Supreme Court of Guyana

# CIVIL PROCEDURE RULES 2016

**CONTENTS**

**PART 1: THE OVERRIDING OBJECTIVE ..... 1**
**1.01 The Overriding Objective ..... 1**
**1.02 Application of the Overriding Objective ..... 1**

**PART 2: CITATION, APPLICATION AND INTERPRETATION ..... 1**
**2.01 Citation ..... 1**
**2.02 Application of these Rules ..... 1**
**2.03 Interpretation ..... 1**
**2.04 Availability of Practice Directions ..... 5**
**2.05 Where and How Court deals with Cases ..... 5**

**PART 3: TIME ..... 6**
**3.01 Computation of Time ..... 6**
**3.02 Extension or Abridgment of Time ..... 6**

**PART 4: DOCUMENTS AND FORMS ..... 6**
**4.01 Form and Content of Documents ..... 6**
**4.02 Use of Prescribed Forms ..... 7**
**4.03 Documents Issued by the Court ..... 7**
**4.04 Filing of Documents with the Court ..... 7**
**4.05 Right to Inspect and Copy Documents Filed with the Court ..... 8**

**PART 5: ORDERS ..... 8**
**5.01 Court Orders ..... 8**
**5.02 Form of Order ..... 8**
**5.03 Service of Order ..... 9**
**5.04 Effect of Order ..... 9**
**5.05 Correcting, Setting Aside or Varying an Order ..... 9**
**5.06 Failure to Obey an Order ..... 9**

**PART 6: AUTHORITY AND DUTIES OF REGISTRY ..... 10**
**6.01 Authority and Duties of the Registry ..... 10**

**PART 7: SERVICE ..... 10**
**7.01 General Provisions regarding Service ..... 10**
**7.02 Service of Originating Process within the Jurisdiction ..... 10**
**7.03 Personal Service of Other Documents within the Jurisdiction ..... 11**
**7.04 Alternatives to Personal Service of Other Documents within the Jurisdiction ..... 11**
**7.06 On Whom and When Service may be Effected ..... 12**
**7.07 Proof of Service ..... 13**

**PART 8: COMMENCEMENT OF PROCEEDINGS ..... 14**
**8.01 How to Commence Proceedings ..... 14**
**8.02 Duty to Set out Case in Statement of Claim or Fixed Date Application ..... 14**
**8.03 Proceedings Commenced by Statement of Claim ..... 14**

**8.04 Proceeding Commenced by Fixed Date Application ..... 15**

**PART 9: DISPUTING THE COURT'S JURISDICTION ..... 15**
**9.01 Procedure for Disputing the Court's Jurisdiction ..... 15**
**9.02 Consequence of Failing to Make an Application Disputing the Court's Jurisdiction ..... 16**

**PART 10: DEFENDING A PROCEEDING ..... 16**
**10.01 Requirement to Defend where Proceeding Commenced by Statement of Claim ..... 16**
**10.02 Requirement to Defend where Proceeding Commenced by Fixed Date Application ..... 16**
**10.03 Duty to Set Out Case ..... 16**
**10.05 Reply to Defence or Affidavit in Defence ..... 17**
**10.06 Consequence of Admissions ..... 17**
**10.07 Withdrawal of Admissions ..... 17**

**PART 11: APPLICATIONS FOR COURT ORDERS ..... 18**
**11.01 Applications for Court Orders ..... 18**
**11.02 When Application to be Heard ..... 18**
**11.03 Form and Content ..... 18**
**11.04 Written Submissions ..... 19**
**11.05 Applications which may be dealt in Writing ..... 19**
**11.06 Court's Powers on an Application ..... 19**
**11.07 Respondent's Remedies ..... 19**

**PART 12: DEFAULT JUDGMENT ..... 20**
**12.01 Default Judgment ..... 20**
**12.02 Requirements for Default Judgment ..... 20**
**12.03 Application to Set Aside Default Judgment ..... 21**

**PART 13: DISMISSAL FOR DELAY ..... 21**
**13.01 Dismissal for Delay ..... 21**
**13.02 Setting Aside Dismissal for Delay ..... 22**

**PART 14: STRIKING OUT STATEMENT OF CASE ..... 22**
**14.01 Striking Out Statement of Case ..... 22**
**14.02 Application for Striking Out Statement of Case ..... 22**
**14.03 Consequence of Striking Out Statement of Case ..... 22**

**PART 15: SUMMARY JUDGMENT ..... 23**
**15.01 Summary Judgment ..... 23**
**15.02 Application for Summary Judgment ..... 23**

**PART 16: ASSESSMENT OF DAMAGES ..... 23**
**16.01 Requisition for Assessment of Damages ..... 23**
**16.02 Hearing of Assessment of Damages ..... 24**

**PART 17: INTERIM REMEDIES ..... 24**
**17.01 Interim Remedies Before Determination of a Proceeding ..... 24**

**17.02 Application for Interim Payment ..... 25**

**PART 18: ANCILLARY CLAIMS ..... 26**
**18.01 Ancillary Claims ..... 26**
**18.02 Counterclaim ..... 26**
**18.03 Crossclaim ..... 27**
**18.04 Third Party Claim ..... 27**
**18.05 Fourth and Subsequent Party Claims ..... 28**

**PART 19: ADDITION, SUBSTITUTION AND REMOVAL OF PARTIES, AND JOINDER ..... 28**
**19.01 Parties to a Proceeding ..... 28**
**19.02 Adding, Removing or Substituting Parties ..... 28**
**19.03 Joinder of Claims ..... 29**
**19.04 Joinder of Parties ..... 29**

**PART 20: AMENDMENTS TO STATEMENTS OF CASE ..... 30**
**20.01 Amendments to Statement of Case ..... 30**
**20.02 Application to Amend Statement of Case ..... 30**
**20.03 Format and Consequence of Amendment ..... 30**

**PART 21: REPRESENTATIVES OF PARTIES ..... 31**
**21.01 Appointment of Representative Party ..... 31**
**21.02 Consequence of Order Appointing Representative Party ..... 31**
**21.03 Representation of Beneficiaries by Trustees ..... 32**
**21.04 Proceedings Against Estate of Deceased Person ..... 32**
**21.05 Power of Court After a Party's Death ..... 32**

**PART 22: MISCELLANEOUS RULES ABOUT PARTIES ..... 32**
**22.01 Company ..... 32**
**22.02 Partnership ..... 32**
**22.03 Individual Carrying on Business ..... 33**

**PART 23: MINORS AND PATIENTS ..... 33**
**23.01 Requirement of Next Friend in Proceedings by or against Minors or Patients ..... 33**
**23.02 Appointment to Act as Next Friend ..... 33**
**23.03 Court's Power to Terminate and Substitute Next Friend ..... 34**
**23.04 Procedure where Appointment as Next Friend Ceases ..... 34**
**23.05 Compromise or Control of Money Recovered by or on behalf of Minor or Patient ..... 34**

**PART 24: SECURITY FOR COSTS ..... 35**
**24.01 Application for Security for Costs ..... 35**
**24.02 Court's Discretion to make Order for Security for Costs ..... 35**

**PART 25: CASE MANAGEMENT ..... 35**
**25.01 Court's Duty to Actively Manage Cases ..... 35**
**25.02 Court's Powers of Case Management ..... 36**
**25.03 Case Management Conference ..... 36**

**25.04 Fixing and Variation of Timetable ..... 37**
**25.05 Scheduling or Rescheduling a Case Management Conference ..... 37**
**25.06 Dispensing with Case Management ..... 38**

**PART 26: COURT ORDERED MEDIATION ..... 38**
**26.01 Court's Power to Order Mediation ..... 38**
**26.02 Procedure on Court Appointed Mediation ..... 38**
**26.03 Fees of Mediation ..... 39**
**26.04 Outcome of Mediation ..... 39**
**26.05 Failure to Attend at, Participate in or Comply with Requirements of Mediation ..... 39**

**PART 27: NON-COMPLIANCE, SANCTIONS AND RELIEF FROM SANCTIONS ..... 39**
**27.01 Non-Compliance with the Rules or a Practice Direction ..... 39**
**27.02 Application for Relief from Sanctions ..... 40**
**27.03 Application for Unless Order ..... 40**
**27.04 Failure to Comply with Unless Order ..... 40**

**PART 28: DISCLOSURE AND INSPECTION OF DOCUMENTS ..... 40**
**28.01 Scope of Disclosure Obligation ..... 40**
**28.02 Automatic Duty of Disclosure ..... 41**
**28.03 Contents of Affidavit of Documents ..... 41**
**28.04 Right to Inspect and Copy Documents ..... 42**
**28.05 Application for Specific Disclosure ..... 42**
**28.06 Consequence of Failure to Disclose Documents ..... 42**
**28.07 Claim of Right to Withhold Disclosure or Inspection of Document ..... 43**
**28.08 Subsequent Use of Disclosed Documents ..... 43**
**28.09 Notice to Prove Document ..... 43**

**PART 29: EVIDENCE ..... 43**
**29.01 Evidence, Generally ..... 43**
**29.02 Requirement to Serve Witness Statement ..... 44**
**29.03 Witness Summary ..... 44**
**29.04 Evidence of Witness at Trial ..... 44**
**29.05 Use of Other Evidence at Trial ..... 45**
**29.06 Compelling Attendance of Witness ..... 45**
**29.07 Calling an Adverse Party as Witness at Trial ..... 46**
**29.08 Evidence on Questions of Foreign Law ..... 46**

**PART 30: AFFIDAVITS ..... 46**
**30.01 Form of Affidavit ..... 46**
**30.02 Content of Affidavit ..... 47**
**30.03 Exhibits to an Affidavit ..... 47**
**30.04 Affidavit Deposed by Illiterate, Blind or Person who does not Understand the Language ..... 47**

**PART 31: INTERVENTION ..... 47**
**31.01 Application for Permission to Intervene ..... 47**

**PART 32: EXPERTS ..... 48**

**32.01 Expert's Duty to Court ..... 48**
**32.02 Expert Reports ..... 48**
**32.03 Consequence of Failure to Serve Expert's Report ..... 49**
**32.04 Court's Power to limit Expert Evidence ..... 49**
**32.05 Joint Experts ..... 49**
**32.06 Court Appointed Experts ..... 49**
**32.07 Written Questions to Experts ..... 50**
**32.08 Meeting of Experts ..... 50**

**PART 33: EXAMINATION OF WITNESS BEFORE OR AFTER TRIAL ..... 50**
**33.01 Availability and Scope of Examination ..... 50**
**33.02 Examination of Non-Parties ..... 51**
**33.03 Oral Examination: Application for Permission, where Required ..... 51**
**33.04 Oral Examination: Where Person to be Examined is Out of the Jurisdiction ..... 52**
**33.05 Oral Examination: How to Initiate ..... 52**
**33.06 Oral Examination: Procedure ..... 53**
**33.07 Oral Examination: Conduct ..... 53**
**33.08 Oral Examination: Limitations ..... 54**
**33.09 Oral Examination: Failure to Answer ..... 54**
**33.10 Oral Examination: Duty to Correct Answers ..... 55**
**33.11 Written Examination: How to Initiate ..... 55**
**33.12 Use of Examination at Trial ..... 56**

**PART 34: DEMAND FOR PARTICULARS AND REQUEST TO ADMIT FACTS ..... 56**
**34.01 Demand for Particulars ..... 56**
**34.02 Request to Admit Facts ..... 57**

**PART 35: OFFERS TO SETTLE ..... 57**
**35.01 Making an Offer to Settle ..... 57**
**35.02 Withdrawal or Deemed Withdrawal of an Offer to Settle ..... 58**
**35.03 Disclosure of Offer to Settle to Court ..... 58**
**35.04 Acceptance of an Offer to Settle ..... 58**
**35.05 Failure to Comply with an Accepted Offer to Settle ..... 58**
**35.06 Cost Consequences where Offer to Settle not Accepted ..... 59**

**PART 36: PAYMENTS INTO COURT AND OUT OF COURT ..... 59**
**36.01 Payment into Court ..... 59**
**36.02 Payment out of Court ..... 59**

**PART 37: DISCONTINUANCE ..... 60**
**37.01 Right to Discontinue Claim ..... 60**
**37.02 Procedure for Discontinuance ..... 60**
**37.03 Right to Apply to have Notice of Discontinuance Set Aside ..... 61**
**37.04 Effect of Discontinuance ..... 61**
**37.05 Liability for Costs ..... 61**
**37.06 Quantification of Costs ..... 61**
**37.07 Discontinuance and Subsequent Proceedings ..... 61**

**PART 38: PRE-TRIAL REVIEW** ..... **61**
**38.01 Pre-Trial Review** ..... **61**
**38.02 Materials to be Filed** ..... **62**
**38.03 Attendance** ..... **62**
**38.04 Powers of the Court and Matters to be Considered** ..... **62**

**PART 39: TRIAL** ..... **63**
**39.01 Bundles for use at Trial** ..... **63**
**39.02 Written Submissions** ..... **63**
**39.03 Exclusion of Witnesses** ..... **63**
**39.04 Exhibits at Trial** ..... **63**
**39.05 Failure to Prove Fact or Document** ..... **64**
**39.06 Failure of Party to Attend Trial** ..... **64**
**39.07 Applications to Set Aside Judgment given in Party's Absence** ..... **64**
**39.08 Adjournment of Trial** ..... **64**
**39.09 Inspection by Trial Judge** ..... **64**

**PART 40: APPOINTMENT OF REFEREE** ..... **65**
**40.01 Power to Order Trial before Referee** ..... **65**
**40.02 Appointment of Referee** ..... **65**
**40.03 Conduct of Reference** ..... **65**
**40.04 Report Following Reference** ..... **65**
**40.05 Consideration of Report by Court** ..... **66**

**PART 41: ACCOUNTS AND INQUIRIES** ..... **66**
**41.01 Accounts and Inquiries** ..... **66**
**41.02 Delay in Taking the Account** ..... **66**
**41.03 Verification of Account** ..... **66**
**41.04 Notice of Omissions** ..... **66**
**41.05 Distribution before Entitlement Ascertained** ..... **67**

**PART 42: REFERENCE TO HIGH COURT BY THE LEGAL PRACTITIONERS COMMITTEE** ..... **67**
**42.01 Procedure on Reference by the Legal Practitioners Committee** ..... **67**

**PART 43: METHODS OF ENFORCEMENT** ..... **67**
**43.01 Methods of Enforcement** ..... **67**
**43.02 How to and Who may Enforce** ..... **67**
**43.03 Costs of Enforcement** ..... **68**
**43.04 Writs of Execution, Generally** ..... **68**
**43.05 Renewal of Writs** ..... **68**
**43.06 Suspension of Writ** ..... **68**
**43.07 Irregularity in Execution** ..... **68**
**43.08 Where Judgment Debt Satisfied** ..... **68**

**PART 44: GARNISHMENT** ..... **69**
**44.01 Availability of Garnishment** ..... **69**
**44.02 Procedure for obtaining a Garnishment Order** ..... **69**
**44.03 Service and effect of Service of Garnishment Order** ..... **69**

**44.04 Garnishee Must Serve Statement and Effect of Failure to Serve ..... 70**
**44.05 Discharge of Garnishee's Liability ..... 70**
**44.06 Costs of Garnishment Proceedings ..... 71**

**PART 45: WRIT OF POSSESSION ..... 71**
**45.01 Application for Writ of Possession ..... 71**

**PART 46: WRIT OF DELIVERY ..... 71**
**46.01 Application for Writ of Delivery ..... 71**

**PART 47: WRIT OF SEQUESTRATION ..... 72**
**47.01 Application for Writ of Sequestration ..... 72**
**47.02 Service and Effect of Writ of Sequestration ..... 72**

**PART 48: WRIT OF SEIZURE AND SALE ..... 72**
**48.01 Application for Writ of Seizure and Sale ..... 72**
**48.02 Where Property Seized by Marshal ..... 73**
**48.03 Seizure and Sale of Personal Property ..... 73**
**48.04 Seizure and Sale of Real Property ..... 73**
**48.05 Notice of Sale ..... 74**

**PART 49: APPOINTMENT OF A RECEIVER ..... 74**
**49.01 Application for Appointment of Receiver ..... 74**
**49.02 Remuneration of Receiver ..... 75**
**49.03 Default by Receiver ..... 75**

**PART 50: ORDER TO COMMIT ..... 75**
**50.01 Application for Order to Commit ..... 75**
**50.02 Hearing of Application for Order to Commit ..... 76**

**PART 51: CONTEMPT ORDER ..... 76**
**51.01 Application for Contempt Order ..... 76**
**51.02 Hearing of Application for Contempt Order ..... 77**
**51.03 Discharging or Setting Aside Contempt Order ..... 77**

**PART 52: EXAMINATION IN AID OF EXECUTION ..... 77**
**52.01 Examination of Judgment Debtor ..... 77**
**52.02 Limitation on Examination in Aid of Execution ..... 78**
**52.03 Statement of Financial Position ..... 78**

**PART 53: STOP NOTICES AND CHARGING ORDERS ..... 78**
**53.01 Stop Notice ..... 78**
**53.02 Charging Order ..... 78**
**53.03 Application for Charging Order ..... 79**
**53.04 Service of Charging Order ..... 79**
**53.05 Variation or Discharge of Charging Order ..... 79**
**53.06 Enforcement of Charging Order ..... 80**

**PART 54: INTERPLEADER ..... 80**
**54.01 Application for Interpleader Relief ..... 80**
**54.02 Hearing of Application for Interpleader Relief ..... 80**

**PART 56: PROCEEDINGS FOR ADMINISTRATIVE ORDERS ..... 81**
**56.01 Proceedings for Administrative Orders ..... 81**
**56.02 Publication of Proceeding for Administrative Order ..... 81**
**56.03 Joinder of Claims for Other Relief ..... 82**
**56.04 Hearing of Proceeding for Administrative Order and Costs ..... 82**
**56.05 Special Provisions relating to Orders of Certiorari ..... 82**

**PART 57: HABEAS CORPUS ..... 82**
**57.01 Application for Issue of Writ of Habeas Corpus ..... 82**
**57.02 Powers of Court ..... 82**
**57.03 Service of Writ ..... 83**
**57.04 Return to Writ ..... 83**

**PART 58: APPLICATIONS FOR BAIL ..... 83**
**58.01 Applications for Bail ..... 83**

**PART 59: PROCEEDINGS BY AND AGAINST THE STATE ..... 83**
**59.01 Proceedings By and Against the State ..... 83**

**PART 60: APPEAL TO THE HIGH COURT ..... 84**
**60.01 Appeal to the High Court ..... 84**
**60.02 Hearing of Appeal by the High Court ..... 84**

**PART 61: CASE STATED ..... 85**
**61.01 Availability of Case Stated ..... 85**
**61.02 Where Appeal lies by way of Case Stated ..... 85**
**61.03 Where Referral of Case Stated ..... 85**
**61.04 Hearing of Case Stated ..... 85**

**PART 62: APPEAL TO THE FULL COURT ..... 86**
**62.01 Application and Procedure ..... 86**
**62.02 Where Permission to Appeal Required ..... 86**
**62.03 Cross-Appeal ..... 86**
**62.04 Record of Appeal to the Full Court ..... 87**
**62.05 Failure to file Record of Appeal ..... 87**
**62.06 Skeleton Arguments ..... 87**
**62.07 Powers of Full Court on Hearing of Appeal ..... 88**
**62.08 Application for Security for Costs ..... 88**
**62.09 Costs of Appeal in the Full Court ..... 88**
**62.10 Certificate of Result of Appeal ..... 88**
**62.11 Discontinuance ..... 88**

**PART 63: REPRESENTATION BY OR WITHOUT AN ATTORNEY-AT-LAW ..... 89**

**63.01 Party Acting in Person ..... 89**
**63.02 Appointment, Change or Removal of Attorney-at-Law ..... 89**
**63.03 Application for Removal by Attorney-at-Law ..... 89**
**63.04 Application for Removal by Another Party ..... 89**

**PART 64: COSTS ..... 90**
**64.01 How Costs are to be Awarded ..... 90**
**64.02 Court's Discretion as to Costs ..... 90**
**64.03 Fixed Costs ..... 91**
**64.04 Prescribed Costs ..... 91**
**64.05 Assessed Costs ..... 91**
**64.06 Budgeted Costs ..... 92**
**64.07 Costs Against Person not a Party ..... 93**
**64.08 Wasted Costs Orders ..... 93**
**64.09 Procedural Default Costs ..... 93**
**64.10 Registry Fees and Marshal's Fees ..... 94**

**PART 65: REMUNERATION OF ATTORNEY-AT-LAW ..... 94**
**65.01 Agreements as to Remuneration of Attorney-at-Law ..... 94**
**65.02 Contingency Fee Agreements ..... 94**
**65.03 Attorney-at-Law's Bills ..... 95**

**PART 66: ASSESSMENT OF ATTORNEY AT LAW'S BILL ..... 95**
**66.01 Application for Assessment of Attorney-at-Law's Bill ..... 95**
**66.02 Procedure on Hearing of Assessment ..... 96**
**66.03 How Bill is to be Assessed ..... 96**

**PART 67: PROCEEDINGS FOR ADMINISTRATION ..... 96**
**67.01 Commencement of Proceedings for Administration ..... 96**
**67.02 Judgments and Orders in Administration Proceedings ..... 97**

**PART 68: PROBATE PROCEEDINGS ..... 98**
**68.01 Commencement and Requirements of Probate Proceedings ..... 98**

**PART 69: DEFAMATION CLAIMS ..... 98**
**69.01 Claimant's Statement of Case ..... 98**
**69.02 Defence to Defamation Claim ..... 99**
**69.03 Ruling on Meaning ..... 99**

**PART 70: ADMIRALTY PROCEEDINGS ..... 99**
**70.01 Application of this Part ..... 99**
**70.02 Admiralty Proceedings In Rem ..... 100**
**70.03 Special Provisions as to Statements of Case in Collision Claims ..... 101**
**70.04 Warrant for Arrest ..... 101**
**70.05 Caveat Against Arrest ..... 102**
**70.06 Proceedings where Caveat Against Arrest ..... 102**
**70.07 Execution of Warrant for Arrest ..... 103**
**70.08 Directions with respect to Property Under Arrest ..... 103**

**70.09 Release of Property Under Arrest ..... 103**
**70.10 Caveat Against Release ..... 104**
**70.11 Duration of Caveats ..... 104**
**70.12 Bail ..... 104**
**70.13 Intervenors ..... 105**
**70.14 Default Judgment and Order for Sale ..... 105**
**70.15 Order for Sale of Ship ..... 105**
**70.16 Appraisal and Sale pursuant to Order for Sale ..... 106**
**70.17 Stay of Proceedings in Collision and Other Proceedings Until Security Given ..... 106**
**70.18 Inspection of Ship or Property ..... 106**
**70.19 Application for Limitation of Liability ..... 106**
**70.20 Order Limiting Liability ..... 106**
**70.21 Application to Set Aside Order Limiting Liability ..... 107**
**70.22 Payment into Court where Limitation of Liability ..... 107**
**70.23 Agreements Between Parties ..... 108**
**70.24 Appeal ..... 108**
**70.25 Undertakings ..... 108**

**PART 71: OBTAINING EVIDENCE FOR FOREIGN COURTS ..... 108**
**71.01 Application for Order ..... 108**
**71.02 Manner of Taking Evidence ..... 109**
**71.03 Claim to Privilege ..... 109**

**PART 72: RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS ..... 110**
**72.01 Application for Registration of Foreign Judgment ..... 110**
**72.02 Order for Registration of Foreign Judgment ..... 110**
**72.03 Setting Aside Registration of Foreign Judgment ..... 111**
**72.04 Execution of Registered Foreign Judgment ..... 111**

**PART 73: TRANSITIONAL PROVISIONS ..... 111**
**73.01 Application of these Rules ..... 111**

**SCHEDULE 1: REGISTRY FEES AND MARSHAL'S FEES ..... 112**

**SCHEDULE 2: APPENDIX A – LEGAL FEES WHERE FIXED COSTS APPLY ..... 115**

**SCHEDULE 2: APPENDIX B – LEGAL FEES WHERE PRESCRIBED COSTS APPLY ..... 116**

**SCHEDULE 3: FORMS ..... 117**

## PART 1: THE OVERRIDING OBJECTIVE

### 1.01 The Overriding Objective

(1) The overriding objective of these Rules is to enable the Court to deal with cases justly.
(2) Dealing with a case justly includes,
  (a) ensuring, so far as is practicable, that the parties are on an equal footing;
  (b) saving expense;
  (c) dealing with it in ways which are proportionate to the,
    (i) importance of the case;
    (ii) complexity of the issues;
    (iii) amount of money involved; and
    (iv) financial position of each party;
  (d) ensuring that the case is dealt with expeditiously; and
  (e) allotting to the case an appropriate share of the Court's resources while taking into account the need to allot resources to other cases.

### 1.02 Application of the Overriding Objective

(1) The Court must seek to give effect to the overriding objective when it interprets any Rule or exercises any discretion given to it by the Rules.
(2) It is the duty of the parties and their Attorneys-at-Law to help the Court to further the overriding objective.

## PART 2: CITATION, APPLICATION AND INTERPRETATION

### 2.01 Citation

(1) These are the Civil Procedure Rules of the High Court of the Supreme Court of Judicature of Guyana and may be cited as the "Civil Procedure Rules", "CPR" or "Rules".
(2) In these Rules,
  (a) all the provisions identified by the same number to the left of the decimal point comprise a Rule (for example, Rule 1 consists of Rules 1.01 to 1.02);
  (b) a provision identified by a number with a decimal point is a Rule (for example, Rule 1.01); and
  (c) a Rule may be subdivided into sub-Rules (for example, sub-Rule 1.01(2)), clauses (for example, clause 1.01(2)(c)) and sub-clauses (for example, sub-clause 1.01(2)(c)(iii)).
(3) It is sufficient to refer to a Rule or subdivision of a Rule as "Rule" followed by the number of the Rule, sub-Rule, clause or sub-clause (for example, Rule 1.01(2)(c)(iii)).

### 2.02 Application of these Rules

(1) These Rules apply to all civil proceedings under the jurisdiction of the Court.
(2) These Rules do not apply to proceedings instituted under another enactment in so far as rules made under that enactment regulate those proceedings.
(3) Where these Rules are silent on a matter and no other enactment applies, the matter shall be determined by analogy to these Rules.

### 2.03 Interpretation

(1) In these Rules,
"**Address for Service**" means the contact particulars of a person that must be provided when required, specifically,
  (a) an address in Guyana at which a document may be served in person on that person; or
  (b) where the person is represented by an Attorney-at-Law,
    (i) the address in Guyana at which a document may be served in person on the Attorney-at-Law;

(ii) the telephone number of the Attorney-at-Law; and
(iii) either the fax number for or e-mail address of the Attorney-at-Law.

"**Alternative Dispute Resolution**" or "**ADR**" means any procedure of attempting to settle a dispute outside of Court, and specifically includes mediation and arbitration;

**"Ancillary Claim"** means a claim other than a claim by a Claimant against a Defendant or a claim for set off contained in a Defence, which is auxiliary, supplemental to or dependent on another claim and includes a counterclaim, Crossclaim and Third or Subsequent Party Claim;

"**Appellant**" means a person who commences an appeal under these Rules;

"**Applicant**" means a person who seeks an order or orders from the Court by way of an application;

"**application**", other than when referring to a Fixed Date Application, means a request for an order or orders from the Court and includes,

(a) where a proceeding is already pending before the Court, an application made by Notice of Application made in writing or made orally during an appearance before the Court; or
(b) where no proceeding is pending before the Court, a Fixed Date Application;

"**Attorney-at-Law**" means a legal practitioner as defined under the *Legal Practitioners Act*, Chapter 4:01, and where a Rule refers to a person's Attorney-at-Law, it means their Attorney-at-Law of record;

"**Attorney-at-Law of record**" means an Attorney-at-Law who is noted as a person's Attorney-at-Law on a document filed by that Attorney-at-Law with the Court, who appears in Court as the Attorney-at-Law for a person, who accepts service of a document on behalf of a person, or who signs documents as the person's Attorney-at-Law, and the Attorney-at-Law remains the person's Attorney-at-Law of record until a Judgment is rendered in the proceeding that finally disposes of the proceeding, the person or another Attorney-at-Law serves a notice pursuant to these Rules that the Attorney-at-Law is no longer on record, the Court grants permission for the Attorney-at-Law to withdraw, or the Court orders otherwise;

"**case**" means a claim or other proceeding allowed in law for bringing a matter to the Court for a final or provisional order, and includes all applications, enforcements and appeals;

"**caveat book**" means the record or log of all Caveats entered, whether written or electronic, that is kept in and maintained by the Registry;

"**Chancellor**" includes, in relation to any period in which the office of Chancellor may be vacant, the person performing the functions of the Chancellor during that time;

"**claim**" means a Statement of Claim, Counterclaim, Crossclaim or Third or Subsequent Party Claim and, in relation to any proceedings commenced before these Rules came into force, includes any proceeding commenced by petition, originating summons, notice of motion or other originating process;

"**Claimant**" means a person who makes a claim and, in relation to any proceedings commenced before these Rules came into force, includes a plaintiff, petitioner or Applicant in any proceeding commenced by petition, originating summons, notice of motion or other originating process;

"**client**" means a person who, as a principal or on behalf of another person, or as a trustee or executor, or in any other capacity, has power, express or implied, to retain or employ and retains or employs or is about to retain or employ, an Attorney-at-Law and any person for the time being liable to pay to an Attorney-at-Law for his or her services;

"**collision claim**" means, in relation to an admiralty proceeding, a proceeding to enforce a claim for damage, loss of life, or personal injury arising out of

(a) a collision involving a ship;
(b) the carrying out or omission to carry out any maneuver in the case of one or more ships; or
(c) non-compliance, on the part of one or more ships, with the collision regulations applicable in Guyana;

"**collision regulations**" means, in relation to an admiralty proceeding, regulations made under the *Guyana Shipping Act*, Chapter 49:07, or in accordance with any international conventions;

"**contempt order**" means an order finding a person in contempt of Court;

"**Constitution**" means the *Constitution of the Co-operative Republic of Guyana*, Chapter 1:01;

"**company**" means a company as defined under the *Companies Act*, Chapter 89:01, or other foreign corporate legal entity;

"**costs**" mean the legal costs involved in a proceeding, which consists of counsel fees and disbursements;

"**Court**" means the High Court of the Supreme Court of Judicature as constituted under the *High Court Act*, Chapter 3:02, and includes the Full Court of the High Court as well as any individual Judge when exercising any of the jurisdictions conferred onto him or her by the *High Court Act*, by any other relevant enactment or by these Rules;
"**Defendant**" means a person against whom a claim is made and, in relation to proceedings commenced before these Rules came into force, includes a Respondent to any petition, originating summons or motion;
"**deponent**" means the individual who, under oath or affirmation, gives evidence orally on an examination or in writing in the form of an Affidavit;
"**disbursements**" mean the expenses incurred on behalf of a client in relation to the legal services performed by the Attorney-at-Law, which are charged or to be charged by the Attorney-at-Law to the client, and include but are not limited to charges for serving or delivering documents, conducting searches, photocopies, expert reports (where chargeable to the Attorney-at-Law), as well as Registry fees;
"**electronic mail**" or "**email**" means the method of transmitting correspondence digitally over the internet from one email address to another or other email addresses;
"**enactment**" means the whole or part of a piece of legislation or the whole or part of an instrument or regulation made under a piece of legislation;
**"expert"** means a person who has specialized knowledge or skill based on training, study, or experience and who has been instructed or retained to prepare a report or to be put forward with a view of giving evidence for the purpose of a proceeding;
"**fax**" means the method of transmitting an image of a document through telephonic transmission from one fax number to another or other fax numbers;
"**garnishee**" means any person who holds money for or owes money to a Judgment Debtor and may be required to transfer the money to a Judgment Creditor to satisfy a Judgment debt;
"**Guyana**" or "**State**" means the Co-operative Republic of Guyana;
"**hearing**" includes a trial;
**"holiday"** means any Saturday, Sunday, public, legal or national holiday, or any other day that the Registry office is closed;
"**individual**" means a natural person and does not include any other legal entity;
"**Judge**" means a Judge of the Court and includes the Chancellor and the Chief Justice;
"**Judgment**" means a decision of the Court that finally disposes of a proceeding, or any part of it, on its merits, and includes a Judgment entered in consequence of the default of a party;
"**Judgment Creditor**" means a person who is entitled to enforce an order;
"**Judgment debt**" means the amount of money owing under an order and includes interest on that amount;
"**Judgment Debtor**" means a person against whom an order may be enforced;
"**jurat**" means the certification that immediately follows the body of an Affidavit, which authenticates the Affidavit by setting out the name, qualifications and signature of the person before whom the oath or affirmation was made, the date and location of the making of the oath or affirmation, as well as the name and signature of the deponent;
"**legal entity**" includes any individual, partnership, association, organization, company or other thing with a distinct and independent existence that has legal capacity to enter into agreements and contracts, assume obligations, incur and pay debts and sue and be sued;
"**legal fees**" mean the fees charged or to be charged by an Attorney-at-Law to his or her client for legal services performed by the Attorney-at-Law;
"**limitation claim**" means, in relation to an admiralty proceeding, any proceedings by ship owners or other persons under the *Guyana Shipping Act*, Chapter 49:07, for the limitation of the amount of their liability in connection with a ship or other property;
"**mail**", when used as a noun, means ordinary or regular post, and when used as a verb means to send by ordinary or regular post;
"**minor**" means an individual under the age of majority;

"**month**" means a calendar month and, in terms of calculation of time, the period of time between the same dates in successive calendar months;
"**next friend**" means a representative of a person who is unable to act on his or her own behalf and who does not have a legal guardian;
"**order**" means a direction or decision of the Court and includes an award, declaration or Judgment;
"**originating process**" means a document that commences a proceeding and is required to be issued under these Rules, and includes a Statement of Claim, a Fixed Date Application, and a Third or Subsequent Party Claim, but does not include a Counterclaim, a Crossclaim or a notice of application;
"**patient**", when used as a noun, means a person who has been adjudged to be of unsound mind within the meaning of the *Mental Hospital Act*, Chapter 140, or who is by reason of mental disorder incapable of managing and administering his or her own affairs;
"**party**" means a person named as a party to a proceeding and includes both the party and any Attorney-at-Law on record for that party unless a Rule specifies otherwise or it is clear from the context that it relates to the party only;
"**person**" includes an individual or other legal entity;
"**personal injury**" or "**personal injuries**" means any injury to or impairment of an individual's physical or mental state or condition;
"**port**", in relation to an admiralty proceeding, includes a place and a harbour;
"**Practice Direction**" means a direction, notice, guide or similar publication that governs, clarifies or adds to the practice, procedure or conduct to be followed under these Rules;
"**probate**" means the process whereby a will is proved and accepted as a valid document that is the true last testament of the deceased;
"**Registrar**" means the Registrar of the Court and includes, where the context or circumstances so require, the Assistant Registrar and Deputy Registrar;
"**Registry**" means the office of the Court where documents are filed, and includes its staff;
**"representative**" means the Attorney-at-Law or other person representing a person in a proceeding under these Rules;
"**Respondent**" means a person against whom an application is made or an appeal is brought;
"**salvage claim**", in relation to an admiralty proceeding, includes any claim for or in the nature of salvage, any claim for special compensation, any claim for the apportionment of salvage and any claim arising out of or connected with any contract for salvage services;
"**secured creditor**" means a person holding a mortgage, charge or lien or other security on the property of a debtor, or any part thereof, which under the laws of Guyana is valid as a security for a debt due to him or her from the debtor;
"**security**" or "**securities**" means,
(a) any stock issued by or funds of, or an annuity granted by, the State;
(b) stock of a company; or
(c) a dividend or interest payable on stock mentioned in (a) or (b);
"**ship**" includes, in relation to an admiralty proceeding, every description of a vessel used in navigation that is not propelled by only oars, and where the context so requires includes an aircraft, whether of the State or not, whether registered or not, and irrespective of the residence or domicile of its owner;
"**specified sum of money**", in relation to a claim means an amount of money that is definite and fixed or clearly ascertainable as a matter of arithmetic, for example, if there was no dispute as to prices of material or hours of labour in a service agreement, and the basis of computation is provided in the agreement, the claim is for a specified sum of money;
"**Statement of Case**" means the formal document that sets out a person's position in a proceeding and includes a Statement of Claim, Ancillary Claim, Defence and Reply;
"**statutory rate of interest**" means the rate of interest prescribed under the *Law Reform (Miscellaneous Provisions) Act*, Chapter 6:02, or any other relevant enactment;
"**stock**" includes shares and a debenture, debenture stock, bond, note or other security;
"**title of proceeding**" means, in relation to a document that is or is to be filed in a proceeding, that portion

of the document that sets out the Court file number attributed to the proceeding, the Registry in which the proceeding is being or is to be conducted, and which identifies the parties to the proceeding or, if there is no person named as a Defendant, the subject matter of the proceeding;

"**testamentary document**" means a will or other document that creates, extinguishes, or transfers an interest in, or right to, an asset or property, or copy or draft thereof, or any document purporting to be a copy or evidence of the contents of a will or other document that creates, extinguishes, or transfers an interest in, or right to, an asset or property which is alleged to have been lost or destroyed.

"**trial**" includes a hearing;

"**unsecured creditor**" means a creditor other than a secured creditor, who does not have the benefit of any security interests in the assets of a debtor;

"**vessel**", in relation to an admiralty proceeding, includes,

(a) every description of a watercraft however propelled or moored, including a barge, hydrofoil, hovercraft, every other type of non-displacement craft, and anything constructed or used to carry persons or goods by water, including a seaplane on or in water;
(b) a hulk, store ship or other similar vessel without means of propulsion; and
(c) such other thing constructed or adapted for flying or floating or being submerged in water as the State may by order specify as a vessel for the purpose of any provision of the Guyana Shipping Act, Chapter 49:07;

"**will**" has the meaning assigned to it by section 2 of the *Wills Act*, Chapter 12:02; and

"**without notice**" means ex parte, and refers to a proceeding or step in a proceeding where relief is sought from the Court without providing notice of the proceeding to the other party or parties who may be affected or bound by any order that is made.

**2.04 Availability of Practice Directions**

(1) The Chancellor may issue Practice Directions to govern, clarify or add to the practice, procedure or conduct to be followed under these Rules.
(2) A Practice Direction must be,
  (a) published in the Official *Gazette*; and
  (b) displayed and made available to the public at each Registry.
(3) A Practice Direction comes into effect on the date that it is published in the Official *Gazette*, unless the Practice Direction itself specifies another date.
(4) A person must comply with all applicable Practice Directions.

**2.05 Where and How Court deals with Cases**

(1) All proceedings must be heard in open Court unless the Court directs that otherwise.
(2) The Court sitting in chambers shall have the same powers as if it were sitting in open Court and an order made in chambers shall have the same force and effect as if it were made in open Court.
(3) The Court may, on its own initiative or upon application,
  (a) order that the whole or part of any proceeding be conducted by telephone or video conference or by any other means that it considers appropriate; and
  (b) require the use of electronic means of communication, storage or retrieval of information, or any other technology that it considers appropriate.
(4) Where a trial or hearing has been commenced but not completed by a Judge and the Judge,
  (a) ceases to be a Judge of the Court;
  (b) the Judge dies or is incapacitated; or
  (c) for any other reason it is impossible or inconvenient for the Judge to act in the proceeding,

  the Chancellor may nominate another Judge to complete or retry the trial or hearing.
(5) When a proceeding is pending before the Court, no party or their Attorney-at-Law may communicate about the proceeding out of Court with the Judge presiding over their proceeding, directly or indirectly, unless all the parties consent in advance to the out-of-court communication or the Court directs.

## PART 3: TIME

### 3.01 Computation of Time

(1) In the computation of time under these Rules, a Practice Direction or an order, except where a contrary intention appears,
   (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;
   (b) where a period of 7 days or less is prescribed, holidays must not be counted;
   (c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and
   (d) service of a document made after 4 p.m. or at any time on a holiday must be deemed to have been made on the next day that is not a holiday.

(2) The following are examples of how time is counted under these Rules:
   (a) where a document is deemed to be served 5 days after the day that it was mailed, if it was mailed on a Friday, it is deemed to have been served on the following Friday;
   (b) where a document is required to be filed at least 3 days before a hearing date and the hearing date is a Friday, the last date for filing the document is the Tuesday of that week, assuming no day that week is a holiday;
   (c) where a document is required to be filed at least 3 days before the hearing date and the hearing date is a Tuesday, the last date for filing the document is the Thursday prior to the day of the hearing, assuming no weekday between the two days is a holiday; and
   (d) where a document is required to be served at least 14 days before a specified date and that date is a Friday, the last date for filing the document is the Friday two weeks before the specified date.

(3) Where a time of day is mentioned in these Rules or in any document, the time referred to shall be taken as the time observed locally, unless explicitly expressed otherwise in the document.

### 3.02 Extension or Abridgment of Time

(1) The Registry must refuse to accept a document that any person seeks to file after the time for doing so as specified in these Rules, a Practice Direction or an order has expired, unless that person also files an application for an extension or abridgment of time with the document or, where the document itself is an application, the application includes a request for an extension or abridgment of time in the relief sought.

(2) The Court may, on its own initiative or upon application, extend or abridge any time prescribed by these Rules, a Practice Direction or an order, on such terms as are just.

(3) The Court must not make an order extending or abridging time unless an application for an extension or abridgment of time is made before the expiration of the time prescribed except where it is satisfied that there were circumstances making it impractical to do so.

## PART 4: DOCUMENTS AND FORMS

### 4.01 Form and Content of Documents

(1) So far as practicable, any document prepared for use in or filed with the Court must,
   (a) be on paper that is 11 inches long by 8.5 inches wide with 1" margins on all sides;
   (b) be printed, typed, written or reproduced legibly, one side per page with double spaces between the lines where possible;
   (c) where typed, the characters used must be of 12 point size font.

(2) Every document issued or filed with the Court must,
   (a) be headed with the full title of proceedings as per General Heading (Form 4A);
   (b) state the name and Address for Service of the party on whose behalf it is filed;
   (a) except in the case of an Affidavit, be signed by the party or Attorney-at-Law of the party on whose

behalf it is filed, with the name of the signatory set out legibly below the signature;
(b) in the case of an Affidavit, be sworn by the deponent with the name of the deponent set out legibly below the signature and the date when he or she swore it; and
(c) include a Back Sheet (Form 4B) that states,
(i) the name and Address for Service of the party on whose behalf it is filed; and
(ii) the Registry file number assigned to the proceeding, and the name and address of the Registry in which the proceeding is pending.

(3) The Chancellor may, by Practice Direction,
(a) prescribe further requirements for the form and contents of documents to be filed with the Court;
(b) require any document to be used in or filed with the Court to be in a format that facilitates electronic recording or electronic filing of that document; and
(c) prescribe the conditions under which documents may be served or filed electronically.

**4.02 Use of Prescribed Forms**

(1) The forms prescribed by these Rules must be used where applicable and with such variations as the circumstances require.
(2) A form must not be varied so as to omit any information or guidance that the form is intended to give to the recipient of the form.

**4.03 Documents Issued by the Court**

(1) Every document that is required to be issued must be sealed by the Registry before it is served.
(2) Any person seeking to have a document issued must,
(a) if the document is a Statement of Claim, file an Information for Court Use (Form 4C); and
(b) submit sufficient copies to the Registry in order for the Registry to keep a copy for the Court's file, to provide an issued copy for keeping by the person seeking to have it issued, and for service on all of the other parties to the proceeding, whether or not service is arranged by the Registry.
(3) A document is sealed if it is stamped with the Court's seal or by any other means prescribed by Practice Direction.
(4) The Registry may only issue a document if the prescribed fee is paid and it is satisfied that the document meets all of the requirements of these Rules as applicable to that document.
(5) A document purporting to bear the Court's seal is admissible in evidence without proof of its authenticity.

**4.04 Filing of Documents with the Court**

(1) All documents required to be filed under these Rules may be filed at any Registry.
(2) Every person filing a document is obligated to ensure that their address for service on the document is correct and current, and if changed, to provide the Court and all parties to the proceeding with an updated address for service.
(3) The Registry must not accept a document for filing unless the prescribed fee is paid and it is satisfied that the document meets all of the requirements of these Rules as applicable to that document.
(4) Where a document is accepted for filing, the Registry must stamp it as filed using the Court's stamp and, on or around that stamp, state the date and time that it was filed as well as note the name and signature of the person at the Registry who accepted it for filing.
(5) Any document, other than one that is required to be issued, may be filed,
(a) by delivering, mailing or couriering it to the Registry together with the prescribed filing fee, if any, in which case it is deemed to be filed on the date that is stamped as filed by the Registry; or
(b) where no filing fee is required to be paid, by delivering, mailing, faxing or couriering it to the Registry or, where the Registry acknowledges receipt of the document, by email.
(6) Where a filing fee is required to be paid, the document shall not accepted for filing unless the fee is paid.
(7) Where a document is received after 4:00 p.m. or on a day that is a holiday, it is deemed to be filed on the next day that is not a holiday.
(8) Where the Court has no record of receipt of a document alleged to have been filed, the document shall be

deemed not to have been filed, unless the Court orders otherwise.

(9) Any person filing a document may provide the Registry with a duplicate copy of the document for it to be stamped as filed and returned to the person as proof of filing.

**4.05 Right to Inspect and Copy Documents Filed with the Court**

(1) Except where a proceeding or part of a proceeding is sealed from the public by order of the Court, upon payment of the prescribed fee,
   (a) any party to a proceeding, or their Attorney-at-Law, is entitled to inspect the Court's file in relation to the proceeding; and
   (b) any other person is entitled to inspect any Statement of Case filed in the Registry in relation to a proceeding.

(2) Any person entitles to inspect a document pursuant to sub-Rule (1) may, upon payment of the prescribed fee, obtain a photocopy or a certified copy of that document.

(3) Where a certified copy of any document filed with the Registry is requested, the Registry must endorse it with a certificate signed by the Registrar stating, "*I certify that this document is a true copy of the document as filed with the High Court of the Supreme Court of Judicature of Guyana*."

(4) No Court file or portion thereof that is in the custody of the Registry may be taken out of the Registry without permission of the Court, unless it is to be sent or transferred to another Registry.

## PART 5: ORDERS

**5.01 Court Orders**

(1) The Court may make an order on its own initiative or upon application to the Court.

(2) If the Court proposes to make an order on its own initiative, where prior to making such an order the Court proposes to hear submissions in person, the Court must give each party at least 7 days notice of the date, time and place of such hearing.

(3) When making an order under these Rules, the Court may,
   (a) impose such terms as are just; and
   (b) make the order subject to conditions, including but not limited to,
      (i) requiring a party to give an undertaking;
      (ii) requiring a party to give security;
      (iii) requiring a party to pay all or part of the costs of the proceeding;
      (iv) requiring the payment of money into Court or as the Court may otherwise direct; and
      (v) that a party permit entry by another party or someone acting on behalf of another party onto property owned or occupied by it.

**5.02 Form of Order**

(1) Every order of the Court must,
   (a) be in Form 5A (Order) or Form 5B (Judgment);
   (b) include a recital of the particulars necessary to understand the order, including the date of the hearing, the parties who were present or represented at the hearing and those who were not, and any undertaking given by a party as a condition of the order;
   (c) state the name and title of the Judge who made it;
   (d) bear the date on which it is made; and
   (e) be issued by the Court.

(2) The Court must, whenever practicable, specify the consequences of a failure to comply with the order, unless it is a Judgment.

(3) Where an order is on consent, it must expressly state that it is made on consent.

(4) An order for the payment of money on which interest is payable shall set out the rate of interest and the date from which the interest is payable.

(5) Where a Judge ceases to hold office or becomes incapacitated after making an endorsement that the parties seek to have issued as an order, another Judge may settle and sign it.
(6) Any party may prepare a draft of the formal order to be issued and send it to all other parties represented at the hearing for approval of its form and content.
(7) Where all the parties that attended at a hearing approve the form and content of the order resulting from that hearing, the party who prepared the draft order must file the approval of all the parties represented at the hearing, together with a copy of the order, and the Registry may sign the order on behalf of the Court and issue it.

**5.03 Service of Order**

(1) Upon issuing any order, the Registry must immediately serve it on,
  (a) every party to the proceeding in which the order is made; and
  (b) any other person on whom the Court considers necessary.
(2) The Court may direct that any order be served on a party in person as well as on their Attorney-at-Law.

**5.04 Effect of Order**

(1) An order takes effect as of the day that it is made, unless the Court specifies that it is to take effect on another date.
(2) Every party to the proceeding in which an order is made is bound by the terms of the order, whether or not the order was served on the party, unless and until the order is set aside.
(3) Any other person named in the order who is not a party to the proceeding in which the order is made is bound by the terms of the order, unless and until the order is set aside.
(4) Every person or party bound by an order must comply with it immediately, without demand, unless the order specifies some other date for compliance or a subsequent order varies the time for compliance.
(5) Any person that is not a party to a proceeding but is served with an order in which they are named is entitled to participate in any proceeding relating to or arising out of the order.
(6) Where an order requires a person to carry out an act or omission for the benefit of another person, that other person may consent to different terms unless these Rules prevent it.

**5.05 Correcting, Setting Aside or Varying an Order**

(1) The Court may, on its own initiative or upon application, correct an error in an order arising from a clerical mistake, accidental slip or omission.
(2) A party may make an application to set aside or vary an order of the Court,
  (a) at any time, where the order was obtained by fraud; or
  (b) in accordance with a Rule, a Practice Direction or an order, where permitted to do so.
(3) Any person that is not a party to a proceeding but is served with an order that affects them may, within 28 days of having been served with the order, make an application for to set aside or vary the order.

**5.06 Failure to Obey an Order**

(1) If a person fails to obey an order, the Court may deal with the failure as it considers just, including making,
  (a) an order for costs;
  (b) an order striking out a Statement of Case or other document filed by a party;
  (c) an order that all or part of a document that was required to be provided but was not, may not be used in the proceeding;
  (d) an order postponing the trial or any other step in the proceeding; and
  (e) a contempt order.
(2) If an order is made striking out a party's Statement of Case,
  (a) the party is not entitled to any further notice of any steps in the proceeding;
  (b) the party is not entitled to participate in the proceeding in any way; and
  (c) the Court may deal with the case in the party's absence.

  unless these Rules provide or the Court orders otherwise.

## PART 6: AUTHORITY AND DUTIES OF REGISTRY

### 6.01 Authority and Duties of the Registry

(1) The Registry shall have power to exercise all such authority conferred upon it under these Rules, a Practice Direction or an order of the Court.

(2) It is the duty of the Registry to,
   (a) issue and accept for filing all documents in accordance with these Rules;
   (b) keep a continuing and current record of every document issued and filed in the course of a proceeding, which may be maintained electronically;
   (c) give notice by advertisement in the Official Gazette where required;
   (d) affix notices to notice boards in the Registry by 8:30 a.m. each morning, outside courtrooms and in the library, of the times for the hearing of any proceeding scheduled for that day;
   (e) deposit all sums paid into Court under these Rules into an interest bearing account at a financial institution, to the credit of the proceeding to which the sum relates; and
   (f) perform all other duties required under these Rules, a Practice Direction, order or as directed by the Chancellor.

(3) The Registrar may assign different duties to different staff of the Registry.

## PART 7: SERVICE

### 7.01 General Provisions regarding Service

(1) Service of any document under these Rules must be carried out in accordance with this Part, unless otherwise required by another Rule.

(2) Except where a document is to be served out of the jurisdiction (in which case Rule 7.05 applies), unless a Rule, Practice Direction, another enactment or order specifies otherwise,
   (a) an originating process must be served personally; and
   (b) every document other than an originating process may be served personally or by an alternative to personal service, unless a Rule, Practice Direction or order require otherwise.

(3) Where service of a document is arranged for by,
   (a) the Registry, the Registry must lodge in the file proof of service of that document; or
   (b) any other person or party, that person or party must arrange for the filing of proof of service of that document if required or necessary.

(4) A person who has not been served with the originating process but delivers a Defence or Affidavit in Defence to it is deemed to have been served with the originating process.

(5) Where an Attorney-at-Law accepts service on behalf of a person or party, the Attorney-at-Law is deemed to represent to the Court that he or she has the person's or party's authority to accept service of that document on their behalf.

### 7.02 Service of Originating Process within the Jurisdiction

(1) Every originating process that is issued must, as soon as practicable, be personally served on all other parties to the proceeding who are within the jurisdiction, unless these Rules, a Practice Direction or order provide otherwise.

(2) Where the originating process is a claim, the Registry must arrange for the document's personal service upon it being issued.

(3) Where personal service of a document is required to be arranged by the Registry but service cannot be effected despite at least one (1) attempt, the Registry may,
   (a) effect personal service on the person or party by leaving the document with an adult who resides at the home of the person to be served or who is an employee or agent of the party to be served; or
   (b) serve a Notice Requiring Party to arrange own Service (Form 7A) on the person or party that filed or issued the document, and that party must arrange for personal service of the document.

(4) Personal service of an originating process on parties other than an opposite party is not required.
(5) An amended originating process need not be served personally on a party who was served with the original originating process and responded to it, but must be served personally on any opposite party who has not responded to the original originating process, whether or not the party is in default of these Rules.

**7.03 Personal Service of Other Documents within the Jurisdiction**

(1) Where these Rules, a Practice Direction, another enactment or order require personal service of a document, the document must be served personally unless the person upon whom the document is to be served, or their Attorney-at-Law, acknowledges acceptance of service.
(2) Where a document is required to be served personally, it must be served by a Marshal or other person authorised to serve process in civil cases.
(3) A document is served personally by handing the document to, or leaving it with, the person permitted to be served under Rule 7.06.

**7.04 Alternatives to Personal Service of Other Documents within the Jurisdiction**

(1) Where a document is not required to be served by personal service, it may be served by an alternative to personal service.
(2) Alternatives to personal service include,
    (a) mailing a copy to the person's Attorney-at-Law or, if none, to the person;
    (b) sending a copy by courier to the person's Attorney-at-Law or, if none, to the person;
    (c) if the total number of pages (including any cover page) of the document or documents relating to a single step in a proceeding is not more than 20, faxing a copy to the person's Attorney-at-Law or, if none, to the person;
    (d) emailing a copy to the person's Attorney-at-Law or, if none, to the person, but service is only effected if the recipient acknowledges receipt of the email;
    (e) leaving a copy at the person's place of residence, in an envelope addressed to the person, with anyone who appears to be an adult person resident at the same address and, on the same or next day, mailing another copy to the person at that address; or
    (f) any other method that was contractually agreed by the person to be served where the subject of the dispute between the parties is that contract.

**7.05 Service Out of the Jurisdiction**

(1) Unless the person on whom a document is to be served agrees in writing to accept service of the document, every document to be served on a person outside of the jurisdiction of Guyana requires permission of the Court, which may be obtained by making an application without notice.
(2) The Court must not give permission to serve a document on a person that is out of the jurisdiction unless the Court is satisfied that,
    (a) where the document is an originating process, the claim against the person that is out of the jurisdiction has a reasonable prospect of success;
    (b) the document is a proper one for service out of the jurisdiction; and
    (c) the method of service proposed is appropriate.
(3) Where an order is made permitting service of a document on a person that is out of the jurisdiction, the order must,
    (a) state the method of service required and the time within which the document must be served;
    (b) where the document is to be served in a country in which English is not an official language, require that the document be served with a certified translation of the document as well as the order into any official language of the country in which the document is to be served; and
    (c) require that the order be served together with the document that it permits to be served out of the jurisdiction.

**7.06 On Whom and When Service may be Effected**

(1) Service may be effected, where the person to be served is,
  (a) an individual, on that individual;
  (b) a company, by leaving the document with or delivering the document to,
    (i) the registered office of the company;
    (ii) any director, manager, officer, receiver, receiver-manager or liquidator of the company;
    (iii) any manager or other senior employee of the company, at the place of business of the company;
    (iv) the registered agent of the company;
  (c) a partnership,
    (i) on any one or more partners;
    (ii) on a manager or any person having, at the time of service, control or management of the partnership business or other responsible person at the principal place of business of the partnership;
  (d) a minor who is not also a patient, one of the minor's parents or guardians or, if there is no parent or guardian, on the person with whom the minor resides or in whose care the minor is, unless the Court orders otherwise;
  (e) a patient,
    (i) on the curator or committee of the patient or any person authorized under any relevant law relating to mental health to conduct the proceedings in the name of the patient or on the patient's behalf, unless the Court orders otherwise; or
    (ii) if there is no person so authorized, on the person with whom the patient resides or in whose care the patient is; or
  (f) on the Attorney General, where no express provision as to service is made by another enactment or Rule, on an official at or employee of the Attorney General's office.

(2) Where a person is represented by an Attorney-at-Law, service of any document other than an originating process must be effected on that Attorney-at-Law.

(3) Notwithstanding sub-Rule (1), the Court may, on its own initiative or upon application, direct that a document be served on any other person in any other manner that it considers appropriate.

(4) Service may be effected on any day but will be deemed effective as follows:

| **Method of Service** | **When Effective** |
|---|---|
| Personal Service | On the day that it is left with the person |
| Mail | On the fourteenth day after the document was mailed |
| Courier | On the day on which the courier verifies to the sender that the document was delivered |
| Fax | On the date shown on the fax or, if the fax shows that the document was served after 4 p.m., the following day |
| Email | On the date shown in the email or, if the email shows that the document was served after 4 p.m., the following day |
| Leaving a copy at the person's place of residence and mailing it | On the fourteenth day after the document was mailed |
| Any other method that was contractually agreed upon | On the date that the contract stipulates or, where the contract does not so stipulate, on the fifth day after the document was sent unless it was sent by one of the other methods in this chart |

(5) If the effective date of service is a holiday, service is deemed effective on the next day that is not a holiday.

**7.07 Proof of Service**

(1) Proof of service may be established by,
  (a) an Affidavit of Service (Form 7B) made by the person effecting the service;
  (b) a dated and signed endorsement of service on a copy of the document that was served by the person who accepted service; or
  (c) in the case of service by a Marshal, a dated and signed endorsement of service on a copy of the document by the Marshal.

(2) Upon proof of service being filed, the Registry may refer any proof of service to a Judge who must consider and endorse on it whether it satisfactorily proves service and, if the Judge is not satisfied that service was sufficient to enable the person to ascertain the contents of the document, the Registry must serve the person who filed the proof of service with a Notice Requiring Party to Serve (Form 7C).

**7.08 Substituted Service, Approving Irregular Service and Dispensing with Service**

(1) Notwithstanding the provisions of these Rules, on its own initiative or upon application, the Court may,
  (a) order substituted service requiring the document be served by any other method it considers appropriate if the Court is satisfied that,
    (i) the method of substituted service could reasonably be expected to bring the document to the attention of the person to be served and enable him or her to ascertain the contents of the document; and
    (ii) sufficient steps were taken to attempt to serve the document or, where the person to be served could not been located, to attempt to locate the person to be served;
  (b) approve service of a document that has been served by a method that is not permitted by these Rules or an order, if the document came to the attention of the person to be served or would have come to the person's attention if the person had not been evading service; or
  (c) order that service is not required, if reasonable efforts to locate the person to be served have not been or would not be successful and there is no method of service that could reasonably be expected to bring the document to the person's attention.

(2) In an order for substituted service, the Court must specify when such service is effective.

(3) Where an order is made approving service of a document that has been served by a method that is not permitted by these Rules or an order, the order must specify when service of the document was effected.

(4) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these Rules.

**7.09 Setting Aside Service**

(1) A person who has been served or who is deemed to have been served with a document may make an application to set aside the service of that document, which application must establish that,
  (a) the document,
    (i) did not come to the person's attention;
    (ii) came to the person's attention only at some time later than when it was served or is deemed to have been served; or
    (iii) was served on the person out of the jurisdiction without permission of the Court when permission was required;
  (b) the case is not a proper one for the Court's jurisdiction; or
  (c) the person that served the document does not have a sufficient prospect of establishing a good cause of action.

## PART 8: COMMENCEMENT OF PROCEEDINGS

### 8.01 How to Commence Proceedings

(1) A person commences a proceeding by issuing a Statement of Claim (Form 8A) or, where permitted, a Fixed Date Application (Form 8B).

(2) A proceeding must be commenced by way of a Fixed Date Application instead of a Statement of Claim if,
   (a) another proceeding to which the matter relates is not already before or has not already been determined by the Court and,
      (i) the relief claimed is urgent;
      (ii) it is in respect of any matter where it is unlikely that there will be any material facts in dispute; or
      (iii) the matter can be determined at the date fixed for the hearing at the time of the filing of the application, based on the Affidavit evidence filed in support of and against the application; or
   (b) these Rules, a Practice Direction or order require it.

(3) Where another enactment gives a person the right to apply to the Court, such application must be made by way of a Fixed Date Application unless a proceeding to which the application relates is already pending before the Court in which case the application must be made under Part 11.

(4) The Court must not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

(5) A proceeding is commenced on the day on which the Statement of Claim or Fixed Date Application is issued.

### 8.02 Duty to Set out Case in Statement of Claim or Fixed Date Application

(1) Every Statement of Claim and Fixed Date Application must,
   (a) include a description of the nature of the claim or application;
   (b) state all of the facts upon which the Claimant or Applicant relies; and
   (c) specify any remedy being sought.

(2) Notwithstanding sub-Rule (1)(c), the Court may grant any other remedy to which the Claimant or Applicant may be entitled.

(3) The Claimant or Applicant may not rely on any allegation or fact that could have been but is not set out in the Statement of Claim or Fixed Date Application, unless the Court gives permission.

(4) A Claimant or Applicant who seeks,
   (a) aggravated or exemplary damages must state so;
   (b) interest must state so, including the basis of the entitlement, rate and period for which it is sought;
   (c) a specified sum of money must state the total amount of interest sought, if any, up to the date of the issuance of the originating process, as well as the daily rate at which interest will accrue after that date;
   (d) recovery of any property must state the estimate of the value of that property; and
   (e) damages for personal injuries must state the Claimant's date of birth and include the particulars of any special damages sought.

(5) Where a quantum of damages is not specified, the Statement of Claim or Fixed Date Application must include a statement that the damages claimed exceed the jurisdiction of the Magistrate's Court.

(6) A Claimant or Applicant who claims in a representative capacity must state what that capacity is and whom the Claimant or Applicant represents.

### 8.03 Proceedings Commenced by Statement of Claim

(1) Every Statement of Claim must be issued before it is served and must be served upon every Defendant within 6 months of being issued.

(2) A Claimant may make an application, without notice, for an order extending the time for service of a Statement of Claim but the period by which the time for service can be extended may not be longer than six (6) months on any one application.

(3) The Court may make an order extending the time for service of a Statement of Claim if it is satisfied that,

(a) the Claimant has taken all reasonable steps to trace and serve the Defendant; or
(b) there is some other compelling reason for extending the period.

(4) If an order is made extending the time for service of the Statement of Claim, the Claimant must serve a copy of the order extending the time for service together with the Statement of Claim.

(5) Where the Statement of Claim is not served upon at least one of the Defendants within the time required under these Rules of an order of the Court, the Court must serve the Claimant with a Notice of Pending Dismissal (Form 8C) requiring the Claimant to, within 28 days of the date of the Notice of Pending Dismissal,
(a) file proof of service of the Statement of Claim upon at least one Defendant; or
(b) make an application for an order extending the time for service,
failing which the Statement of Claim must be dismissed by the Court without further notice.

(6) Any application for an order extending the time for service of the Statement of Claim must be made before the proceeding is dismissed pursuant to a Notice of Pending Dismissal.

**8.04 Proceeding Commenced by Fixed Date Application**

(1) Every Fixed Date Application must be issued before it is served.

(2) Where a proceeding is to be commenced by way of a Fixed Date Application, the Applicant must,
(a) attach an Affidavit (Form 8D) of all of the evidence upon which the Applicant relies; and
(b) attach a draft of the order that the Applicant seeks to have the Court make.

(3) On issuing the Fixed Date Application, the Registry must schedule a date for the hearing of the Fixed Date Application and mark on it the date, time and place that the application is to be heard.

(4) Where the Fixed Date Application is,
(a) urgent and made without notice, it need not be served and the Registry must schedule it to be heard on the day after it is issued;
(b) made without notice, it need not be served and the Registry must schedule it to be heard within 4 days of being issued;
(c) urgent but made on notice, the Registry must schedule it to be heard within 7 days of being issued and the application must be served at least 4 days before the date scheduled for the hearing; and
(d) in any other case, the Registry must schedule it to be heard within 28 days of being issued and the application must be served at least 7 days before the date scheduled for the hearing,
unless these Rules, a Practice Direction or the Court otherwise permits.

(5) At the hearing of a Fixed Date Application, the Court must,
(a) proceed to determine the application based on the evidence before it; or
(b) if there is insufficient evidence to determine the application on its merits,
(i) dismiss the application; or
(ii) proceed as if the Fixed Date Application was commenced by way of Statement of Claim and conduct the hearing as a first Case Management Conference, complying with Part 25.

(6) Where a Fixed Date Application must proceed as if it was commenced by way of Statement of Claim, the Court must mark the Fixed Date Application on its face as proceeding as a Statement of Claim and the Applicant must be referred to as a Claimant and any Respondents must be referred to as Defendants.

(7) At the hearing of the Fixed Date Application, in addition to any other powers that the Court may have, the Court may award costs.

## PART 9: DISPUTING THE COURT'S JURISDICTION

**9.01 Procedure for Disputing the Court's Jurisdiction**

(1) A party who seeks to dispute the Court's jurisdiction or who contends that the Court should not exercise its jurisdiction to determine the Statement of Claim or Fixed Date Application must make an application for a declaration to that effect within the time required for filing a Defence or Affidavit in Defence.

(2) On an application disputing the Court's jurisdiction, if the Court determines that it does have jurisdiction,

it must make an order as to the time permitted to file a Defence or Affidavit in Defence.

**9.02 Consequence of Failing to Make an Application Disputing the Court's Jurisdiction**

(1) A Defendant or Respondent who does not make an application disputing the Court's jurisdiction within the required time is deemed to have accepted the Court's jurisdiction to try the Statement of Claim or hear the Fixed Date Application, unless the Court orders otherwise.

(2) If a Defendant has not filed a Defence or an application disputing the Court's jurisdiction within the required time, Default Judgment may be entered against that party under Part 12.

## PART 10: DEFENDING A PROCEEDING

**10.01 Requirement to Defend where Proceeding Commenced by Statement of Claim**

(1) Where a proceeding is commenced by Statement of Claim, a Defendant who wishes to dispute all or part of the claim must file, with proof of service, a Defence (Form 10A).

(2) A Defence must be filed within 28 days of the Defendant being served unless the Claimant agrees to any other period of time but only if the Defendant files, prior to the expiration of time for filing the Defence, a Consent (Form 10B) setting out the new date by which the Defence must be filed in accordance with the agreement with the Claimant.

(3) The Registry must not accept for filing any Defence that is not filed within the time specified under this Rule, unless the Court otherwise permits.

(4) If a Defendant fails to file a Defence within the time required under this Rule, the Defendant is deemed to admit the Statement of Claim, and Default Judgment may be entered against that Defendant under Part 12.

**10.02 Requirement to Defend where Proceeding Commenced by Fixed Date Application**

(1) Where a proceeding is commenced by Fixed Date Application, a Respondent who wishes to dispute all or part of the application must file, with proof of service, an Affidavit in Defence (Form 10C),
   (a) within 2 days of the date scheduled for the hearing, where the Fixed Date Application that was issued was urgent; or
   (b) within 4 days of the date scheduled for the hearing in any other case.

(2) The Registry must not accept for filing any Affidavit in Defence that is not filed within the time specified under this Rule, unless the Court otherwise permits

(3) If a Respondent fails to file an Affidavit in Defence within the period required, the Court may,
   (a) proceed to determine the hearing of the Fixed Date Application in any event; or
   (b) only where the Respondent has a reasonable explanation for the failure, adjourn the hearing of the Fixed Date Application and order that the Respondent file, with proof of service, an Affidavit in Defence by a specified date.

**10.03 Duty to Set Out Case**

(1) Every Defence and Affidavit in Defence must,
   (a) be as short as practicable;
   (b) set out all the facts on which the Defendant or Respondent relies upon to dispute the claim or application;
   (c) identify which, if any, allegations in the Statement of Claim or Fixed Date Application,
      (i) are admitted;
      (ii) are denied, including the reasons for denying them;
      (iii) are neither admitted nor denied because the Defendant or Respondent does not know whether they are true; and
      (iv) the Defendant or Respondent wishes the Claimant or Applicant to prove; and

(d) if the Defendant or Respondent intends to prove a different version of events from that set out by the Claimant or Applicant, set out the Defendant's or Respondent's own facts in support of that different version.

(2) If, in relation to any allegation in the Statement of Claim or Fixed Date Application, the Defendant or Respondent does not admit or deny and put forward a different version of events, the Defendant or Respondent must state the reasons for resisting the allegation.

(3) The Defendant or Respondent may not rely on any allegation or fact that is not set out in the Defence or Affidavit in Defence but which could have been set out, unless the Court otherwise permits.

(4) A Defendant or Respondent who defends in a representative capacity must state what that capacity is and whom the Defendant represents.

**10.04 Defence of Tender**

(1) The Defence of tender is not available unless the Defendant pays the amount alleged to have been tendered into Court prior to filing its Defence or Affidavit in Defence.

(2) Where the amount alleged to have been tendered is paid into Court in accordance with this Rule,
(a) the Court may make an order releasing the funds at the hearing of the Fixed Date Application; or
(b) where the proceeding was commenced by Statement of Claim and the Claimant has not notified the Defendant within 28 days of being served with the Defence that it accepts payment, the Defendant may make an application for an order releasing the funds.

**10.05 Reply to Defence or Affidavit in Defence**

(1) Unless it has already been pleaded in the Statement of Claim or Fixed Date Application, a Claimant or Applicant who intends to prove a version of facts different from that pleaded in the Defence or Affidavit in Defence must,
(a) where the proceeding was commenced by Statement of Claim, file a Reply (Form 10D) setting out the different version, with proof of service, within 14 days of being served with the Defence; or
(b) where the proceeding was commenced by Fixed Date Application, file an Affidavit in Reply (Form 10E) setting out the different version, with proof of service, within 2 days of the date scheduled for the hearing of the Fixed Date Application.

(2) Where a Defence contains a Counterclaim or Crossclaim, Part 18 applies.

**10.06 Consequence of Admissions**

(1) Where, in its Defence, a Defendant admits,
(a) the entirety of a Claimant's Statement of Case as against it, the Claimant may make an application for Default Judgment under Part 12 or Summary Judgment under Part 15;
(b) liability on the Statement of Case as against it, the Claimant may make an application for Summary Judgment under Part 15 and request that damages be assessed under Part 16;
(c) only specific allegations or facts of another party's Statement of Case, Claimant may make an application for Summary Judgment under Part 15 where appropriate.

(2) An admission made in relation to a proceeding is to be taken to have been made for the purpose of that proceeding only and in favour only of the parties concerned in that proceeding.

**10.07 Withdrawal of Admissions**

(1) Any party may make an application for permission to withdraw an admission that it made, and the Court may make such order as it considers just.

(2) In deciding whether to give permission for an admission to be withdrawn, the Court must have regard to all the circumstances of the case, including,
(a) the grounds upon which the Applicant seeks to withdraw the admission, including whether or not new evidence has come to light that was not available at the time the admission was made;
(b) the conduct of the parties, including any conduct which led the party making the admission to do so;
(c) the prejudice that may be caused to any person if the admission is withdrawn or refused;

(d) the stage in proceedings at which the application to withdraw the admission is made, in particular in relation to the date or period fixed for trial;
(e) the prospects of success (if the admission is withdrawn) of the claim or part of the claim in relation to which the admission was made; and
(f) the interests of the administration of justice.

## PART 11: APPLICATIONS FOR COURT ORDERS

### 11.01 Applications for Court Orders

(1) Where any Rule, Practice Direction, order or other enactment enables a person to make an application, it must be made by issuing a Notice of Application (Form 11), which must be made on notice to all of the other parties to the proceeding, unless these Rules, a Practice Direction or order otherwise permit.
(2) An application under this Part may be made orally, without a Notice of Application, if the Court permits or be made in writing where these Rules, a Practice Direction or the Court permits.
(3) If an application must be made within a specified period, it is so made if it is made orally to the Court or issued within that period.
(4) Where an order is sought in relation to a matter not already pending before or determined by the Court, this Part does not apply and the person seeking the order must proceed under Part 8.

### 11.02 When Application to be Heard

(1) Except where an application is made in writing, it must be scheduled to be heard,
  (a) at the next Case Management Conference in the proceeding; or
  (b) where it is not practical or possible for the application to be heard at the next Case Management Conference, at the next available date that the Court hears such applications.
(2) If an application could have properly been dealt with at a Case Management Conference but was scheduled for an earlier date by the Applicant, the Court may order that the Applicant pay costs to the Respondent.
(3) If the Applicant or any party on whom the application has been served fails to attend the hearing of the application, the Court may proceed in the absence of that party.
(4) The Court must serve a copy of any order made at the hearing of the application on any party to the proceeding that was entitled to notice of the application but was not present or represented at the hearing.

### 11.03 Form and Content

(1) Every application under this Part must,
  (a) state the relief that Applicant is seeking;
  (b) set out the grounds on which the Applicant is relying in order to obtain the requested relief; and
  (c) unless these Rules, a Practice Direction or an order otherwise permit,
    (i) attach a supporting Affidavit (Form 8D) of the evidence upon which the Applicant relies, unless the application is being made on consent; and
    (ii) attach a draft of the order that the Applicant seeks to have the Court make.
  (d) where the application is made on consent, attach a Consent (Form 10B) that is signed by each of the parties or, where represented, their Attorney-at-Law; and
  (e) where the application is made without notice,
    (i) state the basis upon which the application may be made without notice; and
    (ii) contain a written statement in the draft order advising the Respondent of the Respondent's right to make an application to set it aside or vary it and the time within which to do so.
(2) An Applicant may not request any order that was not sought in the application, unless the Court permits.
(3) An Application under this Part that is made on notice and is not made in writing must,
  (a) state the date, time and place that the application is to be heard; and

(b) be served on all of the parties to the proceeding at least 7 days before the date scheduled for the hearing of the application.

(4) Where any Application under this Part that is made on notice, the Applicant must file proof of service of the application on all of the parties to the proceeding.

**11.04 Written Submissions**

(1) A written submission consisting of concise argument stating the facts and law relied upon by the party may,
   (a) be filed by the Applicant, with proof of service, at least 7 days before the hearing;
   (b) be filed by the Respondent, with proof of service, at least 4 days before the hearing; and
   (c) be filed by the Applicant in reply, with proof of service, at least 2 days before the hearing.

(2) Where necessary, the Respondent may also file an Affidavit (Form 8D) containing the evidence it intends to rely on in response to the application, together with its written submission.

(3) Where necessary, the Applicant may file a supplementary Affidavit (Form 8D) containing the evidence it intends to rely on in reply to the Respondent's written submission, together with its written submission.

**11.05 Applications which may be dealt in Writing**

(1) The Court may deal with an application in writing without holding a hearing in cases where,
   (a) the application is made without notice;
   (b) all of the parties to the proceeding have consented that the application be determined in writing;
   (c) all of the parties to the proceeding have consented to the terms of a draft order that is in compliance with these Rules; or
   (d) the Court determines that holding a hearing would be contrary to the overriding objective.

(2) Where an application is dealt with in writing, the Court must serve a copy of any order granted thereunder on all of the parties to the proceeding.

**11.06 Court's Powers on an Application**

(1) On an application for Court orders, the Court may exercise any power that it might exercise at a Case Management Conference.

(2) The Court has power to control the evidence given at any hearing of an application, including the power to,
   (a) issue a Summons to Witness (Form 29B) requiring a party or other person to attend at the hearing of the application;
   (b) question any party or witness, either orally or by putting written questions to them; and
   (c) require a party to produce a document or documents.

(3) If the Court chooses to question a witness, any party may then cross-examine the witness.

**11.07 Respondent's Remedies**

(1) A party who was not present when an order was made may, within 14 days of having been served with the order, make an application to set aside or vary the order.

(2) In addition to the requirements of this Part, the Affidavit in support of the application to set aside or vary an order must,
   (a) provide the reason for failing to attend the hearing; and
   (b) demonstrate that it is likely that had the party been present, some other order might have been made.

## PART 12: DEFAULT JUDGMENT

### 12.01 Default Judgment

(1) Where a Defendant has failed to file a Defence within the time required under these Rules, a Claimant may obtain a Default Judgment against that Defendant without a trial subject to the provisions of this Part, unless another Rule, Practice Direction or order prohibits it.

(2) Where the Claimant seeks Default Judgment against a Defendant and the claim against that Defendant is,
   (a) for a specified sum of money, Default Judgment may be awarded in the amount claimed;
   (b) for a specified sum of money together with interest at an unspecified rate, on election by the Claimant, Default Judgment may be awarded for,
      (i) the sum of money claimed together with interest at the statutory rate of interest from the date of the claim to the date of obtaining the Default Judgment; or
      (ii) the sum of money claimed and for interest to be assessed;
   (c) partly for a specified sum and partly for an unspecified sum, Default Judgment may be awarded,
      (i) for only the specified sum if the Claimant abandons the claim for the unspecified sum; or
      (ii) for the specified sum, with the unspecified sum to be determined by the Court.
   (d) for an unspecified sum of money, Default Judgment may be awarded with damages to be assessed;
   (e) for possession of land, Default Judgment may be obtained for possession on the date specified by the Court;
   (f) on a claim for goods, Default Judgment may, at the option of the Claimant, require the Defendant to,
      (i) deliver the goods;
      (ii) deliver the goods by a certain date or pay the value of the goods as assessed by the Court;
      (iii) pay the value of the goods as assessed by the Court;
      (iv) deliver the goods without giving the alternative of paying their assessed value; or
      (v) where the claim specifies the value of the goods, pay that value.
   (g) for some other remedy, Default Judgment may be as the Court considers just.

(3) Where a Claimant seeks Default Judgment against one of two or more Defendants and,
   (a) the claim can be dealt with separately from the claim against the other Defendants, the Court may enter Default Judgment against that Defendant and the Claimant may continue its proceedings against the other Defendants; or
   (b) the claim cannot be dealt with separately from the claim against the other Defendants, the Court may not enter Default Judgment against that Defendant and must deal with it at the same time as it disposes of the claim against the other Defendants.

(4) Where the claim is against the State, a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of another enactment, or a minor or patient, the Claimant must first make an application for an order permitting an application for Default Judgment against that Defendant.

### 12.02 Requirements for Default Judgment

(1) A Claimant may make an application for Default Judgment, which application may be made without notice and must be made in writing, unless upon considering the application the Court finds that there are exceptional circumstances that require a hearing of the application.

(2) The Court must award Default Judgment where it is satisfied that,
   (a) the claim was served on the Defendant against whom Default Judgment is sought or there is an order dispensing with service on that Defendant;
   (b) the Claimant is entitled to the relief sought based on the facts alleged in the Statement of Claim;
   (c) there is no pending application by the Defendant against whom Default Judgment is sought that,
      (i) disputes the Court's jurisdiction;
      (ii) seeks an extension of time to file a Defence;
      (iii) seeks to strike the Claimant's Statement of Claim; or
      (iv) seeks Summary Judgment against the Claimant.

(d) the Defendant against whom Default Judgment is sought failed to file a Defence within the time required, or that Defendant's Defence has been struck out;
(e) the Claimant has permission of the Court to enter Default Judgment, if required; and
(f) the claim against the Defendant against whom Default Judgment is sought can be dealt with separately from the claim against other Defendants if the Claimant seeks Default Judgment against one of two or more Defendants.

(3) Where Default Judgment is awarded, the Court may award fixed costs to the Claimant, unless the Court orders that costs are to be assessed.
(4) An order for Default Judgment must be served on the party against whom the order was made as well as every other party to the proceeding.
(5) Unless the Defendant obtains an order for setting aside a Default Judgment, the only matters on which a Defendant against whom a Default Judgment has been entered may be heard are costs or enforcement of the order.

**12.03 Application to Set Aside Default Judgment**

(1) The Court may, on its own initiative or upon application, make an order setting aside or varying a Default Judgment.
(2) Every application to set aside or vary a Default Judgment must,
(a) be made within 28 days of the Applicant having been served with the order for Default Judgment;
(b) provide an explanation for the failure to file a Defence; and
(c) attach a draft of the Applicant's proposed Defence.
(3) In considering whether to set aside or vary a Judgment under this Rule, the Court must consider whether,
(a) the explanation given for the failure to file a Defence is reasonable;
(b) the requirements necessary for ordering Default Judgment under this Part were satisfied; and
(c) the Defendant has a real prospect of successfully defending in the claim.
(4) Where a Default Judgment is set aside, the order setting it aside must,
(a) be conditional upon the Defendant filing a Defence by a specified date;
(b) specify that, where the Claimant has abandoned any remedy sought in the claim in order to obtain a Default Judgment, the abandoned claim must be restored if the Default Judgment is set aside; and
(c) be served on every party to the proceeding.

## PART 13: DISMISSAL FOR DELAY

**13.01 Dismissal for Delay**

(1) The Registry must serve a Notice of Pending Dismissal (Form 8C),
(a) on the Claimant, if the claim has not been served on at least one defendant within the time required;
(b) on all parties to the proceeding, if there has been no Case Management Conference held in 6 months and there is no trial or hearing date scheduled in the proceeding; or
(c) as and where these Rules otherwise require it.
(2) The Notice of Pending Dismissal must require any Claimant to the proceeding to file a Requisition (Form 13A) for a Case Management Conference within 28 days of the date of the Notice.
(3) Where the Claimant fails to requisition a Case Management Conference within the time required, the claim must be dismissed for delay by the Registry without further notice and the Registry must mail or otherwise serve a Notice of Dismissal (Form 13B) on all of the parties to the proceeding.
(4) Where a Claimant is a minor or a patient, the claim cannot be dismissed for delay unless the Court permits.
(5) Where a claim against a Defendant who has counterclaimed is dismissed for delay, the Defendant may, within 28 days after the dismissal, file a written notice of its election to proceed with the Counterclaim, with proof of service, failing which the Counterclaim must be deemed to be discontinued without costs.

(6) Unless the Court orders otherwise, where a claim against a Defendant who has crossclaimed or made a Third or Subsequent Party Claim is dismissed for delay, the Crossclaim or Third or Subsequent Party Claim must be deemed to be dismissed.
(7) This Rule applies, with necessary modifications, to Counterclaims, Crossclaims and Third or Subsequent Party Claims.

**13.02 Setting Aside Dismissal for Delay**

(1) If a claim is dismissed for delay in accordance with this Part, any party to the proceeding may, within 28 days of the date of the Notice of Dismissal, make an application for an order to set aside the dismissal.
(2) In determining whether to set aside the dismissal, the Court must be satisfied that,
    (a) the explanation given for the failure comply with the Notice of Pending Dismissal is reasonable; and
    (b) the Applicant has a real prospect of success in the claim that he or she seeks to restore.

## PART 14: STRIKING OUT STATEMENT OF CASE

**14.01 Striking Out Statement of Case**

(1) In addition to any other power to do so under these Rules, the Court may, on its own initiative or upon application, strike out the whole or part of a Statement of Case if it appears to the Court that,
    (a) the Statement of Case or the part to be struck out,
        (i) does not disclose any reasonable ground for bringing or defending the claim;
        (ii) is an abuse of the process of the Court;
        (iii) is scandalous, frivolous or vexatious; or
        (iv) is likely to obstruct the just disposal of the proceedings; or
    (b) there has been a repeated or intentional failure of a party to comply with a Rule, Practice Direction or order.

**14.02 Application for Striking Out Statement of Case**

(1) Any party to a proceeding may make an application to strike out the whole or part of a Statement of Case.
(2) An application to strike must be made within a reasonable time,
    (a) of having been served with the Statement of Case; or
    (b) after the Applicant knew or ought reasonably to have known of the failure to comply.
(3) An order to strike on the basis of a party's failure to comply with a Rule, Practice Direction or order, may not be granted where the Applicant took any further step in the proceeding after obtaining knowledge of the failure to comply.
(4) Where the Court makes an order to strike out a claim and the Claimant is ordered to pay costs to the Applicant, but before those costs are paid, the Claimant starts a similar claim against the Applicant based on substantially the same facts, the Court may stay the subsequent claim until the costs of the first claim have been paid.

**14.03 Consequence of Striking Out Statement of Case**

(1) Where a Defendant's Statement of Case is ordered struck out, the Claimant may make an application under Part 12 for Default Judgment.
(2) Where a Claimant's Statement of Case is ordered struck out, the Claimant's claim is deemed to be dismissed and any Defendant who has counterclaimed may, within 28 days of the order striking the claim, file a written notice of its election to proceed with the Counterclaim, with proof of service, failing which the Counterclaim must be deemed to be discontinued without costs.

## PART 15: SUMMARY JUDGMENT

### 15.01 Summary Judgment

(1) Summary Judgment is available in any proceeding commenced by Statement of Claim except,
  (a) admiralty proceedings;
  (b) probate proceedings;
  (c) proceedings for,
    (i) claims against the State;
    (ii) defamation;
    (iii) false imprisonment;
    (iv) malicious imprisonment; and
    (v) redress under the Constitution.

(2) Summary Judgment is not available where a proceeding was commenced by way of Fixed Date Application, unless the proceeding was ordered to proceed as if it was commenced by way of Statement of Claim.

(3) The Court may give Summary Judgment on any issue of fact or law, whether or not the Judgment will bring the proceedings to an end.

(4) Summary Judgment applies with necessary modifications, to Counterclaims, Crossclaims and Third or Subsequent Party Claims.

### 15.02 Application for Summary Judgment

(1) A Claimant may, after the Defendant has delivered a Defence, make an application for Summary Judgment on all or part of the claim in the Statement of Claim.

(2) A Defendant may, after delivering a Defence, make an application for Summary Judgment dismissing all or part of the claim in the Statement of Claim.

(3) The Court may, on its own initiative or upon application, grant Summary Judgment on a claim or on a particular issue if the Court is satisfied that,
  (a) the Claimant has no real prospect of succeeding on the claim or the issue; or
  (b) the Defendant has no real prospect of successfully defending the claim or the issue.

(4) In considering whether to grant Summary Judgment, the Court must consider the evidence submitted by the parties and may,
  (a) weigh the evidence;
  (b) evaluate the credibility of a deponent; and
  (c) draw any reasonable inference from the evidence.

(5) If the proceedings are not brought to an end, the Court must also treat the hearing as a Case Management Conference.

(6) Where Summary Judgment is refused or is granted only in part, the Court may make an order specifying what material facts are not in dispute and define the issues to be tried.

(7) Where it appears that the enforcement of a Summary Judgment ought to be stayed pending the determination of any other issue in the proceeding or a Counterclaim, Crossclaim or Third or Subsequent Party Claim, the Court may so order on such terms as are just.

## PART 16: ASSESSMENT OF DAMAGES

### 16.01 Requisition for Assessment of Damages

(1) Where these Rules, a Practice Direction, an order or any other enactment require for damages to be assessed, the person seeking that damages be assessed must file a Requisition (Form 13A) seeking that the Registry fix a hearing date for the assessment of damages.

(2) The Registry must provide at least 28 days notice of the date fixed for the assessment of damages to the person who filed the Requisition as well as any party that may be liable to pay the damages to be assessed as specified in the Requisition.
(3) At least 21 days before the date fixed for the assessment of damages, the person who filed the Requisition must file, with proof of service on any party that may be may be liable to pay the damages to be assessed,
  (a) a Certificate (Form 16) stating that he or she is in a position to prove the amount of the damages; and
  (b) any bundle of documents, Affidavit evidence, Expert reports, Witness Statements, or any other material upon which the person intends to rely at the hearing.
(4) If the person who filed the Requisition fails to file the documents required under sub-Rule (3), the Registry must vacate the hearing date and immediately notify the parties that the hearing is no longer proceeding.

**16.02 Hearing of Assessment of Damages**
(1) The Court may limit examination, cross-examination or re-examination of any witness.
(2) A Defendant is entitled to cross-examine any witness called on behalf of the Claimant and make submissions to the Court but is not entitled to call any evidence unless the Defendant filed a Defence setting out the facts the Defendant seeks to prove.

## PART 17: INTERIM REMEDIES

**17.01 Interim Remedies Before Determination of a Proceeding**
(1) The Court may, on its own initiative or upon application, grant an interim remedy, including,
  (a) an interim injunction or declaration;
  (b) an order relating to any property that is the subject of a dispute or to which any question may arise for the,
    (i) detention, custody or preservation of that property;
    (ii) inspection of that property;
    (iii) taking of a sample of that property;
    (iv) carrying out of an experiment on, upon or with that property;
    (v) sale of that property, including land, which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
    (vi) payment of income from that property until a claim is decided;
  (c) an order authorizing a person to enter on any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-Rule (b);
  (d) an order to deliver up goods;
  (e) a freezing order restraining a party from,
    (i) removing from the jurisdiction assets located there; or
    (ii) dealing with any assets whether located within the jurisdiction or not;
  (f) a search order requiring a party to admit another party to premises for the purpose of locating and preserving evidence;
  (g) an order directing a party provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order or search order;
  (h) an order for interim payment by a Defendant on account of any damages, debt or other sum which the Court may find the Defendant liable to pay;
  (i) an order for interim costs;
  (j) an order for a specified fund to be paid into Court or otherwise secured where there is a dispute over a party's right to the fund;

(k) an order permitting a party seeking to recover personal property to pay a sum of money into Court pending the outcome of the proceedings and directing that, if he does so, the property must be given up to him;
(l) an order directing a party to prepare and file accounts relating to the dispute; and
(m) an order directing any account to be taken or inquiry to be made by the Court.

(2) A party seeking an interim remedy may proceed without notice to any other party but must include in the grounds for the application the reasons why notice was not given.

(3) The Court may grant an interim remedy only where,
(a) the Applicant undertakes to abide by any order as to damages caused by the granting, continuance or extension of the order, if any;
(b) where a proceeding has not yet been commenced,
(i) the matter is urgent or it is otherwise necessary in the interests of justice; and
(ii) the Applicant provides an undertaking to issue a claim by a specified date, where necessary; and
(c) on an application without notice, it is satisfied that,
(i) there was good reason for not giving notice;
(ii) in a case of urgency, notice was not reasonably possible; or
(iii) the giving of notice would have defeated the purpose of the application.

(4) On an application without notice, the Court must require the order to terminate or expire within 14 days unless a further order is made, or fix a date for further consideration of the application.

(5) Any application to extend an interim order under this Rule must be made on notice to the Respondent unless the Court orders otherwise.

(6) Where a claim is stayed, other than by agreement between the parties, any interim injunction except for a freezing injunction that was granted must be set aside unless the Court orders otherwise.

**17.02 Application for Interim Payment**

(1) Any party may make an application for an order for an interim payment, even where an earlier application for an order for an interim payment has been refused, which application must,
(a) not be made before the expiration of time for the Defendant against whom the application is made to file a Defence; and
(b) include in the supporting Affidavit,
(i) the Claimant's assessment of the amount of damages or other monetary Judgment that is likely to be awarded; and
(ii) any documentary evidence supporting Claimant's assessment of the amount of damages; and
(c) where the claim is made under another enactment in respect of injury resulting in death, contain full particulars of the,
(i) nature of the claim in respect of which the damages are sought to be recovered; and
(ii) person or persons for whom and on whose behalf the claim is brought.

(2) The Court may make an order for an interim payment only if,
(a) the Defendant against whom the order is sought has admitted liability;
(b) the Claimant has obtained an order for an account to be taken as between himself and the Defendant and Judgment for any amount certified due on taking the account to be paid;
(c) the Claimant has obtained Judgment against that Defendant for damages to be assessed;
(d) it is satisfied that if the claim went to trial, the Claimant would obtain Judgment against the Defendant from whom he is seeking an order for interim payment for a substantial amount of money or for costs;
(e) where the Claimant is seeking an order for possession of land, whether or not any other order is also being sought, and the Court is satisfied that, if the case went to trial, the Defendant would be held liable, even if the claim for possession should fail, to pay the Claimant a sum of money for rent or for the Defendant's use and occupation of the land while the claim for possession was pending; or

(f) where the claim is for personal injuries, the Defendant is insured in respect of the claim, is a public body, or is a person whose means and resources are such as to enable that person to make the interim payment.

(3) The Court may order an interim payment to be made as a single payment or be paid by instalments.

(4) In a claim for damages where there are two or more Defendants, the Court may make an order for the interim payment of damages against any Defendant.

(5) The Court must not order an interim payment of more than a reasonable proportion of the likely amount of a Judgment, taking into account the Defendant's possible contributory negligence, where applicable, and any relevant set-off or Counterclaim.

(6) Where a Defendant has been ordered to make an interim payment, or has made an interim payment (whether voluntarily or under an order), the Court may make an order,
   (a) to adjust, vary or discharge the interim payment;
   (b) that the interim payment be repaid; or
   (c) that a Defendant reimburse, either in whole or in part, another Defendant who has made an interim payment if,
      (i) the Defendant to be reimbursed made the interim payment in relation to a claim in respect of which he or she has made a claim against the other Defendants for a contribution, indemnity or other remedy; and
      (ii) the claim or part to which the interim payment relates has been withdrawn or disposed of.

(7) The fact that a Defendant has made an interim payment, whether voluntarily or pursuant to a Court order, must not, as far as practicable, be disclosed to the trial Judge until all questions of liability and the amount of money to be awarded have been decided, unless the Defendant agrees.

## PART 18: ANCILLARY CLAIMS

### 18.01 Ancillary Claims

(1) Any proceeding commenced by Statement of Claim may involve Ancillary Claims in accordance with this Part, including a Counterclaim, Crossclaim or Third or Subsequent Party Claims, and any Ancillary Claim must be case managed and tried together with the main proceeding, unless the Court orders otherwise.

(2) Where a proceeding has been commenced by Fixed Date Application, this Part does not apply unless the proceeding continues as if it had been commenced by Statement of Claim.

(3) Except where they conflict with the Rules under this part, the provisions of Part 8 and Part 10, where relevant, apply with necessary modifications to Ancillary Claims.

(4) Part 12 does not apply to Ancillary Claims.

(5) Where a party against whom an Ancillary Claim is made fails to defend the Ancillary Claim, the party is deemed to admit the Ancillary Claim.

### 18.02 Counterclaim

(1) A Defendant may assert, by way of Counterclaim, any right or claim against the Claimant including a claim for contribution or indemnity in respect of another party's claim against the Defendant, except in a proceeding by or against the State unless the Court permits or the Attorney General consents.

(2) A Counterclaim (Form 18A) must,
   (a) be included in the same document as the Defence and be entitled a Defence and Counterclaim;
   (b) be served on every party to the proceeding, but need not be served personally; and
   (c) be filed, with proof of service, within the time prescribed for delivery of the Defence.

(3) A Claimant against whom a Counterclaim is made must serve a Defence to the Counterclaim within 14 days of being served with the Defence and Counterclaim.

(4) Where a Claimant against whom a Counterclaim is made serves a Reply (Form 10D), the Claimant's Defence to the Counterclaim must be included in the same document as the Reply and be entitled a Reply and Defence to Counterclaim.

(5) A Reply and Defence to Counterclaim, if any, must be filed, with proof of service, within 7 days of service of the Defence to Counterclaim.
(6) A Defendant who served a Defence without a Counterclaim but seeks to add a Counterclaim may, with permission of the Court, issue an amended Defence that includes the Counterclaim.
(7) Where the Court gives Judgment on a Statement of Claim, or the Statement of Claim is stayed, discontinued or dismissed, and the Court does not dismiss the Counterclaim, the Defendant may continue the Counterclaim.
(8) Where it appears that a Counterclaim may unduly complicate or delay the trial of the main proceeding, or cause undue prejudice to a party, the Court may order separate trials or order that the Counterclaim proceed as a separate proceeding.
(9) Where both the Claimant in the main proceeding and the Claimant by Counterclaim succeed, either in whole or in part, and there is a resulting balance in favour of one of them, the Court may in a proper case give Judgment for the balance and dismiss the smaller claim and may make such order for costs of the claim and Counterclaim as is just.

**18.03 Crossclaim**

(1) A Defendant may claim, by way of Crossclaim, against a co-Defendant who,
  (a) is or may be liable to the Defendant for all or part of the Claimant's claim;
  (b) is or may be liable to the Defendant for an independent claim for damages or other relief arising out of a transaction or occurrence or series of transactions or occurrences involved in the main proceeding or a related transaction or occurrence or series of transactions or occurrences; or
  (c) should be bound by the determination of an issue arising between the Claimant and the Defendant.
(2) A Crossclaim (Form 18B) must,
  (a) be included in the same document as the Defence and the document must be entitled a Defence and Crossclaim;
  (b) be served on every party to the proceeding, but need not be served personally; and
  (c) be filed, with proof of service, within the time prescribed for delivery of the Defence.
(3) A Defendant who is served with a Crossclaim must serve a Defence (Form 10A) to the Crossclaim within 14 days of service of the Defence and Crossclaim unless,
  (a) the Crossclaim contains no claim other than a claim for contribution or indemnity;
  (b) the Defendant to the Crossclaim has delivered a Defence in the main proceeding; and
  (c) the Defendant to the Crossclaim in response to the Crossclaim relies on the facts pleaded in the Defendant's Defence in the main proceeding and not on a different version of the facts or on any matter that might, if not specifically pleaded, take the crossclaiming Defendant by surprise,

  in which case the Defendant will be deemed to deny the allegations of fact made in the Crossclaim and to rely on the facts pleaded in the Defence in the main proceeding.
(4) A Reply (Form 10D) to Defence to Crossclaim, if any, must be filed, with proof of service, within 7 days of service of the Defence to Crossclaim.
(5) A Defendant who serves a Defence without a Crossclaim but subsequently seeks to add a Crossclaim may, with permission of the Court, issue an amended Defence that includes the Crossclaim.
(6) A Crossclaim must be tried at or immediately after the trial of the main proceeding, unless the Court orders otherwise.
(7) Where it appears that a Crossclaim may unduly complicate or delay the trial of the main proceeding, or cause undue prejudice to the Claimant, the Court may order separate trials, order that the Crossclaim proceed as a separate proceeding, or make such order or impose such other terms as it considers just.
(8) This Rule applies, with necessary modifications, to the assertion of a Crossclaim between co-Defendants to a Counterclaim or between parties to a Third Party Claim.

**18.04 Third Party Claim**

(1) A Defendant may claim, by way of Third Party Claim, against any person who is not a party to the main proceeding and who,

(a) is or may be liable to the Defendant for all or part of the Claimant's claim;
(b) is or may be liable to the Defendant for an independent claim for damages or other relief arising out of a transaction or occurrence or series of transactions or occurrences involved in the main proceeding or a related transaction or occurrence or series of transactions or occurrences; or
(c) should be bound by the determination of an issue arising between the Claimant and the Defendant.

(2) A Third Party Claim must be given the same Court file number as the main proceeding, followed by a suffix letter.

(3) A Third Party Claim (Form 18C) is an originating process and must,
(a) be issued within the time prescribed for delivery of the Defence in the main proceeding or, where the Claimant serves a Reply in the main proceeding to the Defendant's Defence, within 7 days of being served with that Reply;
(b) be served within 28 days of being issued,
(i) personally on the third party, together with all of the documents already filed with the Court in the main proceeding or in any Counterclaim, Crossclaim or Third or Subsequent Party Claim; and
(ii) on every other party to the main proceeding by any method of service.

(4) A person who is served with a Third Party Claim must serve a Defence (Form 10A) to the Third Party Claim within 28 days of service of the Third Party Claim.

(5) A Reply (Form 10D) to the Defence to Third Party Claim, if any, must be filed, with proof of service, within 7 days of service of the Defence to Crossclaim.

(6) Default Judgment or a Judgment on consent in the main proceeding may only be obtained on notice to the Third Party.

(7) A Third Party Claim must be tried at or immediately after the trial of the main proceeding, unless the Court orders otherwise.

(8) Where it appears that a Third Party Claim may unduly complicate or delay the trial of the main proceeding, or cause undue prejudice to the Claimant in the main proceeding, the Court may order separate trials, order that the Third Party Claim proceed as a separate proceeding, or make such order or impose such other terms as it considers just.

**18.05 Fourth and Subsequent Party Claims**

(1) A Third Party may, by commencing a Fourth Party Claim, assert a claim against any person not already a party to the Third Party Claim that is properly the subject matter of a Third Party Claim.

(2) The provisions of these Rules that apply to Third Party Claims apply, with necessary modifications, to fourth and subsequent party claims.

## PART 19: ADDITION, SUBSTITUTION AND REMOVAL OF PARTIES, AND JOINDER

**19.01 Parties to a Proceeding**

(1) Unless these Rules or the Court otherwise permits, where a Claimant or Applicant seeks a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceeding and, if any such person does not agree to be a Claimant, that person must be made a Defendant.

(2) The Court must not dismiss a proceeding because a person,
(a) who should have been made a party was not made a party to the proceeding, unless the applicable limitation period has lapsed; or
(b) was added as a party to the proceeding who should not have been added.

**19.02 Adding, Removing or Substituting Parties**

(1) The Court may, at any stage of a proceeding, on its own initiative or upon application, add, remove or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

(2) A Claimant may add a new Defendant to proceedings,
  (a) without permission, at any time before the first date fixed for the first Case Management Conference; or
  (b) after the first date fixed for the first Case Management Conference, by making an application for an order to add a party.
(3) An application for an order to add, remove or substitute a party,
  (a) may only be made by,
    (i) an existing party; or
    (ii) a person who wishes to become a party; and
  (b) must be served on all parties to the proceeding and the person to be added or substituted, if applicable.
(4) On an application for an order to add or substitute a party, the Court must be satisfied that the relevant limitation period for bringing a claim against that party has not expired.
(5) An order for adding substituting or removing a party must be served on,
  (a) all of the parties to the proceeding;
  (b) any party added or substituted; and
  (c) any other person affected by the order.
(6) No person may be added or substituted as a Claimant unless that person has given their consent in writing and that consent has been filed in the Registry.

**19.03 Joinder of Claims**

(1) A Claimant may in the same proceeding join any claims the Claimant has against an opposite party.
(2) A Claimant may sue and a Defendant may be sued in different capacities in the same proceeding.
(3) Where there is more than one Defendant, it is not necessary for each to have an interest in all the relief claimed or in each claim included in the proceeding.

**19.04 Joinder of Parties**

(1) Two or more persons who are represented by the same Attorney-at-Law may join as Claimants in the same proceeding where,
  (a) they assert, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;
  (b) a common question of law or fact may arise in the proceeding; or
  (c) it appears that their joining in the same proceeding may promote the convenient administration of justice.
(2) Two or more persons may be joined as Defendants to a proceeding where,
  (a) there are asserted against them, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;
  (b) a common question of law or fact may arise in the proceeding;
  (c) there is doubt as to the person or persons from whom the Claimant is entitled to relief;
  (d) damage or loss has been caused to the same Claimant by more than one person, whether or not there is any factual connection between the several claims apart from the involvement of the Claimant, and there is doubt as to the person or persons from whom the Claimant is entitled to relief or the respective amounts for which each may be liable; or
  (e) it appears that their being joined in the same proceeding may promote the convenient administration of justice.
(3) Where a Claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties to the claim unless the Court orders otherwise.
(4) No proceeding shall be defeated by reason of the misjoinder or non-joinder of any party and the Court may, in a proceeding, determine the issues in dispute so far as they affect the rights of the parties to the proceeding and pronounce Judgment without prejudice to the rights of all persons who are not parties.
(5) Where it appears that the joinder of multiple claims or parties in the same proceeding may unduly

complicate or delay the hearing or cause undue prejudice to a party, the Court may,

(a) order separate hearings;
(b) require one or more of the claims to be asserted, if at all, in another proceeding;
(c) order that a party be compensated by costs for having to attend, or be relieved from attending, any part of a hearing in which the party has no interest;
(d) stay the proceeding against a Defendant or Respondent pending the hearing of the proceeding against another Defendant or Respondent, on condition that the party against whom the proceeding is stayed is bound by the findings made at the hearing against the other Defendant or Respondent; or
(e) make such other order as is just.

## PART 20: AMENDMENTS TO STATEMENTS OF CASE

### 20.01 Amendments to Statement of Case

(1) A party may amend its Statement of Case,
  (a) without permission, at any time prior to the first date fixed for the first Case Management Conference; or
  (b) after the first date fixed for the first Case Management Conference, by making an application for an order permitting the amendment.

### 20.02 Application to Amend Statement of Case

(1) In considering an application to amend a Statement of Case, the Court must have regard to,
  (a) how promptly the application was made after the party became aware that the change was one which they wished to make;
  (b) the prejudice to the Applicant if the application were to be refused;
  (c) the prejudice to the other parties if the change were to be permitted;
  (d) whether any prejudice to any other party can be compensated by the payment of costs;
  (e) whether the trial date or any likely trial date can still be met if the application is granted; and
  (f) the administration of justice.
(2) The Court may allow an amendment,
  (a) to alter the capacity in which a party makes its claim;
  (b) to correct a mistake as to the name of a party but only where,
    (i) the mistake was genuine; and
    (ii) not a mistake that, in all the circumstances, caused reasonable doubt as to the identity of the party in question, and
  (c) the effect of which will be to add or substitute a new claim after the end of a relevant limitation period but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to change the Statement of Case has already claimed a remedy in the proceeding.
(3) An amendment that has the effect of adding, substituting or removing a party to the proceeding is dealt with under Part 19.

### 20.03 Format and Consequence of Amendment

(1) An amended Statement of Case must be served upon every party to the proceeding.
(2) Where an amended Statement of Claim is served on a Defendant, the Defendant may file an amended Defence within of 28 days after the date of service of the amended Statement of Claim.
(3) Where an amended Defence is served on a Claimant, the Claimant may file or amend its Reply within 14 days of the date of service of the amended Defence.
(4) Where a party has filed a Statement of Case in answer to another Statement of Case that is subsequently amended and served on them under this Rule, if that party does not amend their Statement of Case in

accordance with this Rule, they shall be deemed to rely on it in answer to the amended Statement of Case.

(5) This Rule applies with all necessary modifications to Ancillary Claims.

## PART 21: REPRESENTATIVES OF PARTIES

### 21.01 Appointment of Representative Party

(1) The Court may, upon application, appoint a representative party where,
  (a) 5 or more persons have the same or a similar interest;
  (b) a person, or class or some member of it, cannot be ascertained or cannot readily be ascertained;
  (c) a person, or class or some member of it, though ascertained cannot be found; or
  (d) it is expedient to do so for any other reason.

(2) The Court may only appoint a person as a representative party who consents to being appointed.

(3) The representative party appointed under this Part must be one of the persons identified in sub-Rule (1) or be a person affected by or having a current, contingent or unascertained interest in the proceeding.

(4) An application for an order appointing a representative party under this Rule,
  (a) may be made at any time,
    (i) under Part 11 where a proceeding has already been commenced; or
    (ii) if proceedings have not yet commenced, by way of Fixed Date Application;
  (b) may be made by any,
    (i) party;
    (ii) person or body who wishes to be appointed as a representative party;
    (iii) person who is likely to be a party to proceedings; or
    (iv) person who is or may be interested in or affected by the proceeding.
  (c) may be made without notice, where the application seeks to appoint a representative Claimant;
  (d) must be made on notice, where the application seeks to appoint a representative Defendant; and
  (e) must identify every person to be represented or, if not practicable to identify them, by description.

(5) The Court may direct that notice of an application to appoint a representative party be given to such other persons as it thinks fit.

(6) If the Court directs that a person not already a party is to be a representative Defendant, it must make an order adding that person as a Defendant.

### 21.02 Consequence of Order Appointing Representative Party

(1) If there is a representative Claimant or Defendant, an order of the Court binds everyone whom that party represents.

(2) An order of the Court may not be enforced against a representative that is not a party to the proceedings, except with permission of the Court.

(3) A person may make an application for permission to enforce an order against a representative that is not a party to the proceedings, which application need only be served on the person against whom enforcement of the order is sought.

(4) Where a representative represents a group of persons, any settlement, compromise, or payment and acceptance of money relating to a proceeding is not valid without approval of the Court, which may be obtained upon application, and the Court may provide its approval where it is satisfied that the settlement, compromise, or payment and acceptance of money will be for the benefit of the persons represented.

(5) The Court's order approving the settlement, compromise, or payment and acceptance of money binds all of the persons represented unless it has been obtained by fraud or non-disclosure of material facts.

**21.03 Representation of Beneficiaries by Trustees**

(1) A claim may be made by or against a person in that person's capacity as a trustee, executor or administrator.
(2) A document purporting to contain the written consent of a person to act as trustee, executor or administrator and that person's signature verified by some other person is evidence of such consent.
(3) If a claim is so made, there is no need for a beneficiary also to be a party.
(4) The Court may direct that notice of the proceedings be given to any beneficiary.
(5) A decision of the Court in such proceedings binds a beneficiary, unless the Court orders otherwise.
(6) The only grounds for an order that a decision is not binding on a beneficiary is that the trustee, executor or administrator acted fraudulently or could not or did not in fact represent the interest of the beneficiary.

**21.04 Proceedings Against Estate of Deceased Person**

(1) If in any proceeding it appears that a deceased person was interested in the proceeding but the deceased person has no personal representatives, the Court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceeding.
(2) The Court may, on its own initiative or upon application, appoint a person as a representative of the deceased person's estate if that person,
    (a) can fairly and competently conduct proceedings on behalf of the estate of the deceased person; and
    (b) has no interest adverse to that of the estate of the deceased person.
(3) Until the Court has appointed someone to represent the deceased person's estate, a Claimant may not take any steps in the proceeding apart from making an application for an order to have a representative appointed under this Part.
(4) A decision in proceedings in which the Court has appointed a representative under this Rule binds the estate to the same extent as if the person appointed were a trustee, executor or administrator of the deceased person's estate.

**21.05 Power of Court After a Party's Death**

(1) If a party to a proceeding dies, the Court may, on its own initiative or upon application, give directions to enable the proceedings to be carried on.
(2) If the party to the proceeding that dies is the Claimant and the Claimant's personal representatives do not apply for an order to be substituted as Claimants, the Defendant may make an application to strike the claim.
(3) In an application under sub-Rule (2), the application must be served on the personal representatives of the Claimant, if any, and such other persons as the Court directs.
(4) If the Court makes an order as a result of an application under sub-Rule (2), it must provide that unless the personal representatives or some other person on behalf of the estate makes an application to be substituted as a Claimant or for directions by a specified date, the claim will be struck out.

## PART 22: MISCELLANEOUS RULES ABOUT PARTIES

**22.01 Company**

(1) Subject to any statutory provision to the contrary, a duly authorized director or officer of a company may act as representative on its behalf.
(2) A company must be represented by an Attorney-at-Law, unless the Court permits otherwise.

**22.02 Partnership**

(1) Persons claiming to be entitled or alleged to be liable as partners may sue or be sued in the firm's name if,
    (a) the firm's name is the name of the firm in which they were partners; and
    (b) they carried on business in that name within the jurisdiction, when the right to claim arose.

(2) If partners sue or are sued in the firm's name, they must, if any other party so demands in writing, immediately deliver to that party a statement of the names and residential addresses of all the persons who were partners in the firm when the right to claim arose.
(3) If the partners do not comply with sub-Rule (2), any other party may make an application for an order requiring them to provide such a statement and to certify it to the Court.
(4) An application under sub-Rule (3) may be made in writing and without notice but must establish that,
  (a) the Applicant has made a demand in writing; and
  (b) the demand has not been complied with.
(5) Where an order is made as a result of an application under sub-Rule (3), if the partners do not comply with it within 21 days of being served with the order, any claim or Defence brought by the partners is deemed to be struck out.
(6) Subject to any statutory provision to the contrary, any duly authorized partner or employee of the partnership may act as representative of the partnership.
(7) A partnership must be represented by an Attorney-at-Law, unless the Court permits otherwise.

**22.03 Individual Carrying on Business**

(1) In the case of a business that is not a company or partnership, any proceeding must be made by or against that individual who carries or carried on business in the jurisdiction under that business name.
(2) The proceeding must be made against that person by identifying them by their name followed by "operating as" or "carrying on business as" and the business name under which they carry or carried on the business.

## PART 23: MINORS AND PATIENTS

**23.01 Requirement of Next Friend in Proceedings by or against Minors or Patients**

(1) A party that is a minor or patient must have a next friend in order to issue an originating process, or pursue, defend or otherwise conduct a proceeding on their behalf, unless the Court permits otherwise.
(2) An application for an order permitting a minor or patient to issue a claim or conduct proceedings without a next friend must, where the minor or patient has a next friend, be made on notice to that next friend or, where there is no next friend, without notice.
(3) Unless the Court has made an order permitting a minor or patient to conduct proceedings without a next friend, a person may not take any step in a proceeding against a minor or patient except to,
  (a) issue and serve a claim against a minor or patient; or
  (b) apply for the appointment of a next friend.
(4) Where there is a Court order permitting a minor or patient to conduct proceedings without a next friend but it subsequently appears to the Court that it is desirable for a next friend to conduct the proceedings on behalf of the minor, the Court may appoint a person to be the minor's next friend.
(5) Where a person other than a minor becomes a patient during proceedings, no party may take any step in the proceedings apart from applying to the Court for the appointment of a next friend until the patient has a next friend.
(6) Any step taken by a party against a minor or a patient that is contrary to that permitted by this Rule is of no effect, unless the Court orders otherwise.
(7) A next friend must be represented by an Attorney-at-Law, unless the Court orders otherwise.

**23.02 Appointment to Act as Next Friend**

(1) The Court may, on its own initiative or upon application, make an order appointing a next friend but only if the next friend consents to being so appointed.
(2) Any party or person who wishes to be a next friend may make an application for an order appointing a next friend, which application may be made without notice.

(3) The Court may not appoint a next friend unless it is satisfied that the person to be appointed can fairly and competently conduct proceedings on behalf of the minor or patient and has no interest adverse to that of the minor or patient.
(4) Unless the Court appoints some other person, a person authorized under any enactment to conduct legal proceedings in the name of a minor or patient or on their behalf is entitled to be their next friend in any proceeding to which the authority extends.
(5) Where a next friend has not been appointed by the Court, a person may act as a next friend without a Court order if that person,
  (a) can fairly and competently conduct proceedings on behalf of the minor or patient;
  (b) has no interest adverse to that of the minor or patient;
  (c) files a certified copy of the document that constitutes that person's authorization to act; and
  (d) files a Certificate (Form 16) stating that that person satisfies the conditions of this Rule.
(6) The Court must serve a copy of the Certificate on every other party to the proceeding.

**23.03 Court's Power to Terminate and Substitute Next Friend**

(1) The Court may, on its own initiative or upon application,
  (a) terminate a next friend's authority to act;
  (b) direct that a person may not act as a next friend; or
  (c) substitute a new next friend for an existing one.
(2) An application under sub-Rule (1) must be served on,
  (a) all of the other parties to the proceeding;
  (b) on the person who is or purports to act as next friend; and
  (c) on the person who is proposed should act as next friend if that person is not the Applicant.
(3) The Court may appoint the person proposed or any other person it considers appropriate.
(4) The Court may not appoint a next friend unless it is satisfied that the person to be appointed can fairly and competently conduct proceedings on behalf of the minor or patient and has no interest adverse to that of the minor or patient

**23.04 Procedure where Appointment as Next Friend Ceases**

(1) The appointment of a minor's next friend ceases when a minor reaches the age of majority, only if the minor is not a patient.
(2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the next friend's appointment continues until it is ended by Court order upon an application, which application may be made by a party, the former patient, or the next friend.
(3) The minor or patient in respect of whom the appointment to act has ceased must serve notice on all of the other parties,
  (a) providing an address for service;
  (b) stating that the appointment of the next friend has ceased; and
  (c) stating whether the minor or patient chooses to carry on the proceedings.
(5) If the notice is not served within 28 days after the appointment of the next friend ceases, the Court may, on application, strike out any claim or Defence brought or filed by the minor or patient.
(6) The liability of a next friend for costs continues until the minor or patient serves the notice referred to in sub-Rule (3) or the next friend serves notice on the other parties that the appointment has ceased.

**23.05 Compromise or Control of Money Recovered by or on behalf of Minor or Patient**

(1) Where a minor or patient is a party to a proceeding, any settlement, compromise or payment, and any acceptance of money, relating to the proceeding is not valid without the approval of the Court.
(2) If, in any proceeding money is recovered by or on behalf of or for the benefit of a minor or patient or is paid into Court and accepted by or on behalf of a minor or patient, that money must not be dealt with without directions from the Court by way of application.
(3) Directions given under this Rule may provide that the money must be wholly or partly paid into Court and

invested or otherwise dealt with.

## PART 24: SECURITY FOR COSTS

**24.01 Application for Security for Costs**

(1) Any party may make an application for an order requiring a party claiming against it to give security for costs of the proceeding.
(2) An application for security for costs must be made without delay.
(3) The amount and nature of any security shall be at the discretion of the Court.

**24.02 Court's Discretion to make Order for Security for Costs**

(1) The Court has discretion whether to grant an order for security for costs.
(2) In considering to grant an order for security for costs, the Court must be satisfied that,
    (a) having regard to all of the circumstances of the case, it is just to do so; and
    (b) the party against whom costs are sought,
        (i) is ordinarily resident, is based or carries on business out of the jurisdiction;
        (ii) failed to give its address, gave an incorrect address as its address, or changed its address since the proceedings were commenced without notifying the Court of its change in address, with a view to evading the Court's process or the enforcement of its order;
        (iii) is receiving contribution from, or has an agreement to receive contribution from, another person towards its costs in return for a share of any money or property which the Claimant may recover;
        (iv) is acting as a nominal Claimant, other than as a representative Claimant under Part 21, and there is reason to believe that the Claimant will be unable to pay the Defendant's costs if ordered to do so;
        (v) is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor; or
        (vi) has taken steps with a view to placing the Claimant's assets beyond the jurisdiction or the reach of the Court.
(3) On making an order for security for costs, the Court may also order that,
    (a) the claim be stayed until such time as security for costs is provided in accordance with the terms of the order; or
    (b) where security is not provided in accordance with the terms of the order by a specified date, the claim be struck out.

## PART 25: CASE MANAGEMENT

**25.01 Court's Duty to Actively Manage Cases**

(1) The Court must further the overriding objective by actively managing cases, which includes,
    (a) encouraging the parties to a proceeding to,
        (i) co-operate with each other in the conduct of the proceeding;
        (ii) use alternative dispute resolution; and
        (iii) settle the whole or part of their case;
    (b) considering whether the likely benefits of taking a step in a proceeding justify the cost of taking it;
    (c) ensuring that no party gains an unfair advantage;
    (d) making appropriate use of technology; and
    (e) ensuring compliance with the Rules, Practice Directions and Court orders.
(2) Despite the Court's duty to actively manage cases, the responsibility for moving a proceeding expeditiously to a trial, hearing or other resolution remains with the parties.

**25.02 Court's Powers of Case Management**

(1) In actively managing cases, the Court has the power to,
  (a) identify the issues at an early stage, determine the order in which issues are to be tried, and separate and dispose of those issues that do not need full investigation and trial;
  (b) direct how a proceeding is to be dealt with by ordering that,
    (i) separate proceedings be consolidated, or heard at the same time or one immediately after the other;
    (ii) any issue or any part of a proceeding (such as a Counterclaim or Ancillary Claim) be dealt with as a separate proceeding;
    (iii) there be a trial of an issue before the rest of the proceeding is determined or tried;
    (iv) the whole or part of a proceeding be transferred to Family Court, Magistrate's Court or to another Registry;
    (v) where two or more parties are represented by the same Attorney-at-Law, they be separately represented and, if necessary, any hearing be adjourned to a fixed date to enable separate representation to be arranged;
  (c) control the progress of the case by,
    (i) extending or abridging the time for compliance with any Rule, Practice Direction or order, even if there has been no application for an extension of time or an application for an extension is made after the time for compliance has passed;
    (ii) fixing or amending a timetable;
    (iii) adjourning or bringing forward a hearing to a specific date;
    (iv) staying the whole or part of any proceedings generally or until a specified date or event;
  (d) control the conduct of the case by,
    (i) dealing with as many aspects of the case as practicable on the same occasion;
    (ii) if appropriate, dealing with as many aspects of the case without the necessity of the attendance of the parties or their Attorneys-at-Law, whether by way of written submissions, or telephone or video conference;
    (iii) ordering that any evidence be given in written form;
    (iv) requiring the maker of an Affidavit to attend for cross-examination;
    (v) directing that notice of any proceeding be given to any person;
    (vi) requiring any party or a party's Attorney-at-Law to attend before the Court;
  (e) where there is a substantial inequality in the proven financial position of parties, order a party with greater financial resources that applies for an order to pay the costs of complying with the order of the party ordered to comply with it;
  (f) award costs as necessary to carry out the purpose of this Part;
  (g) take any other step, give any other direction or make any other order that furthers the overriding objective.

(2) A Case Management Judge may, at any time,
  (a) on his or her own initiative or at a party's request, convene a Case Management Conference; or
  (b) on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the Rules.

(3) The list of powers in this Rule is in addition to any powers given to the Court by any other Rule, Practice Direction or other enactment.

**25.03 Case Management Conference**

(1) Upon the filing of a first Defence to a Statement of Claim, the Court must immediately fix a date for a first Case Management Conference.

(2) The first Case Management Conference must take place not less than 2 months and not more than 4 months after the filing of the first Defence, unless the Court orders otherwise.

(3) The Court must, at least 14 days before the date scheduled for the first Case Management Conference,

serve a Notice of Case Management Conference (Form 25) on all parties to the proceeding that have filed a Statement of Case in the proceeding.

(4) The Judge who presides over the first Case Management Conference must be the Case Management Judge assigned to that proceeding.

(5) If the Case Management Judge is, for any reason, unavailable to continue as the Case Management Judge, another Case Management Judge may be assigned for part or all of the case.

(6) Each party and, if represented, their Attorney-at-Law or another Attorney-at-Law who is authorized to negotiate on behalf of the party must attend the Case Management Conference, unless the Court orders otherwise.

(7) Where a party or, if represented, their Attorney-at-Law or another Attorney-at-Law who is authorized to negotiate on behalf of the party fails to attend at a Case Management Conference, the Court may award costs against that party or Attorney-at-Law.

**25.04 Fixing and Variation of Timetable**

(1) At the first Case Management Conference, the Court must set a specific timetable for the steps to be taken in the case before it comes to trial, which may include but is not limited to fixing a date for,
   (a) the service of expert reports;
   (b) the service of Witness Statements;
   (c) the completion of cross-examination on any Affidavits;
   (d) the preparation of an agreed statement of issues or facts;
   (e) the bringing of any applications in relation to an issue or part of a proceeding;
   (f) a date for a Pre-Trial Review unless it is satisfied that having regard to the value, importance and complexity of the case, it may be dealt with justly without a Pre-Trial Review;
   (g) the period within which the trial is to commence or, where possible, the trial date; and
   (h) the next Case Management Conference.

(2) The timetable set by the Court must,
   (a) be contained in an order of the Court; and
   (b) specify the date or dates on or by which each step must occur or be completed by.

(3) If a party fails to comply with a timetable, the Case Management Judge may, on his or her own initiative or on an application by any other party,
   (a) stay the party's proceeding;
   (b) dismiss the party's proceeding or strike out the party's Defence;
   (c) award costs against a party; or
   (d) make such other order as is just.

(4) If a party seeks to vary a date that the Court has fixed in a timetable, it must make an application, which application may be made in writing.

(5) Where all of the parties to the proceeding consent to vary a date or dates that the Court has fixed in a timetable (other than a Pre-Trial Review date, trial date or date by which the trial is to commence), the Applicant must attach a Consent (Form 10B) to the application.

**25.05 Scheduling or Rescheduling a Case Management Conference**

(1) The Court may, on its own initiative or upon application, schedule or adjourn a first or subsequent Case Management Conference.

(2) An application to schedule or adjourn a first or subsequent Case Management Conference may be made without notice to any party that has not filed a Defence and may be made in writing.

(3) Where the Court schedules a first Case Management Conference, it must, at least 14 days before the date scheduled for the first Case Management Conference, serve a Notice of Case Management Conference (Form 25) on all parties to the proceeding that have filed a Statement of Case in the proceeding.

(4) Where the Court reschedules or adjourns a Case Management Conference, it must,
   (a) reschedule or adjourn it to be presided by the Case Management Judge assigned to that proceeding; and

(b) specify the date, time and place for the scheduled or adjourned Case Management Conference.

**25.06 Dispensing with Case Management**

(1) The Court may, on its own initiative or upon application, dispense with case management of a proceeding if it is satisfied that,
   (a) the case can be dealt with justly without case management;
   (b) the case is urgent and not suitable for case management; or
   (c) the cost of case management would be disproportionate to the value of the proceeding or the benefits that might be achieved from case management.

(2) If the Court dispenses with case management, it must,
   (a) fix a trial date or period within which the trial is to take place;
   (b) give directions for the preparation and conduct of the case, if appropriate;
   (c) fix a timetable for the steps to be taken before trial; and
   (d) give any other order or direction that will assist in the speedy and just resolution of the proceeding.

## PART 26: COURT ORDERED MEDIATION

**26.01 Court's Power to Order Mediation**

(1) All parties are encouraged to and may, without permission of the Court, refer their dispute to mediation at any time prior to a Pre-Trial Review.

(2) Notwithstanding sub-Rule (1), the Court may, on its own initiative or upon application, order any or all parties to a proceeding to participate in a mediation.

(3) In deciding whether to order any or all parties to participate in a mediation, the Court must consider,
   (a) the possible benefits that might be achieved by mediation;
   (b) how far apart and how firm the parties are in their positions;
   (c) the costs of mediation in proportion to the value of the claim;
   (d) whether the proceeding involves a matter of public policy that would render it inappropriate for mediation; and
   (e) any other factors that the Court considers appropriate.

(4) Where the Court orders that any or all parties participate in a mediation, the order must state,
   (a) a date by which the parties are to agree to a mediator of their choosing, failing which the matter must be referred to the mediator named in the order; and
   (b) a date by which the mediation is to be completed.

(5) The parties may, prior to the date by which the mediation is ordered to be completed, extend the date by a further 28 days if they file a Consent to do so with the Court.

**26.02 Procedure on Court Appointed Mediation**

(1) All parties to the mediation and, where represented, their Attorneys-at-Law must attend the mediation, unless the court orders otherwise.

(2) Where a party is not an individual, the party's duly authorized representative who has authority to settle the dispute must attend the mediation on behalf of that party.

(3) Each party must, at least 7 days before the mediation session, serve on the mediator and every party to the mediation a mediation brief which,
   (a) identifies the factual and legal issues in dispute;
   (b) sets out the position and interests of the party on the issues in dispute;
   (c) attaches any documents that the party considers of central importance to the issues in dispute; and
   (d) in the case of the Claimant, attaches a copy of every Statement of Case filed in the proceeding.

(4) All communications at a mediation session and the mediator's notes and records shall be deemed to be without prejudice settlement discussions.

**26.03 Fees of Mediation**

(1) Fees for the mediation must be borne equally between the parties ordered to participate in the mediation, unless the Court orders otherwise.
(2) The mediator may require that the parties pay an amount for the estimated fees of the mediation in advance as security.
(3) The fees of mediation that are paid by a party will be costs in the claim unless otherwise agreed to by the parties.

**26.04 Outcome of Mediation**

(1) If, at the mediation session, a settlement is reached resolving some or all of the issues in dispute, it must be set out in writing and be signed by the parties.
(2) Within 7 days of the completion of the mediation, the mediator must file a Mediation Report (Form 26A) with the Court, and serve a copy on every party to the mediation.
(3) The Mediation Report must notify the Court of any issues that were settled during the mediation.
(4) Where the Mediation Report advises the Court that a settlement was reached on all of the issues, the Court must stay the proceeding, subject to any provision of the settlement dealing with the dismissal or discontinuance of the proceeding.
(5) If a party to a signed settlement agreement fails to comply with its terms, any other party to the agreement may make an application,
    (a) for Judgment on the terms of the agreement, and the Court may grant Judgment accordingly; or
    (b) to lift the stay and continue the proceeding as if there had been no agreement.
(6) If no agreement is reached that resolves all the issues in dispute, the matter shall continue in Court.

**26.05 Failure to Attend at, Participate in or Comply with Requirements of Mediation**

(1) The mediator must cancel the mediation session and file a Certificate of Non-Compliance (Form 26B) with the Court if,
    (a) a party fails to serve its mediation brief as required under this Part;
    (b) a party fails to attend within the first 30 minutes of the time appointed for the commencement of the mediation session; or
    (c) a party intentionally frustrates the mediation, which includes refusing to engage in discussion of the issues or matter in dispute.
(2) If a Certificate of Non-Compliance is filed, the Court may,
    (a) strike out any document filed by a party;
    (b) dismiss the proceeding, if the non-complying party is a Claimant;
    (c) strike out the Defence, if the non-complying party is a Defendant;
    (d) order a party to pay costs; or
    (e) make any other order the Court considers just.

## PART 27: NON-COMPLIANCE, SANCTIONS AND RELIEF FROM SANCTIONS

**27.01 Non-Compliance with the Rules or a Practice Direction**

(1) Where a party has failed to comply with a Rule, Practice Direction or order, any sanction for non-compliance imposed by the Rule, Practice Direction or order has effect unless the party in default makes an application for and obtains relief from the sanctions.
(2) If a Rule, Practice Direction or order requires a party to do something by a specified date and specifies the consequences of a failure to comply, the time for doing the act in question may not be extended by agreement between the parties.
(3) A failure to comply with these Rules or a Practice Direction is an irregularity and does not render a proceeding or a step in a proceeding, a document or an order in a proceeding a nullity.
(4) Where there has been non-compliance with these Rules or a Practice Direction, the Court may,

(a) dispense with compliance with any Rule or Practice Direction;
(b) grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or
(c) set aside the proceeding or a step in the proceeding in whole or in part.

**27.02 Application for Relief from Sanctions**

(1) A person may make an application for relief from any sanction imposed for a failure to comply with a Rule, Practice Direction or order, which application must be made promptly.
(2) In considering whether to grant relief for sanctions, the Court must have regard to,
(a) the effect which the granting of relief or not would have on each party;
(b) the interests of the administration of justice;
(c) whether the failure to comply has been or can be remedied within a reasonable time;
(d) whether the failure to comply was due to the party or the party's Attorney-at-Law; and
(e) whether the trial date or any likely trial date can still be met if relief is granted.
(3) The Court may grant relief from sanctions only if it is satisfied that,
(a) the failure to comply was not intentional;
(b) there is a good explanation for the failure; and
(c) the Applicant has generally complied with all other relevant Rules, Practice Directions and orders.
(4) The Court may not order a Respondent to pay the Applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

**27.03 Application for Unless Order**

(1) Where a party has failed to comply with a Rule, Practice Direction or order in respect of which no sanction for non-compliance has been imposed, any other party may make an application for an "unless order".
(2) An application for an unless order may be made without notice and in writing but must be supported by Affidavit evidence that identifies the Rule, Practice Direction or order (and attaches the order) that has not been complied with and describes the nature of the breach or non-compliance.
(3) Where the Court is satisfied that there has been non-compliance with a Rule, Practice Direction or order, it may grant an unless order, which order must identify the breach and require the party in default to remedy the default by a specified date.
(4) The Court may order the Respondent to pay costs to the Applicant for its application for an unless order.
(5) The Applicant must personally serve the unless order on the party against whom it is made.

**27.04 Failure to Comply with Unless Order**

(1) If the defaulting party fails to comply with the terms of an unless order,
(a) the Court's general power to grant relief where there has been non-compliance shall not apply; and
(b) that party's Statement of Case must be struck out.
(2) Upon the filing of a Requisition (Form 13A) together with a draft order (Form 5A) and supporting Affidavit (Form 8D), the Registry may issue an order striking out the defaulting party's Statement of Case.
(3) An Affidavit in support of the Requisition must,
(a) attach a copy of the unless order;
(b) attach proof of service of the unless order on the defaulting party; and
(c) establish that the defaulting party failed to comply with the unless order.

## PART 28: DISCLOSURE AND INSPECTION OF DOCUMENTS

**28.01 Scope of Disclosure Obligation**

(1) Every document directly relevant to any matter in issue in a proceeding that is or has been in the possession, control or power of a party to the proceeding must be disclosed, whether or not privilege is claimed in respect of the document.

(2) In this Part, "document" means anything on or in which information of any description is recorded and includes all written, typed, electronic, oral or otherwise preserved materials or communications, including but not limited to documents, non-identical copies and drafts of documents, recordings, films, photographs, books, records, accounts, publications, notes or any other information or data.
(3) A document is directly relevant if,
  (a) the party with possession, control or power of the document intends to rely on it or it supports that party's case even though the party may not intend to rely on it;
  (b) it adversely affects the position of the party with possession, control or power of the document; or
  (c) it supports another party's position.
(4) A party discloses a document by identifying it in its Affidavit of Documents (Form 28).
(5) Where a party has or has had possession, control or power of one or multiple copies of a document, it need not disclose the copy unless the copy contains a modification, obliteration or other marking or feature that is not present in the original or other copy of the document that is being disclosed.
(6) A party's duty to disclose is limited to documents which are or have been in the possession, control or power of that party.
(7) A party has or has had possession, control or power of a document if,
  (a) the document is or was in the physical possession of the party;
  (b) the party has or has had a right to inspect or take copies of the document; or
  (c) the party has or has had a right to possession of the document.

**28.02 Automatic Duty of Disclosure**

(1) Every Defendant must file a copy of its Affidavit of Documents, with proof of service, within 28 days of filing its Defence.
(2) Every Claimant must file a copy of its Affidavit of Documents with the Court, with proof of service, within 28 days of being served with a first Defence.
(3) The duty of disclosure is an ongoing obligation that continues until the proceeding is brought to an end.
(4) Where a new document or documents come to a party's attention during the proceeding after it has already served its Affidavit of Documents, that party must,
  (a) immediately notify the other parties to the proceeding of the new document or documents;
  (b) serve a supplementary Affidavit of Documents within 14 days after the new document or documents have come to the notice of the party required to serve it; and
  (c) file a copy of its supplementary Affidavit of Documents, together with proof of service, with the Court.

**28.03 Contents of Affidavit of Documents**

(1) A party's Affidavit of Documents must,
  (a) identify each document by providing, where possible, the document's name, date, nature or type, author, recipient, and any other particulars sufficient to identify each document;
  (b) be organized according to the following categories:
    (i) Schedule A: Documents in the party's possession, control or power that the party does not object to producing for inspection;
    (ii) Schedule B: Documents that are or were in the party's possession, control or power that the party objects to producing on the grounds of privilege;
    (iii) Schedule C: Documents that were, but no longer are, in the party's possession, control or power; and
  (c) list each document under each category chronologically;
  (d) number each document under each category consecutively.
(2) The party or, where the party is a company, organization or other entity, the person with authority to represent the interests of that party must certify in the Affidavit of Documents that he or she,
  (a) understands the duty of disclosure;
  (b) has conducted a reasonable search for the documents that it is obligated to disclose; and

(c) has satisfied that duty.

(3) Where a party is represented by an Attorney-at-Law, the Affidavit of Documents must include a certificate of the Attorney-at-Law that he or she has explained to their client,
   (a) the necessity of making full disclosure of all directly relevant documents in accordance with these Rules;
   (b) the types of documents that are likely to be directly relevant to the allegations made in the proceeding; and
   (c) the possible consequences of failing to comply with the disclosure obligation.

**28.04 Right to Inspect and Copy Documents**

(1) Any party to a proceeding has the right to inspect and copy any document listed or mentioned by another party to the proceeding in,
   (a) Schedule A to its Affidavit of Documents;
   (b) its Statement of Case;
   (c) an Affidavit served or filed by it;
   (d) an expert's report relied upon by it; or
   (e) a Witness Statement or summary prepared by it.

(2) The party wishing to inspect or copy any document or document referred to in sub-Rule (1) must give the other party from whom it seeks inspection written notice of its intention to inspect.

(3) The party on whom notice to inspect is given must comply with the notice within 7 days of the date on which the notice is received.

(4) If the party giving the notice undertakes to pay the reasonable cost of copying, the party on whom notice to inspect is given must supply the copy or copies within 7 days of the date on which the notice is received, unless the parties agree otherwise.

(5) The parties must exchange their documents electronically, where reasonably practicable.

**28.05 Application for Specific Disclosure**

(1) Where a party has failed to comply with its disclosure obligation or there is reason to believe that the disclosure made has been insufficient, the Court may, on its own initiative or upon application, make an order for specific disclosure and order costs against that party.

(2) An order for specific disclosure may include requiring a party to,
   (a) disclose specific documents or classes of documents;
   (b) carry out a search for documents to the extent stated in the order; and
   (c) disclose any document located as a result of that search.

(3) An application for specific disclosure may be made without notice at a Case Management Conference.

(4) When deciding whether to make an order for specific disclosure, the Court must,
   (a) consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs; and
   (b) have regard to,
      (i) the likely benefits of specific disclosure;
      (ii) the likely cost of specific disclosure; and
      (iii) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.

(5) If, having regard to sub-Rule (4)(b)(iii), the Court would otherwise refuse to make an order for specific disclosure, it may nonetheless make such an order on terms that the party seeking the order pay the other party's costs of such disclosure.

**28.06 Consequence of Failure to Disclose Documents**

(1) Where a party fails to disclose or permit inspection of a document as required,
   (a) it may not rely on that document at trial, unless the Court permits; and
   (b) the Court may award costs of any party that seeks to enforce disclosure against it.

(2) A party seeking to enforce disclosure may make an application for an unless order under Part 27.

**28.07 Claim of Right to Withhold Disclosure or Inspection of Document**

(1) A person who claims a right to withhold disclosure of a document or part of a document must state the grounds on which such a right is claimed.
(2) A person may make an application, without notice, for an order permitting that person not to disclose the existence of a document on the ground that disclosure of the existence of the document would damage the public interest.
(3) A person who applies under sub-Rule (2) must,
  (a) identify the document, documents or parts thereof for which a right to withhold disclosure is claimed;
  (b) set out the grounds on which the right or duty is claimed; and
  (c) establish, in its supporting Affidavit, that the Applicant has a right or duty to withhold disclosure.
(4) Unless the Court orders otherwise, an order under sub-Rule (2) is not to be open for inspection by or served on any person.
(5) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may make an application for an order that the document be disclosed or made available for inspection.
(6) On hearing such an application the Court must make an order that the document be disclosed unless it is satisfied that there is a right to withhold disclosure.
(7) If a person applies for an order permitting that the existence of a document or part of a document not be disclosed, or claims a right to withhold inspection, the Court may require the person to produce that document to the Court to enable it to decide whether the claim is justified.
(6) On considering any application under this Rule, the Court may invite any person to make representations on the question of whether the document ought to be withheld.
(7) If a party inadvertently allows a privileged document to be inspected, the party who has inspected it may use it only with the consent of the party disclosing the document or permission of the Court.

**28.08 Subsequent Use of Disclosed Documents**

(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, unless,
  (a) the document has been read to or by the Court, or has been referred to in open Court; or
  (b) the party disclosing the document and the person to whom the document belongs, or the Court, gives permission.
(2) The Court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the Court, or referred to in open Court.

**28.09 Notice to Prove Document**

(1) A party shall be deemed to admit the authenticity of any document disclosed under this Part unless that party serves a notice that the document must be proved at trial.
(2) A notice to prove a document must be served not less than 28 days before the trial.

## PART 29: EVIDENCE

**29.01 Evidence, Generally**

(1) The Court may control the evidence to be given at any trial or hearing by giving appropriate directions, at a Case Management Conference or otherwise, as to the issues on which it requires evidence and the way in which any matter is to be proved.
(2) Subject to any order of the Court or provision in these Rules to the contrary, any fact which needs to be proved by evidence of witnesses is to be proved,
  (a) at trial, by their oral evidence; and

(b) at any other hearing, by Affidavit.

(3) Any evidence taken at the trial or other hearing in any proceeding may subsequently be used in that proceeding.

(4) The Court may allow a witness to give evidence without being present in the Courtroom, through a video link or by any other means.

**29.02 Requirement to Serve Witness Statement**

(1) The Court may order a party to serve on any other party a statement containing all of the evidence that a witness could give orally at trial in relation to any issue of fact to be decided, which statement must be in the form of a Witness Statement (Form 29A).

(2) A party's obligation to serve a Witness Statement is independent of any other party's obligation to serve such a statement.

(3) The Court may give directions as to the order in which Witness Statements are to be served and when they are to be filed.

(4) A Witness Statement must,

(a) give the name, address and occupation of the witness;

(b) include a statement by the intended witness that he or she believes the statements of fact in it to be true;

(c) not include any matters of information or belief which are not admissible or, where admissible, state the source of any matters of information or belief;

(d) so far as reasonably practicable, be in the intended witness' own words; and

(e) sufficiently identify any document to which the statement refers without repeating its contents unless necessary in order to identify the document.

(5) The Court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive statement be struck out of any Witness Statement.

(6) If a Witness Statement is not served in respect of an intended witness within the time required, the witness may not be called unless the Court permits, and the Court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief.

(7) A Witness Statement may be used only for the purpose of the proceedings in which it is served unless and to the extent that,

(a) the Court gives permission for some other use of it;

(b) the witness gives consent in writing to some other use of it; or

(c) the witness statement has been put in evidence.

**29.03 Witness Summary**

(1) A party who is not able to obtain a Witness Statement within the time ordered by the Court may serve a witness summary within that time.

(2) A witness summary must set out, so far as is known, all of the contemplated evidence of the witness that would otherwise be included in a Witness Statement.

(3) The party who serves a witness summary must include in the witness summary the reason why a Witness Statement could not be obtained within the time required.

(4) Unless the Court orders otherwise, a witness summary must include the name and address of the intended witness or other sufficient means of identifying the intended witness.

(5) Where a party provides a witness summary, it must still serve a Witness Statement of that witness prior to trial, unless the Court orders otherwise.

**29.04 Evidence of Witness at Trial**

(1) If a party has served a Witness Statement and wishes to rely on the evidence of that witness, that party must call the witness to give evidence and the examination of the witness may consist of direct examination, cross-examination and re-examination.

(2) The Court may,

(a) direct that a witness' Witness Statement be accepted as evidence in place of any direct examination; or
(b) make an order allowing the Witness Statement be accepted as evidence in place of the attendance of the witness at trial, unless an adverse party reasonably requires the attendance of the witness at trial for cross-examination.

(3) If a party has served a Witness Statement and does not intend to call that witness at the trial, that party must give notice to that effect to the other parties at least 14 days before the trial.

(4) A witness giving oral evidence may, with permission of the Court,
(a) amplify the evidence as set out in his or her Witness Statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;
(b) give evidence in relation to new matters which have arisen since the Witness Statement was served; or
(c) comment on evidence given by other witnesses.

(5) If a witness is called to give evidence at trial, that witness may be cross-examined on the evidence as set out in his or her Witness Statement, whether or not it or any part of it was referred to during the witness' evidence in chief.

(6) The Court must exercise reasonable control over the mode of interrogation of a witness so as to protect the witness from undue harassment or embarrassment and may disallow a question put to a witness that is vexatious or irrelevant to any matter that may properly be inquired into at the trial.

(7) Where a witness appears unwilling or unable to give responsive answers, the Court may permit the party calling the witness to examine him or her by means of leading questions.

(8) Where a witness does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter shall, before the witness is called, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and his or her answers.

(9) Where an interpreter is required, the party calling the witness must provide the interpreter.

**29.05 Use of Other Evidence at Trial**

(1) A party who intends to rely at trial on evidence that is not to be given orally or contained in a Witness Statement, Affidavit of Documents, other Affidavit or expert report, must disclose that intention to the other parties at least 28 days before the commencement of trial.

(2) If a party fails to disclose the intention to rely on the evidence as required by this Rule, the evidence may not be relied upon at trial, unless the Court permits otherwise.

**29.06 Compelling Attendance of Witness**

(1) A party who requires the attendance of a person as a witness at a hearing may serve the person with a Summons to Witness (Form 29B) requiring him or her to attend the hearing at the time and place stated in the summons, and the summons may also require the person to produce at the trial the documents or other things in his or her possession, control or power relating to the matters in question in the proceeding that are specified in the summons.

(2) At the request of a party and on payment of the prescribed fee, the Registry must sign, seal and issue a Summons to Witness for each witness that the party requires to attend at a hearing.

(3) A Summons to Witness must,
(a) be issued with the Court before it can be served;
(b) be personally served on the witness at least 14 days before the date on which the witness is required to attend,
failing which the Summons to Witness is not binding, unless the Court orders otherwise.

(4) Where a party wishes to have a Summons to Witness issued less than 14 days before the date of the hearing or requires the witness to produce documents on any date except the date fixed for the hearing of the proceeding, the party must make an application for permission from the Court, which application

may be made in writing and without notice, and any Summons to Witness so issued must be endorsed as having been, "Issued pursuant to a direction of the Court given this (day) of (month), (year)."

(5) A Summons to Witness continues to have effect until the attendance of the witness is no longer required.

(6) Where a witness is served with a Summons to Witness and the witness fails to attend or remain in attendance at the hearing in accordance with the requirements of the summons, upon satisfactory proof of service of the Summons to Witness, the Court may issue a Warrant for Arrest (Form 29C) to cause the witness to be apprehended anywhere within the jurisdiction and immediately brought before the Court and

(a) on being apprehended, the witness may be detained in custody until his or her presence is no longer required, or released on such terms as are just; and

(b) the witness may be ordered to pay the costs arising out of the failure to attend or remain in attendance.

(7) The Court may issue a Summons to Witness in aid of any other court or tribunal that does not have power to issue a Summons to Witness in relation to proceedings before it.

**29.07 Calling an Adverse Party as Witness at Trial**

(1) A party may call an adverse party as a witness at trial unless the person has already testified or the adverse party or the adverse party's Attorney-at-Law undertakes to call the person as a witness.

(2) A party may secure the attendance of an adverse party, including an officer, director, employee or sole proprietor of an adverse party or a partner of a partnership that is an adverse party, as a witness at a trial by serving the person with a Summons to Witness (Form 29B) or by serving the adverse party, at least 14 days before the date on which the witness is required to attend, a notice of its intention to call the person as a witness.

(3) If an adverse party is in attendance at the trial, it is unnecessary to serve that person who is in attendance with a Summons to Witness.

(4) An adverse party may be cross-examined by the party who called him or her as a witness and by any other party who is adverse in interest to that person.

(5) After a cross-examination of an adverse party, the person may be re-examined by any party who is not entitled to cross-examine them.

(6) Where a person required to testify under this Rule,

(a) refuses or neglects to attend or to remain in attendance at the hearing;

(b) refuses to be sworn or affirmed; or

(c) refuses to answer any proper question put to him or her, or to produce any document or other thing that he or she is required to produce,

the Court may grant Judgment in favour of the party calling the witness, adjourn the trial or make such other order as is just.

**29.08 Evidence on Questions of Foreign Law**

(1) Where a party intends to adduce evidence on a question of foreign law, the party must give every other party notice of that intention at least 28 days before the commencement of trial or 14 days before any other hearing, and the notice must attach any document that forms the basis of the evidence and specify the question on which the evidence is to be adduced.

(2) If a party fails to disclose the intention to rely on the evidence as required by this Rule, the evidence may not be relied upon at trial or the hearing, unless the Court permits otherwise

## PART 30: AFFIDAVITS

**30.01 Form of Affidavit**

(1) Every Affidavit (Form 8D) must,

(a) be divided into paragraphs, numbered consecutively, with each paragraph being confined as far as possible to a particular statement of fact;
(b) be expressed in the first person;
(c) be signed by the deponent and,
  (i) if sworn or affirmed within the jurisdiction, be sworn or affirmed before a person authorized to administer oaths or affirmations whose name, qualification and full address must be printed beneath his signature; or
  (ii) if sworn or affirmed outside of the jurisdiction, be sworn or affirmed before a Notary Public or in accordance with the law or rules of the place where the Affidavit is sworn or affirmed and, subject to the provisions of the *Evidence Act*, Chapter 5:03, or any other relevant law, any Affidavit which purports to have been sworn or affirmed in accordance with the law or rules of any place outside the jurisdiction is presumed to have been so sworn or affirmed;
(d) state the full name and complete address for service of the deponent and, if the deponent is a party or Attorney-at-Law, officer, director, member or employee of a party, state that fact; and
(e) state the step in the proceeding for which the Affidavit is being filed in support of or in opposition to.

(2) No Affidavit may be admitted into evidence if sworn or affirmed by the Attorney-at-Law of the party on whose behalf it is to be used or before any agent, partner, employee or associate of that Attorney-at-Law.

**30.02 Content of Affidavit**

(1) An Affidavit must contain only statement of facts within the personal knowledge of the deponent, except where these Rules or another enactment permit otherwise.
(2) Any interlineation, erasure or other alteration in any Affidavit must be initialed by the person taking the Affidavit and, unless so initialed, the altered Affidavit must not be used without permission of the Court.
(3) The Court may order that any scandalous, irrelevant or otherwise oppressive Affidavit, or portion thereof, be struck.

**30.03 Exhibits to an Affidavit**

(1) An exhibit that is referred to in an Affidavit must be marked as such by the person taking the Affidavit, and be attached to the Affidavit.
(2) Where there are numerous exhibits to an Affidavit, they may be included in a bundle which is in chronological order, indexed, marked, paginated, and marked by the person taking the Affidavit as a bundle of the exhibits referred to by the deponent.

**30.04 Affidavit Deposed by Illiterate, Blind or Person who does not Understand the Language**

(1) Where it appears to a person taking an Affidavit that the deponent is illiterate or blind, the person must certify in the jurat that the Affidavit was read in his or her presence to the deponent, that the deponent appeared to understand it, and that the deponent signed the Affidavit or placed his or her mark on it in the presence of the person taking the Affidavit.
(2) Where it appears to a person taking an Affidavit that the deponent does not understand the language used in the Affidavit, the person must certify in the jurat that the Affidavit was interpreted to the deponent in the person's presence by a named interpreter who took an oath or made an affirmation before him or her to interpret the Affidavit correctly.

## PART 31: INTERVENTION

**31.01 Application for Permission to Intervene**

(1) A person who is not a party to a proceeding may make an application for permission to intervene as an added party if the person claims,
  (a) an interest in the subject matter of the proceeding;
  (b) that the person may be adversely affected by a Judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On an application under this Part, the court must consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the Court may add the person as a party to the proceeding and may make such order as is just.

(3) Any person may, with permission or invitation of the Court, and without becoming a party to the proceeding, intervene as a friend of the Court for the purpose of rendering assistance to the Court by way of argument.

## PART 32: EXPERTS

**32.01 Expert's Duty to Court**

(1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these Rules,
   (a) to provide opinion evidence that is fair, objective and non-partisan;
   (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
   (c) to provide such additional assistance as the Court may reasonably require to determine a matter in issue.

(2) The duty in sub-rule (1) prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

**32.02 Expert Reports**

(1) A party who intends to call an expert witness at trial must, not less than 3 months before the Pre-Trial Review, serve on every other party to the proceeding a report, signed by the expert, containing the information required under this Rule.

(2) A party who intends to call an expert witness at trial to respond to the expert witness of another party must, not less than 1 month before the Pre-Trial Review, serve on every other party to the proceeding a report, signed by the expert, containing the information required under this Rule.

(3) Every expert report provided for the purposes of sub-Rules (1) or (2) must contain,
   (a) the expert's name, address and area of expertise;
   (b) the expert's qualifications and employment and educational experiences in his or her area of expertise;
   (c) the instructions provided to the expert in relation to the proceeding and, where the instructions were in writing, attach a copy of the instructions;
   (d) the nature of the opinion being sought and each issue in the proceeding to which the opinion relates;
   (e) the expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range;
   (f) the expert's reasons for his or her opinion, including,
      (i) a description of the factual assumptions on which the opinion is based;
      (ii) a description of any research conducted by the expert that led him or her to form the opinion;
   (g) copies of the documents relied upon by the expert in forming his or her opinion, which documents may be produced in a different format and separate to the report if a list of those documents is included in the report; and
   (h) an Acknowledgement of Expert's Duty (Form 32) signed by the expert.

(4) Where, after reviewing an opposing party's expert report, its expert's opinion changes on a material matter, that party may serve on every other party to the proceeding a supplementary report, signed by the expert, not less than 14 days before the Pre-Trial Review.

(5) The Court may, on its own initiative or upon application, extend or abridge the time provided for service of any expert report under this Part.

(6) Except with permission of the Court, a party may not call upon or put into evidence any opinion with respect to an issue unless the substance of the expert's opinion with respect to that issue is set out in a report served under this Rule.

**32.03 Consequence of Failure to Serve Expert's Report**

(1) A party who fails to serve an expert's report may not rely upon the report or call the expert to testify at trial, except with permission of the Court.
(2) The Court must not give permission under sub-Rule (1) unless it is satisfied that,
  (a) special circumstances exist; and
  (b) it was not reasonably practicable for the party to have applied for relief from sanctions at an earlier stage.

**32.04 Court's Power to limit Expert Evidence**

(1) No party may rely upon a report from, or the opinion of, more than one expert, except with permission of the Court.
(2) The Court may, on its own initiative or upon application, give permission to a party to rely upon a report from, or the opinion of, more than one expert and, where it does, the Court may limit the extent or nature of the expert's report or opinion that may be given.
(3) Where a party makes an application for permission to rely upon a report from, or the opinion of, more than one expert, it must,
  (a) identify the field of expertise in which the party wishes to rely on expert evidence; and
  (b) where known, state the name of the expert in that field on whose evidence the party wishes to rely.
(4) Where a party seeks to rely upon a report from, or the opinion of, more than one expert and another party seeks to submit expert evidence on the same or similar issue, the Court may direct that expert evidence on this issue be given by a single expert only and, where the parties cannot agree who should be the expert, the Court may select the expert or direct that the expert be selected in such other manner as the Court considers just.

**32.05 Joint Experts**

(1) A joint expert may be appointed by the Court to replace or supplement experts instructed by the parties or to assess the evidence to be given by experts instructed by them.
(2) Where the Court gives directions for a joint expert to be used,
  (a) each instructing party may give written instructions to the expert but only if the instructions are copied to or served on all of the other parties at the same time that they are submitted to the expert; and
  (b) the Court may,
    (i) give directions regarding the payment of the expert's fees and expenses and any inspection, examination or experiments which the expert wishes to carry out;
    (ii) limit the amount that can be paid by way of fees and expenses to the expert; and
    (iii) direct that the parties pay that amount into Court or to the expert in such proportions as may be directed.
(3) Unless the Court otherwise orders, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.

**32.06 Court Appointed Experts**

(1) The Court may, on its own initiative or upon application, appoint one or more experts to inquire into and report on any question of fact or opinion relevant to an issue in the action.
(2) The Court must allow the parties to make submissions in respect of the form and content of the questions to be asked of the expert.
(3) An order appointing an expert must,
  (a) where possible, appoint an expert that is agreed on by the parties;

(b) if known, name the expert so appointed;
(c) contain the instructions to be given to the expert;
(d) set out the remuneration to be paid to the expert, which amount must include a fee for the expert's report and an appropriate sum for each day that attendance at the trial is required; and
(e) state the party or parties responsible for payment of the remuneration of the expert, which does not affect any subsequent decision of the Court as to the party who is ultimately to bear the costs of the expert.

(4) Where an application by a party for the appointment of an expert is opposed, the Court may, as a condition of making the appointment, require the party seeking the appointment to give such security for the remuneration of the expert as is just and the expert will not be required to act until the amount has been paid.
(5) The Court may make such further orders as it considers necessary to enable the expert to carry out the instructions.
(6) All communications between the Court and the expert must be in the presence of all of the parties to the proceeding, but may be in person, over the telephone, via email or other electronic communication where the parties and the Court agree.
(7) Where an expert appointed by the Court gives oral evidence or furnishes a written opinion on an issue in the case, the expert may be cross-examined by any party.

**32.07 Written Questions to Experts**

(1) A party may put written questions to an expert instructed by another party or jointly about his report.
(2) Unless the Court permits or the parties agree otherwise, written questions under this Rule,
(a) may be put once only;
(b) must only be in order to clarify the report; and
(c) must be served on the party that proffered the report within 14 days of being served with that expert's report;
(3) An expert's answers to questions under this Rule must be served within 14 days of service of the questions, and must be treated as part of that expert's report.
(4) Where a party has put a written question to an expert instructed by another party in accordance with this Rule and the expert does not answer that question, the Court may make an order that,
(a) that party may not rely on the evidence of the expert;
(b) that party may not recover the fees and expenses of the expert from any other party; or
(c) the party asking the questions obtain answers from another expert on the same question.

**32.08 Meeting of Experts**

(1) The Court may direct that the experts in a proceeding meet to identify,
(a) the extent of the agreement between them, if any;
(b) the points of and short reasons for any disagreement;
(c) action, if any, which may be taken to resolve any outstanding points of disagreement; and
(d) any further material issues not raised and the extent to which these issues are agreed.
(2) The meeting may take place in person, by telephone or by any other means agreeable to the experts who are directed to meet.
(3) Within 14 days of their meeting, or as ordered otherwise, the experts must file a joint report with respect to the items listed in sub-Rule (1).

## PART 33: EXAMINATION OF WITNESS BEFORE OR AFTER TRIAL

**33.01 Availability and Scope of Examination**

(1) A party may examine,

(a) for discovery, any party, with permission of the Court, whether or not that party would otherwise call that person as a witness at trial; or
(b) in aid of execution after Judgment, a Judgment Debtor, as permitted under Part 52.

(2) An examination under sub-Rule (1) may be conducted orally or by submitting questions in writing.
(3) A party who seeks to examine a Claimant may only do so after serving their Defence and Affidavit of Documents, unless the parties agree otherwise.
(4) A party who seeks to examine a Defendant may only do so after the Defendant has delivered a Defence and, if that party is a Claimant, after the Claimant has served its Affidavit of Documents, unless the parties agree otherwise.
(5) A person under examination must answer, to the best of his or her knowledge, information and belief, any proper question relevant to any matter in issue in the proceeding or as required under Part 52, where applicable.
(6) A party may, on an examination, obtain disclosure of,
(a) the names and addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue in the proceeding, unless the Court orders otherwise;
(b) the existence and contents of any insurance policy under which an insurer may be liable to satisfy all or part of a Judgment in the proceeding or to indemnify or reimburse a party for money paid in satisfaction of all or part of the Judgment and the amount of money available under the policy, and any conditions affecting its availability.
(7) Where information may become relevant only after the determination of an issue in the proceeding and the disclosure of that information before the issue is determined would prejudice a party, the Court may, upon application, grant permission to withhold the information until after the issue has been determined.
(8) Any evidence given on examination may be used only for the purpose of the proceeding in which it is given, unless the party or deponent, or the Court, permits otherwise.

**33.02 Examination of Non-Parties**

(1) The Court may permit, on such terms as are just, including costs, the examination of any person who is not a party to the proceeding, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation.
(2) An order under sub-Rule (1) may not be made unless the Court is satisfied that,
(a) there is reason to believe that the person may have information relevant to a material issue in the proceeding;
(b) the applicant has been unable to obtain the information from other persons whom the applicant is entitled to examine or from the person that the party seeks to examine;
(c) it would be unfair to require the applicant to proceed to trial without having the opportunity of examining the person; and
(d) the examination will not,
(i) unduly delay the commencement of the trial of the proceeding;
(ii) entail unreasonable expense for other parties; or
(iii) result in unfairness to the person that the applicant seeks to examine.
(3) The examining party is not entitled to recover the costs of the examination from another party unless the Court orders otherwise.

**33.03 Oral Examination: Application for Permission, where Required**

(1) In an application for permission to examine any person, in exercising its discretion, the Court must take into account,
(a) the amount of money in issue in the proceeding;
(b) the complexity of the issues of fact or law;
(c) a party's denial or refusal to admit anything that should have been admitted;
(d) the possibility that the person will be unavailable to testify at the trial by reason of death, infirmity or sickness;

(e) the possibility that the person will be beyond the jurisdiction of the Court at the time of the trial;
(f) whether the examination is necessary in order to dispose fairly of the proceedings; and
(g) any other reason that should be considered in the interest of justice.

(2) Where a party seeks permission to examine more than one person on behalf of a party, or where multiple parties share the same interest in the proceeding, before making an order for permission to allow an Applicant to examine more than one person,
(a) the Court must be satisfied that,
(i) satisfactory answers respecting all of the issues raised cannot be obtained from only one person without undue expense and inconvenience; and
(ii) examination of more than one person would likely expedite the conduct of the action; and
(b) the Court may impose such limits on the examination as are just if it is satisfied that multiple examinations would be oppressive, vexatious or unnecessary.

(3) Where the person to be examined resides outside Guyana, the Court may determine,
(a) whether the examination is to take place in or outside of Guyana;
(b) the time and place of the examination;
(c) the minimum notice period;
(d) the person before whom the examination is to be conducted;
(e) the amount of attendance money to be paid to the person to be examined; and
(f) any other matter respecting the holding of the examination.

(4) On consent of the parties or permission of the Court, an examination may be recorded and the video or other recording may be filed for the use of the Court along with the transcript.

**33.04 Oral Examination: Where Person to be Examined is Out of the Jurisdiction**

(1) Where a party wishes to examine a person who resides or is based outside of Guyana, the Court may direct the issuance of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(3) The person to be examined out of the jurisdiction must be examined in accordance with any procedure permitted in the country in which the examination is to take place.

(4) If the Court makes an order for the issuance of a letter of request, the party who sought the order must file,
(a) where applicable, a translation into the official language of the country where the examination is to take place of,
(i) the draft letter of request;
(ii) a statement of the issues relevant to the proceedings; and
(iii) a list of questions or the subject matter of questions to be put to the person to be examined; and
(b) an undertaking to be responsible for the expenses of the Minister with responsibility for Foreign Affairs.

**33.05 Oral Examination: How to Initiate**

(1) Where a party seeks to examine a person orally, the party must serve a Notice of Examination (Form 33A) at least 7 days before the date of the examination on the person to be examined,
(a) for discovery, on the Attorney-at-Law for the party to be examined or, where the party acts in person or is not a party to the action, on the person by way of personal service; or
(b) in aid of execution, on the Judgment Debtor by way of personal service.

(2) A Notice of Examination must be issued before it is served on the proposed deponent.

(3) Where the deponent,
(a) is a company, any officer, director or employee on behalf of the company may be examined, but the Court may order the examining party to examine another officer, director or employee;

(b) is a partnership, any person who was, or is alleged to have been, a partner or the sole proprietor, as the case may be, at the material time, may be examined;
(c) is a minor or a patient, the minor or patient if he or she is competent to give evidence or the next friend in place of the minor or patient may be examined;
(d) is an assignee, the assignor or assignee may be examined; or
(e) is a trustee of the estate of a bankrupt, the bankrupt or the trustee may be examined.

(4) The party who first serves a Notice of Examination on a deponent may examine first and complete the examination before the deponent is examined by another party, unless the Court orders otherwise.

**33.06 Oral Examination: Procedure**

(1) An oral examination must,
(a) be held at a time and place set out in the Notice of Examination;
(b) be conducted by an Attorney-at-Law on behalf of the examining party; and
(c) be recorded by a competent stenographer who must produce a transcript of the examination if requested.

(2) Before being examined, the person to be examined must take an oath or make an affirmation administered by a person authorized to administer oaths in Guyana.

(3) Where the deponent resides in Guyana, any oral examination must take place in the district in which the deponent resides, unless the Court orders or the deponent and all the parties agree otherwise.

(4) A deponent who objects to being examined at the time, place or before the person set out in the Notice of Examination may make an application to show that the time, place or person is unsuitable for the proper conduct of the examination.

(5) If an application under sub-Rule (4) is dismissed, the Court must order the Applicant to pay the Respondent's costs immediately, unless the Court is satisfied that the making of the application, although unsuccessful, was nevertheless reasonable.

(6) Where the deponent does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter must, before the deponent is examined, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation and the questions to and answers of the person being examined.

(7) A deponent may be re-examined by his or her own Attorney-at-Law and by any party adverse in interest to the examining party, which re-examination must take place immediately after the examination and may not take the form of a cross-examination.

(8) Every examination must be recorded by a stenographer in its entirety in question and answer form in a manner that permits the preparation of a transcript of the examination, unless the Court orders or the parties agree otherwise.

(9) Where a party requests it, the stenographer must prepare and provide a transcript of the examination within 28 days after receipt of the request and the transcript must be certified as correct by the stenographer who recorded the examination.

**33.07 Oral Examination: Conduct**

(1) Where a question is objected to,
(a) the objector must state the reason for the objection;
(b) may be answered with the objector's consent but may not be used unless the Court rules that it was a proper question; and
(c) its propriety must be determined on an application, unless the parties agree otherwise.

(2) An examination may be adjourned by the deponent or by a party present or represented at the examination, for the purpose of applying for directions with respect to the continuation of the examination or for an order terminating the examination or limiting its scope, where,
(a) the right to examine is being abused by an excess of improper questions or interfered with by an excess of improper interruptions or objections;

(b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the person being examined;
(c) many of the answers to the questions are evasive, unresponsive or unduly lengthy; or
(d) there has been a neglect or improper refusal to produce a relevant document on the examination.

(3) Where the Court finds that,
(a) a person's improper conduct necessitated an application under sub-Rule (2); or
(b) a person improperly adjourned an examination under sub-Rule (2),
the Court may order the person to pay personally and immediately the costs of the application, any costs thrown away and the costs of any continuation of the examination and the Court may fix the costs and make such other order as is just.

(4) Where a deponent fails to attend at the time and place fixed for an examination in the Notice of Examination or at the time and place agreed on by the parties, or refuses to take an oath or make an affirmation, to answer any proper question, or to produce a document or thing that he or she is required to produce, the Court may,
(a) where an objection to a question is held to be improper, order or permit the deponent to attend at his or her own expense and answer the question, in which case the deponent must also answer any proper questions arising from the answer;
(b) where the deponent is a party or a person examined on behalf or in place of a party, dismiss the party's proceeding or strike out the party's Defence;
(c) strike out all or part of the deponent's evidence, including any Affidavit made by the deponent; and
(d) make such other order as is just.

(5) Any order under this Rule must be served personally on the person against whom it is made.

**33.08 Oral Examination: Limitations**

(1) Unless the Court orders or the parties agree otherwise, where more than one party is entitled to examine a party or other person without permission, there shall be only one oral examination, which may be initiated by any party adverse to the party who is to be examined or on behalf or in place of whom, or in addition to whom, a person is to be examined.

(2) No party shall, in conducting oral examinations, exceed one day of examination up to a total of 7 hours, regardless of the number of parties or other persons to be examined, except with the consent of the parties or with permission of the Court.

(3) In determining whether permission should be granted under sub-Rule (2), the Court must consider,
(a) the amount of money in issue;
(b) the complexity of the issues of fact or law;
(c) the amount of time that ought reasonably to be required in the proceeding for oral examinations;
(d) the financial position of each party;
(e) the conduct of any party, including a party's unresponsiveness in any examinations held previously in the proceeding, such as failure to answer questions on grounds other than privilege or the questions being obviously irrelevant, failure to provide complete answers to questions, or providing answers that are evasive, irrelevant, unresponsive or unduly lengthy;
(f) a party's denial or refusal to admit anything that should have been admitted; and
(g) any other reason that should be considered in the interest of justice.

**33.09 Oral Examination: Failure to Answer**

(1) A deponent fails to answer a question if,
(a) the deponent refuses to answer the question, whether on the grounds of privilege or otherwise;
(b) the deponent indicates that the question will be considered or taken under advisement, but no answer is provided within 28 days after the response; or
(c) the deponent undertakes to answer the question, but no answer is provided within 28 days after the response.

(2) If a deponent fails to answer a question as described in sub-Rule (1), the party may not introduce at the hearing or trial the information that was not provided, except with permission of the Court.
(3) Nothing in these Rules relieves a party or other person who undertakes to answer a question from the obligation to honour the undertaking.
(4) Questions on an oral examination must be answered by the deponent but, where there is no objection, the question may be answered by his or her Attorney-at-Law and the answer shall be deemed to be the answer of the deponent unless, before the conclusion of the examination, the deponent repudiates, contradicts or qualifies the answer.

**33.10 Oral Examination: Duty to Correct Answers**

(1) Where a deponent has been examined and the deponent subsequently discovers that the answer to a question on the examination was incorrect or incomplete when made or is no longer correct and complete, the deponent must immediately provide the information in writing to every other party.
(2) Where a deponent provides information in writing pursuant to sub-Rule (1),
  (a) the writing may be treated as if it formed part of the original examination of the deponent; and
  (b) any adverse party may require that the information be verified by Affidavit of the deponent or be the subject of further examination for discovery.
(3) Where a deponent has failed to comply with sub-Rule (1) or a requirement under sub-Rule (2)(b), and the information subsequently discovered is,
  (a) favourable to the party's case, the party may not introduce the information at the trial, except with permission of the Court; or
  (b) not favourable to the party's case, the Court may make such order as is just.

**33.11 Written Examination: How to Initiate**

(1) An examination by written questions (also referred to as interrogatories) is initiated by serving, on the deponent and every other party, a Notice of Written Examination (Form 33B) containing all of the questions to be answered by the deponent.
(2) Written questions must be answered in the form of an Affidavit (Form 8D) by the person being examined, and served on every party within 14 days after service of the Notice of Written Examination.
(3) An objection to answering a question must be made in the Affidavit of the deponent with a statement of the reason for the objection.
(4) Where the examining party is not satisfied with an answer or where an answer suggests a new line of questioning, the examining party may, within 7 days after receiving the answer, serve a supplementary Notice of Written Examination, which must be answered by the deponent within 14 days after service.
(5) Where the deponent refuses or fails to answer a proper question or where the answer to a question is insufficient, the Court may order the deponent to answer or give a further answer to the question or to answer any other question either by Affidavit or on oral examination.
(6) Where the Court is satisfied, on reading all the answers to the written questions, that some or all of them are evasive, unresponsive or otherwise unsatisfactory, the Court may order the deponent to submit to oral examination on such terms respecting costs and other matters as are just.
(7) Where a deponent refuses or fails to answer a proper question on a written examination or to produce a document that he or she is required to produce, the Court may, in addition to the sanctions provided in sub-Rules (6) and (7),
  (a) if the deponent is a party or a person examined on behalf or in place of a party, dismiss the party's proceeding or strike out the party's Defence;
  (b) strike out all or part of the deponent's evidence; and
  (c) make such other order as is just.
(8) On application by the deponent or any party, the Court may terminate a written examination or limit its scope where,
  (a) the right to examine is being abused by an excess of improper questions; or

(b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the deponent.

(9) It is the responsibility of a party who intends to refer to evidence given on a written examination to file a copy of the questions and answers of the examination with the Court, which copies must be filed at least 4 days before the hearing or 14 days before a trial.

**33.12 Use of Examination at Trial**

(1) A party may read into evidence at trial, as part of the party's own case against an adverse party, any part of the evidence given on the examination of the adverse party or a person examined on behalf or in place of, or in addition to the adverse party if the evidence is otherwise admissible, whether the party or other person has already given evidence or not.

(2) The evidence given on an examination may be used for the purpose of impeaching the testimony of the deponent as a witness in the same manner as any previous inconsistent statement by that witness.

(3) Where only part of the evidence given on an examination is read into or used in evidence, the Court may direct the introduction of any other part of the evidence that qualifies or explains the part first introduced.

(4) A party who reads into evidence as part of the party's own case evidence given on an examination of an adverse party, or a person examined on behalf, in place of or in addition to an adverse party, may rebut that evidence by introducing any other admissible evidence.

(5) The evidence given on the examination of a party who is a minor or a patient may be read into or used in evidence at the trial only with permission of the Court.

(6) Where a deponent has died, is unable to testify because of infirmity or illness, for any other sufficient reason cannot be compelled to attend at trial, or refuses to take an oath or make an affirmation or to answer any proper question, any party may, with permission of the Court, read into evidence all or part of the evidence given on the examination as the evidence of the deponent, to the extent that it would be admissible if the person were testifying in Court.

(7) In deciding whether to grant permission under sub-Rule (6), the Court must consider,
(a) the extent to which the person was cross-examined on the examination;
(b) the importance of the evidence in the proceeding;
(c) the general principle that evidence should be presented orally in Court; and
(d) any other relevant factor.

(8) It is the responsibility of a party who intends to refer to evidence given on an examination at trial to have a copy of the transcript or Affidavit in answer to a written examination available, but a copy of a transcript for the use of the Court at trial must not be filed until a party refers to it at trial, and the trial Judge may read only the portions to which a party refers.

## PART 34: DEMAND FOR PARTICULARS AND REQUEST TO ADMIT FACTS

**34.01 Demand for Particulars**

(1) Where a person is served with an inadequately particularized Statement of Case, the person may serve the party whose Statement of Case it is with a written request for particulars specifying the particulars it wishes to obtain.

(2) The party on whom a request for particulars is served must respond to it within 14 days of being served.

(3) If the recipient of the request for particulars fails to respond to the request for particulars, the person seeking to obtain the particulars may make an application for an unless order under Part 27.

(4) If the recipient of the request for particulars responds to the request but fails to provide adequate particulars, the person seeking to obtain the particulars may make an application for an order that the answers provided were inadequate and for the party to provide proper particulars.

(5) Where a response to a request for particulars is provided, the answers are deemed to be part of the party's Statement of Case.

**34.02 Request to Admit Facts**

(1) A party may serve a Request to Admit Facts (Form 34A) on another party requiring that other party to admit or deny the facts specified in the request.

(2) A Request to Admit Facts must be filed, with proof of service, no later than 2 month before the commencement of trial.

(3) A party upon which a Request to Admit Facts is served must, at least 28 days before the commencement of trial, file a Response to Request to Admit (Form 34B) with proof of service on all of the parties to the proceeding.

(4) If the party served with a Request to Admit Facts fails to serve a Response to Request to Admit Facts within the time required, the Court may assess the costs incurred by a party in proving such facts and order the defaulting party to pay such costs.

## PART 35: OFFERS TO SETTLE

**35.01 Making an Offer to Settle**

(1) A party to a proceeding may, at any time, serve on any other party an Offer to Settle (Form 35).

(2) The Offer to Settle may propose to settle any one or more of the claims in the proceeding, part of them, or any issue that arises in them, on the terms specified in the Offer to Settle, whether or not there is a claim for money.

(3) An Offer to Settle under this Part applies, with necessary modifications, to Counterclaims, Crossclaims and Third Party Claims, and in every case must state,

(a) whether or not it relates to the whole or part of the claim and,

(i) where it does not clearly state otherwise, it is to be taken to relate to the whole claim; or

(ii) where it relates only to part or parts of the claim it must identify the part or parts of the claim in respect of which it is made and what is offered in respect of each part to which it relates;

(b) if it is open for acceptance only until a specified date or event, in which case,

(i) the Offer to Settle shall have no effect on any decision that the Court makes as to the consequences of the Offer to Settle unless it is open for acceptance for at least 28 days;

(ii) acceptance of the Offer to Settle after the beginning of trial shall have no effect on any decision that the Court makes as to the consequences of such acceptance;

(c) where there is a counterclaim,

(i) in the case of an offer by the Claimant, whether or not it takes into account the Counterclaim; or

(ii) in the case of an offer by the Defendant, whether or not it takes into account the claim;

(d) where an interim payment has been made, whether the offer is in addition to the interim payment or the interim payment is to be replaced by or deducted from the amount offered; and

(e) whether or not the offer includes costs and, where the offer does not provide for costs, the Claimant is entitled,

(i) where the offer was made by the Defendant, to the Claimant's costs assessed to the date the Claimant was served with the offer; or

(ii) where the offer was made by the Claimant, to the Claimant's costs assessed to the date that the notice of acceptance was served.

(4) A party may but is not obliged to make a payment into Court to support an Offer to Settle.

(5) An Offer to Settle is deemed to be an offer of compromise made without prejudice, however, the party making the offer reserves the right to make the terms of the Offer to Settle known to the Court after Judgment is given.

(6) An Offer to Settle is made when it is served on the party to whom the offer is made.

(7) This Rule does not limit a party's right to make an Offer to Settle other than in accordance with this Rule.

(8) A party who is a minor or a patient may make, withdraw and accept an Offer to Settle, but no acceptance of an Offer to Settle made by the party and no acceptance by the party of an Offer to Settle made by another party is binding on the party until the settlement has been approved by the Court.

**35.02 Withdrawal or Deemed Withdrawal of an Offer to Settle**

(1) An Offer to Settle may be withdrawn at any time before it is accepted by serving written notice of the withdrawal of the Offer to Settle on the party to whom the offer was made.

(2) Where an Offer to Settle specifies a time within which it may be accepted and it is not accepted or withdrawn within that time, it shall be deemed to have been withdrawn when the time expires.

**35.03 Disclosure of Offer to Settle to Court**

(1) No statement of the fact that an Offer to Settle has been made shall be contained in any pleading.

(2) Except in the case of a Defence of tender, where an Offer to Settle is not accepted, no communication respecting the offer shall be made to the Court at the hearing of the proceeding until all questions of liability and the relief to be granted, other than costs, have been determined.

(3) An Offer to Settle must not be filed until all questions of liability and the relief to be granted in the proceeding, other than costs, have been determined.

(4) Where an Offer to Settle is disclosed to the Court, the Court may incorporate any terms of the Offer to Settle into a Judgment.

**35.04 Acceptance of an Offer to Settle**

(1) An Offer to Settle may be accepted by serving a written notice of acceptance of the Offer to Settle on the party who made the offer, at any time before it is withdrawn or the Court disposes of the claim in respect of which it is made.

(2) An Offer to Settle is deemed accepted when the party who made the offer is served with the notice of acceptance.

(3) Where a party to whom an Offer to Settle is made rejects the offer or responds with a counter-offer that is not accepted, the party may thereafter accept the original Offer to Settle unless it has been withdrawn or the Court has disposed of the claim in respect of which it was made.

(4) Where an Offer to Settle is accepted and it relates to,

(a) the whole of a claim, the claim is stayed upon the terms of the offer;

(b) the whole of a claim and counterclaim, both the claim and the Counterclaim are stayed on the terms of the offer; or

(c) any other case, the proceedings are stayed to the extent that they are covered by the terms of the offer,

except where the approval of the Court is required for the settlement of the proceedings, in which case any stay arising out of the acceptance of an offer has effect only if and when the Court gives its approval.

(5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.

(6) Where money has been paid into Court in support of an Offer to Settle, a stay arising out of the acceptance of the offer does not affect proceedings to obtain payment out of Court.

**35.05 Failure to Comply with an Accepted Offer to Settle**

(1) Where a party to an accepted Offer to Settle fails to comply with the terms of the Offer to Settle, any stay as a consequence of the offer having been accepted is deemed lifted and any party to the offer may,

(a) continue the proceeding as if there had been no accepted Offer to Settle; or

(b) make an application for Judgment on the terms of the accepted offer, and the Court may grant Judgment accordingly or upon such other terms as are just.

(2) Where a party seeks damages for breach of the failure of another party to carry out the terms of an accepted offer, that party may do so in an application under sub-Rule (1)(b) without the need to commence new proceedings.

**35.06 Cost Consequences where Offer to Settle not Accepted**

(1) Where an Offer to Settle,
  (a) is made by a Claimant at least 28 days before the commencement of the hearing;
  (b) is not withdrawn and does not expire before the commencement of the hearing;
  (c) is not accepted by the Defendant; and
  (d) the Claimant obtains a Judgment as favourable as or more favourable than the terms of the Offer to Settle,

the Claimant is entitled to its costs of the proceeding and the Court may, in exercising its discretion as to interest, take into account the failure of the Defendant to accept the Claimant's offer.

(2) Where an Offer to Settle,
  (a) is made by a Defendant at least 28 days before the commencement of the hearing;
  (b) is not withdrawn and does not expire before the commencement of the hearing;
  (c) is not accepted by the Claimant; and
  (d) the Claimant obtains a Judgment as favourable as or less favourable than the terms of the Offer to Settle,

the Claimant must pay any costs incurred by the Defendant after the last date on which the offer could have been accepted in accordance with its terms, unless the Court orders otherwise.

(3) The burden of proving that the Judgment is as favourable as the terms of the Offer to Settle, or more or less favourable, as the case may be, is on the party who claims the benefit of sub-Rules (1) or (2).

(4) The Court, in exercising its discretion with respect to costs, may take into account any Offer to Settle made in writing, the date the offer was made, the terms of the offer and the conduct of the parties.

## PART 36: PAYMENTS INTO COURT AND OUT OF COURT

**36.01 Payment into Court**

(1) Where these Rules, a Practice Direction, an order or other enactment permit, money may be paid into Court by filing with the Registry,
  (a) a Requisition (Form 13A) for payment into Court that refers to any statutory provision or Rule that authorizes the payment into Court; and
  (b) a copy of the order, Offer to Settle or acceptance of offer, if any, pursuant to which the money is being paid.

(2) On receiving the documents filed under sub-Rule (1), the Registry must give the person a direction addressed to the Court's bank, specifying the account into which the money is to be paid.

(3) On receiving the direction referred to in sub-Rule (2), the person must attend at the Court's bank and deposit the money into the specified bank account in accordance with the direction.

(4) On receiving the money, the bank must give a receipt to the person paying the money.

(5) The person who paid the money must file a Notice of Payment into Court (Form 36A) attaching a copy of the receipt from the bank.

**36.02 Payment out of Court**

(1) Money may be paid out of Court in accordance with an order of the Court or on consent, unless sub-Rule (2) applies.

(2) Money may not be paid out of Court on consent where,
  (a) a Claimant accepts money paid into Court by one or more but not all of a number of Defendants;
  (b) there is a Defence of tender;
  (c) the proceeding or part of it has been stayed;
  (d) one or more of the parties to the proceeding is a minor or patient; or
  (e) an order or other Rule provides that an order is required for the money to be paid out of Court;

(3) A person who seeks payment of money out of Court in accordance with an order must file,

(a) a Requisition (Form 13A) for payment of the money out of Court;
(b) the original order or a certified copy of the order, unless an original or certified copy has already been filed with the Registrar at the time that the money was paid into Court; and
(c) an Affidavit establishing that,
(i) where an order stipulates that money may be paid out to a party when the party attains the age of majority, the party has attained the age of majority; and
(ii) the time prescribed for an appeal of the order has expired and no appeal is pending,

and the Registry must pay the money out to the person to whom the order directs that it be paid.

(4) A party who seeks payment out of Court, on consent, must file,
(a) a Requisition (Form 13A) for payment of the money out of Court; and
(b) a Consent (Form 10B) of all parties or their Attorneys-at-Law,

and the Registry must pay the money out to the party in accordance with the consent.

(5) Where money may be paid out of Court only in accordance with an order of the Court and a single sum of money was paid into Court in satisfaction of claims by multiple Claimants, the Court must apportion the money between the persons entitled to the sum unless the sum has already been apportioned by the Court or by agreement between the parties.

(6) Where money has been paid into Court as security for costs or an order has been made for payment of security for costs out of Court and the order does not provide for payment out directly to an Attorney-at-Law, the money may be paid out to the Attorney-at-Law for the party entitled, on filing with the Registrar the material required by this Rule.

(7) Where money in Court is to be paid out or transferred to a person named in an order who has died, the money may be paid or transferred to the deceased person's representative on proof to the satisfaction of the Registry of the person's death and of the representative's authority.

## PART 37: DISCONTINUANCE

### 37.01 Right to Discontinue Claim

(1) A Claimant may discontinue all or part of a claim without permission of the Court unless,
(a) there is more than one Claimant, in which case the Claimant requires the written consent of every other Claimant or permission of the Court;
(b) any party has given an undertaking to the Court or the Court has granted an interim injunction, in which case the Claimant requires permission from the Court; or
(c) the Claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 17), in which case the Claimant requires a written consent from the Defendant who made the payment or permission of the Court.

(2) If there is more than one Defendant the Claimant may discontinue all or part of the claim against all or any of the Defendants.

### 37.02 Procedure for Discontinuance

(1) A Claimant who claims more than one remedy and subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies is not treated as discontinuing part of a claim for the purposes of this Part.

(2) To discontinue a claim or any part of a claim a Claimant must file a Notice of Discontinuance (Form 37), which must be served on every other party to the claim.

(3) If the Claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed copy of the Notice of Discontinuance.

(4) If the Claimant needs permission from the Court, the Notice of Discontinuance must contain details of the order by which the Court gave permission.

(5) If there is more than one Defendant, the Notice of Discontinuance must specify against which Defendant or Defendants the claim is discontinued.

**37.03 Right to Apply to have Notice of Discontinuance Set Aside**

(1) If the Claimant discontinues without the consent of the Defendant or permission of the Court, any Defendant who has not consented may make an application to have the Notice of Discontinuance set aside.

(2) An application under this Rule must be made within 28 days or service of the Notice of Discontinuance on the Applicant.

**37.04 Effect of Discontinuance**

(1) Discontinuance against any Defendant takes effect on the date when the Notice of Discontinuance is served on that Defendant.

(2) A claim or the relevant part of a claim is brought to an end as against that Defendant on that date but the discontinuance does not affect,

(a) any proceedings relating to costs; or

(b) the right of the Defendant to apply to have the Notice of Discontinuance set aside.

**37.05 Liability for Costs**

(1) Unless the parties agree or the Court orders otherwise, a Claimant who discontinues is liable for the costs incurred by the Defendant against whom the claim is discontinued, on or before the date on which Notice of Discontinuance was served.

(2) If a claim is only partly discontinued,

(a) the Claimant is only liable for the costs relating to that part of the claim which is discontinued; and

(b) unless the Court orders otherwise, the costs which the Claimant is liable to pay are not to be quantified until the conclusion of the rest of the claim.

**37.06 Quantification of Costs**

(1) Unless an order has been made for budgeted costs, costs are to be determined in accordance with the scale of prescribed costs.

(2) If the Claimant discontinues part of the case only, the amount of costs must be assessed by the Court when the remainder of the claim is resolved.

(3) In determining the appropriate amount of costs to be paid where an order has been made for budgeted costs, the Court may take into account any written information provided by either party when the costs budget was made.

**37.07 Discontinuance and Subsequent Proceedings**

(1) If the Claimant,

(a) discontinues a claim after the Defendant against whom the claim is discontinued has filed a Defence; and

(b) makes a subsequent claim against the same Defendant arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and

(c) has not paid the Defendant's costs of the discontinued claim;

the Court may stay the subsequent claim until the costs of the discontinued claim are paid.

## PART 38: PRE-TRIAL REVIEW

**38.01 Pre-Trial Review**

(1) A Pre-Trial Review is intended to encourage a settlement prior to trial, assist in identifying or narrowing the actual issues for trial, and deal with any outstanding issues before trial, and no further Case Management Conferences must be held after a Pre-Trial Review unless the Court orders otherwise.

(2) Every party to a Claim must participate in a Pre-Trial Review, which must be held not less than 2 months

and not more than 4 months before the date set for the commencement of trial, unless the Court permits otherwise.

(3) The Court must schedule a date by which a Pre-Trial Review must be held at the first Case Management Conference, and a specific date for the Pre-Trial Review may be fixed at a Case Management Conference or upon one of the parties filing a Requisition (Form 13A).

(4) The Court must give each party at least 28 days notice of the date, time and place for the Pre-Trial Review.

(5) The Judge who conducts the Pre-Trial Review must not, where practicable, be the Case Management Judge or preside at the trial, unless the parties agree and file a Consent (Form 10B) to the same effect.

(6) The Court may at any time, on its own initiative or upon application, direct that a Pre-Trial Review be waived or another Pre-Trial Review be held.

**38.02 Materials to be Filed**

(1) At least 7 days before a Pre-Trial Review, each party must file, with proof of service, a Pre-Trial Review memorandum containing concise statements of the following matters:
   (a) the nature of the proceeding;
   (b) a brief overview of the factual background;
   (c) the issues to be determined at trial;
   (d) the party's position on each issue to be determined at trial, including details of any admissions made;
   (e) the names of the witnesses that the party is likely to call at the trial and the length of time that the evidence of each of those witnesses is estimated to take; and
   (f) the steps that need to be completed before the proceeding is ready for trial, and the length of time that it is estimated that the completion of those steps will take.

**38.03 Attendance**

(1) Each party to the proceeding and, where represented, their Attorney-at-Law, must participate in the Pre-Trial Review by personal attendance or, only if personal attendance would require undue amounts of travel time or expense, by telephone or video conference, unless the Court otherwise permits.

(2) Every Attorney-at-Law attending the Pre-Trial Review must be fully acquainted with the facts and legal issues in the proceeding.

(3) A party who requires another person's approval before agreeing to a settlement shall, before the Pre-Trial Review, arrange to have ready telephone or other immediate electronic communication access to the other person throughout the conference, whether it takes place during or after business hours.

**38.04 Powers of the Court and Matters to be Considered**

(1) In addition to any case management powers under Part 25, the Court may,
   (a) establish a timetable for any remaining steps necessary to be taken before trial;
   (b) order a Case Management Conference, if necessary;
   (c) give directions as to the procedure to be followed at trial; and
   (d) make such order as the Court considers necessary or advisable with respect to the conduct of the proceeding.

(2) The following matters must be considered at a Pre-Trial Review:
   (a) the possibility of settlement of any or all of the issues in the proceeding;
   (b) simplification of the issues;
   (c) the possibility of obtaining admissions that may facilitate the hearing;
   (d) the question of liability.
   (e) the amount of damages, if damages are claimed.
   (f) the estimated duration of the trial or hearing.
   (g) in the case of an action, the number of expert witnesses and other witnesses that may be called by each party, and dates for the service of any outstanding or supplementary expert reports.
   (h) the advisability of directing a reference.

(i) any other matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.

(3) The presiding Judge should make an order for costs against any party that unnecessarily frustrates the intent and purpose of the Pre-Trial Review.

## PART 39: TRIAL

### 39.01 Bundles for use at Trial

(1) At least 28 days before the date fixed for the commencement of trial, all parties must inform the Claimant of any documents that they wish to be used, relied upon or entered as exhibits at trial, and the Claimant must prepare a bundle of documents that includes all of those documents.

(2) The bundle of documents must separate those documents which are agreed and those which are not, be paginated, and include a concise index of all of the documents contained in it.

(3) At least 14 days before the date fixed for the commencement of trial the Claimant must file,
   (a) the bundle of documents referred to in sub-Rule (1);
   (b) a bundle of pleadings that includes copies of all of the statements of case filed in the proceeding;
   (c) a bundle of evidence that includes,
      (i) any Affidavits served in response to requests for information;
      (ii) any Response to Request to Admit Facts and statements of agreed facts; and
      (iii) all Witness Statements; and
   (d) all expert reports that were served in relation to the proceeding.

(4) Where there are numerous documents contained in any of the bundles referred to in sub-Rule (3), the Claimant may also file a Core Bundle that contains only the documents from sub-Rule (3) to which it will be necessary to refer to repeatedly at the trial.

(5) Any Offers to Settle, Notices of Payment into Court, and any applications or orders relating to interim payments, or references thereto, must not be included in any bundles.

### 39.02 Written Submissions

(1) The parties may, with permission of the Court, file written submissions instead of or in addition to closing submissions.

(2) Written submissions must be filed within 7 days of the conclusion of the trial or such shorter period as the Court directs.

### 39.03 Exclusion of Witnesses

(1) Subject to sub-Rule (2), the trial Judge may, at the request of any party, order that a witness be excluded from the courtroom until called to give evidence.

(2) An order under sub-Rule (1) may not be made in respect of a party to the proceeding or a witness whose presence is essential to instruct the Attorney-at-Law for the party calling the witness, but the trial Judge may require any such party or witness to give evidence before any other witnesses are called to give evidence on behalf of that party.

(3) Where an order is made excluding a witness from the courtroom, there shall be no communication with that witness with respect to any evidence given during his or her absence from the courtroom until after that witness has been called, has given evidence, has been excused, or the trial Judge otherwise permits.

(4) Nothing in this Rule prevents the trial Judge from excluding from the courtroom any person who is interfering with the proper conduct of the trial.

### 39.04 Exhibits at Trial

(1) Exhibits must be marked and numbered consecutively.

(2) A list of all of the exhibits must be maintained and updated throughout the trial, which provides a description of each exhibit, and states by whom it was put in evidence and, where the person who produced it is not a party or a party's Attorney-at-Law, the name of that person.
(3) Exhibits must remain in the possession of the Court until the time for an appeal has expired or, where an appeal has been taken, until it has been disposed of.
(4) Subject to sub-Rule (3), at any time following the trial Judgment,
    (a) on Requisition (Form 13A) by the Attorney-at-Law or party who put an exhibit in evidence or the person who produced it and on the filing of a Consent (Form 10B) of all parties represented at the trial, the Registry may return the exhibit to the person making the requisition; or
    (b) the Registry must return the exhibits to the respective Attorneys-at-Law or parties who put the exhibits in evidence at the trial.

**39.05 Failure to Prove Fact or Document**

(1) Where, through accident, mistake or other cause, a party fails to prove some fact or document material to the party's case, the Judge may proceed with the trial subject to proof of the fact or document afterwards at such time and on such terms as the Judge directs.

**39.06 Failure of Party to Attend Trial**

(1) Where a proceeding is called for trial and,
    (a) all of the parties fail to attend, the trial Judge may dismiss the proceedings;
    (b) a party fails to attend, the trial Judge may,
        (i) proceed with the trial in the absence of the party;
        (ii) where the Claimant attends and the Defendant fails to attend, dismiss the counterclaim, if any, and allow the Claimant to prove the claim;
        (iii) where the defendant attends and the Claimant fails to attend, dismiss the claim and allow the defendant to prove the counterclaim, if any; or
        (iv) make such other order as is just.
(2) The Court may set aside or vary, on such terms as are just, a Judgment obtained against a party who failed to attend at the trial.

**39.07 Applications to Set Aside Judgment given in Party's Absence**

(1) A party who was not present at a trial at which Judgment was given or an order made may make an application to set aside that Judgment or order, which application must be made within 28 days of being served with the Judgment or order.
(2) In considering an application to set aside under this Rule, the Court must be satisfied that,
    (c) the Applicant had a good reason for failing to attend the hearing; and
    (d) it is likely that, had the Applicant attended at the hearing, some other Judgment or order might have been given or made.

**39.08 Adjournment of Trial**

(1) The Judge may adjourn a trial on such terms as the Judge thinks just.
(2) The Judge may only adjourn a trial to a date and time fixed by the Judge or to be fixed by the Registry.

**39.09 Inspection by Trial Judge**

(1) A Judge before whom a proceeding is being tried or the Court before whom an appeal is being heard may, in the presence of the parties or their Attorneys-at-Law, inspect any property concerning which any question arises in the proceeding, or the place where the cause of action arose.

## PART 40: APPOINTMENT OF REFEREE

### 40.01 Power to Order Trial before Referee

(1) The Court may order the claim or any issue or allegation to be tried by a referee where,
  (d) the parties agree;
  (e) the matters in dispute are wholly or mainly a matter of account; or
  (f) the Court considers that the claim requires,
    (i) prolonged examination of documents; or
    (ii) scientific or local investigation which cannot conveniently be carried out by the Court.

(2) The Court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

(3) In a claim by or against the State, an appointment of a referee may not be made without the consent of the Attorney General.

### 40.02 Appointment of Referee

(1) A referee must be appointed at a Case Management Conference.

(2) The referee must be a person agreed on by the parties or, if they fail to agree, a person selected by the Court in accordance with sub-Rule (3).

(3) If the parties cannot agree who should be the referee, the Court may,
  (a) select the referee from a list prepared or identified by the parties; or
  (b) direct that the referee be selected in such other manner as the Court directs.

(4) The Court must identify the question or issue upon which the referee is to report.

(5) The Court must decide what fee is to be paid to the referee and by whom.

(6) Notwithstanding sub-Rule (5), the Court may ultimately order any party to pay the fee of the referee.

### 40.03 Conduct of Reference

(1) Unless the Court orders otherwise, the referee must adopt the simplest, least expensive and most expeditious method of conducting the reference.

(2) The referee may hold the trial or conduct the inquiry at any place and at any time which appears to the referee to be convenient to the parties.

(3) A party who requires the attendance of a person as a witness before the referee may serve the person with a Summons to Witness (Form 29B) in accordance with Rule 29.06.

(4) Where a witness is served with a Summons to Witness and the witness fails to attend or remain in attendance in accordance with the requirements of the summons, a party may obtain a Warrant for Arrest (Form 29C) in accordance with Rule 29.06.

(5) If a person served with a Summons to Witness to appear before a referee,
  (a) fails to attend;
  (b) refuses to answer any lawful question or produce any document at the inquiry; or
  (c) refuses to be sworn or affirm for the purposes of the inquiry,
  the referee must file a certificate of such failure or refusal.

(4) Any party may make an application for an order requiring a person served with the Summons to Witness to appear before a referee to attend, be sworn or affirmed, or answer any question or produce any document, as the case may be, which application may be made without notice.

(5) On an application under sub-Rule (4), the Court may order the person to pay any costs resulting from the refusal to be sworn or affirmed or refusal to answer any lawful question or produce any document at the inquiry.

(6) An order made under sub-Rule (4) must be served personally on the defaulting person.

(7) Where a person disobeys an order made under sub-Rule (4), a contempt order may be obtained against them under Part 51.

### 40.04 Report Following Reference

(1) The report of the referee is to be filed, with proof of service on each of the parties.

(2) The referee may in the report,
  (a) make a special statement of facts from which the Court may draw inferences; or
  (b) submit any question for the decision of the Court.

**40.05 Consideration of Report by Court**

(1) Upon receipt of the report of the referee, the Registry must fix a date, time and place for consideration of the report by the Court and give at least 14 days notice to the parties of such date.
(2) The Court may,
  (a) adopt the report in whole or in part;
  (b) ask the referee to explain any part of the report;
  (c) decide the question or issue on the evidence taken by the referee;
  (d) direct that additional evidence be given to the Court;
  (e) remit any question or issue for further consideration; or
  (f) vary the report.

## PART 41: ACCOUNTS AND INQUIRIES

**41.01 Accounts and Inquiries**

(1) Where a claim seeks an accounting or some other relief that requires the taking of an account, any party may make an application for directions relating to the taking of the account, which application must be determined at the Case Management Conference.
(2) The Court may,
  (a) direct that any preliminary issue of fact be tried;
  (b) order an account to be taken;
  (c) order inquiries be made; or
  (d) order that any amount shown to be due to a party on the account be paid by a specified date.
(3) On directing that an account be taken, the Court must direct how it is to be taken.
(4) The Court may direct that any relevant books of account be evidence of the matters contained in them, subject to any objection that a party may take.

**41.02 Delay in Taking the Account**

(1) If there is undue delay in taking the account, the Court may,
  (a) require the accounting party, or any other party, to explain the delay;
  (b) give directions to expedite the taking of the account;
  (c) direct any other party to take over the taking of the account; and
  (d) make such order for costs as it considers just.

**41.03 Verification of Account**

(1) When there has been a direction for an account to be taken, the accounting party must verify the account by Affidavit (Form 8D) and attaching a copy of the account to it.
(2) The accounting party must file the Affidavit, with proof of service, unless the Court orders otherwise.

**41.04 Notice of Omissions**

(1) Any party who claims that there are omissions or who challenges any item in the account must give notice to the accounting party with the best particulars that the party can give of the omission or error and the grounds for alleging it.

**41.05 Distribution before Entitlement Ascertained**

(1) Where some, but not all, of the persons entitled to share in a fund are ascertained and there is likely to be delay in determining the existence or entitlement of the other persons, the Court may order immediate payment of their shares to the persons who have been ascertained.

(2) The Court need not reserve any part of those shares for the purpose of meeting any subsequent costs of determining the existence or entitlement of the other persons.

## PART 42: REFERENCE TO HIGH COURT BY THE LEGAL PRACTITIONERS COMMITTEE

**42.01 Procedure on Reference by the Legal Practitioners Committee**

(1) On receiving the copy of the proceedings of the Legal Practitioners Committee forwarded to him or her under section 36(3) of the *Legal Practitioners Act*, Chapter 4:01, the Attorney General may make an application for an order under section 37(5) of that Act.

(2) The application must be by way of Fixed Date Application and must be filed together with 4 copies of the proceedings and findings of the Legal Practitioners Committee but the proceedings and findings of the Legal Practitioners Committee need not be served on the Respondent.

(3) The hearing of the Fixed Date Application must be heard by the High Court constituted of not less than three Judges.

(4) The evidence taken and all documents admitted at the inquiry before the Legal Practitioners Committee may be relied upon at the hearing of the application but no other evidence may be introduced or produced except with permission of the Court.

(5) Upon hearing of the Fixed Date Application, where the Court determines that an Attorney-at-Law must be suspended from practice, the person responsible for maintaining the Roll of Attorneys-at-law referred to in section 3 of the *Legal Practitioners Act*, Chapter 4:01, must remove from it the Attorney-at-Law's name.

## PART 43: METHODS OF ENFORCEMENT

**43.01 Methods of Enforcement**

(1) Enforcement proceedings refer to the measures a person may take under these Rules to compel a Judgment Debtor to obey an order.

(2) Parts 43 to 53 deal with the methods available for the enforcement of different types of orders and the type of order may affect the method of enforcement that will be available to enforce the order.

**43.02 How to and Who may Enforce**

(1) A Judgment Creditor who has an order with costs may enforce the Judgment and costs separately.

(2) An order that is made for the benefit of a person who is not a party may be enforced by that person in the same manner as if the person were a party.

(3) An order that may be enforced against a person who is not a party may be enforced against that person in the same manner as if the person were a party.

(4) Where an order requires the Judgment Debtor to do two or more different things, the Judgment Creditor may obtain a single writ to enforce every part of the order or separate writs to enforce one or more parts of the order.

(5) An order that is subject to the fulfilment of a condition may not be enforced unless the condition is fulfilled, except with permission of the Court upon an application.

(6) Where the Court sets aside an order, any order made for the purpose of enforcing that order ceases to have effect unless the Court directs otherwise.

(7) The rate of interest payable on a Judgment debt is the statutory rate of interest unless the Court has directed some other rate.

**43.03 Costs of Enforcement**

(1) A Judgment Creditor may recover the fees and costs of enforcement in addition to any other amount payable under an order.

**43.04 Writs of Execution, Generally**

(1) Writs of execution and payments thereunder shall prima facie have priority as of the time of the day and date of the filing of the request for a writ of execution.
(2) A writ of execution must include a direction to recover,
   (a) the amount payable for the fees and fixed costs of enforcement; and
   (b) in the case of a money Judgment, the amount of interest upon the Judgment debt.
(3) Unless the Court otherwise orders, the amount for which a writ of execution may be issued must include the unpaid fees and costs of any previous enforcement proceedings on the same Judgment.
(4) A writ may not be issued where 10 years have elapsed since the date of the order to be enforced, except with permission of the Court.
(5) A writ of execution is valid for a period of 1 year beginning with the date of its issue after which period the Judgment Creditor may not take any step under the writ unless the Court has renewed it.
(6) The priority of the renewed writ and of any other writ of execution must be determined according to the time of the filing of the original request for the writ.

**43.05 Renewal of Writs**

(1) A person may make an application for an order to renew of a writ, which application may be made without notice and may be made in writing.
(2) An application for an order to renew a writ must be made before the writ expires, except with permission of the Court if the Court is satisfied that the Judgment Creditor has taken all reasonable steps to execute the writ but has been unable to do so.
(3) The Court may order the renewal a writ for a period of not exceeding 1 year.
(4) Upon the Court ordering the renewal of a writ, at a person's request and payment of the requisite fee, the Registry must renew the writ by signing and marking it with the date of the order permitting its renewal, and placing the seal of the Court near the marking.

**43.06 Suspension of Writ**

(1) The Judgment Creditor may request the Marshal in writing to suspend execution.
(2) Where the Judgment Creditor suspends execution, neither the Judgment Creditor nor the Marshal may take any further step under the writ of execution unless the Court first renews it and the Judgment Creditor gives written notice of such renewal to the Marshal to resume execution.

**43.07 Irregularity in Execution**

(1) In the event of any irregularity being committed in any process in execution or in the event of there being an excess in execution, the person against whom or against whose property the process has issued may apply to the Court to stay proceedings in the execution until such irregularity is amended or such excess remedied.
(2) The Court may make such order in respect of an application under sub-Rule (1) as will remedy or remove any irregularity or excess, and give such directions as are necessary for the purpose of reserving to the aggrieved party his or her remedy by action against all parties concerned for any injury or damage they may have sustained by reason for such irregularity or excess.
(3) Where a proceeding in execution is wrongly, illegally or erroneously made or done, it may be cancelled by order of the Court on an application without notice, and a new proceeding may be made.

**43.08 Where Judgment Debt Satisfied**

(1) Where an order has been satisfied in full, the Judgment Creditor must withdraw all writs relating to the order from the office of any Marshal with whom they have been filed.

(2) Where the Judgment Creditor fails to withdraw a writ as required, the court may, on application by the Judgment Debtor, order that the writ be withdrawn.
(3) Where there is a garnishment in effect and the Judgment debt has been satisfied in full, the Judgment Creditor must terminate the garnishment as required by Part 44.

## PART 44: GARNISHMENT

### 44.01 Availability of Garnishment

(1) A Judgment Creditor under an order for the payment or recovery of money may, by way of a Garnishment Order (Form 44A), obtain payment of all or part of the Judgment debt from a person who owes money to a Judgment Debtor.
(2) Where a person owes money to the Judgment Debtor and another person, only one-half of the indebtedness may be garnished, unless otherwise permitted by the Court.
(3) A garnishment order may not be obtained in relation to an order that requires money to be paid into Court.
(4) A garnishment order may only be made against a garnishee who resides within or carries on business in the jurisdiction.
(5) Debts due from the State to the Judgment Debtor may not be garnished.

### 44.02 Procedure for obtaining a Garnishment Order

(1) A Judgment Creditor who seeks to enforce an order for the payment or recovery of money by garnishment must make an application for a Garnishment order, which application may be made without notice and in writing.
(2) An application for a Garnishment order must,
  (a) attach a copy of the order in favour of the Judgment Creditor for the payment or recovery of money; and
  (b) include in the supporting Affidavit evidence that,
    (i) the order is still unsatisfied;
    (ii) the date and amount of any payments received since the order was made, if any;
    (iii) the amount owing, including interest and the fixed costs of the garnishment proceeding, and details of how the amount owing and the interest are calculated;
    (iv) the address of the Judgment Debtor;
    (v) the name and address of the person to whom the garnishment order is to be directed;
    (vi) that the Judgment Creditor believes that person is or will become indebted to the Judgment Debtor and the grounds for the belief; and
    (vii) such particulars of the Judgment debt as are known to the creditor;
(3) The Court may issue a garnishment order if it is satisfied that, on the evidence submitted in the application, the Judgment Creditor is entitled to the debt.
(4) A garnishment order,
  (a) must name only one Judgment Debtor and one Garnishee;
  (b) remains in force for 6 years from the date of its issue and for a further 6 years from each renewal; and
  (c) may be renewed before its expiration by filing an application for renewal of the garnishment together with the requirements of sub-Rule (2).

### 44.03 Service and effect of Service of Garnishment Order

(1) The Judgment Creditor must serve the garnishment order on the garnishee as well as on the Judgment Debtor.
(2) If the garnishee is a financial institution, the garnishment order must be served on the branch at which the debt is payable, being the branch where the Judgment Debtor maintains an account, and the

garnishee is not liable to pay to the Judgment Creditor an amount that would reduce the Judgment Debtor's account balance below $10,000.

(3) The garnishment becomes binding on the garnishee as soon as it is served on the garnishee.

(4) The garnishee is liable to pay to the Judgment Creditor any debt of the garnishee to the Judgment Debtor, up to the amount shown in the garnishment order, within 14 days of being served with the garnishment order or within 14 days after the debt becomes payable, whichever is later.

(5) A debt of the garnishee to the Judgment Debtor,

(a) includes,

(i) a debt payable at the time the garnishment order is served; and

(ii) a debt payable after the garnishment order is served and within 6 years after it is issued;

(b) does not include,

(i) if the garnishee is a financial institution, money in an account opened after the garnishment order is served;

(ii) if the garnishee is an employer, a debt arising out of employment that commences after the garnishment order is served; or

(iii) if the garnishee is an insurer, a debt payable under an insurance policy that is entered into after the garnishment order is served.

**44.04 Garnishee Must Serve Statement and Effect of Failure to Serve**

(1) Within 14 days of being served with the garnishment order, a garnishee must serve upon the Judgment Creditor and file with the Court, with proof of service, a Garnishee's Statement (Form 44B).

(2) Where the garnishee has paid the Judgment Creditor the full amount as set out in the garnishment order, the Garnishee's Statement must give the particulars of the payment.

(3) Where the garnishee disputes the garnishment or pays to the Judgment Creditor an amount that is less than the amount set out in the garnishment order, the Garnishee's Statement must set out the reasons for disputing or failing to comply with the garnishment order.

(4) Where the garnishee fails serve a Garnishee's Statement upon the Judgment Creditor or if the Judgment Creditor is not satisfied with the garnishees reasons for disputing or failing to comply with the garnishment order, the Judgment Creditor may make an application for a hearing for the garnishee to explain its failure to comply with the garnishment order, which application must be made on notice to the garnishee.

(5) On an application for a hearing for the garnishee to explain its failure to comply with the garnishment order, the Court may,

(a) order that any issue or question necessary for determining the garnishee's liability be tried or determined as the court considers just;

(b) where the garnishee failed to serve and file a Garnishee's Statement, order that the garnishee pay the amount that the court finds is payable to the Judgment Debtor by the garnishee, or the amount set out in the garnishment order, whichever is less;

(c) determine any matter in relation to the garnishment order; or

(d) dismiss the application.

**44.05 Discharge of Garnishee's Liability**

(1) The garnishee's liability to the Judgment Creditor is discharged,

(a) upon the garnishee's filing of its Garnishee's Statement confirming that payment to the Judgment Creditor of the full amount due under the garnishment order has been made;

(b) if the Court sets aside the garnishment order or the original order based upon which the garnishment order was made; or

(c) if the Judgment Creditor files, with proof of service on the garnishee, a Notice of Termination of Garnishment (Form 44C).

**44.06 Costs of Garnishment Proceedings**

(1) The Judgment Creditor's costs of any garnishment proceedings are those fixed by Practice Direction, unless the Court orders otherwise, in which case it must assess the costs.

(2) The Judgment Creditor may include its costs of the application for a garnishment order in the garnishment order, which costs must rank in priority to the amount of the Judgment debt.

(3) Where the Court permits, a garnishee who appears at a hearing of an application under this Part may deduct his or her costs as fixed or assessed by the Court before paying any sum to the Judgment Creditor pursuant to the garnishment order.

## PART 45: WRIT OF POSSESSION

**45.01 Application for Writ of Possession**

(1) A Writ of Possession provides the Marshal with the authority to enter and take possession of specified land or premises and give possession of that property to the Judgment Creditor.

(2) A Judgment Creditor may make an application for a Writ of Possession (Form 45), which application must be made on notice to any person who occupies the real property that is the subject of the Writ of Possession, and the supporting Affidavit must,
   (a) attach a copy of the order to which it relates;
   (b) establish that the order was served upon the person directed to deliver up possession; and
   (c) establish that the person against whom the order was made did not deliver up possession as ordered.

(3) The court may order a Writ of Possession only where it is satisfied that all persons in possession of any part of the property have received sufficient notice of the proceeding in which the order was obtained.

(4) Where the Court makes an order for the issuance of a Writ of Possession, the Registry must issue a Writ of Possession at the request of any person, upon payment of the requisite fee.

(5) The Writ of Possession must be delivered to the Marshal.

(6) Upon receipt of a Writ of Possession, the Marshal must remove any person that occupies the property from the property.

## PART 46: WRIT OF DELIVERY

**46.01 Application for Writ of Delivery**

(1) A Writ of Delivery may be used to enforce an order for the recovery of possession of personal property other than money, such as where a person or business has personal property that does not belong to him or her and refuses to return it to the Judgment Debtor.

(2) A Judgment Creditor may make an application for a Writ of Delivery (Form 46), which application must be made on notice to any person who is in possession of the property that is the subject of the Writ of Delivery, and the supporting Affidavit must,
   (a) attach a copy of the order to which it relates;
   (b) establish that the order was served upon the person directed to deliver up possession; and
   (c) establish that the person against whom the order was made did not deliver up possession as ordered.

(3) The court may order a Writ of Delivery only where it is satisfied that the person in possession of the property received sufficient notice of the proceeding in which the order was obtained.

(4) Where the Court makes an order for the issuance of a Writ of Delivery, the Registry must issue a Writ of Delivery at the request of any person, upon payment of the requisite fee.

(5) The Writ of Delivery must be delivered to the Marshal.

(6) Upon receipt of a Writ of Delivery, the Marshal must seize the property from the person to which the Writ of Delivery relates.

## PART 47: WRIT OF SEQUESTRATION

### 47.01 Application for Writ of Sequestration

(1) A Writ of Sequestration provides the Marshal with the authority to take possession of and hold the real or personal property of a Judgment Debtor, and to collect and hold any income from the property until the person complies with the order.

(2) Where a person fails to do an act (other than the payment of money) or fails to abstain from doing an act as required by an order, a person may make an application for a Writ of Sequestration (Form 47) against all or part of the person's real or personal property, which application may be made without notice and in writing.

(3) In an application for a Writ of Sequestration, the application must,
   (a) attach a copy of the order requiring the Judgment Debtor to do or not to do an act;
   (b) provide evidence that the order was personally served on the Judgment Debtor; and
   (c) specify the precise term of the order which it is alleged that the Judgment Debtor disobeyed, the exact nature of the alleged breach of the order by the Judgment Debtor and when and where each breach occurred, if applicable.

(4) On an application for a Writ of Sequestration, the Court may,
   (a) issue a Writ of Sequestration,
      (i) against a Judgment Debtor;
      (ii) where the Judgment Debtor is a company, against an officer of the Judgment Debtor;
   (b) require that the application be served on the Judgment Debtor and adjourn the application to another date;
   (c) dismiss the application; or
   (d) make such other order or impose terms on the Writ of Sequestration as it considers just.

(5) The Court may not issue a Writ of Sequestration unless it is satisfied that the order was personally served on the Judgment Debtor and was served in sufficient time to give the Judgment Debtor a reasonable opportunity to do the act before the expiration of that time.

(6) Where the order has not been served, the Court may issue Writ of Sequestration only if it is satisfied that the person against whom the order is to be enforced had notice of its terms by being present when the order was made or was notified of its terms by some other means.

(7) The court may, on its own initiative or upon application, discharge or vary a Writ of Sequestration on such terms as are just.

### 47.02 Service and Effect of Writ of Sequestration

(1) Where the Court issues a Writ of Sequestration,
   (a) the Writ of Sequestration must authorize the Marshal to enter upon the property that is the subject of the Writ of Sequestration, and to sequester all the rents, profits and issues of the said property, as well as the goods and chattels of such person on that property, and to keep same until the person complies with the order or the court directs otherwise;
   (b) a copy of the issued Writ of Sequestration must immediately be,
      (i) provided to the Marshal by the Registry; and
      (ii) served on the Judgment Debtor by the Judgment Creditor.

(2) The Judgment Creditor may not sell any property seized under an order for sequestration without permission of the Court.

## PART 48: WRIT OF SEIZURE AND SALE

### 48.01 Application for Writ of Seizure and Sale

(1) A Writ of Seizure and Sale (Form 48A) provides the Marshal with the authority to seize and sell the real or personal property of a Judgment Debtor.

(2) A Judgment Creditor may make an application for a Writ of Seizure and Sale, which application must be made on notice to any person who is in possession of the property that is the subject of the Writ of Seizure and Sale, and the supporting Affidavit must,
   (a) attach a copy of the Judgment or order to which it relates;
   (b) establish that the Judgment or order was served upon Respondent; and
   (c) establish that the person with possession did not deliver up possession of the property as ordered.

(3) The court may order a Writ of Seizure and Sale only where it is satisfied that the person in possession of the property received sufficient notice of the proceeding in which the Judgment or order was obtained.

(4) Where the Court makes an order for the issuance of a Writ of Seizure and Sale, the Registry must issue a Writ of Seizure and Sale at the request of any person, upon payment of the requisite fee.

(5) The Writ of Seizure and Sale must be delivered to the Marshal.

(6) Upon receipt of a Writ of Seizure and Sale, the Marshal must seize the property to which the Writ of Seizure and Sale relates.

**48.02 Where Property Seized by Marshal**

(1) Where a person alleges an interest in any property seized or about to be seized by a Marshal, he or she must give notice in writing to the Marshal of their claim within 7 days of the seizure, which notice must state,
   (a) the person's name and address for service;
   (b) identification of the property to which the person claims an interest; and
   (c) the person's grounds for the claim.

(2) Immediately upon receipt of a notice made in accordance with sub-Rule (1), the Marshal must serve a copy of the notice on the Judgment Creditor.

(3) The Judgment Creditor must, within 4 days of receiving a copy of the notice, advise the Marshal in writing whether the Judgment Creditor admits or disputes the person's claim to the property and,
   (a) where the Judgment Creditor admits the person's claim to the property,
      (i) the Marshal must withdraw from possession of the property; and
      (ii) the Judgment Creditor is liable only for the fees and expenses of the Marshal incurred before the Marshal received the notice;
   (b) where the Judgment Creditor disputes the person's claim to the property or fails to advise the Marshal as required under this Rule, the Marshal may make an application for relief under this Part.

**48.03 Seizure and Sale of Personal Property**

(1) Where personal property is seized under a Writ of Seizure and Sale, the Marshal must, on request, deliver an inventory of the property seized to the Judgment Debtor before or, where this is not practicable, within a reasonable time after the property is removed from the premises on which it was seized.

(2) Personal property seized under a Writ of Seizure and Sale may not be sold by the Marshal unless a Notice of Sale (Form 48B), at least 14 days before the sale, has been served on the Judgment Creditor and the Judgment Debtor and has been published in a newspaper of general circulation in the place where the property was seized.

(3) The Marshal must not pay out the net proceeds of sale to the party entitled thereto before the expiration of 14 days after the sale.

(4) No cattle, implements of husbandry, utensils, nor instruments mortgaged with a plantation shall be comprehended under the term personal property, and no such cattle, implements of husbandry, utensils or instruments shall be taken in execution, except together and with the real property with which, as appurtenant and appendant, they shall be under mortgage.

**48.04 Seizure and Sale of Real Property**

(1) A Judgment Creditor may not take any step to sell land under a Writ of Seizure and Sale until 3 months after writ was issued.

(2) No sale of land under a Writ of Seizure and Sale may be held until 6 months after the writ was issued.

(3) A sale of land must not be held under a Writ of Seizure and Sale unless a Notice of Sale has been, at least 28 days before the sale,
   (a) served on the Judgment Creditor and the Judgment Debtor;
   (b) published in a newspaper of general circulation in the place where the property is located; and
   (c) posted in a conspicuous place on the property.

(4) The Marshal must not pay out the net proceeds of sale to the party entitled thereto before the expiration of 14 days after the sale.

**48.05 Notice of Sale**

(1) A Notice of Sale must include,
   (a) the title of the proceeding;
   (b) a short description of the property to be sold;
   (c) the time and place of the intended sale; and
   (d) the name of the Judgment Debtor whose interest is to be sold.

(2) The Marshal may adjourn a sale to a later date where the Marshal considers it necessary in order to realize the best price that can be obtained in all the circumstances, and where the sale is adjourned, it may be conducted on the later date with such further notice, if any, as the Marshal considers advisable.

(3) Where personal property or land seized under a Writ of Seizure and Sale remains unsold for want of buyers, the Marshal must notify the Judgment Creditor of the date and place of the attempted sale and of any other relevant circumstances and the Judgment Creditor may instruct the Marshal in writing to sell the personal property or land in such manner as the Marshal considers will realize the best price that can be obtained.

**48.06 Opposition to Sale**

(1) Within 14 days after the first advertisement of the sale of any immovable property, any person having a right to oppose such sale may enter or cause to be entered in a book to be kept for that purpose by the Marshal an opposition to such sale.

## PART 49: APPOINTMENT OF A RECEIVER

**49.01 Application for Appointment of Receiver**

(1) Where the provisions for the appointment of a receiver under the *Companies Act*, Chapter 89:01, do not apply, the Court may appoint a receiver, on an application, to recover a Judgment debt from the income or capital assets of a Judgment Debtor.

(2) In deciding whether to order the appointment of a receiver under this Part, the Court must have regard to,
   (a) the amount of the Judgment debt;
   (b) the amount likely to be obtained by the receiver; and
   (c) the probable cost of appointing and remunerating the receiver.

(3) Where the Court makes an order appointing a receiver under this Part, the order must,
   (a) name the person appointed as receiver;
   (b) specify the amount and terms of the security, if any, to be furnished by the receiver for the proper performance of the receiver's duties;
   (c) state whether the receiver is also appointed as manager and, if necessary, define the scope of the receiver's managerial powers;
   (d) specify who is to be responsible for paying the receiver or the property from which the receiver is to recover his or her remuneration;
   (e) specify the dates by which the receiver must file the receiver's accounts; and
   (f) contain such directions and impose such terms as are just.

**49.02 Remuneration of Receiver**

(1) A receiver may only be remunerated for his or her services if the Court so orders and,
  (a) specifies the basis upon which the receiver is to be remunerated; or
  (b) directs that the amount of the receiver's remuneration is to be determined by the Court.

(2) Where the Court directs that the amount of the receiver's remuneration is to be determined by the Court,
  (a) the receiver may not recover any remuneration without a determination by the Court; and
  (b) the receiver or any party may make an application at any time for such a determination to take place.

(3) The receiver or any party may make an application for the determination of the amount of the receiver's remuneration and, where the application is made by the receiver, the application must attach the receiver's accounts as exhibits to the supporting Affidavit and show the basis upon which the remuneration is claimed.

(4) An application for the determination of the amount of the receiver's remuneration must be made on notice to the receiver, Judgment Debtor and Judgment Creditor.

(5) In considering the application for the remuneration of a receiver under this Part, the Court may,
  (a) award such sum as is justified, reasonable and proportionate in all the circumstances, taking into account,
    (i) the time spent by the receiver and his or her staff;
    (ii) the complexity of the receivership;
    (iii) any responsibility of an exceptional kind or degree which fell on the receiver in consequence of the receivership;
    (iv) the effectiveness with which the receiver appeared to be carrying out carried out his or her duties; and
    (v) the value and nature of the subject matter of the receivership; or
  (b) order the receiver to provide further information in support of his or her claim for remuneration and adjourn the hearing to a fixed date.

(6) The receiver must pay into Court any balance shown on the accounts as due from the receiver within 7 days of the passing of any account.

**49.03 Default by Receiver**

(1) Where a receiver fails to submit an account by the date ordered or pay into Court any balance shown on the account as due from the receiver, any party may make an application for the receiver to show cause for the failure, which application must be made on notice to the receiver.

(2) At the hearing of an application for the receiver to show cause for the failure, the Court may,
  (a) give directions to the receiver to remedy the default;
  (b) discharge the receiver;
  (c) appoint another receiver;
  (d) disallow any remuneration claimed by the receiver; or
  (e) order the receiver to,
    (i) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver; and
    (ii) pay the costs of the Applicant in bringing the application, which costs may be fixed or assessed by the Court.

## PART 50: ORDER TO COMMIT

**50.01 Application for Order to Commit**

(1) Where permitted under the *Debtors Act*, Chapter 6:04, a Judgment Creditor may make an application for an Order to Commit (Form 50A) a Judgment Debtor for non-payment of all or part of an amount due under an order, which application may be made without notice.

(2) In an application under this Part, the Affidavit in support of the application must,

(a) attach a copy of the order requiring payment of the debt;
(b) provide the details of any payment that has been made by the Judgment Debtor up to the date of the application; and
(c) state the amount of interest claimed to the date of the application and the daily rate thereafter.

(3) The Applicant must file, together with his or her application, a Judgment Summons (Form 50B) and, upon payment of the prescribed fee, the Registry must note the date for the hearing of the application on the Judgment Summons and issue it.

(4) Upon issuance of the Judgment Summons, the Applicant must serve it on the Judgment Debtor by way of personal service not less than 7 days before the date fixed for the hearing of the application to commit.

(5) The Judgment Creditor must file proof of service or proof of attempted service not less than 4 days before the hearing, failing which the application must be struck from the Court docket and must not be heard.

**50.02 Hearing of Application for Order to Commit**

(1) At the hearing of the application for an order to commit, the Court may,
(a) dismiss the application to commit; or
(b) where the Court is satisfied that the Judgment Summons has come to the knowledge of the Judgment Debtor or that all reasonable efforts have been made to serve the Judgment Debtor and the Judgment Debtor is willfully evading service, make an order to commit the Judgment Debtor for such fixed term as is permitted by law.

(2) An order to commit must bear the date of the day on which such order was made and must continue in force for one year from such date.

(3) Where a Judgment Debtor has once been imprisoned pursuant to an order to commit, no second order to commit may be made against that Judgment Debtor in respect of the same debt, unless the order for payment of the debt owing by the Judgment Debtor provides for payment by instalments in which case a power of committal arises on default of payment for each instalment.

(4) Imprisonment of a Judgment Debtor pursuant to an order to commit does not operate as a satisfaction or extinguishment of the debt, and the Judgment Creditor is not prohibited from proceeding by any other means of enforcement against that Judgment Debtor as permitted by these Rules.

## PART 51: CONTEMPT ORDER

**51.01 Application for Contempt Order**

(1) Where a person fails to do an act (other than the payment of money) or fails to abstain from doing an act as required by an order, any person may make an application for a contempt order against that person.

(2) An Affidavit in support of an application for a contempt order must,
(a) attach a copy of the order that is alleged to have been disobeyed or breached;
(b) establish that the order that is alleged to have been disobeyed or breached was served on the person or, where service could not be effected, that the order would have come to the person's attention if the person had not been evading service;
(c) specify the term of the order which it is alleged that the person has disobeyed or broken;
(d) specify the exact nature of the alleged disobedience or breach and, where applicable, when and where each breach occurred;

(3) An application for a contempt order must be personally served on the person against whom the contempt order is sought.

(4) An Affidavit in support of an application for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief must be specified in the Affidavit.

**51.02 Hearing of Application for Contempt Order**

(1) In disposing of an application for a contempt order, the Court may make such order as is just, and where a finding of contempt is made, the Court may order that the person in contempt,
   (a) be imprisoned for such period and on such terms as are just;
   (b) be imprisoned if the person fails to comply with a term of the order;
   (c) pay a fine;
   (d) do or refrain from doing an act;
   (e) pay such costs as are just; and
   (f) comply with any other order that the Court considers necessary,

(2) Where a company is in contempt, the Court may also make an order under sub-Rule (1) against any officer or director of the company.

(3) Where a person fails to comply with an order requiring the doing of an act, other than the payment of money, the Court may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the Court.

(4) The party enforcing the order and any person appointed by the Court are entitled to the costs of the application under this Part and the expenses incurred in doing the act ordered to be done, which costs may be fixed or assessed by the Court.

(5) Where an order for imprisonment is made, it may be enforced by the issue of a Warrant of Committal by the Registry.

**51.03 Discharging or Setting Aside Contempt Order**

(1) The Court may discharge, set aside, vary or give directions in respect of a contempt order and may grant such other relief and make such other order as is just.

## PART 52: EXAMINATION IN AID OF EXECUTION

**52.01 Examination of Judgment Debtor**

(1) A Judgment Creditor may examine a Judgment Debtor in relation to the enforcement of an order, which examination may be referred to as an examination in aid of execution.

(2) Where the Judgment Debtor sought to be examined,
   (a) is a company, the Judgment Creditor may examine any officer, director or employee on behalf of the company;
   (b) is a partnership, the Judgment Creditor may examine any person who was, or is alleged to have been, a partner at the material time;

(3) A Judgment Creditor may examine the Judgment Debtor in relation to,
   (a) the reason for nonpayment or nonperformance of the order;
   (b) the Judgment Debtor's income and property;
   (c) the debts owed to and by the Judgment Debtor;
   (d) the disposal the Judgment Debtor has made of any property either before or after the making of the order;
   (e) the Judgment Debtor's present, past and future means to satisfy the order;
   (f) whether the Judgment Debtor intends to obey the order or has any reason for not doing so; and
   (g) any other matter pertinent to the enforcement of the order.

(4) Where a Judgment Creditor seeks to examine a Judgment Debtor, the Judgment Creditor must serve a Notice of Examination (Form 33A) on the Judgment Debtor in accordance with Part 33 and the provisions of Part 33 apply to the conduct of the examination in addition to the provisions of this Part.

**52.02 Limitation on Examination in Aid of Execution**

(1) A Judgment Creditor is entitled to only one examination in aid of execution of a Judgment Debtor, except with permission of the Court.

(2) Where a Judgment Creditor seeks permission to conduct a further examination in aid of execution of a Judgment Debtor, the Judgment Creditor must make an application, which application may be made without notice and may be made in writing.

(3) Any order for further examination in aid of execution must be served upon the Judgment Debtor together with the Notice of Examination.

**52.03 Statement of Financial Position**

(1) Where the order to be enforced is a for the payment of an amount of money, the Judgment Creditor may serve, together with the Notice of Examination, a Statement of Financial Position (Form 52) requiring the Judgment Debtor to complete the requirements of the form.

(2) The Judgment Debtor must serve his or her completed the Statement of Financial Position on the Judgment Creditor within 4 days of the date scheduled for the examination and, where the Judgment Creditor is satisfied with the answers provided by the Judgment Debtor, the Judgment Creditor may cancel the examination provided that the Judgment Debtor is notified of the cancellation.

## PART 53: STOP NOTICES AND CHARGING ORDERS

**53.01 Stop Notice**

(1) Where a Judgment Creditor believes that there may be a transfer, disposition of or other dealing with property or securities of a Judgment Debtor by another person, the Judgment Creditor may file a Requisition (Form 13A), together with a draft Stop Notice (Form 53), with the Registry to obtain a Stop Notice.

(2) Upon receipt of the Requisition, and payment of the requisite fee, the Registry must issue a Stop Notice, which requires any person served with the Stop Notice to provide the Judgment Creditor with at least 28 days written notice of any intended transfer, disposition of or other dealing with the property or securities of the Judgment Debtor.

(3) The Judgment Creditor must personally serve the Stop Notice on any person to whom it is directed, which may include the Registrar where there are any funds in Court.

(4) Any person who was served with a Stop Notice but who makes a transfer, disposition of or otherwise deals with the property or securities to which the Stop Notice relates without complying with the Stop Notice is liable to pay the Judgment Creditor an amount equivalent to the value of the property or securities up to the amount of the outstanding Judgment debt, interest and costs.

**53.02 Charging Order**

(1) A Judgment Creditor may, upon application, obtain a charge on the beneficial interest of the Judgment Debtor in,
   (a) property, whether land or personal property;
   (b) any securities; or
   (c) any funds in Court, which includes securities.

(2) A Judgment Creditor may make an application for a single charging order in respect of more than one order against a Judgment Debtor.

(3) No person on whom a charging order is served may transfer, dispose, or otherwise deal with the property or securities to which the charging order relates unless the order has been discharged.

(4) Any transfer, disposition of or other dealing with the property or securities to which the charging order relates by a person served with the charging order is invalid, unless the transfer, disposition or other dealing occurred after the charging order was discharged.

(5) Any person who was served with a charging order but makes a transfer, disposition of or otherwise deals with the property or securities to which the charging order relates is liable to pay the Judgment Creditor an amount equivalent to the value of the property or securities up to the amount of the outstanding Judgment debt, interest and costs.
(6) A charging order remains in force until it is discharged by order of the Court.

**53.03 Application for Charging Order**

(1) An application for a charging order may be made without notice but must be supported by an Affidavit that,
  (a) identifies and attaches the order to be enforced against the Judgment Debtor;
  (b) states that the Judgment debt is unsatisfied, either wholly or in part and to what extent;
  (c) identifies the property or securities in respect of which the order is sought and states in whose name they stand, as well as whether any person other than the Judgment Debtor who may have an interest in the property or securities;
  (d) identifies any known unsecured creditors of the Judgment Debtor; and
  (e) states that the Judgment Debtor has a beneficial interest in the securities and describing that interest.
(2) An Affidavit under this Rule may contain statements of fact based on information and belief if the grounds for the information and belief are set out.
(3) Where an application for a charging order is made on notice, it must be served on,
  (a) the Judgment Debtor;
  (b) where the securities to be charged are stock, the company;
  (c) where the property or securities to be charged are funds in Court, the Registrar;
  (d) all unsecured creditors of the Judgment Debtor; and
  (e) any other person that may allege an interest in the property or securities to which the charging order relates.
(4) Where an application for a charging order is made without notice, the Court may only grant a temporary charging order.
(5) The Judgment Creditor may, at any time before the expiration of a temporary charging order, make an application to make the order absolute and, unless the Judgment Debtor attends at the hearing of such application and shows cause why the order should not be made absolute, the Court may, upon proof of service of the application, make the order absolute.

**53.04 Service of Charging Order**

(1) Where the Court makes a charging order, whether or not temporary, the Judgment Creditor must personally serve a copy of the order on,
  (a) the Judgment Debtor; and
  (b) any unsecured creditors or other person that may allege an interest in the property or securities to which the charging order relates.
(2) The charging order must be served within 7 days of the date of the charging order.
(3) Where the charging order relates to stock of a company or funds in Court, it must be served together with a stop notice.

**53.05 Variation or Discharge of Charging Order**

(1) Any person may at any time make an application to vary or discharge a charging order.
(2) An application to vary a charging order must be made on notice to,
  (a) the Judgment Creditor, unless the Judgment Creditor is the Applicant;
  (b) the Judgment Debtor, unless the Judgment Debtor is the Applicant; and
  (c) any unsecured creditors or other person that may allege an interest in the property or securities to which the charging order relates.

(3) Where the Judgment Creditor is the Applicant, an application to discharge a charging order may be made without notice and in writing.
(4) Unless the Judgment Creditor is the Applicant, an application to discharge a charging order must be made on notice to the Judgment Creditor.

**53.06 Enforcement of Charging Order**

(1) The Judgment Creditor may, after 3 months of the date of a charging order, make an application for an order directing the sale of the Judgment Debtor's interest in the property or securities with the proceeds of the sale being payable to the Judgment Creditor up to the amount of the outstanding Judgment debt, interest and costs.
(2) The Judgment Creditor must serve a copy of the application directing a sale on,
    (a) the Judgment Debtor; and
    (b) any unsecured creditors or other person that may allege an interest in the property or securities to which the charging order relates.
(3) The Court may give such directions as it considers appropriate to secure the expeditious sale of the property or securities at a price that is fair to both Judgment Creditor and the Judgment Debtor.

## PART 54: INTERPLEADER

**54.01 Application for Interpleader Relief**

(1) Where a person is sued or expects to be sued in respect of property in the person's possession or under the person's control or in respect of the proceeds from a disposition of the property, or receives a claim in respect of the property or proceeds by or from two or more persons making adverse claims and the person claims no beneficial interest in the property, the person may make an application for an order for interpleader relief.
(2) An application under this Part must,
    (a) establish that the Applicant,
        (i) claims no interest in the subject matter in dispute other than for charges or costs;
        (ii) does not collude with any of the parties claiming an interest in the subject matter; and
        (iii) is willing to transfer the subject matter into Court or dispose of it as the Court may direct.
    (b) be served,
        (i) on the Judgment Creditor, the Judgment Debtor and on the person claiming the money, goods or chattels, where applicable; and
        (ii) where the application is brought by any person other than the Marshal, on all persons making a claim to the money, goods or chattels.
(3) Where an application for interpleader relief is made by the Marshal, Affidavit evidence in support of the application is not required.

**54.02 Hearing of Application for Interpleader Relief**

(1) On an application for interpleader relief, the Court may,
    (a) determine the question in issue between the parties unless one of the persons alleging a claim to the property objects;
    (b) order that the issue between the persons alleging a claim to the property be tried;
    (c) order that any person alleging a claim to the property be made a party to any pending proceeding relating to such property; or
    (d) on an application by a Marshal who has seized any property to which a person claims to be entitled to by way of security, order that all or part of such property be sold and the proceeds applied in accordance with the order.
(2) Where a person alleging a claim to the property has been served with the application but fails to attend at the hearing, the Court may make an order barring that person and any person claiming under them from

prosecuting any claim to the property as against the Applicant and any person claiming under the Applicant.

## PART 56: PROCEEDINGS FOR ADMINISTRATIVE ORDERS

**56.01 Proceedings for Administrative Orders**

(1) This Part deals with proceedings for administrative orders where the relief sought is for,
  (a) judicial review under the *Judicial Review Act*, Chapter 3:06, including an order for,
    (i) certiorari, for quashing unlawful acts;
    (ii) prohibition, for prohibiting unlawful acts;
    (iii) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; or
    (iv) such other relief, directions or writs as the Court considers just and as the circumstances warrant.
  (b) a declaration against a party that is the State, a Court, a tribunal or any other public body;
  (c) relief under the Constitution; or
  (d) the Court, by virtue of any law, to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.

(2) A proceeding for administrative orders must be commenced by issuing a Statement of Claim (Form 8A) or, where permitted, a Fixed Date Application (Form 8B) in accordance with Part 8.

(3) Where the proceeding is for relief under the Constitution, it must be served on the Attorney General.

(4) Where the proceeding is for judicial review, it may be made by any person, group or body having sufficient interest in the subject matter of the proceeding including,
  (a) any person who can show that he has been adversely affected by the decision which is the subject of the application; or
  (b) any body or group,
    (i) acting at the request of a person or persons who would be entitled to apply under sub-Rule (a);
    (ii) that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;
    (iii) that can show that the matter is of public interest and that the body or group possesses expertise in the subject-matter of the application;
  (c) any statutory body where the subject matter falls within its statutory remit;
  (d) any other person or body who has a right to be heard under the provisions of any relevant enactment or the Constitution.

(5) Apart from any time limit imposed by any relevant enactment, relief may be refused in any case in which the Court considers that the granting of relief would be likely,
  (a) to cause substantial hardship to or to substantially prejudice the rights of any person; or
  (b) to be detrimental to good administration.

**56.02 Publication of Proceeding for Administrative Order**

(1) When issuing a proceeding for an administrative order, the Applicant must file a Notice of Claim for an Administrative Order (Form 56).

(2) Upon the application being filed, the Registry must post the Notice of Claim for an Administrative Order in a prominent and conspicuous area accessible to the public in the Registry.

(3) Where the administrative order sought is for judicial review under section 4(1)(b) of the *Judicial Review Act*, Chapter, 3:06, the Registrar must cause the originating process to be published in accordance with section 7 of that Act, in addition to the requirements of sub-Rule (2).

**56.03 Joinder of Claims for Other Relief**

(1) A Claimant may include in its originating process, in addition to seeking an administrative order, a claim for any other relief or remedy that arises out of or is related or connected to the subject matter.

(2) In a proceeding for judicial review or for relief under the Constitution, where the facts set out justify the granting of any other remedy arising out of any matter to which the claim for an administrative order relates, and the Court is satisfied that at the time when the proceeding was issued the Applicant could have sought such remedy, the Court may award damages, restitution or an order for return of property.

(3) Where the Court considers it appropriate, it may at any stage direct that any claim for other relief be dealt with separately from the claim for an administrative order.

**56.04 Hearing of Proceeding for Administrative Order and Costs**

(1) At the hearing of the application, the Court may allow any person, group or body who appears to have a sufficient interest in the subject matter of the claim to make submissions, whether or not served with the originating process.

(2) The submissions of such a person, group or body must be made in writing unless the Court orders otherwise.

(3) The Court may grant any relief that appears to be justified by the facts proved before it, whether or not that relief should have been sought in a proceeding for an administrative order.

(4) The Court may make such orders as to costs as it considers just, which costs must be assessed.

**56.05 Special Provisions relating to Orders of Certiorari**

(1) Where the proceeding seeks an order or writ of certiorari for the Court to review other proceedings for the purpose of quashing them, the validity of any order, warrant, commitment, conviction or record may not be questioned unless,

(a) a copy of the order, warrant, commitment, conviction or record, verified by Affidavit (Form 8D), is lodged with the Registry before the hearing; or

(b) the Applicant can account for the failure to do so to the satisfaction of the Court.

(2) Where the proceeding seeks an order or writ of certiorari, the Court may, if satisfied that there are reasons for quashing the decision to which the proceeding relates,

(a) direct that the decision be quashed; and

(b) in addition, remit the proceeding to the other court, tribunal or authority concerned, with a direction to reconsider the matter in accordance with the findings of the Court.

## PART 57: HABEAS CORPUS

**57.01 Application for Issue of Writ of Habeas Corpus**

(1) An application for the issue of a Writ of Habeas Corpus (Form 57) must be made by way of Fixed Date Application without notice, and may be determined by a Judge in chambers.

(2) Evidence in support of the application by way of Affidavit (Form 8D) must be given by the person restrained stating how that person is restrained and, if the person restrained is not able to make the Affidavit, it may be made by another person on that person's behalf and must state why the person restrained is not able to make the Affidavit.

(3) The application must be heard in open Court unless it is made on behalf of a minor in which case it must be heard in chambers.

**57.02 Powers of Court**

(1) On an application under this Part, the Court may make an order,

(a) for the writ to issue;

(b) to adjourn the application and give directions for notice to be given to the person against whom the issue of the writ is sought and any other person as the Judge may direct; or

(c) that the person restrained be released.

(2) On making an order for the writ to issue, the Court must give directions as to the date, time and place of hearing.

(3) On the date fixed for the person detained to be brought before the Court, the Court must make such orders as are just and, in particular, may give directions as to the manner in which any claim for compensation is to be dealt with by the Court without requiring the issue of any further process.

**57.03 Service of Writ**

(1) The writ must be served personally on the person to whom it is directed.

(2) If it is not possible to serve that person personally, or if that person is the keeper of a prison or other public official, the writ may instead be served personally on a servant or agent of the person to whom it is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person it must be served on the person first named and copies served on each of the other persons named in accordance with sub-Rule (1) or (2).

(4) Each person served must also be served with a copy of the Fixed Date Application and notice of the date, time and place at which the person restrained is to be brought and containing a warning that in default of compliance with the writ proceeding for committal may be taken.

**57.04 Return to Writ**

(1) Each person served must endorse on or annex to the writ a return stating each cause of detention of the person restrained.

(2) The return may be amended or another substituted with permission of the Court.

## PART 58: APPLICATIONS FOR BAIL

**58.01 Applications for Bail**

(1) Any person who is denied bail by a Magistrate may make an application for bail to the Court by way of a Fixed Date Application, which application may be made without notice.

(2) If a person is in custody and is not represented by an Attorney-at-Law, the Director of Prisons must file the application on the person's behalf.

(3) Upon receipt of an application for bail under this Part, the Registry must serve a copy of the application, with the date, time and place of the hearing noted thereon, on the Director of Public Prosecutions.

(4) Upon the Court making an order on bail under this Part, the Registry must serve a copy of the order on,

(a) the Applicant or his or her Attorney-at-Law, unless the Applicant or his or her Attorney-at-Law was present at the hearing of the application;

(b) where the Applicant is in custody, the Director of Prisons; and

(c) the Chief Magistrate.

## PART 59: PROCEEDINGS BY AND AGAINST THE STATE

**59.01 Proceedings By and Against the State**

(1) Where a claim is made in proceedings against or seeking relief from the State,

(a) the provisions of the *State Liability and Proceedings Act*, Chapter 6:05, apply; and

(b) the claim must contain particulars of the circumstances in which it is alleged that the liability of the State has arisen, as well as, as far as reasonably possible, the identity of the government department and officer(s) of the State involved.

(2) The enforcement procedures available under these Rules do not apply as against the State.

(3) No admiralty claim in rem may be brought against the State.

## PART 60: APPEAL TO THE HIGH COURT

### 60.01 Appeal to the High Court

(1) Where permitted by any relevant enactment, an appeal may be made to the Court under this Part, other than an appeal by way of case stated which is governed by Part 61, by issuing a Notice of Appeal to the High Court (Form 60A).

(2) Every Notice of Appeal to the Court must,
  (a) be issued,
    (i) within 28 days of the date of the decision that is the subject of the appeal; or
    (ii) where the Appellant was not present or represented when the decision was handed down, within 28 days of the decision that is the subject of the appeal having been served on the Appellant;
  (b) set out the,
    (i) the law and section enabling an appeal to be made to the High Court;
    (ii) name of the tribunal or person whose decision is the subject of the appeal;
    (iii) details of the decision against which the appeal is made; and
    (iv) Appellant's grounds of appeal on which it is contended the decision should be reversed, varied or set aside, identifying any finding of fact and any finding of law which the Appellant seeks to challenge; and
  (c) be served on the person or body whose decision is the subject of the appeal, as well as every other party to the proceeding in which the decision was made.

(3) The date fixed for the hearing of the Appeal to the Court must be set for not less than 2 months and not more than 6 months from the issue of the Notice of Appeal to the High Court.

(4) The Registry must give at least 28 days notice of the hearing of the appeal to all parties that have been served with the Notice of Appeal to the High Court.

(5) The Appellant may amend its grounds of appeal,
  (a) without permission, not less than 7 days before the date fixed for the Appeal; or
  (b) within 7 days of the date fixed for the Appeal where the Court considers that the interests of justice require it.

(6) The Appellant must file, not less than 7 days before date fixed for the Appeal, a copy of the transcript of the proceeding in which the decision being appealed was made, if any.

(7) The filing of an appeal to the Court does not operate as a stay of proceeding of the decision against which the appeal is brought, unless the Court, or the body or person whose decision is under appeal, so orders.

(8) Unless an enactment provides otherwise, all appeals to the Court shall be by way of re-hearing.

### 60.02 Hearing of Appeal by the High Court

(1) On hearing of an Appeal, the Court may,
  (a) receive further evidence on matters of fact; and
  (b) draw any inferences of fact that might have been drawn in the proceeding in which the decision was made.

(2) In making a decision on an Appeal, the Court may,
  (a) give any decision or make any order which ought to have been given or made by the body or person whose decision is under appeal;
  (b) make such further or other order as the case requires; or
  (c) remit the matter for rehearing and determination by the tribunal or person.

(3) The Court hearing an appeal may make orders about the costs of the proceeding giving rise to the appeal as well as the costs of the appeal.

(4) The Court is not bound to hear an appeal on a misdirection or the improper admission or rejection of evidence unless it considers that a substantial wrong or a miscarriage of justice has been caused.

(5) Upon the making of a decision on an appeal by the Court, the Registry must issue a Certificate of Result of Appeal (Form 60B).

## PART 61: CASE STATED

**61.01 Availability of Case Stated**

(1) Where a Rule, Practice Direction, order or enactment permits an appeal on or referral of a question of law to the Court (including the Full Court), this Part applies and the Court is required to accept the statement of facts as set out by the body or person whose decision is under referral or appeal.

**61.02 Where Appeal lies by way of Case Stated**

(1) Where it is an appeal by way of case stated, the Appellant must issue a Notice of Appeal by way of Case Stated (Form 61), which must,
   (a) set out the contentions on the question of law to which the case relates;
   (b) be served on all parties to the proceeding to which the case relates and, where it relates to proceeding brought under the Constitution, on the Attorney General,
      (i) within 28 days of the date of the decision that is the subject of the appeal; or
      (ii) where the Appellant was not present or represented when the decision was handed down, within 28 days of the decision that is the subject of the appeal having been served on the Appellant; and
   (c) be fixed for hearing not less than 1 month and not more than 3 months from the issue of the Notice of Appeal by way of Case Stated.

(2) Not less than 7 days before the date fixed to determine the case, the Appellant must file a copy of the decision or proceeding to which the case relates.

**61.03 Where Referral of Case Stated**

(1) Where a referral lies by way of case stated, or there is a refusal to state a case by a person or body, the proceeding must be commenced by Fixed Date Application (Form 8B), which must
   (a) state the grounds of the application;
   (b) identify the question of law upon which it is sought to have a case stated or which it is sought to have referred to the Court;
   (c) set out any reasons given by the person or body for the refusal to state a case, or to refer the question of law to the Court; and
   (d) attach in the supporting affidavit a copy of the decision or proceeding to which the case relates, as well as the refusal, if any.

(2) The Fixed Date Application must be served within,
   (a) the time required under the referral or refusal to state a case; or
   (b) 14 days of the date of the referral or refusal to state a case,

   on all of the parties to the proceeding to which the case relates, the body or person whose decision is questioned and, where it relates to proceeding brought under the Constitution, on the Attorney General.

(3) Where there was a refusal to state a case, at the hearing of the Fixed Date Application, the Court must order whether or not to permit the referral and, where it does grant an order referring the question of law to the Court, it must adjourn the proceeding to another date for the determination of the question of law, notwithstanding the provisions of any other Rule to the contrary.

**61.04 Hearing of Case Stated**

(1) The Court may amend the case or order it to be returned for amendment stating the case for amendment.

(2) The Court may draw inferences of fact from the facts stated in the case.

(3) The Court may make orders about the costs of the proceeding giving rise to the case stated as well as the costs of the case stated.

## PART 62: APPEAL TO THE FULL COURT

### 62.01 Application and Procedure

(1) Where an appeal lies to the Full Court under an enactment, any person may appeal to the Full Court by issuing a Notice of Appeal to the Full Court (Form 62A), which must,
  (a) be issued,
    (i) within 28 days of the date of the decision that is the subject of the appeal; or
    (ii) where the Appellant was not present or represented when the decision was handed down, within 28 days of the decision that is the subject of the appeal having been served on the Appellant;
  (b) set out the,
    (i) law and section enabling an appeal to be made to the Full Court;
    (ii) details of the decision against which the appeal is made; and
    (iii) Appellant's grounds of appeal on which it is contended the decision should be reversed, varied or set aside, identifying any finding of fact and any finding of law which the Appellant seeks to challenge; and
  (c) be served on every other party to the proceeding in which the decision was made.

(2) The date fixed for the hearing of the Appeal to the Full Court must be set for not less than 2 months and not more than 6 months from the issue of the Notice of Appeal to the Full Court.

(3) The Registry must give at least 28 days notice of the hearing of the appeal to all parties that have been served with the Notice of Appeal to the Full Court.

(4) The Appellant may amend its grounds of appeal,
  (a) without permission, not less than 7 days before the date fixed for the Appeal; or
  (b) within 7 days of the date fixed for the Appeal where the Court considers that the interests of justice require it.

(5) The Appellant must file, not less than 7 days before date fixed for the Appeal, a copy of the decision against which the appeal is brought unless the Court so orders.

(6) If any doubt arises as to whether an order is final or interlocutory, a party may make an application, which must be determined by the Full Court and be binding on all parties.

(7) Unless an enactment provides otherwise, all appeals to the Full Court shall be by way of re-hearing.

### 62.02 Where Permission to Appeal Required

(1) Where permission to appeal is required but not granted at the time that the decision that is the subject of the appeal is made, the proposed Appellant must make an application for permission to appeal by way of a Fixed Date Application (Form 8B) in accordance with Part 8.

(2) A Fixed Date Application for leave to appeal must,
  (a) be filed within 14 days of,
    (i) the date of the decision that is the subject of the appeal; or
    (ii) where the Appellant was not present or represented when the decision was handed down, within 14 days of the decision that is the subject of the appeal having been served on the proposed Appellant.
  (b) attach a draft copy of the Notice of Appeal to the Full Court.

### 62.03 Cross-Appeal

(1) If a Respondent contends that the decision that is the subject of the appeal should be varied, the Respondent must seek that relief by way of a Notice of Cross-Appeal to the Full Court (Form 62B).

(2) A Respondent to an appeal may cross-appeal by issuing a Notice of Cross-Appeal to the Full Court within 14 days of having been served with the Notice of Appeal.

(3) Every Notice of Cross-Appeal to the Full Court must,

(a) set out the Cross-Appellant's grounds of appeal on which it is contended the decision should be varied, identifying any finding of fact and any finding of law which the Appellant seeks to challenge; and
(b) be served on every other party to the proceeding in which the decision was made.

**62.04 Record of Appeal to the Full Court**

(1) An Appellant must file a Record of Appeal within 14 days of the date fixed for the hearing of the appeal.
(2) The Appellant's Record of Appeal must,
  (a) have a table of contents;
  (b) include,
    (i) the relevant portions of the transcript, Judge's notes or other record of proceedings, if any, which resulted in the decision that is the subject matter of the appeal;
    (ii) copies of any exhibits or other documents necessary for the determination of the appeal; and
    (iii) where an appeal involves a question of fact, all of the evidence submitted in the Court below bearing on that question of fact;
  (c) exclude all documents that are duplicative or irrelevant to the subject matter of the appeal; and
  (d) be filed with sufficient copies for service on every other party to appeal, the Court file and each Judge.
(3) A Respondent may file a Respondent's Record of Appeal within 7 days of the date fixed for the hearing of the appeal.
(4) The Respondent's Record of Appeal must,
  (a) consists only of materials that the Respondent intends to rely upon in responding to the appeal or in relation to its Cross-Appeal which were omitted by the Appellant in the Appellant's record of appeal; and
  (b) comply with sub-Rule (2).
(5) The Court may refuse to accept for filing any Record of Appeal that does not comply with these Rules.
(6) The Court may impose costs sanctions where evidence is transcribed or exhibits are reproduced unnecessarily.

**62.05 Failure to file Record of Appeal**

(1) If an Appellant fails to file its record of appeal within the required time, the appeal must,
  (a) be struck from the Court docket and shall not be heard on the date for which it was fixed; and
  (b) be dismissed unless the Appellant, by the original date fixed for the hearing of the appeal,
    (i) files a Requisition (Form 13A) to restore the appeal with the Court; and
    (ii) pays the required fee.
(2) Where an appeal has been restored to be heard,
  (a) the Registrar must give at least 14 days notice of the hearing of the appeal to all parties that have been served with the Notice of Appeal to the Full Court; and
  (b) if an Appellant fails to file its record of appeal within the time required,
    (i) the Court must dismiss the appeal and serve a Notice of Dismissal (Form 13B) on all parties; and
    (ii) the Appellant shall be liable for the costs incurred by the Respondent up to the date on which notice of dismissal is served on the Respondent.
(3) If a Respondent fails to file a record of appeal, it may not rely on any material not contained in the Appellant's record of appeal.

**62.06 Skeleton Arguments**

(1) An Appellant must file a Skeleton Argument within 7 days of the date fixed for the hearing of the appeal.
(2) A Respondent must file its Skeleton Argument within 4 days of the date fixed for the hearing of the appeal.
(3) A skeleton argument must,
  (a) set out concisely the arguments on each ground of appeal;

(b) in the case of a point of law, state the point and cite the principal authorities in support with references to the particular page where the principle concerned is set out; and
(c) in the case of questions of fact, state briefly the basis on which it is contended that the Court can interfere with the finding of fact concerned, with cross references to the passages in the transcript or notes of evidence which bear on the point.

**62.07 Powers of Full Court on Hearing of Appeal**

(1) On the hearing of an appeal, the Court may,
(a) draw inferences of fact;
(b) give any Judgment or order which ought to have been given or made;
(c) order that a Judgment be set aside and a new trial be held; and
(d) make such order as to the entitlement to the whole or any part of the costs of the appeal as may be just.
(2) No interlocutory order or Rule from which there has been no appeal shall operate to bar or prejudice the Full Court from giving such decisions upon the appeal as may be just.
(3) The Court hearing an appeal may make orders about the costs of the proceeding giving rise to the appeal as well as the costs of the appeal.
(4) The powers referred to in this Rule are not limited to the issues raised in the notices of appeal or Cross-Appeal and may be exercised notwithstanding that the parties did not raise them.

**62.08 Application for Security for Costs**

(1) An application for an order for deposit of security for costs of an appeal must be made by application, stating the special circumstances in which it is made.
(2) Before the application is made, a written demand for the security for costs must be made by the Respondent and, if the demand is refused or if an offer of security is made by the Appellant and not accepted by the Respondent, the Judge must upon an application for an order for the security, in dealing with the costs thereof, consider which of the parties to the appeal has made the application necessary.
(3) An application under this Rule must be made as promptly as circumstances permit.

**62.09 Costs of Appeal in the Full Court**

(1) The costs of any appeal in the Full Court must be quantified as prescribed costs, unless ordered otherwise.
(2) Where the Full Court is of the opinion that prescribed costs are not applicable or appropriate, the Full Court may order that the costs of the appeal proceeding be assessed.

**62.10 Certificate of Result of Appeal**

(1) Upon conclusion of an appeal, the Court must prepare a Certificate of Result of Appeal (Form 60B).
(2) The Court must serve a copy of the Certificate of Result of Appeal on every party to the proceeding within 14 days of the decision on appeal.

**62.11 Discontinuance**

(1) If an Appellant files a Notice to Discontinue Appeal (Form 62C), the appeal must be deemed dismissed against all the parties against whom the Appellant wishes to withdraw or discontinue the appeal as of the date on which such notice is filed.
(2) The Court must serve copies of the Notice to Discontinue Appeal on all the parties against whom the Appellant wishes to withdraw or discontinue the appeal.
(3) Notwithstanding that the appeal is deemed dismissed, the Appellant must be liable for the costs incurred by the Respondent up to the date that the appeal is deemed dismissed.
(4) If an appeal is only partly discontinued,
(a) the Appellant is only liable for the costs relating to that part of the appeal which is discontinued; and
(b) unless the Court orders otherwise, the costs which the Appellant is liable to pay are not to be quantified until the conclusion of the rest of the appeal.

## PART 63: REPRESENTATION BY OR WITHOUT AN ATTORNEY-AT-LAW

### 63.01 Party Acting in Person

(1) Any party to a proceeding may act in person unless the party is,
  (a) a company or other entity that is not an individual;
  (b) acting in a representative capacity; or
  (c) a minor or a patient.

(2) Where a party to a proceeding is not represented by an Attorney-at-Law but acts in person, anything that these Rules require or permit an Attorney-at-Law to do must be done by the party.

### 63.02 Appointment, Change or Removal of Attorney-at-Law

(1) A party acting in person in a proceeding may appoint an Attorney-at-Law as their Attorney-at-Law of record by having the Attorney-at-Law serve on every other party and file, with proof of service, a Notice of Appointment of Attorney-at-Law (Form 63A).

(2) A party who has an Attorney-at-Law of record may change the Attorney-at-Law of record by having the new Attorney-at-Law serve on the former Attorney-at-Law and every other party and filing, with proof of service, a Notice of Change of Attorney-at-Law (Form 63B).

(3) A party who has an Attorney-at-Law of record may, subject to these Rules, elect to act in person by serving on the Attorney-at-Law and every other party and filing, with proof of service, a Notice of Intention to Act in Person (Form 63C).

(4) An Attorney-at-Law must act as and remains the Attorney-at-Law of record for his or her client until,
  (a) the client files a Notice of Intention to Act in Person (Form 63C);
  (b) another Attorney-at-Law files a Notice of Change of Attorney-at-Law (Form 63B); or
  (c) an order removing the Attorney-at-Law from the record has been entered.

(5) Where a party files a notice under this Rule, the Court must immediately serve a copy of it on all other parties.

### 63.03 Application for Removal by Attorney-at-Law

(1) An Attorney-at-Law who wishes to be removed from the record as acting for a party may make an application for an order to be removed from the record.

(2) An application under this Rule must be served on the client or former client but need not be served on any other party to the proceeding.

(3) Any order made removing an Attorney-at-Law from the record must,
  (a) state the client's last known address or the client's address for service, if different;
  (b) state another address, if any, where the Attorney-at-Law believes the copy is likely to come to the client's attention;
  (c) state the client's last known telephone number, fax number and email, if any; and
  (d) be served on the client or former client as well as the other parties to the proceeding.

(4) A client must, within 28 days of being served with an order removing their Attorney-at-Law from the record, appoint a new Attorney-at-Law of record by filing a Notice of Appointment of Attorney-at-Law (Form 63A) or file a Notice of Intention to Act in Person (Form 63C).

(5) If the client fails to comply with sub-Rule (4), the Court must serve them with a Notice of Pending Dismissal (Form 8C) requiring them to file a Notice of Appointment of Attorney-at-Law (Form 63A) or a Notice of Intention to Act in Person (Form 63C) within 28 days of being served with the notice, failing which the Court must dismiss the proceeding or strike out the Defence.

### 63.04 Application for Removal by Another Party

(1) Any person may make an application for an order removing an Attorney-at-Law from the record where that Attorney-at-Law has,
  (a) died;
  (b) become incompetent or incapacitated in a manner that prevents them from practicing;

(c) become bankrupt;
(d) been removed or suspended from the roll; or
(e) failed to take out a practicing certificate.

(2) The application must be served on the Attorney-at-Law, if practicable, and personally on his client where the client is not the Applicant.

(3) Any order made under this Rule must be served on the Attorney-at-Law or former Attorney-at-Law, if practicable, and personally on his client where client is not the Applicant.

## PART 64: COSTS

### 64.01 How Costs are to be Awarded

(1) Unless these Rules, a Practice Direction, another enactment or an order specify otherwise, the Court may award costs,
(a) according to the Court's discretion;
(b) as fixed costs;
(c) as prescribed costs;
(d) as assessed costs; or
(e) where a budget was approved by the Court, as budgeted costs.

(2) Where the Court makes a costs award, it must specify by whom and by when the costs must be paid.

(3) Generally, the unsuccessful party must pay the costs of the successful party, but the fact that a party is successful in a proceeding or a step in a proceeding does not prevent the Court from awarding costs against the party in a proper case.

(4) Where two or more parties having the same interest in relation to a proceeding are separately represented, the Court may disallow more than one set of costs.

(5) Where in any enactment there is a reference to the taxation of any costs, this is to be construed as referring to the assessment of costs, unless the enactment provides otherwise.

(6) A person who is not registered for VAT may add the amount of VAT to the amount of any prescribed, assessed or budgeted costs awarded to him.

(7) Unless a person is a party to the proceeding or an Attorney-at-Law, if he or she commences, prosecutes or defends in his or her own name, or that of any other person, any proceeding, he or she is incapable of recovering any fee on account thereof and is guilty of a contempt of the Court in which such proceeding was commenced, carried on or defended, and is punishable accordingly.

### 64.02 Court's Discretion as to Costs

(1) Subject to the provisions of these Rules, a Practice Direction or an order, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the Court, and the Court may determine by whom, to what extent and by when the costs must be paid.

(2) In exercising its discretion to award costs, the Court may consider, in addition to the result in the proceeding and any Offer to Settle or to contribute made in writing,
(a) the conduct of the parties;
(b) whether a party succeeded on particular issues, even if not ultimately successful in the whole case, even though success on an issue is not conclusive of entitlement to a costs order;
(c) whether it was reasonable for a party to raise or pursue a particular allegation or issue;
(d) whether the successful party increased the costs of the proceeding by the unreasonable pursuit of issues;
(e) the manner in which a party pursued the case, a particular allegation or a particular issue, and whether that manner increased the costs of the proceeding; and
(f) whether the successful party exaggerated its claim.

(3) The conduct of the parties includes conduct before as well as during proceeding and whether a party,
(a) generally complied with these Rules;

(b) refused unreasonably to try an alternative dispute resolution procedure; or
(c) behaved in a manner inconsistent with its duty to assist the Court to further the overriding objective.

(4) In exercising its discretion to award costs, the Court must,
(a) take into account all of the circumstances including,
(i) any orders that have already been made;
(ii) the importance of the matter to the parties;
(iii) the time reasonably spent on the case;
(iv) the degree of responsibility accepted by the Attorney-at-Law;
(v) the care, speed and economy with which the case was prepared;
(vi) the novelty, weight and complexity of the case; and
(vii) in the case of costs charged by an Attorney-at-Law to his client, any agreement that may have been made as to the basis of charging and whether the Attorney-at-Law advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive; and
(b) award an amount that it considers to be reasonable and which appears to the Court to be fair to both the person paying and the person receiving such costs.

**64.03 Fixed Costs**

(1) Where these Rules, a Practice Direction, another enactment or an order specify that costs are to be awarded as fixed costs, a party is entitled to the fee set out in Column 2 of Schedule 2: Appendix A, plus disbursements.
(2) Where a party seeks reimbursement for disbursements in addition to the legal fees in Schedule 2: Appendix A, it must file an Affidavit of Disbursements (Form 64A) itemizing each disbursement claimed as having been paid or for which it is responsible to pay in the proceeding.

**64.04 Prescribed Costs**

(1) Where these Rules, a Practice Direction, another enactment or an order specify that costs are to be awarded as prescribed costs, a party is entitled legal fees in an amount as calculated in accordance with Schedule 2: Appendix B, plus disbursements.
(2) The value to be used for the calculation in accordance with Schedule 2: Appendix B must be the amount of damages agreed to or awarded in the order, or any other value the Court orders the prescribed costs to be calculated based upon.
(3) In any case, at any time before the proceeding is determined or concluded, a party may make an application for an order regarding the value to be applied in calculating prescribed costs but the Court may only order another value where it is satisfied that the prescribed costs are likely to be excessive or substantially inadequate, taking into account the nature and circumstances of the particular case.
(4) Where a party seeks reimbursement for disbursements in addition to the legal fees in Schedule 2: Appendix A, it must file an Affidavit of Disbursements (Form 64A) itemizing each disbursement claimed as having been owed or paid in the proceeding.

**64.05 Assessed Costs**

(1) Where these Rules, a Practice Direction, another enactment or an order specify that costs are to be assessed, the party seeking assessed costs must make an application for the assessment of costs, which application may be made in writing but must be on notice to any party who may be liable to pay the costs.
(2) In an application for an assessment of costs, it need not include a supporting Affidavit but the party seeking assessed costs must attach its Bill of Costs (Form 64B) showing the legal fees incurred in relation to the proceeding, or part thereof, and how the party's Attorney-at-Law's legal fees were calculated.
(3) Where disbursements are claimed in addition to legal fees, the Bill of Costs must attach an Affidavit of Disbursements (Form 64A) itemizing each disbursement claimed as being owed or having been paid in the proceeding.
(4) In assessing costs, the Court may consider,

(c) the conduct of the parties;
(d) whether a party succeeded on particular issues, even if not ultimately successful in the whole case, even though success on an issue is not conclusive of entitlement to a costs order;
(e) whether it was reasonable for a party to raise or pursue a particular allegation or issue;
(f) whether the successful party increased the costs of the proceeding by the unreasonable pursuit of issues;
(g) the manner in which a party pursued the case, a particular allegation or a particular issue, and whether that manner increased the costs of the proceeding; and
(h) whether the successful party exaggerated its claim.

(5) The conduct of the parties includes conduct before as well as during proceedings and whether a party,
(a) generally complied with these Rules;
(b) refused unreasonably to try an alternative dispute resolution procedure; or
(c) behaved in a manner inconsistent with its duty to assist the Court to further the overriding objective.

(6) In assessing costs, the Court must take into account any representations as to the time that was reasonably spent by the Attorney-at-Law and must allow such sum as it considers fair and reasonable.

(7) On an assessment of costs, the party seeking assessed costs may also claim its costs of the assessment.

**64.06 Budgeted Costs**

(1) At or before the first Case Management Conference, any party make an application to set a costs budget for the proceeding, which application must include in its supporting Affidavit,
(a) a statement of the amount that the party seeking the order wishes to be set as the budget;
(b) a statement showing how the budget has been calculated, including,
(i) the hourly rate charged by the Attorney-at-Law (or other basis of charging);
(ii) a breakdown of the costs incurred to date;
(iii) any legal fees that are anticipated to be paid to an Attorney-at-Law other than the Attorney-at-Law on record;
(iv) the anticipated disbursements that are included in the budget;
(v) a statement of the number of hours for the various stages of the proceeding that the Attorney-at-Law for the party making the application has already spent and that the Attorney-at-Law anticipates will be required to bring the proceeding to trial; and
(vi) what procedural steps or applications are or are not included in the budget.

(2) The Affidavit in support of the application must be sworn by the party that is seeking an order for budgeted costs.

(3) Where the application is made on consent, the Applicant must file a Consent (Form 10B) that is signed by the parties personally.

(4) The Court may not make an order for budgeted costs unless,
(a) the parties are present, together with their Attorney-at-Law, at the hearing of the application;
(b) the Court is satisfied that each party understands the consequences of the order being sought as to,
(i) the party's liability for costs to its own Attorney-at-Law whether or not it obtains an order for costs against any other party;
(ii) the party's liability to pay costs in the budgeted sum to the other party if that party obtains an order for costs against it; and
(iii) what the party's liability might be if fixed costs applied;
(c) the consent of the party is in a separate document which,
(i) is signed by the individual or authorized representative of the entity, and witnessed;
(ii) deals only with the question of budgeted costs;
(iii) states the Attorney-at-Law's estimate of what the prescribed costs appropriate to the proceeding would be;
(iv) gives an estimate of the total costs of the proceeding as between the Attorney-at-Law and client; and
(v) sets out the basis of that estimate including the amount of any hourly charge.

(5) A party may make an application to vary the terms of an order made approving the budgeted costs at any time prior to the commencement of the trial but no order may be made increasing the amount of the budgeted costs unless the Court is satisfied that there has been a change of circumstances which only became known after the order was made.

**64.07 Costs Against Person not a Party**

(1) The Court may, on its own initiative or upon application, make an order that a person who is not a party to the proceeding pay the costs of some other person or party.

(2) Where the Court is considering making a costs order on its own initiative against a person who is not a party to the proceeding, the Court must,
   (a) unless it is considering doing so in the presence of that person,
      (i) give that person written notice that it is considering making such a costs order against them;
      (ii) set a date, time and place at which that person may attend to show cause why the order should not be made; and
      (iii) serve the notice at least 14 days before the date set for the attendance; and
   (b) state the grounds on which the Court is considering making the costs order.

(3) Where a person or party seeks a costs order against a person who is not a party to the proceeding, they must make an application, which application may be made without notice to the other parties to the proceeding but must be made on notice to the person against whom the order is sought.

(4) Unless a costs order against a person who is not a party to the proceeding is made in the presence of that person, the Court must serve the costs order on them or their Attorney-at-Law.

**64.08 Wasted Costs Orders**

(1) The Court may, on its own initiative or upon application, make a wasted costs order directing an Attorney-at-Law to pay the whole or part of the costs incurred by its client or disallowing costs as against the Attorney-at-Law's client where the party incurs the costs,
   (a) as a result of an improper, unreasonable or negligent act or omission on the part of the Attorney-at-Law or an employee of the Attorney-at-Law; or
   (b) if, in the light of any act or omission occurring before or after the costs were incurred, the Court considers it unreasonable to expect the party to pay the costs.

(2) Where the Court is considering making a wasted costs order on its own initiative, the Court must,
   (a) unless it is considering doing so in the presence of that person,
      (i) give the Attorney-at-Law written notice of the fact that it is considering making a wasted costs order against them;
      (ii) set a date, time and place at which that person may attend to show cause why the order should not be made; and
      (iii) serve the notice at least 14 days before the date set for the attendance; and

(3) Where a person or party seeks a wasted costs order, it must do so by filing an application, which may be made without notice to the other parties to the proceeding but must be on notice to the Attorney-at-Law against whom the wasted costs order is sought.

(4) Unless a wasted costs order is made in the presence of the Attorney-at-Law, the Court must serve the costs order on the Attorney-at-Law.

**64.09 Procedural Default Costs**

(1) Where a party fails to comply with a provision of these Rules, a Practice Direction or an order and, as a result of that default, another party has incurred costs or a hearing has had to be vacated, the Court may on its own initiative order the party responsible to pay to the other party an amount of costs in the discretion of the Court.

(2) Any sum paid under an order made under this Rule may be payable in addition to any sum which the Court may order a party or its Attorney-at-Law to pay by way of wasted costs.

**64.10 Registry Fees and Marshal's Fees**

(1) The Registry must charge the Registry Fees as set out in Schedule 1 to these Rules.
(2) Where it appears to the Chancellor that the payment of any fee specified in Schedule 1 would, owing to the exceptional circumstances of the particular case, involve undue hardship, the Chancellor may reduce or remit the fee in that case.
(3) The fees that may be charged by a Marshal in relation to the Marshal's services pursuant to these Rules are in the amounts stipulated under Schedule 1 to these Rules.
(4) Where any convention entered into by the State with any foreign power provides that no fee shall be required to be paid in respect of any proceeding, the Registry and Marshal, as applicable, must not require any fee to be paid.

## PART 65: REMUNERATION OF ATTORNEY-AT-LAW

**65.01 Agreements as to Remuneration of Attorney-at-Law**

(1) An Attorney-at-Law may make an agreement with his or her client respecting the amount and manner of payment for the whole or a part of any past or future services done or to be done by the Attorney-at-Law, either by a gross sum or by commission or percentage, or by salary or otherwise, and may include disbursements incurred by the Attorney-at-Law in respect of such services.
(2) Any agreement as to the remuneration of the Attorney-at-Law must be in writing and signed by the client.
(3) Such an agreement excludes any further claim of the Attorney-at-Law beyond the terms of the agreement in respect of the conduct and completion of the services in respect of which it is made, except as expressly excepted by the agreement.
(4) A provision in any such agreement that the Attorney-at-Law is not to be liable for negligence or that he or she is to be relieved from any responsibility to which he or she would otherwise be subject as such Attorney-at-Law is void.
(5) An Attorney-at-Law may accept from his or her client, and a client may give to the client's Attorney-at-Law, security for the amount to become due to the Attorney-at-Law for business to be transacted by him or her.
(6) No claim may be brought upon any agreement as to the remuneration of an Attorney-at-Law, but every question respecting the validity or effect of it may be examined and determined, and it may be enforced or set aside on the application of any person who is a party to the agreement or who is or is alleged to be liable to pay or who is or claims to be entitled to be paid the costs in respect of which the agreement is made.
(7) Upon any such application, the Court may,
    (a) if it appears to the Court that the agreement is in all respects fair and reasonable between the parties, order that the amount due thereunder be payable in such manner and subject to such conditions as to the costs of the application as the Court thinks fit; and
    (b) if the terms of the agreement are deemed by the Court not to be fair and reasonable, the agreement may be declared void and the Court may direct that costs be assessed in the same manner as if the agreement had not been made.

**65.02 Contingency Fee Agreements**

(1) An Attorney-at-Law may enter into a contingency fee agreement that provides that the remuneration paid to the Attorney-at-Law for the legal services provided to or on behalf of the client is contingent, in whole or in part, on the successful disposition or completion of the matter in respect of which services are provided.
(2) An Attorney-at-Law may not enter into a contingency fee agreement if the Attorney-at-Law is retained in respect of any criminal or quasi-criminal proceeding or a family law matter.
(3) A contingency fee agreement must be in writing.

(4) If a contingency fee agreement involves a percentage of the amount or of the value of the property recovered in a proceeding, the amount to be paid to the Attorney-at-Law must not be more than the maximum permitted by the *Legal Practitioners Amendment Act*, No. 26 of 2010.
(5) A bill of an Attorney-at-Law for the amount due under any such contingency fee agreement is not subject to assessment.

**65.03 Attorney-at-Law's Bills**

(1) An Attorney-at-Law's bill is sufficient in form if it contains a reasonable statement or description of the services rendered with a lump sum charge therefor together with a detailed statement of any disbursements but in any claim upon or assessment of such bill, further details of the services rendered may be ordered by the Court.
(2) An Attorney-at-Law may charge interest on unpaid legal fees and disbursements, calculated from a date that is one month after the bill is delivered to the client, however,
    (a) the rate of interest applicable to a bill must be shown on the bill as delivered to the client; and
    (b) on an assessment of an Attorney-at-Law's bill, if Court considers it just in the circumstances, the Court may, in respect of the whole or any part of the amount allowed on the assessment, disallow or vary the applicable rate of interest.
(3) The bill of an Attorney-at-Law may include costs (being legal fees and disbursements) payable in discharge of a liability properly incurred by the Attorney-at-Law on behalf of the party to be charged with the bill, notwithstanding that those costs have not been paid before the delivery to that party of that bill.
(4) An Attorney-at-Law's bill must be,
    (a) if the bill is due to an individual attorney, signed by the Attorney-at-Law;
    (b) if the bill is due to a firm,
        (i) made in the name of the firm and signed by an Attorney-at-Law of the firm; or
        (ii) accompanied by a letter from the firm that is signed by an Attorney-at-Law of the firm referring to the bill.
    (c) delivered to the party to be charged therewith either personally or by any alternative to personal service.
(5) Where a bill is proved to have been delivered in compliance with this Rule, it shall be presumed, until the contrary is proven, to be a bill made in good faith.
(6) No claim may be brought for the recovery of legal fees or disbursements for services by an Attorney-at-Law until one month after a bill of the Attorney-at-Law has been delivered to the person to be charged therewith.

## PART 66: ASSESSMENT OF ATTORNEY AT LAW'S BILL

**66.01 Application for Assessment of Attorney-at-Law's Bill**

(1) Any party may make an application for the assessment of an Attorney-at-Law's bill.
(2) Where no order for an assessment of costs has been made,
    (a) a client may make an application for the assessment of an Attorney-at-Law's bill within one month from its delivery to the client; or
    (b) an Attorney-at-Law may make an application for the assessment of the Attorney-at-Law's bill at any time after the expiration of one month from its delivery to the client but before the expiration of twelve months from the time such bill was delivered,

    unless special circumstances exist and the Court permits.
(3) The payment of a bill does not preclude the bill from being assessed.
(4) An application for an assessment of an Attorney-at-Law's bill must include in the supporting Affidavit a copy of the bill that is the subject of the assessment and, where disbursements are in issue, an itemized listing of every disbursement claimed as having been paid in the proceeding and the amount paid.

(5) No claim or proceeding must be commenced upon a bill until the assessment is completed or the time for making an application for an assessment has expired.

**66.02 Procedure on Hearing of Assessment**

(1) Where either party to an assessment, having due notice of the application, refuses or fails to attend the assessment hearing, the Court may proceed with the assessment hearing in the absence of that party.

(2) Unless a consent adjournment request has been filed with the Court within 7 days of the date scheduled for the assessment hearing, the Court must not adjourn the hearing unless,

(a) the Court requires an Attorney-at-Law to produce further documents in support of the amounts claimed but only where such documents could not have been expected to have been necessary to be included in the Affidavit in support of the application when it was filed; or

(b) rare and exceptional circumstances warrant it.

**66.03 How Bill is to be Assessed**

(1) The Court must allow any legal fees in a bill which are based on the amounts permitted under a Practice Direction, if any.

(2) Where legal fees beyond those permitted by sub-Rule (1) are claimed by an Attorney-at-Law, the Court may,

(a) consider as applicable,

(i) the amount involved in the proceeding or matter to which the services relate;

(ii) the complexity of the proceeding or matter to which the services relate;

(iii) the importance of the issues;

(iv) the duration of the hearing;

(v) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding or services required;

(vi) whether any step in the proceeding or matter to which the services relate was improper, vexatious or unnecessary, or taken through negligence, mistake or excessive caution;

(vii) a party's denial of or refusal to admit anything that should have been admitted; and

(viii) any other matter relevant to the assessment of costs;

(b) allow the costs of steps taken in proceeding that were in fact unnecessary where it is of the opinion that the steps were taken by the Attorney-at-Law because, in his or her Judgment, reasonably exercised, they were conducive to the interests of his or her client;

(c) allow the costs of steps that were not calculated to advance the interests of the client where the steps were taken by the desire of the client after being informed by the Attorney-at-Law that they were unnecessary and not calculated to advance the client's interests;

(3) The Court's order on an assessment of the bill,

(a) must include the cost of the assessment;

(b) must set out the amount assessed and the amount allowed; and

(c) unless it is set aside or altered by the Court, is final.

(4) The amount ordered to be due on an assessment of a bill must be paid by the party liable within 1 month.

## PART 67: PROCEEDINGS FOR ADMINISTRATION

**67.01 Commencement of Proceedings for Administration**

(1) A proceeding for the administration of an estate of a deceased person or for the execution of a trust must be commenced by way of a Fixed Date Application (Form 8B) and may be made,

(a) by a person claiming to be a creditor of the estate of the deceased person;

(b) by a person claiming to be a beneficiary under the will or on the intestacy of the deceased person or under the instrument of trust; or

(c) by an executor or administrator of the estate of the deceased person or a trustee.

(2) In a proceeding for the administration of the estate of a deceased person or for the execution of a trust, an executor, administrator or trustee may seek the determination of any question or any relief including,
   (a) any question arising in the administration of the estate of a deceased person;
   (b) any question arising in the execution of, or under, a trust;
   (c) any question as to the composition of any class of persons having,
      (i) a claim against the estate of a deceased person;
      (ii) a beneficial interest in the estate of a deceased person; or
      (iii) a claim against any property subject to a trust; and
   (d) any question as to the rights or interests of a person claiming to be,
      (i) a creditor of the estate of a deceased person;
      (ii) entitled under a will or on the intestacy of a deceased person; or
      (iii) beneficially entitled under a trust.
   (e) an order,
      (i) requiring an executor, administrator or trustee to furnish and verify accounts;
      (ii) enabling or requiring the payment into Court of money held by a person in the capacity of executor, administrator or trustee;
      (iii) directing a person to do or abstain from doing a particular act in the capacity of executor, administrator or trustee;
      (iv) approving any sale, purchase, compromise or other transaction by a person in the capacity of executor, administrator or trustee; or
      (v) directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed under the direction of the Court.

(3) Any executor or administrator of the estate or trustee of the trust who is not a Claimant or Applicant must be a Defendant or Respondent, as applicable.

(4) The Claimant or Applicant need not join as a Defendant or Respondent any person having a beneficial interest under the estate or trust, except where the Court so directs.

(5) Where there is a proceeding under a Judgment or order made in an administration claim and a person who is not a party to that proceeding seeks to makes a claim against the estate, this Rule must apply and no person other than the executor(s) or administrator(s) may appear in proceedings relating to that claim unless the Court otherwise directs.

**67.02 Judgments and Orders in Administration Proceedings**

(1) A Judgment for administration of an estate or for execution of a trust shall be granted only if the Court is satisfied that the questions between the parties cannot otherwise be properly determined.

(2) Where an administration proceeding is brought by a person other than an executor or administrator of the estate of the deceased person or a trustee,
   (a) where no accounts or insufficient accounts have been rendered, the Court may, instead of granting Judgment for administration of the estate or for execution of the trust, stay the application until a specified date and order that the executors, administrators or trustees render to the Applicant a proper statement of their accounts; or
   (b) where it is necessary to prevent proceedings by other creditors or Claimants, give Judgment or make an order for the administration of the estate or due performance of the duties of the trustee and include an order that no proceedings are to be taken under the Judgment or order, or under any particular account or inquiry directed without the Court's permission.

(3) Where in an administration proceeding an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees shall have the conduct of the sale unless the Court otherwise directs.

## PART 68: PROBATE PROCEEDINGS

### 68.01 Commencement and Requirements of Probate Proceedings

(1) A probate proceeding must be commenced by way of a Fixed Date Application (Form 8B).

(2) In a proceeding for grant of probate or letters of administration, every Affidavit in support of the Fixed Date Application and any Affidavit in Defence thereof must,
   (a) state the nature of the interest of the party on whose behalf it is being filed in the estate of the deceased person to which the proceeding relates;
   (b) where the deponent has no knowledge of a testamentary document of the deceased, state so;
   (c) where the deponent has knowledge of a testamentary document of the deceased, give the identity, name and address of the person in whose possession or control the deponent believes the testamentary document to be or state that he or she does not know in whose possession or control the testamentary document is;
   (d) where the deponent is in possession of a testamentary document of the deceased, attach to the Court's copy the original, if available, or a copy of the testamentary document as an exhibit to his or her Affidavit;
   (e) where the person disputes the interest of another person in the deceased's estate, explicitly deny the interest and state the grounds for the denial; and
   (f) where the person disputes the validity of a testamentary document, state the grounds and evidence in support of the testamentary document being invalid.

(3) In a proceeding for the revocation of a grant of probate or letters of administration, every Affidavit in support of the Fixed Date Application and any Affidavit in Defence thereof must,
   (a) state the nature of the interest of the party on whose behalf it is being filed in the estate of the deceased person to which the proceeding relates; and
   (b) where the deponent is in possession of the probate or letters of administration, attach to the Court's copy the original, if available, or a copy thereof as an exhibit to his or her Affidavit.

(4) Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of the deceased person's will or letters of administration of his estate must be made a party to any proceeding for revocation of the grant.

(5) Parts 12 and 37 do not apply to probate proceedings.

## PART 69: DEFAMATION CLAIMS

### 69.01 Claimant's Statement of Case

(1) Where the Claimant alleges defamation, the Claimant's (or in the case of a counterclaim, the Defendant's) Statement of Case in a defamation claim must, in addition to the requirements of Part 8, set out sufficient particulars to inform the party against whom the claim is made of the nature of the case that party has to meet, which includes,
   (a) the precise words complained of and the particulars of the publication, if any, in respect of which the claim is brought;
   (b) where the Claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, the facts and matters relied on in support of such sense of the defamatory meaning which is alleged and,
      (i) their natural and ordinary meaning; and
      (ii) any innuendo meaning (that is to say, a meaning alleged to be conveyed to some person because of that person's knowledge of facts extraneous to the words complained of);
   (c) where an innuendo meaning is alleged, the relevant extraneous facts; and
   (d) where the Claimant alleges that the Defendant maliciously published the words or matters, the particulars in support of the allegation.

(2) A Claimant must give full details of the facts and matters on which the Claimant relies in support of a claim for damages.
(3) Where a Claimant seeks aggravated or exemplary damages, the Claimant must include in his claim a prayer for such damages and the grounds for making such a claim.
(4) Where a Defendant pleads the defences of truth, or fair comment on a matter of public interest, the Claimant must serve a Reply specifically admitting or denying the allegations and giving the facts on which he relies.
(5) Where a Defendant contends that any of the words or matters are fair comment or were published on a privileged occasion and the Claimant intends to allege that the Defendant acted with malice, the Claimant must serve a Reply giving particulars of the facts or matters relied on.

**69.02 Defence to Defamation Claim**

(1) A Defendant who does not in his Statement of Case assert the truth of the statement of which complaint is made may not give evidence as to the circumstances under which the libel or slander was published or the character of the Claimant with a view to mitigating damages, unless particulars are given in a Witness Statement (Form 29A).
(2) Where a Defendant alleges that the words complained of are true in substance and in fact, the Defendant must,
    (a) specify the defamatory meanings which he seeks to justify; and
    (b) give particulars of the matters on which he relies in support of the allegation that the words are true.
(3) Where a Defendant alleges that the matters complained of consist of expressions of opinion which are fair comment on a matter of public interest, the Defendant must,
    (a) specify the defamatory meaning he seeks to defend as fair comment; and
    (b) give particulars of the matters on which he relies in support of the allegation that the words are fair comment.
(4) Where a Defendant alleges that the words complained of were published on a privileged occasion, the Defendant must specify the circumstances relied on in support of that contention.
(5) The Claimant may not make a request for information under Part 34 as to the Defendant's sources of information or grounds of belief.

**69.03 Ruling on Meaning**

(1) At any time after the service of the Statement of Claim, either party may make an application to a Judge in chambers for an order determining whether or not the words complained of are capable of having a meaning or meanings attributed to them in the Statements of Case.
(2) Where an application is made for a ruling on meaning it must state that it is an application for such purpose made in accordance with this Rule.
(3) The application, or the evidence served with it, must identify clearly the statement and the meaning attributed to it which the Court is being asked to consider.
(4) If it appears to the Judge on the hearing of an application under sub-Rule (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statements of case, the Judge may dismiss the claim or make such other order or give such Judgment in the proceedings as may be just.

## PART 70: ADMIRALTY PROCEEDINGS

**70.01 Application of this Part**

(1) This Part applies to all admiralty proceedings of the Court sitting and exercising its admiralty jurisdiction pursuant to section 21 of the *High Court Act*, Chapter 3:02.
(2) The other provisions of these Rules apply to admiralty proceedings subject to the provisions of this Part.
(3) For the purposes of this Part, admiralty proceedings include,

(a) a claim,
  (i) for damage done or sustained by a ship or for loss or damage to goods carried in a ship;
  (ii) concerning the earnings, possession, ownership or sale of a ship;
  (iii) concerning goods or materials supplied to, wages, fees or dues payable or employment by a ship;
  (iv) for loss of life or personal injury sustained in consequence of any act, neglect or default in the navigation or management of a ship or in the loading, carriage or disembarkation of persons on, in or from a ship, or in consequence of any defect in a ship, its apparel or equipment;
  (v) in the nature of or relating to towage or pilotage of a ship or bottomry;
  (vi) arising out of an act which is or is claimed to be a general average act;
  (vii) under the *Guyana Shipping Act*, Chapter 49:07;
  (viii) under the *International Convention on Salvage, 1989*;
(b) a collision claim;
(c) a limitation claim in relation to a ship, its cargo or wreckage, or any mortgage or charge relating to a ship, whether or not registered and whether legal or equitable, including a mortgage or charge created under foreign law;
(d) a salvage claim; and
(e) any other claim that falls under the admiralty jurisdiction of the Court or is transferred to it.

(4) Admiralty proceedings, whether in rem or in personam, must be commenced by Statement of Claim or, where permitted, by Fixed Date Application in accordance with Part 8, and must be identified on the face of each document filed with the Court as an admiralty proceeding.

(5) No admiralty claim in rem may be brought against the State.

(6) All documents relating to an admiralty claim must be served in accordance with Part 7, unless specified otherwise under this Part, except that service must be effected by the parties rather than the Registry.

(7) Part 12 does not apply to admiralty proceedings.

**70.02 Admiralty Proceedings In Rem**

(1) An admiralty claim in rem may be brought against a ship or property of a ship in connection with which the claim or question arises, even where there is or is claimed to be a maritime lien or other charge against the ship or property.

(2) In the case of a claim relating to or in the nature of towage or pilotage, a claim in rem may be brought against a ship where, at the time that the claim was issued, the ship was beneficially owned by a person who would be liable on the claim in personam.

(3) An admiralty claim in rem must be served on the outside of the property against which the claim is brought in a position which may reasonably be expected to be seen, except where,
(a) the property to be served,
  (i) is freight, the claim must be served on the cargo in respect of which the freight is payable (or was earned) or on the ship in which that cargo was carried;
  (ii) has been sold by the Marshal, the claim must be filed in the Registry and the claim must be deemed to have been served on the day on which the copy was filed;
  (iii) is in the custody of a person who will not permit access to it, by leaving a copy of it with that person;
(b) on any Attorney-at-Law who has authority to accept service of the claim;
(c) on such person and in such manner as is stated to constitute effective service under any agreement providing for service of the proceedings; or
(d) the Court or a Practice Direction permit another method of service.

(4) Service of a warrant of arrest or claim in rem against a ship, freight or cargo is to be effected by affixing the warrant or claim on,
(a) any mast of the ship, the outside of any suitable part of the ship's superstructure, or a sheltered and conspicuous part of the ship; or

(b) where the cargo has been landed or transhipped, by placing the warrant or claim on the cargo or, where the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or claim with that person.

(5) Where the claimant or the claimant's Attorney-at-Law in a claim in rem becomes aware that there is in force a caveat against arrest with respect to the property against which the proceedings are brought, the claimant or their Attorney-at-Law must immediately serve the claim on the person at whose instance the caveat was entered.

(6) Where a claim in rem is amended after service, the amended claim must also be served on any Defendant and intervener that has filed a document with the Registry in relation to the proceeding.

(7) Where a ship has been served with a claim in rem or arrested to enforce a claim in rem, no other ship may be served with a claim or arrested in that or any other claim in rem brought to enforce that claim.

**70.03 Special Provisions as to Statements of Case in Collision Claims**

(1) In addition to the other requirements for a Statement of Case, where a proceeding relates to damage, loss of life or personal injuries arising out of a collision of a ship, the Statement of Case must set out,

(a) the names of the ships which collided, their ports of Registry and the names of their masters;

(b) the length, breadth, gross tonnage and horsepower of the ship, the draught at the material time and the nature and tonnage of any cargo carried by the ship;

(c) the weather, direction and force of the wind, the state, direction and force of the tidal or other current, and the date, time (including time zone) and location at the time of the collision;

(d) the position, course steered and speed of the ship through the water immediately before the collision or before any measures were taken to attempt to avoid the collision, and all subsequent alterations to the course or speed of the ship up to the time of the collision;

(e) the distance and bearing of the other ship if and when her echo was first observed by radar;

(f) the distance, bearing and approximate heading of the other ship, if any, when first seen and what lights or shapes or combinations of lights or shapes, if any, of the other ship were first seen and subsequently seen before the collision and when;

(g) what alterations, if any, were made to the course and speed of the ship up to the time of the collision, and when and what measures, if any, other than alterations of course or speed, were taken to avoid the collision;

(h) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the ships at the moment of contact;

(i) what sound signals, if any, were given and were heard from another ship, if any, and when;

(j) all other details of any allegations of negligence or other fault; and

(k) what breach of any navigation rule, by-law or regulation is alleged to have been committed.

**70.04 Warrant for Arrest**

(1) In an admiralty proceeding in rem, a Claimant may, at any time after the issue of the claim and subject to the provisions of this Rule, proceed to have the property arrested by filing a Requisition (Form 13A) with such variations as circumstances may require, for the Registry to issue a Warrant for Arrest (Form 29C) of the Property against which the claim or Counterclaim is brought.

(2) The Requisition referred to in sub-Rule (1) must be accompanied by an Affidavit that sets out,

(a) the name and description of the party at whose instance the warrant is to be issued;

(b) the nature of the claim and that it has not been satisfied;

(c) where the claim arises in connection with a ship, the name and nationality of that ship and, where the claim relates to a foreign ship, that notice of the commencement of the proceeding had been given to the Consul of the state to which the vessel belongs and attaches a copy of the notice (where that state has a Consul in Guyana);

(d) the name, if any, and nature of the property to be arrested as well as the name of the beneficial owner of the property, if known;

(e) where the property is a ship, the name of the ship and her port of registry;

(f) the amount of security sought, if any;
(g) where applicable, the name of the person who would be liable on the claim in proceedings in personam, that when the cause of action arose the person was the owner or charterer of, or in possession or control of, the ship and that, at the time of the issuance of the claim, the person was either the beneficial owner or charterer of the ship;
(h) in an action of bottomry, a description of the bottomry bond and attaches a certified copy of the bond as well as a notarial translation of the bond if it is in a foreign language;
(i) in an action of distribution of salvage, the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same;
(j) whether or not there is any caveat against arrest already in force with respect to that property that is the subject of the warrant; and
(k) an undertaking to pay the fees and expenses of the Marshal.

(3) A warrant for arrest takes effect upon its being issued by the Registry.
(4) Upon the claimant delivering the issued warrant for arrest to the Marshal, the Marshal must administer the arrest.

**70.05 Caveat Against Arrest**

(1) A person who seeks to prevent the arrest of any ship or property may cause a caveat against the issue of a warrant for arrest to be entered in the Registry by filing a Requisition (Form 13A) signed by that person or his or her Attorney-at-Law that,
(a) states, where a claimant in limitation proceedings has constituted a limitation fund in accordance with Article 11 of the *Convention on Limitation of Liability for Maritime Claims 1976*, that the claimant has constituted a limitation fund; and
(b) includes an undertaking to acknowledge service, as may be appropriate, of any claim that may be made against the property described in the request; and
(c) where the claimant has not constituted a limitation fund, to give bail or to pay into Court a sum not exceeding an amount specified in the Requisition on account of the claim within 3 days after receiving notice that such a claim has been made.

(2) On the filing of the Requisition and payment of the requisite fee, the Registrar must enter a Caveat against Arrest (Form 70A) against the issue of a warrant for arrest of the property described in the request in the Registry's Caveat Book for Admiralty Proceedings.
(3) The fact that there is a caveat against arrest in force does not prevent the issue of a warrant to arrest the property to which the caveat relates.
(4) Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may make an application for an order discharging the warrant.

**70.06 Proceedings where Caveat Against Arrest**

(1) A party, commencing a claim against any property in respect of which a caveat against arrest has been entered must immediately serve a copy of the claim upon the party, or the party's Attorney-at-Law, on whose behalf the caveat was made.
(2) Within 3 days from the service of the claim, the party on whose behalf the caveat was made must, if the sum in respect of which the proceeding is commenced does not exceed the amount for which he has undertaken, give bail in such sum or pay the same into the Registry.
(3) After the expiration of 7 days from the service of the claim if the party on whose behalf the caveat has been entered shall not have given bail in such sum or paid the same into the Registry the claimant may proceed with the proceeding by default and have it listed for hearing.
(4) If, when the proceeding comes before the Court and the Court is satisfied that the claim is well founded, the Court may pronounce for the amount which appears to be due, and may enforce the payment thereof by attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the Court.

**70.07 Execution of Warrant for Arrest**

(1) A warrant of arrest is valid for 6 years beginning on the date of its issue.
(2) A warrant of arrest may only be executed by the Marshal or a substitute appointed by the Marshal, whether the property to be arrested be situate within the port of Georgetown or elsewhere within the jurisdiction of the Court.
(3) A warrant for arrest must not be executed where the party at whose instance it was issued lodges a written request to that effect with the Marshal.
(4) A warrant of arrest is effected by service of the warrant of arrest on the property against which it is issued or, where it is not reasonably practicable to serve the warrant, by service of a notice of the issue of the warrant in that manner upon the property or by giving notice to those in charge of the property.
(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.
(6) Property under arrest may not be moved without an order of the Court and the property may be immobilized or otherwise prevented from sailing in such manner as the Marshal or his substitute may decide is appropriate.
(7) Within 7 days after the service of a warrant for arrest, the Marshal or other person effecting service of the warrant must file proof of service of same.

**70.08 Directions with respect to Property Under Arrest**

(1) Any person may at any time make an application for directions with respect to property under arrest in any proceedings, which application must be made on notice to,
  (a) all persons who in relation to that property have,
    (i) entered a caveat which is still in force;
    (ii) caused a warrant for the arrest of the property to be executed by the Marshal;
    (iii) participated in any proceedings in which the property is under arrest; and
    (iv) intervened in any proceedings in which the property is under arrest; and
  (b) where the Applicant is a person other than a Marshal, the Marshal; and
  (c) any other person that the Court may direct.
(2) Where the Court makes an order under an application for directions, the Marshal must mail a copy of the order to all persons required to be served with the application pursuant to sub-Rule (1).
(3) An application for an order dispensing with service may be made without notice.

**70.09 Release of Property Under Arrest**

(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property arrested by warrant may only be released pursuant to a Release of Property under Arrest (Form 70B) issued by the Registry.
(2) A release may not be issued with respect to property to which a Caveat against Release is in force, unless at the time of the issue of the release the property was under arrest in one or more proceedings or the Court so orders.
(3) A release of the property under arrest may be issued at the request of any party where,
  (a) it is sold by the Court;
  (b) the Court orders release upon application made by any party;
  (c) the arresting party and all caveators, if any, file a Requisition for release;
  (d) all the other parties, except a defaulting Defendant, consent; or
  (e) any party files in the Registry a Requisition for release (which must also contain an undertaking) together with a consent to the release of the arresting party and all caveators, if any;
  (f) the sum in respect of which the claim has been commenced is paid into the Registry.
(4) Cargo arrested for freight only may be released by filing an Affidavit as to the value of the freight and by paying the amount of the freight into Court or by satisfying the Court that it has already been paid.

(5) Before a release is issued, the party requesting it must give notice to any person at whose instance a subsisting Caveat against Release has been entered, or their Attorney-at-Law, requiring the caveat to be withdrawn.
(6) Before property under arrest is released, the party at whose instance the release was issued must, in accordance with the direction of the Marshal, either
  (a) pay the fees of the Marshal already incurred and lodge in the Marshal's office an undertaking to pay on demand all other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or
  (b) lodge in the Marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

**70.10 Caveat Against Release**

(1) A person alleging to have a claim in rem against any property which is under arrest or the proceeds of sale thereof or a party who seeks to prevent the release of any property under arrest and who wishes to be served with notice of any application in respect of that property or those proceeds may file a request for a Caveat against Release (Form 70C).
(2) On the filing of a Caveat against Release, the Registry must enter a caveat against the release of the property in its caveat book.
(3) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may make an application for an order requiring the person who procured the entry of the caveat to pay to the Applicant damages in respect of the loss suffered by the Applicant by reason of the delay and, on considering the application, the Court, unless it is satisfied that the person who procured the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.
(4) Where the Court makes an order requiring the person who procured the entry of the caveat to pay to the Applicant damages, the damages must be assessed.

**70.11 Duration of Caveats**

(1) A caveat, whether against the issue of a warrant, the release of property or the payment of money out of Court, is valid for one year from the date of its entry unless it is withdrawn by the person at whose instance it was entered.
(2) The period of validity of a caveat may not be extended but this provision does not prevent the entry of successive caveats.

**70.12 Bail**

(1) Unless a ship that has been arrested was arrested in respect of a claim for the possession or ownership of a ship or any share therein, the Court must permit the release of the ship upon sufficient bail being provided, unless an application is made objecting to the bail provided within 7 days of the bail being provided.
(2) Unless the parties agree, the Court must determine the nature and amount of any bail.
(3) Bail on behalf of a party to a claim in rem may be given by,
  (a) filing one or more bail bonds with one or more sureties; or
  (b) filing a guarantee or other security from a financial institution, acceptable to the Marshal.
(4) The party on whose behalf bail is given must serve on any other party to the proceeding a copy of the bail, containing the names and addresses of the persons who have given bail on that party's behalf and of the commissioner before whom the bail bond was sworn, and file it with proof of service.
(5) Any party dissatisfied with the bail must, within 7 days, make an application for the issue of bail to be decided by the Court.

**70.13 Intervenors**

(1) Where property against which a claim 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 party to the proceedings may make an application to intervene in the proceedings, which application may be made without notice.

(2) On an application under this Rule, where the Court gives the Applicant permission to intervene,
   (a) the Applicant becomes a party to the proceedings; and
   (b) the Applicant must serve a copy of the order permitting it to intervene on all other parties to the proceeding.

**70.14 Default Judgment and Order for Sale**

(1) Where a Defendant who was properly served with a claim fails to file a Defence to the claim within the prescribed time, the claimant may make an application for Default Judgment under Part 12, except where the Statement of Case is a claim in rem, in which case the provisions of this Rule apply.

(2) In a claim in rem, where a Defendant who was properly served with the claim fails to file a Defence to the claim within the prescribed time, the claimant may make an application for Default Judgment against that Defendant and for an order for sale, which may be enforced subject to any outstanding caveats for arrest or orders for sale of the property and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) An application for Judgment against a Defendant under this Rule must include Affidavit evidence,
   (a) establishing service of the claim on the Defendant; and
   (b) verifying the facts on which the claim is based.

(4) In considering an application under this Rule, where the Court is satisfied that the Applicant's claim is well founded, it may
   (a) give Judgment on the claim;
   (b) order the property against which the claim is brought to be appraised and sold (with or without previous notice) and the proceeds to be paid into Court; or
   (c) make such other order as it considers just.

(5) The Court may set aside or vary a Default Judgment made under this Rule on such terms as it considers just.

**70.15 Order for Sale of Ship**

(1) Where the Court has ordered a ship to be sold, it may further order that,
   (a) the order of priority of the claims against the proceeds of sale of the ship not be determined until 3 months after the day on which the proceeds of sale are paid into Court, or such other period as the Court may specify;
   (b) any party to the proceeding or to any other claim in rem against the ship or the proceeds of sale thereof may make an application in the proceeding to which he or she is a party to extend the period specified in the order; and
   (c) within 7 days of the date of payment into Court of the proceeds of sale, the Marshal must publish in the Official Gazette and such other newspaper of general circulation as the Court may direct, a notice stating,
      (i) that the ship, (naming her), has been sold by order of the Court in a claim in rem and identifying the claim;
      (ii) that the gross proceeds of the sale as specified have been paid into Court;
      (iii) the order of priority of claims, if any, against the proceeds will not be determined until after the expiration of the period specified in the order for sale; and
      (iv) any person with a claim against the ship or the proceeds of sale thereof on which the person intends to proceed to Judgment should do so before the expiration of that period

(2) Where the notice in sub-Rule (1) is required to be published, the Marshal must file an Affidavit attaching a copy of the Official Gazette and each newspaper in which the notice appeared and any expenses incurred

by the Marshal under this Rule are to be included in the Marshal's expenses relating to the sale of the ship.

(3) Any party who has obtained or obtains Judgment against the ship or proceeds of sale of the ship may make an application for an order determining the order of priority of the claims against the proceeds of sale of the ship.

**70.16 Appraisal and Sale pursuant to Order for Sale**

(1) Where the Court makes an order for sale,
   (a) the property or ship to be sold must be appraised before it can be sold but the Court may allow the sale to be completed at a price lower than the value shown in the appraisal;
   (b) the sale must be by public auction unless the Court permits a sale by private treaty; and
   (c) the Marshal must,
      (i) pay into Court the gross proceeds of the sale; and
      (ii) file his or her account relating to the sale, with vouchers in support thereof, for assessment.

(2) The person seeking to enforce the sale must file a Request for Appraisal and Sale (Form X) to be issued by the Registry.

(3) Upon issuance of the Request for Appraisal and Sale, it must be delivered to the Marshal together with a written undertaking satisfactory to the Marshal to pay the fees and expenses of the Marshal on demand.

(4) On the assessment of the Marshal's account relating to a sale, any person interested in the proceeds of the sale is entitled to be heard.

**70.17 Stay of Proceedings in Collision and Other Proceedings Until Security Given**

(1) In a claim in rem for damage, loss of life or personal injuries, the Court may stay any Ancillary Claim arising out of the collision, event or occurrence where the ship cannot be arrested and security has not been given, until security is given to satisfy any Judgment.

**70.18 Inspection of Ship or Property**

(1) Any party may make an application for an order for the inspection by an assessor or assessors or by any party or witness of any ship or other property, whether real or personal, where the inspection may be desirable for the purpose of obtaining full information or evidence in connection with any issue in the proceedings.

**70.19 Application for Limitation of Liability**

(1) A Defendant to an admiralty claim may argue limitation of liability as a Defence to the claim, but only with permission of the Court.

(2) Where a Defendant seeks to argue limitation of liability as a Defence, the Defendant must make an application for permission to do so and the Court must determine the issue of limitation of liability at the hearing scheduled for the application.

(3) The application must be served,
   (a) on any person within the jurisdiction that is named as a party to the admiralty claim; and
   (b) where a person that is named as a party to the admiralty claim is to be served out of the jurisdiction, without permission if that person has submitted to or agreed to submit to the jurisdiction of the Court or the Court has jurisdiction over the claim under any applicable Convention.

(4) Where a Respondent admits the Applicant’s right to limit liability before the hearing of the application, the Applicant may file a Requisition (Form 13A) together with an executed consent and the Court must make an order limiting liability only against the Respondent or Respondents that have admitted the Applicant’s right to limit liability.

**70.20 Order Limiting Liability**

(1) Where a Respondent does not admit the Applicant’s right to limit liability but fails to respond to the application, the court may make an order limiting liability against that Respondent.

(2) Where the Court makes an order permitting the Applicant to limit its liability generally as opposed to only against a specified Respondent or Respondents, the Court may,
   (a) order that the proceedings to which the application relates be stayed; or
   (b) order the Applicant to establish a limitation fund if one has not already been established or make such other arrangements for payment of claims against which liability is limited as the Court considers appropriate.

(3) Any order limiting an Applicant's liability must,
   (a) fix a date by which any person may make an application to set aside the order limiting liability, which date must not be less than 2 months from the date of any advertisement of the order;
   (b) be advertised by the Applicant as may be provided by the order; and
   (c) be served on any Respondent to the application, or as otherwise directed by the Court.

(4) Where the only Respondents in limitation proceeding are those named in the claim by name and all the persons so named have either been served with the application, any order limiting liability need not be advertised as it operates only to protect the claimant in respect of claims by the persons so named or persons claiming through or under them.

(5) Where the Court requires the order to be advertised, the advertisement may be a single advertisement in a newspaper as specified by the Court, which must,
   (a) identify the claim, the casualty and the relation of the Applicant thereto (whether as owner of a ship involved in the casualty or otherwise, as the case may be);
   (b) state that an order limiting the Applicant's liability has been made;
   (c) specify the amount fixed by the order as the limit of the Applicant's liability; and
   (d) state the time allowed for making an application to set aside the order.

(6) The Applicant must file an Affidavit attaching a copy of the advertisement with the Court within the time allowed for making an application to set aside the order.

**70.21 Application to Set Aside Order Limiting Liability**

(1) Where the Court makes an order limiting the Applicant's liability generally or against a specified Respondent or Respondents, any person may make an application to set aside the order within the time specified by the order.

(2) An application to set aside an order limiting liability must include Affidavit evidence that,
   (a) the person seeking to set aside the order has a bona fide claim against the person that is the subject of the order limiting liability; and
   (b) demonstrates sufficient prima facie grounds for the contention that the person that is the subject of the order limiting liability is not entitled to the relief given to them by the order.

(3) The application to set aside an order limiting liability must be served on every party that has defended the admiralty proceeding to which the order relates.

(4) On the hearing of the application, the Court may, if satisfied that the evidence establishes the criteria required by sub-Rule (2), set aside the order limiting liability and give directions as if the hearing were a Case Management Conference.

**70.22 Payment into Court where Limitation of Liability**

(1) The Applicant may constitute a limitation fund by paying into Court the Guyanese dollar equivalent of the number of special drawings rights to which he claims to be entitled to limit his liability under the *Guyana Shipping Act*, together with interest thereon from the date of the occurrence giving rise to the liability to the date of payment into Court.

(2) Where the Applicant does not know the Guyanese dollar equivalent of the number of special drawing rights on the date of payment into Court, the Applicant may calculate the same on the basis of the latest available published dollar equivalent of a special drawing right as fixed by the International Monetary Fund.

(3) In the event of the Guyanese dollar equivalent of a special drawing right on the date of the payment into Court is different from that used by the Applicant, the Applicant may,

(a) make up any deficiency by making a further payment into Court which, if made within 14 days of the original payment into Court, must be treated as if it had been made on the date of the original payment, except for the purposes of the accrual of interest on the money paid into Court; or
(b) make an application to the Court for payment out of any excess in the amount paid into Court, together with any interest accrued thereon, which may be made without notice but must establish the appropriate dollar equivalent of the appropriate number of special drawing rights on the date of the payment into Court.

(4) On making any payment into Court under this rule, the Applicant must give written notice thereof within 7 days to every Respondent specifying,
(a) the date of the payment in;
(b) the amount paid in;
(c) the amount of interest included therein;
(d) the rate of such interest; and
(e) the period to which such interest relates.

(5) The Applicant must also give written notice within 7 days to every Respondent of any payment out of the fund, specifying any amount of interest included therein.

(6) Money paid into Court under this Rule must not be paid out except pursuant to an order.

(7) Where a limitation fund was established but the person who created it does not make an application for permission to argue limitation of liability within 2 months of the date that the fund was established, the Court must repay the funds to that person, together with any interest accrued herein.

(8) Where a limitation fund is repaid to the person who created it under sub-Rule (7), that person is not prohibited from establishing a new fund.

**70.23 Agreements Between Parties**

(1) Any written agreement between the parties to the proceeding may be issued as an order where the parties file an executed Consent (Form 10B) attaching a draft of the order and the Registry considers the order one that may be made on consent.

(2) Upon the filing of an executed Consent and draft of the order, and payment of the requisite fee, the Registry may issue an order in accordance with the Consent.

(3) In accordance with sub-Rule (1), where the parties seek to proceed with an assessment of damages under Part 16 or to refer the proceeding or part thereof to a referee under Part 40, they may file a Consent (Form 10B) attaching a draft of the order.

**70.24 Appeal**

(1) No appeal lies from any order under this Part, except on a question of law.

**70.25 Undertakings**

(1) Where a party or the party's Attorney-at-Law fails to comply with a written undertaking given by him or her to accept service of the claim, give bail or pay money into Court in lieu of bail, that party or Attorney-at-Law may be found in contempt under Part 51.

(2) Where a party is required to give to the Marshal an undertaking to pay any fees or expenses, the Marshal may instead of an undertaking accept a deposit of such sum as the Marshal considers reasonable to meet those fees and expenses.

## PART 71: OBTAINING EVIDENCE FOR FOREIGN COURTS

**71.01 Application for Order**

(1) The Court may, at the request of another foreign Court, require a person in Guyana to give evidence for use in foreign proceedings, which power includes making an order for:
(a) the person to be examined, either orally or in writing;

(b) the production of documents by the person; or
(c) the inspection, photocopying, preservation, custody or detention of any property of the person.

(2) An application for an order under this Part may be made without notice but must be supported by Affidavit evidence which,
(a) attaches the request in pursuance of which the application is made, and if the request is not in the English language, a certified English translation of the request; and
(b) establishes that the evidence sought is relevant, necessary, and not otherwise obtainable;

(3) in deciding an application under this part, the Court must be satisfied that the order sought is not unduly burdensome, bearing in mind what the witness will be required to do, and produce.

(4) Where the request of the foreign Court is received by the,
(a) Court in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person for the assistance of a Court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of the party; or
(b) minister with responsibility for foreign affairs and sent by the minister to the Court with an intimation that effect should be given to the request without requiring an application for that purpose,
the Court must send the document to the Attorney General.

**71.02 Manner of Taking Evidence**

(1) An order for the examination of a witness made under this Part may direct that the examination be taken before any person nominated by the Applicant, before an examiner of the Court, or before any other qualified person as the Court considers fit.

(2) Subject to any special directions contained in an order made under this Part, the examination must be taken in the manner provided by Part 33 and an order may also be made for payment of the fees and expenses due to the examiner.

(3) Unless any order made under this Part for the examination of any witness otherwise directs, the examiner before whom the examination is taken must send the transcript of the examination of that witness to the Court, and the Court must,
(a) give a certificate with the Court's seal annexing and identifying the request under which the order was granted, the order of the Court for the examination of the witness, as well as the transcript; and
(b) send the certificate with the annexed documents to the minister with responsibility for foreign affairs, or, if the request was sent to the Registry by some other person, to that other person for transmission to the requesting foreign Court.

**71.03 Claim to Privilege**

(1) Where the person in Guyana ordered to give evidence for use in foreign proceedings claims a right to withhold evidence on the basis of privilege and the claim is contested, the examiner may require them to give the evidence in any event, in which case,
(a) the evidence relating to the claim of privilege must be recorded separate from the rest of that witness' examination;
(b) in addition to the transcript of the examination, the examiner must send to the Court the transcript of the evidence relating to the claim of privilege, including any documents with respect to which the privilege is claimed, together with a signed statement by the examiner setting out the claim and the grounds on which it was made;
(c) the Court must,
(i) send the transcript of the examination, excluding the transcript of the evidence and documents relating to the claim of privilege, to the foreign Court;
(ii) send the statement to the foreign Court for determination on the issue of privilege; and
(iii) upon receipt of a decision from the foreign Court, notify the witness and the person who obtained the order of the Court's determination on the issue of privilege; and
(d) where the claim of privilege is,

(i) upheld, the Court must send the transcript of the evidence relating to the claim of privilege, and any documents with respect to which the privilege is claimed, to the witness; or
(ii) rejected, the Court must send to the foreign Court the transcript of the evidence relating to the claim of privilege, and any documents with respect to which privilege is claimed.

(2) If the examiner does not require the person to give evidence relating to the matters upon which privilege was claimed, the person who obtained the order may make an application to require the person do so and, such an application may be made without notice.

## PART 72: RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS

### 72.01 Application for Registration of Foreign Judgment

(1) Any person may make an application by way of a Fixed Date Application (Form 8B) for an order registering a foreign Judgment for enforcement within Guyana.
(2) The application may be made without notice but must be supported by Affidavit evidence which,
(a) attaches a verified, certified or otherwise duly authenticated copy of the foreign Judgment and, if the Judgment is not in the English language, a certified English translation of it;
(b) where the sum payable sought to be registered is expressed in a currency other than the currency of Guyana, specifies the amount in the currency of Guyana calculated at the rate of exchange prevailing at the date of the Judgment;
(c) specifies the amount of interest, if any, that has become due under the Judgment up to the time of the application;
(d) states the name and the last known place of residence or business of the Judgment Creditor and Judgment Debtor; and
(e) states that, to the best of the deponent's information or belief,
(i) the Judgment Creditor is entitled to enforce the Judgment;
(ii) the Judgment has not been satisfied as at the date of the application or, if partially satisfied, the amount that remains unsatisfied;
(iii) there is no reason why the Judgment should not be registered for enforcement in Guyana; and
(iv) the registration would not be or be liable to be set aside under the laws of the country of the original Judgment.
(3) The Court hearing the application may order that,
(a) notice of the application be given and the hearing rescheduled to a new date; or
(b) the Judgment Creditor give security for the costs of any proceedings which may be brought to set aside the registration.

### 72.02 Order for Registration of Foreign Judgment

(1) Where the Court is satisfied with the evidence submitted in support of the application, it may make an order registering the foreign Judgment for enforcement under the laws of Guyana as if it were a Judgment granted by the Court.
(2) The order must,
(a) state the period after the date of service within a person may make an application to set aside the registration of the foreign Judgment;
(b) state that execution on the Judgment will not issue until after the expiration of the period to make an application to set aside the registration of the foreign Judgment; and
(c) be served personally by the Applicant, together with a copy of the foreign Judgment, on the Judgment Debtor.
(3) An order registering the foreign Judgment outside of the jurisdiction may be served without permission of the Court.
(4) Upon the filing proof of service of the order registering the foreign Judgment and upon the expiration of the period to make an application to set aside the registration of the foreign Judgment, the Registrar must

add the particulars of the registered order to the register of all foreign Judgments recognized by the Court.

**72.03 Setting Aside Registration of Foreign Judgment**

(1) Any person may make an application for an order setting aside the registration of a foreign Judgment.

(2) An application for an order setting aside the registration of a foreign Judgment must be made within 28 days of the Applicant having been served with the order registering the foreign Judgment.

(3) If the Court hearing the application to set aside the registration of the foreign Judgment is satisfied that,
   (a) it is not just or convenient that the Judgment be enforced in Guyana; or
   (b) the foreign Judgment may not be registered for enforcement within Guyana under the laws of the country of the original Judgment,

it may order that the registration of the foreign Judgment be set aside.

**72.04 Execution of Registered Foreign Judgment**

(1) Execution on a registered foreign Judgment must not commence until,
   (a) proof of service of the order registering the foreign Judgment is filed with the Court; and
   (b) the period of time to apply to set aside the foreign Judgment has expired.

(2) If an application is made to set aside the registration of a foreign Judgment, execution may not commence until after the application to set it aside is finally determined.

## PART 73: TRANSITIONAL PROVISIONS

**73.01 Application of these Rules**

(1) These Rules apply to all proceedings commenced on or after the date on which these Rules come into force.

(2) In all proceedings commenced before the date on which these Rules come into force,
   (a) where a trial date in the proceeding has been fixed, these Rules do not apply, unless the trial date is adjourned; and
   (b) where a trial date is adjourned or has not yet been fixed, the Registry must serve the parties to the proceeding with a Notice of Case Management Conference in accordance with Part 25 and, at the Case Management Conference, the Court must,
      (i) determine whether these Rules should apply to the proceeding or whether the proceeding ought to continue under the old rules; or
      (ii) if the Claimant fails to attend the Case Management Conference, deliver a Notice of Pending Dismissal (Form 8C) in accordance with Part 13.

(3) The Court may exercise its discretion and make such orders or give such directions as necessary to address any issues that arise in a proceeding as a result of the proceeding transitioning under these Rules, taking into account the overriding objective.

**SCHEDULE 1: Registry Fees and Marshal's Fees**

The following are the filing and other fees of the Registry:

| | | |
|---|---|---|
| Upon the issuance of a, | | |
| | Statement of Claim | $3,500 |
| | Amended Statement of Claim | $500 |
| | Third or Subsequent Party Claim | $3,500 |
| | Amended Third or Subsequent Party Claim | $500 |
| | Fixed Date Application | $3,500 |
| | Amended Fixed Date Application | $500 |
| | Notice of Application | $1,500 |
| | Summons to Witness | $500 |
| | Judgment Summons | $500 |
| | Garnishment Order | $1,500 |
| | Writ of Possession, Writ of Delivery, Writ of Sequestration, Writ of Seizure and Sale, Warrant for Arrest, or Writ of Habeas Corpus | $1,500 |
| | Request for Appraisal and Sale | $1,500 |
| | Release of Property under Arrest | $500 |
| | Notice of Examination | $500 |
| | Notice of Appeal or Notice of Cross-Appeal | $4,000 |
| | Order issued at the request of a party | $1,000 |
| | Order issued subsequent to the determination of an application by the Court | Nil |
| For personal service of any document for which service is required to be arranged by the Court | | $1,000 |
| Upon the filing of a, | | |
| | Defence | $2,000 |
| | Defence and Counterclaim | $2,500 |
| | Defence and Crossclaim | $2,500 |
| | Amended Defence | $500 |
| | Amended Defence and Counterclaim | $1,500 |
| | Amended Defence and Crossclaim | $1,500 |
| | Defence to Counterclaim, Defence to Crossclaim, Defence to Third or Subsequent Part Claim | $2,000 |
| | Amended Defence to Counterclaim, Amended Defence to Crossclaim, Amended Defence to Third or Subsequent Part Claim | $500 |
| | Reply (including Reply to Defence to Counterclaim, Reply to Defence to Crossclaim, or Reply to Defence to Third or Subsequent Part Claim) | $1,000 |
| | Amended Reply (including Amended Reply to Defence to Counterclaim, Amended Reply to Defence to Crossclaim, or Amended Reply to Defence to Third or Subsequent Part Claim) | $500 |
| | Affidavit in Defence | $1,500 |

| | | |
|---|---|---|
| | Affidavit in Reply | $1,000 |
| | Affidavit of Service or other Endorsement evidencing service | $500 |
| | Notice of Appointment of Attorney-at-Law, Notice of Change of Attorney-at-Law, Notice of Intention to Act in Person | $500 |
| | Affidavit | $500 |
| | Consent | $500 |
| | Requisition | $1,500 |
| | Affidavit of Documents | $500 |
| | Witness Statement | $500 |
| | Mediation Report | Nil |
| | Garnishee's Statement | Nil |
| | Caveat against Release | $1,000 |
| For making copies of documents, | | |
| | not requiring certification, per page | $20 |
| | requiring certification, per document | $500 |
| For the inspection of a court file, | | |
| | by an Attorney-at-Law or party in the proceeding | $500 |
| | by any other person, per file | $1,000 |
| For the retrieval from storage of a Court file | | $500 |
| For every search in the cause book or index or computer records | | $500 |
| For the taking of an affidavit by a commissioner for taking affidavits | | $1,000 |
| Upon the filing of any other document | | $500 |

The following are the fees permitted to be charged by a Marshal:

| **Demerara** | | |
|---|---|---|
| **Taxation** | $500 | |
| **Mileage** | $1,000 for the first 15 miles from Georgetown and $10 for every mile thereafter | |
| **Levy** | Within Georgetown | $1,000 |
| | From Georgetown to Supply, E.B.D. | $1,200 plus $1,500 to any place thereafter |
| | From Georgetown to Linden | $2,000 |
| | From Georgetown to Mahaica | $1,200 plus $100 to the end of Demerara |
| | From Georgetown to Abary | $2,000 plus $100 for every mile thereafter to the end of West Berbice |
| | From Georgetown to New Amsterdam to Bermine | $4,000 plus $100 for every mile thereafter |
| | From Georgetown to New Amsterdam to Molson Creek | $4,000 plus $100 for every mile thereafter |
| | From Georgetown to Vreed-en-Hoop | $1,000 plus $100 for every mile thereafter to Parika |

| | | |
|---|---|---|
| | From Georgetown to Essequibo Coast | $3,000 to Supernaam plus $100 for every mile thereafter to Charity |
| | From Georgetown to Bartica | $3,000 plus $100 for every mile thereafter |
| **Essequibo** | | |
| **Taxation** | $500 | |
| **Mileage** | $1,000 for the first 15 miles around Suddie, Essequibo and $10 for every mile thereafter | |
| **Levy** | From Suddie to Supernaam | $1,200 |
| | From Suddie to Cotton Field | $1,200 plus $100 for every mile thereafter |
| | From Suddie to PomeroonJacklow | $2,500 plus $100 for every mile thereafter |
| | From Suddie to Vendon | $2,500 plus $100 for every mile thereafter |
| | From Suddie to Port Kaituma | $3,500 plus $100 for every mile thereafter |
| | From Suddie to Moruka | $3,000 plus $100 for every mile thereafter |
| | From Suddie to Lethem | $4,000 plus $100 for every mile thereafter |
| **Berbice** | | |
| **Taxation** | $500 | |
| **Mileage** | $1,000 for the first 15 miles out of New Amsterdam and $10 for every mile thereafter | |
| **Levy** | Within New Amsterdam | $1,000 |
| | From New Amsterdam to Canjie Bridge up to Rosehall | $1,500 plus $100 for every mile thereafter |
| | From New Amsterdam to Port Mourant | $2,000 plus $100 for every mile thereafter to Molson Creek |
| | From New Amsterdam to Rosignol and the East Coast of Demerara | $1,500 plus $100 for every mile thereafter |
| | From New Amsterdam to Glasgow Village, East Berbice | $1,500 plus $100 for every mile thereafter |

**SCHEDULE 2: Appendix A – Legal Fees where Fixed Costs Apply**

Where the Court orders fixed costs, this table shows the portion of the costs that are to be awarded on account of legal fees.

These amounts reflect legal fees only, and do not include disbursements. The legal fees in this table are not intended to be considered as a limit on what may be charged to the client for actual legal fees incurred as a result of services provided.

| Column 1 | | Column 2 |
|---|---|---|
| (1) Where Judgment is granted upon the conclusion of a trial and the relief claimed in Statement of Case is for, | | |
| | damages in an amount between $50,000 and $499,999 | $75,000 |
| | damages in an amount between $500,000 and $999,999 | $150,000 |
| | damages in an amount between $1,000,000 and $4,999,999 | $250,000 |
| | damages in an amount between $5,000,000 and $14,999,999 | $500,000 |
| | damages in an amount between $15,000,000 and $39,999,999 | $1,000,000 |
| | damages in an amount between $40,000,000 and $69,999,999 | $2,000,000 |
| | damages in an amount of $70,000,000 or more | $3,000,000 |
| | delivery or recovery of personal property or land | $75,000 or 15% of the value of the property, whichever is greater |
| (2) Where the costs award only relates to an application made under Part 11 | | $30,000 |
| (3) Where the costs award relates to a Fixed Date Application that was disposed of at the date scheduled upon issuance of the Fixed Date Application | | $50,000 |
| (4) Where any order made is against multiple Defendants or Respondents, for each additional Defendant or Respondent against whom the order is made (which amount is in addition to the fee in (1), (2) or (3)) | | $10,000 |

**SCHEDULE 2: Appendix B – Legal Fees where Prescribed Costs Apply**

Where the Court orders prescribed costs, this table shows how to calculate the legal fees portion of those costs that are to be awarded on account of services provided. The amounts under section (1) are cumulative. Where there is no value for damages, the amount of damages to be used for the calculation is deemed to be $10,000,000, unless the Court orders hat the prescribed costs be calculated based upon another value.

The result of the calculation based on this table reflects legal fees only, does not include disbursements, and is not intended to be considered as a limit on what may be charged to the client for actual legal fees incurred as a result of services provided.

| Column 1 | | Column 2 |
|---|---|---|
| (1) Where the value is, | | |
| | an amount between $50,000 and $499,999 | 40% |
| | plus any amount between $500,000 and $999,999 | 30% |
| | plus any amount between $1,000,000 and $4,999,999 | 20% |
| | plus any amount between $5,000,000 and $14,999,999 | 10% |
| | plus any amount between $15,000,000 and $39,999,999 | 5% |
| | plus any amount between $40,000,000 and $69,999,999 | 1% |
| | plus any amount of $70,000,000 or more | 0.5% |
| (2) The total from (1) must be multiplied by the percentage that corresponds to the stage to which the proceeding advanced | | |
| | service of a Defence only | 20% |
| | at least one Case Management Conference held | 40% |
| | up to Default Judgment and including assessment of damages | 60% |
| | up to and including Pre-Trial Review, if any | 80% |
| | up to and including trial | 100% |

For example, where the claim was for $50,000,000, the amount in (1) would be:

($499,999 x 0.40)
+ ($500,000 x 0.30)
+ ($4,000,000 x 0.20)
+ ($10,000,000 x 0.10)
+ ($25,000,000 x 0.05)
+ ($10,000,001 x 0.01)
$3,500,000

And where the proceeding advanced to the stage where a Pre-Trial Review was held, the prescribed costs would be:

$3,500,000 x 0.80 = $2,800,000

**SCHEDULE 3: Forms**

This table lists the forms referred to in these Rules:

| Form Number | Form Name | Date of Form |
|---|---|---|
| 4A | General Heading | April 1, 2016 |
| 4B | Back Sheet | April 1, 2016 |
| 4C | Information for Court Use | April 1, 2016 |
| 5A | Order | April 1, 2016 |
| 5B | Judgment | April 1, 2016 |
| 7A | Notice Requiring Party to arrange own Service | April 1, 2016 |
| 7B | Affidavit of Service | April 1, 2016 |
| 7C | Notice Requiring Party to Serve | April 1, 2016 |
| 8A | Statement of Claim | April 1, 2016 |
| 8B | Fixed Date Application | April 1, 2016 |
| 8C | Notice of Pending Dismissal | April 1, 2016 |
| 8D | Affidavit | April 1, 2016 |
| 10A | Defence | April 1, 2016 |
| 10B | Consent | April 1, 2016 |
| 10C | Affidavit in Defence | April 1, 2016 |
| 10D | Reply | April 1, 2016 |
| 10E | Affidavit in Reply | April 1, 2016 |
| 11 | Notice of Application | April 1, 2016 |
| 13B | Notice of Dismissal | April 1, 2016 |
| 13A | Requisition | April 1, 2016 |
| 16 | Certificate | April 1, 2016 |
| 18A | Counterclaim | April 1, 2016 |
| 18B | Crossclaim | April 1, 2016 |
| 18C | Third Party Claim | April 1, 2016 |
| 25 | Notice of Case Management Conference | April 1, 2016 |
| 26A | Mediation Report | April 1, 2016 |
| 26B | Certificate of Non-Compliance | April 1, 2016 |
| 28 | Affidavit of Documents | April 1, 2016 |
| 29A | Witness Statement | April 1, 2016 |
| 29B | Summons to Witness | April 1, 2016 |
| 29C | Warrant for Arrest | April 1, 2016 |
| 32 | Acknowledgement of Expert's Duty | April 1, 2016 |
| 33A | Notice of Examination | April 1, 2016 |

| | | |
|---|---|---|
| 33B | Notice of Written Examination | April 1, 2016 |
| 34A | Request to Admit Facts | April 1, 2016 |
| 34B | Response to Request to Admit | April 1, 2016 |
| 35 | Offer to Settle | April 1, 2016 |
| 36A | Notice of Payment into Court | April 1, 2016 |
| 37 | Notice of Discontinuance | April 1, 2016 |
| 44A | Garnishment Order | April 1, 2016 |
| 44B | Garnishee's Statement | April 1, 2016 |
| 44C | Notice of Termination of Garnishment | April 1, 2016 |
| 45 | Writ of Possession | April 1, 2016 |
| 46 | Writ of Delivery | April 1, 2016 |
| 47 | Writ of Sequestration | April 1, 2016 |
| 48A | Writ of Seizure and Sale | April 1, 2016 |
| 48B | Notice of Sale | April 1, 2016 |
| 50A | Order to Commit | April 1, 2016 |
| 50B | Judgment Summons | April 1, 2016 |
| 52 | Statement of Financial Position | April 1, 2016 |
| 53 | Stop Notice | April 1, 2016 |
| 56 | Notice of Claim for an Administrative Order | April 1, 2016 |
| 57 | Writ of Habeas Corpus | April 1, 2016 |
| 60A | Notice of Appeal to the High Court | April 1, 2016 |
| 60B | Certificate of Result of Appeal | April 1, 2016 |
| 61 | Notice of Appeal by way of Case Stated | April 1, 2016 |
| 62A | Notice of Appeal to the Full Court | April 1, 2016 |
| 62B | Notice of Cross-Appeal to the Full Court | April 1, 2016 |
| 62C | Notice to Discontinue Appeal | April 1, 2016 |
| 63A | Notice of Appointment of Attorney-at-Law | April 1, 2016 |
| 63B | Notice of Change of Attorney-at-Law | April 1, 2016 |
| 63C | Notice of Intention to Act in Person | April 1, 2016 |
| 64A | Affidavit of Disbursements | April 1, 2016 |
| 64B | Bill of Costs | April 1, 2016 |
| 70A | Caveat against Arrest | April 1, 2016 |
| 70B | Release of Property under Arrest | April 1, 2016 |
| 70C | Caveat against Release | April 1, 2016 |