

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**

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

Title: amended, on 1 April 1980, pursuant to section 12 of the 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acts of authority which originated under any of the enactments mentioned in Schedule 1 hereto or any enactment thereby repealed, and are subsisting or in force on the coming into op-

eration 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.)

Section 1(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

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)

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

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.

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.

Section 2: substituted, on 1 January 1986, by section 2(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 2 **Chief High Court Judge**: inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 2 **Master**: inserted, on 6 November 1986, by section 2 of the Judicature Amendment Act 1986 (1986 No 93).

Section 2 **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2 **Supreme Court**: inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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: substituted, on 1 April 1980, by section 2 of the 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 be-

- ing 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: substituted, on 26 September 1957, by section 4(1) of the Judicature Amendment Act 1957 (1957 No 9).

Section 4(1): substituted, on 20 May 2004, by section 3(1) of the Judicature Amendment Act 2004 (2004 No 45).

Section 4(1A): inserted, on 20 May 2004, by section 3(1) of the Judicature Amendment Act 2004 (2004 No 45).

Section 4(1B): inserted, on 20 May 2004, by section 3(1) of the Judicature Amendment Act 2004 (2004 No 45).

Section 4(1C): inserted, on 20 May 2004, by section 3(1) of the Judicature Amendment Act 2004 (2004 No 45).

Section 4(1D): inserted, on 20 May 2004, by section 3(1) of the Judicature Amendment Act 2004 (2004 No 45).

Section 4(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 4(2A): inserted, on 20 May 2004, by section 3(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 4(3): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 4(3A): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 4(3B): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 4(4): amended, on 1 April 1980, pursuant to section 12 of the 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.

Section 4A: inserted, on 1 January 2004, by section 43 of the Supreme Court Act 2003 (2003 No 53).

4B Functions of Chief High Court Judge

- (1) The Chief High Court Judge is responsible to the Chief Justice for ensuring the orderly and prompt conduct of the High Court's business.
- () The Chief High Court Judge may make all the arrangements that are necessary for the sittings of the Court and the conduct of its business.

Section 4B: inserted, on 1 January 2004, by section 43 of the Supreme Court Act 2003 (2003 No 53).

Section 4B(2): added, on 1 February 2009, by section 5 of the Judicature (High Court Rules) Amendment Act 2008 (2008 No 90).

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: inserted, on 20 May 2004, by section 4 of the Judicature Amendment Act 2004 (2004 No 45).

5 Senior Judge to act as Chief Justice in certain circumstances

[Repealed]

Section 5: repealed, on 1 January 2004, by section 48(2) of the Supreme Court Act 2003 (2003 No 53).

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: substituted, on 13 December 1979, by section 4 of the Judicature Amendment Act 1979 (1979 No 124).

7 Commissions of Judges to continue during good behaviour

[Repealed]

Section 7: repealed, on 1 January 1987, by section 27 of the Constitution Act 1986 (1986 No 114).

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

[Repealed]

Section 8: repealed, on 1 January 1987, by section 27 of the Constitution Act 1986 (1986 No 114).

9 Governor-General may suspend Judge when Parliament not sitting

[Repealed]

Section 9: repealed, on 1 January 1987, by section 27 of the 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: inserted, on 1 April 1985, by section 2 of the Judicature Amendment Act (No 3) 1985 (1985 No 136).

Section 9A: amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

Section 9A(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 9A(1): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Section 9A(4): inserted, on 20 May 2004, by section 5 of the Judicature Amendment Act 2004 (2004 No 45).

Section 9A(5): inserted, on 20 May 2004, by section 5 of the Judicature Amendment Act 2004 (2004 No 45).

10 Salaries not to be diminished

[Repealed]

Section 10: repealed, on 1 January 1987, by section 27 of the 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.

Section 11: substituted, on 14 October 1981, by section 2(1) of the Judicature Amendment Act 1981 (1981 No 40).

Section 11(3): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 11(3): amended, on 1 April 1985, by section 3 of the Judicature Amendment Act (No 3) 1985 (1985 No 136).

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.

Section 11A: inserted, on 14 October 1981, by section 2(1) of the Judicature Amendment Act 1981 (1981 No 40).

Section 11A(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 11A(3): amended, on 1 April 1985, by section 3 of the Judicature Amendment Act (No 3) 1985 (1985 No 136).

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.

Section 11B: substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

12 Superannuation allowance of Judges

[Repealed]

Section 12: repealed, on 28 October 1955, by section 18(1) of the 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.

Section 13: substituted, on 14 October 1981, by section 3(1) of the Judicature Amendment Act 1981 (1981 No 40).

Section 13: amended, on 6 March 2007, by section 4 of the Judicature Amendment Act 2007 (2007 No 3).

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: substituted, on 25 October 1963, by section 3 of the Judicature Amendment Act 1963 (1963 No 133).

Section 14: amended, on 1 January 1981, by section 2(2) of the Judicature Amendment Act 1980 (1980 No 88).

Section 14: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 14: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 14: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 14: amended, on 6 March 2007, by section 5 of the Judicature Amendment Act 2007 (2007 No 3).

15 How superannuation allowances of existing Judges to be computed

[Repealed]

Section 15: repealed, on 28 October 1955, by section 18(1) of the 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 27 The Chancery Amendment Act 1858 (UK); the Supreme Court Act 1981 s 50 (UK)

Section 16A: inserted, on 1 January 1989, by section 2 of the 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: amended, on 1 April 1970, pursuant to section 129(4) of the Mental Health Act 1969 (1969 No 16).

Section 17: amended, on 1 April 1970, pursuant to section 129(7) of the Mental Health Act 1969 (1969 No 16).

Section 17: amended, on 1 January 1970, by section 36(1)(b) of the Guardianship Act 1968 (1968 No 63).

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.

Section 17A: inserted, on 1 July 1994, by section 2 of the 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.

Section 17B: inserted, on 1 July 1994, by section 2 of the 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.

Section 17C: inserted, on 1 July 1994, by section 2 of the 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.

Section 17D: inserted, on 1 July 1994, by section 2 of the 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.

Section 17E: inserted, on 1 July 1994, by section 2 of the Judicature Amendment Act 1993 (1993 No 117).

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

[Spent]

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.

Section 19(2) heading: amended, on 15 August 1991, by section 2 of the Judicature Amendment Act 1991 (1991 No 60).

Section 19(2): inserted, on 1 April 1980, pursuant to section 12 of the 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.

Section 19A: inserted, on 7 October 1977, by section 9(1) of the Judicature Amendment Act 1977 (1977 No 32).

Section 19A(1): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 19A(2): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 19A(2): amended, on 1 April 1980, by section 6 of the Judicature Amendment Act 1979 (1979 No 124).

Section 19A(3): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 19A(3): amended, on 1 April 1980, by section 6 of the Judicature Amendment Act 1979 (1979 No 124).

Section 19A(4): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 19A(5): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 19A(6): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

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.

Section 19B: inserted, on 7 October 1977, by section 9(1) of the Judicature Amendment Act 1977 (1977 No 32).

Section 19B(1): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 19B(2): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

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: inserted, on 1 January 1986, by section 3 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

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

[Repealed]

Section 20: repealed, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

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

[Repealed]

Section 21: repealed, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

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

[Repealed]

Section 22: repealed, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

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) *[Repealed]*
- (2) *[Repealed]*
- (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 con-

form 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: inserted, on 16 October 1952, by section 2(1) of the Judicature Amendment Act 1952 (1952 No 24).

Section 23A(1): amended, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

Section 23A(1A): repealed, on 1 May 2002, by section 192(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 23A(2): repealed, on 1 May 2002, by section 192(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 23A(3): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 23A(3): amended, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

24 Registrar may act for Judge in certain cases

[Repealed]

Section 24: repealed, on 27 November 1947, by section 28(7) of the Statutes Amendment Act 1947 (1947 No 60).

Commercial list

Heading: inserted, on 6 November 1986, by section 4 of the 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.

Section 24A: inserted, on 6 November 1986, by section 4 of the 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 or the Securities Markets Act 1988:
 - (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.

Section 24B: inserted, on 6 November 1986, by section 4 of the Judicature Amendment Act 1986 (1986 No 93).

Section 24B(1)(e): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 24B(1)(f): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 24B(2): substituted, on 10 July 1987, by section 2 of the 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.

Section 24C: inserted, on 6 November 1986, by section 4 of the Judicature Amendment Act 1986 (1986 No 93).

Section 24C(1): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 24C(1A): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 24C(2): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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.

Section 24D: inserted, on 6 November 1986, by section 4 of the 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.

Section 24E: inserted, on 6 November 1986, by section 4 of the 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.

Section 24F: inserted, on 6 November 1986, by section 4 of the 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.

Section 24G: inserted, on 6 November 1986, by section 4 of the Judicature Amendment Act 1986 (1986 No 93).

Administrative Division of the Court

Heading: substituted, on 31 October 1968, by section 2 of the Judicature Amendment Act 1968 (1968 No 18).

25 Administrative Division of the High Court

[Repealed]

Section 25: repealed, on 15 August 1991, by section 3(2) of the Judicature Amendment Act 1991 (1991 No 60).

26 Jurisdiction of Administrative Division

[Repealed]

Section 26: repealed, on 15 August 1991, by section 3(2) of the Judicature Amendment Act 1991 (1991 No 60).

26A Lay members or assessors in certain cases

[Repealed]

Section 26A: repealed, on 15 August 1991, by section 3(2) of the Judicature Amendment Act 1991 (1991 No 60).

26B Rules relating to Administrative Division

[Repealed]

Section 26B: repealed, on 15 August 1991, by section 3(2) of the Judicature Amendment Act 1991 (1991 No 60).

Associate Judges of the High Court

Heading: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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).

Section 26C: substituted, on 20 May 2004, by section 7 of the 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).

Section 26D: substituted, on 20 May 2004, by section 7 of the 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.

Section 26E: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26E(1): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26E(2): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26E(2): amended, on 20 May 2004, by section 8 of the Judicature Amendment Act 2004 (2004 No 45).

Section 26E(3): amended, on 6 March 2007, by section 6(2) of the Judicature Amendment Act 2007 (2007 No 3).

Section 26E(3): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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.

Section 26F: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26F heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26F(1): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26F(1): amended, on 1 July 1989, by section 86 of the Public Finance Act 1989 (1989 No 44).

Section 26F(1)(a): amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

Section 26F(1)(b): amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

Section 26F(2): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26F(2): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26F(3): amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

Section 26F(5): substituted, on 20 May 2004, by section 9 of the Judicature Amendment Act 2004 (2004 No 45).

Section 26F(6): inserted, on 20 May 2004, by section 9 of the 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.

Section 26G: substituted, on 4 June 1998, by section 2 of the Judicature Amendment Act 1998 (1998 No 52).

Section 26G heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26G: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26G: amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

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.

Section 26H: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26H heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26H(1): substituted, on 15 August 1991, by section 5 of the Judicature Amendment Act 1991 (1991 No 60).

Section 26H(1): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26H(2): amended, on 20 May 2004, by section 10 of the Judicature Amendment Act 2004 (2004 No 45).

Section 26H(3): amended, on 6 March 2007, by section 7 of the Judicature Amendment Act 2007 (2007 No 3).

Section 26H(3): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26H(4): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26H(5): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26H(6): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26H(7): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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:
 - (ea) the making of any order (other than an arrest order or an order relating to an arrest order) that may be made under rules of court against a judgment debtor who has been ordered to attend court for examination:
 - (eb) the making, variation, suspension, or discharge of attachment orders under rules of court:
 - (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) “the Model Law on Cross-Border Insolvency as set out in Schedule 1 of the Insolvency (Cross-border) Act 2006.”
- (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) *[Repealed]*

Section 26I: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26I heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26I(1)(b): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 26I(1)(c): amended, on 17 May 2005, by section 3 of the Judicature Amendment Act 2005 (2005 No 57).

Section 26I(1)(ea): inserted, on 1 February 2009, by section 6 of the Judicature (High Court Rules) Amendment Act 2008 (2008 No 90).

Section 26I(1)(eb): inserted, on 1 February 2009, by section 6 of the Judicature (High Court Rules) Amendment Act 2008 (2008 No 90).

Section 26I(2): substituted, on 1 July 1994, by section 2 of the Judicature Amendment Act 1994 (1994 No 42).

Section 26I(2): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26I(2)(a): substituted, on 1 July 1997, by section 17 of the Arbitration Act 1996 (1996 No 99).

Section 26I(2)(c): amended, on 8 May 1999, by section 2(a) of the Judicature Amendment Act 1999 (1999 No 36).

Section 26I(2)(d): amended, on 8 May 1999, by section 2(b) of the Judicature Amendment Act 1999 (1999 No 36).

Section 26I(2)(d): amended, on 8 May 1999, by section 2(c) of the Judicature Amendment Act 1999 (1999 No 36).

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

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).

Section 26I (2)(k): inserted, on 15 December 2005, by section 3 of the Judicature Amendment Act (No 2) 2005 (2005 No 107).

Section 26I(2)(l): added, on 24 July 2008, by section 13 of the Insolvency (Cross-border) Act 2006 (2006 No 57).

Section 26I(3): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26I(4)(a): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26I(4)(b): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26I(5): repealed, on 4 June 1998, by section 3 of the 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: inserted, on 1 July 1994, by section 3 of the Judicature Amendment Act 1994 (1994 No 42).

Section 26IA heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26IA(1): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26IA(2): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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: inserted, on 1 September 2006, by section 7 of the Judicature Amendment Act 2006 (2006 No 16).

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.

Section 26J: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26J heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26J(1): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26J(2)(a): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26J(2)(b): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26J(3): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26J(3)(a): amended, on 1 February 2001, by section 128 of the Legal Services Act 2000 (2000 No 42).

Section 26J(3)(d): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 26J(4): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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.

Section 26K: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26K heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26K: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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.

Section 26L: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26L heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26L: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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.

Section 26M: substituted, on 1 July 1997, by section 17 of the Arbitration Act 1996 (1996 No 99).

Section 26M heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26M: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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.

Section 26N: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26N heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26N(1): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26N(2): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26N(3)(b): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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.

Section 26O: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26O heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26O: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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.

Section 26P: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26P heading: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26P(1): substituted, on 1 January 2000, by section 4 of the Judicature Amendment Act 1998 (1998 No 52).

Section 26P(1): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

Section 26P(1A): substituted, on 19 December 2002, by section 3 of the Judicature Amendment Act 2002 (2002 No 68).

Section 26P(1AA): inserted, on 19 December 2002, by section 3 of the Judicature Amendment Act 2002 (2002 No 68).

Section 26P(2): amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

26Q Immunity of Associate Judges

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

Section 26Q: substituted, on 20 May 2004, by section 11 of the 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.

Section 26R: inserted, on 6 November 1986, by section 5 of the Judicature Amendment Act 1986 (1986 No 93).

Section 26R: amended, on 20 May 2004, by section 6(2) of the Judicature Amendment Act 2004 (2004 No 45).

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: substituted, on 22 May 1997, by section 2 of the Judicature Amendment Act 1997 (1997 No 10).

*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

Section 28(2): inserted, on 15 December 2005, by section 4 of the Judicature Amendment Act (No 2) 2005 (2005 No 107).

Section 28(3): inserted, on 15 December 2005, by section 4 of the 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: substituted, on 1 April 1973, by section 20(1) of the Judicature Amendment Act 1972 (1972 No 130).

Section 29(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 29(2): amended, on 1 April 1988, pursuant to section 90(a) of the State Sector Act 1988 (1988 No 20).

30 Security to be given by Sheriffs

[Repealed]

Section 30: repealed, on 1 April 1973, by section 20(1) of the Judicature Amendment Act 1972 (1972 No 130).

31 Sureties may withdraw

[Repealed]

Section 31: repealed, on 1 April 1973, by section 20(1) of the Judicature Amendment Act 1972 (1972 No 130).

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: amended, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

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

Section 35: amended, on 1 April 1980, pursuant to section 12 of the 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]

Section 37: repealed, on 11 October 1978, by section 4(1) of the Judicature Amendment Act 1978 (1978 No 55).

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

[Repealed]

Section 38: repealed, on 11 October 1978, by section 4(1) of the Judicature Amendment Act 1978 (1978 No 55).

39 Goods defined

[Repealed]

Section 39: repealed, on 11 October 1978, by section 4(1) of the Judicature Amendment Act 1978 (1978 No 55).

40 Sheriffs' poundage fees

[Repealed]

Section 40: repealed, on 1 January 1969, by section 3(4) of the Judicature Amendment Act (No 2) 1968 (1968 No 59).

41 Fee in special cases

[Repealed]

Section 41: repealed, on 1 January 1969, by section 3(4) of the 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: substituted, on 25 January 2005, by section 37(1) of the 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]

Section 43: repealed, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

44 Provision in cases of vacancy in office of Sheriff

[Repealed]

Section 44: repealed, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

45 Governor-General may appoint Deputy Sheriffs

[Repealed]

Section 45: repealed, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

46 When Deputies to act

[Repealed]

Section 46: repealed, on 1 April 1973, by section 18(2) of the Judicature Amendment Act 1972 (1972 No 130).

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: substituted, on 1 January 1986, by section 11 of the 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

Section 50(2): repealed, on 1 May 1981, by section 4 of the 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.

Section 51: substituted, on 1 January 1986, by section 4 of the 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.

Section 51A: substituted, on 1 January 2000, by section 8 of the Acts and Regulations Publication Amendment Act 1999 (1999 No 111).

Section 51A(2): substituted, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

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.

Section 51B: substituted, on 31 August 1999, by section 2 of the Judicature (Rules Committee and Technical Advisers) Amendment Act 1999 (1999 No 88).

Section 51B(1)(ab): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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.

Section 51C: inserted, on 1 January 1986, by section 4 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 51C(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 51C(2)(cc): inserted, on 1 July 1990, by section 2 of the Judicature Amendment Act 1990 (1990 No 44).

Section 51C(2)(f): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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.

Section 51D: inserted, on 1 January 1986, by section 4 of the 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.

Section 51E: inserted, on 1 January 1986, by section 4 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 51E heading: amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 51E(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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.

Section 51F: inserted, on 1 January 1986, by section 4 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 51F(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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.

Section 51G: inserted, on 1 January 1986, by section 4 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

52 Power of Judge to hold or adjourn sitting

- (1) A Judge may hold any sitting of the Court at any time and place the Judge thinks fit.
- (2) A Judge may adjourn a sitting of the Court to a time and place the Judge thinks fit.
- (3) If a Judge is not present at the time appointed for a sitting of the Court, the Registrar may adjourn the sitting to a time that is convenient.

Section 52: substituted, on 1 February 2009, by section 7 of the Judicature (High Court Rules) Amendment Act 2008 (2008 No 90).

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: substituted, on 9 October 2001, by section 3 of the 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.

Section 54: substituted, on 1 January 1986, by section 4 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

54A Verdict of three-fourths

[Repealed]

Section 54A: repealed, on 29 June 2009, by section 19(3) of the Juries Amendment Act 2008 (2008 No 40).

54B Discharge of juror or jury

Nothing in this Act affects the powers of a Court or Judge to discharge a juror or jury for a civil case under section 22 of the Juries Act 1981.

Section 54B: substituted, on 25 December 2008, by section 16(2) of the Juries Amendment Act 2008 (2008 No 40).

Miscellaneous rules of law and of practice

Habeas corpus

Heading: inserted, on 1 January 1986, by section 5 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

54C Procedure in respect of habeas corpus

[Repealed]

Section 54C: repealed, on 26 May 2001, by section 22(1) of the 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

Section 55(1): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 55(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 55(2): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 55(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 55(2): amended, on 10 July 1967, pursuant to section 7(1)(a) of the Decimal Currency Act 1964 (1964 No 27).

Section 55(3): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

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 judg-

ment, 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

Section 56(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Witnesses

Heading: inserted, on 25 October 1960, by section 2 of the 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.

Section 56A: inserted, on 25 October 1960, by section 2 of the Judicature Amendment Act 1960 (1960 No 109).

Section 56A(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 56A(2): amended, on 1 March 1978, by section 4(1) of the Judicature Amendment Act 1977 (1977 No 32).

Section 56A(3): inserted, on 29 September 1961, by section 10 of the Judicature Amendment Act 1961 (1961 No 11).

Section 56A(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 56A(3): amended, on 1 March 1978, by section 4(2) of the Judicature Amendment Act 1977 (1977 No 32).

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.

Section 56B: inserted, on 25 October 1960, by section 2 of the Judicature Amendment Act 1960 (1960 No 109).

Section 56B(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

56BB Witnesses entitled to expenses

[Repealed]

Section 56BB: repealed, on 14 October 1981, by section 5(2)(a) of the Judicature Amendment Act 1981 (1981 No 40).

Contempt of Court

Heading: inserted, on 25 October 1960, by section 3 of the 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: inserted, on 25 October 1960, by section 3 of the Judicature Amendment Act 1960 (1960 No 109).

Section 56C(2): amended, on 16 December 1983, by section 3 of the Judicature Amendment Act 1983 (1983 No 103).

Immigration Matters

Heading: inserted, on 1 April 1999, by section 63 of the 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: inserted, on 1 April 1999, by section 63 of the 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: inserted, on 1 July 1990, by section 3 of the 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 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,

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.

Section 56D: inserted, on 1 July 1990, by section 3 of the 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.

Section 56E: inserted, on 1 July 1990, by section 3 of the 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.

Section 56F: inserted, on 1 July 1990, by section 3 of the 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.

Section 56G: inserted, on 1 July 1990, by section 3 of the 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.

Section 56H: inserted, on 1 July 1990, by section 3 of the 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 Australia 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.

Section 56I: inserted, on 1 July 1990, by section 3 of the 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.

Section 56J: inserted, on 1 July 1990, by section 3 of the 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.

Section 56K: inserted, on 1 July 1990, by section 3 of the 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.

Section 56L: inserted, on 1 July 1990, by section 3 of the 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.

Section 56M: inserted, on 1 July 1990, by section 3 of the 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.

Section 56N: inserted, on 1 July 1990, by section 3 of the 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.

Section 56O: inserted, on 1 July 1990, by section 3 of the 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.

Section 56P: inserted, on 1 July 1990, by section 3 of the 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 Courthas 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 Courthas all the privileges and immunities of counsel in the High Court.

Section 56Q: inserted, on 1 July 1990, by section 3 of the 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.

Section 56R: inserted, on 1 July 1990, by section 3 of the 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.

Section 56S: inserted, on 1 July 1990, by section 3 of the 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

Section 57(2): substituted, on 1 January 2004, by section 44 of the Supreme Court Act 2003 (2003 No 53).

Section 57(2)(b): amended, on 10 April 2006, by section 4 of the Judicature Amendment Act 2006 (2006 No 16).

Section 57(3): substituted, on 1 January 1958, by section 2(1) of the Judicature Amendment Act 1957 (1957 No 9).

Section 57(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 57(4): substituted, on 1 January 1958, by section 2(1) of the Judicature Amendment Act 1957 (1957 No 9).

Section 57(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 57(5): inserted, on 1 January 1958, by section 2(1) of the Judicature Amendment Act 1957 (1957 No 9).

Section 57(5): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 57(6): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 57(6A): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 57(6B): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 57(6C): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 57(6D): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 57(7): inserted, on 1 January 1958, by section 2(1) of the Judicature Amendment Act 1957 (1957 No 9).

Section 57(7): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 57(8): inserted, on 1 January 1958, by section 2(1) of the Judicature Amendment Act 1957 (1957 No 9).

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: inserted, on 20 May 2004, by section 12 of the 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: substituted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

Section 58(1): amended, on 7 August 2006, by section 5(1) of the Judicature Amendment Act 2006 (2006 No 16).

Section 58(2): repealed, on 7 August 2006, by section 5(2) of the Judicature Amendment Act 2006 (2006 No 16).

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: substituted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

Section 58A(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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: substituted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

Section 58B(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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.

Section 58C: inserted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

Section 58C(3): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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 Court Martial Appeal Court under section 10 of the Court Martial Appeals Act 1953.

Section 58D: inserted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

Section 58D(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 58D(4)(c): amended, on 1 July 2009, by section 87 of the Court Martial Act 2007 (2007 No 101).

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).

Section 58E: inserted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

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.

Section 58F: inserted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

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.

Section 58G: inserted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

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: substituted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

Section 59(1): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 59(3): inserted, on 7 August 2006, by section 6 of the Judicature Amendment Act 2006 (2006 No 16).

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: substituted, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

Section 60(2): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 60(3): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

60A Court of Appeal may sit in divisions

[Repealed]

Section 60A: repealed, on 1 August 1998, by section 5 of the Judicature Amendment Act 1998 (1998 No 52).

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 directions 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: inserted, on 31 January 1978, by section 8 of the Judicature Amendment Act 1977 (1977 No 32).

Section 61A(1): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 61A(2): amended, on 1 August 1998, by section 7(a) of the Judicature Amendment Act 1998 (1998 No 52).

Section 61A(4): amended, on 1 August 1998, by section 7(b) of the Judicature Amendment Act 1998 (1998 No 52).

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

Section 62: amended, on 1 April 1980, pursuant to section 12 of the 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

Section 63: amended, on 1 April 1980, pursuant to section 12 of the 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.

Section 64: substituted, on 4 June 1998, by section 8 of the Judicature Amendment Act 1998 (1998 No 52).

65 Decision of Court of Appeal final as regards tribunals of New Zealand

[Repealed]

Section 65: repealed, on 10 April 2006, by section 8 of the 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 regulating 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

Section 66: amended, on 1 April 1980, pursuant to section 12 of the 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: substituted, on 10 April 2006, by section 9 of the Judicature Amendment Act 2006 (2006 No 16).

68 Direct appeal from decision of inferior Courts

[Repealed]

Section 68: repealed, on 10 April 2006, by section 10 of the 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

Section 69(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 69(1): amended, on 1 April 1973, by section 18(2) of the Judicial Amendment Act 1972 (1972 No 130).

Appeals from convictions

70 Appeal from Judgment of Supreme Court on conviction

[Repealed]

Section 70: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

Miscellaneous

71 Rules of practice

[Repealed]

Section 71: repealed, on 1 January 1986, by section 6 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

71A Restriction on institution of vexatious actions

[Repealed]

Section 71A: repealed on 19 October 1966, by section 3(1) of the 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

Section 72: substituted, on 22 May 1997, by section 3 of the Judicature Amendment Act 1997 (1997 No 10).

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: repealed, on 1 January 1931, by section 4 of the 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: repealed, on 1 January 1910, by section 15 of the Inferior Courts Procedure Act 1909 (1909 No 13).

Limitation of actions

77 Limitation of actions for merchants' accounts

[Repealed]

Section 77: repealed, on 1 January 1952, by section 35(2) of the Limitation Act 1950 (1950 No 65).

78 Limitation not barred by claims subsequently arising

[Repealed]

Section 78: repealed, on 1 January 1952, by section 35(2) of the Limitation Act 1950 (1950 No 65).

79 Absence beyond seas or imprisonment of a creditor not to be a disability

[Repealed]

Section 79: repealed, on 1 January 1952, by section 35(2) of the 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]

Section 80: repealed, on 1 January 1952, by section 35(2) of the 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]

Section 81: repealed, on 1 January 1952, by section 35(2) of the Limitation Act 1950 (1950 No 65).

82 Part payment by one contractor, &c, not to prevent bar in favour of another contractor, &c

[Repealed]

Section 82: repealed, on 1 January 1952, by section 35(2) of the Limitation Act 1950 (1950 No 65).

Sureties

83 Consideration for guarantee need not appear by writing

[Repealed]

Section 83: repealed, on 19 October 1956, by section 3(2) of the 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

Section 85(1): amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

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 7.5% 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: substituted, on 16 October 1952, by section 3 of the Judicature Amendment Act 1952 (1952 No 24).

Section 87(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 87(1): amended, on 13 January 1983, by section 4(2) of the District Courts Amendment Act (No 2) 1982 (1982 No 130).

Section 87(1): amended, on 21 October 1974, by section 7(1) of the Judicature Amendment Act 1974 (1974 No 57).

Section 87(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 87(2): amended, on 13 January 1983, by section 4(2) of the District Courts Amendment Act (No 2) 1982 (1982 No 130).

Section 87(2): amended, on 21 October 1974, by section 7(1) of the Judicature Amendment Act 1974 (1974 No 57).

Section 87(3): inserted, on 21 October 1974, by section 7(2) of the 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

Heading: inserted, on 1 November 1999, by section 2 of the Judicature Amendment Act (No 2) 1999 (1999 No 87).

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: inserted, on 1 November 1999, by section 2 of the 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 88B: inserted, as section 88A, on 15 December 2005, by section 5(1) of the Judicature Amendment Act (No 2) 2005 (2005 No 107).

89 Administration suits

[Repealed]

Section 89: repealed, on 1 January 1953, by section 79(1) of the 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: amended, on 1 January 1986, by section 7 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

91 Damages by collision at sea

[Repealed]

Section 91: repealed, on 1 May 1913, by section 10 of the 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: repealed, on 1 January 1952, by section 35(2) of the 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: amended, on 1 January 1986, by section 11(1) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

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.

Section 94A: inserted, on 28 September 1958, by section 2 of the Judicature Amendment Act 1958 (1958 No 40).

Section 94A: amended, on 1 January 1986, by section 11 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

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.

Section 94B: inserted, on 28 September 1958, by section 2 of the Judicature Amendment Act 1958 (1958 No 40).

95 Limitation of time within which wills may be impeached
[Repealed]

Section 95: repealed, on 1 January 1952, by section 35(2) of the Limitation Act 1950 (1950 No 65).

96 Jurisdiction as to costs in administration suits*[Repealed]*

Section 96: repealed, on 1 January 1953, by section 79(1) of the Administration Act 1952 (1952 No 56).

97 Court empowered to grant special relief in cases of encroachment*[Repealed]*

Section 97: repealed, on 18 September 1950, by section 3(2) of the Property Law Amendment Act 1950 (1950 No 27).

98 Custody and education of infants*[Repealed]*

Section 98: repealed, on 1 January 1970, by section 35(1) of the 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: inserted, on 1 January 1986, by section 8(1) of the 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: substituted, on 1 January 1986, by section 11 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 99A(2): amended, on 1 July 1995 by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

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)

Section 99B: inserted, on 31 August 1999, by section 3 of the Judicature (Rules Committee and Technical Advisers) Amendment Act 1999 (1999 No 88).

Section 99B(1): amended, on 1 January 2004, by section 45(1) of the Supreme Court Act 2003 (2003 No 53).

Section 99B(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 99B(4): repealed, on 1 January 2004, by section 45(2) of the Supreme Court Act 2003 (2003 No 53).

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.

Section 99C: inserted, on 31 August 1999, by section 3 of the 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 appointment of a technical adviser and the assistance to be given by the technical adviser:
 - (b) The conduct of proceedings involving technical advisers.

Section 99D: inserted, on 31 August 1999, by section 3 of the 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: substituted, on 1 January 1986, by section 9 of the 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: substituted, on 1 January 1986, by section 11 of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 100A(1)(d): substituted, on 9 October 2001, by section 4 of the Judicature Amendment Act 2001 (2001 No 83).

Section 100A(1)(da): inserted, on 9 October 2001, by section 4 of the Judicature Amendment Act 2001 (2001 No 83).

Section 100A(1)(db): inserted, on 9 October 2001, by section 4 of the Judicature Amendment Act 2001 (2001 No 83).

Section 100A(1)(dc): inserted, on 9 October 2001, by section 4 of the Judicature Amendment Act 2001 (2001 No 83).

Section 100A(1)(dd): inserted, on 9 October 2001, by section 4 of the Judicature Amendment Act 2001 (2001 No 83).

Section 100A(2): inserted, on 9 October 2001, by section 4 of the 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: inserted, on 9 October 2001, by section 5 of the Judicature Amendment Act 2001 (2001 No 83).

101 Words imputing unchastity to women actionable without special damage

[Repealed]

Section 101: repealed, on 29 September 1954, by section 23(1) of the Defamation Act 1954 (1954 No 46).

Schedule 1
Enactments consolidated

s 1(2)

- 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

High Court Rules

Schedule 2: substituted, on 1 February 2009, by section 8(1) of the Judicature (High Court Rules) Amendment Act 2008 (2008 No 90).

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Part 1
Rules of general application

Subpart 1—Objective and interpretation

1.1 Title

These rules are the High Court Rules.

Compare: 1908 No 89 Schedule 2 r 1

Part 1—*continued*
Subpart 1—*continued*

1.2 Objective

The objective of these rules is to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application.

Compare: 1908 No 89 Schedule 2 r 4

1.3 Interpretation

(1) In these rules, unless the context otherwise requires,—

Act means the Judicature Act 1908

address for service, in relation to a party, means the address of a place in New Zealand at which a document may be left for that party, or to which it may be sent by post to that party, under these rules

appearance means a document that states a person's address for service, and is either—

- (a) an appearance and objection to the jurisdiction of the court under rule 5.49; or
- (b) an appearance for ancillary purposes under rule 5.50; or
- (c) an appearance reserving rights under rule 5.51; or
- (d) an appearance authorised by any other rule

case management conference means a conference conducted under rule 7.3

chattels includes all things that are not land

civil means not criminal

civil proceedings, in relation to the Crown, has the same meaning as in section 2(1) of 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

court means the High Court; and includes—

- (a) a Judge of the High Court; and

Part 1—*continued*
Subpart 1—*continued*

- (b) an Associate Judge of the High Court exercising the jurisdiction conferred on an Associate Judge by the Act or by rules made under section 26J of the Act

court holiday means a day that is a holiday under rule 3.2

the **Crown** has the same meaning as in section 2(1) of the Crown Proceedings Act 1950

defendant means a person served or intended to be served with a proceeding (other than a third or subsequent party served with a proceeding under rule 4.12)

document means—

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or from which such symbols, images, or sounds can be derived, and includes—
- (i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached:
 - (ii) a book, map, plan, graph, or drawing;
 - (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information

electronic includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic, and **electronically** has a corresponding meaning

expert means a person who has specialised knowledge or skill based on training, study, or experience

expert evidence means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion

to **file**, in relation to any document, means to lodge the document in the form required by these rules in, or to send it by post or electronically in accordance with these rules to, the proper registry of the court, together with the fee (if any) payable for filing it

Part 1—*continued*
Subpart 1—*continued*

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 in chambers means a hearing that takes place in circumstances in which the general public is not admitted, except with the leave of the Judge, and includes any conference held under these rules

interlocutory application means an application made in accordance with rule 7.19 or 7.41

interlocutory order—

- (a) means an order or a 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

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 Act or by rules made under section 26J of the Act

land includes any estate, right, title, or interest in land

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

Māori means a person of the Māori race of New Zealand; and includes any descendant of that 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 under rule 5.22

opinion, in relation to a statement offered in evidence, means a statement of opinion that tends to prove or disprove a fact

Part 1—*continued*
Subpart 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 a defendant or a person added to a 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

property includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest

Registrar includes a Deputy Registrar

respondent, in relation to an interlocutory application, means a party on whom the application has been served

these rules means the High Court Rules

trial includes a hearing before a Judge alone

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.
- (2) A word or an expression in a rule or form in these rules not defined in these rules but defined in an enactment dealing with the subject matter of that rule or form, unless the context otherwise requires, has the meaning given to it by that enactment.
 - (3) In these rules, unless the context otherwise requires, a reference to a numbered form is a reference to the form so numbered in Schedule 1 of these rules.

Part 1—*continued*
Subpart 1—*continued*

- (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 r 3

Subpart 2—Application and compliance

1.4 Application

- (1) The practice and procedure of the court in all civil proceedings and interlocutory applications is regulated by these rules.
- (2) Despite subclause (1), these rules do not apply to—
- (a) appeals to the Court of Appeal; or
 - (b) appeals to the Supreme Court.
- (3) These rules are subject to—
- (a) section 51(2) and (3) and to sections 51A to 56C of the Act;
 - (b) the Evidence Act 2006;
 - (c) any statute prescribing the practice and procedure of the court in a proceeding or an appeal or application for leave to appeal under that statute;
 - (d) rules made under section 51C of the Act prescribing the procedure applicable in respect of any class of civil proceedings.
- (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 a party or on its own initiative, determine the question and give any directions it thinks just.

Compare: 1908 No 89 Schedule 2 r 2

1.5 Non-compliance with rules

- (1) A failure to comply with the requirements of these rules—
- (a) must be treated as an irregularity; and
 - (b) does not nullify—
 - (i) the proceeding; or

Part 1—*continued*
Subpart 2—*continued*

- (ii) any step taken in the proceeding; or
 - (iii) any document, judgment, or order in the proceeding.
- (2) Subject to subclauses (3) and (4), the court may, on the ground that there has been a failure to which subclause (1) applies, and on any terms as to costs or otherwise that 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 any amendments to be made and to make any order dealing with the proceeding generally as it thinks just.
- (3) The court must 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 the rules to be begun by an originating process other than the one employed.
- (4) The court must 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 a 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 5

1.6 Cases not provided for

- (1) If any case arises for which no form of procedure is prescribed by any Act or rules or regulations or by these rules, the court must dispose of the case as nearly as may be practicable in accordance with the provisions of these rules affecting any similar case.

Part 1—*continued*
Subpart 2—*continued*

- (2) If there are no such rules, it must be disposed of in the manner that the court thinks is best calculated to promote the objective of these rules (*see* rule 1.2).

Compare: 1908 No 89 Schedule 2 r 9

1.7 Oral applications for relief

- (1) A Judge may grant relief on an oral application if the case is urgent and the interests of justice so require.
- (2) This rule applies despite any rule requiring a written application.
- (3) Relief may be granted on terms and conditions considered just.

1.8 Consent instead of leave of court

- (1) When, by these rules, the leave of the court is required in any matter of procedure, and all parties and persons who are affected consent to the grant of leave, a party may file a memorandum signed by all those parties and persons evidencing that consent and its terms and conditions.
- (2) The Registrar must either—
- (a) make and seal an order in terms of the memorandum; or
 - (b) refer the memorandum to the court, in which case the memorandum must be treated as an interlocutory application for the leave.

Compare: 1908 No 89 Schedule 2 r 10

1.9 Amendment of defects and errors

- (1) The court may, 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 on its own initiative or on the application of a party to the proceedings, any amendments to any pleading or the procedure

Part 1—*continued*
Subpart 2—*continued*

in the proceeding that are necessary for determining the real controversy between the parties.

- (3) All amendments under subclause (1) or (2) may be made with or without costs and on any terms the court thinks just.
- (4) This rule is subject to rule 7.18 (no steps after the setting down date without leave).

Compare: 1908 No 89 Schedule 2 r 11

1.10 Security

- (1) An officer who is empowered to take security from a person for any purpose may determine the appropriate number of sureties and the form and the amount of the security.
- (2) Any person required to give security may appeal to the court against any decision under subclause (1).
- (3) If a surety becomes bankrupt or insolvent, or makes a composition with that surety's creditors, the court may stay all further steps in the proceeding by the principal party to the security until another surety has been found.

Compare: 1908 No 89 Schedule 2 rr 16, 17

*Subpart 3—Use of Māori language,
translations, and sign language*

1.11 Speaking in Māori

- (1) This rule applies to a person entitled under section 4(1) of the Maori Language Act 1987 to speak Māori in a proceeding or at the hearing of an interlocutory application.
- (2) If a person to whom this rule applies wishes to speak Māori 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 Māori.
- (3) The notice must state that the person intends to speak Māori at—
 - (a) all case management conferences and hearings; or

Part 1—*continued*
Subpart 3—*continued*

- (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 G 12.
- (5) The notice must be filed and served,—
 - (a) if the person intends to speak Māori 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 Māori 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 Māori; or
 - (c) if the person intends to speak Māori at a particular case management conference or hearing, not less than 10 working days before the case management conference or hearing.

Compare: 1908 No 89 Schedule 2 r 65A

1.12 Translation of documents into te reo Māori

- (1) A person upon whom a document is served in any proceeding is entitled to receive a translation of the document into the Māori language if he or she—
 - (a) applies, orally or in writing, to the Registrar in the place where the proceeding is pending, within 10 working days after the date of service, for a translation into the Māori language of the document; and
 - (b) states a postal address for the service of the translation (if an address for service has not already been given); and
 - (c) satisfies the Registrar that he or she is unable to read the document but could read it if it were translated into the Māori language.

Part 1—*continued*
Subpart 3—*continued*

- (2) The Registrar must require that translation to be prepared by the party or person on whose behalf the document was served.
- (3) The translation must be certified correct by a person holding an endorsed certificate of competency under section 18 of the Maori Language Act 1987.
- (4) The translation may be served—
 - (a) personally; or
 - (b) at the address for service (if any) of the person entitled to the translation; or
 - (c) by sending it by registered post addressed to that person at the stated postal address.
- (5) When the translation is sent by registered post, it is to be treated as having been served when it would be delivered or available for delivery at its address in the ordinary course of registered post.
- (6) The costs of preparing, certifying, and serving the translation are in the discretion of the court as costs in the proceeding.
- (7) Unless the court otherwise orders,—
 - (a) the document is deemed not to have been served until the translation is served in accordance with subclause (4); and
 - (b) the proceeding in which the document is issued must be stayed as far as the person entitled to the translation is concerned until the translation is so served; and
 - (c) every subsequent document served on that person in the proceeding and every execution process or other process issued against that person to enforce any judgment entered or order made in the proceeding must, unless that person is at the time represented by a solicitor, be accompanied by a translation into the Māori language complying with this rule.

Compare: 1908 No 89 Schedule 2 rr 62–64

Part 1—*continued*
Subpart 3—*continued*

1.13 Failure to give notice

A failure to comply with rule 1.11 does not prevent a person speaking Māori at a case management conference or pre-trial 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 Māori 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.

Compare: 1908 No 89 Schedule 2 r 65B

1.14 Translation may be ordered by court

- (1) The court may at any time order that a translation into the Māori language, complying with rule 1.12(2) to (7), of any document served, before or after the making of the order, upon a Māori concerned in a proceeding be served on that Māori, whether or not he or she has applied for it under rule 1.12(1).
- (2) An order may be made subject to such terms and conditions as the court thinks just.
- (3) The court may, on ordering a translation under this rule, grant an adjournment of the proceeding if justice so requires.

Compare: 1908 No 89 Schedule 2 r 65

1.15 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
 - (b) the interpreter's translation of the non-English language affidavit.

Compare: 1908 No 89 Schedule 2 r 512

Part 1—*continued*
Subpart 3—*continued*

1.16 Sign language

- (1) Any person permitted by the New Zealand Sign Language Act 2006 to use New Zealand Sign Language in a proceeding or at the hearing of any interlocutory application or at a case management or pre-trial conference must give the court and all other parties 10 working days' notice of that person's intention to do so.
- (2) A Judge may at any time, on application by or on behalf of a party, make any order thought just relating to—
 - (a) providing, with the Registrar's assistance, a competent interpreter, and ensuring that the interpreter is available; and
 - (b) the interpretation of the sign language into English or Māori and the interpretation of English or Māori words used in court into sign language; and
 - (c) the cost of any interpretation ordered and its incidence; and
 - (d) the method of making and recording the sign language communication.
- (3) A failure to give notice as required by subclause (1) does not prevent any permitted person using New Zealand Sign Language, however—
 - (a) the failure is a relevant consideration in an award of costs; and
 - (b) the Judge may adjourn the conference or hearing or trial to enable the Registrar to arrange for a competent interpreter to be available at the adjourned conference or hearing or trial.
- (4) In this rule, **competent interpreter** means an interpreter who meets the standards of competency specified in regulations made under the New Zealand Sign Language Act 2006; and in the absence of such regulations means a person whom the Judge is satisfied is competent to translate from English or Māori (as the case requires) into New Zealand Sign Language and from New Zealand Sign Language into English or Māori (as the case requires).

Part 1—*continued**Subpart 4—Time***1.17 Calculating periods of time**

- (1) A period of time fixed by the rules or by a judgment, order, or direction or by a document in a proceeding must be calculated in accordance with this rule and rule 1.18.
- (2) When a time of 1 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 must not be counted.
- (3) Nothing in this rule or in rules 1.18 and 1.19 affects the reckoning of a period of time fixed by the Limitation Act 1950 or any other statute or the application of the Interpretation Act 1999 in relation to the Limitation Act 1950 or any other statute.

Compare: 1908 No 89 Schedule 2 r 13

1.18 When time expires when court registry is closed

When the time for doing any act at a registry of the court expires on a day on which that registry is closed, so that that act cannot be done on that day, the act is in time if done on the next day on which that registry is open.

Compare: 1908 No 89 Schedule 2 r 15

1.19 Extending and shortening time

- (1) The court may, in its discretion, extend or shorten 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.
- (2) The court may order an extension of time although the application for the extension is not made until after the expiration of the time appointed or fixed.

Compare: 1908 No 89 Schedule 2 r 6

*Subpart 5—Lawyers' obligations***1.20 Lawyers' duties**

- (1) The duties imposed by these rules on lawyers do not limit a lawyer's obligations to a client or another lawyer or the court

Part 1—*continued*
Subpart 5—*continued*

under the rules of conduct and client care for lawyers in New Zealand or other applicable ethical rules or guidelines.

- (2) A lawyer who acts for a party to a proceeding, or is a party to any proceeding, must not, without the leave of the court, act for any other party to the proceeding who does not have the same interest in the subject matter of the proceeding.
- (3) In this rule, **lawyer** includes the partner of a solicitor to whom subclause (1) applies.
- (4) In applying these rules, the court may have regard to the obligations referred to in subclause (1).

Compare: 1908 No 89 Schedule 2 r 41A

Subpart 6—Forms

1.21 Variation of forms

- (1) Variations may be made to any form directed or authorised by these rules to be used, as the circumstances of a particular case require.
- (2) Subclause (1) does not apply if a Judge orders that a court document be prepared in a particular format or with prescribed content.

Compare: 1908 No 89 Schedule 2 r 7

Subpart 7—International co-operation

1.22 Communication with foreign court

- (1) This rule applies if, and to the extent that, the court is required, or wishes, to seek the co-operation of a court in another country when dealing with an application under these rules.
- (2) The court is entitled to communicate with the foreign court if—
 - (a) the parties consent; and
 - (b) the communication is not prohibited by the law of the other country.

Part 1—*continued*
Subpart 7—*continued*

- (3) When the court acts under subclause (2) it must give the parties to the proceeding an opportunity to be heard on the form of the communication.
- (4) The communication and any reply must be treated as part of the record of the proceeding or interlocutory application.

Part 2
Jurisdiction and powers of Associate Judges
and Registrars

Subpart 1—Associate Judges

2.1 Jurisdiction and powers

- (1) An Associate Judge has the jurisdiction and powers of a Judge in chambers conferred by the Act or these rules or another enactment.
- (2) The jurisdiction and powers referred to in subclause (1) are in addition to the jurisdiction and powers conferred by section 26I of the Act.
- (3) Despite subclause (1), an Associate Judge does not have jurisdiction or powers in respect of the matters specified in—
 - (a) section 26J(3) and (4) of the Act; or
 - (b) section 26P(1) of the Act.

Compare: 1908 No 89 Schedule 2 r 61A

2.2 Interim order on transfer of proceeding

An Associate Judge who refers a proceeding or a matter arising in a proceeding to a Judge under section 26N(1) of the Act may, before the final disposal of the proceeding or matter, make any interim order he or she considers just.

Compare: 1908 No 89 Schedule 2 r 61B

2.3 Review of decision

- (1) An application for a review, under section 26P(1) of the Act, of an order or a decision made by an Associate Judge must be by

Part 2—*continued*
Subpart 1—*continued*

interlocutory application, which must fully state the grounds of review and what exactly is challenged by the applicant.

- (2) Unless a Judge or an Associate Judge directs otherwise, notice of the application 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 was given, within 5 working days of the order being made or the decision being given; or
 - (b) if it is made by a party who was not present or represented, within 5 working days after the receipt by that party of notice of the making of the order or the giving of the decision.
- (3) Unless a Judge or an Associate Judge directs otherwise, the application does not operate as—
 - (a) a stay of the proceeding; or
 - (b) a step in the proceeding.
- (4) If the order or decision being reviewed was made following a defended hearing and is supported by documented reasons,—
 - (a) the review proceeds as a rehearing; and
 - (b) the Judge may, if he or she thinks it is in the interests of justice, rehear the whole or part of the evidence or receive further evidence.
- (5) In all other cases,—
 - (a) a review proceeds as a full rehearing; and
 - (b) the Judge may give the order or decision the weight he or she thinks appropriate.

Compare: 1908 No 89 Schedule 2 r 61C

2.4 Appeal to Court of Appeal

The Court of Appeal (Civil) Rules 2005 apply, with all necessary modifications, to an appeal under section 26P(2) of the Act brought against an order or a decision of an Associate Judge.

Compare: 1908 No 89 Schedule 2 r 61D

Part 2—*continued**Subpart 2—Registrars***2.5 Registrars' jurisdiction and powers relating to interlocutory applications**

A Registrar (not including a Deputy Registrar) has the jurisdiction and powers of a Judge to do the following:

- (a) hear and determine an application to extend or shorten the time for filing a statement of defence or notice of interlocutory application:
- (b) hear and determine an application under rule 6.28 (relating to service out of New Zealand):
- (c) adjourn a trial, reserving to the court the costs of, or arising out of, the adjournment:
- (d) order a stay on an application made to vary or rescind an order or a decision of a Registrar:
- (e) make an order in an interlocutory application on notice—
 - (i) if the consent of all relevant parties is endorsed on the application or filed; or
 - (ii) on receiving a draft order consented to in writing by all relevant parties or by their solicitor or counsel.

Compare: 1908 No 89 Schedule 2 r 270

2.6 Additional jurisdiction for certain Registrars

The Registrar (not including a Deputy Registrar) at the Auckland, Hamilton, Rotorua, Palmerston North, Wellington, Christchurch, or Dunedin registry has the jurisdiction and powers given to a Judge by the following:

- (a) rule 1.19, so far as it applies to—
 - (i) rule 5.73:
 - (ii) rule 8.18:
 - (iii) rule 9.69:
 - (iv) rule 9.70:
 - (v) rule 9.71:
- (b) rule 4.35(4):
- (c) rule 5.1(4):
- (d) subpart 2 of Part 17:

Part 2—*continued*
Subpart 2—*continued*

(e) rule 17.24.

Compare: 1908 No 89 Schedule 2 r 271

2.7 Limits on jurisdiction

- (1) A Registrar must exercise jurisdiction under rules 2.5 and 2.6—
 - (a) in chambers; and
 - (b) subject to any judicial direction.
- (2) However, a Registrar may exercise his or her jurisdiction under those rules without further direction.
- (3) In exercising a jurisdiction conferred by these rules a Registrar is not subject to direction by any person except a Judge acting under rule 2.11.

Compare: 1908 No 89 Schedule 2 r 272

2.8 Powers ancillary to jurisdiction

A Registrar may exercise powers ancillary to jurisdiction under rules 2.5 and 2.6 if a Judge may exercise those ancillary powers in the same circumstances.

Compare: 1908 No 89 Schedule 2 r 273

2.9 Jurisdiction in other registries

A Registrar may exercise jurisdiction under rules 2.5 and 2.6 in respect of an application filed in a registry of the court other than the one at which he or she is Registrar.

Compare: 1908 No 89 Schedule 2 r 274

2.10 Form of order

An order made by a Registrar under rule 2.5 or 2.6 must—

- (a) be headed “Before the Registrar at [*place*], in chambers”; and
- (b) be signed by a Registrar or Deputy Registrar, and sealed with the seal of the court; and
- (c) state the rule under which it is made.

Compare: 1908 No 89 Schedule 2 r 275

Part 2—*continued*
Subpart 2—*continued*

2.11 Review of Registrar's decision

- (1) An affected party to a proceeding or an intended proceeding may apply to a Judge by interlocutory application for a review of any of the following:
 - (a) a Registrar's exercise of jurisdiction:
 - (b) a Registrar's refusal to file a document tendered for filing:
 - (c) a Registrar's refusal to perform a duty placed on him or her under these rules.
- (2) The Judge may, on review, make any orders he or she thinks just.
- (3) It is not necessary to apply for an order for an extraordinary remedy under Part 30 or to make an application for review under Part 1 of the Judicature Amendment Act 1972 when seeking a review under subclause (1)(b) or (c).
- (4) Notice of an application for review must 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 5 working days of the decision or refusal; or
 - (b) if it is made by a party who was not present or represented, within 5 working days after the receipt by the party of notice of the decision or refusal.
- (5) An application for review under this rule is not a stay of proceeding or a step in the proceeding, unless a Judge, or a Registrar acting under rule 2.5, so directs.

Compare: 1908 No 89 Schedule 2 r 276

Part 3
Court administration
*Subpart 1—Registry hours and court
holidays*

3.1 Registry hours

The court's registries must be open from 9 am to 5 pm on every day that is not a court holiday.

Compare: 1908 No 89 Schedule 2 r 22

Part 3—*continued*
Subpart 1—*continued*

3.2 Court holidays

- (1) The following are court holidays for the court and the court's registries:
- (a) the period beginning on Good Friday and ending on the close of the Tuesday after Easter:
 - (b) the period beginning on 24 December and ending on the close of 3 January:
 - (c) Saturdays and Sundays:
 - (d) the Sovereign's birthday:
 - (e) Anzac Day:
 - (f) Labour Day:
 - (g) Waitangi Day:
 - (h) the anniversary day of the region in which the court is situated:
 - (i) in each place where a registry of the court is situated, any day which is in that place—
 - (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 the court and its registries are closed under an order made under rule 3.4.
- (2) The Holidays Act 2003 overrides subclause (1).
Compare: 1908 No 89 Schedule 2 rr 18, 19

3.3 Sitting on court holidays

- (1) The court may sit on a court holiday if a Judge considers it desirable to do so in order to dispose of business.
- (2) Despite subclause (1), the court may sit on a Sunday, Christmas Day, New Year's Day, or Good Friday only if a Judge is of the view that the business to be disposed of is extremely urgent.
- (3) If the court sits on a court holiday, it may—
- (a) authorise the receipt or issue of any document complying with these rules; and

Part 3—*continued*
Subpart 1—*continued*

- (b) despite section 54 of the Act, authorise the service of any document received or issued under paragraph (a).

Compare: 1908 No 89 Schedule 2 r 21

3.3A Vacations

- (1) There is to be a long vacation beginning on 20 December and ending with the close of 31 January.
- (2) There is to be an Easter vacation beginning on the day before Good Friday and ending with the close of the Saturday following Easter.

Schedule 2 rule 3.3A: inserted, on 1 December 2009, by rule 4 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

3.4 Epidemics and emergencies

- (1) Despite rule 3.1, a Judge may order that the court and its registries be closed for a period specified in the order (not exceeding 1 week) if an epidemic or emergency exists in the place where the court is located.
- (2) A Registrar must ensure that an order made under this rule is immediately advertised in the manner the Judge directs.

Compare: 1908 No 89 Schedule 2 r 20

Subpart 2—Access to court documents

Schedule 2 Part 3 subpart 2: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.5 Interpretation

In this subpart, unless the context otherwise requires,—

access means to search, inspect, or copy under the supervision of an officer of the court

court file means a collection of documents in the custody or control of the court that relate to a proceeding (including any interlocutory application associated with the proceeding)

Part 3—*continued*
Subpart 2—*continued*

document—

- (a) means any written material in the custody or control of the court that relates to a proceeding (including any interlocutory application associated with the proceeding), whether or not kept on a court file; and
- (b) includes documentary exhibits, video recordings, records in electronic form, films, photographs, and images in electronic form; but
- (c) excludes—
 - (i) notes made by or for a Judge for his or her personal use; and
 - (ii) any material that relates to the administration of the court

formal court record means any of the following kept in a registry of the court:

- (a) a register or index;
- (b) any published list that gives notice of a hearing;
- (c) a document that—
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its contents to the public;
- (d) a judgment, order, or minute of the court, including any record of the reasons given by the Judge;
- (e) the rolls of barristers and solicitors kept under section 56 of the Lawyers and Conveyancers Act 2006 or any former corresponding enactment.

Schedule 2 rule 3.5: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.6 Application

- (1) This subpart applies to documents while they are in the custody or control of the Court and until they are transferred to Archives New Zealand.
- (2) These rules do not require any person to prepare a document that is not in existence at the time the document is sought.

Part 3—*continued*
Subpart 2—*continued*

Schedule 2 rule 3.6: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.7 General right of access to formal court record and certain applications under Administration Act 1969

- (1) Subject to rule 3.12, every person has the right to access the formal court record kept in a registry of the court.
- (2) Subject to rule 3.12, every person has the right to access any document or court file that relates to an application or action for a grant of administration under the Administration Act 1969 or to a proceeding for the recall of any such grant.
- (3) Despite subclause (1) or (2), a Judge may direct that judgments or orders, or documents or files of the kind described in subclause (2), not be accessed without the permission of the court.

Schedule 2 rule 3.7: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.8 Right of parties to access court file or documents

- (1) The parties to a proceeding, and their counsel, may (whether during or after the completion of the proceeding), under the supervision of an officer of the court,—
 - (a) search and inspect the court file or any document relating to the proceeding, without payment of a fee; and
 - (b) copy any part or parts of the court file or any document relating to the proceeding on payment of any prescribed fee.
- (2) Despite subclause (1), a record of court proceedings in electronic form may be copied only with the permission of the court.
- (3) Despite subclause (1), a Judge may direct that the court file or any document relating to the proceeding not be accessed by the parties or their counsel without the permission of the court.

Schedule 2 rule 3.8: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

Part 3—*continued*
Subpart 2—*continued*

3.9 Access to documents during substantive hearing stage

- (1) This rule applies during the hearing of a proceeding (other than the hearing of an interlocutory application) and until—
 - (a) the close of the 20th working day after the court has given the final judgment on the proceeding; or
 - (b) the discontinuance of the proceeding before the final judgment is given.
- (2) During the period to which this rule applies, any person may access any of the following documents relating to the proceeding:
 - (a) any pleading, reference, notice, or application filed in the court;
 - (b) affidavits, depositions, or other written statements admitted into evidence for the purposes of the hearing;
 - (c) documents admitted into evidence for the purposes of the hearing;
 - (d) if any evidence given orally at the hearing has been transcribed, a transcript of that evidence.
- (3) Despite subclause (2), a Judge may, on his or her initiative or on request, direct that any document, or part of a document, relating to the proceeding not be accessed without the permission of a Judge.
- (4) A request for access to a document under this rule is made informally to the Registrar by letter that—
 - (a) identifies the requested document; and
 - (b) gives the reasons for the request.
- (5) The following provisions apply when a request for access to a document is made under subclause (4):
 - (a) the Registrar must promptly give the parties or their counsel a copy of the request;
 - (b) a party who wishes to object must, before the relevant deadline (within the meaning of rule 3.10), give written notice of the objection to the Registrar, to the person who made the request, and to the other parties or their counsel:

Part 3—*continued*
Subpart 2—*continued*

- (c) on receipt of an objection, the Registrar must promptly refer the objection and the request to the Judge for determination:
- (d) unless the document is subject to a restriction stated in subclause (3) or in rule 3.12, the Registrar must promptly give the person who made the request access to the document—
 - (i) if the Registrar receives no objection before the expiry of the relevant deadline (within the meaning of rule 3.10); or
 - (ii) if the parties or their counsel earlier agree that the person be given access to the document:
- (e) every request that relates to a document that is subject to a restriction stated in subclause (3) or in rule 3.12 is taken to be a request for the permission of a Judge, and must be promptly referred to the Judge by the Registrar.
- (6) The Judge may determine an objection referred to the Judge under subclause (5)(c) or a request for permission under subclause (3) or (5)(e) in any manner the Judge considers just.
- (7) For the purposes of subclause 2(b) and (c), **admitted into evidence** does not include evidence admitted provisionally.

Schedule 2 rule 3.9: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.10 Meaning of relevant deadline in rule 3.9

- (1) For the purpose of rule 3.9, where a party or counsel receives a copy of a request given to the party or counsel under that rule, **relevant deadline** means whichever of the following times is applicable:
 - (a) if the copy of the request is received on a day on which the hearing is proceeding, 3 pm on the first working day after the day on which the copy is received:
 - (b) if the copy of the request is received on any other day, 3 pm on the third working day after the day on which the copy is received.

Part 3—*continued*
Subpart 2—*continued*

- (2) For the purposes of subclause (1), a person is deemed to receive a request—
 - (a) on the day on which it is emailed, faxed, or handed to the person;
 - (b) on the day after the day on which it is posted to the person.
- (3) This rule overrides rule 6.6.

Schedule 2 rule 3.10: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.11 Access to court files, documents, and formal court record in other cases

If a person is not eligible to access a document, court file, or any part of the formal court record under any of rules 3.7 to 3.9, the person may access the document, court file, or any part of the formal court record with the permission of the court, given on an application made under rule 3.13.

Schedule 2 rule 3.11: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.12 Restrictions on access

- (1) Any right or permission conferred or given by these rules to access a document, court file, or any part of the formal court record is subject to—
 - (a) any enactment, court order, or direction limiting or prohibiting access or publication; and
 - (b) the payment of any prescribed fees for access.
- (2) A person may not access a document, court file, or any judgment or order, that relates to a proceeding brought under an enactment specified in subclause (3) unless—
 - (a) the person is a party to that proceeding; or
 - (b) the court permits the person to do so.
- (3) The enactments are as follows:
 - (a) Adoption Act 1955:
 - (b) Alcoholism and Drug Addiction Act 1966:
 - (c) Arbitration Act 1996:

Part 3—*continued*
Subpart 2—*continued*

- (d) Care of Children Act 2004:
 - (e) Civil Union Act 2004:
 - (f) Family Proceedings Act 1980:
 - (g) Family Protection Act 1955:
 - (h) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
 - (i) Marriage Act 1955:
 - (j) Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - (k) Property (Relationships) Act 1976:
 - (l) Protection of Personal and Property Rights Act 1988:
 - (m) Status of Children Act 1969:
 - (n) any former provisions corresponding to provisions of any of the Acts mentioned in paragraphs (a) to (m).
- (4) A person may search, inspect, or copy a document, court file, or any judgment or order relating to an application under rule 9.60 or 28.4 (which relate to the service of New Zealand subpoenas in Australia) only with the leave of a Judge.

Schedule 2 rule 3.12: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.13 Applications for permission to access documents, court file, or formal court record other than at hearing stage

- (1) This rule applies whenever the permission of the court is necessary under these rules and is sought to access a document, court file, or any part of the formal court record, except where access may be sought under rule 3.9.
- (2) An application under this rule is made informally to the Registrar by a letter that—
 - (a) identifies the document, court file, or part of the formal court record that the applicant seeks to access; and
 - (b) gives the reasons for the application.
- (3) The application is heard and determined by a Judge or, if a Judge directs the Registrar to do so, by the Registrar.

Part 3—*continued*
Subpart 2—*continued*

- (4) On receipt of an application made in accordance with subclause (2), the Judge or Registrar may direct that the person file an interlocutory application or originating application.
- (5) The applicant must give notice of the application to any person who is, in the opinion of the Judge or Registrar, adversely affected by the application.
- (6) The Judge or Registrar may dispense with the giving of notice under subclause (5) if it would be impracticable to require notice to be given.
- (7) The Judge or Registrar may deal with an application on the papers, at an oral hearing, or in any other manner the Judge or Registrar considers just.

Schedule 2 rule 3.13: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.14 Decisions on applications under rule 3.13

- (1) The Judge or Registrar may refuse an application made under rule 3.13 or grant it in whole or in part without conditions or subject to any conditions that the Judge or Registrar thinks appropriate.
- (2) A Judge may permit access to a series of files for the purposes of research.

Schedule 2 rule 3.14: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.15 Review of decisions by Registrar

- (1) Any decision by a Registrar under rule 3.14 is subject to review by a Judge on the application of the applicant or any person affected.
- (2) Rule 2.11 applies to subclause (1) as if the reference in that rule to a party were a reference to the applicant or any person affected.

Schedule 2 rule 3.15: inserted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

Part 3—*continued*
Subpart 2—*continued*

3.16 Matters to be taken into account

In determining an application under rule 3.13, or a request for permission under rule 3.9, or the determination of an objection under that rule, the Judge or Registrar must consider the nature of, and the reasons for, the application or request and take into account each of the following matters that is relevant to the application, request, or objection:

- (a) the orderly and fair administration of justice:
- (b) the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:
- (c) the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, court hearings and decisions:
- (d) the freedom to seek, receive, and impart information:
- (e) whether a document to which the application or request relates is subject to any restriction under rule 3.12:
- (f) any other matter that the Judge or Registrar thinks just.

Schedule 2 rule 3.16: inserted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

Subpart 3—Investment of funds in court

Schedule 2 Part 3 subpart 3: substituted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.17 Application for order

- (1) Subclause (2) applies if money has been, or is to be, paid into court in a proceeding under—
 - (a) an order of the court; or
 - (b) a provision of these rules.
- (2) If this subclause applies, a party to the proceeding may apply to the court for an order directing the Registrar to invest the money on whatever security or securities the court thinks just.

Part 3—*continued*
Subpart 3—*continued*

- (3) Unless the court otherwise orders, an application may not be made until 15 working days after the money has been paid into court.

Compare: 1908 No 89 Schedule 2 r 69

Schedule 2 rule 3.17: inserted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.18 Powers of court in relation to application

- (1) The court may, when making an order for investment of money under rule 3.17,—
- (a) direct that the security on which the money is invested must be taken in the name of the Registrar alone or with another person the court nominates; and
 - (b) also give—
 - (i) directions as to the form and the terms of the security; and
 - (ii) any other directions as may appear necessary or expedient.
- (2) An order may be varied by the court on the application of a party to the proceeding.

Compare: 1908 No 89 Schedule 2 r 70

Schedule 2 rule 3.18: inserted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

3.19 Disposal of securities and income

- (1) The court may, on the application of a party to a proceeding, direct that—
- (a) the security on which money is invested under rule 3.17 be transferred to a party or parties in the shares or proportions the court thinks just; or
 - (b) the security be converted into money and the resulting capital and income be paid to a party or parties in the shares or proportions the court thinks just; or
 - (c) the capital be paid to a party or parties and the income be paid to another party or parties in the shares or proportions the court thinks just.

Part 3—*continued*
Subpart 3—*continued*

- (2) An application may be made—
 - (a) at the time of making an order under rule 3.17; or
 - (b) at a later time.
- (3) Unless the court directs otherwise, the income received from an investment under an order under rule 3.17 must be paid to the party or parties who are found by the court to be entitled to the capital, in the shares or proportions the court thinks just.

Compare: 1908 No 89 Schedule 2 r 71

Schedule 2 rule 3.19: inserted, on 12 June 2009, by rule 4 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

Part 4
Parties

Subpart 1—Limit on parties

4.1 Limit on parties

The number of persons named or joined as parties to a proceeding must be limited, as far as practicable, to—

- (a) persons whose presence before the court is necessary to justly determine the issues arising; and
- (b) persons who ought to be bound by any judgment given.

Compare: 1908 No 89 Schedule 2 r 76

Subpart 2—Plaintiffs

4.2 Plaintiffs

- (1) Persons may be joined jointly, severally, or in the alternative as plaintiffs,—
 - (a) if it is alleged that they have a right to relief in respect of, or arising out of, the same transaction, matter, event, instrument, document, series of documents, enactment, or bylaw; and
 - (b) if each of those persons brought a separate proceeding, a common question of law or fact would arise.

Part 4—*continued*
Subpart 2—*continued*

- (2) On the application of a defendant, the court may, if it considers a joinder may prejudice or delay the hearing of a proceeding, order separate trials or make any order it thinks just.

Compare: 1908 No 89 Schedule 2 r 73

Subpart 3—Defendants

4.3 Defendants

- (1) Persons may be joined jointly, individually, or in the alternative as defendants against whom it is alleged there is a right to relief in respect of, or arising out of, the same transaction, matter, event, instrument, document, series of documents, enactment, or bylaw.
- (2) It is not necessary for every defendant to be interested in all relief claimed or every cause of action.
- (3) The court may make an order preventing a defendant from being embarrassed or put to expense by being required to attend part of a proceeding in which the defendant has no interest.
- (4) A plaintiff who is in doubt as to the person or persons against whom the plaintiff is entitled to relief may join 2 or more persons as defendants with a view to the proceeding determining—
- (a) which (if any) of the defendants is liable; and
 - (b) to what extent.

Compare: 1908 No 89 Schedule 2 r 74

Subpart 4—Third, fourth, and subsequent parties

4.4 Third parties

- (1) A defendant may issue a third party notice if the defendant claims any or all of the following:
- (a) that the defendant is entitled to a contribution or an indemnity from a person who is not a party to the proceeding (a **third party**);
 - (b) that the defendant is entitled to relief or a remedy relating to, or connected with, the subject matter of the

Part 4—*continued*
Subpart 4—*continued*

proceeding from a third party and the relief or remedy is substantially the same as that claimed by the plaintiff against the defendant:

- (c) that a question or issue in the proceeding ought to be determined not only between the plaintiff and the defendant but also between—
 - (i) the plaintiff, the defendant, and the third party; or
 - (ii) the defendant and the third party; or
 - (iii) the plaintiff and the third party:
 - (d) that there is a question or an issue between the defendant and the third party relating to, or connected with, the subject matter of the proceeding that is substantially the same as a question or an issue arising between the plaintiff and the defendant.
- (2) A third party notice must be issued within—
 - (a) 10 working days after the expiry of the time for filing the defendant's statement of defence; or
 - (b) a longer time given by leave of the court.
 - (3) A third party notice may be issued only with the leave of the court if—
 - (a) an application for judgment is pending under rule 12.2 or 12.3; or
 - (b) a proceeding is entered on a commercial list established under section 24A of the Act at a registry of the court.

Compare: 1908 No 89 Schedule 2 r 75(1), (5)

4.5 Fourth parties

- (1) A third party claiming any or all of the matters in rule 4.4(1) in relation to a person who is not a party to the proceeding (a **fourth party**) may issue a fourth party notice.
- (2) A fourth party notice must be issued within—
 - (a) 10 working days after the expiry of the time for filing the third party's statement of defence; or
 - (b) a longer time given by leave of the court—
 - (i) on an application on notice to all existing parties; or

Part 4—*continued*
Subpart 4—*continued*

- (ii) with the written consent of all existing parties.
- (3) Rule 4.4(3) applies to fourth party notices.
Compare: 1908 No 89 Schedule 2 r 75(2)

4.6 Subsequent parties

- (1) A fourth party who claims any or all of the matters in rule 4.4(1) in relation to a person who is not a party to the proceeding (a **subsequent party**) may issue a subsequent party notice and so on.
- (2) A subsequent party notice may be issued only with—
 - (a) the written consent of all existing parties; or
 - (b) the leave of the court made on an application on notice to all existing parties.
- (3) Rule 4.4(3) and 4.5(2) apply, with all necessary modifications, to subsequent party notices.
Compare: 1908 No 89 Schedule 2 rr 75(2), 162

4.7 Status of third, fourth, and subsequent parties

- (1) A third, fourth, or subsequent party is a party to the proceeding from the time a notice is served on that party.
- (2) A third, fourth, or subsequent party has the same rights of defence as a defendant to the proceeding.
Compare: 1908 No 89 Schedule 2 r 75(3)

4.8 Court's power and discretion

- (1) On an application seeking leave to issue a third, fourth, or subsequent party notice, the court must have regard to all relevant circumstances, including delay to the plaintiff.
- (2) On the making of an application of that kind, the court may grant or refuse leave or grant leave on just terms.
Compare: 1908 No 89 Schedule 2 r 75(4)

Part 4—*continued*
Subpart 4—*continued*

4.9 Application of third party notice rules to fourth and subsequent party notices

Rules 4.10 to 4.17 apply, with all necessary modifications, to fourth and subsequent party notices.

Compare: 1908 No 89 Schedule 2 r 162

4.10 Requirements of third party notice

- (1) A third party notice must be signed by the defendant and inform the third party of—
 - (a) the plaintiff's claim against the defendant; and
 - (b) the defendant's claim against the third party; and
 - (c) the steps the third party is required to take if the third party 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 G 14.

Compare: 1908 No 89 Schedule 2 r 154

4.11 Filing of third party notice

- (1) A third party notice must be filed in the court together with a statement of the defendant's claim against the third party.
- (2) The statement of claim must—
 - (a) comply with rules 5.27 to 5.35; and
 - (b) state the nature of the question or issue to be determined; and
 - (c) state the nature and extent of any relief or remedy claimed against the third party.

Compare: 1908 No 89 Schedule 2 r 155

4.12 Service on third party

A defendant must, within 25 working days after the date of the filing of the third party notice or the date of the order granting leave to issue the third party notice, serve the following on the third party:

- (a) a copy of the third party notice:

Part 4—*continued*
Subpart 4—*continued*

- (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 other documents that have been served—
 - (i) by the plaintiff on the defendant; or
 - (ii) by the defendant on the plaintiff.

Compare: 1908 No 89 Schedule 2 r 156

4.13 Service on plaintiff

- (1) The defendant must, within 25 working days after the date of the filing of the third party notice or the date of the order granting leave to issue the third party notice, serve the plaintiff with—
 - (a) a copy of the third party notice; and
 - (b) a copy of the defendant's statement of claim against the third party.
- (2) The plaintiff must not, without the leave of the court, do the following until the expiry of the time for the third party to file a defence:
 - (a) enter judgment in the proceeding; or
 - (b) apply for the allocation of a hearing date for the proceeding.
- (3) An application for leave to the court must be made on notice—
 - (a) to the defendant; and
 - (b) if the third party has been served, to the third party.

Compare: 1908 No 89 Schedule 2 r 157

4.14 Filing and service of statement of defence

- (1) A statement of defence by a third party must be filed and served within 25 working days after the date of service of the third party notice.

Part 4—*continued*
Subpart 4—*continued*

- (2) A third party must serve a copy of the third party's statement of defence on the plaintiff and the defendant.

Compare: 1908 No 89 Schedule 2 r 158

4.15 Service of application for leave

If an application to the court for leave to issue a third party notice is required, it must be served on the other parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r 159

4.16 Setting aside third party notice

- (1) A third party may apply to the court to have a third party notice issued and served with the leave of the court set aside.
- (2) A party to a proceeding served with a third party notice issued and served without leave of the court may apply to the court to have the notice set aside.
- (3) In either case, the court may—
- (a) set the third party notice aside and dismiss the defendant's statement of claim against the third party—
 - (i) on the merits; or
 - (ii) without prejudice to the right of the defendant to pursue that claim against the third party in an independent proceeding; or
 - (b) give other directions.

Compare: 1908 No 89 Schedule 2 r 160

4.17 Default in filing statement of defence

- (1) A third party defaulting in filing a statement of defence—
- (a) admits the validity of, and is bound by,—
 - (i) any judgment (whether by consent, default, or otherwise) given in the proceeding; and
 - (ii) any decision on a question specified in the defendant's statement of claim; and
 - (b) admits liability if a contribution, indemnity, relief, or remedy is claimed against the third party in the defendant's statement of claim.

Part 4—*continued*
Subpart 4—*continued*

- (2) Subclause (1) does not apply in third party proceedings against the Crown, unless—
- (a) an application is made to that effect and the court orders it; and
 - (b) the application was served on the Crown not less than 5 working days before the day for hearing the application.

Compare: 1908 No 89 Schedule 2 r 161

Subpart 5—Claims between defendants

4.18 Right to give notice

If a defendant claims against another defendant in circumstances in which (had that other defendant not been a defendant) it would be permissible to issue and serve a third party notice on that other defendant, the claiming defendant may, at any time before the setting down date for the proceeding, file and serve that other defendant and the plaintiff with a notice to that effect.

Compare: 1908 No 89 Schedule 2 r 163

4.19 Statement of claim to be filed and served

- (1) A defendant who files a notice under rule 4.18 must file and serve with it a statement of that defendant's claim against the other defendant.
- (2) The statement of claim—
- (a) must comply with the requirements of subpart 6 of Part 5; and
 - (b) in particular, must 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.

Compare: 1908 No 89 Schedule 2 r 164

4.20 Statement of defence

- (1) Unless a defendant served with a notice under rule 4.18 wishes to raise an affirmative defence to the claim made against that

Part 4—*continued*
Subpart 5—*continued*

defendant by the defendant serving the notice, it is not necessary to file a statement of defence to that claim.

- (2) A statement of defence to a claim made in a notice served under rule 4.18 must, within 10 working 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 165

4.21 Form of notice

- (1) A notice filed and served under rule 4.18 must be in form G 15.
- (2) Every such notice must be signed by the defendant or the defendant's solicitor.

Compare: 1908 No 89 Schedule 2 r 166

4.22 Effect of omission to give notice

Even if a defendant has not given a notice under rule 4.18 the court may give any judgment or grant any relief in favour of that defendant that might have been given or granted in the absence of that rule.

Compare: 1908 No 89 Schedule 2 r 167

Subpart 6—Impact of certain capacities

4.23 Trustees, executors, and administrators

- (1) Trustees, executors, and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees, executors, or administrators.
- (2) There is no need to join persons beneficially interested in a trust or an estate to a proceeding because the trustees, executors, and administrators represent those persons.
- (3) However, the court may, at any stage, order that a beneficially interested person be made a party, either in addition to or instead of the trustees, executors, or administrators.

Compare: 1908 No 89 Schedule 2 r 77

Part 4—*continued*
Subpart 6—*continued*

4.24 Persons having same interest

One or more persons may sue or be sued on behalf of, or for the benefit of, all persons with the same interest in the subject matter of a proceeding—

- (a) with the consent of the other persons who have the same interest; or
- (b) as directed by the court on an application made by a party or intending party to the proceeding.

Compare: 1908 No 89 Schedule 2 r 78

4.25 Partners

- (1) Any 2 or more persons making a claim as partners 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 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 are stayed.

Compare: 1908 No 89 Schedule 2 r 79

4.26 Person trading as firm

- (1) A person carrying on business in the name of a firm may be sued in the name of the firm.
- (2) The opposite party may 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 80

4.27 Representation by other persons

In respect of a proceeding or intended proceeding, the court may, on an application by a party or an intending party or on its own initiative,—

Part 4—*continued*
Subpart 6—*continued*

- (a) direct an executor or a trustee to represent minors, unborn persons, absentees, or unrepresented persons:
- (b) appoint a counsel who agrees to represent minors, unborn persons, absentees, or unrepresented persons:
- (c) appoint a litigation guardian to represent a person if it appears necessary:
- (d) direct the Public Trust to represent a person or class of persons:
- (e) direct that the Attorney-General or the Solicitor-General be served:
- (f) direct, with the consent of the Attorney-General, that a head of a government department or other officer represent the public interest:
- (g) direct that a local authority, public body, or other representative body represent the inhabitants of a locality or any class of persons, unless their interests, or the interests of a considerable section of them, may be adverse to those of the local authority, public body, or other representative body:
- (h) if a local authority, public body, or other representative body is a plaintiff or a party whose interests appear to be adverse to those of the inhabitants of a locality or any class of persons, or a considerable section of them, direct the manner in which the inhabitants, class, or section are to be represented.

Compare: 1908 No 89 Schedule 2 r 81

4.28 Relators

- (1) In this rule, a **relator** is a person who has been approved by the Attorney-General to bring a proceeding in the name of the Attorney-General.
- (2) A person who seeks to bring a proceeding in the name of the Attorney-General must obtain the approval of the Attorney-General.
- (3) A relator is liable for the costs of a proceeding.

Part 4—*continued*
Subpart 6—*continued*

- (4) A proceeding does not come to an end because a relator or all relators die or become incapable of acting.
- (5) However, the court may stay a proceeding until the name of a new relator, who has been approved by the Attorney-General, has been substituted.
- (6) A person must not be named as a relator in a proceeding until the person has authorised the solicitor issuing the proceeding to name him or her as a relator.
- (7) The authority must be—
 - (a) in writing; and
 - (b) signed by the proposed relator; and
 - (c) filed in the registry of the court in which the proceeding is to commence.

Compare: 1908 No 89 Schedule 2 r 95

Subpart 7—Incapacitated persons

4.29 Incapacitated person, litigation guardian, 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

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 (but only in a proceeding to which the authority extends); or

Part 4—*continued*
Subpart 7—*continued*

- (ii) a person who is appointed under rule 4.35 to conduct a proceeding; and
- (b) has the same meaning as the expression “guardian *ad litem*”

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.

Compare: 1908 No 89 Schedule 2 rr 82 and 83

4.30 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 otherwise orders.
- (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.

Compare: 1908 No 89 Schedule 2 r 84

4.31 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 otherwise orders.
- (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
 - (c) is authorised under rule 4.32 to conduct a proceeding without a litigation guardian.

Compare: 1908 No 89 Schedule 2 r 85

4.32 Minor may apply to conduct proceeding without litigation guardian

- (1) This rule applies to a minor who—

Part 4—*continued*
Subpart 7—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 86

4.33 Application of rules 4.34 to 4.46 to minors

Rules 4.34 to 4.46 apply to a minor to whom rule 4.31(1) applies, and every reference in those rules to an incapacitated person must be read as if it were also a reference to a minor.

Compare: 1908 No 89 Schedule 2 r 86A

4.34 Court may set aside 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.

Compare: 1908 No 89 Schedule 2 r 86B

4.35 Appointment of litigation guardian

- (1) This rule applies if an incapacitated person does not have a litigation guardian within the meaning of paragraph (a)(i) of the definition of litigation guardian in rule 4.29.
- (2) The court may appoint a litigation guardian if it is satisfied that—

Part 4—*continued*
Subpart 7—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 86C

4.36 Application to be served on person for whom litigation guardian is to be appointed

- (1) Unless the court otherwise orders, an application under rule 4.35—
 - (a) may be made without notice; 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 otherwise orders, the application must be served instead on—
 - (i) the minor's parent or guardian; or

Part 4—*continued*
Subpart 7—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 86D

4.37 Notification of appointment

- (1) A litigation guardian within the meaning of paragraph (a)(i) of the definition of litigation guardian in rule 4.29 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 4.35 as a litigation guardian of a party to a proceeding must give notice of the appointment to other parties in the proceeding as soon as practicable after the appointment.

Compare: 1908 No 89 Schedule 2 r 86E

4.38 Powers of litigation guardian

A litigation guardian may do anything in relation to a proceeding that the incapacitated person could do if he or she were not incapacitated.

Compare: 1908 No 89 Schedule 2 r 87

4.39 Heading on documents when incapacitated person is represented

The heading of a document filed in a proceeding in which an incapacitated person is represented by a litigation guardian must state—

- (a) the name of the incapacitated person followed by the words “by his (*or* her) litigation guardian”; and
- (b) the litigation guardian’s name.

Compare: 1908 No 89 Schedule 2 r 88

4.40 Service of documents

- (1) A party who knows that an incapacitated person has a litigation guardian must serve any document in a proceeding—

Part 4—*continued*
Subpart 7—*continued*

- (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 4.35; 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.

Compare: 1908 No 89 Schedule 2 r 89

4.41 Representation 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 an award of costs under the rules in favour of or against the incapacitated person.

Compare: 1908 No 89 Schedule 2 r 90

4.42 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 any 1 or more of the following:
 - (a) the incapacitated person;
 - (b) the person who is the litigation guardian of the incapacitated person at the time the costs determination is made;
 - (c) a person against whom an order for indemnity or contribution has been made under rule 4.43, to the extent of the amount of the indemnity or contribution.

Part 4—*continued*
Subpart 7—*continued*

- (2) Unless the court otherwise orders, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs paid under subclause (1)(b) or (c).

Compare: 1908 No 89 Schedule 2 r 91

4.43 Liability of former litigation guardian for costs subsequently awarded against incapacitated person

The court may make an order—

- (a) directing a person who has ceased to be a litigation guardian of an incapacitated person (a **former litigation guardian**) to indemnify the incapacitated person or a current litigation guardian for any costs subsequently awarded against the incapacitated person in relation to 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 on a basis specified by the court for any costs subsequently awarded against the incapacitated person in relation to 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 (b):
- (d) declaring that the former litigation guardian is not liable for any of the costs referred to in paragraph (a) or (b).

Compare: 1908 No 89 Schedule 2 r 92

4.44 Compliance with liability order

- (1) A former litigation guardian may be required by the incapacitated person or the current litigation guardian to give effect to an order made under paragraph (a), (b), or (c) of rule 4.43.
- (2) The court may, on the application of a former litigation guardian, declare that the former litigation guardian is not required to comply with that order if it is satisfied, having regard to circumstances occurring after the order was made,

Part 4—*continued*
Subpart 7—*continued*

that it is no longer just that the former litigation guardian be required to comply with the order.

Compare: 1908 No 89 Schedule 2 r 92

4.45 Litigation guardian may be reimbursed for costs out of property of incapacitated person

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 solicitor and client costs) paid or incurred, or that are to be paid or incurred, by the litigation guardian on behalf of the incapacitated person.

Compare: 1908 No 89 Schedule 2 r 93

4.46 Retirement, removal, or death of litigation guardian

- (1) A litigation guardian may retire only with the leave of the court.
- (2) Unless the court otherwise orders, the appointment of a litigation guardian under rule 4.35 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.

Compare: 1908 No 89 Schedule 2 r 94

4.47 Procedure when 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

Part 4—*continued*
Subpart 7—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 94A

4.48 Procedure when 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 otherwise orders, 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 become a party to the proceeding when he or she was not a minor.

Compare: 1908 No 89 Schedule 2 r 94B

Part 4—*continued**Subpart 8—Change of parties by death,
bankruptcy, or devolution***4.49 Proceeding not to come to end**

- (1) A proceeding does not come to an end on the death or bankruptcy of a party if a cause of action survives or continues.
- (2) A proceeding does not become defective because of the assignment, creation, or devolution of an estate or a title when the proceeding is pending.

Compare: 1908 No 89 Schedule 2 r 98

4.50 Procedure on death, bankruptcy, and devolution

In the case of death, bankruptcy, or devolution of an estate of a party to a proceeding by operation of law in circumstances where the complete settlement of all the questions involved in the proceeding is necessary, the court—

- (a) must order that a personal representative, trustee, or other successor to the interest (if any) of that party be made a party to the proceeding, or be served with notice of it, in the prescribed manner and form on terms it thinks just; and
- (b) may make orders it thinks just for the disposal of the proceeding.

Compare: 1908 No 89 Schedule 2 r 99

4.51 Devolution when proceeding pending

A proceeding may be continued by or against a person to or on whom an estate or title is assigned, created, or devolved if the assignment, creation, or devolution takes place when a proceeding is pending.

Compare: 1908 No 89 Schedule 2 r 100

4.52 New parties order

- (1) Subclause (2) applies if, after a proceeding has commenced, there is an event causing a change or transmission of interest or

Part 4—*continued*
Subpart 8—*continued*

liability (including death or bankruptcy) or an interested person comes into existence, making it necessary or desirable—

- (a) that a person be made a party; or
 - (b) an existing party be made a party in another capacity.
- (2) An application without notice may be made for an order that the proceeding be carried on between the continuing parties and the new party (a **new parties order**).
- (3) The new parties order must, unless the court otherwise directs, be served on—
- (a) the continuing parties to the proceeding; and
 - (b) each new party, unless the person making the application is the only new party.
- (4) The new parties order is binding on a person served from the time of service.
- (5) A person who is not already a party who is served with a new parties order must file a statement of defence in the same time frame and manner as a person served with a statement of claim.

Compare: 1908 No 89 Schedule 2 rr 101 and 102

4.53 Discharge or variation of new parties order

- (1) A person may apply to the court to discharge or vary a new parties order within 10 working days from the service of the order.
- (2) An incapacitated person who is served with a new parties order who does not have a litigation guardian may apply to the court within 10 working days from the appointment of a litigation guardian for the new parties order to be discharged or varied.
- (3) Until the period of 10 working days has expired, the new parties order has no force or effect on the incapacitated person.

Compare: 1908 No 89 Schedule 2 rr 103, 104

Subpart 9—Adjusting parties

4.54 Change of name

A party's name that is incorrectly stated in pleadings or changed by marriage, civil union, deed poll, or other means,

Part 4—*continued*
Subpart 9—*continued*

may be amended, without an application to the court, by a notice signed by the party and filed and served on all other parties.

Compare: 1908 No 89 Schedule 2 r 105

4.55 Parties wrongly joined

- (1) A proceeding is not defeated by reason of parties having been wrongly joined.
- (2) Despite a misjoinder, the court may deal with a proceeding in accordance with the rights and interests of the parties.

Compare: 1908 No 89 Schedule 2 r 96

4.56 Striking out and adding parties

- (1) A Judge may, at any stage of a proceeding, order that—
 - (a) the name of a party be struck out as a plaintiff or defendant because the party was improperly or mistakenly joined; or
 - (b) the name of a person be added as a plaintiff or defendant because—
 - (i) the person ought to have been joined; or
 - (ii) the person's presence before the court may be necessary to adjudicate on and settle all questions involved in the proceeding.
- (2) An order does not require an application and may be made on terms the court considers just.
- (3) Despite subclause (1)(b), no person may be added as a plaintiff without that person's consent.

Compare: 1908 No 89 Schedule 2 r 97

Subpart 10—Interpleader

4.57 Interpretation

In this rule and rules 4.58 to 4.64, unless the context otherwise requires,—

applicant means a person or an officer entitled under rule 4.58 to apply to the court for relief under rule 4.63

Part 4—*continued*
Subpart 10—*continued*

claimant means a person claiming against an applicant in terms of rule 4.58

execution creditor means a person who has issued an enforcement process under Part 17

execution debtor means a person against whose property an enforcement process has been issued under Part 17.

Compare: 1908 No 89 Schedule 2 r 172

4.58 Right to interplead

- (1) When a person (**A**) who is under a liability in respect of a debt or in respect of any money or chattels is, or expects to be, sued for or in respect of the debt, money, or chattels by 2 or more persons making adverse claims, A may apply to the court, on notice to the persons making the adverse claims, for relief under rule 4.63.
- (2) If a person (**B**) who is not a person against whom a sale order (described in rule 17.62) or a possession order (described in rule 17.80) is issued claims money or chattels taken or intended to be taken by an officer giving effect to either of those orders, or the proceeds or value of those chattels, the officer may apply to the court, serving notice on the execution creditor, the execution debtor, and B for relief under rule 4.63.
- (3) Subclause (2) applies—
 - (a) whether or not there has been a return of the order; and
 - (b) whether or not a proceeding has been commenced against the officer in respect of the money or chattels.

Compare: 1908 No 89 Schedule 2 r 173

4.59 Form of application

- (1) When a claimant has issued a proceeding against the applicant in respect of the debt or money or chattels referred to in rule 4.58(1), and in cases within rule 4.58(2), the application must be an interlocutory application in the proceeding.
- (2) Subject to rules 4.61 to 4.64, subpart 2 of Part 7 of these rules applies to the application.

Part 4—*continued*
Subpart 10—*continued*

- (3) In other cases the application must be made by filing and serving a statement of claim and notice of proceeding under Part 5.

Compare: 1908 No 89 Schedule 2 r 174

4.60 Affidavit in support

- (1) An application under rule 4.58 must be supported by an affidavit 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 must be given) have been made by the claimants and the steps already taken by the respective claimants in support of their claims; and
 - (c) that the applicant is not colluding 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 must be served on each claimant when the application under rule 4.58 is served.

Compare: 1908 No 89 Schedule 2 r 175

4.61 Time for applying

- (1) If a claimant has commenced a proceeding against the applicant to enforce the claim, an application under rule 4.58 must be made before a statement of defence has been filed by the applicant.
- (2) If no statement of defence has been filed by the applicant, it must be made before judgment has been entered against the applicant.

Compare: 1908 No 89 Schedule 2 r 176

4.62 Claimants to file affidavits

- (1) Subject to subclauses (2) and (3), a claimant who wishes to justify a claim must, within 5 working days after service of an

Part 4—*continued*
Subpart 10—*continued*

application made under subclause (1) or (2) of rule 4.58, file and serve on other claimants and on the applicant an affidavit stating the facts and matters relied on.

- (2) When, in accordance with rule 4.59(3), a statement of claim and notice of proceeding have been filed and served together with an affidavit under rule 4.60, the claimant must file and serve a statement of defence with the claimant's affidavit.
- (3) If the claimant, had the claimant been a defendant, might have filed an appearance under rules 5.49 to 5.51, the claimant may, instead of filing and serving an affidavit under subclause (1), file and serve an appearance.
- (4) An appearance filed and served under subclause (3), for all the purposes of rules 4.63 and 4.64, has effect as though the claimant were a defendant in a proceeding brought by the applicant or by any other claimant referred to in the appearance.

Compare: 1908 No 89 Schedule 2 r 177

4.63 Powers of court

- (1) Upon hearing an application under rule 4.58, the court may make whatever orders and directions justice requires.
- (2) In particular, and without limiting subclause (1), the court may—
 - (a) stay a proceeding commenced by a claimant:
 - (b) bar the claim of a claimant who has not filed and served either—
 - (i) an affidavit justifying the claim under rule 4.62(2); or
 - (ii) an appearance under rule 4.62(3):
 - (c) adjudicate upon the competing claims on the affidavits filed, or adjourn the application for that purpose:
 - (d) if the question appears to be one of law only, direct that the question be determined by the court:
 - (e) direct the trial of the issues involved by the method that the court directs:
 - (f) order that 1 of the claimants commence a proceeding against any other or others to try the question involved

Part 4—*continued*
Subpart 10—*continued*

or, if a proceeding has been commenced by a claimant, order that any other claimant be joined as a defendant to that proceeding:

- (g) order that the chattels in dispute or any part of them be sold, and that the proceeds of the sale be applied in such manner and on such terms as are just.
- (3) Subclause (4) applies to a claimant who has been served with an application and—
 - (a) does not appear on the hearing of the application; or
 - (b) having appeared, fails or refuses to comply with an order.
- (4) The court may make an order declaring that the claimant and all persons claiming under that claimant may not continue or subsequently prosecute that claim against the applicant and all persons claiming under the applicant but that order does not affect the rights of the claimants as between themselves.

Compare: 1908 No 89 Schedule 2 r 178

4.64 Costs of applicant

- (1) Unless the court otherwise orders, an applicant is entitled to the indemnity costs (as defined by rule 14.6(1)(b)) of and incidental to the application.
- (2) The court may order that the applicant's costs be paid by any 1 or more of the claimants and may apportion the liability between any 2 or more claimants, as it thinks just.
- (3) The court may charge any property in dispute, or the proceeds of the sale of it, or both, with payment of the costs of the applicant.

Compare: 1908 No 89 Schedule 2 r 179

Part 5
Commencement of proceedings and filing
of documents

Subpart 1—Proper registry of court

5.1 Identification of proper registry

- (1) The proper registry of the court, for the purposes of rules 5.25 and 19.7, is,—
- (a) when a sole defendant is resident or has a principal place of business in New Zealand, the registry of the court nearest to the residence or principal place of business of the defendant, but when there are 2 or more defendants, the proper registry is determined by reference to the first-named defendant who is resident or has a principal place of business in New Zealand;
 - (b) when no defendant is resident or has a principal place of business in New Zealand, the registry the plaintiff selects;
 - (c) when the Crown is a defendant, the registry nearest to the place where the cause of action or a material part of it arose;
 - (d) despite paragraphs (a) to (c), 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 application for, or in the nature of, an extraordinary remedy under Part 30 of these rules that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002;
 - (iii) an application under section 35, 47E, or 55 of the Terrorism Suppression Act 2002.
- (2) Despite subclause (1)(a), if the place where the cause of action sued on, or some material part of it, arose is nearer to the place where the plaintiff or the plaintiff first-named in the statement of claim resides than to the place where the defendant resides,

Part 5—*continued*
Subpart 1—*continued*

the proper registry of the court for the purposes of subclause (1) is, at the option of the plaintiff or the plaintiff first-named, as the case may be, the registry nearest to the residence of the plaintiff or the plaintiff first-named, as the case may be.

- (3) If a plaintiff proposes to exercise the option conferred by subclause (2), the plaintiff must file with the statement of claim and notice of proceeding an affidavit by the plaintiff or the plaintiff's solicitor stating the place where the cause of action or the material part of it arose, and that that place is nearer to the place where the plaintiff or the plaintiff first-named in the statement of claim resides than to the place where the defendant resides.
- (4) If it appears to a Judge, on application made, that the statement of claim has been filed in the wrong registry of the court, he or she may direct that the statement of claim or all documents filed in the proceeding be transferred to the proper registry.
- (5) If it appears to a Judge, on application made, that a different registry of the court would be more convenient to the parties, he or she may direct that the statement of claim or all documents be transferred to that registry and that registry becomes the proper registry.

Compare: 1908 No 89 Schedule 2 r 107

*Subpart 2—Formal requirements for
documents*

5.2 Non-complying documents

- (1) A document that does not comply with rules 5.3 to 5.16 may be received for filing only by leave of a Judge or the Registrar.
- (2) The cost of an application under subclause (1) must be borne by the party making it, and may not be claimed as costs against another party under Part 14.

Compare: 1908 No 89 Schedule 2 r 23

5.3 Paper

- (1) The paper used must be of medium weight and good quality.

Part 5—*continued*
Subpart 2—*continued*

- (2) Each sheet of paper must be of international size A4.
Compare: 1908 No 89 Schedule 2 r 24

5.4 Contents to be typed, etc

- (1) The contents of each document must be legible and clearly typewritten, printed, or produced in permanent form by photocopying.
- (2) Despite subclause (1), handwriting may be used for the date of the document.
- (3) Subclause (1) does not apply to the signature on a document.
Compare: 1908 No 89 Schedule 2 r 25

5.5 Margin

- (1) A margin of at least one-quarter of the width of the paper must be left on the left-hand side of each page.
- (2) If, however, the reverse side of a page is used, a margin of that width must be left on the right-hand side of that page.
Compare: 1908 No 89 Schedule 2 r 26

5.6 Signature to be original

If a document is signed,—

- (a) the signature must be an original signature; and
- (b) immediately below the original signature, the name of the signatory must be—
- (i) legibly typed, printed, or stamped; or
- (ii) legibly written in the style of printed matter.

Compare: 1908 No 89 Schedule 2 r 27

5.7 Cover sheet, numbering, and fastening of document

- (1) The first sheet of a document must be a cover sheet, showing the matters specified in rules 5.8 and 5.11.
- (2) The cover sheet must not be numbered, even if the heading is continued on another sheet under rule 5.10(2).
- (3) Each page after the cover sheet must be numbered consecutively, starting with the number 1.

Part 5—*continued*
Subpart 2—*continued*

- (4) All sheets of a document must be securely fastened together.
Compare: 1908 No 89 Schedule 2 r 30

5.8 Description of document

- (1) The cover sheet must show, immediately below the heading, an accurate description of the document.
- (2) The description must include—
- (a) words indicating the party by whom or on whose behalf the document is filed; and
 - (b) the words “application without notice” in the case of an application so made.

Compare: 1908 No 89 Schedule 2 r 31

5.9 Heading generally

All documents presented for filing must have the proper heading of the proceeding.

Compare: 1908 No 89 Schedule 2 r 35

5.10 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 information required by rule 5.16; and
 - (b) leave ample space between the description of the document and the information referred to in paragraph (a)(v) for the inclusion of a minute.
- (2) The heading may, if necessary, be continued on another sheet.

Part 5—*continued*
Subpart 2—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 33

Subpart 3—Heading of court documents

5.11 Heading on statement of claim and counterclaim

- (1) The heading of a statement of claim, and of any counterclaim intended to be served upon a person other than the plaintiff, must show—
- (a) the number of the proceeding:
 - (b) the registry of the court in which it is filed:
 - (c) if the statement of claim or counterclaim seeks relief in reliance on jurisdiction conferred by an enactment, the title of that enactment:
 - (d) if 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) if 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) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an enactment, the title and the relevant section or sections of the enactment:
 - (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 G 1 must be used for the purposes of subclause (1).
- (3) The names of parties in the heading of a statement of claim must not be repeated in the heading of a counterclaim, which may, for example, refer to the “Plaintiff and First Counterclaim Defendant”.

Compare: 1908 No 89 Schedule 2 r 36

Part 5—*continued*
Subpart 3—*continued*

5.12 Heading on judgment and certain orders

The heading of a judgment and of an order that is required to be registered under any enactment must be the same as the heading on the statement of claim or other document by which the proceeding was commenced.

Compare: 1908 No 89 Schedule 2 r 36A

5.13 Heading on other documents

(1) The heading of a document to which neither rule 5.11 nor 5.12 applies may be abbreviated as follows:

- (a) first names of persons may be denoted by initials only, unless full names are necessary to distinguish between persons having the same initials;
- (b) if 2 or more persons are joined in the same interest, the name of the first-named person may 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 with the same name) and indications of the interest in which a person is a party must be omitted;
- (d) the names of corporations must be set out without abbreviation, but without stating the fact of incorporation or referring to the registered office or making other addition.

(2) Despite 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 r 37

5.14 Division into paragraphs

(1) Every document presented for filing must be divided into paragraphs which must be numbered consecutively, starting with the number 1.

Part 5—*continued*
Subpart 3—*continued*

- (2) Each paragraph must so far as possible be confined to a single topic.

Compare: 1908 No 89 Schedule 2 r 38

5.15 Numbers

Numbers must be expressed in figures and not in words.

Compare: 1908 No 89 Schedule 2 r 39

5.16 Information at foot of cover page

- (1) The following information must appear at the foot of the cover page of every document for filing:
- (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) when 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 post office box or document exchange used by the solicitor or firm; and
 - (iii) any fax number and any email address used by the solicitor or firm.
- (2) The fact that the name of a solicitor or firm of solicitors is subscribed on a document is prima facie evidence that the document was filed by that solicitor or firm of solicitors.

Compare: 1908 No 89 Schedule 2 r 40

Subpart 4—Pleadings generally

5.17 Distinct matters to be stated separately

- (1) Distinct causes of action and distinct grounds of defence, founded on separate and distinct facts, must if possible be stated separately and clearly.
- (2) If a party alleges a state of mind of a person, that party must give particulars of the facts relied on in alleging that state of mind.

Part 5—*continued*
Subpart 4—*continued*

- (3) A state of mind includes a mental disorder or disability, malice, or fraudulent intention but does not include mere knowledge.

Compare: 1908 No 89 Schedule 2 r 181

5.18 Denial of representative character

A denial must be specific if a party wishes to deny the right of another party to claim as executor or administrator or as trustee, or in a representative or other alleged capacity, or the alleged constitution of a partnership firm.

Compare: 1908 No 89 Schedule 2 r 182

5.19 Denial of contract

- (1) A bare denial of a contract will be treated as denying only the making of the contract in fact, and a party must specifically plead an assertion as to the legality or enforceability of a contract, whether with reference to section 24 of the Property Law Act 2007 or otherwise, or as to the interpretation of the contract advanced by that party.
- (2) A party asserting that a contract is illegal or unenforceable must plead the enactment or rule of law relied on.
- (3) A party asserting that the interpretation of a contract advanced by another party is wrong must assert its own interpretation.

Compare: 1908 No 89 Schedule 2 r 183

5.20 Effect of document to be stated

If a party relies upon any document in whole or in part, it is sufficient to state its effect as briefly as possible, without setting it out, unless the precise words are material.

Compare: 1908 No 89 Schedule 2 r 184

5.21 Notice requiring further particulars or more explicit pleading

- (1) A party may, by notice, require any other party—
- (a) to give any further particulars that may be necessary to give fair notice of—

Part 5—*continued*
Subpart 4—*continued*

- (i) the cause of action or ground of defence; or
 - (ii) the particulars required by these rules; or
- (b) to file and serve a more explicit statement of claim or of defence or counterclaim.
- (2) A notice must indicate as clearly as possible the points on which the pleading is considered defective.
- (3) If the party on whom a notice is served neglects or refuses to comply with the notice within 5 working days after its service, the court may, if it considers that the pleading objected to is defective or does not give particulars properly required by the notice, order a more explicit pleading to be filed and served.
- (4) Even if no notice has been given under this rule, the court may on its own initiative order a more explicit pleading to be filed and served.

Compare: 1908 No 89 Schedule 2 r 185

Subpart 5—Notice of proceeding

5.22 Notice of proceeding to be filed with statement of claim

A notice of proceeding must be filed with every statement of claim.

Compare: 1908 No 89 Schedule 2 r 120

5.23 Requirements as to notice of proceeding

- (1) The notice of proceeding must—
 - (a) be signed by the plaintiff or the plaintiff's solicitor;
 - (b) 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) warn the defendant that if a statement of defence is not filed within the required time, the plaintiff may at once proceed to judgment on the plaintiff's claim and judgment may be given in the absence of the defendant.
- (2) The notice of proceeding must be in form G 2.
- (3) If the court has directed that any person other than the defendant named in the title of the proceeding be served, a statement

Part 5—*continued*
Subpart 5—*continued*

to that effect signed by the Registrar and setting out the name, place of residence, and occupation of that person must be annexed to the notice of proceeding.

- (4) A memorandum signed by the Registrar in form G 3, G 4, or G 5 (whichever is appropriate) must be attached to the notice of proceeding.

Compare: 1908 No 89 Schedule 2 r 121

5.24 When not necessary to file notice of proceeding

Despite rule 5.22, a notice of proceeding need not be filed, unless the court so orders,—

- (a) if 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) if service of the notice is dispensed with—
 - (i) by statute; or
 - (ii) under these rules; or
 - (iii) by order of the court.

Compare: 1908 No 89 Schedule 2 r 124

Subpart 6—Statement of claim

5.25 Proceeding commenced by filing statement of claim

- (1) A proceeding must be commenced by filing a statement of claim in the proper registry of the court.
- (2) Subclause (1) does not apply to—
 - (a) an unopposed application under Part 27;
 - (b) an appeal under Part 20;
 - (c) a proceeding commenced by originating application under Part 18, 19, or 26;
 - (d) an application under Part 31.
- (3) Despite subclause (1), the statement of claim may be filed in any registry of the court if the parties agree, by endorsement

Part 5—*continued*
Subpart 6—*continued*

on the statement of claim, to the filing of the statement of claim in that registry.

Compare: 1908 No 89 Schedule 2 r 106

5.26 Statement of claim to show nature of claim

The statement of claim—

- (a) must show the general nature of the plaintiff's claim to the relief sought; and
- (b) must give sufficient particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances to inform the court and the party or parties against whom relief is sought of the plaintiff's cause of action; and
- (c) must state specifically the basis of any claim for interest and the rate at which interest is claimed; and
- (d) in a proceeding against the Crown that is instituted against the Attorney-General, must give particulars of the government department or officer or employee of the Crown concerned.

Compare: 1908 No 89 Schedule 2 r 108

5.27 Statement of claim to specify relief sought

- (1) The statement of claim must conclude by specifying the relief or remedy sought.
- (2) If the statement of claim includes 2 or more causes of action, it must specify separately the relief or remedy sought on each cause of action immediately after the pleading of that cause of action.

Compare: 1908 No 89 Schedule 2 rr 109, 114

5.28 Inclusion of several causes of action

- (1) A plaintiff may include several causes of action in the same statement of claim.
- (2) Despite subclause (1), claims by or against an Official Assignee in bankruptcy, or a liquidator or a receiver of a company, in that capacity, must not, without leave of the court, be

Part 5—*continued*
Subpart 6—*continued*

joined with any claim by or against that person in any other capacity.

- (3) Despite subclause (1), claims by or against an executor or administrator or trustee, in that capacity, must not be joined with claims by or against that person in a personal capacity unless those personal claims are alleged to arise with reference to the estate or trust in respect of which the person sues or is sued as executor or administrator or trustee.

Compare: 1908 No 89 Schedule 2 r 110

5.29 Joint plaintiffs

Claims by plaintiffs jointly may be joined with separate claims by them or any of them against the same defendant.

Compare: 1908 No 89 Schedule 2 r 111

5.30 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.

Compare: 1908 No 89 Schedule 2 r 112

5.31 Specifying relief sought

- (1) The relief claimed must be stated specifically, either by itself or in the alternative.
- (2) Despite subclause (1), it is not necessary to ask for general or other relief but the court may, if it thinks just, grant any other relief to which the plaintiff is entitled, even though that relief has not been specifically claimed and there is no claim for general or other relief.

Compare: 1908 No 89 Schedule 2 r 115

Part 5—*continued*
Subpart 6—*continued*

5.32 Amount of money claim

A statement of claim seeking the recovery of a sum of money must state the amount as precisely as possible.

Compare: 1908 No 89 Schedule 2 r 116

5.33 Special damages

A plaintiff seeking to recover special damages must state their nature, particulars, and amount in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 117

5.34 Set-off

A plaintiff who wishes to allow a set-off or to give up a portion of the plaintiff's claim must show the amount allowed or given up in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 118

5.35 Representative capacity of party

A party to a proceeding who sues or is sued in a representative capacity must show in what capacity the party sues or is sued in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 119

Subpart 7—Authority of solicitors to act

5.36 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 39 of the Lawyers and Conveyancers Act 2006.

Compare: 1908 No 89 Schedule 2 r 41

Part 5—*continued*
Subpart 7—*continued*

5.37 Solicitor’s warranty as to authorisation to file documents

A solicitor by whom, or on whose behalf, a document is filed in the court is to be treated as warranting 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.

Compare: 1908 No 89 Schedule 2 r 41B

5.38 Solicitor on record

- (1) The solicitor on the record for a party to a proceeding is the solicitor whose name appears on the memorandum located at the end of the first document filed by the party in accordance with rule 5.44.

- (2) This rule is subject to rule 5.42.

Compare: 1908 No 89 Schedule 2 r 42

5.39 Authority to sign documents

- (1) A document required, by these rules, to be signed by a party may be signed on behalf of the party by the party’s solicitor on the record unless the party’s personal signature is expressly required.

- (2) Subclause (1) does not limit the authority of counsel to sign documents.

Compare: 1908 No 89 Schedule 2 r 43

5.40 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.

- (2) If the party’s address for service after the change of representation will be different from that which applied before the

Part 5—*continued*
Subpart 7—*continued*

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 5.44(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 attaching 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).
- (7) A notice of change of address for service need not be filed under subclause (5)(a) if an affidavit is filed under subclause (4).
- (8) Form G 11 may be used.

Compare: 1908 No 89 Schedule 2 r 45

5.41 Withdrawal of solicitor who has ceased to act for party

- (1) If the solicitor on the record for a party to a proceeding has ceased to act for the party, the solicitor may apply to the court for an order declaring that the solicitor has ceased to be the solicitor on the record for the party in that proceeding and the court may make the order.
- (2) It is not necessary to make an application if—

Part 5—*continued*
Subpart 7—*continued*

- (a) the party has effected a change of solicitor in accordance with rule 5.40; or
- (b) the party—
 - (i) has filed a notice stating that the party intends to act in person and the party's new address for service; and
 - (ii) has served a copy of the notice on the solicitor on the record and on every other party to the proceeding who has given an address for service; and
 - (iii) has filed an affidavit proving that service and attaching and verifying a copy of the notice served.
- (3) Unless subclause (2)(a) or (b) applies, the solicitor on the record for a party to a proceeding, for the purposes of that proceeding, is 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 that subclause; and
 - (c) files an affidavit proving that service.
- (4) Every application under subclause (1) must be made by interlocutory application and must 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 the application, must be served on the party for whom the solicitor acted, and that notice must inform the party of the effect that rule 5.42 will have on the party's address for service if the solicitor obtains an order under subclause (1).
- (6) An order made under subclause (1) does not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

Compare: 1908 No 89 Schedule 2 r 45A

Part 5—*continued*
Subpart 7—*continued*

5.42 Address for service of party whose solicitor has ceased to act

- (1) This rule applies whenever the solicitor on the record for a party has obtained an order under rule 5.41 and has complied with rule 5.41(3)(b) and (c).
- (2) The last known address of the party, or, when the party is a body corporate, its registered or principal registry is, for the purpose of serving the party with any document not required to be served personally, the party's address for service until the party either—
 - (a) appoints another solicitor and complies with rule 5.40; or
 - (b) if 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 5.41 and on every other party to the proceeding who has given an address for service a copy of that notice; and
 - (iii) files an affidavit proving that service and attaching and verifying a copy of the notice served.

Compare: 1908 No 89 Schedule 2 r 45B

5.43 Solicitors to inform clients of orders or directions

The solicitor on the record for a party must notify the party of an order or direction that affects that party promptly after it is made.

Compare: 1908 No 89 Schedule 2 r 43A

Subpart 8—Memorandum on first document

5.44 Memorandum at end of first document filed by party

- (1) At the end of the first document filed by a party there must be a memorandum stating—

Part 5—*continued*
Subpart 8—*continued*

- (a) that the document is filed by a party in person, or by the party's solicitor, as the case may be; and
 - (b) if 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's name, the name of the firm; and
 - (c) if 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) if it is filed by a solicitor, any post office box address, document exchange box number, fax number, or email address by which the solicitor will accept service of documents in the course of the proceeding.
- (2) The memorandum may be in 1 of the paragraphs of form G 10.
Compare: 1908 No 89 Schedule 2 r 44

Subpart 9—Security for costs

5.45 Order for security of costs

- (1) Subclause (2) applies if a Judge 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 a subsidiary (within the meaning of section 5 of the Companies Act 1993) 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.
- (2) A Judge may, if the Judge thinks it is just in all the circumstances, order the giving of security for costs.

Part 5—*continued*
Subpart 9—*continued*

- (3) An order under subclause (2)—
 - (a) requires the plaintiff or plaintiffs against whom the order is made to give security for costs as directed for a sum that the Judge considers sufficient—
 - (i) by paying that sum into court; or
 - (ii) by giving, to the satisfaction of the Judge or the Registrar, security for that sum; and
 - (b) may stay the proceeding until the sum is paid or the security given.
 - (4) A Judge may treat a plaintiff as being resident out of New Zealand even though the plaintiff is temporarily resident in New Zealand.
 - (5) A Judge may make an order under subclause (2) even if the defendant has taken a step in the proceeding before applying for security.
 - (6) References in this rule to a **plaintiff** and **defendant** are references to the person (however described on the record) who, because of a document filed in the proceeding (for example, a counterclaim), is in the position of plaintiff or defendant.
- Compare: 1908 No 89 Schedule 2 r 60

5.46 Solicitor not to be surety

A party's solicitor may not be accepted as surety for a security that the party is required to give under rule 5.45(2).

Compare: 1908 No 89 Schedule 2 r 61

*Subpart 10—Statement of defence and
appearance*

5.47 Filing and service of statement of defence

- (1) A defendant who intends to defend the proceeding must,—
 - (a) within the number of working days stated in the notice of proceeding, file in the registry of the court named in that notice a statement of defence to the plaintiff's claim; and

Part 5—*continued*
Subpart 10—*continued*

- (b) serve a copy of the statement of defence on the plaintiff and any other party.
- (2) Unless otherwise ordered by the court,—
 - (a) the place for filing the statement of defence must be the registry of the court in which the statement of claim was filed or into which it has been transferred:
 - (b) the time within which the statement of defence is required to be filed is 25 working 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 rr 122, 129

5.48 Requirements of statement of defence

- (1) The statement of defence must either admit or deny the allegations of fact in the statement of claim, but a defendant does not have to plead to an allegation that does not affect that defendant.
- (2) A denial of an allegation of fact in the statement of claim must not be evasive. Points must be answered in substance. If for example, it is alleged that the defendant received a sum of money, it is not sufficient to deny receipt of the particular amount. Rather, the defendant must deny receipt of that sum or any part of it, or set out how much was received. When a matter is alleged with circumstances it is not sufficient to deny it as alleged with those circumstances. In all cases a fair and substantial answer must be given.
- (3) An allegation not denied is treated as being admitted.
- (4) An affirmative defence must be pleaded.
- (5) The statement of defence must give particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances sufficient to inform the court, the plaintiff, and any other parties of the defendant's defence.

Compare: 1908 No 89 Schedule 2 r 130

Part 5—*continued*
Subpart 10—*continued*

5.49 Appearance and objection to jurisdiction

- (1) A defendant who objects to the jurisdiction of the court to hear and determine the proceeding may, within the time allowed for filing a statement of defence and instead of so doing, file and serve an appearance stating the defendant's objection and the grounds for it.
- (2) The filing and serving of an appearance does not operate as a submission to the jurisdiction of the court.
- (3) A defendant who has filed an appearance may apply to the court to dismiss the proceeding on the ground that the court has no jurisdiction to hear and determine it.
- (4) The court hearing an application under subclause (3) must,—
 - (a) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss the proceeding; but
 - (b) if it is satisfied that it has jurisdiction to hear and determine the proceeding, dismiss the application and set aside the appearance.
- (5) At any time after an appearance has been filed, the plaintiff may apply to the court by interlocutory application to set aside the appearance.
- (6) The court hearing that application must,—
 - (a) if it is satisfied that it has jurisdiction to hear and determine the proceeding, set aside the appearance; but
 - (b) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss both the application and the proceeding.
- (7) To the extent that an application under this rule relates to service of process effected outside New Zealand under rule 6.27 or 6.28, it must be determined under rule 6.29.
- (8) The court, in exercising its powers under this rule, may do so on any terms and conditions the court thinks just and, in particular, on setting aside the appearance it may extend the time within which the defendant may file and serve a statement of defence and may give any directions that appear necessary regarding any further steps in the proceeding in all respects as

Part 5—*continued*
Subpart 10—*continued*

though the application were an application for directions under rule 7.9.

- (9) If the appearance set aside has been filed in relation to a proceeding in which the plaintiff has applied for judgment under rule 12.2 or 12.3, the court—
- (a) must fix the time within which the defendant may file and serve—
 - (i) a notice of opposition; and
 - (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 (8), give any other directions that appear necessary regarding any further steps in the proceeding.

Compare: 1908 No 89 Schedule 2 r 131

5.50 Appearance for ancillary purposes

A defendant who does not oppose the plaintiff's claim but who wishes to be heard on any ancillary matter (including costs) may, without filing a statement of defence, file and serve an appearance stating those matters, which must not subsequently be determined without notice to that defendant.

Compare: 1908 No 89 Schedule 2 r 132

5.51 Appearance reserving rights

- (1) This rule applies to a defendant who does not oppose the plaintiff's claim but who wishes to reserve the defendant's rights—
- (a) in the event that any other person may become a party to the proceeding; or
 - (b) in the event that any person, already a party, may take some steps in the proceeding adverse to the defendant's interests.
- (2) The defendant—
- (a) may, without filing a statement of defence, file and serve an appearance reserving those rights; and

Part 5—*continued*
Subpart 10—*continued*

- (b) is subsequently entitled to be served with all documents relevant to the rights so reserved that are filed in the proceeding by a person who is or becomes a party.
- (3) A defendant who has filed an appearance under subclause (2) may at any time, by leave of the court, file and serve a statement of defence and any other document within the time and upon any terms and conditions prescribed by the court when granting leave.

Compare: 1908 No 89 Schedule 2 r 133

5.52 Forms

Form G 7, G 8, or G 9 (whichever is appropriate) may be used for the purpose of entering an appearance under rules 5.49 to 5.51.

Compare: 1908 No 89 Schedule 2 r 134

Subpart 11—Counterclaims

5.53 Counterclaim against plaintiff only

- (1) A defendant who intends to raise a counterclaim against the plaintiff only must file a statement of counterclaim in the registry of the court in which the statement of defence must be filed.
- (2) This rule is subject to rule 5.54.

Compare: 1908 No 89 Schedule 2 r 145

5.54 Heading of counterclaim

A counterclaim must be headed with the word “Counterclaim” but in all other respects it must conform with rule 5.11 and the rules applying to statements of claim.

Compare: 1908 No 89 Schedule 2 r 147

5.55 Filing and service

A counterclaim must be filed in the court and a copy served on the plaintiff within the time stated in the notice of proceeding

Part 5—*continued*
Subpart 11—*continued*

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 148

5.56 Defence to counterclaim

- (1) A plaintiff who intends to defend a counterclaim that has been served must, within 25 working days after the day on which the counterclaim is served, file a statement of defence to it and serve a copy on the defendant.
- (2) The statement of defence must be headed with the words “Defence to Counterclaim” but in all other respects it must conform with the rules applying to statements of defence.

Compare: 1908 No 89 Schedule 2 r 149

5.57 Counterclaim against plaintiff and another person

- (1) A defendant who 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 may, within the time allowed for filing a statement of defence, file a statement of the counterclaim and serve a copy on the plaintiff and that other person (to be referred to as a counterclaim defendant).
- (2) Subclause (1) is subject to rule 5.61.
- (3) A counterclaim defendant must file a statement of defence to a counterclaim within 25 working days after the day on which the counterclaim was served.
- (4) A notice of proceeding in form G 2 must be served with each copy of a counterclaim served under subclause (1).
- (5) Rules 5.53 to 5.56 apply with respect to the counterclaim and any defence to it.
- (6) The court may at any time order that a counterclaim to which subclause (1) applies be struck out, upon such terms as it thinks just, if it appears—
 - (a) that, by reason of the counterclaim, the plaintiff is likely to be unduly delayed in obtaining relief; or

Part 5—*continued*
Subpart 11—*continued*

- (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 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 r 150

5.58 Place of trial of counterclaim

- (1) A counterclaim must be tried at the same place as the statement of claim in the original proceeding and either simultaneously or immediately afterwards.
- (2) Despite 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 must proceed in the same manner as if the defendant had commenced an independent proceeding against the plaintiff.

Compare: 1908 No 89 Schedule 2 r 151

5.59 Status of counterclaim if proceeding stayed

If a defendant sets up a counterclaim against the plaintiff, whether alone or along with any other person, and the proceeding of the plaintiff is stayed, discontinued, or dismissed, that defendant may nevertheless proceed with the counterclaim.

Compare: 1908 No 89 Schedule 2 r 152

5.60 Counterclaim by counterclaim defendant

- (1) Rules 5.56 to 5.59 apply to a counterclaim by a counterclaim defendant in the same way as if the counterclaim defendant

Part 5—*continued*
Subpart 11—*continued*

were a defendant in a separate proceeding brought by the defendant.

- (2) In a case referred to in subclause (1), the term **defendant** includes the counterclaim defendant and the term **plaintiff** includes the defendant who has joined the counterclaim defendant.

Compare: 1908 No 89 Schedule 2 r 153

5.61 Restriction when the Crown involved

- (1) In a proceeding by the Crown for the recovery of taxes, duties, or penalties, a defendant is not entitled to advance any set-off or counterclaim.
- (2) In a proceeding of any nature by the Crown, a defendant is not entitled to advance any set-off or counterclaim arising out of a right or claim to payment in respect of any taxes, duties, or penalties.
- (3) In a proceeding by or against the Crown, being a proceeding to which neither subclause (1) nor (2) applies, a defendant is not entitled, without leave of the court, to advance a 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 an officer or employee of the Crown; or
- (ii) in the name of a government department or an officer or employee of the Crown; and
- (b) if the subject matter of the set-off or counterclaim does not relate to that department or officer.
- (4) An application for leave under subclause (3) that is made by a defendant other than the Crown must be served on the Crown not less than 5 working days before the date specified for hearing the application.

Compare: 1908 No 89 Schedule 2 r 146

Part 5—*continued*

Subpart 12—Reply

5.62 Duty to file and serve reply

If a statement of defence asserts an affirmative defence or contains any positive allegation affecting any other party, the plaintiff or that other party must, within 10 working days after the day on which that statement of defence is served, file a reply and serve it on the party serving the statement of defence.

Compare: 1908 No 89 Schedule 2 r 169

5.63 Contents of reply

- (1) A reply must be limited to answering the affirmative defence or positive allegation and otherwise must comply with the rules governing statements of defence so far as they are applicable.
- (2) An affirmative defence or positive allegation in a statement of defence that is not denied is treated as being admitted.

Compare: 1908 No 89 Schedule 2 rr 170, 171

*Subpart 13—Proceedings and actions
transferred from District Court*

5.64 Application of rules

- (1) This subpart applies to every action, counterclaim, and other proceeding transferred to the court from a District Court under an order made under section 43, 44, or 45 of the District Courts Act 1947.
- (2) However, this subpart does not apply to a proceeding removed to the court by an order made under section 43(6) of the District Courts Act 1947.

Compare: 1908 No 89 Schedule 2 r 228

5.65 Documents to be filed in proper registry

If the registry of the court at which the documents are received from the District Court is not the registry 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 5.25, the Registrar receiving the

Part 5—*continued*
Subpart 13—*continued*

documents must immediately transmit them to the Registrar at that registry for filing there.

Compare: 1908 No 89 Schedule 2 r 229

5.66 On filing treated as proceeding

- (1) Documents filed under rule 5.65 must be treated as documents in a proceeding commenced under these rules.
- (2) Subject to subclause (3) and rules 5.67 and 5.68, these rules apply with all necessary modifications.
- (3) Any party who has not given an address for service complying with these rules must immediately do so.

Compare: 1908 No 89 Schedule 2 r 230

5.67 Title of documents

All documents filed in the proceeding after it has been filed in the court in accordance with rule 5.65 must be headed as if the proceeding had been commenced in the High Court.

Compare: 1908 No 89 Schedule 2 r 231

5.68 Time for filing statement of defence

If no statement of defence has been filed in the District Court, a statement of defence may be filed within 25 working days from the date when the proceeding is filed in accordance with rule 5.65.

Compare: 1908 No 89 Schedule 2 r 232

5.69 Transfer under section 45 of District Courts Act 1947

- (1) An application under section 45 of the District Courts Act 1947 must be by interlocutory application.
- (2) It must,—
 - (a) if made by the counterclaimant, be made within 5 working days after the counterclaim or set-off and counterclaim is filed in the District Court:

Part 5—*continued*
Subpart 13—*continued*

- (b) if made by the party against whom the counterclaim or set-off and counterclaim is made, be made within 5 working days after service on that party.
- (3) 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 its disposal.
- (4) The order in subclause (3) may be made without notice and subject to any conditions or undertakings that the court thinks just.
- (5) If the court orders that the counterclaim or set-off and counterclaim alone be transferred, references in rules 5.64 to 5.68 and in other provisions of these rules to the plaintiff must be read as references to the counterclaimant and references to the defendant must be read as references to the party against whom the counterclaim or set-off and counterclaim is made.

Compare: 1908 No 89 Schedule 2 r 233

*Subpart 14—Service of statement of claim
and notice of proceeding*

5.70 Service generally

- (1) Except as otherwise provided by any Act or these rules or an order made under these rules, a statement of claim and notice of proceeding must be served—
 - (a) on every defendant named in it; and
 - (b) on every other person directed to be served with it.
- (2) Despite subclause (1), in a 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 Attorney-General is joined as a party or third or subsequent party, service on the Crown must be effected in accordance with section 16 of the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 r 125

Part 5—*continued*
Subpart 14—*continued*

5.71 Personal service required

- (1) Except when the court directs or these rules require or permit a different mode of service, the statement of claim and notice of proceeding must be served personally.
- (2) Rule 5.73(2) overrides subclause (1).

Compare: 1908 No 89 Schedule 2 r 126

5.72 Prompt service required

- (1) The statement of claim and notice of proceeding must be served—
 - (a) as soon as practicable after they are filed; or
 - (b) when directions as to service are sought, as soon as practicable after the 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 must be treated as having 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 127

5.73 Extension of time for service

- (1) The plaintiff may, before or after the expiration of the period referred to in rule 5.72, 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) 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 has not been disposed of.

Compare: 1908 No 89 Schedule 2 r 128

Part 6 Service

Subpart 1—Methods and proof of service

6.1 Methods of service

- (1) Any of the following methods may be used for serving a document that is required by these rules to be served:
 - (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) if the solicitor for the party or person has, under rule 5.44(1)(e), specified a post office box address, document exchange box number, fax number, or email address,—
 - (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 electronically to that fax number or email address.
- (2) In any case not provided for by these rules, service must be effected by the method and at the place the court directs.
- (3) This rule does not apply if an Act or a rule requires a special and exclusive method of service.

Compare: 1908 No 89 Schedule 2 r 192

Schedule 2 rule 6.1(1)(d): amended, on 15 May 2009, by rule 4 of the High Court Amendment Rules 2009 (SR 2009/75).

6.2 Service of copies

Unless an Act or a rule expressly requires an original document to be served, service of a true copy is to be treated as service of the document.

Compare: 1908 No 89 Schedule 2 r 193

Part 6—*continued*
Subpart 1—*continued*

6.3 Notices

Rules 6.1 and 6.2 and rules 6.4 to 6.25 apply to any notice that by these rules, or by any order made under these rules, is required to be given to any person, whether or not that person is a party or the notice is required to be filed in the court.

Compare: 1908 No 89 Schedule 2 r 194

6.4 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) Service on 1 spouse, civil union partner, or de facto partner is not to be treated as service on the other unless the court so orders.

Compare: 1908 No 89 Schedule 2 r 205

6.5 Service at address for service

A document may be served at an address for service by leaving the document at that address at any time between 9 am and 5 pm.

Compare: 1908 No 89 Schedule 2 r 206

6.6 Service by means of post office box, document exchange, fax, or email

- (1) When a document is served on a party or person in accordance with rule 6.1(d)(i) or (ii), that document must,—
 - (a) if posted to a post office box address, be treated as served on the earlier of—
 - (i) the third working day after the day on which it was posted; or
 - (ii) the day on which it was received; and
 - (b) if left at a document exchange, be treated as served on the earlier of—
 - (i) the second working day after the day on which it was left; or

Part 6—*continued*
Subpart 1—*continued*

- (ii) the day on which it was received.
- (2) A document served on a party or person in accordance with rule 6.1(d)(iii) must—
 - (a) be treated as dispatched at the time the electronic communication first enters an information system outside the control of its originator; and
 - (b) be treated as received,—
 - (i) in the case of a party who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or
 - (ii) in any other case, at the time the electronic communication comes to the attention of the party or person being served, or the solicitor or other agent of that party or person.
- (3) When a document is transmitted electronically on a day that is not a working day, or after 5 pm on a working day, it must be treated as served on the first subsequent working day.
- (4) When a document is served electronically under this rule, the party or person served must, on receiving the document, immediately give to the person who served the document, or that person's solicitor or agent, an acknowledgement in writing or electronically—
 - (a) that the document has been received; and
 - (b) of the date and time of receipt.
- (5) In this rule, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

Compare: 1908 No 89 Schedule 2 r 206A

6.7 Service under agreement

Service by a method agreed to in writing by a party is sufficient service on that party.

Compare: 1908 No 89 Schedule 2 r 210

Part 6—*continued*
Subpart 1—*continued*

6.8 Substituted service

If reasonable efforts have been made to serve a document by a method permitted or required under these rules, and either the document has come to the knowledge of the person to be served or it cannot be promptly served, the court may—

- (a) direct—
 - (i) that instead of service, specified steps be taken that are likely to bring the document to the notice of the person to be served; and
 - (ii) that the document be treated as served on the happening of a specified event, or on the expiry of a specified time:
- (b) when 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 treated as served on that person on a specified date:
- (c) subject to any conditions that the court thinks just to impose, dispense with service of a document on a person and give to the party by whom the document is required to be served leave to proceed as if the document had been served.

Compare: 1908 No 89 Schedule 2 r 211

6.9 Notices to be given by Registrar

When notice is required to be given by the Registrar to a 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 the solicitor's place of business:
- (b) if the person is not acting by a solicitor, by sending it by ordinary post addressed to that person at that person's address for service (if given) or last known or usual place of residence or business in New Zealand:
- (c) in any other manner the court directs.

Compare: 1908 No 89 Schedule 2 r 195

Part 6—*continued*
Subpart 1—*continued*

6.10 Proof of service

- (1) The service of a document may be proved on oath before the court or by affidavit in form G 16.
- (2) If the service of a document is proved by affidavit in form G 16, it is unnecessary, unless the court otherwise directs, for a copy of that document to be annexed if—
 - (a) either the original of the document or a copy of the document has, at the time of service, been filed in the registry 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
 - (ii) includes the date of the document (if the document is dated).

Compare: 1908 No 89 Schedule 2 r 196

6.11 Personal service

A document may be personally served by leaving the document with the person to be served, or, if that person does not accept it, by putting it down and bringing it to the notice of that person.

Compare: 1908 No 89 Schedule 2 r 197

*Subpart 2—Corporations, partners,
attorneys, and agents*

6.12 Personal service on New Zealand corporations

- (1) A document may be served on a company incorporated under the Companies Act 1993 in accordance with section 387 of that Act.
- (2) A document may be served on a corporation incorporated in New Zealand other than a company incorporated under the Companies Act 1993—
 - (a) by service in accordance with rule 6.11 on—

Part 6—*continued*
Subpart 2—*continued*

- (i) the mayor, chairman, president, town clerk, managing director, secretary, treasurer, or other similar officer of the corporation; or
- (ii) any member, officer, or employee 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
- (c) by serving the document on a member, officer, or employee of the corporation in any manner that the court directs; or
- (d) by complying with any enactment that provides for service of a document on a corporation.

Compare: 1908 No 89 Schedule 2 r 198

6.13 Personal service in New Zealand on foreign corporations

- (1) An overseas company (within the meaning of section 2 of the Companies Act 1993) that is served in New Zealand must be personally served in accordance with section 389 of the Companies Act 1993.
- (2) A corporation (other than an overseas company within the meaning of section 2 of the Companies Act 1993) may be served in New Zealand in accordance with rule 6.11 by service on a 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 if the corporation—
 - (a) is incorporated outside New Zealand; and
 - (b) has a place or places of business in New Zealand.

Compare: 1908 No 89 Schedule 2 r 199

6.14 Personal service on unincorporated societies

A document may be served on an unincorporated society by serving the president, chairperson, secretary, or any similar officer of the society under rule 6.11.

Compare: 1908 No 89 Schedule 2 r 200

Part 6—*continued*
Subpart 2—*continued*

6.15 Personal service on partnership or apparent partnership

A document may be served on a partnership or on a person carrying on business in the name of a firm apparently consisting of more than 1 person by serving it in accordance with rule 6.11—

- (a) on any partner or on that 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 control of the business there.

Compare: 1908 No 89 Schedule 2 r 201

6.16 Personal service on attorney or agent of absentee

A document may be served on a person who is out of New Zealand by serving, in accordance with rule 6.11, an attorney or agent of that person in New Zealand if the attorney or agent is authorised—

- (a) to transact that person's affairs generally and to defend proceedings; or
- (b) to transact the person's affairs in respect of the subject matter of the proceeding and to defend the particular proceeding.

Compare: 1908 No 89 Schedule 2 r 202

6.17 Service on representatives

- (1) This rule applies to a person (a **representative**) who—
 - (a) is appointed by the court to represent any person or persons, or any class of persons; or
 - (b) sues or defends on behalf of himself or herself and any other person or persons.
- (2) Service on the representative is to be treated as service on behalf of all persons for whom the representative has been appointed to represent or on whose behalf the representative sues or defends.

Compare: 1908 No 89 Schedule 2 r 208

Part 6—*continued*
Subpart 2—*continued*

6.18 Service on solicitor

A document is treated as served on a person on the date on which the solicitor for that person signs on a copy of the document a note accepting service of it, or a proved earlier date.

Compare: 1908 No 89 Schedule 2 r 209

6.19 Service of statement of claim on certain days void

- (1) A statement of claim must not be served on Christmas Day, New Year's Day, or Good Friday.
- (2) Section 54 of the Act is not affected.

Compare: 1908 No 89 Schedule 2 r 207

6.20 Failure to give address for service

A party to a contentious proceeding who has not given an address for service is not entitled to be served with notice of any step in the proceeding or with copies of any further documents filed in the proceeding or to address the court.

Compare: 1908 No 89 Schedule 2 r 212

Subpart 3—Foreign process

6.21 Service of foreign process

- (1) This subpart applies when a request is made to the court to effect service of a foreign process on a person in New Zealand.
- (2) A request may be made to the court to effect service of a foreign process on a person in New Zealand in any manner permitted or required by the provisions of a convention.
- (3) Service in New Zealand of a foreign process must be in accordance with a convention if—
 - (a) the convention contains an express provision governing the service of that process in New Zealand; and
 - (b) that convention excludes other methods of service.
- (4) When service is in accordance with a convention, no court fees are to be charged for the filing of any document or the doing of any act relating to the service or the certification of service.

Part 6—*continued*
Subpart 3—*continued*

- (5) A letter of request from a foreign court requesting service of process on any person in New Zealand in connection with any civil matter pending before that foreign court must be forwarded through diplomatic channels to the Secretary of Foreign Affairs and Trade who must send it to the Secretary for Justice for further transmission to the Registrar with an intimation that it is desirable that effect should be given to that request.
- (6) A letter of request must be accompanied by—
 - (a) a translation of it in English if it is not in English; and
 - (b) 2 copies of the process or citation to be served; and
 - (c) 2 copies of the process or citation in English or translated into English.
- (7) Subclauses (5) and (6) and rules 6.22 to 6.25 apply subject to the provisions of any relevant convention.
- (8) In this rule, **convention** means any treaty to which New Zealand is a party that makes provision for service of foreign process in New Zealand.

Compare: 1908 No 89 Schedule 2 r 213

6.22 Sheriff to effect service

Service of the process or citation must be effected by the Sheriff whose registry 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 214

6.23 Method of service

Service must be effected by leaving, in accordance with these rules, a copy of the process or citation and of any translation with the person to be served.

Compare: 1908 No 89 Schedule 2 r 215

6.24 Return as to service

After service of the process or citation has been effected or (if that is the case) attempts to effect service of the process or

Part 6—*continued*
Subpart 3—*continued*

citation have failed, the Sheriff or the officer effecting or attempting to effect service must return to the Registrar of the court nearest to the place of service or attempted place of service—

- (a) 1 copy of the process or citation; and
- (b) an affidavit made by the Sheriff or the officer stating 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 216

6.25 Certification

The Registrar must give a certificate in form G 17—

- (a) identifying the documents annexed, namely 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 6.24(b); and
- (b) certifying—
 - (i) that the method of service of the process and the proof of service comply with the law and practice of the High Court of New Zealand regulating the service of New Zealand legal process in New Zealand and its proof; or
 - (ii) if that is the case, that service of the process could not be effected for the reason specified in the certificate; and
- (c) certifying the cost of effecting, or attempting to effect, service.

6.26 Sealing and transmission of certificate

The certificate given under rule 6.25 must be sealed with the seal of the court and sent to the Secretary for Justice who must send it to the Secretary of Foreign Affairs and Trade for further transmission through diplomatic channels to the foreign court.

Compare: 1908 No 89 Schedule 2 r 217

Part 6—*continued*

Subpart 4—Service out of New Zealand

6.27 When allowed without leave

- (1) This rule applies to a document that initiates a civil proceeding, or is a notice issued under subpart 4 of Part 4 (Third, fourth and subsequent parties), which under these rules is required to be served but cannot be served in New Zealand under these rules (an **originating document**).
- (2) An originating document may be served out of New Zealand without leave in the following cases:
 - (a) when a claim is made in tort and—
 - (i) any act or omission in respect of which damage was sustained was done or occurred in New Zealand; or
 - (ii) the damage was sustained in New Zealand:
 - (b) when a contract sought to be enforced or rescinded, dissolved, annulled, cancelled, otherwise affected or interpreted in any proceeding, or for the breach of which 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) when there has been a breach in New Zealand of any contract, wherever made:
 - (d) when the claim is for—
 - (i) a permanent injunction to compel or restrain the performance of any act in New Zealand; or
 - (ii) interim relief in support of judicial or arbitral proceedings commenced or to be commenced outside New Zealand:
 - (e) when the subject matter of the proceeding is land or other property situated in New Zealand, or any act,

Part 6—*continued*
Subpart 4—*continued*

deed, will, instrument, or thing affecting such land or property:

- (f) when the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged according to the law of New Zealand:
- (g) when any relief is sought against any person domiciled or ordinarily resident in New Zealand:
- (h) when any person out of the jurisdiction is—
 - (i) a necessary or proper party to proceedings properly brought against another defendant served or to be served (whether within New Zealand or outside New Zealand under any other provision of these rules), and there is a real issue between the plaintiff and that defendant that the court ought to try; or
 - (ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by proceedings in the court:
- (i) when the proceeding is for the administration of the estate of any deceased person who at the time of his or her death was domiciled in New Zealand:
- (j) when the claim arises under an enactment and either—
 - (i) any act or omission to which the claim relates was done or occurred in New Zealand; or
 - (ii) any loss or damage to which the claim relates was sustained in New Zealand; or
 - (iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside New Zealand in the circumstances alleged; or
 - (iv) the enactment expressly confers jurisdiction on the court over persons outside New Zealand (in which case any requirements of the enactment relating to service must be complied with):

Part 6—*continued*
Subpart 4—*continued*

- (k) when the person to be served has submitted to the jurisdiction of the court:
- (l) when a claim is made for restitution or for the remedy of constructive trust and the defendant's alleged liability arises out of acts committed within the jurisdiction:
- (m) when it is sought to enforce any judgment or arbitral award.

Compare: 1908 No 89 Schedule 2 r 219

6.28 When allowed with leave

- (1) In any proceeding when service is not allowed under rule 6.27, an originating document may be served out of New Zealand with the leave of the court.
- (2) An application for leave under this rule must 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 must be served with the document to which it relates.
- (4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction under rule 6.29, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is a New Zealand citizen.
- (5) The court may grant an application for leave if the applicant establishes that—
 - (a) the claim has a real and substantial connection with New Zealand; and
 - (b) there is a serious issue to be tried on the merits; and
 - (c) New Zealand is the appropriate forum for the trial; and
 - (d) any other relevant circumstances support an assumption of jurisdiction.

Compare: 1908 No 89 Schedule 2 r 220

Part 6—*continued*
Subpart 4—*continued*

6.29 Court's discretion whether to assume jurisdiction

- (1) If service of process has been effected out of New Zealand without leave, and the court's jurisdiction is protested under rule 5.49, the court must dismiss the proceeding unless the party effecting service establishes—
 - (a) that there is—
 - (i) a good arguable case that the claim falls wholly within 1 or more of the paragraphs of rule 6.27; and
 - (ii) the court should assume jurisdiction by reason of the matters set out in rule 6.28(5)(b) to (d); or
 - (b) that, had the party applied for leave under rule 6.28,—
 - (i) leave would have been granted; and
 - (ii) it is in the interests of justice that the failure to apply for leave should be excused.
- (2) If service of process has been effected out of New Zealand under rule 6.28, and the court's jurisdiction is protested under rule 5.49, and it is claimed that leave was wrongly granted under rule 6.28, the court must dismiss the proceeding unless the party effecting service establishes that in the light of the evidence now before the court leave was correctly granted.
- (3) When service of process has been validly effected within New Zealand, but New Zealand is not the appropriate forum for trial of the action, the defendant may apply for a stay, or for a dismissal of the proceeding under rule 15.1.

Compare: 1908 No 89 Schedule 2 r 220

6.30 Service of other documents outside New Zealand

Any document other than an originating document required by any rule to be served personally may be served abroad with the leave of the court, which may be given with any directions that the court thinks just.

Part 6—*continued*
Subpart 4—*continued*

6.31 Notice to defendant served outside New Zealand

If a defendant is to be served out of New Zealand, the memorandum required by rule 5.23(4) must also include a notice, which may be in form G 6, 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 and objection to the jurisdiction of the court under rule 5.49.

Compare: 1908 No 89 Schedule 2 r 221

6.32 Service outside New Zealand

- (1) An originating document permitted under these rules to be served outside New Zealand may be served by a method—
 - (a) specified in rule 6.1; or
 - (b) permitted by the law of the country in which it is to be served; or
 - (c) provided for in rules 6.33 and 6.34.
- (2) Subclause (1) is subject to subclauses (3) and (4).
- (3) When a convention relating to service of process is in force between New Zealand and the country where service is to be effected, service must be effected in accordance with a method provided for, or permitted by, that convention.
- (4) No service outside New Zealand is valid if effected contrary to the law of the country where service is effected.

Compare: 1908 No 89 Schedule 2 r 222

6.33 Service through official channels

- (1) When a party seeks service outside New Zealand through official channels, the request must be sent by the Registrar to the Secretary for Justice who must forward it to the Secretary of Foreign Affairs and Trade for further transmission to the appropriate authorities in the foreign country.

Part 6—*continued*
Subpart 4—*continued*

- (2) Proof of service must be returned to the Registrar through the same channels.
- (3) In respect of each person to be served, the request for service must be accompanied by—
 - (a) the document to be served; and
 - (b) a copy of the document 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 the language (verified as correct to the satisfaction of the Registrar) of the person to be served for service with the document; and
 - (ii) a copy of that translation, which must be exhibited to the evidence verifying service.
- (4) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a New Zealand consular officer, is sufficient proof of that fact and date.
- (5) This rule is subject to any relevant convention that requires or permits any other method of service through official channels.
Compare: 1908 No 89 Schedule 2 r 223

6.34 Service in convention countries

- (1) This rule applies when—
 - (a) a convention is in force between New Zealand and any other country relating to the service 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 that other country by official means.
- (2) When this rule applies, the party seeking service may file a request in form G 18 stating the official means of service desired and containing the undertaking set out in that form covering the payment of expenses.

Part 6—*continued*
Subpart 4—*continued*

- (3) Subclause (2) is subject to the provisions of the convention.
- (4) In respect of each person to be served, the request for service must be accompanied by—
 - (a) the document to be served; and
 - (b) a copy of it 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 or her 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.
- (5) The document and translation to be served must be sealed by the Registrar with the seal of the court and the documents required to accompany the request for service forwarded by the Registrar to the Secretary for Justice for transmission through the appropriate channels to the country concerned for service in accordance with the request for service.
- (6) 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 Secretary for Justice to the Registrar is sufficient proof of that service.
- (7) A certificate filed by the Registrar is equivalent to an affidavit of service of the documents referred to in the certificate.

Compare: 1908 No 89 Schedule 2 r 224

6.35 Time for filing defence

Except when the court otherwise orders, a defendant who has been served out of New Zealand must file a statement of defence or appearance within 30 working days from the date of service.

Compare: 1908 No 89 Schedule 2 r 225

Part 7

Case management, interlocutory applications, and interim relief

Subpart 1—Case management

7.1 Tracks for proceedings

- (1) All proceedings (other than proceedings entered on the commercial list) are on either the standard track or the swift track.
- (2) The following are on the swift track:
 - (a) applications under Part 12 (applications for summary judgment):
 - (b) applications under Part 19 (originating applications):
 - (c) applications for leave to appeal, and appeals, under Part 20:
 - (d) applications under Part 24 (insolvency) and Part 31 (companies liquidation):
 - (e) applications for leave to appeal, and appeals, under Part 26 (arbitration).
- (3) A proceeding not referred to in subclause (2) is on the standard track.
- (4) A Judge may, at any time, on the Judge's 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.

Compare: 1908 No 89 Schedule 2 r 426

7.2 Convening of case management conferences

- (1) A Judge may, at any time, hold a case management conference.
- (2) The case management conference is held so that the Judge may—
 - (a) assist the parties in the just, speedy, and inexpensive determination of the proceeding:
 - (b) make orders under rule 7.9:
 - (c) if practicable, make other interlocutory orders.
- (3) A case management conference may be convened by a Judge on the Judge's own initiative or on the application of 1 or more of the parties.

Compare: 1908 No 89 Schedule 2 r 427

Part 7—*continued*
Subpart 1—*continued*

7.3 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) After 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 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, or direct the Registrar to do so.
- (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

Part 7—*continued*
Subpart 1—*continued*

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 8.
- (9) Counsel must file and serve, 2 working days before the pre-trial conference, a memorandum that addresses each of the items in Schedule 8, or, alternatively, a joint memorandum.
- Compare: 1908 No 89 Schedule 2 r 428

7.4 Matters to be considered at case management conferences for proceedings other than appeals

- (1) The matters to be considered at a case management conference under rule 7.3(1)(a) and (b) are—
- (a) the Schedule 5 matters that are relevant to the proceeding and its current stage; and
 - (b) any interlocutory applications allocated for hearing at that conference under rule 7.33; and
 - (c) any application for an interlocutory order outlined in a memorandum filed under subclause (3).
- (2) Unless excused by the Judge, 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.
- (3) Any memorandum filed for a conference under rule 7.3(1)(a) and (b) must—
- (a) address the matters set out in Schedule 5 that are relevant to the proceeding and its current stage; and

Part 7—*continued*
Subpart 1—*continued*

- (b) outline, with reasonable details, any application for an interlocutory order intended to be made at the case management conference.
- (4) Any memorandum filed for a conference under subclause (2) must address the matters in that subclause.
- (5) Any memorandum may be filed by fax or by email transmission.

Compare: 1908 No 89 Schedule 2 r 429

7.5 Case management conferences for appeals

- (1) In the case of an appeal under Part 20 or 26, 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 20.6 or an originating application under rule 26.3 is filed;
 - (b) the date on which leave to appeal is granted on an application under rule 20.3 or 26.15.
- (2) The appellant 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) address the matters set out in Schedule 6; and
 - (b) specify any directions in Schedule 6 that should be deleted or modified, and why; and
 - (c) set out any additional directions sought, and why; and
 - (d) set out the issues raised by the appeal if they are not fully set out, or are different from those set out, in the notice of appeal.
- (5) Any memorandum may be filed by fax or by email transmission.

Part 7—*continued*
Subpart 1—*continued*

- (6) The directions set out in Schedule 6 apply except to the extent that those directions are modified by directions given by the Judge.
- (7) At the conference, the Judge must give directions for the conduct of the appeal, which may, without limitation, include directions—
 - (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 20, 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 26,—
 - (i) as to the preparation of the record in accordance with rule 26.10 or in any other manner the Judge thinks fit:
 - (ii) as to the transcription of the evidence in accordance with rule 26.11:
 - (e) on any other matter for the purpose of best securing the just, speedy, and inexpensive determination of the appeal.
- (8) In the case of an appeal or reference by way of case stated under Part 21, this rule applies as if the appeal or reference were an appeal under Part 20, except that the references in subclauses (4) and (6) to Schedule 6 must be read as references to Schedule 7.

Compare: 1908 No 89 Schedule 2 r 430

7.6 Cancellation of conference

A Judge may cancel a case management conference if, after reading the memoranda prepared under rule 7.4(3) or 7.5(3) for the conference, the Judge—

- (a) is satisfied that all orders sought can be made by consent; and

Part 7—*continued*
Subpart 1—*continued*

- (b) is satisfied that the attendance of counsel is not required;
and
- (c) makes those orders.

Compare: 1908 No 89 Schedule 2 r 431

7.7 Court to seek admissions and agreements

At a case management conference, the Judge—

- (a) must endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceeding that ought reasonably to be made by them; and
- (b) may direct that any refusal to make an admission or agreement be recorded, in any form the Judge directs, so that the refusal can be taken into account in an award of costs.

Compare: 1908 No 89 Schedule 2 r 439(1)

7.8 Limitation of right of appeal

Rule 7.7 does not require the Judge to endeavour to secure that the parties agree to exclude or limit any right of appeal, but an agreement to that effect must be recorded in any form the Judge directs.

Compare: 1908 No 89 Schedule 2 r 439(2)

7.9 Directions as to conduct of proceeding

- (1) A Judge 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.

Part 7—*continued*
Subpart 1—*continued*

- (2) On an originating application a Judge may direct the parties to file a statement of claim and of defence, respectively.
- (3) A party or intended party may apply without notice to a Judge for directions if in doubt about—
 - (a) whether it is correct or appropriate to join a person as a party; or
 - (b) the proper court in which to commence or take a step in a proceeding; or
 - (c) the correct method of proceeding under these rules.
- (4) A step taken in accordance with a direction given under sub-clause (3) must be treated as valid.

Compare: 1908 No 89 Schedule 2 rr 8, 425

7.10 Order may be varied at trial

An order or direction made or given under rule 7.9 may, if justice so requires, be varied or revoked (in whole or in part) by the court at the trial.

Compare: 1908 No 89 Schedule 2 r 440

7.11 Hearing dates for proceedings on swift track

- (1) In the case of appeals under Part 20 or 26, the Judge must, at a case management conference or, if the case management conference is cancelled under rule 7.6, by minute, give a direction—
 - (a) allocating a hearing date for the appeal; or
 - (b) requiring 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 20 or 26), 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.

Compare: 1908 No 89 Schedule 2 r 432

Part 7—*continued*
Subpart 1—*continued*

7.12 Application of rules 7.13 to 7.18

Rules 7.13 to 7.18 apply to all proceedings other than proceedings that are on the swift track.

Compare: 1908 No 89 Schedule 2 r 433

7.13 Allocation of hearing dates and setting down dates

- (1) A Judge may give a direction that—
 - (a) allocates a hearing date for a proceeding; or
 - (b) requires the Registrar to allocate a hearing date for the proceeding.
- (2) Unless the Judge otherwise directs, if no hearing date has been allocated for the proceeding by the time that a second case management conference is, under rule 7.3(1)(b), held for the proceeding, the hearing date must be allocated at that conference whether or not any interlocutory application is outstanding.
- (3) When the Judge gives a direction under subclause (1), the Judge 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 Judge's own initiative or on the application of 1 or more parties to the proceeding.
- (5) If the Judge gives a direction under subclause (1) without giving a direction under subclause (3), the setting down date for the proceeding is the later of—
 - (a) the date that is 60 working days before the hearing date; or
 - (b) the date on which the hearing date is allocated.

Compare: 1908 No 89 Schedule 2 r 434

7.14 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

Part 7—*continued*
Subpart 1—*continued*

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
- (b) a date fixed by a Judge for the purpose.

Compare: 1908 No 89 Schedule 2 r 435

7.15 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 7.13(1)(a); and
- (b) a list of proceedings for which the Registrar is, under rule 7.13(1)(b), required to allocate a hearing date.

Compare: 1908 No 89 Schedule 2 r 436

7.16 Registrar's functions in relation to hearing dates

- (1) After a Judge has allocated a hearing date for a proceeding under rule 7.13(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 Judge gives a direction under rule 7.13(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—
 - (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.

Part 7—*continued*
Subpart 1—*continued*

- (3) The performance of the Registrar's functions under subclause (1) is subject to any direction by a Judge.

Compare: 1908 No 89 Schedule 2 r 437

7.17 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.

Compare: 1908 No 89 Schedule 2 r 438

7.18 No steps after setting down date without leave

- (1) On and after the setting down date the Registrar, without requiring an application by a party, must treat the proceeding as set down for hearing.
- (2) 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 a Judge.
- (3) Subclause (2) does not apply to—
- (a) an application for leave under that subclause; or
 - (b) an application for directions under rule 7.9; or
 - (c) a pleading or an affidavit that merely brings up to date the information before the court; or
 - (d) an application for an amendment of a defect or error under rule 1.9.

Compare: 1908 No 89 Schedule 2 r 438AA

*Subpart 2—Interlocutory applications and
interlocutory orders*

7.19 Contents, form, and filing of interlocutory application

- (1) An interlocutory application must—
- (a) state the relief sought and the grounds justifying that relief; and
 - (b) refer to any particular enactments or principles of law or judicial decisions on which the applicant relies.

Part 7—*continued*
Subpart 2—*continued*

- (2) The application need not ask for general or other relief.
- (3) The application is made by filing it in the court.
- (4) The application must be in form G 31 or G 32.
- (5) This subpart applies to the application.

Compare: 1908 No 89 Schedule 2 r 237(1)–(3)

7.20 Affidavit to be filed with application

Any affidavit in support of the application must be filed at the same time as the application.

Compare: 1908 No 89 Schedule 2 r 241

7.21 Filing by post

- (1) An applicant may post an application and related documents together with the applicable fee to the Registrar at the proper registry of the court.
- (2) A posted application is filed when that Registrar receives it with the applicable fee.
- (3) The Registrar must acknowledge the receipt of all documents sent by post and notify the applicant of the hearing date (if any) allocated for the application.
- (4) If the application is made without notice and does not require any attendance by or on behalf of the applicant, the Registrar must notify the applicant of the result of the application.

Compare: 1908 No 89 Schedule 2 r 237(4), (5)

7.22 Service of application and supporting affidavit

- (1) After filing an application and any affidavit in support of it, the applicant must promptly serve a copy of the application and affidavit on every party.
- (2) After the applicant is notified of the hearing date for the application, the applicant must promptly notify every respondent of the hearing date.
- (3) This rule does not apply to an application made without notice in accordance with rule 7.23.

Compare: 1908 No 89 Schedule 2 r 243

Part 7—*continued*
Subpart 2—*continued*

7.23 Application without notice

- (1) If the applicant wishes the application to be determined without any other party being served (in these rules referred to as an **application without notice**), the applicant must use form G 32.
- (2) An application without notice must contain a certificate that—
 - (a) uses the words “I certify that this application complies with the rules”; and
 - (b) is personally signed by the applicant’s lawyer.
- (3) The lawyer who signs the certificate must, before signing it, be personally satisfied that—
 - (a) the application and every affidavit filed in support of it complies with these rules:
 - (b) the order sought is one that ought to be made:
 - (c) there is a proper basis for seeking the order in an application without notice.
- (4) The lawyer is responsible to the court for those matters.
- (5) Despite subclause (2), a Judge may dispense with the certificate if the applicant is unrepresented and justice so requires, and if dispensation is sought, the applicant must state the reasons for the absence of a lawyer’s certificate.

Compare: 1908 No 89 Schedule 2 r 240

7.24 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—
 - (a) the period of 10 working days after being served with the application; or
 - (b) if the hearing date for the application is within that period, 3 working days before the hearing date.
- (2) The notice of opposition must—
 - (a) state the respondent’s intention to oppose the application and the grounds of opposition; and

Part 7—*continued*
Subpart 2—*continued*

- (b) refer to any particular enactments or principles of law or judicial decisions on which the respondent relies.
- (3) The notice of opposition must be in form G 33.
Compare: 1908 No 89 Schedule 2 r 244

7.25 Affidavit to be filed with notice of opposition

Any affidavit setting out evidence in support of the notice of opposition must be filed and served at the same time as the notice of opposition.

Compare: 1908 No 89 Schedule 2 r 245

7.26 Affidavit in reply

- (1) Any reply by the applicant to the respondent's notice of opposition or affidavit must be by affidavit, which must be filed and served within—
 - (a) the period of 5 working days after service of the notice of opposition; or
 - (b) if the hearing date for the application is within that period, 1 pm on the working day before that hearing date.
- (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.

Compare: 1908 No 89 Schedule 2 r 246

7.27 Evidence normally given by affidavit

- (1) Evidence relating to interlocutory applications is given by affidavit.
- (2) Despite subclause (1), in special circumstances, a Judge may accept oral evidence.

Compare: 1908 No 89 Schedule 2 r 253(1)

7.28 Cross-examination of maker of affidavit

A Judge may in special circumstances, on the application of a party, order the attendance for cross-examination of a person

Part 7—*continued*
Subpart 2—*continued*

who has made an affidavit in support of, or in opposition to, an interlocutory application.

Compare: 1908 No 89 Schedule 2 r 253(2)

7.29 Rules governing affidavits

Rules 9.75 to 9.88 apply, with all necessary modifications, to affidavits filed for interlocutory applications.

Compare: 1908 No 89 Schedule 2 r 249(1)

7.30 Statements of belief in affidavits

- (1) A Judge 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.

- (2) Subclause (1) overrides rule 7.29.

Compare: 1908 No 89 Schedule 2 r 249(2)

7.31 When admissions binding

An admission of a fact expressly made only for the purpose of an application binds the party only for the application.

Compare: 1908 No 89 Schedule 2 r 247

7.32 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 a Judge, 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 application without notice, they are referred to in the notice of application.

Part 7—*continued*
Subpart 2—*continued*

- (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 7.31.

Compare: 1908 No 89 Schedule 2 r 248

7.33 Allocation of hearing date

On or following the filing of an application (other than an application without notice), the Registrar must allocate a hearing date for the application.

Compare: 1908 No 89 Schedule 2 r 242(1)

7.34 Mode of hearing

- (1) An interlocutory application for which a hearing is required must be heard in chambers unless a Judge otherwise directs.
- (2) On the Judge's own initiative or on the application of 1 or more of the parties, the Judge may conduct a hearing in chambers by telephone or video link.

Compare: 1908 No 89 Schedule 2 r 251(2), (3), (5)

7.35 Publication about hearing in chambers

Particulars of the hearing in chambers of an interlocutory application or of the decision or both (including the reasons for the decision) may be published unless a Judge or Registrar, exercising jurisdiction in chambers, otherwise directs.

Compare: 1908 No 89 Schedule 2 r 72A

7.36 Application for summary judgment to be heard in open court

Despite rule 7.34(1), every application for summary judgment must be heard in open court.

Compare: 1908 No 89 Schedule 2 r 251(1)

Part 7—*continued*
Subpart 2—*continued*

7.37 No hearing required if respondents consent or do not oppose

- (1) Subclause (2) applies if each respondent to an interlocutory application has stated on the application or in a memorandum filed in the court that the respondent consents to, or does not oppose, the orders sought in the application.
- (2) A Judge may—
 - (a) make the orders sought without holding a hearing; or
 - (b) direct that the application be heard on the hearing date allocated under rule 7.33.
- (3) If the Judge makes the orders without holding a hearing, the Registrar must promptly advise the parties of the orders made and the cancellation of the hearing date.

Compare: 1908 No 89 Schedule 2 r 250(1), (2)

7.38 Respondent who consents, or who does not oppose, need not attend hearing

- (1) If a hearing of an interlocutory application is held, a respondent need not attend the hearing if the respondent consents to, or does not oppose, the application and has notified the court in writing.
- (2) Subclause (1) does not apply if, on the hearing date allocated for the interlocutory application, a case management conference is also due to be held.

Compare: 1908 No 89 Schedule 2 r 250(3), (4)

7.39 Synopsis of argument

- (1) This rule applies to a defended interlocutory application unless, or to the extent that, a Judge 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 7.24(1)(a), at least 3 working days before the hearing of the interlocutory application; or

Part 7—*continued*
Subpart 2—*continued*

- (b) if the respondent has filed a notice of opposition under rule 7.24(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.
 - (4) The material required to be included in the applicant's synopsis under subclause (3)(a) to (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) to (c) must not exceed 10 pages.
- Compare: 1908 No 89 Schedule 2 r 251A

7.40 Failure to attend

- (1) If a party is neither present nor represented at the hearing of an application, the Judge may—
 - (a) determine the application in the party's absence in any manner that appears just; or

Part 7—*continued*
Subpart 2—*continued*

- (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, a Judge may, if the Judge 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) A Judge may, in any manner that the Judge thinks just, reinstate an application that has been struck out for non-appearance.
- (4) A Judge may make a determination referred to in subclause (2) or (3) on the Judge's 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.

Compare: 1908 No 89 Schedule 2 r 252

7.41 Certain applications may be made orally at hearing

- (1) At a hearing, the Judge may agree to hear 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
 - (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 Judge agrees to hear an oral application, the Judge may make any interlocutory order or grant any interlocutory relief

Part 7—*continued*
Subpart 2—*continued*

the Judge could have made or granted on a formal notice of the application.

- (3) This rule overrides rule 7.19.

Compare: 1908 No 89 Schedule 2 r 254

7.42 Adjournment

The hearing of an application may, from time to time, be adjourned on any terms that the Judge thinks just.

Compare: 1908 No 89 Schedule 2 r 255

7.43 Making of interlocutory orders

- (1) A Judge may make any interlocutory order that—
 (a) is provided for in these rules; or
 (b) may be made under rule 1.6.
- (2) An interlocutory order may be made—
 (a) on the interlocutory application of a party; or
 (b) on a Judge's own initiative.
- (3) Before making an order under subclause (2)(b), the Judge must give the parties an opportunity to be heard.

Compare: 1908 No 89 Schedule 2 r 234

7.44 Power to grant interlocutory order or interlocutory relief

A Judge may make any interlocutory order or grant any interlocutory relief the Judge thinks just, even though the order or relief has not been specifically claimed and there is no claim for general or other relief.

Compare: 1908 No 89 Schedule 2 r 235

7.45 Interlocutory orders may be made subject to conditions

A Judge may make an interlocutory order subject to any just terms or conditions, including, without limitation, any condition that—

- (a) a party give an undertaking;
(b) the order operate only for a specified period.

Compare: 1908 No 89 Schedule 2 r 236

Part 7—*continued*
Subpart 2—*continued*

7.46 Determination of application without notice

- (1) The Registrar must refer an application without notice to a Judge for direction or decision.
- (2) The Judge, on receiving an application without notice, must determine whether the application can properly be dealt with without notice.
- (3) The Judge may determine that an application can properly be dealt with without notice only if the Judge 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
 - (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.
- (4) If the Judge determines that the application can properly be dealt with without notice, the Judge may—
 - (a) make the order sought in the application; or
 - (b) make any other order that the Judge thinks just in the circumstances; or
 - (c) dismiss the application.
- (5) If the Judge determines that the application cannot properly be dealt with without notice, the Judge may—
 - (a) give directions as to service and adjourn the determination of the application until the application has been served on persons who are affected by the application; or
 - (b) if the Judge considers that the application has no chance of success, dismiss the application.

Compare: 1908 No 89 Schedule 2 rr 242(2), 256

7.47 Drawing up and sealing interlocutory order

- (1) A party may draw up an interlocutory order and submit it to the Registrar for sealing.

Part 7—*continued*
Subpart 2—*continued*

- (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—
 - (a) affects a person who is not a party; or
 - (b) joins a person as a party; or
 - (c) directs that it be served on a person.
- (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:
 - (a) the party must file an original order together with sufficient copies so that the party 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 G 34:
 - (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.

Compare: 1908 No 89 Schedule 2 r 257

7.48 Enforcement of interlocutory order

- (1) If a party (the **party in default**) fails to comply with an interlocutory order, a Judge may, subject to any express provision of these rules, make any order that the Judge thinks just.
- (2) The Judge may, for example, order—
 - (a) that any pleading of the party in default be struck out in whole or in part:
 - (b) that judgment be sealed:
 - (c) that the proceeding be stayed in whole or in part:

Part 7—*continued*
Subpart 2—*continued*

- (d) that the party in default be committed:
 - (e) if any property in dispute is in the possession or control of the party in default, that the property be sequestered:
 - (f) that any fund in dispute be paid into court:
 - (g) the appointment of 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 party in default or that party had notice or knowledge of the order within sufficient time for compliance with the order.

Compare: 1908 No 89 Schedule 2 r 258

7.49 Order may be varied or rescinded if shown to be wrong

- (1) A party affected by an interlocutory order (whether made on a Judge'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.
- (2) A party may not apply under subclause (1) if the order or decision was made or given—
- (a) with the consent of the parties; or
 - (b) on an interlocutory application for summary judgment under rule 12.4; 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 terms.

Part 7—*continued*
Subpart 2—*continued*

- (4) The application does not operate as a stay unless a Judge so orders.
- (5) Unless a Judge otherwise directs, the application must be heard by the Judge who made the order or gave the decision.
- (6) The Judge may,—
 - (a) if satisfied that the order or decision is wrong, vary or rescind the order or decision; or
 - (b) on the Judge's own initiative or on the application of a party, transfer the application to the Court of Appeal.

Compare: 1908 No 89 Schedule 2 r 259

7.50 Order relating to management of proceeding may be varied if circumstances change

- (1) This rule applies to an order or direction (a **determination**) that—
 - (a) relates to the management of a proceeding; and
 - (b) has been made by a 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 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 7.49(1) or be transferred to the Court of Appeal.

Compare: 1908 No 89 Schedule 2 r 260

Part 7—*continued*
Subpart 2—*continued*

7.51 Order may be rescinded if fraudulently or improperly obtained

- (1) A Judge may rescind any order that has been fraudulently or improperly obtained.
- (2) The Judge 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.

Compare: 1908 No 89 Schedule 2 r 261

7.52 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 a Judge.
- (2) A Judge may grant leave only in special circumstances.

Compare: 1908 No 89 Schedule 2 r 262

Subpart 3—Interim relief

7.53 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 an injunction is claimed in the party's statement of claim, counterclaim, or third party notice.
- (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 Judge thinks just.

Compare: 1908 No 89 Schedule 2 r 238(1), (2)

Part 7—*continued*
Subpart 3—*continued*

7.54 Undertaking as to damages

- (1) An applicant for an interlocutory injunction under rule 7.53 must file a signed undertaking that the applicant will comply with any order for the payment of damages to compensate the other party for any damage sustained through the injunction.
- (2) The undertaking must be referred to in the order granting the interlocutory injunction and is part of it.

Compare: 1908 No 89 Schedule 2 r 238 (3), (4)

7.55 Preservation of property

- (1) A Judge may at any stage in a proceeding make orders, subject to any conditions specified by the Judge, for the detention, custody, or preservation of any property.
- (2) An order may authorise a person to enter any land or to do any other thing for the purpose of giving effect to the order.
- (3) The Judge may order that a fund be paid into court or otherwise secured if the proceeding concerns the right of a party to the fund.
- (4) The Judge may treat an application under this rule as an application for directions under rule 7.9 and give directions accordingly.

Compare: 1908 No 89 Schedule 2 rr 331, 335, 336

7.56 Sale of perishable property before hearing

- (1) A Judge may, on application, make an order authorising a person to sell property (other than land) in a manner and subject to any conditions stated in the order if—
 - (a) the proceeding concerns the property or raises, or may raise, questions about the property; and
 - (b) the property—
 - (i) is perishable or likely to deteriorate; or
 - (ii) should for any other reason be sold before the hearing.

Part 7—*continued*
Subpart 3—*continued*

- (2) The Judge may treat an application under this rule as an application for directions under rule 7.9 and give directions accordingly.

Compare: 1908 No 89 Schedule 2 rr 332, 335

7.57 Order to transfer part of property to person with interest in property

- (1) At any stage of a proceeding concerning property a Judge may order, subject to any conditions, that a part of the property be transferred or delivered to a person who has an interest in the property.
- (2) The order may be made if the Judge is satisfied—
- (a) that the part of the property transferred or delivered is not required for the provision that ought to be made to meet the claims on the property; and
 - (b) that the order is necessary or desirable—
 - (i) to exclude the part of the property from an injunction or other order; or
 - (ii) to protect the person who is to transfer or deliver the property.

Compare: 1908 No 89 Schedule 2 r 333

7.58 Interim payment of income to person with interest in income

- (1) At any stage of a proceeding concerning property a Judge may order, subject to any conditions, that the whole or part of the income from the property be paid, during a period stated in the order, to 1 or more persons who have an interest in the income.
- (2) The order may be made if the Judge is satisfied—
- (a) that the income stated in the order is not required for any provision that ought to be made to meet the claims on the property or its income; and
 - (b) that the order is necessary or desirable—
 - (i) to exclude the income from a freezing injunction or other order; or

Part 7—*continued*
Subpart 3—*continued*

- (ii) to protect the person who is to pay the income.

Compare: 1908 No 89 Schedule 2 r 334

Subpart 4—Receivers

7.59 Application

Rules 7.60 to 7.67 apply to a receiver appointed under an order of the court to the extent that the order does not expressly provide otherwise.

Compare: 1908 No 89 Schedule 2 r 337

7.60 Address for service

The receiver must, within 5 working days after appointment, file a notice specifying an address for service.

Compare: 1908 No 89 Schedule 2 r 338

7.61 Receiver must give security

- (1) A Judge may give directions as to the security that the receiver is required to give in accordance with this rule.
- (2) If a Judge directs that a receiver be appointed, no appointment may be made until the person to be appointed has given security in accordance with this rule.
- (3) Any security given under this rule must be approved by the Registrar.
- (4) The Registrar must be satisfied that the security is sufficient to ensure that the receiver will—
 - (a) account for everything received in his or her capacity as receiver; and
 - (b) comply with any direction given by a Judge.
- (5) A Judge may vary any directions given and may, in particular, order that the security be varied or discharged.
- (6) Subclauses (1) and (2) are subject to any enactment.

Compare: 1908 No 89 Schedule 2 r 339

7.62 Remuneration of receiver

- (1) A receiver must be paid the remuneration fixed by a Judge.

Part 7—*continued*
Subpart 4—*continued*

- (2) A Judge may, in the order appointing a receiver or in a later order, name the party or parties who must pay the remuneration and, if more than 1 party is named, the proportion to be paid by each party.
- (3) A Judge may order any party or parties to give security for the receiver's remuneration.
- (4) Subclause (3) does not affect subclause (2).
Compare: 1908 No 89 Schedule 2 r 340

7.63 Accounts of receiver

A receiver must file accounts at the intervals or on the dates specified in directions given by a Judge.

Compare: 1908 No 89 Schedule 2 r 341

7.64 Examination of accounts

- (1) The receiver must—
 - (a) on filing the accounts, request the Registrar to examine the accounts and to allocate a date and time for that examination; and
 - (b) serve on each party interested who has given an address for service in the proceeding—
 - (i) a copy of the accounts; and
 - (ii) a notice of the date and time allocated for the examination of the accounts.
- (2) The receiver must, unless a Judge otherwise orders, attend at the examination of the accounts.

Compare: 1908 No 89 Schedule 2 r 342

7.65 Default by receiver

- (1) A Judge may make any orders and give any directions that the Judge thinks fit if a receiver does not comply with a requirement, under these rules or an order or a direction,—
 - (a) to file any accounts or an affidavit; or
 - (b) to attend at the examination of the accounts; or
 - (c) to do any other thing.

Part 7—*continued*
Subpart 4—*continued*

- (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) If a receiver does not comply with a requirement under these rules or an order or direction of a Judge to pay into court a sum shown by the accounts as due from the receiver, a Judge may order the receiver to pay interest at the rate prescribed under section 87 of the Act.
- (4) This rule does not limit the powers of the court to enforce orders or to punish contempt.
- (5) Subclause (3) does not limit subclause (1) or (2).
Compare: 1908 No 89 Schedule 2 r 343

7.66 Powers of receiver

- (1) A Judge may authorise a receiver to do (either in the receiver's own name or in that of 1 or more parties) any act or thing that 1 or more parties could do if of full age and capacity.
- (2) An authority given under subclause (1)—
 - (a) may apply generally or be limited to a particular instance; and
 - (b) has effect even if 1 or more parties are not of full age and capacity.
- (3) This rule does not limit the powers of a Judge to authorise a receiver to do any act or thing.
Compare: 1908 No 89 Schedule 2 r 344

7.67 Accounts on death of receiver

- (1) If the receiver in any proceeding dies, a Judge may, on application, make any orders the Judge thinks fit for the filing and examining of accounts by the personal representatives of the deceased receiver and for the payment into court of any amount shown to be due.

Part 7—*continued*
Subpart 4—*continued*

- (2) A Judge may not make any order under subclause (1) unless notice of the application has been served on the personal representatives.
- (3) Notice of the application may be served in any manner in which a statement of claim may be served.

Compare: 1908 No 89 Schedule 2 rr 345, 346

Subpart 5—Interim payments

7.68 Interpretation

In rules 7.69 to 7.76, **interim payment** means a payment on account of any damages, debt, or other sum (excluding costs) that the defendant in a proceeding may be held liable to pay to, or for the benefit of, the plaintiff in that proceeding.

Compare: 1908 No 89 Schedule 2 r 346A

7.69 Application for interim payment

- (1) The plaintiff in a proceeding may, at any time after the time for the filing of a statement of defence by the defendant has expired, apply to the court for an order requiring the defendant to make an interim payment.
- (2) An application under subclause (1) must be supported by an affidavit—
 - (a) stating the amount of the damages, debt, or other sum to which the application relates and the reasons for making the application; and
 - (b) attaching 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 to it must be served on the defendant against whom the order is sought at least 10 working days before the date allocated for the hearing of the application.
- (4) A second or subsequent application for an interim payment may be made if it is shown to be justified, even if such an order has previously been made or refused.

Compare: 1908 No 89 Schedule 2 r 346B

Part 7—*continued*
Subpart 5—*continued*

7.70 Order for interim payment in respect of damages

- (1) A Judge may make an order under subclause (2) if, on hearing the application, the Judge is satisfied that—
 - (a) the defendant against whom the order is sought has admitted liability for the plaintiff's damages; or
 - (b) the plaintiff has a judgment against the defendant for damages to be assessed; or
 - (c) on a trial of the proceeding, the plaintiff would obtain judgment for substantial damages against the defendant or, if there are several defendants, against 1 or more of them.
- (2) A Judge may, within the limits in subclause (3), order the defendant to make an interim payment of an amount that the Judge thinks just.
- (3) The amount must not exceed a reasonable proportion of the damages the plaintiff is, in the opinion of the Judge, likely to recover after taking into account—
 - (a) any relevant contributory negligence; and
 - (b) any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

Compare: 1908 No 89 Schedule 2 r 346C

7.71 Order for interim payment in respect of sums other than damages

- (1) A Judge may make an order under subclause (2) if, on hearing the application, the Judge 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 the payment of any amount certified to be payable on the basis of that account; or
 - (b) in the case of a claim for the possession of land, that even if the proceeding was finally determined in favour of the defendant, the defendant would still be required to compensate the plaintiff for the defendant's use and occupation of the land before the determination of the proceeding; or

Part 7—*continued*
Subpart 5—*continued*

- (c) that, on the trial of the proceeding, the plaintiff is likely to obtain judgment against the defendant for a substantial sum of money apart from any damages or costs.
- (2) A Judge may order that the defendant pay an amount the Judge thinks just, after taking into account any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.
- (3) The order does not prejudice any contentions of the parties as to the nature or character of the sum to be paid by the defendant.

Compare: 1908 No 89 Schedule 2 r 346D

7.72 Method of payment

- (1) The amount of any interim payment ordered to be made must be paid to the plaintiff unless the order provides for it to be paid into court.
- (2) If the amount is paid into court, a Judge may, on the application of the plaintiff, order the whole or any part of it to be paid out to the plaintiff at a time or times the Judge thinks just.
- (3) If the person entitled to an interim payment or to a part of an interim payment belongs to a class of persons stated in subclause (4), acceptance of the interim payment is subject to the approval of a Judge and payment out of court may not be made without the leave of a Judge.
- (4) The classes are—
 - (a) minors (not including a minor to whom rule 4.31(2) applies);
 - (b) persons subject to a property order under the Protection of Personal and Property Rights Act 1988;
 - (c) incapacitated persons within the meaning of rule 4.29.
- (5) An application under subclause (2) for money in court to be paid out may be made without notice, but a Judge hearing the application may direct that notice of the application be served on the other party.
- (6) An interim payment may be ordered to be made in 1 sum or by any instalments a Judge thinks just.

Part 7—*continued*
Subpart 5—*continued*

- (7) If 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 while the proceeding awaits determination.
- (8) Subclause (1) is subject to subclause (3).
Compare: 1908 No 89 Schedule 2 r 346E

7.73 Directions on interim payment application

When an application is made under rule 7.69, a Judge may give any directions as to the further conduct of the proceeding that the Judge thinks just, and may, in particular, order an early trial of the proceeding.

Compare: 1908 No 89 Schedule 2 r 346F

7.74 Non-disclosure of interim payment

- (1) The fact that an order has been made under rule 7.70(2) or 7.71(2) must not be pleaded.
- (2) The fact that the order has been made or that an interim payment has been made, whether voluntarily or under an order, must not be disclosed at the trial, or hearing, of any question or issue as to liability or damages.
- (3) Subclause (2) does not prevent the disclosure of any fact—
 - (a) to the extent that the defendant consents to, or a Judge directs, the disclosure; or
 - (b) after all questions of liability and amount have been determined.

Compare: 1908 No 89 Schedule 2 r 346G

7.75 Adjustment on final judgment or order or on discontinuance

- (1) A Judge may, on the application of a party, make an order with respect to an interim payment made under an order or voluntarily that the Judge thinks just.
- (2) A Judge may, in particular, make an order for—
 - (a) the repayment by the plaintiff of all or part of the interim payment; or

Part 7—*continued*
Subpart 5—*continued*

- (b) the variation or discharge of the interim payment; or
- (c) the payment by another defendant of part of the interim payment, if the defendant who made the interim payment is entitled to recover from the other defendant an amount—
 - (i) by way of contribution or indemnity; or
 - (ii) in respect of a remedy or relief relating to, or connected with, the plaintiff's claim.
- (3) A Judge may make an order under this rule—
 - (a) when giving or making a final judgment or order; or
 - (b) when granting the plaintiff leave to discontinue the proceeding or to withdraw the claim in respect of which the interim payment has been made; or
 - (c) at any other stage of the proceeding.

Compare: 1908 No 89 Schedule 2 r 346I

7.76 Counterclaims and other proceedings

Rules 7.68 to 7.75 apply, with all necessary modifications, to any counterclaim or proceeding in which 1 party seeks an order for an interim payment from another.

Compare: 1908 No 89 Schedule 2 r 346J

Subpart 6—Amendment of pleading

7.77 Filing of amended pleading

- (1) A party may before trial file an amended pleading and serve a copy of it on the other party or parties.
- (2) An amended pleading may introduce, as an alternative or otherwise,—
 - (a) a fresh cause of action, which is not statute barred; or
 - (b) a fresh ground of defence.
- (3) 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.
- (4) If a cause of action has arisen since the filing of the statement of claim, it may be added only by leave of the court. If leave

Part 7—*continued*
Subpart 6—*continued*

is granted, the amended pleading must be treated, for the purposes of the law of limitation defences, as having been served on the date of the filing of the application for leave to introduce that cause of action.

- (5) Subclause (4) overrides subclause (1).
- (6) If an amended pleading introduces a fresh cause of action, the other party must file and serve that party's defence to it within 10 working days after the day on which the amended pleading is actually served on the other party.
- (7) When an amended pleading does not introduce a fresh cause of action, the other party may, within 5 working days after the day on which the amended pleading is served on that other party, file and serve an amended defence to it.
- (8) If an amended pleading has been filed under this rule, the party filing the amended pleading must bear all the costs of and occasioned by the original pleading and any application for amendment, unless the court otherwise orders.
- (9) This rule does not limit the powers conferred on the court by rule 1.9.
- (10) This rule is subject to rule 7.18 (which prohibits steps after the setting down date without leave).

Compare: 1908 No 89 Schedule 2 r 187

*Subpart 7—Recovery of specific property
subject to lien*

7.78 Recovery of specific property subject to lien or other security

- (1) This rule applies if a party (**A**) seeks to recover specific property other than land and the party from whom recovery is sought (**B**) does not dispute the title of A, but claims to retain the property by virtue of a lien or otherwise as security for a sum of money.
- (2) The court may order that A may pay into court 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

Part 7—*continued*
Subpart 7—*continued*

directs, and money so paid in must be held by the court until the result of the proceeding is known.

- (3) If payment into court is made, the court may order that the property claimed be delivered to its claimant.
- (4) Subclause (1) is applicable as soon as the claim to retain the property appears from the statement of defence or otherwise.

Compare: 1908 No 89 Schedule 2 r 180

Subpart 8—Negotiations for settlement

7.79 Court may assist in negotiating for settlement

- (1) A Judge may, at any time before the hearing of a proceeding, convene a conference of the parties in chambers 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 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 there are no circumstances that would make it inappropriate for the Judge to do so.
- (5) A Judge 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.

Part 7—*continued*
Subpart 8—*continued*

- (6) The parties, and a Judge or Associate Judge who presides at a conference or assists in negotiations under this rule, must not disclose any statement made during a conference, either—
- (a) in court; or
 - (b) otherwise.
- (7) This rule must be read with subpart 8 of Part 2 of the Evidence Act 2006 (privilege).

Compare: 1908 No 89 Schedule 2 r 442

7.80 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, on application by a party, 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, on application by a party, stay those parts of the proceeding to which the arbitration agreement relates.
- (4) The court may make the stay on terms as to costs or other ancillary matters.
- (5) 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.

Compare: 1908 No 89 Schedule 2 r 383A

*Subpart 9—Interim relief in respect of
overseas proceedings*

7.81 Interim relief in support of overseas proceedings

- (1) On the application of a party or an intended party to judicial proceedings commenced or to be commenced outside New Zealand (**overseas proceedings**), the court may, if the court

Part 7—*continued*
Subpart 9—*continued*

thinks it just to do so, give interim relief in support of the overseas proceedings.

- (2) These rules apply to an application under subclause (1) as if the overseas proceedings for which support is sought had been commenced under these rules.
- (3) Subclause (1) does not apply to—
 - (a) an application for an interim payment under subpart 5:
 - (b) an application for discovery under subpart 3 of Part 8:
 - (c) an application in relation to evidence under Part 9:
 - (d) an application for a freezing order under Part 32.
- (4) Before making an order under this rule, the court must be satisfied that there is a real connecting link between the subject matter of the interim relief and the territorial jurisdiction of the court.
- (5) An order under subclause (1) must not be inconsistent with interim relief granted in the overseas proceedings by the court outside New Zealand.

Part 8
Interrogatories, discovery, and inspection
Subpart 1—Interrogatories

8.1 Interrogatories by notice

- (1) After a statement of defence has been filed, a party who has filed a pleading may file and serve on another party who has filed a pleading a notice 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 even if the interrogating party has not previously required any answers to interrogatories to be verified.
- (3) The notice must be in form G 35.

Compare: 1908 No 89 Schedule 2 r 278

Part 8—*continued*
Subpart 1—*continued*

8.2 Duties of party served

- (1) A party required by notice under rule 8.1 to answer interrogatories must answer the interrogatories within the period specified in the notice.
- (2) The period specified commences on the first working day after the day on which the notice under rule 8.1 is served and may not be less than 10 working days (or, if the party is resident out of New Zealand, 20 working days).
- (3) Unless verification is required, the party required to answer the interrogatories must file and serve on the party requiring the answers,—
 - (a) if the answers do not have to be verified, a statement in accordance with rule 8.6; or
 - (b) if the answers do have to be verified, an affidavit verifying the statement together with the statement verified unless it has already been filed and served.
- (4) This rule is subject to rule 8.3.

Compare: 1908 No 89 Schedule 2 r 279

8.3 Limitation of interrogatories by notice

- (1) A Judge may, on the application of a party required to answer interrogatories, order that answers to interrogatories under rule 8.2 by that party—
 - (a) are not required; or
 - (b) need to be given only to specified interrogatories or classes of interrogatories or to specified matters that are in question in the proceeding.
- (2) The application may be made before or after the party has been served with a notice under rule 8.1.
- (3) In determining the application, the Judge must make any orders required to prevent unnecessary or oppressive interrogatories or unnecessary answers to interrogatories.

Compare: 1908 No 89 Schedule 2 r 280

Part 8—*continued*
Subpart 1—*continued*

8.4 Multiple parties

If there are more than 2 parties, a party who is required under rule 8.2 to answer interrogatories must serve the documents required to be served under that rule on every party who has given an address for service.

Compare: 1908 No 89 Schedule 2 r 281

8.5 Order to answer

- (1) A Judge 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 statement prepared in accordance with rule 8.6 in answer to interrogatories specified or referred to in the order.
- (2) The interrogatories must relate to matters in question in the proceeding.
- (3) The order may require the statement to be verified by affidavit.
- (4) The Judge must not make an order under subclause (1) unless satisfied that the order is necessary at the time when it is made.

Compare: 1908 No 89 Schedule 2 r 282

8.6 Contents of statement

- (1) A statement in answer to interrogatories must, unless a Judge otherwise orders, comply with this rule.
- (2) A statement in answer to interrogatories must 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 1 or more of the grounds mentioned in rule 8.7(1) and briefly stating the facts on which the objection is based.
- (3) The statement must set out above or opposite to each answer or objection the interrogatory to which it relates.

Compare: 1908 No 89 Schedule 2 r 283

Part 8—*continued*
Subpart 1—*continued*

8.7 Objection to answer

- (1) A party may object to answer an interrogatory on the following grounds only:
 - (a) that the interrogatory does not relate to a matter in question between the parties involved in the interrogatories;
 - (b) that the interrogatory is vexatious or oppressive;
 - (c) that the information sought is privileged;
 - (d) that the sole object of the interrogatory is to ascertain the names of witnesses.
 - (2) It is not a sufficient objection that the answer to an interrogatory will determine a substantial issue in the proceeding.
 - (3) On an application under rule 8.3 in respect of an interrogatory, a Judge may—
 - (a) require the applicant to specify on what grounds the applicant objects to answer that interrogatory; and
 - (b) determine the sufficiency of the objection.
 - (4) If the Judge determines that the objection is not sufficient, the applicant is not entitled to object to answer the interrogatory.
- Compare: 1908 No 89 Schedule 2 r 284

8.8 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) if the person required to make the statement is a minor (other than a minor to whom rule 4.31(2) applies) or is an incapacitated person within the meaning of rule 4.29, by the person's litigation guardian;
 - (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 a registry), by a person who meets the requirements of rule 9.82;
 - (d) if the person required to make the statement is the Crown, or an officer of the Crown who sues or is sued

Part 8—*continued*
Subpart 1—*continued*

in an official capacity, or as representing a government department, by an officer of the Crown.

- (2) Despite subclause (1), if paragraph (c) or (d) of that subclause applies, and if the affidavit is to be filed and served in accordance with an order, a Judge may—
- (a) specify by name or otherwise the person who has to make the affidavit; or
 - (b) specify by description or otherwise a group or class of persons, any one of whom may make the affidavit.

Compare: 1908 No 89 Schedule 2 r 286

8.9 Insufficient answer

If a party fails to answer an interrogatory sufficiently, a Judge may, in addition to acting under rule 7.48,—

- (a) if the party has made an insufficient answer, order the party to make a further answer verified by affidavit in accordance with rule 8.8; or
- (b) order the party, or any of the persons mentioned in rule 8.8(1)(b) to (d) as the case requires, to attend to be orally examined.

Compare: 1908 No 89 Schedule 2 r 287

8.10 Incorrect answer to be amended

- (1) If, by reason of a change of circumstances or an error or omission, a statement filed in response to a notice given or order made under rule 8.1, 8.5, or 8.9 appears to the party by or on whose behalf it was filed to be defective or erroneous, that party must promptly file and serve a further statement that corrects or supplements the original statement.
- (2) If the original statement was verified, the further statement must also be verified.

Compare: 1908 No 89 Schedule 2 r 288

8.11 Answers as evidence

- (1) A party may give in evidence—

Part 8—*continued*
Subpart 1—*continued*

- (a) 1 or more answers to interrogatories without giving the others:
 - (b) part of an answer to an interrogatory without giving the whole of the answer.
- (2) If a party proposes to give in evidence an answer (or part of an answer) to an interrogatory (**answer A**), the Judge may look at the other answers, and if the Judge considers that answer A is so connected with another answer (**answer B**) that answer A ought not to be received without answer B, the Judge may refuse to receive answer A unless answer B is also given in evidence.

Compare: 1908 No 89 Schedule 2 r 289

8.12 Public interest

The rules that relate to interrogatories do not affect any rule of law that authorises or requires the withholding of a matter on the ground that its disclosure would be injurious to the public interest.

Compare: 1908 No 89 Schedule 2 r 290

8.13 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 may be allowed unless the interrogatories are necessary in the interests of justice.

Compare: 1908 No 89 Schedule 2 r 285

Subpart 2—Notice to admit facts

8.14 Notice to admit facts

- (1) A party who is entitled to serve a notice under rule 8.1 may at any time serve on another party a notice requiring the party to admit, for the purpose of the proceeding only, the facts specified in the notice.

Part 8—*continued*
Subpart 2—*continued*

- (2) The notice must be in form G 36.
- (3) An admission made in compliance with a notice under subclause (1)—
 - (a) may be amended or withdrawn by the party by whom it was made at any time, if a Judge so allows and on any terms the Judge 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 which it was made.
- (4) If the party on whom a notice to admit facts has been served under subclause (1) refuses or neglects to admit the facts within 5 working days after the day of service or within any longer time allowed by a Judge, the costs of proving the facts must be paid by that party, unless a Judge otherwise orders.
Compare: 1908 No 89 Schedule 2 r 291

8.15 Judgment on admission of facts

A judgment or order may be made on an admission of facts under rule 15.15.

Compare: 1908 No 89 Schedule 2 r 292

Subpart 3—Discovery

8.16 Contents of discovery order

- (1) In this rule and in rules 8.17 to 8.38, **discovery order** means an order, made under rule 8.17(1) or (3), 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 8.18, the order contains those terms.
- (3) A discovery order may modify the terms set out in rule 8.18 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 a Judge:
 - (b) by excluding 1 or more of those terms:

Part 8—*continued*
Subpart 3—*continued*

- (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 8.18 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 method of discovering the documents:
 - (c) the time or times within which the documents are to be discovered.

Compare: 1908 No 89 Schedule 2 r 293

8.17 Discovery orders to be made at case management conferences

- (1) If discovery of documents is appropriate for a proceeding on the standard track, a Judge 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.
- (3) A Judge 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 7.5, why the order is sought.
- (4) If a party wishes a discovery order to contain terms that are not contained in, or that differ from, the terms set out in rule 8.18, the party must, in a memorandum filed under rule 7.5, set out the terms sought and why they are sought.

Compare: 1908 No 89 Schedule 2 r 294

8.18 Default terms of discovery order

- (1) A discovery order is in the terms set out in this rule unless those terms are modified by the order.

Part 8—*continued*
Subpart 3—*continued*

- (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 8.20 and 8.21; 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.

Compare: 1908 No 89 Schedule 2 r 295

8.19 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.

Compare: 1908 No 89 Schedule 2 r 296

8.20 Affidavit of documents

- (1) This rule applies to an affidavit of documents that a party is required to make under rule 8.18(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
 - (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; and
 - (d) identify or list the documents required to be discovered under the order in a schedule that complies with rule 8.21; and

Part 8—*continued*
Subpart 3—*continued*

- (e) state any restrictions proposed to protect the claimed confidentiality of any document.
- (3) The affidavit may be in form G 37.
Compare: 1908 No 89 Schedule 2 r 297

8.21 Schedule appended to affidavit of documents

- (1) The schedule referred to in rule 8.20(2)(d) must identify or list documents—
 - (a) in the control of the party giving discovery and for which the party does not claim privilege or confidentiality, identifying them by number:
 - (b) in the control of the party giving discovery for which privilege is claimed, stating the nature of the privilege claimed:
 - (c) in the control of the party giving discovery for which confidentiality is claimed, stating the nature and extent of the confidentiality:
 - (d) that have been, but are no longer, in the control of the party giving discovery, stating when the documents ceased to be in that control and the person who now has control of them:
 - (e) that have not been in the control of the party giving discovery but are known by that party to relate to a matter in question in the proceeding, stating who has control of them.
- (2) Documents of the same nature in category (b), (c), (d), or (e) may be described as a group or groups.
- (3) The schedule need not include—
 - (a) copies of documents filed in court; or
 - (b) correspondence that may reasonably be assumed to be in the possession of all parties.

Compare: 1908 No 89 Schedule 2 r 298

8.22 Variation of discovery order

- (1) Subject to rule 7.18, a party may apply for an order varying the terms of a discovery order.

Part 8—*continued*
Subpart 3—*continued*

- (2) The variation may be granted by a Judge 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 re-consideration.

Compare: 1908 No 89 Schedule 2 r 299

8.23 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.
- (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.

Compare: 1908 No 89 Schedule 2 r 299A

8.24 Order for particular discovery against party after proceeding commenced

If at any stage of the proceeding it appears to a Judge, 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 Judge may order that party—

- (a) to file an affidavit stating—
 - (i) whether the documents are or have been in the party's control; and

Part 8—*continued*
Subpart 3—*continued*

- (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 who now has control of them; and
- (b) to serve the affidavit on any other party.

Compare: 1908 No 89 Schedule 2 r 300

8.25 Order to discover particular documents before proceeding commenced

- (1) This rule applies if it appears to a Judge 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 a 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 Judge 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 the documents 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; and
 - (c) if the documents are in the person's control, to make those documents available for inspection, in accordance with rule 8.33, to the intending plaintiff.
- (3) An application under subclause (2) must be by interlocutory application made on notice—
 - (a) to the person; and

Part 8—*continued*
Subpart 3—*continued*

(b) to the intended defendant.

- (4) The Judge may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

Compare: 1908 No 89 Schedule 2 r 301

8.26 Order for particular discovery against non-party after proceeding commenced

- (1) This rule applies if it appears to a Judge that a person who is not a party to a proceeding 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 Judge 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 the documents 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; and
 - (c) if the documents are in the control of the person, to make those documents available for inspection, in accordance with rule 8.33, to the 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 Judge may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

Compare: 1908 No 89 Schedule 2 r 302

Part 8—*continued*
Subpart 3—*continued*

8.27 Expenses

If an order is made under rule 8.25(2) or 8.26(2), the Judge may, if the Judge thinks it just, 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.

Compare: 1908 No 89 Schedule 2 r 303

8.28 Incorrect affidavit of documents to be amended

If, by reason of any change of circumstances or an error or omission, an affidavit of documents filed under an order made under any of rules 8.17, 8.22, or 8.24 to 8.26 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.

Compare: 1908 No 89 Schedule 2 r 304

8.29 Where process impeded by discovery of irrelevant documents

If a Judge 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 Judge may order the party to pay costs to a party or parties specified in the order.

Compare: 1908 No 89 Schedule 2 r 305

8.30 Who may swear affidavit of documents

- (1) When the Judge makes an order under any of rules 8.17, 8.22, or 8.24 to 8.26, the Judge may—
 - (a) specify by name or otherwise the person who has to make the affidavit of documents; or
 - (b) specify by description or otherwise a group of persons or a class of persons, each of whom may make the affidavit.
- (2) If the Judge does not specify the person or the group or class of persons, the affidavit of documents may be made as follows:

Part 8—*continued*
Subpart 3—*continued*

- (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 9.82:
- (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.

Compare: 1908 No 89 Schedule 2 r 306

Schedule 2 rule 8.30(2)(b): amended, on 1 December 2009, by rule 5 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

8.31 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, a Judge may require the document under review to be produced to the Judge and inspect it for the purpose of deciding the validity of the claim.
- (3) The Judge 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 Judge thinks just.

Compare: 1908 No 89 Schedule 2 r 307

8.32 Crown documents and public interest

An 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—

Part 8—*continued*
Subpart 3—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 308

8.33 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.
- (4) Subclause (1) is subject to subclauses (2) and (3).
- (5) Subclauses (2) and (3) are subject to any contrary order made under rule 8.31.

Compare: 1908 No 89 Schedule 2 r 309

8.34 Order facilitating inspection

- (1) A Judge may, on application, make any order the Judge 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:

Part 8—*continued*
Subpart 3—*continued*

- (b) assist the party inspecting the documents to locate and identify particular documents or groups of documents.

Compare: 1908 No 89 Schedule 2 r 310

8.35 Cost of production by non-party

If an order is made under rule 8.25(2) or 8.26(2), the Judge may, if the Judge thinks it just, 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.

Compare: 1908 No 89 Schedule 2 r 311

8.36 Right to make copies

- (1) A party to whom a document is produced for inspection under rule 8.33 or 8.34 may make copies of the document.
- (2) On the application of a party to whom a document is produced for inspection under rule 8.33 or 8.34, a Judge may order the person who has control of the document to give the applicant a legible copy.
- (3) An order under subclause (2) may be made on any terms the Judge thinks just, and, in particular, the Judge 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 given 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.

Compare: 1908 No 89 Schedule 2 r 312

8.37 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

Part 8—*continued*
Subpart 3—*continued*

only with the consent of the other party or parties or the leave of the court.

Compare: 1908 No 89 Schedule 2 r 313

8.38 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 rules 8.17 to 8.22, party A must (subject to any contrary order by a Judge) be treated as having 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 rules 8.17 to 8.22 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 rules 8.24 to 8.26 (which relate to discovery of

Part 8—*continued*
Subpart 3—*continued*

particular documents) as they apply in relation to an affidavit made under a discovery order.

Compare: 1908 No 89 Schedule 2 r 314

8.39 Notice to produce documents or things

- (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 a Judge, an officer, an 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 a Judge 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.

Compare: 1908 No 89 Schedule 2 r 315

8.40 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 a Judge, withdraw an admission under subclause (2).

Compare: 1908 No 89 Schedule 2 r 316

Part 8—*continued*
Subpart 3—*continued*

8.41 Restricted effect of admission

An admission under rule 8.38 or 8.40 for the purpose of a proceeding may not be used against the admitting party in another proceeding.

Compare: 1908 No 89 Schedule 2 r 317

8.42 Contempt of court

- (1) Every person is guilty of contempt of court who, being a person from whom discovery is sought by an order made under rule 8.25(2) or 8.26(2), wilfully and without lawful excuse disobeys the order or fails to ensure the order is complied with.
- (2) This rule does not limit or affect any power or authority of the court to punish a person for contempt of court.

Compare: 1908 No 89 Schedule 2 r 317A

Part 9
Evidence

*Subpart 1—Briefs of evidence, indexes, and
bundles of documents*

9.1 Scope of briefs regime

- (1) The evidence in chief of witnesses in a proceeding must be contained in briefs and given in accordance with this subpart unless the Judge has directed that such evidence, or the evidence of a particular witness, or part of that evidence, be given orally.
- (2) Rules 9.2 to 9.9 and 9.12 to 9.16 apply to a proceeding unless modified or excluded by a direction of the court.
- (3) Despite subclause (2), rules 9.2 to 9.9 and 9.12 to 9.16 do not apply to a specified proceeding unless they are applied, with or without modifications, by a direction of the court.
- (4) 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

Part 9—*continued*
Subpart 1—*continued*

- (c) in which an agreed statement of facts has been filed under rule 9.57.
- (5) In this subpart, **brief**, in relation to the evidence of a witness to be called by a party, means a written statement setting out evidence proposed to be given by that witness.
Compare: 1908 No 89 Schedule 2 r 441A

9.2 Service by plaintiff of briefs

- (1) The plaintiff or other party responsible for serving the first briefs in a proceeding must, not later than the specified date, serve on every other party who has given an address for service a brief of the evidence in chief of each witness to be called by the plaintiff or that party.
- (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.

Compare: 1908 No 89 Schedule 2 r 441B

9.3 Service by other parties of briefs of evidence in chief

If a party who has been served with a brief under rule 9.2 also wishes to offer evidence, the party must, not later than 15 working days after the date on which the party was served with that brief, serve on every other party who has given an address for service a brief of the evidence in chief of each witness to be called by the party.

Compare: 1908 No 89 Schedule 2 r 441C

9.4 Requirements in relation to briefs

A brief served under rule 9.2, 9.3, or 9.5—

- (a) must be signed by the witness by whom the brief is made; and
- (b) must not contain evidence that is inadmissible in the proceeding.

Compare: 1908 No 89 Schedule 2 r 441D

Part 9—*continued*
Subpart 1—*continued*

9.5 Supplementary briefs

- (1) A party to a proceeding who wishes to offer new or further evidence after a brief has been served on that party under rule 9.2 or 9.3 (not being evidence in response to any matter contained in that brief) may serve on every other party who has given an address for service a supplementary brief.
- (2) A supplementary brief served under subclause (1) must be served as soon as possible after the party wishing to offer the new or further evidence becomes aware of its existence or its relevance.
- (3) The evidence contained in a supplementary brief served under this rule may be offered as evidence only with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 441E

9.6 Evidence in chief at trial

- (1) A brief signed by a witness that has been served under rule 9.2 or 9.3, together with any supplementary brief that may be offered under rule 9.5,—
 - (a) must, unless the trial Judge otherwise directs, be read by the witness at the trial as the witness’s evidence in chief; and
 - (b) is, when read by the witness at the trial, the evidence in chief given by the witness at the trial; and
 - (c) must, 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) must be signed and dated by or on behalf of the Registrar.

Compare: 1908 No 89 Schedule 2 r 441F

9.7 Oral evidence in chief generally not permissible

- (1) Oral evidence in chief of any person (whether or not a brief of that person’s evidence has been served) may be offered at the trial only if that oral evidence—
 - (a) is in response to evidence offered by another party; or

Part 9—*continued*
Subpart 1—*continued*

- (b) is offered with the leave of the trial Judge.
- (2) Leave may be granted only if—
 - (a) the evidence relates to matters contained in a brief that has been served and is required to explain, elaborate, or otherwise clarify those matters; or
 - (b) the evidence relates to evidence in response to matters contained in a brief that has been served; or
 - (c) the evidence relates to new or further matters that could not reasonably have been included in the witness's brief or a supplementary brief; 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.
- (3) This rule does not apply if the Judge has directed that evidence be given orally under rule 9.1(1) or 9.6.

Compare: 1908 No 89 Schedule 2 r 441G

9.8 References to briefs not given in evidence

If, by the time that a party opens the party's case, the brief of another party's witness has not been given in evidence, the party may, in opening, refer to that brief only with the leave of the trial Judge.

Compare: 1908 No 89 Schedule 2 r 441H

9.9 Cross-examination in relation to briefs not given in evidence

- (1) When any part of the evidence contained in a brief served under rule 9.2, 9.3, or 9.5 is not given in evidence at the trial by the person who signed the brief, 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) When a brief served under rule 9.2, 9.3, or 9.5, or any part of the brief, has not been given in evidence, any party may, with

Part 9—*continued*
Subpart 1—*continued*

the leave of the trial Judge, put that brief or that part of it to any witness in cross-examination.

Compare: 1908 No 89 Schedule 2 r 441I

9.10 Privilege and admissibility not affected by briefs

Nothing in rules 9.1 to 9.9—

- (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 brief, served under these rules, that is inconsistent with a statement previously made by that party; or
- (e) allows a brief, served under these rules, to be made available, before it is given in evidence, for use for another purpose or proceeding.

Compare: 1908 No 89 Schedule 2 r 441J

9.11 Cross-examination duties

The exchange of briefs under this subpart does not affect the cross-examination duties referred to in section 92 of the Evidence Act 2006.

Compare: 1908 No 89 Schedule 2 r 441K

9.12 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 briefs of evidence under these rules.
- (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

Part 9—*continued*
Subpart 1—*continued*

- (b) are not already included in any index previously served under this rule on the party by another party.

Compare: 1908 No 89 Schedule 2 r 441M

9.13 Bundle of documents for hearing to be prepared and filed

- (1) After the expiry of the period of 15 working days specified in rule 9.3, the plaintiff must prepare a bundle of documents (in this rule and in rules 9.14 and 9.15 referred to as the **common bundle**) that contains every document referred to in—
 - (a) the index served by the plaintiff under rule 9.12; 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.

Compare: 1908 No 89 Schedule 2 r 441N

9.14 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 9—*continued*
Subpart 1—*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.

Compare: 1908 No 89 Schedule 2 r 441O

9.15 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.

Compare: 1908 No 89 Schedule 2 r 441P

Part 9—*continued*
Subpart 1—*continued*

9.16 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.

Compare: 1908 No 89 Schedule 2 r 441Q

Subpart 2—Evidence by depositions

9.17 Order for examination of witness or for letters of request

- (1) When, in a proceeding or on an interlocutory application, a party desires to have the evidence of a person or persons taken otherwise than at the trial or the hearing of that interlocutory application, the court may, on application by that party, make orders on any terms the court thinks just—
 - (a) for the examination of a person on oath before a Judge, Registrar, or Deputy Registrar or before a person that the court appoints (in rules 9.18 to 9.23 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 a person.
- (2) On the application of an opposite party, the court may, if it is satisfied that the party who obtained the order under subclause (1) is not implementing the order with due diligence, rescind the order and may make any other order justice requires.

Compare: 1908 No 89 Schedule 2 r 369

9.18 Security for costs for taking evidence outside New Zealand

The court may, as a condition of making an order under rule 9.17 for the taking of evidence outside New Zealand, require the party applying to give security for—

Part 9—*continued*
Subpart 2—*continued*

- (a) the estimated fees and expenses of the examiner, or other person by or before whom the evidence is to be taken; and
- (b) the costs of any opposite party of and incidental to the taking of the evidence, for the amount the court thinks just, but not exceeding the estimated reasonable indemnity costs and disbursements of that opposite party.

Compare: 1908 No 89 Schedule 2 r 370

9.19 Documents for examiner

- (1) The party obtaining an order for examination before an examiner must, 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 those documents in the proceeding that are necessary to inform the examiner of the matters to which the examination is to relate.
- (2) If the documents in the proceeding are not sufficient to inform the examiner of the matters to which the examination is to relate, the court must, in the order for examination or in a later order, state those matters.

Compare: 1908 No 89 Schedule 2 r 371

9.20 Procedure for examination before examiner

- (1) On receipt of a copy of the order for examination, the examiner must appoint a time and place for the examination and notify all parties of the time and place.
- (2) The examiner may adjourn the examination from time to time and from place to place as is necessary or expedient.
- (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 trial of a proceeding.
- (4) The examiner must ensure that evidence given at the examination is recorded, together with notes of any objections to the evidence.

Part 9—*continued*
Subpart 2—*continued*

- (5) The depositions so taken must be signed on each page by the witness and by the examiner.
- (6) The depositions when taken must be securely fastened together and must, together with the exhibits and the report of the examiner, be sent without delay to the registry of the court in which the file of the proceeding is for the time being held.
- (7) The examiner may send to the registry of the court in which the file of the proceeding is for the time being held a certificate stating that—
 - (a) at the time and place appointed for the examination or at any adjournment, there was no appearance by or on behalf of the party obtaining the order; or
 - (b) the witness did not attend at that time and place; or
 - (c) at that time and place, the applicant intimated that it was not intended to proceed with the taking of the evidence.
- (8) On application to the Registrar a party may inspect any depositions taken under this rule and make copies of them or extracts from them.

Compare: 1908 No 89 Schedule 2 r 372

9.21 Examination of additional persons

- (1) The examiner may, with the consent in writing of all parties to the proceeding, take the examination of a person in addition to the person named or referred to in the order for examination.
- (2) The consent of each of the parties must be attached to the deposition of that person.

Compare: 1908 No 89 Schedule 2 r 373

9.22 Objection to question

When objection is taken to a question to a person being examined before an examiner, or a witness takes objection to answering a question or to producing a document or a thing,—

- (a) the examiner must give the parties the examiner's opinion on the objection, but must not rule on it; and

Part 9—*continued*
Subpart 2—*continued*

- (b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) to the question must be set out in the deposition of the witness or in a statement attached to the deposition; and
- (c) the court may, on application by a party, decide the validity of the objection.

Compare: 1908 No 89 Schedule 2 r 374

9.23 Form of report

The report of the examiner may be in form G 19.

Compare: 1908 No 89 Schedule 2 r 375

9.24 Depositions as evidence

Depositions taken in accordance with these rules under an order under rule 9.17 may be produced as evidence at the trial of the proceeding and must be received subject to any objection on the ground of admissibility.

Compare: 1908 No 89 Schedule 2 r 376

9.25 Letters of request where convention exists

When a convention is in force between a country and New Zealand relating to the taking of evidence in that country for use in New Zealand, rules 9.26 to 9.28 apply subject to any special provisions contained in the convention.

Compare: 1908 No 89 Schedule 2 r 377

9.26 Issue of letters of request

- (1) When an order has been made for the issue of a letter of request, the party obtaining the order must—
 - (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 subpara-

Part 9—*continued*
Subpart 2—*continued*

- graphs (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 the party's 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 those expenses, to pay the amount forthwith into a Crown Bank Account and produce evidence of the payment to the Registrar.
- (2) The correctness of every translation must be certified or otherwise verified to the satisfaction of the Registrar.
- (3) The Registrar may require security of a reasonable amount instead of an undertaking under subclause (1)(b)(ii).
- (4) The letter of request must be in such form as the court approves and be issued under the hand of a Judge and the seal of the court.

Compare: 1908 No 89 Schedule 2 r 378

9.27 Agents of parties

The party who obtains an order for the issue of a letter of request must file a statement of the names and addresses of the parties' agents in the country in which the letter of request is to be executed.

Compare: 1908 No 89 Schedule 2 r 379

9.28 Consequences of non-compliance with undertaking as to expenses

When a party who has given an undertaking under rule 9.26(1)(b)(ii) does not, within 5 working days after being served with notice of the amount of the expenses concerned,

Part 9—*continued*
Subpart 2—*continued*

pay that amount 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 pleading filed by that party.

Compare: 1908 No 89 Schedule 2 r 380

9.29 Application by Solicitor-General on letters of request from abroad

- (1) The Registrar must transmit to the Solicitor-General a letter of request received if—
 - (a) the letter relates to a proceeding to which sections 184 and 185 of the Evidence Act 2006 apply; and
 - (b) it appears that the letter is not to be given effect by an application by a party to the proceeding.
- (2) The Solicitor-General may then make an application and take any steps that are necessary to give effect to the letter.

Compare: 1908 No 89 Schedule 2 r 381

Subpart 3—Medical examinations

9.30 Order for medical examination

- (1) An order under section 100(1) of the Act may be made—
 - (a) at any time after the time for filing a statement of defence to the plaintiff's statement of claim has expired, on the application of any party to the proceeding; or
 - (b) by the court on its own initiative.
- (2) The time and place of the examination must be fixed by the order.

Compare: 1908 No 89 Schedule 2 r 318

Part 9—*continued*
Subpart 3—*continued*

9.31 Report

When an order is made under section 100(1) of the Act the court may require a medical practitioner making the examination—

- (a) to furnish to the court, within the time 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 relevant; and
 - (iii) if appropriate, the medical practitioner's prognosis in respect of the condition; and
- (b) to deliver, within the same time, a copy of the report to the party (if any) who applied for the order.

Compare: 1908 No 89 Schedule 2 r 319

9.32 Service of report

- (1) Unless the court otherwise directs, the party to whom the copy of the report is delivered under rule 9.31(b) must immediately serve a copy of the report on the person examined or that person's solicitor and the other parties.
- (2) If the order under section 100(1) of the Act was made by the court on its own initiative, the Registrar must, as soon as practicable after the report is furnished to the court, serve a copy of the report on the parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r 320

9.33 Evidence of medical practitioner when medical examination ordered

If the parties do not agree to accept a report obtained under 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 any appropriate stage of the trial before counsels' addresses, examine the medical practitioner on the report; and

Part 9—*continued*
Subpart 3—*continued*

- (c) may permit any party to cross-examine the medical practitioner on the evidence then given.

Compare: 1908 No 89 Schedule 2 r 321

Subpart 4—Inspection and testing

9.34 Order for inspection, etc

- (1) The court may, for the purpose of enabling the proper determination of any matter in question in a proceeding, make orders, on terms, for—
- (a) the inspection of any property:
 - (b) the taking of samples of any property:
 - (c) the observation of any property:
 - (d) the measuring, weighing, or photographing of any property:
 - (e) the conduct of an experiment on or with any property:
 - (f) the observation of a process.
- (2) An order may authorise a person to enter any land or do anything else 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 control of a party or not.

Compare: 1908 No 89 Schedule 2 r 322

9.35 Notice of application

A party applying for an order under rule 9.34 must, so far as practicable, serve notice of the application on each person who would be affected by the order if made.

Compare: 1908 No 89 Schedule 2 r 323

Subpart 5—Experts

9.36 Appointment of court expert

- (1) In a proceeding that is to be tried by Judge alone and in which a question for an expert witness arises, the court may at any time, on its own initiative or on the application of a party, appoint an independent expert, or, if more than 1 such question arises, 2 or more such experts, to inquire into and report upon any

Part 9—*continued*
Subpart 5—*continued*

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 9.37 to 9.42 as a **court expert**.
- (3) A court expert in a proceeding must, if possible, be a person agreed upon by the parties and, failing agreement, the court must appoint the court expert from persons named by the parties.
- (4) A person appointed as an independent expert in a proceeding under rule 9.44(3) may not be appointed as a court expert unless the parties agree.
- (5) In this rule, **expert**, in relation to a question arising in a proceeding, means a person who has the knowledge or experience of, or in connection with, that question that makes that person's opinion on it admissible in evidence.

Compare: 1908 No 89 Schedule 2 r 324

9.37 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 must, failing agreement between the parties, be settled by the court.

Compare: 1908 No 89 Schedule 2 r 325

9.38 Report of court expert

- (1) The court expert must send his or her report to the court, together with whatever number of copies the court directs.
- (2) The Registrar must 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 not accepted by all the parties must be treated as information furnished to the court and given appropriate weight.

Compare: 1908 No 89 Schedule 2 r 326

Part 9—*continued*
Subpart 5—*continued*

9.39 Experiments and tests

- (1) If the court expert is of the opinion that an experiment or test of any kind (other than one of a trifling character) is necessary for the making of a satisfactory report, the court expert—
 - (a) must inform the parties or their solicitors; and
 - (b) must, 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) The court must settle any matters on which the parties or their solicitors are unable to agree.

Compare: 1908 No 89 Schedule 2 r 327

9.40 Cross-examination of court expert

- (1) Any party may, within 10 working days after receiving a copy of the court expert's report, apply to the court for an order under subclause (2).
- (2) On an application under subclause (1), the court must make an order for the cross-examination of the court expert by all parties, either—
 - (a) at the trial; or
 - (b) before an examiner at such time and place as may be specified in the order.

Compare: 1908 No 89 Schedule 2 r 328

9.41 Remuneration of court expert

- (1) The remuneration of the court expert must be fixed by the court and include—
 - (a) a fee for the report; and
 - (b) a proper sum for each day during which he or she is required to be present either in court or before an examiner.
- (2) The court may, by the order appointing the court expert or subsequently, make any order it thinks just for and incidental to

Part 9—*continued*
Subpart 5—*continued*

the payment of the remuneration of the court expert including either or both of the following:

- (a) an order directing that the remuneration of the court expert must be paid by 1 or more of the parties and, if more than 1, in the proportions the court thinks just:
 - (b) an order that any party or parties give security, on any terms the court thinks just, for the remuneration of the court expert.
- (3) When the court appoints the court expert on its own initiative, the court, instead of making an order under subclause (2), may, by the order appointing the expert or subsequently, order that the remuneration of the court expert must be paid by the chief executive of the Ministry of Justice out of money appropriated by Parliament for the purpose.
- (4) Subclauses (2) and (3) do not affect 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.

Compare: 1908 No 89 Schedule 2 r 329

9.42 Calling of expert witnesses

- (1) If a court expert is appointed in a proceeding or an interlocutory application, a party may call 1 expert witness, or with leave, more than 1, to give evidence on the question reported on by the court expert, if the party gives notice of the intention to do so a reasonable time before the trial.
- (2) The court must not grant leave under subclause (1) unless the circumstances are exceptional.

Compare: 1908 No 89 Schedule 2 r 330

9.43 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—

Part 9—*continued*
Subpart 5—*continued*

- (a) state in any written statement of the proposed evidence of the witness served under rule 9.2 or 9.3, 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 be served under rule 9.2 or 9.3 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 offered only with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 330A

9.44 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 to—
- (a) confer on specified matters:
 - (b) confer in the absence of the legal advisers of the parties:
 - (c) try to reach agreement on matters in issue in the proceeding:
 - (d) 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:
 - (e) prepare the joint witness statement without the assistance of the legal advisers of the parties.
- (2) The court must not give a direction under subclause (1)(b) or (e) 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 just.

Part 9—*continued*
Subpart 5—*continued*

- (4) The court may not appoint an independent expert or give a direction under subclause (3) unless the parties agree.
- (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.

Compare: 1908 No 89 Schedule 2 r 330B

9.45 Status of joint witness statement by expert witnesses

- (1) A joint witness statement prepared by expert witnesses under rule 9.44—
 - (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; 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 9.4 to 9.11 apply, with all necessary modifications, to a joint witness statement as if the statement were a written statement under rule 9.2 or 9.3.
- (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 9.44 or because the witness statement is evidence at the hearing under rule 9.6.

Compare: 1908 No 89 Schedule 2 r 330C

Part 9—*continued*
Subpart 5—*continued*

9.46 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 given or in a sequence the court thinks best suited to the circumstances of the proceeding.

Compare: 1908 No 89 Schedule 2 r 330D

Subpart 6—Preserving evidence

9.47 Right to preserve evidence

A person may apply by originating application for an order for the examination of a witness whose evidence may be material for establishing a right or claim—

- (a) to any estate or interest in property, or to any other relief, to which the person would, in the circumstances alleged to exist, become entitled, on the happening of a future event; and
- (b) that cannot be established before the happening of the future event.

Compare: 1908 No 89 Schedule 2 r 443

9.48 Procedures in which the Crown may have interest

If the Crown may have an estate or interest in the property or in the right or claim, the applicant may join the Crown as a respondent.

Compare: 1908 No 89 Schedule 2 r 444

9.49 Examination of witness

An application under rule 9.47 is not to be set down for hearing but the court may make an appropriate order under rules 9.17 to 9.19 for the examination of a witness (whether offered by the applicant or another party).

Compare: 1908 No 89 Schedule 2 r 445

Part 9—*continued*
Subpart 6—*continued*

9.50 Subsequent admissibility

Evidence taken under rule 9.49 may subsequently be offered at the trial of a proceeding to enforce the claim or interest to which it relates and is admissible unless it is inadmissible in whole or in part under the Evidence Act 2006.

Compare: 1908 No 89 Schedule 2 r 446

Subpart 7—Evidence at trial

9.51 Evidence to be given orally

Unless otherwise directed by the court or required or authorised by these rules or by an Act, disputed questions of fact arising at the trial of any proceeding must be determined on evidence given by means of witnesses examined orally in open court.

Compare: 1908 No 89 Schedule 2 r 496

9.52 Issue of subpoenas

- (1) Orders of subpoena in form G 25 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 must file a written request to obtain it.
- (3) The names of more than 1 witness may be included in an order of subpoena, but it is not necessary to show the names on the written request.
- (4) Upon receiving a written request under this rule the Registrar must forthwith issue the order or orders of subpoena requested.

Compare: 1908 No 89 Schedule 2 r 497

Schedule 2 rule 9.52(4): added, on 1 December 2009, by rule 6 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

9.53 Service of subpoena

The order of subpoena must be served on the witness personally, by leaving a sealed copy of it with the witness, together

Part 9—*continued*
Subpart 7—*continued*

with any allowances and travelling expenses required by section 56A(3) of the Act.

Compare: 1908 No 89 Schedule 2 r 498

9.54 Evidence of person in custody

An application for an order under section 65 of the Corrections Act 2004 may be made without notice.

Compare: 1908 No 89 Schedule 2 r 499

9.55 Affidavit evidence by agreement

- (1) In a proceeding heard by a Judge alone, the parties may file an agreement signed by the parties, that the evidence, or any part of the evidence, is to be given by affidavit.
- (2) Despite an agreement filed under subclause (1), the court may direct that evidence of any disputed fact or issue be given in accordance with rule 9.51.

Compare: 1908 No 89 Schedule 2 r 500

9.56 Affidavit evidence under 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 reasonable conditions,—
 - (a) that any particular fact or facts may be proved by affidavit; or
 - (b) that the evidence of any witness may be given by affidavit read at the trial or on any application for judgment.
- (2) Despite subclause (1), an order must not be made authorising the evidence of the witness to be given by affidavit if—
 - (a) an opposite party desires the production of a witness for cross-examination; and
 - (b) the witness can be produced.
- (3) Subclause (2) is subject to any order made under rule 7.9.

Compare: 1908 No 89 Schedule 2 r 501

Part 9—*continued*
Subpart 7—*continued*

9.57 Agreed statement of facts

- (1) If the parties so agree, the evidence at the trial of any proceeding heard by a Judge alone, or any issue in that proceeding, may be given, without examining any witnesses or filing any affidavits, by a statement of facts agreed upon by the parties.
- (2) Despite the agreement, the court may direct that evidence of any fact or matter be given in accordance with rule 9.51 or 9.56.
- (3) Every agreement under subclause (1) must be in writing signed by the parties and must be filed.
- (4) The agreement must set out the facts agreed upon and the court is entitled to draw any necessary inferences from the agreed facts.

Compare: 1908 No 89 Schedule 2 r 502

*Subpart 8—Evidence in Trans-Tasman
proceedings*

9.58 Interpretation

In rules 9.59 to 9.67, unless the context otherwise requires, terms that are defined in the Evidence Act 2006 have the meanings given to them by that Act.

Compare: 1908 No 89 Schedule 2 r 502A

9.59 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, must be in form G 26.
- (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, must be in form G 27.

Part 9—*continued*
Subpart 8—*continued*

- (3) An order of subpoena referred to in subclause (1) or (2) may be obtained in the same manner and subject to the same conditions as an order of subpoena under rule 9.52.

Compare: 1908 No 89 Schedule 2 r 502B

9.60 Leave to serve New Zealand subpoena on witness in Australia

- (1) An application for leave to serve a New Zealand subpoena on a witness in Australia must be made without notice by originating application and Part 19 applies, with all necessary modifications, to the application.
- (2) Every application for leave to serve a New Zealand subpoena on a witness in Australia must 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:
 - (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

Part 9—*continued*
Subpart 8—*continued*

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 be served in Australia on a body corporate by serving the subpoena on a member, officer, or employee of the body corporate in the manner the Judge directs.
- (4) The file relating to an application must be kept separate from the file relating to the proceeding to which the subpoena relates.
- (5) As provided in rule 3.11, no document relating to an application under this rule may be searched, inspected, or copied without the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r 502C

Schedule 2 rule 9.60(5): amended, on 12 June 2009, by rule 5 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

9.61 Service of subpoena on witness in Australia

Every statement that, in accordance with section 156 of the Evidence Act 2006, is required to accompany a subpoena that is served on a witness in Australia must be in form G 28.

Compare: 1908 No 89 Schedule 2 r 502D

9.62 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.

Part 9—*continued*
Subpart 8—*continued*

- (2) The application may be filed by sending it by fax to the registry of the High Court in which leave to serve the subpoena was given.
- (3) Every application must be made by way of interlocutory application.
- (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) must state an address in New Zealand or Australia that is the applicant's address for service:
 - (b) may state a fax number in New Zealand or Australia to which documents relating to the application may be sent to the applicant.
- (6) If the application is filed by fax, the Registrar—
 - (a) must send by fax to the applicant or the applicant's solicitor, as the case may be, an acknowledgement 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 fax again.

Compare: 1908 No 89 Schedule 2 r 502E

9.63 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 fax number is stated in the application, sending it by fax to that number.
- (2) If a document relating to the application is served on the applicant by fax, the document must, subject to subclauses (3) and (4), be treated as having been served on the day on which it was sent.
- (3) If a document is sent by fax to a fax number in a State or Territory of Australia at a time later than 5 pm in that State

Part 9—*continued*
Subpart 8—*continued*

or Territory, the document must, subject to subclause (4), be treated as having been served on the first working day after the day on which it was sent.

- (4) A document sent to a fax number in Australia must, unless the contrary is proved, be treated as having been received in a complete and legible condition.

Compare: 1908 No 89 Schedule 2 r 502F

9.64 Hearing of application

- (1) Despite 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 under section 168 of the Evidence Act 2006.
- (3) Subject to the Evidence Act 2006, the court must 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 a hearing be held by video link or telephone conference.

Compare: 1908 No 89 Schedule 2 r 502G

9.65 Failure to comply with subpoena

A certificate under section 161 of the Evidence Act 2006 must be in form G 29.

Compare: 1908 No 89 Schedule 2 r 502H

9.66 Transmission of documents or things to Australian Court

- (1) Every person who produces a document or thing at a registry of the court in compliance with an Australian subpoena must provide the Registrar with a copy of the subpoena.
- (2) When a document or thing is produced at a registry of the court, the Registrar must, on compliance with subclause (1),—

Part 9—*continued*
Subpart 8—*continued*

- (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 fax 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 means enabling it to be received before the date on which it is required to be produced to that court.

Compare: 1908 No 89 Schedule 2 r 502I

9.67 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 without notice. Except in the case of an application under section 160 of that Act, the application must 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 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 courtroom 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:

Part 9—*continued*
Subpart 8—*continued*

- (e) in a case where evidence is proposed to be given, an estimate of the time the examination of the witness will take:
 - (f) whether issues of character or credibility are likely to be raised:
 - (g) in a case in which submissions are proposed to be made, an estimate of the time required to make the submissions.
- (2) When the court gives a direction under section 168 of the Evidence Act 2006, it must instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions that the court may make.
- (3) Without limiting 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.

Compare: 1908 No 89 Schedule 2 r 502J

*Subpart 9—Procedure when evidence given
by affidavit*

9.68 Application of rules 9.69 to 9.74

- (1) Rules 9.69 to 9.74 apply subject to a direction by the court and to any rule affecting a particular kind of proceeding.

Part 9—*continued*
Subpart 9—*continued*

- (2) In this subpart, **taker** means the person before whom an affidavit is sworn or an affirmation is made.

Compare: 1908 No 89 Schedule 2 r 503

9.69 Time for filing plaintiff's affidavits

- (1) In this rule, **the prescribed date** means,—
- (a) if the parties have agreed under rule 9.55 that evidence be given by affidavit, the date when the agreement was filed;
 - (b) when these rules provide that the evidence be given by affidavit, the setting down date determined under rule 7.13.
- (2) Within 10 working days after the prescribed date the plaintiff must, subject to rule 19.11, file the plaintiff's affidavits and serve copies on the other parties.

Compare: 1908 No 89 Schedule 2 r 504

9.70 Time for filing defendant's affidavits

The defendant must, within 10 working days after service of the plaintiff's affidavits, file the defendant's affidavits and serve copies of them on the plaintiff and on any other party.

Compare: 1908 No 89 Schedule 2 r 505

9.71 Time for filing affidavits in reply

Within 10 working days after service on the plaintiff of the defendant's affidavits, the plaintiff must file the plaintiff's affidavits in reply and serve copies of them on the defendant and on any other party.

Compare: 1908 No 89 Schedule 2 r 506

9.72 Use of affidavits

- (1) No affidavit may be read or used until it has been filed.
- (2) When an affidavit has been filed, it may be used by any party.

Part 9—*continued*
Subpart 9—*continued*

- (3) An affidavit may not be taken off the file without the leave of the court.

Compare: 1908 No 89 Schedule 2 r 507

9.73 Swearing of affidavits

- (1) An affidavit may be read and used in a proceeding only if it complies either with subclause (2) or (3).
- (2) A sworn affidavit must be 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 9.85 or 9.86.
- (3) An affirmed affidavit must comply with the Oaths and Declarations Act 1957.

Compare: 1908 No 89 Schedule 2 r 520

9.74 Cross-examination of person who has sworn affidavit

- (1) A party desiring to cross-examine a person who has sworn or affirmed 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 that person for cross-examination before the court at the trial.
- (2) The notice must be served, and copies of it filed in the court and delivered to all other parties who have taken any step in the proceeding, not less than 3 working days before the day fixed for the trial.
- (3) The affidavit of a person who is not produced must not be used as evidence unless the evidence is routine, or there are exceptional circumstances, and in either case the court grants leave.
- (4) The party to whom the notice is given is entitled to compel the attendance of the person who has sworn an affidavit for

Part 9—*continued*
Subpart 9—*continued*

cross-examination in the same way as that party might compel the attendance of a witness to be examined.

Compare: 1908 No 89 Schedule 2 r 508

9.75 Person refusing to make affidavit

- (1) If a person having information relevant to a proceeding or an interlocutory application refuses to make an affidavit as to that information, a party may apply for an order directing the person to appear and be examined on oath before the court, or any person the court appoints, as to that information.
- (2) The court may—
 - (a) make any orders the court thinks just for the attendance of that person before the court, or before the person named in the order, for the purpose of being examined, and for the production of any documents specified in the order; and
 - (b) impose any terms the court thinks just, as to the examination and the costs of and incidental to the application and examination.

Compare: 1908 No 89 Schedule 2 r 509

9.76 Form and contents of affidavits

- (1) An affidavit—
 - (a) must be expressed in the first person; and
 - (b) must state the full name, occupation, and place of residence of the person making it; and
 - (c) must either—
 - (i) be signed by that person; or
 - (ii) if that person cannot write, have that person's mark set to it by that person; and
 - (d) must be confined—
 - (i) to matters that 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—

Part 9—*continued*
Subpart 9—*continued*

- (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 that 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 taker must sign the affidavit after the signature of the person making it, and must state the date and place of swearing or affirming the affidavit and the taker's qualification (in this subpart referred to as the **statement by the taker**).
- (4) If an affidavit has more than 1 page,—
 - (a) the deponent must initial or set the deponent's mark on each page (not including the cover sheet) that precedes the page on which the statement by the taker in accordance with subclause (3) appears; and
 - (b) the taker must initial each of those pages.
- (5) This rule does not limit the extent to which subpart 2 of Part 5 applies in respect of affidavits.

Compare: 1908 No 89 Schedule 2 r 510

9.77 Exhibits to affidavits

- (1) Exhibits to an affidavit—
 - (a) must be marked, in each case, with a distinguishing letter or number; and
 - (b) must be annexed to the affidavit—
 - (i) if this is practicable; and
 - (ii) if none of them exceed international size A4; and
 - (c) must, in each case, be identified by a note made on it and signed by the taker.
- (2) Exhibits that are not annexed to the affidavit must, subject to subclause (3), be filed with the affidavit in a separate bundle, which bundle must—
 - (a) be securely bound; and
 - (b) include a sheet bearing a proper heading, endorsement, and subscription.

Part 9—*continued*
Subpart 9—*continued*

- (3) If the size, shape, or nature of an exhibit makes it impracticable to comply with subclause (1)(b) or (2), that exhibit must have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.

Compare: 1908 No 89 Schedule 2 r 511

9.78 Interlineation, alteration, or erasure in affidavit

An affidavit having in the statement by the taker or its contents an interlineation, alteration, or erasure must not, without leave of the court, be read or made use of in a proceeding unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the taker, 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 taker.

Compare: 1908 No 89 Schedule 2 r 513

9.79 Irregularity in form of affidavit

The court may receive any affidavit sworn or affirmed for the purpose of being used in any proceeding, despite any defect by misdescription of parties in the title or statement by the taker, or any other irregularity in its form, and may direct that a note be made on the document that it has been so received.

Compare: 1908 No 89 Schedule 2 r 514

9.80 Service copies of affidavits

Every service copy of an affidavit must be legible and, when practicable, include legible copies of all exhibits.

Compare: 1908 No 89 Schedule 2 r 515

9.81 Affidavit may be sworn on Sunday

An affidavit may be sworn or affirmed on any day, including Sunday.

Compare: 1908 No 89 Schedule 2 r 516

Part 9—*continued*
Subpart 9—*continued*

9.82 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 to 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.

Compare: 1908 No 89 Schedule 2 r 517

9.83 Affidavit by 2 or more persons

In an affidavit made by 2 or more persons, the names of each of those persons must be inserted in the statement by the taker. If, however, the affidavit of those persons is sworn (or affirmed) at the same time before the same person, it is sufficient to state that it was sworn (or affirmed) by both (or all) of the “persons named above”.

Compare: 1908 No 89 Schedule 2 r 518

9.84 Affidavit by blind or illiterate person

If it appears to the taker that the person making the affidavit is wholly or partially blind, or (whether because of physical handicap or otherwise) is unable to read or has severe difficulty in reading, the taker must certify in the affidavit—

- (a) that the affidavit was read and explained by him or her to the person; and
- (b) that the person appeared perfectly to understand the affidavit; and
- (c) that the person wrote his or her signature or made his or her mark in the presence of the taker.

Compare: 1908 No 89 Schedule 2 r 519

9.85 Authority to take affidavits in New Zealand

- (1) An affidavit may be sworn in New Zealand before a solicitor of the court or a Registrar or a Justice of the Peace.

Part 9—*continued*
Subpart 9—*continued*

- (2) No affidavit, other than one sworn in respect of a non-contentious proceeding, may 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.
- (3) Subclause (2) overrides subclause (1).
- (4) 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.

Compare: 1908 No 89 Schedule 2 r 521

9.86 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 affidavit which qualification that person has.
- (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 relating to compliance with either of those subclauses.
- (4) Nothing in this rule affects the administering of oaths under the Oaths and Declarations Act 1957.

Compare: 1908 No 89 Schedule 2 r 522

Part 9—*continued*
Subpart 9—*continued*

9.87 Meaning of authenticated deposition

In rules 9.88 and 9.89, **authenticated deposition** means a written statement—

- (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 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 with the seal 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 punishment if the statement is false.

Compare: 1908 No 89 Schedule 2 r 523

9.88 Admissibility of authenticated deposition

Evidence that may, under these rules, be given by affidavit, may be given in an authenticated deposition.

Compare: 1908 No 89 Schedule 2 r 524

Part 9—*continued*
Subpart 9—*continued*

9.89 Application of other rules

- (1) Rules 9.69 to 9.75 apply, with any necessary modifications, in relation to an authenticated deposition as if the deposition were an affidavit.
- (2) Rule 9.88 and this rule do not affect rules 9.17 to 9.29.

Compare: 1908 No 89 Schedule 2 r 524A

Part 10
Trial
Subpart 1—Place

10.1 Venue and changing it

- (1) The place of trial is the town where the registry of the court in which the statement of defence is to be filed is situated, but if that registry is in Masterton, the place of trial is Wellington, and if that registry is in Tauranga the place of trial is Rotorua.
- (2) Despite subclause (1), the court may at any time order that the proceeding be tried at a place—
 - (a) that the parties consent to; or
 - (b) where the proceeding can be more conveniently or more fairly tried.
- (3) When the court orders a change of venue, 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 rr 123, 479

*Subpart 2—Adjournments, methods of trial,
and verdicts*

10.2 Adjournment of trial

The court may, before or at the trial, if it is in the interests of justice, postpone or adjourn the trial for any time, to any place, and upon any terms it thinks just.

Compare: 1908 No 89 Schedule 2 r 480

Part 10—*continued*
Subpart 2—*continued*

10.3 Method of trial

A proceeding must be tried either before a Judge alone or before a Judge and a jury.

Compare: 1908 No 89 Schedule 2 r 481

10.4 Court may order separate trials

When justice requires, the court may order separate trials of causes of action and it may also direct the sequence of the separate trials and make any supplementary order that is just.

Compare: 1908 No 89 Schedule 2 r 113

10.5 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 must be determined by the Judge and not by the jury.

Compare: 1908 No 89 Schedule 2 r 482

10.6 When neither party appears

- (1) If neither party appears when the proceeding is called, the court may order it to be struck out.
- (2) The court may order it to be reinstated on good cause shown by either party and on any terms it thinks just.

Compare: 1908 No 89 Schedule 2 r 483

10.7 When only plaintiff appears

If the plaintiff appears and the defendant does not, the plaintiff must prove the cause of action so far as the burden of proof lies on the plaintiff.

Compare: 1908 No 89 Schedule 2 r 484

10.8 When only defendant appears

If the defendant appears but the plaintiff does not, the defendant,—

- (a) if the claim is not admitted, is entitled to judgment dismissing the proceeding; and

Part 10—*continued*
Subpart 2—*continued*

- (b) if there is a counterclaim, must prove it so far as the burden of proof lies on the defendant.

Compare: 1908 No 89 Schedule 2 r 485

10.9 Judgment following non-appearance may be set aside

Any verdict or judgment obtained when one party does not appear at the trial may be set aside or varied by the court on any terms that are just if there has, or may have been, a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r 486

10.10 When both parties appear

- (1) If both the plaintiff and the defendant appear, the plaintiff or any other party that has the right to begin must open the case and offer any evidence in support of it.
- (2) When the party who begins has closed that party's case, the other party must state his or her case and offer any evidence in support of it.
- (3) After the evidence has been given, the party who did not begin may address the court generally on the case, and then the other party may address the court in reply.
- (4) If, however, the party who did not begin has not offered evidence, the sequence stated in subclause (3) is reversed.
- (5) This rule applies subject—
 - (a) to any directions given under rule 7.9; and
 - (b) to the provisions of any Act.

Compare: 1908 No 89 Schedule 2 r 487

10.11 When proceeding tried with jury

- (1) When the proceeding is tried with a jury, the Judge must, after the conclusion of counsels' addresses, direct the jury on the evidence given in the case and on any relevant points of law.
- (2) The Judge may leave the case to the jury generally to find for either party, or may ask the jury to answer the issues the Judge has settled, and take the verdict of the jury on those issues only.

Part 10—*continued*
Subpart 2—*continued*

- (3) The jury may, instead of finding a verdict for either party, state the facts as they find them to have been proved.
- (4) The statement must be put into writing and signed by the foreman of the jury before the jury is discharged.
- (5) The jury may give a verdict for either party, subject to a special case to be stated by the parties.
- (6) This rule applies subject to the provisions of any Act.

Compare: 1908 No 89 Schedule 2 r 488

Subpart 3—Consolidation of proceedings

10.12 When order may be made

The court may order that 2 or more proceedings be consolidated on terms 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, if the court is satisfied—

- (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.

Compare: 1908 No 89 Schedule 2 r 382

10.13 Application of rule 10.12

Rule 10.12 applies even though—

- (a) the relief claimed in the proceedings is not the same; or
- (b) 1 or more of the proceedings—

Part 10—*continued*
Subpart 3—*continued*

- (i) is pending in the court in the exercise of its admiralty jurisdiction; or
- (ii) is brought under the provisions of an Act conferring special jurisdiction on the court.

Compare: 1908 No 89 Schedule 2 r 383

Subpart 4—Separate decision of questions

10.14 Definition of question

In rules 10.15 to 10.21, **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.

Compare: 1908 No 89 Schedule 2 r 417

10.15 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
- (b) the formulation of the question for decision and, if thought necessary, the statement of a case.

Compare: 1908 No 89 Schedule 2 r 418

10.16 Removal into Court of Appeal

If the court orders the separate decision of a question of law under rule 10.15, it may further order that it be removed into the Court of Appeal.

Compare: 1908 No 89 Schedule 2 r 419

10.17 Agreed result

- (1) The parties to a proceeding in which an order is sought or has been made under rule 10.15 may agree that, on any question being decided in the sense specified in the agreement, a spe-

Part 10—*continued*
Subpart 4—*continued*

cified direction for entry of judgment or a specified order will be made.

- (2) On that question being so decided, the court may make the agreed direction or order.
- (3) Where an agreement is made under subclause (1) before a case is stated, the terms of the agreement must be set out in the case stated.

Compare: 1908 No 89 Schedule 2 r 420

10.18 Record, etc, of decision

When any question is decided under an order made under rule 10.15, the court must, subject to rule 10.19, either—

- (a) cause the decision to be recorded; or
- (b) direct the entry of an appropriate declaratory judgment or order.

Compare: 1908 No 89 Schedule 2 r 421

10.19 Disposal of proceeding if proceeding substantially affected by decision of question

- (1) This rule applies if a decision of a question under an order made under rule 10.15—
 - (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.
- (2) The court, at the time of deciding the question or at any subsequent time, may, as appropriate,—
 - (a) dismiss the proceeding or the whole or any part of any claim for relief in the proceeding; or
 - (b) direct the entry of any judgment; or
 - (c) make any other order.

Compare: 1908 No 89 Schedule 2 r 422

Part 10—*continued*
Subpart 4—*continued*

10.20 Form and contents of case

A case stated under an order under rule 10.15—

- (a) must be divided into paragraphs numbered consecutively; and
- (b) must state concisely any facts, and attach any documents that are necessary to enable the court to hear and decide the questions arising on the case stated; and
- (c) must state the questions and matters to be decided.

Compare: 1908 No 89 Schedule 2 r 423

10.21 Insufficient case or disputed facts or documents

If 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 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.

Compare: 1908 No 89 Schedule 2 r 424

Subpart 5—Counsel assisting

10.22 Counsel assisting

At the request of the court, the Solicitor-General must appoint counsel to appear and be heard as counsel assisting the court.

Compare: 1908 No 89 Schedule 2 r 438A

Subpart 6—Hearings by video link

Schedule 2 subpart 6: added, on 1 December 2009, by rule 7 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

10.23 Interpretation

In this subpart,—

Part 10—*continued*
Subpart 6—*continued*

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

video link means facilities that enable audio and visual communication between persons at a judicial location and persons at a remote location.

Schedule 2 rule 10.23: added, on 1 December 2009, by rule 7 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

10.24 Judge may preside at hearing of certain matters by video link

- (1) For the purposes of section 26IB of the Act, a 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 10.25.
- (4) This rule does not limit or affect the inherent jurisdiction of the court.

Schedule 2 rule 10.24: added, on 1 December 2009, by rule 7 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

10.25 Requirements for hearing by video link

A Judge must not preside at the hearing of a matter by video link under rule 10.24 unless he or she is satisfied that—

- (a) the judicial location and every remote location is equipped with facilities that will—

Part 10—*continued*
Subpart 6—*continued*

- (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.

Schedule 2 rule 10.25: added, on 1 December 2009, by rule 7 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

10.26 Incidental directions

- (1) A Judge presiding at the hearing of a matter by video link under rule 10.24 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:

Part 10—*continued*
Subpart 6—*continued*

- (d) direct when the video link must be operational in relation to his or her own entry to, or rising from, the judicial location.

Schedule 2 rule 10.26: added, on 1 December 2009, by rule 7 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

Part 11
Judgment
Subpart 1—General provisions

11.1 Interpretation

In this Part,—

delivery time has the meaning set out in rule 11.5

judgment includes a decree or order of the court

reasons for judgment means—

- (a) the written reasons given by a Judge for his or her decision; or
- (b) when the Judge gives reasons orally, means a report, approved by the Judge, of those reasons.

Compare: 1908 No 89 Schedule 2 r 539

11.2 Types of judgment

A judgment may—

- (a) be interim; or
- (b) be final; or
- (c) deal with any question or issue; or
- (d) order any accounts, inquiries, acts, or steps that the court considers necessary.

Compare: 1908 No 89 Schedule 2 r 531(1)

11.3 How judgment given

- (1) A Judge may give a judgment—

- (a) in writing; or
- (b) orally—
 - (i) if the conditions in subclause (2) apply; or
 - (ii) on an application without notice.

Part 11—*continued*
Subpart 1—*continued*

- (2) The conditions are that the affected parties or their counsel have been given a reasonable opportunity—
- (a) to be present when the judgment is given; or
 - (b) to hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.

Compare: 1908 No 89 Schedule 2 r 540(1), (2)

11.4 Time judgment given

- (1) A judgment is given orally when the Judge pronounces it, with or without reasons.
- (2) A written judgment is given at the delivery time directed or nominated under rule 11.5.

Compare: 1908 No 89 Schedule 2 r 540(3), (4)

11.5 Delivery time of written judgment

The **delivery time** of a written judgment is—

- (a) the date and time directed by the Judge responsible for it; or
- (b) if no direction is given under paragraph (a), a date and time nominated by the Registrar under rule 11.14.

Compare: 1908 No 89 Schedule 2 r 540(4), (5)

11.6 Form of judgment

- (1) Judgments must be drawn up in a form approved by the Registrar.
- (2) Forms J 1 to J 4 must be used, as appropriate.

Compare: 1908 No 89 Schedule 2 r 541(1), (2)

11.7 Duplicate judgments

Duplicates of a judgment, with the word duplicate on the front page, may be issued to any party.

Compare: 1908 No 89 Schedule 2 r 541A

Part 11—*continued*
Subpart 1—*continued*

11.8 Death or incapacity of Judge before judgment

- (1) A Judge or the Registrar may give a judgment or deliver the reasons for a judgment signed by a Judge who becomes incapable or dies after signing and before giving the judgment or delivering the reasons.
- (2) A decision is the judgment of the court, if—
 - (a) subclause (1) does not apply; and
 - (b) a court of 3 or more Judges sitting without a jury completes the trial of a proceeding or issue; and
 - (c) 1 of the Judges becomes incapable of giving judgment or dies; and
 - (d) a majority of the Judges who constituted the court when the trial began concur in the decision on the proceeding or issue.
- (3) A proceeding or issue must be retried if—
 - (a) neither subclause (1) nor (2) applies; and
 - (b) a Judge who is sitting without a jury on the trial of the proceeding or issue becomes incapable of giving judgment or dies.
- (4) A Judge or the Registrar must discharge the jury and order a new trial if another Judge sitting with a jury on the trial of the proceeding or issue dies or becomes incapable of acting for any other reason before the jury retires to consider its verdict.
- (5) A Judge may do any 1 or more of the following if another Judge sitting with a jury on the trial of a proceeding or issue dies or becomes incapable of acting for any other reason after the jury retires to consider its verdict and before judgment is given:
 - (a) give any further directions required by the jury;
 - (b) take the verdict and give judgment on it;
 - (c) discharge the jury without verdict;
 - (d) do whatever is necessary, up to and including the sealing of judgment.

Compare: 1908 No 89 Schedule 2 r 543

Part 11—*continued*
Subpart 1—*continued*

11.9 Recalling judgment

A Judge may recall a judgment given orally or in writing at any time before a formal record of it is drawn up and sealed.

Compare: 1908 No 89 Schedule 2 r 542(3)

11.10 Correction of accidental slip or omission

- (1) A judgment or order may be corrected by the court or the Registrar who made it, if it—
 - (a) contains a clerical mistake or an error arising from an accidental slip or omission, whether or not made by an officer of the court; or
 - (b) is drawn up so that it does not express what was decided and intended.
- (2) The correction may be made by the court or the Registrar, as the case may be,—
 - (a) on its or his or her own initiative; or
 - (b) on an interlocutory application.

Compare: 1908 No 89 Schedule 2 r 12

Subpart 2—Sealing and notification

11.11 Judgments to be sealed, dated, and served

- (1) A Registrar must seal judgments with the seal of the court.
- (2) A judgment must be sealed—
 - (a) in accordance with any direction given by the Judge relating to the sealing of the judgment; or
 - (b) if no direction is given, at any time after the judgment is given.
- (3) Except with the leave of the court, a judgment must not be sealed until any application under rule 11.9 for the recall of the judgment is determined.
- (4) A sealed judgment must state—
 - (a) the date on which the judgment is given; and
 - (b) the date on which it is sealed.
- (5) A party who has a judgment sealed must immediately serve a sealed copy of it on—

Part 11—*continued*
Subpart 2—*continued*

- (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 r 541(1), (3)–(5)

11.12 When judgment takes effect

- (1) A judgment takes effect when it is given.
- (2) Rule 11.13 overrides subclause (1).

Compare: 1908 No 89 Schedule 2 r 542(1), (5)(a)

11.13 Steps before judgment sealed

- (1) A step may be taken on a judgment before it is sealed only
with the leave of a Judge.
- (2) A party may appeal under rule 31 of the Court of Appeal
(Civil) Rules 2005 against a judgment before it is sealed but
must take steps to ensure the judgment is sealed without delay
after the appeal is brought.

Compare: 1908 No 89 Schedule 2 r 542(2), (4)

11.14 Registrar's role on receipt of judgment

- (1) The Registrar must endorse a written judgment with the deliv-
ery time when the Registrar receives it from the Judge respon-
sible for it.
- (2) The date and time nominated by the Registrar under rule
11.5(b) must not be earlier than the date and time the Registrar
endorses the judgment under subclause (1).
- (3) The Registrar must attempt to notify the parties of the delivery
time, by telephone or otherwise, immediately after endorsing
a judgment.
- (4) A party may request the Registrar to—
 - (a) send the party a copy of the written judgment by email
or fax immediately after the delivery time; or

Part 11—*continued*
Subpart 2—*continued*

- (b) make a copy of the written judgment available for collection from the court registry immediately after the delivery time.
- (5) The Registrar must, immediately after the delivery time, post a copy of the written judgment to a party that—
 - (a) has given an address for service; and
 - (b) does not make a request under subclause (4).
- (6) A failure by the Registrar to comply with any of subclauses (3) to (5) does not affect a judgment's validity or its delivery time.

Compare: 1908 No 89 Schedule 2 r 540(4), (6)–(9)

*Subpart 3—Judgment if proceeding tried
with jury*

11.15 Judgment after proceeding tried with jury

After a Judge takes the jury's verdict in a proceeding, he or she may—

- (a) give judgment immediately; or
- (b) adjourn the proceeding for further consideration; or
- (c) give judgment for either party and reserve leave for either party to apply—
 - (i) to set aside the judgment; and
 - (ii) for another judgment.

Compare: 1908 No 89 Schedule 2 r 525

11.16 Leave to apply to set aside judgment

A party to whom leave is reserved under rule 11.15(c) and who wishes to apply must do so—

- (a) within the time fixed by the court for the purpose; or
- (b) if paragraph (a) does not apply, within 10 working days after leave is reserved.

Compare: 1908 No 89 Schedule 2 r 526

Part 11—*continued*
Subpart 3—*continued*

11.17 Judgment not in accordance with verdict

- (1) Either party to a proceeding tried with a jury may apply to set aside the judgment and for another judgment, on the ground that the judgment given is not in accordance with the verdict of the jury.
- (2) An application under subclause (1)—
 - (a) may be made without leave reserved; and
 - (b) must be made within 10 working days after judgment is given.

Compare: 1908 No 89 Schedule 2 r 527

11.18 Application for judgment on special verdict or subject to special case

- (1) Either party may apply for the judgment to which the party considers the party is entitled within 10 working days after the jury states the facts or finds a verdict subject to a special case.
- (2) A copy of the case must be filed in court with the notice of application if it is on a special case.

Compare: 1908 No 89 Schedule 2 r 529

11.19 Application for judgment by both parties

Applications for judgment by 2 or more parties must be heard together, unless the court thinks it preferable to hear them separately.

Compare: 1908 No 89 Schedule 2 r 530

Subpart 4—Giving effect to judgments

11.20 Conduct of proceedings after judgment

The court may give the conduct of the proceeding after judgment to whichever party the court thinks proper, if the court makes an order under rule 11.2(d).

Compare: 1908 No 89 Schedule 2 r 531(2)

Part 11—*continued*
Subpart 4—*continued*

11.21 Applying for dismissal because of inactivity

- (1) A party may apply to dismiss the proceeding if the opposite party has the conduct of the proceeding and does not—
 - (a) proceed with the accounts, inquiries, acts, or steps ordered; or
 - (b) take all necessary steps to have them completed.
- (2) On an application under subclause (1), the court may make any 1 or more of the following orders it considers just:
 - (a) an order as to the prosecution of the account, inquiries, acts, or steps:
 - (b) an order for the dismissal of the proceeding:
 - (c) an order giving the conduct of the proceeding to another party.

Compare: 1908 No 89 Schedule 2 r 532

11.22 Judgment directing sale of property

- (1) Property to be sold because of a direction in a judgment or order must be sold in a way that ensures that the best price is obtained for it, unless the court directs otherwise.
- (2) The court may do any 1 or more of the following, when giving the judgment or making the order or at a later time:
 - (a) give directions about the method of the sale:
 - (b) give directions about the terms and conditions of sale:
 - (c) if the sale is by auction,—
 - (i) fix a reserve price, if appropriate; and
 - (ii) define the rights of parties to bid at the sale.
- (3) All parties must co-operate in effecting the sale of the property and do everything necessary to give effect to the sale, including signing any documents required to transfer or convey the property to the purchaser.
- (4) To effect the sale of the property, the court may—
 - (a) give all necessary directions, including directions in relation to the transfer or conveyance of the property sold; and

Part 11—*continued*
Subpart 4—*continued*

- (b) appoint a person to sign any documents required to transfer or convey to the purchaser the property sold.

Compare: 1908 No 89 Schedule 2 r 533

11.23 Judgment for balance of claim over counterclaim

The plaintiff is entitled to judgment on the cause of action for the balance of his or her claim, after deducting the amount of the counterclaim proved by the defendant, if a counterclaim is proved to an amount less than that recovered on the cause of action.

Compare: 1908 No 89 Schedule 2 r 534

11.24 Judgment for balance of counterclaim

The defendant is entitled to judgment for the excess if a counterclaim is proved to an amount exceeding that recovered on the cause of action.

Compare: 1908 No 89 Schedule 2 r 535

11.25 Cross judgments

- (1) Cross judgments may be set off against each other by leave of the court if they are between the same parties and for any 1 or more of the following:
 - (a) money:
 - (b) costs:
 - (c) debt:
 - (d) damages.
- (2) Leave must 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 536

11.26 Judgment if third party defends

- (1) The court may do the following if a third party files a statement of defence to a third party notice:
 - (a) order judgment to be entered for or against the defendant giving the notice against or for the third party; and

Part 11—*continued*
Subpart 4—*continued*

- (b) grant to the defendant or to the third party any relief or remedy that might properly have been granted if the defendant had instituted a proceeding against the third party; and
 - (c) make another appropriate order, instead of or in addition to the orders in paragraphs (a) and (b).
- (2) The court may act under subclause (1)—
 - (a) at or after the trial; or
 - (b) on application, whether the proceeding is decided by trial or otherwise.
- (3) This rule applies, with all necessary modifications, whenever a fourth or subsequent party notice is issued.

Compare: 1908 No 89 Schedule 2 r 537

11.27 Interest on judgment debt

- (1) A judgment debt carries interest from the time judgment is given until it is satisfied.
- (2) The interest is at the rate prescribed by or under section 87 of the Act or at a lower rate fixed by the court.
- (3) The interest may be levied on the judgment under an enforcement process (as defined in rule 17.3).

Compare: 1908 No 89 Schedule 2 r 538

11.28 Satisfaction of judgment

- (1) As soon as a judgment is satisfied by payment, levy, or in another way, the party against whom the judgment was given is entitled to have satisfaction of that judgment formally entered.
- (2) For the purposes of subclause (1), the party against whom the judgment was given must produce and file in the registry of the court an acknowledgment of satisfaction signed by or on behalf of the party obtaining judgment.
- (3) Despite 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 544

Part 12

Summary judgment

12.1 Application of summary judgment procedure

Rules 12.2 to 12.16 apply to all proceedings except—

- (a) a proceeding under Part 19, 20, or 21; or
- (b) an application for a writ of habeas corpus; or
- (c) an application for administration in common form under Part 27.

Compare: 1908 No 89 Schedule 2 r 135

12.2 Judgment when there is no defence or when 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 cause of action in the statement of claim or to a particular part of any such cause of action.
- (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.

Compare: 1908 No 89 Schedule 2 r 136

Schedule 2 rule 12.2(1): amended, on 15 May 2009, by rule 5 of the High Court Amendment Rules 2009 (SR 2009/75).

12.3 Summary judgment on liability

The court may give judgment on the issue of liability, and direct a trial of the issue of amount (at the time and place it thinks just), if the party applying for summary judgment satisfies the court that the only issue to be tried is one about the amount claimed.

Compare: 1908 No 89 Schedule 2 r 137

12.4 Interlocutory application for summary judgment

- (1) Application for judgment under rule 12.2 or 12.3 must be made by interlocutory application.
- (2) An application by a plaintiff may be made either at the time the statement of claim is served on the defendant, or later with the leave of the court.

Part 12—*continued*

- (3) An application by a defendant may be made either 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) an interlocutory application on notice in form G 31;
 - (b) a supporting affidavit;
 - (c) if the party is a plaintiff applying at the time the statement of claim is served,—
 - (i) a notice of proceeding in form G 13; and
 - (ii) a statement of claim;
 - (d) if the party applying is a defendant applying at the time the statement of defence is served, a statement of defence.
- (5) The 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 belief of the person making the affidavit 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.

Compare: 1908 No 89 Schedule 2 r 138

12.5 Service out of New Zealand

A plaintiff who makes an application under rule 12.2 or 12.3 must serve the documents specified in rule 12.4(4) on a defendant who is overseas,—

- (a) if the defendant is served in the Commonwealth of Australia, not less than 15 working days before the date for hearing the application:

Part 12—*continued*

- (b) if the defendant is served elsewhere, not less than 25 working days before the date for hearing the application.

Compare: 1908 No 89 Schedule 2 r 138A

12.6 Requirements as to notice of proceeding

Rule 5.23 does not apply to a proceeding under Part 12.

Compare: 1908 No 89 Schedule 2 r 139

12.7 Time for service

- (1) The documents specified in rule 12.4(4) must be served on the other party to the proceeding not less than 15 working days before the date for hearing the application.
- (2) Rule 12.5 overrides this rule.

Compare: 1908 No 89 Schedule 2 r 140

12.8 Postponement of hearing

If the documents specified in rule 12.4(4) have not been served within the time prescribed by rule 12.7(1), or rule 12.5 if applicable, the Registrar, on request, may postpone the hearing by—

- (a) deleting 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.

Compare: 1908 No 89 Schedule 2 r 140A

12.9 Notice of opposition and affidavit in answer

- (1) A party who intends to oppose an application for judgment under rule 12.2 or 12.3 must, at least 3 working days before the date for hearing the application, file in the court and serve on the applicant—
 - (a) a notice of opposition in form G 33; 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 applicant.

Part 12—*continued*

- (2) For the purposes of subclause (1), **in answer to** means,—
 - (a) in the case of a defendant, setting out the defence to the cause or causes of action that are subject to the summary judgment application; or
 - (b) in the case of a plaintiff, setting out the reasons why the defendant's defences do not succeed against the plaintiff's cause or causes of action.
- (2) If an opposing party does not file and serve the documents required by subclause (1), the party may not be heard in opposition to the application without the leave of the court.
- (3) Rule 7.24(2) and (3) apply, with all necessary modifications, to a notice of opposition filed under subclause (1)(a).
Compare: 1908 No 89 Schedule 2 r 141

12.10 Statement of defence

A defendant who has filed both a notice of opposition and an affidavit under rule 12.9 may, in addition, file a statement of defence in the registry of the court in which the notice of opposition and the affidavit were filed.

Compare: 1908 No 89 Schedule 2 r 141A

12.11 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.

Compare: 1908 No 89 Schedule 2 r 141B

Part 12—*continued*

12.12 Disposal of application

- (1) If the court dismisses an application for judgment under rule 12.2 or 12.3, 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 12.2 or 12.3 that the defendant has a counterclaim that ought to be tried, the court—
 - (a) may give judgment for the amount that appears just on any terms it thinks just; or
 - (b) may dismiss the application and give directions under subclause (1).

Compare: 1908 No 89 Schedule 2 r 142

12.13 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 10 working days after the date on which any application by a plaintiff for judgment under rule 12.2 or 12.3 is dismissed in whole or in part.
- (2) Rule 12.12(1) overrides this rule.

Compare: 1908 No 89 Schedule 2 r 142A

12.14 Setting aside judgment

A judgment given against a party who does not appear at the hearing of an application for judgment under rule 12.2 or 12.3 may be set aside or varied by the court on any terms it thinks just 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 143

12.15 Discontinuance

- (1) The party making the application may, at any time before an application for judgment under rule 12.2 or 12.3 is heard, discontinue the application—
 - (a) by filing in the registry of the court in which the application is filed a memorandum of discontinuance; and

Part 12—*continued*

- (b) by serving a copy of the memorandum on the other party to the application.
- (2) The court may give directions about the future conduct of the proceeding after an application for judgment under rule 12.2 or 12.3 is discontinued.
Compare: 1908 No 89 Schedule 2 r 143A

12.16 Application to counterclaims and claims against third parties

Rules 12.1 to 12.15 apply, with all necessary modifications, to counterclaims and to claims against third parties.
Compare: 1908 No 89 Schedule 2 r 144

Part 13

Summary proceeding for recovery of land

13.1 Interpretation

In this Part, **unlawful occupier** means a person who—

- (a) occupies or continues to occupy land of the plaintiff without the licence or consent of the plaintiff or the plaintiff's predecessor in title; and
- (b) is not a tenant or subtenant holding over after the termination of a tenancy or subtenancy.

Compare: 1908 No 89 Schedule 2 r 134A(1)

13.2 Application of Part

- (1) This Part applies to every proceeding in which the plaintiff claims the recovery of land that is occupied solely by 1 or more unlawful occupiers.
- (2) This Part does not affect the application of Part 12 (summary judgment) to a proceeding for the recovery of land.
Compare: 1908 No 89 Schedule 2 r 134A

13.3 Defendants

- (1) The plaintiff must name as a defendant in the statement of claim each unlawful occupier who is known to the plaintiff.

Part 13—*continued*

- (2) If no unlawful occupier is known to the plaintiff by name, the statement of claim need not name any person as defendant.

- (3) Subclause (1) is subject to subclause (2).

Compare: 1908 No 89 Schedule 2 r 134B

13.4 Affidavit in support

The plaintiff must file with the statement of claim an affidavit that—

- (a) states the interest of the plaintiff in the land; and
- (b) states 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 no person is named as defendant in the statement of claim, states that the plaintiff does not know the name of any of the unlawful occupiers.

Compare: 1908 No 89 Schedule 2 r 134C

13.5 Service

- (1) The plaintiff must serve the following documents on each defendant, if any, and on each unlawful occupier who is not a defendant:

- (a) the statement of claim;
- (b) the notice of proceeding;
- (c) a copy of the affidavit required by rule 13.4;
- (d) a copy of any exhibit referred to in that affidavit.

- (2) In the case of a defendant, service must be effected in accordance with rule 5.71.

- (3) In the case of an unlawful occupier who is not a defendant, service (unless the court directs or permits a different method of service) must be effected—

- (a) by affixing to some conspicuous part of the land the documents required to be served under 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 under subclause (1) (those documents must be

Part 13—*continued*

enclosed in a sealed envelope addressed to “The Occupiers”).

Compare: 1908 No 89 Schedule 2 r 134D

13.6 Time for filing statement of defence

Despite rule 5.47(2)(b), if service is effected in accordance with rule 13.5(3), the statement of defence must be filed within 25 working days after the day on which that service is effected.

Compare: 1908 No 89 Schedule 2 r 134E

13.7 Power of court to make unlawful occupiers defendants

A Judge may order that an unlawful occupier who is not a defendant be made a defendant or be added as a defendant.

Compare: 1908 No 89 Schedule 2 r 134F

13.8 Judgment for possession

Rule 15.8 (which allows the plaintiff to seek judgment immediately upon certain defaults by the defendant) does not apply to proceedings to which this Part applies.

Compare: 1908 No 89 Schedule 2 r 134G

13.9 Possession order

- (1) Once 3 months have elapsed after the date on which a judgment is given in a proceeding to which this Part applies, a possession order to enforce the judgment may issue only with the leave of the court.

- (2) An application for leave under subclause (1) may be made without notice unless a Judge otherwise directs.

Compare: 1908 No 89 Schedule 2 r 134H

Part 14

Costs

Subpart 1—Costs generally

14.1 Costs at discretion of court

- (1) All matters are at the discretion of the court if they relate to costs—

Part 14—*continued*
Subpart 1—*continued*

- (a) of a proceeding; or
 - (b) incidental to a proceeding; or
 - (c) of a step in a proceeding.
- (2) Rules 14.2 to 14.10 are subject to subclause (1).
- (3) The provisions of any Act override subclauses (1) and (2).
- Compare: 1908 No 89 Schedule 2 r 46

14.2 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 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 solicitor or counsel involved or on the time actually spent by the 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.

Compare: 1908 No 89 Schedule 2 r 47

Part 14—*continued*
Subpart 1—*continued*

14.3 Categorisation of proceedings

- (1) For the purposes of rule 14.2(b), proceedings must be classified as falling within 1 of the following categories:

Category 1 proceedings	Proceedings of a straightforward 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 significance require counsel to have special skill and experience in the High Court

- (2) The court may at any time determine in advance a proceeding's category, which applies to all subsequent determinations of costs in the proceeding, unless there are special reasons to the contrary.

Compare: 1908 No 89 Schedule 2 r 48

14.4 Appropriate daily recovery rates

For the purposes of rule 14.2(c), the appropriate daily recovery rates for the categories referred to in rule 14.3—

- (a) are the rates specified in Schedule 2; and
- (b) must be applied to those categories.

Compare: 1908 No 89 Schedule 2 r 48A

14.5 Determination of reasonable time

- (1) For the purposes of rule 14.2(c), a reasonable time for a step is—
- (a) the time specified for it in Schedule 3; or
 - (b) a time determined by analogy with that schedule, if Schedule 3 does not apply; or
 - (c) the time assessed as likely to be required for the particular step, if no analogy can usefully be made.
- (2) A determination of what is a reasonable time for a step under subclause (1) must be made by reference—

Part 14—*continued*
Subpart 1—*continued*

- (a) to band A, if a comparatively small amount of time is considered reasonable; or
- (b) to band B, if a normal amount of time is considered reasonable; or
- (c) to band C, if a comparatively large amount of time for the particular step is considered reasonable.

Compare: 1908 No 89 Schedule 2 r 48B

14.6 Increased costs and indemnity costs

- (1) Despite rules 14.2 to 14.5, 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 and in relation to any step in it.
- (3) The court may order a party to pay increased costs if—
 - (a) the nature of the proceeding or the step in it 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 it by—
 - (i) failing to comply with these rules or with 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
 - (iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or other similar requirement under these rules; or

Part 14—*continued*
Subpart 1—*continued*

- (v) failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 14.10 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 it or participate in it 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; 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 it; 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.

Compare: 1908 No 89 Schedule 2 r 48C

Part 14—*continued*
Subpart 1—*continued*

14.7 Refusal of, or reduction in, costs

Despite rules 14.2 to 14.5, 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 proceeding concerned a matter of public interest, and the party opposing costs acted reasonably in the conduct of the proceeding; or
- (f) the party claiming costs has contributed unnecessarily to the time or expense of the proceeding or step in it 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, a 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 14.10 or some other offer to settle or dispose of the proceeding; or

Part 14—*continued*
Subpart 1—*continued*

- (g) 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.

Compare: 1908 No 89 Schedule 2 r 48D

14.8 Costs on interlocutory applications

- (1) Costs on an opposed interlocutory application, unless there are special reasons to the contrary,—
 - (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.

Compare: 1908 No 89 Schedule 2 r 48E

14.9 Costs may be determined by different Judge or Associate Judge

Costs may be determined by a Judge or an Associate Judge other than the one who heard the matter to which the costs relate, if he or she is not available conveniently to make the determination.

Compare: 1908 No 89 Schedule 2 r 48F

14.10 Written offers without prejudice except as to costs

- (1) A party to a proceeding may make a written offer to another party at any time that—
 - (a) is expressly stated to be without prejudice except as to costs; and
 - (b) relates to an issue in the proceeding.

Part 14—*continued*
Subpart 1—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 48G

14.11 Effect on costs

- (1) The effect (if any) that the making of an offer under rule 14.10 has on the question of costs is at the discretion of the court.
- (2) Subclauses (3) and (4)—
- (a) are subject to subclause (1); and
 - (b) do not limit rule 14.6 or 14.7; and
 - (c) apply to an offer made under rule 14.10 by a party to a proceeding (**party A**) to another party to it (**party B**).
- (3) Party A is entitled to costs on the steps taken in the proceeding after the offer is made, if party A—
- (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.
- (4) The offer may be taken into account, if party A makes an offer that—
- (a) does not fall within paragraph (a) or (b) of subclause (3); and
 - (b) is close to the value or benefit of the judgment obtained by party B.

Compare: 1908 No 89 Schedule 2 r 48GA

14.12 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 legal professional services in a solicitor's bill of costs; and

Part 14—*continued*
Subpart 1—*continued*

- (b) includes—
 - (i) fees of court for the proceeding;
 - (ii) expenses of serving documents for the purposes of the proceeding;
 - (iii) expenses of photocopying documents required by these rules or by a direction of the court;
 - (iv) expenses of conducting a conference by telephone or video link; but
 - (c) does not include counsel's fee.
- relevant issue**, in relation to a disbursement, means the issue in respect of which the disbursement was paid or incurred.
- (2) A disbursement must, if claimed and verified, be included in the costs awarded for a proceeding to the extent that it is—
 - (a) of a class that is either—
 - (i) approved by the court for the purposes of the proceeding; or
 - (ii) specified in paragraph (b) of subclause (1); and
 - (b) specific to the conduct of the proceeding; and
 - (c) reasonably necessary for the conduct of the proceeding; and
 - (d) reasonable in amount.
 - (3) Despite subclause (2), a disbursement may be disallowed or reduced if it is disproportionate in the circumstances of the proceeding.
 - (4) A Judge or an Associate Judge may direct a Registrar to exercise the powers of the court under subclause (2) or (3).
 - (5) When considering whether a disbursement paid or payable for an expert witness's fee or expenses is reasonable for the purposes of subclause (2)(d), a Judge or an Associate Judge may—
 - (a) call for a report or an assessment from a professional organisation or otherwise; and
 - (b) make any incidental order considered just, including an order as to the cost of that report or assessment.

Compare: 1908 No 89 Schedule 2 r 48H

Part 14—*continued*
Subpart 1—*continued*

14.13 Proceedings within jurisdiction of District Court

Costs ordered to be paid to a successful plaintiff must not exceed the costs and disbursements that the plaintiff would have recovered in the District Court if the proceeding could have been brought there, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 49

14.14 Joint and several liability for costs

The liability of each of 2 or more parties ordered to pay costs is joint and several, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 50

14.15 Defendants defending separately

The court must not allow more than 1 set of costs, unless it appears to the court that there is good reason to do so, if—

- (a) several defendants defended a proceeding separately; and
- (b) it appears to the court that all or some of them could have joined in their defence.

Compare: 1908 No 89 Schedule 2 r 51

14.16 Claim and counterclaim both established

The court must award costs as if each party had succeeded in an independent proceeding, unless, in the court's opinion, the justice of the case otherwise requires, if—

- (a) the plaintiff succeeds in his or her proceeding; and
- (b) the defendant succeeds in a counterclaim.

Compare: 1908 No 89 Schedule 2 r 52

14.17 Set-off if costs allowed to both parties

If opposite parties are awarded costs against each other, their respective costs must be set off and the lesser sum must be deducted from the greater, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 53

Part 14—*continued**Subpart 2—Taxation of costs between parties***14.18 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) The party entitled to the costs must serve a copy of the appointment on the party liable to pay the costs at least 2 working days before the day appointed if the party liable to pay the costs has given an address for service.

Compare: 1908 No 89 Schedule 2 r 54

14.19 Taxation of disbursements

- (1) On taxation, all disbursements claimed must be proved to the satisfaction of the Registrar.
- (2) Only disbursements that may be included in an award of costs under rule 14.12(2) may be claimed under subclause (1).

Compare: 1908 No 89 Schedule 2 r 55

14.20 No charge allowed for bill of costs

No charge is allowed on taxation for the preparation or service of the bill of costs or of any copy of it.

Compare: 1908 No 89 Schedule 2 r 56

14.21 Registrar sole judge of questions of fact

The Registrar is the sole judge of all questions of fact that may arise on taxation, and his or her decision is final.

Compare: 1908 No 89 Schedule 2 r 57

14.22 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.

Compare: 1908 No 89 Schedule 2 r 58

Part 14—*continued*
Subpart 2—*continued*

14.23 Review of taxation

The court may, on the application of a party dissatisfied with the Registrar's decision, refer a matter back to the Registrar with any necessary directions, or may itself make any amendments that appear necessary, if—

- (a) the Registrar has ascertained or fixed the amount of costs or disbursements or the head under which costs are allowed; and
- (b) the Registrar's actions referred to in paragraph (a) were done under these rules or by a direction of the court; and
- (c) it appears that the Registrar acted erroneously as to amount or principle.

Compare: 1908 No 89 Schedule 2 r 59

Part 15
Constituency election petitions

Schedule 2 Part 15: inserted, on 1 December 1998, by rule 2 of the 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

Part 15—*continued*

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

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

Schedule 2 rule 796: inserted, on 1 December 1998, by rule 2 of the 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.

Schedule 2 rule 797: inserted, on 1 December 1998, by rule 2 of the 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):

Part 15—*continued*

- (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).

Schedule 2 rule 798: inserted, on 1 December 1998, by rule 2 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Schedule 2 rule 798(2)(m): substituted, on 24 November 2003, by rule 18 of the High Court Amendment Rules 2003 (SR 2003/280).

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.

Schedule 2 rule 799: inserted, on 1 December 1998, by rule 2 of the 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.

Schedule 2 rule 800: inserted, on 1 December 1998, by rule 2 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Part 15—*continued*

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

Schedule 2 rule 801: inserted, on 1 December 1998, by rule 2 of the 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

Schedule 2 rule 802: inserted, on 1 December 1998, by rule 2 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Part 15—*continued*

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

Schedule 2 rule 803: inserted, on 1 December 1998, by rule 2 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

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

Schedule 2 rule 804: inserted, on 1 December 1998, by rule 2 of the 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

Part 15—*continued*

- (b) Impose any other requirement the Registrar of the Court considers necessary.

Compare: 1996/218 rr 25, 26, 27

Schedule 2 rule 805: inserted, on 1 December 1998, by rule 2 of the 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
 - (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

Schedule 2 rule 806: inserted, on 1 December 1998, by rule 2 of the 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

Part 15—*continued*

- (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

Schedule 2 rule 807: inserted, on 1 December 1998, by rule 2 of the 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

Schedule 2 rule 808: inserted, on 1 December 1998, by rule 2 of the 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,

Part 15—*continued*

- (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

Schedule 2 rule 809: inserted, on 1 December 1998, by rule 2 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

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

Schedule 2 rule 810: inserted, on 1 December 1998, by rule 2 of the 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

Schedule 2 rule 811: inserted, on 1 December 1998, by rule 2 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Part 15—*continued*

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
 - (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

Schedule 2 rule 812: inserted, on 1 December 1998, by rule 2 of the 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

Schedule 2 rule 813: inserted, on 1 December 1998, by rule 2 of the 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,

Part 15—*continued*

- (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
Schedule 2 rule 814: inserted, on 1 December 1998, by rule 2 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

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

Schedule 2 rule 815: inserted, on 1 December 1998, by rule 2 of the 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—*continued*

Schedule 2 rule 816: inserted, on 1 December 1998, by rule 2 of the 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.
- (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

Schedule 2 rule 817: inserted, on 1 December 1998, by rule 2 of the 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

Schedule 2 rule 818: inserted, on 1 December 1998, by rule 2 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Part 15

Disposal other than by trial

Subpart 1—Dismissal or stay without trial

15.1 Dismissing or staying all or part of proceeding

- (1) The court may strike out all or part of a pleading if it—

Part 15—*continued*
Subpart 1—*continued*

- (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of the process of the court.
- (2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.
- (3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.
- (4) This rule does not affect the court's inherent jurisdiction.
Compare: 1908 No 89 Schedule 2 rr 186, 477

15.2 Dismissal for want of prosecution

Any opposite party may apply to have all or part of a proceeding or counterclaim dismissed or stayed, and the court may make such order as it thinks just, if—

- (a) the plaintiff fails to prosecute all or part of the plaintiff's proceeding to trial and judgment; or
- (b) the defendant fails to prosecute all or part of the defendant's counterclaim to trial and judgment.

Compare: 1908 No 89 Schedule 2 r 478

Subpart 2—Judgment by default

15.3 Application where appearance

- (1) If the defendant has filed an appearance under rule 5.49, rules 15.4 to 15.14 do not apply.
- (2) If the defendant has filed an appearance under rule 5.50 or 5.51, rules 15.4 to 15.14 apply subject to that appearance.

Compare: 1908 No 89 Schedule 2 r 459

Part 15—*continued*
Subpart 2—*continued*

15.4 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 the defendant's behalf, an affidavit verifying the statement of claim.

Compare: 1908 No 89 Schedule 2 r 468

15.5 When several causes of action

The plaintiff may proceed separately under rules 15.7 to 15.12 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 466

15.6 When several defendants

The plaintiff may proceed against any 1 or more of the defendants under rules 15.7 to 15.12 and may, despite any judgment given under those rules, continue the proceeding against any other defendant against whom the cause of action subsists.

Compare: 1908 No 89 Schedule 2 r 467

15.7 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 working days required by the notice of proceeding, the plaintiff may seal judgment for a sum not exceeding the sum claimed in the statement of claim (or less or nothing) and—
 - (a) interest (if any) payable as of right calculated up to the date of judgment (if interest has been specifically claimed in the statement of claim); and
 - (b) costs and disbursements as fixed by the Registrar.

Part 15—*continued*
Subpart 2—*continued*

- (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 sub-clause (1)(b).

Compare: 1908 No 89 Schedule 2 r 460

15.8 Land

- (1) 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 working days required by the notice of proceeding (or if the statement of defence is limited to part only of the land claimed), the plaintiff may seal judgment that the person whose title is asserted in the statement of claim recovers possession of the land (or possession of any part of the land to which the statement of defence does not apply) and costs and disbursements as 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 sub-clause (1).

Compare: 1908 No 89 Schedule 2 r 461

15.9 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 working days required by the notice of proceeding (or if the statement of defence is limited to part only of the chattels claimed), the plaintiff may seal judgment for costs and disbursements as fixed by the Registrar and—

Part 15—*continued*
Subpart 2—*continued*

- (a) recovery of possession of the chattels claimed (or any of them to which the statement of defence does not apply);
or
 - (b) the value of the chattels.
- (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 sub-clause (1).
 - (4) If the possession of any chattels claimed is not recovered, the plaintiff may have the proceeding tried to assess the value of those chattels.

Compare: 1908 No 89 Schedule 2 r 462

15.10 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 working days required by the notice of proceeding, the proceeding must be tried to assess damages.

Compare: 1908 No 89 Schedule 2 r 463

15.11 Evidence on trial

- (1) On any trial for assessment of damages under rule 15.9(4) or 15.10, no defendant can adduce evidence without the leave of the court, except in mitigation of damages.
- (2) Unless the proceeding is required to be tried with a jury, the plaintiff may adduce evidence of the plaintiff's damages by affidavit.

Compare: 1908 No 89 Schedule 2 r 464

Part 15—*continued*
Subpart 2—*continued*

15.12 Other proceedings

- (1) Subject to rule 15.14, in all other proceedings in which a defendant has not filed a statement of defence within the number of working days required by the notice of proceeding, the plaintiff may apply on notice to the defendant for any judgment against that defendant, and the court may give judgment for the relief to which the plaintiff is entitled on the facts set out in the statement of claim.
- (2) If the court thinks it is just, the court may, subject to rule 15.14, dispense with the giving of notice to the defendant under subclause (1).
- (3) Instead of applying under subclause (1), the plaintiff may apply for the allocation of a hearing date for the proceeding when the court may give judgment for the relief to which the plaintiff is entitled on the facts set out in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 465

15.13 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 just, 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 469

15.14 Overseas service cases

- (1) When a document has been served on a party outside New Zealand under rule 6.27 and that person has not appeared, judgment by default against that party must not be sealed without the leave of the court.
- (2) Leave must not be granted unless the court is satisfied—
 - (a) that the party applying for leave was entitled to effect service without leave under rule 6.27; and
 - (b) that there is no reason to believe that the service was effected, or may have been effected, contrary to the law of the country concerned relating to the method of serving

Part 15—*continued*
Subpart 2—*continued*

documents in domestic actions on persons in that country; and

- (c) that the service was effected in sufficient time to enable that party to appear.

Compare: 1908 No 89 Schedule 2 r 226

Subpart 3—Judgment on admission

15.15 Judgment on admission of facts

- (1) If a party admits facts (in the party's pleadings or otherwise), any other party to the proceeding may apply to the court for any judgment or order upon those admissions the other party may be entitled to, without waiting for the determination of any other question between the parties, and the court may give any judgment or order on the application as it thinks just.
- (2) This rule is not affected by rules 15.16 and 15.17.

Compare: 1908 No 89 Schedule 2 r 292

15.16 Admission of cause of action

- (1) At any time after a party has been served with a notice of proceeding, that party may file and serve (separately from the party's pleadings) an admission of all, some, or part of the alleged causes of action on all other parties to the proceeding.
- (2) An admission can be withdrawn only with the leave of the court.
- (3) When an admission is filed and served under subclause (1), a party on whom the admission is served may seek judgment on the cause of action admitted, without prejudice to that party's right (if any) to proceed on any other cause of action.
- (4) An admission under subclause (1) relating to any cause of action in which a sum of money is claimed must state the exact amount admitted.
- (5) Any judgment entered on an admission filed and served under subclause (1) may, upon application, be set aside by the court if—

Part 15—*continued*
Subpart 3—*continued*

- (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.
- (6) Upon an application under subclause (5), the court may direct that a proceeding be brought to determine whether judgment was wrongfully entered.
- (7) This rule does not affect rule 8.15.
Compare: 1908 No 89 Schedule 2 rr 471, 473

15.17 Admission of defence

- (1) When a party's 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 may file and serve an admission of that ground of defence.
- (2) If the admitted ground of defence arose after the filing of the pleading containing the cause of action to which it refers, the party filing and serving the admission is entitled to an order for that party's costs in respect of the cause of action to which the admission applies, up to the time of filing the 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 afterwards seal judgment upon the cause of action to which the admission relates.
- (4) This rule does not affect rule 8.15.
Compare: 1908 No 89 Schedule 2 rr 472, 473

Part 15—*continued*

Subpart 4—Discontinuance

15.18 Interpretation

For the purposes of rules 15.19 to 15.25, a reference to discontinuing a proceeding means discontinuing a proceeding against 1 or more defendants.

Compare: 1908 No 89 Schedule 2 r 474

15.19 Right to discontinue proceeding

- (1) At any time before the giving of judgment or a verdict, a plaintiff may discontinue a proceeding by—
 - (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 that the proceeding is discontinued.
- (2) A notice of discontinuance under subclause (1)(a) must be in form G 24.
- (3) This rule is subject to rule 15.20.

Compare: 1908 No 89 Schedule 2 r 475

15.20 Restrictions on right to discontinue proceeding

- (1) A plaintiff may discontinue a proceeding only with the leave of the court if—
 - (a) the court—
 - (i) has granted an interim injunction; or
 - (ii) made an interim order under rule 30.4; or
 - (iii) made an interim order under section 8 of the Judicature Amendment Act 1972; 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 7.70 or 7.71, 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 plain-

Part 15—*continued*
Subpart 4—*continued*

tiff or with the leave of the court. If the plaintiff files a notice of discontinuance under rule 15.19(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 discontinuance under rule 15.19(1)(a), the consent of every other defendant must be in writing.

Compare: 1908 No 89 Schedule 2 r 476

15.21 Effect of discontinuance

- (1) A proceeding ends against a defendant or defendants on—
- (a) the filing and service of a notice of discontinuance under rule 15.19(1)(a); or
 - (b) the giving of oral advice of the discontinuance at the hearing under rule 15.19(1)(b); or
 - (c) the making of an order under rule 15.20.
- (2) The discontinuance of a proceeding does not affect the determination of costs.
- (3) Rule 15.22 overrides this rule.

Compare: 1908 No 89 Schedule 2 r 476A

15.22 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 25 working days after discontinuance under rule 15.19.

Compare: 1908 No 89 Schedule 2 r 476B

15.23 Costs

Unless the defendant otherwise agrees or the court otherwise orders, a plaintiff who discontinues a proceeding against a de-

Part 15—*continued*
Subpart 4—*continued*

defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

Compare: 1908 No 89 Schedule 2 r 476C

15.24 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 15.23 relating to proceeding A.

Compare: 1908 No 89 Schedule 2 r 476D

15.25 Certain remedies not affected

If a plaintiff discontinues a proceeding in which a defendant has issued a third party notice under rules 4.9 to 4.17 or has filed a notice under rules 4.18 to 4.21, the discontinuance does not affect the continuation of the proceeding in relation to the third party notice or the notice filed under rules 4.18 to 4.21.

Compare: 1908 No 89 Schedule 2 r 476E

Part 16
Accounts and inquiries

16.1 Interpretation

In this Part,—

account-taker has the meaning set out in rule 16.6

accounting party means—

- (a) the party required by an order for the taking of an account to account to the other party; and
- (b) in a case coming within rule 16.5, each party.

Compare: 1908 No 89 Schedule 2 r 390

Part 16—*continued***16.2 Orders for accounts and inquiries**

The court may, on the application of any party, before, at, or after the trial of a proceeding, order an account or an inquiry, whether or not it has been claimed in that party's pleading.

Compare: 1908 No 89 Schedule 2 r 384

16.3 Directions

- (1) At the time of ordering an account or an inquiry, or at another time, the court may—
 - (a) give directions or further directions about the account or inquiry;
 - (b) order additional accounts or inquiries;
 - (c) direct that the relevant books of account are prima facie evidence of the truth of the matters contained in them.
- (2) An order or direction under subclause (1) overrides rules 16.6 to 16.21.

Compare: 1908 No 89 Schedule 2 r 385

16.4 Summary order for accounts

- (1) If a party's pleading claims an account or makes a claim that involves taking an account, the court may, on application by that party at any stage of the proceeding, order—
 - (a) an account; and
 - (b) that any amount certified on the account as due to any party be paid to that party.
- (2) The court must not make an order under subclause (1)—
 - (a) if there is some preliminary question to be determined; or
 - (b) 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.

Compare: 1908 No 89 Schedule 2 r 386

16.5 Mutual accounts

- (1) The court may order that each party account to the other if it considers that each is accountable to the other because of—
 - (a) the relationship between the parties; or

Part 16—*continued*

- (b) their course of dealing; or
 - (c) any other reason.
- (2) At the time of making an order under subclause (1), or at any time afterwards, the court may direct—
 - (a) that the result of the account be certified as the net balance found to be due to 1 party; or
 - (b) that the certificate show the amounts found to be due to each party.
- (3) An order under this rule overrides rules 16.6 to 16.21.
Compare: 1908 No 89 Schedule 2 r 387

16.6 Account-taker

- (1) The court may order accounts to be taken before an **account-taker** who may be—
 - (a) the Registrar; or
 - (b) an accountant; or
 - (c) the Registrar and an accountant.
- (2) Unless otherwise ordered, an accountant who takes an account must be a chartered accountant in public practice who is a member of the New Zealand Institute of Chartered Accountants.
Compare: 1908 No 89 Schedule 2 r 388

16.7 Direction as to evidence

The court may direct that any evidence relevant to the account be given to the account-taker, with any incidental order the court thinks just.

16.8 Remuneration of accountant

- (1) The court must fix the remuneration of an accountant who is an account-taker. The order doing so may cover incidental matters including (for example) 1 or more of the following:
 - (a) that the remuneration be paid by 1 or more of the parties in any proportions:

Part 16—*continued*

- (b) that 1 or more of the parties give security for the remuneration of the accountant, on terms the court thinks just.
- (2) Subclause (1) does not limit the court's power to make an order providing for the payment of the remuneration as part of the costs of the proceeding.

Compare: 1908 No 89 Schedule 2 r 389

16.9 Form and verification of account

- (1) The items on each side of an account must be numbered consecutively.
- (2) An accounting party must verify the account by affidavit, and must attach the account as an exhibit.

Compare: 1908 No 89 Schedule 2 r 391

16.10 Filing and service of account

Within 10 working days after the order to account has been served on an accounting party, that party must—

- (a) file the account and verifying affidavit; and
- (b) serve a copy of the account and verifying affidavit on each other party.

Compare: 1908 No 89 Schedule 2 r 392

16.11 Notice of receipt that is not admitted

A party who alleges an accounting party has received an amount that is not admitted in the accounting party's account must, within 10 working days after being served with the account, notify the accounting party of the allegation, stating (as far as possible) the amount and brief particulars.

Compare: 1908 No 89 Schedule 2 r 393

16.12 Notice of error

A party who alleges that any item in an accounting party's account is erroneous in amount or otherwise must, within 10 working days after being served with the account, notify the

Part 16—*continued*

accounting party of the allegation, stating the grounds for alleging the error.

Compare: 1908 No 89 Schedule 2 r 394

16.13 Admission of items

Except to the extent shown in a notice given under rule 16.11 or 16.12, all items in the account must be treated as correct.

Compare: 1908 No 89 Schedule 2 r 395

16.14 Appointment and notice for taking accounts

As soon as possible after the accounting party has filed the account, the account-taker must—

- (a) appoint a time (no less than 15 working days after the filing date) and a place for taking the account (the **account hearing**); and
- (b) give notice of that time and place to the parties no less than 5 working days before the account hearing date.

Compare: 1908 No 89 Schedule 2 r 396

16.15 Parties to attend account hearing

- (1) The parties or their solicitors or counsel must attend the account hearing.
- (2) If the account-taker is satisfied that notice of the time and place has been given and received, the account-taker may proceed with the account hearing, even if any party is absent.

Compare: 1908 No 89 Schedule 2 r 397

16.16 Adjournment of account hearing

The account-taker may adjourn the time and place of the account hearing as necessary or expedient.

Compare: 1908 No 89 Schedule 2 r 398

16.17 Power of summary decision

- (1) The account-taker may decide all disputed items of account summarily.
- (2) Despite subclause (1),—

Part 16—*continued*

- (a) any item may be referred for the decision of the court by—
 - (i) any party; or
 - (ii) the account-taker; and
- (b) all items of account in respect of which the Registrar and an accountant disagree must be referred for the decision of the court.

Compare: 1908 No 89 Schedule 2 r 399

16.18 Examination of accounting party

If an item has been referred to the court under rule 16.17(2), the court may, on the application of a party who has given a notice under rule 16.11 or 16.12, order that the accounting party appear before the court to be examined orally about the disputed item of account.

Compare: 1908 No 89 Schedule 2 r 400

16.19 Production of documents

The accounting party must, when required by written notice, produce all invoices, statements of account, receipts, and any other documents in that party's possession or power relating to any disputed item of account specified in the notice at—

- (a) the taking of the account; or
- (b) the examination of the accounting party under rule 16.18.

Compare: 1908 No 89 Schedule 2 r 401

16.20 Interest on debts of deceased person

A court ordering an account of the debts of a deceased person may order—

- (a) which debts carry interest; and
- (b) the date from which the debts carry interest (for example, from the date of the order); and
- (c) the rate of interest for each debt, which may be—
 - (i) the rate prescribed by the instrument or instruments creating the debt or debts; or

Part 16—*continued*

- (ii) if no rate is so prescribed, the rate prescribed for the purposes of section 87 of the Act or any lower rate.

Compare: 1908 No 89 Schedule 2 r 402

16.21 Interest on legacies

A court ordering an account of legacies may order interest to be paid—

- (a) at the rate prescribed by or under section 39 of the Administration Act 1969 from the end of 1 year after the death of the deceased; or
- (b) at any rate of interest and time of payment directed by the will.

Compare: 1908 No 89 Schedule 2 r 403

16.22 Accounting and estimates

- (1) Any amount which has been paid or credited must be brought into account.
- (2) If there is no material before the account-taker which enables an amount to be ascertained with certainty, the account-taker may estimate the amount which in all the circumstances should reasonably be included.

Compare: 1908 No 89 Schedule 2 r 404

16.23 Directions for inquiries

The court may direct the Registrar or any other person to make inquiries (in any manner and within any time period) about—

- (a) next of kin;
- (b) creditors;
- (c) other claimants;
- (d) any other similar matters.

Compare: 1908 No 89 Schedule 2 r 405

16.24 Powers of persons taking accounts or making inquiries

The account-taker or the person whom the court directs to make an inquiry may—

- (a) issue advertisements; and

Part 16—*continued*

- (b) summon parties and witnesses; and
- (c) administer oaths; and
- (d) receive affidavits and acknowledgments; and
- (e) examine parties and witnesses either by interrogatories or by hearing them in person.

Compare: 1908 No 89 Schedule 2 r 406

16.25 Duty of persons summoned to attend

- (1) A person must attend an account-taker or a person taking an inquiry—
 - (a) in accordance with a summons; and
 - (b) at any other time required without a further summons.
- (2) A person who fails to attend after being summoned is liable to the same extent as if he or she had disobeyed a court order.

Compare: 1908 No 89 Schedule 2 r 407

16.26 Time for proving claims

- (1) The court must fix and advertise the time within which persons must prove their claims (for example, as creditors or next of kin).
- (2) The time must not be less than 25 working days after the date on which the advertisement is first published.

Compare: 1908 No 89 Schedule 2 r 408

16.27 Statement of claim to be filed

A person claiming as a creditor, next of kin, or otherwise must file a statement of claim verified by an affidavit.

Compare: 1908 No 89 Schedule 2 r 409

16.28 Failure to claim within time

- (1) A person who does not prove a claim within the advertised time is excluded from the benefit of the judgment or order directing accounts or inquiries.
- (2) Sections 75, 76, and 76A of the Trustee Act 1956 override subclause (1).

Compare: 1908 No 89 Schedule 2 r 410

Part 16—*continued*

16.29 Result to be certified

The result of any account or inquiry must be stated in a short certificate to the court, unless the court orders the result to be recorded in a formal report.

Compare: 1908 No 89 Schedule 2 r 411

16.30 Party may ask for court's decision

At any time before the end of 10 working days after a certificate or report has been completed, but before it has been signed by a Judge, any party may ask for the court's decision on any particular point or on the result.

Compare: 1908 No 89 Schedule 2 r 413

16.31 Certificate when approved to be signed by Judge

- (1) A Judge must sign a certificate or report stated or recorded under rule 16.29 when he or she has approved it.
- (2) The Registrar must file the signed certificate or report in the court.

Compare: 1908 No 89 Schedule 2 r 412

16.32 Effect of certificate when filed

- (1) A certificate or report that has been filed in the court is binding on all parties to the proceeding, unless discharged or varied by the court after an application made within 25 working days.
- (2) Subclause (1) does not prevent the court from re-opening a certificate or report at any time on the grounds of fraud, surprise, or mistake.

Compare: 1908 No 89 Schedule 2 r 414

16.33 Distribution before all persons entitled are ascertained

The court may order the immediate payment of a party's share to that party—

- (a) even if the other persons who are entitled to shares are not ascertained and there is likely to be difficulty or delay in ascertaining those others; and

Part 16—*continued*

- (b) without reserving any part of the share to meet the subsequent costs of ascertaining those others.

Compare: 1908 No 89 Schedule 2 r 415

16.34 Payment of share carried over to separate trust account

- (1) If the rights or circumstances of the parties at the time of judgment do not enable the court to order absolutely that payment be made to the persons entitled, the court may order any party's share that has not become absolute to be carried over on trust to a separate account.
- (2) A party that becomes entitled to a share held in trust under subclause (1) may apply for payment of the share on notice to the other persons interested in the matter, and the court may order payment to that party.

Compare: 1908 No 89 Schedule 2 r 416

Part 17

Enforcement

*Subpart 1—General provisions***17.1 Interpretation**

In this Part, unless the context otherwise requires,—

enforcement process includes every order referred to in rule 17.3

enforcing officer means the court officer to whom an enforcement process is issued, and includes any court officer who may carry out any functions, duties, or powers provided for in this Part in the course of his or her employment duties

entitled party means—

- (a) a judgment creditor; or
- (b) a party other than a judgment creditor entitled to relief against another party under a judgment; or
- (c) a party entitled to issue a charging order because the party may obtain judgment for—
 - (i) the payment of a sum of money; or

Part 17—*continued*
Subpart 1—*continued*

- (ii) the return of the property the party seeks to charge

judgment creditor means the party entitled to enforce a judgment for the recovery or payment of a sum of money

judgment debtor means the party liable under a judgment to return or pay a sum of money or the party whose estate, right, title, or interest in property is liable to be charged under a charging order

liable party means—

- (a) a judgment debtor; or
- (b) a party who is liable to another party under a judgment, though not a judgment debtor; or
- (c) the party whose estate, right, title, or interest in property is liable to be charged under a charging order

personal property has the same meaning as in section 16(1) of the Personal Property Securities Act 1999.

Compare: 1908 No 89 Schedule 2 r 545

17.2 Method of enforcing orders

A court order, except an order made on an interlocutory application, may be enforced in the same way as a judgment in the proceeding to the same effect.

Compare: 1908 No 89 Schedule 2 r 546

17.3 Method of enforcing judgments

- (1) A judgment may be enforced by 1 or more of the following enforcement processes:
 - (a) an attachment order:
 - (b) a charging order:
 - (c) a sale order:
 - (d) a possession order:
 - (e) an arrest order:
 - (f) a sequestration order.
- (2) Subclause (1) is subject to the rules in this Part.

Part 17—*continued*
Subpart 1—*continued*

- (3) No enforcement process may be issued until any period specified in the judgment for payment or performance has expired.
Compare: 1908 No 89 Schedule 2 r 547; Civil Procedure Rules 1998 r 70.2 (UK)

17.4 No excessive recovery

- (1) An entitled party is not entitled to recover a greater sum than the amount owing under the judgment or order, the costs and expenses of and incidental to issuing and effecting an enforcement process, and any interest due under the judgment or order.
- (2) A claim that excessive recovery has occurred, or may occur, may be resolved by the Judge on application.

17.5 No enforcement against the Crown

- (1) No enforcement process can be issued to enforce satisfaction of any judgment, order, decree, rule, award, or declaration given or made in any civil proceedings under the Crown Proceedings Act 1950 against—
- (a) the Crown; or
 - (b) the Attorney-General; or
 - (c) any government department; or
 - (d) any officer of the Crown.
- (2) Subclause (1) does not limit section 24 of the Crown Proceedings Act 1950.
Compare: 1908 No 89 Schedule 2 r 553

17.6 Enforcement by or against non-parties

- (1) A non-party is entitled to the same enforcement process as a party to the proceeding if—
- (a) the non-party obtains an order; or
 - (b) an order is made in the non-party's favour.
- (2) A non-party is liable to the same enforcement process as a party to the proceeding if—
- (a) a judgment is given against the non-party; or

Part 17—*continued*
Subpart 1—*continued*

- (b) an order is made against the non-party.

Compare: 1908 No 89 Schedule 2 r 554

17.7 Enforcement against partners or alleged partners

- (1) A judgment against partners sued in the name of the firm may be enforced without the court's leave—
- (a) against any property of the partners:
 - (b) against any person who—
 - (i) has admitted in pleadings that he or she is a partner; or
 - (ii) has been held by the court 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) Subclause (1) is subject to rule 17.8.
- (3) A judgment against partners sued in the name of the firm may be enforced against any person as a partner of that firm with the court's leave in any case not covered by subclause (1).
- (4) On an application under subclause (3), the court,—
- (a) if liability is not disputed by the person against whom the applicant claims to be entitled to issue enforcement, may grant leave; or
 - (b) if liability is disputed by the person against whom the applicant claims to be entitled to issue enforcement, may order that the liability of that person be tried and determined as it thinks just.

Compare: 1908 No 89 Schedule 2 r 555

17.8 Issuing enforcement process as of right

- (1) An enforcement process may be issued as of right unless leave is required under rule 17.9.
- (2) An enforcement process is issued under subclause (1) by the entitled party, or that party's solicitor, filing—
- (a) a written request that a particular enforcement process should be issued; and

Part 17—*continued*
Subpart 1—*continued*

- (b) an affidavit stating that none of paragraphs (c) to (e) of rule 17.9(2) apply.
 - (3) The court may set aside an enforcement process issued under subclause (1) if it is satisfied that any of paragraphs (c) to (e) of rule 17.9(2) applied when the enforcement process was issued.
- Compare: 1908 No 89 Schedule 2 r 556

17.9 When leave to issue enforcement process necessary

- (1) The court's leave is required before issuing an arrest order or a sequestration order.
- (2) The court's leave is required to issue an enforcement process—
 - (a) if judgment has not been sealed; or
 - (b) if 6 years have elapsed since the date of the judgment; or
 - (c) if any change has taken place (whether by death or otherwise) in the parties entitled or liable to enforcement under the judgment; or
 - (d) if the judgment is against the assets of a deceased person, enforcement is sought against those assets, and that person's executor or administrator has taken possession of those assets after the date of the judgment; or
 - (e) if a person is entitled to relief under the judgment only if that person has fulfilled a condition, and that person alleges that condition has been fulfilled; or
 - (f) if goods sought to be seized under an enforcement process are in the possession of—
 - (i) a receiver appointed by the court; or
 - (ii) a sequestrator.
- (3) If the court grants leave to issue an enforcement process (under this rule or otherwise) and the process is not issued within 1 year after the date of the order granting leave, that order expires but that does not prevent the making of a new order granting leave.

Compare: 1908 No 89 Schedule 2 r 556

Part 17—*continued*

*Subpart 2—Obtaining information from
liable party for enforcement purposes*

17.10 Notice to liable party to complete financial statement

- (1) An entitled party may serve on the liable party a notice in form E 1 with 2 copies of form E 2.
- (2) A notice in form E 1 requires the liable party to complete and serve on the entitled party a statement in form E 2 of the liable party's—
 - (a) receipts and payments for the preceding 52 weeks; and
 - (b) assets and liabilities; and
 - (c) income and expenditure; and
 - (d) means of satisfying the judgment.
- (3) The liable party must serve the statement in form E 2 on the entitled party within 10 working days after the date on which the notice in form E 1 is served on the liable party.

Compare: 1908 No 89 Schedule 2 r 620

17.11 Interpretation

In rules 17.12 to 17.20, unless the context otherwise requires,—

examinee means the party to be examined under rule 17.12 (or if the party is a corporation, an officer of the corporation)

examining party means a party seeking the recovery or payment of money in a proceeding who applies for an order for examination under rule 17.12.

17.12 Order for examination

- (1) Whether or not a notice has been served under rule 17.10, an examining party may apply for an order—
 - (a) at any time after the proceeding has commenced, if that party seeks a charging order under subpart 5 of this Part; and
 - (b) in all other cases, at any time after judgment is sealed.
- (2) An examining party may apply to the court for an order requiring the examinee to attend the court or a person whom the court appoints, and to be orally examined on oath about—

Part 17—*continued*
Subpart 2—*continued*

- (a) the standard issues in subclause (3); and
 - (b) any additional issues suggested by the examining party that the court considers are necessary.
- (3) The standard issues are—
- (a) if judgment has been given, about the examinee’s—
 - (i) receipts and payments for the preceding 52 weeks; and
 - (ii) assets and liabilities; and
 - (iii) income and expenditure; and
 - (iv) means of satisfying the judgment:
 - (b) if judgment has not been given, about any matters that are relevant to the issue of a charging order.
- (4) When granting the application, the court may order the production of documents at the examination and may impose terms and conditions it thinks just in respect of the conduct of the examination or otherwise.
- (5) An application under this rule may be made without notice, and may be granted by a Judge without a hearing.
- (6) An order under this rule must contain a notice in the following terms:
- “You must obey this order. If you do not, you may be sent to prison for contempt of court.”

Compare: 1908 No 89 Schedule 2 r 621; Civil Procedure Rules 1998 rr 71.2, 71.6 (UK); Practice Direction Supplementing Part 71 of the Civil Procedure Rules 1998 paras 4.1, 5.1 (UK)

17.13 Service of order for examination

- (1) Unless the court otherwise orders, an order to attend court for examination must be served on the examinee not less than 10 working days before the examination.
- (2) The examining party must inform the court not less than 5 working days before the date of the hearing if the order has not been served.

Compare: Civil Procedure Rules 1998 r 71.3 (UK)

Part 17—*continued*
Subpart 2—*continued*

17.14 Examining party's affidavit

At the examination, the examining party must file an affidavit or affidavits—

- (a) by the person who served the order (unless it was served by an enforcing officer) giving details of how and when it was served; and
- (b) stating how much remains unpaid of the amount for which the examining party may obtain or has obtained judgment.

Compare: Civil Procedure Rules 1998 r 71.5 (UK)

17.15 Procedure for examination

- (1) The examinee—
 - (a) must appear personally;
 - (b) may be represented by counsel, who may examine the examinee and be heard on the matter of the examinee's means;
 - (c) may be cross-examined by the examining party.
- (2) A witness who is not the examinee may be cross-examined by or on behalf of the examinee or the examining party.

Compare: 1947 No 16 s 84D; Civil Procedure Rules 1998 r 71.6 (UK)

17.16 Adjournment of hearing

If the hearing is adjourned, the court must give directions about the manner in which notice of the new hearing is to be served on the examinee.

Compare: Civil Procedure Rules 1998 r 71.7 (UK)

17.17 Orders by court

- (1) After an examination is completed, a Judge may, after giving the examining party and the examinee an opportunity to be heard, do any 1 or more of the following:
 - (a) direct that 1 or more of the processes referred to in rule 17.3 be commenced or continued, direct any steps to be taken in those processes, and issue any warrant or

Part 17—*continued*
Subpart 2—*continued*

summons or make any order for the purpose of those processes:

- (b) make an order that the money owing under the judgment be paid by instalments payable at times fixed by the court;
 - (c) stay any processes for the enforcement of the judgment;
 - (d) make an order varying any order relating to the enforcement of the judgment.
- (2) The Judge may do any 1 or more of the things referred to in subclause (1), even though—
- (a) no application was made for the particular direction, order, or stay; or
 - (b) that application was made for a different direction, order, or stay.

Compare: 1947 No 16 s 84E

17.18 Failure to comply with order for examination

- (1) A Judge may make an arrest order against an examinee who—
 - (a) fails to attend the examination; or
 - (b) refuses at the examination to take the oath or to answer any question; or
 - (c) fails to comply with the order for examination in any other way.
- (2) Subclause (1) is subject to subclauses (3) and (4).
- (3) An arrest order for failing to attend the examination must not be made unless the examining party has filed the affidavit required by rule 17.14.
- (4) If an arrest order is made, the Judge must direct that—
 - (a) the order is suspended provided the examinee—
 - (i) attends the court or any person whom the court has appointed for examination at a time and place specified in the order; and
 - (ii) complies with all the terms of the arrest order and the order for examination; and
 - (b) if the examinee fails to comply with any term on which the arrest order is suspended, the examinee may be

Part 17—*continued*
Subpart 2—*continued*

brought before a Judge so that the Judge may consider whether to commit the examinee to prison.

Compare: Civil Procedure Rules 1998 r 71.8 (UK)

17.19 Certification of breach of arrest order

- (1) If an examinee who has been served with an arrest order fails to attend the examination or fails to comply with any other term on which the arrest order was suspended, an enforcing officer may issue a certificate to that effect.
- (2) The certificate need not be served on the examinee.
- (3) After seeing a certificate under subclause (1), a Judge or enforcing officer may issue a warrant to bring the examinee before a Judge.

Compare: Civil Procedure Rules 1998 r 71.8 (UK)

17.20 Discharge of arrest order

- (1) When an examinee is brought before a Judge on a warrant under rule 17.19(3), the Judge must discharge the arrest order unless the Judge is satisfied beyond reasonable doubt that—
 - (a) the examinee has failed to comply with—
 - (i) the original order to attend court; and
 - (ii) the terms on which the arrest order was suspended; and
 - (b) both orders have been served on the examinee.
- (2) If the Judge does not discharge the arrest order, the Judge may commit the examinee to prison for a term of imprisonment of not more than 3 months.

*Subpart 3—Preparation and issue of
enforcement process*

17.21 Enforcement process to conform with judgment

An enforcement process must strictly conform with the judgment or order it is enforcing or state why it does not.

Compare: 1908 No 89 Schedule 2 r 557

Part 17—*continued*
Subpart 3—*continued*

17.22 Preparation and issue of enforcement processes

- (1) An entitled party issuing an enforcement process must also file an original order for the particular enforcement process sought, and a copy for the court.
- (2) The Registrar must seal the original order and give it to an enforcing officer.
- (3) An enforcement process is issued at the time when the original sealed order is given to an enforcing officer under subclause (2).

Compare: 1908 No 89 Schedule 2 r 558

17.23 Date of enforcement process

The date of an enforcement process is the date it is issued.

Compare: 1908 No 89 Schedule 2 r 559

17.24 Currency and renewal of enforcement processes (except for charging orders)

- (1) An enforcement process that is not executed expires 1 year after the date it is issued.
- (2) Subclauses (3) and (7) override subclause (1).
- (3) An enforcement process may be renewed with the leave of a Judge once only for 1 year from the original expiry date.
- (4) Leave under subclause (3) may be given before or after the enforcement process expires.
- (5) When an enforcement process is renewed, it retains its original priority unless a Judge orders otherwise.
- (6) The Registrar must note the fact and date of renewal on the enforcement process, and that is sufficient evidence of its having been renewed.
- (7) Nothing in this rule applies in respect of a charging order.

Compare: 1908 No 89 Schedule 2 r 560

17.25 Expenses of enforcement

- (1) An entitled party is entitled to the costs and expenses in respect of and incidental to issuing and effecting an enforcement

Part 17—*continued*
Subpart 3—*continued*

process, and may levy those costs and expenses from the liable party.

- (2) Subclause (1) is subject to rule 17.26.

Compare: 1908 No 89 Schedule 2 r 561

17.26 Concurrent enforcement processes

- (1) Two or more enforcement processes (of the same or different kinds) may be issued to 1 or more places and addressed to different enforcing officers.
- (2) The costs and expenses of more than 1 concurrent enforcement process may be allowed to a party only with the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r 562

17.27 Return of enforcement process

The enforcing officer must return an enforcement process as soon as possible to the court registry it was issued from with a memorandum stating,—

- (a) if the officer succeeded in enforcing it, the way in which it was enforced; or
- (b) if the officer did not succeed in enforcing it, despite reasonable attempts, the reason why it was not enforced.

Compare: 1908 No 89 Schedule 2 r 563

17.28 Reissue of enforcement process

If an enforcement process is returned unenforced and there are grounds for believing it can be successfully enforced, the entitled party may request that it be issued again to an enforcing officer.

Compare: 1908 No 89 Schedule 2 r 564

17.29 Stay of enforcement

A liable party may apply to the court for a stay of enforcement or other relief against the judgment upon the ground that a substantial miscarriage of justice would be likely to result if

Part 17—*continued*
Subpart 3—*continued*

the judgment were enforced, and the court may give relief on just terms.

Compare: 1908 No 89 Schedule 2 r 565

17.30 Enforcement process may be set aside

The court may set aside an enforcement process if it is issued contrary to—

- (a) any order of the court; or
- (b) the agreement of the entitled party; or
- (c) good faith.

Compare: 1908 No 89 Schedule 2 r 566

Subpart 4—Attachment orders

17.31 Interpretation

In this subpart, unless the context otherwise requires,—

employer, in relation to a liable party, includes—

- (a) a person by whom a retiring allowance or pension or other payment of a similar nature is payable to the liable party;
- (b) the Accident Compensation Corporation in respect of weekly compensation payable to the liable party under the Injury Prevention, Rehabilitation, and Compensation Act 2001;
- (c) the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 in respect of a benefit payable to the liable party;
- (d) a person for whom work is performed under a contract for services

protected earnings amount means an amount specified in an attachment order below which the net earnings or benefit paid to the liable party must not be reduced

salary or wages includes—

- (a) a retiring allowance or pension or other payment of a similar nature:

Part 17—*continued*
Subpart 4—*continued*

- (b) a bonus or an incentive payment:
- (c) a payment of commission:
- (d) a payment in consideration of work performed under a contract for services:
- (e) all payments of weekly compensation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001 by the Accident Compensation Corporation:
- (f) a benefit within the meaning of the Social Security Act 1964.

Compare: 1947 No 16 s 84F

17.32 Effect of attachment order

- (1) An attachment order directs that money due under a judgment is a charge on any salary or wages that are due and payable by an employer to the liable party.
- (2) The charge—
 - (a) accrues from week to week on the day of the week specified in the attachment order; and
 - (b) accrues by way of weekly payments of the amount specified in the attachment order; and
 - (c) attaches to all salary or wages that become due by the employer to the liable party at any time while the attachment order is in force, whether or not the contract of employment or contract for services under which the salary or wages become due existed at the date of the attachment order.

Compare: 1947 No 16 s 84I

17.33 When attachment order may be issued

- (1) If the liable party has been examined under rule 17.15, the court, on the written or oral application of the entitled party, may make an attachment order at any time after judgment is sealed.
- (2) An attachment order—
 - (a) may be made against a person who the court is satisfied is an employer of the liable party:

Part 17—*continued*
Subpart 4—*continued*

- (b) may be made for a fixed period or until the judgment debt has been fully paid:
 - (c) must specify the person to whom the amounts to be deducted must be paid:
 - (d) must specify the protected earnings amount.
- (3) Form E 3 must be used.
Compare: 1947 No 16 s 84G

17.34 Attachment order to be served on employer

- (1) A copy of an attachment order must be served on the employer to whom it relates—
 - (a) personally; or
 - (b) by leaving it at the employer's place of residence or business; or
 - (c) by sending it by post, addressed to the employer at the employer's place of residence or business.
- (2) In the absence of proof to the contrary, any order served by post is deemed to have been served on the fourth working day after the day on which it was posted.
- (3) To prove service it is sufficient to prove that the letter was properly addressed and posted.
- (4) Every attachment order takes effect when a copy of the order is served on the employer in accordance with this rule.

Compare: 1947 No 16 s 84H

17.35 Priority of attachment order

- (1) The charge under an attachment order is subject to the following charges, adjustments, and deductions (whether the charge was created or the adjustment or deduction was authorised before or after the making of the attachment order under this subpart):
 - (a) a charge created by an attachment order or deduction notice made under the Family Proceedings Act 1980:
 - (b) a charge created by an attachment order made under the Summary Proceedings Act 1957:

Part 17—*continued*
Subpart 4—*continued*

- (c) a deduction notice issued under the Child Support Act 1991;
 - (d) a deduction notice issued under section 157 of the Tax Administration Act 1994 (as applied by section 46 of the Student Loan Scheme Act 1992);
 - (e) a deduction from or adjustment to a benefit under section 86 of the Social Security Act 1964.
- (2) Subclause (3) applies if the liable party assigns or charges the liable party's salary or wages before or after the making of the attachment order.
 - (3) The attachment order has the same effect as it would have if the assignment or charge had not occurred.
 - (4) Section 84 of the Social Security Act 1964 does not apply to an attachment order under this rule.

Compare: 1947 No 16 ss 84G, 84I

17.36 Protected earnings amount

- (1) The sum of an amount charged under an attachment order and any other amounts described in subclause (2) must not reduce the net earnings or any benefit of the liable party below the protected earnings amount, and if necessary the amount to be deducted under an attachment order must be reduced or cancelled accordingly.
- (2) For the purposes of subclause (1), **other amounts** means the amounts stated in any or all of the following:
 - (a) an attachment order under another Act; and
 - (b) a deduction notice made under the Family Proceedings Act 1980 or issued under section 86 or 86A of the Social Security Act 1964.

Compare: 1947 No 16 s 84G

17.37 Liability of employer

- (1) While an attachment order remains in force and whenever any salary or wages become due and payable by an employer to the liable party, the employer must—

Part 17—*continued*
Subpart 4—*continued*

- (a) deduct from the salary or wages a sufficient amount to satisfy the charge on the money that has accrued before the day on which the salary or wages becomes due and payable; and
 - (b) not later than the 20th day of the next month after the month in which the deduction is made, pay the deducted amount to the person specified in the attachment order.
- (2) All sums deducted are treated as having been paid by the employer in satisfaction of the salary or wages payable by the employer to the liable party.
- (3) All sums deducted are treated as having been paid by the liable party in satisfaction of the liable party's liability to pay the judgment debt.
- (4) The employer must notify a court officer within 5 working days if the liable party leaves or is dismissed from the employer's employment.
- (5) If an employer defaults in paying any money in satisfaction of a charge under an attachment order, that money becomes a debt due by the employer to the entitled party, and may be recovered by the entitled party in any court of competent jurisdiction.
- (6) Subclause (1) is subject to rule 17.36.
Compare: 1947 No 16 s 84J

17.38 Attachment orders in State services

- (1) In this rule,—
employee has the same meaning as in the State Sector Act 1988
State services has the same meaning as in the State Sector Act 1988.
- (2) This subpart binds the Crown to the extent of and subject to subclauses (3) and (4).
- (3) If the liable party is an employee in the State services, an attachment order may be made against the employer of that employee, and—

Part 17—*continued*
Subpart 4—*continued*

- (a) the order must be served on the chief executive of the employee's department or agency or other instrument of the Crown, and also on any officer of the Crown specified in the order; and
 - (b) the order must be served in accordance with rule 17.34.
- (4) When service is effected by post, it is sufficient if the letter is addressed to the person to be served by that person's official title or any sufficient description.
- (5) If the liable party is entitled to a benefit within the meaning of the Social Security Act 1964, an attachment order may be made against the chief executive of the department for the time being responsible for the administration of that Act.
- (6) If subclause (5) applies, the order must be served by leaving a copy of the order at, or sending a copy of the order by post to,—
 - (a) the district office of that department nearest to the liable party's place of residence; or
 - (b) an address notified by the chief executive of that department to the chief executive of the Ministry of Justice.

Compare: 1947 No 16 s 84L

17.39 Variation, suspension, and discharge of attachment orders

- (1) An entitled party or a liable party may apply to a Judge for relief under this rule at any time.
- (2) If a Judge is satisfied that there is a good reason to do so, he or she may—
 - (a) vary or suspend the order; or
 - (b) discharge the order.
- (3) The variation, suspension, or discharge takes effect when notice of it is served on the employer in accordance with rule 17.34.
- (4) The powers of the Judge under this rule are in addition to the court's powers under rule 7.49.

Compare: 1947 No 16 s 84M

Part 17—*continued**Subpart 5—Charging orders***17.40 Effect of charging order**

- (1) A charging order charges the estate, right, title, or interest of the liable party in the property described in the order with payment of the amount for which the entitled party may obtain or has obtained judgment.
- (2) A charging order may be in form E 4, form E 5, or form E 6.
Compare: 1908 No 89 Schedule 2 r 548

17.41 Leave to issue charging order

Leave to issue a charging order before judgment may be granted only on proof that the liable party, with intent to defeat either his or her creditors or the entitled party or both,—

- (a) is removing, concealing, or disposing of the liable party's property; or
- (b) is absent from or about to leave New Zealand.

Compare: 1908 No 89 Schedule 2 r 567

17.42 Issue of charging order without leave after judgment

After judgment is sealed, the entitled party may issue a charging order without leave.

Compare: 1908 No 89 Schedule 2 r 568

17.43 Charging order where amount involved small

If the amount involved is so small that the issue of a charging order is vexatious or worthless, the court may—

- (a) refuse the application for a charging order; or
- (b) 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 569

17.44 Application for relief by persons prejudicially affected

- (1) At any time, a person alleging that he or she is prejudicially affected by a charging order may apply to the court for relief.
- (2) The court may—
 - (a) vary or rescind the order; or

Part 17—*continued*
Subpart 5—*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 7.49.

Compare: 1908 No 89 Schedule 2 r 570

17.45 Claim of third party on property charged

- (1) For the purposes of this rule, **interested third party** means a person other than the entitled party or liable party who allegedly—
 - (a) owns the charged property; or
 - (b) has a lien, charge, or other claim on the charged property.
- (2) The court may order an interested third party to attend the court and state the nature and details of the third party's interest in the charged property.
- (3) An interested third party may attend and state the nature and particulars of that party's claim to the court without the court's leave at the hearing of—
 - (a) an application to make the charging order final;
 - (b) an application to set aside or vary the charging order.
- (4) An interested third party must give 24 hours' notice to the court and all affected parties of an intention to attend the court under subclause (3).

Compare: 1908 No 89 Schedule 2 r 571

17.46 Apportionment when more than 1 charging order

- (1) Subclause (2) applies if more than 1 charging order has been issued against the same liable party.
- (2) The court may, on the application of the liable party or any other person claiming to be affected, determine how much or what part of the relevant property is for the separate use of each entitled party who has obtained a charging order.

Compare: 1908 No 89 Schedule 2 r 572

Part 17—*continued*
Subpart 5—*continued*

17.47 Charging order for land final when issued

- (1) A charging order may charge an estate, right, title, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent) in any land held in the liable party's own name.
- (2) A charging order issued under this rule is a final charging order when it is issued.

Compare: 1908 No 89 Schedule 2 r 573

17.48 Registration of charging order under Land Transfer Act 1952

- (1) A final charging order in respect of land that is under the Land Transfer Act 1952 must be registered under that Act against the land's certificate of title.
- (2) The charging order must sufficiently refer to the affected land so as to identify that land by—
 - (a) a description of the land; or
 - (b) a reference to a certificate of title or other instrument containing a description of the land.
- (3) 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 Land Transfer Act 1952, the charging order must have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.
- (4) The entitled party must deposit a duplicate of the charging order with the District Land Registrar (unless that Registrar has dispensed with the production of duplicate instruments in accordance with the Land Transfer Act 1952).

Compare: 1908 No 89 Schedule 2 r 574

17.49 Registration of charging order not under Land Transfer Act 1952

- (1) A final charging order in respect of land that is not under the Land Transfer Act 1952 must be registered with the district Registrar of Deeds under the Deeds Registration Act 1908 or

Part 17—*continued*
Subpart 5—*continued*

otherwise in accordance with the current law about the registration of deeds.

- (2) The charging order must sufficiently refer to the affected land so as to identify that land by—
 - (a) a description of the land; or
 - (b) a reference to a Crown grant or other instrument containing a description of the land.
- (3) The charging order must 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 r 575

17.50 Sale before registration of charging order

An unregistered charging order has no effect against a purchaser for valuable consideration.

Compare: 1908 No 89 Schedule 2 r 576

17.51 Discharge of land from charging order

Land subject to a final charging order is discharged from that order on registration with the District Land Registrar or Registrar of Deeds of—

- (a) a memorandum of satisfaction of the judgment in the proceeding in which the charging order has been issued or other sufficient evidence of satisfaction; or
- (b) an order of the court to the effect that the land is 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.

Compare: 1908 No 89 Schedule 2 r 577

17.52 Lapse of charging order after 2 years

- (1) A charging order no longer binds the land affected and is treated as discharged after 2 years from the date of the charging order unless it is extended under subclause (2).

Part 17—*continued*
Subpart 5—*continued*

- (2) The court may within that period, if it thinks just, extend the effect of a charging order for any necessary period.
- (3) Subclause (1) does not apply if the charging order has led to a sale order, and a person registers any of the following in relation to the land under that sale order:
 - (a) an instrument of transfer:
 - (b) a deed of conveyance:
 - (c) an assignment.

Compare: 1908 No 89 Schedule 2 r 578

17.53 Personal property may be charged

A charging order may charge all personal property, including—

- (a) debts payable by or accruing due from the Crown to the liable party that are not excepted by section 26 of the Crown Proceedings Act 1950:
- (b) a debt or sum of money due or accruing due to the liable party, including money—
 - (i) due or accruing due to the liable party by a public body; or
 - (ii) standing to the credit of the liable party in a proceeding or interlocutory application; or
 - (iii) standing to the credit of the liable party in the possession of a Sheriff or court officer:
- (c) the right or interest of the liable party in a partnership:
- (d) shares held by the liable party in any company that—
 - (i) is incorporated in New Zealand; or
 - (ii) has a registry in New Zealand in which transfers of shares may be registered:
- (e) the estate, right, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent) in any land, or in any money, shares, or other personal property, held under or because of any express or implied trust for the liable party.

Compare: 1908 No 89 Schedule 2 r 579

Part 17—*continued*
Subpart 5—*continued*

17.54 Interim charging order in first instance

- (1) A charging order under rule 17.53—
 - (a) is a limited charging order until the court discharges or finalises it in accordance with these rules; and
 - (b) is called an **interim charging order** in this rule and in rules 17.55 to 17.60.
- (2) An interim charging order must be served—
 - (a) on the person it is intended to affect; or
 - (b) on any person the court directs, if money is—
 - (i) due by the Crown or a public body; or
 - (ii) standing to the credit of a liable party in a proceeding or interlocutory application.
- (3) If an interim charging order is intended to affect an estate, right, or interest in land under or because of any trust,—
 - (a) that interim charging order may also be registered against the land; or
 - (b) a caveat may be lodged against the land in respect of the interim charging order.

Compare: 1908 No 89 Schedule 2 r 580

17.55 Effect of interim charging order

A person served with an interim charging order may not, except under rules 17.56 to 17.61 or with the leave of the court,—

- (a) pay over any debt, income, interest, dividends, bonus, profits, or other money due or accruing due to the liable party named in the interim charging order; or
- (b) make, concur in making, or permit any conveyance, transfer, assignment, or disposition of any estate, right, or interest, or of any share in a partnership or company, of the liable party named in the interim charging order.

Compare: 1908 No 89 Schedule 2 r 581

17.56 Liability of persons breaching interim charging order

- (1) If a person who has been served with an interim charging order breaches rule 17.55, the court may order that person to pay the entitled person either of the following:

Part 17—*continued*
Subpart 5—*continued*

- (a) the amount of the money paid or the value of the property disposed of in breach of that rule; or
 - (b) a sufficient part of the money paid or the value of the property disposed of in breach of that rule to satisfy any judgment the entitled party may obtain or may have obtained in the proceeding.
- (2) The court's orders under subclause (1) may be in addition to or instead of a penalty that may be imposed by or under another rule.

Compare: 1908 No 89 Schedule 2 r 582

17.57 Money may be paid into court

- (1) A person served with an interim charging order may pay the money affected by the order into court.
- (2) The money paid into court must be paid out in accordance with the result of the proceeding or an order of the court.

Compare: 1908 No 89 Schedule 2 r 583

17.58 Court may order sale of property affected

- (1) On an application by the entitled party or by the person affected by the order, the court may do 1 or more of the following:
- (a) order that any property affected be sold;
 - (b) give directions about the sale as the court thinks just;
 - (c) order that the net proceeds of the sale be paid into court, to be paid out later in accordance with the result of the proceeding or an order of the court.
- (2) The court may act under subclause (1) when making an interim charging order or at any later time before judgment.

Compare: 1908 No 89 Schedule 2 r 584

17.59 Application to make final charging order after judgment

- (1) The entitled party may apply to the court to have an interim charging order made final at any time after judgment is sealed.

Part 17—*continued*
Subpart 5—*continued*

- (2) The court may make orders and give directions for the disposal of money paid into court under rule 17.57 or 17.58.

Compare: 1908 No 89 Schedule 2 r 585

17.60 Execution after charging order made final

After a charging order has been made final, the entitled party may do either or both of the following:

- (a) if a person is affected by an interim charging order because he or she owes any money due or accruing due to the liable party,—
 - (i) issue a sale order under rules 17.62 to 17.82 against that person's property; and
 - (ii) execute the sale order as if judgment had been sealed by the liable party against that person:
- (b) sell any property referred to in paragraphs (c) to (e) of rule 17.53 under a sale order in the same way (as nearly as possible) as a sale of land under rules 17.62 to 17.82.

Compare: 1908 No 89 Schedule 2 r 586

17.61 Discharge of person served with order

- (1) A person served with a final charging order who pays money under it to a court officer (whether because of an enforcement process or otherwise) is discharged from that person's obligation to the liable party to the extent of the amount paid.
- (2) Subclause (1) applies even if the court sets aside or reverses—
 - (a) the final charging order; or
 - (b) the judgment in the proceeding in which the final charging order was obtained.

Compare: 1908 No 89 Schedule 2 r 587

*Subpart 6—Sale orders and possession
orders*

17.62 Effect of sale order

- (1) A sale order authorises and requires an enforcing officer to seize all the liable party's personal property except—

Part 17—*continued*
Subpart 6—*continued*

- (a) necessary tools of trade to a value not exceeding \$5,000; and
 - (b) necessary household furniture and effects to a value not exceeding \$10,000 (necessary household furniture and effects includes the clothes of the liable party and his or her family).
- (2) An enforcing officer must take the actions described in subclause (3) if money seized under a sale order is not enough to—
 - (a) discharge any claims which by law are entitled to be paid in priority to the entitled party's claim; and
 - (b) pay the costs and expenses of executing the order; and
 - (c) satisfy the amount of the judgment and interest payable to the entitled party.
- (3) In the situation described in subclause (2), an enforcing officer must—
 - (a) receive and recover the sum or sums—
 - (i) payable under any cheques, bills of exchange, and promissory notes; or
 - (ii) secured by bonds or other securities for money; and
 - (b) sell, in accordance with rules 17.63 to 17.82, the seized chattels and the liable party's estate, right, title, or interest in any land (whether it is in possession, remainder, reversion, or expectancy).
- (4) A sale order may be in form E 7.
Compare: 1908 No 89 Schedule 2 r 549

17.63 When sale order may be issued

An entitled party may issue a sale order at any time after judgment for a sum of money is sealed.

Compare: 1908 No 89 Schedule 2 r 588

17.64 Execution for less than full amount of judgment

- (1) An entitled party must endorse the sale order with the amount claimed.

Part 17—*continued*
Subpart 6—*continued*

- (2) The amount claimed must reflect any of the following that apply:
 - (a) money paid on account of the judgment:
 - (b) the entitled party's wish to waive—
 - (i) any part of the money due on account of the judgment; or
 - (ii) payment of the entitled party's costs or any part of those costs:
 - (c) that the judgment has been given for a larger amount than is due.
- (3) If the amount due under a judgment is less than the amount of the judgment and the entitled party has not endorsed that on the sale order as required by this rule, the court may set aside or vary the order and make whatever restitutionary or incidental orders are thought just.

Compare: 1908 No 89 Schedule 2 r 589

17.65 Recovery of money owing on cheques and other securities

- (1) If money seized under a sale order is not the full amount required by the sale order, the enforcing officer may seize any of the following as security for the balance of the full amount:
 - (a) cheques:
 - (b) bills of exchange:
 - (c) promissory notes:
 - (d) bonds:
 - (e) other securities for money.
- (2) The officer may sue the issuer of the security in the officer's own name for the sum or sums secured by it in accordance with the terms of the particular security seized.
- (3) The officer need not sue under subclause (2) unless the entitled party enters into a bond with 2 sufficient guarantors that indemnifies the officer against—
 - (a) all costs and expenses of suing; and
 - (b) all costs and expenses to which the officer may become liable as a result of the suit.

Part 17—*continued*
Subpart 6—*continued*

- (4) The expenses of the bond referred to in subclause (3) must be deducted out of any money recovered in the proceeding.

Compare: 1908 No 89 Schedule 2 r 590

17.66 Discharge of person paying on cheque or other security

A person liable to the liable party under a security seized under rule 17.65 who pays money under the security to a court officer (whether because of an enforcement process or otherwise) is discharged from liability to the liable party to the extent of the amount paid.

Compare: 1908 No 89 Schedule 2 r 591

17.67 Disposal of proceeds

The order in which an enforcing officer must apply the proceeds of the sale order is—

- (a) discharging all claims that have priority over the entitled party's claim;
- (b) paying the costs and expenses of executing the sale order;
- (c) paying the entitled party a sufficient sum to satisfy the amount required by the sale order;
- (d) paying any surplus to the liable party.

Compare: 1908 No 89 Schedule 2 rr 592, 605

17.68 Not necessary to seize land

An enforcing officer need not seize land before selling the land.

Compare: 1908 No 89 Schedule 2 r 593

17.69 Moving seized chattels

- (1) An enforcing officer must move chattels seized under a sale order to an appropriate selling place as soon as possible.
- (2) The liable party may consent in writing to the chattels—
 - (a) remaining in the place where they were seized; and
 - (b) being kept in the custody of a person the officer considers appropriate; and

Part 17—*continued*
Subpart 6—*continued*

- (c) being sold in that place.
- (3) Subclause (2) is an exception to subclause (1).
Compare: 1908 No 89 Schedule 2 r 594

17.70 Place of sale

- (1) An enforcing officer must sell seized chattels in the place he or she considers best.
- (2) With the written consent of the liable party, the officer may—
 - (a) sell chattels at the place of seizure; and
 - (b) sell land to be sold on the land itself.Compare: 1908 No 89 Schedule 2 r 595

17.71 Advertising of notice of sale

- (1) An enforcing officer must give notice of the sale of seized chattels in whichever newspaper or newspapers the officer considers sufficient.
- (2) The notice must be first published,—
 - (a) for a land sale, at least 15 working days before the date of the intended sale;
 - (b) for any other sale, at least 5 working days before the date of the intended sale.
- (3) The notice may be republished in the same or other newspaper or newspapers in the way and to the extent the officer considers sufficient.
- (4) The notice—
 - (a) must contain the information specified in rule 17.73; and
 - (b) must be in the form and give the particulars the officer considers sufficient.Compare: 1908 No 89 Schedule 2 r 596

17.72 Service of notice of sale on liable party

At least 7 working days before the sale, an enforcing officer must serve a copy of the notice referred to in rule 17.71 on the liable party—

Part 17—*continued*
Subpart 6—*continued*

- (a) at the liable party's address for service; or
- (b) if the liable party has not filed an address for service, at the liable party's last known residential address.

Compare: 1908 No 89 Schedule 2 r 597

17.73 Contents of notice of sale

The notice referred to in rule 17.71—

- (a) must state that the sale is made on behalf of the entitled party; and
- (b) must 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 enforcing officer; and
 - (iii) the name of the solicitor (if any) for the entitled party.

Compare: 1908 No 89 Schedule 2 r 598

17.74 Method and conditions of sale

- (1) All sales under a sale order must be—
 - (a) by public auction on terms and conditions approved by the Registrar; or
 - (b) by private treaty—
 - (i) with the parties' consent; or
 - (ii) by order of the court made on the application of either party.
- (2) An enforcing officer may choose whether to sell property seized under a sale order in 1 lot or in several lots.
- (3) Unless the court directs otherwise, all sales—
 - (a) must be for cash on delivery, assignment, or transfer; and
 - (b) must be of the estate, right, title, or interest only of the liable party in the chattels or land put up for sale.

Compare: 1908 No 89 Schedule 2 r 599

Part 17—*continued*
Subpart 6—*continued*

17.75 Powers of enforcing officer in relation to sale by auction

An enforcing officer—

- (a) may sell property seized under a sale order by public auction without an auctioneer's licence (despite anything in any Act to the contrary); and
- (b) may place a reserve on the property; and
- (c) may put the property up for sale as often as required until it is sold.

Compare: 1908 No 89 Schedule 2 r 600

17.76 Power of enforcing officer to seize title deeds

- (1) The enforcing officer may require the liable party—
 - (a) to provide (if they are in the liable party's possession) the certificate of title and any title deeds for land that is to be sold; and
 - (b) to disclose—
 - (i) the name of any person who has possession of the certificate of title and any title deeds for land that is to be sold; and
 - (ii) the address where those documents are kept.
- (2) If the person who possesses the documents referred to in subclause (1) refuses to give them to the officer, the officer may seize those documents.
- (3) The officer may give copies of the certificate of title and any title deeds to an intending purchaser.

Compare: 1908 No 89 Schedule 2 r 601

17.77 Order of sale of land and chattels

- (1) An enforcing officer must sell chattels first if both land and chattels were seized from a liable party under the same sale order unless another sequence is—
 - (a) preferred by the liable party; or
 - (b) directed by the court.
- (2) Despite any preferences of the liable party, the court may direct under subclause (1)(b) that the land be sold—
 - (a) before the chattels; or

Part 17—*continued*
Subpart 6—*continued*

- (b) at the same time as a specified chattel or a specified class of chattels.
- (3) If 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 amount required by the sale order, the enforcing officer must sell the remaining seized property.

Compare: 1908 No 89 Schedule 2 r 602

17.78 Power of liable party or mortgagee to give directions concerning sale of land

- (1) A liable party whose interest in land is to be sold or a mortgagee of that interest may by notice require that any specified portions of the land that may lawfully be sold separately be sold first.
- (2) A notice under subclause (1) must be—
 - (a) in writing; and
 - (b) delivered to an enforcing officer at least 10 working days before the date of the sale.
- (3) If the liable party and a mortgagee deliver conflicting requirements under subclause (1), the mortgagee's requirement prevails.
- (4) An enforcing officer must sell the specified portions first in accordance with a notice under subclause (1) or any prevailing mortgagee's requirement under subclause (3).
- (5) If the sum realised by the sale of the specified portions is sufficient to satisfy the execution, interest, costs, and expenses, the officer may not sell any other part of the land.
- (6) Unless subclause (5) applies, the officer must, after selling the specified portions, proceed with the sale of the remainder.

Compare: 1908 No 89 Schedule 2 r 603

17.79 Transfers, etc, to purchaser

- (1) A valid instrument of transfer, deed of conveyance, or assignment to the purchaser of the estate, right, title, or interest of the liable party in any land or chattels sold—

Part 17—*continued*
Subpart 6—*continued*

- (a) must be prepared by the purchaser at the purchaser's own expense; and
 - (b) must be left for approval with the enforcing officer 4 working days before it is to be executed.
- (2) The officer must (if required by the purchaser) execute the instrument if and when the officer approves it.
- (3) The instrument, when executed by the officer,—
 - (a) is equally effective for all purposes as if it had been executed by the liable party; and
 - (b) is prima facie evidence of—
 - (i) the existence of a valid judgment and sale order supporting the seizure by the officer; and
 - (ii) all necessary notices having been given and published; and
 - (iii) a valid seizure; and
 - (iv) a sale having taken place according to law.

Compare: 1908 No 89 Schedule 2 r 604

17.80 Effect of possession order

- (1) A possession order authorises and requires an enforcing officer to deliver possession of the land or chattels described in the order to the person named in the order.
- (2) For the purpose described in subclause (1), the officer may—
 - (a) eject any other person from land; or
 - (b) seize and take possession of the chattels.
- (3) A possession order may be in form E 8.

Compare: 1908 No 89 Schedule 2 r 550

17.81 When possession order may be issued

If a judgment orders a party to deliver possession of land or chattels to another party, that other party may issue a possession order.

Compare: 1908 No 89 Schedule 2 r 606

Part 17—*continued*
Subpart 6—*continued*

17.82 Combined sale and possession order

If a judgment orders a party to pay a sum of money and to deliver possession of land or chattels to another party, that other party may issue a sale and possession order.

Compare: 1908 No 89 Schedule 2 r 607

*Subpart 7—Arrest orders and sequestration
orders*

17.83 Effect of arrest order

- (1) An arrest order authorises and requires an enforcing officer to arrest any person named in the order and to bring that person before the court at the time and place specified in the order, and until then, to keep the person in safe custody.
- (2) An arrest order may be in form E 9.

Compare: 1908 No 89 Schedule 2 r 551

17.84 Power to issue arrest order

- (1) In this subpart, an **original court order** means, whether or not the order is in a judgment, a court order to do or abstain from doing something that is not paying a sum of money.
- (2) If a party has been served with an original court order but does not comply, a Judge may issue an order arresting the non-complying party on the application of a party entitled to the benefit of that order.

Compare: 1908 No 89 Schedule 2 r 608

17.85 Power to commit to prison for disobedience

- (1) A court may commit to prison a party brought before the court on an arrest order unless the party complies with the original court order.
- (2) A court may commit a party to prison under subclause (1) for a term that—
 - (a) the court considers necessary; and
 - (b) is allowed by law.

Compare: 1908 No 89 Schedule 2 r 609

Part 17—*continued*
Subpart 7—*continued*

17.86 Effect of sequestration order

- (1) A sequestration order authorises and requires the sequestrator to enter and take possession of all the real and personal property of the party against whom it is directed.
- (2) The sequestrator must obtain the rents and profits from the property until—
 - (a) the party clears the party's contempt of court in the way specified in the order; or
 - (b) the court orders otherwise.
- (3) A sequestration order may be in form E 10.
Compare: 1908 No 89 Schedule 2 r 552

17.87 Power to issue sequestration order

- (1) If a party has been served with an original court order or an order to pay money into court but does not comply, the court may issue a sequestration order against the property of the non-complying party.
- (2) The court can issue a sequestration order under subclause (1) only on notice to the non-complying party.
- (3) The court must appoint a sequestrator of the property and the provisions of rules 7.61 to 7.67 apply, with all necessary modifications, as if the sequestrator were a receiver.
Compare: 1908 No 89 Schedule 2 r 610

*Subpart 8—Absconding debtors and
imprisonment for debt*

17.88 Arrest of absconding debtor

- (1) The plaintiff may make an application without notice for an order to arrest and imprison a defendant under section 55 of the Act.
- (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.

Part 17—*continued*
Subpart 8—*continued*

- (3) The court may make any order that is just on an application under subclause (2).

Compare: 1908 No 89 Schedule 2 r 611(1)–(3)

17.89 Process for order to arrest and imprison defendant

- (1) An order to arrest and imprison a defendant under section 55 of the Act must be—
(a) in form E 11; or
(b) if section 55(3) of the Act applies, in form E 12.
- (2) Concurrent orders may be issued for arrest in different places.
- (3) The order must be endorsed with the address for service of the plaintiff before it is delivered to the Sheriff.
- (4) The Sheriff or other enforcing officer must endorse the actual date of the arrest on the order within 2 working days after the arrest.

Compare: 1908 No 89 Schedule 2 r 611(4)–(7)

17.90 Security by absconding debtor

- (1) The security to be given by a defendant to discharge an order to arrest and imprison him or her under section 55 of the Act 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) Within 4 working days of receiving details of the names and addresses of the proposed sureties and the form of the proposed bond, the plaintiff may give a notice of objection to the sureties and form of bond, with details of the reasons for objection.
- (3) If the plaintiff gives a notice under subclause (2), the Registrar must determine the sufficiency of the security, and the Regis-

Part 17—*continued*
Subpart 8—*continued*

trar has the power to award the costs of the reference to either party.

Compare: 1908 No 89 Schedule 2 r 612

17.91 Orders about security

The court may, at any time, order—

- (a) that the whole or part of a sum of money paid or secured under rule 17.90 be paid to the plaintiff; or
- (b) that any security given under rule 17.90 by the defendant be enforced.

Compare: 1908 No 89 Schedule 2 r 613

17.92 Discharge on payment

- (1) An enforcing officer must give a receipt for the payment into court of the amount required by an order under rule 17.91.
- (2) The plaintiff or the plaintiff's solicitor must give a certificate of receipt of the bond or other security required by an order under rule 17.91.
- (3) The defendant is entitled to be discharged out of prison when a receipt or certificate under this rule is given to the Sheriff.

Compare: 1908 No 89 Schedule 2 r 614

Part 18
Applications in equity and under statutes
Subpart 1—Application

18.1 Types of proceedings

This Part applies to the following types of proceedings:

Equitable jurisdiction

- (a) proceedings in which the relief claimed is wholly within the equitable jurisdiction of the court, such as—
 - (i) the determination of a claim to an entitlement as beneficiary under a will or trust or on the intestacy of a deceased person, or as creditor of a deceased person, whether the claim is made by the

Part 18—*continued*
Subpart 1—*continued*

person claiming to be entitled or by that person's assignee or successor:

- (ii) the ascertainment of a class of creditors, beneficiaries under a will, or persons entitled on the intestacy of a deceased person, or of beneficiaries under a trust:
- (iii) the giving of particular accounts by executors, administrators, or trustees:
- (iv) the payment into court of money held by executors, administrators, or trustees:
- (v) the giving of directions to persons in their capacity as executors, administrators, trustees, or beneficiaries to do or abstain from doing a particular act:
- (vi) the approval of a sale, purchase, compromise, or other transaction by executors, administrators, or trustees:
- (vii) the carrying-on of a business authorised to be carried on by any deed or instrument creating a trust or by the court:
- (viii) the interpretation of a deed or instrument creating a trust:
- (ix) the determination of a question that arises in the administration of an estate or trust or whose determination is necessary or desirable to protect the executors, administrators, or trustees:

Determinations by court under statutes

- (b) proceedings in which the relief is claimed solely under the following enactments:
 - (i) the Care of Children Act 2004:
 - (ii) the Charitable Trusts Act 1957:
 - (iii) the Companies Act 1993 (not being a proceeding properly brought under Part 19 or 31 of these rules):
 - (iv) the Corporations (Investigation and Management) Act 1989:

Part 18—*continued*
Subpart 1—*continued*

- (v) the Declaratory Judgments Act 1908:
- (vi) the Family Protection Act 1955:
- (vii) the Incorporated Societies Act 1908:
- (viii) the Industrial and Provident Societies Act 1908:
- (ix) the Insolvency Act 2006 and the Insolvency (Cross-border) Act 2006:
- (x) sections 140, 143, 144, 145, 145A, and 148 of the Land Transfer Act 1952 (which relate to caveats):
- (xi) the Law Reform (Testamentary Promises) Act 1949:
- (xii) the Mental Health (Compulsory Assessment and Treatment) Act 1992:
- (xiii) the Trustee Act 1956:
- (xiv) any repealed enactment to which Part 4 of the High Court Rules applied immediately before the commencement of these rules if the enactment continues to apply to the plaintiff:

Contracts for sale of land

- (c) any proceeding by a party to, or an assignee of, a contract for the sale of the freehold or leasehold in any land, 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):

Mortgages and charges over land

- (d) any proceeding by a person affected by a mortgage or charge (whether legal or equitable) of an interest in land for the purpose of determining—
 - (i) the person's rights or obligations under the mortgage or charge; or
 - (ii) the exercise or purported or threatened exercise of any right or power alleged to arise out of the mortgage or charge:

Part 18—*continued*
Subpart 1—*continued*

Proceedings directed by court

- (e) any other proceeding to which the court directs that this Part is to apply.

Compare: 1908 No 89 Schedule 2 rr 447, 448, 448B, 448C, 449

18.2 Limited application of this Part to proceedings under Property (Relationships) Act 1976

Rule 18.14 (which relates to joinder of claims and consolidation) and rule 18.15 (which relates to evidence) apply to proceedings transferred to the court by order of a Family Court Judge under section 22(3) of the Property (Relationships) Act 1976, but no other rule in this Part applies to proceedings under that Act.

Compare: 1908 No 89 Schedule 2 r 448D

18.3 This Part subject to rules under other Acts

The application of this Part to a proceeding brought under an Act is subject to any rules in force under that Act.

Compare: 1908 No 89 Schedule 2 r 448(2)

18.4 Commencement of proceedings

- (1) A proceeding under this Part must be—
(a) commenced by statement of claim; and
(b) accompanied by an application for directions under rule 7.9.
- (2) The application of this Part to a proceeding does not prevent the commencement of that proceeding by originating application if it is eligible to be so commenced under Part 19, in which event this Part does not apply.
- (3) Rule 7.9, with all necessary modifications, applies to a proceeding under this Part.

Compare: 1908 No 89 Schedule 2 r 449A

Part 18—*continued*

*Subpart 2—Special provisions concerning
pleadings, directions, and affidavits*

18.5 Naming of defendants in cases involving deceased estates or trusts

- (1) This rule applies to a proceeding that—
 - (a) involves a deceased estate or a trust; and
 - (b) is not commenced by the personal representative of the deceased person or the trustee of the trust.
- (2) The only defendant that may be named in the statement of claim is the personal representative or the trustee.
- (3) In proceedings under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, the only defendant that may be named in the statement of claim is the personal representative of the deceased person against whose estate the claim is brought.

Compare: 1908 No 89 Schedule 2 r 450(1), (2)

18.6 Persons served by direction of court need not be named as defendant

A person who becomes a defendant to a proceeding by being served under a direction of the court need not be named as defendant.

Compare: 1908 No 89 Schedule 2 r 450(3)

18.7 Applications for directions as to service

- (1) This rule applies when—
 - (a) the law requires the making of an application for directions as to service; 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
 - (d) 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 an applica-

Part 18—*continued*
Subpart 2—*continued*

- tion to set aside a statutory demand under section 290 of that Act; or
- (e) the court directs that the plaintiff should apply to the court under this rule.
- (2) The plaintiff must apply to the court without notice for directions as to service and for any orders for representation that may be required.
- (3) In support of the application, the plaintiff must provide (by affidavit or otherwise) the information that 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.
- (4) In the case of claims under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, the information required by subclause (3) 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 or her 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:
- (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.
- (5) The application must specify the directions sought and be accompanied by a memorandum by the plaintiff's solicitor or counsel stating why the directions are sought.

Compare: 1908 No 89 Schedule 2 r 451(1)–(4)

Part 18—*continued*
Subpart 2—*continued*

18.8 Orders giving directions as to service

- (1) On an application under rule 18.7, the Judge may make any orders for service or representation that the Judge thinks just.
- (2) If, in a proceeding involving an incapacitated person or minor, the Judge considers it is not necessary to appoint a litigation guardian, the Judge may make orders with regard to the representation of that person, without the appointment of a litigation guardian under rule 4.35.
- (3) The effect of every order for directions as to service or for representation made under this rule must be set out in the notice of proceeding in accordance with rule 5.23.

Compare: 1908 No 89 Schedule 2 r 451(5), (6)

18.9 Proceeding without service

- (1) This rule applies to a statement of claim that need not be served because of an enactment or a direction of a Judge.
- (2) The facts alleged in the statement of claim must be verified by or on behalf of the plaintiff by an affidavit (which may be appended to the statement of claim or filed separately) stating that, so far as they relate to matters within the personal knowledge of the person making the affidavit, they are true, and, so far as they relate to matters not within that person's personal knowledge, the person believes them to be true.
- (3) Despite subclause (2), the Judge may require any fact not within the personal knowledge of the person to be proved by the affidavit of a person who has such personal knowledge.

Compare: 1908 No 89 Schedule 2 r 452

18.10 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.

Compare: 1908 No 89 Schedule 2 r 456

Part 18—*continued*
Subpart 2—*continued*

18.11 Time for serving affidavit in support of appearance

- (1) If a defendant in any proceeding to which this Part applies files an appearance in lieu of a statement of defence, the defendant may, at the time of serving the defendant's appearance, without leave, and at any time afterwards with leave of the court, serve the defendant's affidavits in support of any matters referred to in the appearance.
- (2) These rules apply to affidavits filed under subclause (1) as though they were affidavits filed by a plaintiff in support of a statement of claim.

Compare: 1908 No 89 Schedule 2 r 457

18.12 Statement of defence to be filed

- (1) No affidavit may be filed by a defendant in opposition to the claim of the plaintiff or of any claimant under rule 18.13 unless the defendant has filed and served a statement of defence to the claim or an appearance.
- (2) Affidavits filed by any party after a statement of defence or appearance has been filed must be confined to matters put in issue by pleadings or by the appearance.
- (3) Subclause (1) is subject to rule 18.11.

Compare: 1908 No 89 Schedule 2 r 458

*Subpart 3—Multiple claims, joinders, and
consolidations of claims*

**18.13 Joining in proceedings under Family Protection Act 1955
and Law Reform (Testamentary Promises) Act 1949**

- (1) A person who is a defendant in a proceeding under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949 (**party A**) must make any claim against the same estate by filing a statement of claim in the proceeding, and, when that statement of claim is filed, these rules apply as if—
 - (a) party A were a plaintiff; and
 - (b) the plaintiff were a defendant.

Part 18—*continued*
Subpart 3—*continued*

- (2) When a statement of claim is filed under subclause (1), it is not necessary for party A to apply for directions for service or to file or serve a notice of proceeding but party A must serve party A's statement of claim and affidavits—
 - (a) on the personal representative; and
 - (b) on the plaintiff; and
 - (c) on all other persons (except party A) whom the plaintiff has been directed to serve.
- (3) A person, who has not been directed to be served in a proceeding under the Acts specified in subclause (1), must make any claim under those Acts against the same estate by filing a statement of claim in the proceeding, and, when that statement of claim is filed, subclauses (1) and (2) apply as if that person were party A.

Compare: 1908 No 89 Schedule 2 r 453

18.14 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 1 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 10.12 and 10.13 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.

Compare: 1908 No 89 Schedule 2 r 454

Part 18—*continued**Subpart 4—Evidentiary requirements***18.15 Evidence generally by agreed statement of facts or affidavit**

- (1) Unless a Judge otherwise directs, evidence in a proceeding to which this Part applies must be given—
 - (a) by means of an agreed statement of facts in accordance with rule 9.57; or
 - (b) by affidavit in accordance with rules 9.72 to 9.89.
- (2) Unless a Judge otherwise directs, evidence must be given orally in a proceeding—
 - (a) under the Law Reform (Testamentary Promises) Act 1949;
 - (b) in which relief by way of specific performance is sought.
- (3) Subclause (1) applies to a proceeding in respect of which a direction has been given under subclause (2).

Compare: 1908 No 89 Schedule 2 r 455

Part 19

Originating applications

*Subpart 1—Proceedings eligible to be commenced by originating application***19.1 Meaning of originating application**

In these rules, **originating application** means an application made in accordance with this Part.

19.2 Applications under certain enactments

Applications to the court under the following enactments must be made by originating application:

- (a) the Arbitration Act 1996 (other than article 35 of Schedule 1 and clause 5 of Schedule 2 of that Act);
- (b) section 21(1)(a) and (b) and Parts 3, 4, and 5 of the Charitable Trusts Act 1957:

Part 19—*continued*
Subpart 1—*continued*

- (c) sections 228(1)(d), 233(1)(c), 233(2)(c), 236, 290, 294(5), 295, 299, and Part 15A of the Companies Act 1993:
- (d) sections 34, 41, 95, 97, and 126 of the Coroners Act 2006:
- (e) sections 58 and 59 of the Corporations (Investigation and Management) Act 1989:
- (f) section 166E of the Customs and Excise Act 1996:
- (g) section 43(6) of the District Courts Act 1947:
- (h) the Habeas Corpus Act 2001:
- (i) section 23A of the Incorporated Societies Act 1908:
- (j) section 10A of the Industrial and Provident Societies Act 1908:
- (k) section 56 of the Judicature Act 1908:
- (l) sections 132, 133, 140, 143, 145, 145A, 148, and 217 of the Land Transfer Act 1952:
- (m) sections 30, 37, 52, 166, 180, and 182 of the Lawyers and Conveyancers Act 2006:
- (n) section 9A(3) of the Law Reform Act 1936:
- (o) section 12(1)(a) of the Minors' Contracts Act 1969:
- (p) section 41 of the Patents Act 1953 (subject to Part 22 of these rules):
- (q) sections 128, 131, 167, 168, 179, 181, 182, and 186 of the Personal Property Securities Act 1999:
- (r) the Criminal Proceeds (Recovery) Act 2009:
- (s) sections 126, 136, 244, 248, 253, 254, 258, 261, and 357 of the Property Law Act 2007:
- (t) the Protection of Personal and Property Rights Act 1988:
- (u) the Reciprocal Enforcement of Judgments Act 1934:
- (v) section 44C(2) and (8) of the Securities Act 1978:
- (w) section 47E of the Terrorism Suppression Act 2002:
- (x) section 76 of the Trustee Act 1956:
- (y) rule 7.81, 9.60, 24.11, 24.56, 28.4, or 32.2 of these rules:
- (z) any repealed enactment if—

Part 19—*continued*
Subpart 1—*continued*

- (i) the application under that enactment could have been made by originating application immediately before the commencement of these rules; and
- (ii) the enactment continues to apply to the applicant.

Compare: 1908 No 89 Schedule 2 r 458D(1)(a)

Schedule 2 rule 19.2(r): substituted, on 1 December 2009, by rule 4 of the High Court (Criminal Proceeds (Recovery) Act 2009) Amendment Rules 2009 (SR 2009/313).

19.3 Application of this Part to certain kinds of proceeding

This Part applies to the following kinds of proceeding:

- (a) an originating proceeding for contempt of court;
- (b) an originating proceeding for relief against forfeiture for non-payment of rent.

Compare: 1908 No 89 Schedule 2 r 458D(1)(b), (c)

19.4 Certain directions may be sought by originating application

The following office holders may seek the directions of the court by originating application:

- (a) a liquidator;
- (b) a receiver;
- (c) a judicial manager appointed under Part 1A of the Life Insurance Act 1908;
- (d) a statutory manager appointed under the Corporations (Investigation and Management) Act 1989;
- (e) a statutory manager appointed under the Reserve Bank of New Zealand Act 1989.

Compare: 1908 No 89 Schedule 2 r 458D(1)(d)

19.5 Court may permit proceeding to be commenced by originating application

- (1) The court may, in the interests of justice, permit any proceeding not mentioned in rules 19.2 to 19.4 to be commenced by originating application.

Part 19—*continued*
Subpart 1—*continued*

- (2) The court's permission may be sought without notice.
- (3) The proposed originating application must be filed with an application for permission under this rule.
Compare: 1908 No 89 Schedule 2 r 458D(1)(e)

19.6 Certain proceedings must be commenced by interlocutory application

- (1) This rule applies if—
 - (a) an application under the Arbitration Act 1996 or the Personal Property Securities Act 1999 has been made by originating application; and
 - (b) a party to the application wishes to make another application in respect of the same arbitration or the same security.
- (2) The other application must be made by an interlocutory application that relates to the proceeding commenced by the originating application.
- (5) This rule overrides rule 19.2(a) and (q).
Compare: 1908 No 89 Schedule 2 r 458D(5), (6)

Subpart 2—Procedure for originating applications

19.7 Commencement of proceeding

- (1) A proceeding that may be commenced by originating application is commenced when the originating application is filed in the proper registry of the court, as determined in accordance with rule 5.1, or when the court gives permission under rule 19.5(1).
- (2) This rule—
 - (a) prevails over rule 5.25 and Part 18; but
 - (b) is subject to the special rules for company liquidations in Part 31.

Compare: 1908 No 89 Schedule 2 r 458E(1), (5)

Part 19—*continued*
Subpart 2—*continued*

19.8 Memorandum relating to filing and address for service

- (1) At the end of the originating application there must be a memorandum stating the matters set out in rule 5.44.
- (2) The memorandum may be in one of the paragraphs of form G 10.

Compare: 1908 No 89 Schedule 2 r 458E(3)

19.9 Heading of documents

- (1) The heading of a document presented for filing in a proceeding commenced by originating application must be in form G 1.
- (2) However, if there is neither a defendant nor a respondent to the proceeding, the heading must be in the following form:

In the matter of [*title of Act*]

and

In the matter of [*full name, place of residence, occupation*]

Compare: 1908 No 89 Schedule 2 r 458E(4)

19.10 Application of rules relating to interlocutory applications

- (1) The following rules concerning interlocutory applications apply with all necessary modifications to proceedings commenced by originating application:
 - (a) rule 7.19 (contents, form, and filing of interlocutory application):
 - (b) rule 7.20 (affidavit to be filed with application):
 - (c) rule 7.21 (filing by post):
 - (d) rule 7.22 (service of application and supporting affidavit):
 - (e) rule 7.23 (application without notice):
 - (f) rule 7.24 (notice of opposition to application):
 - (g) rule 7.25 (affidavit to be filed with notice of opposition):
 - (h) rule 7.26 (affidavit in reply):
 - (i) rule 7.29 (rules governing affidavits):
 - (j) rule 7.30 (statements of belief in affidavits):
 - (k) rule 7.40 (failure to attend):
 - (l) rule 7.42 (adjournment):

Part 19—*continued*
Subpart 2—*continued*

- (m) rule 7.45 (interlocutory orders may be made subject to conditions):
- (n) rule 7.46 (determination of application without notice):
- (o) rule 7.47 (drawing up and sealing interlocutory order).
- (2) Subclause (1) is subject to the rules in this Part.
- (3) Despite subclause (1), rule 7.45, in its application to a proceeding commenced by originating application, is subject to the Act under which the originating application is made.

Compare: 1908 No 89 Schedule 2 r 458F

19.11 Directions as to parties and conduct of applications

Rule 7.9 applies, with all necessary modifications, to an originating application.

19.12 Originating applications relating to certain proceedings under Companies Act 1993

- (1) Despite rule 19.7, an originating application under section 294(5) or 295 of the Companies Act 1993 must be filed in the same office of the court in which the notice under section 294(1) of that Act was filed.
- (2) An originating application under section 299 of the Companies Act 1993 must be filed in the proper office of the court, as determined in accordance with rule 31.38.
- (3) The affidavit filed in support of an originating application under section 294(5) or 295 of the Companies Act 1993 must have attached to it a copy of the notice under section 294(1) of that Act.

Compare: 1908 No 89 Schedule 2 r 458EA

19.12A Special provisions for service of applications to remove caveats or set aside statutory demands

- (1) An originating application under section 143 of the Land Transfer Act 1952 for the removal of a caveat may be served, in accordance with rule 6.5, at the address for service stated in the caveat.

Part 19—*continued*
Subpart 2—*continued*

- (2) An originating application under section 290 of the Companies Act 1993 to set aside a statutory demand may be served, in accordance with rule 6.5, at the address shown in the statutory demand as the creditor's address or the address for payment.

Schedule 2 rule 19.12A: inserted, on 1 December 2009, by rule 8 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

Subpart 3—Evidence in originating applications

19.13 Evidence

Despite rules 7.20 and 7.25 (as applied by rule 19.10), in a proceeding commenced by originating application evidence may be taken orally on oath if the court, on application before or at the hearing, so directs.

Compare: 1908 No 89 Schedule 2 r 458L

19.14 Cross-examination of person making affidavit

Rule 9.74 applies to a proceeding commenced by originating application.

Compare: 1908 No 89 Schedule 2 r 458M

Part 20
Appeals

Subpart 1—Preliminary provisions

20.1 Application of this Part

- (1) This Part applies to appeals to the court under any enactment other than—
- (a) the Summary Proceedings Act 1957:
 - (b) the Arbitration Act 1996:
 - (c) the Bail Act 2000:
 - (d) appeals by way of case stated under Part 21 of these rules.
- (2) For the purposes of subclause (1)(a), appeals under an enactment that incorporates provisions (whether modified or not) of

Part 20—*continued*
Subpart 1—*continued*

the Summary Proceedings Act 1957 are not appeals under the Summary Proceedings Act 1957.

- (3) This Part applies subject to any express provision in the enactment under which the appeal is brought or sought to be brought.

Compare: 1908 No 89 Schedule 2 r 701

20.2 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

decision includes a finding, order, or judgment made by a decision-maker

decision-maker means a court, tribunal, 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

registry means the registry of the court—

- (a) at which an appeal is required to be filed under rule 20.8(1); or
- (b) to which documents relating to an appeal are transferred under rule 20.8(3).

Compare: 1908 No 89 Schedule 2 r 702

Subpart 2—Application for leave to appeal

20.3 Application for leave to appeal to court

- (1) An application for leave to appeal in a case when an enactment provides that an appeal to the court against a decision may not be brought without leave must be made—

Part 20—*continued*
Subpart 2—*continued*

- (a) to the decision-maker or, as the case requires, the court; and
 - (b) within 20 working days after the decision is given.
- (2) An application for leave to appeal must be made within 20 working days after the refusal of the decision-maker if—
 - (a) an enactment provides that the court may grant leave to appeal to it against a decision after the decision-maker refuses leave; and
 - (b) the decision-maker refuses leave.
- (3) The appeal must be brought—
 - (a) by the date fixed when the decision-maker or the court grants leave; or
 - (b) within 20 working days after the grant of leave, if the decision-maker or the court does not fix a date.
- (4) Any date fixed by the decision-maker is to be treated as a determination for the purposes of rule 7.50.
- (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
 - (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) An 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.

Compare: 1908 No 89 Schedule 2 r 703

Subpart 3—Commencement of appeal

20.4 Time for appeal if there is right of appeal

- (1) This rule applies if a party has a right of appeal to the court.
- (2) An appeal must be brought—

Part 20—*continued*
Subpart 3—*continued*

- (a) within the specified period if the enactment that confers the right of appeal specifies a period within which the appeal must be brought; or
 - (b) in every other case, within 20 working days after the decision appealed against is given.
- (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.

Compare: 1908 No 89 Schedule 2 r 704

20.5 Commencement of periods in rules 20.3 and 20.4

For the purposes of rules 20.3 and 20.4, a period begins when the decision to which it relates is given, whether or not—

- (a) reasons for the decision are given then or later; or
- (b) formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.

Compare: 1908 No 89 Schedule 2 r 705

20.6 When appeal brought

- (1) An appeal is brought when the appellant—
 - (a) files a notice of appeal in the 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 subclause (1).

Compare: 1908 No 89 Schedule 2 r 706

Part 20—*continued*
Subpart 3—*continued*

20.7 Power to dispense with service

Despite rule 20.6(1)(c), the court may dispense with service on a party of a notice of appeal on any terms the court thinks just.

Compare: 1908 No 89 Schedule 2 r 707

20.8 Filing notice of appeal

- (1) Subject to any contrary enactment, a notice of appeal must be filed in—
 - (a) the registry of the court nearest to the place where the hearing took place of the matter under appeal; or
 - (b) if no hearing took place, in the registry of the court nearest to the place where the decision appealed against was given; or
 - (c) any other registry of the court in which the parties agree that the notice of appeal may be filed.
- (2) If subclause (1)(c) 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 registry of the court in which it is filed.
- (3) The court may on application or on its own initiative in the circumstances set out in subclause (4) direct as follows:
 - (a) the notice of appeal must be filed in another registry of the court; or
 - (b) the documents relating to the appeal must be transferred to another registry of the court.
- (4) The circumstances are that it appears to the court that—
 - (a) a notice of appeal has been filed in the wrong registry of the court; or
 - (b) another registry of the court would be more appropriate.
- (5) Filing a notice of appeal in the wrong registry of the court does not invalidate an appeal.

Compare: 1908 No 89 Schedule 2 r 708

Schedule 2 rule 20.8: substituted, on 15 May 2009, by rule 6 of the High Court Amendment Rules 2009 (SR 2009/75).

Part 20—*continued*
Subpart 3—*continued*

20.9 Contents of notice of appeal

- (1) Unless the court otherwise directs, a notice of appeal must—
 - (a) have a heading stating the full name and description of each party and referring 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
 - (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 20.17 (which entitles a decision-maker, other than a District Court, to be represented and heard on an appeal).
- (4) An appellant may amend a notice of appeal at any time with the leave of a Judge.
- (5) If the notice of appeal does not attach a copy of the decision against which the appeal is brought, the appellant must file a copy of that decision immediately it becomes available.

Compare: 1908 No 89 Schedule 2 r 709

20.10 Stay of proceedings

- (1) An appeal does not operate as a stay—
 - (a) of the proceedings appealed against; or
 - (b) of enforcement of any judgment or order appealed against.
- (2) Despite subclause (1), the decision-maker or the court may, on application, do any 1 or more of the following pending determination of an appeal:

Part 20—*continued*
Subpart 3—*continued*

- (a) order a stay of proceedings in relation to the decision appealed against;
 - (b) order a stay of enforcement of any judgment or order appealed against;
 - (c) grant any interim relief.
- (3) An order made or relief granted under subclause (2) may—
- (a) relate to enforcement of the whole of a judgment or order or to a particular form of enforcement;
 - (b) be subject to any conditions for the giving of security the decision-maker or the court thinks just.

Compare: 1908 No 89 Schedule 2 r 710

20.11 Cross-appeal

- (1) A respondent wishing 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 registry of the court; and
 - (b) file a copy of the notice in the administrative office; and
 - (c) serve a copy of the notice on every other party directly affected by the cross-appeal.
- (2) A notice of cross-appeal must be filed no later than 2 working days before the case management conference relating to the appeal, except with the leave of the court.
- (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 respondent's failure to file and serve a notice of cross-appeal,—
- (a) allow the respondent to contend at the hearing that the decision appealed against should be varied; or

Part 20—*continued*
Subpart 3—*continued*

- (b) adjourn the hearing to allow the respondent time to file and serve a notice; or
 - (c) make any other order the court thinks just, including an order for the payment of costs.
- (5) A respondent may amend a notice of cross-appeal at any time with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 711

20.12 Dismissal or stay or abandonment of appeal or cross-appeal

- (1) The court may, on application, dismiss or stay an appeal or a cross-appeal if the court is satisfied that the appellant or the respondent has failed to proceed with it, or has failed to comply with a direction under rule 7.5.
- (2) The appeal is taken to have been dismissed, subject to the respondent's right to apply for an order as to costs, if the appellant signs, files, and serves on every other party a statement to the effect that the appellant abandons the appeal.
- (3) The cross-appeal is taken to have been dismissed, subject to the appellant's right to apply for an order as to costs, if the respondent signs, files, and serves on every other party a statement to the effect that the respondent abandons the cross-appeal.

Compare: 1908 No 89 Schedule 2 r 712

20.13 Security for appeal

- (1) This rule applies to an appeal other than an appeal for which the appellant has been granted legal aid under the Legal Services Act 2000.
- (2) The Judge must fix security for costs at the case management conference relating to the appeal, unless the Judge considers that in the interests of justice no security is required.
- (3) The amount of security must be fixed in accordance with the following formula, unless the Judge otherwise directs:

Part 20—*continued*
Subpart 3—*continued*

$$\frac{a}{2} \times b$$

where—

- a is the daily recovery rate for the proceeding as classified by the Judge under rule 14.4; and
 - b is the number of half days estimated by the Judge as the time required for the hearing.
- (4) Security must be paid to the Registrar at the registry of the court no later than 10 working days after the case management conference, unless the Judge otherwise directs.
- (5) Except in the case of an appeal under the District Courts Act 1947 (where non-compliance with the security order results in a deemed abandonment of the appeal under section 74), if the security is not paid within the time specified under subclause (4), the respondent may apply for an order dismissing the appeal.
- (6) The Judge must defer the fixing of security until the application for legal aid has been determined if—
- (a) an appellant has applied for legal aid under the Legal Services Act 2000; and
 - (b) at the time of the case management conference, the application has not been determined.

Compare: 1908 No 89 Schedule 2 r 713

Subpart 4—Matters leading up to hearing

20.14 Order for transcript of evidence

- (1) The court may order, on application, that—
- (a) a transcript be made of all or part of the evidence given at the hearing before the decision-maker; and
 - (b) the transcript be sent to the Registrar at the registry of the court.
- (2) An application under subclause (1) must be filed no later than the first of the following dates:

Part 20—*continued*
Subpart 4—*continued*

- (a) the date that is 20 working days after the date on which notice of appeal is filed in the court;
 - (b) the working day before the date of the case management conference.
- (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 registry of the court.
- (5) The court may order, on application by the administrative officer, that a party to the appeal pay some or all of the costs of making the transcript.
- (6) An order made under subclause (1) or (5) may be made on any conditions the court thinks just.

Compare: 1908 No 89 Schedule 2 r 714

20.15 Report by decision-maker

- (1) The decision-maker must, if the court directs, provide to the Registrar at the registry of the court a report setting out—
 - (a) any considerations, other than findings of fact, not set out in the decision but to which the decision-maker had regard in making the decision appealed against;
 - (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.
- (2) The Registrar must provide a copy of the report to every party to the appeal.

Part 20—*continued*
Subpart 4—*continued*

- (3) Every party to the appeal is entitled to be heard, and tender evidence, on any matter referred to in the report.

Compare: 1908 No 89 Schedule 2 r 715

20.16 Further evidence

- (1) Without leave, a party to an appeal may 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. An example of a special reason is that 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) Further evidence under this rule must be given by affidavit, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 716

Subpart 5—Conduct of appeal

20.17 Decision-maker entitled to be heard on appeal

The decision-maker is entitled to be represented and heard at the hearing of an appeal on all matters arising in it, unless—

- (a) the decision-maker is a District Court; or
(b) the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 717

20.18 Appeal is rehearing

Appeals are by way of rehearing.

Compare: 1908 No 89 Schedule 2 r 718

20.19 Powers of court on appeal

- (1) After hearing an appeal, the court may do any 1 or more of the following:
- (a) make any decision it thinks should have been made:

Part 20—*continued*
Subpart 5—*continued*

- (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;
 - (c) make any order the court thinks just, 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 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.

Compare: 1908 No 89 Schedule 2 r 718A

20.20 Repayment of judgment sum and interest

- (1) Subclause (2) applies when—
 - (a) a party to proceedings before a decision-maker (**party A**) has, in accordance with a judgment or order of the

Part 20—*continued*
Subpart 5—*continued*

- decision-maker, paid an amount to another party to the proceedings (**party B**); and
- (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) When this subclause 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 no greater than the prescribed rate (within the meaning of section 87(3) of the Judicature Act 1908) on the sum ordered to be repaid.

Compare: 1908 No 89 Schedule 2 r 718B

20.21 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.

Compare: 1908 No 89 Schedule 2 r 718C

Subpart 6—Appeals to Court of Appeal

20.22 Applications for leave

- (1) This rule applies when an enactment provides that a decision of the court may be appealed to the Court of Appeal with leave of the court.
- (2) If this rule applies, an application for leave to appeal must be made to the court within 20 working days after the decision is given.
- (3) 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 application under subclause (2) is served on the respondent.

Part 20—*continued*
Subpart 6—*continued*

- (4) An application for leave to appeal under subclause (2) or to cross-appeal under subclause (3) must be made by interlocutory application.

Compare: 1908 No 89 Schedule 2 rr 718E, 718F

Part 21
Cases stated

21.1 Application

- (1) This Part applies to—
- (a) appeals to the court under any Act by way of case stated for a decision on a question of law or fact (or both);
 - (b) other references to the court under any Act by way of case stated for a decision on a question of law or fact (or both).
- (2) This Part does not apply to cases stated by an order under rule 10.15.
- (3) This part applies subject to any express provision in the enactment under which the appeal is brought or sought to be brought.

Compare: 1908 No 89 Schedule 2 r 719

21.2 Some rules in Part 20 apply

The following rules apply, with all necessary modifications, to every appeal to which this Part applies:

- (a) rule 20.4(3) and (4) (extension of time for appeal);
- (b) rule 20.7 (power to dispense with service);
- (c) rule 20.10 (stay of proceedings).

Compare: 1908 No 89 Schedule 2 r 722

21.3 Interpretation

In this Part, unless the context otherwise requires,—

appropriate officer, in relation to a tribunal, means the Registrar, secretary, clerk, or any other officer of the tribunal who is responsible for the administration of the tribunal

Part 21—*continued*

appropriate registry means the registry of the court where the appeal or reference is to be filed

decision includes any order made by a tribunal or person

tribunal includes any—

- (a) Minister of the Crown
- (b) government department or officer
- (c) any other person or body that may be required, or is authorised, by or under any Act to state or refer a case for the opinion of the court.

Compare: 1908 No 89 Schedule 2 r 721

21.4 Method of commencing appeal or reference

- (1) An appellant must commence an appeal to which this Part applies by—
 - (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; and
 - (c) serving a copy of the notice of appeal on every party to the matter in which the decision was given (either before or immediately after the giving and filing of the notice of appeal).
- (2) References to which this Part applies that are not appeals (except for references on a tribunal's own initiative) commence in accordance with the tribunal's direction made on application by a party to the matter in which the question of law or fact (or both) arose.
- (3) A reference under subclause (2) must comply with rule 21.9(1).
- (4) A reference by a tribunal on its own initiative must be commenced by filing a case stated, which is signed by the chairman or other authorised officer of the tribunal, and complies with rule 21.9(1).

Compare: 1908 No 89 Schedule 2 rr 723(1), (2), 724

Part 21—*continued*

21.5 Time for appeal

A notice of appeal must be given to the tribunal and filed within 20 working days after the date of the decision to which the appeal relates.

Compare: 1908 No 89 Schedule 2 r 724A

21.6 Notice of appeal

Unless otherwise provided by any enactment, every notice of appeal must specify—

- (a) the decision or the part of the decision appealed from; and
- (b) the error of law alleged by the appellant (if any); and
- (c) the question of law or fact (or both) to be resolved; and
- (d) the relief sought.

Compare: 1908 No 89 Schedule 2 r 724B

21.7 Place for filing notice

- (1) The appropriate registry in which to file a notice of appeal is—
 - (a) the registry of the court nearest to the place where the matter was or is being heard; or
 - (b) any other registry of the court in which the parties agree that the notice or case may be filed.
- (2) If subclause (1)(a) applies, the court may direct that the notice of appeal be filed in another registry of the court if it appears to the court (on an application by a party) that—
 - (a) the notice of appeal has been filed in the wrong registry of the court; or
 - (b) another registry of the court would be more convenient to the parties.
- (3) If subclause (2)(b) applies, the parties must endorse on or file with the notice of appeal a memorandum of their agreement.

Compare: 1908 No 89 Schedule 2 r 724C

21.8 Lodging of draft case stated

- (1) Every person who gives a notice of appeal must, as soon as practicable after giving that notice, lodge a draft case with—

Part 21—*continued*

- (a) 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; and
 - (b) every party to the matter in which the question of law or fact (or both) arose.
- (2) Where the case stated is a reference from a tribunal, the tribunal must serve a draft case on every party to the matter in which the question of law or fact (or both) arose.
Compare: 1908 No 89 Schedule 2 r 723(3)

21.9 Contents of case

- (1) A case must state concisely—
 - (a) the circumstances relating to the matter leading to the statement of the case; and
 - (b) the relevant facts as determined by the tribunal (attaching copies of documents, if any) necessary to enable the court to decide the questions; and
 - (c) where appropriate, the respective contentions of the parties with reference to the questions; and
 - (d) the questions on which the opinion of the court is sought.
- (2) Subclause (3) applies when a ground of appeal is—
 - (a) that there was no evidence on which the tribunal could properly reach its decision, or a specified part of it; or
 - (b) that the tribunal reached a wrong conclusion on a question of fact.
- (3) When this subclause applies, there must be attached to the case—
 - (a) copies of the documents, affidavits, and exhibits that were placed before the tribunal; and
 - (b) a copy of any evidence given at the hearing that has been transcribed.
- (4) A transcript certified as correct by or on behalf of the tribunal requires no further verification of its contents.
- (5) No document or transcript of any evidence may be attached to the case unless it is necessary for a proper determination by

Part 21—*continued*

the court of the question of law or fact (or both) specified in the case.

- (6) The draft case may be amended by the tribunal only to correct errors of fact.
- (7) The case must be signed by or on behalf of the tribunal.

Compare: 1908 No 89 Schedule 2 r 724D

21.10 Order for transcription of evidence

- (1) In any case stated on a question of law or fact (or both), the court may order, on any conditions it thinks just, that a transcript be made of all or any part of the evidence that was material to the issues specified in the notice of appeal if—
 - (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 appeal is either of those referred to in rule 21.9(2).
- (2) Rule 20.14(2) to (6) applies, with all necessary modifications, in relation to an application for an order for a transcript as if the application were an application for an order under rule 20.14(1).

Compare: 1908 No 89 Schedule 2 r 724E

21.11 When case deemed to be stated

- (1) The appellant or the party who sought the stating of a case must ensure that, when the case has been settled and signed by or on behalf of the tribunal,—
 - (a) the case is filed in the appropriate registry; and
 - (b) immediately after the case has been filed in the appropriate registry, the party filing it must serve a copy on every party to the matter in which the question of law or fact (or both) arose.
- (2) A case is deemed to have been stated when a case stated has been filed.

Compare: 1908 No 89 Schedule 2 r 724F

Part 21—*continued***21.12 Power to amend case**

- (1) The court may send a case back to the tribunal for amendment—
- (a) to clarify the question of law or fact (or both) on which the opinion of the court is sought; or
 - (b) to provide any further information necessary to enable the court to dispose of the questions in the case stated.
- (2) The court may amend the case at the hearing.
- Compare: 1908 No 89 Schedule 2 r 724G

21.13 Security for costs

The court may order the appellant in a case stated to give security for costs.

Compare: 1908 No 89 Schedule 2 r 724I

21.14 Determination of questions

After hearing and determining the question of law or fact (or both) in a case stated, the court must do 1 or more of the following things:

- (a) in the case of an appeal, reverse, confirm, or amend the decision in respect of which the case was stated;
- (b) in the case of an appeal, remit the matter to the tribunal for reconsideration and decision in accordance with the opinion of the court on the question of law or fact (or both);
- (c) in every other case, remit the matter to the tribunal with the opinion of the court;
- (d) in any case, make any other order that is just.

Compare: 1908 No 89 Schedule 2 r 725

Part 22
Patents**22.1 Interpretation**

In this Part,—

Act means the Patents Act 1953

Commissioner means the Commissioner of Patents

Part 22—*continued*

journal means the *New Zealand Patent Office Journal*

report means a report by a scientific adviser

respondent's notice means a notice given under rule 22.32

scientific adviser includes—

- (a) an accountant:
- (b) an actuary:
- (c) an architect:
- (d) an engineer:
- (e) a medical practitioner:
- (f) a person with scientific qualifications:
- (g) a surveyor:
- (h) other specially skilled persons whose opinion in relation to any matter may be of assistance to the court.

Compare: 1908 No 89 Schedule 2 r 725A

Subpart 1—Scientific advisers

22.2 Appointment

- (1) In a proceeding under the Act or for infringement of a patent, the court may (with or without an application) appoint an independent scientific adviser to—
 - (a) assist the court; or
 - (b) inquire into and report on any questions of fact or opinion that do not involve questions of law or construction.
- (2) The court must appoint an independent scientific adviser if all parties request it.

Compare: 1908 No 89 Schedule 2 r 725B

22.3 Nominating scientific adviser and settling questions and instructions

- (1) A scientific adviser is nominated by the court.
- (2) Questions or instructions to be submitted or given to the scientific adviser must be settled by the court.

Compare: 1908 No 89 Schedule 2 r 725C

22.4 Report

- (1) A report by a scientific adviser must—

Part 22—*continued*
Subpart 1—*continued*

- (a) be made in writing to the court; and
 - (b) be accompanied by the number of copies the court requires.
- (2) The court must forward copies of the report to the parties.
- (3) If a report is not accepted by all parties to a proceeding, it must be—
 - (a) treated as information furnished to the court; and
 - (b) given the weight the court considers appropriate.

Compare: 1908 No 89 Schedule 2 r 725D

22.5 Cross-examination

- (1) A party may, within 10 working days of receiving a copy of a report, or within any longer time the court directs, apply for leave to cross-examine a scientific adviser on his or her report.
- (2) The court may make an order for cross-examination of the scientific adviser at the hearing.
- (3) At the hearing, the court must direct at what stage the scientific adviser will be called.

Compare: 1908 No 89 Schedule 2 r 725E

22.6 Experiment or test

- (1) If the scientific adviser considers that an experiment or test (other than one of an insignificant nature) is necessary in order to report in a satisfactory manner, he or she must—
 - (a) inform the parties; and
 - (b) endeavour to get agreement between the parties on expenses for, and the persons to attend, the experiment or test.
- (2) If there is no agreement between the parties, those matters are to be determined by the court.

Compare: 1908 No 89 Schedule 2 r 725F

22.7 Further or supplementary report

- (1) The court may direct a scientific adviser to make a further or supplementary report.

Part 22—*continued*
Subpart 1—*continued*

- (2) Rules 22.4 and 22.5 apply to further or supplementary reports.
Compare: 1908 No 89 Schedule 2 r 725G

22.8 Remuneration

A scientific adviser's remuneration must be fixed by the court, and includes—

- (a) the costs of making a report; and
- (b) a proper daily fee for attendance at court.

Compare: 1908 No 89 Schedule 2 r 725H

Subpart 2—Amending specification

22.9 Application of subpart to application under section 39

This subpart applies to an application made by a patentee under section 39 of the Act for an order to amend the patentee's complete specification.

Compare: 1908 No 89 Schedule 2 r 725X

22.10 Notifying Commissioner

The patentee must notify the Commissioner of an intention to make an application to amend.

Compare: 1908 No 89 Schedule 2 r 725Y

22.11 Advertisement

- (1) A notice must be accompanied by a copy of a suitable advertisement of the proposed amendment.
- (2) The Commissioner must publish the advertisement in the journal (on 1 occasion).
- (3) The advertisement must—
 - (a) contain particulars of the proposed amendment and of the patentee's address for service within New Zealand; and
 - (b) state that any person who wishes to oppose the amendment must, within 10 working days after the date of the

Part 22—*continued*
Subpart 2—*continued*

actual issue of the journal, give written notice to the patentee.

Compare: 1908 No 89 Schedule 2 r 725Z

22.12 Right to be heard

A person giving notice under rule 22.11(3)(b) is entitled to be heard, subject to any direction of the court on costs.

Compare: 1908 No 89 Schedule 2 r 725ZA

22.13 Time for making application

The patentee must, as soon as practicable after the expiration of 15 working days after the date of the issue of the journal in which an advertisement of the proposed amendment is published, proceed by way of interlocutory application.

Compare: 1908 No 89 Schedule 2 r 725ZB

22.14 Service of notice of interlocutory application

The patentee must serve notice of the interlocutory application, together with a copy of the specification certified by the Commissioner showing the proposed amendment in distinguishing ink or type, on—

- (a) the Commissioner; and
- (b) the parties; and
- (c) any person who has given notice of an intention to oppose.

Compare: 1908 No 89 Schedule 2 r 725ZC

22.15 Duty of court to give directions

On hearing the interlocutory application, the court must—

- (a) decide whether and on what terms an application is allowed to proceed (whether in relation to costs or otherwise); and
- (b) direct whether the application is to be heard on oral or affidavit evidence, and, if on affidavit evidence, fix the times within which affidavits must be filed by the parties

Part 22—*continued*
Subpart 2—*continued*

and other persons entitled to be heard under the Act or the rules.

Compare: 1908 No 89 Schedule 2 r 725ZD

22.16 Procedure when amendment allowed

- (1) If the court makes an order allowing a specification to be amended,—
 - (a) the patentee must immediately lodge a copy of the order with the Commissioner; and
 - (b) the Commissioner must advertise the order on 1 occasion in the journal and otherwise as the court may direct.
- (2) A patentee must, if required by the court or the Commissioner, leave a new specification and drawings as amended and prepared under the Patents Regulations 1954 at the Patent Office.

Compare: 1908 No 89 Schedule 2 r 725ZE

Subpart 3—Revoking patent

22.17 Application by originating application

- (1) An application to the court to revoke a patent under section 41 of the Act (not being an application made in the course of a proceeding) must be by way of an originating application.
- (2) The originating application must be filed in the registry of the court at Wellington (unless the court otherwise directs).

Compare: 1908 No 89 Schedule 2 r 725ZF

22.18 Respondent begins proceeding

- (1) The respondent is entitled—
 - (a) to begin and give evidence in support of the patent; and
 - (b) to reply, if the applicant gives evidence impeaching the validity of the patent.
- (2) This rule has effect despite rule 10.10.

Compare: 1908 No 89 Schedule 2 r 725ZG

Part 22—*continued**Subpart 4—Objections***22.19 Particulars if validity of patent disputed**

Particulars of an objection to the validity of a patent must—

- (a) be delivered with—
 - (i) an application for revocation under section 41 of the Act; or
 - (ii) a defence in a proceeding for infringement of a patent; or
 - (iii) a counterclaim for revocation under section 70 of the Act; and
- (b) include the grounds on which the validity of the patent is disputed; and
- (c) include particulars clearly stating issues intended to be raised.

Compare: 1908 No 89 Schedule 2 r 725ZH

22.20 Particulars if want of novelty alleged

- (1) The particulars of an objection on the basis of want of novelty must state the time and place of the alleged previous knowledge, publication, or use.
- (2) The particulars of an objection on the basis that the invention has been used prior to the date of the patent must—
 - (a) state the name and address of the alleged prior user and the place of prior use; and
 - (b) state whether the prior use is alleged to have continued to the date of the patent, and, if not, the earliest and latest dates on which the prior use is alleged to have taken place; and
 - (c) contain a description (accompanied by drawings, if necessary) sufficient to identify the alleged prior use; and
 - (d) if the use relates to machinery or apparatus, specify whether it is in existence and where it may be inspected.
- (3) Evidence that exists at the date of delivery of the particulars about machinery or apparatus in relation to which prior use is alleged is not able to be received, unless it is proved that the party relying on the prior use has,—

Part 22—*continued*
Subpart 4—*continued*

- (a) if the machinery or apparatus is in that party's own possession, offered an inspection of it; or
- (b) if the machinery or apparatus is not in that party's own possession, used best endeavours to obtain an inspection of it for the other parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r 725ZI

22.21 Service of notice on Solicitor-General

A party that intends to dispute the validity of a patent in a proceeding must—

- (a) give notice of that intention to the Solicitor-General at least 15 working days before the hearing; and
- (b) supply the Solicitor-General with a copy of papers filed in the proceeding by that party or papers filed by any other party that the Solicitor-General requires.

Compare: 1908 No 89 Schedule 2 r 725ZJ

22.22 Particulars supplied by plaintiff

In a proceeding for infringement of a patent, the plaintiff must—

- (a) deliver particulars of the breaches relied on with the plaintiff's statement of claim; and
- (b) state which aspects of the specification of the patent are alleged to be infringed; and
- (c) give at least 1 instance of each type of infringement.

Compare: 1908 No 89 Schedule 2 r 725ZK

22.23 Particulars supplied by defendant

- (1) A defendant in a proceeding for infringement of a patent who intends to rely on a defence that the patentee inserted a condition in a contract that is void (by virtue of section 66 of the Act) must deliver with the defendant's statement of claim—

- (a) full particulars of the dates of, and parties to, all contracts on which the defendant intends to rely; and
- (b) full particulars of the conditions on which the defendant intends to rely.

Part 22—*continued*
Subpart 4—*continued*

- (2) The defendant is not entitled to rely on a defence under section 66(2) of the Act if those particulars are not delivered.

Compare: 1908 No 89 Schedule 2 r 725ZL

22.24 Evidence restricted to particulars delivered

- (1) No person may be heard or adduce evidence in support of an alleged infringement, objection, or defence so far as it relates to matters that are not specified in, or are at variance with, the particulars that person has delivered.
- (2) Despite subclause (1), the court may grant leave on terms it considers appropriate.

Compare: 1908 No 89 Schedule 2 r 725ZM

22.25 Amendment of particulars

- (1) Particulars filed in the court under these rules may be amended by leave of the court on terms the court considers just.
- (2) Further and better particulars may at any time be ordered by the court.
- (3) This rule has effect despite rule 7.77.

Compare: 1908 No 89 Schedule 2 r 725ZN

Subpart 5—Appeals

22.26 Application of Part 20

Part 20 applies to an appeal under the Act, unless modified by or inconsistent with this Part or the Act.

Compare: 1908 No 89 Schedule 2 r 725ZZA

22.27 Method and time of bringing appeal

- (1) A person who wishes to appeal from a decision of the Commissioner in relation to which a right of appeal is given by the Act must file a notice of appeal in the court.
- (2) The notice of appeal must be filed within 20 working days after the date of the Commissioner's decision.

Part 22—*continued*
Subpart 5—*continued*

- (3) Other than with the leave of the court, an appeal must not be entertained unless notice of appeal has been given within the 20-working-day period.

Compare: 1908 No 89 Schedule 2 rr 725ZO, 725ZP

22.28 Contents of notice of appeal

A notice of appeal must state—

- (a) the decision or part of the decision appealed against; and
- (b) any error of law alleged; and
- (c) any question of law to be resolved; and
- (d) the grounds of the appeal (specified with reasonable particularity in order to give the court and the other parties full information about the issues involved); and
- (e) the relief sought.

Compare: 1908 No 89 Schedule 2 r 725ZQ

22.29 Grounds of appeal

Only grounds stated in the notice of appeal may be allowed to be taken by the appellant at the hearing, unless the court grants leave to do otherwise on terms it considers appropriate.

Compare: 1908 No 89 Schedule 2 r 725ZR

22.30 Service of notice of appeal

An appellant must, within 5 working days of filing a notice of appeal, serve a copy of it on—

- (a) the Commissioner; and
- (b) any other party to the proceeding before the Commissioner.

Compare: 1908 No 89 Schedule 2 r 725ZS

22.31 Commissioner to transmit papers

On receiving notice of an appeal, the Commissioner must immediately transmit all papers relating to the subject matter of the appeal to the court.

Compare: 1908 No 89 Schedule 2 r 725ZT

Part 22—*continued*
Subpart 5—*continued*

22.32 Contentions raised by respondent

- (1) A respondent who has not appealed a decision of the Commissioner, but who wishes to contend on appeal that the decision be varied (in any event or in the event of the appeal being allowed in whole or in part)—
 - (a) must give notice stating the grounds of the contention and the relief sought by the respondent; and
 - (b) need not file a further notice of appeal.
- (2) A respondent who wishes to argue that a decision of the Commissioner be affirmed on grounds other than those set out in the decision must give notice of those grounds of contention.

Compare: 1908 No 89 Schedule 2 r 725ZU

22.33 Respondent's notice

- (1) A respondent's notice must be sent to the Commissioner, the appellant, and every other party to the proceedings before the Commissioner—
 - (a) within 20 working days after the date of the receipt of the notice of appeal by the respondent; or
 - (b) within any longer period the court directs.
- (2) A party sending a respondent's notice must, within 5 working days after the date of the service of the notice on the appellant, give 2 copies of the notice to the court.
- (3) If more than 1 party files a notice of appeal, any party (whether or not that party has filed a notice of appeal) may file a respondent's notice in respect of a notice of appeal given by any other party.

Compare: 1908 No 89 Schedule 2 r 725ZV

22.34 Appeal by way of rehearing

- (1) An appeal is by way of rehearing.
- (2) The evidence used on appeal must be the same as that used before the Commissioner.

Part 22—*continued*
Subpart 5—*continued*

- (3) No further evidence may be given, except with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 725ZW

22.35 Proceeding heard and determined in public

- (1) A proceeding under the Act or for infringement of a patent must be heard and determined in public unless the court directs that it must be heard in private.
- (2) Despite subclause (1), a proceeding relating to a decision of the Commissioner in a case in which the complete specification of the patent application has not been published must be heard and determined in private unless the court directs that it must be heard in public.
- (3) A direction given by the court (on its own initiative or on the application of a party to a proceeding) may relate to the whole proceeding or a specified part of it.

Compare: 1908 No 89 Schedule 2 r 725ZX

22.36 Documentary evidence

Rules about the filing of documentary evidence in proceedings before the Commissioner apply to documentary evidence filed on an appeal.

Compare: 1908 No 89 Schedule 2 r 725ZY

22.37 Cross-examination of witnesses

- (1) At the request of a party, the court may order that a person who has made a statutory declaration or sworn an affidavit in the matter to which the appeal relates attend for cross-examination.
- (2) A party that requires a witness to attend for cross-examination must pay the witness the appropriate fees, allowances, and travelling expenses under the appropriate scales specified in the Schedule of the Witnesses and Interpreters Fees Regulations 1974.

Compare: 1908 No 89 Schedule 2 r 725ZZ

Part 22—*continued**Subpart 6—Costs***22.38 Costs**

In a proceeding for infringement of a patent, no costs are allowed to the parties who deliver particulars of breaches or of objection in respect of any issues raised in those particulars and relating to that patent unless the issues or particulars are certified by the court as—

- (a) proved; or
- (b) reasonable and proper.

Compare: 1908 No 89 Schedule 2 r 725ZZB

Part 23

Enforcement between jurisdictions

*Subpart 1—Enforcement under Reciprocal**Enforcement of Judgments Act 1934***23.1 Scope and interpretation**

- (1) This subpart applies to the enforcement of judgments under the Act.
- (2) With the exception of subclause (3), this subpart does not apply to, and does not affect—
 - (a) the enforcement of judgments at common law by a proceeding commenced under Part 5 or 12; or
 - (b) the filing of memorials, and subsequent enforcement, of judgments obtained out of New Zealand (section 56 of the Judicature Act 1908).
- (3) An application to the court or a Judge under section 56(4) of the Judicature Act 1908 for an order that the person against whom the judgment was obtained show cause why enforcement process should not issue must be made by originating application under Part 19.
- (4) In this Part, unless the context otherwise requires,—

Act means the Reciprocal Enforcement of Judgments Act 1934

application for registration means an application made under section 4 of the Act

Part 23—*continued*
Subpart 1—*continued*

foreign judgment means any judgment to which, under section 3, 3A, or 3B of the Act, Part 1 of the Act for the time being applies

general rules means the rules comprised in the other Parts of these rules.

- (5) Unless the context otherwise requires, expressions not defined in this subpart but defined in the Act have the meanings so defined.

Compare: 1908 No 89 Schedule 2 r 726

23.2 Application of other Parts

The general rules apply except so far as they are modified by or are inconsistent with this subpart.

Compare: 1908 No 89 Schedule 2 r 727

23.3 Subpart subject to Orders in Council

This subpart has effect subject to provisions in Orders in Council made under section 3, 3A, or 3B of the Act declared by those Orders in Council to be necessary for giving effect to any agreement made by or on behalf of the Government of New Zealand in 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: 1908 No 89 Schedule 2 r 728

23.4 Method of application for registration

- (1) An application for registration must be made by originating application in form G 30, and Part 19 applies except so far as it is modified by or inconsistent with this subpart.
- (2) The application may be made without notice to the judgment debtor, and if so made the requirement of certification in rule 7.23 applies.

Compare: 1908 No 89 Schedule 2 r 729

Part 23—*continued*
Subpart 1—*continued*

23.5 Title and content of application

The heading to each document filed in an application for registration must—

- (a) include both a reference to the Act and a reference to the judgment sought to be enforced; and
- (b) specify, in relation to the judgment, both the court in which it was given and the parties to the judgment.

Compare: 1908 No 89 Schedule 2 r 730

23.6 Place of filing

An application for registration must be filed in the registry of the court in which the defendant would have been required to file that defendant's 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: 1908 No 89 Schedule 2 r 731

23.7 Supporting affidavits

Every application for registration must be supported by 1 or more affidavits.

Compare: 1908 No 89 Schedule 2 r 732

23.8 Copy judgment and translation

- (1) The foreign judgment, or a verified or certified or otherwise duly authenticated copy of it, must be attached as an exhibit 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 must be filed.
- (3) Any such translation must be verified by the affidavit of a person qualified as a translator from that language.

Compare: 1908 No 89 Schedule 2 r 733

Part 23—*continued*
Subpart 1—*continued*

23.9 Judicial notice of authentication of judgment

Judicial notice must be taken of any seal or signature by which a copy of a foreign judgment is verified and which purports to be—

- (a) the seal of the court in which the judgment was given or of a Judge or a Registrar or similar officer of the court; or
- (b) the signature of a Judge or Registrar or similar officer of that court.

Compare: 1908 No 89 Schedule 2 r 734

23.10 Evidence of exchange rates and interest

The affidavit or affidavits filed in support of the application for registration of a money judgment must include,—

- (a) when 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 that the sum payable under the judgment represents in New Zealand currency calculated at that rate:
- (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 that, by that law, will have become due under the judgment up to the time of the application, expressed,—
 - (i) when 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 under paragraph (a):

Part 23—*continued*
Subpart 1—*continued*

- (ii) when the application states that the judgment is to be registered in the currency in which it is expressed, in that currency.

Compare: 1908 No 89 Schedule 2 r 735

23.11 Evidence of right to registration

- (1) An affidavit filed in support of the application for registration must state, to the best of the information and belief of the person,—
 - (a) that the applicant is entitled to enforce the judgment; and
 - (b) 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) if, 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 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 person making the affidavit must specify in that affidavit the source of the person's information and the grounds for his or her belief.

Compare: 1908 No 89 Schedule 2 r 736

23.12 Further evidence

The application for registration must be supported by whatever other evidence may be required, having regard,—

Part 23—*continued*
Subpart 1—*continued*

- (a) in the case of a money judgment of a superior court, to the Order in Council under section 3 of the Act;
- (b) in the case of a money judgment of an inferior court, to the Order in Council under section 3A of the Act;
- (c) in the case of a non-money judgment of a superior court, to the Order in Council under section 3B(1) of the Act;
- (d) in the case of a non-money judgment of an inferior court, to the Order in Council under section 3B(2) of the Act.

Compare: 1908 No 89 Schedule 2 r 737

23.13 Registration of part of judgment

When—

- (a) a foreign judgment is in respect of different matters; and
- (b) if some parts of the foreign judgment had been contained in separate judgments, those judgments could not properly have been registered,—

the application for registration must specify, and the order giving leave to register the foreign judgment must be limited to, the parts that are entitled to registration.

Compare: 1908 No 89 Schedule 2 r 738

23.14 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: 1908 No 89 Schedule 2 r 739

23.15 Order for registration

- (1) The order giving leave to register a judgment or part of a judgment—
 - (a) must 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

Part 23—*continued*
Subpart 1—*continued*

- (b) must prohibit enforcement of the judgment until after the expiration of the period stated in paragraph (a).
- (2) Unless the court otherwise orders, the period stated under subclause (1)(a) must 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 fixed or as subsequently extended) during which an application to have the judgment set aside may be made.
- (4) It is not necessary to serve an order made under subclause (1) on the judgment debtor.

Compare: 1908 No 89 Schedule 2 r 740

23.16 Method of registration

- (1) The registration of every judgment ordered to be registered under the Act must be effected by entry of particulars in an appropriate record book kept by the Registrar.
- (2) The record book must state—
 - (a) the date of the order for registration;
 - (b) the name, title, trade, or business of the judgment creditor and the judgment debtor;
 - (c) the usual or last known place of abode or business of the judgment creditor and the judgment debtor;
 - (d) in the case of a money judgment, the sum payable under the judgment, expressed,—
 - (i) when 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:

Part 23—*continued*
Subpart 1—*continued*

- (f) where the judgment is a non-money judgment, particulars of the judgment:
- (g) the costs allowed of and incidental to registration:
- (h) any special directions contained in the order for registration:
- (i) the particulars of any action taken to enforce the judgment.

Compare: 1908 No 89 Schedule 2 r 741

23.17 Date of registration

- (1) The date of the order for registration and the date of the registration are to be treated as the date when the originating application was filed.
- (2) Subclause (1) is subject to a court order.

Compare: 1908 No 89 Schedule 2 r 742

23.18 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 must be served personally in accordance with the general rules unless some other mode of service is ordered by the court.
- (3) Despite rule 6.28, if the judgment debtor is out of New Zealand, the notice may be served without the leave of the court.

Compare: 1908 No 89 Schedule 2 r 743

23.19 Contents of notice of registration

- (1) The notice of registration must state—
 - (a) full particulars of—
 - (i) the judgment registered; and
 - (ii) the order for registration; and
 - (iii) any special direction contained in the order for registration; and

Part 23—*continued*
Subpart 1—*continued*

- (b) whether the notice is issued by the judgment creditor or by a solicitor on behalf of the judgment creditor; 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 period 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 the grounds on which the registration can be set aside.

Compare: 1908 No 89 Schedule 2 r 744

23.20 Application to set aside registration

- (1) An application to set aside the registration of a foreign judgment must 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 must be stated and tried and may give such directions in relation to the trial of the issue as may be necessary.

Compare: 1908 No 89 Schedule 2 r 745

23.21 Determination of certain questions

If, whether under the Act or under this subpart, 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 must be determined in accordance with,—

- (a) in the case of a money judgment of a superior court, the Order in Council under section 3 of the Act;
- (b) in the case of a money judgment of an inferior court, the Order in Council under section 3A of the Act;
- (c) in the case of a non-money judgment of a superior court, the Order in Council under section 3B(1) of the Act;

Part 23—*continued*
Subpart 1—*continued*

- (d) in the case of a non-money judgment of an inferior court, the Order in Council under section 3B(2) of the Act.

Compare: 1908 No 89 Schedule 2 r 746

23.22 Enforcement of judgments

- (1) A registered judgment must 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 must be proved by an affidavit.

Compare: 1908 No 89 Schedule 2 r 747

23.23 Form of enforcement process

The form of an enforcement process within the meaning of rule 17.3 issued on a foreign judgment registered under the Act must—

- (a) specify the sum awarded, or the order or other relief granted; and
- (b) state the name and address of the judgment creditor; and
- (c) name the judgment debtor against whom the judgment was obtained; and
- (d) name the court in which the judgment was obtained and the date of that judgment; and
- (e) certify that the judgment has been duly registered in the High Court pursuant to Part 1 of the Reciprocal Enforcement of Judgments Act 1934.

Compare: 1908 No 89 Schedule 2 r 748

Subpart 2—Certified copy procedure

23.24 Method of application

- (1) An application under section 11 of the Act for a certified copy of a judgment obtained in the court must be made by applica-

Part 23—*continued*
Subpart 2—*continued*

tion without notice filed in the registry of the court in which the judgment was sealed.

- (2) The application must be supported by the affidavit of the judgment creditor or the judgment creditor's solicitor, and that affidavit must—
- (a) give particulars of the proceeding in which the judgment was sealed; and
 - (b) attach—
 - (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
 - (c) verify the copies of evidence attached to it in accordance with 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 or of enforcement; 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: 1908 No 89 Schedule 2 r 749

23.25 Issue of certified copy

- (1) It is not necessary to seal any order made on an application under rule 23.24; instead, the Registrar must issue to the judgment creditor—
- (a) a copy of the judgment sealed with the seal of the court, which copy must be certified by the Registrar—
 - (i) to be a true copy; and

Part 23—*continued*
Subpart 2—*continued*

- (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 must certify—
 - (i) the matters stated in the affidavit filed in accordance with rule 23.24(2); and
 - (ii) any other particulars it is necessary to give to the court or tribunal in which enforcement of the judgment will be sought.
- (2) In giving a certificate under subclause (1)(b) the Registrar is entitled to rely on the affidavit filed under rule 23.24(2) and the documents attached to it.

Compare: 1908 No 89 Schedule 2 r 750

*Subpart 3—Enforcement of certain
judgments and orders of Federal Court of
Australia*

23.26 Interpretation

- (1) In this subpart, unless the context otherwise requires,—
- Act** means the Reciprocal Enforcement of Judgments Act 1934
- Federal Court** means the Federal Court of Australia
- general rules** means all the rules in these rules except this subpart
- judgment creditor** means the person in whose favour a judgment, order, or injunction was given, made, or granted in a specified proceeding; and includes any person in whom the rights under it have become vested by succession, assignment, or otherwise
- judgment debtor** means the person against whom a judgment, order, or injunction was given, 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.

Part 23—*continued*
Subpart 3—*continued*

- (2) In this subpart, unless the context otherwise requires, expressions not defined in this subpart but defined in Part 1A of the Act have the meanings so defined.

Compare: 1908 No 89 Schedule 2 r 751

23.27 Scope

This subpart applies to judgments, orders, and injunctions given, made, or granted in specified proceedings.

Compare: 1908 No 89 Schedule 2 r 752

23.28 Application of other Parts

The general rules, except subpart 1 of this Part, apply unless those rules are modified by or are inconsistent with this subpart.

Compare: 1908 No 89 Schedule 2 r 753

23.29 Method of application

- (1) An application for an order that a judgment, order, or injunction to which this Part applies be registered under section 8D of the Act must be made by originating application under Part 19, and the provisions of Part 19 apply unless they are modified by or inconsistent with this subpart.
- (2) Every application under subclause (1) must be accompanied by a copy of the judgment, order, or injunction certified by the Federal Court to be a true copy or by a legible facsimile of that certified copy.
- (3) An application under subclause (1) may be made without notice.
- (4) If a facsimile of a certified copy of a judgment, order, or injunction to which this subpart applies accompanies the application, the application must 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.
- (5) The affidavit must state that the person making it has been advised by—

Part 23—*continued*
Subpart 3—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 754

23.30 Title of proceeding

The heading to an application under rule 23.29 must include a reference to Part 1A of the Act and include—

- (a) a reference to the judgment, order, or injunction; and
- (b) the names of the judgment creditor and the judgment debtor.

Compare: 1908 No 89 Schedule 2 r 755

23.31 Place of filing

Every application for an order that a judgment, order, or injunction to which this subpart applies be registered must be filed in the registry of the court determined as follows:

- (a) if the judgment debtor is resident or the judgment debtor's principal place of business is in New Zealand, whichever of the registries of the court at Auckland, Wellington, or Christchurch is nearest to the residence or principal place of business of the judgment debtor (or, if there are 2 or more judgment debtors, the first named of them);
- (b) if no judgment debtor is resident or no judgment debtor's principal place of business is in New Zealand, whichever of those registries the plaintiff selects;
- (c) despite paragraphs (a) and (b), if the Crown is the judgment debtor, the court at Wellington.

Compare: 1908 No 89 Schedule 2 r 756

Part 23—*continued*
Subpart 3—*continued*

23.32 Evidence of exchange rates and interest

If a judgment or order for the payment of a sum of money in Australian currency is to be registered, the application must be supported by an affidavit stating,—

- (a) if 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 that the sum payable under the judgment or order represents in New Zealand currency so calculated:
- (b) the rate of interest (if any) carried by the judgment or order:
- (c) the amount of interest that, under Australian law, will have become due and payable under the judgment or order up to the time of the application, expressed,—
 - (i) if the application does not state that the judgment creditor wishes the judgment to be registered in Australian currency, in New Zealand currency calculated under paragraph (a)(i):
 - (ii) if the application states that the judgment is to be registered in Australian currency, in Australian currency.

Compare: 1908 No 89 Schedule 2 r 757

23.33 Method of registration

- (1) The registration under section 8D of the Act of every judgment, order, or injunction to which this subpart applies must be effected by entry of particulars in an appropriate record book kept by the Registrar.
- (2) The record book must contain—
 - (a) the date of the order for registration:
 - (b) the name, title, and trade or business of the judgment creditor and the judgment debtor respectively:

Part 23—*continued*
Subpart 3—*continued*

- (c) the usual or last known place of abode or business of the judgment creditor and judgment debtor 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) if the application states that the judgment creditor so wishes, 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 enforcement issued.

Compare: 1908 No 89 Schedule 2 r 758

23.34 Notice of registration

- (1) Notice in writing of the registration of a judgment, order, or injunction to which this subpart applies must be served on the judgment debtor.
- (2) The notice must be served personally in accordance with the general rules unless some other method of service is ordered by the court.
- (3) If the judgment debtor is out of New Zealand, the notice may, notwithstanding rule 6.28, be served on the judgment debtor without the leave of the court.

Compare: 1908 No 89 Schedule 2 r 759

Part 23—*continued*
Subpart 3—*continued*

23.35 Contents of notice of registration

The notice of registration must state—

- (a) full particulars of—
 - (i) the judgment, 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.

Compare: 1908 No 89 Schedule 2 r 760

23.36 Service of copy of judgment, order, or injunction

When a judgment, order, or injunction to which this subpart applies is registered, a copy of the judgment, order, or injunction, or a legible facsimile or electronic version of it, or a legible copy of that facsimile or electronic version, must be served on the judgment debtor either with the notice of registration or separately.

Compare: 1908 No 89 Schedule 2 r 761

23.37 Copy of judgment, order, or injunction to be filed if facsimile produced

- (1) If a judgment, order, or injunction to which this subpart applies has been registered on the production of a facsimile or electronic version of it, the applicant must file the copy from which the facsimile or electronic version was made not later than 5 working days after the making of the order.
- (2) Except with the leave of the court, no proceedings for the enforcement of the judgment or the order or injunction may be commenced before the copy is filed.

Compare: 1908 No 89 Schedule 2 r 762

Part 23—*continued*
Subpart 3—*continued*

23.38 Application to set aside registration or for stay of enforcement

- (1) An application to set aside the registration of a judgment, order, or injunction to which this subpart applies or an application for a stay of enforcement of such a judgment, order, or injunction must be made by interlocutory application.
- (2) The court may direct that an issue between the judgment creditor and the judgment debtor be stated and tried and may give such directions in relation to the trial as are necessary.

Compare: 1908 No 89 Schedule 2 r 763

Part 24
Insolvency
Subpart 1—Scope

24.1 Interpretation

- (1) In this Part, unless the context otherwise requires, **Act** means the Insolvency Act 2006.
- (2) In this Part, unless the context otherwise requires, expressions defined in the Act and used but not defined in this Part have the meanings given by the Act.
- (3) Subclause (1) does not apply to subpart 15 (cross-border proceedings).

Compare: 1908 No 89 Schedule 2 r 819

24.2 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 r 820

24.3 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 r 821

Part 24—*continued**Subpart 2—Proceedings generally***24.4 Forms**

- (1) The prescribed forms must be used whenever appropriate.
- (2) If a form has not been prescribed for an application, it must be an interlocutory application, and an order made on that application 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 B 7.

Compare: 1908 No 89 Schedule 2 r 822

24.5 General requirements of documents filed in court

Every document filed must—

- (a) comply with the rules in subpart 3 of Part 5 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 r 823

24.6 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 r 824

24.7 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

Part 24—*continued*
Subpart 2—*continued*

written interrogatories or on affidavit or by commission, as the court thinks just.

Compare: 1908 No 89 Schedule 2 r 825

Subpart 3—Bankruptcy notices

24.8 Issue of bankruptcy notice

- (1) A request for the issue of a bankruptcy notice must be in form B 1.
- (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 B 2 and 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 r 826

24.9 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.

Part 24—*continued*
Subpart 3—*continued*

- (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 r 827

24.10 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 r 828

Subpart 4—Adjudication proceedings

24.11 Application for adjudication by creditor

- (1) A creditor's application for adjudication must be commenced by filing an originating application in form B 3.
- (2) Part 19 applies to adjudication proceedings but, in case of any conflict, is overridden by this Part.
- (3) An affidavit in form B 4 and a summons to debtor in form B 5 must be filed (in duplicate) with a creditor's application.
- (4) A summons must also state the amount of any costs claimed.

Compare: 1908 No 89 Schedule 2 r 829

24.12 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 r 830

24.13 Where application for adjudication to be filed

An application for adjudication must be filed,—

Part 24—*continued*
Subpart 4—*continued*

- (a) if the debtor is resident in New Zealand, in the registry 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:
- (b) if the debtor is in custody, in the registry 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 registry 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 registry 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 registry of the court.

Compare: 1908 No 89 Schedule 2 r 831

24.14 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 r 832

24.15 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, on any terms it thinks just, hear the creditor's application on any date the court considers expedient.

Compare: 1908 No 89 Schedule 2 r 833

Part 24—*continued*
Subpart 4—*continued*

24.16 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 r 834

24.17 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 r 835

24.18 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 B 6, together with an affidavit in support of the opposition; and
- (b) serve a copy of those documents on the applicant creditor.

Compare: 1908 No 89 Schedule 2 r 836

Part 24—*continued*
Subpart 4—*continued*

24.19 Affidavit evidence of applicant creditor

- (1) Unless the court otherwise directs, an applicant 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 applicant creditor at least 3 working days before the date of the hearing of the application.

Compare: 1908 No 89 Schedule 2 r 837

24.20 Applicant creditor's solicitor's certificate as to unpaid debt

A certificate by the applicant 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 r 838

24.21 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 r 839

Subpart 5—Appointment of Official Assignee

24.22 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 r 840

Part 24—*continued*
Subpart 5—*continued*

24.23 Official Assignee may seek additional sum where original deposit insufficient

- (1) If the sum deposited for the Official Assignee's expenses under rule 24.22 is insufficient, the person who paid the deposit must deposit with the Official Assignee any additional sum that the 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 r 841

24.24 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 r 842

24.25 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 24.22 and 24.23 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 24—*continued*
Subpart 5—*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 r 843

24.26 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 r 844

Subpart 6—Contributions from bankrupt

24.27 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 r 845

24.28 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 r 846

Part 24—*continued*
Subpart 6—*continued*

24.29 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 is entitled to appear and be heard.

Compare: 1908 No 89 Schedule 2 r 847

24.30 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 or other person against whom the assignment or charge was given.

Compare: 1908 No 89 Schedule 2 r 848

Subpart 7—Compositions during bankruptcy

24.31 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 r 849

Part 24—*continued*
Subpart 7—*continued*

24.32 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 r 850

24.33 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 r 851

24.34 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 r 852

Subpart 8—Irregular transactions

24.35 Applications by Official Assignee for cancellation of irregular transactions or retransfer of property or payment of value

- (1) An application to the court by the Official Assignee under section 206 of the Act (for the cancellation of an irregular transaction) or under section 207 of the Act (for the retransfer of property or payment of value) must be made by originating application under Part 19.
- (2) An application under section 206 must be in form B 14.
- (3) An application under section 207 must be in form B 15.

Compare: 1908 No 89 Schedule 2 r 853

Part 24—*continued**Subpart 9—Discharge of bankrupt***24.36 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 B 8.
- (2) A creditor who enters an objection to a discharge must serve the objection on the Official Assignee.

Compare: 1908 No 89 Schedule 2 r 854

24.37 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 the hearing date to be advertised.

Compare: 1908 No 89 Schedule 2 r 855

24.38 Report of Official Assignee

At least 5 working days before the hearing date, the Official Assignee must—

- (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 r 856

24.39 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 r 857

Part 24—*continued*
Subpart 9—*continued*

24.40 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 r 858

24.41 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 r 859

Subpart 10—Proposals

24.42 Proposal and statement of affairs and affidavit

A proposal under subpart 2 of Part 5 of the Act must be in form B 9 and must be accompanied by a statement of affairs and affidavit in form B 10.

Compare: 1908 No 89 Schedule 2 r 860

24.43 Trustee's report on proposal

The trustee must file a report in form B 11 with the application for approval under section 333 of the Act.

Compare: 1908 No 89 Schedule 2 r 861

Subpart 11—Insolvent deceased estates

24.44 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 r 862

Part 24—*continued*
Subpart 11—*continued*

24.45 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 B 12 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 r 863

24.46 Duty of Registrar when order made

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 r 864

24.47 Duty of administrator when 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, provide whatever particulars of the affairs of the deceased are required by the appointee.

Compare: 1908 No 89 Schedule 2 r 865

Part 24—*continued*
Subpart 11—*continued*

24.48 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 24.47.

Compare: 1908 No 89 Schedule 2 r 866

24.49 Administration election

A certificate by Public Trust or the Māori Trustee recording an election to administer an insolvent estate under Part 6 of the Act must be in form B 13.

Compare: 1908 No 89 Schedule 2 r 867

Subpart 12—Appeals

24.50 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 r 868

Part 24—*continued*
Subpart 12—*continued*

24.51 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 r 869

Subpart 13—Official Assignee

24.52 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 r 870

24.53 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 r 871

Subpart 14—District Court filings

24.54 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.
- (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 r 872

Part 24—*continued*

Subpart 15—Cross-border proceedings

24.55 Interpretation

- (1) In this subpart, unless the context otherwise requires, **Act** means the Insolvency (Cross-border) Act 2006.
- (2) Unless the context otherwise requires, expressions defined in Schedule 1 of the Act have, in this subpart, the meanings so defined.
- (3) In this subpart, references to articles are references to articles in Schedule 1 of the Act.

Compare: 1908 No 89 Schedule 2 r 873

24.56 Applications for recognition of foreign proceedings

- (1) An application by a foreign representative under article 15(1) must be made by originating application under Part 19.
- (2) In addition to complying with the requirements of article 15, the application must—
 - (a) be supported by an affidavit verifying the statement referred to in article 15(3) (identifying all foreign proceedings in respect of the debtor that are known to the foreign representative) or by other sworn evidence acceptable to the court:
 - (b) be served, in accordance with Part 6 of these rules, on the debtor or a New Zealand agent or representative of the debtor unless a Judge directs that the application may in all the circumstances proceed without that service.
- (3) A foreign representative who has filed an application under subclause (1) may apply without notice for relief of a provisional nature under article 19(1).

Compare: 1908 No 89 Schedule 2 r 874(1), (2), (6)

24.57 Other procedural requirements

- (1) A New Zealand agent or representative of the debtor served under rule 24.56(2)(b), must, as a condition of being treated as a respondent to the application under Part 19, provide evidence of that agency or representation to the court's satisfaction.

Part 24—*continued*
Subpart 15—*continued*

- (2) The foreign representative must, when filing an application under rule 24.56(1) or within 25 working days after the date of filing, file an application for directions as to service under rule 18.7 and the Judge may give directions as to service and make any incidental orders considered just.
- (3) An application for modification or termination of recognition under article 17(5) must be made by originating application served on the parties and any other persons who were directed to be served before the recognition order under article 17(1) was made.

Compare: 1908 No 89 Schedule 2 r 874(3)–(5)

24.58 Relief after recognition

- (1) The foreign representative may apply by interlocutory application for appropriate relief under article 21(1).
- (2) An application under subclause (1) must be served on—
 - (a) any other parties to the application under rule 24.56:
 - (b) persons directed to be served under rule 24.56:
 - (c) any judgment creditor carrying on business, or resident, or having a registered office, in New Zealand.

Compare: 1908 No 89 Schedule 2 r 875

24.59 Modification or termination

- (1) The foreign representative or a person affected by relief granted under article 19 and rule 24.56(3), or under article 21 and rule 24.58, may apply by interlocutory application for an order modifying or terminating the relief granted.
- (2) The statutory manager may apply by interlocutory application under article 22(4) to terminate relief granted under article 19 and rule 24.56(3), or under article 21 and rule 24.58.

Compare: 1908 No 89 Schedule 2 r 876

Part 24—*continued*

Subpart 16—Voluntary administration

24.60 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 19.

Compare: 1908 No 89 Schedule 2 r 700ZL

24.61 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 19.
- (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 subpart 2 of Part 7.
- (3) Subclause (1) is subject to subclause (2).

Compare: 1908 No 89 Schedule 2 r 700ZM

24.62 Proper registry of court

- (1) The proper registry of the court for the purpose of filing an originating application under rule 24.61 is—
 - (a) the registry of the court in the town where, or the registry 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 registry of the court in the town where, or the registry of the court in the town nearest to where, the principal or last known place of business is or was situated.
- (2) If it appears to the court on application to it that the originating application has been filed in the wrong registry of the court, or that any other registry of the court would be more convenient

Part 24—*continued*
Subpart 16—*continued*

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 registry or the other registry of the court.

- (3) This rule overrides rule 5.1.
Compare: 1908 No 89 Schedule 2 r 700ZN

Part 25
Admiralty

Subpart 1—Preliminary provisions

25.1 Interpretation

- (1) In this Part, unless the context otherwise requires,—
Act means the Admiralty Act 1973
action means an action *in personam* or *in rem*, or both, in the admiralty jurisdiction of the court
foreign ship has the same meaning as it has in section 2(1) of the Maritime Transport Act 1994.
- (2) In this Part, unless the context otherwise requires, terms and expressions used and not defined in this Part but defined in the Act have the same meaning as in the Act.
Compare: 1908 No 89 Schedule 2 r 764

25.2 Scope of this Part

- (1) Subpart 1 contains preliminary provisions and applies generally to actions.
- (2) Subpart 2 contains provisions about starting actions and applies generally to actions.
- (3) Subpart 3 contains provisions in addition to subpart 2 that apply to actions arising out of collisions between ships.
- (4) Subpart 4 contains provisions in addition to subpart 2 that apply to actions for the limitation of liability under Part 7 of the Maritime Transport Act 1994.
- (5) Subpart 5 applies to applications for judgment by default in actions.

Part 25—*continued*
Subpart 1—*continued*

- (6) Subpart 6 applies to the arrest, release, and sale of property in actions.
- (7) Subpart 7 contains miscellaneous provisions that apply generally to actions.

25.3 Application of other rules and practice of court

The other Parts of these rules and the general practice of the court apply when this Part applies unless modified by or inconsistent with the Act or this Part.

Compare: 1908 No 89 Schedule 2 r 766

25.4 Parties can apply for directions if procedure not prescribed

- (1) A party or intending party who wishes to take a step in a proceeding for which a procedure is not prescribed by this Part or any other Part or by the general practice of the court may apply to the court or a Judge for directions.
- (2) The court or a Judge may give any directions concerning the steps to be taken by the party that the court or Judge thinks just.
- (3) A step in a proceeding is treated as having been properly taken if taken in accordance with the directions given under subclause (2).

Compare: 1908 No 89 Schedule 2 r 767

25.5 Form of application

An interlocutory application under this Part must be in form G 31 and an order made on that application must be in form G 34.

Compare: 1908 No 89 Schedule 2 r 768

Part 25—*continued**Subpart 2—Starting proceedings in admiralty***25.6 Action *in personam* or *in rem*, or both, started by notice of proceeding**

- (1) Actions may be *in personam* or *in rem*, or both.
- (2) An action is started by a notice of proceeding—
 - (a) issued from any registry 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 is treated as having started when a notice of proceeding complying with subclause (2) is filed.

Compare: 1908 No 89 Schedule 2 r 769

25.7 Notice of proceeding for action *in personam*

- (1) An action *in personam* is started by a notice of proceeding in form AD 2.
- (2) The action must be headed as in form AD 1.
- (3) Rules 6.27 to 6.35 apply in relation to service out of the jurisdiction in an action *in personam*.

Compare: 1908 No 89 Schedule 2 r 770

25.8 Notice of proceeding for action *in rem*

- (1) An action *in rem* is started by a notice of proceeding in form AD 4.
- (2) The action must be headed as in form AD 3.
- (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

Part 25—*continued*
Subpart 2—*continued*

in personam may be served out of the jurisdiction in so far as it is *in personam*.

- (5) Rules 6.27 to 6.35 apply to service out of the jurisdiction under subclause (4).

Compare: 1908 No 89 Schedule 2 r 771(1)–(5)

25.9 Notice of proceeding for action both *in rem* and *in personam*

- (1) An action that is both *in rem* and *in personam* is started by a notice of proceeding in form AD 5.
- (2) The action must be headed as in form AD 1.

Compare: 1908 No 89 Schedule 2 r 771(6)

25.10 How to serve notice of proceeding in action *in rem* on ship, cargo, or other property

- (1) To serve a notice of proceeding in an action *in rem* on a ship or on cargo or on other property on board a ship,—
- (a) attach a sealed copy of the notice to a place adjacent to the bridge or some conspicuous part of the ship, or adjacent to an entrance way to the superstructure or accommodation section of the ship; and
 - (b) leave a copy of the notice with the person apparently in charge of the ship, if that person is available at the time of service.
- (2) To serve a notice of proceeding in an action *in rem* on cargo or on other property not on board a ship,—
- (a) attach a sealed copy of the notice to that cargo or other property; and
 - (b) attach a copy of the notice to the place where the cargo or other property is located.
- (3) To serve a notice of proceeding in an action *in rem* on freight in the hands of an individual,—
- (a) show a sealed copy of the notice to that individual; and
 - (b) leave a copy of the notice with that individual.

Part 25—*continued*
Subpart 2—*continued*

- (4) To serve a notice of proceeding in an action *in rem* on proceeds in court,—
 - (a) show a sealed copy of the notice to the Registrar; and
 - (b) leave a sealed copy of the notice with the Registrar.
- (5) To serve a notice of proceeding in an action *in rem* on inaccessible cargo or on other property,—
 - (a) show a sealed copy of the notice to any person appearing to be in charge of that cargo or other property; and
 - (b) leave a copy of the notice with that person.
- (6) Instead of serving a notice of proceeding in the appropriate manner set out in subclauses (1) to (5), service in an action *in rem* may be carried out in some other manner ordered by the court.

Compare: 1908 No 89 Schedule 2 r 772(1)

25.11 Other provisions about service in action *in rem*

- (1) A notice of proceeding in an action *in rem* may be served on a Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.
- (2) The following provisions apply in an action *in rem* if a caveat against arrest is entered under rule 25.43:
 - (a) 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 the caveat is entered;
 - (b) 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) Service of a notice of proceeding or of a warrant of arrest is not required in an action *in rem* 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.

Part 25—*continued*
Subpart 2—*continued*

- (4) An affidavit of service in an action *in rem* attaching as an exhibit a sealed copy of the notice of proceeding and stating the time, place, and method of service must be filed.

Compare: 1908 No 89 Schedule 2 r 772(2)–(5)

25.12 Defendant must enter appearance

- (1) A defendant to an action must enter an appearance in person, or by a solicitor, by filing a memorandum in form AD 6 within the time and at the place directed in the notice of proceeding.
- (2) 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.
- (3) 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 period specified in rule 25.17, for an order under that rule and the court makes an order under that rule.

Compare: 1908 No 89 Schedule 2 r 773(1), (4), (6)

25.13 Content of memorandum

- (1) Every memorandum of appearance must contain an endorsement stating—
- (a) that the appearance is filed by the party appearing in person or by the party's solicitor (as the case may be); and
 - (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.
- (2) A memorandum of appearance in an action *in rem* must also state—

Part 25—*continued*
Subpart 2—*continued*

- (a) the name and correct address of the party appearing and the capacity in which that party appears, whether as owner, part-owner, or otherwise; and
- (b) the port of registry or port to which the ship belongs.
- (3) A statement made under subclause (2) is prima facie evidence of the matters stated in it.

Compare: 1908 No 89 Schedule 2 r 773(10), (11)

25.14 Time limits for entering appearance

- (1) An appearance must be entered,—
 - (a) for a notice of proceeding to be served within the jurisdiction, within 10 working days after the day of service;
 - (b) for a notice of proceeding to be served outside the jurisdiction, within the period specified by an order granting leave to serve the notice outside the jurisdiction.
- (2) A party not entering an appearance within the specified period may, by consent of the other parties or by leave of the Judge, enter an appearance at any time on any terms that the Judge may order.
- (3) A party may not enter an appearance after judgment has been entered except with the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r 773(2), (5)

25.15 Provisions about filing

- (1) A memorandum of appearance may be filed by post and—
 - (a) the appearance is treated as having been entered when 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.
- (2) When a memorandum of appearance is filed, the Registrar must—
 - (a) enter an appearance in the Register of Admiralty Proceedings; and

Part 25—*continued*
Subpart 2—*continued*

- (b) return to the party filing the memorandum a duplicate copy showing the date of filing.

Compare: 1908 No 89 Schedule 2 r 773(8), (15)

25.16 Service of memorandum

The party filing the memorandum of appearance must—

- (a) serve the duplicate copy on the plaintiff as soon as practicable; and
- (b) immediately serve registry copies on those other parties who have entered appearances.

Compare: 1908 No 89 Schedule 2 r 773(9)

25.17 Defendant may apply for orders

- (1) A defendant to an action may apply to the court for an order for 1 or more of the following:
 - (a) setting aside the notice of proceeding or service of the notice on the defendant;
 - (b) declaring that the notice has not been duly served on the defendant;
 - (c) discharging any order giving leave to serve the notice on the defendant out of the jurisdiction.
- (2) The application may be made—
 - (a) at any time before entering an appearance in the action; or
 - (b) if the defendant has entered a conditional appearance, within 5 working days after the day on which that conditional appearance is entered.
- (3) The court may make any order it thinks just.

Compare: 1908 No 89 Schedule 2 r 773(7)

25.18 Solicitor's undertaking

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 action *in rem*, and fails to fulfil that undertaking, is liable to punishment for contempt of court.

Compare: 1908 No 89 Schedule 2 r 773(12)

Part 25—*continued*
Subpart 2—*continued*

25.19 Substituted defendants, third parties, and interveners

Rules 25.12 to 25.18 apply, with the necessary modifications, to—

- (a) an added or substituted defendant:
- (b) a third or further party who is served with a third party notice:
- (c) an intervener who has obtained leave to intervene in an action.

Compare: 1908 No 89 Schedule 2 r 773(3)

25.20 Statement of claim

- (1) Every action must be heard with pleadings, unless the court or a Judge otherwise orders under this rule or rule 25.23(5).
- (2) The plaintiff must file in court and serve a full and explicit statement of claim on each defendant, unless the court or a Judge gives leave to the contrary.
- (3) The steps required by subclause (2) must be taken 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 10 working days after that defendant enters an appearance, unless the court or a Judge gives leave to the contrary or subclause (4) applies.
- (4) If preliminary acts are required under rule 25.23, the plaintiff must file in court and serve a statement of claim on each defendant within 10 working days after the latest date on which the preliminary act of any party to the action is filed, unless the court or a Judge orders the action to be tried without pleadings.

Compare: 1908 No 89 Schedule 2 r 774

25.21 Statement of defence

A defendant who enters an appearance in, and intends to defend, an action must file in court and serve a statement of defence on the plaintiff within 20 working days after the day on which a statement of claim is served on the defendant, unless the court or a Judge gives leave to the contrary.

Compare: 1908 No 89 Schedule 2 r 775

Part 25—*continued*

Subpart 3—Procedure in collision cases

25.22 Meaning of preliminary act

A **preliminary act** is a document containing a statement of the following particulars:

- (a) the names of the ships that 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:
- (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

Part 25—*continued*
Subpart 3—*continued*

alterations of course or speed, taken to avoid the collision, and the 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.

Compare: 1908 No 89 Schedule 2 r 785(2)

25.23 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 20 working days after the issue of the notice of proceeding:
 - (b) the defendant must file a preliminary act within 20 working days after entering an appearance in the action and before any pleading is filed or served.
- (2) The Registrar must seal every preliminary act and file it in a closed envelope, and the envelope must be sealed with the official stamp of the court and show the date of filing.
- (3) 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, unless the court or a Judge otherwise orders.
- (4) A party filing a preliminary act concerning a collision must, within 3 working 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.

Part 25—*continued*
Subpart 3—*continued*

- (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 the period stated in the order,—
- (a) to file a statement of the grounds on which the party charges any other party with negligence in connection with the collision; and
 - (b) to serve a copy of the statement on that other party.

Compare: 1908 No 89 Schedule 2 r 785(1), (3)–(6)

25.24 Proceedings against party in default where other party fails to lodge preliminary act

- (1) A defendant in an action arising out of a collision between ships who has lodged a preliminary act within the specified period may apply to the court for an order to dismiss the action if the plaintiff fails to lodge a preliminary act within the specified period, and the court may by order dismiss the action or make any other order on any terms it thinks just.
- (2) The plaintiff to an action *in personam* arising out of a collision between ships who has lodged a preliminary act within the specified period may proceed to judgment under rule 25.29 if the defendant fails to lodge a preliminary act within the specified period, as if that failure were a failure to enter an appearance or to file a statement of defence within the periods specified by or under these rules for doing those things.
- (3) The plaintiff to an action *in rem* arising out of a collision between ships who has lodged a preliminary act within the specified period may apply to the court by motion for judgment against the defendant if the defendant fails to lodge a preliminary act within the specified period, 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),—
 - (a) the court may make any orders it thinks just; and
 - (b) 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

Part 25—*continued*
Subpart 3—*continued*

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.
- (6) On being satisfied that the plaintiff's claim is well founded, the court may—
 - (a) give judgment for the claim; and
 - (b) at the same time,—
 - (i) order that the property against which the action is brought be appraised and sold and the proceeds paid into court; or
 - (ii) make any other orders it thinks just.
- (7) The court may, on any terms it thinks just, set aside any judgment entered under this rule.
- (8) In this rule, references to the **specified period** are to be construed as references to the period within which, by virtue of rule 25.23(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: 1908 No 89 Schedule 2 r 786

*Subpart 4—Limitation of liability under Part
7 of Maritime Transport Act 1994*

25.25 Actions for limitation of liability

- (1) Proceedings for relief under Part 7 of the Maritime Transport Act 1994 must be in the form of an action *in personam*.
- (2) 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.
- (3) For the purposes of the proceedings,—
 - (a) **name** includes a firm name or the name under which a person carries on business:

Part 25—*continued*
Subpart 4—*continued*

- (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 as having been named in the notice of proceeding by that person's name.
- (4) At least 1 of the persons with claims against the plaintiff concerning the casualty to which the action relates must be described by name in the notice of proceeding as a defendant.
- (5) All persons with claims against the plaintiff concerning the casualty to which the action relates who are not named defendants may be described generally in the notice of proceeding as defendants.
- (6) 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.

Compare: 1908 No 89 Schedule 2 r 792(1)–(7)

25.26 Plaintiff must apply to court within 5 working days

- (1) The plaintiff in an action *in personam* for relief under Part 7 of the Maritime Transport Act 1994, 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 an order to that effect, for directions as to the further proceedings in the action, and the application must be made—
 - (a) within 5 working days after the entry of appearance by 1 of the defendants named by their names in the notice of proceeding; or
 - (b) if none of the defendants enters an appearance, within 5 working days after the period specified for appearing.
- (2) The application must be supported by an affidavit or affidavits proving—
 - (a) the plaintiff's case in the action; and

Part 25—*continued*
Subpart 4—*continued*

- (b) 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
 - (c) 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
 - (d) the address of each of those persons, if known to the plaintiff.
- (3) The motion and every affidavit in support of the motion must be served, at least 5 working days before the hearing of the application, on any defendant who has entered an appearance.
- (4) 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 plaintiff's liability and fix the amount to which the liability is to be limited.
- (5) 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—
 - (a) give such directions as appear to be appropriate for enabling the defendant to obtain such information; and
 - (b) adjourn the hearing.
- (6) 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.
- (7) A defendant who, after directions have been given under subclause (6), ceases to dispute the plaintiff's right to limit the plaintiff's liability must immediately file a notice to that effect in the registry of the court and serve a copy on the plaintiff and on every other defendant who has entered an appearance.

Part 25—*continued*
Subpart 4—*continued*

- (8) If every defendant who disputes the plaintiff's right to limit the plaintiff's liability serves a notice on the plaintiff under subclause (7), the plaintiff may apply to the court for an order limiting the plaintiff's liability, and subclauses (3) and (4) apply to the application with the necessary modifications.

Compare: 1908 No 89 Schedule 2 r 792(8)

25.27 Protection against other parties

- (1) This rule applies if the only defendants in an action *in personam* for relief under Part 7 of the Maritime Transport Act 1994 are those named in the summons by their names and all those defendants have been served.
- (2) An order limiting the plaintiff's liability—
- (a) need not be advertised; but
 - (b) if not advertised, operates only to protect the plaintiff against claims by the named defendants or persons claiming through or under those persons.
- (3) To protect the plaintiff's liability against claims by other persons as well as the defendants and persons referred to in subclause (2)(b), an order limiting the plaintiff's liability must—
- (a) be advertised by the plaintiff in the manner provided, and within the period specified, in the order; and
 - (b) specify a period 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 subclause (5) applies, file a motion, if they think fit, to set the order aside.
- (4) The period to be allowed under subclause (3)(b), unless the court otherwise orders, must be not less than 2 months from the latest date allowed for the appearance of the advertisement and, after the expiration of the period 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.
- (5) If an order limiting the plaintiff's liability specifies a period in accordance with subclause (3),—

Part 25—*continued*
Subpart 4—*continued*

- (a) a person with a claim against the plaintiff concerning the casualty to which the action relates who is not named in the notice of proceeding as a defendant to the action may, within the specified period after entering an appearance, apply on notice for the order to be set aside:
 - (b) a person with a claim against the plaintiff concerning the casualty to which the action relates who is named but was not served with the notice of proceeding and has not entered an appearance may, within the specified period after entering an appearance, apply on notice for the order to be set aside.
- (6) An application under subclause (4) must be supported by an affidavit or affidavits showing that the defendant in question makes a claim in good faith 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.
 - (7) An application under subclause (4) and every affidavit in support of the application must be served, at least 5 working days before the hearing of the motion, on the plaintiff and on any defendant who has entered an appearance.
 - (8) If satisfied that the defendant concerned is making a claim in good faith against the plaintiff, and that it is reasonably arguable that the plaintiff is not entitled to the relief given to the plaintiff by the order, the court must set the order aside and give any directions as to the further proceedings in the action that appear appropriate.

Compare: 1908 No 89 Schedule 2 r 792(9), (10)

25.28 Order limiting plaintiff's liability

Any order limiting the plaintiff's liability in an action *in personam* for relief under Part 7 of the Maritime Transport Act 1994 may make any provision authorised by section 89 of the Maritime Transport Act 1994.

Compare: 1908 No 89 Schedule 2 r 792(11)

Part 25—*continued*

Subpart 5—Judgment by default

25.29 Who may seek judgment by default in action *in personam*

- (1) Rules 15.4 to 15.14 apply to actions *in personam*.
- (2) A plaintiff to an action *in personam* is entitled to proceed to judgment if the defendant fails, within the period specified by or under this Part, either to enter an appearance or to file a statement of defence.
- (3) Judgment under this rule must not exceed the amount endorsed on the notice of proceeding or claimed in the statement of claim concerning the demand for costs.

Compare: 1908 No 89 Schedule 2 r 787

25.30 Default in filing and service of statement of claim

- (1) This rule applies if the plaintiff to an action *in personam* or *in rem* is required by these rules to file in court a statement of claim and to serve it on a defendant, but the plaintiff fails to do either of those things.
- (2) The defendant may, after the expiration of the period specified by or under these rules for filing the statement of claim, apply to the court for an order to dismiss the action.
- (3) The court may by order dismiss the action or make any other order on any terms it thinks just.
- (4) The court may, on any terms it thinks just, set aside or vary any default judgment entered under this rule.

Compare: 1908 No 89 Schedule 2 r 788

25.31 Third parties

Rule 4.17 applies if a third party fails to enter an appearance, as if the failure to enter an appearance were a failure to file a statement of defence.

Compare: 1908 No 89 Schedule 2 r 789

25.32 Application for judgment by default in action *in rem*

- (1) An application for judgment by default in an action *in rem* must be made by motion.

Part 25—*continued*
Subpart 5—*continued*

- (2) In default actions *in rem*, evidence may, unless the court otherwise orders, be given by affidavit.
- (3) The plaintiff may, on filing an affidavit verifying the facts on which the action is based, apply to the court for judgment by default if—
 - (a) a notice of proceeding is served under rule 25.11(2) on a party at whose instance a caveat against arrest has been issued; and
 - (b) 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
 - (c) that party or that party's solicitor does not, within 10 working days after service of the notice of proceeding, fulfil that undertaking.
- (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 enter an appearance within the period specified for appearing; and
 - (b) not less than 10 working 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.
- (5) 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 specified 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

Part 25—*continued*
Subpart 5—*continued*

- (ii) an affidavit verifying the facts on which the action is based.
- (6) 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 counterclaim within the period specified 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.

Compare: 1908 No 89 Schedule 2 r 790(1), (3)–(5), (7)

25.33 Judgment by default in action *in rem*

- (1) On being satisfied at the hearing that the applicant's claim in an action *in rem* is well founded, the court may—
 - (a) give judgment for the claim; and
 - (b) at the same time,—
 - (i) 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
 - (ii) make any other orders it thinks just.
- (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) The court may, on any terms it thinks just, set aside or vary any judgment by default entered in an action *in rem*.

Compare: 1908 No 89 Schedule 2 r 790(2), (6), (8)

Part 25—*continued**Subpart 6—Arrest, release, and sale of
property*

Arrest of property

25.34 Application for warrant of arrest of property

- (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 AD 7, apply for the issue of a warrant of arrest of the property against which the action or counterclaim is brought.
- (2) However, 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) a warrant of arrest may be issued against 1 ship only; and
 - (b) the plaintiff must name that ship in the application for the warrant of arrest.
- (3) The applicant for the issue of a warrant of arrest must cause a search to be made 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, the applicant must file—
 - (a) an affidavit stating—
 - (i) the name and description of the party at whose instance the warrant is to be issued; 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 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

Part 25—*continued*
Subpart 6—*continued*

- (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 AD 8 and security to the satisfaction of the Registrar for the fees, expenses, and harbour dues (if any) of the Registrar and of the Registrar's appointed officers and agents.

Compare: 1908 No 89 Schedule 2 r 776(1)–(4)

25.35 Issue of warrant of arrest

- (1) The Registrar may require additional security to cover fees, expenses, and harbour dues (if any) referred to in rule 25.34(4)(b).
- (2) The Registrar must, before issuing the warrant of arrest, ascertain whether a caveat against the issue of a warrant of arrest has been entered, but, under rule 25.43(2), the entry of a caveat against arrest does not prevent the issue of a warrant of arrest.
- (3) “On being satisfied that the relevant requirements of rule 24.34 and this rule have been complied with, the Registrar must—”
 - (a) complete the certificate on the application for a warrant of arrest; and
 - (b) issue a warrant of arrest in form AD 9.
- (4) Despite subclause (2), a Registrar may, in the case of any emergency or special circumstances, issue a warrant of arrest immediately if the Registrar—
 - (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 an indemnity that the Registrar requires against any claim arising out of the issue of a warrant of arrest.
- (5) 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 (4).

Compare: 1908 No 89 Schedule 2 r 776(5)–(7), (12), (13), (17)(b)

Part 25—*continued*
Subpart 6—*continued*

25.36 Service of warrant

- (1) The warrant must be served by—
 - (a) the Registrar; or
 - (b) a person lawfully authorised (whether generally or specially for the purpose) to act as the Registrar.
- (2) The Registrar or other authorised person must serve the warrant in the manner specified 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 by the Registrar or other authorised person in that manner.
- (3) The warrant may be served on a Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.
- (4) A Registrar may, by fax or other means of communication,—
 - (a) 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;
 - (b) give instructions for the execution of the warrant.

Compare: 1908 No 89 Schedule 2 r 776(8)–(10)

25.37 Currency of warrant

A warrant of arrest is valid for 6 months beginning on the day of issue unless sooner withdrawn, and successive warrants may be issued.

Compare: 1908 No 89 Schedule 2 r 776(14)

25.38 Notice of arrest of property

- (1) 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 AD 10.
- (2) Service may be made by the Registrar’s duly appointed officer or agent.

Compare: 1908 No 89 Schedule 2 r 776(15)

Part 25—*continued*
Subpart 6—*continued*

25.39 No Crown indemnity required

Rules 25.34(4)(b) and 25.35(4)(b) do not require the Crown to give any indemnity or security.

Compare: 1908 No 89 Schedule 2 r 776(16)

25.40 Contempt to move ship under arrest

- (1) This rule applies to—
 - (a) the master of a ship having notice of the issue of a warrant of arrest of the ship;
 - (b) any other person having notice of the arrest of the ship.
- (2) It is contempt of court for the master or other person to move the ship from where it is lying without the consent of the Registrar.

Compare: 1908 No 89 Schedule 2 r 776(11)

25.41 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).
- (2) The person applying must give notice of the application to all parties to the action unless the court otherwise orders.

Compare: 1908 No 89 Schedule 2 r 776A

25.42 Request for caveat against arrest of property

- (1) A person may request a caveat against the arrest of any property by filing a request in form AD 11 signed by the person or the person's solicitor undertaking—
 - (a) to enter an appearance in any action that may be started against the property described in the request; and
 - (b) within 3 working days after receiving notice that such an action has been started, to give security to the satisfaction of the Registrar in the sum specified in the request or to pay that sum into court.

Part 25—*continued*
Subpart 6—*continued*

- (2) 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 working days after the day of service of the notice of proceeding or counter-claim.
- (3) 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.

Compare: 1908 No 89 Schedule 2 r 777(1), (3), (4)

25.43 Entry of caveat

- (1) Immediately on the filing of a request under rule 25.42, the Registrar must enter a caveat in the Register of Admiralty Proceedings.
- (2) Neither 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 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.
- (3) 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, and successive caveats may be entered.
- (4) 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.
- (5) The court may, on its own initiative or on application, set aside a caveat entered under this rule.

Compare: 1908 No 89 Schedule 2 r 777(2), (5)–(8)

Part 25—*continued*
Subpart 6—*continued*

25.44 Request for instrument of release

- (1) A party interested in any property arrested under a warrant of arrest may request a Registrar to issue an instrument of release (a **release**) in form AD 12 for the release of the property unless the property is sold under an order of the court.
- (2) The release must be issued out of the registry where the action in which the warrant was issued is proceeding.
- (3) The Registrar must, before issuing the release, cause a search to be made to ascertain whether a caveat against release of the property in question is in force.
- (4) 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.
- (5) 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.
- (6) The court, on the application of any party who objects to directions given to that party by the Registrar under subclause (5), may vary or revoke the directions.

Compare: 1908 No 89 Schedule 2 r 778(1), (6)–(9)

25.45 Issue of release

- (1) A Registrar may issue a release either—
 - (a) on the order of the court at the request of a party interested in the property under arrest; or
 - (b) by consent of all the other parties to the action in which the warrant of arrest was issued, unless release on this basis is prevented by a court order.

Part 25—*continued*
Subpart 6—*continued*

- (2) A Registrar may issue a release under subclause (1) either—
 - (a) 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
 - (b) on security (including a bail bond in form AD 13) for those amounts having been given to the satisfaction of the Registrar.
- (3) A release must not be issued for property under subclause (1) if a caveat against release of that property is in force, unless the court otherwise orders.
- (4) A release must be issued for property if,—
 - (a) before an appearance is entered in the action concerned, a party at whose instance the property was arrested files a notice withdrawing the warrant of arrest; and
 - (b) rule 25.44(4) has been complied with (if applicable) and the release is not prevented by subclause (3).

Compare: 1908 No 89 Schedule 2 r 778 (2)–(5), (10)

25.46 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 a request for a caveat in form AD 14.
- (2) On the filing of the request, the Registrar must enter in the Register of Admiralty Proceedings a caveat against—
 - (a) the issue of a release for the property; or
 - (b) the payment out of court of the money in court; or
 - (c) both.
- (3) The caveator must serve a copy of the caveat on every party to the action.
- (4) 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.

Part 25—*continued*
Subpart 6—*continued*

- (5) 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.
- (6) A caveat under this rule may be withdrawn by filing a notice of withdrawal signed by the caveator or the caveator's solicitor.
- (7) The court may, on its own initiative or on application, set aside a caveat issued under this rule.

Compare: 1908 No 89 Schedule 2 r 779

25.47 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 in accordance with this rule.
- (2) The Registrar must apply to the court under rule 25.41 for the appropriate order if—
 - (a) the Registrar considers the request reasonable; and
 - (b) the applicant gives 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.
- (3) If the interested persons are unable or unwilling to arrange for an undertaking under subclause (2)(b) 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.
- (4) If a ship is under arrest but cargo on board the ship is not, persons interested in the cargo who wish to secure its discharge may follow 1 or other of the procedures specified in this rule.

Compare: 1908 No 89 Schedule 2 r 780

Part 25—*continued*
Subpart 6—*continued*

25.48 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) submit to the jurisdiction of the court for all purposes relating to the security and its enforcement, unless otherwise ordered by the court; and
 - (b) give an address for service within the jurisdiction of the court.

Compare: 1908 No 89 Schedule 2 r 781

25.49 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.
- (2) With the written consent of all parties to the action and of any caveator and of any intervener under rule 25.50, the Registrar may authorise money to be paid out of court.

Compare: 1908 No 89 Schedule 2 r 782

25.50 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: 1908 No 89 Schedule 2 r 783

Part 25—*continued*
Subpart 6—*continued*

25.51 Appraisement and sale of property

- (1) A party may request a commission for the appraisement and sale of any property under arrest of the court by filing a request in form AD 15.
- (2) The court may, either before or after final judgment, order that any property described in the request—
 - (a) be appraised; or
 - (b) be sold with or without appraisement, and either by public auction or by private contract.
- (3) If the property is deteriorating in value, the court may order that it be sold immediately.
- (4) If the property sold is of small value, the court may, if it thinks just, order that it be sold without a commission of sale being issued.
- (5) The commission for the appraisement must be in form AD 16 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 registry.
- (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: 1908 No 89 Schedule 2 r 784

25.52 Determination of priority of claims where court orders sale of ship

- (1) In making an order for the sale of a ship in an action *in rem*, the court may further order—
 - (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 65 working days, or of any other period

Part 25—*continued*
Subpart 6—*continued*

specified by the court, 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 5 working days after the date of payment into court of the proceeds of sale, the Registrar must send a notice in form AD 17 for publication in the *Gazette* and such newspaper (if any) as the court may direct.
- (2) A 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 sale of the ship.
 - (3) However, if the order for sale contains a further order referred to in subclause (1), an application for an order determining priorities may be made only after the expiration of the period that applies under paragraph (a) or (b) of that subclause.
 - (4) An application to the court to extend the period referred to in subclause (1)(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.
 - (5) The Registrar must lodge in the registry a copy of each newspaper in which the notice referred to in subclause (1)(c) appeared.
 - (6) 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.

Compare: 1908 No 89 Schedule 2 r 791

Subpart 7—Miscellaneous provisions

25.53 Inspection of ship, etc

- (1) 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,

Part 25—*continued*
Subpart 7—*continued*

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.

- (2) Subclause (1) does not limit the court's powers under any other provision of these rules.

Compare: 1908 No 89 Schedule 2 r 793

25.54 Consent orders

- (1) 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.

- (2) The agreement becomes an order of the court when it is filed.

Compare: 1908 No 89 Schedule 2 r 794

25.55 Registrar may seek court's assistance

- (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.

- (2) The court may make any orders it thinks just concerning the performance or exercise of that function, duty, right, or power.

Compare: 1908 No 89 Schedule 2 r 795(1)

25.56 Parties may seek review of Registrar's decision

- (1) 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.

- (2) The court may make any orders it thinks just.

Compare: 1908 No 89 Schedule 2 r 795(2)

Part 26
Arbitration Act 1996

Subpart 1—Preliminary provisions

26.1 Interpretation

In this Part,—

Act means the Arbitration Act 1996

arbitral tribunal has the same meaning as in section 2(1) of the Act

Judge includes Associate Judge

Schedule 1 means Schedule 1 of the Act

Schedule 2 means Schedule 2 of the Act.

Compare: 1908 No 89 Schedule 2 r 877

26.2 Application

This Part applies to—

- (a) an appeal under clause 5(1)(a) or (b) of Schedule 2:
- (b) an application for leave to appeal under clause 5(1)(c) of Schedule 2:
- (c) an application for entry of an award as a judgment under article 35 of Schedule 1.

Compare: 1908 No 89 Schedule 2 r 878

*Subpart 2—Appeals under clause 5(1)(a) or
(b) of Schedule 2*

26.3 Originating application to commence appeal

- (1) The plaintiff must commence an appeal to which clause 5(1)(a) or (b) of Schedule 2 applies by filing an originating application in the proper registry determined under rule 5.1.
- (2) The originating application—
 - (a) must be in form Arb 1; and
 - (b) must not name the arbitral tribunal as a defendant.
- (3) Rule 5.44 applies to the originating application.
- (4) The application must attach the award or arbitral tribunal's decision to which the appeal relates, but if it is not available at the date of the application it must be filed by the applicant immediately it becomes available.

Part 26—*continued*
Subpart 2—*continued*

- (5) This rule has effect despite rule 5.25 or Part 18.
Compare: 1908 No 89 Schedule 2 r 879

26.4 Affidavit to be filed in support

At the same time as the originating application is filed, the plaintiff must file an affidavit proving that the appeal falls within clause 5(1)(a) or (b) of Schedule 2, as the case may be.

Compare: 1908 No 89 Schedule 2 r 880

26.5 Service

The plaintiff must serve copies of the originating application and the affidavit on the defendant either before or immediately after filing.

Compare: 1908 No 89 Schedule 2 r 882

26.6 Amending appeal grounds

The grounds of the appeal may be subsequently amended by leave of the court.

Compare: 1908 No 89 Schedule 2 r 881

26.7 Notice of opposition to application

- (1) A defendant intending to oppose the originating application must—
- (a) file a notice of opposition; and
 - (b) serve it on the plaintiff and all other parties.
- (2) The notice of opposition—
- (a) must be filed within 10 working days after service of the originating application; and
 - (b) must state the defendant's intention to oppose the application and the grounds of opposition, including—
 - (i) a denial of any fact stated in the originating application that is not admitted; and
 - (ii) a statement of any fact or matter, not mentioned in the originating application, on which the defendant relies; and

Part 26—*continued*
Subpart 2—*continued*

- (c) must contain a reference to any enactment, or rule, or principle of law on which the defendant relies; and
- (d) must be in form G 33, with any necessary modifications.

Compare: 1908 No 89 Schedule 2 r 883

26.8 Cross-appeal

- (1) A defendant wishing to cross-appeal at the hearing of the originating application in the circumstances set out in subclause (2) must—
 - (a) file a notice of cross-appeal; and
 - (b) serve it on the plaintiff and all other parties.
- (2) The circumstances are that—
 - (a) the defendant intends to contend at the hearing that another question of law arises out of the award; and
 - (b) the other question is the reason for the cross-appeal; and
 - (c) clause 5(1)(a) or (b) of Schedule 2 applies with respect to the other question.
- (3) The notice of cross-appeal—
 - (a) must be filed within 10 working days after service of the plaintiff's originating application; and
 - (b) must be in form Arb 1, with any necessary modifications.
- (4) This Part applies to cross-appeals with all necessary modifications.

Compare: 1908 No 89 Schedule 2 r 884

26.9 Record of arbitration

- (1) This rule and rule 26.10 apply if the court gives a direction under rule 7.5(7)(d)(i) at a case management conference or at any other time.
- (2) The record of the arbitration comprises any—
 - (a) application, documents, written submissions, statements, reports, and other papers lodged with the arbitral tribunal; and
 - (b) transcript of evidence; and

Part 26—*continued*
Subpart 2—*continued*

- (c) exhibits.
 - (3) Despite subclause (2), a part of the record must be omitted from the record filed if the parties agree that it is unnecessary for the hearing of the appeal.
 - (4) The cost of preparing the record—
 - (a) must be met by the plaintiff; and
 - (b) is a disbursement in the proceeding.
- Compare: 1908 No 89 Schedule 2 r 886(1), (3), (6), (7)

26.10 Service and filing of record

- (1) The plaintiff must serve a properly indexed copy of the record of the arbitration on the defendant within 20 working days of the direction.
- (2) Within 5 working days after service of the proposed record and index, the defendant must,—
 - (a) if agreeing to the record and index, signify agreement by signing the index; or
 - (b) advise the plaintiff of changes sought to the proposed record or index.
- (3) After the defendant has taken the steps in subclause (2), the plaintiff must file, without delay,—
 - (a) a properly indexed copy of the record; and
 - (b) a memorandum setting out changes sought by the defendant and the plaintiff's reasons for not agreeing to them, if applicable; and
 - (c) any further documents that the defendant contends form part of the record.
- (4) The court may direct the plaintiff to file a further copy of the record if an appeal is to be heard by more than 1 Judge.

Compare: 1908 No 89 Schedule 2 r 886(2), (4), (5), (8)

26.11 Transcript of evidence

- (1) This rule and rule 26.12 apply if the court gives a direction under rule 7.5(7)(d)(ii) at a case management conference or at any other time.

Part 26—*continued*
Subpart 2—*continued*

- (2) The court may order that a transcript be made of any recorded evidence given in the arbitration—
 - (a) if it is satisfied that the transcript is required to properly determine the appeal; and
 - (b) subject to any conditions that the court thinks just.
- (3) The cost of preparing a transcript is a disbursement in the proceeding.

Compare: 1908 No 89 Schedule 2 r 887(1), (2), (7)

26.12 Service and filing of transcript

- (1) The plaintiff must serve the proposed transcript on the defendant within 20 working days of the direction.
- (2) Within 5 working days after service of the proposed transcript, the defendant must—
 - (a) agree to the transcript, and signify agreement by appropriately certifying the transcript; or
 - (b) advise the plaintiff of—
 - (i) changes sought; and
 - (ii) additional evidence to be transcribed.
- (3) After the defendant has taken the steps in subclause (2), the plaintiff must file, without delay,—
 - (a) the transcript; and
 - (b) a memorandum setting out changes sought by the defendant and the plaintiff's reasons for not agreeing to them, if applicable.
- (4) The defendant may file a transcript of evidence if—
 - (a) the defendant sought to have additional evidence transcribed; and
 - (b) the plaintiff disputed—
 - (i) the relevance of the evidence; or
 - (ii) the necessity of transcribing it for the hearing.
- (5) The court may direct a party submitting a transcript to file a further copy of it if an appeal is to be heard by more than 1 Judge.

Compare: 1908 No 89 Schedule 2 r 887(3)–(6), (8)

Part 26—*continued*
Subpart 2—*continued*

26.13 Hearing of appeal

- (1) Appeals are by way of rehearing.
- (2) In an appeal, the court has all the powers and discretions of an 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.

Compare: 1908 No 89 Schedule 2 r 889

26.14 Leave to appeal to Court of Appeal

An 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 20 working days of the High Court's determining the appeal under clause 5(4) of Schedule 2.

Compare: 1908 No 89 Schedule 2 r 890

*Subpart 3—Leave to appeal under clause
5(1)(c) of Schedule 2*

26.15 Applications for leave to appeal

- (1) The plaintiff must commence a proceeding to which clause 5(1)(c) of Schedule 2 applies by filing an originating application in the proper registry determined under rule 5.1.
- (2) The originating application—
 - (a) must be in form Arb 2; and
 - (b) must not name the arbitral tribunal as a defendant.
- (3) In relation to the originating application, the following apply:
 - (a) rule 5.44; and
 - (b) rules 26.4 to 26.7, with all necessary modifications.
- (4) This rule has effect despite rule 5.25 or Part 18.

Compare: 1908 No 89 Schedule 2 r 891

26.16 Submissions

- (1) The plaintiff must file the following within 10 working days of the time specified in subclause (2):
 - (a) submissions as to why leave should be granted:

Part 26—*continued*
Subpart 3—*continued*

- (b) copies of any authorities relied on.
- (2) The time is whichever of the following applies:
 - (a) the date on which the plaintiff is served with a notice of opposition;
 - (b) the date by which the defendant must file a notice of opposition if the defendant wishes to oppose the application.
- (3) Copies of material filed must be served immediately on any defendant who has filed and served a notice of opposition.
- (4) At the hearing, unless otherwise directed by the Judge,—
 - (a) the plaintiff or his or her counsel is restricted to 30 minutes; and
 - (b) the defendant or his or her counsel is restricted to 30 minutes; and
 - (c) the plaintiff or his or her counsel is restricted to 10 minutes by way of reply.

Compare: 1908 No 89 Schedule 2 r 892

26.17 Granting leave

The court need not give reasons for granting leave unless it thinks reasons are required in the circumstances.

Compare: 1908 No 89 Schedule 2 r 893

26.18 Refusing leave

The court must give reasons if it refuses to grant leave.

Compare: 1908 No 89 Schedule 2 r 894(1)

26.19 Applying to Court of Appeal for leave to appeal

An application to the court under clause 5(5) of Schedule 2 for leave to appeal to the Court of Appeal from a refusal to grant leave to appeal must be filed within 20 working days of the refusal.

Compare: 1908 No 89 Schedule 2 r 894(2)

Part 26—*continued*

*Subpart 4—Entry of award as judgment
under article 35 of Schedule 1*

26.20 Entry of judgment if all parties agree

- (1) All parties to an award who agree that it may be entered as a judgment may apply to a Registrar by letter signed by all parties or their solicitor or counsel requesting the entry of the award as a judgment.
- (2) The Registrar must enter the award as a judgment as soon as practicable—
 - (a) if he or she is satisfied that all parties have agreed; and
 - (b) if he or she is satisfied with respect to the matters set out in article 35(2) of Schedule 1.

Compare: 1908 No 89 Schedule 2 r 895

26.21 Entry of judgment in other cases

- (1) If rule 26.20 does not apply, 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) A party electing the method set out in subclause (1)(a) must commence a proceeding under Part 5.
- (3) A party electing the method set out in subclause (1)(b) must follow the procedure set out in rules 26.22 to 26.27.

Compare: 1908 No 89 Schedule 2 r 896

26.22 Application for entry of award as judgment

- (1) The party to the award must file an originating application in the proper registry, determined under rule 5.1.
- (2) The originating application—
 - (a) must be in form Arb 3; and
 - (b) must not name the arbitral tribunal as a defendant.
- (3) Rule 5.44 applies to the originating application.
- (4) This rule has effect despite anything in rule 5.25 or Part 18.

Compare: 1908 No 89 Schedule 2 r 897

Part 26—*continued*
Subpart 4—*continued*

26.23 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.

Compare: 1908 No 89 Schedule 2 r 898

26.24 Service

- (1) The plaintiff must serve copies of both the originating application and the affidavit on the defendant either before or immediately after filing.
- (2) Subclause (1) does not apply if the plaintiff obtains an order under rule 26.25.

Compare: 1908 No 89 Schedule 2 r 899

26.25 Entry as judgment without notice in exceptional circumstances

- (1) In exceptional circumstances, the plaintiff may, on or after the filing of the originating application, file an application without notice for an order that the award be entered as a judgment.
- (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 without notice 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 it has been served on the defendant and a period specified by the court has expired after service.

Compare: 1908 No 89 Schedule 2 r 899A

26.26 Entry as judgment if defendant takes no steps

- (1) The Registrar must enter the award as a judgment as soon as practicable if—
 - (a) the defendant takes no steps within the time specified in subclause (2); and

Part 26—*continued*
Subpart 4—*continued*

- (b) the plaintiff makes an application for the entry.
- (2) The time is whichever of the following applies:
 - (a) 10 working days after the plaintiff's application is served on the defendant; or
 - (b) a period fixed by the court of less than 10 working days after the order fixing that period is served on the defendant.
- (3) An application to the Registrar under subclause (1)(b)—
 - (a) is made by letter signed by the plaintiff or his or her solicitor or counsel requesting the entry of the award as a judgment; and
 - (b) need not be served on the defendant.
- (4) An application for an order under subclause (2)(b) may be made without notice.
- (5) An order under subclause (2)(b) does not take effect unless it is served on the defendant together with the documents referred to in rule 26.24(1).
- (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.

Compare: 1908 No 89 Schedule 2 r 900

26.27 Opposition to entry as judgment

- (1) This rule applies if a defendant wishes to oppose the originating application.
- (2) The plaintiff's application is stayed pending the determination of an application under this rule.
- (3) The defendant must file and serve an application seeking an order for refusal of recognition and enforcement in terms of article 36 of Schedule 1.
- (4) The application referred to in subclause (3) must be—
 - (a) filed and served within the applicable period specified in rule 26.26(2); and

Part 26—*continued*
Subpart 4—*continued*

- (b) treated as if it were an originating application under Part 19; and
- (c) disposed of in accordance with Part 19; and
- (d) determined at the same time as the plaintiff's application to enforce the award by entry as a judgment.

Compare: 1908 No 89 Schedule 2 r 901

Part 27
Administration (including probate)
Subpart 1—General

27.1 Wills and intestacies to which this Part applies

- (1) The rules in this Part apply to—
 - (a) the wills of persons who die on or after 1 November 2007; and
 - (b) grants of administration in respect of persons who die intestate on or after the date when these rules come into force.
- (2) The rules in this Part, except rule 27.14, do not apply to the wills of persons who died before 1 November 2007.
- (3) The High Court Rules set out in Schedule 2 of the Judicature Act 1908 before their amendment by the High Court Amendment (Wills Act 2007) Rules 2007, except for the amendment in rule 27.14, apply to the wills of persons who died before 1 November 2007.

27.2 Interpretation

For the purposes of this Part,—

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
- (c) for Public Trust or the Māori Trustee or a trustee company as defined in the Trustee Companies Act 1967, includes—

Part 27—*continued*
Subpart 1—*continued*

- (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 Māori 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 has the same meaning as in section 8 of the Wills Act 2007.

Subpart 2—Applications for administration

27.3 Kinds of applications for grants

An application for a grant is made by—

- (a) an application without notice under rule 27.4; or
- (b) an application in solemn form under rule 27.6.

27.4 Applications without notice

- (1) This rule applies to an application without notice.
- (2) Rule 5.36 does not apply to the application.
- (3) The application is headed in the same way as form PR 1.
- (4) A lawyer may give the certificate required by rule, 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

Part 27—*continued*
Subpart 2—*continued*

- (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 PR 1 to PR 6 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 PR 1 to PR 6 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 PR 1.
- (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 PR 1 or PR 2 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 application without notice under rules 7.19 and 7.23, subject to this Part.
- (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 r 634

27.5 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; and
 - (b) 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.

Part 27—*continued*
Subpart 2—*continued*

- (3) The applicant may make an application under rule 27.4 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—
 - (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 27.4 until the application under section 53 has been determined.

Compare: 1908 No 89 Schedule 2 r 635

Applications in solemn form

27.6 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 5 applies to the application.
- (4) The procedure for dealing with the application is the same as for an ordinary proceeding, subject to the rules in this Part.

Compare: 1908 No 89 Schedule 2 r 636

27.7 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 27.6.
- (2) If the applicant does not apply, or if the court does not give directions, the applicant must name as respondents—

Part 27—*continued*
Subpart 2—*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 27.11.
- (3) A person interested in the result of an application under rule 27.6 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 r 637

27.8 Compromises

- (1) This rule applies if an application under rule 27.6 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 27.4; and
 - (b) that evidence on the application may be given by affidavit.

Compare: 1908 No 89 Schedule 2 r 638

27.9 Pleadings

- (1) This rule applies to an application under rule 27.6 in which a pleading states that the will that the application relates to is invalid.
- (2) This rule also applies to an application under rule 27.6 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.

Part 27—*continued*
Subpart 2—*continued*

- (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 any or all of the following:
- (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 639

27.10 Where application is filed

- (1) This rule applies to an application, and all other documents, filed under this Part.
- (2) If the deceased resided in New Zealand when he or she died, the application and documents must be filed in the registry 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 Zealand, the application and documents must be filed in the registry 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 registry of the court at Wellington or a registry 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 registry of the court at Wellington or a registry specified under subclause (6).
- (6) If subclause (4) or (5) applies,—

Part 27—*continued*
Subpart 2—*continued*

- (a) the applicant may make an interlocutory application for an order specifying the registry of the court in which the application and documents are to be filed; and
 - (b) the court may make an order specifying the registry.
- (7) If an application or a document is filed in the wrong registry of the court, the court may order the transfer of the application or document to the proper registry.
- Compare: 1908 No 89 Schedule 2 r 640

27.11 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 PR 10.
 - (3) The caveat must be lodged with the Registrar in the registry in which the application is required to be filed under rule 27.10.
- Compare: 1908 No 89 Schedule 2 r 641

27.12 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 27.4.
- (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

Part 27—*continued*
Subpart 2—*continued*

- (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 2.5 to 2.11 and 7.19 to 7.52.
 - (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 r 642

27.13 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 643

27.14 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 registry; 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

Part 27—*continued*
Subpart 2—*continued*

- (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
 - (g) rule 27.10(6)(b); and
 - (h) rule 27.12(6), if an unopposed application has been made under rule 27.12(3); and
 - (i) rule 27.13(3); and
 - (j) rule 27.29(2); and
 - (k) rule 27.30(1) to (4); and
 - (l) rule 27.34(2).
- (3) Rules 2.7 to 2.11 apply to a registrar acting under subclause (2) and, for this purpose, references in them to rule 2.5 or 2.6 must be read as references to rule 27.14(2).

Compare: 1908 No 89 Schedule 2 r 644

27.15 Application of rules 27.16 to 27.28

Rules 27.16 to 27.28 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 645

27.16 Evidence as to execution

- (1) A person who knows the relevant facts personally may provide the evidence required by rules 27.17 to 27.28.
- (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

Part 27—*continued*
Subpart 2—*continued*

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, and form PR 12 may be used.

Compare: 1908 No 89 Schedule 2 r 646

27.17 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 27.16 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 27.16 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 647

27.18 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—

Part 27—*continued*
Subpart 2—*continued*

- (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 27.16 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 648

27.19 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—
 - (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 649

27.20 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 650

27.21 Changes

- (1) This rule applies if—
 - (a) a change appears on a will; and
 - (b) the change is of practical importance; and

Part 27—*continued*
Subpart 2—*continued*

- (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)(l) 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.
- (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 651

27.22 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 652

27.23 Revocation

- (1) This rule applies if it appears to the court that,—

Part 27—*continued*
Subpart 2—*continued*

- (a) for a will made on or after 1 November 2007, 1 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, 1 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 653

27.24 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 654

*Subpart 3—Administration with will
annexed*

27.25 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 the executor or each of the executors appointed—
 - (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

Part 27—*continued*
Subpart 3—*continued*

- 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 that section has done so within 4 months after the will-maker'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 27.26.

Compare: 1908 No 89 Schedule 2 r 655(1), (3), (4)

27.26 Priority of potential administrators for purposes of rule 27.25

- (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

Part 27—*continued*
Subpart 3—*continued*

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.
- (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 656

27.27 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 27.26 would give persons other than the applicant a priority that is higher than, or equal to, that of the applicant.
- (2) The applicant must—

Part 27—*continued*
Subpart 3—*continued*

- (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
 - (c) attach the written consents of all the persons to an affidavit in form PR 2.
 - (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 657

27.28 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 658

Subpart 4—Grants

27.29 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 5 working days from the date of the will-maker's death; and
 - (b) for other letters of administration, no earlier than 10 working days from the date of the deceased's death.

Part 27—*continued*
Subpart 4—*continued*

- (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 659

27.30 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 that Act.
- (6) The grant is for the use and benefit of the person or donor.

Compare: 1908 No 89 Schedule 2 r 660

27.31 Common or solemn form

- (1) A grant on an application under rule 27.4 must be in common form in whichever is appropriate of forms PR 7, PR 8, and PR 9.
- (2) A grant on an application under rule 27.6 must be in solemn form.

Compare: 1908 No 89 Schedule 2 r 661

Part 27—*continued*

Subpart 5—Inventories and accounts

27.32 Inventory and account filed by administrator

- (1) A person interested in a deceased's estate may apply for an order that the administrator of the estate 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 were 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
 - (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 registry in which the grant was made.

Compare: 1908 No 89 Schedule 2 r 662

Part 27—*continued**Subpart 6—Overseas assets***27.33 Administration of overseas assets**

- (1) An administrator administering overseas assets may request the court to seal an exemplification of administration in form PR 11.
- (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 663

*Subpart 7—Recall of grant***27.34 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
 - (b) 1 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 27.9 applies to an application under subclause (1) and the proceedings referred to in subclause (3).

Compare: 1908 No 89 Schedule 2 r 664

Part 27—*continued*

Subpart 8—Priorities on intestacy

27.35 Order of priority for grant in case of intestacy

- (1) If a person has died wholly intestate, the right to apply for letters of administration of that person's estate is determined in accordance with the order of priority set out in subclause (3).
- (2) Subclause (1) is subject to section 6 of the Administration Act 1969.
- (3) The order referred to in subclause (1) is as follows:
 - (a) the first in priority is persons having a beneficial interest in the estate, according to the order of priority set out in subclause (4):
 - (b) the second in priority is the Attorney-General, if he or she claims *bona vacantia* on behalf of the Crown:
 - (c) the third in priority is a creditor of the deceased, or any person who, even though having no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion to it.
- (4) Persons having a beneficial interest in the estate are entitled to a grant of administration in the following order of priority:
 - (a) the surviving spouse or civil union partner or de facto partner entitled to succeed on the intestacy, if paragraph (b) 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 the case of a surviving de facto partner, by section 77B of the Administration Act 1969; or
 - (iv) in every case, by the choice of option A under section 61 of the Property (Relationships) Act 1976:

Part 27—*continued*
Subpart 8—*continued*

- (b) 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), a 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 (iv):
 - (c) 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 a child who has died during the lifetime of the deceased:
 - (d) the parent or parents of the deceased:
 - (e) brothers and sisters of full or half blood, or, failing them, the issue of any such brother or sister who has died during the lifetime of the deceased:
 - (f) grandparents:
 - (g) uncles and aunts of full or half blood, or failing them, the issue of an uncle or aunt who has died during the lifetime of the deceased.
- (5) The personal representative of a person in any of the classes referred to in subclause (4) or the personal representative of a creditor has the same right to a grant as the person represented.
 - (6) The Adoption Act 1955 applies in determining entitlement to a grant in the same way that it applies to devolution of property on intestacy.
 - (7) If a person has died partially intestate, that is, his or her will has disposed of some but not all of that person's assets, the court must make a single grant of administration for the whole of the estate. The executor, or executors, named in the will has priority in applying for that grant, but otherwise rule 27.26 applies.

Compare: 1908 No 89 Schedule 2 r 665

Part 27—*continued*
Subpart 8—*continued*

27.36 Justification of entitlement to grant

- (1) When 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 have (if living and competent), under rule 27.35, a priority higher than or equal to that of the applicant, the applicant—
 - (a) must prove to the satisfaction of the court—
 - (i) that those persons are dead or incompetent; or
 - (ii) that notice of the intended application has been given to them; or
 - (b) must file their consents in writing, duly verified by affidavit.
- (2) Despite subclause (1), the court may, on any conditions that it thinks just, dispense with the giving of notice to, or the obtaining of the consent of, any person who, at the time of the application,—
 - (a) is beyond the jurisdiction of the court; or
 - (b) cannot be found.
- (3) The applicant must prove the identity and relationship with the deceased of any person who, under rule 27.35, has a priority higher than or equal to that of the applicant.
- (4) If the applicant is the surviving spouse or the surviving civil union partner, the applicant must prove 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) If the applicant is the surviving de facto partner, the applicant must prove that the restrictions on succession imposed by section 77B of the Administration Act 1969 do not apply.
- (6) Nothing in this rule limits the power of the court to require evidence of other facts necessary to enable the court to decide whether to make a grant to the applicant.

Part 27—*continued*
Subpart 8—*continued*

- (7) In particular, evidence may be required when 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 666

Subpart 9—Commission

27.37 Form of application for commission

- (1) This rule applies to an 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.
- (2) An application under this rule must be made by statement of claim in accordance with Part 5.
- (3) Despite subclause (2), the application must be made by interlocutory application in the proceeding for probate or letters of administration, or in the earlier proceeding for commission, if either—
- (a) the trust was created by will or arises upon an intestacy; or
 - (b) there has been a previous application for commission (whether or not by the same applicant).

Compare: 1908 No 89 Schedule 2 r 667

27.38 Affidavit in support

An application under rule 27.37 must be supported by an affidavit or affidavits showing—

- (a) how and when the trust was constituted, the names of all present and previous trustees of it, and the period during which each held registry;
- (b) the information that is necessary in accordance with rule 18.7 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

Part 27—*continued*
Subpart 9—*continued*

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 of it:
- (e) particulars of every such profit, benefit, and advantage:
- (f) the amount of the allowance sought by each applicant, and the basis or principle by which the same is arrived at:
- (g) if an order is sought under section 72(3) of the Trustee Act 1956 apportioning the total amount allowed, the basis of the proposed apportionment:
- (h) 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,—
 - (i) the trust property has been realised and income got in:
 - (ii) the administration of the trust has been carried on and its responsibilities discharged by each person who is or has been a trustee:
- (i) 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, having regard to—
 - (i) the extent to which the duties of the trusteeship have already been discharged:
 - (ii) the period likely to elapse before that final distribution:

Part 27—*continued*
Subpart 9—*continued*

- (iii) the changes in trusteeship that may occur during that period:
- (iv) other relevant facts.

Compare: 1908 No 89 Schedule 2 r 668

27.39 Documents to be filed and verified

- (1) This rule is subject to rules 27.40 and 27.45.
- (2) The following documents, verified by an affidavit or affidavits of a solicitor or chartered accountant, must be filed in respect of an application under rule 27.37:
 - (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 of those accounts 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 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

Part 27—*continued*
Subpart 9—*continued*

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 that period in respect of capital and income respectively.

Compare: 1908 No 89 Schedule 2 r 669

27.40 Power to adopt previous accounts

- (1) Unless the court otherwise orders, the accounts of the trustees or summarised statements 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 27.38 and 27.39 and not contained in the accounts or summarised statements previously kept or made (including any information required in respect of administration by other trustees) must be supplied by supplementary accounts or summarised statements verified in each case by an affidavit of a chartered accountant or solicitor.
- (3) If 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 a commission or percentage, rules 27.38 and 27.39 are to be treated to that extent as having been complied with.

Compare: 1908 No 89 Schedule 2 r 670

27.41 Power to refer matter to Registrar for inquiry

The court may at any time refer the application or anything that is part of it or connected with it to the Registrar for inquiry and report.

Compare: 1908 No 89 Schedule 2 r 671

27.42 Notice of inquiry by Registrar

- (1) Unless the court otherwise orders, reasonable notice to the satisfaction of the Registrar of any appointment made by the

Part 27—*continued*
Subpart 9—*continued*

Registrar to proceed with the Registrar's inquiry must be given to every person who was entitled to be served with the application.

- (2) Subclause (1) does not apply if 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: 1908 No 89 Schedule 2 r 672

27.43 Evidence before Registrar

The evidence of every witness called on the inquiry before the Registrar must be taken down in writing and signed by the witness, and accompany the Registrar's report to the court.

Compare: 1908 No 89 Schedule 2 r 673

27.44 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 of it.

Compare: 1908 No 89 Schedule 2 r 674

27.45 Power to dispense with rules

- (1) On an interlocutory application made before or after the filing of an application for a commission or percentage, and upon sufficient grounds, the court may dispense with the observance of all or any of the rules in this subpart.
- (2) An application under subclause (1) may be made without notice, but the court may require notice of it to be given to any other person or persons and prescribe the method.

Compare: 1908 No 89 Schedule 2 r 675

Part 28

Trans-Tasman competition proceedings

28.1 Interpretation

In this Part, 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 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 application related to such a proceeding and an application for the issue of execution or enforcement of a judgment, order, or injunction given, made, or granted in 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 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 a related interlocutory proceeding and an application for the issue of execution or enforcement of a judgment, order, or injunction given, made, or granted in a proceeding.

Compare: 1908 No 89 Schedule 2 r 446R

28.2 Commencement of New Zealand proceedings

- (1) A New Zealand proceeding must be commenced by filing a statement of claim in the registry of the court at Auckland, Wellington, or Christchurch in accordance with rule 28.3.
- (2) Despite subclause (1), the statement of claim may be filed in any of those registries of the court if the parties agree, by en-

Part 28—*continued*

dorsement on the statement of claim, to the filing of the statement of claim in that registry.

Compare: 1908 No 89 Schedule 2 r 446S

28.3 Registry of court in which proceedings to be commenced

- (1) Despite rule 5.1, the registry of the court for the purposes of rule 28.2 is determined as follows:
 - (a) if any defendant is resident or the defendant's principal place of business is in New Zealand, that registry is whichever of the registries of the court at Auckland, Wellington, or Christchurch is nearest to the residence or principal place of business of the defendant and if there are 2 or more defendants, that registry is determined by reference to the first named defendant who is resident or whose principal place of business is in New Zealand;
 - (b) if no defendant is resident or no defendant's principal place of business is in New Zealand, that registry is whichever of those registries the plaintiff selects;
 - (c) despite paragraphs (a) and (b), if the Crown is a defendant, that registry is whichever of those registries the plaintiff selects.
- (2) Subclause (1) is subject to subclauses (3) and (4).
- (3) If it appears to the court on application made to it that the statement of claim has been filed in the wrong registry of the court, or that any other registry 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 registry, or that all documents filed in the proceeding be transferred to the proper registry or to that other registry which is then treated as the proper registry.
- (4) If an order is made under subclause (3), each party must change the party's address for service accordingly.

Compare: 1908 No 89 Schedule 2 r 446T

Part 28—*continued*

28.4 Issue of subpoenas for service in Australia

- (1) Despite rule 9.52, an order of subpoena in a New Zealand proceeding for service in Australia must not be issued without the leave of a Judge, and must,—
 - (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 G 20;
 - (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 G 21.
- (2) An application for the issue of an order of subpoena under subclause (1) must be made without notice by originating application and the provisions of Part 19 (other than rule 19.11) apply, subject to all necessary modifications, to the application.
- (3) An application must 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 that may constitute a ground for setting the subpoena aside under section 56G of the Act, the fact or circumstance.
- (4) In determining whether to grant leave the Judge must, in addition to any other matter that the Judge considers to be relevant, have regard to—

Part 28—*continued*

- (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.
- (5) Leave may be granted under subclause (1) subject to such conditions as the Judge thinks just.
- (6) Without limiting subclause (5), 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.
- (7) A Judge may direct that service on a body corporate will be effected by serving the order of subpoena on a member, officer, or servant of the body corporate in such manner as the Judge directs.
- (8) The file relating to every such application must be kept separate from the file relating to the New Zealand proceeding.
- (9) As provided in rule 3.11, no document relating to an application under this rule may be searched, inspected, or copied without the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r 446U

Schedule 2 rule 28.4(9): amended, on 12 June 2009, by rule 6 of the High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133).

28.5 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 G 22 setting out the person's rights and obligations.
- (2) Service of the order of subpoena on a corporation must be in accordance with any directions given by the Judge under rule 28.4(7).

Part 28—*continued*

- (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.

Compare: 1908 No 89 Schedule 2 r 446V

28.6 Subpoenas for production

- (1) An order of subpoena issued in a New Zealand proceeding that requires a person in Australia to produce documents or things, but does not require the person to testify, must 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) is 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 10 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
 - (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 subpoena by fax 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) The receipt is sufficient evidence of compliance with the order of subpoena.

Compare: 1908 No 89 Schedule 2 r 446W

Part 28—*continued***28.7 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 fax.
- (2) The Registrar must send to the applicant by fax an acknowledgment of an application that has been filed by fax.
- (3) The court must give such directions for the conduct of the hearing of the application as it thinks just.
- (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 to be taken in Australia; or
 - (c) the application to be heard in Australia.

Compare: 1908 No 89 Schedule 2 r 446X

28.8 Failure to comply with subpoena in New Zealand proceeding

The court may, on the application of a party to a New Zealand proceeding or on its own initiative, issue a certificate in form G 23 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.

Compare: 1908 No 89 Schedule 2 r 446Y

28.9 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 in a New Zealand proceeding or on its own initiative, 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

Part 28—*continued*

expenses tendered or paid to that person under rule 28.5(3); 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 be fixed by the Registrar.

Compare: 1908 No 89 Schedule 2 r 446Z

28.10 Transmission of documents to Federal Court

The Registrar at the 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 must—

- (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 by fax the officer of the Federal Court who issued the subpoena; 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.

Compare: 1908 No 89 Schedule 2 r 446ZA

28.11 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, order, or injunction given, made, or issued in that proceeding.
- (2) An application under this rule may be made without notice.
- (3) A copy of the judgment, order, or injunction must be—
 - (a) sealed with the seal of the court; and
 - (b) certified to be a true copy of a judgment, order, or injunction given, made, or issued in a New Zealand proceeding within the meaning of section 56D of the Act

Part 28—*continued*

and section 32B of the Federal Court of Australia Act 1976.

Compare: 1908 No 89 Schedule 2 r 446ZB

28.12 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, or both, may make submissions from Australia by video link or telephone conference.
- (2) An application under subclause (1) may be made without notice and must 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 witnesses 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 must instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions the Judge makes.
- (4) Without limiting 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—

Part 28—*continued*

- (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 telephone conference and transmitting the evidence or submissions in accordance with a direction given under this rule must be paid by the applicant.

Compare: 1908 No 89 Schedule 2 r 446ZC

Part 29
Commercial list

29.1 Interpretation

In this Part, unless the context otherwise requires,—

commercial list means a commercial list established under section 24A of the Act at a registry of the High Court

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

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.

Compare: 1908 No 89 Schedule 2 r 446A

29.2 Application of this Part

- (1) This Part applies in relation to—
 - (a) commercial lists; and
 - (b) the entry of proceedings on commercial lists; and

Part 29—*continued*

- (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) 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 on its own initiative, decide the question and give such directions as it thinks just.
- (3) Subject to any directions of the court, other Parts of these rules apply in relation to any proceedings entered on a commercial list except to the extent that they are modified by or are inconsistent with the Act or this Part.

Compare: 1908 No 89 Schedule 2 r 446B

29.3 Entry on commercial list by endorsement

- (1) If—
 - (a) a statement of claim or statement of defence in any proceeding referred to in section 24B(1)(a) to (f) of the Act is filed in a registry 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 must be entered on that list.
- (2) A requirement under subclause (1) must be made by a party by endorsing “Commercial List” on the statement of claim or statement of defence, immediately under the reference to the registry in which the proceeding is filed.
- (3) The endorsement must be made before the document is filed.
- (4) A requirement under subclause (1) must not be made—
 - (a) on a statement of claim that is to be served on the defendant with an application for judgment under rule 12.2 or 12.3; or

Part 29—*continued*

- (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 12.2 or 12.3; or
 - (c) on a counterclaim; or
 - (d) by a defendant to a counterclaim; or
 - (e) by a third or subsequent party.
- (5) At the time of endorsement under subclause (1)(b)(i), the plaintiff must file and serve a statement of the essential issues believed to arise in the proceeding.
- (6) When filing a statement of defence, the defendant to a proceeding endorsed under subclause (1)(b)(i) must also file a statement of additional issues or affirmative defences believed to arise in the proceeding and not included in the statement required by subclause (5).
- (7) A plaintiff or other party to a proceeding endorsed under subclause (1)(b)(ii) must, within 5 working days after receiving the defendant's statement of defence and statement under subclause (6), file and serve a statement of additional issues or affirmative replies or defences believed to arise in the proceeding and not included in the statement required by subclause (6).
- (8) A party subsequently joined in proceedings governed by this Part must, within 5 working days of that joinder, file and serve a statement of additional issues or affirmative defences believed to arise in the proceeding and not included in statements filed under subclauses (5), (6), and (7).

Compare: 1908 No 89 Schedule 2 r 446C

29.4 Entry on commercial list by order

- (1) If a statement of claim that could have been endorsed under rule 29.3(1)(b) has not been endorsed, the plaintiff may, at any time after the filing of the statement of claim but not later than 10 working days after the day on which a statement of defence in the proceeding is filed, apply to a commercial list Judge for the entry of the proceeding on the commercial list.

Part 29—*continued*

- (2) If a statement of claim that, but for rule 29.3(4)(a), could have been endorsed under rule 29.3(1)(b) is served with an application for judgment under rule 12.2 or 12.3 and an affidavit by or on behalf of the defendant is, in accordance with rule 12.9, 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) If a statement of claim that, but for rule 29.3(4)(a), could have been endorsed under rule 29.3(1)(b) is served with an application for judgment under rule 12.2 or 12.3, and that application is subsequently dismissed, the plaintiff may make application to a commercial list Judge for the entry of the proceeding on the commercial list.
- (4) If the statement of claim in a proceeding that is of a commercial nature but that 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 a registry 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 10 working days after the day on which a statement of defence in the proceeding is filed, apply to a commercial list Judge for the entry of that proceeding on the commercial list.
- (5) If an application is made under subclauses (1) to (4), a commercial list Judge may order that the proceeding be entered on the commercial list.
- (6) An application under this rule must be accompanied by a statement concisely stating the nature of the dispute, the issues likely to arise, the contentions of the applicant on those issues, the reasons why the order should be made, and an explanation of the delay in applying.

Compare: 1908 No 89 Schedule 2 r 446D

Part 29—*continued*

29.5 Entry on commercial list of appeals against determinations of Commerce Commission

- (1) Any appellant who files a notice of appeal 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 must immediately be entered on that list.
- (2) A requirement under subclause (1) must be made by endorsing commercial list on the notice of appeal, immediately under the reference to the registry.
- (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 decision appealed against) may, within 10 working days after the day on which that party is served with a copy of the notice of appeal, make an application for the proceeding to be entered on the commercial list.
- (4) If an application is made under subclause (3), a commercial list Judge may order that the appeal be entered on the commercial list.

Compare: 1908 No 89 Schedule 2 r 446DA

29.6 Entry on commercial list of applications for directions by liquidators or receivers

- (1) A liquidator or receiver who files an originating application for directions under Part 19 may, by endorsement of the originating application, require the proceeding to be entered on the commercial list, and the proceeding must immediately be entered on that list.
- (2) A requirement under subclause (1) must be made by endorsing commercial list on the originating application, immediately under the reference to the registry in which the proceeding is filed.
- (3) A party may, at any time before the date for hearing of the application, apply for the proceeding to be entered on the commercial list.

Part 29—*continued*

- (4) If an application is made under subclause (3), a commercial list Judge may order that the proceeding be entered on the commercial list.

Compare: 1908 No 89 Schedule 2 r 446DB

29.7 Documents to be served on and filed and served by defendant

If a proceeding is entered on a commercial list before the notice of proceeding is served,—

- (a) that notice of proceeding must be in form CL 1; and
- (b) the defendant is not obliged by rule 5.47 to file and serve a statement of defence but may, within 10 working 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 CL 2 or in form G 7, G 8, or G 9.

Compare: 1908 No 89 Schedule 2 r 446E

29.8 Heading of documents

The heading of every document filed or issued in any proceeding that is on a commercial list must show, immediately after the reference to the registry in which the proceeding is filed, the words “Commercial list”.

Compare: 1908 No 89 Schedule 2 r 446F

29.9 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 under subclause (1) may be sent to the court and to the parties by post, fax, email, or other written communication.

Part 29—*continued*

- (3) The court's copy of the application must 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 commercial list proceeding (other than an order or decision made without notice) may be varied or rescinded under rule 7.49.

Compare: 1908 No 89 Schedule 2 r 446G

29.10 Application for directions

- (1) If a proceeding has been entered on the commercial list, the party who required the proceeding to be so entered or the party who obtained the order for the entry of the proceeding on that list, as the case may be, must file, under rule 7.9, an interlocutory application for directions regarding the proceeding.
- (2) The application filed under subclause (1) must state the details of a proposed timetable for the steps leading to the hearing of the proceeding.
- (3) If the proceeding has been entered on the commercial list as a result of an endorsement on the statement of claim, an application under subclause (1) may be filed at any time after the statement of claim has been filed but not later than 5 working days after the date on which any defendant files a statement of defence or an appearance in the proceeding, whichever occurs first.
- (4) If the proceeding has been entered on the commercial list as a result of an endorsement on an appearance or a statement of defence, the application required by subclause (1) must be filed not later than 5 working days after the date on which the appearance or statement of defence is filed.
- (5) If the proceeding has been entered on the commercial list under an order under rule 29.4(5), an application under subclause (1) must be filed not later than 5 working days after the date of the making of the order.
- (6) Despite rule 7.23, every application under subclause (1) must be made on notice.

Compare: 1908 No 89 Schedule 2 r 446H

Part 29—*continued***29.11 Response to application for directions**

- (1) A party who has been served with an application under rule 29.10(1) must file, 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 that the party intends to oppose:
 - (c) if 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) if the party intends to oppose the proposed timetable, a brief statement of the grounds of opposition:
 - (f) any modifications suggested to the proposed timetable:
 - (g) any other directions sought.
 - (2) A memorandum under subclause (1) must be filed and served at least 2 working days before the day for the hearing of the application, but the memorandum may, with the leave of a commercial list Judge, be filed and served on that day or less than 2 working days before that day.
 - (3) If a memorandum under subclause (1) is filed and served in accordance with this rule in relation to any application for directions, it is not necessary for that party to file and serve in relation to that application a notice of opposition in form G 33.
- Compare: 1908 No 89 Schedule 2 r 446I

29.12 Hearing of application for directions

- (1) On the hearing of an application for directions, a commercial list Judge may give any directions that could be given by a Judge under rule 7.9 and may give such other directions as the commercial list Judge thinks just (whether or not inconsistent with these rules or 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 subclause (1), directions under rule 7.9 may relate to—
 - (a) pleadings or points of claim or of defence:
 - (b) counterclaim and third party proceedings:

Part 29—*continued*

- (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 that 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:
 - (o) the exercise of the court's powers under Schedule 1 of the Arbitration Act 1996:
 - (p) any other matters that the nature of the case or its speedy and inexpensive determination may require.
- (3) Without limiting 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 that is not in dispute.
- (4) Nothing in this rule limits rules 7.7 and 7.9.
- Compare: 1908 No 89 Schedule 2 r 446J

29.13 Removal from list

- (1) A commercial list Judge may, on the application of any party or on the Judge's own initiative, at any time remove any proceeding (including a proceeding to which section 24B(1) of the Act applies) from the commercial list.

Part 29—*continued*

- (2) If a proceeding is removed from the commercial list, the commercial list Judge making the order must give directions as to the future conduct of the proceeding.

Compare: 1908 No 89 Schedule 2 r 446K

29.14 Proceedings in other registries

- (1) Despite rule 5.1, a plaintiff in a proceeding to which section 24B(1) of the Act applies may file that proceeding in a registry of the court at which a commercial list is established.
- (2) A defendant in a proceeding to which section 24B(1) of the Act applies may apply to a commercial list Judge for an order that the proceeding, if it may not be or has not been filed at a registry of the court where a commercial list is established, be transferred to that registry and entered on that list.
- (3) If subclause (1) is invoked or an order under subclause (2) is made, a commercial list Judge may give whatever directions the Judge thinks are just to minimise difficulties caused to any party arising from distance from the registry of the court at which the commercial list is established.
- (4) Without limiting subclause (4), a commercial list Judge may order that the trial, or part of the trial, or any interlocutory application be heard and determined in the registry in which the proceeding was originally commenced or at any other venue.

Compare: 1908 No 89 Schedule 2 r 446L

29.15 Memorandum that decision will be final

If the parties desire that the decision of a Judge hearing and determining any proceeding entered on the commercial list will be final, a memorandum to that effect executed by the parties to the proceeding must be filed before the trial of the proceeding begins.

Compare: 1908 No 89 Schedule 2 r 446N

29.16 Additional powers of commercial list Judge

- (1) A commercial list Judge may give such directions as the Judge thinks just for the speedy and inexpensive determination of the

Part 29—*continued*

real questions between the parties to any proceeding entered on a commercial list.

- (2) Without limiting 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) when appropriate, deal with applications or hold conferences by way of a teleconference at the expense of 1 or more of the parties;
 - (c) when appropriate, deal with applications by way of email, fax, or courier post at the expense of 1 or more of the parties;
 - (d) give directions to assist the convenience of the parties and witnesses in the case, including directions about the preparation, service, and use of experts' reports;
 - (e) change the venue of the trial, or adjourn the trial part heard to continue at a different venue;
 - (f) with the consent of counsel, make such use of video tape, film projection, computers, and other equipment as the Judge thinks just in the proceeding, subject to a direction about 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 about costs;
 - (h) appoint any person authorised in law to administer an oath to any witness giving evidence under this rule.

Compare: 1908 No 89 Schedule 2 r 446O

29.17 Disputes concerning construction

- (1) When 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 must file—
- (a) a statement of claim setting out the question involved in the dispute; and

Part 29—*continued*

- (b) an affidavit attaching 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 must be in form CL 3.
- (3) The defendant is not obliged by rule 5.47 to file and serve a statement of defence but may, within 10 working 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 CL 2.
- (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 attached as an exhibit to the affidavit filed under 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 initiative, order that the proceeding be placed on the commercial list.

Compare: 1908 No 89 Schedule 2 r 446P

29.18 Form of documents

- (1) Despite rule 5.8, 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 must 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 must provide a folder or ring-binder of a type approved by the Registrar at that party's expense for the filing of all documents in the proceeding or in relation to the application.

Compare: 1908 No 89 Schedule 2 r 446Q

Part 30

Judicial review

30.1 Crown Proceedings Act 1950 not affected

This Part does not limit or affect the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 r 622

30.2 Interpretation

In this Part, **extraordinary remedy** means—

- (a) an order of mandamus, prohibition, or certiorari;
- (b) a declaration or injunction in relation to the breach, threatened breach, continuation of a breach, or further breach of a duty of a court, tribunal, or person exercising public functions; or
- (c) an order removing a person from public office or a declaration as to the right of a person to hold a public office.

Compare: 1908 No 89 Schedule 2 rr 623–627A

30.3 Procedure

- (1) An application for judicial review under Part 1 of the Judicature Amendment Act 1972 and an application for an extraordinary remedy must be commenced by statement of claim and notice of proceeding in accordance with Part 5 of the rules.
- (2) The heading of an application for review under Part 1 of the Judicature Amendment Act 1972 must state that it is an application for review.
- (3) A statement of claim seeking an extraordinary remedy may claim more than 1 of those remedies and may claim any other relief (including damages) to which the plaintiff may be entitled.
- (4) Section 9 of the Judicature Amendment Act 1972 applies 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 the rules.

Compare: 1908 No 89 Schedule 2 r 628

Part 30—*continued***30.4 Interim orders**

- (1) When an application is made for an extraordinary remedy under this Part, the court may make an interim order on whatever terms and conditions the court thinks just.
- (2) An applicant who applies for an interim order must, if ordered by the court, file a signed undertaking 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.
- (3) The undertaking must be referred to in the order and is part of it.

Compare: 1908 No 89 Schedule 2 r 627B

Part 31

Companies: liquidation

31.1 Application

- (1) This Part applies to an application to the High Court—
 - (a) to put a company into liquidation; or
 - (b) for an order under section 174 of the Companies Act 1993.
- (2) Rules 31.37 and 31.38 apply in respect of a notice under section 294(1) of the Companies Act 1993.
- (3) These rules and the general practice of the High Court apply to applications to which subclause (1) applies and notices to which subclause (2) applies unless they are modified by or inconsistent with this Part or the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r 700A

31.2 Hearing of applications

Unless the court otherwise directs, every application to which this Part applies must be heard in open court.

Compare: 1908 No 89 Schedule 2 r 700B

Part 31—*continued*

31.3 Applications to be made by statement of claim

- (1) An application to the High Court to put a company into liquidation under section 241(2)(c) of the Companies Act 1993 must be made by statement of claim in form C 1.
- (2) An application to the High Court under section 174 of the Companies Act 1993 must be made by statement of claim in form C 2.

Compare: 1908 No 89 Schedule 2 r 700C

31.4 Proper registry of court

- (1) Despite rules 5.1(1) to (3) and 5.25, the proper registry of the court for the purposes of the filing of a statement of claim under rule 31.3 is—
 - (a) the registry of the court in the town where, or the registry of the court in the town nearest to which, the defendant company's registered office is situated; or
 - (b) if the defendant company does not have a registered office, the registry of the court in the town where, or the registry of the court in the town nearest to which, the defendant company's principal or last known place of business is or was situated.
- (2) This rule does not limit rule 5.1(4) and (5).

Compare: 1908 No 89 Schedule 2 r 700D

31.5 Notice of proceeding and verifying affidavit

- (1) Rules 5.22 and 5.23 do not apply to a proceeding commenced by the filing of a statement of claim under rule 31.3.
- (2) A notice of proceeding in form C 3 and an affidavit in form C 4 or C 5 verifying the allegations in the statement of claim must be filed and served with a statement of claim filed under rule 31.3.
- (3) Subclause (2) is subject to rule 5.24.
- (4) The affidavit must be made by the plaintiff, or by 1 of the plaintiffs if more than 1, or, if the proceeding is brought by a corporation, by a person who meets the requirements of rule 9.82.

Part 31—*continued*

- (5) The affidavit is sufficient prima facie evidence of the statements in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 700E

31.6 Date of hearing

- (1) On the filing of a statement of claim under rule 31.3, the Registrar must as soon as practicable appoint the time and place of the hearing.
- (2) Unless the court otherwise orders, the place for the hearing of the proceeding is—
- (a) the High Court in the town in which the statement of claim is filed; or
 - (b) if no Judge will be available in that town at the appointed time, the High Court in another town; or
 - (c) if the statement of claim is filed in Masterton, the High Court at Wellington; or
 - (d) if the statement of claim is filed in Tauranga, the High Court at Rotorua.
- (3) Notice of the time and place of the hearing must be included in the notice of proceeding in form C 3.
- (4) The Registrar may change the time before the proceeding has been advertised.

Compare: 1908 No 89 Schedule 2 r 700F

31.7 Exclusion of rules relating to setting down

Rules 7.1 to 7.6 and 7.11 to 7.14 do not apply to a proceeding under rule 31.3.

Compare: 1908 No 89 Schedule 2 r 700G

31.8 Directions

Rules 7.7, 7.8, 7.10, and 7.79 apply, with all necessary modifications, in relation to a proceeding under rule 31.3.

Compare: 1908 No 89 Schedule 2 r 700H

Part 31—*continued*

31.9 Advertisement of application

- (1) A proceeding commenced by a statement of claim under rule 31.3 must be advertised at least 5 working days before the hearing.
- (2) In this Part, **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.
- (3) This rule is subject to rule 31.10 and to any order made on an application under rule 31.11.
- (4) If 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 a registry of the court, the advertisement must be published—
 - (a) once in the *Gazette*; and
 - (b) at least once—
 - (i) in a daily newspaper published in that town; or
 - (ii) in another newspaper as the Registrar directs.
- (5) In the case of a defendant company to which subclause (4) does not apply, the advertisement must be published—
 - (a) once in the *Gazette*; and
 - (b) at least once—
 - (i) in a local newspaper circulating in the locality where the registered office, or principal or last known principal place of business, as the case may be, of the defendant company is or was situated; or
 - (ii) in another newspaper as the Registrar directs.
- (6) The advertisement, which must be in form C 6 or C 7 as the case may require, must state—
 - (a) the day on which the application to put the defendant company into liquidation was filed; and

Part 31—*continued*

- (b) the name and address of the plaintiff and of the plaintiff's solicitor (if any); and
 - (c) the plaintiff's address for service; and
 - (d) the place, date, and time of the hearing of the application; and
 - (e) that the statement of claim and the verifying affidavit may be inspected at the registry of the court or at the plaintiff's address for service; and
 - (f) 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 2 working days before the day appointed for the hearing of the application.
- (7) If the plaintiff or the plaintiff's solicitor does not within the prescribed time, or within any extended time allowed by the Registrar, duly advertise the proceeding in the manner prescribed by this rule, the appointment of the time and place of hearing must be cancelled by the Registrar, and the proceeding must then be removed from the list, unless the defendant company has been served or the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 700I

31.10 Restriction on advertising of proceeding

- (1) No person may, unless the court otherwise directs, publish any advertisement required by rule 31.9 or any other information relating to the statement of claim until at least 5 working days after the date on which the statement of claim is served on the defendant company.
- (2) Subclause (1) does not apply when a statement of claim has been filed by the defendant company.

Compare: 1908 No 89 Schedule 2 r 700J

31.11 Power to stay liquidation proceedings

- (1) If an application for putting a company into liquidation is made under rule 31.3, the defendant company, or, with the leave of the court, any creditor or shareholder of that company or the Registrar of Companies, may, within 5 working days after the

Part 31—*continued*

date of the service of the statement of claim on the defendant company, apply to the court—

- (a) for an order restraining publication of an advertisement required by rule 31.9 or any other information relating to that statement of claim; and
 - (b) for an order staying any further proceedings in relation to the liquidation.
- (2) The court must treat an application under subclause (1) as if it were an application for an interim injunction and, if it makes the order sought, it may do so on whatever terms the court thinks just.
- (3) The inherent jurisdiction of the court is not limited by this rule.
Compare: 1908 No 89 Schedule 2 r 700K

31.12 Service of proceeding

- (1) Every statement of claim filed under rule 31.3 must, unless the defendant company has brought the proceeding, be served, together with the verifying affidavit and notice of proceeding, upon the defendant company.
- (2) Service under this rule must be effected not less than 15 working days before the date of hearing appointed or fixed under rule 31.6.
Compare: 1908 No 89 Schedule 2 r 700L

31.13 Affidavit of service

- (1) The plaintiff must, before the hearing, file an affidavit of service in form C 8 proving the service of the statement of claim, verifying affidavit, and notice of proceeding on the defendant company.
- (2) Subclause (1) does not apply—
- (a) if the defendant company has brought the proceeding; or
 - (b) in relation to service on a person who, before the hearing, files a statement of defence.
- Compare: 1908 No 89 Schedule 2 r 700M

Part 31—*continued***31.14 Evidence of advertising**

The plaintiff must, before the hearing, file in the registry of the court—

- (a) copies of the advertisements published in accordance with rule 31.9; and
- (b) a statement of the newspapers in which, and the dates on which, the advertisements appeared.

Compare: 1908 No 89 Schedule 2 r 700N

31.15 Entitlement to copy of statement of claim, etc

- (1) Shareholders and creditors of the defendant company, and the Registrar of Companies, are 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.
- (2) The price must not be more than 50 cents per page (inclusive of goods and services tax).

Compare: 1908 No 89 Schedule 2 r 700O

31.16 Statement of defence

- (1) Rule 5.47 does not apply to a proceeding commenced by the filing of a statement of claim under rule 31.3.
- (2) A person, being the defendant company or a creditor or shareholder of that company, who intends to defend a proceeding commenced by a statement of claim under rule 31.3 must file a statement of defence in the registry of the court named in the notice of proceeding.
- (3) A person who files a statement of defence must 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) If the defendant company has filed a statement of defence, a statement of defence filed by a creditor or shareholder of that company must state specifically any grounds of opposition that

Part 31—*continued*

are additional to those appearing in the company's statement of defence.

Compare: 1908 No 89 Schedule 2 r 700P

31.17 Time for filing statement of defence

A statement of defence must be filed within 10 working days after the date on which the statement of claim is served on the person filing the statement of defence.

Compare: 1908 No 89 Schedule 2 r 700Q

31.18 Appearance

A 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 C 9—

- (a) stating that the 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 174 of the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r 700R

31.19 Time for filing appearance

An appearance must be filed not later than 2 working days before the date of hearing.

Compare: 1908 No 89 Schedule 2 r 700S

31.20 Effect of failure to file statement of defence or appearance

If 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 under rule 31.3 fails to file a statement of defence or an appearance within the time prescribed, that person must not, without an order for extension of time granted on application made under rule 31.22 or the special leave of the court, be allowed to appear at the hearing of the proceeding.

Compare: 1908 No 89 Schedule 2 r 700T

Part 31—*continued***31.21 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 a 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 a debt remains unpaid may be given by an affidavit sworn by or on behalf of the plaintiff not earlier than 2 working days before the date of hearing.

Compare: 1908 No 89 Schedule 2 r 700U

31.22 Interlocutory applications

- (1) When a proceeding is commenced under rule 31.3, an interlocutory application (unless made with the leave of the court) may not be made to the court before the date of hearing specified in the notice of proceeding served with that statement of claim unless it is—
 - (a) an application for an extension or abridgement of time; or
 - (b) an application under rule 1.9 or rule 31.6(2) or 31.11; or
 - (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 rule in this Part.
- (2) When a statement of defence is filed in a proceeding commenced under rule 31.3 and the hearing of that proceeding is adjourned for the allocation of a hearing date on a defended basis, these rules apply as if the proceeding had been commenced by a statement of claim filed under Part 5 and not under rule 31.3.
- (3) The inherent jurisdiction of the court is not limited by this rule.

Compare: 1908 No 89 Schedule 2 r 700V

31.23 Power to appoint interim liquidator

- (1) When a proceeding for putting a company into liquidation has been commenced under rule 31.3, the plaintiff and any person

Part 31—*continued*

entitled to apply to the court for the appointment of a liquidator under section 241(2)(c) of the Companies Act 1993 may apply to the court for the appointment of an interim liquidator.

- (2) If 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 any manner it thinks just.

Compare: 1908 No 89 Schedule 2 r 700W

31.24 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 a company into liquidation under section 241(2)(c) of the Companies Act 1993.
- (2) The person may become a plaintiff in that proceeding by filing in the registry of the court and serving on all the parties to the proceeding—
 - (a) a statement of claim in form C 1; and
 - (b) a notice of proceeding in form C 3; and
 - (c) an affidavit in form C 4.
- (3) Those documents must be filed and served not later than 2 working days before the date of hearing of the proceeding.
- (4) If a person has filed an appearance under rule 31.18 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 then to proceed with the hearing of the application to put the company into liquidation, the court may, on the oral application of that person,—
 - (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.
- (5) The addition or substitution of a person as a plaintiff under subclause (4) must be subject to the condition that that person file in the registry of the court and serve on all the other parties to the proceeding, within 5 working days after the day on which the addition or substitution is made,—

Part 31—*continued*

- (a) a statement of claim in form C 1; and
 - (b) a notice of proceeding in form C 3; and
 - (c) an affidavit in form C 4.
- (6) If a person to whom rule 31.16(2) applies is a person on whom the statement of claim is served under this rule, that person must file a statement of defence within 10 working days after the date on which the statement of claim is served upon that person.

Compare: 1908 No 89 Schedule 2 r 700X

31.25 Consolidation of proceedings

- (1) If 2 or more proceedings have been commenced in respect of the same company under rule 31.3, 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 10.12 and 10.13.

Compare: 1908 No 89 Schedule 2 r 700Y

31.26 Discontinuance of proceeding

A proceeding commenced under rule 31.3 may be discontinued only with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 700YA

31.27 Requirements in relation to order appointing interim liquidator

The order appointing the interim liquidator must—

- (a) show the number of the proceeding; and
- (b) state the nature and a short description of the property of which the interim liquidator is ordered to take possession; and
- (c) state the duties to be performed by the interim liquidator.

Compare: 1908 No 89 Schedule 2 r 700Z

Part 31—*continued*

31.28 Costs, charges, and expenses of interim liquidator and Official Assignee

- (1) Subject to an order of the court, subclause (2) applies 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.
- (2) The person holding registry as interim liquidator is entitled to be paid, out of the property of the defendant company, all costs, charges, and expenses properly incurred by that person as interim liquidator or, if that person is the Official Assignee, whatever sum the court directs.
- (3) If a person other than the Official Assignee has been appointed interim liquidator and the Official Assignee has taken steps for the purpose of obtaining a statement of affairs or has performed another duty prescribed by this Part, the interim liquidator must pay the Official Assignee whatever sum, if any, the court directs.

Compare: 1908 No 89 Schedule 2 r 700ZA

Order to put company into liquidation

31.29 Obligation to send notice of order appointing liquidator or interim liquidator of 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 of the court must, on the same day, send to the liquidator or interim liquidator a notice informing him or her of his or her appointment.
- (2) The notice must be in form C 10 or C 11, as the case requires, with any variations the circumstances require.

Compare: 1908 No 89 Schedule 2 r 700ZB

Part 31—*continued***31.30 Order and copies to be sealed**

The plaintiff or the plaintiff's solicitor must, no later than 2 working days after the day on which an order putting a company into liquidation is made, leave the order and 2 copies of it at the registry of the court for sealing.

Compare: 1908 No 89 Schedule 2 r 700ZC

31.31 Contents of order putting company into liquidation

- (1) An order putting a company into liquidation must be in form C 12.
- (2) An order for the appointment of an interim liquidator must be in form C 13.

Compare: 1908 No 89 Schedule 2 r 700ZD

31.32 Transmission of order putting 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) 1 copy of the order sealed with the seal of the court must immediately be sent by post or otherwise by the Registrar to the liquidator or interim liquidator, as the case may be;
- (b) 1 copy of the order sealed with the seal of the court must be served by the plaintiff on the company in accordance with the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r 700ZE

31.33 Service of order made under section 174 of Companies Act 1993

- (1) When an order is made under section 174 of the Companies Act 1993, a registry copy of the order must, unless the court otherwise orders, be served by the plaintiff on—
 - (a) the defendant company in accordance with the Companies Act 1993; and
 - (b) the Registrar of Companies.

Part 31—*continued*

- (2) If the order involves an alteration of the constitution of the company, the Companies Act 1993 and this Part apply as the court directs.

Compare: 1908 No 89 Schedule 2 r 700ZF

31.34 Service of notice to officer executing process that company being put into liquidation

- (1) This rule applies to a notice given for the purposes of section 252 of the Companies Act 1993, which is a notice—
- (a) that an application has been made to the court to appoint a liquidator; or
 - (b) that the court has made an order appointing a liquidator; or
 - (c) that the court has appointed an interim liquidator; or
 - (d) of the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or
 - (e) that a special resolution has been passed appointing a liquidator; or
 - (f) of the calling of a meeting of the board at which a resolution is proposed to appoint a liquidator; or
 - (g) that a resolution has been passed appointing a liquidator.
- (2) The notice must be in writing and addressed to the officer required to act on it, and may be served by being delivered by hand or by registered post at the office of that officer.

Compare: 1908 No 89 Schedule 2 r 700ZG

31.35 Procedure in respect of miscellaneous applications

- (1) Subpart 2 of Part 7, relating to interlocutory applications, applies to applications to the court in respect of—
- (a) a defendant company sought to be put into liquidation under section 241(2)(c) of the Companies Act 1993; or
 - (b) a company in respect of which a liquidator has been appointed under section 241(2)(c) of the Companies Act 1993; or
 - (c) a company in respect of which an application under section 174 of the Companies Act 1993 is pending.
- (2) Subclause (1) is subject to subclauses (3) and (4).

Part 31—*continued*

- (3) An application specified in subclause (1) must have the same heading as the heading on the application for putting the company into liquidation or for the order under section 174 of the Companies Act 1993.
- (4) Subclause (1) does not apply to—
 - (a) an application under rule 31.36; or
 - (b) an application to which Part 18 or 19 applies.

Compare: 1908 No 89 Schedule 2 r 700ZH

31.36 Applications involving allegations of fraud, negligence, misfeasance, or similar behaviour

- (1) An application must be made by filing a statement of claim under these rules if it relates to a company described in subclause (2) and involves an allegation of fraud, negligence, misfeasance, or similar behaviour.
- (2) The companies are—
 - (a) a defendant company in relation to an application made to put that company into liquidation under section 241(2)(c) of the Companies Act 1993; or
 - (b) a company in respect of which a liquidator has been appointed under section 241(2)(c) of the Companies Act 1993; or
 - (c) a company in respect of which an application under section 174 of the Companies Act 1993 is pending.
- (3) The applicant must, as soon as practicable after the statement of defence has been filed or the time for filing a statement of defence has expired, file an application for directions under rule 7.9.
- (4) The statement of claim must have the same heading as the heading on the application for putting the company into liquidation or for the order under section 174 of the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r 700ZI

Part 31—*continued*

31.37 Liquidator's notice to set aside voidable transaction or voidable charge

A notice under section 294(1) of the Companies Act 1993 must—

- (a) contain the heading in form C 14; and
- (b) be in form C 15 or C 16 as appropriate; and
- (c) comply with rules 5.11 and 5.44 (with any necessary modifications).

Compare: 1908 No 89 Schedule 2 r 700ZJ

31.38 Proper registry of court

- (1) A notice under section 294(1) of the Companies Act 1993 must,—

- (a) if the company has been put into liquidation by the court, be filed in the registry of the court in which the order putting the company into liquidation was made under the liquidation file number (even though the heading of the notice is different); and
- (b) in any other case, be filed in the registry of the court in the town where, or the registry of the court in the town nearest to which, the registered office of the company in liquidation was situated at the date of liquidation.

- (2) If more than 1 notice under section 294(1) of the Companies Act 1993 relating to the same company in liquidation has been filed under subclause (1)(b), those notices must be filed under the same file number (even though the heading of each notice is different).

Compare: 1908 No 89 Schedule 2 r 700ZK

31.39 Transitional provision for companies registered under the Companies Act 1955

Part 9A of the High Court Rules as in force immediately before the coming into force of these rules applies, even though it has been repealed, to companies remaining registered under the Companies Act 1955.

Part 32

Freezing orders

32.1 Interpretation

In this Part, unless the context otherwise requires,—

ancillary order means an order made under rule 32.3

another court means a court outside New Zealand or a court in New Zealand other than the High Court

applicant means a person who applies for a freezing order or an ancillary order

freezing order means an order made under rule 32.2

judgment includes an order

respondent means a person against whom a freezing order or an ancillary order is sought or made.

32.2 Freezing order

- (1) The court may make an order (a **freezing order**), on or without notice to a respondent in accordance with this Part.
- (2) A freezing order may restrain a respondent from removing any assets located in or outside New Zealand or from disposing of, dealing with, or diminishing the value of, those assets.
- (3) An applicant for a freezing order without notice to a respondent must fully and frankly disclose to the court all material facts, including—
 - (a) any possible defences known to the applicant; and
 - (b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.
- (4) An application for a freezing order must be made by interlocutory application under Part 7 or originating application under Part 19, which Parts apply subject to this Part.
- (5) An applicant for a freezing order must file a signed undertaking that the applicant will comply with any order for the payment of damages to compensate the respondent for any damage sustained in consequence of the freezing order.

Part 32—*continued*

32.3 Ancillary order

- (1) The court may make an order (an **ancillary order**) ancillary to a freezing order or prospective freezing order if the court considers it just.
- (2) Without limiting the generality of subclause (1), an ancillary order may be made for any of the following purposes:
 - (a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;
 - (b) determining whether the freezing order should be made;
 - (c) appointing a receiver of the assets that are the subject of the freezing order.
- (3) An ancillary order is subject to the court's jurisdiction to decide an objection raised on the ground of the privilege against self-incrimination conferred by section 60 of the Evidence Act 2006.

32.4 Respondent need not be party to proceeding

The court may make a freezing order or an ancillary order against a respondent even if the respondent is not a party to a proceeding in which substantive relief is sought against the respondent.

32.5 Order against judgment debtor or prospective judgment debtor or third party

- (1) This rule applies if—
 - (a) judgment has been given in favour of an applicant by—
 - (i) the court; or
 - (ii) in the case of a judgment to which subclause (2) applies, another court; or
 - (b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—
 - (i) the court; or
 - (ii) in the case of a cause of action to which subclause (3) applies, another court.
- (2) This subclause applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the court.

Part 32—*continued*

- (3) This subclause applies to a cause of action if—
- (a) there is sufficient prospect that the other court will give judgment in favour of the applicant; and
 - (b) there is a sufficient prospect that the judgment will be registered in or enforced by the court; and
 - (c) there is a real connecting link between the subject matter of the order sought and the territorial jurisdiction of the New Zealand court; and
 - (d) the order sought would not be inconsistent with interim relief granted by the other court.
- (4) The court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because—
- (a) the judgment debtor, prospective judgment debtor, or another person might abscond; or
 - (b) the assets of the judgment debtor, prospective judgment debtor, or another person might be—
 - (i) removed from New Zealand or from a place inside or outside New Zealand; or
 - (ii) disposed of, dealt with, or diminished in value (whether the assets are in or outside New Zealand).
- (5) The court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a **third party**) if the court is satisfied, having regard to all the circumstances, that—
- (a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because—
 - (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
 - (ii) the third party is in possession of, or in a position of control or influence concerning, assets

Part 32—*continued*

- (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
- (b) a process in the court is or may ultimately be available to the applicant, as a result of a judgment or prospective judgment, under which the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.

32.6 Form and further terms of freezing order

- (1) A freezing order must be issued in form G 38.
- (2) If the likely maximum amount of the applicant's claim is known, the value of the assets covered by the freezing order must not exceed that amount together with interest on that amount and costs.
- (3) The freezing order must not prohibit the respondent from dealing with the assets covered by the order for the purpose of—
- (a) paying ordinary living expenses; or
- (b) paying legal expenses related to the freezing order; or
- (c) disposing of assets, or making payments, in the ordinary course of the respondent's business, including business expenses incurred in good faith.
- (4) Unless there are special circumstances, the court must require the applicant for a freezing order to give appropriate undertakings, including an undertaking as to damages.
- (5) If the applicant has, or may later have, insufficient assets within New Zealand to discharge the obligation created by an undertaking as to damages, the court may require the applicant to provide security for that obligation in a form and in an amount fixed by a Judge or, if the Judge so directs, the Registrar.

32.7 Duration of freezing order

- (1) A freezing order made without notice to the respondent must state that it is limited to a particular date, which should be as early as practicable after the freezing order is made.

Part 32—*continued*

- (2) The respondent must be informed that on that date the respondent will have an opportunity to be heard by the court.
- (3) On the date referred to in subclause (1) the applicant has the onus of satisfying the court that the freezing order should be continued or renewed.

32.8 Discharge or variation of freezing order

- (1) A freezing order must reserve leave to the respondent to apply to the court to discharge or vary the freezing order on whatever period of notice to the applicant the court considers just.
- (2) An application by the respondent to discharge or vary the freezing order must be treated as an urgent application by the court.

32.9 Jurisdiction

This Part does not affect the jurisdiction of the court under any enactment to make an order freezing assets.

32.10 Costs

- (1) The court may make any order as to costs it considers just in relation to an order made under this Part.
- (2) Without limiting the generality of subclause (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

Part 33
Search orders

33.1 Interpretation

In this Part, unless the context otherwise requires,—

applicant means an applicant for a search order

described includes described generally, whether by reference to a class or otherwise

premises includes a vehicle or vessel of any kind

record includes a copy, photograph, film, or sample

Part 33—*continued*

respondent means a person against whom a search order is sought or made

search order means an order made under rule 33.2.

33.2 Search order

- (1) This rule applies only if the evidence is, or may be, relevant to an issue in the proceeding or anticipated proceeding.
- (2) The court may make an order (a **search order**), in a proceeding or before a proceeding commences, with or without notice to the respondent, to—
 - (a) secure or preserve evidence; and
 - (b) require a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence.
- (3) Form G 39 must be used but may be varied as the circumstances require.
- (4) A search order must be served on the respondent.

33.3 Requirements for grant of search order

The court may make a search order under rule 33.2 only if the court is satisfied that—

- (a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and
- (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and
- (c) there is sufficient evidence in relation to a respondent that—
 - (i) the respondent possesses relevant evidentiary material; and
 - (ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

33.4 Restriction on entrants

- (1) The permitted persons identified under rule 33.2(2)(b) must not include the applicant in person, or, if the applicant is not

Part 33—*continued*

a natural person, any director, officer, employee, partner, or other person associated with the applicant, other than the applicant's solicitor.

- (2) The number of those permitted persons must be as small as is reasonably practicable in the circumstances.

33.5 Applicant's undertaking and duty

- (1) As a condition of the making of the order, the applicant must undertake to the court to pay the reasonable costs and disbursements of any independent solicitor appointed under rule 33.7.
- (2) The court must require the applicant for a search order to give appropriate undertakings, including an undertaking as to damages.
- (3) If the applicant has, or may later have, insufficient assets within New Zealand to discharge the obligation created by an undertaking as to damages, the court may require the applicant to provide security for that obligation in a form and in an amount fixed by a Judge or, if the Judge so directs, the Registrar.
- (4) An applicant for a search order without notice to a respondent must fully and frankly disclose to the court all material facts, including—
 - (a) any possible defences known to the applicant; and
 - (b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.

33.6 Terms of search order

- (1) A search order may direct a named or described person—
 - (a) to permit, or arrange to permit, another or other named or described person or persons specified—
 - (i) to enter specified premises; and
 - (ii) to take other steps including searching for, inspecting, or removing a listed or described thing and making or obtaining a record of it or information contained in it; and

Part 33—*continued*

- (b) to provide, or arrange to provide, named or described persons with any described information, thing, or service; and
 - (c) to allow other named or described persons, including computer specialists not associated with either the applicant or the respondent, to take and retain in their custody, or copy, any described thing; and
 - (d) not to disclose any information about the order, for up to 3 working days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
 - (e) to do or refrain from doing any specified act.
- (2) A search order may contain whatever other incidental provisions the court considers just.
 - (3) A search order must fix a date on which the court will consider a report on the search from the independent solicitors, and any applications related to the matters listed in rule 33.8.

33.7 Independent solicitors

- (1) If the court makes a search order, the court must appoint 1 or more solicitors, each of whom is independent of the applicant's solicitors (the **independent solicitors**), to supervise the execution of the order, and to do whatever things in relation to the order the court considers appropriate.
- (2) The court may appoint an independent solicitor to supervise the carrying out of the order at any 1 or more premises, and a different independent solicitor or solicitors to supervise execution of the order at other premises, with each independent solicitor having power to do whatever things in relation to the order the court considers appropriate.
- (3) Service of a search order, or of any other document ordered to be served on a respondent, on a person appearing to an independent solicitor to be responsible and in charge of premises, is to be treated as service on the respondent.

Part 33—*continued*

- (4) A search order must fix a date on which the court will consider a report on the search from the independent solicitors, and any applications related to the matters in rule 33.8.

33.8 Review of search

- (1) On the date fixed under rule 33.7(4) the applicant and the respondent and the independent solicitors are entitled to appear, and the court may make any order it considers just.
- (2) In making an order under subclause (1), the court must consider the following:
- (a) what is to happen to any goods removed from the premises or to any copies that have been made:
 - (b) how the confidentiality to which the respondent is entitled is to be maintained:
 - (c) any privilege claim:
 - (d) any application by a party:
 - (e) any issue raised by an independent solicitor.

33.9 Costs

- (1) The court may make any order as to costs that it considers just in relation to an order made under this Part.
- (2) Without limiting the generality of subclause (1), an order as to costs includes an order as to the costs of any person affected by a search order.

Schedule 1

r 1.3(3)

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Using High Court Rules forms

Purpose of forms

The High Court Rules forms are templates you can use to prepare a document for a proceeding in the High Court.

The forms are grouped as follows:

- general forms (G 1, G 2, etc) are those that the High Court Rules require, or authorise to be used, in a standard High Court proceeding:
- judgment forms (J 1, J 2, etc) are those used when entering a formal judgment on the court record:
- enforcement forms (E 1, E 2, etc) are those used when a judgment is being enforced:
- commercial list forms (CL 1, CL 2, etc) are those used when proceedings are on, or are to be transferred to, the commercial list (Auckland registry only):
- probate forms (PR 1, PR 2, etc) are those used in connection with applications for probate or administration:
- admiralty forms (AD 1, AD 2, etc) are those used in the High Court's admiralty jurisdiction over ships and cargo:
- arbitration forms (Arb 1, Arb 2, etc) are those used when the High Court's jurisdiction is invoked in relation to an arbitration:
- company forms (C 1, C 2, etc) are those used in relation to a company's liquidation:
- bankruptcy forms (B 1, B 2, etc) are those used when a person is being adjudicated bankrupt, and in the administration of the bankrupt estate.

Preparing forms

Before preparing a form, check whether a High Court Rule applies. The relevant rule number appears at the top of each form. If a rule applies, comply with it.

To prepare a document using the forms

- use the general heading as set out in form G 1 at the beginning of each document or any modified heading indicated:
- replace text in [*square brackets*] with the relevant text:
- when alternative statements are provided (statement A, statement B, etc), select the relevant statement or statements that apply and omit the others:

- if required, renumber the numbered paragraphs so that the final document is numbered sequentially:
- remove all instructions (always in italics) in the documents filed in the High Court or served on other parties—this includes instructions within square brackets, footnotes, and statement labels (statement A, statement B, etc).

Format and content of forms

The High Court Rules specify requirements for the presentation of forms. In particular, you should refer to the following rules:

- Rule 1.21: this rule states that you may vary a prescribed form as the circumstances of the particular case require:
- Rules 5.2 to 5.16: these rules indicate how the completed forms should be formatted and how the content should be presented. This includes specifications for page size, margins, numbering of pages, and division of content into numbered paragraphs:
- Rule 5.10: this rule prescribes the content and format of the cover sheet of a document. When filing your first document as a party in a proceeding, at the end of it you must set out a memorandum containing prescribed information (*see* rule 5.44 and form G 10).

Swearing and affirming

Some documents, eg, affidavits, need to be solemnly verified. A form will indicate this by using the word “sworn” at the end of the document. This kind of document must be verified before a person who is authorised to take oaths, such as a solicitor or a Justice of the Peace.

However, under the Oaths and Declarations Act 1957 you may affirm instead of swearing an oath. “Affirming” means “solemnly, sincerely, and truly declaring and affirming” the contents of a document.

If you choose to affirm, change “sworn” to “affirmed” where it occurs in the form.

Form G 1 rr 5.11(2), 19.9(1)
General heading for documents filed in
proceeding

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

Under the [*name of Act under which the proceeding is authorised*]

In the matter of [*specify matter to which proceeding relates*]

Between [*full name, place of residence, occupation*]

(plaintiff)

And [*full name, place of residence, occupation*]

(defendant)

*Include the following if there is a counterclaim against both the
plaintiff and another person.*

Between [*full name, place of residence, occupation*]

(defendant)

And [*full name, place of residence, occupation*]

(plaintiff)

And [*full name, place of residence, occupation*]

(counterclaim defendant)

Form G 2
Notice of proceeding

rr 5.23(2), 5.57(4)

To complete this notice—

- *complete and insert the heading as set out in form G 1:*
- *complete and attach the memorandum as set out in form G 3:*

To the defendant/defendants* and any other person directed to be served

*Select one.

This document notifies you that unless, within 25 working days after the date on which you are served with this notice, you file in the registry of this court a statement of your defence to the plaintiff's claim (a copy of which is served with this notice), the plaintiff may proceed to a hearing and judgment on the plaintiff's claim in your absence.

If a trial of the proceeding is necessary, it will be held in this court at *[place]* at a time to be fixed by the court.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Include the following paragraph (and signature block) if it applies, otherwise omit.

The court has directed that this notice and the statement of claim be served not only on the defendant/defendants* but also on the following persons: *[full name, place of residence, and occupation of each person or entity directed to be served]*.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Form G 3
Memorandum (general form)

r 5.23(4)

Advice

- 1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—
- (a) it can only carry on a proceeding in the court by a solicitor; and
 - (b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

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 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff 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 registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

Form G 3—*continued*

- 5 *Omit this paragraph if it conflicts with a direction by the court.*
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.
- 6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

Counterclaim

- 7 If you have a counterclaim against the plaintiff, you must file a statement of that counterclaim in the registry of the court, and serve it on the plaintiff and on any other person against whom the same claim is made. This must be done within the same period of time you have for filing a statement of defence.

Witnesses

- 8 Summonses for the attendance of witnesses will be issued on application at the registry of the court.

Registry hours

- 9 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form G 4

r 5.23(4)

Memorandum to be endorsed on form G 2 in
proceeding under Declaratory Judgments Act
1908**Advice**

- 1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—
 - (a) it can only carry on a proceeding in the court by a solicitor; and
 - (b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

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 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff 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 registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

Form G 4—*continued*

- 5 *Omit this paragraph if it conflicts with a direction by the court.*
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.
- 6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

Appearance objecting to jurisdiction of court

- 7 If you object to the jurisdiction of the court to hear and determine this proceeding, you may file in the registry of the court an appearance stating your objection and the grounds for it instead of a statement of defence, and serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing a statement of defence.
- 8 An appearance is not treated as a submission to the jurisdiction of the court.

Appearance for ancillary purposes

- 9 If you do not oppose the plaintiff's claim but want to be heard on an ancillary matter (including costs), you may, without filing a statement of defence,—
- (a) file an appearance stating the matters on which you want to be heard; and
- (b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.
- 10 Those matters will not subsequently be determined except on notice to you.

Appearance reserving rights

- 11 If you do not oppose the plaintiff's claim but want to reserve your rights in the event that another person becomes a party to the proceeding or that a party takes a step in the proceeding that

Form G 4—*continued*

is against your interests, you may, without filing a statement of defence,—

- (a) file an appearance reserving those rights in the registry of the court; and
- (b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

12 Subsequently—

- (a) you will be entitled to be served with all documents relevant to the reserved rights that may be filed in the proceeding by a person who is, or may become, a party; and
- (b) with the leave of the court, you may file and serve a statement of defence and any other document within the time and on the terms and conditions prescribed by the court.

Registry hours

- 13 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form G 5

r 5.23(4)

Memorandum to be endorsed on form G 2 in
proceeding under Family Protection Act 1955

Advice

- 1 Although you do not have to employ a solicitor for the purpose of this proceeding it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—
 - (a) it can only carry on a proceeding in the court by a solicitor; and
 - (b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

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 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff 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 registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

Form G 5—*continued*

- 5 *Omit this paragraph if it conflicts with a direction by the court.*
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.
- 6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

Appearance objecting to jurisdiction of court

- 7 If you object to the jurisdiction of the court to hear and determine this proceeding, you may file in the registry of the court an appearance stating your objection and the grounds for it instead of a statement of defence, and serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing a statement of defence.
- 8 An appearance is not treated as a submission to the jurisdiction of the court.

Appearance for ancillary purposes

- 9 If you do not oppose the plaintiff's claim but want to be heard on an ancillary matter (including costs), you may, without filing a statement of defence,—
- (a) file an appearance stating the matters on which you want to be heard; and
 - (b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.
- 10 Those matters will not subsequently be determined except on notice to you.

Appearance reserving rights

- 11 If you do not oppose the plaintiff's claim but want to reserve your rights in the event that another person becomes a party to the proceeding or that a party takes a step in the proceeding that

Form G 5—*continued*

is against your interests, you may, without filing a statement of defence,—

- (a) file an appearance reserving those rights in the registry of the court; and
- (b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

12 Subsequently—

- (a) you will be entitled to be served with all documents relevant to the reserved rights that may be filed in the proceeding by a person who is, or may become, a party; and
- (b) with the leave of the court, you may file and serve a statement of defence and any other document within the time and on the terms and conditions prescribed by the court.

Claim by defendant

13 If you want to make a claim under the Family Protection Act 1955 to provide for yourself out of the estate of the deceased, you must file a statement of claim setting out your claim and supporting facts, and serve a copy of it on—

- (a) the plaintiff; and
- (b) the defendant; and
- (c) any other person (other than yourself) directed to be served with the plaintiff's proceeding.

This must be done within the same period of time you have for filing a statement of defence.

Registry hours

14 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Form G 5—*continued*

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form G 6

r 6.31

Notice to defendant served overseas

Add this notice to form G 2, G 4, or G 5 as appropriate.

Since you are resident outside New Zealand you are further notified that—

- 1 The plaintiff has commenced a proceeding against you in the High Court of New Zealand, claiming the relief specified in the attached statement of claim.
- 2 Although you are resident outside New Zealand, the plaintiff claims that this proceeding can be brought against you in the High Court of New Zealand.
- 3 By New Zealand law, the High Court may exercise jurisdiction in certain classes of case even though the defendant is resident outside New Zealand.
- 4 *[Specify particular provision(s) of rule 6.27 on which the plaintiff relies to serve the proceeding overseas.]*
- 5 In this case the plaintiff claims: *[specify facts alleged by the plaintiff to confer jurisdiction]*.
- 6 Even though the court has jurisdiction to hear and determine this proceeding, it may decline to do so if it is satisfied—
 - (a) that in all the circumstances a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be determined; and
 - (b) that the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.
- 7 If you want to dispute the jurisdiction of the court, you must, within the time specified for filing a statement of defence, and instead of filing and serving a statement of defence,—
 - (a) file an appearance in this court, in the form required by the rules of this court, stating your objection to the court's jurisdiction and the grounds for it; and
 - (b) serve a copy of it on the plaintiff.The appearance is not treated as a submission to the jurisdiction of the court.
- 8 If you want to dispute the jurisdiction of the High Court or to defend the plaintiff's claim, you should either directly, or

Form G 6—*continued*

through a qualified legal adviser in the place where you are,
send written authority (by fax or email) to a solicitor in New
Zealand to act for you.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form G 7

rr 5.52, 29.7

Appearance under protest to jurisdiction

- 1 The defendant, [*name*], 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:
[*specify grounds*].

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

Form G 8

rr 5.52, 29.7

Appearance for ancillary purpose

Complete and attach the memorandum as set out in form G 10.

The defendant, *[name]*, does not oppose the plaintiff's claim but appears in order to be heard on the following matters: *[specify matters]*.

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

Form G 9

rr 5.52, 29.7

Appearance reserving rights

Complete and attach the memorandum as set out in form G 10.

The defendant, [name], does not oppose the plaintiff's claim but appears in order to reserve the defendant's rights in the event that another person becomes a party to this proceeding, or that a party takes a step in the proceeding that is against the defendant's interests.

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

Form G 10

rr 5.44, 19.8(2)

Memorandum to be attached to first document
filed by party

Select the statement that applies.

Statement A

This document is filed by the plaintiff/defendant/third party* in person. The address for service of the plaintiff/defendant/third party* is [address].

*Select one.

Statement B

This document is filed by [full name], solicitor for the plaintiff/defendant/third party*, of the firm [full name]. The address for service of the plaintiff/defendant/third party* is [address].

*Select one.

Documents for service on the filing party may be left at that address for service or may be—

- (a) posted to the solicitor at [post office box address]; or
- (b) left for the solicitor at a document exchange for direction to [document exchange box number]; or
- (c) transmitted to the solicitor by fax to [fax number]; or
- (d) *Omit this paragraph if email service will not be accepted.*
emailed to the solicitor at [email address].

Statement C

This document is filed by [full name], solicitor for the plaintiff/defendant/third party*, of the firm [full name], whose postal address is [address]. The address for service of the plaintiff/defendant/third party* is [address].

*Select one.

The solicitor's agent in the proceeding is [full name].

Documents for service on the party may be left at that address for service or may be—

- (a) posted to the solicitor at [post office box address]; or
- (b) left for the solicitor at a document exchange for direction to [document exchange box number]; or

Form G 10—*continued*

- (c) transmitted to the solicitor by fax to [*fax number*]; or
- (d) *Omit this paragraph if email service will not be accepted.*
emailed to the solicitor at [*email address*].

Form G 11

r 5.40(8)

Memorandum as to change of representation
and/or address for service**To** the Registrar of the High Court at *[place]*

and

To *[name of other party or parties to proceeding]***This document notifies you that—**

- 1 *For this paragraph select the statement that applies.*

Statement A

The solicitor for the plaintiff/defendant/third party* is now
[name and address of solicitor and solicitor's firm, if any].

*Select one.

Statement B

The plaintiff/defendant/third party* now acts in person in
place of *[name and address of previous solicitor and solicitor's firm, if any]*.

*Select one.

- 2 The address for service of the plaintiff/defendant/third party*
is now *[address complying with definition of address for service in rule 1.3]*.

*Select one.

Date:

Signature*:

(plaintiff/defendant/third party†)

*If this document notifies a change of solicitor, it must be signed by the party
personally or by the party's solicitor.

†Select one.

Form G 12

r 1.11(4)

Notice of intention to speak Māori

To the Registrar of the High Court at *[place]*

and

To *[names of parties to be served]*

This document notifies you that *[full name and address of party, counsel, or witness]* intends to speak Māori at—

Select the statement that applies.

Statement A

all case management conferences and hearings relating to the above proceeding.

Statement B

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 Māori]*.

Statement C

the case management conference/the hearing relating to the above proceeding* to be held at *[specify details of particular case management conference or hearing at which the person wishes to speak Māori]*.

*Select one.

Date:

Signature:

(signature of party/solicitor/person intending to speak Māori*)

*Select one.

Form G 12—*continued*

Notes

- 1 The Maori Language Act 1987 entitles the following persons to speak Māori in legal proceedings: the parties to the proceedings, witnesses, counsel, and, with the leave of the court, other persons.
- 2 If a person intends to speak Māori 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 registry 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 Māori 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 Māori, file this notice in the registry 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 Māori 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 registry 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 Māori does not prevent a person speaking Māori 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 G 13 r 12.4(4)
Notice of proceeding when summary judgment
sought by plaintiff

To the defendant/defendants*

*Select one.

This document notifies you that—

- (a) a claim, a copy of which is served with this document, has been filed by the plaintiff; and
- (b) the plaintiff has also applied to this court for immediate judgment against you (on that claim or, if judgment is not sought on the full claim, to the extent stated in the notice of application for summary judgment also served with this document) 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

- 1 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 with this document),—
 - (a) file in the court registry at *[place]*—
 - (i) a notice of opposition; and
 - (ii) an affidavit sworn by you or on your behalf setting out your defence; and
 - (b) serve a copy of that notice of opposition and a copy of that affidavit on the plaintiff.
- 2 The court may give whatever judgment on the plaintiff's claim against you is thought just if you fail—
 - (a) to file both a notice of opposition and 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.
- 3 If you are a natural person, you may appear personally at the hearing or by counsel.
- 4 If you are a company or other corporation, you may appear only by counsel at the hearing.

Form G 13—*continued***Statement of defence**

- 5 You may, in addition to filing a notice of opposition and an affidavit, file a statement of defence.
- 6 If you want to file a statement of defence,—
- (a) you must file it in the registry of the 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
 - (c) you must both file and serve it not less than 3 working days before the date of hearing.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Memorandum**Advice**

- 1 Although you do not have to employ a solicitor for the purpose of this application, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to oppose this application or appear at any hearing must consult a solicitor immediately because—
- (a) it can only carry on proceedings in the court by a solicitor; and
 - (b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Form G 13—*continued*

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 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff 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 registry of the court, instead of a notice of opposition and an affidavit, an appearance stating your objection and the grounds for it; and
 - (b) serve a copy of the appearance on the plaintiff.
- 5 Such an appearance will not be treated as a submission to the jurisdiction of the court.

Registry hours

- 6 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

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

Form G 13—*continued*

- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Add the following notice if the defendant is to be served overseas.

Notice to defendant served overseas

Since you are resident outside New Zealand you are further notified that—

- 1 The plaintiff has commenced a proceeding against you in the High Court of New Zealand, claiming 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 certain classes of case even though the defendant is resident outside New Zealand.
- 4 [*Specify particular provision(s) of rule 6.27 on which the plaintiff relies to serve the proceeding overseas.*]
- 5 In this case the plaintiff claims: [*specify facts alleged by the plaintiff to confer jurisdiction*].
- 6 Even though the court has jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied that—
 - (a) in all the circumstances a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and

Form G 13—*continued*

- (b) the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.
- 7 If you want to dispute 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.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form G 14
Third party notice

r 4.10(2)

To [*full name, address, occupation*]**This document notifies you that—****Claim by plaintiff against defendant**

- 1 This proceeding has been brought by the plaintiff against the defendant, in which the plaintiff claims the relief set out in the plaintiff's statement of claim (copy attached). The defendant has/has not* filed a statement of defence to the claim.

*Select one.

Omit the following sentence if it does not apply.

A copy of that statement of defence is served with this document.

Claim by defendant against you

- 2 The defendant claims relief or a remedy against you in respect of, or arising out of, the plaintiff's claim. That relief or remedy and the grounds on which it is claimed are set out in the defendant's statement of claim (copy attached).

Can I dispute the claims made against the defendant and me?

- 3 Yes. If you want to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must, within 22 working days after the day on which you are served with this notice,—
- (a) file in the registry 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 defence on the plaintiff and the defendant and on the other parties to the proceeding.

What if I fail to dispute the claims?

- 4 If you do not dispute the claims—
- (a) you will be treated as having admitted—

Form G 14—*continued*

- (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 given, which may be enforced against you under the rules of court.

Trial of proceeding

- 5 The trial of the proceeding, if a trial is necessary, will take place at *[place]* at a time to be fixed by the court.

Include the following sentence if there is a court order; otherwise omit.

This notice is issued under an order of the court made on *[date]*.

Date:

Signature:

(defendant/solicitor for the defendant*)

*Select one.

Form G 15

r 4.21(1)

Notice to other defendant

To the [*specify which defendant, eg, second, third, etc*] defendant,
[*full name*]

This document notifies you that—**Claim against you**

- 1 The [*specify which defendant*] defendant, [*name*], claims the relief or remedy against you set out in the attached statement of claim. The grounds for claiming the relief or remedy are also set out in the statement of claim.

Your right to dispute claim

- 2 If you dispute the claim, you must, within 8 working days after the day on which you are served with this notice,—
- (a) file in this registry of the court a statement of your defence to the claim; and
 - (b) serve a copy of that statement of defence on—
 - (i) the claiming defendant, [*full name*]; and
 - (ii) the plaintiff; and
 - (iii) any other party who has filed an address for service.

Date:

Signature:

(defendant/solicitor for defendant*)

*Select one.

Form G 16
Affidavit of service

r 6.10

I, *[full name, place of residence, occupation]*, swear—

1 On *[day, date]*, I served the *[party as described in the heading]*, *[full name]*, with the following documents:
[List each document served, eg, statement of claim and notice of proceeding. If, under rule 6.10, a copy of a served document is not attached 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 *[party as described in the heading]* at *[place]* in New Zealand by *[specify how documents were delivered, eg, personally]*.

3 I believe it was the *[defendant or other party as described in the heading]* that I served because—

Select the statement(s) that apply.

Statement A

the defendant/*[party]** acknowledged that he/she* is the defendant.

*Select one.

Statement B

I know the defendant/*[party]**.

*Select one.

Statement C

[Specify any other reason.]

4 *Omit this paragraph if it does not apply.*

True copies of the documents served are attached to this affidavit and marked “A” and “B”.

Form G 16—*continued*

Signature of deponent:

Sworn at: [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*)

*Select one.

Form G 17

r 6.25

Service of foreign process in New
Zealand—Registrar's certificate

- 1 I, [full name], Registrar of the High Court of New Zealand, at [place], certify that the documents attached to this certificate are—
- (a) the original letter of request for service of process received from [name of foreign court or tribunal] at [place where foreign court or tribunal sits] in [name of foreign country], in the matter of [specify matter pending before foreign court or tribunal]; and
 - (b) the copy of the process/citation* received with the letter of request; and
 - (c) the evidence of service on [full name of entity or person named in letter of request].

*Select one.

- 2 For this paragraph select the statement that applies.

Statement A

I certify that the service that has been proved and its proof comply with the law and practice of the High Court of New Zealand regulating the service and proof of service of New Zealand legal process in New Zealand.

Statement B

Service of the process could not be effected for the following reasons: [specify reasons].

- 3 I certify that the cost of effecting the service/attempting to effect the service* is \$[amount].

*Select one.

Date:

Signature:

(Registrar)

Form G 18

r 6.34(2)

Request for service abroad

To the Registrar of the High Court at [*place*]

- 1 This request is made under [*name of convention*].
- 2 I 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/substituted service* on the [*describe defendant as in the heading*] defendant, [*name*], at [*place*] or elsewhere in [*name of country*], and that the service be effected directly through a New Zealand or British consular officer (or by the competent authority of that country).

*Select one.

- 3 I undertake—
 - (a) to be responsible for all expenses of effecting or endeavouring to effect service incurred by the New Zealand Government and by any competent authority acting in the matter or by any governmental officer; and
 - (b) on being advised of the amount of those expenses,—
 - (i) to pay that amount immediately to a Crown Bank Account; and
 - (ii) to produce evidence of the payment to the Registrar.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Form G 19
Report of examiner

r 9.23

To the Registrar of the High Court at *[place]*

- 1 Under the order of this court made on *[date]* and rule 9.20 of the High Court Rules, I, *[full name and address of examiner]*, the examiner appointed by that order,—
 - (a) duly appointed *[time, date]* as the time and *[address of place where examination to be held]* as the place where the persons named in the order were to be examined; and
 - (b) notified the parties.
- 2 At the appointed time and place, the parties appeared by counsel, namely, *[name]* for the plaintiff and *[name]* for the defendant. The proceeding was adjourned until *[particulars of any adjournments]**.

*Omit this sentence if proceeding not adjourned.
- 3 The examination of the witnesses named in the order was conducted before me in accordance with rule 9.20 of the High Court Rules on *[dates on which witnesses were examined]*.
- 4 With the written consent of each party and in accordance with rule 9.21 of the High Court Rules, the following witnesses were also examined before me on *[dates on which additional witnesses were examined]*.
- 5 Before each witness was examined, the witness took an oath or affirmation to tell the truth, the whole truth, and nothing but the truth in the evidence that the witness was about to give.
- 6 The evidence of each witness was recorded. Under rule 9.22 of the High Court Rules, I also recorded—
 - (a) a note of each objection to any evidence; and
 - (b) the ground of each objection; and
 - (c) my opinion on each objection; and
 - (d) the answer (if any) of the witness to the question.
- 7 The entire record is attached.
- 8 I certify that I incurred the following out-of-pocket expenses in relation to this examination: *[specify items, eg, rent, transport, stenographer, and attach vouchers]*.

Form G 19—*continued*

Date:

Signature:
(examiner)

If the evidence of any witness is not taken for any of the reasons set out in rule 9.20(7), complete and insert the following certificate either:

- *in place of paragraphs 2 to 7; or*
- *after paragraph 7.*

In all other circumstances, omit.

I certify that at the time and place appointed set out in paragraph 1/at [time, date, place], the time and place to which I had adjourned the examination*,—

*Select one.

Select the statement that applies.

Statement A

there was no appearance by or on behalf of the plaintiff/defendant*.

*Select one.

Statement B

the witness [name] did not attend.

Statement C

the plaintiff/defendant* stated that there was no intention to proceed with the taking of evidence.

*Select one.

Form G 20

r 28.4(1)

Subpoena to give evidence in New Zealand
proceeding for service in Australia

To *[name, place of residence, occupation]*

- 1 You are ordered to attend the High Court of New Zealand at *[place, date, time]* and, on each subsequent day until you are discharged from attendance, to give evidence on behalf of the *[party]* in this proceeding.
- 2 *Omit this paragraph if it does not apply.*
You are ordered to bring with you and produce at the same time and place *[details of documents to be produced]*.
- 3 This order of subpoena is issued by *[full name]*, the party/solicitor for the party*, with the leave of the Honourable Justice *[name]*.

*Select one.

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

Sealed: *[date]*

Form G 21

r 28.4(1)

Subpoena for production only issued in New
Zealand proceeding for service in Australia**To** *[name, place of residence, occupation]*

- 1 *For this paragraph select the statement that applies.*

Statement A

You are ordered to produce this subpoena and the documents or things set out in the list below at the High Court of New Zealand at *[place, date, time]*.

Statement B

You are ordered to produce this subpoena and the documents or things set out in the list below at the Federal Court of Australia at *[place]* not later than *[date]*.

- 2 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 fax 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.
- 3 This order of subpoena is issued by *[full name]*, the party/solicitor for the party*, with the leave of the Honourable Justice *[name]*.

*Select one.

List of documents and things

[List documents and things.]

Form G 21—*continued*

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

Sealed: [*date*]

Form G 22

r 28.5(1)

Statement of rights and obligations of
person served in Australia with subpoena in
Trans-Tasman Competition Proceedings

Allowances and travelling expenses

- 1 At the time you are served with this subpoena, or at some other reasonable time before the hearing, you are entitled to be paid allowances and travelling expenses, or given vouchers in respect of those allowances and expenses, that cover your reasonable expenses in complying with this subpoena.
- 2 You are not required to comply with this subpoena unless those allowances and travelling expenses or vouchers are tendered to you.
- 3 You are also entitled to be paid for your reasonable expenses in complying with the subpoena in addition to any payment or vouchers tendered to you. You may apply to the High Court of New Zealand for an order specifying that amount.

Failure to comply

- 4 Failure to comply with this subpoena constitutes contempt of the Federal Court of Australia, and is punishable unless you establish that the failure to comply should be excused.

Setting subpoena aside

- 5 You may apply to the High Court of New Zealand to have the subpoena set aside 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

Form G 22—*continued*

penalty under section 80 or 83 of the Commerce Act 1986 of New Zealand:

- (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.

- 6 The application must be made by affidavit and must be filed in the registry of the High Court of New Zealand that issued the order of subpoena.
- 7 The affidavit must be sworn by the applicant and must set out the facts relied on to set the subpoena aside.
- 8 You can send the affidavit by fax. If you do this,—
 - (a) mark the document for the attention of the officer whose name appears on the subpoena; and
 - (b) give a fax number so that a receipt can be sent to you; and
 - (c) post the original affidavit to the court.
- 9 Your affidavit will be served on the party who obtained the subpoena.
- 10 The High Court of New Zealand will decide whether a hearing is necessary. If it is, you will be notified by an officer of the court.

Note

If you are in doubt about any matter relating to this subpoena you should obtain legal advice.

Form G 23

r 28.8

Certificate of non-compliance with subpoena
issued in New Zealand proceeding for service
in Australia**To** the Federal Court of Australia at *[place]*

1 The High Court of New Zealand certifies that *[name of person subpoenaed]*, having been served with a subpoena in a New Zealand proceeding within the meaning of section 32B of the Federal Court of Australia Act 1976 (a copy of which is attached to this certificate), has contravened that subpoena in that *[particulars of contravention]*.

2 *For this paragraph select the statement that applies.*

Statement A

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.

Statement B

An application to set aside the subpoena under section 56G of the Judicature Act 1908 of New Zealand has been dismissed. A copy of the reasons for dismissing the application is attached to this certificate.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form G 24

r 15.19(2)

Notice of discontinuance

To the Registrar of the High Court at *[place]*

and

To *[name of other party or parties to proceeding]*

This document notifies you that—

- 1 *[Name of plaintiff discontinuing proceeding]* discontinues this proceeding against *[name of defendant or, if more than 1 defendant, names of defendants or names of defendants against whom the plaintiff discontinues the proceeding]*.
- 2 *For this paragraph select the statement that applies.*

Statement A

A copy of the written consent of a plaintiff who is required under rule 15.20 of the High Court Rules to consent to this discontinuance is attached.

Statement B

A copy of the written consent of a defendant who is required under rule 15.20 of the High Court Rules to consent to this discontinuance is attached.

Statement C

The High Court has granted leave to the plaintiff to discontinue this proceeding.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Form G 25
Subpoena

r 9.52(1)

To [*name, place of residence, occupation*]

- 1 You are ordered to attend the High Court at [*place, date, time*] and, on each subsequent day until you are discharged from attendance, to give evidence on behalf of the [*party*] in this proceeding.
- 2 *Omit this paragraph if it does not apply.*
You are ordered to bring with you and produce at the same time and place [*details of documents and things to be produced*].
- 3 This order of subpoena is issued by [*full name*], the party/solicitor for the party.*

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Notes

Allowances and travelling expenses

- 1 You are entitled to have paid to you, at the time of the service of this order on you, or at some other reasonable time before the hearing, an amount in respect of your allowances and travelling expenses.
- 2 The scale of allowances and travelling expenses that applies is prescribed for the time being by the Witnesses and Interpreters Fees Regulations 1974.

Failure to attend

- 3 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.

Form G 25—*continued*

- 4 The penalty for failing to attend without just excuse is a fine not exceeding \$500.

Schedule 2 schedule 1 form G25: amended, on 1 December 2009, by rule 9 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

Form G 26

r 9.59(1)

Subpoena to give evidence for service in
Australia**To** *[name, place of residence, occupation]*

- 1 You are ordered to attend *[place of court or, if witness is required to attend at a place other than the High Court, that other place]* on *[date, time]* and on each subsequent day until you are discharged from attendance to give evidence on behalf of the *[party]* in this proceeding.
- 2 *Omit this paragraph if it does not apply.*
You are ordered to bring with you and produce at the same time and place *[details of documents and things to be produced]*.
- 3 This order of subpoena is issued by *[full name]*, the party/solicitor for the party*, with the leave of the Honourable Justice *[name]*.

*Select one.

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

Sealed: *[date]*

Form G 27 r 9.59(2)
Subpoena for production only for service in
Australia

To [*name, place of residence, occupation*]

- 1 You are ordered to produce this subpoena and the documents and things set out in the list below at the High Court of New Zealand at [*place, date, time*].
- 2 You will comply with this subpoena if you produce the documents and things at a registry of an Australian court that is authorised by the law of the Commonwealth of Australia to receive those documents and things, no later than 7 working days before that date.
- 3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*, with the leave of the Honourable Justice [*name*].

*Select one.

List of documents and things

[*List documents and things.*]

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

Sealed: [*date*]

Form G 28

r 9.61

Statement of rights and obligations of person
served in Australia with subpoena under
Evidence Act 2006

Important: This statement is important. Please read the statement and the attached document carefully. If you are in any doubt about this statement or the attached 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 [*specify whether witness is required to attend the High Court or some other place to give evidence, give evidence and produce documents and things, or only produce documents*].

The subpoena may be served in Australia under section 156 of the Evidence Act 2006 of New Zealand.

This statement sets out your rights and obligations relating to the subpoena.

Your rights

- 1 At the time you are served with this subpoena, or at some other reasonable time before the hearing, you are entitled to be paid allowances and travelling expenses, or given vouchers in respect of those allowances and expenses, that cover your reasonable expenses in complying with this subpoena.
- 2 You are not required to comply with this subpoena unless those allowances and travelling expenses or vouchers are tendered to you.
- 3 You are also entitled to be paid for your reasonable expenses in complying with the subpoena in addition to any payment or vouchers tendered to you. You may apply to the High Court of New Zealand for an order specifying that amount.
- 4 You may apply to the High Court of New Zealand to have the subpoena set aside. If you want to have the subpoena set aside, you should get legal advice as soon as possible.
- 5 An application to set the subpoena aside can be made and determined without having to go to New Zealand. You are entitled to have Australian solicitors act for you.

Form G 28—*continued*

- 6 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 requires 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: See “setting subpoena aside” for details of the grounds on which a subpoena may be set aside and the procedure that must be followed.

Your obligations

- 7 If the subpoena is not set aside, you must comply with it if—
- (a) when you were served with the subpoena, or at some reasonable time before the time specified for you to comply, you have been paid or tendered allowances and travelling expenses, or offered vouchers in respect of those allowances and expenses, that are sufficient to cover reasonable expenses incurred in complying with this 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; and
 - (c) you were served with the subpoena 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 are 18 years of age.
- 8 If the subpoena only requires you to produce documents and 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 7 working days before the date specified in the subpoena for producing them in the High Court of New Zealand. If you produce the documents or things at a

Form G 28—*continued*

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 and things, and of sending them to the High Court, paid or tendered to you before you are required to comply with the subpoena.

Failure to comply with subpoena

- 9 Failure to comply with the subpoena constitutes contempt of the Federal Court of Australia and is punishable unless you establish that the failure to comply should be excused.

Setting subpoena aside

- 10 You may apply to the High Court of New Zealand to have this subpoena set aside under section 160 of the Evidence Act 2006 of New Zealand. 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
 - (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.
- 11 Section 160 further provides that the High Court may set a subpoena aside if it is satisfied that—

Form G 28—*continued*

- (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,—
 - (i) the documents or things should not be taken out of Australia; and
 - (ii) satisfactory evidence of the contents of the documents or evidence of the things can be given by other means.
- 12 An application to set the subpoena aside must be filed in the registry of the High Court of New Zealand in which leave to serve the subpoena was given, together with any affidavit setting out the facts on which you rely.
- 13 The application and the affidavit may be sent by fax. The fax number of the registry of the court is *[fax number]*.
- 14 The application must contain an address for service in New Zealand or Australia and may also state a fax number in New Zealand or Australia to which documents relating to the application may be sent.
- 15 The Registrar of the High Court of New Zealand will arrange for service of the application and any affidavit.
- 16 The High Court of New Zealand can decide the application without a hearing if neither you nor the party who requested the issue of the subpoena states 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.

Form G 29

r 9.65

Certificate of non-compliance with subpoena
for service in Australia**To** the Federal Court of Australia at *[place]*

The High Court of New Zealand certifies that on *[date]* the Honourable Justice *[name]* gave leave to serve a subpoena, being a subpoena to which Part 4 of the Evidence Act 2006 of New Zealand applies, on *[name of person subpoenaed]*, and that *[name of person subpoenaed]* has failed to comply with the subpoena in that *[particulars of failure to comply]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form G 30 r 23.4(1)
Application for registration of foreign judgment
under Reciprocal Enforcement of Judgments
Act 1934

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the matter of the Reciprocal Enforcement of Judgments Act 1934

And

In the matter of a judgment of the [*name of foreign court*]

Between [*full name*] (judgment creditor)

And [*full name*] (judgment debtor)

To the Registrar

This document notifies you that—

- 1 On [*date*] at 10 am, the judgment creditor will apply to the court for an order that the judgment be registered under the Reciprocal Enforcement of Judgments Act 1934.
- 2 The judgment is attached to the affidavit of [*name of person making affidavit, and its date*].
- 3 *Omit this paragraph if the foreign judgment or an authenticated copy of it is being filed and is in English.*
A translation of the judgment into English is attached to the affidavit of [*name of person making affidavit, and its date*].
- 4 *Select the statement that applies.*

Statement A

The relevant rate of exchange, and the New Zealand currency equivalent of the amount of the judgment calculated at that rate, are set out in the affidavit of [*name of person making affidavit, and its date*].

Statement B

The judgment creditor wants the judgment to be registered in the currency in which it is expressed.

- 5 The rate of interest carried by the judgment by the law of [*specify country under whose law it was given*] is [*specify rate*] per cent. The amount of interest which, by that law, has become

Form G 30—*continued*

due up to the time of this application is [*specify amount in New Zealand currency if statement A was chosen for paragraph 4, or in the currency of the country of the judgment if statement B was chosen for that paragraph*].

6 Evidence of the right to register the judgment is contained in the affidavit of [*name of person making affidavit, and its date*].

7 *Omit this paragraph if there is no relevant Order in Council imposing further evidentiary requirements.*

Further evidence required by an Order in Council under section 3 of the Reciprocal Enforcement of Judgments Act 1934 is contained in the affidavit of [*name of person making affidavit, and its date*].

Date:

Signature:

(judgment creditor/solicitor for judgment creditor*)

*Select one.

Notes

- 1 This form should be used if the application is being made without notice to the judgment debtor. Modify it appropriately if it is being made on notice.
- 2 The foreign judgment must be verified or certified or otherwise duly authenticated (*see* rule 23.8 of the High Court Rules).
- 3 The affidavit referred to in paragraph 7 must comply with rule 23.11 of the High Court Rules.
- 4 If only part of the foreign judgment is entitled to registration (*see* rule 23.13 of the High Court Rules), identify that part. An affidavit should explain why the remainder is not being registered.

Form G 31

rr 7.19(4), 12.4(4), 25.5

Interlocutory application on notice

To the Registrar of the High Court at *[place]*

and

To *[name of party/parties to be served with this application]*

This document notifies you that—

- 1 The applicant, *[name]*, will on *[date]* apply to the court for an order/orders* *[specify orders sought, numbering them if more than 1]*.

*Select one.

- 2 The grounds on which each order is sought are as follows:
[specify concisely the grounds on which each order is sought].
- 3 The application is made in reliance on *[specify any particular provision of an enactment, principle of law, or judicial decision relied on]*.

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

*Select one.

Form G 32

rr 7.19(4), 7.23(1)

Interlocutory application without notice

To the Registrar of the High Court at *[place]***This document notifies you that—**

- 1 The applicant, *[name]*, will on *[date]* apply to the court for an order/orders* *[specify orders sought, numbering them if more than 1]*.

*Select one.

- 2 The grounds on which each order is sought are as follows:
[specify concisely the grounds on which each order is sought].
- 3 The application is made in reliance on *[specify any particular provision of an enactment, principle of law, or judicial decision relied on]*.

I certify that this application complies with the rules.*

*This certificate may be dispensed with if a Judge so orders under rule 7.23(5). If dispensation is sought, the reasons for the absence of a lawyer's certificate must be stated.

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

*Select one.

[Telephone number]

Form G 33 rr 7.24(3), 12.9(1), 29.11(3)
Notice of opposition

To the Registrar of the High Court at *[place]*
and

To *[name of applicant and any other party to be served with this notice]*

This document notifies you that—

- 1 The respondent, *[name]*, intends to oppose the interlocutory application by the plaintiff/defendant* dated *[date]*.
*Select one.
- 2 The respondent is opposed to the making of the order/the orders numbered *[specify numbers]* in the application*.
*Select one.
- 3 The grounds on which the respondent opposes the making of the order(s) are as follows: *[specify grounds concisely]*.
- 4 The respondent relies on *[specify any particular provision of an enactment, principle of law, or judicial decision relied on]*.

Date:

Signature:

(solicitor for respondent/counsel for respondent/respondent*)

*Select one.

Form G 34
Interlocutory order

rr 7.47(3), 25.5

To *[every party who has given an address for service and any other person affected by the order]*

1 The interlocutory application made by *[name]* on *[date]* was determined by the Honourable Justice *[name]* on *[date]*.

2 *For this paragraph select the statements that apply.*

Statement A

The determination was made following a hearing held on *[date(s)]*. *[List names of counsel or solicitors who represented the respective parties at the hearing and state whether any party appeared in person at the hearing.]*

Statement B

The determination was made without a hearing.

Statement C

The determination was made with the consent of the parties.

3 The following order was/orders were* made: *[specify orders made, numbering them if more than 1]*.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: *[date]*

Form G 35

r 8.1(3)

Notice to answer interrogatories

To *[name of party required to answer interrogatories]*

This document notifies you that—

- 1 The party giving notice, *[name of party giving notice]*, requires you to answer the interrogatories set out in paragraph 5 of this notice.
- 2 The requirement to answer interrogatories is made under rule 8.1 of the High Court Rules. The interrogatories relate to matters in question in this proceeding between you and the party giving notice.
- 3 You must answer the interrogatories within a period of *[specify number]* working days. (The period starts on the first working day after you are served with the notice.)
- 4 *Include this paragraph if verification is required, otherwise omit.*
You are also required to verify your answers by affidavit.
- 5 The interrogatories that you are required to answer are as follows: *[specify interrogatories required to be answered, numbering them if more than 1]*.

Date:

Signature:

(solicitor/counsel* for party giving notice)

*Select one.

Form G 36
Notice to admit facts

r 8.14(2)

To [*name of party required to admit facts*]**This document notifies you that—**

- 1 The party giving notice, [*name of party giving notice*], requires you to admit the facts set out in paragraph 4 of this notice. The admissions are for the purpose of this proceeding only.
- 2 The requirement is made under rule 8.14 of the High Court Rules.
- 3 If you refuse or neglect to admit the facts within 5 working days after the day on which you are served with this notice, you will have to pay the costs of proving the facts, unless a Judge orders otherwise.
- 4 The facts that you are required to admit are as follows: [*specify facts party is required to admit, numbering them if more than 1.*]

Date:

Signature:

(solicitor/counsel* for party giving notice)

*Select one.

Form G 37
Affidavit of documents

r 8.20(3)

I, *[full name, 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 8.17 of the High Court Rules on *[date]* (the discovery order).
- 3 *Include this paragraph if it applies, otherwise omit.*
The discovery order contains particular terms that are not set out in rule 8.18 of the High Court Rules, and those particular terms are: *[specify 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 that I am required to discover under the order, and I have also taken the following particular steps: *[specify steps taken, such as, for example, inquiries made of named persons]*.
- 6 In the Schedule of this affidavit, I list the documents that I am required to discover.
- 7 In Part 1 of the Schedule, I list the documents that are in my control and for which I claim neither privilege nor confidentiality.
- 8 *Include this paragraph if it applies, otherwise omit.*
In Part 2 of the Schedule, I list the documents that are in my control and for which I claim privilege and state in relation to each document the privilege that applies.
- 9 *Include this paragraph if it applies, otherwise omit.*
In Part 3 of the Schedule, I list the documents that are in my control and for which I claim confidentiality. I propose that inspection of these documents be restricted to *[name persons]* and that the following restrictions apply *[specify proposed restrictions on inspection]*.
- 10 *Include this paragraph if it applies, otherwise omit.*
In Part 4 of the Schedule, I list documents that are no longer in my control and state when, to the best of my

Form G 37—*continued*

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 *Include this paragraph if it applies, otherwise omit.*

In Part 5 of the Schedule, I list 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 [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

Schedule

Part 1

Documents that are in my control and for which
I claim neither privilege nor confidentiality

[*List and number the documents concerned.*]

Part 2

Documents that are in my control and for which
I claim privilege

[*List and number the documents concerned. State the nature of the privilege claimed for each document or category of document, eg, legal professional privilege.*]

Part 3

Documents that are in my control and for which
I claim confidentiality

[*List and number the documents concerned. State why each document or category of document is confidential.*]

Form G 37—*continued*

Part 4

Documents that are no longer in my control

[List the documents concerned. State, to the best of your knowledge and belief,—

- (a) when each document or category of document ceased to be in your control; and*
- (b) the persons who now have control of each document.]*

Part 5

Documents that have never been in my control

[List any documents that you know relate to a matter in question in the proceeding but that are not, and have never been, in your control. State, to the best of your knowledge and belief, where the documents are.]

Form G 38
Freezing order

r 32.6(1)

To the respondent [name]1 *For this paragraph select the statement that applies.**Statement A*

Judgment has been given in favour of the applicant by the court
[specify different named court if rule 32.5(3) applies].

Statement B

The applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in the court [specify different named court if rule 32.5(3) applies].

2 The court has considered the applicant's application for a freezing order, and has heard [name of applicant or applicant's counsel] in support.

3 The court is satisfied, having regard to all the circumstances disclosed by affidavit evidence filed in support of the application, that there is a danger that judgment in favour of the applicant will be wholly or partly unsatisfied, because [state reason or reasons as set out in rule 32.5(4)].

4 This freezing order is made in respect of the following assets: [set out a comprehensive list, with description adequate to identify each asset].

5 Subject to paragraph 6, this order restrains you from removing any of the assets listed in paragraph 4 from New Zealand, or from disposing of, dealing with, or diminishing the value of, those assets, whether they are in or outside New Zealand.

6 This freezing order does not prohibit you from dealing with the assets covered by the order for the purpose of—

- (a) paying ordinary living expenses; or
- (b) paying legal expenses related to the freezing order; or
- (c) disposing of assets, or making payments, in the ordinary course of your business, including business expenses incurred in good faith.

7 *Include this paragraph only if the freezing order was made without notice to the respondent*

As the freezing order has been made without notice to you, it will have no effect after [state the particular date inserted by the court under rule 32.7], unless on that date it is continued

Form G 38—*continued*

or renewed. On that date you or your counsel are entitled to be heard by the court in opposition to the continuation or renewal of the order.

- 8 You may apply to the court by interlocutory application to discharge or vary the order. If you apply, you must give the applicant notice of not less than [*specify period fixed under rule 32.8*].

- 9 *Omit this paragraph if no undertaking has been required by the court.*

An undertaking as to damages given by the applicant is attached.

- 10 [*State any other special terms that the court has ordered*].

- 11 This order does not affect anyone outside New Zealand until it is declared enforceable by a court in the relevant country, (in which case it affects a person only to the extent that it has been declared enforceable) unless the person is—

- (a) a person to whom this order is addressed, or an officer of that person, or an agent appointed by power of attorney of that person; or
- (b) a person who—
 - (i) has been given written notice of this order at that person's residence or place of business within New Zealand; and
 - (ii) is able to prevent acts or omissions outside the jurisdiction of this court that constitute, or assist, a breach of this order.

- 12 This order does not prevent, in respect of assets located outside New Zealand, any third party from complying with—

- (a) what it reasonably believes to be the third party's obligations, contractual or otherwise, under the laws of the country in which those assets are situated or under the proper law of any contract between the third party and the respondent; and
- (b) any orders of the courts of that country, provided that reasonable notice of any application for such an order is given to the applicant's solicitors.

Form G 38—*continued*

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Form G 39
Search order

r 33.2(3)

To the Respondent [*name*]

- 1 This order notifies you that the court is satisfied—
- (a) the applicant has a strong prima facie case on an accrued cause of action; and
 - (b) the potential or actual loss or damage to the applicant will be serious if this search order is not made; and
 - (c) there is sufficient evidence in relation to you that—
 - (i) you possess important evidentiary material; and
 - (ii) there is a real possibility that you might destroy that material, or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.
- 2 You are required to permit the persons named or described above paragraph 4 to enter the premises described in paragraph 5 for the purpose of securing or preserving the evidentiary material listed or described in paragraph 6.
- 3 The applicant's undertaking as to damages is attached.

To the following persons [*names or description of persons authorised to enter and search*]

- 4 This order authorises you to search for, inspect, and remove the things listed or described in paragraph 6 and to take any further steps set out in paragraph 7*.
- *Omit reference to further steps if none is authorised.
- 5 The specified premises are: [*full address of premises*].
- 6 The things that may be searched for and inspected or removed are: [*set out comprehensive list or description of these things*].
- 7 *Omit this paragraph if the search order does not authorise further steps*
The persons named or described above paragraph 4 may take the following further steps: [*list steps*].
- 8 The following independent solicitors are appointed to supervise the carrying out of this order and to report to the court: [*full names and addresses of independent solicitors*].

Form G 39—*continued*

9 *Omit this paragraph if the court has not included this additional power.*

The independent solicitors are also authorised to do the following things: [*specify things*].

To the Respondent and the persons named or described above
paragraph 4

10 On [*date fixed under rule 33.6(3)*] the court will consider a report on the search from the independent solicitors. The applicant and the respondent and the independent solicitors are entitled to be heard on that date. The court will also consider the following:

- (a) what is to happen to any goods removed from the premises or to any copies that have been made:
- (b) how the confidentiality to which the respondent is entitled is to be maintained:
- (c) any privilege claim:
- (d) any application by a party:
- (e) any issue raised by an independent solicitor.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Schedule 2 schedule 1 form G 39: substituted, on 15 May 2009, by rule 7 of the High Court Amendment Rules 2009 (SR 2009/75).

Form J 1
Judgment by default in case of liquidated
demand

r 11.6(2)

Complete and insert the heading as set out in form G 1.

Because the defendant has not filed a statement of defence in the court, judgment is given that the plaintiff recover \$[*amount*], and \$[*amount*] for costs.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Form J 2

r 11.6(2)

Judgment by default in proceeding for recovery
of land*Complete and insert the heading as set out in form G 1.*

Because the defendant has not filed a statement of defence in the court, judgment is given that the plaintiff recover possession of the land described in the plaintiff's statement of claim, and \$[*amount*] for costs.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Form J 3

r 11.6(2)

Judgment on trial by Judge

Complete and insert the heading as set out in form G 1.

This proceeding was heard on *[date(s)]* at *[place]* before the Honourable Justice *[name]*, who, having heard from *[name]*, counsel for the plaintiff, and *[name]*, counsel for the defendant, and having heard the evidence adduced, gives judgment that *[terms of judgment]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: *[date]*

Form J 4

r 11.6(2)

Judgment on trial by jury

Complete and insert the heading as set out in form G 1.

This proceeding was heard on *[date(s)]* at *[place]* before the Honourable Justice *[name]* and a jury. Having heard from *[name]*, counsel for the plaintiff, and *[name]*, counsel for the defendant, and having heard the evidence adduced, the jury found that *[verdict or finding]* and judgment is given that *[terms of judgment]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: *[date]*

Form E 1
Notice to liable party

r 17.10

To [*name of liable party*]

This document notifies you that—

- 1 Judgment has been given against you in the High Court at [*place*] for \$[*amount*], and for [*specify amount for whichever of the following apply*]:
 - *costs*
 - *disbursements*
 - *witnesses' expenses*].
- 2 The entitled party, [*name*], is entitled to enforce payment of these amounts against you.
- 3 The entitled party requires you to serve the statement in the attached form E 2 on the entitled party within 10 working days after the date on which you are served with this notice.
- 4 You may be required to attend court to be orally examined about any of the following and other necessary issues:
 - (a) your receipts and payments for the preceding 52 weeks:
 - (b) your assets and liabilities:
 - (c) your income and expenditure:
 - (d) your means of satisfying the judgment.
- 5 If you pay the amount(s) stated in paragraph 1 within 10 working days after the date on which you are served with this notice,—
 - (a) you do not need to complete the attached form E 2; and
 - (b) you do not need to attend court to be orally examined.

Date:

Signature:

(entitled party/solicitor for entitled party*)

*Select one.

Form E 1—*continued*

Notes

Advice

- 1 If you require help in completing the attached statement, consult your lawyer or seek help from a Citizens' Advice Bureau, Community Law Centre, or other community service.

Registry hours

- 2 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Form E 2

r 17.10

Statement of means of liable party

I, *[full name, place of residence, occupation]*, the liable party, state—

1 The 52 weeks immediately preceding the date of this statement started on *[date]* and end on *[date, which must be not later than date of statement]* (the 52 weeks).

2 My income for the 52 weeks was as follows:
Specify income for each item in the following table—if no income, specify “Nil”.

Item	Particulars	Amount (\$)
(a)	salary, wages, or other personal earnings	
(b)	gross income from business, shop, farm, or sale of produce*	
(c)	amount received from boarders (including children over 16 years of age) boarders at \$ <i>[rate]</i> per week boarders at \$ <i>[rate]</i> 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 rooms let)	
(f)	compensation or damages received (including payments from the Accident Compensation Corporation)	
(g)	superannuation, pension, or benefit (including overseas income)	
(h)	dividends and interest	
(i)	all other sources of income <i>[specify]</i>	

Total income in the 52 weeks:

*Attach the latest statement of financial position and statement of financial performance.

3 The employers and other persons from whom I received the income specified in paragraph 2 (other than that specified under item (b)) are as follows:

Form E 2—*continued*

Item in paragraph 2	Name and address	Amount (\$)
(a)	[employers]	
(b)	[boarders]	
(c)	[relatives and other persons]	
(d)	[tenants]	
(e)	[persons who paid compensation or damages]	
(f)	[persons who paid superannuation, pension, or benefit]	
(g)	[persons who paid dividends and interest]	
(h)	[persons who paid other income]	

- 4 My expenses for the 52 weeks were as follows:
Specify expenses for each item in the following table—if no expenses, specify “Nil”.

Item	Particulars	Amount (\$)
(a)	income tax	
(b)	insurance and superannuation	
(c)	medical and hospital benefits	
(d)	rent	
(e)	rates	
(f)	mortgage payments	
(g)	repairs on home	
(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 partner	
(o)	entertainment	
(p)	fares	
(q)	car maintenance, running, and registration	

Form E 2—*continued*

	Item	Particulars	Amount (\$)
	(r)	hire purchase payments	
	(s)	other expenses [<i>specify</i>]	
	Total expenses in the 52 weeks:		
5	Separate income, for the 52 weeks, of members of your household whose expenses are included was as follows:		
	Full name	Age	Relationship
			Details of separate income (\$)
6	The persons to whom I paid rent (the amount set out in item (d) of paragraph 4) were as follows:		
	Full name	Address	Amount (\$)
7	The persons to whom I paid mortgage payments (the amount set out in item (f) of paragraph 4) were as follows:		
	Full name	Address	Amount (\$)
8	The persons to whom I paid hire purchase instalments (the amount set out in item (r) of paragraph 4) were as follows:		
	Full name	Address	Amount (\$)
9	My assets (both in New Zealand and elsewhere) are as follows:		
	Item	Particulars	Amount (\$)
	(a)	land and buildings: [<i>address and capital value</i>]	
	(b)	money in bank accounts: [<i>specify banks and account numbers</i>]	
	(c)	money not in bank or invested:	
	(d)	money lent or in the hands of any person: [<i>name and address</i>]	
	(e)	government stock, shares, debentures, or bonds: [<i>specify details</i>]	
	(f)	plant and machinery: [<i>specify details</i>]	
	(g)	livestock: [<i>specify details</i>]	

Form E 2—*continued*

Item	Particulars	Amount (\$)				
(h)	interest in business, stock in trade, or venture of any kind: <i>[specify details]</i>					
(i)	motor vehicles: <i>[specify details]</i>					
(j)	any other property or assets not specified above, including interest in any estate: <i>[specify details]</i>					
	Total assets:					
10	The property specified in items <i>[specify]</i> of paragraph 9 of this statement is mortgaged, or otherwise secured to <i>[full name, address]</i> , for the sum of \$ <i>[amount]</i> .					
11	Assets sold or otherwise disposed of by me at any time in the 52 weeks are as follows:					
	<table border="0"> <thead> <tr> <th style="text-align: left;">Description of asset</th> <th style="text-align: left;">Names and addresses of persons to whom properties given, sold, or otherwise disposed of</th> <th style="text-align: left;">Dates of disposal</th> <th style="text-align: right;">Amounts received (\$)</th> </tr> </thead> </table>	Description of asset	Names and addresses of persons to whom properties given, sold, or otherwise disposed of	Dates of disposal	Amounts received (\$)	
Description of asset	Names and addresses of persons to whom properties given, sold, or otherwise disposed of	Dates of disposal	Amounts received (\$)			
12	Debts owed by me that are secured by mortgage or charge are as follows: \$ <i>[amount]</i> .					
13	The persons to whom the debts specified in paragraph 12 are owed, and the items specified in paragraph 9 on which the debts are secured, are as follows:					
	<table border="0"> <thead> <tr> <th style="text-align: left;">Name</th> <th style="text-align: left;">Address</th> <th style="text-align: left;">Item</th> <th style="text-align: right;">Amount (\$)</th> </tr> </thead> </table>	Name	Address	Item	Amount (\$)	
Name	Address	Item	Amount (\$)			
14	My unsecured debts are as follows: \$ <i>[amount]</i> .					
15	The persons to whom the debts specified in paragraph 14 are owed are as follows:					
	<table border="0"> <thead> <tr> <th style="text-align: left;">Name</th> <th style="text-align: left;">Address</th> <th style="text-align: right;">Amount of debt (\$)</th> </tr> </thead> </table>	Name	Address	Amount of debt (\$)		
Name	Address	Amount of debt (\$)				
16	The liabilities that I expect I will be obliged to meet within the 6-month period beginning on the date of this statement are as follows: \$ <i>[amount]</i> .					
17	The persons to whom I expect to be obliged to pay money during the 6-month period beginning on the date of this statement					

Form E 2—*continued*

in discharge of liabilities specified in paragraph 16 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.

Date:

Signature:
(liable party)

Form E 3
Attachment order

r 17.33(3)

Before the Honourable Justice [*name, date*]**To** [*employer's name, address*]

- 1 This court is satisfied that you are the employer of [*liable party's name, address*] (the liable party).
- 2 On [*date*] in the High Court at [*place*], judgment was given against the liable party for \$[*amount*] (including costs).
- 3 The liable party has not paid this amount and, after examining the liable party's means, the court makes this attachment order.
- 4 The court orders that while this order is in force, whenever any salary or wages become payable to the liable party, you must deduct from it the amount of \$[*amount*] for each week.
- 5 However, if in any week the deduction would reduce the net earnings paid to the liable party below the protected earnings rate of \$[*amount*] per week, you must adjust the amount of the deduction so that the liable party receives the protected earnings rate.
- 6 The first deduction is to be made on the payday following the date on which you receive this order. A deduction is to be made on every subsequent payday until [*date*] or until the total amount payable shown in paragraph 8 has been paid.
- 7 The money deducted is to be paid to [*name, address*] by the 20th day of the month after the month in which the deduction was made.
- 8 You are not required to make deductions for more than the total amount payable shown below—

Particulars	Amount (\$)
Whole/portion* of judgment debt sought by this order	
Court fees and solicitor's costs	

Form E 3—*continued*

Particulars	Amount (\$)
Costs and expenses of this order	
Total amount payable	
*Select depending on whether enforcement is sought for less than the full amount for which judgment was sealed. If less than the full amount, add the following words: “(less than the full amount of the judgment debt)”.	

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

- 1 Please see High Court Rules 17.31 to 17.39 for the rules about this order. Those rules define the terms “employer” and “salary or wages”.
- 2 If you do not make payments as required, you can be sued for the amount owing. You may also be convicted of an offence under the Judicature Amendment Act 2008 and fined up to \$1,000.
- 3 You must notify the Registrar of the High Court within 7 days if the debtor leaves or is dismissed from your employment.
- 4 If you need to reduce the amount of any deduction from the liable party’s salary or wages in order to leave the liable party with the protected earnings rate, you should notify the Registrar of the High Court immediately.
- 5 If in doubt about your obligations under this order, you should consult a solicitor or the Registrar at the High Court immediately.
- 6 The registry hours of the High Court are from 9 am to 5 pm, except on court holidays.

Form E 4
Charging order on land

r 17.40(2)

To [*name of liable party*]

This court orders that your estate, right, title, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent) in [*land description*] is charged with payment of the amount for which the entitled party, [*name*], may obtain/has obtained* judgment. The amount charged is \$[*amount*][†].

*Select one.

[†]If this order seeks less than the full amount for which judgment was sealed, add the following words: “(less than the full amount of the judgment debt)”.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form E 5

r 17.40(2)

Interim charging order

Before the Honourable Justice [*name, date*]

To [*name of liable party*]

This court orders that until it discharges or finalises this order, your estate, right, title, or interest in [*property description*] is charged with payment of the amount for which the entitled party, [*name*], may obtain/has obtained* judgment. The amount charged is \$[*amount*][†].

*Select one.

[†]If this order seeks less than the full amount for which judgment was sealed, add the following words: “(less than the full amount of the judgment debt)”.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form E 6
Final charging order

r 17.40(2)

Before the Honourable Justice [*name, date*]**To** [*name of liable party*]

This court orders that your estate, right, title, or interest in [*property description*] is charged with payment of the amount for which the entitled party, [*name*], has obtained judgment. The amount charged is \$[*amount*]*.

*If this order seeks less than the full amount for which judgment was sealed, add the following words: “(less than the full amount of the judgment debt is being charged by this order)”.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form E 7
Sale order

r 17.62(4)

To [*name of enforcing officer*]

This court authorises and requires you or your authorised agent to seize all the land and chattels* of [*name*] (the liable party) except—

- (a) necessary tools of trade to a value not exceeding \$5,000; and
- (b) necessary household furniture and effects to a value not exceeding \$10,000 (which includes the clothes belonging to the liable party (and his or her family)).

*Chattels includes money, cheques, bills of exchange, promissory notes, bonds, and other securities for money.

If money seized is not enough, you are authorised and required to obtain more money and deal with it in accordance with rules 17.62 to 17.82 of the High Court Rules. You are authorised and required to obtain more money by—

- (a) receiving and recovering the money—
 - (i) payable to you under any cheques, bills of exchange, and promissory notes; or
 - (ii) secured by bonds or other securities for money; and
- (b) selling the liable party's seized chattels; and
- (c) selling the liable party's estate, right, title, or interest in any land (whether it is in possession, remainder, reversion, or expectancy).

Note

The money seized will not be enough if it—

- (a) cannot discharge any claims that by law are entitled to be paid in priority to the entitled party's claim; and
- (b) cannot pay the costs and expenses of executing this order; and
- (c) is not—
 - (i) the whole/portion* of the judgment debt sought by this order of \$[*amount*]; and
 - (ii) interest at the rate for the time being prescribed by or under section 87 of the Judicature Act 1908 or at a lower rate fixed by the court; and
 - (iii) costs/disbursements/witnesses' expenses† of \$[*amount*].

Form E 7—*continued*

*Select depending on whether enforcement is sought for less than the full amount for which judgment was sealed. If less than the full amount, add the following words: “(less than the full amount of the judgment debt)”.

†Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form E 8
Possession order

r 17.80(3)

To [*name of enforcing officer*]

Note: In this possession order, liable party means [*name of liable party*].

- 1 This court orders that you are authorised and required to take possession for [*name of entitled party*] (the entitled party) of—
Select the statement(s) that apply.

Statement A

the liable party's land [*land description(s)*], ejecting others from the land as necessary.

Statement B

the liable party's chattels [*list chattels*], seizing the chattels as necessary.

- 2 This court further orders that you are authorised to deliver possession of any land or chattels received under this possession order to the entitled party.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form E 9
Arrest order

r 17.83(2)

Before the Honourable Justice [*name, date*]**To** [*name of enforcing officer*]

This court orders that you are authorised and required to—

- (a) arrest [*name of liable party*] (the liable party); and
- (b) bring the liable party before this court at [*place, date, time*];
and
- (c) keep the liable party in prison until that time.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form E 10
Sequestration order

r 17.86(3)

Before the Honourable Justice [*name, date*]

To [*name of enforcing officer*]

This court orders that you are appointed sequestrator and authorised and required to enter and take possession of all the land and chattels of [*name of liable party*] (the liable party). The sequestrator must obtain the rents and profits from the property until—

- (a) the liable party clears that party's contempt of court in the way specified in the original court order made at [*place, date*]; or
- (b) the court orders otherwise.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form E 11

r 17.89(1)

Order to arrest and imprison absconding debtor

Before the Honourable Justice [*name, date*]**To** [*name of enforcing officer*]

- 1 This court orders that you are authorised and required to arrest [*name of liable party*] (the liable party) within 1 month of the date of this order and imprison the liable party at [*place*] for [*period of time*] unless and until—
 - (a) the liable party deposits in the court \$[*amount*] by way of security; or
 - (b) the liable party gives [*name of plaintiff*] (the plaintiff) a bond executed by that party and 2 sufficient sureties of \$[*amount*] or some other security satisfactory to the plaintiff.
- 2 The security is to be held on the basis that it is forfeit to the plaintiff if the liable party leaves New Zealand without the leave of the court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form E 12

r 17.89(1)

Order to arrest and imprison absconding
debtor (in civil proceedings for penalty) when
necessary to prove material prejudice

Before the Honourable Justice [*name, date*]

To [*name of enforcing officer*]

- 1 This court orders that you are authorised and required to arrest [*name of liable party*] (the liable party) within 1 month of the date of this order and imprison the liable party at [*place*] for [*period of time*] unless and until—
 - (a) the liable party deposits in the court \$[*amount*] by way of security; or
 - (b) the liable party gives [*name of plaintiff*] (the plaintiff) a bond executed by the liable party and 2 sufficient sureties of \$[*amount*] or some other security satisfactory to the plaintiff.
- 2 The security is to be held on the basis that if the liable party does not pay the plaintiff the amount that the plaintiff becomes entitled to claim from the liable party in these proceedings,—
 - (a) the security is forfeit to the plaintiff; and
 - (b) the liable party must go to prison (unless the court orders otherwise).

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form CL 1
Commercial list

r 29.7(a)

To complete this document—

- *complete and insert the heading as set out in form G 1, modified by the addition of the words “Commercial list” immediately under the reference to registry;*
- *complete and attach the memorandum as set out in form G 3.*

To the defendant/defendants*

*Select one.

- 1 This proceeding is entered on the commercial list established at the registry of this court at *[place]*.
- 2 The plaintiff may proceed to a hearing and judgment on the claim in your absence unless, within 10 working days after the date on which you are served with this notice, you file in this registry of the court at *[place]*—
 - (a) a statement of your defence to the plaintiff’s claim (copy attached); or
 - (b) an appearance indicating that you oppose the plaintiff’s claim and that you want to be heard in relation to it; or
 - (c) an appearance objecting to the jurisdiction; or
 - (d) an appearance for an ancillary purpose; or
 - (e) an appearance reserving rights.
- 3 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.
- 4 As this proceeding is entered on a commercial list it cannot be tried before a jury.
- 5 A commercial list Judge may, on the application of any party or on the Judge’s own initiative, order the removal of any proceeding from the commercial list.

Form CL 1—*continued*

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Omit the following paragraph if it does not apply.

The court has directed that this notice and the statement of claim be served not only on the defendant/defendants* but also on the following persons: *[full name, place of residence, and occupation of each person directed to be served]*.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Form CL 2 rr 29.7(b), 29.17(3)
Appearance in proceeding entered on
commercial list

To complete this document—

- *complete and insert the heading as set out in form G 1, modified by the addition of the words “Commercial list” immediately under the reference to registry:*
- *complete and attach the memorandum as set out in form G 3.*

The defendant, by this appearance, gives notice that the defendant opposes the plaintiff’s claim and wants to be heard in relation to it.

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Form CL 3

r 29.17(2)

Notice of proceeding (being application to
commercial list Judge) under section 24C(4) of
Judicature Act 1908

To complete this document—

- *complete and insert the heading as set out in form G 2, modified by the addition of the words “Commercial list” immediately under the reference to registry;*
- *complete and attach the memorandum as set out in form G 10.*

To the defendant/defendants*

*Select one.

- 1 The plaintiff seeks the determination of questions involved in a dispute.
- 2 A commercial list Judge may determine the questions involved in the dispute in your absence unless, within 10 working days after the date on which you are served with this notice, you file in this registry of the court at *[place]*—
 - (a) a statement of your defence to the plaintiff’s claim (copy attached); or
 - (b) an appearance indicating that you oppose the plaintiff’s claim and that you want to be heard in relation to it; or
 - (c) an appearance under protest to jurisdiction; or
 - (d) an appearance for an ancillary purpose; or
 - (e) an appearance reserving rights.
- 3 The determination of the questions involved in the dispute will take place in this court at *[place]* at a time to be fixed by a commercial list Judge.
- 4 If the proper determination of the questions involved in the dispute requires evidence to be heard 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 initiative, order that the proceeding be placed on the commercial list.

Form CL 3—*continued*

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Omit the following paragraph if it does not apply.

The court has directed that this notice and the statement of claim be served not only on the defendant/defendants* but also on the following persons: *[full name, place of residence, and occupation of each person directed to be served]*.

*Select one.

Date:

Signature:

(Deputy Registrar/Registrar*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Form PR 1

r 27.4

Affidavit for obtaining grant of probate

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*], swear/severally swear/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".

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 and knows or know about the deceased's death personally.

- 3 When the deceased died, he or she resided at [*place, country*].

Form PR 1—*continued*

- 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 27.10(3) to (7) of the High Court Rules applies.
- 5 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 revocation or revival in a separate document.*
The deceased revoked or revived the will referred to in paragraph 5, or part of it, in a separate document. 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.

Statement B

I am one/We are some* of the executors named in the will.

*Select one.

Statement C

I am the/I am an/We are the/We are some of the* executor/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

Form PR 1—*continued*

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 details of 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.

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 details of 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*]”.

Form PR 1—*continued**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 details of 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 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 details of 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

Form PR 1—*continued*

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(s) are the executor(s) according to the tenor of the will, state the facts proving this.]

- 10 If you selected statement A for paragraph 9, for this paragraph select the first of the following statements that applies, otherwise omit this paragraph.

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—

Form PR 1—*continued*

- (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 were on revenue account.

*Select one.

Severally sworn/affirmed* by both persons/by all of the persons*
named above at [*place, date*]

or

Sworn/Affirmed* at [*place, date*]

Before me: [*name, signature*]

*Select one.

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy
Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

Form PR 2

r 27.4

Affidavit for obtaining grant of 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)

I/We*, [*full name, place of residence, occupation*], swear/severally
swear/solemnly and sincerely affirm/severally solemnly and sin-
cerely 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".

*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 and knows or know about the deceased's
death personally.*

Form PR 2—*continued*

- 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 27.10(3) to (7) applies.

- 5 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 revocation or revival in a separate document.*

The deceased revoked or revived the will referred to in paragraph 5, or part of it, in a separate document. 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*]”.

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 details of order, decree, or enactment in force between the parties providing for their separation or the dissolution of their*

Form PR 2—*continued*

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 details of 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 that section has done so within 4 months after the will-maker’s death.

Form PR 2—*continued*

- 8 *If you selected statement B for paragraph 7, for this paragraph select the first of the following statements that applies, otherwise omit this paragraph.*

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 facts showing applicant's or applicants' right to the grant in terms of rules 27.26 and 27.27 or 27.28. 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 PR 2—*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 already known to me/us* 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

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 C

Getting in or preserving the assets of the deceased’s estate requires the making of an immediate grant of administration because [state why].

Statement D

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].

Form PR 2—continued

- 13 *If you selected statement A for paragraph 12, for this paragraph select the statement that applies, otherwise omit this paragraph.*

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 “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 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 were on revenue account.

*Select one.

Form PR 2—*continued*

Severally sworn/affirmed* by both persons/by all of the persons*
named above at [*place, date*]

or

Sworn/Affirmed* at [*place, date*]

Before me: [*name, signature*]

*Select one.

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy
Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

Form PR 3

r 27.4

Affidavit for obtaining grant of administration
on intestacy to surviving spouse, civil union
partner, or de facto partner

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/solemnly and
sincerely affirm*—

*Select one.

1 The deceased (whom I knew) died at [place, country] on or
about [date].

2 For this paragraph select the first of the following statements
that applies.

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

*Statement D*The deceased is the person named [full name] in the attached
certified copy of the entry in the Register of Deaths at [place]
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 and knows or know about the deceased's
death personally.*

3 At the time of death the deceased resided at [place, country].

4 The nearest registry of this court, by the most practicable route,
to the place stated in paragraph 3 is [name of registry].

Form PR 3—*continued*

5 I have made full inquiries and searches for a will made by the
deceased. I am satisfied that the deceased died without leaving
a will (intestate).

6 *For this paragraph select the statement that applies.*

Statement A

I am the surviving spouse/civil union partner* of the deceased.
I am entitled to succeed on the intestacy. My beneficial interest
in the estate is not affected—

- (a) *[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
- (b) *[in the case of a surviving spouse or surviving civil
union partner]* by section 26(1) of the Family Proceed-
ings Act 1980; or
- (c) *[in every case]* by the choice I have made between op-
tion A and option B, under section 61 of the Property
(Relationships) Act 1976, because I have chosen option
B and I lodged a notice of choice of option in accord-
ance with section 65(2)(c) of that Act in this court on
[*date*]. A copy is attached and marked “[*specify*]”.

*Select one.

Statement B

- (a) I am the surviving de facto partner of the deceased. I
am entitled to succeed on the intestacy. My beneficial
interest in the estate is not affected 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 I lodged a notice of choice of
option in accordance with section 65(2)(c) of that Act
in this court on [*date*]. A copy is attached and marked
“[*specify*]”.
- (b) My interest is not affected by section 77B of the Ad-
ministration Act 1969 (which negates the beneficial in-
terest of a surviving de facto partner to a relationship of
short duration in some circumstances [*if you claim that*

Form PR 3—*continued*

section 77B(2) applies, state the facts supporting your claim].

- 7 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a de facto partner entitled to succeed on the intestacy.

Statement B

The 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.

Statement C

The deceased was also survived by a husband/wife/de facto partner/1 or more other de facto partners* entitled to succeed on the intestacy, namely: *[list full name and address of each]*.

*Select one.

- 8 *If you selected statement C for the preceding paragraph, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*

Statement A

On *[date]*, I gave written notice to *[full names]*, the survivors of the deceased who are named in the preceding paragraph, that I intended to apply to this court for letters of administration of the estate.

Statement B

Of the survivors of the deceased who are named in the preceding paragraph, *[number of survivors]*, namely, *[full names and country of residence for each]*, reside beyond the jurisdiction of the court.

Statement C

I attach to this affidavit the consents, marked *[“specify”]*, of *[full names]*, survivors of the deceased who are named in the preceding paragraph, granting me letters of administration of the deceased's estate.

Form PR 3—*continued*

- 9 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a child—

- (a) who was born to the deceased; or
- (b) who was adopted by the deceased; or
- Omit paragraphs (c) and (d) if the deceased was the applicant's wife or female civil union partner or de facto partner.*
- (c) in respect of whom the deceased had admitted paternity; or
- (d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

Statement B

The deceased was survived by the following children, all of whom, except where otherwise shown, are adult: *[list full names, places of residence, and occupations of the children of the deceased and, in the case of any child who is a minor, the child's age]*.

- 10 *Include this paragraph if you selected statement B for paragraph 9, otherwise omit.*

The children named in paragraph [number] 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.

- 11 *Include this paragraph if you selected statement B for paragraph 9, otherwise omit.*

The deceased was not survived by any other child—

- (a) who was born to the deceased; or
- (b) who was adopted by the deceased; or
- Omit paragraphs (c) and (d) if the deceased was the applicant's wife or female civil union partner or de facto partner.*
- (c) in respect of whom the deceased had admitted paternity; or
- (d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

Form PR 3—*continued*

- 12 *For this paragraph select the statement that applies.*

Statement A

I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate by reason only of that Act. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

Statement B

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 C

The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Statement D

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*].

- 13 *If you selected statement A for paragraph 12, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my inquiries was that I did not discover any such parent or child. Attached and marked “[*specify*]” is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B

The result of my inquiries was that I discovered [*full names and relationship of those discovered*]. In the case of children, in addition, state 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 applies”].

Form PR 3—*continued*

- 14 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed \$[*amount*].
- 15 I will faithfully administer the estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—
- (a) a true and complete inventory of the deceased's estate; and
 - (b) a true and complete account of the deceased's estate—
 - (i) setting out the dates and particulars of all receipts and disbursements; and
 - (ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]

Before me: [*name, signature*]

*Select one.

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

Form PR 4

r 27.4

Affidavit for obtaining grant of administration
on intestacy to daughter or son of deceased

In the High Court of New Zealand

[*Name of registry*] RegistryNo: [*number of proceeding*]In the estate of [*full name, place, occupation*] (deceased)I, [*full name, place of residence, occupation*], swear/solemnly and
sincerely affirm*—

*Select one.

1 The deceased (whom I knew) died at [*place, country*] on or
about [*date*].

2 *For this paragraph select the first of the following statements
that applies.*

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

*Statement D*The deceased is the person named [*full name*] in the attached
certified copy of the entry in the Register of Deaths at [*place*]
marked "A".

3 At the time of death the deceased resided at [*place, country*].

4 I have made full inquiries and searches for a will made by the
deceased. I am satisfied that the deceased died without leaving
a will (intestate).

5 I am a daughter/son* of the deceased.

*Select one.

Form PR 4—*continued*

- 6 *For this paragraph select the statement that applies.*

Statement A

At the time of his death, my father was a widower/At the time of her death, my mother was a widow* and was not living in a de facto relationship.

*Select one.

Statement B

I attach to this affidavit a copy of the order/decre absolute* marked “[specify]”, dissolving my father’s/mother’s* marriage. He/She* did not subsequently marry or enter into a civil union, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

Statement C

I attach to this affidavit a copy of the separation order/decre of judicial separation* marked “[specify]”, made between my father and his wife/my mother and her husband*. The order/decre* was in force at the time of his/her* death, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

Statement D

The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he/she* chose option A. Attached and marked “[specify]” is a copy of the choice of option.

*Select one.

Form PR 4—*continued*

7 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by any other child—

(a) who was born to the deceased; or

(b) who was adopted by the deceased; or

Omit paragraphs (c) and (d) if the deceased was the applicant's mother.

(c) in respect of whom the deceased had admitted paternity;
or

(d) in respect of whom the deceased was adjudged, before
or after his death, to be the father.

Statement B

In addition to myself, the deceased was survived by the following children, all of whom, except where otherwise shown, are adult: *[list full names, places 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]*.

8 *If you selected statement B for paragraph 7, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*

Statement A

On *[date]*, I gave written notice to *[full names]*, adult children of the deceased who are named in paragraph 7, that I intended to apply to this court for letters of administration of the estate of the deceased. Attached and marked "*[specify]*" is a copy/copies* of that notice/those notices*).

*Select one.

Statement B

I attach the consents marked "*[specify]*" of *[full names]*, adult children of the deceased who are named in paragraph 7, granting me letters of administration of the deceased's estate.

Form PR 4—*continued*

- 9 *For this paragraph select the statement that applies.*

Statement A

Neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies to me.

Statement B

Both in the case of the children of the deceased who are named in paragraph [number] of this affidavit and in my case, neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

- 10 *For this paragraph select the statement that applies.*

Statement A

I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [specify].

Statement B

Making 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 why].

Statement C

The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [state why].

Statement D

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].

Form PR 4—*continued*

- 11 *If you selected statement A for paragraph 10, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my inquiries was that I did not discover any such parent or child. Attached and marked “[*specify*]” is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B

The result of my inquiries was that I discovered [*full names and relationship of those discovered. In the case of children, in addition, state 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 applies”*].

- 12 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed \$[*amount*].
- 13 I will faithfully administer the deceased’s estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—
- (a) a true and complete inventory of the deceased’s estate; and
 - (b) a true and complete account of the deceased’s estate—
 - (i) setting out the dates and particulars of all receipts and disbursements; and
 - (ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]

Before me: [*name, signature*]

*Select one.

Form PR 4—*continued*

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

Form PR 5

r 27.4

Affidavit for obtaining grant of administration
on intestacy to parent of deceased

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/solemnly and
sincerely affirm*—

*Select one.

- 1 The deceased (whom I knew) died at [place, country] on or
about [date].

- 2 *For this paragraph select the first of the following statements
that applies.*

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

*Statement D*The deceased is the person named [full name] in the attached
certified copy of the entry in the Register of Deaths at [place]
marked "A".

- 3 At the time of death the deceased resided at [place, country].

- 4 *For this paragraph select the statement that applies.*

*Statement A*I have made full inquiries and searches for a will made by the
deceased. I am satisfied that the deceased died without leaving
a will (intestate).*Statement B*I have made full inquiries and searches for a will made by the
deceased. The deceased left a will but there is an intestacy as
to [specify beneficial interest in the real or personal property
of the deceased].

Form PR 5—*continued*

Statement C

I believe that the deceased died wholly intestate.

Statement D

I believe that the deceased died intestate as to [*specify beneficial interest in the real or personal property of the deceased*].

- 5 I am the deceased's father/mother*.

*Select one.

- 6 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a spouse or civil union partner, or by any de facto partners, entitled to succeed on the intestacy.

Statement B

I attach to this affidavit a copy of the order/decre absolute* marked "[*specify*]", dissolving the marriage of my son/daughter*, the deceased. He/She* did not subsequently marry or enter into a civil union, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

Statement C

I attach to this affidavit a copy of the separation order/decre of judicial separation* marked "[*specify*]", made between my son/daughter*, the deceased, and his wife/her husband/civil union partner*. The order/decre* was in force at the time of his/her* death, and at the time of his/her* death he/she* was not living in a de facto relationship.

*Select one.

Statement D

The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because

Form PR 5—*continued*

he/she* chose option A. Attached and marked “[*specify*]” is a copy of the choice of option.

*Select one.

- 7 *For this paragraph select the statement that applies.*

Statement A

I attach the consent marked “[*specify*]”, of [*full name*], the father/mother* of the deceased, granting me letters of administration of the deceased’s estate.

*Select one.

Statement B

[*Full name*], the father/mother* of the deceased, died at [*place, country*] on or about [*date*] and therefore predeceased his/her* son/daughter*.

*Select one.

Statement C

[*Full name*], the father/mother* of the deceased, does not join in the application as he/she* is incapable of acting as administrator because [*state why*].

*Select one.

- 8 The deceased was not survived by a child—
(a) who was born to the deceased; or
(b) who was adopted by the deceased; or
Omit paragraphs (c) and (d) if the deceased was a daughter of the applicant.
(c) in respect of whom the deceased had admitted paternity; or
(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.
- 9 The deceased was not survived by any grandchild—
(a) who was born to a child of the deceased; or
(b) who was adopted by a child of the deceased; or
(c) in respect of whom a son of the deceased had admitted paternity; or

Form PR 5—*continued*

- (d) in respect of whom a son of the deceased was adjudged, before or after the death of the child of the deceased, to be the father.

10 *For this paragraph select the statement that applies.*

Statement A

I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

Statement B

Making 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 why*].

Statement C

The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Statement D

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*].

11 *If you selected statement A for paragraph 10, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my inquiries was that I did not discover any such parent or child. Attached and marked “[*specify*]” is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Form PR 5—*continued**Statement B*

The result of my inquiries was that I discovered [*full names and relationship of those discovered. In the case of children, in addition, state 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 applies”*].

- 12 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed \$[*amount*].
- 13 I will faithfully administer the deceased’s estate in accordance with the law, and will, when required by the court, file in the court and verify by affidavit—
- (a) a true and complete inventory of the deceased’s estate; and
 - (b) a true and complete account of the deceased’s estate—
 - (i) setting out the dates and particulars of all receipts and disbursements; and
 - (ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]

Before me: [*name, signature*]

*Select one.

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

Form PR 6

r 27.4

Affidavit for obtaining grant of administration
on intestacy to brother or sister of deceased

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/solemnly and
sincerely affirm*—

*Select one.

- 1 The deceased (whom I knew) died at [*place, country*] on or
about [*date*].

- 2 *For this paragraph select the first of the following statements
that applies.*

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

Statement D

The deceased is the person named [*full name*] in the attached
certified copy of the entry in the Register of Deaths at [*place*]
marked "A".

- 3 At the time of death the deceased resided at [*place, country*].

- 4 *For this paragraph select the statement that applies.*

Statement A

I have made full inquiries and searches for a will made by the
deceased. I am satisfied that the deceased died without leaving
a will (intestate).

Statement B

I have made full inquiries and searches for a will made by the
deceased. The deceased left a will but there is an intestacy as
to [*specify beneficial interest in the real or personal property
of the deceased*].

Form PR 6—*continued**Statement C*

I believe that the deceased died wholly intestate.

Statement D

I believe that the deceased died intestate as to [*specify beneficial interest in the real or personal property of the deceased*].

- 5 I am a brother/sister* of the deceased.

*Select one.

- 6 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a spouse or civil union partner, or by any de facto partner, entitled to succeed on the intestacy.

Statement B

I attach to this affidavit a copy of the order/decre absolute* marked “[*specify*]”, dissolving the marriage of my brother/sister*, the deceased. He/She* did not subsequently marry or enter into a civil union, and at the time of his/her* death he/she* was not living in a de facto relationship.

Statement C

I attach to this affidavit a copy of the separation order/decre of judicial separation* marked “[*specify*]”, made between my brother/sister*, the deceased, and his/her* wife/husband/civil union partner*. The order/decre* was in force at the time of his/her* death, and at the time of his/her* death he/she* was not living in a de facto relationship.

Statement D

The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he/she* chose option A. Attached and marked “[*specify*]” is a copy of the choice of option.

*Select one.

Form PR 6—*continued*

- 7 The deceased was not survived by a parent.
- 8 The deceased was not survived by any child—
- (a) who was born to the deceased; or
 - (b) who was adopted by the deceased; or
- Omit paragraphs (c) and (d) if the deceased was a sister of the applicant.*
- (c) in respect of whom the deceased had admitted paternity; or
 - (d) in respect of whom the deceased was adjudged, before or after his death, to be the father.
- 9 The deceased was not survived by any grandchild—
- (a) who was born to a child of the deceased; or
 - (b) who was adopted by a child of the deceased; or
 - (c) in respect of whom a son of the deceased had admitted paternity; or
 - (d) in respect of whom a son of the deceased was adjudged, before or after the death of the child of the deceased, to be the father.
- 10 *For this paragraph select the statement that applies.*
- Statement A*
The deceased was not survived by any other brother or sister.
- Statement B*
In addition to myself, the deceased was survived by the following brothers and sisters, all of whom, except where otherwise shown, are adult: [*list full names, places 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*].
- 11 *If you selected statement B for paragraph 10, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*
- Statement A*
On [*date*], I gave written notice to [*full names*], adult brothers and sisters of the deceased who are named in paragraph 10, that I intended to apply to this court for letters of administration of

Form PR 6—*continued*

the deceased's estate. Attached and marked "[*specify*]" is a copy of that notice.

Statement B

I attach to this affidavit the consents, marked "[*specify*]", of [*full names*], adult brothers and sisters of the deceased who are named in paragraph 10, granting me letters of administration of the deceased's estate.

- 12 *For this paragraph select the statement that applies.*

Statement A

Neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies to me.

Statement B

Both in the case of the brothers and sisters of the deceased who are named in paragraph 11 of this affidavit and in my case, neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

- 13 *For this paragraph select the statement that applies.*

Statement A

I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

Statement B

Making 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 why*].

Statement C

The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Form PR 6—*continued*

Statement D

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]*.

- 14 *If you selected statement A for paragraph 13, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my inquiries was that I did not discover any such parent or child. Attached and marked “[*specify*]” is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B

The result of my inquiries was that I discovered [*full names and relationship of those discovered. In the case of children, in addition, state 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 applies”*].

- 15 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed \$[*amount*].
- 16 I will faithfully administer the deceased’s estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—
- (a) a true and complete inventory of the deceased’s estate; and
 - (b) a true and complete account of the deceased’s estate—
 - (i) setting out the dates and particulars of all receipts and disbursements; and
 - (ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Form PR 6—*continued*

Sworn/Affirmed* at [*place, date*]

Before me: [*name, signature*]

*Select one.

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

Form PR 7

r 27.31(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 The deceased [*full name*] died at [*place*] on or about the [*date*], leaving a will. A copy is attached.

2 *For this paragraph select the statement that applies.*

Statement A

The will was proved before the Honourable Justice [*name*] in Chambers at [*place*], and probate of the will was granted this day.

Statement B

The will was proved before Registrar [*name*] in Chambers at [*place*]/before Senior Deputy Registrar [*name*] in Chambers at Auckland* acting under rule 7.14 of the High Court Rules, and probate of the will was granted this day.

*Select one.

3 This probate document appoints [*full name, place of residence, and occupation of executor or each executor*], the executor/executors* named in the will, [*state basis for grant as specified in the application*], as the administrator/administrators* of the deceased's estate.

*Select one.

4 *Omit this paragraph if it does not apply.*

The court reserves the power to grant probate to [*full name(s)*], the other executor/executors* named in the will, if they appear before this court and apply.

*Select one.

Form PR 7—*continued*

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Form PR 8

r 27.31(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 basis for entitlement to grant as specified in rule 27.26 that allowed grant of administration.*]

- 1 The deceased died at [*place*] on or about [*date*], leaving a will.
A copy is attached.
- 2 *For this paragraph select the statement that applies.*

Statement A

The will was proved before the Honourable Justice [*name*] in Chambers at [*place*], and letters of administration with the will annexed was granted this day.

Statement B

The will was proved before Registrar [*name*] in Chambers at [*place*]/before Senior Deputy Registrar [*name*] in Chambers at Auckland* acting under rule 27.14 of the High Court Rules, and letters of administration with the will annexed was granted this day.

*Select one.

- 3 The circumstance in rule 27.26(1) to (3) of the High Court Rules 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 of the deceased's estate.

Form PR 8—*continued*

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Form PR 9

r 27.31(1)

Letters of administration on intestacy

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*], [*relationship to deceased, eg, widow, de facto partner*] of [*full name*] (deceased)

- 1 The deceased, [*name*], died without leaving a will (intestate) on or about [*date*].
- 2 You are authorised by these letters of administration—
 - (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, so far as the estate extends.
- 3 You are appointed as the administrator of all of the deceased's estate.
- 4 *For this paragraph select the statement that applies.*

Statement A

This grant was made this day by the Honourable Justice [*name*] in Chambers at [*place*].

Statement B

This grant was made this day by Registrar [*name*] in Chambers at [*place*]/by Senior Deputy Registrar [*name*] in Chambers at Auckland* acting under rule 27.14 of the High Court Rules.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Form PR 10

r 27.11(2)

Caveat

In the High Court of New Zealand

[*Name of registry*] RegistryNo: [*number of proceeding*]

Under section 60 of the Administration Act 1969

And

In the matter of the will/estate* of [*full name, place, occupation*]
(deceased)

*Select one.

Probate of the will/letters of administration of the estate* of the deceased, [*name*], must not be granted without notice to [*full name*], solicitor for [*full name, place, occupation*], who has an interest in the estate.

*Select one.

Date:

Signature:

(caveator/solicitor for caveator*)

*Select one.

Complete and attach the memorandum as set out in form G 10.

Form PR 11
Exemplification of probate or letters of
administration

r 27.33(1)

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*], the named executor.

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 [*specify the person's status as described in rule 27.26*].

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*].

- 2 *For this paragraph select the statement that applies.*

Statement A

The probate is on record in the registry 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 PR 11—*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.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [date]

Form PR 12
Affidavit of valid execution

r 27.16(4)

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/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 PR 12—*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.

- 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, and occupation for 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, and occupation for 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 [specify 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 [specify the actions by which the deceased indicated consent to the obliteration].

Form PR 12—*continued*

*Select one.

- 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/Affirmed* at: [*place, date*]

Before me: [*name, signature*]

*Select one.

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

Form AD 1

rr 25.7(2), 25.9(2)

General heading for action *in personam*

In the High Court of New Zealand

In Admiralty

[*Name of registry*] RegistryNo: [*number of proceeding*]Between [*name of plaintiff*]

(plaintiff)

And [*name of defendant*]

(defendant)

Form AD 2

r 25.7(1)

Notice of proceeding *in personam*

To *[name of defendant(s)]*

- 1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you cause an appearance to be entered for you in the registry of this court at *[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 *[place]* at a time to be fixed by the court.
- 3 *For this paragraph select the statement that applies.*

Statement A

I, *[full name]*, appearing in person, issued this notice of proceeding. My address for service is *[address]*.

Statement B

I, *[full name of solicitor]*, issued this notice of proceeding for the plaintiff/plaintiffs*. My firm is *[name, address]*. My address for service is *[address]*†.

*Select one.

†If 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.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form AD 2—*continued***Service of this notice**

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 appearance

- 1 You may enter an appearance either personally (if acting without a solicitor) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at that registry. You may obtain the appropriate form at any registry of the High Court.
- 2 If the last day for entering your appearance falls on a Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.
- 3 *Omit this paragraph if it conflicts with a 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.

Statement of defence

A defendant who intends to defend an action must file or serve a statement of defence within 20 working days after the day on which the statement of claim was served on that defendant, unless the court or a Judge gives leave to the contrary.

Form AD 3

r 25.8(2)

General heading for action *in rem*

In the High Court of New Zealand

In Admiralty

[*Name of registry*] Registry

No: [*number of proceeding*]

Admiralty action *in rem*

Between [*name of plaintiff(s), eg, the owners of the ship "X"*]
(plaintiff/plaintiffs*)

*Select one.

And [*name of defendant(s), eg, the ship "Y", the ship "Y" and its freight, the ship "Y" and its cargo and freight, the cargo from the ship "Y", the proceeds of the ship "Y", or the proceeds of the cargo from the ship "Y"*]

(defendant/defendants*)

*Select one.

Form AD 4

r 25.8(1)

Notice of proceeding *in rem*

To the owners and all others who have an interest in the [*name of ship or describe property*]

- 1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you cause an appearance to be entered for you in the registry of this court at [*place*], the plaintiff may proceed in the plaintiff's action without having it heard in court, and judgment may be given in your absence. If the thing described in this notice of proceeding is then held under an order of the court authorising its arrest, 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 [*place*] at a time to be fixed by the court.
- 3 *For this paragraph select the statement that applies.*

Statement A

I, [*full name*], appearing in person, issued this notice of proceeding. My address for service is [*address*].

Statement B

I, [*full name of solicitor*], solicitor for the plaintiff/plaintiffs*, issued this notice of proceeding. My firm is [*name, address*]. My address for service is [*address*].†

*Select one.

†If 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.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form AD 4—*continued*

Service of this notice

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 appearance

- 1 You may enter an appearance either personally (if suing in person) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at the registry. You may obtain the appropriate form at any registry of the High Court.
- 2 The appearance must state the name and correct 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, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.
- 4 *Omit this paragraph if it conflicts with a 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.

Form AD 5

r 25.9(1)

Notice of proceeding both *in rem* and *in personam*

To the owners and all others interested in the [*name of ship or describe property*]

and

To the defendant [*name*]

1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you have caused an appearance to be entered for you in the registry of this court at [*place*], the plaintiff may proceed in the plaintiff's action without having it heard in court, and judgment may be given in your absence. If the thing described in this notice of proceeding is then held under an order of the court authorising its arrest, 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 [*place*] at a time to be fixed by the court.

3 *For this paragraph select the statement that applies.*

Statement A

This notice of proceeding was issued by [*full name*] appearing in person. My address for service is [*address*].

Statement B

This notice of proceeding was issued by [*full name*], solicitor for the plaintiff/plaintiffs*. My firm is [*name, address*]. My address for service is [*address*].†

*Select one.

†If 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.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form AD 5—*continued*

Service of this notice

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 appearance

- 1 You may enter an appearance either personally (if suing in person) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at the registry. You may obtain the appropriate form at any registry of the High Court.
- 2 The appearance must state the name and correct 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, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.
- 4 *Omit this paragraph if it conflicts with a 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.

You must endorse the notice of proceeding before it is issued.

The plaintiff claims against the [*name of ship or describe property*] under sections [*specify*] of the Admiralty Act 1973 [*summary of claim and amount*].

Form AD 5—*continued*

Include the following sentence if the plaintiff claims against a second defendant, otherwise omit.

The plaintiff claims against the second defendant [*summary of claim and amount*].

Statement of defence

A defendant who intends to defend an action must file or serve a statement of defence within 20 working days after the day on which the statement of claim was served on that defendant, unless the court or a Judge gives leave to the contrary.

Form AD 6
Memorandum of appearance

r 25.12(1)

Defendant: *[name, place of residence or business, occupation]*

Include details for party and port of registry if appearance is in an action in rem.

Party: *[name and correct address of party appearing and capacity in which that party appears (ie, owner, part-owner, or otherwise). This statement is prima facie evidence of matters stated in it (see rule 25.13).]*

Port of registry: *[name of port of registry or port to which ship belongs. This statement is prima facie evidence of matters stated in it (see rule 25.13).]*

- 1 *Include this paragraph if the appearance is to a counterclaim, otherwise omit.*

This is an appearance to a counterclaim.

- 2 *Include this paragraph if the appearance is by an added defendant, third party, or intervener, otherwise omit.*

[Specify briefly the particulars of the order or notice served on the party entering the appearance.]

- 3 *Include this paragraph if the appearance is conditional, otherwise omit.*

This appearance has effect as an unconditional appearance unless, within 8 working days after the appearance is filed, an 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 25.12 of the High Court Rules).

I, *[full name]*, filed this appearance, appearing in person. My address for service is *[address]*.

Date:

Signature:

(party/solicitor*)

*Select one.

Form AD 6—*continued***Note**

If the appearance is filed by a solicitor who has another solicitor acting as that solicitor's agent at the place of filing, add the name and address of the agent or the agent's firm to the name and address of the principal or the principal's firm.

Directions for entering an appearance

- 1 If the last day for entering an appearance falls on Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.
- 2 *Omit this paragraph if it conflicts with a 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.

Form AD 7

r 25.34(1)

Application for warrant of arrest

To the Registrar of the High Court at *[place]*

- 1 The plaintiff applies for a warrant for the arrest of *[name of ship or describe property]*.
- 2 The present location of the property to be arrested is *[location]*.
- 3 This application is accompanied by the affidavit/affidavits* of *[names of deponents]* deposing to the matters referred to in Rule 25.34(4) of the High Court Rules, and an indemnity to the Registrar.

*Select one.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

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 *[name of ship or describe property to be arrested]*;
- (b) this application was filed at *[time, date]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form AD 8
Indemnity to Registrar

r 25.34(4)

To the Registrar of the High Court at [*place*]

The applicant indemnifies you—

- (a) for any fees and expenses (including harbour dues) that may be incurred by you in executing the warrant of arrest issued against [*name of ship or describe property*]; and
- (b) against any liability arising out of or incidental to any act lawfully done by you in executing that warrant.

Date:

Signature:

(applicant/solicitor for applicant*)

*Select one.

Form AD 9
Warrant of arrest

r 25.35(3)

To the Registrar of the High Court at *[place]*
and

To the Registrar's appointed officers or agents

You are directed to arrest the *[name of ship or describe property]*
and keep it under safe arrest until you receive further orders from the
court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

This warrant of arrest is taken out by *[name of solicitor]*, solicitor for
[name of party].

Registrar's endorsement as to execution

This warrant was executed by *[name of person executing warrant]* at
[time, date].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form AD 10

r 25.38(1)

Notice by Registrar of arrest of property

[Name of ship or property]

- 1 The ship named/property described* above is in custody or possession of the Registrar of the High Court of New Zealand by virtue of a warrant of arrest from this court.

*Select one.

- 2 A person who attempts to remove the property or interfere with it without the written authority of the Registrar, or of the Registrar's officers or agents, will be in contempt of court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: *[date]*

Form AD 11

r 25.42(1)

Request for caveat against arrest

[*Name of ship or describe property*]

- 1 I request a caveat be entered against the arrest of the ship/property* described above.

*Select one.

- 2 I undertake to enter an appearance in any action that may be begun against it in the court.

- 3 I undertake, within 3 working days after receiving notice of an action in the court concerning the arrested ship/property*, to give security to the satisfaction of the Registrar in an amount not exceeding \$[*amount*] or to pay that amount into court.

*Select one.

- 4 My address for service is [*address*].

Date:

Signature:

(applicant/solicitor for applicant*)

*Select one.

Sealed: [*date*]

Form AD 12
Release from arrest

r 25.44(1)

To the Registrar of the High Court of New Zealand at [*place*]
and

To the Registrar's appointed officers and agents

- 1 The [*name of ship or describe property*] has been held under arrest in accordance with a warrant of arrest issued at [*place, 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*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]*

*Omit if this release is not under an order of the court.

Form AD 13

r 25.45(2)

Bail bond

- 1 An action *in rem* against the [*name of ship or describe property*] is pending in this court. The parties to the action are [*names*].
- 2 I/We* submit to the jurisdiction of the court.
*Select one.
- 3 If the defendant does not satisfy a judgment in this proceeding or does not pay an amount due to be paid by the defendant under an admission of liability in this action or under a settlement agreement that is filed in this court, the enforcement process may issue against me/us*, my/our* executors or administrators or assigns, and my/our* goods and chattels, and the goods and chattels of my/our* executors, administrators, or assigns, for an amount not exceeding \$[*amount*].

*Select one.

Date:

The common seal [*complete as usual*]:

This bond was signed by:

(sureties)

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

Form AD 14

r 25.46(1)

Request for caveat against release and payment

[*Name of ship or describe property*]

Omit paragraph (a) or (b) if not requested.

I request a caveat be entered against—

- (a) the issue of a release for the arrested property:
- (b) payment out of court of the proceeds of sale (if the court should order that the arrested property be sold).

Date:

Signature:

[*(name of signatory)*]

Form AD 15

r 25.51(1)

Request for commission for appraisalment and
sale

I/We* request a commission for the appraisalment and sale of [*name of ship or describe property*], which was arrested by order of the court on [*date*].

*Select one.

Date:

Signature:

[*(name of signatory)*]

Form AD 16

r 25.51(5)

Commission for appraisement and sale

To the Registrar of the High Court at *[place]*

and

To the Registrar's appointed officers and agents

- 1 The court has ordered that the *[name of ship or describe property]* be appraised and sold.
- 2 You are directed to choose 1 or more experienced persons and to swear them to appraise the property according to its correct value.
- 3 You are also directed that, once that value has been certified in writing by the appraiser or appraisers, you are to arrange for the property to be sold by *[specify whether sale to be by way of private treaty, tender, 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.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

This commission is taken out by *[name]*, solicitor for the *[name of party]*.

Form AD 17

r 25.52(1)

Notice for priority of claims on sale

- 1 The [*name of ship or describe property*] has been sold and the gross proceeds of that sale, amounting to \$[*amount*] have been paid into court at [*place*].
- 2 The priority of the claims against the proceeds of sale will not be determined until after [*expiry date of period specified in order for sale*].
- 3 A person having a claim against the ship or described property, or the proceeds of sale of that ship or property, on which the 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 described property, or the proceeds of sale of that ship or property, may be made without notice to the person claiming against the ship or described property, or the proceeds of sale of that ship or property.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form Arb 1

rr 26.3(2), 26.8(3)

Appeal under Arbitration Act 1996

*Complete and insert the heading as set out in form G 1.***To** the Registrar of the High Court at *[place]*

and

To *[name(s) of party/parties to be served with this notice]***This document notifies you that—**

- 1 On *[date]* at *[time]*, or as soon after that as counsel/parties* may be heard, *[name of plaintiff appealing against arbitral award]* will appeal to the court at *[place]* from an award dated *[date]* made by *[arbitral tribunal name(s)]*.

*Select one.

- 2 The question/questions* of law arising out of the award is/are* as follows: *[specify precise form of question(s) of law alleged to arise, numbered if more than 1]*.

*Select one.

- 3 The plaintiff contends that the question/questions* should be answered as follows: *[specify answer(s) contended for]*.

*Select one.

- 4 The plaintiff seeks the following relief: *[specify relief sought]*.

- 5 The grounds on which this application is made are—

- (a) the plaintiff was a party to the arbitration; and
(b) *For this paragraph select the statement that applies.*

Statement A

the parties to the arbitration agreed before the award was made that any party might appeal to the court on any question of law arising out of the award; and

Statement B

after the award was made, every other party to the arbitration consented to an appeal to the court on the question/questions* of law arising out of the award stated above; and

*Select one.

Form Arb 1—*continued*

- (c) *[specify any grounds for the appeal other than those set out above, giving enough detail to inform the court and the other parties of the issues].*

6 This application is made in reliance on clause 5(1)(a)/5(1)(b)* of Schedule 2 of the Arbitration Act 1996.

*Select one.

[Specify any other enactment or principle of law relied on.]

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application within 10 working days after the day on which you are served with this document. You can do this by—

- (a) filing a notice of opposition in the court; and
- (b) serving a copy of that notice on the plaintiff and on all other parties.

What can happen if I do not file and serve notice of opposition?

If you do not file and serve a notice of opposition, the court may proceed to determine this application in your absence.

Form Arb 2 r 26.15(2)
Notice for leave to appeal under Arbitration Act
1996

Complete and insert the heading as set out in form G 1.

To the Registrar of the High Court at *[place]*
and

To *[name(s) of party or parties to be served with this notice]*

This document notifies you that—

- 1 The plaintiff seeks leave to appeal from an award dated *[date]* made by *[arbitral tribunal name(s)]*.
- 2 The question/questions* of law arising out of the award is/are* as follows: *[specify precise form of question(s) of law alleged to arise, numbered if more than 1]*.
*Select one.
- 3 The plaintiff contends that the question/questions* should be answered as follows: *[specify answer(s) contended for]*.
*Select one.
- 4 If granted leave to appeal, the plaintiff will seek the following relief: *[specify relief sought]*.
- 5 The grounds on which this application is made are—
 - (a) the plaintiff was a party to the arbitration; and
 - (b) *[specify any grounds for the appeal other than those set out above, giving enough detail to inform the court and the other parties of the issues]*.
- 6 This application is made in reliance on clause 5(1)(c) of Schedule 2 of the Arbitration Act 1996.
[Specify any other enactment or principle of law relied on.]

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

Form Arb 2—*continued*

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application within 10 working days after the day on which you are served with this notice. You can do this by—

- (a) filing a notice of opposition in the court; and
- (b) serving a copy of that notice on the plaintiff and on all other parties.

What can happen if I do not file and serve notice of opposition?

If you do not file and serve a notice of opposition, the court may proceed to determine this application in your absence.

Form Arb 3

r 26.22(2)

Application to enter award as judgment

*Complete and insert the heading as set out in form G 1.***To** the Registrar of the High Court at *[place]*

and

To *[name(s) of party or parties to be served with this notice]***This document notifies you that—**

- 1 The plaintiff seeks to enforce the award dated *[date]* made by *[arbitral tribunal name(s)]* by entry as a judgment.
- 2 This application is made in reliance on article 35 of Schedule 1 of the Arbitration Act 1996.

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application by—

- (a) filing an application in the court seeking an order that recognition and enforcement be refused in terms of article 36 of Schedule 1 of the Arbitration Act 1996; and
- (b) serving a copy of that notice on the plaintiff and on all other parties.

You must do this within whichever of the following periods is shorter:

- (a) 10 working days after the day on which you are served with this application:

Form Arb 3—*continued*

- (b) any period fixed by the court of less than 10 working days after you have been served with the order fixing that period.

What will happen if I do not file and serve an application seeking an order that recognition and enforcement be refused?

If you do not file and serve such an application, the Registrar will proceed to enter the award as a judgment.

Form C 1

r 31.3(1)

Statement of claim in proceeding for putting
company into liquidation*Complete and attach the memorandum as set out in form G 10.*

The plaintiff says—

- 1 The [full name of company] (the defendant company) was in
[month, year] incorporated/reregistered* under the Companies
Act 1993.

*Select one.

- 2 The registered office of the defendant company is at [full ad-
dress of registered office].
- 3 [Set out in paragraphs the facts on which the plaintiff relies.]
- 4 The plaintiff therefore requests that the defendant company
be put into liquidation by the court under the Companies Act
1993.

Date:

Signature:

(plaintiff/solicitor*)

*Select one.

Form C 2

r 31.3(2)

Statement of claim in proceeding for order
under section 174 of Companies Act 1993

The plaintiff says—

- 1 The [*name of company*] (the defendant company) was in
[*month, year*] incorporated/reregistered* under the Companies
Act 1993.

*Select one.

- 2 The registered office of the defendant company is at [*full ad-
dress of registered office*].

- 3 *For this paragraph select the statement that applies.*

Statement A

The affairs of the defendant company have been/are being/are
likely to be* conducted in a manner that is [*state whether
oppressive, unfairly discriminatory, or unfairly prejudicial*]
to the plaintiff in the plaintiff's capacity as a member/share-
holder† of the defendant company.

*Select one.

†Select one or specify other capacity.

Statement B

An act/The acts* of the defendant company have been/are
being/are likely to be* [*state whether oppressive, unfairly
discriminatory, or unfairly prejudicial*] to the plaintiff in the
plaintiff's capacity as a member/shareholder† of the defendant
company.

*Select one.

†Select one or specify other capacity.

- 4 *Omit this paragraph if the plaintiff is filing this document with-
out employing a solicitor.*

The plaintiff's solicitor is [*name and address of solicitor*].

Form C 2—*continued*

Date:

Signature*:

(plaintiff/defendant/third party†)

*If this document notifies a change of solicitor, it must be signed by the party personally or by the party's attorney.

†Select one.

Form C 3

rr 31.5(2), 31.6(3)

Notice of proceeding for putting company into
liquidation or for order under section 174 of
Companies Act 1993

To [name of company] (the defendant company)

and

*Include the following address line if a liquidator or interim liquidator
has been appointed, otherwise omit.*

To [full name, address, description], the liquidator/interim liquidator* of the defendant company.

*Select one.

This document notifies you that—

- 1 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is, by a statement of claim (copy attached), applying for an order that the defendant company be put into liquidation under the Companies Act 1993.

Statement B

The plaintiff is, by a statement of claim (copy attached), applying for an order in respect of the defendant company under section 174 of the Companies Act 1993.

- 2 The application will be heard in this court at [place, time, date].

- 3 Unless, within 10 working days after the date on which you are served with this notice, you file in this registry of the court a statement of your defence to the plaintiff's claim (copy attached), the plaintiff may proceed to a hearing and—

Select the statement that applies.

Statement A

an order may be made for the liquidation of the defendant company by the court under the Companies Act 1993.

Statement B

an order may be made in respect of the defendant company under section 174 of the Companies Act 1993.

Form C 3—*continued*

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Important information for recipient of notice

Legal advice

- 1 If you want to oppose this application or to appear at the hearing, it is essential that you consult a solicitor immediately because a company—
 - (a) can carry on proceedings in the court only by a solicitor; and
 - (b) cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Advertising

- 2 The application to put the defendant company into liquidation under the Companies Act 1993 (or for the making of an order under section 174 of the Companies Act 1993 in respect of the defendant company) is to be advertised in the *New Zealand Gazette* and in a newspaper.
- 3 The advertisements will not be published until at least 5 working days after the date on which the defendant company is served with the statement of claim.

Omit the following heading and paragraphs 4 and 5 if the application is not an application to put the defendant company into liquidation.

Power of court to restrain advertising and stay proceedings

- 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.

Form C 3—*continued*

- 5 The defendant company or, with the leave of the court, any creditor, shareholder of the defendant company, or the Registrar of Companies may apply for that order within 5 working days after the date of the service of the statement of claim on the defendant company.

Statement of defence

- 6 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which the registry is open.
- 7 *Omit this paragraph if it conflicts with a direction by the court.*
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.
- 8 If you file a statement of defence, you must also, within the time permitted for filing it in the registry 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 at the hearing. If a company wants to appear at a hearing it must do so by counsel—a company cannot appear in person.

Appearance by persons other than defendant company

- 10 A person (other than the defendant company) who intends to appear at the hearing of the application must file an appearance—
- (a) stating that the person intends to appear; and
 - (b) *For this paragraph select the statement that applies.*
Statement A
indicating whether the person supports or opposes the appointment of a liquidator by the court.

Form C 3—*continued**Statement B*

indicating whether the person supports or opposes the making of an order under section 174 of the Companies Act 1993.

- 11 If you file an appearance, you do not need to file a statement of defence.
- 12 You must file an appearance not later than the second working day before the day appointed for the hearing.
- 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 at the hearing.

Registry hours

- 14 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form C 4
Verifying affidavit

r 31.5(2)

I, [*full name, place of residence, occupation*], swear that those allegations in the statement of claim (a copy of which is attached to this affidavit and marked “A”) that relate to my own/my firm’s* acts and deeds are true, and I believe to be true those allegations that relate to the acts and deeds of another person/other persons*.

*Select one.

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

Form C 5

r 31.5(2)

Affidavit verifying statement of claim of limited
companyI, [*full name, place of residence, occupation*], swear—

- 1 I have knowledge of the facts stated in this affidavit and am duly authorised by the plaintiff to make this affidavit on its behalf.
- 2 Those statements in the statement of claim (a copy of which is attached to this document and marked “A”) that relate to the acts and deeds of the plaintiff are true, and I believe to be true those statements that relate to the acts and deeds of another person/other persons*.

*Select one.

Sworn at [*place, date*]Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

Form C 6

r 31.9(6)

Advertisement of application for putting
company into liquidation

This document notifies you that—

- 1 On *[date]* an application for putting *[full name of company]* into liquidation was filed in the High Court at *[place]*. The application is to be heard by the High Court at *[place, date, time]*.
- 2 A person, other than the defendant company, who wants to appear at the hearing of the application must file an appearance not later than the second working day before that day.
- 3 The plaintiff is *[full name]*, whose address for service is *[address]*.

Note: You may obtain further information from the registry of the court or from the plaintiff or the plaintiff's solicitor.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Form C 7

r 31.9(6)

Advertisement of application for order under
section 174 of Companies Act 1993

- 1 Members of the public are notified that on *[date]* an application for an order under section 174 of the Companies Act 1993 in respect of *[full name of company]* was filed in the High Court at *[place]*.
- 2 The order sought is an order *[specify nature of order sought]*.
- 3 The application is to be heard by the High Court at *[place, date, time]*.
- 4 A person, other than the defendant company, who wants to appear at the hearing of the application must file an appearance not later than the second working day before that day.
- 5 The plaintiff is *[full name]*, whose address for service is *[address for service]*.

Note: You may obtain further information from the registry of the court or from the plaintiff or the plaintiff's solicitor.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Form C 8
Affidavit of service

r 31.13(1)

I, *[full name, place of residence, occupation]*, swear—

1 *For this paragraph select the statement that applies.*

Statement A

On *[date]* I served the defendant company with—

- (a) the statement of claim in this proceeding; and
- (b) the verifying affidavit made by *[full name, date]*; and
- (c) the notice of proceeding dated *[date]*.

Statement B

On *[date]* I served the defendant company with a statement of claim, verifying affidavit, and notice of proceeding (copies of which are attached to this document and marked “A”, “B”, and “C” respectively).

2 I served the documents on the defendant company at *[place]* in New Zealand by *[specify method by which service was effected]*.

Signature of deponent:

Sworn at *[place, date]*

Before me: *[name, signature]*

(a solicitor of the High Court of New Zealand)

Form C 9

r 31.18

Appearance in support of (or in opposition to)
application for putting company into liquidation
(or for making of order under section 174 of
Companies Act 1993)

Complete and attach the memorandum as set out in form G 10.

- 1 I, [full name, address, description], intend to appear at the hearing of this proceeding.

- 2 *For this paragraph select the statement that applies.*

Statement A

I support/oppose* the application for putting the defendant company into liquidation by the High Court.

*Select one.

Statement B

I support/oppose* the application for putting the defendant into liquidation by the making of an order under section 174 of the Companies Act 1993.

*Select one.

- 3 *For this paragraph select the statement that applies.*

Statement A

I am a creditor for \$[amount] in the defendant company.

Statement B

I am a contributory/shareholder* holding [number and class of shares held] shares in the defendant company.

*Select one.

- 4 I served the documents on the defendant company at [place] in New Zealand by [specify method by which service was effected].

Date:

Signature:

(solicitor/counsel* for person filing appearance)

*Select one.

Form C 10

r 31.29(2)

Notification to liquidator of order putting
company into liquidation

To *[full name, full address]* (the liquidator).

This document notifies you that the Honourable Justice/Associate Judge* *[name]* today ordered that the defendant company be put into liquidation by the court under the Companies Act 1993.

*Select one.

Complete the following table.

Name of company	Registered office	Plaintiff's solicitor	Date of filing of statement of claim

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form C 11

r 31.29(2)

Notification to interim liquidator of appointment

To *[full name, full address]* (the interim liquidator).

The Honourable Justice/Associate Judge* *[name]* today appointed *[name of the Official Assignee or, if some other person has been appointed, the name, address, and description of that person]* as interim liquidator for the period before an order putting the company into liquidation is made.

*Select one.

Complete the following table.

Name of company	Registered office	Plaintiff's solicitor	Date of filing of statement of claim

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form C 12

r 31.31(1)

Order putting company into liquidation

This document notifies you that—

- 1 The application made by the plaintiff [*name*] was determined by the Honourable Justice/Associate Judge* [*name*] on [*date*].

*Select one.

- 2 This court orders that the defendant company be put into liquidation by the court under the Companies Act 1993, and appoints [*full name of liquidator*] as liquidator.

- 3 It also orders that the cost of \$[*amount*] of the application be taxed and paid out of the assets of the defendant company.

- 4 Before making this order, the court—

- (a) heard [*name of counsel*] for the plaintiff, and [*name of counsel*] for [*description of other party or person*]; and
- (b) read the statement of claim and the affidavit of [*full name*] verifying the allegations in the statement of claim; and
- (c) sighted the advertisements for the statement of claim published in [*specify the date on which the advertisement appeared in the New Zealand Gazette, and name and date of issue of any other newspapers containing an advertisement for the statement of claim*]; and
- (d) *Omit this paragraph if it does not apply.*
[*Specify any other evidence.*]

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form C 13

r 31.31(2)

Order appointing interim liquidator

This document notifies you that—

- 1 The application made by the plaintiff [*name*] was determined by the Honourable Justice/Associate Judge* [*name*] on [*date*].

*Select one.

- 2 The court appoints [*full name of interim liquidator*] as interim liquidator of the defendant company.
- 3 The court also limits and restricts the powers of the interim liquidator to the following acts: [*specify acts that the interim liquidator is to be authorised to do and the property of which the interim liquidator is to take possession*].
- 4 In making this order, the court read the following documents: [*specify documents relied on by the court*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form C 14 r 31.37
General heading for notices in forms C 15 and
C 16

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

Under the Companies Act 1993

In the matter of the liquidation of [*full name of company in liquidation*]

Between [*full name of liquidator*]

(liquidator)

And [*full name, place of residence, occupation*]

(intended recipient of notice)

Form C 15

r 31.37

Notice to set aside voidable transaction under
Companies Act 1993*Complete and attach the memorandum as set out in form G 10.***To** the Registrar of the High Court at *[place]*

and

To *[full names of parties to be served]***This document notifies you that—**

1 The liquidator *[full name]* of *[full name of company in liquidation]* (the company) wants 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 liquidator's postal, email, and street addresses are *[state addresses]*.

3 The company was put into liquidation when a liquidator was appointed on *[date, time]* by—

*Select the statement that applies.**Statement A*

special resolution of those shareholders entitled to vote and voting on the question.

Statement B

the board of the company on the occurrence of an event specified in the constitution.

*Statement C*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]*.*Statement D*

a resolution of the creditors passed at the watershed meeting held under section 239AT of the Companies Act 1993.

4 The property or value that the liquidator wants to recover is *[details of property or value]*.

5 In giving this notice, the liquidator relies on the following grounds: *[specify grounds]*

Form C 15—*continued*

- 6 You may object to the transaction being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after this notice has been served on you.
- 7 If you do object, your written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.
- 8 If you do not object, within 20 working days after the liquidator's notice has been served on you, the transaction will be set aside as against you.
- 9 If you do object, the liquidator may apply to the Court for the transaction to be set aside.

Date:

Signature:

(solicitor/counsel* for liquidator)

*Select one.

Note

Definition of working day (Companies Act 1993)

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.

Form C 16

r 31.37

Notice to set aside voidable charge under
Companies Act 1993**To** the Registrar of the High Court at *[place]*

and

To *[full names of parties to be served]***This document notifies you that—**

1 The liquidator *[full name]* of *[full name of company in liquidation]* (the company) wants 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, and nature]*.

2 The liquidator's postal, email, and street addresses are *[state addresses]*.

3 The company was put into liquidation when a liquidator was appointed on *[date, time]* by—

Select the statement that applies.

Statement A

special resolution of those shareholders entitled to vote and voting on the question.

Statement B

the board of the company on the occurrence of an event specified in the constitution.

Statement C

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]*.

Statement D

a resolution of the creditors passed at the watershed meeting held under section 239AT of the Companies Act 1993.

4 In giving this notice, the liquidator relies on the following grounds: *[specify grounds]*.

5 You may object to the charge being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after this notice has been served on you.

Form C 16—*continued*

- 6 If you do object, your written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.
- 7 If you do not object, within 20 working days after the liquidator's notice has been served on you, the transaction will be set aside as against you.
- 8 If you do object, the liquidator may apply to the Court for the charge to be set aside.

Date:

Signature:

(solicitor/counsel* for liquidator)

*Select one.

Note

Definition of working day (Companies Act 1993)

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.

Form B 1

r 24.8(1)

Request for issue of bankruptcy notice

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

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, and description of judgment debtor].

2 *If rule 24.13 requires a different statement, substitute that for this paragraph.*

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] within the district of this court.

3 I produce a certified copy of a final judgment or final order against [name of judgment debtor], obtained by me in the [name] court on [date].

4 Execution on the judgment has not been stayed.

Date:

Signature:

(judgment creditor/solicitor for judgment creditor*)

*Select one.

Form B 2
Bankruptcy notice

r 24.8(3)

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To [full name and address of judgment debtor]

- 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 of court] on [date]; or
 - (b) you must secure or enter into a new formal agreement with the judgment creditor or, alternatively, obtain the High Court's approval of terms of payment; 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], which includes a fee for filing a request for this notice of \$[amount] and a fee of \$150 for serving this notice.

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.

Form B 2—*continued***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), or you wish to seek the court's approval of terms of payment, you must, within 10 working days from the date of receiving this notice, apply to the High Court. 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 and 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.

Form B 3

r 24.11(1)

Creditor's application for adjudication order

Complete this application in accordance with the requirements of rule 24.5.

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 24.13]; 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:

Signature:

(Deputy Registrar/Registrar/solicitor/Justice of the Peace*)

*Select one.

Form B 4

r 24.11(3)

Affidavit supporting creditor's application for
adjudication

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

I, [full name, address, description of applying creditor], the applicant, swear—

Select the statement that applies.

Statement A

The statements I make in the accompanying application are, to the best of my knowledge, information, and belief, true.

Statement B

I am a person having knowledge of the facts to which the accompanying application relates. The statements in the application are, to the best of my knowledge, information, and belief, true.

Signature:

(applicant creditor/deponent*)

Sworn at [place, date]

Before me: [name, signature]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*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).

Form B 5
Summons to debtor

r 24.11(3)

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

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 ap-
plication in this court to adjudicate you bankrupt.
- 3 The court will consider whether you should be adjudicated
bankrupt on the following grounds: [specify grounds].
- 4 If, by the hearing date, you have not paid the amount of
\$[amount specified in the creditor's application] to the ap-
plicant, either in person or at the address for service of the
applicant (or solicitor for the applicant), or 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],
which includes a fee for filing this summons of \$[amount]
and a fee of \$[amount] for serving this summons.
- 6 If you do not dispute the claim for costs in paragraph 5, you
must, by the hearing date, pay those costs, either in person or
at the address for service of the applicant (or the solicitor for
the applicant).
- 7 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.
- 8 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.
- 9 If you intend to oppose the making of an order of adjudication
you must, by 1 pm on the last working day before the hearing
date, file a notice of opposition in form B 6, together with an
affidavit in support of the opposition, and serve a copy of those
documents on the applicant creditor.

Form B 5—*continued*

Date:

Signature:

(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.

Form B 6

r 24.18

Notice by debtor of intention to oppose
application

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To [full name and address for service of (solicitor for) applicant creditor]

and

To 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.

Date:

Signature:

(debtor)

Form B 7

r 24.4(5)

Warrant to search for and seize bankrupt's
property under section 150 or 151 of Insolvency
Act 2006

Insert a heading that conforms with rule 24.5.

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.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form B 8

r 24.36(1)

Notice of objection to discharge

Insert a heading that conforms with rule 24.5.

To the Registrar of the High Court at [*place*]

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 statement if the Official Assignee is objecting.

A copy of the order of the court permitting the objection is attached.

Date:

Signature:

(Official Assignee/Deputy Official Assignee/creditor*)

*Select one.

Form B 9

r 24.42

Proposal by insolvent to creditors under
subpart 2 of Part 5 of Insolvency Act 2006*Insert a heading that conforms with rule 24.5.***To** the Registrar of the court at *[place]*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 fees and expenses of 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**[Specify terms of proposal in respect of unsecured claims.]*

- 5 *[Specify terms of any other offer.]*

- 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 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.

Form B 9—*continued*

Date:

Signature:

(insolvent)

I am willing to act as trustee in terms of this proposal.

Date:

Signature:

(trustee)

Form B 10

r 24.42

Statement of affairs and affidavit

*Insert a heading that conforms with rule 24.5.*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.

Form B 11

r 24.43

Report of trustee on proposal

Insert a heading that conforms with rule 24.5.

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 a proposal in the court. 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—
 - (a) the assets of the insolvent and their fair realisable value are as follows: [details of assets, giving the value as

Form B 11—*continued*

carried on the books of the insolvent and the trustee's estimate in each case of their realisable value]:

- (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 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]*.

Date:

Signature:
(trustee)

Form B 12

r 24.45(2)

Account of assets, debts, etc, of deceased person
verified by affidavit

Insert a heading that conforms with rule 24.5.

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 and 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 That I am the administrator of the estate.
- 2 That 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.

Signature:

(administrator)

Sworn at [place, date]

Form B 12—*continued*

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy
Registrar/Notary Public*)

*Select one.

Form B 13

r 24.49

Certificate by Public Trust or Māori Trustee of
election to administer under Part 6 of Insolvency
Act 2006

Insert a heading that conforms with rule 24.5.

The Public Trust/Māori Trustee*, certifies as follows:

*Select one.

- 1 *For this paragraph select the statement that applies.*

Statement A

The [Public Trust or Māori Trustee] is the executor under the will of the deceased, which was proved in this court on [date].

Statement B

The [Public Trust or Māori Trustee] is the administrator of the estate of the deceased under an order to administer the estate granted to the [Public Trust or Māori Trustee] on [date].

- 2 The [Public Trust or Māori 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, the [Public Trust or Māori Trustee] elects to administer the estate under Part 6 of the Insolvency Act 2006, and makes this certificate accordingly.

Date:

Signature:

(signed for the Public Trust/by the Māori 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 admin-

Form B 13—*continued*

istered, under Part 6 of the Insolvency Act 2006. *See* section 386(2) of the Insolvency Act 2006.

Form B 14

r 24.35(2)

Originating application to cancel irregular
transaction under section 206 of Insolvency Act
2006

Insert a heading that conforms with rule 24.5.

To the Registrar of the court at *[place]*

and

To *[full names of parties to be served]*

This document notifies you that—

1 The Assignee of *[full name, address of bankrupt person]* 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 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/insolvent charge/insolvent gift*.

*Select one.

6 The Assignee relies on the following matters in support of the claim in paragraph 5: *[specify matters 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, wants 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 18 of the High Court Rules:

Form B 14—*continued*

- (c) must file and serve a notice of opposition (in form G 33 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.

Date:

Signature:

(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.

Form B 15

r 24.35(3)

Originating application to order retransfer of
property or payment of value under section 207
of Insolvency Act 2006

Insert a heading that conforms with rule 24.5.

To the Registrar of the High Court at [place]

and

To [full names of parties to be served]

This document notifies you that—

1 The Assignee of [full name, address of bankrupt person] 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 ad-
ditional order sought under section 207(2), otherwise
omit this paragraph].

2 [Specify 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 matters with par-
ticularity].

4 The Assignee relies on the following evidence: [list any affi-
davits filed or to be filed].

5 A person who, having been served with this application, wants
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 18
of the High Court Rules:

Form B 15—*continued*

- (c) must file and serve a notice of opposition (in form G 33 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.

Date:

Signature:

(Assignee/counsel for the Assignee*)

*Select one.

Form 83
Constituency Election Petition

r 799(1)(a)

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*].

Schedule 2 schedule 1 form 83: inserted, on 1 December 1998, by rule 4 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 84
Bond for Security

r 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).

Schedule 2 schedule 1 form 84: inserted, on 1 December 1998, by rule 4 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 85

r 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 atSchedule 2 schedule 1 form 86: inserted, on 1 December 1998, by rule 4 of the
High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 86

r 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):

Schedule 2 schedule 1 form 86: inserted, on 1 December 1998, by rule 4 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 87

r 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), andCD [*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):

Schedule 2 schedule 1 form 87: inserted, on 1 December 1998, by rule 4 of the High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Schedule 2

r 14.4

Appropriate daily recovery rates

[Note: The following are the appropriate daily recovery rates for the categories of proceedings referred to in rule 14.3.]

Category of proceedings referred to in rule 14.3	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 Time allocations

r 14.5

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	0.8	1.6	4.8
3.2	Cross-notice between defendants	0.6	1.2	4
3.3	Commencement of proceedings against third parties, including notice and statement of claim	1.2	2.4	7
3.4	Notice of appearance with protest to jurisdiction	0.3	0.6	2
3.5	Notice of appearance	0.2	0.2	0.2
3.6	Pleading in response to other party's amended pleading (payable regardless of outcome except where formal or consented to)	0.3	0.6	2
4	Interlocutory proceedings and related steps:			
4.1	Notice to answer interrogatories	0.4	1	4
4.2	Answer to interrogatories	0.4	1	4
4.3	Notice to admit facts	0.4	0.8	2.4
4.4	Admissions of facts	0.4	0.8	2.4
4.5	List of documents on discovery	0.7	1.5	6
4.6	Production of documents for inspection	0.3	1	3
4.7	Inspection of documents	0.5	1.5	6
4.8	Payment into court	0.3	0.3	0.3
4.9	Filing offer of other relief	0.3	0.3	0.3

General civil proceedings		Allocated days or part days		
		A	B	C
4.10	Filing memorandum for case management conference or mentions hearing	0.2	0.4	1
4.11	Appearance at case management conference	0.3	0.3	0.7
4.12	Preparing and filing interlocutory application (excluding summary judgment application) and supporting affidavits	0.3	0.6	2
4.13	Preparing and filing opposition to interlocutory application (excluding summary judgment application) and supporting affidavits	0.3	0.6	2
4.14	Preparation for hearing of defended interlocutory application (excluding summary judgment application)	The time occupied by the hearing measured in quarter days		
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	0.2	0.2	0.2
4.18	Sealing order or judgment	0.2	0.2	0.2
5	Summary judgment application (additional to costs in items 1 to 3):			
5.1	Preparing and filing summary judgment application and supporting affidavits	0.3	0.6	2
5.2	Preparing and filing opposition and supporting affidavits	0.3	0.6	2
5.3	Preparation for hearing of defended summary judgment application	The time occupied by the hearing measured in quarter days		
5.4	Arguing defended summary judgment application	Appearance in court measured in quarter days		
5.5	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)	0.3	0.3	0.5
7	Preparation for hearing following setting down or direction for trial if trial does not eventuate:			

General civil proceedings		Allocated days or part days		
		A	B	C
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
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	0.3	0.3	1
10.2	Charging order with application, including any unopposed order	0.5	0.5	1.4
10.3	Writ of sale	0.5	0.5	0.7
10.4	Other execution process	0.5	0.5	0.7
11	Other steps in the proceeding not specifically mentioned	As allowed by court		
12	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)	0.2	0.5	1.5
13	Preparation for case management conference or pre-trial conference	0.1	0.2	0.4

Appeals and reviews of Associate Judges		Allocated days or part days		
		A	B	C
14	Appearance at case management conference or pre-trial conference	0.1	0.2	0.4
15	Preparation for appeal or review	The time occupied by the hearing measured in quarter days		
16	Appearance at hearing	Appearance in court measured in quarter days		
Bankruptcy proceedings		Allocated days or part days		
Items 17 to 20 apply to bankruptcy proceedings instead of items 1, 2, 4.10, 4.11, 8, and 9		A	B	C
17	Preparing, filing, and serving bankruptcy notice	0.1	0.2	0.6
18	Preparing bankruptcy petition and other documents	0.2	0.4	1.2
19	Appearance at hearing	0.2	0.4	1.2
20	Supporting party on bankruptcy	0.2	0.4	1.2
Company liquidation proceedings		Allocated days or part days		
Items 21 to 24 apply to company liquidation proceedings instead of items 1, 2, 4.10, 4.11, 8, and 9		A	B	C
21	Preparing and issuing statutory demand	0.1	0.2	0.6
22	Preparing statement of claim and other documents	0.3	0.6	1.8
23	Appearance at hearing	0.2	0.4	1.2
24	Supporting party on liquidation	0.2	0.4	1.2
Specified originating applications* (relating to relief in respect of statutory demands and caveats)		Allocated days or part days		
Items 25 to 30 apply to a specified originating application instead of items 1, 2, 4.10, 4.11, 8, and 9.		A	B	C
25	Preparing and filing specified originating application and supporting affidavits	0.8	1.6	4.8
26	Preparing and filing notice of opposition and supporting affidavits	0.8	1.6	4.8
27	Filing memorandum for case management conference	0.2	0.4	1
28	Appearance at case management conference	0.3	0.3	0.7

Specified originating applications* (relating to relief in respect of statutory demands and caveats)

Allocated days or part days

		A	B	C
29	Preparing for hearing of defended specified originating application	The time occupied by the hearing measured in quarter days		
30	Appearance at hearing of defended specified originating application	Appearance in court measured in quarter days		

*In items 25 to 30, **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 290 of the Companies Act 1993.
-

Schedule 4

r 9.43

Code of conduct for expert witnesses**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 2 schedule 4: amended, on 1 December 2009, by rule 10 of the High Court Amendment Rules (No 2) 2009 (SR 2009/334).

Schedule 5

r 7.4

**Matters for consideration at case
management conference for proceeding
other than appeal**

- 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 14.3.
- 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 7.79 or to allow time for negotiation or a form of alternative dispute resolution.
- 11 The duration of the trial of the proceeding.
- 12 Whether the trial is to be heard before a jury.
- 13 The allocation of a trial date for the proceeding, and whether a setting down date for the proceeding should be fixed under rule 7.13(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 9.1(1)) seeks directions that are not set out in, or that differ from, rules 9.2 to 9.9 or rules 9.12 to 9.16).
- 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 (when 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-trial matters and the conduct of the trial of the proceeding.
 - 20 Whether the Solicitor-General should be notified because a significant issue arises under the New Zealand Bill of Rights Act 1990, or an issue affects New Zealand's international obligations or the Crown's obligations under the Treaty of Waitangi, or an issue in the proceeding is otherwise of significant public interest.
-

Schedule 6

r 7.5

Standard directions for appeals

- 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 14.3.
- 3A The registry in which the appeal is to proceed as determined by rule 20.8(1) or by any direction given under rule 20.8(3).
- 4 The appellant must pay security in the sum of \$[*amount*] 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 If the appeal involves a significant issue under the New Zealand Bill of Rights Act 1990, or an issue affecting New Zealand's international obligations or the Crown's obligations under the Treaty of Waitangi, or an issue arising in the appeal is otherwise of significant public interest, the Judge may direct that the Solicitor-General be served with the notice of appeal, and with documents subsequently filed in the appeal.
- 7 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.
- 8 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.

- 9 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).
- 10 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.
- 11 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 10; and
 - (b) if the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.
- 12 The appellant must prepare a bundle of any authorities referred to in the submissions provided in accordance with clauses 9 and 11 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.
- 13 If the appeal is to be heard by a single Judge, 1 copy of each document must be filed.
- 14 If the appeal is to be heard by a full court, 2 copies of each document must be filed.

Schedule 2 schedule 6 clause 3A: inserted, on 15 May 2009, by rule 8 of the High Court Amendment Rules 2009 (SR 2009/75).

Schedule 7

r 7.5(8)

**Standard directions for appeals by way of
case stated and references under Part 21**

- 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 14.3.
 - 4 The appellant must pay security in the sum of \$[*amount*] not
later than 10 working days after the conference [*if ordered*
under rule 21.13].
 - 5 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).
 - 6 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 author-
ities mentioned.
 - 7 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
6; and
 - (b) if the respondent disagrees with the appellant's chronol-
ogy, a separate chronology noting areas of disagree-
ment.
 - 8 The appellant must prepare a bundle of any authorities referred
to in the submissions provided in accordance with clauses 6
and 7 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.
 - 9 If the appeal is to be heard by a single Judge, 1 copy of each
document must be filed.
 - 10 If the appeal is to be heard by a full court, 2 copies of each
document must be filed.
-

Schedule 8

r 7.3(8)

Matters for consideration at pre-trial conference for proceedings on standard track

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

s 71

Rules of the Court of Appeal

[Repealed]

Schedule 3: repealed, on 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.

Juries Amendment Act 2008

Public Act 2008 No 40
Date of assent 25 June 2008
Commencement see section 2

1 Title

This Act is the Juries Amendment Act 2008.

2 Commencement

- (1) This Act (except sections 4, 11, 12, and 19) comes into force on the day that is 6 months after the date on which this Act receives the Royal assent.
- (2) Sections 4, 11, 12, and 19 come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.

15 New sections 22 to 22C substituted

- (1) *Amendment incorporated in the principal Act*
 - (2) This section and 16 (amendments and repeals consequential on new sections 22 to 22C substituted) apply only to any trial for which a jury is constituted on or after the date on which this section comes into force.
-

Judicature (High Court Rules) Amendment Act 2008

Public Act 2008 No 90
Date of assent 25 September 2008
Commencement see section 2

1 Title

This Act is the Judicature (High Court Rules) Amendment Act 2008.

2 Commencement

- (1) This Act comes into force on 1 February 2009.
- (2) Despite subsection (1), subparts 15 and 16 of Part 5 of the High Court Rules (as substituted by section 8) come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.

Part 1

Amendments to principal Act

8 New Schedule 2 substituted

- (1) *Amendment incorporated in the principal Act.*
- (2) Despite subsection (1), Part 15 and forms 83 to 88 of the High Court Rules (which relate to constituency election petitions) as in force immediately before the commencement of this section continue in force until they are revoked by rules made under section 51C.

Part 2

Transitional provisions and consequential amendments

9 Transitional provisions

- (1) Subsections (2) to (5) of this section apply to a proceeding that is commenced before the commencement of section 8 and that has not been completed by that date (a **pending proceeding**).

-
- (2) A pending proceeding must be continued, completed, and enforced under the High Court Rules set out in Schedule 2 as substituted by section 8.
- (3) Subsection (2) is subject to subsection (4).
- (4) If,—
- (a) on the commencement of section 8, time is running on the period within which the High Court Rules require or permit a step to be taken in a pending proceeding; and
 - (b) the period prescribed by the High Court Rules in respect of that step, as in force immediately before that commencement, differs from that prescribed on that commencement,—
- then the period required or permitted for that step is the longer period.
- (5) Subsection (4) does not apply to any order made by a Judge.
- (6) If judgment has been sealed in a proceeding commenced before the commencement of section 8, any enforcement process permitted by the new High Court Rules as substituted by that section may be issued, but any execution or enforcement process that has been issued but not completed before that commencement must be completed as if section 8 had not been enacted.
- (7) In this section,—
- Judge** includes an Associate Judge
- judgment** includes a decree or order of the court
- proceeding** means any application to the court, however commenced, for the exercise of the civil jurisdiction of the court.
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**High Court (Access
to Court Documents)
Amendment Rules 2009**
(SR 2009/133)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 11th day of May 2009

Present:

His Excellency the Governor-General in Council

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 at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

Rules

1 Title

These rules are the High Court (Access to Court Documents) Amendment Rules 2009.

2 Commencement

These rules come into force on 12 June 2009.

7 Transitional provision

Any application or appeal under subpart 2 of Part 3 of the High Court Rules (as in force immediately before the commencement of these rules) that is not disposed of on the commence-

ment of these rules must be dealt with as if rule 4 of these rules had not been made.

Michael Webster,
for Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 14 May 2009.

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Notes

1 General

This is an eprint of the Judicature Act 1908. It incorporates all the amendments to the Act as at 1 December 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 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. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

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 2) 2009 (SR 2009/334)

High Court (Criminal Proceeds (Recovery) Act 2009) Amendment Rules 2009 (SR 2009/313)

High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133)

High Court Amendment Rules 2009 (SR 2009/75)

Judicature (High Court Rules) Amendment Act 2008 (2008 No 90)

High Court (Lawyers and Conveyancers Act 2006) Amendment Rules 2008 (SR 2008/196)

Juries Amendment Act 2008 (2008 No 40): sections 16(2), 19(3)

High Court (Property Law Act 2007) Amendment Rules 2007 (SR 2007/386)

Court Martial Act 2007 (2007 No 101): section 87

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 (Cross-border) Act 2006 (2006 No 57): section 13

Insolvency Act 2006 (2006 No 55): section 445

Securities Markets Amendment Act 2006 (2006 No 47): section 14
