

THE REPUBLIC OF
TRINIDAD AND TOBAGO



JUDICIARY
JUDICIAL EDUCATION
INSTITUTE

TRINIDAD AND TOBAGO

CONSOLIDATED CIVIL
PROCEEDINGS RULES
2016

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Preface

The Consolidated Civil Proceedings Rules (CPR) 2016 is a publication of the Judicial Education Institute of Trinidad and Tobago (JEITT). This publication has been undertaken in furtherance of the JEITT's Mission Statement: "To promote excellence in the administration of justice in the Republic of Trinidad and Tobago through continuous training and development of Judges, other judicial officers and non-judicial staff attached to the Judiciary." To further our vision, "Transformation through Education," we have made the decision to allow this book to be freely accessible internationally through our e-book platform at www.tlawcourts.org/jeibooks. In making this decision, we proceed with the goal of access to justice for all, enabling for all citizens access to an updated and consolidated version of the Civil Proceedings Rules 1998, including its amendments, forms, and practice directions.

In February 2016, the Consolidated CPR 2016 sub-committee gathered for its first meeting, to discuss the vision for this publication. The sub-committee consisted of Justice Peter Jamadar JA, Justice Gregory Smith JA, Justice Nadia Kangaloo, Justice Margaret Mohammed, and their respective Judicial Research Counsel, who consulted with each other to determine the needs of the target audiences for the Consolidated CPR 2016.

The production of this publication was an onerous process which required the help of the JEITT's Research and Publications Specialist, Kelsea Mahabir, Legal Research Officer, Trisha Dassrath, Legal Research Assistant, Elron Elahie, and Business Operations Assistant, Asha James. A group of industrious, dedicated and competent Judicial Research Counsel – Sumintra Singh, Kamla Braithwaite, Johanna Daniel, Mukta Balroop, Tanya Carter, Christie Borely, Anna Jacobs, Leselli Simon-Dyette, Joezel Williams and Khadine Jordan – also rendered assistance for which we are immensely grateful. Without this assistance, this publication would not have been possible, and we are deeply grateful to all of these persons. We also extend our gratitude to the Registrar of the Supreme Court for giving us permission to consolidate and publish the Civil Proceedings Rules, and to the Librarian of the Supreme Court, Carol Ford-Nunes, for generously making the library's resources available during the research process. Finally, we are deeply grateful to the Honourable the Chief Justice Mr Justice Ivor Archie ORTT, as the President of the Board of the JEITT, and to the entire Board for their support for this project.

This publication includes the Civil Proceedings Rules 1998, with all updates and amendments up to January 2017, as well as those cases with written decisions relevant to the CPR 1998, primarily from January 2005–May 2016. The cases are listed in reverse chronological order, and listed according to court. Relevant case notations and catch words are included in the case details for ease of reference. Transcripts, however, are omitted because they often contain discussion which may or may not assist on a

particular point. This was a policy decision of the publication committee. To further assist our reader, new rules are stated with a reference to when they were amended by a legal notice, which can be viewed as marginal notes throughout the text, and former rules are included prior to the cases under each Part.

To prepare for publication, the committee prepared the manuscript to include amendments, practice directions and legal notices, performed case research, selected cases for inclusion, and created catch words for each case by looking at the language used in the part and the issue in the case. All appeals of High Court cases were checked up until January 16th, 2017. In the preparation of the manuscript, the original text of the CPR 1998 remains unchanged, however, as only the statutory committee assigned to these rules – the Rules Committee – has the authority to do so.

This is not an official publication of the CPR and therefore, if there are any differences between the text of this publication and the official CPR, the official CPR takes precedence. If any differences are identified, they may be e-mailed to jei@ttlawcourts.org, so that the e-version of this publication may be brought into conformity.

In addition to the consolidation of the CPR and the inclusion of relevant cases, this publication consists of a companion booklet entitled *Exploring the Role of the CPR Judge*. This booklet explores the fundamental underpinnings of that role in the Constitution, the Statements of Principle and Guidelines for Judicial Conduct, and in the CPR itself. It also considers 9 specific areas: The Overriding Objective; Dealing Justly; Substantive Justice; Alternative Dispute Resolution; Procedural Justice; The ‘New’ Role of the CPR Judge; Procedural Fairness; Performance Standards; and Special Concerns. The Special Concerns considered include: Impartiality; Self-Represented and Under-Represented Litigants; Social Context Training; Effective Communication; and People who are Vulnerable and People who are Differently Abled. With respect to these concerns, guidelines for best practices are suggested. In this way, it functions as a quasi-bench book in relation to these areas.

Thus, it is hoped that the Consolidated CPR 2016 will improve the administration of justice – through having the Rules and all relevant updates and amendments in one text, and by having cases which will assist in uniformity of decision-making – and improve access to justice, through widespread and free-of-charge availability of the publication, as a sort of ‘starter guide’ for the application of the Rules.

Mr Justice P Jamadar JA
Chairman, Board of the JEITT
April 2017

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PART I THE OVERRIDING OBJECTIVE

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The overriding objective	Rule 1.1
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Duty of the parties	Rule 1.3

The overriding objective

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

Application by the court of the overriding objective

- 1.2** The court must seek to give effect to the overriding objective when it—
- (1) exercises any discretion given to it by the Rules; or
 - (2) interprets the meaning of any rule.

Duty of the parties

- 1.3** The parties are required to help the court to further the overriding objective.

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL***Buddie Miller and Another v Michael Perez***

Civ App No P131 of 2016 (2016.10.10)

Appeal dismissed

CV 2009-02764 (2016.04.26)

RULE 1.1 — RULE 1.3 — DUTY OF PARTIES — ATTORNEY'S ACTS INCONSISTENT WITH OVERRIDING OBJECTIVE

(Also under Part 43)

Louis A Monteil and Another v Central Bank of Trinidad and Tobago and Another

Civ App No P019 of 2015 (2016.05.27)

Appeal dismissed

RULE 1.1 — OVERRIDING OBJECTIVE — CONSIDERATION OF ALL FACTORS — NOT NECESSARY TO LIST FACTORS

(Also under Parts 20, 26 and 35)

Cristal Roberts and Another v Dr Samantha Bhagan and Another

Civ App No P049 of 2016 (2016.03.21)

Appeal allowed

CV 2010-01117 (2016.02.25)

OVERRIDING OBJECTIVE — PERMISSION TO CALL WITNESSES — CONSIDERATION OF FACTORS — PREJUDICE — EQUAL FOOTING — SAVING EXPENSE — DELAY

(Also under Parts 29 and 33)

Ravendra K Bridglal v The Attorney General of Trinidad and Tobago

Civ App No S188 of 2016 (2016.03.10)

Appeal dismissed

CV 2015-03939 (2016.06.07)

RULE 1.1 — CONSTITUTIONAL LAW — ALTERNATIVE REMEDY — OVERRIDING OBJECTIVE — CONSIDERATION OF FACTORS — DEALING WITH CASES JUSTLY — SAVING EXPENSE

(Also under Part 56)

Wendell Marcano and Others v Bissram Kalladeen

Civ App No 189 of 2012 (2016.03.07)

Appeal dismissed

RULE 1.1 — OVERRIDING OBJECTIVE — DUTY OF PARTIES — INADEQUATE DEFENCE — POWERS AT CMC — JUST DISPOSAL

(Also under Part 68)

HIGH COURT

The National Insurance Board of Trinidad and Tobago v The Trinidad and Tobago National Petroleum Company Limited

CV 2012-03949 (2016.04.20)

OVERRIDING OBJECTIVE — EXTENSION OF TIME — CONSIDERATION OF ALL FACTORS — DELAY — PREJUDICE

(Also under Parts 20 and 27)

2015

PRIVY COUNCIL/ COURT OF APPEAL

Her Worship Magistrate, Marcia Ayers-Caesar and Another v BS (by his kin and next friend Karen Mohammed)

Civ App No P252 of 2015 (2015.11.16)

Appeal allowed

PART 1 — OVERRIDING OBJECTIVE — CONSIDERATION OF FACTORS — JUDGE'S ROLE UNDER CPR — ACTIVE JUDICIAL CASE MANAGEMENT — CASE FLOW MANAGEMENT

(Also under Parts 26 and 56)

Medical Professionals Association of Trinidad and Tobago v Fidel Rampersad and Others

Civ App No P337 of 2014 (2015.01.26)

Appeal allowed

CV 2014-01330 (2015.01.23)

OVERRIDING OBJECTIVE — INTERPRETATION OF CPR — DISCRETION

(Also under Parts 8 and 26)

HIGH COURT*Cristal Roberts and Another v Dr Samantha Bhagan and Another*

CV 2010-01117 (2015.11.30)

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(Also under Parts 8 and 33)

Dev A Seepersad v The Director of Forestry and Another

CV 2014-04624 (2015.11.06)

OVERRIDING OBJECTIVE — ABUSE OF PROCESS — PREVIOUS PROCEEDINGS*Capital Plaza Hotel Limited v Caribbean Football Union Limited*

CV 2014-01668 (2015.05.27)

PART 1 — OVERRIDING OBJECTIVE — DUTY TO ASSIST COURT — EXPEDITION — IMPACT ON COSTS

(Also under Part 67)

Anand Ramlogan v Keith C Rowley

CV 2014-02394 (2015.01.26)

OVERRIDING OBJECTIVE — DISCRETION — CONSIDERATION OF FACTORS — PREJUDICE — ADMINISTRATION OF JUSTICE — PUBLIC IMPORTANCE

(Also under Part 31)

2014

PRIVY COUNCIL/ COURT OF APPEAL*Myron Rudder and Others v The Attorney General of Trinidad and Tobago*

Civ App No P046 of 2014

Appeal pending

CV 2012-05129 (2014.01.14)

RULE 1.1 — OVERRIDING OBJECTIVE — EXPERT EVIDENCE — CONSIDERATION OF FACTORS — EQUAL FOOTING — EXPEDITION — COURT'S RESOURCES

(Also under Part 33)

Roland James v The Attorney General of Trinidad and Tobago

Civ App No P044 of 2014 (2014.12.19)

Appeal dismissed

RULE 1.1(2) — OVERRIDING OBJECTIVE — CPR SILENT ON FACTORS — LIST OF FACTORS NOT EXHAUSTIVE — CONSIDERATION OF ALL FACTORS

(Also under Parts 10 and 12)

Ramesh Chaitlal and Another v Andy Sinanan and Another

Civ App No S154 of 2014 (2014.07.07)

Appeal allowed

CV 2013-00787 (2014.07.01)

RULE 1.1 — RULE 1.2 — OVERRIDING OBJECTIVE — DISCRETION — CONSIDERATION OF FACTORS — PREJUDICE

(Also under Part 26)

David Walcott v Scotiabank Trinidad and Tobago Limited

Civ App No P140 of 2013 (2014.06.25)

Appeal dismissed

CV 2012-04235 (2013.05.02)

RULE 1.1 — OVERRIDING OBJECTIVE — LITIGANT IN PERSON — RELITIGATION — ABUSE OF PROCESS — EQUAL FOOTING — PROPORTIONALITY — COURT'S RESOURCES

(Also under Part 26)

Junior Sammy Contractors Limited v Kevin Longdon and Others

Civ App No S094 of 2014 (2014.06.09)

Appeal allowed

CV 2013-01699 (2014.06.05)

OVERRIDING OBJECTIVE — EXTENSION OF TIME TO FILE DEFENCE — EXPEDITION — PROPORTIONALITY

Giselle Marfleet and Others v The University of Trinidad and Tobago

Civ App No P104 of 2014 (2014.06.09)

Appeal dismissed

CV 2013-00212 (2014.04.11)

RULE 1.2 — OVERRIDING OBJECTIVE — CASE MANAGEMENT POWERS — TRIAL DATE RESECHEDULED

(Also under Part 15)

Gulf View Medical Centre and Another v Karen Tesheira

Civ App No P135 of 2014 (2014.06.02)

Appeal allowed

CV 2009–02051 (2014.05.05)

RULE 1.1 — OVERRIDING OBJECTIVE — CONSIDERATION OF FACTORS — EQUAL FOOTING — ALLOCATION OF COURT'S RESOURCES — PROPORTIONATE ORDERS

(Also under Part 39)

HIGH COURT

Ayoub Khan v Caroni (1975) Limited

CV 2006–03392 (2014.07.03)

OVERRIDING OBJECTIVE — EXPEDITION — FRESH EVIDENCE — PERMISSION

(Also under Part 34)

Charlene Forde v Public Transport Service Corporation

CV 2008–04679 (2014.05.20)

RULE 1.1 — CONSIDERATION OF FACTORS — COURT'S RESOURCES — FAILURE TO PROSECUTE DILIGENTLY — ABUSE OF PROCESS

(Also under Part 26)

Faaig Mohammed v Jack Austin Warner

CV 2013–04726 (2014.05.05)

PART 1 — OVERRIDING OBJECTIVE — CONSIDERATION OF FACTORS — EQUAL FOOTING — COURT'S RESOURCES — PROPORTIONATE ORDERS — POWER TO EXCLUDE EVIDENCE

(Also under Part 29)

Global Dynamics Limited v Intercommercial Bank Limited

CV 2013–00258 (2014.02.03)

RULE 1.1 — VALUE OF CLAIM UNSPECIFIED — CPR SILENT ON FACTORS — OVERRIDING OBJECTIVE TO BE APPLIED

(Also under Parts 24 and 67)

2013

PRIVY COUNCIL/ COURT OF APPEAL

Christianne Kelsick v Dr Ajit Kuruvilla and Others

Civ App No P277 of 2012 (2013.03.19)

Appeal allowed

RULE 1.1 — OVERRIDING OBJECTIVE — PERMISSION FOR EXPERT EVIDENCE — CONSIDERATION OF FACTORS — PROPORTIONALITY — IMPORTANCE OF CASE — COMPLEXITY — IMPECUNIOSITY — COURT’S RESOURCES

(Also under Parts 26, 29 and 33)

2012

PRIVY COUNCIL/ COURT OF APPEAL

Rookmin Dulariya v Verma Ramdass

Civ App No S181 of 2009 (2012.10.08)

Appeal allowed

CV 2006–03379, HC S1559/2005 (2009.07.13)

RULE 1.2 — OVERRIDING OBJECTIVE — DISCRETION — ADJOURNMENT OF TRIAL DATE

(Also under Part 40)

HIGH COURT

Export-Import Bank of Trinidad and Tobago v Waterworks Limited and Others

CV 2010–03594 (2012.11.14)

RULE 1.2 — OVERRIDING OBJECTIVE — CONSIDERATION OF ALL FACTORS — JUST DISPOSAL — RE-AMENDMENT

(Also under Part 20)

Neutrice Greaves v Nina Grant

CV 2010–00647 (2012.09.28)

RULE 1.3 — OVERRIDING OBJECTIVE — USE OF ADR — COSTS

(Also under Part 26)

VITCO TT Ltd v Motilal Ramhit and Sons Constructing Company

CV 2011-03758 (2012.07.31)

RULE 1.1 — RULE 1.3 — OVERRIDING OBJECTIVE — WIDE CASE MANAGEMENT POWERS — REPLY TREATED AS DEFENCE TO COUNTERCLAIM

(Also under Part 18)

Samuel Alfred and Others v Leonora Balfour and Another

CV 2009-03461 (2012.07.06)

EXTENSION OF TIME TO FILE DEFENCE — CONSIDERATION OF FACTORS

(Also under Part 12)

Steve Chairman v Samuel Saunders

CV 2012-01670 (2012.07.02)

RULE 1.1 — OVERRIDING OBJECTIVE — DISCRETION — ABUSE OF PROCESS — CONSIDERATION OF FACTORS — COURT'S RESOURCES

(Also under Part 26)

2011

PRIVY COUNCIL/ COURT OF APPEAL*Chanan Mahabir and Another v Sandra Mahabir*

Civ App No P085 of 2011 (2011.05.11)

Appeal dismissed

CV 2010-02915 (2011.05.17)

RULE 1.3 — OVERRIDING OBJECTIVE — BREACH OF ATTORNEY'S DUTY — SAVING EXPENSE — COURT'S RESOURCES*Jeffrey Bonyun v Ramoutar's Hardware Limited and Another*

Civ App No S216 of 2008 (2011.05.06)

Appeal allowed

CV 2007-01427 (2008.11.24)

RULE 1.2 — OVERRIDING OBJECTIVE — PRE-CPR RULES NOT SUPERSEDED BY CPR

2010

PRIVY COUNCIL/ COURT OF APPEAL

Charmaine Bernard v Ramesh Seebalack

[2010] UKPC 15 (2010.07.21)

RULE 1.1 — OVERRIDING OBJECTIVE — CONSIDERATION OF FACTORS — EXPEDITION — PROPORTIONALITY — COURT’S RESOURCES — APPEAL DISMISSED

(Also under Part 8)

HIGH COURT

Wendell Steele v Lennox Petroleum Services Limited

CV 2009-04689 (2010.10.04)

RULE 1.1 — OVERRIDING OBJECTIVE — CONSIDERATION OF FACTORS — JUST DISPOSAL — EQUAL FOOTING — SAVING EXPENSE — PROPORTIONALITY — EXPEDITION — COURT’S RESOURCES — RELITIGATION

(Also under Part 38)

2009

PRIVY COUNCIL/ COURT OF APPEAL

Joseph Alexander v Roslyn Baptiste and Others

Civ App T099 of 2009 (2009.05.18)

Appeal allowed

CV 2008-04227 (2009.05.12)

RULE 1.2 — OVERRIDING OBJECTIVE — DUTY OF ATTORNEYS — DUTY OF COURT

(Also under Part 13)

2008

PRIVY COUNCIL/ COURT OF APPEAL

Bridgemohan Sookdeo and Another v Ramesh Jagdeo

Civ App No S170 of 2007 (2008.07.11)

Appeal dismissed

CV 2006-01546 (No Date of Delivery)

OVERRIDING OBJECTIVE — CONSIDERATION OF FACTORS — JUST DISPOSAL — COURT’S RESOURCES

(Also under Part 40)

Chandresh Sharma v The Attorney General of Trinidad and Tobago

Civ App No P043 of 2006 (2008.02.08)

Appeal dismissed

CV 2005-00150 (2006.03.23)

PART 1 — OVERRIDING OBJECTIVE NOT TO BE USED AS A SLIP RULE — DISCRETION

HIGH COURT

Knolly John v Brenda Mahabir and Others

CV 2005-00866 (2008.01.30)

OVERRIDING OBJECTIVE — DUTY TO ASSIST THE COURT — DISCRETION

(Also under Part 13)

2007

PRIVY COUNCIL/ COURT OF APPEAL

Basdeo Panday v Jacqueline Sampson

Civ App No P120 of 2007 (2007.10.19)

Appeal dismissed

OVERRIDING OBJECTIVE — DEALING WITH CASES JUSTLY

(Also under Part 66)

HIGH COURT

Sherman McNicholls v Judicial and Legal Service Commission

CV 2007-03132 (2007.10.31)

PART 1 — OVERRIDING OBJECTIVE — COURT DRIVEN LITIGATION — SCHEDULING OF HEARINGS

PART 2 APPLICATION AND INTERPRETATION OF THE RULES

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Time—vacations	Rule 2.9
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Time—alternative dispute resolution	Rule 2.12

Citation and commencement

- 2.1 (1) These Rules may be cited as the Civil Proceedings Rules 1998.
- (2) These Rules came into effect on the 16th day of September 2005, subject to Part 80.
- (3) A reference to a rule as CPR xx or rule xx is a reference to a rule so numbered in these Rules.

Application of the Rules

- 2.2 (1) Subject to paragraph (3), these Rules apply to all civil proceedings in the Supreme Court.
- (2) “civil proceedings” includes Judicial Review and applications to the court under section 14(1) of the Constitution under Part 56.
- (3) These Rules do not apply to proceedings of the following kinds:

LN 126
of 2011
LN 301
of 2012

- (a) insolvency (including winding up of companies);
 - (b) non-contentious probate proceedings;
 - (c) family proceedings, except as provided in the Family Proceedings Rules; and
 - (d) proceedings when the High Court is acting as a Prize Court.
- (4) In these Rules the word “must” wherever this word occurs shall be deemed to have been substituted by the word “shall”.

Definitions

2.3 In these Rules—

“**ADR procedures**” mean any procedures for alternative dispute resolution including, in particular, mediation;

“**application**” and “**applicant**” have the meanings given by rule 11.2;

“**body corporate**” includes a company or other body corporate wherever or however incorporated other than a corporation sole and includes a limited company unless a rule otherwise provides;

“**certificate of value**” has the meaning given by rule 8.7;

“**Chief Justice**” includes, in relation to any period in which the office of Chief Justice is vacant, the person for the time being performing the functions of the Chief Justice;

“**claim**” is to be construed in accordance with Part 8;

“**claim for personal injuries**” means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

“**claimant**” means a person who makes a claim; and, in relation to any proceedings commenced before these Rules came into force, includes a plaintiff in an action or the petitioner or applicant in any proceedings commenced by petition, originating summons or motion;

“**claim for a specified sum of money**” means—

- (a) a claim for a sum of money recoverable under a contract which is ascertained or capable of being ascertained as a matter of arithmetic; and
- (b) for the purposes of Parts 12 (default judgment) and 14 (admissions), a claim for—
 - (i) the cost of repairs executed to a vehicle or any property in, on or abutting a road; or
 - (ii) any other actual financial loss, claimed as a result of damage which it is alleged to have been caused in an accident as a result of the defendant’s negligence,

provided that the amount of each item in the claim is specified, and copies of receipted bills for the amounts claimed are attached to the claim form or statement of case;

“**the Constitution**” means the Constitution of Trinidad and Tobago;

“**court**” means the High Court and where the context admits, and in Part 64, the Court of Appeal;

“**court office**” indicates—

- (a) the place where documents are to be filed, etc., and includes a registry or sub-registry; and
- (b) where work of a formal or administrative nature under rule 2.5(1) is to be dealt with by members of the court staff;

“**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 originating summons or motion;

“**external company**” means any incorporated body of persons that is formed under the laws of a country other than Trinidad and Tobago;

“**filing**”, in relation to a document, means delivering, sending it by facsimile transmission or posting it to the appropriate court office and is not completed until the document is received at that office;

“**fixed date claim**” is a claim form in Form 2 upon which there has been stated a date, time and place for a first hearing of the claim;

“**limited company or company**” means a body corporate that is incorporated or continued under the Companies Act (Chap. 81:01);

“**master**”, subject to any direction under rule 2.4(2), includes assistant master;

“**minor**” means a person under 18 years;

“**next friend**” has the meaning given by Part 23;

“**order**” includes a judgment, decree, rule, direction, award or declaration;

“**overriding objective**” means the objective set out in rule 1.1;

“**party**” includes both the party to the claim and any attorney-at-law on record for that party unless any rule specifies or it is clear from the context that it relates to the lay client or to the attorney-at-law;

“**patient**” means a person who by reason of mental disorder within the meaning of the Mental Health Act (Chap. 28:02) is incapable of managing his own affairs;

“**period for filing a defence**” has the meaning given by rule 10.3;

“**proper officer**” means the Registrar of the Supreme Court or any other person who from time to time may be designated as having, subject to the Chief Justice, managerial control of the Supreme Court and has custody of the seal of the Supreme Court and responsibility for funds in court;

“**registrar**” means the Registrar of the Supreme Court, the deputy registrar and assistant registrars;

“**statement of case**” includes a claim, defence, counterclaim, ancillary claim form, defence to counterclaim and a reply to a defence;

“**statutory rate of interest**” means the rate of interest on judgments prescribed for the time under section 13 of the Remedies of Creditors Act (Chap. 8:09);

“**summary judgment**” is to be construed in accordance with Part 15.

Who may exercise the powers of the court

- 2.4 (1) Except where any enactment, rule or practice direction provides otherwise the functions of the High Court may be exercised by any judge, master or registrar of that court and the functions of the Court of Appeal may be carried out by any three or, in the case of procedural appeals, any two judges of the Court of Appeal.
- (2) The Chief Justice may by direction allocate the work of the court among judges, masters and the registrar.

Powers, authority and jurisdiction of the registrar

- 2.4A (1) The registrar shall have power to transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a judge sitting in chambers in respect of the following matters, that is to say:
- (a) assessments of costs referred to the registrar under Part 67.12(2);
 - (b) applications under section 42 of the Petty Civil Courts Act (Chap. 4:21);
 - (c) the taking of an account when it has been ordered that the account be taken by the registrar;
 - (d) the hearing of judgment summonses under the Debtors Act (Chap. 8:07) and the Rules made thereunder;
 - (e) applications for the grant of probate or letters of administration or the resealing of a grant of probate or administration except where the proceedings are contentious;
 - (f) applications for attachment of debt orders;
 - (g) applications for the renewal of a writ of execution;
 - (h) applications for permission to issue a writ of possession;
 - (i) applications for permission to issue a writ of delivery of specified goods without the alternative of payment of the assessed value;
 - (j) applications for relief under section 18 of the Bills of Sale Act (Chap. 82:32).

- (2) It shall be lawful for the registrar stationed in Tobago, whenever there is no judge of the court present in Tobago, to make all such orders as may be necessary for the following purposes:
- (a) for the protection, management and custody of property, the subject matter of or in dispute in proceedings before the court;
 - (b) for granting of interim injunctions including mandatory and freezing injunctions, search orders or the appointing of a receiver when the court can exercise such jurisdiction by interim order;
 - (c) for giving interim authority to any executor or executrix or any receiver appointed by him to dispose of perishable articles, and to pay the money into court,

provided always that the registrar stationed in Tobago shall not be bound to make any order under the provisions of this rule, unless the urgency of the case and the interest of justice shall appear so to require; and provided also that he shall have power to alter, vary or discharge any such order or orders.

Powers, authority and jurisdiction of the masters

- 2.4B** (1) Subject to the provisions of this rule, a master shall have power to transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a judge in chambers except in respect of the following matters and proceedings, that is to say:
- (a) matters relating to criminal proceedings or to the liberty of the subject;
 - (b) proceedings for the grant of an injunction or other order under section 23(5) of the Supreme Court of Judicature Act (Chap. 4:01) (hereinafter in this rule referred to as “the Act”);
 - (c) applications for judicial review or an application for a writ of *habeas corpus*;
 - (d) application for an order of committal in proceedings to which Part 53 applies;
 - (e) appeals from registrars;
 - (f) applications under section 34 of the Act for leave to institute legal proceedings;
 - (g) proceedings in respect of which jurisdiction is given by any enactment specifically to a judge in chambers and in which the decision of the judge is final;
 - (h) such business, authority and jurisdiction as the Chief Justice may from time to time direct to be transacted or exercised by a judge in person;
 - (i) any other matter or proceeding which by any of these Rules is required to be heard only by a judge.

- (2) A master shall have power to grant an injunction—
 - (a) in the terms agreed by the parties to the proceedings in which the injunction is sought; or
 - (b) which is ancillary or incidental to a charging order under Part 49.
- (3) A master shall have power to make a stop order under Part 50.
- (4) A master shall have the power to make an order under Part 52 for the appointment of a receiver to obtain payment of the judgment debt from the income or capital assets of the judgment debtor and to grant an injunction if, and only so far as the injunction is ancillary or incidental to such an order.
- (5) Notwithstanding paragraph (1) it shall be lawful for a master in Tobago to make all such orders as can be made by the registrar under rule 2.4A (2).
- (6) A master may refer to a judge any matter which he thinks should be properly decided by a judge, and the judge may either dispose of the matter or refer it back to the master with such directions as he thinks fit.

Court staff

- 2.5 (1) Where these Rules refer to an act being done by the court office or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised in writing by the Chief Justice.
- (2) Where these Rules expressly so provide, any other functions of the court may be carried out by a member of the court staff authorised in writing by the Chief Justice.

Court's discretion as to where it deals with cases

- 2.6 (1) The court may deal with a case at any place that it considers appropriate.
- (2) In considering what place may be appropriate the court must consider the convenience of such place to the parties and their attorneys-at-law.

Time — court to state calendar date

- 2.7 When making any judgment, order or direction which imposes a time limit for doing any act the court must, wherever practicable—
- (a) state the calendar date; and
 - (b) include the time of day,
- by which such act must be done.

Time—computation

- 2.8 (1) This rule shows how to calculate any period of time for doing any act which is fixed—

- (a) by these Rules;
 - (b) by any practice direction; or
 - (c) by any order of the Court.
- (2) All periods of time expressed as a number of days are to be computed as clear days.
- (3) In this rule “clear days” means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

Examples

- (a) Notice of an application must be served at least 3 days before the hearing. If application is to be heard on Friday 20th October, the last date for service is Monday 16th October.
 - (b) A trial bundle must be filed not more than 7 days before the date on which the trial is due to start. If the trial is due to start on Tuesday 17th October, the bundle must be filed on or after Monday 9th October.
- (4) Where the specified period—
- (a) is 5 days or less; and
 - (b) includes—
 - (i) a Saturday or Sunday; or
 - (ii) any other day on which the court office is closed,
 that day does not count.
- (5) When the period fixed—
- (a) by these Rules;
 - (b) by any practice direction; or
 - (c) by any order,
- for doing any act at the court office ends on a day on which the court is closed, it shall be in time if done before 4 p.m. on the next day on which the court is open.
- (6) When the period fixed—
- (a) by these Rules;
 - (b) any practice direction; or
 - (c) by any order,
- for doing any act which does not need to be done at Court ends—
- (i) on a Saturday or Sunday;
 - (ii) on any public holiday; or
 - (iii) on Carnival Monday or Carnival Tuesday,
- it must be done before 4 p.m. on the next ordinary business day.

Time—vacations

- 2.9 (1) During the long vacation time prescribed by these Rules for serving any statement of case other than the claimant’s statement of case served with his claim form does not run.
- (2) However, this rule does not override any order of the court which specifies a date for service of a statement of case.

Meaning of “month”

- 2.10 Where “month” occurs in any order or any other document, it means a calendar month.

Documents

- 2.11 (a) So far as is practicable, every document prepared for use in the Supreme Court must be on “letter size” paper; approximately 11 inches long by 8.5 inches wide. Margins of 1” (25 mm) must be left at top and bottom and of 1.5” (38 mm) at each side.
- (b) Every document to be filed at the court must be headed with the title of the proceedings and—
- (i) a description of the document;
 - (ii) a statement of the nature of the case;
 - (iii) be endorsed with the name;
 - firm name;
 - bar number;
 - address;
 - telephone and fax numbers (if any); and
 - E-mail address (if any),of the attorney-at-law filing the document, and where an advocate attorney has been instructed,
 - the name;
 - bar number;
 - telephone and fax numbers (if any); and
 - E-mail address (if any),of that advocate.

Time—alternative dispute resolution

2.12 During the period specified by the court or these Rules for the conduct of any alternative dispute resolution procedure approved by the court, time prescribed by these Rules for filing any document or doing any other thing does not run. LN 301
of 2012

(Rule 25.1(c) makes provision in relation to dispute resolution. Rule 26.1 provides for the court’s general powers of case management.)

FORMER RULE

1. The **current** rule 2.2 was brought about by the revocation and substitution of sub-rule (3) by rule 3 of the **Civil Proceedings (Amendment) Rules, 2012** Legal Notice No 301 of 2012. This sub-rule was previously deleted and substituted by rule 3 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2011 Amendment, sub-rule (3) read as follows:

- (3) These Rules do not apply to proceedings of the following kinds:
 - (a) insolvency (including winding up of companies);
 - (b) non-contentious probate proceedings;
 - (c) family proceedings except as provided in the Family Proceedings Rules; and
 - (d) proceedings when the High Court is acting as a Prize Court.

As set out in the 2006 publication, sub-rule (3) read as follows:

- (3) These Rules do not apply to proceedings of the following kinds:
 - Insolvency (including winding up of companies);
 - Non-contentious probate proceedings;
 - Proceedings under the Matrimonial Causes Rules and the Family Proceedings Rules;
 - Proceedings when the High Court is acting as a Prize Court.

2. Rule 2.12 was inserted by rule 4 of the **Civil Proceedings (Amendment) Rules, 2012** Legal Notice No 301 of 2012.

CASES

2016

Privy Council/ Court of Appeal***In re an application by Liberty Development Company Limited (In Liquidation)***

Civ App No P091 of 2015 (2016.03.24)

Appeal allowed

RULE 2.2(3) — APPLICATION OF CPR — WINDING UP PETITION

Jermaine Raymer v Lex Caribbean

Civ App No P258 of 2016 (2016.11.21)

Appeal dismissed

CV 2015-01621 (2016.03.23)

RULE 2.3 — DEFINITION OF STATEMENT OF CASE — REPLY

(Also under Part 26)

2014

HIGH COURT***Ricardo Welch v The Attorney General of Trinidad and Tobago and Others***

CV 2013-04279 (2014.03.19)

RULE 2.9 — LITIGANT IN PERSON — INTERPRETATION OF RULE — TIME — VIOLATION OF CONSTITUTIONAL RIGHT

(Also under Parts 11 and 67)

2008

HIGH COURT***Roopnarine Persaud and Another v Danny Balkissoon and Another***

CV 2006-00868 (2008.05.20)

RULE 2.8 — TIME — EXTENSION OF TIME — AMENDED STATEMENT OF CASE — FILING WITHOUT PERMISSION

(Also under Part 24)

PART 3 FORMS

Contents of this Part

Forms

Rule 3.1

Forms

- 3.1** (1) The forms in the Appendices to these Rules and, where appropriate, practice forms must be used in the cases to which they apply.
- (2) A form may be varied if the variation is required by the circumstances of a particular case.
- (3) However, a form must not be varied so as to leave out any information or guidance which the form in the Appendix or practice direction gives to the intended recipient of the form.
- (4) Where these Rules require a party to send a blank form to any other party, he must send it without variation except the insertion of the title of the case and the court address to which that document is to be returned.
- (5) A form marked with the word “Seal” must bear the seal of the Supreme Court.



CASES

2011

PRIVY COUNCIL/ COURT OF APPEAL

Sarah Young and Others v Lena Pegus and Another

Civ App No P271 of 2010 (2011.02.14)

Appeal dismissed

CV 2008-00876 (2010.12.17)

PART 3 — PHOTOCOPY OF CLAIM FORM — IRREGULAR SERVICE

(Also under Parts 5 and 9)

PART 4 PRACTICE DIRECTIONS AND GUIDES

Contents of this Part

Who may issue practice directions	Rule 4.1
Scope of practice directions	Rule 4.2
Publication of practice directions	Rule 4.3
Date from which practice directions take effect	Rule 4.4
Compliance with practice directions	Rule 4.5
Practice guides	Rule 4.6

Who may issue practice directions

4.1 Practice directions may only be issued by the Chief Justice.

Scope of practice directions

- 4.2 (1) A practice direction may be issued in any case where provision for such a direction is made by these Rules.
- (2) Where there is no express provision in these Rules for such a direction, the Chief Justice may give directions as to the practice and procedure to be followed in the conduct of litigation and in the Supreme Court generally. For the avoidance of doubt the words “the conduct of litigation” refers to conduct before as well as after the commencement of a claim.

Publication of practice directions

- 4.3 Practice directions must be—
- (a) published in the *Trinidad and Tobago Gazette*; and
 - (b) displayed and made available at each court office.

Date from which practice directions take effect

- 4.4 A practice direction takes effect from the date of publication in the *Trinidad and Tobago Gazette* unless the direction specifies some other date.

Compliance with practice directions

- 4.5 (1) A party must comply with any relevant practice directions unless there are good reasons for not doing so.

- (2) If a party fails to comply with a practice direction, the court may make an order against him under Part 26 (Powers of the Court) or Part 66 (Costs—General).

Practice guides

- 4.6 (1) The Chief Justice may issue practice guides to assist parties in the conduct of litigation and for the avoidance of doubt the words “the conduct of litigation” refer to conduct before as well as after the commencement of a claim.
- (2) Parties must have regard to any relevant practice guide.
- (3) The court may take into account the failure of any party to comply with any practice guide when deciding whether or not to make an order under Part 26 (Powers of the Court) or Part 66 (Costs — General).

CASES

2015

HIGH COURT

Warren Elias v Deonarine Mahabir

CV 2013-05192 (2015.01.28)

RULE 4.5 — SERVICE — PRE-ACTION PROTOCOL LETTER — PRE-ACTION PROTOCOLS — PRACTICE DIRECTION

(Also under Part 68)

PART 5 SERVICE OF CLAIM FORM

Contents of this Part

Service of claim form—normal method	Rule 5.1
Statement of case to be served with claim form	Rule 5.2
Method of personal service	Rule 5.3
Permitted place of service	Rule 5.4
Proof of personal service	Rule 5.5
Service on a limited company	Rule 5.6
Service of claim form on a firm or partnership	Rule 5.7
Service of claim form on a body corporate	Rule 5.8
Proof of postal service	Rule 5.9
Alternative methods of service	Rule 5.10
Service of claim form on minors and patients	Rule 5.11
Power of court to make an order for service by a specified method	Rule 5.12
Proof of service by specified method	Rule 5.13
Service of claim form by contractually agreed method	Rule 5.14
Service of claim form on agent of principal who is overseas	Rule 5.15
Service of claim form for possession where land vacant	Rule 5.16
Deemed date of service	Rule 5.17

Service of claim form—normal method

- 5.1 The general rule is that a claim form must be served personally.
(Part 6 deals with service of other documents)

Statement of case to be served with claim form

- 5.2 (1) The general rule is that the claimant’s statement of case must be served with the claim form.
- (2) However, the claim form may be served without the statement of case with the permission of the court.
- (Rule 8.2 deals with the power of the court to permit issue and service of a claim form without a statement of case)

Method of personal service

- 5.3 (a) A document is served personally on an individual by handing it to or leaving it with the person to be served.
- (b) A document is served personally on a company or other corporation by handing it to and leaving it with a director, officer, receiver, receiver-manager or liquidator of the company or other corporation.

Permitted place of service

- 5.4 Except as permitted by Part 7 (Service out of the jurisdiction), a document must be served at a place within the jurisdiction.

Proof of personal service

- 5.5 (1) Personal service of any document is to be proved by an affidavit sworn by the server of the document stating—
- (a) the date and time of service;
- (b) the precise place or address at which it was served;
- (c) precisely how the person served was identified; and
- (d) precisely how service was effected.
- (2) Where the person served was identified by another person, there must also be filed where practicable an affidavit by that person proving the identification of the person served and stating how that person was able to identify the person served.
- (3) Where the server identified the person to be served by means of a photograph or description there must also be filed an affidavit by a person verifying the description or photograph as being of the person intended to be served and stating how that person was able to verify the description or photograph as being of the person intended to be served.

Service on a limited company

- 5.6 Service on a limited company may be effected—
- (a) by sending the claim form and statement of case or other document by telefax or prepaid post addressed to the registered office of the company;
- (b) by leaving the claim form and statement of case or other document at the registered office of the company;
- (c) by serving personally the claim form and statement of case or other document on any director, officer, receiver, receiver-manager or liquidator of the company;

- (d) by serving personally the claim form and statement of case or other document on any manager or other senior employee at any place of business of the company having a real connection with the claim; or
- (e) in any other way allowed by an enactment.

Service of claim form on a firm or partnership

- 5.7 (i) Service on a firm or partnership may be effected—
- (a) by serving personally the claim form and statement of case on any partner of the firm; or
 - (b) by serving personally the claim form and statement of case on any responsible person at any place of business of the firm or partnership having a real connection with the claim.
- (2) Where the claimant knows that a partnership has been dissolved when the claim is issued the claim form and statement of case must be served on every person within the jurisdiction whom the claimant seeks to make liable.

Service of claim form on a body corporate

- 5.8 Service on a body corporate (other than a limited company) may be effected—
- (a) by sending the claim form and statement of case or other document to be served by registered post to the principal office of the body corporate;
 - (b) by serving the claim form and statement of case or other document personally on any principal officer of the body corporate; or
 - (c) in any other way allowed by any enactment.

“principal officer” means the mayor, chairman or president of the body, or the town clerk, chief executive officer, clerk, secretary, treasurer or other similar officer of the body.

(Rule 58.3 deals with service on the State)

Proof of postal service

- 5.9 (i) Service by post must be proved by an affidavit of service by the person responsible for posting the claim form and statement of case or other document to the person to be served.
- (2) The affidavit must state—
- (a) the date and time of posting; and
 - (b) the address to which it was sent.

Alternative methods of service

- 5.10** (1) Instead of personal service a party may choose an alternative method of service.
- (2) Where a party chooses an alternative method of service and the court is asked to take any step on the basis that the claim form and statement of case have been served, the party who served the claim form and statement of case must prove service to the satisfaction of the court by filing an affidavit—
- (a) giving details of the method of service used; and
 - (b) showing that—
 - (i) the person intended to be served was able to ascertain the contents of the documents; or
 - (ii) it is likely that he would have been able to do so; and
 - (c) stating the time when the person served was or was likely to be in a position to ascertain the contents of the documents.
- (3) The court office must immediately refer any affidavit filed under paragraph (2) to a master or judge who must consider the evidence and endorse on the affidavit whether it satisfactorily proves service.
- (4) If the court is not satisfied with the method of service the court office must fix a date, time and place to consider making an order under rule 5.12 and give at least 3 days notice to the claimant.

Service of claim form on minors and patients

- 5.11** (1) Paragraphs (2) to (5) specify the persons on whom a claim form and statement of case must be served if it would otherwise be served on a minor or patient.
- (2) A claim form and statement of case which would otherwise be served on a minor who is not also a patient must be served on 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.
- (3) If a person is authorised under Part VII of the Mental Health Act (Chap. 28:02) to conduct the proceedings in the name of the patient or on his behalf, a claim form and statement of case must be served on that person.
- (4) If there is no person so authorised, a claim form and statement of case must be served on the person with whom the patient resides or in whose care the patient is.
- (5) The court may order that, although paragraphs (2) to (4) have not been complied with, the claim form and statement of case are to be treated as if they have been properly served.
- (6) The court may make an order permitting the claim form and statement of case to be served on the minor or patient, or on some other person other than the person specified in paragraphs (2) to (4).

- (7) An application for an order under paragraph (5) or (6) may be made without notice.

(Part 23 deals generally with parties who are minors or patients)

Power of court to make an order for service by a specified method

- 5.12 (1) The court may direct, that a claim form and statement of case may be served by a method specified in the court’s order.
- (2) An application for an order to serve by a specified method may be made without notice but must be supported by evidence—
- (a) specifying the method of service proposed; and
- (b) showing that that method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of case.

Proof of service by specified method

- 5.13 Service must be proved by an affidavit by the person who served the document in accordance with the court’s order showing that the terms of the order had been carried out.

Service of claim form by contractually agreed method

- 5.14 (1) A claim form and statement of case containing a claim in respect of a contract may be served by any method permitted by the contract.
- (2) Where the claim form and statement of case are served within the jurisdiction in accordance with the contract, they are to be treated as having been served on the defendant.
- (3) Where the claim form and statement of case are served out of the jurisdiction in accordance with the contract, they are not to be treated as having been served on the defendant unless service out of the jurisdiction is permitted by Part 7.

Service of claim form on agent of principal who is overseas

- 5.15 (1) Where the conditions specified in paragraph (2) are satisfied, the court may permit a claim form and statement of case relating to a contract to be served on a defendant’s agent.
- (2) The court may not make an order under this rule unless it is satisfied that—
- (a) the defendant cannot be served within the jurisdiction;
- (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant’s agent; and
- (c) at the time of the application either the agent’s authority had not been terminated or he is still in business relations with his principal.

- (3) An application may be made without notice but must be supported by evidence.
- (4) An order under this rule must state the periods within which the defendant must—
 - (a) enter an appearance or make an admission under rule 14.4, 14.5, 14.6 or 14.7; and
 - (b) file a defence.
- (5) When the court makes an order under this rule, the claimant must send to the defendant at his address out of the jurisdiction copies of—
 - (a) the order; and
 - (b) the claim form; and
 - (c) the statement of case; and
 - (d) the document prescribed in rule 8.15(1)(a)–(e).

Service of claim form for possession of land where land vacant

- 5.16** (1) Paragraph (2) deals with the service of a claim form and statement of case for possession of land where there is no person in occupation of the land and service cannot otherwise be effected on the defendant.
- (2) The court may direct that a claim form and statement of case be served by affixing a copy of the claim form to some conspicuous part of the land and by publishing a notice of the claim once in a specified daily newspaper of general circulation. An application for an order under this rule—
 - (a) may be made without notice; but
 - (b) must be supported by evidence that there is no person in possession of the land and that there is no other method of serving the defendant.

Deemed date of service

- 5.17** (1) Where a claim form has been served by pre-paid post, it is deemed to be served, unless the contrary is shown, on the fourteenth day after it was posted.
- (2) If a claim is sent to a party's attorney-at-law who certifies that he accepts service on behalf of his client, the claim is deemed to have been served on the date on which the attorney-at-law certifies that he accepts service.
 - (3) Where an appearance is entered, whether or not the claim form has been duly served, the claimant may if he so wishes treat the date of entering the appearance as the date of service.

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Brent Nunes v Her Worship Magistrate Marissa Gomez

Civ App No P123 of 2016 (2016.11.07)

Appeal allowed

CV 2015-02609 (2016.04.20)

RULE 5.5 — AFFIDAVIT OF SERVICE — GOOD AND PROPER SERVICE — REBUTTABLE PRESUMPTION

(Also under Part 26)

2015

PRIVY COUNCIL/ COURT OF APPEAL

Ravindranath Maharaj v Simon K Macoon and Others

Civ App No S119 of 2015 (2015.09.21)

Appeal allowed

CV 2013-3646 (2015.07.16)

SERVICE OF CLAIM — ALTERNATIVE MODE OF SERVICE

Davidson Ramsook v Carol-Ann Crossley and Another

Civ App No P016 of 2015 (2015.05.11)

Appeal dismissed

CV 2010-03823 (2015.01.19)

RULE 5.1 — RULE 5.2 — RULE 5.5 — CLAIM FORM — PERSONAL SERVICE — IDENTIFICATION ISSUE

HIGH COURT

Riad Marketing Limited v Eckler Chemicals Limited

CV 2015-00670 (2015.12.16)

EXTENSION OF TIME FOR SERVICE OF CLAIM FORM — PURPOSIVE INTERPRETATION OF COURT ORDER

(Also under Part 8)

2014

PRIVY COUNCIL/ COURT OF APPEAL

De Zwarte Band v Reuben Kanhai and Another

Civ App Nos S285 and S286 of 2013 (2014.01.27)

Appeal allowed

CV 2012-02682, CV 2012-02684 (2013.12.05)

RULE 5.5 — PROOF OF SERVICE — IDENTIFICATION ISSUE

(Also under Part 13)

HIGH COURT

Kulraj Kamta v Zahaida Khanpradie

CV 2014-00674 (2014.03.19)

RULE 5.10(3) — CLAIM FORM — REGISTERED MAIL — IMPROPER SERVICE

2011

PRIVY COUNCIL/ COURT OF APPEAL

Sarah Young and Others v Lena Pegus and Another

Civ App No P271 of 2010 (2011.02.14)

Appeal dismissed

CV 2008-00876 (2010.12.17)

RULE 5.10 — GOOD AND PROPER SERVICE — INSUFFICIENT EVIDENCE

(Also under Parts 3 and 9)

2007

HIGH COURT

Gerard Mahadeo v Jessel R Ramsundar

CV 2007-01218 (2007.11.30)

RULE 5.10 — RULE 5.12 — SERVICE OF CLAIM FORM — REASONABLE STEPS — ALTERNATIVE ADDRESSES

(Also under Part 8)

PART 6 SERVICE OF OTHER DOCUMENTS

Contents of this Part

Who is to serve documents other than the claim form	Rule 6.1
Method of service	Rule 6.2
Address for serving such documents	Rule 6.3
Address for serving documents where no address for service is given	Rule 6.4
Service of documents on a person not a party	Rule 6.5
Deemed date for service by post	Rule 6.6
Power of court to dispense with service	Rule 6.7
Service of notices, etc., on the Attorney General	Rule 6.8

Who is to serve documents other than the claim form

- 6.1** (1) Any order which requires service must be served by the court, unless—
- (a) a rule provides that a party must serve the document in question; or
 - (b) the court orders otherwise.
- (2) Any other document must be served by a party, unless—
- (a) these Rules provide otherwise; or
 - (b) the court orders otherwise.

Method of service

- 6.2** Where these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods:
- (a) personal service in accordance with rule 5.3;
 - (b) prepaid post;
 - (c) delivery; or
 - (d) facsimile transmission or other means of electronic communication if permitted by a relevant practice direction
- unless the court orders otherwise.

Address for serving such documents

- 6.3** (1) If a party has given an address at which documents for him may be served, the documents must be delivered or posted to him at that address.
- (2) If the party has given a facsimile transmission number in his address for service the documents may be sent by facsimile transmission to that number.

Address for serving documents where no address for service is given

- 6.4** (1) Where no address is given for service the document must be served by leaving it or posting it at or to—
- (a) the business address of any attorney who purports to act for him in the proceedings;
 - (b) in the case of an individual, his usual or last known place of residence;
 - (c) in the case of a proprietor of a business, either—
 - (i) his usual or last known place of residence; or
 - (ii) his place of business or last known place of business; or
 - (d) in the case of a firm or partnership, either—
 - (i) the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business and which has a real connection with the claim; or
 - (ii) the usual or last known place of residence of one of the partners.
- (2) The provisions of Part 5 may be applied to such a document as if it were a claim form.

Service of documents on a person not a party

- 6.5** If the court or a party is to serve documents on a person who is not a party, such documents must be served by one of the methods specified in Part 5.

Deemed date of service by post

- 6.6** Any document served by prepaid post under this Part shall be deemed to be served on the fourteenth day after posting.

Power of Court to dispense with service

- 6.7** (1) The court may dispense with service of a document if it is appropriate to do so.
- (2) An application for an order to dispense with service may be made without notice.

Service of notices, etc., on the Attorney General

- 6.8** (1) This rule applies where any document has to be served on the Attorney General in connection with any proceedings of which notice has to be given to the Attorney General and no express provision as to service is made by any enactment or rule.
- (2) Any such document must be served in accordance with rule 58.3.

CASES

2015

HIGH COURT

Roger Franco v Paul Precilla and Others

CV 2014-02934 (2015.09.15)

RULE 6.6 — DEFAULT JUDGMENT — ORDER SENT VIA POST — DEEMED TO BE SERVED

(Also under Part 13)

PART 7 SERVICE OF COURT PROCESS OUT OF THE JURISDICTION

Contents of this Part

Scope of this Part	Rule 7.1
General rule as to service out of jurisdiction	Rule 7.2
Service out of jurisdiction in specified proceedings	Rule 7.3
Proceedings which include other types of claim	Rule 7.4
Application for permission to serve out of jurisdiction	Rule 7.5
Application to set aside service under rule 7.3	Rule 7.6
Appearance where claim form served out of jurisdiction	Rule 7.7
Mode of service—general provisions	Rule 7.8
Service through foreign governments, etc.	Rule 7.9
Procedure where claim form is to be served through foreign governments, etc.	Rule 7.10
Service of claim form on a State where Court permits service out of jurisdiction	Rule 7.11
Translation of claim form	Rule 7.12
Undertaking to be responsible for expenses of Minister with responsibility for Foreign Affairs	Rule 7.13
Service of court process other than claim form	Rule 7.14
Meaning of “Hague Convention”	Rule 7.15

Scope of this Part

- 7.1 This Part contains provisions about—
- (a) the circumstances in which court process may be served out of the jurisdiction; and
 - (b) the procedure for serving court process out of the jurisdiction.

General rule as to service out of jurisdiction

- 7.2 A claim form may be served out of the jurisdiction only if—
- (a) rule 7.3 allows it to be served out of the jurisdiction; and
 - (b) the court gives permission.

Service out of jurisdiction in specified proceedings

- 7.3 (1) A claim form may be served out of the jurisdiction if the proceedings are listed in this rule.

Features which may arise in any type of claim

- (2) A claim form may be served out of the jurisdiction where—
- (a) a claim is made for a remedy against a person domiciled or ordinarily resident within the jurisdiction;
 - (b) a claim is made for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction; or
 - (c) a claim is made against someone on whom the claim form has been or will be served and—
 - (i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
 - (ii) the claimant now wishes to serve the claim form on another person who is a necessary and proper party to that claim.

Claims about contracts

- (3) A claim form may be served out of the jurisdiction where—
- (a) a claim is made to enforce, rescind, dissolve or otherwise affect a contract or to obtain any other remedy in respect of a breach of contract and (in either case) the contract—
 - (i) was made within the jurisdiction;
 - (ii) was made by or through an agent trading or residing within the jurisdiction;
 - (iii) is by its terms or by implication governed by the law of Trinidad and Tobago; or
 - (iv) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract;
 - (b) a claim is made in respect of a breach of contract committed within the jurisdiction; or
 - (c) a claim is made for a declaration that no contract exists.

Claims in tort

- (4) A claim form may be served out of the jurisdiction where a claim in tort is made and—
- (a) the damage was sustained within the jurisdiction; or
 - (b) the damage sustained resulted from an act committed within the jurisdiction.

Enforcement

- (5) A claim form may be served out of the jurisdiction where a claim is made to enforce any judgment or arbitral award made within the jurisdiction.

Claims about property within the jurisdiction

- (6) A claim form may be served out of the jurisdiction where—
- (a) the whole subject matter of the proceedings is—
 - (i) land located within the jurisdiction; or
 - (ii) the perpetuation of testimony relating to land located within the jurisdiction;
 - (b) a claim is made in order to interpret, rectify, set aside or enforce a document, obligation or liability affecting land located within the jurisdiction; or
 - (c) a claim is made—
 - (i) for a debt secured on land;
 - (ii) to assert, declare or determine rights in or over land; or
 - (iii) to obtain authority to dispose of land; and (in any of these cases) the land is located within the jurisdiction.

Claims about trusts, etc.

- (7) A claim form may be served out of the jurisdiction where—
- (a) a claim is made for any remedy which might be obtained in proceedings to execute the trusts of a written instrument where—
 - (i) the trusts ought to be executed according to the law of Trinidad and Tobago; and
 - (ii) the person on whom the claim form is to be served is a trustee of the trusts;
 - (b) a claim is made for any remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled within the jurisdiction; or
 - (c) a claim is made in probate proceedings as defined in Part 72;
 - (d) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction.

Admiralty proceedings

- (8) This rule does not apply to an admiralty claim *in rem*.

Proceedings which include other types of claim

- 7.4 Where the claimant makes a claim which falls within—
- (a) rule 7.3(3) (claims about contracts);
 - (b) rule 7.3(4) (claims in tort); or
 - (c) rule 7.3(7)(d) (claims against the defendant as a constructive trustee),
- the court may grant any claim for a remedy which—
- (i) does not fall within rule 7.3; but
 - (ii) arises out of the same facts or substantially the same facts as the claim in respect of which the order is made.

Application for permission to serve out of jurisdiction

- 7.5 An application for permission to serve out of the jurisdiction may be made without notice but must be supported by evidence stating—
- (a) the grounds on which the application is made;
 - (b) that in the deponent's belief the claimant has a claim with a realistic prospect of success; and
 - (c) in what place, within what country, the defendant may probably be found.

Application to set aside service under rule 7.3

- 7.6 (1) Any person on whom a claim form has been served out of the jurisdiction under rule 7.3 may apply to set aside service of the claim form.
- (2) The court may set aside service under this rule where—
- (a) service out of the jurisdiction is not permitted by the rules;
 - (b) the case is not a proper one for the court's jurisdiction; or
 - (c) the claimant does not have a good cause of action.
- (3) This rule does not limit the court's power to make an order under rule 9.7 (procedure for disputing the court's jurisdiction).

Appearance where claim form is served out of jurisdiction

- 7.7 Where a claim form which is to be served out of the jurisdiction under rule 7.3 requires the defendant to enter an appearance, the period within which it must be entered is to be determined by reference to any relevant practice direction.

Mode of service—general provisions

- 7.8 (1) Subject to the following paragraphs of this rule, where a claim form is to be served out of the jurisdiction, it may be served—
- (a) personally by the claimant or his agent;

- (b) in accordance with the law of the country in which it is to be served; or
- (c) by a method provided for by—
 - (i) rule 7.9 (service through foreign governments, etc.);
 - (ii) rule 7.11 (service on a State).
- (2) Nothing in this Part or in any court order or direction authorises or requires any person to do anything in the country where the claim form is to be served which is against the law of that country.
- (3) Except where this Part provides otherwise, the following rules (which apply where a claim form is to be served within the jurisdiction) also apply where a claim form is to be served out of the jurisdiction—
 - (a) rule 8.1(2) (date when claim form issued);
 - (b) rule 8.2 (statement of case to be issued and served with claim form);
 - (c) rule 8.15 (form of appearance and defence form to be sent with a claim);
 - (d) rule 5.17 (deemed date of service); and
 - (e) rule 5.12 (service by a specified method).

Service through foreign governments, judicial and consular authorities

- 7.9** (1) The methods of service permitted by this rule are in addition to any method of service permitted under—
- (a) rule 7.8(1)(a) or (b); or
 - (b) any relevant Civil Procedure Convention.

Service under the Hague Convention

- (2) Where a claim form is to be served on a defendant in any country which is a party to the Hague Convention, the claim form may be served—
 - (a) through the authority designated under the Hague Convention in respect of that country; or
 - (b) if the law of that country permits—
 - (i) through the judicial authorities of that country; or
 - (ii) through the consular authority of Trinidad and Tobago in that country.

Service under other Conventions

- (3) Where a claim form is to be served on a defendant in any country which is a party to a Civil Procedure Convention to which Trinidad and Tobago is a party (other than the Hague Convention) providing for service in that country of court process, the claim form may be served, if the law of that country permits—
 - (i) through the judicial authorities of that country; or

- (ii) through the consular authority of Trinidad and Tobago in that country.

Service where there is no applicable Convention

- (4) Where a claim form is to be served on a defendant in any country with respect to which there is no relevant Civil Procedure Convention providing for service in that country of court process the claim form may be served, if the law of that country so permits—
 - (i) through the government of that country, where that government is willing to serve it; or
 - (ii) through the consular authority of Trinidad and Tobago in that country.

Procedure where claim form is to be served through foreign governments, judicial authorities and consular authorities

- 7.10** (1) This rule applies where the claimant wishes to serve the claim form—
- (a) through the judicial authorities of the country where the claim form is to be served;
 - (b) through the consular authority of Trinidad and Tobago in that country;
 - (c) through the authority designated under the Hague Convention or any other relevant Civil Procedure Convention in respect of that country; or
 - (d) through the government of that country.
- (2) Where this rule applies, the claimant must file—
- (a) a request for service of the claim by his chosen method;
 - (b) a copy of the claim form;
 - (c) an additional copy of the claim form for each person to be served; and
 - (d) any translation required by rule 7.12.
- (3) When the claimant files the documents specified in paragraph (2) the court office must—
- (a) seal the copy of the claim form; and
 - (b) send the documents filed to the Permanent Secretary to the Ministry with responsibility for Foreign Affairs with a request that he arrange for the claim form to be served by the method indicated in the request for service filed under paragraph (2) or, where that request indicates alternative methods, by the most convenient method.

- (4) An official certificate which—
 - (a) states that the claim form has been served in accordance with this rule either personally, or in accordance with the law of the country in which service was effected;
 - (b) specifies the date on which the claim form was served; and
 - (c) is made by—
 - (i) a consular authority of Trinidad and Tobago in the country where the claim form was served;
 - (ii) the government or judicial authorities in that country; or
 - (iii) any other authority designated in respect of that country under the Hague Convention or any other relevant Civil Procedure Convention,

is evidence of the facts stated in the certificate.
- (5) A document purporting to be an official certificate under paragraph (4) is to be treated as such a certificate, unless it is proved not to be.

Service of claim form on a State where court permits service out of jurisdiction

- 7.11** (1) This rule applies where a claimant wishes to serve a claim form on a State.
- (2) Where that State has agreed to a method of service other than a method permitted by this Part, the claim may be served either by the method agreed or in accordance with the other rules in this Part.
 - (3) The claimant must file at the court office—
 - (a) a request for service to be arranged by the Minister with responsibility for Foreign Affairs;
 - (b) a copy of the claim form; and
 - (c) any translation required by virtue of rule 7.12.
 - (4) The court office must send documents filed under this rule to the Permanent Secretary of the Ministry with responsibility for Foreign Affairs with a request that the Minister arrange for the claim form to be served.
 - (5) An official certificate by the Minister with responsibility for Foreign Affairs stating that a claim form has been duly served on a specified date in accordance with a request made under this rule is evidence of that fact.
 - (6) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

Translation of claim form

- 7.12** (1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under rule 7.10 or rule 7.11 must be accompanied by a translation of the claim form.

- (2) The translation must be—
 - (a) in the official language of the country in which it is to be served; or
 - (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form is to be served.
- (3) Every translation filed under this rule must be certified by the person making it to be a correct translation, and the certificate must state—
 - (a) the name of the person making the translation;
 - (b) his address; and
 - (c) his qualifications for making a translation.
- (4) The claimant is not required to file a translation of a claim form filed under rule 7.9 (service through judicial authorities, foreign governments, etc.) where the claim form is to be served—
 - (a) in a country of which English is an official language; or
 - (b) by a consular authority of Trinidad and Tobago on a subject of Trinidad and Tobago,unless a relevant Civil Procedure Convention expressly requires a translation.
- (5) The claimant is not required to file a translation of a claim form filed under rule 7.11 (service on a State) where English is an official language of the State where the claim form is to be served.

Undertaking to be responsible for expenses of Minister with responsibility for Foreign Affairs

- 7.13** (1) Every request for service filed under rule 7.9 (service through foreign governments, judicial authorities, etc.) or rule 7.11 (service on a State) must contain an undertaking by the person making the request—
- (a) to be responsible for all expenses incurred by the Minister with responsibility for Foreign Affairs; and
 - (b) on being informed of the amount of those expenses—
 - (i) to pay that amount to the finance officer of the Ministry with responsibility for Foreign Affairs; and
 - (ii) to produce a receipt for the payment to the court office.
- (2) No further step in the proceedings may be taken by the claimant until he has produced the receipt required by paragraph (1)(b)(ii).

Service of court process other than claim form

- 7.14** (1) An order or notice issued, made or given in any proceedings may be served out of the jurisdiction without the court's permission, if it is served in proceedings in which permission has been given to serve the claim form out of the jurisdiction.

- (2) The procedure by which a document specified in paragraph (1) is to be served is the same as that applicable to the service of a claim form and accordingly rules 7.8 to 7.13 apply.

Meaning of “Hague Convention”

7.15 For the purpose of this Part, “Hague Convention” means the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at The Hague on November 15, 1965.

CASES

2008

HIGH COURT*NH International (Caribbean) Limited v CLICO Investment Bank Limited and Another*

CV 2006-001205 (2008.12.08)

RULE 7.3(2)(c), RULE 7.3(7) — CLAIM FORM — PROPER CASE FOR SERVICE OUT OF JURISDICTION

(Also under Part 9)

PART 8 HOW TO START PROCEEDINGS

Contents of this Part

The claimant—how to start proceedings	Rule 8.1
Statement of case to be issued and served with claim form	Rule 8.2
Where to start proceedings	Rule 8.3
Right to make a claim which includes two or more claims	Rule 8.4
What must be included in claim form	Rule 8.5
Claimant’s duty to set out his case	Rule 8.6
Certificate of value (small claims)	Rule 8.7
Certificate as to truth	Rule 8.8
Additional matters which must be included on claim form or statement of case	Rule 8.9
Special requirements applying to claims for personal injuries	Rule 8.10
Relator claims	Rule 8.11
Service of a claim form	Rule 8.12
Time within which a claim form may be served	Rule 8.13
Extension of time for serving claim form	Rule 8.14
Defence form, etc., must be served with claim form	Rule 8.15

The claimant—how to start proceedings

- 8.1** (1) Proceedings are started by filing in the court office the original and one copy (for sealing) of—
- (a) a claim form; and
 - (b) the claimant’s statement of case.
- (2) A claim is issued on the date entered on the claim form by the court office.
- (3) A claim form must be in Form 1 or 2, with or without variations.
- (4) Form 2 (fixed date claim) must be used—
- (a) in proceedings for possession of premises which are—
 - (i) occupied in whole or in part for residential purposes; or
 - (ii) subject to any statutory restrictions on the claimant’s right to possession;
 - (b) in claims arising out of hire-purchase or credit sale agreements;

- (a) any proceedings relating to land in Tobago or based on a cause of action which arose in Tobago must be started in the court office at Tobago; and
- (b) practice directions may require that claims of a specified type must be issued in a particular court office.

Right to make a claim which includes two or more claims

8.4 A claimant may make a claim which includes all, or any, other claims which can be conveniently disposed of in the same proceedings.

What must be included in claim form

- 8.5** (1) The claim form must—
- (a) include a short description of the claim; and
 - (b) specify any remedy that the claimant is seeking (though this does not limit any power of the court to grant any other remedy to which he may be entitled).
- (2) If the claimant is seeking exemplary damages he must say so expressly on the claim form.
- (3) If the claimant is seeking interest, he must—
- (a) say so expressly on the claim form, and
 - (b) include details of—
 - (i) the basis of entitlement;
 - (ii) the rate;
 - (iii) the period for which it is claimed;
 - (iv) where the claim is for a specified amount of money, the total amount of interest claimed to the date of the claim; and
 - (v) the daily rate at which interest will accrue after the date of the claim,
 on the claim form or in his statement of case.
- (4) If the claimant is claiming in a representative capacity under Part 21 he must state what that capacity is.
- (5) If the defendant is sued in a representative capacity under Part 21, the claimant must state what that capacity is.

Claimant’s duty to set out his case

- 8.6** (1) The claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies.
- (2) The claim form or the statement of case must identify or annex a copy of any document which the claimant considers necessary to his case.

Certificate of value (small claims)

- 8.7 If the amount of any damages claimed is not specified the claim must include a certificate by the claimant or his attorney-at-law that the damages claimed exceed or are likely to exceed \$15,000 or the basis on which it is said that the High Court has jurisdiction.

Certificate as to truth

- 8.8 (1) The claimant must certify on the claim form or his statement of case that he believes that the contents are true and that he is entitled to the remedy claimed.
- (2) If it is impractical for the claimant to give the certificate required by paragraph (1) it may be given by his attorney-at-law.
- (3) If the certificate is given by the attorney-at-law he must also certify—
- (a) the reasons why it is impractical for the claimant to give the certificate; and
 - (b) that the certificate is given on the claimant's instructions.

Additional matters which must be included on claim form or statement of case

- 8.9 (1) Where the claim is for possession of land the claimant must state—
- (a) whether his right to possession is subject to any, and if so what, statutory restrictions; and
 - (b) whether any part of the premises is occupied for residential purposes.
- (2) Where the claim form is issued by an attorney-at-law it must be—
- (a) signed by the attorney-at-law;
 - (b) give his name and business address and facsimile transmission number (if any); and
 - (c) if that address is not within 3 miles of the court office where the claim form is issued give an address for service within that area; and
 - (d) if the claim form is issued by an agent it must be signed by the agent and give his and his principal's name, address and address for service.
- (3) Where the claim form is signed by the claimant personally (or in the case of a body corporate, by an officer of that body corporate), it must give the claimant's address and if that address is not within 3 miles of the court office where the claim form is issued an address for service within that area.

Special requirements applying to claims for personal injuries

- 8.10 (1) This rule sets out additional requirements with which a claimant in a claim for personal injuries must comply.
- (2) The claim form or the statement of case must state the claimant's date of birth or age.

- (3) If the claimant will be relying on the evidence of a medical practitioner the claimant must attach to the claim form a report from a medical practitioner on the personal injuries which he alleges in his claim.
- (4) The claimant must include in, or attach to, his claim form or statement of case a schedule of any special damages claimed.

Relator claims

8.11 No person's name may be used in any claim as a relator unless that person has given written authority for his name to be used and the authority is filed at the court office before the claim is issued.

Service of a claim form

8.12 After a claim has been issued the claim form and statement of case may be served on the defendant in accordance with Part 5 (Service of Claim Form) or Part 7 (Service out of the jurisdiction).

Time within which a claim form may be served

- 8.13** (1) The general rule is that a claim form may only be served within four months after the date when the claim was issued. LN 126
of 2011
- (2) The period of service is six months where the claim form is to be served out of the jurisdiction.
 - (3) The period of service of an admiralty claim form *in rem* is twelve months.
 - (4) A claim (including a counter-claim, ancillary claim and other similar claims) shall be automatically struck out if a claim form is not served within six months of the time fixed by paragraph (1), or extended for service.
 - (5) Where a claim form is duly served and a defendant either does not enter an appearance or file a defence and the claimant who can, does not apply for judgment pursuant to Part 12 within six months of becoming entitled to do so, the claim (including a counter-claim, ancillary claim and other similar claims) shall be automatically struck out.
 - (6) The striking out of a claim under this rule shall not prevent a party from filing new proceedings in respect of the same cause or matter within the relevant period of limitation, except that where a claim is twice struck out, the claimant shall obtain the permission of the court to file new proceedings in respect of such cause or matter.

(Part 7 deals with service out of the jurisdiction; Part 74 deals with admiralty proceedings; Part 9 deals with appearance and notice of intention to defend; Part 10 deals with filing of a defence; Part 12 deals with default judgments; Part 18 deals with counter-claims, ancillary claims and other similar claims.)

Extension of time for serving claim form

- 8.14** (1) The claimant may apply for an order extending the period within which the claim form may be served.
- (2) The general rule is that an application to extend the time for service must be made within the period for serving the claim form specified by rule 8.13.
- (3) If the claimant applies for such an order after the end of the period specified by rule 8.13, the court may make such an order only if it is satisfied that the claimant has taken all reasonable steps—
- (i) to trace the defendant; and
 - (ii) to serve the claim, but has been unable to do so; and
- when the claimant has acted promptly in making the application.
- (4) An application for an order extending the time for service may be made without notice but it must be supported by evidence.

Defence form, etc., must be served with claim form

- 8.15** (1) When a claim form and statement of case are served on a defendant, it must be accompanied by—
- (a) a form for entering appearance (Form 3 or 4);
 - (b) a defence form (Form 5);
 - (c) in the case of a money claim an application to pay by instalments (Form 3A);
 - (d) the prescribed notes for defendants (Form 1A); and
 - (e) a copy of any order made under rule 8.2 or 8.14.
- (2) There must be inserted on each form—
- (a) the address of the court office to which the defendant is to return the forms;
 - (b) the title of the claim; and
 - (c) the reference number of the claim.
- (3) Where there is a standard defence form appropriate to the particular case set out in a practice guide, the form sent to the defendant must be in a standard form of that type.
-

FORMER RULE

The **current** rule 8.13 was brought about by the revocation and substitution of rule 8.13 by rule 4 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, rule 8.13 read as follows:

Time within which a claim form may be served

- 8.13** (1) The general rule is that a claim form may only be served within four months after the date when the claim was issued.
- (2) The period for service is six months where the claim form is to be served out of the jurisdiction.
- (3) The period for service of an admiralty claim form *in rem* is twelve months.

(Part 7 deals with service out of the jurisdiction; Part 74 deals with admiralty proceedings)

CASES

2015

PRIVY COUNCIL/ COURT OF APPEAL

Bhisham Soondarsingh v Anthony Wilson and Others

Civ App No 226 of 2015

Appeal pending

CV 2010-05022, CV 2011-00197 (2015.07.30)

RULE 8.5(3) — CLAIM FORM — FAILURE TO PLEAD INTEREST

Andrew Samuel and others v BG Trinidad Central Block Limited and Another

Civ App Nos S110, 129, 130, 131 and 132 of 2014 (2015.07.13)

Appeal dismissed

CV 2012-00367 (2015.04.08)

RULE 8.13 — RULE 8.14 — LATE SERVICE — CLAIM FORM — STATEMENT OF CASE — INSUFFICIENT EVIDENCE TO SHOW SERVICE — RULE 8.14 REQUIREMENTS UNSATISFIED

First Citizens Bank Limited v Shepboys Limited and Another

Civ App No P231 of 2011 (2015.03.10)

Appeal dismissed

RULE 8.6 — DUTY TO SET OUT CASE — RELIANCE ON MATTERS IN REPLY

(Also under Part 10)

Medical Professionals Association of Trinidad and Tobago v Fidel Rampersad and Others

Civ App No P337 of 2014 (2015.01.26)

Appeal allowed

CV 2014-01330 (2015.01.23)

PART 8.2 — PERMISSION TO FILE CLAIM FORM WITHOUT STATEMENT OF CASE — DISCRETION

(Also under Parts 1 and 26)

HIGH COURT

Riad Marketing Limited v Eckler Chemicals Limited

CV 2015-00670 (2015.12.16)

RULE 8.13 — CLAIM FORM — SERVICE OF PROCEEDINGS — PURPOSE OF SERVICE

(Also under Part 5)

Cristal Roberts and Another v Dr Samantha Bhagan and Another

CV 2010-01117 (2015.11.30)

RULE 8.10 — PERSONAL INJURIES — AMENDED REPLY — FIRST INTRODUCTION OF MEDICAL REPORTS — STRIKING OUT

(Also under Parts 1 and 33)

Soobartar Deonarine v Jamwanti Satnarine and Others

CV 2014-01431 (2015.07.23)

RULE 8.5 — STATEMENT OF CASE — FAILURE TO PLEAD INTEREST

(Also under Part 26)

Rev's Mechanical Engineering Services Limited v Attorney General of Trinidad and Tobago

CV 2014-02604 (2015.04.14)

RULE 8.2 — RULE 8.6 — CLAIM FORM WITHOUT STATEMENT OF CASE — REQUIREMENTS FOR PERMISSION — DUTY TO SET OUT CASE

2014

PRIVY COUNCIL/ COURT OF APPEAL

Real Time Systems Limited v Renraw Investments Limited and Others

[2014] UKPC 6 (2014.03.03)

Appeal dismissed

RULE 8.6 — STATEMENT OF CASE — DUTY TO SET OUT FACTS RELIED UPON

(Also under Parts 20, 26 and 35)

First Citizens Bank Limited v Marsha M Thomas

Civ App No P119 of 2011 (2014.10.06)

Appeal allowed

CV 2008-03280 (2011.05.04)

RULE 8.6 — FAILURE TO INCLUDE MATERIAL FACTS

Dennis Gillard v The Attorney General of Trinidad and Tobago

Civ App No P192 of 2013 (2014.02.11)

Appeal dismissed

CV 2009-03903 (2013.07.29)

PERMISSION FOR DEFAULT JUDGMENT — WHETHER RULE 8.13 APPLICABLE

(Also under Parts 12 and 26)

HIGH COURT

Afrikan Option and Another v Bank of Baroda (Trinidad and Tobago) Limited

CV 2013-05221 (2014.10.14)

RULE 8.7 — RULE 8.8 — COMMENCEMENT OF PROCEEDINGS — CERTIFICATE OF TRUTH — WHETHER PLEADINGS DEFECTIVE

(Also under Part 26)

Central Bank of Trinidad and Tobago and Another v Lawrence Duprey and Others

CV 2011-02140 (2014.06.18)

RULE 8.6 — DUTY TO SET OUT CASE — REPLY — STRIKING OUT PARTS

(Also under Part 10)

2013

PRIVY COUNCIL/ COURT OF APPEAL

LJ Construction Co Ltd v Janis Solomon

Civ App No P042 of 2013 (2013.03.18)

Appeal allowed

RULE 8.3 — TOBAGO — COMMENCEMENT OF PROCEEDINGS

(Also under Part 26)

2012

PRIVY COUNCIL/ COURT OF APPEAL

Nature Resorts Limited v First Citizens Bank Limited

Civ App No P110 of 2012 (2012.06.04)

Appeal allowed

CV 2011-02339 (2012.03.29)

PART 8 — RULE 8.6 — CLAIM FORM AND STATEMENT OF CASE — DUTY TO SET OUT CASE

HIGH COURT

Juliana Webster v Republic Bank Limited and Others

CV 2011-03158 (2012.10.12)

RULE 8.1 — CLAIM FORM VERSUS FIXED DATE CLAIM FORM — MIXED CLAIM — STRIKING OUT — ABUSE OF PROCESS

(Also under Part 56)

Fitzroy Phillip v The Attorney General of Trinidad and Tobago

CV 2008-02197 (2012.07.27)

RULE 8.6 — STATEMENT OF CLAIM — SUFFICIENCY OF CLAIM

Export-Import Bank of Trinidad and Tobago v Water Works Limited and Others

CV 2010-03594 (2012.05.01)

RULE 8.6 — STATEMENT OF CASE — DEFECTIVE PLEADING — OPPORTUNITY TO GIVE FURTHER PARTICULARS

(Also under Parts 10 and 26)

Anil Maharaj v Rudy Roopnarine and Another

CV 2012-04524 (2012.04.19)

RULE 8.5 — RULE 8.6 — PLEADINGS — FAILURE TO PLEAD INTEREST — ANNEXATION OF SUPPORTING DOCUMENTS

Elias Alexander v The Attorney General of Trinidad and Tobago

CV 2010-2501 (2012.02.16)

RULE 8.2 — NO STATEMENT OF CASE FILED WITH CLAIM FORM — WHETHER CLAIM SHOULD PROCEED

(Also under Part 26)

ABC Trinidad Customs Brokers Limited v Xando Distributors Limited

CV 2011-00411 (2012.02.06)

PART 8 — STATEMENT OF CASE — NO SUPPORTING DOCUMENTATION

Norma Tang v Wendell Mc Bain and Others

CV 2011-02471 (2012.01.05)

**RULE 8.14 — RULE 8.14(3) — SERVICE OF CLAIM FORM — EXTENSION OF TIME
— LATE FILING — PROMPTITUDE**

2011

PRIVY COUNCIL/ COURT OF APPEAL

Antonio Webster v The Attorney General of Trinidad & Tobago

[2011] UKPC 22 (2011.07.18)

Appeal dismissed

**RULE 8.1 — CLAIM IN TORT — CLAIM OF CONSTITUTIONAL BREACH —
MIXED CLAIM — FIXED DATE CLAIM FORM**

(Also under Parts 26 and 56)

Russell Seaton v The Attorney General of Trinidad and Tobago

Civ App No P083 of 2011 (2011.05.03)

Appeal dismissed

CV 2009-03667 (2011.05.23)

**RULE 8.10 — STATEMENT OF CASE — PERSONAL INJURIES — FAILURE TO
COMPLY — FAILURE TO IDENTIFY OR ANNEX MEDICAL DOCUMENTS**

HIGH COURT

Samantha F Hosein v Central Equipment Rentals and Others

CV 2009-00301 (2011.06.17)

**RULE 8.5 — RULE 8.6 — FAILURE TO PARTICULARISE — FAILURE TO PLEAD
INTEREST**

2010

PRIVY COUNCIL/ COURT OF APPEAL

Charmaine Bernard v Ramesh Seebalack

[2010] UKPC 15 (2010.07.21)

Appeal dismissed

RULE 8.6 — DUTY OF CLAIMANT TO SET OUT SHORT STATEMENT OF ALL FACTS RELIED ON

(Also under Part 1)

HIGH COURT

Beverly Ann Metivier v The Attorney General of Trinidad and Tobago and Others

CV 2007–00387 (2010.02.10)

RULE 8.6 — STATEMENT OF CASE — DUTY TO INCLUDE MATERIAL FACTS — NO CAUSE OF ACTION

Ivan Neptune v The Attorney General of Trinidad and Tobago

CV 2008–03386 (2010.01.25)

RULE 8.1 — MIXED CLAIM — MODE OF COMMENCEMENT — CONSTITUTIONAL RELIEF — FIXED DATE CLAIM FORM

(Also under Part 56)

2009

PRIVY COUNCIL/ COURT OF APPEAL

Badewatie Ramnarine v Aziz Mohammed and Others

Civ App No S241 of 2009 (2009.12.07)

Appeal allowed

CV 2009–00202 (2011.07.12)

PART 8 — WITNESS STATEMENT — ANNEXURE — HEARSAY — DEPARTURE FROM PLEADINGS

2007

HIGH COURT

Gerard Mahadeo v Jessel R Ramsundar

CV 2007-01218 (2007.11.30)

SERVICE OF CLAIM FORM — EXTENSION OF TIME — ALTERNATIVE ADDRESSES

(Also under Part 5)

Dana Daniel and Another v Ghanny Mohammed

CV 2006-03578 (2007.05.23)

RULE 8.14 — RULE 8.14(3) — CONSIDERATION OF FACTORS — REASONABLE STEPS TO SERVE CLAIM FORM — PROMPTITUDE

Joan Jacob v Housing Development Corporation

CV 2006-01401 (2007.03.22)

RULE 8.6 — STATEMENT OF CASE — NON-DISCLOSURE OF NECESSARY DOCUMENTS

PART 9 APPEARANCE AND NOTICE OF INTENTION TO DEFEND

Contents of this Part

Scope of this Part	Rule 9.1
Entering appearance and consequence of not doing so	Rule 9.2
The period for entering an appearance	Rule 9.3
Notice to claimant of entry of appearance	Rule 9.4
Contents of appearance	Rule 9.5
Right to dispute the jurisdiction of court not taken away by appearance	Rule 9.6
Procedure for disputing court’s jurisdiction	Rule 9.7

Scope of this Part

- 9.1** (1) This Part deals with the procedure to be adopted by a defendant who wishes to contest proceedings and avoid a default judgment being entered against him.
- (2) He does so by entering an appearance containing a notice of intention to defend.

Entering appearance and consequence of not doing so

- 9.2** (1) If the defendant wishes—
- (a) to dispute the claim; or
- (b) to dispute the court’s jurisdiction,
- he must enter an appearance giving notice of intention to defend.
- (2) However he need not enter an appearance if he files a defence within the period specified in rule 9.3.
- (3) If he fails to do so, judgment may be entered if Part 12 allows it.
- (4) An appearance may be entered at any court office even though the claim was not issued from that court office.
- (5) However, that does not mean that the claim is to be transferred to the court office at which the appearance is entered.
- (6) In civil proceedings against the State begun in the court office of San Fernando, the Attorney General, may enter an appearance in the court office at Port of Spain and the proceedings shall continue in that court office until further order.

(Part 58 defines “civil proceedings against the State”)

The period for entering an appearance

- 9.3** (1) The general rule is that the period for entering an appearance is the period of 8 days after the date of service of the claim form.
- (2) Where permission has been given under rule 8.2 for a claim form to be served without a statement of case, the period for entering an appearance is the period of 8 days after the service of the statement of case.
- (3) However, a defendant may enter an appearance at any time before a default judgment is entered.
- (4) The general rule does not apply where—
- (a) the claim form is served outside the jurisdiction in accordance with Part 7; or
- (b) the claim form is served on an agent of an overseas principal under rule 5.15.
- (Rules 7.7 and 5.15 deal with the time for entering an appearance in those cases)

Notice to claimant of entry of appearance

- 9.4** (1) When the defendant enters an appearance the court office must notify the claimant in writing that it has been entered.
- (2) A copy of the appearance and any statement of fact filed with it must be annexed to the notice.

LN 126
of 2011

Contents of appearance

- 9.5** (1) An appearance must state the date on which the defendant received the claim form.
- (2) A defendant may state in an appearance that he admits all or part of the claim.
- (3) A defendant who admits part of the claim must state the amount that he admits.
- (4) Where a defendant admits all or part of the claim, he may file with his appearance—
- (a) his proposals for payment of any sums for which he admits liability; and
- (b) details of his financial circumstances.
- (Part 14 deals with the way in which such proposals are decided)
- (5) If a defendant admits part of the claim he must also file a defence as to that part which he disputes within the time for filing a defence.
- (Rule 10.3 sets out the time for filing a defence)
- (6) An appearance must be signed by the defendant or his attorney-at-law.
- (7) The defendant must include in an appearance an address to which documents may be sent.

- (8) That address must be within three miles of the court office at which the claim was issued.

Right to dispute jurisdiction of court not taken away by appearance

- 9.6 A defendant who enters an appearance does not by doing so lose any right that he may have to dispute the court’s jurisdiction.

Procedure for disputing court’s jurisdiction

- 9.7 (1) A defendant who wishes—
- (a) to dispute the court’s jurisdiction to try the claim; or
 - (b) to argue that the court should not exercise its jurisdiction,
- may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
- (2) A defendant who wishes to make such an application must first enter an appearance.
- (3) An application under this rule must be made within the period for filing a defence.

(Rule 10.3 sets out the period for filing a defence)

- (4) An application under this rule must be supported by evidence.
- (5) If the defendant—
- (a) enters an appearance; and
 - (b) does not make such an application within the period for filing a defence,
- he is treated as having accepted that the court has jurisdiction to try the claim.
- (6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including—
- (a) striking out any statement of case;
 - (b) setting aside service of the claim form and statement of case; and
 - (c) discharging any order made before the claim was commenced or the claim form served.
- (7) If on application under this rule the court does not make a declaration, it—
- (a) must make an order as to the period for filing a defence; and
 - (b) may treat the hearing of the application as a case management conference.

(Part 26 sets out powers which the court may exercise on a case management conference)

-
- (8) Where a defendant makes an application under this rule, the period for filing a defence is extended until the time specified by the court under paragraph (7)(a) and such period may only be extended by an order of the court.

FORMER RULE

The **current** rule 9.4 was brought about by the deletion and substitution of sub-rule (2) by rule 5 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, sub-rule (2) read as follows:

- (2) A copy of the appearance must be annexed to the notice.
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CASES

2015

PRIVY COUNCIL/ COURT OF APPEAL

David Walcott v Eastern Credit Union and Another

Civ App No P121 of 2012 (2015.04.29)

Appeal dismissed

CV 2011-02378 (2012.04.26)

RULE 9.7 — JURISDICTION — CLAIM STRUCK OUT

2014

PRIVY COUNCIL/ COURT OF APPEAL

The National Gas Company of Trinidad and Tobago v Gordon Winter Company Limited

Civ App No P234 of 2013 (2014.06.25)

Appeal dismissed

RULE 9.7 — STAY OF PROCEEDINGS — JURISDICTION — INHERENT JURISDICTION NOT OUSTED BY CPR

L J Williams Limited v Zim Integrated Shipping Services Limited and Another

Civ App No P059 of 2014 (2014.06.04)

Appeal dismissed

RULE 9.7 — STAY OF PROCEEDINGS — JURISDICTION

HIGH COURT

KGC Company Limited v The Owners and/or Parties interested in the motor vessel 'Bywater Liberty'

CV 2013-01209 (2014.03.18)

ADMIRALTY PROCEEDINGS — CLAIM IN REM — TIME FOR ENTERING APPEARANCE — PART 9 APPLIES

(Also under Parts 10 and 74)

2013

HIGH COURT

Stanley Holder v The Attorney General of Trinidad and Tobago

CV 2011-04480 (2013.07.26)

RULE 9.2 — RULE 9.3 — ENTRY OF DEFENCE — REQUIREMENT FOR APPEARANCE

(Also under Parts 27 and 58)

2011

PRIVY COUNCIL/ COURT OF APPEAL

Sarah Young and Others v Lena Pegus and Another

Civ App No P271 of 2010 (2011.02.14)

Appeal dismissed

CV 2008-00876 (2010.12.17)

JURISDICTION — FAILURE TO COMPLY WITH RULE 9.7

(Also under Parts 3 and 5)

HIGH COURT

West Indies Players' Association v West Indies Cricket Board Inc

CV 2011-03130 (2011.11.09)

RULE 9.7(3) — RULE 9.7(4) — JURISDICTION — FAILURE TO COMPLY WITH RULE 9.7

2008

HIGH COURT

NH International (Caribbean) Limited v CLICO Investment Bank Limited and Another

CV 2006-01205 (2008.12.08)

RULE 9.7 — JURISDICTION — FORUM CONVENIENS — JOINDER OF PARTY — SERVICE OUT OF THE JURISDICTION

(Also under Part 7)

PART 10 DEFENCE

Contents of this Part

Scope of this Part	Rule 10.1
The defendant—filing defence and consequences of not doing so	Rule 10.2
The period for filing defence	Rule 10.3
Service of copy of defence	Rule 10.4
Defendant’s duty to set out his case	Rule 10.5
Consequences of not setting out defence	Rule 10.6
Additional matters which must be included in defence	Rule 10.7
Special requirements applying to claims for personal injuries	Rule 10.8
Defence of tender	Rule 10.9
Reply to defence	Rule 10.10

Scope of this Part

- 10.1 The rules in this Part set out the procedure for disputing the whole or part of a claim.
(Part 18 deals with the procedure for making a counterclaim)

The defendant—filing defence and the consequences of not doing so

- 10.2 (1) A defendant who wishes to defend all or part of a claim must file a defence.
- (2) Where a defendant admits liability, but wishes to be heard on the issue of quantum, he need not file a defence but shall indicate on his appearance form referred to in rule 9.4(2) that he wishes to—
- cross-examine any witness called on behalf of the claimant;
 - make submissions to the court; or
 - call any evidence, in which case he shall file with the appearance form a statement of facts upon which he intends to rely.
- (3) If a defendant fails to file a defence within the period for filing a defence, judgment for failure to defend may be entered if Part 12 allows it.
(Part 14 deals with the procedure to admit all or part of the claim)

LN 126
of 2011

The period for filing defence

10.3 (1) The general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form and statement of case.

LN 301
of 2012

- (2) However—
- (a) where permission has been given under rule 8.2 for a claim form to be served without a statement of case; or
 - (b) where a statement of case is amended pursuant to rule 20.1,
- the period for filing a defence is the period of 28 days after the service of the statement of case or the amended statement of case, as the case may be.
- (3) In proceedings against the State the period for filing a defence is the period of 42 days after the date of service of the claim form and statement of case.
- (4) Where the defendant within the period set out in paragraph (1) (2) or (3) makes an application under section 7 of the Arbitration Act (Chap. 5:01) to stay the claim, the period for filing a defence is extended to 14 days after the determination of that application.
- (5) A defendant may apply for an order extending the time for filing a defence.
- (6) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2) or (3) up to a maximum of three months after the date of service of the claim form (or statement of case if served after the claim form).
- (7) Only one agreement to extend the time for filing a defence may be made.
- (8) The defendant must file details of such an agreement.
- (9) Any further extensions may only be made by court order.
- (10) The general rule is subject to rule 9.7.

Service of copy of defence

10.4 When the defendant files a defence, he must also serve a copy on all other parties.

Defendant's duty to set out his case

- 10.5** (1) The defendant must include in his defence a statement of all the facts on which he relies to dispute the claim against him.
- (2) Such statement must be as short as practicable.
- (3) In his defence the defendant must say—
- (a) which (if any) allegations in the claim form or statement of case he admits;
 - (b) which (if any) he denies; and

- (c) which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the claimant to prove.
- (4) Where the defendant denies any of the allegations in the claim form or statement of case—
 - (a) he must state his reasons for doing so; and
 - (b) if he intends to prove a different version of events from that given by the claimant, he must state his own version.
- (5) If, in relation to any allegation in the claim form or statement of case the defendant does not—
 - (a) admit or deny it; or
 - (b) put forward a different version of events,
 he must state each of his reasons for resisting the allegation.
- (6) The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence.

Consequences of not setting out defence

- 10.6** (1) The defendant may not rely on any allegation which he did not mention in his defence, but which he should have mentioned there, unless the court gives him permission to do so.
- (2) The court may give the defendant such permission at a case management conference.
 - (3) The court may not give the defendant such permission after a case management conference unless the defendant can satisfy the court that there has been a significant change in circumstances which became known after the date of the case management conference.

Additional matters which must be included in defence

- 10.7** (1) Where the defence is filed by an attorney-at-law it must—
- (a) be signed by the attorney-at-law;
 - (b) give his name and business address and facsimile transmission number (if any);
 - (c) if that address is not within three miles of the court office where the claim form was issued, give an address for service within that distance; and
 - (d) if the defence is filed by an agent, be signed by the agent and give his name and address for service.
- (2) Where the defence is filed by the defendant personally (or in the case of a body corporate by an officer of that body corporate), it must give an address at which documents may be served, unless he has filed an appearance which includes such an address.

- (3) That address must be within three miles of the court office where the claim was issued.
- (4) The defendant must certify on the defence that he believes that its contents are true.
- (5) If it is impractical for the defendant to give the certificate required by paragraph (4) it may be given by his attorney-at-law.
- (6) If the certificate is given by the attorney-at-law he must also certify the reasons why it is impractical for the defendant to give the certificate and that the certificate is given on the defendant's instructions.
- (7) If the defendant is defending in a representative capacity, he must say—
 - (a) what that capacity is; and
 - (b) whom he is representing.(Part 21 deals with representative parties)

Special requirements applying to claims for personal injuries

- 10.8** (1) This rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.
- (2) Where the claimant has attached to his claim form a report from a medical practitioner on the personal injuries which he is alleged to have suffered, the defendant must state in his defence—
 - (a) whether he agrees the medical report; and
 - (b) where he disputes any part of the medical report, give his reasons for doing so.
 - (3) Where the defendant intends to rely on a report from a medical practitioner to dispute any part of the claimant's claim for personal injuries and the defendant has such a report in his possession the defendant must attach that report to the defence.

Defence of tender

- 10.9** The defence of tender shall not be available unless the defendant pays into court the amount alleged to have been tendered within the period for filing a defence.
- (Rule 10.3 states the period for filing a defence)

Reply to defence

- 10.10** (1) A claimant may not file or serve a reply to a defence without—
 - (a) the permission of the court; or
 - (b) if it is to be filed before a case management conference, the consent of the defendant.
- (2) The court may only give permission at a case management conference.

FORMER RULE

1. The **current** rule 10.2 was brought about by the deletion and substitution of sub-rule (2) by rule 6 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, sub-rule (2) read as follows:

- (2) In particular, if a defendant admits liability but wishes to be heard on the issue of quantum, he must file and serve a defence dealing with that issue.

2. The **current** rule 10.3 was brought about by the deletion and substitution of sub-rule (2) by rule 5 of the **Civil Proceedings (Amendment) Rules, 2012** Legal Notice No 301 of 2012.

As set out in the 2006 publication, sub-rule (2) read as follows:

- (2) However where permission has been given under rule 8.2 for a claim form to be served without a statement of case, the period for filing a defence is the period of 28 days after the service of the statement of case.

CASES

2015

PRIVY COUNCIL/ COURT OF APPEAL*The Presidential Insurance Company Limited v Shiroon Mohammed and Others*

[2015] UKPC 4 (2015.02.03)

Appeal allowed

Civ App No 101 of 2011 (2011.07.28)

Appeal allowed

RULE 10.6 — LATE APPLICATION TO RE-AMEND DEFENCE AND COUNTER-CLAIM — TRIAL JUDGE’S DISCRETION

(Also under Part 64)

Copyright Music Organisation of Trinidad and Tobago v Columbus Communications Trinidad Limited Trading as “FLOW”

Civ App No 167 of 2011 (2015.12.11)

Appeal allowed

CV 2009–04722 (2011.06.14)

RULE 10.5 — DUTY TO PROPERLY PLEAD DEFENCE — DUTY TO ANNEX DOCUMENTS

(Also under Part 15)

Lynette Hughes and Others v The South West Regional Health Authority and Others

Civ App No S030 of 2015 (2015.04.27)

Appeal dismissed

CV 2014–02749 (2015.02.13)

RULE 10.3(5) — RULE 10.3(9) — DEFENCE — APPLICATION FOR FURTHER EXTENSION OF TIME — CPR SILENT ON CONSIDERATIONS — OVERRIDING OBJECTIVE AND PART 26 APPLIED

(Also under Part 26)

First Citizens Bank Limited v Shepboys Limited and Another

Civ App No P231 of 2011 (2015.03.10)

Appeal dismissed

RULE 10.10 — PERMISSION TO FILE A REPLY

(Also under Part 8)

HIGH COURT

James I M Black and Another v Dexter Taylor

CV 2014-01831 (2015.12.03)

RULE 10.10 — PERMISSION TO FILE REPLY — LATE APPLICATION — GOOD REASONS ADVANCED

Lyris Blanchfield v Nichola Blanchfield

CV 2013-04792, CV 2014-00745 (2015.02.19)

RULE 10.5 — DEFENCE — BARE DENIAL — DUTY TO SET OUT CASE
(Also under Parts 15 and 38)

2014

PRIVY COUNCIL/ COURT OF APPEAL

Roland James v The Attorney General of Trinidad and Tobago

Civ App No P044 of 2014 (2014.12.19)

Appeal dismissed

RULE 10.3(3) — LATE FILING OF DEFENCE — NO SANCTION — CPR SILENT ON RULE 10.3(5) CONSIDERATIONS — APPLICATION OF OVERRIDING OBJECTIVE
(Also under Parts 1 and 12)

Port of Port of Spain Limited and Another v Portia Management Services Limited

Civ App No P165 of 2014 (2014.07.21)

Appeal allowed

CV 2013-02091 (2014.05.27)

RULE 10.5 — DEFENCE — FAILURE TO ANSWER ALLEGATIONS — ALLEGATIONS UNDISPUTED

HIGH COURT

Central Bank of Trinidad and Tobago and Another v Lawrence Duprey and Others

CV 2011-02140 (2014.06.18)

RULE 10.10 — DRAFT REPLY — COURT'S DUTY TO SCRUTINIZE REPLY — PARAGRAPHS DISALLOWED

(Also under Part 8)

Kevin Longdon v Susheol General Contractors Limited and Others

CV 2013-01699 (2014.06.05)

DEFENCE — EXTENSION OF TIME — DISCRETION*Carolyn Patterson v Josephine Richards and Another*

CV 2012-03888 (2014.05.09)

RULE 10.6 — RULE 10.6(3) — DEFENCE — EXTENSION OF TIME — DISCRETION — SUFFICIENCY OF EXPLANATION*KGC Company Limited v The Owners and/or Parties interested in the motor vessel 'Bywater Liberty'*

CV 2013-01209 (2014.03.18)

RULE 10.3 — ADMIRALTY CLAIM — EXTENSION OF TIME — DEFENCE — CONSIDERATION OF OVERRIDING OBJECTIVE FACTORS

(Also under Parts 9 and 74)

2013

PRIVY COUNCIL/ COURT OF APPEAL*Thadeus Clement v The Attorney General of Trinidad and Tobago*

Civ App No S095 of 2010 (2013.07.31)

Appeal allowed

CV2009-03208 (2010.02.01)

RULE 10.5 — FAILURE TO SET OUT DEFENCE — STRIKING OUT

(Also under Part 26)

Cecil Santana v Jules Jairul and Others

Civ App No S149 of 2009 (2013.05.27)

Appeal dismissed

CV 2007-04537 (2009.07.21)

SUFFICIENCY OF DEFENCE — STRIKING OUT

(Also under Part 26)

HIGH COURT

Phyllis Crawford and Another v Frankie Ramkalawan

CV 2011-03564 (2013.04.09)

PART 10.3 — LATE FILING OF DEFENCE — DELAY IN SEEKING PERMISSION — FATAL TO EXTENSION OF TIME

Clive Gill v Jude Moses

CV 2009-02696 (2013.03.19)

RULE 10.5 — PLEADINGS — DEFENCE — DUTY TO SET OUT CASE — AVAILABLE INFORMATION ORDERED BY COURT

(Also under Part 20)

2012

PRIVY COUNCIL/ COURT OF APPEAL

Ayoub Khan v Caroni (1975) Limited

Civ App No 167 of 2012 (2012.10.01)

Appeal allowed

CV 2006-03392 (2012.09.20)

DEFENCE — FAILURE TO AMEND — BARE DENIAL

(Also under Part 26)

HIGH COURT

Anthony Z James v The Attorney General of Trinidad and Tobago

CV 2011-04199 (2012.06.05)

RULE 10.3 — TIME — CALCULATION FOR FILING DEFENCE

(Also under Part 12)

Export-Import Bank of Trinidad and Tobago v Water Works Limited and Others

CV 2010-03594 (2012.05.01)

SUFFICIENCY OF CLAIM — BARE DENIAL

(Also under Parts 8 and 26)

Kenneth Melloni v Berkley Petroleum Services Limited

CV 2008-02876 (2012.03.13)

RULE 10.5 — AMENDED DEFENCE — COMPLIANCE WITH CPR — DUTY TO PLEAD DEFENCE

(Also under Part 26)

Augustine Prime v The Attorney General of Trinidad and Tobago

CV 2006-01057 (2012.03.13)

RULE 10.5 — DEFENCE — FAILURE TO COMPLY WITH CPR — STRIKING OUT — DELAY IN CHALLENGE

Sparks and Sons General Contractors Engineering Works Company Limited v Masala Radio Limited and Others

CV 2009-01811 (2012.01.20)

APPLICATIONS — EXTENSION OF TIME — DEFENCE — CONSIDERATION OF ALL FACTORS

(Also under Part 26)

Shadae Cruickshank v The Attorney General of Trinidad and Tobago

CV 2011-00674 (2012.01.17)

RULE 10.3 — DEFENCE — EXTENSION OF TIME — CONSIDERATION OF ALL FACTORS

2011

PRIVY COUNCIL/ COURT OF APPEAL

The Attorney General v Keron Matthews

[2011] UKPC 38 (2011.10.20)

Appeal allowed

LATE DEFENCE — NO IMPLIED SANCTIONS

(Also under Parts 13 and 26)

HIGH COURT

Richard Pooran v Angad Rampersad and Others

CV 2010-02874 (2011.06.09)

RULE 10.5 — REQUIREMENTS OF DEFENCE

Isha Bisnath v Kazuhiko Shaiyana and Others

CV 2007-04224 (2011.02.14)

RULE 10.5 — DEFENCE — DUTY TO IDENTIFY DOCUMENTS RELIED ON

Rajesh Chitta v Point Lisas Industrial Port Development Corporation Limited

CV 2008-3628 (2011.01.13)

RULE 10.6 — DEFENCE — PROPOSED AMENDMENT — DUTY TO SET OUT CASE

2009

PRIVY COUNCIL/ COURT OF APPEAL

Annette Clarke v Garfield Mckenna

Civ App No P165 of 2009 (2009.09.28)

Appeal dismissed

NO REASONABLE DEFENCE — STRIKING OUT

2008

PRIVY COUNCIL/ COURT OF APPEAL

MI5 Investigations Limited v Centurion Protective Agency Limited

Civ App No P244 of 2008 (2008.12.02)

Appeal dismissed

RULE 10.5 — REQUIREMENTS OF DEFENCE — STRIKING OUT

HIGH COURT

Mayfair Knitting Mills (Trinidad) Limited v Mc Farlane's Design Studios Limited

CV 2007-02865 (2008.06.30)

RULE 10.10 — PERMISSION TO FILE REPLY — NECESSITY

Ed Jacob and Others v Millennium Development Corporation Limited

CV 2007-01668 (2008.04.03)

RULE 10.5 — DEFENCE — DUTY TO SET OUT CASE — FAILURE TO COMPLY WITH CPR

2007

HIGH COURT

Caroline Mallalieu v The Mayor, Aldermen and Citizens of the City of Port of Spain and Another

CV 2006–00386 (2007.03.15)

RULE 10.5 — DEFENCE — DUTY TO SET OUT CASE FULLY

PCA/Interplan Group (J-V) Limited v Urban Development Corporation of Trinidad and Tobago Limited

CV 2005–00766 (2007.03.14)

RULE 10.10 — PERMISSION TO REPLY — NEW CAUSE OF ACTION

PART II GENERAL RULES ABOUT APPLICATIONS FOR COURT ORDERS

Contents of this Part

Scope of this Part	Rule II.1
Applicants and respondents	Rule II.2
Where to make an application	Rule II.3
Application to be in writing	Rule II.4
Notice of application and evidence in support	Rule II.5
Time when an application is made	Rule II.6
What an application must include	Rule II.7
Evidence in support of an application	Rule II.8
Contents of notice of application	Rule II.9
Service of notice of application	Rule II.10
Powers of court in relation to the conduct of an application	Rule II.11
Consequence of not asking for order in application	Rule II.12
Application which may be dealt with without hearing	Rule II.13
Service of application where order made on application made without notice	Rule II.14
Application to set aside or vary order made on application made without notice	Rule II.15
Power of court to proceed in absence of a party	Rule II.16
Application to set aside order made in the absence of a party	Rule II.17

Scope of this Part

II.1 This Part deals with applications for court orders made before, during or after the course of proceedings.

Applicants and respondents

II.2 “**applicant**” means a person who seeks a court order by making an application; and

“**respondent**” means—

- (a) the person against whom the order is sought; and
- (b) such other person as the court may direct is to be served with the application.

Where to make an application

- 11.3** (1) The general rule is that an application should be made to the court office where the claim was issued.
- (2) If the claim has been transferred to another court office the application should be made to that court office.
- (3) If the application is made before a claim has been issued it must be made to the court office where it is likely that the claim to which the application relates will be made.

Application to be in writing

- 11.4** (1) The general rule is that an application must be in writing.
- (2) An application may be made orally if—
- (a) this is permitted by a rule or practice direction; or
- (b) the court dispenses with the requirement for the application to be made in writing.

Notice of application and evidence in support

- 11.5** (1) The general rule is that the applicant must give notice of the application to each respondent.
- (2) An applicant may make an application without giving notice if this is permitted by—
- (a) a rule; or
- (b) a practice direction.
- (3) Evidence in support of an application is not needed unless it is required by—
- (a) a rule;
- (b) a practice direction; or
- (c) a court order.
- (4) Notice of the application must be included in the form used to make the application.

Time when application is made

- 11.6** Where an application must be made within a specified period it is so made if it is received by the court office or made orally to the court within that period.

What an application must include

- 11.7** (1) An application must state—
- (a) what order the applicant is seeking; and
- (b) briefly, why the applicant is seeking the order.

- (2) The applicant must include with or attach to the application a draft of the order he is seeking.
- (3) Either the applicant or his attorney-at-law must certify on the application that he believes any facts stated in the application are true.

Evidence in support of application

11.8 Where evidence in support of an application is required it must be contained in an affidavit unless—

- (a) a rule;
- (b) a practice direction; or
- (c) a court order,

otherwise provides.

(Part 31 deals with affidavit evidence).

Contents of notice of application

11.9 (1) If there is to be a hearing the notice must state the date, time and place of the hearing.

(2) If there is not to be a hearing but notice of the application is required, the notice must state how the court will deal with the application.

(Rule 11.13 sets out the circumstances in which there may not be a hearing).

Service of notice of application

11.10 (1) The general rule is that a notice of an application must be served—

- (a) as soon as practicable after the day on which it is issued; and
- (b) at least 7 days before the court is to deal with the application.

(2) However, the period in paragraph (1)(b) shall not apply where any rule specifies some other period for service.

(3) If—

- (a) notice of an application has been given, but
- (b) the period of notice is shorter than the period required,

the court may nevertheless direct that, in all the circumstances of the case, sufficient notice has been given, and may accordingly deal with the application.

(4) The notice must be accompanied by—

- (a) any evidence in support; and
- (b) a copy of any draft order which the applicant has attached to his application.

(5) The notice must be served in accordance with Part 6.

Powers of court in relation to the conduct of an application

- 11.11** (1) The court may—
- (a) issue a witness summons requiring a party or other person to attend the court on the hearing of the application;
 - (b) require a party to produce documents or things at such a hearing; and
 - (c) question any party or witness at such a hearing.
- (2) The court may examine a party or witness—
- (a) orally; or
 - (b) by putting written questions to him and asking him to give written answers to the questions.
- (3) Any party may then cross-examine the witness.
- (4) The court may exercise any power which it might exercise at a case management conference.

Consequences of not asking for order in application

- 11.12** An applicant may not ask for an order for which he has not asked in his application unless the court permits him to do so.

Applications which may be dealt with without hearing

- 11.13** The court may deal with an application without a hearing if—
- (a) the parties agree that the court should dispose of its application without a hearing;
 - (b) the court considers that the application can be dealt with over the telephone or by other means of communication;
 - (c) the parties have agreed to the terms of an order—
 - (i) which do not come within rule 27.9(1); and
 - (ii) the application (or a copy of the application) is signed by all parties to the application or their attorneys-at-law; or
 - (d) the court does not consider that a hearing would be appropriate.

(Rule 43.7 deals with consent orders)

Service of application where order made on application made without notice

- 11.14** (1) After the court has disposed of an application made without notice, in addition to serving a copy of any order made, a copy of the application and any evidence in support must be served on all parties.
- (2) When such an application is made the applicant must file sufficient copies of the application and evidence in support for service on all other parties who may be affected by the order.

- (3) Where an urgent application is made without notice and the applicant undertakes to file evidence after the hearing he must serve copies of the application and evidence on all other parties affected by the order.

Application to set aside or vary order made on application made without notice

- 11.15** (1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.
- (2) A respondent must make such an application not more than 7 days after the date on which the order was served on him.
- (3) An order made on an application of which notice was not given must contain a statement telling the respondent of his right to make an application under this rule.

Power of the court to proceed in the absence of a party

- 11.16** Where the applicant or any person on whom the notice of application has been served fails to attend the hearing of the application, the Court may proceed in his absence.

Application to set aside order made in the absence of a party

- 11.17** (1) A party who was not present when an order was made may apply to set aside that order.
- (2) The application must be made within 7 days after the date on which the order was served on the applicant.
- (3) The application to set aside the order must be supported by evidence showing—
- (a) a good reason for failing to attend the hearing; and
 - (b) that it is likely that had the applicant attended some other order might have been made.

CASES

2014

PRIVY COUNCIL/ COURT OF APPEAL***Beulah G Pompey v Stephen Rolingson***

Civ App No S062 of 2014 (2014.04.28)

Appeal allowed

CV 2013-03696 (2014.03.10)

RULE 11.17 — SETTING ASIDE — EX PARTE ORDER — CONSIDERATION OF ALL FACTORS

(Also under Part 40)

HIGH COURT***Ricardo Welch v The Attorney General of Trinidad and Tobago and Others***

CV 2013-04279 (2014.03.19)

RULE 11.17 — SETTING ASIDE — EX PARTE ORDER — CONSIDERATION OF ALL FACTORS

(Also under Parts 2 and 67)

2012

HIGH COURT***Professor Courtenay Bartholomew and Another v Dr Steve Smith***

CV 2010-02370 (2012.10.30)

RULE 11.4 — ORAL APPLICATION FOR JUDGMENT — FIT AND PROPER CASE TO DISPENSE WITH REQUIREMENT FOR AN APPLICATION IN WRITING

David Walcott v Keith Hercules, Chief Immigration Officer and Others

CV 2011-01859 (2012.02.24)

ORAL APPLICATION — STRIKING OUT — LITIGANT IN PERSON

2011

PRIVY COUNCIL/ COURT OF APPEAL

Alan Dick and Company Limited v Fast Freight Forwarders Limited and Another

Civ App No P214 of 2010 (2011.05.23)

Appeal dismissed

**RULE 11.14 — RULE 11.15 — SETTING ASIDE — TIMELINESS OF APPLICATION
— FAILURE TO COMPLY WITH CPR — EFFECT OF FAILURE**

(Also under Parts 19 and 64)

2007

HIGH COURT

Global Television Production Company Limited v Mohan Jaikaran

CV 2007-001168 (2007.04.23)

**RULE 11.15 — EX PARTE ORDER — RESPONDENT'S RIGHT TO APPLY NOT
STATED — APPLICATION TO DISCHARGE — DEFECT IN APPLICATION —
DISCRETION**

2006

HIGH COURT

Christine Millar and Another v Classic Developers Limited

CV 2006-01510 (2006.11.28)

**RULE 11.4 — ORAL APPLICATION FOR JUDGMENT ON ADMISSION MADE AT
CMC — REQUIREMENT FOR WRITING DISPENSED**

PART 12 DEFAULT JUDGMENTS

Contents of this Part

Scope of this Part	Rule 12.1
Claims in which default judgment may not be obtained	Rule 12.2
Conditions to be satisfied—judgment for failure to enter appearance	Rule 12.3
Conditions to be satisfied—judgment for failure to defend	Rule 12.4
Procedural requirements	Rule 12.5
Claim for specified sum of money	Rule 12.6
Nature of default judgment	Rule 12.7
Interest	Rule 12.8
Costs	Rule 12.9
Directions to be given where further decision of court is needed	Rule 12.10
Defendant’s rights following default judgment	Rule 12.11
Claim against more than one defendant	Rule 12.12

Scope of this Part

- 12.1** (1) This Part contains provisions under which a claimant may obtain judgment without a trial where a defendant—
- (a) has failed to enter an appearance giving notice of intention to defend in accordance with Part 9; or
 - (b) has failed to file a defence in accordance with Part 10.
- (2) Such a judgment is called a “default judgment”.

Claims in which default judgment may not be obtained

- 12.2** (1) A claimant may not obtain default judgment where the claim—
- (a) is a fixed date claim;
 - (b) is an admiralty claim *in rem*; or
 - (c) a claim in probate proceedings.
- (Rule 74.22 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships)
- (2) A claimant needs permission from the court if he wishes to obtain default judgment on any claim which is—
- (a) a claim against a State;
 - (b) a claim against a minor or patient as defined in rule 2.3; or
 - (c) an action in tort brought by one party to a marriage against another.

(Part 58 deals with proceedings against the State; Part 23 deals with proceedings involving a minor or patient)

- (3) An application for permission must be supported by evidence.

Conditions to be satisfied—judgment for failure to enter appearance

12.3 At the request of the claimant the court office must enter judgment for failure to enter appearance if—

- (a) the court office is satisfied that the claim form and statement of case have been served;
- (b) the period for entering an appearance has expired;
- (c) the defendant—
 - (i) has not entered an appearance;
 - (ii) has not filed a defence to the claim or any part of it;
 - (iii) where the only claim is for a specified sum of money, apart from costs and interest, has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it; or
 - (iv) has not satisfied the claim on which the claimant seeks judgment; and
- (d) (where necessary) the claimant has permission to enter judgment.

(Rules 5.5, 5.9, 5.10 and 5.13 deal with how to prove service of the claim form and statement of case)

Conditions to be satisfied—judgment for failure to defend

12.4 At the request of the claimant the court office must enter judgment for failure to defend if—

- (a) the court office is satisfied that the claim form and statement of case have been served; or
- (b) an appearance has been entered; and
- (c) the period for filing a defence has expired;
- (d) the defendant—
 - (i) has not served a defence to the claim or any part of it;
 - (ii) where the only claim is for a specified sum of money, has not filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
 - (iii) has not satisfied the claim on which the claimant seeks judgment; and
- (e) (where necessary) the claimant has the permission of the court to enter judgment.

Procedural requirements

- 12.5** (1) A claimant obtains default judgment by filing a request (Form 6).
 (2) The judgment takes effect from the date that all requisite documents have been filed.

Claim for specified sum of money

- 12.6** (1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.
 (2) Where the claimant claims a specified sum of money together with interest at an unspecified rate he may either—
 (a) enter judgment under this Part for the sum of money claimed together with interest at the statutory rate from the date of the claim to the date of entering judgment; or
 (b) enter judgment for the sum of money claimed and for interest to be assessed.
 (3) For the purpose of this Part and of rule 14.5 a claim for—
 (a) the cost of repairs executed to a vehicle or any property in, on or abutting a road; or
 (b) any other financial losses,
 claimed as a result of damage which it is alleged to have been caused in an accident as a result of the defendant’s negligence is to be treated as a claim for a specified amount of money provided that—
 (i) the amount of each item in the claim is specified; and
 (ii) copies of receipted bills for the amounts claimed are attached to the claim.

Nature of default judgment

- 12.7** (1) Default judgment shall be—
 (a) on a claim for a specified amount of money— judgment for the payment of that amount at the time and rate specified in the request for judgment;
 (b) on a claim for possession of land— judgment for possession on a date to be specified in the request;
 (c) on a claim for an amount of money which is not specified— judgment for the payment of an amount to be decided by the court;
 (d) on a claim for goods either—
 (i) judgment requiring the defendant either to deliver the goods or pay their value as assessed by the court;
 (ii) judgment requiring the defendant to pay the value of the goods as assessed by the court;

- (iii) where the claim form specifies the value of the goods, judgment for that amount; or
 - (iv) if the court gives permission, a judgment requiring the defendant to deliver the goods without giving him the alternative of paying their assessed value.
- (2) An application for permission to enter a default judgment under paragraph (d)(iv) must be supported by evidence and a copy of the application and the evidence must be served on the defendant against whom judgment has been sought even though he has failed to enter an appearance or file a defence.
- (3) Where a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum.
- (4) Default judgment where the claim is for some other remedy shall be such judgment as the court considers the claimant to be entitled to.

Interest

- 12.8** (1) Default judgment shall include judgment for interest for the period claimed where—
- (a) the claim includes a claim for interest; and
 - (b) the claim form or statement of case includes details of—
 - (i) the amount of interest claimed;
 - (ii) the rate; and
 - (iii) the period for which it is claimed; and
 - (c) the request states the amount of interest to the date it was made.
- (2) If the claim includes any other claim for interest, default judgment shall include judgment for an amount of interest to be decided by the court.

Costs

- 12.9** Default judgment gives a claimant a right to fixed costs unless the court assesses the costs.

(Rule 67 sets out what are fixed costs and how costs are assessed)

Directions to be given where further decision of court is needed

- 12.10** Where default judgment is entered and a further decision of the court is needed under rule 12.7(1)(c) or (d) or rule 12.7(4) or rule 12.8(2), the court must give directions for the resolution of any outstanding matters.

(Part 16 deals with the procedure for assessment of damages)

Defendant’s rights following default judgment

12.11 Unless he obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered may be heard are— LN 126
of 2011

- (a) the assessment of damages, provided that he has indicated that he wishes to be heard—
 - (i) on the appearance form; or
 - (ii) in a Notice under rule 16.2 (4);
- (b) costs;
- (c) the time of payment of any judgment debt; and
- (d) enforcement.

(Part 10.2 deals with a defendant who admits liability but wishes to be heard on the issue of quantum and Part 13 deals with setting aside or varying default judgments)

Claim against more than one defendant

12.12 (1) A claimant may obtain default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with his claim against the other defendants.

(2) Where—

- (a) a claimant makes a claim for money or a claim for delivery of goods against more than one defendant;
- (b) the claimant alleges that the defendants are jointly liable;
- (c) default judgment is entered under rule 12.7(1)(c) (claim for amount of money to be assessed by the court) or 12.7(1)(d) (claim for delivery of goods or for value of goods to be assessed by the court) against one or more defendants; and
- (d) the proceedings continue against any other defendant,

the court may defer until the trial determination of the amount which a defendant against whom judgment has been entered under this Part is liable to pay.

(3) Where—

- (a) the claimant applies for default judgment on any claim which is not a claim for money, a claim for recovery of goods or a claim for possession;
- (b) the claim is made against two or more defendants; and
- (c) the claim against the defendant or defendants in default can be dealt with separately from the claim against the other defendants,

the court may give default judgment against the defendant in default and the claimant may continue the proceedings against the other defendants.

- (4) Where, in a claim to which paragraph (3) applies the court office may not enter judgment against the defendant in default, the court must deal with any application for default judgment against that defendant at the same time as it disposes of the claim against the other defendants.
- (5) Where a claim for possession of land is made against more than one defendant (with or without any other claim) the claimant may not enforce any judgment for possession entered under this Part against any one or more defendants without the permission of the court until judgment is given for possession against all the defendants to the claim for possession.

FORMER RULE

The **current** rule 12.11 was brought about by the revocation and substitution of rule 12.11 by rule 7 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, Rule 12.11 read as follows:

Defendant's rights following default judgment

- 12.11** Unless he obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered may be heard are—
- (a) costs;
 - (b) the time of payment of any judgment debt; and
 - (c) enforcement.
- (Part 13 deals with setting aside or varying default judgments)

CASES

2014

PRIVY COUNCIL/ COURT OF APPEAL

Roland James v The Attorney General of Trinidad and Tobago

Civ App No P044 of 2014 (2014.12.19)

Appeal dismissed

RULE 12.2(2) — DEFAULT JUDGMENT APPLICATION — EXTENSION OF TIME TO FILE DEFENCE — CONSIDERATION OF FACTORS — OVERRIDING OBJECTIVE AND RULE 26.7 WITHOUT THRESHOLD REQUIREMENTS

(Also under Parts 1 and 10)

Dennis Gillard v The Attorney General of Trinidad and Tobago

Civ App No P192 of 2013 (2014.02.11)

Appeal dismissed

CV 2009-03903 (2013.07.29)

RULE 12.2(2) — PERMISSION — DEFAULT OF DEFENCE — DELAY — AUTOMATIC STRIKING OUT

(Also under Parts 8 and 26)

2013

HIGH COURT

Mree Investments Limited v Helga J Rees and Another

CV 2012-02369 (2013.12.18)

RULE 12.2 — FIXED DATE CLAIM — DEFAULT JUDGMENT INAPPLICABLE

2012

PRIVY COUNCIL/ COURT OF APPEAL

Okpe Adogwa v Dhanraj Balkaran and Others

Civ App No S103 of 2009 (2012.06.22)

Appeal allowed

DEFAULT JUDGMENT — PROCEEDINGS CONTINUED AGAINST OTHER DEFENDANTS

HIGH COURT

Samuel Alfred and Others v Leonora Balfour and Another

CV 2009-03461 (2012.07.06)

RULE 12.7 — APPLICATION FOR DIRECTIONS — DEFAULT OF DEFENCE — NATURE OF CLAIM — DISCRETION

(Also under Part 1)

Anthony Z James v The Attorney General of Trinidad and Tobago

CV 2011-04199 (2012.06.05)

PART 12 — DEFAULT JUDGMENT — APPLICATION PREMATURE

(Also under Part 10)

2009

HIGH COURT

Kevin Phillip v Bernard Williams and Another

CV 2008-01338 (2009.07.03)

RULE 12.2 — RULE 12.9 — DEFAULT OF DEFENCE — PERMISSION TO ENTER DEFAULT JUDGMENT

PART 13 SETTING ASIDE OR VARYING DEFAULT JUDGMENT

Contents of this Part

Scope of this Part	Rule 13.1
Cases where the court must set aside judgment entered under Part 12	Rule 13.2
Cases where the court may set aside or vary judgment entered under Part 12	Rule 13.3
Application to vary or set aside judgment — procedure	Rule 13.4
Court to impose condition as to filing of defence	Rule 13.5
Hearing may be treated as case management conference	Rule 13.6

Scope of this Part

13.1 The rules in this Part set out the procedure for setting aside or varying a default judgment entered under Part 12 (default judgments).

(Part 48 deals with variation of the terms of a judgment as to time and method of payment)

Cases where the court must set aside judgment entered under Part 12

- 13.2** (1) The court must set aside a judgment entered under Part 12 if judgment was wrongly entered because—
- (a) in the case of a failure to enter an appearance, any of the conditions in rule 12.3 was not satisfied; or
 - (b) in the case of judgment for failure to defend, any of the conditions in rule 12.4 was not satisfied.
- (2) The court may set aside judgment under this rule on or without an application.

Cases where the court may set aside or vary judgment entered under Part 12

- 13.3** (1) The court may set aside a judgment entered under Part 12 if—
- (a) the defendant has a realistic prospect of success in the claim; and
 - (b) the defendant acted as soon as reasonably practicable when he found out that judgment had been entered against him.
- (2) Where this rule gives the court power to set aside a judgment, the court may instead vary it.

Application to vary or set aside judgment—procedure

- 13.4** (1) An application under rule 13.2 (cases where the court must set aside judgment) may be made by—
- (a) the defendant;
 - (b) the claimant; or
 - (c) any other person who is directly affected by the entry of judgment.
- (2) An application under rule 13.3 (cases where the court may set aside or vary judgment) may be made by—
- (a) the defendant; or
 - (b) any other person, except the claimant, who is directly affected by the entry of judgment.
- (3) A claimant who applies to set aside judgment under paragraph (1) may do so without giving notice.
- (4) An application under paragraph (1)(c) or (2)(b) need not be served on the defendant.
- (5) An application (other than an application by a claimant) must be supported by evidence.

Court to impose condition as to filing of defence

- 13.5** (1) If judgment is set aside under this Part the general rule is that the order must be conditional upon the defendant filing and serving a defence by a specified date.
- (2) The general rule shall not apply if the court is satisfied that the defendant was not served with the claim form and statement of case.

Hearing may be treated as case management conference

- 13.6** (1) When judgment is set aside under this Part the court must treat the hearing as a case management conference unless it is not possible to deal with the matter justly at that time.
- (2) If it is not possible to deal with the matter justly at that time the court office must fix a date, time and place for a case management conference.
- (Part 26 deals with the powers of the court on a case management conference; Part 27 deals with the procedure for case management conferences)

CASES

2016

HIGH COURT

Climate Control Limited v CG Construction Services Limited

CV 2015-03486 (2016.03.21)

PART 13 — DEFAULT JUDGMENT — SETTING ASIDE — NO REALISTIC PROSPECT OF SUCCESS

2015

HIGH COURT

Island Roofing and Hardware Solutions Limited v R Maye Hardware Limited

CV 2014-01875 (2015.12.01)

JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE — FAILURE TO ACT WHEN REASONABLY PRACTICABLE — REALISTIC PROSPECT OF SUCCESS

Roger Franco v Paul Precilla and Others

CV 2014-02934 (2015.09.15)

JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE — REALISTIC PROSPECT OF SUCCESS — DELAY — CPR REQUIREMENTS SATISFIED

(Also under Part 6)

2014

PRIVY COUNCIL/ COURT OF APPEAL

Neil R Seepersad and Another v Rasheed Ali of Ali's Poultry and Meat Supplies

Civ App No P316 of 2014 (2014.12.15)

Appeal allowed

CV 2013-01618 (2014.12.08)

RULE 13.3 — JUDGMENT IN DEFAULT OF DEFENCE — SETTING ASIDE — REQUIREMENTS NOT SATISFIED

Selwin Riley v Winston Cuffie

Civ App No S272 of 2014 (2014.11.17)

Appeal allowed

CV 2011-04837 (2014.11.07)

JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE — DELAY

(Also under Part 26)

Rampersad Maharaj and Another v Motor One Insurance

Civ App No S213 of 2014 (2014.10.20)

Appeal dismissed

CV 2013-3656 (2014.09.17)

RULE 13.3 — JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE — REQUIREMENTS SATISFIED

Building Concepts & Construction Limited v The Trinidad And Tobago Housing Development Corporation

Civ App No P166 of 2014 (2014.07.21)

Appeal dismissed

CV 2012-02508 (2014.07.01)

RULE 13.3 — JUDGMENT IN DEFAULT OF DEFENCE — SETTING ASIDE — REQUIREMENTS SATISFIED

The Caribbean New Media Group Limited v Ingrid Isaac

Civ App No S209 of 2013 (2014.04.17)

Appeal allowed

RULE 13.3 — DEFAULT JUDGMENT — SETTING ASIDE — SECOND LIMB OF TEST WIDE ENOUGH FOR RANGE OF CIRCUMSTANCES

De Zwarte Band v Reuben Kanhai and Another

Civ App Nos S285 and S286 of 2013 (2014.01.27)

Appeal allowed

CV 2012-02682, CV 2012-02684 (2013.12.05)

RULE 13.2 — JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE — IRREGULARITY IN SERVICE — PROOF OF IDENTIFICATION

(Also under Part 5)

HIGH COURT

First Citizens Bank Limited v Jennifer Daniels and Others

CV 2013-00136 (2014.11.07)

PART 13 — JUDGMENT IN DEFAULT OF DEFENCE — SETTING ASIDE — NO REALISTIC PROSPECT OF SUCCESS

Hamid Mohammed v Allan Bullock and Others

CV 2012-01932 (2014.02.14)

RULE 13.3 — JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE — DELAY

Andrew Singh v Garvin Hypolite and Another

CV 2006-01543 (2014.01.16)

RULE 13.2 — RULE 13.3 — JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE — DELAY

(Also under Part 22)

2013

PRIVY COUNCIL/ COURT OF APPEAL

Lyris Skinner and Another v Dynasty Holdings Limited

Civ App No P136 of 2012 (2013.12.05)

Appeal dismissed

CV 2010-00307 (2012.06.26)

RULE 13.3 — DEFAULT JUDGMENT — JUDGMENT NOT ENTERED BY REGISTRAR — REQUIREMENTS SATISFIED — JUDGMENT WOULD BE LIABLE TO BE SET ASIDE

Anthony Ramkissoon v Mohanlal Bhagwansingh

Civ App No S163 of 2013 (2013.07.19)

RULE 13.3(1)(a) — JUDGMENT IN DEFAULT OF DEFENCE — SETTING ASIDE — REQUIREMENTS NOT SATISFIED — APPEAL DISMISSED

HIGH COURT

Design Collaborative Associates Limited and Another v Urban Development Corporation of Trinidad and Tobago Limited

CV 2012-02501 (2013.01.17)

RULE 13.3 — JUDGMENT IN DEFAULT OF DEFENCE — SETTING ASIDE — DELAY

2012

PRIVY COUNCIL/ COURT OF APPEAL

Rukhmin Balgobin v South West Regional Health Authority

[2012] UKPC 11 (2012.05.10)

Appeal allowed

PART 13 — DEFAULT JUDGMENT — PROCEDURAL BAR AGAINST OTHER DEFENDANTS

Judy Bobb v Leslie Amedee and Others

Civ App No T254 of 2012 (2012.12.10)

Appeal dismissed

CV 2011-03617 (2012.11.22)

RULE 13.3 — JUDGMENT — DEFAULT OF APPEARANCE — DEFAULT OF DEFENCE — SETTING ASIDE — REQUIREMENTS SATISFIED

Roopnarine's Linen Closet and Interior Accents Limited v John Horsham

Civ App No P118 of 2012 (2012.11.06)

Appeal allowed

CV 2011-03821 (2012.05.16)

RULE 13.3 — DEFAULT JUDGMENT — SETTING ASIDE — REQUIREMENTS NOT SATISFIED

Delora Buckraadee v Winston B Naidoo and Another

Civ App No P218 of 2012 (2012.10.29)

Appeal allowed

CV 2011-00962 (2012.09.27)

RULE 13.3 — DEFAULT JUDGMENT — SETTING ASIDE — REQUIREMENTS SATISFIED

Candy Sampson and Another v Curt Semper

Civ App No S037 of 2012 (2012.05.03)

Appeal dismissed

CV 2010-4557 (2012.02.17)

RULE 13.3 — DEFAULT JUDGMENT — SETTING ASIDE — NO REALISTIC PROSPECT OF SUCCESS

Southern Sales and Service Company Limited v Lydia S Bickram

Civ App No S020 of 2012 (2012.02.13)

Appeal allowed

CV 2009-04568 (2012.01.18)

RULE 13.3 — DEFAULT JUDGMENT — SETTING ASIDE — IRREGULAR SERVICE

HIGH COURT

Trevor Benjamin v Sumintra Ramsaroop and Another

CV 2008-04004 (2012.06.29)

PART 13 — DEFAULT JUDGMENT — SETTING ASIDE — DELAY

Francis Vincent v Merlene Vincent and Another

CV 2008-01217 (2012.05.24)

RULE 13.3 — DEFAULT JUDGMENT — SETTING ASIDE — DELAY

2011

PRIVY COUNCIL/ COURT OF APPEAL

The Attorney General v Keron Matthews

[2011] UKPC 38 (2011.10.20)

Appeal allowed

DEFAULT JUDGMENT — SETTING ASIDE — NO IMPLIED SANCTIONS — PART 13 REQUIREMENTS SUFFICIENT — RULE 26.7 REQUIREMENTS NOT APPLICABLE

(Also under Parts 10 and 26)

The Attorney General v Universal Projects Limited

[2011] UKPC 37 (2011.10.20)

Appeal dismissed

**DEFAULT JUDGMENT — SETTING ASIDE — APPLICABILITY OF RULE 13.3 OR
RULE 26.7 REQUIREMENTS**

(Also under Part 26)

Rohini Khan v Neville Johnston

Civ App No S056 of 2011 (2011.04.18)

Appeal dismissed

CV 2009-02311 (2011.04.12)

**RULE 13.3 — JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE —
REQUIREMENTS SATISFIED**

Shawn Singh v The Attorney General of Trinidad and Tobago

Civ App No 265 of 2010 (2011.01.26)

Appeal dismissed with costs

CV 2009-2340 (2010.12.14)

**PART 13 — JUDGMENT IN DEFAULT OF DEFENCE — APPLICATION TO SET
ASIDE NOT A METHOD TO BYPASS PRIOR RULING**

2009

PRIVY COUNCIL/ COURT OF APPEAL

Joseph Alexander v Roslyn Baptiste and Others

Civ App No T099 of 2009 (2009.05.18)

Appeal allowed

CV 2008-04227 (2009.05.12)

**PART 13 — JUDGMENT IN DEFAULT OF DEFENCE — SETTING ASIDE —
REQUIREMENTS NOT SATISFIED**

(Also under Part 1)

2008

HIGH COURT

Knolly John v Brenda Mahabir and Others

CV 2005-00866 (2008.01.30)

RULE 13.3 — JUDGMENT IN DEFAULT OF APPEARANCE — SETTING ASIDE — REQUIREMENTS SATISFIED

(Also under Part 1)

2007

HIGH COURT

General Earthmovers Limited v Estate Management and Business Development Company

CV 2006-04052 (2007.11.06)

RULE 13.3 — DEFAULT JUDGMENT — SETTING ASIDE — REQUIREMENTS SATISFIED — RULE 13.5 — CONDITION IMPOSED

PART 14 JUDGMENT ON ADMISSIONS

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Admission by notice in writing—application for judgment	Rule 14.3
Action on receipt of admission in whole or in part of money claim	Rule 14.4
Admission of claim for specified amount of money	Rule 14.5
Admission of part of claim for money only	Rule 14.6
Admission of liability to pay the whole of a claim for an unspecified amount of money	Rule 14.7
Requests for time to pay	Rule 14.8
Requests for time to pay—procedure where time and rate agreed	Rule 14.9
Requests for time to pay—procedure where time and rate not agreed	Rule 14.10
Right of reconsideration	Rule 14.11
Variation of order	Rule 14.12

Making an admission

- 14.1** (1) A party may admit the truth of the whole or any part of any other party’s case.
- (2) He may do this by giving notice in writing (such as in a statement of case) before or after the issue of proceedings.
- (3) A defendant may admit the whole or part of a claim for money by entering an appearance containing the admission.
- (4) He may do this in accordance with the following rules—
- (a) rule 14.4 (admission of whole claim for specified sum of money);
 - (b) rule 14.5 (admission of part of a claim for a specified sum of money);
 - (c) rule 14.6 (admission of liability to pay whole of claim for unspecified amount of money); or
 - (d) rule 14.7 (admission of liability to pay claim for an unspecified amount of money where defendant offers a sum in satisfaction of the claim).

- (5) Upon the defendant paying to the claimant the specified sum claimed together with interest and the appropriate fixed costs, as shown on the claim form the claim is stayed.

(Part 67 Appendix A, Table 1 sets out the fixed costs)

Admissions by a minor or patient

14.2 The right to enter judgment on an admission is subject to rule 23.12.

(Rule 23.12 provides that where money is claimed by or on behalf of a minor or patient, no settlement, compromise or payment shall be valid, so far as it relates to that person's claim, without the approval of the court)

Admission by notice in writing—application for judgment

- 14.3** (1) Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.
- (2) The terms of the judgment shall be such as it appears to the court that the applicant is entitled to on the admission.
 - (3) An application to determine the terms of the judgment must be supported by evidence.

Action on receipt of admission in whole or in part of money claim

14.4 On receipt of an admission of the whole or part of a claim for money under rule 14.1(3) the court office must serve a copy of such admission on the claimant.

Admission of claim for specified amount of money

- 14.5** (1) This rule applies where—
- (a) the only remedy which the claimant is seeking is payment of a specified amount of money;
 - (b) the defendant admits the whole of the claim in his appearance or in his defence; and
 - (c) the defendant has not requested time to pay.
- (2) The claimant may file a request for judgment for the amount claimed, interest and for fixed costs and may specify—
- (a) the date on which the judgment debt is to be paid; or
 - (b) the time and rate at which it is to be paid if by instalments.
- (3) The court office must enter judgment in accordance with the request.

(Rule 12.6(3) sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as a claim for a specified sum; Part 67 deals with the quantification of costs)

Admission of part of claim for money only

- 14.6** (1) This rule applies where—
- (a) the only remedy which the claimant is seeking is payment of money; and
 - (b) the defendant admits a specified amount of money in his appearance or in his defence.
- (2) The court office must serve a notice on the claimant requiring him to file a notice stating whether—
- (a) he accepts the amount admitted in satisfaction of his claim; or
 - (b) he wishes the proceedings to continue.
- (3) The claimant must—
- (a) file the notice; and
 - (b) serve a copy on the defendant,
- within 14 days after the court’s notice is served on him.
- (4) If the claimant does not file the notice within 14 days after the court’s notice is served on him—
- (a) the claim is stayed; and
 - (b) any party may apply for the stay to be lifted.
- (5) If the defendant has not requested time to pay under rule 14.8, the claimant may file a request for judgment for the amount admitted, interest and fixed costs and may specify—
- (a) the date on which the judgment debt is to be paid; or
 - (b) the time and rate at which it is to be paid by instalments.
- (6) The court office must enter judgment in accordance with the request.
- (7) If the claimant files notice under paragraph (2) that he wishes the claim to continue the court office must fix a date, time and place for a case management conference.
- (Part 27 sets out the procedure relating to a case management conference; Part 67 deals with quantification of costs)

Admission of liability to pay the whole of a claim for an unspecified amount of money

- 14.7** (1) This rule applies where—
- (a) the only remedy the claimant seeks is the payment of money;
 - (b) the amount of the claim is not specified;
 - (c) the defendant admits liability in his appearance to pay the whole of the claim and does not —
 - (i) offer to pay a specified amount of money in satisfaction of the claim; or

- (ii) file a defence stating that he will dispute the amount of the claim; and
 - (d) the defendant has not requested time to pay under rule 14.8.
 - (2) The claimant may file a request for judgment.
 - (3) The court office must enter judgment in accordance with the request for an amount to be decided by the court and fixed costs.
- (Part 16 deals with how the court decides the amount of the judgment; Part 67 deals with the quantification of costs)

Requests for time to pay

- 14.8** (1) A defendant who makes an admission under rule 14.5, 14.6 or 14.7 may make a request for time to pay.
- (2) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the rate specified in the request.
 - (3) The defendant's request for time to pay must be filed with his admission.
 - (4) The defendant's request for time to pay must be accompanied by a statement of his financial position.
 - (5) The statement must be certified by the defendant as being correct and may be used as evidence of the defendant's financial position at the date it was signed in any subsequent proceedings with regard to enforcement of the judgment.

Requests for time to pay—procedure where time and rate agreed

- 14.9** (1) This rule applies where—
- (a) the only remedy which the claimant seeks is the payment of a sum of money and costs;
 - (b) the defendant—
 - (i) admits the whole of that claim or a specified sum; and
 - (ii) requests time to pay or makes an offer to pay by instalments; and
 - (c) the claimant states in his request for judgment on the admission that he accepts the defendant's offer as to the amount, time and rate of payment.
- (2) Where this rule applies, judgment on the admission shall be judgment for the specified sum of money admitted (less any payments made) and fixed costs at the agreed time and rate.

(Part 67 deals with the quantification of costs)

Requests for time to pay—procedure where time and rate not agreed

- 14.10** (1) This rule applies where the claimant claims a specified sum of money and the defendant—
- (a) admits the whole of that claim or a specified amount of money; and
 - (b) requests time to pay or makes an offer to pay by instalments; and
- the claimant indicates in his request for judgment on the admission that he does not accept the defendant's offer as to the time and rate of payment.
- (2) Where this rule applies, the claimant must state in his request for judgment his reasons for objecting to the defendant's proposals as to payment.
 - (3) If the claimant objects to payment by instalments, the court must consider the defendant's request and the claimant's objections and enter judgment for the amount of the claim, interest and fixed costs on such terms as it sees fit.
 - (4) The general rule is that the court should enter judgment under paragraph (3) without a hearing.
 - (5) If the court decides to deal with the matter at a hearing, it must give the parties at least 7 days' notice of the hearing.
- (Part 67 deals with quantification of costs)

Right of reconsideration

- 14.11** (1) Where the court has determined the time and rate of payment under rule 14.10 without a hearing, either party may apply for the decision to be reconsidered by the court at a hearing.
- (2) An application for reconsideration must be made within 14 days after service of the judgment on the applicant.
- (Part 11 deals with applications)
- (3) At the hearing the court may confirm the judgment or make such other order as to the time and rate of payments as it considers just.

Variation of order

- 14.12** (1) Either party may apply to vary an order made under this Part.
- (2) An application by a defendant must be in accordance with Part 48.

CASES

2016

HIGH COURT*Roberto Charles and Another v Shastri Prabhudial*

CV 2015-02739 (2016.03.02)

PART 14 — JUDGMENT ON ADMISSIONS — CLEAR ACCEPTANCE OF MATERIAL FACTS

2012**PRIVY COUNCIL/ COURT OF APPEAL***David Walcott v Graeme Suite and Another*

Civ App No P070 of 2012 (2012.04.16)

Appeal dismissed

CV 2011-01769 (2012.04.13)

RULE 14.1 — JUDGMENT ON ADMISSIONS — NO ADMISSION — CPR REQUIREMENTS NOT SATISFIED

PART 15 SUMMARY JUDGMENT

Contents of this Part

Scope of this Part	Rule 15.1
Grounds for summary judgment	Rule 15.2
Types of proceedings for which summary judgment is available	Rule 15.3
Procedure	Rule 15.4
Evidence for the purpose of a summary judgment hearing	Rule 15.5
Powers of the court on an application for summary judgment	Rule 15.6

Scope of this Part

15.1 This Part sets out a procedure by which the court may decide a claim or part of a claim without a trial.

Grounds for summary judgment

15.2 The court may give summary judgment on the whole or part of a claim or on a particular issue if it considers that—

- (a) on an application by the claimant, the defendant has no realistic prospect of success on his defence to the claim, part of claim or issue; or
- (b) on an application by the defendant, the claimant has no realistic prospect of success on the claim, part of claim or issue.

Types of proceedings for which summary judgment is available

15.3 The court may give summary judgment in any type of proceedings except—

- (a) proceedings for redress under section 14(1) of the Constitution;
- (b) proceedings for—
 - (i) judicial review;
 - (ii) false imprisonment;
 - (iii) malicious prosecution; and
 - (iv) defamation;
- (c) claims against the State;
- (d) admiralty proceedings *in rem*; and
- (e) probate proceedings.

Procedure

- 15.4** (1) Notice of an application for summary judgment must be served not less than 14 days before the date fixed for hearing the application.
- (2) The court may exercise its powers without such notice at any case management conference.

(Part 11 contains general rules about applications)

Evidence for the purpose of a summary judgment hearing

- 15.5** (1) The applicant must—
- (a) file evidence in support with his application; and
- (b) serve copies on the party against whom he seeks summary judgment.
- (2) If the respondent wishes to rely on evidence he must—
- (a) file the evidence; and
- (b) serve copies on the applicant and any other respondent to the application,
- at least 7 days before the summary judgment hearing.

Powers of the court on an application for summary judgment

- 15.6** (1) The court may give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end.
- (2) Where the proceedings are not brought to an end the court must also treat the hearing as a case management conference.
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CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Adrian D Ache v Rachael Cyrus

Civ App No 169 of 2016 (2016.07.18)

Appeal dismissed

CV 2015-02452 (2016.06.07)

SUMMARY JUDGMENT — REALISTIC PROSPECT OF SUCCESS — SUBSTANTIVE ISSUES TO BE DETERMINED AT TRIAL

(Also under Part 26)

Rainbow Court Townhouses Limited v Shirlanne Singh

Civ App P004 of 2016 (2016.05.09)

Appeal dismissed

SUMMARY JUDGMENT — BREACH OF COVENANT — UNSUBSTANTIATED DEFENCE — REALISTIC PROSPECT OF SUCCESS

HIGH COURT

Kamal Mohammed v De Lamarre Limited

CV 2014-03593 (2016.06.03)

RULE 15.3 — SUMMARY JUDGMENT ENTERED — DUTY TO ANSWER MATERIAL AVERMENTS IN STATEMENT OF CASE — BARE DENIAL — REASONABLE PROSPECT OF SUCCESS

2015

PRIVY COUNCIL/ COURT OF APPEAL

Copyright Music Organisation of Trinidad and Tobago v Columbus Communications Trinidad Limited Trading as “FLOW”

Civ App No 167 of 2011 (2015.12.11)

Appeal allowed

CV 2009-04722 (2011.06.14)

RULE 15.2 — RULE 15.6 — SUMMARY JUDGMENT — ADMISSION OF ALLEGATIONS — SUFFICIENCY OF DEFENCE — REALISTIC PROSPECT OF SUCCESS

(Also under Part 10)

APUA Funding Limited and Another v RBTT Trust Limited

Civ App No 94 of 2010 (2015.11.06)

Appeal dismissed

RULE 15.2 — PERFORMANCE BOND — ILLEGALITY — SUFFICIENCY OF DEFENCE — FRAUD — REALISTIC PROSPECT OF SUCCESS

Sombat Mekhawong v Hilton International Trinidad Limited

Civ App No P108 of 2015 (2015.07.06)

Appeal allowed

RULE 15.2(a) — RULE 15.3 — SUMMARY JUDGMENT — ISSUES OF FACT TO BE DETERMINED AT TRIAL

(Also under Parts 26 and 31)

Mervyn Assam v CLICO Investment Bank Limited and Others

Civ App No 49 of 2011 (2015.06.15)

Appeal dismissed

CV 2009-04584 (2011.01.31)

RULE 15.2(b) — SUMMARY JUDGMENT — ESTABLISHING CAUSE OF ACTION — REALISTIC PROSPECT OF SUCCESS

Irene Noriega and Others v Ross McLean

Civ App No P259 of 2015 (2015.03.14)

Appeal allowed

RULE 15.2(b) — SUMMARY JUDGMENT — INDEFEASIBILITY OF TITLE — FRAUD — SUFFICIENCY OF CLAIM — GROUNDS FOR FULLER INVESTIGATION

HIGH COURT***Kirk Ryan and Another v Kerron Alexis***

CV 2014-04725 (2015.09.21)

RULE 15.2(a) — SUMMARY JUDGMENT — POSSESSION — LOCUS STANDI — FRAUD — BARE ASSERTIONS — REALISTIC PROSPECT OF SUCCESS

Mercury Marketing Limited v VB Enterprises Limited

CV 2014-02694 (2015.03.20)

RULE 15.2 — SUMMARY JUDGMENT — SUFFICIENCY OF DEFENCE — FULL TRIAL — PROPORTIONALITY — REALISTIC PROSPECT OF SUCCESS

Parks International Limited v Juliana Webster

CV 2010-01619 (2015.03.19)

RULE 15.2(a) — REASONABLE GROUNDS FOR DEFENDING CLAIM — CONFLICT OF FACTS — REALISTIC PROSPECT OF SUCCESS

Clyde Moses v Ronald Charles and Another

CV 2011-02341 (2015.03.09)

RULE 15.2 — CONSIDERATION OF PRINCIPLES — ARGUABILITY OF DEFENCE — ISSUE TO BE DETERMINED AT TRIAL — REALISTIC PROSPECT OF SUCCESS

Lyris Blanchfield v Nichola Blanchfield

CV 2013-04792, CV 2014-00745 (2015.02.19)

SUMMARY JUDGMENT — CONSIDERATION OF PRINCIPLES — SUFFICIENCY OF DEFENCE — BARE DENIAL — REALISTIC PROSPECT OF SUCCESS

(Also under Parts 10 and 38)

2014

PRIVY COUNCIL/ COURT OF APPEAL

Giselle Marfleet and Others v The University of Trinidad and Tobago

Civ App No P104 of 2014 (2014.06.09)

Appeal dismissed

CV 2013-00212 (2014.04.11)

RULE 15.2(b) — SUMMARY JUDGMENT — ARGUABLE CLAIM — APPROPRIATENESS OF FURTHER INVESTIGATION — REALISTIC PROSPECT OF SUCCESS

(Also under Parts 1)

Millenium Park Limited v Fareed Mohammed

Civ App No S249 of 2013 (2014.01.27)

Appeal dismissed

CV 2012-3567 (2013.10.30)

RULE 15.2 — SUFFICIENCY OF DEFENCE — CONSIDERATION OF EVIDENCE — REALISTIC PROSPECT OF SUCCESS

(Also under Part 26)

HIGH COURT

Yvonne R Maricheau v Maureen Bharat Pereira and Another

CV 2013–01568 (2014.09.29)

SUMMARY JUDGMENT — GROUNDS FOR DEFENDING CLAIM — APPROPRIATENESS OF FURTHER INVESTIGATION

(Also under Part 26)

Angela Attong v Dianne Hunt

CV 2013–00505 (2014.02.27)

RULE 15.2(a) — SUMMARY JUDGMENT — PAYMENT OF COMMISSION — REALISTIC PROSPECT OF SUCCESS — APPROPRIATENESS OF FURTHER INVESTIGATION

(Also under Part 26)

Yunus Meighoo v Ashram Persad and Others

CV 2013–01963 (2014.02.17)

RULE 15.2 — SUMMARY JUDGMENT — PIERCING CORPORATE VEIL — DETERMINATION OF IMPORTANT ISSUES — REQUIREMENT FOR EVIDENCE

2013

PRIVY COUNCIL/ COURT OF APPEAL

The Tobago House of Assembly v Mentor Melville and Others

Civ App No 254 of 2013

Appeal pending

CV 2011–04125 (2013.10.09)

RULE 15.2 — SUMMARY JUDGMENT — CONSIDERATION OF PRINCIPLES — SUFFICIENCY OF DEFENCE — REALISTIC PROSPECT OF SUCCESS

HIGH COURT

Wayne Yip Choy v Angostura Holdings Limited

CV 2011-03884 (2013.09.20)

**PART 15.2 — SUMMARY JUDGMENT — REALISTIC PROSPECT OF SUCCESS —
CONSIDERATION OF PRINCIPLES**

2012

PRIVY COUNCIL/ COURT OF APPEAL

Maritime General Insurance Company Limited v International Oil Pollution Compensation Fund

Civ App No 56 of 2008 (2012.07.23)

Appeal allowed

**SETTING ASIDE — SUMMARY JUDGMENT — ENFORCEMENT OF FOREIGN
JUDGMENTS — PUBLIC POLICY**

HIGH COURT

Bernard Hosam and Another v Damian Hosam

CV 2011-04355 (2012.06.29)

**RULE 15.2(a) — SUMMARY JUDGMENT — TIME OF APPLICATION — DEFENCE
NOT FILED — REQUIREMENT FOR ORAL TESTIMONY**

Zanim R M John v Courtney Allsop and Others

CV 2010-04559 (2012.06.15)

**RULE 15.2(a) — SUMMARY JUDGMENT — INDEFEASIBILITY OF TITLE —
SUFFICIENCY OF DEFENCE OF FRAUD — ARGUABILITY OF ADVERSE
POSSESSION — REALISTIC PROSPECT OF SUCCESS**

PART 16 ASSESSMENT OF DAMAGES

Contents of this Part

Scope of this Part	Rule 16.1
Assessment of damages after default judgment	Rule 16.2
Assessment of damages after admission of liability on claim for an unspecified sum of money	Rule 16.3
Assessment of damages after direction for trial of issue of quantum	Rule 16.4

Scope of this Part

16.1 This Part deals with the way in which the court decides the amount of any damages under a judgment for damages to be assessed.

Assessment of damages after default judgment

16.2 (1) On applying for a default judgment to be entered under rule 12.7(1)(c), the claimant must state in writing—

- (a) whether he is in a position to prove the amount of the damages; and, if so
- (b) his estimate of the time required to deal with the assessment; or
- (c) if he is not yet in a position to prove the amount of the damages, the period of time that will elapse before he is able to do so.

(2) Unless the claimant states that he is not in a position to prove the amount of damages, the court office shall— LN 126 of 2011

- (a) fix a date for the assessment of damages; and
- (b) give the parties at least 28 days notice of the date, time and place fixed for the hearing.

(3) If the claimant is not in a position to prove the amount of damages, the court office shall— LN 126 of 2011

- (a) fix a period within which the assessment of damages will take place;
- (b) fix a date by which a listing questionnaire shall be sent to the claimant; and
- (c) give the parties at least 28 days notice of the date, time and place fixed for the hearing.

(Rules 27.10 and 27.11 deal with the fixing of a date for trial)

(4) Where a defendant against whom a default judgment is entered wishes to be heard on the issue of quantum and he has not so indicated under rule 10.2(2), he shall within 14 days of receipt of notice under rules 16.2(2) or (3), file and serve a Notice in Form 7A indicating whether he wishes to— LN 126 of 2011

- (a) cross-examine any witness called on behalf of the claimant;
- (b) make submissions to the court; or
- (c) call any evidence, in which case he shall file with the Notice a statement of facts upon which he intends to rely.

Assessment of damages after admission of liability on claim for an unspecified sum of money

16.3 (1) On applying for judgment to be entered for damages to be assessed on an admission under Part 14, the claimant must state in writing—

- (a) whether he is in a position to prove the amount of the damages; and, if so
- (b) his estimate of the time required to deal with the assessment; or
- (c) if he is not yet in a position to prove the amount of the damages, the period of time that would elapse before he is able to do so.

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of 2011

(2) Unless the claimant states that he is not in a position to prove the amount of damages, the court office shall—

- (a) fix a date for the assessment of damages; and
- (b) give the parties at least 28 days notice of the date, time and place fixed for the hearing.

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of 2011

(3) If the claimant is not in a position to prove the amount of damages, the court office shall—

- (a) fix a period within which the assessment of damages will take place;
- (b) fix a date by which a listing questionnaire shall be sent to the claimant; and
- (c) give the parties at least 28 days notice of the date, time and place fixed for the hearing.

(Rules 27.10 and 27.11 deal with the fixing of a date for trial)

(4) The 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 he has filed a defence setting out the facts he seeks to prove.

Assessment of damages after direction for trial of issue of quantum

16.4 (1) This rule applies where the court makes a direction as to the trial of an issue of quantum.

(2) The direction may be given at—

- (a) a case management conference;
- (b) the hearing of an application for summary judgment; or
- (c) the trial of the claim or of an issue, including the issue of liability.

- (3) On making such a direction the court must exercise the powers of a case management conference and must in particular give directions about —
 - (a) disclosure;
 - (b) service of witness statements; and
 - (c) service of expert reports.
- (4) The court must also—
 - (a) fix a date on which the court office is to send a listing questionnaire to the parties; and
 - (b) fix a period within which the assessment of damages must commence.

(Rules 27.10 and 27.11 deal with the fixing of a date for trial)

FORMER RULE

1. The **current** rule 16.2 was brought about by the deletion and substitution of sub-rules (2) and (3) and the insertion of sub-rule (4) by rule 8 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, sub-rules (2) and (3) read as follows:

- (2) Unless the claimant states that he is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and give the claimant at least 14 days notice of the date, time and place fixed for the hearing.
- (3) If the claimant is not in a position to prove damages the court office must fix a period within which the assessment of damages will take place and a date on which a listing questionnaire shall be sent to the claimant.

(Rules 27.10 and 27.11 deal with the fixing of a date for a trial)

2. The **current** rule 16.3 was brought about by the deletion and substitution of sub-rules (2) and (3) by rule 9 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, sub-rules (2) and (3) read as follows:

- (2) Unless the claimant states that he is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and give the claimant at least 14 days notice of the date, time and place fixed for the hearing.
- (3) If the claimant is not in a position to prove damages, the court office shall fix a period within which the assessment of damages will take place and a date on which a listing questionnaire is to be sent to the parties.

(Rules 27.10 and 27.11 deal with the fixing of a date for a trial)

CASES

2011

PRIVY COUNCIL/ COURT OF APPEAL

Sunil Chankersingh and Another v Crystal Morton Gittens

Civ App S010 of 2011 (2011.06.01)

Appeal allowed in part

**RULE 16.4 — ASSESSMENT OF DAMAGES — QUANTUM OF DAMAGES —
SEPARATION OF ISSUES OF LIABILITY AND QUANTUM**

(Also under Part 27)

PART 17 INTERIM REMEDIES

Contents of this Part

Orders for interim remedies	Rule 17.1
Time when an order for an interim remedy may be made	Rule 17.2
How to apply for an interim remedy	Rule 17.3
Interim payments—general procedure	Rule 17.4
Interim payments—conditions to be satisfied and matters to be taken into account	Rule 17.5
Powers of court where it has made an order for interim payment	Rule 17.6
Power of court to order early trial, etc.	Rule 17.7

Orders for interim remedies

- 17.1 (1) The court may grant interim remedies including—
- (a) an interim injunction;
 - (b) an interim declaration;
 - (c) an order—
 - (i) for the detention, custody or preservation of relevant property;
 - (ii) for the inspection of relevant property;
 - (iii) for the taking of a sample of relevant property;
 - (iv) for the carrying out of an experiment on or with relevant property;
 - (v) for the sale of relevant property (including land) which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
 - (vi) for the payment of income from a relevant property until a claim is decided;
 - (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);
 - (e) an order to deliver up goods;
 - (f) an order (referred to as a “freezing injunction”)—
 - (i) restraining a party from removing from the jurisdiction assets located there; or
 - (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;

- (g) an order (referred to as a “search order”) requiring a party to admit another party to premises for the purpose of preserving evidence, etc.;
 - (h) an order (referred to as an order for interim payment) under rule 17.5 for 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 money into court pending the outcome of the proceedings and directing that, if he does so, the property shall 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 a party to provide information about the location of relevant property or to provide information about assets which are or may be the subject of an application for a freezing injunction.
- (2) In paragraph (1)(c) and (m), “relevant property” means property which is the subject of a claim or as to which any question may arise on a claim.
 - (3) The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.
 - (4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

Time when an order for an interim remedy may be made

- 17.2** (1) An order for an interim remedy may be made at any time, including—
- (a) before a claim has been made; and
 - (b) after judgment has been given.
- (2) However—
- (a) paragraph (1) is subject to any rule which provides otherwise;
 - (b) the court may grant an interim remedy before a claim has been made only if—
 - (i) the matter is urgent; or
 - (ii) it is otherwise necessary to do so in the interests of justice; and
 - (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before he has entered an appearance under Part 9.
- (3) Where the court grants an interim remedy before a claim has been commenced, it must require an undertaking to issue a claim.

How to apply for an interim remedy

- 17.3** (1) The court may grant an interim remedy on an application made without notice if it appears to the court that there is good reason for not giving notice.
- (2) An application for an interim remedy must be supported by evidence.
- (3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reason or reasons why notice was not given.
- (4) If no claim has been issued the application must be made in accordance with the general rules about applications contained in Part 11.

Interim payments—general procedure

- 17.4** (1) The claimant may not apply for an order for an interim payment before the end of the period for entering an appearance applicable to the defendant against whom the application is made.
- (Rule 9.3 sets out the period for entering an appearance)
- (2) The claimant may make more than one application for an order for an interim payment even though an earlier application has been refused.
- (3) Notice of an application for an order must—
- (a) be served at least 14 days before the hearing of the application; and
- (b) be supported by evidence.
- (4) The evidence must—
- (a) state the claimant’s assessment of the amount of damages or other monetary judgment that is likely to be awarded;
- (b) set out the grounds of the application;
- (c) exhibit any documentary evidence relied on by the claimant in support of the application; and
- (d) if the claim is made under the Compensation for Injuries Act (Chap. 8:05) in respect of injury resulting in death, contain full particulars of the person or persons for whom and on whose behalf the action is brought and the nature of the claim in respect of which the damages are sought to be recovered.
- (5) If the respondent to an application for an interim payment wishes to rely on evidence or the claimant wishes to rely on evidence in reply, that party must—
- (a) file the evidence; and
- (b) serve copies on every other party to the application, at least 7 days before the hearing of the application.
- (6) The court may order an interim payment to be made in one sum or by instalments.

Interim payments—conditions to be satisfied and matters to be taken into account

- 17.5 (1) The court may make an order for an interim payment only if—
- (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
 - (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 or for a sum of money (including costs) to be assessed;
 - (d) except where paragraph (3) applies, 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; or
 - (e) the following conditions are satisfied—
 - (i) the claimant is seeking an order for possession of land (whether or not any other order is also being sought); and
 - (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) 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.
- (2) In addition, in a claim for personal injuries the court may make an order for the interim payment of damages only if the defendant—
- (a) is insured in respect of the claim;
 - (b) is a public authority; or
 - (c) is a person whose means and resources are such as to enable him to make the interim payment.
- (3) In a claim for damages for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if—
- (a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and
 - (b) paragraph (2) is satisfied in relation to each of the defendants.
- (4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.
- (5) The court must take into account—
- (a) contributory negligence; and
 - (b) any relevant set-off or counterclaim.

Powers of court where it has made order for interim payment

- 17.6** (1) Where a defendant has been ordered to make an interim payment, or has in fact voluntarily made an interim payment, the court may make an order to adjust the interim payment.
- (2) The court may in particular—
- (a) order all or part of the interim payment to be repaid;
 - (b) vary or discharge the order for interim payment; or
 - (c) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment.
- (3) The court may make an order under paragraph (2)(c) only if—
- (a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution, indemnity, or other remedy; and
 - (b) where the claim or the part to which the interim payment relates has been discontinued or disposed of, the circumstances are such that the court could make an order for interim payment under rule 17.5.
- (4) The court may make an order under this rule—
- (a) without an application by a party if it makes the order when it disposes of the claim or any part of it; or
 - (b) on an application by a party made at any time.

Power of court to order early trial, etc.

- 17.7** On hearing any application under this Part, the court may exercise any of its case management powers under Parts 26 and 27 and may in particular give directions for an early trial of the claim or any part of the claim.

CASES

2015

HIGH COURT*Cristal Roberts and Another v Dr Samantha Bhagan*

CV 2010-01117 (2015.03.05)

RULE 17.4 — RULE 17.5 — RULE 17.6 — INTERIM PAYMENTS — PERSONAL INJURIES — ADMISSION OF LIABILITY — RESOURCES OF PARTIES — SUBSTANTIAL DAMAGES RECOVERABLE — SEVERAL LIABILITY

(Also under Parts 23 and 36)

2013**PRIVY COUNCIL/ COURT OF APPEAL***Myron Rudder v Barbara Kanhai*

Civ App No 22 of 2013

Appeal pending

CV 2012-05128 (2013.01.21)

RULE 17.1(1)(f) — GOOD ARGUABLE CASE — THRESHOLD TEST — FREEZING INJUNCTION

2012**PRIVY COUNCIL/ COURT OF APPEAL***Caryn Sobers v Pricemart Trinidad Limited and Another*

Civ App No 55 of 2012 (2012.03.26)

Appeal allowed

CV 2011-02972 (2012.03.22)

RULE 17.4 — RULE 17.5 — INTERIM PAYMENT — SUBSTANTIAL AMOUNT RECOVERABLE — BOUND TO SUCCEED AT TRIAL

PART 18 COUNTERCLAIMS, ANCILLARY CLAIMS AND OTHER SIMILAR CLAIMS

Contents of this Part

Meaning of “ancillary claim”	Rule 18.1
Ancillary claim to be treated as claim for the purposes of the Rules	Rule 18.2
Defendant’s claim for contribution or indemnity from co-defendant	Rule 18.3
Procedure for making ancillary claim other than counterclaim	Rule 18.4
Making a counterclaim	Rule 18.5
Counterclaim may survive claim	Rule 18.6
Restrictions on right to make counterclaim or set-off in proceedings by or against the State	Rule 18.7
Adding other defendants to counterclaim	Rule 18.8
Defence to ancillary claim	Rule 18.9
Matters relevant to the question whether an ancillary claim should be dealt with separately from the main claim	Rule 18.10
Effect of service of ancillary claim form	Rule 18.11
Special provisions relating to judgment on failure to file defence to ancillary claim	Rule 18.12
Procedural steps on service of ancillary claim form on non-party	Rule 18.13
Case management where there is defence to ancillary claim	Rule 18.14

Meaning of “ancillary claim”

- 18.1** (1) An “ancillary claim” is any claim other than a claim by a claimant against a defendant or a claim by a defendant to be entitled to a set off and includes—
- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
 - (b) a claim by the defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
 - (c) where an ancillary claim has been made against a person, any claim made by that person against any other person (whether or not already a party).

- (2) In this Part—
“ancillary claimant” means a person who makes an ancillary claim; and
“ancillary defendant” means the defendant to that claim.
- (3) Where an ancillary defendant makes an ancillary claim against a further person that person is to be called the “second (or as the case may be) ancillary defendant”.
- (4) No ancillary claim may be made in proceedings by or against the State unless the court gives permission.
- (5) The court may not give permission under paragraph (4) for the issue of an ancillary claim against the State unless it is satisfied that the State is in possession of all such information as it reasonably requires—
 - (a) about the claim made against it; and
 - (b) as to the departments and officers of State concerned.

Ancillary claim to be treated as claim for the purposes of the Rules

- 18.2** (1) An ancillary claim is to be treated as if it were a claim for the purposes of these Rules except as provided by this rule.
- (2) The following rules do not apply to ancillary claims—
 - (a) rules 8.13 and 8.14 (time within which a claim may be served);
 - (b) those provisions in Part 12 which enable a claimant to enter default judgment; and
 - (c) rule 12.7 (nature of default judgment).

Defendant’s claim for contribution or indemnity from co-defendant

- 18.3** (1) A defendant who has filed a defence may make an ancillary claim for contribution or indemnity against another defendant by—
 - (a) issuing a notice containing a statement of the nature and grounds of his claim; and
 - (b) serving that notice on the other defendants.
- (2) Rule 18.4 does not apply to an ancillary claim under this rule.

Procedure for making ancillary claim other than counterclaim

- 18.4** (1) A defendant may make an ancillary claim without the court’s permission, if the ancillary claim is issued before the date of the first case management conference.
- (2) Where paragraph (1) does not apply an ancillary claim may be made only if the court gives permission.
 - (3) An application for permission to make an ancillary claim may be made without notice unless the court directs otherwise.
- (Part 11 deals with applications to the court)

- (4) The court may give permission at a case management conference.
- (5) The court must not give permission after the first case management conference to any person who was a party at the time of the case management conference unless satisfied that there has been a significant change in circumstances which became known after the case management conference.
- (6) This rule does not apply to a counterclaim.

Making a counterclaim

- 18.5** (1) A defendant who alleges that he has a claim or is entitled to a remedy against the claimant may file and serve a counterclaim, as well as filing and serving a defence.
- (2) There need be no connection between the claim and a counterclaim.
 - (3) The defendant may make a counterclaim—
 - (a) without the court’s permission if he files and serves it at the same time as the defence; or
 - (b) with the court’s permission at any other time.
 - (4) The court may give the defendant such permission at a case management conference.
 - (5) The court shall not give the defendant such permission after the first case management conference, unless it is satisfied that— LN 126 of 2011
 - (a) there is a good explanation for the counter-claim not having been made prior to that case management conference; and
 - (b) the application to make the counter-claim was made promptly.
 - (5A) In considering whether to give permission, the court shall have regard to— LN 126 of 2011
 - (a) the interests of the administration of justice;
 - (b) whether there has been a significant change in the circumstances which became known after the first case management conference;
 - (c) whether the failure to file the counter-claim arose because of a failure of the party or his attorney;
 - (d) whether the trial date or any likely trial date can still be met if permission is given; and
 - (e) whether any prejudice may be caused to the parties if permission is given or refused.
 - (6) All rules which apply to claims apply also to counterclaims except—
 - (a) rules 8.13 and 8.14 (time within which claim may be served);
 - (b) Part 9 (appearance);

- (c) those provisions in Part 12 which enable a claimant to enter judgment for failure to file a defence; and
- (d) rule 12.7 (nature of default judgment).

Counterclaim may survive claim

18.6 The defendant may continue a counterclaim even if—

- (a) the court gives judgment on the claim for the claimant and does not dismiss the counterclaim; or
- (b) the claim is stayed, discontinued or dismissed.

Restrictions on right to make counterclaim or set-off in proceedings by or against the State

18.7 (1) No counterclaim may be made or set-off pleaded in proceedings by the State if—

- (a) the proceedings are for the recovery of; or
- (b) the counterclaim or set-off arises out of, right or claim to repayment in respect of any taxes, duties or penalties.

(2) No counterclaim may be made or set-off pleaded in any other proceedings by or against the State without the permission of the court.

Adding other defendants to counterclaim

18.8 (1) If the defendant to the claim says that someone else is liable on the counterclaim as well as the claimant, he may add that other person as a defendant to the counterclaim.

(2) If a person so added is not already a party, the defendant must add the person's name to the title of the claim as "defendant to the counterclaim".

(Rule 18.13 deals with the documents to be served on a defendant who is not already a party)

Defence to ancillary claim

18.9 (1) A person against whom an ancillary claim is made may file a defence.

(2) The period for filing a defence is the period of 28 days after the date of service of the ancillary claim.

(3) The rules relating to a defence to a claim apply to a defence to an ancillary claim except Part 12 (Judgment for failure to respond).

Matters relevant to the question whether an ancillary claim should be dealt with separately from the main claim

- 18.10** (1) This rule applies when the court is considering whether to—
- (a) permit an ancillary claim to be made;
 - (b) dismiss an ancillary claim; or
 - (c) require the ancillary claim to be dealt with separately from the claim.
- (Rules 26.1(g) and (h) deal with the court’s power to decide the order in which issues are to be tried or to order that part of the proceedings be dealt with separately).
- (2) The court must have regard to all the circumstances of the case including—
- (a) the connection between the ancillary claim and the claim;
 - (b) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from him;
 - (c) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim; and
 - (d) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings—
 - (i) not only between the existing parties but also between existing parties and the proposed ancillary claim defendant; or
 - (ii) to which he is already a party but also in some further capacity.

Effect of service of ancillary claim form

- 18.11** (1) A person on whom an ancillary claim form is served becomes a party to the proceedings if he is not already a party.
- (2) When an ancillary claim form is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the notice.

Special provisions relating to judgment on failure to file defence to ancillary claim

- 18.12** (1) This rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time.
- (Rule 18.9 (2) deals with the time for filing a defence to an ancillary claim)
- (2) The party against whom the ancillary claim is made—
- (a) is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim; and

- (b) subject to paragraph (4) if judgment under Part 12 is given against the ancillary claimant, he may enter judgment in respect of the ancillary claim.
- (3) However, paragraph (2) does not apply in ancillary proceedings against the State unless the court gives permission.
- (4) An ancillary claimant may not enter judgment under paragraph (2)(b) if he wishes to obtain judgment for any remedy other than a contribution or indemnity for a sum not exceeding that for which judgment has been entered against him.
- (5) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.
- (6) The court may at any time set aside or vary a judgment entered under paragraph (2) if it is satisfied that—
- (i) the ancillary defendant applied to set aside or vary the judgment promptly; and
 - (ii) the ancillary defendant has a defence to the ancillary claim which has a realistic chance of success.

Procedural steps on service of ancillary claim form on non-party

18.13 Where an ancillary claim form is served on a person who is not already a party—

- (a) a copy of—
- (i) every statement of case which has already been served in the proceedings; and
 - (ii) such other documents as the court directs, must also be served.
- (b) a copy of the ancillary claim form must be served by the ancillary claimant on every existing party.

Case management where there is defence to ancillary claim

- 18.14** (1) Where a defence is filed to an ancillary claim the court must consider the future conduct of the proceedings and give appropriate directions.
- (2) The court must fix a case management conference for all parties unless it is satisfied that such further directions as are required can be given in written form.
- (3) In giving directions under this rule the court must ensure that, so far as is practicable, the ancillary claim and the main claim are managed together.

FORMER RULE

The **current** rule 18.5 was brought about by the deletion and substitution of sub-rule (5) and the insertion of sub-rule (5A) by rule 10 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, sub-rule (5) read as follows:

- (5) The court may not give the defendant such permission after a case management conference unless the defendant can show that there has been a significant change in circumstances which became known after the case management conference.
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CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL*Satnarine Maharaj v The Great Northern Insurance Company Limited and Another*

Civ App No P198 of 2015 (2016.02.16)

Appeal allowed

**RULE 18.1 — RULE 18.2 — RULE 18.12 — FAILURE TO FILE DEFENCE —
WHETHER AMOUNTING TO ADMISSION**

2014

PRIVY COUNCIL/ COURT OF APPEAL*Gulf View Medical Centre and Another v Karen Tesheira and Another*

Civ App No P187 of 2013 (2014.07.31)

Appeal dismissed

**RULE 18.4(5) — SIGNIFICANT CHANGE IN CIRCUMSTANCES — WHETHER
CHANGE KNOWN AFTER FIRST CMC**

HIGH COURT*Allana K A La Borde v Anthony Crawford and Another*

CV 2013-01542 (2014.05.01)

Lester Mundie v Anthony Crawford and Another

CV 2013-00754 (2014.05.01)

Daniel Spencer v Anthony Crawford and Others

CV2013-01804 (2014.05.01)

**RULE 18.12(6) — ANCILLARY CLAIM — SETTING ASIDE — PROMPTITUDE —
SUFFICIENCY OF DEFENCE — REALISTIC CHANCE OF SUCCESS**

2012

HIGH COURT

VITCO TT Ltd v Motilal Ramhit and Sons Constructing Company

CV 2011-03758 (2012.07.31)

**RULE 18.12(2)(a) — DEFAULT JUDGMENT — FAILURE TO FILE DEFENCE —
PROCEDURAL DEFECT — REPLY AMOUNTING TO DEFENCE**

(Also under Part 1)

Peter Serrette and Others v Vidya S Sinanan and Another

CV 2007-00706, CV 2007-00707, CV 2007-00709, CV 2007-00710, CV 2007-
00711, CV 2007-01862 (2012.06.11)

**RULE 18.12(2) — ANCILLARY CLAIM — DEFAULT OF DEFENCE — IMPLIED
ADMISSION**

Hazel De Barry v James Mookram

CV 2011-02116 (2012.02.16)

**RULE 18.5(3) — DEFENCE AND COUNTERCLAIM TO BE FILED AT SAME TIME —
COUNTERCLAIM FILED AT TIME OF AMENDED DEFENCE — REQUIREMENTS
SATISFIED**

2011

HIGH COURT

Idorine George v Cynthia Taylor

CV 2008-00924 (2011.07.14)

**RULE 18.4 — APPLICATION TO JOIN ANCILLARY DEFENDANT — SIGNIFICANT
CHANGE IN CIRCUMSTANCES — KNOWLEDGE AT THE TIME OF FIRST CMC**



PART 19 ADDITION AND SUBSTITUTION OF PARTIES

Contents of this Part

Scope of this Part	Rule 19.1
Change of parties—general	Rule 19.2
Claim not to fail by adding or failing to add parties	Rule 19.3
Provisions applicable where two or more persons are jointly entitled to a remedy	Rule 19.4
Procedure for adding and substituting parties	Rule 19.5

Scope of this Part

19.1 This Part deals with the addition or substitution of parties after proceedings have been commenced.

Change of parties—general

- 19.2** (1) This rule applies where a party is to be added or substituted.
- (2) A party may add a new party to proceedings without permission at any time before a case management conference.
- (3) The court may add a new party to proceedings if—
- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
 - (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.
- (4) The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.
- (5) The court may order a new party to be substituted for an existing one if—
- (a) the existing party’s interest or liability has passed to the new party; and
 - (b) the court can resolve the matters in dispute more effectively by substituting the new party for the existing party.
- (6) The court may add or substitute a party at a case management conference.

- (7) The court may not add a party after a case management conference on the application of an existing party unless that party can satisfy the court that the addition is necessary because of some change in circumstances which became known after the case management conference.

Claim not to fail by adding or failing to add parties

19.3 The general rule is that a claim shall not fail because—

- (a) a person was added as a party to the proceedings who should not have been added; or
- (b) a person who should have been made a party was not made a party to them.

Provisions applicable where two or more persons are jointly entitled to a remedy

19.4 However—

- (a) 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 proceedings, unless the court orders otherwise.
- (b) If any person does not agree to be a claimant, he must be made a defendant, unless the court orders otherwise.

This rule does not apply in probate proceedings.

Procedure for adding and substituting parties

- 19.5** (1) The court may add, substitute or remove a party on or without an application.
- (2) An application for permission to add, substitute or remove a party may be made by—
- (a) an existing party; or
- (b) a person who wishes to become a party.
- (3) An application for an order under rule 19.2(5) (substitution of new party where existing party's interest or liability has passed) may be made without notice but must be supported by evidence.
- (4) Nobody may be added or substituted as a claimant unless—
- (a) he has given his consent in writing; and
- (b) that consent has been filed with the court office.
- (5) An order for the addition, substitution or removal of a party must be served on—
- (a) all parties to the proceedings;
- (b) any party added or substituted; and
- (c) any other person affected by the order.

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- (6) Where the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about—
 - (a) filing and serving the claim form and any statements of case on any new defendant;
 - (b) serving relevant documents on the new party; and
 - (c) the management of the proceedings.
 - (7) Where—
 - (a) the court makes an order for the addition or substitution of a new party; and
 - (b) the new party is a defendant and the claim form is served on him, these Rules apply to the new party as they apply to any other party.
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CASES

2015

PRIVY COUNCIL/ COURT OF APPEAL*Helix Energy Solutions Group Incorporated v Otis Ryan and Another*

Civ App No 157 of 2015 (2015.10.12)

Appeal allowed

RULE 19.2(3) — RULE 19.2(7) — JOINDER — LIMITATION OF ACTION — FIRST CMC — SIGNIFICANT CHANGE IN CIRCUMSTANCES

2014

HIGH COURT*De Verteuil Daniel and Others v Ruthven Daniel*

CV 2008–02860 (2014.04.08)

RULE 19.2(3) — ADDITION OF PARTY — DISCRETION — ISSUE DIRECTLY INVOLVING NEW PARTY

2011

PRIVY COUNCIL/ COURT OF APPEAL*Anthony Murray and Others v Dorothy Vierra and Another*

Civ App No 142 of 2011, Civ App No 143 of 2001 (2011.07.28)

Appeal dismissed

RULE 19.2 — RULE 19.3 — RULE 19.5 — JOINDER — LEGAL PERSONAL REPRESENTATIVE — DISCRETION — RESOLUTION OF MATTERS IN DISPUTE*Alan Dick and Company Limited v Fast Freight Forwarders Limited and Another*

Civ App No P214 of 2010 (2011.05.23)

Appeal dismissed

RULE 19.2(7) — NECESSITY OF JOINDER — CHANGE IN CIRCUMSTANCES

(Also under Parts 11 and 64)

HIGH COURT

Trinidad Society for the Prevention of Cruelty to Animals v Hubert Dolsingh and Another

CV 2009-02909 (2011.05.23)

**RULE 19.2 (3) — RULE 19.4 — RULE 19.5(4) — JOINDER — CONSENT OF
PROPOSED CLAIMANT — DISCRETION — RES JUDICATA**

PART 20 CHANGES TO STATEMENTS OF CASE

Contents of this Part

Changes to statements of case

Rule 20.1

Changes to statements of case

- 20.1** (1) A statement of case may be changed at any time prior to a case management conference without the court’s permission.
- (2) The court may give permission to change a statement of case at a case management conference.
- (3) The court shall not give permission to change a statement of case after the first case management conference, unless it is satisfied that—
- (a) there is a good explanation for the change not having been made prior to that case management conference; and
 - (b) the application to make the change was made promptly.
- (3A) In considering whether to give permission, the court shall have regard to—
- (a) the interests of the administration of justice;
 - (b) whether the change has become necessary because of a failure of the party or his attorney;
 - (c) whether the change is factually inconsistent with what is already certified to be the truth;
 - (d) whether the change is necessary because of some circumstance which became known after the date of the first case management conference;
 - (e) whether the trial date or any likely trial date can still be met if permission is given; and
 - (f) whether any prejudice may be caused to the parties if permission is given or refused.
- (4) A statement of case may not be changed without permission under this rule if the change is one to which rule 19.2 (change of parties) applies.
- (5) Any amended statement of case must be filed promptly at the court office.
- (6) Where a statement of case is amended, the amendments must be verified by a certificate of truth unless the court orders otherwise.

LN 126
of 2011

LN 126
of 2011

FORMER RULE

The **current** rule 20.1 was brought about by the deletion and substitution of sub-rule (3) and the insertion of sub-rule (3A) by rule 11 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, sub-rule (3) read as follows:

- (3) The court may not give permission to change a statement of case after the first case management conference unless the party wishing to change a statement of case can satisfy the court that the change is necessary because of some change in circumstances which became known after that case management conference.
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CASES

2017

PRIVY COUNCIL/ COURT OF APPEAL

SAISCON Limited v Estate Management and Business Development Company Limited

Civ App No 104 of 2016 (2017.04.26)

Appeal allowed

PART 20.1(2) — PART 20.1(3) — PERMISSION TO AMEND — COMMENCEMENT AND CONCLUSION OF FIRST CMC

(Also under Part 27)

2016

PRIVY COUNCIL/ COURT OF APPEAL

Louis A Monteil and Another v Central Bank of Trinidad and Tobago and Another

Civ App No P019 of 2015 (2016.05.27)

Appeal dismissed

CV 2011-02140 (2014.10.14)

RULE 20.1(3) — RULE 20.1(3A) — CONSIDERATION OF ALL FACTORS — SUBSTANTIAL CHANGE — APPLICATION DISMISSED

(Also under Parts 1, 26 and 35)

Chantal Riguard v Anthony Lambert

Civ App No 112 of 2016 (2016.07.04)

Appeal dismissed

CV 2015-01091 (2016.04.13)

RULE 20.1(1) — RULE 20.1(2) — RULE 20.1(3) — RULE 20.1(3A) —APPLICATION TO AMEND — FIRST CMC NOT CONCLUDED — PERMISSION REQUIRED- CONSIDERATION OF ALL FACTORS

(Also under Part 26)

HIGH COURT

The National Insurance Board of Trinidad and Tobago v The Trinidad and Tobago National Petroleum Company Limited

CV 2012-03949 (2016.04.20)

**RULE 20.1— RULE 20.2 — RULE 20.3 — PERMISSION TO AMEND DEFENCE —
WHETHER FIRST CMC CONCLUDED — CONSIDERATION OF ALL FACTORS**

(Also under Parts 1 and 27)

2015

PRIVY COUNCIL/ COURT OF APPEAL

Cristal Roberts and Another v Dr Samantha Bhagan and Another

Civ App No P263 of 2014 (2015.07.24)

Appeal dismissed

**RULE 20.1(3) — RULE 20.1(3A) — THRESHOLD REQUIREMENTS SATISFIED —
CONSIDERATION OF FACTORS — PERMISSION TO AMEND**

2014

PRIVY COUNCIL/ COURT OF APPEAL

Real Time Systems Limited v Renraw Investments Limited and Others

[2014] UKPC 6 (2014.03.03)

Appeal dismissed

**STATEMENT OF CASE — SUFFICIENCY OF PARTICULARS — PROCEEDINGS
NOT AT CMC STAGE — DEFECT COULD BE REMEDIED — PERMISSION NOT
REQUIRED**

(Also under Parts 8, 26 and 35)

HIGH COURT

Yunus Meighoo v Ashram Persad and Others

CV 2013-01963 (2014.09.22)

**RULE 20.1(3) — RULE 20.1(3A) — CONSIDERATION OF ALL FACTORS —
AMENDMENT ALLOWED**

(Also under Part 35)

Lorne Ramsoomair v South West Regional Health Authority and Others

CV 2012-01864 (2014.01.15)

RULE 20.1(1) — RULE 20.1(2) — RULE 20.1(3) — WHETHER FIRST CMC CONCLUDED — PERMISSION — PREJUDICE — REAL PROSPECT OF SUCCESS — AMENDMENTS ALLOWED IN PART

2013

HIGH COURT

Clive Gill v Jude Moses

CV 2009-02696 (2013.03.19)

RULE 20.1(3) — RULE 20.1(3A) — APPLICATION TO AMEND — PRE TRIAL REVIEW — THRESHOLD REQUIREMENTS — CONSIDERATION OF ALL FACTORS

(Also under Part 10)

2012

PRIVY COUNCIL/ COURT OF APPEAL

Karissa Seecharan v The North Central Regional Health Authority

Civ App No 117 of 2011 (2012.04.19)

Appeal allowed

RULE 20.1(3) — WHETHER CHANGE OF CIRCUMSTANCES KNOWN AFTER FIRST CMC

Teddy Rampaul v Chavez Industrial Maintenance Company Limited and Another

Civ App No 35 of 2012 (2012.04.02)

Appeal allowed

RULE 20.1(3) — RULE 20.1(3A) — THRESHOLD REQUIREMENTS — CPR REQUIREMENTS SATISFIED — INTEREST OF JUSTICE

HIGH COURT

Export-Import Bank of Trinidad and Tobago v Waterworks Limited and Others

CV 2010-03594 (2012.11.14)

RULES 20.1(3) — RULE 20.1(3A) — THRESHOLD REQUIREMENTS NOT SATISFIED — CONSIDERATION OF ALL FACTORS

(Also under Part 1)

Arjoon Badloo and Another v Lesley Ann Critchlow and Another

CV 2011-01516 (2012.09.28)

RULE 20.1(3) — APPLICATION TO AMEND REPLY AFTER FIRST CMC — THRESHOLD REQUIREMENTS NOT SATISFIED — PRACTICAL APPROACH — TYPOGRAPHICAL ERROR

(Also under Part 26)

Doolin Mohammed v Ashton Kawal and Others

CV 2006-04023 (2012.06.21)

RULE 20.1(3) — RULE 20.1(3A) — DETERMINATION OF WHETHER FIRST CMC CONCLUDED — THRESHOLD REQUIREMENTS— CONSIDERATION OF ALL FACTORS

Gladys Gafoor v The Attorney General of Trinidad and Tobago and Another

CV 2012-00876 (2012.06.06)

RULES 20.1(3) — RULE 20.1(3A) — JUDICIAL REVIEW — WHETHER FIRST CMC TOOK PLACE — THRESHOLD REQUIREMENTS — CONSIDERATION OF ALL FACTORS

PART 21 REPRESENTATIVE PARTIES

Contents of this Part

Representative claimants and defendants—general	Rule 21.1
Appointment of representative claimant or defendant—procedure	Rule 21.2
Consequence of order appointing representative party	Rule 21.3
Representation of persons who cannot be ascertained, etc., in proceedings about estates, trusts and the construction of written instruments	Rule 21.4
Compromise in proceedings to which rule 21.4 applies	Rule 21.5
Representation of beneficiaries by trustees	Rule 21.6
Proceedings against the estate of a dead party	Rule 21.7
Power of court to give directions to enable proceedings to be carried on after a party's death	Rule 21.8
Power of court to strike out action after death of claimant or defendant	Rule 21.9

Representative claimants and defendants—general

- 21.1** (1) This rule applies to any proceedings, other than proceedings falling within rule 21.4 where five or more persons have the same or a similar interest in the proceedings.
- (2) The court may appoint—
- (a) one or more of those persons; or
 - (b) a body having a sufficient interest in the proceedings, to represent all or some of the persons with the same or similar interest.
- (3) A representative under this rule may be either a claimant or a defendant.

Appointment of representative claimant or defendant—procedure

- 21.2** (1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.
- (2) An application for such an order may be made by—
- (a) any party;
 - (b) any person or body who wishes to be appointed as a representative party; or
 - (c) any person who is likely to be a party to proceedings.

- (3) An application for such an order—
 - (a) must be supported by evidence; and
 - (b) must identify every person to be represented, either—
 - (i) individually; or
 - (ii) by description, if it is not practicable to identify a person individually.
- (4) An application to appoint a representative defendant must be on notice to the claimant.
- (5) An application to appoint a representative claimant may be made without notice.
- (6) The court may direct that notice of an application be given to such other persons as it thinks fit.
- (7) If the court orders that a person not already a party shall be a representative defendant, it must make an order adding him as a defendant.

Consequence of order appointing representative party

- 21.3** (1) Where there is a representative claimant or defendant, an order of the court binds everyone whom he represents.
- (2) It may not, however, be enforced against a person not a party to the proceedings unless the person wishing to enforce it obtains permission from the court.
 - (3) An application for permission must be supported by evidence.

Representation of persons who cannot be ascertained, etc., in proceedings about estates, trusts and the construction of written instruments

- 21.4** (1) This rule applies only to proceedings about—
- (a) the estate of someone who is dead;
 - (b) property subject to a trust; or
 - (c) the construction of a written instrument.
- (2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether at present or for any future, contingent or unascertained interest) where—
- (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;
 - (b) the person, or the class or some member of it, though ascertained cannot be found; or
 - (c) it is expedient to do so for any other reason.

- (3) An application for an order to appoint a representative party under this rule may be made by—
 - (a) any party; or
 - (b) any person who wishes to be appointed as a representative party.
- (4) A representative appointed under this rule may be either a claimant or a defendant.
- (5) Where there is a representative claimant or representative defendant, a decision of the court is binding on everyone he represents.

Compromise of proceedings to which rule 21.4 applies

- 21.5** (1) Where—
- (a) a compromise is proposed in proceedings to which rule 21.4 applies;
 - (b) some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings;
 - (c) those persons are represented by a representative appointed under rule 21.4 when the court considers the proposed compromise; and
 - (d) the court is satisfied that the compromise will be for the benefit of the absent persons,
- the court may approve the compromise and order that it shall be binding on the absent persons.
- (2) The persons for whose benefit the court may approve a compromise may be unborn or unascertained.
 - (3) The court’s order approving the compromise binds the absent persons unless it has been obtained by fraud or non-disclosure of material facts.

Representation of beneficiaries by trustees

- 21.6** (1) A claim may be made by or against a person in his capacity as a trustee, executor or administrator.
- (2) If a claim is so made, there is no need for a beneficiary also to be a party.
 - (3) A decision of the court in such proceedings is binding on a beneficiary unless the court otherwise orders.
 - (4) The only ground for an order that a decision is not binding on a beneficiary is that the trustee, executor or administrator—
 - (a) could not; or
 - (b) did not in fact,
 represent the interest of the beneficiary.

Proceedings against the estate of a dead party

- 21.7 (1) Where in any proceedings it appears that a dead person was interested in the proceedings then, if the dead person has no personal representatives, the court may make an order appointing someone to represent his estate for the purpose of the proceedings.
- (2) A person may be appointed as a representative if he—
- (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) The court may make such an order on or without an application.
- (4) Until the court has appointed someone to represent the dead person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.
- (5) A decision in proceedings where the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.

Power of court to give directions to enable proceedings to be carried on after a party's death

- 21.8 (1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.
- (2) An order under this rule may be made on or without an application.

Power of court to strike out action after death of claimant or defendant

- 21.9 (1) If a claimant dies and his personal representatives do not apply for an order under rule 19.5 to be substituted as claimants, the defendant may apply for the claim to be struck out.
- (2) Notice of the application must be given to the personal representatives of the claimant (if any) and such other persons as the court may direct.
- (3) The general rule is that if the court makes an order on an application under this rule it shall be that unless the personal representatives or some other person on behalf of the estate apply to be substituted under rule 19.5 or for directions under rule 21.8 by a specified date, the claim shall be struck out.
- (4) The court may give directions under rule 21.8 at the hearing of an application under this rule.
- (5) If a defendant dies and the claim is stayed under rule 21.7(4), the personal representatives of the defendant may apply to the court for an order that the claim be struck out.

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Paul Sankar and Others v Veronica Nanan and Another

Civ App No S305 of 2015 (2016.04.18)

Appeal dismissed

CV2013-04516 (2015.12.07)

RULE 21.7 — REPRESENTATIVE CAPACITY — LEGAL PERSONAL REPRESENTATIVE — NECESSITY OF GRANT — COMMENCEMENT OF ACTION

2015

HIGH COURT

Haig Community United and Others v The Chaguaramas Development Authority

CV 2015-02000 (2015.06.30)

RULE 21.1 (2)(b) — REPRESENTATIVE PARTY— SUFFICIENT INTEREST — CLAIMS FACT SPECIFIC — COMMON INTEREST

2014

PRIVY COUNCIL/ COURT OF APPEAL

Bobby Maharaj and Others v Francis Daniel and Others

Civ App Nos 343 & 344 of 2014

Appeals pending

CV 2010-03757 (2014.11.10)

RULE 21.1(1) — RULE 21.3 — COMMENCEMENT OF ACTION — NECESSITY FOR COURT ORDER — NON-COMPLIANCE — NON-MATERIAL PROCEDURAL MISSTEP



2013

HIGH COURT

Anthony Jackson v James Seurajh and Another

CV 2012-05167 (2013.06.04)

**RULE 21.7 — REPRESENTATIVE PARTY — APPLICATION PRIOR TO
COMMENCEMENT OF ACTION — PROCEDURAL IRREGULARITY —
APPOINTMENT OF LEGAL PERSONAL REPRESENTATIVE — DISCRETION —
SAVING EXPENSE — PREJUDICE**

PART 22 MISCELLANEOUS RULES ABOUT PARTIES

Contents of this Part

Partners	Rule 22.1
Person carrying on business in a name not his own	Rule 22.2
Bodies corporate	Rule 22.3

Partners

- 22.1** (1) Persons claiming to be entitled, or alleged to be liable, as partners may sue or be sued in the firm name if—
- (a) the firm name is the name of the firm in which they were partners when the right to claim arose; and
 - (b) when the right to claim arose, they carried on business in that name within the jurisdiction.
- (2) Where partners sue or are sued in the firm name, they must, if any other party so demands in writing, immediately—
- (a) deliver to that party; and
 - (b) file,

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 they do not comply, the court, on application by any other party may order them to provide such a statement and to certify it to the court.
- (4) An application may be made without notice.
- (5) The party making the application must—
- (a) certify that he has made a demand in writing;
 - (b) state the date of the demand; and
 - (c) certify that the other party has not complied.
- (6) If the partners do not do so within 21 days after service of the order any claim or defence brought by them is deemed to be struck out.
- (Rule 26.4 deals with the procedure for striking out a statement of case)
- (7) A duly authorised employee of a partnership or firm may—
- (a) conduct proceedings on behalf of the partnership or firm; or
 - (b) represent it in court with the court’s permission.
- (8) Such permission is to be given or refused at a case management conference.

Person carrying on business in a name not his own

- 22.2** (1) A claim may be made by or against a person carrying on business within the jurisdiction in a name other than that person's name or who was carrying on business within the jurisdiction in such a name when the right to claim arose—
- (a) in his own name;
 - (b) in his own name, followed by the words “trading as X.Y.”;
 - (c) as “X.Y.” followed by the words “(a trading name)”;
 - (d) as “X.Y.” followed by the words “a firm”.
- (2) Where a claim is made by or against a person in his business name, the rules about claims by or against partners apply as if that person had been a partner in a firm when the right to claim arose and his business name were the firm's name.

Bodies corporate

- 22.3** (1) A duly authorised director or employee of a limited company or other body corporate may—
- (a) conduct proceedings on its behalf; or
 - (b) represent it in court with the permission of the court.
- (2) Permission to represent the body corporate at the trial is to be given or refused at a case management conference.
- (3) In paragraph (1) “duly authorised” means authorised by the company or body corporate to conduct the proceedings on its behalf.
-

CASES

2014

HIGH COURT

Andrew Singh v Garvin Hypolite and Another

CV 2006-01543 (2014.01.16)

**RULE 22.2(1) — CLAIM AGAINST BUSINESS ENTITY — BOTH PERSONAL NAME
AND BUSINESS NAME PERMISSIBLE**

(Also under Part 13)



PART 23 MINORS AND PATIENTS

Contents of this Part

Scope of this Part	Rule 23.1
Requirement of next friend in proceedings by or against minors or patients	Rule 23.2
Stage of proceedings at which next friend becomes necessary	Rule 23.3
Who may be minor’s next friend	Rule 23.4
Who may be patient’s next friend	Rule 23.5
Conditions for being next friend without court order	Rule 23.6
How a person becomes next friend without court order	Rule 23.7
How a person becomes next friend by court order	Rule 23.8
Court’s power to terminate appointment of and substitute next friend	Rule 23.9
Appointment of next friend by court order — supplementary	Rule 23.10
Procedure where appointment of next friend ceases	Rule 23.11
Compromise etc., by or on behalf of minor or patient	Rule 23.12
Control of money recovered by or on behalf of minor or patient	Rule 23.13
Proceedings under Compensation for Injuries Act	Rule 23.14

Scope of this Part

23.1 (1) This Part—

(a) contains special provisions which apply in proceedings involving minors and patients; and

(b) sets out how a person becomes a minor’s or patient’s next friend.

(Rule 5.11 contains provisions about the service of documents on minors and patients)

(2) In this Part—

“the Act” means the Mental Health Act (Chap. 28:02);

“minor” means a person under 18 years; and

“patient” means a person who by reason of mental disorder within the meaning of the Act is incapable of managing and administering his own affairs.

Requirement of next friend in proceedings by or against minors or patients

- 23.2** (1) A minor or patient must have a next friend to conduct proceedings on his behalf.
- (2) However the court may, on the application of a minor, make an order permitting the minor to conduct proceedings without a next friend.
- (3) An application for an order under paragraph (2) may be made without notice.
- (4) Where—
- (a) the court has made an order under paragraph (2); and
- (b) 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) A next friend must act by an attorney-at-law.

Stage of proceedings at which next friend becomes necessary

- 23.3** (1) A minor or patient must have a next friend in order to issue a claim except where the court has made an order under rule 23.2(2).
- (2) A person may not—
- (a) make any application against a minor or patient before proceedings have started; or
- (b) take any step in proceedings except—
- (i) issuing and serving a claim form against a minor or patient; or
- (ii) applying for the appointment of a next friend under rule 23.8, until the minor or patient has a next friend.
- (3) If a person 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.
- (4) Any step taken before a minor or patient has a next friend shall be of no effect unless the court otherwise orders.

Who may be minor's next friend

- 23.4** (1) A minor's next friend may be a person appointed by the court.
- (2) A person who satisfies the conditions set out in rule 23.6(2) may act as a minor's next friend without a court order appointing him, unless—
- (a) the court has already appointed a next friend; or
- (b) the court makes or has made an order under rule 23.9 (court's power to change next friend or to prevent a person acting as a next friend).

Who may be patient’s next friend

- 23.5** (1) A patient’s next friend may be a person appointed by the court.
- (2) Unless the court appoints some other person, a person authorised under Part VII of the Act to conduct legal proceedings in the name of the patient or on his behalf, is entitled to be the next friend of the patient in any proceedings to which his authority extends.
- (3) If nobody has been appointed by the court or authorised under Part VII, a person who satisfies the conditions set out in rule 23.6(2) may be a patient’s next friend without a court order.

Conditions for being next friend without court order

- 23.6** (1) Paragraph (2) specifies the conditions to be satisfied for the purposes of—
- (a) rule 23.4(2) (minor’s next friend without court order);
- (b) rule 23.5(3) (patient’s next friend without order if nobody is authorised under Part VII of the Act);
- (c) rule 23.7(3);
- (d) rule 23.8(5); or
- (e) rule 23.9(9).
- (2) A person may act as a next friend if he—
- (a) can fairly and competently conduct proceedings on behalf of the minor or patient; and
- (b) has no interest adverse to that of the minor or patient.

How a person becomes next friend without court order

- 23.7** (1) If the court has not appointed a next friend, a person who wishes to act as next friend must follow the procedure set out in this rule.
- (2) A person authorised under Part VII of the Act must file an official copy of the order or other document which constitutes his authorisation to act.
- (3) Any other person must file a certificate that he satisfies the conditions specified in rule 23.6(2)(a) and (b).
- (4) A person who is to act as a next friend for a claimant must file—
- (a) the authorisation; or
- (b) the certificate under paragraph (3),
at the time when the claim is made.
- (5) A person who is to act as a next friend for a defendant must file—
- (a) the authorisation; or
- (b) the certificate under paragraph (3),
and at the time when he first takes a step in the proceedings on behalf of the defendant.

How a person becomes next friend by court order

- 23.8** (1) The court may make an order appointing a next friend with or without an application.
- (2) An application for an order appointing a next friend may be made by—
- (a) a person who wishes to be a next friend; or
 - (b) a party.
- (3) Where—
- (a) a person makes a claim against a minor or patient;
 - (b) the minor or patient has no next friend; and
 - (c) either—
 - (i) someone who is not entitled to be a next friend files a defence; or
 - (ii) the claimant wishes to take some step in the proceedings,the claimant must apply to the court for an order appointing a next friend for the minor or patient.
- (4) An application for an order appointing a next friend must be supported by evidence.
- (5) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6(2).

Court's power to terminate appointment of and substitute next friend

- 23.9** (1) The court may—
- (a) direct that a person may not act as a next friend;
 - (b) terminate a next friend's authority to act; or
 - (c) appoint a new next friend in substitution for an existing one.
- (2) The court may make an order under paragraph (1) with or without an application.
- (3) An application for an order under paragraph (1) must be supported by evidence.
- (4) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6(2).

Appointment of next friend by court order—supplementary

- 23.10** (1) An application for an order under rule 23.8 or 23.9 must be served on every person on whom, in accordance with rule 5.11 (service on parent, guardian, etc.) the claim form should have been served.

- (2) An application for an order under rule 23.9 (substitution of next friend) must also be served on the person who is or who purports to act as next friend.
- (3) On an application for an order under rule 23.8 or 23.9, the court may appoint the person proposed or any other person.

Procedure where appointment as next friend ceases

- 23.11** (1) The appointment of a minor’s next friend ceases when a minor who is not a patient reaches the age of 18 years.
- (2) When a party ceases to be a patient during the course of proceedings, the next friend’s appointment continues until it is ended by court order.
 - (3) An application for an order under paragraph (2) may be made by—
 - (a) the former patient;
 - (b) the next friend; or
 - (c) a party.
 - (4) The minor or patient in respect of whom the appointment to act has ceased must serve notice on the other parties—
 - (a) stating that the appointment of his next friend has ceased;
 - (b) giving his address for service; and
 - (c) stating whether or not he chooses to carry on the proceedings.
 - (5) If he does not do so within 28 days after the appointment of the next friend ceases the court may, on application, strike out any claim or defence brought by him.
 - (6) The liability of a next friend for costs continues until—
 - (a) the minor or patient for whom he acted as next friend serves the notice referred to in paragraph (4); or
 - (b) the next friend serves notice on the other parties that his appointment to act has ceased.

Compromise etc., by or on behalf of minor or patient

- 23.12** (1) Where money is claimed by or on behalf of a minor or patient, no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to that person’s claim, without the approval of the court.
- (2) Where—
 - (a) before proceedings in which a claim is to be made by or on behalf of a minor or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and

- (b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim, the claim may—
- (i) include a request to the court for approval of the settlement; and
 - (ii) be issued jointly by the claimant and defendant.

Control of money recovered by or on behalf of minor or patient

- 23.13** (1) Where in any proceedings—
- (a) money is recovered by or on behalf of or for the benefit of a minor or patient; or
 - (b) money paid into court is accepted by or on behalf of a minor or patient,
- that money must be dealt with in accordance with directions given by the court under this rule and not otherwise.
- (2) Directions given under this rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

Proceedings under Compensation for Injuries Act

- 23.14** (1) Where—
- (a) a single sum of money is paid into court in satisfaction of proceedings arising under the Compensation for Injuries Act (Chap. 8:05); and
 - (b) that sum is accepted,
- the court must apportion that sum between the different causes of action either when—
- (i) giving directions under rule 23.13(2); or
 - (ii) when authorising its payment out of court.
- (2) Where in such proceedings—
- (a) a claim is made by more than one person; and
 - (b) a single sum of money is paid into court and accepted by such persons, the court must apportion the payment between those persons.

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Cristal Roberts and Another v Dr Samantha Bhagan and Another

Civ App No P029 of 2016 (2016.02.23)

Appeal allowed

RULE 23.13(2) — CONTROL OF MONEY RECOVERED ON BEHALF OF MINOR — PROTECTION OF INFANT — PAYMENT OUT APPLICATION — BEST INTERESTS OF MINOR

(Also under Part 33)

HIGH COURT

Cristal Roberts and Another v Dr Samantha Bhagan and Another

CV 2010-01117 (2016.02.10)

RULE 23.13 — PAYMENT OUT APPLICATION — BENEFIT OF MINOR — EDUCATIONAL COSTS — RELEASE OF FULL SUM

(Also under Part 30)

2015

HIGH COURT

Cristal Roberts and Another v Dr Samantha Bhagan

CV 2010-01117 (2015.03.05)

RULE 23.13 — INTERIM PAYMENT FOR BENEFIT OF MINOR — REQUIREMENT OF NEED — PROTECTION OF INTEREST OF MINOR

(Also under Part 17 and 36)

2014

HIGH COURT

Yeshivia Hayon and Others v Chief Immigration Officer and Another

CV 2014-00759 (2014.03.06)

RULE 23.2(i) — RULE 23.6(2)(a), (b) — MINORS — REPRESENTATION IN COURT PROCEEDINGS — APPOINTMENT OF NEXT FRIEND — PROTECTION OF INTEREST OF MINORS

(Also under Part 57)

PART 24 SECURITY FOR COSTS

Contents of this Part

Scope of this Part	Rule 24.1
Application for an order for security	Rule 24.2
Conditions to be satisfied	Rule 24.3
Security for costs against counter-claiming defendant	Rule 24.4
Enforcing an order for security for costs	Rule 24.5

Scope of this Part

24.1 This Part deals with the power of the court to require a claimant to give security for the costs of the defendant.

Application for an order for security

- 24.2** (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.
- (2) The amount and nature of the security shall be such as the court thinks fit.
- (3) An application for security for costs must be supported by evidence.

Conditions to be satisfied

- 24.3** The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that—
- (a) the claimant is ordinarily resident out of the jurisdiction;
 - (b) the claimant is an external company and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;
 - (c) the claimant—
 - (i) failed to give his address in the claim form;
 - (ii) gave an incorrect address in the claim form; or
 - (iii) has changed his address since the claim was commenced, with a view to evading the consequences of the litigation;
 - (d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21 and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

- (e) the claimant 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;
- (f) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover; or
- (g) the claimant has taken steps with a view to placing his assets beyond the jurisdiction of the court.

Security for costs against counter-claiming defendant

24.4 Rules 24.2 and 24.3 shall apply where a defendant makes a counterclaim as if—

- (a) references in those rules to a claimant were references to a defendant making a counterclaim; and
- (b) references to a defendant were references to a claimant defending a counterclaim.

Enforcing an order for security for costs

24.5 On making an order for security for costs the court may also order that—

- (a) the claim (or counterclaim) be stayed until such time as security for costs is provided in accordance with the terms of the order; and/or
 - (b) if security is not provided in accordance with the terms of the order by a specified date, the claim (or counterclaim) be struck out.
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CASES

2015

PRIVY COUNCIL/COURT OF APPEAL

Earl E Melville v Selwyn C Clarke and Others

Civ App No 141 of 2015 (2015.11.16)

Appeal allowed

CV 2014-1189 (2015.09.17)

RULE 24.3 — SECURITY FOR COSTS — ORDINARILY RESIDENT OUTSIDE OF JURISDICTION — FAMILY AND EMPLOYMENT OUT OF JURISDICTION

2014

HIGH COURT

Global Dynamics Limited v Intercommercial Bank Limited

CV 2013-00258 (2014.02.03)

SECURITY FOR COSTS — PRE-TRIAL REVIEW — IMPECUNIOSITY OF CLAIMANT— SUBSTANTIAL COSTS EXPENDED — BOND

(Also under Parts 1 and 67)

2013

HIGH COURT

Mado Gajadar v Sham Gajadhar

CV 2013-00695 (2013.07.17)

RULE 24.3 — JUSTNESS OF ORDER — DISCRETION — CLAIMANT’S SOLE ASSET LAND ON WHICH DEFENDANT CLAIMS EQUITABLE INTEREST — BALANCING EXERCISE — CONSIDERATION OF ALL CIRCUMSTANCES

Ian Bailey v Corporal Carmona Ag No 13235 and Others

CV 2012-03147 (2013.05.06)

RULE 24.3 — RULE 24.5 — SECURITY FOR COSTS — NO HIGH DEGREE OF PROBABILITY OF SUCCESS OR FAILURE — NO EVIDENCE OF CAPACITY TO PAY — STAY PENDING PAYMENT

2012

HIGH COURT

Elma Lawson v Sherba Dick and Others

CV 2010-02739 (2012.10.04)

RULE 24.3(a) — SECURITY FOR COSTS — DISCRETION — BALANCING EXERCISE — CONSIDERATION OF ALL CIRCUMSTANCES — ORDINARILY RESIDENT OUT OF THE JURISDICTION — EVIDENCE OF ASSETS TO SATISFY AWARD OF COSTS

British American Insurance Company Limited v First Citizens Investment Services Limited

CV 2011-03501 (2012.07.25)

RULES 24.3(a), (b) — SECURITY FOR COSTS — ORDINARILY RESIDENT OUT OF THE JURISDICTION — UNDER JUDICIAL MANAGEMENT — CLEAR CASE FOR SECURITY FOR COSTS

2008

HIGH COURT

Ralph E Gonsalves v T&T News Centre Limited

CV 2007-04153 (2008.09.25)

RULE 24.3 — NON-RESIDENCY NOT A PREDOMINANT FACTOR — JUSTNESS OF ORDER — COURT MAY TAKE NOTICE OF OBVIOUS REALITIES WITHOUT EVIDENCE — STAY PENDING PAYMENT

Roopnarine Persaud and Another v Danny Balkissoon and Another

CV 2006-00868 (2008.05.20)

RULE 24.3 — CONDITIONS TO BE SATISFIED — JUSTNESS OF ORDER ORDINARILY RESIDENT OUT OF JURISDICTION — HISTORY OF LITIGATION — NON-DISCLOSURE OF ASSETS — HARDSHIP

(Also under Part 2)

PART 25 CASE MANAGEMENT— THE OBJECTIVE

Contents of this Part

Court’s duty to manage cases

Rule 25.1

Court’s duty to manage cases

- 25.1** The court must further the overriding objective by actively managing cases, which may include—
- (a) identifying the issues at an early stage;
 - (b) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
 - (c) encouraging the parties to use the most appropriate form of dispute resolution including, in particular, mediation, if the court considers that appropriate and facilitating their use of such procedures;
 - (d) encouraging the parties to co-operate with each other in the conduct of proceedings;
 - (e) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
 - (f) deciding the order in which issues are to be resolved;
 - (g) fixing timetables or otherwise controlling the progress of the case;
 - (h) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
 - (i) dealing with as many aspects of the case as is practicable on the same occasion;
 - (j) dealing with the case or any aspect of it, where it appears appropriate to do so, without requiring the parties to attend court;
 - (k) making appropriate use of technology;
 - (l) giving directions to ensure that the trial of the case proceeds quickly and efficiently; and
 - (m) ensuring that no party gains an unfair advantage by reason of his failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application.

(Rule 2.12 provides for the suspension of timelines during dispute resolution procedures approved by the court.) LN 301
of 2012

FORMER RULE

The **current** rule 25.1 was brought about by the insertion of the note after paragraph (m) by rule 6 of the **Civil Proceedings (Amendment) Rules, 2012** Legal Notice No 301 of 2012.

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

The Village Automotive & Hardware Superstores Limited v Anchorage General Insurance Limited

Civ App No P20 of 2016

Appeal pending

CV 2014-01099 (2015.12.14)

RULE 25.1(b) — DUTY TO ACTIVELY MANAGE CASES — SUMMARY DISPOSAL OF ISSUES – SUMMARY JUDGMENT ON COURT’S OWN MOTION

(Also under Part 26)

2014

PRIVY COUNCIL/ COURT OF APPEAL

Hazra Mujaffar v Jumiel Mohammed

Civ App No 58 of 2014 (2014.04.28)

Appeal allowed

CV 2011-00315 (2014.04.23)

RULE 25.1(g) — DUTY TO ACTIVELY MANAGE CASES — FIXING TIMETABLES — CONSEQUENCE OF NON-COMPLIANCE

(Also under Part 26)

PART 26 CASE MANAGEMENT— THE COURT’S POWERS

Contents of this Part

Court’s general powers of management	Rule 26.1
Sanctions—striking out statement of case	Rule 26.2
Court’s general power to strike out statement of case	Rule 26.3
Judgment without trial after striking out	Rule 26.4
Setting aside judgment entered after striking out	Rule 26.5
Court’s powers in cases of failure to comply with rules, orders or directions	Rule 26.6
Relief from sanctions	Rule 26.7
General power of the court to rectify matters where there has been an error of procedure	Rule 26.8

Court’s general powers of management

- 26.1** (1) The court (including where appropriate the court of Appeal) may—
- (a) transfer the whole or any part of any proceedings from one court office to another;
 - (b) transfer proceedings to the family division;
 - (c) consolidate proceedings;
 - (d) extend or shorten the time for compliance with any rule, practice direction or order or direction of the court;
 - (e) adjourn or bring forward a hearing to a specific date;
 - (f) stay the whole or part of any proceedings generally or until a specified date or event;
 - (g) decide the order in which issues are to be tried;
 - (h) direct a separate trial of any issue;
 - (i) try two or more cases on the same occasion;
 - (j) direct that part of any proceedings (such as a counterclaim or other ancillary claim) be dealt with as separate proceedings;
 - (k) dismiss or give judgment on a claim after a decision on a preliminary issue;
 - (l) exclude an issue from determination if it can do substantive justice between the parties on the other issues and determining it would therefore serve no worthwhile purpose;

- (*m*) require the maker of an affidavit or witness statement to attend for cross-examination;
 - (*n*) require any party or a party's attorney-at-law to attend the court;
 - (*o*) deal with a matter without the attendance of any parties;
 - (*p*) hold a hearing by telephone or use any other method of direct oral communication;
 - (*q*) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;
 - (*r*) direct that any evidence be given in written form;
 - (*s*) where there is a substantial inequality in the financial position of each party, order any party having the greater financial resources who applies for an order, to pay the other party's costs of complying with the order in any event;
 - (*t*) where two or more parties to the proceedings are represented by the same attorney—
 - (i) direct that they be separately represented; and
 - (ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged;
 - (*u*) give the control of any proceedings to any person it thinks fit and make any appropriate consequential order about costs;
 - (*v*) direct that notice of any proceedings or application be given to any person; or
 - (*w*) take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.
- (2) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.
- (3) The conditions which the court may impose include—
- (*a*) a condition requiring a party to give security;
 - (*b*) a condition requiring a party to give an undertaking;
 - (*c*) a condition requiring the payment of money into court or as the court may direct;
 - (*d*) a condition requiring a party to pay all or part of the costs of the proceedings; and
 - (*e*) a condition that a party shall permit entry to property owned or occupied by him to another party or someone acting on behalf of another party.
- (4) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.
- (5) The list of powers in this rule is in addition to any other powers given to the court by any other rule, practice direction or enactment.

(Rule 2.12 provides for the suspension of timelines during dispute resolution procedures approved by the court.) LN 301 of 2012

Sanctions—striking out statement of case

- 26.2** (1) The court may strike out a statement of case or part of a statement of case if it appears to the court—
- (a) that there has been a failure to comply with a rule, practice direction or with an order or direction given by the court in the proceedings;
 - (b) that the statement of case or the part to be struck out is an abuse of the process of the court;
 - (c) that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim; or
 - (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.
- (2) Where—
- (a) the court has struck out a claimant’s statement of case;
 - (b) the claimant is ordered to pay costs to the defendant; and
 - (c) before the claimant pays those costs, he starts a similar claim against the same defendant,
- the court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

Court’s general power to strike out statement of case

- 26.3** (1) Where a party has failed to comply with any of these Rules or any court order in respect of which no sanction for noncompliance has been imposed the other party may apply to the court for an “unless order”.
- (2) Such an application may be made without notice but must be supported by evidence which—
- (a) identifies the rule or order which has not been complied with and the nature of the breach; and
 - (b) contains a certificate that the other party is in default.
- (3) The court office must refer any such application immediately to a master or judge who may—
- (i) grant the application;
 - (ii) seek the views of the other party; or
 - (iii) direct that an appointment be fixed to consider the application and that the court office give to all parties notice of the date, time and place for such appointment.
- (4) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.

(5) If the defaulting party fails to comply with the terms of any “unless order” made by the court his statement of case shall be struck out.

(Rule 26.4 deals with judgment after failure to comply with an “unless order”)

(6) Rule 26.8 shall not apply.

(Rule 11.15 deals with applications to set aside any order made on an application made without notice)

Judgment without trial after striking out

26.4 (1) This rule applies where the court makes an order which includes a term that the statement of case of a party, or part of a statement of case, shall be struck out if the party does not comply with the order (an “unless order”).

(2) If the party does not comply with the order, any other party may ask for judgment to be entered and for fixed costs appropriate to the stage that the proceedings have reached.

(3) A party may obtain judgment under this rule by filing a request for judgment.

(4) The request must certify that the right to enter judgment has arisen because the court’s order was not complied with and state the facts which entitle him to judgment.

(5) Judgment under this rule shall be such as the party by whom the request is filed is entitled to.

(6) Where a decision of the court is necessary in order to decide the terms of the judgment the party making the request must apply for directions.

Setting aside judgment entered after striking out

26.5 (1) A party against whom the court has entered judgment under rule 26.4 may apply to the court to set it aside.

(2) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside judgment.

(3) If the application to set aside is made for any other reason, rule 26.7 (relief from sanctions) applies.

Court’s powers in cases of failure to comply with rules, orders or directions

26.6 (1) Where the court makes an order or gives directions the court must whenever practicable also specify the consequences of failure to comply.

(2) Where a party has failed to comply with any of these Rules, a direction or any court order, any sanction for non-compliance imposed by the rule or the court order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.8 shall not apply.

(Rule 26.7 deals with the circumstances in which the court may grant relief from a sanction. Part 66 deals with the power to make orders as to costs by way of sanction)

Relief from sanctions

- 26.7 (1) An application for relief from any sanction imposed for a failure to comply with any rule, court order or direction must be made promptly.
- (2) An application for relief must be supported by evidence.
- (3) The court may grant relief only if it is satisfied that—
- (a) the failure to comply was not intentional;
 - (b) there is a good explanation for the breach; and
 - (c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.
- (4) In considering whether to grant relief, the court must have regard to—
- (a) the interests of the administration of justice;
 - (b) whether the failure to comply was due to the party or his attorney;
 - (c) whether the failure to comply has been or can be remedied within a reasonable time; and
 - (d) whether the trial date or any likely trial date can still be met if relief is granted.
- (5) The court may not order the respondent to pay the applicant’s costs in relation to any application for relief unless exceptional circumstances are shown.

General power of the court to rectify matters where there has been an error of procedure

- 26.8 (1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction or court order.
- (2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders.
- (3) Where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.
- (4) The court may make such an order on or without an application by a party.

FORMER RULE

The **current** rule 26.1 was brought about by the insertion of the note after sub-rule (5) by rule 7 of the **Civil Proceedings (Amendment) Rules, 2012** Legal Notice No 301 of 2012.



CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL***Damian Morris v The Attorney General of Trinidad and Tobago and Another***

Civ App No P090 of 2016

Appeal pending

CV 2015-03606 (2016.02.22)

RULE 26.2(1) — FIXED DATE CLAIM FORM — CONSTITUTIONAL RELIEF — STRIKING OUT — ABUSE OF PROCESS — ALTERNATIVE REMEDIES

The Village Automotive & Hardware Superstores Limited v Anchorage General Insurance Limited

Civ App No P020 of 2016

Appeal pending

CV 2014-01099 (2015.12.14)

RULE 26.2(1)(b) and (c) — CLAIM — STATEMENT OF CASE — STRIKING OUT — TIME-BARRED — NO CAUSE OF ACTION

(Also under Parts 25)

Jermaine Raymer v Lex Caribbean

Civ App No P258 of 2016 (2016.11.21)

Appeal dismissed

CV 2015-01621 (2016.03.23)

RULE 26.2(1)(b) — REPLY TO DEFENCE — STRIKING OUT — ABUSE OF PROCESS — NEW MATTERS — REPETITIOUS PLEADINGS

(Also under Part 2)

Brent Nunes v Her Worship Magistrate Marissa Gomez

Civ App No P123 of 2016 (2016.11.07)

Appeal allowed

CV 2015-02609 (2016.04.20)

RULE 26.8 — FIXED DATE CLAIM FORM — ERROR IN SERVICE — EXTENSION OF TIME — IMPROPER USE OF RECTIFICATION RULE — PRECEDENCE OF SPECIFIC RULE

(Also under Part 5)

Adrian D Ache v Rachael Cyrus

Civ App No 169 of 2016 (2016.07.18)

Appeal dismissed

CV 2015-02452 (2016.06.07)

RULE 26.2(1)(c) — STRIKING OUT — DEFENCE AND COUNTERCLAIM — SUFFICIENT BASIS FOR DEFENCE

(Also under Part 15)

Louis A Monteil and Another v Central Bank of Trinidad and Tobago and Another

Civ App No P019 of 2015 (2016.05.27)

Appeal dismissed

RULE 26.1(1)(w) — FURTHER AND BETTER PARTICULARS — PREMATURE APPLICATION — SUFFICIENCY OF RE-AMENDED STATEMENT OF CASE

(Also under Parts 1, 20 and 35)

Daniyaal Muhammad v Stephen E Maynard and Another

Civ App No 275 of 2014 (2016.04.14)

Appeal dismissed

CV 2014-00410 (2014.09.25)

RULE 26.2(1) — CLAIM — STRIKING OUT — ABUSE OF PROCESS — RELITIGATION OF ISSUES

Chantal Riguard v Anthony Lambert

Civ App No 112 of 2016/ Civ App P No 145 of 2006 (2016.07.04)

Appeal dismissed

CV 2015-01091 (2016.04.13)

RULE 26.2(1)(a) — STATEMENT OF CASE — STRIKING OUT — PERMISSION FOR RE-AMENDMENT

(Also under Part 20)

Jermaine Raymer v Trinidad and Tobago Mortgage Finance Company Limited and Another

Civ App No 33 of 2016

Appeal dismissed

CV 2015-01620 (2016.02.11)

RULE 26.2 — CLAIM — STRIKING OUT — CASE MANAGEMENT — NO GROUNDS FOR CLAIM — NO PLEADED PARTICULARS



Brian Ali v The Attorney General of Trinidad and Tobago

Civ App No 322 of 2015 (2016.01.25)

Appeal allowed

CV 2014-02843 (2015.12.16)

RULE 26.1 — RULE 26.2(1)(c) — CLAIM — STRIKING OUT — WEAK CASE — PROPORTIONALITY — EVIDENCE — ADVERSE INFERENCES

Imeru Derrell v Elizabeth Derrell and Another

Civ App No 316 of 2015 (2016.01.25)

Appeal allowed

CV 2014-03223 (2016.01.15)

RULE 26.7 — RELIEF FROM SANCTIONS — WITNESS STATEMENT — EXTENSION OF TIME — IMPECUNIOUSITY — NO PREJUDICE

Doc's Engineering Works (1992) Limited and Others v First Caribbean International Bank (Trinidad and Tobago) Limited

Civ App No S034 of 2013 (2016.01.14)

Appeal dismissed

RULE 26.2(1) — STRIKING OUT — LIMITATION DEFENCE — CONSIDERATION OF ALL FACTORS — DETERMINATION OF SUBSTANTIVE ISSUES — NOT A PROCEDURAL APPEAL

(Also under Part 64)

HIGH COURT

Francis Ramlal v Suresh Ramlal

CV 2014-01527 (2016.05.13)

RULE 26.7 — EXPERT WITNESS — PERMISSION TO CALL — RELIEF FROM SANCTIONS — THRESHOLD REQUIREMENTS — PROMPTITUDE

(Also under Part 33)

Kenneth Mohess v Hafizool Mohess

CV 2015-01323 (2016.05.03)

RULE 26.2 — PLEADINGS — STRIKING OUT — ABUSE OF PROCESS — RELITIGATION OF CLAIM — REQUIREMENT FOR FURTHER PARTICULARS

Barry Barrington v Attorney General of Trinidad and Tobago

CV 2015-03519 (2016.04.20)

RULE 26.2(1)(b) — STATEMENT OF CASE — STRIKING OUT — ABUSE OF PROCESS — ALTERNATIVE STATUTORY REMEDY — TRIABLE ISSUES

Clair Carimbocas and Others v Carrie Davidson

CV 2015-04011 (2016.04.18)

RULE 26.2 — RULE 26.8 — STATEMENT OF CASE — STRIKING OUT — SUFFICIENCY OF PLEA — CERTIFICATE OF TRUTH — RECTIFIABLE ERROR

(Also under Part 66)

Cristal Roberts and Another v Dr Samantha Bhagan and Another

CV 2010-01117 (2016.03.24)

RULE 26.7(1) — RULE 26.7(3) — WITNESS STATEMENT — RELIEF FROM SANCTIONS — PROMPTITUDE — INTENTIONAL NON-COMPLIANCE — NO GOOD EXPLANATION

Marlene Wilkes v Verne Sydney

CV 2014-02685 (2016.03.15)

RULE 26.1(f) — RULE 26.2(1)(b) and (c) — STRIKING OUT — DEFENCE — DOOMED TO FAIL — FAILURE TO PARTICULARISE — LOCUS STANDI

Sheldon David v The Attorney General of Trinidad and Tobago and Another

CV 2015-03886 (2016.03.14)

RULE 26.2 — FIXED DATE CLAIM FORM — CONSTITUTIONAL RELIEF — STRIKING OUT — ABUSE OF PROCESS — DELAY

Rico Mohammed v Maritime General Insurance Company Limited

CV 2015-01892 (2016.02.25)

RULE 26.2(2)(b) and (c) — DEFENCE — STRIKING OUT — ABUSE OF PROCESS — NO CAUSE OF ACTION — INSURANCE — INTERPRETATION OF LEGISLATION*Dwight Cruickshank v Home Mortgage Bank*

CV 2015-00416 (2016.01.12)

RULE 26.2(1) — CLAIM FORM — STRIKING OUT — NO CAUSE OF ACTION — NO GROUNDS FOR CLAIM — INCORRECT PARTIES — NO PRIVITY OF CONTRACT*Allison John-de Coteau v Louis Maynard-Paul*

CV 2012-03671 (2016.01.08)

RULE 26.7 — DEFENCE — EXTENSION OF TIME — CONSIDERATION OF ALL FACTORS — PREVIOUS PROCEEDINGS — DEALING WITH CASES JUSTLY

2015

PRIVY COUNCIL/ COURT OF APPEAL*SL Construction Limited v Tobago House of Assembly, Division of Settlements and Labour*

Civ App No T137 of 2015 (2015.12.07)

Appeal dismissed

CV 2015-01135 (2015.05.17)

RULE 26.7 — DEFENCE — RELIEF FROM SANCTIONS — EXTENSION OF TIME — CONSIDERATION OF ALL FACTORS*Lakhpatiya Barran a/c Dowlattiah Barran v Balmati Barran and Others*

Civ App No 241 of 2015 (2015.11.16)

Appeal allowed

CV 2013-04300 (2015.09.21)

RULE 26.7 — WITNESS STATEMENT — RELIEF FROM SANCTIONS — EXTENSION OF TIME — PROMPTITUDE — GOOD EXPLANATION — ADMINISTRATION OF JUSTICE — FAULT OF PARTY — REASONABLE TIME TO REMEDY

Her Worship Magistrate Marcia Ayers-Caesar and Another v BS (by his kin and next friend Karen Mohammed)

Civ App No P252 of 2015 (2015.11.16)

Appeal allowed

RULE 26.1(w) — CASE MANAGEMENT POWERS — MINOR — FURTHERING OVERRIDING OBJECTIVE — JURISDICTION TO MAKE INTERIM ORDERS

(Also under Parts 1 and 56)

3G Technologies Limited and Others v Rudranand Maharaj

Civ App No 150 of 2015 (2015.10.05)

Appeal allowed

CV 2014-02872 (2015.06.25)

RULE 26.1(t)(t) — RULE 26.8 — SEPARATE REPRESENTATION — UNRECTIFIABLE ERROR — EXERCISE OF CASE MANAGEMENT POWERS

Kadir Mohammed v The Attorney General of Trinidad and Tobago

Civ App No 173 of 2014 (2015.07.21)

Appeal dismissed

CV 2013-04647 (2014.06.10)

RULE 26.2(t)(c) — CLAIMS — STRIKING OUT — ABUSE OF PROCESS — TRIABLE ISSUES

Crown Point Beach Hotel Limited v Seecharan Sharma and Others

Civ App No P113 of 2015 (2015.07.20)

Appeal dismissed

CV 2013-03309 (2015.05.21)

RULE 26.1(t)(d) — RULE 26.7 — LIST OF DOCUMENTS — WITNESS STATEMENTS — STATEMENT OF ISSUES — RELIEF FROM SANCTIONS — EXTENSION OF TIME — CONSIDERATION OF ALL FACTORS

Sombat Mekhawong v Hilton International Trinidad Limited

Civ App No P108 of 2015 (2015.07.06)

Appeal allowed

CV 2014-01200 (2015.05.20)

RULE 26.1(t)(k) — RULE 26.8 — AFFIDAVIT — RECTIFIABLE ERROR — STRIKING OUT — POINT IN LIMINE — FURTHER CLARIFICATION REQUIRED

(Also under Part 15 and 31)

Steve Hagley and Another v Latchman Babwah

Civ App No 32 of 2015 (2015.06.15)

Appeal dismissed

RULE 26.8 — LIMITATION OF ACTION — EXTENSION OF TIME — DISCRETION — DRAFTING ERROR — RECTIFIABLE

Lynette Hughes and Others v The South West Regional Health Authority and Others

Civ App No 5030 of 2015 (2015.04.27)

Appeal dismissed

CV 2014-02749 (2015.02.13)

RULE 26.1(1)(d) — DEFENCE — EXTENSION OF TIME — DEALING WITH MATTER JUSTLY — PROMPTITUDE — GOOD EXPLANATION

(Also under Part 10)

Shiraze Ahamad v Steve Jaipersad

Civ App No 139 of 2014 (2015.02.24)

Appeal dismissed

CV 2013-03381 (2014.05.07)

RULE 26.2 — CLAIM — STRIKING OUT — ABUSE OF PROCESS — LIMITATION OF ACTION — EQUITABLE RELIEF

Medical Professionals Association of Trinidad and Tobago v Fidel Rampersad and Others

Civ App No P337 of 2014 (2015.01.26)

Appeal allowed

CV 2014-01330 (2015.01.23)

RULE 26.8 — CLAIM FORM — STRIKING OUT — ERROR — DISCRETION — PERMISSION TO FILE WITHOUT STATEMENT OF CASE

(Also under Parts 1 and 8)

HIGH COURT*Taurus Services Limited v Jenny Adams*

CV 2015-1808 (2015.10.05)

RULE 26.1(1)(k) — RULE 26.2(1)(b) — CLAIM — STRIKING OUT — LIMITATION OF ACTION — ABUSE OF PROCESS — POINT IN LIMINE

Soobartar Deonarine v Jamwanti Satnarine and Others

CV 2014-01431 (2015.07.23)

RULE 26.1(1)(w) — RULE 26.8 — STATEMENT OF CASE — PROCEDURAL ERROR — AMENDMENT PERMITTED — CASE MANAGEMENT — FURTHERING OVERRIDING OBJECTIVE

(Also under Part 8)

Victoria Doonie v Home Construction Limited and Another

CV 2013-04898 (2015.03.05)

RULE 26.2(1)(b) — CLAIM — STRIKING OUT — ABUSE OF PROCESS — DISMISSAL OF PREVIOUS PROCEEDINGS

Anand Ramlogan v Dr Keith C Rowley

CV 2012-02981 (2015.01.19)

RULE 26.1(1)(d) — RULE 26.7 FACTORS CONSIDERED — WITNESS STATEMENTS — EXTENSION OF TIME — PREJUDICE — PROMPTITUDE — COMPLIANCE — NO GOOD EXPLANATION — ADMINISTRATION OF JUSTICE

2014

PRIVY COUNCIL/ COURT OF APPEAL

Real Time Systems Limited v Renraw Investments Limited and Others

[2014] UKPC 6 (2014.03.03)

Appeal dismissed

RULE 26.2 — RULE 26.7 — RULE 26.1(1)(w) — RELIEF FROM SANCTIONS — REQUEST FOR INFORMATION — STATEMENT OF CASE — STRIKING OUT — ALTERNATIVES AVAILABLE — COURT'S INITIATIVE

(Also under Parts 8, 20 and 35)

Shariat I Mohammed v Inish Harrilal and Others

Civ App No P309 of 2014

Appeal pending

CV 2013-03930 (2014.11.12)

RULE 26.2(1)(b) — CLAIM — STRIKING OUT — ABUSE OF PROCESS — RELITIGATION OF ISSUE — FRAUD

Jagdeesh Thannoo v Harold Suepaul

Civ App No P020 of 2014

Appeal pending

CV 2013-01517 (2014.01.29)

**RULE 26.2 — CLAIM — STRIKING OUT — VAGUENESS OF PLEADINGS —
REPLY — NEW CIRCUMSTANCES**

Selwin Riley v Winston Cuffie

Civ App No S272 of 2014 (2014.11.17)

Appeal allowed

CV 2011-04837 (2014.11.07)

**RULE 26.2(1)(b) — CLAIM — STRIKING OUT — ABUSE OF PROCESS —
RELITIGATION OF CLAIM — PROPER PARTY**

(Also under Part 13)

John Reginald Phelps Dumas v The Attorney General of Trinidad and Tobago

Civ App No P218 of 2014 (2014.10.20)

Appeal allowed

**RULE 26.8 — COMMENCEMENT OF CLAIM — FIXED DATE CLAIM FORM —
RECTIFIABLE ERROR**

Ramesh Chaitlal and Another v Andy Sinanan and Another

Civ App No S154 of 2014 (2014.07.07)

Appeal allowed

CV 2013-00787 (2014.07.01)

**RULE 26.1(d) — WITNESS STATEMENT — VARIATION OF TIMETABLE —
EXTENSION OF TIME — DISCRETION — PREJUDICE**

(Also under Part 1)

Ava Solomon and Others v Caleb Phillip and Others

Civ App No 126 of 2014 (2014.07.07)

Appeal allowed

CV 2013-00274 (2014.05.01)

**RULE 26.7(3)(b) WITNESS STATEMENTS — EXTENSION OF TIME — RELIEF
FROM SANCTIONS — THRESHOLD NOT MET**

(Also under Part 29)

David Walcott v Scotiabank Trinidad and Tobago Limited

Civ App No P140 of 2013 (2014.06.25)

Appeal dismissed

CV 2012-04235 (2013.05.02)

RULE 26.2 — CLAIM — STRIKING OUT — ABUSE OF PROCESS — RES JUDICATA

(Also under Part 1)

The University of Trinidad and Tobago v Kenneth Julien and Others

Civ App No 104 of 2014 (2014.06.09)

Appeal dismissed

CV 2013-00212 (2014.04.11)

RULE 26.2(1)(c) — STATEMENT OF CASE — COMBINED APPLICATIONS — STRIKING OUT AND SUMMARY JUDGMENT — ARGUABLE GROUNDS — STRIKING OUT DISPROPORTIONATE

Padma Dass v Ramnath Bally and Another

Civ App Nos 27 and 89 of 2014 (2014.05.12)

Appeal dismissed

CV 2012-03309 (2014.01.23)

RULE 26.1(d) — RULE 26.7 — EXTENSION OF TIME — REASONABLENESS — RELIEF FROM SANCTIONS — GOOD EXPLANATION

Hazra Mujaffar v Jumiel Mohammed

Civ App No 58 of 2014 (2014.04.28)

Appeal allowed

CV 2011-00315 (2014.04.23)

RULE 26.1(2) — EXTENSION OF TIME — WITNESS STATEMENTS — CASE MANAGEMENT — “UNLESS ORDER”

(Also under Part 25)

Jamal Sambury v The Attorney General of Trinidad and Tobago

Civ App No 11 of 2014 (2014.02.17)

Appeals dismissed

CV 2011-02720 (2014.02.05)

RULE 26.1(1)(w) — RULE 26.2(1)(b) — STATEMENT OF CASE — COPIED PORTIONS OF WITNESS STATEMENT — STRIKING OUT — ABUSE OF PROCESS — PROPORTIONALITY AND JUSTICE — PENALTY — COSTS ORDER

Dennis Gillard v The Attorney General of Trinidad and Tobago

Civ App No P192 of 2013 (2014.02.11)

Appeal dismissed

CV 2009-03903 (2013.07.29)

RULE 26.1(k) — DEFAULT JUDGMENT — STRIKING OUT — PRELIMINARY ISSUE — FURTHER ORDERS TO BE MADE

(Also under Parts 8 and 12)

Deodat Ramoutar a/c Dave Ramoutar v Sharon Ramoutar

Civ App No P007 of 2014 (2014.02.10)

Appeal dismissed

CV 2011-03947 (2014.02.03)

RULE 26.1(t)(f) — STAY OF PROCEEDINGS — AFFIDAVIT IN SUPPORT — SUFFICIENCY OF FACTS

Millenium Park Limited v Fareed Mohammed

Civ App No S249 of 2013 (2014.01.27)

Appeal dismissed

CV 2012-3567 (2013.10.30)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — ABUSE OF PROCESS — CERTIFICATE OF TRUTH — ENDORSEMENT BY ATTORNEY

(Also under Part 15)

HIGH COURT

Terrence Charles v Chief of The Defence Staff and Another

CV 2014-02620 (2014.12.04)

RULE 26.2(1)(a) and (b) — CLAIM — STRIKING OUT — RECTIFIABLE ERRORS — ABUSE OF PROCESS — MIXED CLAIM — COMMENCEMENT OF CLAIM — ALTERNATIVE REMEDIES — ADMINISTRATION OF JUSTICE

(Also under Part 56)

Hilton Awong v Ramchand Mohit and Others

CV 2012-04919, CV 2012-04921 (2014.10.20)

RULE 26.7(3) — WITNESS STATEMENT — EXTENSION OF TIME — RELIEF FROM SANCTIONS — PROMPTITUDE — UNINTENTIONAL NON-COMPLIANCE — GOOD EXPLANATION — GENERAL COMPLIANCE — LAISSEZ FAIRE APPROACH

Afrikan Option and Another v Bank of Baroda (Trinidad and Tobago) Limited

CV 2013-05221 (2014.10.14)

RULE 26.2(1) — RULE 26.8 — CERTIFICATE OF TRUTH — STRIKING OUT — UNRECTIFIABLE ERROR — IMPROPER PARTY

(Also under Part 8)

Yvonne R Maricheau v Maureen Bharat Pereira and Another

CV 2013-01568 (2014.09.29)

RULE 26.2(1)(c) — STATEMENT OF CASE — STRIKING OUT — NO GROUNDS FOR DEFENCE — NO CAUSE OF ACTION — BREACH OF CONTRACT NOT PLEADED

(Also under Part 15)

Charlene Forde v Public Transport Service Corporation

CV 2008-04679 (2014.05.20)

RULE 26.2(1)(b) — CLAIM FORM — STRIKING OUT — ABUSE OF PROCESS — DELAY

(Also under Part 1)

Sandra K Tewarie v Scotiabank Trinidad and Tobago Limited

CV 2008-03807 (2014.05.05)

RULE 26.7(4) — PERSONAL INJURIES — ASSESSMENT — WITNESS STATEMENTS — EXTENSION OF TIME — FURTHER PARTICULARS — DISCRETION

Angela Attong v Dianne Hunt

CV 2013-00505 (2014.02.27)

RULE 26.2(1)(c) — CLAIM — STRIKING OUT — NO GROUNDS FOR CLAIM — MINI-TRIAL — CASE MANAGEMENT

(Also under Part 15)

Colin Ragoonath and Others v Motor One Insurance Company Limited

CV 2012-04859, CV 2012-04860, CV 2012-04861 (2014.02.12)

RULE 26.1(1)(c) — RULE 26.2.1(b) — STRIKING OUT — CONSOLIDATED PROCEEDINGS — ABUSE OF PROCESS — RIGHT TO BRING SEPARATE CLAIM***Brian Bisnath v The Attorney General of Trinidad and Tobago***

CV 2012-01599 (2014.01.30)

RULE 26.2 — CLAIM — STRIKING OUT — ABUSE OF ACTION — CONVERSION TO ADMINISTRATIVE CLAIM — DELAY — DISCRETION

(Also under Part 56)

2013**PRIVY COUNCIL/ COURT OF APPEAL*****Anand Persad and Another v Tarah Ramlakhan***

Civ App 289 of 2013

Appeal pending

CV 2012-01390 (2013.12.13)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — ABUSE OF PROCESS — RES JUDICATA***Hugh Lee King v Leo Martinez and Another***

Civ App No P250 of 2013

Appeal pending

CV 2012-03303 (2013.06.17)

RULE 26.7 — RELIEF FROM SANCTIONS — WITNESS STATEMENT — DELAY — PROMPTITUDE — INTENTIONAL NON-COMPLIANCE***Thadeus Clement v The Attorney General of Trinidad and Tobago***

Civ App No S095 of 2010 (2013.07.31)

Appeal allowed

CV 2009-03208 (2010.02.01)

RULE 26.2(1)(c) — DEFENCE — STRIKING OUT — BARE DENIAL

(Also under Part 10)

Cecil Santana v Jules Jairul and Others

Civ App No 149 of 2009 (2013.05.27)

Appeal dismissed

CV 2007-04537 (2009.07.21)

RULE 26.2(1)(c) — DEFENCE — STRIKING OUT — WITNESS STATEMENTS — NO EVIDENCE — UNANSWERED ALLEGATIONS

(Also under Part 10)

Christianne Kelsick v Dr Ajit Kuruvilla and Others

Civ App No P277 of 2012 (2013.03.19)

Appeal allowed

RULE 26.1(1) (p) and (w) — APPLICATION FOR EXPERT WITNESS — EVIDENCE BY VIDEO LINK — DEALING WITH CASES JUSTLY

(Also under Parts 1, 29 and 33)

LJ Construction Co Ltd v Janis Solomon

Civ App No P42 of 2013 (2013.03.18)

Appeal allowed

RULE 26.1(1)(a) — RULE 26.8 — COMMENCEMENT OF MATTER — WRONG COURT OFFICE — TRANSFER OF PROCEEDINGS — RECTIFIABLE ERROR

(Also under Part 8)

Nazima Garib v Inshan Ishmael and Another

Civ App No 227 of 2012 (2013.03.04)

Appeal allowed

CV 2012-00646 (No Date of Delivery)

RULE 26.1 — DEFAULT JUDGMENT — SETTING ASIDE — NO EXPLANATION

HIGH COURT

Hindu Credit Union Co-Operative Society Limited (in liquidation) v Ramdath D Rampersad and Another

CV 2011-00840 (2013.11.28)

RULE 26.2(1)(b) — CLAIM AGAINST LIQUIDATOR — STRIKING OUT — NO AUTHORITY TO BRING ACTION — ABUSE OF PROCESS

Jessie James v The Attorney General of Trinidad and Tobago

CV 2013-00923 (2013.II.27)

RULE 26.2(1) (c) — STRIKING OUT — UNSUSTAINABLE CLAIM — APPROPRIATENESS OF AMENDMENT*Rameshwar Maharaj and Another v Petroleum Company of Trinidad and Tobago Limited*

CV 2012-01629 (2013.II.12)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — ABUSE OF PROCESS — LIMITATION OF ACTION — PREJUDICE*Oswyn Edmund and Others v The Water and Sewerage Authority*

CV 2009-04244, CV 2009-04245, CV 2009-04246, CV 2009-04248 (2013.02.22)

RULE 26.7 — WITNESS STATEMENT — RELIEF FROM SANCTIONS — DELAY — PROMPTITUDE — INTENTIONAL NON-COMPLIANCE — NO GOOD EXPLANATION*Rishi Kanhai v Glenda Kanhai*

CV 2011-02445 (2013.01.14)

RULE 26.2 — DEFENCE — STRIKING OUT — FANCIFUL DEFENCE

2012

PRIVY COUNCIL/ COURT OF APPEAL*Evolving Tecknologies and Enterprise Development Company Limited v Kenneth Julien and Others*

Civ App No 171 of 2012 (2012.12.11)

Appeal allowed

CV 2011-03992 (2012.07.24)

RULE 26.2(1)(b) and (c) — CLAIM — STRIKING OUT — ABUSE OF PROCESS — TRIABLE ISSUES OF FACT*Phillip Louis (aka Sagar Manning) and Others v Wilfred des Vignes*

Civ App No 217 of 2012 (2012.II.19)

Appeal dismissed

CV 2011-04984 (2012.09.26)

RULE 26.2 — STATEMENT OF CASE — PARTIAL STRIKING OUT — NO GROUNDS — ABUSE OF PROCESS — CAUSE OF ACTION ESTOPPEL

Karen Tesheira v Gulf View Medical Centre

Civ App No P122 of 2012 (2012.10.01)

Appeal allowed

CV 2009-02051 (2012.05.16)

RULE 26.7(3) — WITNESS STATEMENTS — DELAY — RELIEF FROM SANCTIONS

Dhanmatie Ramlogan v Ramesh Persad-Maharaj and Others

Civ App No 168 of 2012 (2012.10.01)

Appeal allowed

CV 2011-04594 (2012.06.12)

RULE 26.2 — STRIKING OUT — RES JUDICATA — ABUSE OF PROCESS — TRIABLE ISSUES

Ayoub Khan v Caroni (1975) Limited

Civ App No 167 of 2012 (2012.10.01)

Appeal allowed

CV 2006-03392 (2012.03.29)

RULE 26.7(1), (2) and (3) — WITNESS STATEMENT — RELIEF FROM SANCTIONS — DELAY

(Also under Part 10)

Bobby Mungal (Trading as Best Choice Meats) v El Dorado Consumers' Co-Operative Society Limited

Civ App No 100 of 2012 (2012.07.26)

Appeal disposed of by consent

CV 2009-02781, CV 2011-01309 (2012.05.09)

RULE 26.1(k) — CLAIM — STRIKING OUT ON MOTION OF COURT — DEFAULT JUDGMENT OBTAINED IN ERROR

David Walcott v Graeme Suite and Another

Civ App No 146 of 2012 (2012.07.02)

Appeal allowed

CV 2011-01769 (2012.06.29)

RULE 26.1(f) — STAY OF PROCEEDINGS — PENDING PAYMENT — OUTSTANDING ORDERS FOR COSTS

Rawti Roopnarine and Another v Harripersad Kissoo and Others

Civ App No 52 of 2012 (2012.06.22)

Appeal allowed

RULE 26.7(1) — RULE 26.7(4) — WITNESS STATEMENT — RELIEF FROM SANCTIONS — OVERRIDING OBJECTIVE — PROMPTITUDE*Anthony C Mauge v The Attorney General of Trinidad and Tobago**Lawrence Blake v The Attorney General of Trinidad and Tobago*

Civ App No 87 of 2012 (2012.05.21)

Appeal dismissed

CV 2011-02632, CV 2011-02987 (2012.04.03)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — MIXED LAW AND FACT — TRIAL IMMINENT — CASE NOT BOUND TO FAIL*Development Finance Limited v Manta Resorts Company Limited*

Civ App No 268 of 2011 (2012.01.30)

Appeal dismissed

CV 2011-01628 (2012.01.27)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — DELAY — NO GROUNDS FOR CLAIM**HIGH COURT***Mohanlal Ramcharan v Carlyle A. Serrano*

CV 2011-02646 (2012.12.06)

RULE 26.7(3) — DEFENCE — STRIKING OUT — EXTENSION OF TIME — UNINTENTIONAL NON-COMPLIANCE — NO GOOD EXPLANATION — ABUSE OF PROCESS — NO CAUSE OF ACTION*Edmond Ali and Another v Aranguez Estates Limited and Another*

CV 2011-01891 (2012.10.29)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — NON-COMPLIANCE WITH PREVIOUSLY IMPOSED CONDITION

(Also under Part 66)

Annette Ramlal and Another v Maurice Koon Koon and Others

HC 851/2005 (2012.10.19)

EXTENSION OF TIME — WITNESS STATEMENT — NON-COMPLIANCE WITH ORDER — NO APPLICATION FOR RELIEF FROM SANCTIONS

Viking Caribou Holdings Limited v Coosal's Construction Company Limited

CV 2011-02976 (2012.10.06)

RULE 26.7(3) — LATE FILING OF DOCUMENTS — RELIEF FROM SANCTIONS — EXTENSION OF TIME — NON-COMPLIANCE WITH COURT ORDERS

Suresh Persad v Diana Wharwood and Another

CV 2011-03517 (2012.10.04)

RULE 26.2 — CLAIM — STRIKING OUT — OVERRIDING OBJECTIVE — DEALING WITH CASES JUSTLY — PROPORTIONALITY

Nicon & Associates Limited v National Commission For Self Help Limited

CV 2012-00541 (2012.10.04)

RULE 26.2 — DEFENCE — STRIKING OUT — NO GROUNDS FOR DEFENCE

Neutrice Greaves v Nina Grant

CV 2010-00647 (2012.09.28)

RULE 26.2 — DEFENCE — STRIKING OUT — BARE DENIAL

(Also under Part 1)

Arjoon Badloo and Another v Lesley Ann Critchlow and Another

CV 2011-01516 (2012.09.28)

RULE 26.7 — RELIEF FROM SANCTIONS — EXTENSION OF TIME — GOOD EXPLANATION FOR BREACH — PROMPTITUDE

(Also under Part 20)

Steve Chairman v Samuel Saunders

CV 2012-01670 (2012.07.02)

RULE 26.2 — CLAIM FORM — STRIKING OUT — ABUSE OF PROCESS — COURT'S RESOURCES

(Also under Part 1)

Karen Tesheira v Attorney General of Trinidad and Tobago and Others

CV 2011-03941 (2012.05.16)

RULE 26.7(1) and (3) — WITNESS STATEMENT — RELIEF FROM SANCTIONS — DELAY

Steve Thomas v Natisha Winchester and Another

CV 2008 – 00815 (2012.05.03)

RULE 26.2 — COURT ORDER — NON-COMPLIANCE — STRIKING OUT — SANCTIONS

Export-Import Bank of Trinidad and Tobago v Water Works Limited and Others

CV 2010-03594 (2012.05.01)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — SUFFICIENCY OF CLAIMS — REPLY — BLANKET DENIAL — UNDISPUTED ALLEGATIONS

(Also under Parts 8 and 10)

Sumintra Nanan v Shylock Toolsie and Another

CV 2011-04210 (2012.04.26)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — NO CAUSE OF ACTION

Kalistra Baptiste v Beritton Gray and Another

CV 2007-04619 (2012.04.05)

RULE 26.6 — EXTENSION OF TIME — AGREED BUNDLE — UNLESS ORDER — EXPRESS SANCTION

Kenneth Melloni v Berkley Petroleum Services Limited

CV 2008-02876 (2012.03.13)

RULE 26.2 — COUNTERCLAIM — STRIKING OUT — ABUSE OF PROCESS — STATUTE BARRED — LACK OF CLARITY

(Also under Part 10)

Elias Alexander v The Attorney General of Trinidad and Tobago

CV 2010 – 02501 (2012.02.16)

RULE 26.2(1)(a) and (c) — NO STATEMENT OF CASE — STRIKING OUT — SUFFICIENCY OF CLAIM

(Also under Part 8)

Sparks and Sons General Contractors Engineering Works Company Limited v Masala Radio Limited and Others

CV 2009-01811 (2012.01.20)

RULE 26.2 — STATEMENT OF CASE — ENFORCEMENT OF ILLEGAL CONTRACT — STRIKING OUT

(Also under Part 10)

Gangadeen Seebaran v Christine Suchit and Others

CV 2009-04028 (2012.01.20)

RULE 26.2 — STRIKING OUT — ANCILLARY CLAIM — ASSIGNMENT OF RIGHT OF ACTION — AMENDED DEFENCE — BARE DENIAL

(Also under Part 33)

2011

PRIVY COUNCIL/ COURT OF APPEAL

The Attorney General v Universal Projects Limited

[2011] UKPC 37 (2011.10.20)

Appeal dismissed

RULE 26.7 — DEFENCE — DEFAULT JUDGMENT — NON-COMPLIANCE WITH COURT ORDER — RELIEF FROM SANCTIONS

(Also under Part 13)

The Attorney General v Keron Matthews

[2011] UKPC 38 (2011.10.20)

Appeal allowed

RULE 26.1(1)(d), RULE 26.6, RULE 26.7 — DEFENCE — DEFAULT JUDGMENT — SETTING ASIDE — NO IMPLIED SANCTION

(Also under Parts 10 and 13)

Antonio Webster v The Attorney General of Trinidad & Tobago

[2011] UKPC 22 (2011.07.18)

Appeal dismissed

RULE 26.8(3) — PROCEDURAL ERROR — MIXED CLAIM — STATEMENT OF CASE — STRIKING OUT

(Also under Parts 8 and 56)

Roberts & Company v Rehanna Moonan Rajbansie and Another

Civ App No 110 of 2011 (2011.07.04)

Appeal dismissed

CV 2008-00923 (2011.05.31)

RULE 26.1(1)(d) — WITNESS STATEMENT — EXTENSION OF TIME — FAULT OF ATTORNEY — DISCRETION — PROPORTIONALITY — PREJUDICE

(Also under Part 27)

Coosal's Construction Company Limited v Curtis Bonaparte

Civ App No S201 of 2010 (2011.03.21)

Appeal allowed

CV 2008-04695 (2010.09.29)

RULE 26.1(w) — JUDGMENT AT CMC — SETTING ASIDE — OVERRIDING OBJECTIVE — NOT AN IRREGULAR ORDER

(Also under Part 40)

HIGH COURT

Karen Tesheira v Gulf View Medical Centre and Others

CV 2009-02051 (2011.12.19)

RULE 26.7(3) and (4) — WITNESS STATEMENT — RELIEF FROM SANCTIONS — DELAY — RULE 26.7 FACTORS CONSIDERED — EXPERT EVIDENCE

Lennox Offshore Services Limited v Haliburton Trinidad Limited

CV 2010-00536 (2011.12.09)

RULE 26.2 — STATEMENT OF CASE — STRIKING OUT — APPLICATION TO JOIN TRIALS — ABUSE OF PROCESS

Lloyd Charles and Another v North West Regional Health Authority and Another

CV 2008-02668 (2011.06.29)

RULE 26.7 — WITNESS STATEMENT — UNLESS ORDER — AUTOMATIC STRIKING OUT

(Also under Part 29)

Glenroy Harper v Agnes Harper and Another

CV 2010-03327 (2011.05.26)

RULE 26.2(1)(c) — STATEMENT OF CASE — NO CAUSE OF ACTION — NO LOCUS STANDI — STRIKING OUT

Ramraj Deonanan and Another v Michael Harripersad

CV 2010-01662 (2011.03.14)

RULE 26.7 — WITNESS STATEMENT — RELIEF FROM SANCTIONS — DELAY — PROMPTITUDE — NO GOOD EXPLANATION

2010

PRIVY COUNCIL/ COURT OF APPEAL

Darren Morris v The Attorney General of Trinidad and Tobago

Civ App No 253 of 2009 (2010.01.18)

Appeal allowed

CV 2009-01791 (2009.11.08)

RULE 26.7(3) and (4) — DEFENCE — EXTENSION OF TIME — UNLESS ORDER — CONSIDERATION OF ALL FACTORS

2009

PRIVY COUNCIL/ COURT OF APPEAL

Meena Ramnath and Others v Aziz Ali and Others

Civ App No S139 of 2009 (2009.07.09)

Appeal allowed

CV 2008-03282 (2009.06.30)

RULE 26.1(k) — RULE 26.2 — DEFENCE — STRIKING OUT — BARE DENIAL — NO GROUNDS DISCLOSED

Trincan Oil Limited and Another v Chris Martin

Civ App No 65 of 2009 (2009.05.12)

Appeal allowed

RULE 26.7 — RELIEF FROM SANCTIONS — INTERPRETATION — IMPROPER EXERCISE OF DISCRETION

HIGH COURT*Richard Ramnarace v Visham Boodoosingh and Another*

CV 2005–00312 (2009.08.06)

RULE 26.2(1) — CLAIM — STRIKING OUT — EXTENSION OF TIME — RELIEF FROM SANCTIONS*Alan Porter v Marvin Parisienne*

CV 2009–01140 (2009.07.31)

RULE 26.2(2)(a),(c) — STATEMENT OF CASE — REPLY — STRIKING OUT — NO REASONABLE GROUNDS — INSUFFICIENT PARTICULARS*Krishna Rampersad and Another v The Agricultural Development Bank of Trinidad and Tobago*

CV 2007–01083 (2009.03.14)

RULE 26.2(b) and (c) — STRIKING OUT — ABUSE OF PROCESS — NO CAUSE OF ACTION*Raymond Pierre Limited v Caribbean Sound Basin Limited*

CV 2008–02187 (2009.03.12)

RULE 26.1(1)(w) — CASE MANAGEMENT CONFERENCE — DELIVERY OF JUDGMENT — SANCTION FOR NON-COMPLIANCE

2008

PRIVY COUNCIL/COURT OF APPEAL*Arjoon Goberdhan v Faizool Mohammed and Another*

Civ App No 109 of 2008

Appeal dismissed

CV 2007–03530 (2008.06.09)

RULE 26.1(1)(k) — RULE 26.2(1)(c) — DEFENCE — STRIKING OUT — CASE MANAGEMENT CONFERENCE — JUDGMENT AFTER DECISION ON PRELIMINARY POINT

(Also under Part 25)

HIGH COURT

Claude Denbow and Another v The Attorney General of Trinidad and Tobago and Others

CV 2005-00740 (2008.01.28)

PART 26 — PRELIMINARY ISSUE OF LAW — PROCEDURE — JUDGMENT ON ADMISSIONS — DISCRETION

2006

PRIVY COUNCIL/ COURT OF APPEAL

Satnarine Sharma, The Chief Justice of Trinidad and Tobago v Carla Brown-Antoine and Others

[2006] UKPC 57 (2006.11.30)

Appeal dismissed

Civ App Nos 91, 92 & 93 of 2006 (2006.07.31)

Appeal allowed

CV 2006-01956 (2006.07.24)

RULE 26.8 — ERROR OF PROCEDURE — APPLICATION FOR INJUNCTION — OMISSION IN SUPPORTING EVIDENCE — NO PREJUDICE — FAILURE NOT FATAL

Moonan Sooknanan and Another v Development Innovations Limited and Another

Civ App No 109 of 2006

Appeal dismissed

CV 2005-00549 (2006.12.06)

RULE 26.2(1)(c) — STATEMENT OF CASE — STRIKING OUT — NO REASONABLE CAUSE OF ACTION — IMPROPER JOINING OF SECOND DEFENDANT



PART 27 CASE MANAGEMENT CONFERENCES—PROCEDURE

Contents of this Part

Scope of this Part	Rule 27.1
Fixed date claims—first hearing	Rule 27.2
Case management conference	Rule 27.3
Dispensing with case management conference	Rule 27.4
Attendance at case management conference or pre trial review	Rule 27.5
Orders to be made at a case management conference	Rule 27.6
Separate trial of issues of liability and quantum	Rule 27.7
Adjournment of case management conference	Rule 27.8
Variation of case management timetable	Rule 27.9
Listing questionnaire	Rule 27.10
Fixing trial date	Rule 27.11

Scope of this Part

27.1 This Part deals with the procedures by which the court will manage cases.

Fixed date claims—first hearing

- 27.2** (1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.
- (2) On that hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.
- (3) The court may, however, treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily.
- (4) The general rule is that the court must give at least 14 days' notice of any first hearing.
- (5) However, this is subject to any rule or statutory provision, which, specifies a different period.
- (6) The court may with or without an application direct that shorter notice be given—
- (a) if the parties agree; or
- (b) in urgent cases.

Case management conferenceLN 126
of 2011

27.3 (1) The general rule is that the court office shall fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim form.

(2) Where there are two or more defendants and at least one of them files a defence, the court office shall fix a case management conference—

(a) when all the defendants have filed a defence; or

(b) when the period for the filing of the last defence has expired, whichever is sooner.

(3) If the court does not—

(a) dispense with a case management conference under rule 27.4(1) and give directions under rule 27.4(2); or

(b) give notice of a case management conference within—

(i) 14 days of the filing of a defence, where there is only one defendant;

(ii) 14 days of the filing of the last defence, where there are two or more defendants; or

(iii) 14 days of the expiration of the period for the filing of the last defence, where there are two or more defendants,

the claimant shall within 28 days of the relevant period identified in subparagraph (b) apply for a date to be fixed for the case management conference.

(4) If the claimant does not so apply, the claim shall be automatically struck out.

(5) The claimant may apply for relief within 3 months from the date of the service of the defence from the sanction imposed by paragraph (4).

(6) In considering whether the court grants relief, the court shall have regard only to whether the defendant has suffered any prejudice and rule 26.7 shall not apply.

(7) If the court grants relief, the case management conference shall take place within 28 days of the order.

(8) The application under paragraph (5) shall be made with notice and shall be supported by evidence.

(9) The case management conference shall take place not less than four weeks nor more than eight weeks after—

(a) the defence is filed where there is only one defendant;

(b) the final defence is filed where there are two or more defendants; or

(c) the expiration date for the filing of the last defence where there are two or more defendants,

unless any rule prescribes a shorter or longer period or the case is urgent.

- (10) However, a party may apply to the court to fix a case management conference at a time earlier than that provided in paragraph (1) or (2).
- (11) The application may be made without notice but shall state the reasons for the application.
- (12) The court shall fix a case management conference on application if it is satisfied that it will enable it to deal with the case justly.
- (13) The court office shall give all parties not less than 14 days notice of the date, time and place of the case management conference.
- (14) The court may with or without an application direct that shorter notice be given—
 - (a) if the parties agree; or
 - (b) in urgent cases.
- (15) Unless the court orders otherwise, time for fixing a case management conference shall not run in the long vacation.

Dispensing with case management conference

- 27.4 (1) On the application of a party the court may dispense with a case management conference if it is satisfied that—
- (a) the case may be dealt with justly without a case management conference; and
 - (b) the cost of the case management conference to the parties is disproportionate to the value of the proceedings and the benefits that might be achieved by a case management conference; or
 - (c) in any case, the case should be dealt with as a matter of urgency.
- (2) If the court dispenses with a case management conference it must immediately—
- (a) give directions in writing about the preparation of the case;
 - (b) set a timetable for the steps to be taken between the giving of directions and the trial;
 - (c) fix a date for a pre-trial review unless it is satisfied that the case may be dealt with justly without a pre-trial review; and
 - (d) in any event, fix—
 - (i) the trial date; or
 - (ii) the period within which the trial is to take place; and, in either case;
 - (iii) the date on which a listing questionnaire is to be sent by the court office to the parties.

- (3) The court office must serve the directions made on all parties and give notice of—
 - (a) the trial date or trial period; and
 - (b) the date on which the listing questionnaire is to be sent out by the court office.

Attendance at case management conference or pre-trial review

- 27.5** (1) If a party is represented by an attorney-at-law, an attorney-at-law who has conduct of the case or an attorney-at-law who is fully authorised to negotiate on behalf of his client and competent to deal with the case must attend the case management conference and any pre-trial review.
- (2) The general rule is that the party or a person who is in a position to represent the interests of the party (other than the attorney-at-law) must attend the case management conference or pre-trial review.
 - (3) However, the court may direct that a party or his representative need not attend the case management conference or pre-trial review.
 - (4) If the case management conference or pre-trial review is not attended by the attorney-at-law and the party or his representative the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part 26 or Part 66.

Orders to be made at a case management conference

- 27.6** (1) The general rule is that at a case management conference the court must consider whether to make orders for—
- (a) standard disclosure and inspection by a date fixed by the court;
 - (b) service of witness statements by a date fixed by the court; and
 - (c) service of expert's reports (if any) by a date fixed by the court.
- (2) The court may also make orders for—
- (a) the preparation of an agreed statement of facts;
 - (b) the preparation of an agreed statement of issues;
 - (c) the preparation of an agreed statement of the basic technical, scientific or medical matters in issue; and
 - (d) an agreed statement as to any relevant specialist area of law, which statement shall not be binding upon the trial judge.
- (3) The court must fix a date for a pre-trial review unless it is satisfied that the case may be dealt with justly without a pretrial review.
 - (4) The court must in any event, fix—
 - (i) the trial date; or
 - (ii) the period within which the trial is to take place; and

- (iii) the date on which a listing questionnaire is to be sent by the court office to the parties.
- (5) The court office must serve the directions made on all parties and give notice of—
 - (i) the trial date or trial period; and
 - (ii) the date on which the listing questionnaire is to be sent out by the court office.

Separate trial of issues of liability and quantum

- 27.7 The court may direct a separate trial of the issues of liability and quantum only where—
- (a) the costs of preparing the issue as to quantum are substantial and there is a significant dispute on the question of liability; or
 - (b) the claimant is not likely to be able to proceed with the issue as to quantum because of difficulties in determining the prognosis or for any other reason by the time that the issue as to liability should reasonably be determined.

Adjournment of case management conference

- 27.8 (1) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.
- (2) Where the court is satisfied that either—
- (a) the parties are in the process of negotiating, or are likely to negotiate a settlement; or
 - (b) the parties are attending or have arranged to attend a form of ADR procedure,
- the court may adjourn the case management conference to a suitable date, time and place to enable negotiations or ADR proceedings to continue.
- (3) The court may give directions as to the preparation of the case for trial if the case management conference is adjourned.
- (4) Where the case management conference is adjourned under paragraph (2) each party must notify the court office promptly if the claim has been settled.
- (5) Any adjourned case management conference and, so far as practicable, any procedural applications made prior to a pretrial review must be heard and determined by the judge or master who conducted the case management conference.

Variation of case management timetable

- 27.9** (1) A party must apply to the court if he wishes to vary a date which the court has fixed for—
- (a) a case management conference;
 - (b) a pre-trial review;
 - (c) the return of a listing questionnaire; or
 - (d) the trial.
- (2) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and the general rule is that he must do so before that date.
- (3) A party who applies after that date must apply—
- (a) for relief from any sanction to which he has become subject under these Rules or any court order; and
 - (b) for an extension of time when necessary.
- (Rule 26.7 provides for applications for relief from sanctions)
- (4) The parties may agree to vary a date in the timetable other than one mentioned in paragraph (1).
- (5) Where the parties so agree, they must—
- (a) file a consent application for an order to that effect; and
 - (b) certify on that application that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to take place,
- and the timetable is accordingly varied unless the court directs otherwise.

Listing questionnaire

- 27.10** (1) The court office must send the parties a listing questionnaire on the date stated in the directions for the preparation of the case.
- (2) Each party must file the completed listing questionnaire at the court office within the period of 14 days after the date on which it is served on him.
- (3) If—
- (a) a party fails to return the completed questionnaire to the court office within the period of 14 days;
 - (b) a party fails to give all the information requested by the listing questionnaire; or
 - (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete the preparation of the case,

the court office may fix a listing appointment and direct any or all of the parties to attend the appointment.

- (4) The court office must give the parties at least 7 days notice of the date, time and place of the listing appointment.
- (5) Any party at fault must attend the listing appointment.
- (6) At the appointment the court must—
 - (a) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial; and
 - (b) make a wasted costs order unless there is a special reason why it should not make such an order.
- (7) Apart from the requirement to complete a listing questionnaire the court may at any time require the parties to answer a questionnaire to assist it in the management of the case.

Fixing trial date

- 27.11 (1) As soon as practicable after—
- (a) each party has returned a completed listing questionnaire to the court office; or
 - (b) the court has held a listing appointment under rule 27.10(3),
- the court office must fix the date of the trial (or, if it has already done so, confirm that date) and notify the parties.
- (2) The general rule is that the court office must give the parties at least 8 weeks’ notice of the date of the trial.
 - (3) The court may however give shorter notice—
 - (a) if the parties agree; or
 - (b) in urgent cases.

FORMER RULE

The **current** rule 27.3 was brought about by the revocation and substitution of rule 27.3 by rule 12 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, rule 27.3 read as follows:

- 27.3 (1) The general rule is that the court office must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.
- (2) If the court does not—
 - (a) dispense with a case management conference under rule 27.4(1) and give directions under rule 27.4(2); or

- (b) give notice of a case management conference within 14 days of the filing of a defence,
the claimant must within 28 days of the service of the defence apply for a date to be fixed for a case management conference.
- (3) If the claimant does not so apply the claim shall be struck out.
- (4) (a) The claimant may apply for relief within 3 months from the date of the service of the defence from the sanction imposed by paragraph (3).
(b) In considering whether the court grants relief the court shall have regard only to whether the defendant has suffered any prejudice and rule 26.7 shall not apply.
(c) If the court grants relief the case management conference must take place within 28 days of the order.
- (5) The application under paragraph (4) shall be made with notice and shall be supported by evidence.
- (6) The case management conference must take place not less than four weeks nor more than eight weeks after the defence is filed unless any rule prescribes a shorter or longer period or the case is urgent.
- (7) However, a party may apply to the court to fix a case management conference before a defence is filed.
- (8) The application may be made without notice but must state the reasons for the application.
- (9) The court must fix a case management conference on application if it is satisfied that it will enable it to deal with the case justly.
- (10) The court office must give all parties not less than 14 days notice of the date, time and place of the case management conference.
- (11) The court may with or without an application direct that shorter notice be given—
(a) if the parties agree; or
(b) in urgent cases.
- (12) Unless the court orders otherwise time for fixing a case management conference shall not run in the long vacation.
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CASES

2017

PRIVY COUNCIL/ COURT OF APPEAL

SAISCON Limited v Estate Management and Business Development Company Limited

Civ App No 104 of 2016 (2017.04.26)

Appeal allowed

CV 2012-01144 (2016.04.07)

RULE 27.6 — RULE 27.8(2)(a) — CONCLUSION OF FIRST CMC — ACTIVE JUDICIAL CASE MANAGEMENT — RECORDING OF CMC ADJOURNMENTS

(Also under Part 20)

2016

HIGH COURT

The National Insurance Board of Trinidad and Tobago v The Trinidad and Tobago National Petroleum Company Limited

CV 2012-03949 (2016.04.20)

RULE 27.8(2) — ADJOURNMENT OF CMC — AID TO RESOLUTION OF CLAIM

(Also under Parts 1 and 20)

2013

HIGH COURT

Stanley Holder v The Attorney General of Trinidad and Tobago

CV 2011-04480 (2013.07.26)

RULE 27.3 — RULE 27.3 (3) — RULE 27.3(4) — RULE 27.3(5) — APPLICATION FOR FIXING OF CMC — NON-COMPLIANCE WITH CPR — STRIKING OUT

(Also under Parts 9 and 58)

2012

PRIVY COUNCIL/COURT OF APPEAL

Yvonne Marcelle v Edwin Marcelle and Others

Civ App No T027 of 2012 (2012.02.27)

Appeal compromised

RULE 27.2(3) — FIRST HEARING OF FIXED DATE CLAIM — ABSENCE OF DEFENCE — APPROPRIATENESS OF SUMMARY DISPOSITION

(Also under Part 40)

HIGH COURT

Clarence Ashby and Others v Stephen Moses

CV 2007-01224 (2012.06.13)

RULE 27.7 — APPLICATION AT END OF TRIAL FOR SEPARATE TRIAL OF LIABILITY AND QUANTUM — CONSIDERATION OF PRINCIPLES

2011

PRIVY COUNCIL/ COURT OF APPEAL

Roberts & Company v Rehanna Moonan Rajbansie

Civ App No 110 of 2011 (2011.07.04)

Appeal dismissed

CV 2008-00923 (2011.05.31)

RULE 27.9(2) — VARIATION OF CMC TIMETABLE — APPLICATION FOR EXTENSION OF TIME MADE PRIOR TO DEADLINE — PERMISSION REQUIRED — NO REQUIREMENT FOR EVIDENCE

(Also under Part 26)

Sunil Chankersingh and Another v Crystal Morton Gittens

Civ App No S010 of 2011 (2011.06.01)

Appeal allowed in part

RULE 27.7 — SEPARATION OF ISSUES OF LIABILITY AND QUANTUM — JURISDICTION TO SPLIT TRIAL OTHER THAN AT CMC

(Also under Part 16)

HIGH COURT

American Life Insurance Company and Another v RBTT Merchant Bank Limited

CV 2008–00215 (2011.04.12)

RULE 27.9(2) — RULE 27.9(3) — VARIATION OF CMCTIMETABLE — APPLICATION FOR EXTENSION OF TIME — TIME OF APPLICATION — CONSIDERATION OF RULE 26.7 FACTORS WITHOUT THRESHOLD REQUIREMENT

2010

PRIVY COUNCIL/COURT OF APPEAL

Kenneth Cox and Others v Alexander Primus

Civ App No P172 of 2009 (2010.01.11)

Appeal allowed

CV 2008–03254 (2009.09.15)

RULE 27.5 — DUTY OF ATTORNEYS TO ATTEND CMC

(Also under Part 40)



PART 28 DISCLOSURE AND INSPECTION OF DOCUMENTS

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Subsequent use of disclosed documents	Rule 28.17
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Scope of this Part

- 28.1** (1) This Part sets out rules about the disclosure and inspection of documents.
- (2) In this Part “documents” means anything on or in which information of any description is recorded; and
- “copy” in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

- (3) A party “discloses” a document by revealing that the document exists or has existed.
- (4) For the purposes of this Part a document is “directly relevant” if—
 - (a) the party with control of the document intends to rely on it;
 - (b) it tends to adversely affect that party’s case; or
 - (c) it tends to support another party’s case,but the rule of law known as “the rule in *Peruvian Guano*” does not apply.

Duty of disclosure limited to documents which are or have been in party’s control

- 28.2** (1) A party’s duty to disclose document is limited to documents which are or have been in the control of that party.
- (2) For this purpose a party has or has had control of a document if—
 - (a) it is or was in the physical possession of the party;
 - (b) the party has or has had a right to possession of it; or
 - (c) the party has or has had a right to inspect or take copies of it.

Disclosure of copies

- 28.3** (1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.
- (2) A party must, however, disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed.

Standard disclosure

- 28.4** Where a party is required by any direction of the court to give standard disclosure that party must disclose all documents which are directly relevant to the matters in question in the proceedings.

Specific disclosure

- 28.5** (1) An order for specific disclosure is an order that a party must do one or more of the following things:
- (a) disclose documents or classes of documents specified in the order; or
 - (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.
- (2) An order for specific disclosure may be made on or without an application.
 - (3) An application for specific disclosure may be made without notice at a case management conference.

- (4) An application for specific disclosure may identify documents—
 - (a) by describing the class to which they belong; or
 - (b) in any other manner.
- (5) An order for specific disclosure may only require disclosure of documents which are directly relevant to one or more matters in issue in the proceedings.

Criteria for ordering specific disclosure

- 28.6** (1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (2) It must have regard to—
 - (a) the likely benefits of specific disclosure;
 - (b) the likely cost of specific disclosure; and
 - (c) 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.
 - (3) Where, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure it may however make such an order on terms that the party seeking that order shall pay the other party’s costs of such disclosure.
 - (4) Where the court makes an order under paragraph (3) it must assess the costs to be paid in accordance with rule 67.11
 - (5) The party in whose favour such an order for costs was made may apply to vary the amount of costs so assessed.

Procedure for disclosure

- 28.7** (1) Paragraphs (2) to (5) set out the procedure for disclosure.
- (2) Each party must make, and serve on every other party, a list of documents in Form 8.
 - (3) The list must identify the documents or categories of documents in a convenient order and manner and as concisely as possible.
 - (4) The list must indicate—
 - (a) those documents which are no longer in the party’s control;
 - (b) what has happened to those documents; and
 - (c) state where each such document then is to the best of the party’s knowledge, information or belief.
 - (5) It must include documents already disclosed.
 - (6) A list of documents served by a company, firm, association or other organisation must—

- (a) state the name and position of the person responsible for identifying individuals who might be aware of any document which should be disclosed; and
- (b) identify those individuals who have been asked whether they are aware of any such documents and state the position of those individuals.

Duty of legal practitioner

28.8 The legal representative for a party must—

- (1) Explain to the maker of the list of documents:
 - (i) the necessity of making full disclosure in accordance with the terms of the order for disclosure and those rules; and
 - (ii) the possible consequences of failing to do so; and
- (2) Certify on the list of documents under rule 28.7(2) or rule 28.12(3) that the explanation required by paragraph (1) has been given.

Requirement for party to certify that he understands duty of disclosure

28.9 (1) The lay party must certify in the list of documents—

- (a) that he or she understands the duty of disclosure; and
 - (b) that to the best of that party's knowledge the duty has been carried out.
- (2) If it is impracticable for the party to sign the certificate required by paragraph (1) it may be given by that party's legal practitioner.
 - (3) A certificate given by the legal practitioner must also certify—
 - (a) the reason why it is impractical for the party to give the certificate; and
 - (b) that the certificate is given on the party's instructions.
 - (4) In the case of a list served on behalf of a company, firm, association or other organisation the certificate must be made by the person identified in rule 28.7(6)(a).

(Rule 26.7 deals with applications for relief)

Disclosure in stages

28.10 The party may agree in writing or the court may direct that disclosure or inspection or both may take place in stages.

Inspection and copying of listed documents

- 28.11** (1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except—
- (a) documents which are no longer in the physical possession of the party who served the list; or
 - (b) documents for which the party claims a right to withhold from disclosure.
- (2) The party wishing to inspect the documents must give the party who served the list written notice of the wish to inspect documents in the list.
- (3) The party who is to give inspection must permit inspection not more than 7 days after the date on which the request is received.
- (4) If the party giving notice undertakes to pay the reasonable cost of copying, the party who served the list must supply the other with a copy of each document requested.
- (5) The party who served the list must supply the copy not more than 7 days after the date on which the request was received.

Duty of disclosure continuous during proceedings

- 28.12** (1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.
- (2) If documents to which that duty extends come to a party’s notice at any time during the proceedings that party must immediately notify every other party and serve a supplemental list of those documents.
- (3) The supplemental list must be served not more than 14 days after the new documents have come to the notice of the party required to serve it.

Consequence of failure to disclose documents under an order for disclosure

- 28.13** (1) A party who fails to give disclosure by the date specified in the order may not rely on or produce any document not so disclosed at the trial.
- (2) A party seeking to enforce an order for specific disclosure may apply to the court for an order that the other party’s statement of case or some part of it be struck out.
- (3) An application under this rule may be made without notice but must be supported by evidence on affidavit that the other party has not complied with the order.
- (4) On such an application the court may order that unless the party in default complies with the order for specific disclosure by a specific date that the party’s statement of case or some part of it be struck out.

(Rule 26.7 deals with applications for relief; Rule 11.15 deals with applications to set aside order made on application without notice; Rules 26.4 and 26.5 deal with judgment after striking out)

Claim of right to withhold disclosure or inspection of a document

- 28.14** (1) A person who claims a right to withhold disclosure or inspection of a document or part of a document must—
- (a) make such claim for the document; and
 - (b) state the grounds on which such a right is claimed in the list or otherwise in writing to the person wishing to inspect the document.
- (2) A person may, however, apply to the court 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) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be served on any other person nor be open for inspection by any person.
- (4) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may apply to the court for an order that such document be disclosed or made available for inspection.
- (5) 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.
- (6) If a person—
- (a) claims a right to withhold inspection; or
 - (b) applies for an order permitting that person not to disclose the existence of a document or part of a document,
- the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.
- (7) On any hearing under this rule, the court may invite any person to make representations on the question of whether the document ought to be withheld.
- (8) This rule does not affect any rule of law which permits or requires a document to be withheld on the ground that its disclosure or inspection would damage the public interest.

Restriction on use of a privileged document inspection of which has been inadvertently allowed

- 28.15** Where a party inadvertently allows a privileged document to be inspected the party who has inspected it may use it only with the permission of the court or the agreement of the party disclosing the document.

Documents referred to in statement of case, etc.

- 28.16** (1) A party may inspect and copy a document mentioned in—
- (a) the claim form;
 - (b) a statement of case;
 - (c) a witness statement;
 - (d) an affidavit; or
 - (e) an expert’s report.
- (2) A party who wishes to inspect and copy such a document must give written notice to the party who or whose witness, mentioned the document.
- (3) The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served.

Subsequent use of disclosed documents

- 28.17** (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 except where—
- (a) the document has been read to or by the court or referred to in open court; or
 - (b) (i) the party disclosing the document;
 - (ii) the person to whom the document belongs; or
 - (iii) 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.
- (3) An application for such an order may be made—
- (a) by a party; or
 - (b) by any person to whom the document belongs.

Notice to prove a document

- 28.18** (1) A party shall be deemed to admit the authenticity of any document disclosed to him under this Part unless that party serves notice that the document must be proved at trial.
- (2) A notice to prove a document must be served not less than 42 days before the trial.

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

The Attorney General of Trinidad and Tobago v Primnath Geelal and Another

Civ App No S324 of 2015 (2016.01.25)

Appeal allowed

CV 2015-02943 (2015.12.21)

RULE 28.5(1) — RULE 28.5(5) — RULE 28.6(1) — SPECIFIC DISCLOSURE — NOTES OF EVIDENCE — DIRECT RELEVANCE TO MATTERS IN ISSUE — NECESSITY FOR FAIR DISPOSAL OF CLAIM

HIGH COURT

James Philbert v Anil Roberts and Another

CV 2012-05201 (2016.05.10)

RULE 28.13(1) — LIST OF DOCUMENTS — FAILURE TO DISCLOSE DOCUMENT — RELIANCE UPON UNDISCLOSED DOCUMENT

2015

HIGH COURT

Lisa A McKenzie and Others v Medcorp Limited and Another

CV 2012-05158 (2015.05.14)

RULE 28.1(3) — RULE 28.2 — SPECIFIC DISCLOSURE — DISCLOSURE OF DOCUMENT BY STATING IT EXISTS — REQUIREMENT TO DISCLOSE DOCUMENTS WITHIN ONE'S CONTROL

2014

HIGH COURT

Taggart Global Trinidad Limited v Arcelor Mittal Point Lisas Limited

CV 2012-00056 (2014.07.28)

**RULE 28.1(4) — RULE 28.7 — RULE 28.13 — DUTY OF STANDARD
DISCLOSURE — DIRECT RELEVANCE OF DOCUMENTS — EFFECT OF NON-
DISCLOSURE**

Nairob Smart v Director of Personnel Administration and Another

CV 2014-00038 (2014.07.25)

**RULE 28.5(5) — RULE 28.14(4) — JUDICIAL REVIEW — DISCLOSURE — DIRECT
RELEVANCE OF DOCUMENT TO ISSUES EMERGING FROM AFFIDAVITS —
NECESSITY FOR FAIR DISPOSAL OF CLAIM**



PART 29 EVIDENCE

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Notice to admit facts	Rule 29.15

Power of court to control evidence

29.1 The court may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence it requires; and
- (c) the way in which any matter is to be proved,

by giving appropriate directions at a case management conference or by other means.

Evidence at trial—general rule

- 29.2** (1) The general rule is that any fact which needs to be proved at trial by the evidence of witnesses is to be proved by their oral evidence given in public.
- (2) This is subject—
- (a) to any provision to the contrary contained in these Rules or elsewhere;
 - and

- (b) to any order of the court.
- (3) Any evidence taken at the trial or other hearing of any proceedings may be used subsequently in those proceedings.

Evidence by video link or other means

29.3 The court may allow a witness to give evidence without attending, through a video link or by any other means.

Requirement to serve witness statements

- 29.4** (1) The court may order a party to serve on any other party a statement of the evidence of any witness upon which the party serving the statement intends to rely in relation to any issues of fact to be decided at the trial.
- (2) A party's obligation to serve a witness statement is independent of any other party's obligation to serve such a statement upon him.
- (3) The court may give directions as to the order in which witness statements are to be served and the time when they are to be filed.

Form of witness statements

- 29.5** (1) A witness statement must—
- (a) give the name, address and occupation of the witness;
- (b) be dated;
- (c) be signed by the intended witness;
- (d) so far as reasonably practicable, be in the intended witness's own words;
- (e) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document;
- (f) not include any matters of information or belief which are not admissible and, where admissible, must state the source of such information or belief of any matters of information or belief; and
- (g) include a statement by the intended witness that he believes the statements of fact in it to be true.
- (2) The court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.

Witness summaries

- 29.6** (1) A party required to provide a witness statement may apply to the court for permission to serve a witness summary instead if he is not able to obtain a witness statement.
- (2) The application may be made without notice.

- (3) It must however be supported by evidence showing why it is not possible to obtain a witness statement.
- (4) A witness summary is a summary of the evidence, so far as is known, which would otherwise be included in a witness statement; or if the evidence is not known, the matters about which the party serving the witness summary will question the witness.
- (5) Unless the court orders otherwise a witness summary must include the name and address of the intended witness or other sufficient means of identifying him.
- (6) Unless the court orders otherwise, a witness summary must be served within the period in which a witness statement would have had to be served.
- (7) Where a party provides a witness summary, so far as practicable, rules 29.4 (requirement to serve witness statements), 29.5 (form of witness statement), 29.7 (procedure where party will not serve witness statements), 29.8 (supplemental witness statements) and 29.10 (amplifying witness statements at trial) shall apply to the summary.

Procedure where one party will not serve witness statement by date directed

- 29.7** (1) This rule applies where—
- (a) one party is able and prepared to serve his witness statements; but
 - (b) the other party fails to make reasonable arrangements to exchange statements.
- (2) The first party may comply with this Part by filing his witness statements in a sealed envelope at the court office by the date directed.
 - (3) The filed statements must not be disclosed to the other party until he certifies that he has served his witness statements or summaries in respect of all witnesses upon whose evidence he intends to rely.

Supplemental witness statements

- 29.8** (1) Where—
- (a) a party has served a witness statement;
 - (b) further matters on which the witness can give evidence arise or become relevant or known to the party after it has been served; and
 - (c) the party who served the witness statement proposes to call the witness to give evidence on those further matters,
- that party must serve a statement of the further evidence which the witness will give.
- (2) Such a statement is referred to as a “supplemental witness statement”.
 - (3) A party who serves a supplemental witness statement must do so as soon as possible after the further matters arise or become relevant or known.

Witness to give evidence unless court otherwise orders

- 29.9** (1) Except where rule 29.11 applies, if—
- (a) a party has served a witness statement; and
 - (b) he wishes to rely on the evidence of the witness who made the statement,
- he must call the witness to give evidence unless the court orders otherwise.
- (2) If—
- (a) a party has served a witness statement; and
 - (b) he does not intend to call that witness at the trial,
- he must give notice to that effect to the other parties not less than 21 days before the trial.

Amplifying witness statements at trial

- 29.10** A witness giving oral evidence may with the permission of the court—
- (a) amplify the evidence as set out in his witness statement if that statement has disclosed the substance of the evidence which he is asked to amplify; or
 - (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties and which could not reasonably have been contained in a supplemental witness statement.

Cases where witness statement is evidence even if witness not called

- 29.11** (1) Unless the court orders otherwise, a party may rely on a witness statement as evidence at trial without calling the witness to give oral evidence if—
- (a) there is no dispute as to facts, or there is unlikely to be such a dispute;
 - (b) the only or main issue is the meaning of a document or statutory provision;
 - (c) the only or main issue is a matter of law;
 - (d) the proceedings are such that there must be a hearing although default judgment has been entered; or
 - (e) in any other case, the parties agree.
- (2) Where a party intends to rely on a witness statement under paragraph (1) he must give notice of his intention to the other parties not less than 21 days before the trial or other hearing at which such evidence is to be relied on.
- (3) On receipt of such notice any party may apply to the court for an order requiring the maker of the witness statement to attend to be cross-examined.

- (4) If the person who made the witness statement does not attend in accordance with the order, his witness statement may not be used as evidence.

Cross-examination on a witness statement

29.12 Where a party is called to give evidence at trial, he may be cross-examined on his witness statement, whether or not the statement or any part of it was referred to during the witness’s evidence-in-chief.

Consequence of failure to serve witness statement or summary

- 29.13** (1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court then the witness may not be called unless the court permits.
- (2) The court may not give permission at the trial unless the party asking for permission has a good reason for not seeking relief under rule 26.7 earlier.

Use of witness statements for other purposes

- 29.14** (1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.
- (2) Paragraph (1) does not apply if and to the extent that—
 - (a) the witness gives consent in writing to some other use of it;
 - (b) the court gives permission for some other use; or
 - (c) the witness statement has been put in evidence.

Notice to admit facts

- 29.15** (1) A party may serve notice on another party requiring him to admit the facts or the part of his case, specified in the notice.
- (2) A notice to admit facts must be served no later than 42 days before the trial.
- (3) Where the other party makes any admission in response to the notice, the admission may be used against him only—
 - (a) in the proceedings in which the notice to admit is served; and
 - (b) by the party who served the notice.
- (4) Where the party served with the notice to admit does not admit the facts set out in the notice the court may assess the costs incurred by the party serving the notice in proving such facts if he is able and order the party served with the notice to pay such costs.

(Rule 67.11 deals with assessment of costs)

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Ramona A Stobbert-Owens v Tasma C Silk

Civ App No P042 of 2016

Appeal pending

CV 2013-01803 (2016.01.13)

RULE 29.5(e) — WITNESS STATEMENT — NEED FOR DOCUMENTS TO BE SUFFICIENTLY IDENTIFIED

Ryan Wellington v The Attorney General of Trinidad and Tobago

Civ App No P072 of 2016 (2016.04.18)

Appeal allowed

CV 2013-02341 (2016.03.14)

RULE 29.11(4) — NON-ATTENDANCE OF WITNESS — DISCRETION — EXCLUSION OF WITNESS STATEMENT AS EVIDENCE

Cristal Roberts and Another v Dr Samantha Bhagan and Another

Civ App No P049 of 2016 (2016.03.21)

Appeal allowed

CV 2010-01117 (2016.02.25)

RULE 29.3 — EXPERT EVIDENCE — EVIDENCE BY VIDEO LINK — CONSIDERATION OF FACTORS

(Also under Parts 1 and 33)

2015

PRIVY COUNCIL/ COURT OF APPEAL

Mukesh Rampersad and Another v Ramkarran Ramparas and Another

Civ App No P181 of 2015

Appeal pending

CV 2013-04946 (2015.06.11)

RULE 29.5(1)(d) — IDENTICAL WITNESS STATEMENTS — OWN WORDS — CREDIBILITY OF WITNESS

Anthony Goberdhan and Others v Joan E Goberdhan and Another

Civ App No S139 of 2015

Appeal pending

CV 2014-00526 (2015.05.11)

RULE 29.5(1)(d) — WITNESS STATEMENT — OWN WORDS — ADOPTING EVIDENCE OF OTHER WITNESS — WEIGHT TO BE ATTACHED

HIGH COURT

Kristian Lutchmansingh v Rosemarie Siewnarine and Others

CV 2013-02858 (2015.01.30)

RULE 29.6 — WITNESS SUMMARIES — PERMISSION — NON-COMPLIANCE WITH CPR — STRIKING OUT — RELIEF FROM SANCTIONS

(Also under Part 33)

2014

PRIVY COUNCIL/ COURT OF APPEAL

Ava Solomon and Others v Caleb Phillip and Others

Civ App No 126 of 2014 (2014.07.07)

Appeal allowed

CV2013-00274 (2014.05.01)

RULE 29.13 — WITNESS STATEMENTS — FAILURE TO FILE AND SERVE WITHIN PRESCRIBED TIME — RELIEF FROM SANCTIONS NEEDED

(Also under Part 26)

The Attorney General of Trinidad and Tobago v Jamal Sambury

Civ App No P011 of 2014 (2014. 02.17)

Appeal dismissed

CV 2011-02720 (2014.02.05)

RULE 29.1 — RULE 29.5(d) — WITNESS STATEMENTS — OWN WORDS — COPYING OF OTHER WITNESS STATEMENTS — FRAUDULENT MISREPRESENTATION

HIGH COURT*Faaq Mohammed v Jack Austin Warner*

CV 2013-04726 (2014.05.05)

RULE 29.1 — RULE 29.5 — RULE 29.5(1)(f) — RULE 29.5(2) — WITNESS STATEMENT — ADMISSIBILITY OF HEARSAY EVIDENCE — REQUIREMENT FOR HEARSAY NOTICE — PROPORTIONALITY

(Also under Part 1)

*Simon Tidd v Israel B Khan**Theresa Ross and Others v Simon Tidd*

CV 2006-01435, CV 2008 - 02249 (2014.01.21)

RULE 29.5 — RULE 29.6 — WITNESS SUMMARY — REQUIREMENT FOR PERMISSION — DELAY — APPLICATION FOR RELIEF FROM SANCTIONS

2013

PRIVY COUNCIL/ COURT OF APPEAL*Christianne Kelsick v Dr Ajit Kuruvilla and Others*

Civ App No P277 of 2012 (2013.03.19)

Appeal allowed

RULE 29.2 — RULE 29.3 — EXPERT WITNESS — EVIDENCE BY VIDEO LINK — EXCEPTION TO GENERAL RULE — FAIR AND JUST

(Also under Parts 1, 26 and 33)

HIGH COURT*Tucker Energy Services Limited v Weatherford Trinidad Limited*

CV 2010-02730 (2013.10.08)

RULE 29.9 — RULE 29.11 — WITNESS STATEMENT — GENERAL RULE — WITNESS TO BE CALLED — RESIDUAL DISCRETION — WEIGHT OF EVIDENCE WHEN WITNESS NOT CALLED

(Also under Part 30)

2012

HIGH COURT

Shah Mohammed v Trinidad and Tobago Electricity Commission

CV 2009-00689 (2012.06.29)

RULE 29.8 — SUPPLEMENTAL WITNESS STATEMENT — ISSUE OF FURTHER MATTERS ARISING AFTER SERVICE

2011

HIGH COURT

Lloyd Charles and Another v North West Regional Health Authority and Another

CV 2008-02668 (2011.06.29)

RULE 29.5 — RULE 29.6(1) — FORM OF WITNESS STATEMENTS — SIGNATURE OF WITNESS — CERTIFICATE OF TRUTH — NON-COMPLIANCE WITH CPR — FORM OF WITNESS SUMMARIES — PERMISSION REQUIRED

(Also under Part 26)

2009

HIGH COURT

John Jessamy and Others v Classic Developers Limited

CV 2006-04026 (2009.05.15)

RULE 29.4 — RULE 29.9 — RULE 29.9(2) — WITNESS STATEMENT — FAILURE TO FILE — NON-ATTENDANCE FOR CROSS-EXAMINATION — EVIDENCE IN SUPPORT OF CLAIM — STRIKING OUT

2008

HIGH COURT

Deosahai Bedaisee and Others v Ramdial Transport Limited and Another

HC 2541/2002 (2008.06.20)

RULE 29.5 — WITNESS STATEMENTS — CERTIFICATE OF TRUTH — ADEQUACY OF EVIDENCE



PART 30 EVIDENCE—HEARSAY

Contents of this Part

Scope of this Part	Rule 30.1
Service of hearsay notice	Rule 30.2
Contents of notice—statement admissible under s.37 of the Act	Rule 30.3
Contents of notice—statement admissible under s.39 of the Act	Rule 30.4
Contents of notice—statement admissible under s.40 of the Act	Rule 30.5
Reasons for not calling person as witness	Rule 30.6
Service of counter-notice	Rule 30.7
Power of court to allow statement to be given in evidence	Rule 30.8
Notice of intention to challenge credibility of hearsay evidence	Rule 30.9

Scope of this Part

- 30.1** (1) This Part deals with the admissibility of hearsay evidence.
- (2) “Hearsay evidence” means a statement made otherwise than by a person while giving oral evidence in proceedings which is tendered as evidence of the matters stated.
- (3) In this Part “the Act” means the Evidence Act (Chap. 7:02).
- (4) “Hearsay notice” means a notice of intention to give hearsay evidence.

Service of hearsay notice

- 30.2** (1) Any party who wishes to give hearsay evidence which is admissible only by virtue of section 37, 39 or 40 of the Act must serve on every other party a hearsay notice.
- (2) A hearsay notice must be served not later than the time by which witness statements are to be served or, if there are no such statements, not less than 42 days before the hearing at which the party wishes such evidence to be given unless the court gives permission.
- (3) A hearsay notice is not required where—
- (a) a party to a probate action wishes to give a statement in evidence alleged to have been made by the deceased person whose estate is the subject of the action; or
- (b) hearsay evidence is included in an affidavit for use in interlocutory proceedings.

(Part 31 deals with affidavit evidence)

Contents of notice—statement admissible under s.37 of the Act

- 30.3** (1) This rule applies where the statement is admissible under s.37 of the Act (admissibility of out of court statements).
- (2) Where the statement was not made in a document, the notice must contain particulars of—
- (a) the time, place and circumstances at or in which the statement was made;
 - (b) the persons by whom and to whom the statement was made; and
 - (c) the substance of the statement and so far as practicable the words used.
- (3) Where the statement was made in a document—
- (a) a copy or a transcript of the document or of the relevant part of the document must be annexed to the notice; and
 - (b) such of the particulars required under paragraph (2)(a) and (b) as are not apparent on the face of the document must be given.
- (4) If the party giving the notice—
- (a) does not intend to call any person of whom details are contained in the notice; and
 - (b) claims that any of the reasons set out in rule 30.6 applies, the notice must say so and state the reason(s) relied on.

Contents of notice—statement admissible under s.39 of the Act

- 30.4** (1) This rule applies where the statement is admissible under s.39 of the Act (admissibility of certain records).
- (2) The notice must have annexed to it a copy or transcript of the statement or the relevant part of the statement.
- (3) The notice must also contain—
- (a) particulars of—
 - (i) the person by whom the record containing the statement was compiled;
 - (ii) the person who originally supplied the information from which the record was compiled; and
 - (iii) any other person through whom that information was supplied to the compiler;
 - (b) a description of the duty under which any person named or particularised under paragraph (a)(i) or (iii) was acting when—
 - (i) compiling the record; or
 - (ii) supplying the information from which the record was compiled;

- (c) a description of the nature of the record containing the statement; and
 - (d) particulars of the time when, place at, and circumstances under which that record was compiled.
- (4) If the party giving the notice—
- (a) does not intend to call any person of whom details are contained in the notice; and
 - (b) claims that any of the reasons set out in rule 30.6 applies, the notice must say so and state the reason(s) relied on.

Contents of notice—statement admissible under s.40 of the Act

- 30.5 (1) This rule applies where the statement is admissible under s.40 of the Act (admissibility of computer records).
- (2) The notice must have annexed to it a copy of the document or the relevant part of the document containing the statement.
 - (3) The notice must also contain—
 - (a) particulars of—
 - (i) a person who had responsibility for the management of the relevant activities for which the computer was used during the material period;
 - (ii) a person who during that period had responsibility for the supply to the computer of the information reproduced in the statement of information from which that information was derived; and
 - (iii) a person who had responsibility for the operation of the computer during that period; and
 - (b) a statement whether or not the computer was operating properly throughout the material period and, if not, whether any failure to operate properly might have affected the production of the document containing the statement or the accuracy of its contents.
 - (4) If the party giving the notice—
 - (a) does not intend to call any person of whom details are contained in the notice; and
 - (b) claims that any of the reasons set out in rule 30.6 applies, the notice must say so and state the reason(s) relied on.

Reasons for not calling person as witness

30.6 The reasons referred to in rules 30.3(4)(b), 30.4(4)(b) and 30.5(4)(b) are that—

- (a) the person—
 - (i) is dead;
 - (ii) is overseas;
 - (iii) is unfit by reason of bodily or mental condition to attend as a witness; or
 - (iv) cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement; or
- (b) that despite using reasonable diligence it has not been possible to—
 - (i) identify that person; or
 - (ii) find him.

Service of counter-notice

- 30.7** (1) A party on whom a hearsay notice has been served may serve a counter-notice requiring the server of the notice to call any person named in the counter-notice as a witness.
- (2) The counter-notice must be served within 21 days of service of the hearsay notice.
 - (3) If there is a statement in the hearsay notice that the person named in the counter-notice cannot or should not attend for a specified reason, the counter-notice must state why that person should be required to attend.
 - (4) No counter-notice may be served where there is a statement in the hearsay notice that one of the reasons in rule 30.6 applies.
 - (5) The party served with the counter-notice may, however, apply to the court for directions as to the admissibility of the statement.
 - (6) Where a counter-notice is served no statement made by any person named in the counter-notice shall be admissible unless the server of the hearsay notice—
 - (a) calls the person named; or
 - (b) applies to the court for directions as to the admissibility of the statement.
 - (7) Any application to the court under paragraph (5) or (6) must be made at a pre-trial review wherever practicable.
 - (8) No application may be made at the trial or hearing at which the statement is, or is not, to be admitted unless the applicant can show that the application could not have been made earlier.

Power of court to allow statement to be given in evidence

30.8 The court may permit a party to adduce hearsay evidence falling within sections 37, 39 and 40 of the Act even though the party seeking to adduce that evidence has—

- (a) failed to serve a hearsay notice; or
- (b) failed to comply with any requirement of a counter-notice served under rule 30.7.

Notice of intention to challenge credibility of hearsay evidence

30.9 Where—

- (a) a party has served a hearsay notice complying with section 37 or 39 of the Act;
- (b) none of the reasons under rule 30.6 applies; and
- (c) the person who made the statement or supplied the information from which the record containing the statement was compiled is not called,

no party may adduce any evidence under section 42 of the Act without the permission of the court, unless he gave a counter-notice in respect of that person under rule 30.7.

CASES

2016

HIGH COURT

Cristal Roberts and Another v Dr Samantha Bhagan and Another

CV 2010-01117 (2016.02.10)

RULE 30.2 — RULE 30.8 — HEARSAY EVIDENCE — REQUIREMENT OF HEARSAY NOTICE — RISK OF MATERIAL PREJUDICE

2013

PRIVY COUNCIL/ COURT OF APPEAL

Latchman Ramoutar and Another v Lenore Duncan

Civ App No 126 of 2010 (2013.07.25)

Appeal allowed

**RULE 30.8 — HEARSAY EVIDENCE — REQUIREMENT OF HEARSAY NOTICE
— DISCRETION — PREJUDICE**

HIGH COURT

Tucker Energy Services Limited v Weatherford Trinidad Limited

CV 2010-02730 (2013.10.08)

**RULE 30.2 — RULE 30.6 — RULE 30.7— RULE 30.8 — ADMISSIBILITY OF
WITNESS STATEMENT — HEARSAY EVIDENCE**

(Also under Part 29)

2012

HIGH COURT

*KKRK Consolidated Marine Services Limited v The Attorney General of Trinidad and
Tobago*

CV 2008-02899 (2012.10.04)

**RULE 30.2(2) — RULE 30.3 — RULE 30.6 — HEARSAY NOTICE — ATTENDANCE
OF WITNESS — COMPLIANCE WITH CPR**

Vincent Rampersad and Sons Limited v Trincan Oil Limited

CV 2008-04781 (2012.05.10)

**RULE 30.2 — RULE 30.8 — WITNESS STATEMENTS — HEARSAY — DISCRETION
— NON-COMPLIANCE WITH CPR**

2008

PRIVY COUNCIL/ COURT OF APPEAL

Brian Saunders v Nellie Des Vignes and Another

Civ App No 138 of 2006 (2008.07.04)

Appeal dismissed

**PART 30 — HEARSAY EVIDENCE — ADMISSIBILITY — FILING OF HEARSAY
NOTICE — DELAY — DISCRETION — COMPLIANCE WITH CPR**

PART 3I AFFIDAVITS

Contents of this Part

Affidavit evidence	Rule 3I.1
Form of affidavit	Rule 3I.2
Contents of affidavit	Rule 3I.3
Documents to be used in conjunction with affidavit	Rule 3I.4
Making of affidavits	Rule 3I.5
Service of affidavit	Rule 3I.6

Affidavit evidence

- 3I.1** (1) The court may require evidence to be given by affidavit instead of, or in addition to, oral evidence or, a witness statement.
- (2) In this Part “deponent” means the maker of an affidavit.
- (3) Whenever an affidavit is to be used in evidence, any party may apply to the court for an order requiring the deponent to attend to be cross-examined.
- (4) If the deponent does not attend as required by the court order, his affidavit may not be used as evidence unless the court permits.
- (5) The general rule is that an affidavit must be filed before it may be used in any proceedings.
- (6) In a case of urgency the court may, however, make an order on an affidavit which has not been filed if the party tendering it undertakes to file it before the order is drawn up.

Form of affidavit

3I.2 Every affidavit must—

- (a) be headed with the title of the proceedings;
- (b) be in the first person and state the name, address and occupation of the deponent and, if more than one, of each of them;
- (c) state if any deponent is employed by a party to the proceedings;
- (d) be divided into paragraphs numbered consecutively;
- (e) be signed by the deponent or deponents;
- (f) be endorsed with the name of the attorney-at-law, if any, for the party on whose behalf it is filed; and

- (g) be marked on the top right hand corner of the affidavit and of the backsheet with—
- (i) the party on whose behalf it is filed;
 - (ii) the initials and surname of the deponent;
 - (iii) (where the deponent swears more than one affidavit in any proceedings), the number of the affidavit in relation to the deponent;
 - (iv) the identifying reference of each exhibit referred to in the affidavit;
 - (v) the date when sworn; and
 - (vi) the date when filed.

Example: “Claimant: N. Berridge: 2nd: NB 3 and 4:1.10.08: 3.10.08.”

Contents of affidavit

- 31.3** (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his own knowledge.
- (2) However, an affidavit may contain statements of information and belief—
- (a) where any of these Rules so allows; and
 - (b) where it is for use in any procedural or interlocutory application or in an application for summary judgment,
- provided that the source of such information and the ground of such belief is stated in the affidavit.
- (3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.
- (4) No affidavit containing any alteration may be used in evidence unless all such alterations have been initialled by the person before whom the affidavit was sworn.

Documents to be used in conjunction with affidavit

- 31.4** (1) Any documents to be used in conjunction with an affidavit must be exhibited to it.
- (2) Where there are more than one such documents they may be included in a bundle which is in date or some other convenient order and is properly paginated.
- (3) Clearly legible photographic copies of original documents may be exhibited, provided that the originals are made available for inspection by other parties before the hearing and by the court at the hearing.
- (4) Each exhibit or bundle of exhibits should be marked in accordance with rule 31.2(g).

- (5) Where a deponent deposes to more than one affidavit to which there are exhibits or annexures in any one matter, the numbering of such exhibits or annexures should run consecutively throughout and not begin again with each affidavit.

Making of affidavits

- 31.5**
- (1) All affidavits must be sworn or affirmed before a Commissioner of Affidavits.
 - (2) No affidavit may be admitted into evidence if sworn or affirmed before the attorney-at-law of the party on whose behalf it is to be used or before any agent, clerk, partner or associate of such attorney-at-law.
 - (3) Where it appears that the deponent is illiterate or blind, the person before whom the affidavit is made must certify in the jurat that—
 - (a) the affidavit was read in his presence to the deponent;
 - (b) the deponent seemed perfectly to understand it; and
 - (c) the deponent made his signature or mark in his presence.
 - (4) A person may make an affidavit outside the jurisdiction in accordance with—
 - (a) this Part; or
 - (b) the law of the place where he makes the affidavit.
 - (5) Any affidavit which purports to be sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

Service of affidavit

- 31.6**
- (1) The general rule is that a party who is giving evidence by affidavit must serve a copy on every other party.
 - (2) This applies whether the affidavit was made in the proceedings or in some other proceedings.
 - (3) A party does not need to serve a copy of an affidavit if he wishes to use the affidavit in support of an application to be made without notice.

CASES

2015

PRIVY COUNCIL/ COURT OF APPEAL***Sombat Mekhawong v Hilton International Trinidad Limited***

Civ App P108 of 2015 (2015.07.06)

Appeal allowed

CV 2014-01200 (2015.05.20)

**RULE 31.5(3) — SWEARING OF AFFIDAVIT — CERTIFICATION IN JURAT —
READING AFFIDAVIT TO DEPONENT — RECTIFICATION — SUPPLEMENTAL
AFFIDAVIT**

(Also under Part 15 and 26)

HIGH COURT***Jacobes Company Limited v Courtney's Racing Service and Another***

CV 2014-02922 (2015.02.11)

**RULE 31.3(1) — RULE 31.3(2) — EVIDENCE TO BE WITHIN KNOWLEDGE OF
DEPONENT — EXCEPTIONS TO GENERAL RULE**

(Also under Part 68)

Anand Ramlogan v Keith C Rowley

CV 2014-02394 (2015.01.26)

**RULE 31.3(2) — STATEMENTS OF INFORMATION AND BELIEF — NON-
COMPLIANCE NOT FATAL**

(Also under Part 1)

2008

HIGH COURT

Jorsling E Guide and Another v Richard Guide and Another

CV 2006–00214 (2008.05.28)

RULE 31.1(1) — RULE 31.1(3) — RULE 31.1(4) — AFFIDAVIT EVIDENCE — CROSS-EXAMINATION — ATTENDANCE OF WITNESS — WEIGHT TO BE ATTACHED

The Airports Authority of Trinidad and Tobago v The Minister of Labour and Small and Micro Enterprise Development

CV2006–00600 (2008.02.15)

RULE 31.3(3) — STRIKING OUT — PARTS OF AFFIDAVIT — RELEVANCE TO ISSUES TO BE DETERMINED



PART 32 MISCELLANEOUS RULES ABOUT EVIDENCE

Contents of this Part

Use of plans, photographs, etc., as evidence	Rule 32.1
Evidence of findings on question of foreign law	Rule 32.2
Evidence of consent of trustee to act	Rule 32.3

Use of plans, photographs, etc., as evidence

- 32.1** (1) If a party wishes to rely on evidence at a trial which—
- (a) is not to be given orally; and
 - (b) which is not contained in a witness statement,
- he must disclose his intention to the other parties in accordance with this rule.
- (2) If a party fails to disclose his intention to rely on the evidence as required by this rule, the evidence may not be given.
 - (3) Where a party intends to use the evidence as evidence of any fact then, except where paragraph (4),(5) or (6) apply, he must disclose his intention not later than the latest date for serving witness statements.
 - (4) He must disclose the evidence at least 21 days before the hearing at which he proposes to put in the evidence, if—
 - (a) there are not to be witness statements; or
 - (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.
 - (5) Where the evidence forms part of expert evidence, he must disclose his intention when the expert’s report is served on the other party.
 - (6) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he must disclose his intention at least 21 days before the hearing at which he proposes to put in the evidence.
 - (7) Where a party has disclosed his intention to put in the evidence he must give every other party an opportunity to inspect it and to agree to its admission without proof.

Evidence of findings on question of foreign law

- 32.2** (1) This rule sets out the procedure which must be followed by a party who intends to put in evidence a finding on a question of foreign law.
- (2) He must first give any other party notice of his intention.
- (3) He must give the notice—
- (a) if there are to be witness statements, not later than the latest date for serving them; or
- (b) otherwise, not less than 42 days before the hearing at which he proposes to put the finding in evidence.
- (4) The notice must—
- (a) specify the question on which the finding was made; and
- (b) have attached a document where it is reported or recorded.

Evidence of consent of trustee to act

- 32.3** A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person is evidence of such consent.
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PART 33 EXPERTS AND ASSESSORS

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Expert’s overriding duty to the court

- 33.1** (1) It is the duty of an expert witness to help the court impartially on the matters relevant to his expertise.
- (2) This duty overrides any obligations to the person from whom he has received instructions.

Experts—way in which duty to court is to be carried out

- 33.2** (1) Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of the litigation.
- (2) An expert witness must provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise.
- (3) An expert witness must state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded view.

- (4) An expert witness must make it clear if a particular matter or issue falls outside his expertise.
- (5) If an expert's opinion is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.
- (6) If the expert cannot assert that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.
- (7) If after exchange of reports an expert changes his view on a material matter such change of view must be communicated to the other party.

Expert's right to apply to the court for directions

- 33.3** (1) An expert may apply to the court for directions to assist him in carrying out his functions as an expert and his duty to the court.
- (2) Where an expert applies for directions under this rule, he must give notice of the application to the party instructing him.
 - (3) The court may direct that notice be given to any other parties.

General duty of the court and of the parties

- 33.4** Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.

Court's power to restrict expert evidence

- 33.5** (1) No party may call an expert witness or put in an expert's report without the court's permission.
- (2) The general rule is that the court's permission should be given at a case management conference.
 - (3) The court may give permission on or without an application.
 - (4) No oral or written expert's evidence may be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert intends to give.
 - (5) The court must direct by what date such report must be served.
 - (6) The court may direct that that evidence be given by one or more experts—
 - (a) chosen by agreement between the parties;
 - (b) appointed by the court; or
 - (c) appointed in such way as the court may direct.
 - (7) The court may direct that part only of an expert's report be disclosed.

Court's power to appoint a single expert

- 33.6** (1) Where the court gives permission to call an expert witness or put into evidence an expert's report, it may direct that evidence is to be given by a single expert appointed—
- (a) jointly by the parties;
 - (b) by the court;
 - (c) by the court from a list prepared by the parties; or
 - (d) in such manner as the court may direct.
- (2) If the court gives such a direction the parties must, so far as is practicable, agree—
- (a) the questions to be submitted to the expert;
 - (b) the instructions to be given to him; and
 - (c) arrangements for—
 - (i) the payment of the expert's fees and expenses; and
 - (ii) any inspection, examination or experiments which the expert wishes to carry out.
- (3) If the parties cannot agree these matters any party may apply to the court to decide them.
- (4) A single expert may be appointed by the court—
- (a) instead of the parties instructing their own experts;
 - (b) to replace experts instructed by the parties;
 - (c) in addition to experts instructed by them; or
 - (d) to assess the evidence to be given by experts instructed by them.

Joint instructions to experts

- 33.7** (1) The general rule is that parties must give instructions to a single expert.
- (2) Where, however, experts are instructed by two or more parties such experts must seek to carry out any examination jointly.
- (3) A party instructing an expert must provide him with a copy of this Part and give every other party notice of—
- (a) the name and address of the expert; or
 - (b) the names and addresses of a number of experts one of whom the party intends to instruct; and
 - (c) the nature of the instructions to be given to him.
- (4) Notice under paragraph (3) must be such as will give the other party enough time and information—
- (a) to instruct the same expert;

- (b) to instruct another expert to carry out an examination with the expert named in the notice; or
 - (c) to instruct another expert to prepare a report jointly with that expert.
- (Rule 66.6 deals with the possible effect on an order for costs if this rule is not followed before or after the issue of a claim)

Power of court to direct party to obtain and share expert evidence

- 33.8** (1) The court may order a party—
- (a) to arrange for an expert to prepare a report on any matter and, if appropriate, to arrange for an examination to be carried out in relation to that matter; and
 - (b) to file the report and serve a copy on any other party.
- (2) On giving such a direction, the court may—
- (a) identify the person who is to prepare the report; and
 - (b) specify which party is to be responsible for the cost of preparing it.
- (3) The court's powers under this rule may be exercised only on the application of a party.

Expert's reports to be addressed to the court

- 33.9** An expert must address his report to the court and not to any person from whom he has received instructions.

Contents of report

- 33.10** (1) An expert's report must—
- (a) give details of the expert's qualifications;
 - (b) give details of any literature or other material which the expert has used in making his report;
 - (c) say who carried out any test or experiment which the expert has used for the report;
 - (d) give details of the qualifications of the person who carried out any such test or experiment; and
 - (e) where there is a range of opinion on the matters dealt with in the report—
 - (i) summarise the range of opinion; and
 - (ii) give reasons for his opinion.
- (2) At the end of an expert's report there must be a statement that—
- (a) the expert understands his duty to the court as set out in rules 33.1 and 33.2;

- (b) he has complied with that duty;
 - (c) his report includes all matters within his knowledge and area of expertise relevant to the issue on which his expert evidence is given; and
 - (d) he has given details in his report of any matters which to his knowledge might affect the validity of his report.
- (3) There must be also attached to an expert’s report copies of—
- (a) all written instructions given to the expert;
 - (b) any supplemental instructions given to the expert since the original instructions were given; and
 - (c) a note of any oral instructions given to the expert,
- and the expert must certify that no other instructions than those disclosed have been received by him from the party instructing him, his attorney-at-law or any other person acting on behalf of the party.
- (4) Where expert evidence refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.

Meeting of experts

- 33.II** (1) The court may direct a meeting of experts of like speciality.
- (2) The court may specify the issues which the experts must address when they meet.
- (3) Any such meeting is to be regarded as “without prejudice”.
- (4) After the meeting the experts must prepare for the court a statement of—
- (a) any issues within their expertise on which they agree; and
 - (b) any such issues on which they disagree and their reasons for disagreeing.
- (5) Instead of, or in addition to, such statement the court may direct that the experts prepare an agreed statement of the basic “science” which applies to the matters relevant to their expertise.
- (6) Such a statement must be as short as practicable.

Consequence of failure to disclose expert’s report

- 33.I2** (1) A party who fails to comply with a direction to disclose an expert’s report may not use the report at the trial or call the expert unless the court gives permission.
- (2) The court may not give permission at the trial unless the party asking for permission can show that it was not reasonably practicable to have applied for relief at an earlier stage.

(Rule 26.7 deals with applications for relief)

Appointment of assessors

- 33.13** (1) The court may appoint one or more persons to assist it as assessors.
- (2) Before doing so, it must state the questions on which it wants assistance.

Fees for experts or assessors

- 33.14** (1) The court must decide what fee is to be paid to an expert or assessor, and by whom.
- (2) This does not affect any decision as to the party who is ultimately to bear the cost of the expert or assessor.

Cross-examination of court expert

- 33.15** Where an expert appointed by the court gives oral evidence he may be cross-examined by any party.
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CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Cristal Roberts and Another v Dr Samantha Bhagan and Another

Civ App No P049 of 2016 (2016.03.21)

Appeal allowed

CV 2010-01117 (2016.02.25)

RULE 33.5 — EXPERT EVIDENCE — PERMISSION TO ADDUCE SUPPLEMENTAL REPORT

(Also under Parts 1 and 29)

Cristal Roberts and Another v Dr Samantha Bhagan, and Another

Civ App Nos P029 and P030 of 2016 (2016.02.23)

Both appeals allowed

CV 2010-01117 (2016.01.26)

RULE 33.11 — EXPERT EVIDENCE — JOINT MEETING OF EXPERTS — NARROWING OF ISSUES

(Also under Part 23)

HIGH COURT

Francis Ramlal v Suresh Ramlal

CV 2014-01527 (2016.05.13)

RULE 33.5 — RULE 33.7 — LATE APPLICATION TO ADMIT EXPERT WITNESS — DISCRETION — PERMISSION NOT GRANTED

(Also under Part 26)

2015

PRIVY COUNCIL/ COURT OF APPEAL

Gulf View Medical Centre Limited and Another v Karen Tesheira

Civ App No P087 and P093 of 2015

Appeal pending

CV 2009-02051 (2015.03.27)

GUIDANCE FOR EXPERTS — COMPLIANCE WITH PROCEDURAL REQUIREMENTS — INDEPENDENT EXPERT REPORTS

Cristal Roberts and Another v Dr Samantha Bhagan and Another

Civ App No P345 of 2014, Civ App No P347 of 2014 (2015.10.15)

Appeal allowed

MULTIPLE EXPERTS — SUBSTITUTION OF EXPERTS — CONDITIONAL PERMISSION

HIGH COURT

Cristal Roberts and Another v Dr Samantha Bhagan and Another

CV 2010-01117 (2015.11.30)

EXPERTS OF LIKE SPECIALTY — WRITTEN QUESTIONS IN LIEU OF JOINT MEETING

(Also under Parts 1 and 8)

Paul Dial and Others v The Water and Sewerage Authority

CV 2007-02500 (2015.10.22)

EXPERT WITNESS — MEDICAL REPORT — WITNESS STATEMENT TREATED AS EXPERT EVIDENCE

Emile Elias v Joseph Elias and Others

CV 2013-01623 (2015.07.22)

RULE 33.5 — EXPERT EVIDENCE — REASONABLY REQUIRED — COURT APPOINTED EXPERT — CONSIDERATIONS

Dr Wayne Kublalsingh and Others v The Attorney General of Trinidad and Tobago

CV 2012-03205 (2015.03.06)

EXPERT EVIDENCE — REASONABLY REQUIRED — EXPERT EVIDENCE IRRELEVANT — UNFIT TO QUALIFY AS EXPERT

Kristian Lutchmansingh v Rosemarie Siewnarine and Others

CV 2013-02858 (2015.01.30)

RULE 33.5 — EXPERT EVIDENCE — NO APPLICATION FOR PERMISSION — STRIKING OUT

(Also under Part 29)

2014

PRIVY COUNCIL/ COURT OF APPEAL

Myron Rudder and Others v The Attorney General of Trinidad and Tobago

Civ App No P046 of 2014

Appeal pending

CV 2012-05129 (2014.01.14)

RULE 33.4 — RULE 33.5 — PERMISSION TO CALL EXPERT — REASONABLY REQUIRED — EVIDENCE NOT USEFUL — REPORT NOT EXPERT EVIDENCE

(Also under Part 1)

2013

PRIVY COUNCIL/ COURT OF APPEAL

Christianne Kelsick v Dr Ajit Kuruvilla and Others

Civ App No P277 of 2012 (2013.03.19)

Appeal allowed

PERMISSION TO CALL EXPERT — REASONABLY REQUIRED — CRITERIA TO BE FOLLOWED

(Also under Parts 1, 26, 29)

N.E.M. (West Indies) Limited v David Strisiver and Others

Civ App No P223 of 2012 (2013.02.19)

Appeal allowed

OVERRIDING DUTY OF EXPERT — EXPERT REPORT TAINTED — EXPERT REPORT EXCLUDED

2012

PRIVY COUNCIL/ COURT OF APPEAL

Mora Oil Ventures Limited and Another v Scotiabank Trinidad and Tobago Limited

Civ App No P153 of 2012 (2012.07.30)

Appeal allowed

CV 2009-00551 (2012.07.25)

RULE 33.4 — DUTY OF EXPERT TO COURT — INDEPENDENT ASSISTANCE

Endeavour Holdings Limited v Nirmal Bhaggan

Civ App No P117 of 2012 (2012.06.11)

Appeal dismissed

CV 2010-02387 (2012.05.14)

RULE 33.5(1) — RULE 33.7(3) — RULE 33.10 — NON-EXPERT OPINION — DUTY OF EXPERT WITNESS — PERMISSION GRANTED

HIGH COURT***American Life Insurance Company and Another v RBTT Merchant Bank Limited***

CV 2008-00215 (2012.07.30)

ADMISSIBILITY OF EXPERT EVIDENCE — OPINION EVIDENCE — DISCRETION

Readymix (West Indies) Limited v Super Industrial Services Limited

CV 2010-03435 (2012.06.12)

DUTY OF EXPERT TO COURT— EXPERT EVIDENCE — LATE DISCLOSURE OF EVIDENCE — EVIDENCE EXCLUDED — MANIFESTLY UNFAIR

Fazal Hosein v Rajindra Maharaj and Another

CV 2011-01525 (2012.06.05)

ROLE OF EXPERT WITNESS — EXPERT REPORT — APPOINTMENT OF SINGLE EXPERT

The United Policyholders Group and Others v The Attorney General of Trinidad and Tobago

CV 2011-04702 (2012.04.19)

EXPERT REPORT — COMPLIANCE — ADMISSIBILITY

Gangadeen Seebaran v Christine Suchit and Others

CV 2009-04028 (2012.01.20)

RULE 33.1 — RULE 33.5 — DUTY OF EXPERT WITNESS — EXPERT REPORT — NON-COMPLIANCE — STRIKING OUT

(Also under Part 26)

2011

PRIVY COUNCIL/ COURT OF APPEAL

Rhonda Taylor v Priest Titre and Others

Civ App No P216 of 2011 (2011.11.16)

Appeal allowed

CV 2009-00226 (2011.10.03)

**RULE 33.5 — LATE APPLICATION — ADMISSIBILITY — MEDICAL DOCTOR —
EXPERT OR WITNESS OF FACT**

Vanessa Garcia v The North Central Regional Health Authority

Civ App No P118 of 2011 (2011.07.11)

Appeal allowed in part

CV 2010-00463 (2011.07.15)

**MEDICAL DOCTORS — NOT EXPERT WITNESSES — PERMISSION REQUIRED
— WITNESS SUMMARIES ADMISSIBLE**

Basdeo Panday and Another v Ejenny Espinet Her Worship and Another

Civ App No P250 of 2009 (2011.05.11)

Appeal dismissed

CV 2008-02265 (2009.10.22)

**PERMISSION TO ADDUCE EXPERT EVIDENCE — DELAY — NO SATISFACTORY
EXPLANATION — APPLICATION REFUSED**

HIGH COURT

Martin P Revenales v Eric Charles

CV 2006-03842 (2011.07.27)

**RULE 33.10 — NON-COMPLIANCE — EXPERT NOT APPOINTED — DUTY OF
EXPERT TO COURT — EVIDENCE NOT PERMITTED**

Top Hat Yachts Limited v Evelyn Petersen and Others

CV 2006-03677 (2011.02.01)

**WITNESS STATEMENT — EXPERT EVIDENCE — NON-COMPLIANCE —
STRIKING OUT**

2007

HIGH COURT

Digicel (Trinidad & Tobago) Limited v Rory Macmillan and Others

CV 2006-03320 (2007.03.27)

**EXPERT EVIDENCE — PERMISSION OF COURT — REASONABLY REQUIRED
—EVIDENCE NOT USEFUL**

PART 34 COURT ATTENDANCE BY WITNESSES

Contents of this Part

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Witness summons	Rule 34.2
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Witness summons in aid of inferior court or tribunal	Rule 34.4
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Enforcing attendance of witness	Rule 34.8
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Fees and expenses of examiner	Rule 34.15
Order for payment of examiner's fees	Rule 34.16
Use of deposition at hearing	Rule 34.17
Restrictions on subsequent use of depositions taken for the purpose of any hearing except the trial	Rule 34.18
Where a person to be examined is out of the jurisdiction —letter of request	Rule 34.19
Early appointment to produce documents	Rule 34.20

Scope of this Part

- 34.1** (1) This Part provides—
- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
 - (b) for a party to obtain evidence before a hearing to be used at the hearing.
- (2) In this Part, reference to a hearing includes a reference to the trial.

Witness summons

- 34.2** (1) A witness summons is a document issued by the court requiring a witness to attend court—
- (a) to give evidence; or
 - (b) produce documents to the court.
- (2) A witness summons must be in the prescribed form.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either—
- (a) on the date fixed for a hearing; or
 - (b) on such date as the court may direct.

Issue of witness summons

- 34.3** (1) A witness summons is issued on the date entered on the summons by the court office.
- (2) A party must obtain permission from the court where—
- (a) he wishes to have a witness summons issued less than 21 days before the date of the hearing; or
 - (b) he wishes to have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial.
- (3) The application may be without notice but must be supported by evidence.
- (4) The court may set aside or vary a witness summons.

Witness summons in aid of inferior court or tribunal

- 34.4** (1) The court may issue a witness summons in aid of an inferior court or of a tribunal.
- (2) The court may set aside a witness summons issued under this rule.

Time for serving witness summons

- 34.5** (1) The general rule is that a witness summons is binding only if it is served at least 14 days before the date on which the witness is required to attend before the court or tribunal.
- (2) The court may direct that a witness summons may be binding although it will be served less than 14 days before the date on which the witness is required to attend before the court or tribunal.
- (3) An application for such an order may be made without notice but must be supported by evidence.
- (4) A witness summons which is—
- (a) served in accordance with this rule; and
- (b) requires the witness to attend court to give evidence,
- is binding until the conclusion of the hearing at which the attendance of the witness is required.

Who is to serve witness summons

- 34.6** (1) The general rule is that a witness summons is to be served by the party on whose behalf it is issued.
- (2) However, the marshal may serve the summons if the party on whose behalf it is issued, requests the court office to do so.
- (3) Where the marshal serves the witness summons, the party on whose behalf it is issued must deposit in the court office the money to be paid or offered to the witness under rule 34.7.

Right of witness to travelling expenses and compensation for loss of time

- 34.7** At the time of service of a witness summons the witness must be offered or paid—
- (a) a sum reasonably sufficient to cover his subsistence and expenses in travelling to and from the court; and
- (b) such sum by way of compensation for loss of time as may be specified in a practice direction.

Enforcing attendance of witness

- 34.8** (1) If a person served with a witness summons fails to attend court, the court on the application of the party who issued the witness summons may make an order requiring the person to attend and to produce any documents required by the witness summons.
- (2) A party applying for such an order must provide evidence—
- (a) of service of the witness summons; and

- (b) that the person served with the witness summons was paid or offered the payments required by rule 34.7.
- (3) Any order made by the court must be served personally on the witness and be endorsed with a notice in accordance with rule 53.3(b).
- (4) A person who wilfully disobeys an order made against him under paragraph (1) is guilty of contempt of court.
- (5) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.
- (Part 53 deals with the procedure to apply to commit a person for contempt of court)

Evidence by deposition

- 34.9** (1) A party may apply for an order for a person to be examined before a hearing.
- (2) A person from whom evidence is to be obtained following any order under this rule is referred to as a “deponent” and the evidence is referred to as a “deposition”.
- (3) An order under this rule shall be for a deponent to be examined on oath before—
- (a) a judge;
- (b) a master; or
- (c) an attorney-at-law who has practised for at least seven years and who is appointed by the consent of the parties or the court.
- (4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.
- (5) The order must state the date, time and place of the examination.
- (6) At the time of service of the order the deponent must be offered or paid travelling expenses and compensation for loss of time in accordance with rule 34.7.
- (7) An application may be made by any party whether or not that party would otherwise call the witness.
- (8) Where the application is made by the party who would call the witness to give evidence, the court may order that party to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.
- (Part 29 contains the general rules about witness statements and witness summaries)

Conduct of examination

- 34.I0** (1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.
- (2) If the parties are present, the examiner may, with the consent of the parties, conduct the examination of a person not named in the order for examination.
- (3) The examiner may conduct the examination in private if he considers it appropriate to do so.
- (4) The examiner must ensure that a full record is taken of the evidence given by the witness.
- (5) If any person being examined objects to answer any question put to him, the ground of the objection and the answer to any such question must be set out in the deposition or in a statement annexed to the deposition.
- (6) The examiner must state his opinion with regard to the ground of the objection but any decision on the validity of that ground must be made by the court.
- (7) The examiner must send a copy of the deposition to—
- (a) every party to the proceedings;
- (b) to the court office; and
- (c) to the deponent.
- (8) If the witness or any attorney-at-law present at the hearing is of the opinion that the deposition does not accurately represent the evidence he may endorse on the copy deposition the corrections which in his opinion should be made and file the copy deposition and serve a copy of it on all other parties.

Evidence without examiner being present

- 34.II** (1) With the consent of the parties, the court may order that the evidence of a witness be taken as if before an examiner, but without an examiner actually being appointed or present.
- (2) Where such an order is made then, subject to any directions that may be contained in the order—
- (a) the party whose witness is to be examined must provide a shorthand writer or stenographer to take down the evidence of the witness;
- (b) an attorney-at-law of any party may administer the oath to a witness;
- (c) the shorthand writer or stenographer need not himself be sworn but must certify in writing as correct a transcript of his notes of the evidence and deliver it to the attorney-at-law for the party whose witness was examined;

- (d) the attorney-at-law whose witness was examined must file the original transcript and deliver a true copy to all other parties and to the witness who was examined; and
- (e) if the witness or any attorney-at-law present at the hearing is of the opinion that the transcript does not accurately represent the evidence given he may endorse on the copy transcript the corrections which in his opinion should be made and file the copy transcript and serve a copy of it on all other parties.

Enforcing attendance of witness before an examiner

- 34.12** (1) If a person served with a witness summons to attend before an examiner—
- (a) fails to attend;
 - (b) refuses to be sworn or to affirm for the purpose of the examination; or
 - (c) refuses to answer any lawful question or produce any document at the examination,
- the examiner must sign and file a certificate of his failure or refusal.
- (2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring the person to attend, or to be sworn or to affirm or to answer any question or produce any document as the case may be.
 - (3) An application for an order under this rule may be made without notice but must be supported by evidence—
 - (a) of service of the witness summons; and
 - (b) that the person served with the witness summons was paid or offered the payments required by rule 34.7.
 - (4) Any order made by the court must be served personally on the witness and be endorsed with a notice in accordance with rule 53.3(b).
 - (5) A person who wilfully disobeys an order made against him under paragraph (2) is guilty of contempt of court.
 - (6) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.
- (Part 53 deals with the procedure to apply to commit a person for contempt of court)

Time taken to be endorsed on deposition

- 34.13** The examiner must endorse on the deposition the time occupied in taking the deposition and the fees received by him.

Special report

34.14 The examiner may make a special report to the court with regard to the absence or conduct of any person present when the deposition was taken.

Fees and expenses of examiner

- 34.15** (1) On appointing an examiner the court must fix the fee to be paid to the examiner for carrying out the examination.
- (2) The party who obtained the order must also pay all reasonable travelling and other expenses including charges for a room (other than the examiner's own chambers or office) where the examination takes place.
- (3) This does not affect any decision as to the party who is ultimately to bear the costs of the examination.

Order for payment of examiner's fees

34.16 The examiner may report to the court the fact that any fees or expenses due to him have not been paid and the court may make an order that the party who obtained the order for the examination should pay such fees and expenses.

Use of deposition at hearing

- 34.17** (1) A deposition ordered under rule 34.9 may be given in evidence at the trial unless the court orders otherwise.
- (2) A party intending to put in evidence a deposition at a hearing must serve notice of his intention to do so on every other party.
- (3) He must serve the notice at least 21 days before the day fixed for the hearing.
- (4) The court may require a deponent to attend the hearing and give evidence orally.

Restrictions on subsequent use of depositions taken for the purpose of any hearing except the trial

- 34.18** (1) Where the court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.
- (2) However, it may be used for some other purpose —
- (a) by the party who was examined;
- (b) if the party who was examined agrees; or
- (c) if the court gives permission.

Where a person to be examined is out of the jurisdiction—letter of request

- 34.19** (1) Where a party wishes to take a deposition from a party outside the jurisdiction, the court may direct the issue 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) If the country to which the letter is sent allows a person appointed by the court to examine a person in that country, the court may make an order appointing an examiner for that purpose.
- (4) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.
- (5) If the court makes an order for the issue of a letter of request, the party who sought the order must file—
- (a) the following documents and, except where paragraph (6) applies, a translation of them:
- (i) a 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 expense of the Minister with responsibility for Foreign Affairs.
- (6) There is no need to file a translation if English is one of the official languages of the country where the examination is to take place.

Early appointment to produce documents

- 34.20** (1) The court may permit a party to issue a witness summons requiring—
- (a) a party; or
- (b) any other person,
- to attend at a date, time or place (a “production hearing”) specified in the summons other than the date of the trial for the purpose of producing one or more documents.
- (2) The only documents that a summons under this rule can require a person to produce are documents which that person could be compelled to produce at the trial.
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CASES

2014

HIGH COURT

Ayoub Khan v Caroni (1975) Limited

CV 2006-03392 (2014.07.03)

**RULE 34.3 — PERMISSION TO ISSUE WITNESS SUMMONS DURING TRIAL —
FRESH EVIDENCE — RELEVANCE TO ISSUES**

(Also under Part 1)



PART 35 REQUESTS FOR INFORMATION

Contents of this Part

Right of parties to obtain information	Rule 35.1
Orders compelling reply to request for information	Rule 35.2
Time limits for compelling reply	Rule 35.3
Information obtained under Part 35 not to be used in other proceedings	Rule 35.4

Right of parties to obtain information

- 35.1** (1) This Part enables a party to obtain from any other party information about any matter which is in dispute in the proceedings.
- (2) To do so he must serve a request for information that he wants on that other party.
- (3) He must state in his request precisely what information he wants.

Orders compelling reply to request for information

- 35.2** (1) If a party does not give information which another party has requested under rule 35.1 within a reasonable time, the party who served the request may apply for an order compelling him to do so.
- (2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.
- (3) When considering whether to make an order the court must have regard—
- (a) to the likely benefit which will result if the information is given;
 - (b) to the likely cost of giving it; and
 - (c) to whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order.

Time limits for compelling reply

- 35.3** An application for an order compelling a reply to a request for information may not be made before the time for serving witness statements has expired nor less than 42 days before the date fixed for the trial.

(The time for serving witness statements will be specified in directions given by the court under Part 27)

Information obtained under Part 35 not to be used in other proceedings

35.4 A party may use information which he obtains—

- (a) in response to a request under rule 35.1; or
- (b) in compliance with an order under rule 35.2.

only for the purpose of the proceedings in which the request or order was made.

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Louis A Monteil and Another v Central Bank of Trinidad and Tobago and Another

Civ App No P019 of 2015 (2016.05.27)

Appeal dismissed

**FURTHER AND BETTER PARTICULARS — RE-AMENDED STATEMENT OF CASE
— SUFFICIENT PARTICULARS — DEFENDANT TO KNOW CASE TO BE MET**

(Also under Parts 1, 20 and 26)

2014

PRIVY COUNCIL/ COURT OF APPEAL

Real Time Systems Limited v Renraw Investments Limited and Others

[2014] UKPC 6 (2014.03.03)

Appeal dismissed

PART 35 — INTERPRETATION — ABILITY TO REQUEST INFORMATION

(Also under Parts 8, 20 and 26)

HIGH COURT

Yunus Meighoo v Ashram Persad and Others

CV 2013-01963 (2014.09.22)

**PART 35 — REQUEST FOR PARTICULARS — REPLY — INFORMATION
PERTINENT TO DISPUTE — CONSIDERATION OF ALL FACTORS**

(Also under Part 20)

2010

PRIVY COUNCIL/ COURT OF APPEAL

Premnath Bowlah v The Attorney General of Trinidad and Tobago

Civ App No P261 of 2009 (2010.02.01)

Appeal allowed

CV 2008-04924 (2009.12.09)

**RULE 35.1(2) — RULE 35.2(2) — RULE 35.3 — RELEVANT AND NECESSARY
INFORMATION REQUESTED — DISCLOSURE**

(Also under Part 56)

2009

HIGH COURT

Basdeo Panday and Another v Her Worship Ejenny Espinet and Another

CV 2008-02265 (2009.04.29)

**RULE 35.2 — REQUEST FOR INFORMATION — IRRELEVANCE — PREMATURE
— CPR REQUIREMENTS NOT SATISFIED**

PART 36 OFFERS TO SETTLE

Contents of this Part

Scope of this Part	Rule 36.1
Introductory	Rule 36.2
Making offer to settle	Rule 36.3
Time when offer to settle may be made	Rule 36.4
Procedure for making offer to settle	Rule 36.5
Extent to which offer to settle covers interest, costs or counterclaim	Rule 36.6
Offer to settle made after interim payment	Rule 36.7
Offer to settle part of claim	Rule 36.8
Time limit for accepting offer to settle	Rule 36.9
Procedure for acceptance	Rule 36.10
Effect of acceptance—generally	Rule 36.11
Effect of acceptance where there are more than two parties	Rule 36.12
Costs of offeror and offeree where offer is accepted—defendant’s offer	Rule 36.13
Costs of offeror and offeree where offer is accepted—claimant’s offer	Rule 36.14
Costs where offer not accepted—general rules	Rule 36.15
How costs are to be dealt with	Rule 36.16

Scope of this Part

- 36.1** (1) This Part contains rules about
- (a) offers to settle which any party may make to another party; and
 - (b) the consequences of such offers.
- (2) This Part does not limit a party’s right to make an offer to settle otherwise than in accordance with this Part.
- (Part 37 deals with payments into court)

Introductory

- 36.2** (1) An offer to settle may be made in any proceedings whether or not there is a claim for money.
- (2) The party who makes the offer is called the “offeror”.
 - (3) The party to whom the offer is made is called the “offeree”.
 - (4) An offer to settle is made when it is served on the offeree.

Making offer to settle

- 36.3** (1) A party may make an offer to another party which is expressed to be “without prejudice” but in which the offeror reserves the right to make the terms of the offer known to the court after judgment is given with regard to the allocation of the costs of the claim.
- (2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

Time when offer to settle may be made

- 36.4** A party may make an offer to settle under this Part at any time up to the beginning of the trial.

Procedure for making offer to settle

- 36.5** (1) An offer to settle must be in writing.
- (2) The offeror must serve the offer on the offeree and a copy on all other parties.
- (3) The fact that an offer has been made under this Part or any payment into court in support of the offer shall not be communicated to the court until all questions of liability and the amount of money to be awarded have been decided.
- (4) Paragraph (3) does not apply—
- (a) to an offer which has been accepted;
 - (b) where a defence of tender before claim has been pleaded; or
 - (c) in proceedings for defamation where a party pleads the defence provided by section 5 of the Libel and Defamation Act (Chap. 11:16) (actions against newspapers).

Extent to which offer to settle covers interest, costs or counterclaim

- 36.6** (1) An offer to settle a claim for damages must state whether or not the amount offered includes—
- (a) interest; or
 - (b) costs.
- (2) If the offer covers interest or costs it must state the amount which is included for each.
- (3) If there is a counterclaim as well as a claim, the offer must state—
- (a) in the case of an offer by the claimant, whether or not it takes into account the counterclaim; or
 - (b) in the case of an offer by the defendant, whether or not it takes into account the claim,
- and in each case in what amount.

Offer to settle made after interim payment

36.7 If an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle must state whether it is in addition to the interim payment or whether it is intended to replace it.

Offer to settle part of claim

36.8 (1) An offer to settle must state whether or not it covers the whole or part of the claim.

(2) If it does not it is to be taken to cover the whole claim.

(3) If the offer covers only part or parts of the claim it must—

(a) identify the part or parts of the claim in respect of which it is made; and

(b) if more than one, state what is offered in respect of each part covered by the offer.

Time limit for accepting offer to settle

36.9 (1) The offeror may state in the offer that it is open for acceptance until a specified date.

(2) The offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least 21 days.

(3) Acceptance of the offer shall have no effect on any decision that the court makes as to the consequences of acceptance of the offer if it is accepted after the beginning of the trial.

Procedure for acceptance

36.10 To accept an offer a party must—

(a) serve written notice of acceptance on the offeror; and

(b) serve a copy of the notice on any other party.

Effect of acceptance—generally

36.11 (1) If the offeree accepts an offer which is not limited in accordance with rule 36.8 (offer to settle part of claim), the claim is stayed upon the terms of the offer.

(2) If the offer covers a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.

(3) In any other case the proceedings are stayed to the extent that they are covered by the terms of the offer.

- (4) If the court's approval is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only when the court gives its approval.

(Rule 23.12 deals with the settlement of proceedings involving minors and patients)

- (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 not dealt with by the offer.
- (6) Where money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect any proceedings to obtain payment out of court.

(Part 37 deals with payments into court)

- (7) Where an offer is accepted but its terms are not complied with, any stay arising on acceptance ceases to have effect and—
- (a) the proceedings or the part which was stayed may continue; and
- (b) either party may apply to the court to enforce those terms.
- (8) If a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an agreed offer, he may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

Effect of acceptance where there are more than two parties

36.12 (1) Where—

- (a) there is more than one defendant whom the claimant says are jointly and severally, or severally, liable;
- (b) the claimant agrees to settle the claim as against one or more, but not all of them; and
- (c) the claimant discontinues his claim against any other defendant, the claimant is liable to pay the costs of that defendant unless the court otherwise orders.
- (2) Where a claimant accepts an offer made by one of a number of joint defendants—
- (a) paragraph (1) shall not apply; and
- (b) the defendant who made the offer is liable for the costs of the other joint defendants.
- (3) Where—
- (a) there is more than one claimant; and
- (b) one or more, but not all, of them agree to settle, the others may continue the proceedings.

Costs of offeror and offeree where offer is accepted—defendant’s offer

36.13 (1) Where—

- (a) the defendant makes an offer to settle; and
- (b) the claimant accepts the offer within any period stated for accepting it and before the beginning of the trial,

the claimant is entitled to his costs to the time when he accepts the offer.

(2) Where the defendant does not state the period within which the offer is open for acceptance—

- (a) if the claimant accepts it within 21 days of the date when it is made, he is entitled to his costs up to the date on which he accepts it; or
- (b) if he accepts the payment more than 21 days after the date on which it is made, he is entitled to his costs up to the date on which he accepts it unless the court orders otherwise.

(3) If the defendant permits a claimant to accept an offer after the time originally stated for accepting it—

- (a) the claimant is entitled to his costs to the end of the period originally stated for accepting the offer; and
- (b) the defendant is entitled to any costs that he may have incurred between the end of the period originally stated for accepting the offer and the date when the offeree accepts the offer, unless the court orders otherwise.

(4) The time when an offeree accepts the offer is the time when he serves notice of acceptance on the offeror.

(5) If the settlement relates only to part of the proceedings and the remaining part or parts of the proceedings continue—

- (a) the claimant is entitled under this rule only to the costs relating to that part of the proceedings which has been settled; and
- (b) unless the court orders otherwise or the defendant agrees, the claimant may not recover any such costs, nor have them quantified, until the conclusion of the rest of the proceedings when the court can deal with the costs of the whole of the proceedings including any costs relating to those parts of the proceedings that were not settled.

Costs of offeror and offeree where offer is accepted—claimant’s offer

36.14 Where the claimant makes an offer which is accepted by the defendant, the claimant is entitled to his costs up to the time when notice of acceptance of the offer is served on him.

Costs where offer not accepted—general rules

36.15 (1) The general rule for defendant’s offers is that, where the defendant makes an offer to settle which is not accepted and—

- (a) in the case of an offer to settle the claim for damages, the court awards less than 85% of the amount of the defendant’s offer; or
- (b) in any other case, the court considers that the claimant acted unreasonably in not accepting the defendant’s offer,

the claimant must pay any costs incurred by the defendant after the date on which the defendant made the offer.

(2) Where a claimant makes an offer to settle and—

- (a) in the case of an offer to settle a claim for damages, the court awards an amount which is equal to or more than the amount of the offer; or
- (b) in any other case, the court considers that the defendant acted unreasonably in not accepting the claimant’s offer,

the Court may, in exercising its discretion under section 25 of the Supreme Court of Judicature Act (Chap. 4:01) (Power of courts to award interest on debt and damages), take into account the higher rates of interest set out in the following table:

NET AMOUNT OF DAMAGES	RATE OF INTEREST
not exceeding \$50,000	20% per annum
for the next \$100,000	15% per annum
for the next \$150,000	12% per annum
for the next \$500,000	10% per annum
in excess of \$800,000	8% per annum

“net” means the amount of damages on the claim less the amount (if any) awarded on any counterclaim.

Example:

One year since the offer

Damages— \$400,000, the court might award 20% on the first \$50,000 for one year (\$10,000);

plus 15% interest on the next \$100,000 for one year (\$15,000);

plus 12% interest on the next \$150,000 for one year (\$18,000);

plus 10% interest on the remaining \$100,000 for one year (\$10,000),

a total of \$53,000 interest on damages.

- (3) The court may decide that the general rule under paragraph (1) is not to apply in a particular case.
- (4) In deciding whether the general rule should not apply and in considering the exercise of its discretion under paragraph (2), the court may take into account—
 - (a) the terms of any offer;
 - (b) the stage in the proceedings at which the offer was made;
 - (c) the information available to the offeror and the offeree at the time that the offeror made the offer; and
 - (d) the conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated.
- (5) This rule applies to offers to settle at any time, including before proceedings were started.

How costs are to be dealt with

- 36.16** (1) Where an offer to settle is accepted the parties may agree the amount of costs that are due to be paid under this Part.
- (2) Where the amount of costs falls to be quantified by the court, then the general rule is that, unless an order has been made for budgeted costs under rule 67.8 the costs shall be determined in accordance with the scale of prescribed costs contained in Appendix B and Appendix C to Part 67.
 - (3) Where an offer to settle—
 - (a) is accepted after the time originally stated for accepting it under rule 36.13(3); or
 - (b) deals only with part of the case in accordance with rule 36.13(4),
 the amount of costs to be paid to the defendant under rule 36.13(3)(b) and to either party under paragraph (b) must be assessed by the court and in assessing the costs the court must take into account the scale of prescribed costs or the amount of the budgeted costs as the case may be.
 - (4) In determining the appropriate amount of costs to be paid where an order has been made under rule 67.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.



CASES

2015

HIGH COURT

Cristal Roberts and Another v Dr Samantha Bhagan and Another

CV 2010-01117 (2015.03.05)

RULE 36.5 — ORDINARY MEANING OF WORDS — AGREEMENT FOR INTERIM PAYMENT OR OFFER TO SETTLE

(Also under Parts 17 and 23)

2014

PRIVY COUNCIL/ COURT OF APPEAL

Domingo Lamotte v Water and Sewerage Authority

Civ App No P198 of 2013 (2014.06.25)

Appeal dismissed

CV 2011-04336 (2013.06.27)

PART 36 — INTERPRETATION OF AGREEMENT — ENFORCEMENT OF AGREEMENT — INTEREST AND COSTS

PART 37 PAYMENTS INTO COURT TO SUPPORT OFFERS UNDER PART 36 AND UNDER ORDER

Contents of this Part

Scope of this Part	Rule 37.1
Payments into court to support offers to settle	Rule 37.2
Right to payment out on acceptance of offer	Rule 37.3
Cases where payment out requires court order—general	Rule 37.4
Money paid into court under order—general	Rule 37.5
Money paid into court as condition for permission to defend or to continue to defend	Rule 37.6

Scope of this Part

- 37.1** (1) This Part deals with payments into court to support offers of settlement under Part 36.
- (2) A defendant is not obliged to make a payment into court to support such an offer.

Payments into court to support offers to settle

- 37.2** (1) A defendant who offers to settle the whole or part of proceedings may pay money into court in support of the offer.
- (2) A defendant may not pay money into court unless—
- (a) he certifies that such payment is in support of an offer to settle; or
 - (b) the payment in is made under a court order.
- (3) No payment into court may be made until a claim is served.
- (4) A payment into court to support an offer may be made—
- (a) when the offer is made; or
 - (b) at any time while the offer is outstanding.
- (5) A defendant who pays money into court must—
- (a) serve notice of the payment in on the claimant; and
 - (b) file a copy of such notice with a statement of the date (if any) by which the offer is open for acceptance under rule 36.9(1).

Right to payment out on acceptance of offer

- 37.3 (1) The general rule is that a claimant who accepts an offer to settle within the period stated for accepting it is entitled to payment of the sum which the defendant paid into court to support the offer, without needing a court order.
- (2) To obtain payment, the claimant must file a request for payment and must certify that the offer has been accepted within any period stated in the offer for accepting it.
- (3) The general rule is qualified by rule 37.4 (cases where payment out requires a court order—general).

Cases where payment out requires court order—general

- 37.4 (1) Where a claimant accepts money paid into court—
- (a) by one or more but not all, of a number of defendants;
 - (b) with a defence of tender before claim;
 - (c) to settle a claim to which Part 23 (claims by minors and patients) applies; or
 - (d) after the end of the period stated for accepting it,
- the money in court may only be paid out under an order of the court.
- (2) An order under paragraph (1)(c) may not be made by consent.
- (3) Where—
- (a) a claimant accepts money paid into court after the trial has begun; and
 - (b) all further proceedings on the claim or that part of it to which the acceptance relates are stayed,
- the money in court may only be paid out under an order of the court.
- (4) An order under this rule must deal with the costs of the proceedings which have been stayed.

Money paid into court under order—general

- 37.5 (1) When a party makes a payment into court under a court order he must give notice of the payment to every other party.
- (2) Money paid into court under a court order may not be paid out unless the court gives permission for it to be paid out.
- (3) Paragraph (2) does not apply where—
- (a) the money is paid into court by a defendant;
 - (b) in accordance with rule 37.6(2)(b) that defendant chooses to treat the money paid into court as if it were payment into court in support of an offer to settle; and
 - (c) the claimant accepts the offer to settle.

Money paid into court as condition for permission to defend or to continue to defend

- 37.6** (1) This rule applies where the court makes an order permitting a defendant—
- (a) to defend; or
 - (b) to continue to defend,
- on condition that he makes a payment into court.
- (2) Where—
- (a) a defendant makes such a payment into court; and
 - (b) makes an offer to settle (whether before or after the order to pay money into court),
- he may choose to treat the whole or any part of the money paid into court as if it were a payment into court made in support of his offer to settle.
- (3) To do this he must—
- (a) file a notice that he so chooses; and
 - (b) at the same time, serve a copy of it on every other party to the proceedings.

PART 38 DISCONTINUANCE

Contents of this Part

Scope of this Part	Rule 38.1
Right to discontinue claim	Rule 38.2
Procedure for discontinuing	Rule 38.3
Right to apply to have notice of discontinuance set aside	Rule 38.4
Effect of discontinuance	Rule 38.5
Liability for costs	Rule 38.6
Quantification of costs	Rule 38.7
Discontinuance and subsequent proceedings	Rule 38.8

Scope of this Part

38.1 (1) The rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim.

(2) A claimant who—

(a) claims more than one remedy; and

(b) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies,

is not treated as discontinuing all or part of a claim for the purposes of this Part.

(Rule 43.7 deals with consent orders which may include orders bringing an action to an end by way of a consent judgment or otherwise)

Right to discontinue claim

38.2 (1) The general rule is that a claimant may discontinue all or part of his claim without the permission of the court.

(2) However—

(a) a claimant needs permission from the court if he wishes to discontinue all or part of a claim in relation to which—

(i) the court has granted an interim injunction; or

(ii) any party has given an undertaking to the court.

(b) Where a claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 17) he may discontinue only if—

- (i) the defendant consents in writing; or
 - (ii) the court gives permission.
- (c) Where there is more than one claimant, a claimant may not discontinue unless—
 - (i) every other claimant consents in writing; or
 - (ii) the court gives permission.
- (3) Where there is more than one defendant the claimant may discontinue all or part of his claim against all or any of the defendants.

Procedure for discontinuing

- 38.3** (1) To discontinue proceedings or any part of proceedings a party must—
- (a) serve a notice of discontinuance on every other party to the proceedings; and
 - (b) file a copy of it.
- (2) The claimant must state in the copy notice of discontinuance which he files that he has served notice of discontinuance on every other party to the proceedings.
- (3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.
- (4) Where the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.
- (5) Where there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.

Right to apply to have notice of discontinuance set aside

- 38.4** (1) Where the claimant discontinues without the consent of the defendant or the permission of the court any defendant may apply to have the notice of discontinuance set aside.
- (2) The defendant may not make application under this rule more than 28 days after the date when the notice of discontinuance was served on him.

Effect of discontinuance

- 38.5** (1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on him under rule 38.3(1)(a).
- (2) The proceedings are brought to an end as against him on that date.
- (3) However, this does not affect—

- (a) the right of the defendant under rule 38.4 to apply to have the notice of discontinuance set aside; or
- (b) any proceedings relating to costs.

Liability for costs

- 38.6** (1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom he discontinues incurred on or before the date on which notice of discontinuance was served on him.
- (2) If proceedings are only partly discontinued—
- (a) the claimant is liable for only the costs relating to that part of the proceedings which he discontinues; and
 - (b) unless the court orders otherwise, the costs which the claimant is liable to pay may not be quantified until the conclusion of the rest of the proceedings.

Quantification of costs

- 38.7** (1) The general rule is that, unless an order has been made for budgeted costs under rule 67.8 the costs shall be determined in accordance with the scale of prescribed costs contained in Appendix B and Appendix C to Part 67.
- (2) Where the claimant discontinues only part of the case the amount of costs must be assessed by the court.
- (3) In determining the appropriate amount of costs to be paid where an order has been made under rule 67.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

Discontinuance and subsequent proceedings

- 38.8** Where—
- (a) a claimant discontinued a claim after the defendant against whom he discontinued filed a defence; and
 - (b) the claimant makes a subsequent claim—
 - (i) against the same defendant;
 - (ii) the subsequent claim arises out of facts which are the same or substantially the same as those relating to the discontinued claim; and
 - (iii) the claimant has not paid the defendant’s costs of the discontinued claim,

the court may stay the subsequent claim until such time as the costs of the discontinued proceedings are paid.

CASES**2015****HIGH COURT***The Chairman of the Region of Diego Martin and others v EDFAM*

CV 2014-03319 (2015.05.15)

DISCONTINUANCE — MULTIPLE CLAIMANTS — NEED FOR CONSENT OR PERMISSION — PREJUDICE

Lyris Blanchfield v Nichola Blanchfield

CV 2013-04792, CV 2014-00745 (2015.02.19)

NOTICE OF DISCONTINUANCE — LIABILITY OF CLAIMANT — AWARD OF COSTS

(Also under Parts 10 and 15)

2010**HIGH COURT***Wendell Steele v Lennox Petroleum Services Limited*

CV 2009-04689 (2010.10.04)

DISCONTINUANCE — FRESH CLAIM — STRIKING OUT — ABUSE OF PROCESS

(Also under Part 1)

PART 39 PRE-TRIAL REVIEW

Contents of this Part

Scope of this Part	Rule 39.1
Direction for a pre-trial review	Rule 39.2
Rules relating to case management conferences to apply	Rule 39.3
Who is to conduct pre-trial review	Rule 39.4
Parties to prepare statement of issues	Rule 39.5
Directions at pre-trial review	Rule 39.6

Scope of this Part

39.1 This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

Direction for a pre-trial review

- 39.2** (1) At any case management conference and at any subsequent hearing in the proceedings other than the trial the court must consider whether a pre-trial review should be held to enable the court to deal justly with the proceedings.
- (2) A party may apply for a direction that a pre-trial review be held.
- (3) An application for a pre-trial review must be made at least 60 days before the trial date or the beginning of any trial period fixed under rule 27.6(4).
- (4) The court office must give each party at least 14 days notice of the date, time and place for a pre-trial review.

Rules relating to case management conferences to apply

39.3 Parts 25 and 26 apply to a pre-trial review as they do to a case management conference.

Who is to conduct pre-trial review

- 39.4** (1) The general rule is that the pre-trial review is to be conducted wherever practicable by the trial judge.
- (2) Where this is not practicable the pre-trial review should be conducted by a judge of the High Court.

Parties to prepare statement of issues

- 39.5** (1) The parties must file at the court office not less than 7 days before the pre-trial review a statement, agreed if possible, of the issues to be tried.
- (2) If the parties are not able to agree such a statement each party must file a statement of the issues and serve a copy on all other parties not later than 3 days before the date fixed for the pre-trial review.

Directions at pre-trial review

- 39.6** (1) The court must give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the issues.
- (2) In particular the court may—
- (a) direct either party to provide further information to the other;
 - (b) give directions for the filing by each party and service on all other parties of one or more of—
 - (i) a skeleton argument;
 - (ii) a chronology of relevant events;
 - (iii) a summary of any legal propositions to be relied on at the trial;
 - (iv) a list of authorities which it is proposed to cite in support of those propositions;
 - (v) a core bundle of documents (that is, a bundle containing only such documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial);
 - (vi) an agreed statement of facts;
 - (vii) an agreed statement of the basic, technical, scientific or medical matters in issue; and
 - (viii) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;
 - (c) direct whether or not there shall be any opening or closing addresses and the time to be allocated to each;
 - (d) give directions as to the procedure to be followed at the trial;
 - (e) decide on the total time to be allowed for the trial; and
 - (f) direct how that time shall be allocated between the parties.

CASES

2014

PRIVY COUNCIL/ COURT OF APPEAL

Gulf View Medical Centre and Another v Karen Tesheira

Civ App No P135 of 2014 (2014.06.02)

Appeal allowed

CV 2009-02051 (2014.05.05)

**PRE-TRIAL REVIEW — VARIATION OF DIRECTIONS — VACATING TRIAL DATES
— EFFICIENT USE OF COURT RESOURCES**

(Also under Part 1)

2012

HIGH COURT

Sieulal Ramsaran v Rennie Lakhan Police Constable No 13429 and Another

CV 2010-01582 (2012.02.23)

**PRE-TRIAL REVIEW — CLAIM UNSUPPORTED BY EVIDENCE — SUMMARILY
DISMISSED**



PART 40 TRIAL

Contents of this Part

Documents for use at trial	Rule 40.1
Failure of a party to attend trial	Rule 40.2
Application to set aside judgment given in party's absence	Rule 40.3
Adjournment of trial	Rule 40.4
Inspection	Rule 40.5
Powers of judge to summon witness	Rule 40.6

Documents for use at trial

- 40.1** (1) At least 21 days before the date fixed for hearing all parties must inform the claimant of the documents that they wish to have included in the bundle of documents to be used at the trial.
- (2) The claimant must prepare a bundle of all the documents which any party wishes to make use of at the trial.
- (3) The bundle of documents should separate those which are agreed and those which are not agreed.
- (4) The claimant must paginate and index the bundle of documents.
- (5) At least 10 days before the date fixed for hearing the claimant must file at the court office—
- (a) a bundle comprising copies of—
- (i) any legal aid certificate;
 - (ii) the claim form;
 - (iii) all statements of case, including counterclaims, defences to counterclaims and ancillary claims and defences; and
 - (iv) any requests for information and the replies;
- (b) a second bundle comprising copies of—
- (i) all witness statements; and
 - (ii) all expert reports;
- (c) a third bundle comprising the documents referred to in paragraph (2); and
- (d) if the bundle prepared under paragraph (2) exceeds 100 pages of documents, a core bundle as described in rule 39.6(2)(v).
- (6) Where only a counterclaim is to be tried reference in this rule to the “claimant” should be construed as reference to the defendant.

Failure of a party to attend trial

- 40.2** (1) If neither party appears at the trial the judge may strike out the claim.
- (2) If only one party appears the judge may proceed in the absence of the other.

Application to set aside judgment given in party's absence

- 40.3** (1) A party who was not present at a trial at which judgment was given or an order made in his absence may apply to set aside that judgment or order.
- (2) The application must be made within 7 days after the date on which the judgment or order was served on the applicant.
- (3) The application to set aside the judgment or order must be supported by evidence showing—
- (a) a good reason for failing to attend the hearing; and
- (b) that it is likely that had the applicant attended some other judgment or order might have been given or made.

Adjournment of trial

- 40.4** (1) The judge may adjourn a trial on such terms as he thinks just.
- (2) The judge may only adjourn a trial to a date and time fixed by him or to be fixed by the court.

Inspection

- 40.5** The judge trying a claim may inspect any place or thing that may be relevant to any issue in the claim.

Powers of the judge to summon witness

- 40.6** (1) The judge may—
- (a) issue a witness summons requiring a party or other person to attend the trial;
- (b) require a party to produce documents or things at the trial; and
- (c) question any party or witness at the trial.
- (2) The judge may examine a party or witness—
- (a) orally; or
- (b) by putting written questions to him and asking him to give written answers to the questions.
- (3) Any party may then cross-examine the witness.

CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Ganase Mathura and Another v Dolly Ragoonath and Others

Civ App No S127 of 2016 (2016.06.06)

Appeal dismissed

CV 2011-03720 (2016.06.02)

ADJOURNMENT OF TRIAL — ILLNESS — NEW TRIAL DATES

HIGH COURT

Merle Hendrickson Romeo v David N Trim and Another

CV 2013-03409 (2016.04.20)

CLAIMANT AWARE OF TRIAL DATE — NON-APPEARANCE OF CLAIMANT AND WITNESSES — NO PROPER REASON

2015

PRIVY COUNCIL/ COURT OF APPEAL

The National Insurance Board of Trinidad and Tobago v Odai NS Ramischand and Company

Civ App No S245 of 2015 (2015.11.16)

Appeal dismissed

CV 2012-03810 (2015.11.20)

RULE 40.3 — TRIAL — NON-ATTENDANCE — NO GOOD REASON

2014

PRIVY COUNCIL/ COURT OF APPEAL

Beulah G Pompey v Stephen Rolingson

Civ App No S062 of 2014 (2014.04.28)

Appeal allowed

CV 2013-03696 (2014.03.10)

RULE 40.3 — NON-ATTENDANCE AT TIME OF DECISION — NO GOOD REASON
(Also under Part 11)

2012

PRIVY COUNCIL/ COURT OF APPEAL

Rookmin Dulariya v Verma Ramdass

Civ App No S181 of 2009 (2012.10.08)

Appeal allowed

CV 2006-03379 (2009.07.13)

TRIAL DATE CERTAINTY — ADJOURNMENT — NO PROPER REASON — DISCRETION

(Also under Part 1)

Yvonne Marcelle v Edwin Marcelle and Others

Civ App No T027 of 2012 (2012.02.27)

Appeal compromised

CV 2011-02975 (2012.02.22)

RULE 40.3(3) — NON-APPEARANCE AT TIME OF DECISION — APPLICATION TO SET ASIDE — EVIDENCE — NON-COMPLIANCE WITH CPR

(Also under Part 27)

2011

PRIVY COUNCIL/ COURT OF APPEAL

Wilston Campbell v Anthony Harricharan

Civ App No S044 of 2011 (2011.04.05)

Appeal allowed

CV 2008-02024 (2011.02.28)

RULE 40.3(3)(a) — RECOVERY OF DEBT — NON-ATTENDANCE — NO GOOD REASON

Coosal's Construction Company Limited v Curtis Bonaparte

Civ App No S201 of 2010 (2011.03.21)

Appeal allowed

CV 2008-04695 (2010.09.29)

TRIAL ON QUANTUM — NON-ATTENDANCE OF DEFENDANT — APPLICATION TO SET ASIDE — NO GOOD REASON

(Also under Part 26)

2010

PRIVY COUNCIL/ COURT OF APPEAL

Kenneth Cox and Others v Alexander Primus

Civ App No P172 of 2009 (2010.01.11)

Appeal allowed

CV 2008-03254 (2009.09.15)

RULE 40.3 — ORDER SETTING ASIDE TRIAL DATE — NON-ATTENDANCE — PRE-TRIAL REVIEW STAGE AND TRIAL — NO GOOD REASON

(Also under Part 27)

2008

PRIVY COUNCIL/ COURT OF APPEAL

Bridgemohan Sookdeo and Another v Ramesh Jagdeo

Civ App No S170 of 2007 (2008.07.11)

Appeal dismissed

CV 2006-01546 (2008.01.17)

RULE 40.3(3)(b) — NON-ATTENDANCE BY DEFENDANT AT TRIAL — RULE NOT SATISFIED

(Also under Part 1)

PART 4I APPOINTMENT OF REFEREE TO INQUIRE AND REPORT

Contents of this Part

Power to order trial before referee	Rule 4I.1
Reference to referee for inquiry and report	Rule 4I.2
Appointment of referee	Rule 4I.3
Powers of referee	Rule 4I.4
Report following reference	Rule 4I.5
Consideration of report by court	Rule 4I.6
Restrictions on appointment of referee in proceedings by or against the State	Rule 4I.7

Power to order trial before referee

4I.1 Where—

- (a) the parties agree;
 - (b) 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; or
 - (c) the matters in dispute are wholly or mainly a matter of account,
- the court may order the claim or any issue or allegation to be tried by a referee.

Reference to referee for inquiry and report

4I.2 The court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

Appointment of referee

- 4I.3** (1) The general rule is that the appointment of a referee under rule 4I.1 or 4I.2 must be made at a case management conference or pre-trial review.
- (2) The referee shall be such person as may be agreed by the parties or, if they fail to agree, by the court.
- (3) The court must state the question or issue upon which the referee is to report.

- (4) The court must decide what fee is to be paid to the referee and by whom.
- (5) This does not affect any decision as to the party who is ultimately to bear the referee's fee.

Powers of referee

- 41.4** (1) For the purpose of his inquiry the referee has the same powers as the court (other than the power to commit).
- (2) The trial or inquiry must so far as possible be conducted in the same way as a trial by the court.
 - (3) The referee may hold the trial or conduct the inquiry at any place which appears to him to be convenient to the parties.
 - (4) If a person served with a witness summons to appear before a referee—
 - (a) fails to attend;
 - (b) refuses to be sworn or affirm for the purposes of the inquiry; or
 - (c) refuses to answer any lawful question or produce any document at the inquiry,the referee must sign and file a certificate of his failure or refusal.
 - (5) Any party may apply to the court for an order requiring the witness to attend, or to be sworn or affirmed, or answer any question or produce any document as the case may be.
 - (6) An application for an order under this rule may be made without notice but must be supported by evidence—
 - (a) of service of the witness summons; and
 - (b) that the person served with the witness summons was paid or offered the payments required by rule 34.7.
 - (7) Such an order must be served personally on the witness and be endorsed with a notice in accordance with rule 53.3(b).
 - (8) A person who wilfully disobeys an order made against him under paragraph (5) is guilty of contempt of court.
 - (9) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.
- (Part 53 deals with the procedure to apply to commit a person for contempt of court)

Report following reference

- 41.5** (1) The report of the referee appointed under rule 41.2 shall be made to the court.
- (2) The referee must supply a copy of the report to each party.
- (3) The referee may in his report—
- (a) submit any question for the decision of the court; or
 - (b) make a special statement of facts from which the court may draw inferences.

Consideration of report by the court

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

Restrictions on appointment of referee in proceedings by or against the State

- 41.7** In proceedings by or against the State no appointment of a referee under rule 41.1 or 41.2 may be made without the consent of the Attorney General.

PART 42 ACCOUNTS AND INQUIRIES

Contents of this Part

Scope of this Part	Rule 42.1
Directions for account	Rule 42.2
Verification of account	Rule 42.3
Omissions, etc., in account	Rule 42.4
Allowances	Rule 42.5
Delay	Rule 42.6
Distribution before entitlement ascertained	Rule 42.7
Guardian's accounts	Rule 42.8

Scope of this Part

42.1 This Part deals with claims for an account or which require the taking of an account.

Directions for account

- 42.2** (1) An application for an account must be made 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 date specified in the order.
- (3) Every direction that an account be taken must be so numbered that each distinct account and inquiry may be designated by that number.
- (4) On directing that an account be taken, or subsequently, the court must direct how it shall be taken or vouched.
- (5) The court may direct that any relevant books of account shall be evidence of the matters contained in them, subject to any objections that any party may take.

Verification of account

- 42.3** (1) When there has been a direction for an account to be taken the accounting party must make out his account and verify it by affidavit exhibiting the account.
- (2) The items on each side of the account must be numbered consecutively.
- (3) Unless otherwise directed, the accounting party must file the affidavit and the account and serve a copy on all other parties.

Omissions, etc., in account

- 42.4** Any party who claims that there are omissions or challenges any item in the account shall give notice to the accounting party with—
- (a) the best particulars that he can give of the omission or error; and
- (b) his grounds for alleging it.

Allowances

- 42.5** In taking any account all just allowances shall be made.

Delay

- 42.6** 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; and
- (b) stay the proceedings; or
- (c) give directions to expedite the taking of the account; or
- (d) direct any other party to take over the taking of the account; and
- (e) make such order for costs as is just.

Distribution before entitlement ascertained

- 42.7** (1) This rule applies where some but not all of the persons entitled to share in a fund are ascertained and there is likely to be delay in ascertaining the other persons.
- (2) The court may order immediate payment of their shares to the persons who have been ascertained.
- (3) The court need not reserve any part of those shares to meet any subsequent costs of ascertaining the other persons.

Guardian's accounts

- 42.8** The accounts of a person appointed guardian of a minor's estate must be verified and passed in the same manner as receiver's account under Part 52.
-

CASES

2016

HIGH COURT*Sanjay Sagar v Rajesh Sagar*

CV 2007-03631 (2016.04.01)

**STATEMENT OF ACCOUNTS — OBJECTIONS — JUST ALLOWANCES —
ACCOUNTS WILL STAND**

PART 43 JUDGMENTS AND ORDERS

Contents of this Part

Scope of this Part	Rule 43.1
Parties present when order made or notified of terms to be bound	Rule 43.2
Practice forms to be used where available	Rule 43.3
Standard requirements	Rule 43.4
Drawing of judgments and orders	Rule 43.5
Service on party personally	Rule 43.6
Consent judgments and orders	Rule 43.7
Time when judgment or order takes effect	Rule 43.8
Time for complying with a judgment or order	Rule 43.9
Correction of errors in judgments or orders	Rule 43.10
Cases where court gives judgment both on claim and counterclaim	Rule 43.11
Service of copy order on a person not a party	Rule 43.12

Scope of this Part

- 43.1** (1) This Part sets out rules about judgments and orders.
- (2) They do not apply to the extent that any other rule makes a different provision in relation to the judgment or order in question.
- (Rule 6.1 deals with who is to serve a judgment or order, Part 11 contains rules about orders made in the course of proceedings)

Parties present when order made or notified of terms to be bound

- 43.2** A party is bound by the terms of the order or judgment whether or not the judgment or order is served where—
- (a) he is present whether in person or by attorney-at-law when the judgment given or order was made; or
- (b) he is notified of the terms of the judgment or order by facsimile transmission, or otherwise

Practice forms to be used where available

43.3 Where there is a practice form for a judgment or order of any description, a judgment or order of that description must be in that form.

Standard requirements

- 43.4** (1) Every judgment or order must state the name and judicial title of the person who made it, unless it is—
- (a) a default judgment under Part 12;
 - (b) a judgment entered on an admission or following a court order under Part 14;
 - (c) a consent order under rule 43.7.
- (2) Every judgment or order must be sealed by the court.

Drawing of judgments and orders

- 43.5** (1) Every judgment or order must be drawn by the court, unless—
- (a) the court directs a party to draw it up;
 - (b) a party with the consent of the court agrees to draw it up;
 - (c) the court dispenses with the need to do so;
 - (d) at the hearing a party gives the court a draft order which it approves;
or
 - (e) it is a consent order under rule 43.7.
- (2) The court may direct the parties to file an agreed statement of its terms before drawing the order.
- (3) Where a draft of an order or an agreed statement of terms is directed it must be filed no later than 7 days from the date on which the direction was given so that the court office may seal the order.
- (4) If a party fails to file a draft of an order within 7 days after the direction was given the court may order some other party to draw and file the order.
- (5) A party who drafts an order must file sufficient copies for service on all parties who are to be served.
- (Rule 6.1 deals with who should serve the judgment or order)

Service on a party personally

43.6 Where a party on whom any order is to be served is acting by an attorney-at-law, the court may order the judgment or order to be served on the lay party as if he were acting in person.

Consent judgments and orders

- 43.7** (1) This rule applies where all parties agree the terms in which judgment should be given or an order made.
- (2) Except as provided by paragraphs (3) and (4), it applies to the following kinds of judgment or order:
- (a) a judgment or order for—
- (i) the payment of a debt or damages (including a judgment or order for damages or the value of goods to be assessed); or
 - (ii) the delivery up of goods with or without the option of paying the value of the goods to be assessed or the agreed value;
- (b) an order for—
- (i) the dismissal of any proceedings, wholly or in part;
 - (ii) the stay of proceedings on terms which are attached as a schedule to the order but which are not otherwise part of it (i.e. a ‘Tomlin Order’);
 - (iii) the stay of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is payable on a stated date or by instalments specified in the order;
 - (iv) the setting aside of a default judgment under Part 13;
 - (v) the payment out of money which has been paid into court;
 - (vi) the discharge from liability of any party; or
 - (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed;
- (c) any order for the extension of time for serving or filing any statement of case or other document, other than—
- (i) an order for the extension of time for serving a statement of case under Part 8;
 - (ii) an order for the extension of time for filing a defence under Part 10 for longer than three months;
 - (iii) an order for the extension of time for filing a listing questionnaire under Part 27;
 - (iv) an order to vary the date fixed for the return of a listing questionnaire under Part 27; or
 - (v) any other order where the court has made an order in terms which prevent an extension of time by consent in relation to the step in question; and

- (d) any order to restore proceedings or allowing a party to apply to vary the order.
- (3) Paragraph (2)(c) is subject to rule 27.9 (which provides that the party may agree to vary dates set by the court or these Rules for doing any act, except the acts specified under rule 27.9(1), provided the variation does not make it necessary to vary the dates fixed for doing those acts).
- (4) This rule does not apply—
 - (a) where any party is a litigant in person;
 - (b) where any party is a minor or patient; or
 - (c) in admiralty proceedings.
- (5) This rule does not allow the making of a consent order by which any hearing date fixed by the court is to be adjourned.
- (6) Where this rule applies the order must be—
 - (a) drawn in the terms agreed;
 - (b) expressed as being ‘By Consent’;
 - (c) signed by the attorney-at-law acting for each of the parties to whom the order relates; and
 - (d) filed at the court office for sealing and rule 43.5 (drawing and filing of judgments and orders) will apply as it applies to all other orders.

Time when judgment or order takes effect

43.8 A judgment or order takes effect from the day it is given or made, unless the court specifies that it is to take effect on a different date.

Time for complying with a judgment or order

43.9 A party must comply with a judgment or order immediately, unless —

- (a) the judgment or order specifies some other date for compliance;
- (b) the court varies the time for compliance; or
- (c) when the claimant enters judgment in default under Part 12 or judgment on an admission under Part 14, he specifies a different time for compliance.

Correction of errors in judgments or orders

- 43.10** (1) The court may at any time correct (without an appeal) a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.
- (2) A party may apply for a correction without notice.

Cases where court gives judgment both on claim and counterclaim

- 43.11** (1) This rule applies where the court gives judgment for a specified amount both for the claimant on his claim and the defendant on the counterclaim.
- (2) If there is a balance in favour of one of the parties, it may order the party whose judgment is for the lesser amount to pay the balance.
- (3) In a case to which this rule applies, the court may make against the claimant and the defendant [whether or not it makes an order under paragraph (2)]—
- (a) a separate order as to damages; and
- (b) a separate order as to costs.

Service of copy order on a person not a party

- 43.12** (1) Where in any proceedings an order is made which may affect the rights of persons who are not parties to the action, the court may at any time direct that a copy of any judgment or order be served on any such person.
- (2) The copy order must be endorsed with a notice in Form 22.
- (3) The court may dispense with service of the copy order or judgment if it appears impracticable to serve that person.
- (4) Any person so served, or on whom service is dispensed with—
- (a) is bound by the terms of the judgment or order; but
- (b) may apply within 28 days of being served to discharge, vary or add to the judgment or order; and
- (c) may take part in any proceedings under the judgment or order.



CASES**2016****PRIVY COUNCIL/ COURT OF APPEAL***Buddie Miller and Another v Michael Perez*

Civ App No P131 of 2016 (2016.10.10)

Appeal dismissed

CV 2009-02764 (2016.04.26)

**ENFORCEMENT OF COURT ORDER — TIME FOR COMPLIANCE —
INTERPRETATION OF ORDER — SLIP RULE — CORRECTION TO ORDER**

(Also under Part 1)

2012**HIGH COURT***Hajra Lendor v Caribbean Union College and Another*

CV 2008-04544 (2012.10.18)

CLARITY OF ORDER — NO AMBIGUITY — TERMS OF ORDER CLEAR

2011**HIGH COURT***Peter P Jagwansingh and Others v Ulix Manmohansingh and Others*

CV 2006-02455 (2011.01.20)

CONSENT ORDER — SETTING ASIDE — SLIP RULE

2010

HIGH COURT

Ronald A Adams v Linwald Beharry

CV 2007-02177 (2010.05.26)

**RULE 43.10 — POWER TO CORRECT ORDER — ACCIDENTAL SLIPS OR
OMISSIONS — INHERENT JURISDICTION**



PART 44 ENFORCEMENT— GENERAL PROVISIONS

Contents of this Part

Scope of this Part	Rule 44.1
Procedure for beginning enforcement	Rule 44.2
Judgment subject to condition	Rule 44.3
Separate enforcement of costs	Rule 44.4
Effect of setting aside judgment or order	Rule 44.5
Court’s powers where person ordered to do act fails to comply	Rule 44.6
Judgment for sum in foreign currency	Rule 44.7
Enforcement by or against non-party	Rule 44.8
Enforcement against a partnership	Rule 44.9
Enforcement of awards, etc., made by outside bodies	Rule 44.10

Scope of this Part

- 44.1** (1) This Part deals generally with the enforcement of judgments.
- (2) In this Part and in Parts 45 to 53, “judgment creditor” means the person who is entitled to enforce a judgment or order; and “judgment debtor” means the person who is liable to enforcement under the judgment or order, even though the judgment or order is not a money judgment.

Procedure for beginning enforcement

- 44.2** (1) The general rule is that, once a judgment or order has become enforceable, the court must issue an enforcement order if the judgment creditor files the appropriate request.
- (2) Where any of these Rules requires a judgment creditor to obtain permission to begin enforcement proceedings he must first obtain that permission.

Judgment subject to condition

- 44.3** (1) A person who has a judgment or order subject to the fulfilment of a condition may not enforce the judgment unless—
- (a) the condition is fulfilled; and
 - (b) the court gives leave for the judgment to be enforced.
- (2) Where a person has the benefit of a judgment subject to fulfilment of a condition and there is a failure to fulfil that condition, then unless the court otherwise orders—
- (a) that person loses the benefit of the judgment; and
 - (b) any other person interested under the judgment may take any steps which—
 - (i) are warranted by the judgment; or
 - (ii) which might have been taken if the judgment had not been given.

Separate enforcement of costs

- 44.4** A judgment creditor who has judgment with costs may enforce the judgment and the costs separately.

Effect of setting aside judgment or order

- 44.5** (1) The general rule is that, if the court sets aside a judgment or order, any order made for the purpose of enforcing it ceases to have effect.
- (2) The court may, however, direct that it shall not cease to have effect.

Court's powers where person ordered to do act fails to comply

- 44.6** (1) If—
- (a) the court orders a party to do an act; but
 - (b) he does not do it,
- the party who obtained the order may apply for an order—
- (i) that he may do the act; or
 - (ii) that some person appointed by the court may do it.
- (2) The court may order the person who failed to do the act to pay the costs and expenses of the person who does it.
- (3) If it does so, it must assess the costs under rule 67.12.
- (Part 53 deals with enforcement by committal or confiscation of assets)

Judgment for sum in foreign currency

- 44.7** (1) This rule has effect where—
- (a) the court gives judgment for a sum expressed in a foreign currency; and
 - (b) the currency is that of a country other than the country in which the judgment is to be enforced.
- (2) At the time when the person who is entitled to enforce a judgment commences enforcement proceedings, he must file a certificate stating the exchange rate current in Port-of-Spain for the purpose of the unit of foreign currency in which the judgment is expressed at the close of business on the previous business day.

Enforcement by or against non-party

- 44.8** (1) A judgment in favour of a non-party may be enforced in the same way as a judgment in favour of a party.
- (2) A judgment against a non-party may be enforced in the same way as a judgment against a party.

Enforcement against a partnership

- 44.9** (1) This rule has effect where the court gives a judgment or makes an order against a firm or partnership.
- (2) The person who is entitled to enforce a judgment or order may do so against—
- (a) any of the firm’s property; or
 - (b) any person who—
 - (i) has admitted to being a partner in the firm;
 - (ii) was adjudged by the court to be a partner; or
 - (iii) was served with the claim as a partner.
- (3) In a case to which paragraph (2) does not apply the person who is entitled to enforce a judgment may issue enforcement proceedings against a person whom he claims to be a partner if he has the court’s permission to do so.
- (4) A judgment or order given or made—
- (a) on a claim by or against a firm against or by a member of the firm; or
 - (b) on a claim by another firm against a firm where the two firms have one or more partners in common,
- shall not be enforced without the permission of the court.

Enforcement of awards, etc., made by outside bodies

- 44.10** (1) This rule has effect—
- (a) as to the enforcement of an award not made by the court which is enforceable by virtue of a statutory provision as if it were an order of the court; and
 - (b) as to the registration of such an award so that it may be enforceable as if it were an order of the court.
- (2) In this rule—
- “award” means the award, order or decision which it is sought to enforce; and
- “outside body” means any authority other than the court.
- (3) The general rule is that an application—
- (a) for permission to enforce an award; or
 - (b) to register an award,
- may be made without notice but must be supported by evidence.
- (4) The general rule does not apply where a rule or statutory provision requires notice to be given.
- (5) The applicant must—
- (a) exhibit to the affidavit the award or a copy of it;
 - (b) if the award is for the payment of money, certify the amount remaining due to the applicant; and
 - (c) give an address for service for the person against whom the applicant seeks to enforce the award.

NOTE

(The Debtors Act, Chap. 8:07, the Debtors Rules, the Absconding Debtors Act, Chap. 8:08 and the Remedies of Creditors Act, Chap. 8:09 also make provision for the enforcement of judgments and the procedure for doing so).

PART 45 ORAL EXAMINATION IN AID OF ENFORCEMENT

Contents of this Part

Scope of this Part	Rule 45.1
Who may be orally examined	Rule 45.2
Procedure to obtain an order for oral examination	Rule 45.3
Order for oral examination	Rule 45.4
Conduct of oral examination	Rule 45.5
Financial position notice	Rule 45.6

Scope of this Part

45.1 This Part deals with the examination of a judgment debtor to obtain information to enforce that judgment. Such an examination is called an “oral examination”.

Who may be orally examined

45.2 The following persons may be ordered to attend an oral examination:

- (a) the judgment debtor; or
- (b) an officer or former officer of a judgment debtor which is a body corporate (including a limited company).

Procedure to obtain order for oral examination

- 45.3**
- (1) An application for an order that a person attend an oral examination may be made without notice.
 - (2) Where permission is required to enforce the judgment a copy of the permission must be attached to the application.
 - (3) Where the application for the order is against an officer of a body corporate the application must be supported by evidence showing that the person to be orally examined is such an officer.
 - (4) Where the person to be examined is to be ordered to produce any books or documents the application must identify the books and documents to be produced.

Order for oral examination

- 45.4** (1) The order must state the date, time and place of the examination.
- (2) The order must specify the books or documents (if any) which the person to be examined must produce.
- (3) The order must be served personally on the person to be examined at least 7 days before the date fixed for the examination.

Conduct of oral examination

- 45.5** (1) The examination may take place before an officer of the court authorised by the Chief Justice.
- (2) The examination must be on oath or affirmation.
- (3) If the person to be examined refuses to be sworn or affirm or to answer any question the officer of the court may adjourn the examination to a judge.
- (4) At least 7 days notice of the adjourned examination must be served personally on the person to be examined.
- (5) The statement made by the person examined shall be taken down, read to him and he shall be asked to sign it.
- (6) If the person examined refuses to sign the statement it must be signed by the person conducting the examination and certified to be a true record of the examination.

Financial position notice

- 45.6** (1) Where the judgment to be enforced is a money judgment, the court office may issue, in addition to or in place of an order for an oral examination, a financial position notice requiring a judgment debtor—
- (a) to complete a statement of his financial position in the practice form and serve it on the judgment creditor within 14 days of service; and
- (b) to attend before the court on the oral examination.
- (2) If the judgment creditor is satisfied with the information provided by the judgment debtor he may notify the judgment debtor and the court in writing.
- (3) The court office must then notify the judgment debtor that he need not then attend the examination.
- (4) If the judgment debtor is a body corporate, the financial position notice must require an officer of the body corporate to comply with paragraph (1) (a).

CASES

2012

PRIVY COUNCIL/ COURT OF APPEAL

Steve Mahabir and Others v Balgobin Rattan

Civ App No P033 of 2012 (2012.03.05)

Appeal allowed

CV 2005-00156 (2012.02.23)

**ORAL EXAMINATION — PAYMENT OF OUTSTANDING JUDGMENT ON COSTS
— RELEVANCY OF DOCUMENTS**

PART 46 HOW JUDGMENTS MAY BE ENFORCED

Contents of this Part

Scope of this Part	Rule 46.1
How money judgments may be enforced	Rule 46.2
Enforcement of orders for payment of money into court	Rule 46.3
Enforcement of judgments and orders for possession of land	Rule 46.4
Enforcement of judgments and orders for delivery of goods	Rule 46.5
Enforcement of judgments and orders requiring a person to do an act within a specified time or not to do an act	Rule 46.6
Enforcement of judgments and orders requiring a body corporate to do an act within a specified time or not to do an act	Rule 46.7

Scope of this Part

46.1 This Part sets out the ways in which judgments may be enforced.

How money judgments may be enforced

46.2 (1) A judgment or order for payment of a specified sum of money other than an order for payment of money into court may be enforced by—

- (a) a writ of *fi fa* under Part 47;
- (b) a charging order under Part 49;
- (c) a garnishee order under Part 51;
- (d) the appointment of a receiver under Part 52; or
- (e) a committal order under Part 53.

(2) An order for committal under paragraph (e) may only be made—

- (a) in the circumstances set out in section 3(2) of the Debtors Act (Chap. 8:07); and
- (b) where the judgment debtor has been required to make payment within a specified time or by a specified date which has passed.

(The Debtors Rules deal with enforcement of a money judgment by judgment summons)

Enforcement of orders for payment of money into court

- 46.3** (1) An order for the payment of money into court may be enforced by—
- (a) the appointment of a receiver under Part 52;
 - (b) an order for confiscation of assets under Part 53; or
 - (c) committal to prison under Part 53.
- (2) An order for confiscation of assets or committal under paragraph (b) or (c) may only be made if the order requires payment to be made within a specified time or by a specified date.

Enforcement of judgments and orders for possession of land

- 46.4** (1) A judgment or order for the possession of land may be enforced by—
- (a) a writ of possession of land;
 - (b) a confiscation of assets order under Part 53; or
 - (c) an order for committal to prison under Part 53.
- (2) An order for confiscation of assets or committal under paragraph (b) or (c) may only be made if the court has given a judgment or made an order requiring possession of land to be given within a specified time or by a specified date.

Enforcement of judgments and orders for delivery of goods

- 46.5** (1) The ways in which an order for delivery of goods may be enforced depend on whether or not the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods.
- (2) If it gives him the choice the means of enforcement are—
- (a) a writ of delivery to recover the goods or their assessed value under Part 47;
 - (b) a writ of specific delivery for the recovery of specified goods under Part 47; or
 - (c) an order for confiscation of assets under Part 53.
- (3) A judgment creditor may only obtain a writ of specific delivery under paragraph (2)(b) if the court gives him permission.
- (4) Where the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods that judgment or order may not be enforced by order of committal under Part 53.
- (5) However, on the application of the judgment creditor the court may make an order requiring the judgment debtor to deliver the goods to the judgment creditor within a specified time or by a specified date and if the

judgment debtor does not comply that order may be enforced by an order for committal under Part 53.

- (6) If the judgment or order does not give the judgment debtor the choice of paying the assessed value of the goods, the means of enforcing the order are—
 - (a) an order for recovery of specified goods under Part 47;
 - (b) an order for confiscation of assets under Part 53; or
 - (c) an order for committal to prison under Part 53.
- (7) He may only obtain an order for confiscation of assets or committal under paragraph (2) or (6) if the court has given a judgment or made an order requiring delivery within a specified time.

Enforcement of judgments and orders requiring a person to do an act within a specified time or not to do an act

46.6 The general rule is that a judgment or order which requires a person—

- (a) to do an act within a specified time; or
- (b) to abstain from doing an act,

may be enforced by an order—

- (i) for his committal to prison under Part 53; or
- (ii) for the confiscation of his assets under Part 53.

Enforcement of judgments and orders requiring a body corporate to do an act within a specified time or not to do an act

46.7 (i) If—

- (a) the court gives a judgment such as is mentioned in rule 46.6, or makes an order such as is mentioned in that rule; and
- (b) the judgment or order requires a body corporate to do or abstain from that act,

the court may make an order—

- (i) for the committal to prison or for confiscation of assets against an appropriate person; or
- (ii) for confiscation of assets of the body corporate.
- (2) In this rule “appropriate person” means a director or other officer of the body corporate.
- (3) The judgment creditor must apply for the court’s permission to issue an order for the confiscation of the appropriate person’s assets.

CASES**2012****PRIVY COUNCIL/ COURT OF APPEAL*****Baby Sookram v Emmanuel Ramsahai***

Civ App No P103 of 2012 (2012.05.28)

Appeal dismissed

CV 2012-00877 (2012.05.07)

RULE 46.4 — WRIT OF POSSESSION — PERMISSION OF COURT NEEDED(Also under Part 47)

PART 47 GENERAL RULES ABOUT WRITS OF EXECUTION

Contents of this Part

Meaning of “writ of execution”	Rule 47.1
Permission required to enforce in certain cases	Rule 47.2
Application for permission to enforce	Rule 47.3
Amount to be recovered on enforcement	Rule 47.4
Enforcement of judgment or order requiring judgment debtor to do two or more different things	Rule 47.5
No writ of execution against the State	Rule 47.6
Enforcement of judgment for payment by instalments	Rule 47.7
Writ of possession not to issue without leave	Rule 47.8
No writ of execution for goods or payment of assessed value unless court has assessed value	Rule 47.9
Order for specific delivery	Rule 47.10
Period for which writ of execution valid	Rule 47.11
Renewal of writ of execution	Rule 47.12
Period for which court may renew writ of execution	Rule 47.13
Effective date of renewed writ unchanged	Rule 47.14
Claims to goods seized under writ of execution	Rule 47.15
Suspension of writ of execution at request of judgment creditor	Rule 47.16
Return to writ of execution	Rule 47.17

Meaning of “writ of execution”

47.1 In these Rules a “writ of execution” means any of the following:

- (a) an order for the seizure and sale of goods (writ of *feri facias*);
- (b) a writ of possession;
- (c) a writ of delivery (whether it is—

- (i) an order for recovery of specified goods; or
- (ii) an order for the recovery of goods or their assessed value);
and
- (d) an order for confiscation of assets.

(Enforcement by an order for confiscation of assets is dealt with under Part 53)

Permission required to enforce in certain cases

47.2 A writ of execution may not be issued without permission where—

- (a) six years have elapsed since the judgment was entered;
- (b) the judgment creditor is no longer entitled to enforce the order;
- (c) any party against whom a judgment or order was liable to be enforced is no longer liable to have it enforced against him;
- (d) the person against whom the judgment or order was liable to be enforced has died and the judgment creditor wishes to enforce against assets of the dead person which have passed to his personal representatives since the date of the order;
- (e) the goods against which it is wished to enforce the judgment or order are in the hands of a receiver or confiscator appointed by the court;
- (f) the judgment was made subject to conditions; or
- (g) where any statutory provision requires the permission of the court to be obtained before judgment is enforced.

Application for permission to enforce

- 47.3** (1) An application for permission may be made without notice unless the court otherwise directs but must be supported by evidence.
- (2) On an application for leave the applicant must satisfy the court that he is entitled to proceed to enforce the judgment or order, and, in particular—
- (a) where the judgment is a money judgment, as to—
 - (i) the amount originally due; and
 - (ii) the amount due and the amount of interest due at the date of the application;
 - (b) where rule 47.2 (1)(a) applies, the reasons for the delay;
 - (c) where rule 47.2 (1)(b) applies, as to the change that has taken place;
 - (d) where rule 47.2(1)(d) or (e) applies that a demand to satisfy the judgment or order has been made on the person holding the assets and that he has refused or failed to do so;

- (e) that the applicant is entitled to enforce the judgment; and
- (f) that the person against whom enforcement is sought is liable to satisfy the judgment.

Amount to be recovered on enforcement

- 47.4** (1) A judgment creditor may recover the fees and costs of enforcement in addition to any other amount payable under the judgment.
- (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) The rate of interest payable on a judgment debt is the statutory rate of interest.
 - (4) 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.

(Part 67 deals with the fixed costs on enforcement)

Enforcement of judgment or order requiring judgment debtor to do two or more different things

- 47.5** Where a judgment or order requires the judgment debtor to do two or more different things, the judgment creditor may obtain —
- (a) a single writ of execution to enforce every part of the judgment or order; or
 - (b) separate writs of execution to enforce one or more parts of it.

No writ of execution against the State

47.6 No writ of execution may be issued where the judgment debtor is the State.

Enforcement of judgment for payment by instalments

- 47.7** (1) This rule has effect where the court has made an order for payment by instalments of—
- (a) a sum of money; or
 - (b) the value of goods assessed after the court has made an order for the recovery of goods or their assessed value and the judgment debtor has failed to pay one or more instalments.

- (2) The judgment creditor has a right to issue an order for the seizure and sale of the goods for the purpose of recovering the whole of the amount recoverable under the judgment and not merely the instalment(s) in arrear.

Writ of possession not to issue without leave

- 47.8** (1) The general rule is that a writ of possession may not issue without the permission of the court.
- (2) The general rule does not apply where the order for possession relates to—
 - (a) mortgage claims (Part 69);
 - (b) summary proceedings for possession (Part 68);
 - (c) proceedings for possession of residential property; or
 - (d) proceedings where the tenancy is subject to statutory restrictions.
 - (3) Permission may not be given unless it is shown that every person in actual possession of the land has received such notice of the proceedings as the court considers sufficient to enable him to apply to the court for any relief to which he may be entitled.
 - (4) An application for permission may be made without notice but must be supported by evidence.

No writ of execution for goods or payment of assessed value unless court has assessed value

- 47.9** A writ of delivery for the recovery of goods or payment of their assessed value may not be issued unless that value has previously been assessed or an order has been made under rule 47.10.

Order for specific delivery

- 47.10** Where the court makes an order for delivery of goods or payment of their assessed value, the judgment creditor may apply to the court for permission to issue a writ of delivery of specified goods without the alternative of payment of the assessed value.

Period for which writ of execution valid

- 47.11** (1) A writ of execution is valid for a period of twelve months beginning with the date of its issue.
- (2) After that period the judgment creditor may not take any step under the writ unless the court has renewed it.

Renewal of writ of execution

- 47.12** (1) The judgment creditor may apply for the renewal of a writ of execution.
- (2) The general rule is that an application for renewal must be made within the period for which the writ is valid.
- (3) If the judgment creditor applies for renewal after the end of that period, the court may renew the writ only if it is satisfied that the judgment creditor—
- (a) has been unable to execute the writ or some part of it; and
- (b) has taken all reasonable steps to do so.
- (4) An application for renewal may be made without notice but must be supported by evidence.
- (5) On such an application the court must have regard to the interests of any other judgment creditor of whose existence it is aware.
- (6) The judgment creditor must state in his evidence under paragraph (4) whether or not he is aware of any other judgment creditor and if so, give such details of which he is aware as to the money due from the judgment debtor to each such judgment creditor.

Period for which court may renew writ of execution

- 47.13** On an application for renewal of a writ of execution the court may renew it for a period of not more than 6 months.

Effective date of renewed writ unchanged

- 47.14** (1) The renewal of a writ of execution does not change its effective date.
- (2) The effective date is therefore still that of the writ as originally issued.
- (3) The priority of the renewed writ and of any other writ of execution must be determined accordingly.

Claims to goods seized under writ of execution

47.15 If—

- (a) goods are seized under a writ of execution; and
- (b) some person other than the judgment creditor or judgment debtor subsequently claims any of them,

the validity of the writ of execution is extended until the end of twelve months from the conclusion of proceedings on that claim.

(Part 54 deals with proceedings on a claim to goods seized)

Suspension of writ of execution at request of judgment creditor

- 47.16** (1) The judgment creditor may ask the marshal to suspend execution.
- (2) If he does so, neither the judgment creditor nor the marshal may take any further step under the recovery order unless the court first renews the writ.

(Rule 47.12 deals with applications to renew a writ of execution)

Return to writ of execution

- 47.17** (1) A judgment creditor who has issued a writ of execution may serve a notice on the marshal requiring him to make a return of the manner in which he has executed it.
- (2) If the marshal fails to comply with the notice within 14 days the judgment creditor may apply to the court for an order directing the marshal to comply.

CASES

2012

PRIVY COUNCIL/ COURT OF APPEAL***Baby Sookram v Emmanuel Ramsahai***

Civ App No P103 of 2012 (2012.05.28)

Appeal dismissed

CV 2012-00877 (2012.05.07)

RULE 47.8 — WRIT OF POSSESSION — PERMISSION OF COURT NEEDED — NO TIME LIMIT ON ENFORCEMENT

(Also under Part 46)

PART 48 VARIATION OF JUDGMENTS AND SUSPENSION OF WRITS OF *FI FA* AND WRITS OF DELIVERY

Contents of this Part

Scope of this Part	Rule 48.1
Applications to vary time and method of payment or suspend writ of <i>fi fa</i> or delivery	Rule 48.2
Where no objection except as to term—procedure	Rule 48.3
Application for reconsideration of court’s decision	Rule 48.4
Where judgment creditor objects to variation or suspension	Rule 48.5
Pre-suspension costs	Rule 48.6
Judgment creditor’s right to re-issue writ of execution	Rule 48.7

Scope of this Part

48.1 This rule deals with—

- (a) the variation of the terms of judgment for payment of a specified sum of money as to the time and method of payment; and
- (b) the suspension of writs of *fi fa* and writs of delivery.

Applications to vary time and method of payment or suspend writ of *fi fa* or delivery

48.2 (1) This rule applies to—

- (a) judgments for payment of a specified sum of money;
 - (b) judgments for the delivery of goods or payment of their value;
 - (c) writs of *fi fa*; and
 - (d) writs of delivery.
- (2) An application by the judgment debtor to vary the terms of the judgment as to the time or method of payment or to suspend a writ of execution under this rule must be supported by evidence in the practice form.

Where no objection except as to terms—procedure

- 48.3** (1) The court must serve the application to vary or suspend on the judgment creditor.
- (2) The judgment creditor may file and serve on the judgment debtor objections to the application.
- (3) If the judgment creditor does not do so before the end of 14 days from the date of service of the application, the court may make an order in the terms for which the judgment debtor asks.
- (4) If the judgment creditor objects only to the rate and time of any payment proposed by the judgment debtor, the court—
- (a) may decide the rate and time of payments; and
- (b) where appropriate, may make an order suspending the writ of execution on those terms.
- (5) The court may make this decision without a hearing.
- (6) The court office must serve a copy of the order made under paragraph (3) or (4) on the judgment creditor and judgment debtor.

Application for reconsideration of court's decision

- 48.4** (1) The judgment creditor or the judgment debtor may apply to the court to reconsider the decision.
- (2) The application may not be made more than 14 days after the date of service of the court's order under rule 48.3(6).
- (3) The court must fix a hearing and give the judgment creditor and judgment debtor at least 7 days notice of the hearing.

Where judgment creditor objects to variation or suspension

- 48.5** If the judgment creditor gives the court notice that he does not agree to a variation as to the time or method of payment or suspension of the writ of execution on any terms, the court must fix a hearing and give the judgment creditor and judgment debtor at least 7 days notice of the date, time and place of the hearing.

Pre-suspension costs

- 48.6** Where the court considers an application to vary the judgment or suspend a writ of execution it may add to the judgment debt—
- (a) the costs of the application for variation or suspension; and
- (b) any costs or fees incurred by the judgment creditor in connection with any writ of execution,
- and such costs must be assessed by the court.
- (Rules 67.11 and 67.12 deal with assessed costs)

Judgment creditor's right to re-issue writ of execution

- 48.7 (1) A judgement creditor may re-issue a writ of execution where—
- (a) execution has been suspended on terms; and
 - (b) the judgement debtor has not complied with those terms.
- (2) The re-issued writ has the same priority as the original writ.
-

PART 49 CHARGING ORDERS

Contents of this Part

Scope of this Part and definitions	Rule 49.1
How to apply for charging order	Rule 49.2
Evidence in support of application for charging order	Rule 49.3
Single charging order for more than one judgment debt	Rule 49.4
Procedure for making provisional charging order	Rule 49.5
Interested persons	Rule 49.6
Service of a provisional charging order and of copies	Rule 49.7
Making of final charging order	Rule 49.8
Discharge or variation of final charging order	Rule 49.9
Enforcement of charging order by sale	Rule 49.10

Scope of this Part and definitions

- 49.1** (1) This Part deals with the enforcement of a judgment debt by charging—
- (a) stock under sections 14 to 16 of the Remedies of Creditors Act (Chap. 8:09); and
 - (b) money in court.
- (2) In this Part “stock” includes shares, securities and dividends arising therefrom.

How to apply for charging order

- 49.2** (1) An application for a charging order must be made on the appropriate practice form.
- (2) The application is to be made without notice but must be supported by evidence.

Evidence in support of application for charging order

- 49.3** (1) This rule sets out the evidence required to support an application for a charging order.
- (2) The applicant must—
- (a) state the name and address of the judgment debtor;

- (b) state that to the best of his information and belief the debtor is beneficially entitled to the stock or the money in court as the case may be;
- (c) identify the judgment debt or debts to be enforced;
- (d) state that the applicant is entitled to enforce the judgment and the amount remaining due;
- (e) state the name and address of every person who is to his knowledge an unsecured creditor of the judgment debtor;
- (f) where the application relates to stock—
 - (i) identify the public company and the stock of that company which he wishes to charge;
 - (ii) identify any person who has responsibility for keeping a register of the stock; and
 - (iii) state whether to his knowledge any other person than the judgment debtor has an interest in that stock whether as a joint owner, a trustee, or a beneficiary and if so, give the names and addresses of such persons and details of their interest; and
- (g) in the case of money in court, exhibit a certificate of fund showing the amount in court.

Single charging order for more than one judgment debt

49.4 A judgment creditor may apply for a single charging order in respect of more than one judgment or order against a judgment debtor.

Procedure for making provisional charging order

49.5 In the first instance the court must deal with an application for a charging order without a hearing and may make a provisional charging order.

Interested persons

- 49.6** (1) The persons specified in paragraph (2) have an interest in the charging order proceedings as well as the judgment creditor and the judgment debtor and are referred to in this Part as “the interested persons”.
- (2) The interested persons are—
- (a) any unsecured creditor;
 - (b) any person who owns the stock to be charged jointly with the judgment debtor;
 - (c) the public company whose stock is to be charged;
 - (d) any person who is responsible for keeping the register of stock for that company;

- (e) if the stock is held under a trust, such of the trustees of that trust as the court may direct;
- (f) if the stock is held by the judgment debtor as a trustee, such of the trustees and beneficiaries as the court may direct; and
- (g) if the stock is held in court, the proper officer.

Service of a provisional charging order and of copies

- 49.7** (1) If the court makes a provisional charging order—
- (a) the order; and
 - (b) a copy of the evidence in support of the application for the order, must be served on the judgment debtor.
- (2) A copy of the order must also be served on the interested persons listed in the evidence filed in support of the application for a charging order.
 - (3) The provisional charging order must state the date, time and place when the court will consider making a final charging order.
 - (4) The court office must give at least 42 days notice of that hearing.
 - (5) The judgment creditor must serve the order and copy order.
 - (6) Any interested person other than the public company and the proper officer must be served personally.

Making of final charging order

- 49.8** (1) This rule deals with—
- (a) the filing of objections to a provisional charging order; and
 - (b) the making of a final charging order.
- (2) The following persons may file objections to a provisional charging order:
 - (a) the judgment creditor;
 - (b) the judgment debtor; and
 - (c) any interested person.
 - (3) The objection must be filed within 21 days of the date of the provisional order.
 - (4) The judgment creditor must file evidence of service of the provisional order.
 - (5) He must do so within 21 days after the date of the order.
 - (6) At the hearing the court has power—
 - (a) to make a final charging order;
 - (b) to discharge the provisional charging order; or
 - (c) to give directions for the resolution of any objections.

- (7) A copy of the charging order must be served by the court office on—
- (a) the judgment creditor;
 - (b) the judgment debtor;
 - (c) any interested person who has filed an objection;
 - (d) in the case of stock—
 - (i) the public company; and
 - (ii) any person who has responsibility for keeping a register of the stock; and
 - (e) in the case of money in court, the proper officer.
- (8) Every copy of the charging order served on—
- (i) the public company;
 - (ii) any person who has responsibility for keeping a register of the stock; or
 - (iii) the proper officer,
- must contain a stop notice.

Discharge or variation of final charging order

- 49.9** (1) An application to discharge or vary a final charging order may be made by—
- (a) the judgment creditor;
 - (b) the judgment debtor; or
 - (c) any interested person.
- (2) Notice of application must be served on the—
- (a) judgment creditor if made by the judgment debtor;
 - (b) judgment debtor if made by the judgment creditor; or
 - (c) judgment creditor and the judgment debtor if made by an interested person.
- (3) Any order must be served on every person on whom the final charging order was served.

Enforcement of charging order by sale

- 49.10** (1) This rule applies where a judgment creditor wishes to enforce a charging order of stock by sale.
- (2) He may apply to the court for an order for sale of the stock.
 - (3) The application must be supported by evidence.
 - (4) Notice must be served on the judgment debtor.

PART 50 STOP NOTICES AND STOP ORDERS

Contents of this Part

Scope of this Part	Rule 50.1
Right to apply for stop notice	Rule 50.2
Procedure for obtaining stop notice	Rule 50.3
Service	Rule 50.4
Amendment of stop notice	Rule 50.5
Withdrawal or discharge of stop notice	Rule 50.6
Stop orders	Rule 50.7
Procedure on application for stop order	Rule 50.8
Power to vary or discharge stop order	Rule 50.9

Scope of this Part

- 50.1** (1) This Part enables a person—
- (a) by obtaining a stop notice, to be notified of proposed dealings relating to stock; or
 - (b) by obtaining a stop order to prevent certain specified steps to be taken with regard to stock or funds in court.
- (2) In this Part—
- “stop notice” means a notice requiring any person or body on whom it is served to refrain from taking, in respect of any of the stock specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served;
- “stop order” means an order of the court prohibiting the taking, in respect of any of the stock specified in the order, any of the specified steps; and
- “the specified steps” means—
- (a) the registration of any transfer of the stock;
 - (b) in the case of stock or funds in court, the transfer, sale or other dealing with the stock or the payment out of the income thereof; or
 - (c) the making of any payment by way of dividend, interest or otherwise in respect of the stock.

Right to apply for stop notice

50.2 Any person who claims to be beneficially entitled to an interest in stock may apply for a stop notice.

Procedure for obtaining stop notice

- 50.3 (1) Anyone who wants the court office to issue a stop notice (“the applicant”) may obtain one by filing a notice in the practice form.
- (2) The applicant must also file an affidavit which—
- (a) identifies the stock;
 - (b) identifies the applicant’s interest in it; and
 - (c) gives an address for service for the applicant.
- (3) The court office must then issue a stop notice.

Service

- 50.4 (1) The applicant must serve a copy of—
- (a) the stop notice; and
 - (b) his affidavit,
- on the public company and any keeper of the register on whom he would have had to serve a charging order relating to the stock.
- (2) After that, so long as the stop notice is in force, the company or the keeper of the register must not register a transfer of the stock or take any step mentioned in the stop notice until 14 days after sending a notification to the applicant.

Amendment of a stop notice

- 50.5 (1) If a stop notice describes any stock incorrectly, the applicant may ask the court office to issue an amended notice.
- (2) The application may be made without notice.
- (3) Rule 50.4 applies to an amended notice as it applies to the original notice.

Withdrawal or discharge of stop notice

- 50.6 (1) The person on whose behalf the court office issued a stop notice may withdraw it by serving a notification of withdrawal on every person on whom the stop notice was served.
- (2) On the application of any person claiming to be beneficially interested in the stock to which a stop notice relates the court may by order discharge or vary the notice.

- (3) An application for such an order must be served on the person on whose behalf the court originally issued the stop notice.

Stop orders

- 50.7 (1) The court may make a stop order relating to—
- (a) stock; or
 - (b) funds in court.
- (2) The stop order may prohibit the taking of any of the specified steps.

Procedure on application for stop order

- 50.8 (1) Any person claiming to be beneficially entitled to stock may apply for a stop order.
- (2) In the case of money in court any person—
- (i) who has a mortgage or charge on the interest of any person in funds in court; or
 - (ii) to whom that interest has been assigned; or
 - (iii) who is a judgment creditor of the person entitled to that interest,
- may apply for a stop order.
- (3) Notice of an application for a stop order must be served on any person whose interest may be affected by the order and, in the case of funds in court, on the proper officer.

Power to vary or discharge stop order

- 50.9 The court may vary or discharge a stop order on the application of any person claiming to be entitled to any interest in the stock to which the order relates.

PART 51 ATTACHMENT OF DEBTS

Contents of this Part

Scope of this Part	Rule 51.1
Circumstances in which court may make order for attachment of debt	Rule 51.2
Procedure—making of provisional order	Rule 51.3
Money in bank accounts, etc.	Rule 51.4
Joint funds	Rule 51.5
Presumption of equal shares in joint fund	Rule 51.6
Attachment of debts owed by firm	Rule 51.7
Service of provisional order	Rule 51.8
Effect of provisional order	Rule 51.9
Hearing to consider making final order	Rule 51.10
Claim to debt by person other than judgment debtor	Rule 51.11
Enforcement against garnishee	Rule 51.12
Discharge of garnishee’s debt to judgment debtor	Rule 51.13
Costs of proceedings for attachment of debt	Rule 51.14
Money in court	Rule 51.15

Scope of this Part

- 51.1** (1) This Part provides a procedure under which a judgment creditor can recover the amount of the judgment debt from a person who owes the judgment debtor money.
- (2) The person who is said to owe the judgment debtor money is called “the garnishee”.
- (3) An order of the court is required. This order is called an “attachment of debts order”.
- (4) The attachment of debts order may require the garnishee to pay enough to satisfy the fixed costs of the attachment of debts proceedings as well as the judgment debt.

(The fixed costs are set out in Appendix A to Part 67)

Circumstances in which court may make order for attachment of debt

- 51.2** (1) The attachment of debt procedure may not be used where the order is to pay money into court.
- (2) An attachment of debt order can only be made against a garnishee who is within the jurisdiction.
- (3) A debt may be attached if it—
- (a) is due or accruing to the judgment debtor from the garnishee on the date that the provisional order under rule 51.3 is served on the garnishee; or
- (b) becomes due or accrues due to the judgment debtor on a date between the service of the provisional order under rule 51.3 and the date of the hearing.

Procedure—making of provisional order

- 51.3** (1) An application by a judgment creditor for an attachment of debt order must be in the appropriate practice form.
- (2) The application may be made without notice but must be supported by evidence.
- (3) If the court considers that on the evidence submitted the judgment creditor is entitled to an attachment of debt order it must make a provisional order.
- (4) It is to do this without a hearing.
- (5) When it makes a provisional order the court office must fix a date for the hearing.
- (6) It must state in the provisional order the date, time and place of the hearing.

Money in bank accounts, etc.

- 51.4** (1) An attachment of debt order may be made in respect of any type of debt but includes money standing to the credit of any account of the judgment debtor with a bank, other deposit taking institution or building society.
- (2) An attachment of debt order must not require a payment that would reduce below \$5, the amount standing in the name of a judgment debtor in an account with a bank, building society or other financial institution.

Joint funds

- 51.5 (1) This rule applies where an application is made to attach a fund which is owned jointly by the judgment debtor and another person or persons.
- (2) The evidence in support of the application must state—
- (a) the names and addresses of the person or persons who own the fund jointly with the judgment debtor;
 - (b) details of the joint fund; and
 - (c) if the applicant claims that the judgment debtor is entitled to more than an equal share in the fund, the grounds for that claim.
- (3) Each owner of the fund must be served with the provisional attachment of debt order and the evidence in support.

Presumption of equal shares in joint fund

- 51.6 (1) The general rule is that a fund held jointly by the judgment debtor and another person or persons is to be presumed to be owned in equal shares.
- (2) Any person served under rule 51.5(3) may apply to the court to determine the actual beneficial entitlement of each owner of the joint fund.

Attachment of debts owed by firm

- 51.7 (1) This rule applies to the attachment of debts due or accruing due from a firm carrying on business within Trinidad and Tobago.
- (2) Such debts may be attached even if one or more members of the firm is resident outside Trinidad and Tobago.
- (3) A provisional order under rule 51.3 must be served on—
- (a) a member of the firm; or
 - (b) some other person having the control or management of the partnership business,
- in Trinidad and Tobago.
- (4) Any member of the garnishee may attend a hearing of an application for an attachment of debt order.

Service of provisional order

- 51.8 (1) A provisional attachment of debt order must be served by the judgment creditor.
- (2) It must be served first on the garnishee at least 14 days before the hearing.
- (3) It must be served personally on the garnishee unless the garnishee is a body corporate.

- (4) If the garnishee is a bank, building society or other financial institution, the provisional attachment of debt order must be served on its principal or registered office and also the branch at which the judgment debtor's account is kept if that address is known to the judgment creditor.
- (5) Secondly, it must be served on the judgment debtor.
- (6) It must be served on him at least 7 days after it has been served on the garnishee and not less than 7 days before the hearing.

Effect of provisional order

- 51.9** (1) This rule sets out the effect of a provisional attachment of debt order.
- (2) It becomes binding on the garnishee as soon as it is served on him.
 - (3) The garnishee does not then have to pay the judgment debtor anything except to the extent that his debt to the judgment debtor is greater than the amount of the attachment of debts order.
 - (4) However, it means that if he pays anyone but the judgment creditor he may have to make a further payment to the judgment creditor in accordance with the terms of any final attachment of debt order that the court may make.

Hearing to consider making final order

- 51.10** At the hearing fixed by the provisional order the court, if satisfied that the order has been properly served, may—
- (a) make a final attachment of debt order;
 - (b) discharge the provisional order; or
 - (c) give directions for the resolution of any dispute.

Claim to debt by person other than judgment debtor

- 51.11** (1) This rule has effect where the court is aware from information supplied by the garnishee or from any other source that someone other than the judgment debtor—
- (a) is or claims to be entitled to the debt; or
 - (b) has or claims to have a charge or lien on it.
- (2) In this rule “lien” means a right to retain possession of goods to protect the debt.
- (3) Where this rule has effect, the court may require the judgment creditor to serve notice—
- (a) of the application for an attachment of debt order; and

- (b) of any hearing fixed by the court, on any person who may have such an interest as is set out in paragraph (1).
- (4) The notice must be served personally unless the person is a body corporate.
- (5) Notice must also be served on—
 - (a) the judgment debtor; and
 - (b) the garnishee.
- (6) A notice under this rule must contain a warning to every person on whom it is served that, if he does not attend court, it may proceed to decide the issue in his absence.

Enforcement against garnishee

51.12 If a garnishee does not fulfil the terms of an attachment of debt order the judgment creditor may issue enforcement proceedings against the garnishee.

Discharge of garnishee’s debt to judgment debtor

- 51.13** (1) This rule has effect where—
- (a) the garnishee pays money to the judgment creditor in compliance with an attachment of debt order; or
 - (b) the attachment of debt order is enforced against the garnishee.
- (2) The garnishee’s liability to the judgment debtor is then discharged to the extent of the amount paid by, or recovered from him.
- (3) This rule has effect even if the court later sets aside the attachment of debt order or the original judgment or order.

Costs of proceedings for attachment of debt

- 51.14** (1) Paragraphs (3) to (6) contain the general provisions about the costs of attachment of debt proceedings.
- (2) The court may, however, make a special order about such costs in a particular case.
- (3) The judgment creditor’s costs are those fixed by Appendix A to Part 67 unless the court makes some other order in which case it must assess the amount of his costs.
- (4) The judgment creditor may retain the costs out of the money which he recovers through the attachment of debt order.
- (5) The costs are to be taken to have been paid to the judgment creditor before any payment in respect of the judgment debt.

- (6) A garnishee who appears at attachment of debt proceedings may deduct his costs in a sum assessed by the court before paying any sum over to the judgment creditor in pursuance of the attachment of debt order.

Money in court

- 51.15** (1) No attachment of debt order may be made in respect of money in court standing to the credit of the judgment debtor.
- (2) The judgment creditor may, however, apply for an order that sufficient of the money in court to satisfy his judgment and the fixed costs of the application be paid to him.
- (3) Until hearing of the application the money to which it relates must not be paid out of court.

(The fixed costs are set out in Appendix A to Part 67)

CASES

2014

HIGH COURT

Roofman Limited v Rayford Construction Limited

CV 2009-0394 (2014.02.20)

**GARNISHEE PROCEEDINGS — VALID ASSIGNMENT — GARNISHEE ORDER
NISI**

PART 52 APPOINTMENT OF RECEIVER

Contents of this Part

Scope of this Part	Rule 52.1
Application for appointment of receiver and injunction	Rule 52.2
Conditions for appointment of receiver	Rule 52.3
Giving of security by receiver	Rule 52.4
Remuneration of receiver	Rule 52.5
Receiver's powers	Rule 52.6
Accounts of receiver	Rule 52.7
Payment of balance into court	Rule 52.8
Default by receiver	Rule 52.9

Scope of this Part

52.1 This Part deals with the appointment of a receiver and includes an application to appoint a receiver to obtain payment of the judgment debt from the income or capital assets of the judgment debtor.

Application for appointment of receiver and injunction

- 52.2** (1) An application for the appointment of a receiver must be supported by evidence.
- (2) The applicant may also apply for an injunction to restrain the judgment debtor or other respondent from assigning, charging or otherwise dealing with any property identified in the application.
- (3) Where an application for an immediate injunction is made, the application for the appointment of a receiver and for an injunction may be made without notice.

Conditions for appointment of receiver

- 52.3 In deciding whether to appoint a receiver to recover a judgment debt 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.

Giving of security by receiver

- 52.4 (1) The general rule is that a person may not be appointed receiver until he has given security.
- (2) The court may, however, dispense with security.
 - (3) The order appointing the receiver must state the amount of the security.
 - (4) The security must be by guarantee unless the court makes some other order.
 - (5) The guarantee or other security must be filed at the court.

Remuneration of receiver

- 52.5 The receiver may be allowed such remuneration as the court may direct.

Receiver's powers

- 52.6 A receiver's powers operate to the exclusion of the powers of the judgment debtor for the duration of the receiver's appointment.

Accounts of receiver

- 52.7 (1) The order appointing a receiver must direct on what dates the receiver must file accounts.
- (2) Unless the court orders otherwise the account must be verified by affidavit.
 - (3) The receiver must serve a copy of the account on the judgment creditor.
 - (4) The judgment creditor must obtain an appointment to pass the account.
 - (5) The passing of the account must be verified by a master.

Payment of balance into court

52.8 The receiver must pay into court any balance shown on his accounts as due from him within 7 days of the passing of any account.

Default by receiver

- 52.9** (1) This rule applies if the receiver—
- (a) fails to submit an account by the date ordered;
 - (b) fails to attend for the passing of any account; or
 - (c) fails to pay into court any balance shown on the account as due from him.
- (2) The applicant must ask the court office to fix a hearing for the receiver to show cause for his failure.
- (3) The court office must issue a notice stating the date, time and place of the hearing to show cause.
- (4) The applicant must serve the notice on the receiver at least 7 days before the hearing.
- (5) At the hearing the court may—
- (a) give directions to remedy the default; or
 - (b) give directions for the discharge of the receiver;
 - (c) appoint another receiver;
 - (d) disallow any remuneration claimed by the receiver; and
 - (e) order the receiver to—
 - (i) pay the costs of the applicant as assessed by the court; and
 - (ii) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from him.

PART 53 COMMITTAL AND CONFISCATION OF ASSETS

Contents of this Part

Scope of this Part	Rule 53.1
Order specifying time for act to be done	Rule 53.2
When committal order or confiscation of assets order may be made	Rule 53.3
Committal order or confiscation of assets order against an officer of a body corporate.	Rule 53.4
Need for permission to apply for committal order	Rule 53.5
Making committal order or confiscation of assets order when judgment or order not served	Rule 53.6
Undertakings	Rule 53.7
Application for committal order or confiscation of assets order	Rule 53.8
Service of notice of hearing	Rule 53.9
Powers of the court	Rule 53.10
Restoration of adjourned hearing	Rule 53.11
Application for enforcement of suspended committal order or order for confiscation of assets	Rule 53.12
Special provisions relating to an order for confiscation	Rule 53.13

Scope of this Part

53.1 This Part deals with the power of the court to commit a person to prison or to make an order confiscating assets for failure to comply with an order requiring him to do or an undertaking to do an act within a specified time or not to do an act.

Order specifying time for act to be done

- 53.2** (1) Where a judgment or order specifies the time or date by which an act must be done the court may by order specify another time or date by which the act must be done.
- (2) Where a judgment or order does not specify the time or date by which an act must be done the court may by order specify a time or date by which the act must be done.

- (3) The time by which the act must be done may be specified by reference to the time that the order is served on the judgment debtor.
- (4) An application for an order under this rule may be made without notice but the court may direct that notice be given to the judgment debtor.
- (5) Any order made under this rule must be served in the manner required by rule 53.3 (in the case of an individual judgment creditor) or rule 53.4 (enforcement against an officer of a body corporate).

When committal order or confiscation of assets order may be made

53.3 Neither a committal order nor a confiscation of assets order may be made unless—

- (a) the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the judgment debtor;
- (b) at the time that order was served it was endorsed with a notice in the following terms:

“NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to be imprisoned or to have your assets confiscated.”, or in the case of an order served on a body corporate in the following terms:

“NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to have your assets confiscated.”; and
- (c) where the order required the judgment debtor or do an act within a specified time or by a specified date, it was served on the judgment debtor in sufficient time to give him a reasonable opportunity to do the act before the expiration of that time or before that date.

Committal order or confiscation of assets order against an officer of a body corporate

53.4 Neither a committal order nor a confiscation of assets order may be made against an officer of a body corporate unless—

- (a) a copy of the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the officer against whom the order is sought;
- (b) at the time that order was served it was endorsed with a notice in the following terms:

“NOTICE: If (name of body corporate) fails to comply with the terms of this order it will be in contempt of court and you (name of officer) may be liable to be imprisoned or have your assets confiscated.”; and

- (c) where the order required the judgment debtor to do an act within a specified time or by a specified date, it was served on the judgment debtor in sufficient time to give him a reasonable opportunity to do the act before the expiration of that time or before that date.

Need for permission to apply for committal order

- 53.5 (1) No application for a committal order may be made without the permission of the court where the contempt alleged is—
- (a) in disobedience to a writ of *habeas corpus*, or is committed in connection with an application for such a writ, or is in disobedience to an order of *mandamus*, prohibition or *certiorari*;
 - (b) committed in connection with—
 - (i) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or
 - (ii) proceedings in an inferior court; or
 - (c) committed otherwise than in connection with proceedings.
- (2) An application for permission to apply for a committal order may be made without notice but must be supported by evidence.
- (3) Where such permission is given—
- (i) unless an application is made for a committal order within 14 days the permission lapses; and
 - (ii) the application for the committal order may not be heard until at least 8 days have passed since service of the application unless the court gives permission.

Making committal order or confiscation of assets order when judgment or order not served

- 53.6 (1) This rule applies where the judgment or order has not been served.
- (2) Where the order requires the judgment debtor not to do an act the court may make a committal order or confiscation of assets order if it is satisfied that the person against whom the order is to be enforced has had notice of the terms of the order by—
- (a) being present when the order was made; or
 - (b) being notified of the terms of the order by facsimile transmission or otherwise.
- (3) The court may make an order dispensing with service of the judgment or order under rule 53.3 or rule 53.4 if it thinks it just to do so.

Undertakings

53.7 An undertaking given to the court must, if practicable, be given in writing in the appropriate practice form and a copy of this form endorsed with a notice in accordance with rule 53.3(b) or rule 53.4(b) must, if practicable, be served on the person giving the undertaking.

Application for committal order or confiscation of assets order

- 53.8 (1) The application must specify—
- (a) the precise term of the order or undertaking which it is alleged that the judgment debtor has disobeyed or broken; and
 - (b) the exact nature of the alleged breach or breaches of the order or undertaking by the judgment debtor.
- (2) The application must be verified by an affidavit.
- (3) The applicant must prove—
- (a) service of the order endorsed with the notice under rule 53.3(b) or rule 53.4(b);
 - (b) if the order required the judgment debtor not to do an act, that the person against whom it is sought to enforce the order had notice of the terms of the order under rule 53.3(b) or rule 53.4(b); or
 - (c) that it would be just for the court to dispense with service.

Service of notice of hearing

- 53.9 (1) Notice of the date, time and place of the hearing of the application must be served personally on the judgment debtor or, in the case of a body corporate, the officer against whom it is sought to make a committal order or confiscation of property order.
- (2) A copy of the application and of the evidence in support must be served with the notice.

Powers of the court

- 53.10 The court may—
- (a) make a committal order against a judgment debtor who is an individual;
 - (b) make a confiscation of assets order against a judgment debtor who is an individual or a body corporate;
 - (c) make a committal order against an officer of a judgment debtor which is a body corporate;

- (d) make a confiscation of assets order against an officer of a judgment debtor which is a body corporate;
 - (e) adjourn the hearing of the application to a fixed date;
 - (f) accept an undertaking from the judgment debtor or an officer of a body corporate who is present in court and adjourn the application generally;
 - (g) make a suspended committal order or confiscation of assets order on such terms as the court considers just; or
 - (h) dismiss the application,
- and may make such order as to assessed costs as it considers to be just.

Restoration of adjourned hearing

- 53.11** (1) Where an application for a committal order or a confiscation of assets order has been adjourned under rule 53.10(f) the court office may fix a date for the adjourned hearing.
- (2) An application for the order may be made without notice but must be supported by evidence specifying the exact nature of any breaches of the undertaking given to the court.
 - (3) The order must state the date, time and place of the restored hearing and must be served on the judgment debtor or the officer of a body corporate personally at least 3 days before the adjourned hearing.
 - (4) A copy of the evidence under paragraph (2) must be served with the order.

Application for enforcement of suspended committal order or order for confiscation of assets

- 53.12** (1) Where the court has imposed terms under rule 53.10(g) and the judgment creditor alleges that the judgment debtor or the officer of a body corporate has failed to comply with the terms imposed the judgment creditor may apply for the suspended order to be enforced.
- (2) The application must be in the appropriate practice form and must specify—
 - (a) the precise term or terms of the suspended order which it is alleged that the judgment debtor has disobeyed; and
 - (b) the exact nature of the alleged breach or breaches of the suspended order by the judgment debtor.
 - (3) The application must be verified by an affidavit.
 - (4) The court office must fix a date for the hearing of the application.

-
- (5) The notice of hearing must be served on the judgment debtor or the officer of a body corporate personally at least 3 days before the adjourned hearing.
 - (6) A copy of the evidence under paragraph (2) must be served with the order.

Special provisions relating to an order for confiscation

- 53.13** (1) The judgment creditor may not sell any property seized under an order for confiscation without the permission of the court.
- (2) An application for permission must be supported by evidence.
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CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Joe-Ann Glanville and Another v Heller Security Services 1996 Limited

Civ App No P152 of 2016 (2016.10.03)

Appeal dismissed

CV 2013-03429 (2016.04.06)

CONTEMPT OF COURT — NON-COMPLIANCE WITH COURT ORDER — NO APPLICATION TO VARY COURT ORDER — COMMITTAL/CONFISCATION ORDER NOT APPROPRIATE — FINE IMPOSED

2015

HIGH COURT

Renaldo Tenia v The Piarco Airport Taxi Co-operative Society Limited and Another

CV 2008-00186 (2015.11.26)

COMMITTAL PROCEEDINGS — TIME FOR COMPLIANCE — AMBIGUITY AND ENFORCEABILITY OF ORDER



PART 54 INTERPLEADER

Contents of this Part

Scope of this Part	Rule 54.1
Claim to goods taken in execution	Rule 54.2
How to interplead	Rule 54.3
Service of interpleader application	Rule 54.4
Powers of the court	Rule 54.5
Power to order sale of goods taken in execution	Rule 54.6

Scope of this Part

- 54.1** (1) This Part deals with the situation where—
- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and proceedings are taken against him, or are likely to be taken against him by two or more persons making adverse claims in respect of the debt, money, goods or chattels; or
 - (b) a claim is made to any money, goods or chattels seized or intended to be seized by the marshal in execution by a person other than the person against whom execution has issued.
- (2) The person under a liability under paragraph (1)(a) or the marshal may apply for relief.
- (3) That procedure is called an interpleader.

Claim to goods taken in execution

- 54.2** (1) A person who makes a claim against any money, goods or chattels seized or about to be seized by the marshal must give written notice to the marshal.
- (2) The notice must—
- (a) give that person’s name and address for service;
 - (b) identify the money, goods or chattels claimed; and
 - (c) set out the grounds for his claim.
- (3) Forthwith on receipt of the claim the marshal must give written notice to the judgment creditor.
- (4) Within 4 days after receiving the notice the judgment creditor must give notice to the marshal admitting or disputing the claim.

- (5) Where the judgment creditor gives notice admitting the claim—
 - (a) he is liable only for the fees and expenses of the marshal incurred before the marshal receives his notice;
 - (b) the marshal must withdraw from possession of the money, goods or chattels; and
 - (c) the marshal may apply to the court for an order restraining any action being brought against him in respect of his having taken possession of the money, goods or chattels.
- (6) Where the judgment creditor gives notice disputing the claim or fails to give notice and the claim is not withdrawn the marshal may apply to the court for relief under this Part.

How to interplead

- 54.3** (1) A person interpleads by filing an application for relief by way of interpleader.
- (2) The application must be filed—
 - (a) in the court office out of which the writ of execution was issued;
 - (b) if no writ of execution has issued but there are proceedings in respect of the money, goods or chattels, in the court office in which such proceedings are being conducted; or
 - (c) where there are no such proceedings, in any court office.
 - (3) An application other than by the marshal must be supported by evidence that the applicant—
 - (a) claims no interest in the subject matter in dispute other than for charges or costs;
 - (b) does not collude with any of the claimants to that subject matter; and
 - (c) is willing to pay or transfer that subject matter into court or dispose of it as the court may direct.

Service of interpleader application

- 54.4** (1) An application by the marshal must be served on the judgment creditor, the judgment debtor and on the person claiming the money, goods or chattels.
- (2) An application by any other person must be served on all persons making a claim to the money, goods or chattels.

Powers of the court

- 54.5 (1) On an application by the marshal the court may unless any claimant objects summarily determine the question in issue between the parties and order accordingly.
- (2) On any other application the court may order—
- (a) that any person claiming the money, goods or chattels be made a defendant in any pending claim relating to such money, goods or chattels either in addition to or in substitution for the applicant for relief; or
- (b) that the issue between two or more persons claiming the money, goods or chattels be tried, and may direct which person claiming is to be the claimant in those proceedings and which the defendant.
- (3) Where a person making a claim to any money, goods or chattels who has been served with the application—
- (a) fails to attend the hearing; or
- (b) fails to comply with any order made by the court, the court may make an order barring that person and any persons claiming under him forever from prosecuting his claim to the money, goods or chattels as against the applicant and all persons claiming under him.
- (4) An order under paragraph (3) does not affect the rights as between the persons claiming the money, goods or chattels.

Power to order sale of goods taken in execution

- 54.6 On an application by a marshal who has seized any goods or chattels where a person claims to be entitled to such goods by way of security, the court may order that all or part of such goods or chattels be sold and the proceeds applied in accordance with the order.

PART 55 SALE OF LAND BY ORDER OF COURT

Contents of this Part

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Order for sale other than under the Remedies of Creditors Act (Chap. 8:09)	Rule 55.4
Conduct of sale	Rule 55.5
Certificate as to result of sale	Rule 55.6
Mortgage, exchange or partition of land	Rule 55.7

Scope of this Part

- 55.1** (1) This Part deals with the sale of land—
- (a) under the Remedies of Creditors Act (Chap. 8:09) to enforce a judgment or order; or
 - (b) where it appears to the court to be necessary or expedient to order a sale of land.
- (2) In this Part “land” includes any interest in, or right over, land.

Sale of land under the Remedies of Creditors Act (Chap. 8:09)

- 55.2** Unless the court makes any special condition or gives any special directions the following rules apply to any sale of land under the Remedies of Creditors Act (Chap. 8:09):
- (a) The marshal must offer the land for sale by auction to the highest bidder after advertisement of the sale in—
 - (i) one copy of the *Trinidad and Tobago Gazette*; and
 - (ii) two days in each week for a period of four weeks in a local daily newspaper.
 - (b) The cost of the advertisement must be borne by the party who sought the order for sale (“the applicant”) but may be added to the judgment debt to be recovered out of the proceeds of sale if satisfactory evidence of the amount paid is supplied to the marshal.

- (c) The applicant must file at the court office a copy of each advertisement under paragraph (a)(ii) not less than 2 days before the day fixed for the sale.
- (d) If the applicant fails to comply with the requirements of paragraph (a), (b) or (c), the marshal may cancel or postpone the sale.
- (e) Where—
 - (i) the highest bid at the sale does not exceed one thousand dollars the sum bid must be paid immediately in cash; or
 - (ii) the highest bid exceeds one thousand dollars the buyer must immediately pay the price bid, or a deposit of 10% of the price bid (or one thousand dollars if that be more).
- (f) Where the buyer does not make the cash payment required under paragraph (e), the sale must not be closed but continue then or at such other time as the marshal appoints.
- (g) The buyer must pay the balance (if any) of the purchase money within 28 days of the close of the sale.
- (h) Where the buyer does not pay the balance of the purchase price in accordance with paragraph (g) the marshal must again put the land up for sale after re-advertising in accordance with paragraph (a).
- (i) Where the price paid at a resale under paragraph (h) is less than the price bid at the previous sale, the marshal must apply the first deposit as follows:
 - (i) first, in payment of the costs of the resale;and
 - (ii) next, in making good any deficit,and any balance must be repaid to the depositor.
- (j) The purchase price less any expenses of sale must be paid forthwith into the Treasury to the credit of the action in which the order for sale was made.

Further directions on such a sale

55.3 The marshal may at any time apply to the court to vary or modify the rules set out in rule 55.2 or to give further directions.

Order for sale other than under the Remedies of Creditors Act (Chap. 8:09)

55.4 Where it appears to the court necessary or expedient for the purpose of any proceedings that land be sold, the court may—

- (a) order the sale of the land identifying the extent of the land to be sold; and
- (b) order that any party bound by the order who is—
 - (i) in possession; or
 - (ii) in receipt of the rent and profits,
 of any part of that land deliver up possession or the receipt of such rent or profits to such person as the court may direct.

Conduct of sale

- 55.5 (1) On making an order under rule 55.4, the court must direct who is to have conduct of the sale and must give directions as to the manner of sale.
- (2) The directions may—
- (a) fix the manner of sale;
 - (b) fix a reserve or minimum price;
 - (c) require payment of the purchase price into court or to trustees or to some other person;
 - (d) provide for the settling of particulars and conditions of sale;
 - (e) require evidence to be provided as to the value of the property; and
 - (f) fix the remuneration to be allowed to an auctioneer and provide for security to be given to him.

Certificate as to result of sale

- 55.6 The attorney-at-law for the person having conduct of the sale must within two days of the sale file at the court office a certificate by—
- (a) the auctioneer who conducted the auction sale; or
 - (b) in any other case, the attorney-at-law,
- setting out the result of the sale.

Mortgage, exchange or partition of land

- 55.7 Rules 55.4, 55.5 and 55.6, so far as applicable, apply to any mortgage, exchange or partition of land under an order of the court.

PART 56 ADMINISTRATIVE LAW

Contents of this Part

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Judicial review—application for leave	Rule 56.3
Judicial review—hearing of application for leave	Rule 56.4
Delay	Rule 56.5
Proceedings by way of claim which should be an application for an administrative order	Rule 56.6
How to make an application for an administrative order	Rule 56.7
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Joinder of claims for other relief	Rule 56.9
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Applications	Rule 56.13
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Scope of this Part

- 56.1** (1) This Part deals with applications—
- (a) for judicial review (which includes *mandamus*, prohibition and *certiorari*);
 - (b) by way of originating motion under s.14(1) of the Constitution;
 - (c) for a declaration in which a party is the State, a court, a tribunal or any other public body; and
 - (d) where the court has power by virtue of any enactment 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) In this Part such applications are referred to generally as “applications for an administrative order”.

Who may apply for judicial review

- 56.2 An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application including—
- (a) any person who can show that he has been adversely affected by the decision which is the subject of the application;
 - (b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);
 - (c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;
 - (d) any statutory body where the subject matter falls within its statutory remit; or
 - (e) any body or group 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.

Judicial review—application for leave

- 56.3 (1) No application for judicial review may be made unless the court gives leave.
- (2) An application for leave may be made without notice.
 - (3) The application must state—
 - (a) the name, address and description of the applicant and respondent;
 - (b) the relief including in particular details of any interim relief sought;
 - (c) the grounds on which such relief is sought;
 - (d) the applicant's address for service;
 - (e) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;
 - (f) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;
 - (g) whether any time limit for making the application has been exceeded and, if so, why; and
 - (h) whether the applicant is personally or directly aggrieved by the decision about which complaint is made; or
 - (i) where the applicant is not personally or directly aggrieved, what public or other interest the applicant has in the matter; and

- (j) the name and address of the applicant’s attorneys (if applicable).
- (4) The application must be verified by evidence on affidavit which must include a short statement of all the facts relied on.
- (5) The applicant must file his application for leave and affidavit not later than the day before the application is to be heard unless the court otherwise orders.

Judicial review—hearing of application for leave

- 56.4 (1) An application for leave to make a claim for judicial review must be considered by a judge of the High Court.
- (2) The judge may give leave without hearing the applicant.
 - (3) However, if—
 - (a) the judge is minded to refuse the application;
 - (b) the application includes a claim for immediate interim relief; or
 - (c) it appears that a hearing is desirable in the interests of justice, he must direct that a hearing in open court be fixed.
 - (4) The judge may direct that notice of the hearing be given to the respondent or the Attorney General.
 - (5) Where the application relates to any judgment, order, conviction or other proceedings which are subject to appeal, the judge may adjourn consideration of the application to a date after the appeal has been determined.
 - (6) The judge may allow the application to be amended.
 - (7) The judge may grant leave on such conditions or terms as he considers just.
 - (8) Where the application is for an order of prohibition or *certiorari* the judge must direct whether or not the grant of leave operates as a stay of the proceedings.
 - (9) The judge may grant such interim relief as appears just.
 - (10) On granting leave the judge must either direct when the case management conference shall take place or, in cases of urgency, or where he considers a case management conference is not necessary, fix the date of hearing of the application for a judicial review and give any appropriate consequential directions.
 - (11) Leave must be conditional on the applicant making a claim for judicial review within 14 days.

Delay

- 56.5 (1) The judge may refuse leave or to grant relief in any case in which he considers that there has been unreasonable delay before making the application.
- (2) Where the application is for leave to make a claim for an order of *certiorari* the general rule is that the application must be made within three months of the proceedings to which it relates.
- (3) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to—
- (a) cause substantial hardship to or substantially prejudice the rights of any person; or
- (b) be detrimental to good administration.

Proceedings by way of claim which should be an application for an administrative order

- 56.6 (1) This rule applies where a claimant issues a claim for damages or other relief other than an administrative order but where the facts supporting such claim are such that the only or main relief is an administrative order.
- (2) The court may at any stage direct that the claim is to proceed by way of an application for an administrative order.
- (3) Where the appropriate administrative relief would be by way of judicial review the court may give leave for the matter to proceed as if an application had been made under rule 56.3.
- (4) If the court makes a direction under paragraph (2) it must give such directions as are necessary to enable the claim to proceed under this Part.

How to make an application for an administrative order

- 56.7 (1) An application for an administrative order must be made by a fixed date claim identifying whether the application is—
- (a) for judicial review;
- (b) under section 14(1) of the Constitution;
- (c) for a declaration; or
- (d) for some other administrative order (naming it).
- (2) The claim form in an application under section 14(1) of the Constitution shall serve as the originating motion mentioned in that section and shall be headed “Originating Motion”.

- (3) The claimant must file with the claim form an affidavit.
- (4) The affidavit must state—
 - (a) the name, address and description of the claimant and the defendant;
 - (b) the nature of the relief sought identifying—
 - (i) any interim relief sought; and
 - (ii) whether the claimant seeks damages, restitution or recovery of a sum due or alleged to be due, setting out the facts on which such claim is based and, where practicable, specifying the amount of any money claimed;
 - (c) in the case of a claim under s. 14(1) of the Constitution, the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;
 - (d) the grounds on which such relief is sought;
 - (e) the facts on which the claim is based;
 - (f) the claimant’s address for service; and
 - (g) the names and addresses of all defendants to the claim.
- (5) The general rule is that the affidavit must be made by the claimant or where the claimant is not an individual by an appropriate officer of the body making the claim.
- (6) If the claimant is unable to make the affidavit it may be made by some other person on his behalf but must state why the claimant is unable to make the affidavit.
- (7) On issuing the claim the court office must fix a date for a case management conference which must be endorsed on the claim form.
- (8) The general rule is that the case management conference must take place no later than four weeks after the date of issue of the claim.
- (9) However, any party may apply to a judge in chambers for that date to be brought forward or for an early date to be fixed for the hearing of the application for an administrative order.
- (10) The application may be without notice but must be supported by evidence.

Publicity

- 56.8** (1) When an application is made for an administrative order the application must be made public in the following way.
- (2) There must be posted for at least 14 days in a prominent position accessible to the public in the court office a notice stating—



- (a) the date the claim was filed;
- (b) the name and address of the claimant;
- (c) the name and address of the defendant;
- (d) a short description of the nature of the complaint; and
- (e) the date, time and place of the case management conference.

Joinder of claims for other relief

- 56.9** (1) The general rule is that, where permitted by the substantive law, the applicant may include a claim for any other relief or remedy that arises out of or is related or connected to the subject matter of an application for an administrative order.
- (2) The court may, however, at any stage—
- (a) direct that any claim for other relief be dealt with separately from the application for an administrative order; or
 - (b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and,
 - (c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this rule.

Service of claim form for an administrative order

- 56.10** (1) The claim form and the affidavit in support must be served on the defendants not less than 14 days before the date fixed for the case management conference.
- (2) A claim form relating to an application under s. 14(1) of the Constitution must be served on the Attorney General.
- (3) Where leave has been given to make a claim for judicial review the claimant must also serve a copy of—
- (a) the application for leave;
 - (b) the affidavit in support; and
 - (c) the order giving leave.
- (4) Where the Attorney General is not a defendant, the claimant must give notice of the claim to the Solicitor General immediately after service of the claim on any defendant.
- (5) The notice must have attached to it a copy of the claim and the affidavit in support.

- (6) The claimant must file at the court office not less than 7 days before the date fixed for the case management conference an affidavit which—
 - (a) gives the names and addresses of all defendants who have been served with the claim;
 - (b) states the date and place of service on each such defendant;
 - (c) states when the notice under paragraph (4) was given to the Solicitor General; and
 - (d) if any defendant has not been served, states that fact and the reason for it.
- (7) If the judge considers that any person who should have been served has not been served the judge may adjourn the case management conference to a fixed date and give directions for service.

(Part 5 deals generally with the service of claims)

Evidence in answer

56.11 Any evidence filed in answer to an application for an administrative order must be by affidavit but the provisions of Part 10 apply to such affidavit.

Case management conference

- 56.12** (1) At the case management conference the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.
- (2) The judge may allow the claimant to amend any claim for an administrative order or to substitute another form of application for that originally made.
 - (3) At the case management conference the judge may allow any person who appears to have sufficient interest in the subject matter of the claim to be heard whether or not he has been served with the claim.
 - (4) The judge must direct whether any person or body having such interest is to make submissions by way of written brief or whether such person or body may make oral submissions at the hearing.
 - (5) Where there is more than one claim by one or more persons or bodies or against one or more persons in respect of the same office made on the same grounds the judge may direct that they be consolidated.

Applications

56.13 Any application during a claim for an administrative order must be made to the judge who heard the case management conference unless that judge otherwise directs.

Hearing of Application

- 56.14** (1) At the hearing of the application the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not he has been served with the application.
- (2) Such a person or body must make submissions by way of a written brief unless the judge orders otherwise.
 - (3) The judge may grant any relief that appears to be justified by the facts proved before him whether or not such relief should have been sought by an application for an administrative order.
 - (4) The judge may, however, make such orders as to costs as appear to him to be just including a wasted costs order.
 - (5) Where the judge makes any order as to costs he must assess them.
- (Part 66 deals with the court's discretion on costs)

Special provisions relating to orders for judicial review

- 56.15** (1) Where the claimant seeks an order of *certiorari* to remove any proceedings for the purpose of quashing them, the claimant may not question the validity of any order, warrant, commitment, conviction or record unless before the trial he has lodged with the court office a copy of the order, etc., verified by affidavit or can account for his failure to do so to the satisfaction of the court.
- (2) Where the claim is for an order of *certiorari*, the judge may if satisfied that there are reasons for quashing the decision to which the claim relates—
 - (a) direct that the proceedings be quashed on their removal to the High Court; and
 - (b) remit the matter to the court, tribunal or authority concerned with a direction to reconsider it in accordance with the findings of the High Court.
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CASES

2016

PRIVY COUNCIL/ COURT OF APPEAL

Wayne Oudit v The Eastern Regional Health Authority

Civ App No P111 of 2016

Appeal pending

CV 2015-02112 (2016.03.16)

JUDICIAL REVIEW — LEAVE TO APPLY — TEST FOR LEAVE — ARGUABLE CASE WITH REALISTIC PROSPECT OF SUCCESS

Director of Public Prosecutions v Her Worship Lucina Cardenas Ragoonanan

Civ App No P073 of 2016

Appeal pending

CV 2015-02718 (2016.03.11)

JUDICIAL REVIEW — LEAVE GRANTED — ALTERNATIVE STATUTORY REMEDIES — NO EXCEPTIONAL CIRCUMSTANCES — LEAVE SET ASIDE

Ravendra K Bridglal v The Attorney General of Trinidad and Tobago

Civ App No S188 of 2016 (2016.10.03)

Appeal dismissed

CV 2015-03939 (2016.06.07)

CONSTITUTIONAL MOTION — SEIZURE OF CASH — BREACH OF CONSTITUTIONAL RIGHTS — ALTERNATIVE REMEDY — CONVERTED TO COMMON LAW ACTION

(Also under Part 1)

Wescan Trinidad Agency v The National Insurance Property Development Company Limited

Civ App No P113 of 2014 (2016.07.25)

Appeal allowed

CV 2014-00334 (2014.04.03)

JUDICIAL REVIEW — LEAVE TO APPLY — POWERS OF COURT — INTERIM RELIEF

HIGH COURT

WIN Communications Limited v The Telecommunications Authority of Trinidad and Tobago

CV 2016-00507 (2016.02.26)

JUDICIAL REVIEW — LEAVE TO APPLY — TEST FOR LEAVE — NO TRIABLE ISSUE

2015

PRIVY COUNCIL/ COURT OF APPEAL

Rajae Ali v Sterling Stewart (The Commissioner of Prisons) and Another

Civ App No P248 of 2015

Appeal pending

CV 2015-03190 (2015.10.09)

JUDICIAL REVIEW — LEAVE TO APPLY — DELAY — ALTERNATIVE REMEDY — INTERIM RELIEF GRANTED

Motilal Ramsingh v Eric James and Others

Civ App No S307 of 2015

Appeal pending

CV 2015-00713, CV 2015-00714, CV 2015-00715 (2015.11.13)

RULE 56.10(4) — JUDICIAL REVIEW — ATTORNEY GENERAL NOT PARTY — DUTY TO SERVE ATTORNEY GENERAL

Winfield Walker v Public Service Commission and Another

Civ App No P334 of 2014 (2015.11.30)

Appeal dismissed

JUDICIAL REVIEW — REFUSAL TO GRANT LEAVE — UNDUE DELAY — NO BASIS TO INTERFERE WITH DECISION

Her Worship Magistrate, Marcia Ayers-Caesar and Another v BS (by his kin and next friend Karen Mohammed)

Civ App No P252 of 2015 (2015.11.16)

Appeal allowed

JUDICIAL REVIEW — INTERIM ORDER — JURISDICTION — OVERREACHING — INTERIM ORDER SET ASIDE

(Also under Parts 1 and 26)

Gregory Roberts v Conrad Barrow, The Commissioner of Prisons

Civ App No P098 of 2015 (2015.06.22)

Appeal dismissed

CV 2014-03866 (2015.03.27)

JUDICIAL REVIEW — LEAVE TO APPLY — DELAY — EXTENSION OF TIME

Mukesh Maharaj v Attorney General of Trinidad and Tobago

Civ App No P118 of 2010; Civ App No P67 of 2011 (2015.03.25)

Appeals allowed

RULE 56.14 — ADMINISTRATIVE CLAIM — ASSESSMENT OF COSTS

(Also under Part 67)

HIGH COURT

Ruby George Warner v Public Service Commission

CV 2014-00329 (2015.03.19)

RULE 56.3 — JUDICIAL REVIEW — DELAY — REASONABLENESS

2014

PRIVY COUNCIL/ COURT OF APPEAL

Her Worship Maria Busby Earle-Caddle v Beeraj Joseph

Civ App No S287 of 2013 (2014.01.27)

Appeal allowed

CV 2012-04571 (2014.01.14)

RULE 56.10 — SERVICE OF PROCEEDINGS ON DEFENDANT — SOLICITOR GENERAL'S DEPARTMENT — COMPLIANCE

HIGH COURT

Terrence Charles v The Chief of Defence Staff and Another

CV 2014-02620 (2014.12.04)

RULE 56.7(1) — RULE 56.7(2) — MIXED CLAIM — NON-COMPLIANCE — PROCEDURAL DEFECTS — NOT FATAL TO CLAIM

(Also under Part 26)

Director of Public Prosecutions v Her Worship Marcia Murray and Another

CV 2012-03883 (2014.04.11)

RULE 56.3 — NOTICE — DELAY — PROPER EXPLANATION — EXCEPTIONAL CASE — LEAVE TO APPLY SET ASIDE IN PART — SUBSTANTIVE APPLICATION HEARD

Lisa Nanhoo-Chaitram v The Honourable Minister of Planning and Sustainable Development

CV 2013-04233 (2014.02.12)

JUDICIAL REVIEW — LEAVE TO APPLY — DELAY — NO REASONABLE EXPLANATION — NOT FATAL TO CLAIM — REASONABLE CHANCE OF SUCCESS — NO SUITABLE ALTERNATIVE REMEDY

Arcelor Mittal Point Lisas Limited v The Minister of Labour, Small and Micro Enterprise Development

CV 2013-04254 (2014.02.10)

JUDICIAL REVIEW — LEAVE TO APPLY — DELAY — REASONABLENESS — ARGUABLE CASE

Brian Bisnath v The Attorney General of Trinidad and Tobago

CV 2012-01599 (2014.01.30)

RULE 56.6 — POWER OF COURT — INORDINATE DELAY — ABUSE OF PROCESS

(Also under Part 26)

2013

PRIVY COUNCIL/ COURT OF APPEAL

Nizam Mohammed v The Attorney General of Trinidad and Tobago

Civ App No P075 of 2013 (2013.07.29)

Appeal allowed

RULE 56.14(5) — ADMINISTRATIVE CLAIM — INTERPRETATION OF RULE — TRIAL JUDGE TO ASSESS COSTS

(Also under Part 67)

2012

HIGH COURT

Phillip Quashie v The Chief Fire Officer

CV 2009-02981 (2012.10.24)

JUDICIAL REVIEW — DELAY — NO REASONS

Juliana Webster v Republic Bank Limited and Others

CV 2011-03158 (2012.10.12)

MIXED CLAIM — OTHER AVAILABLE RELIEF — POWERS OF COURT — MATTER PROCEEDED WITH AS FIXED DATE CLAIM

(Also under Part 8)

Vitamin and Herbal Cabinet Limited v The Chief Chemist/Director of Food and Drugs and Another

CV 2011-01394 (2012.01.31)

JUDICIAL REVIEW — LEAVE TO APPLY — DELAY — GOOD REASONS — PROPER PARTIES TO ACTION

2011

PRIVY COUNCIL/ COURT OF APPEAL

Antonio Webster v The Attorney General of Trinidad and Tobago

[2011] UKPC 22 (2011.07.18)

Appeal dismissed

**ADMINISTRATIVE ORDERS — CONSTITUTIONAL LAW — METHOD OF
COMMENCEMENT ERRONEOUS — NON-CONSEQUENTIAL**

(Also under Parts 8 and 26)

2010

PRIVY COUNCIL/ COURT OF APPEAL

Premnath Bowlah v The Attorney General of Trinidad and Tobago

Civ App No P261 of 2009 (2010.02.01)

Appeal allowed

CV 2008–04924 (2009.12.09)

**RULE 56.12 — ADMINISTRATIVE LAW — CASE MANAGEMENT — ROLE OF
COURT — PROCEDURE**

(Also under Part 35)

HIGH COURT

Ivan Neptune v The Attorney General of Trinidad and Tobago

CV 2008–03386 (2010.01.25)

**FIXED DATE CLAIM — CONSTITUTIONAL RELIEF — INTERPRETATION OF
RULE**

(Also under Part 8)

2009

PRIVY COUNCIL/ COURT OF APPEAL

The Honourable Patrick Manning and others v Chandresh Sharma

[2009] UKPC 37 (2009.08.03)

Appeal dismissed

JUDICIAL REVIEW — LEAVE TO APPLY — DELAY — DISCRETION — EXTENSION OF TIME

Police Service Commission and Another v Abzal Mohammed

Civ App No S053 of 2009 (2010.03.31)

Appeal allowed

CV 2008-04646 (2009.02.20)

JUDICIAL REVIEW — LEAVE TO APPLY — DELAY — NO GOOD OR SATISFACTORY REASON

Audine Mootoo v The Attorney General of Trinidad and Tobago and Another

Civ App No P038 of 2009

Decision pending

CV 2007-00587 (2009.01.29)

RULE 56.7 — AMENDED CLAIM FORM — REQUIREMENTS NOT SATISFIED — UNREASONABLE DELAY — FATAL TO CLAIM

HIGH COURT

Krishna Persad v Rajendra Rambachan, Magistrate and Another

CV 2005-01582 (2009.05.15)

JUDICIAL REVIEW — LEAVE TO APPLY — NO ARGUABLE ISSUES

Cheryll Pierre-Brooks v The Public Service Commission

CV 2005-00844 (2009.02.28)

JUDICIAL REVIEW — UNDUE DELAY — DETRIMENTAL TO GOOD ADMINISTRATION — ALTERNATIVE REMEDY AVAILABLE

2008

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Janet Tobias-Douglas v The Tobago House of Assembly and Another

CV 2007-04742 (2008.12.11)

**RULE 56.4(11) — MEANING CLEAR — NON-COMPLIANCE — DELAY IN FILING
— LAPSE OF LEAVE**

2007

HIGH COURT

Reynold Beddeau v Public Service Commission

CV 2006-00254 (2007.12.06)

**LEAVE GRANTED — NO APPLICATION TO SET ASIDE — PERMISSIBLE TO RAISE
UNREASONABLE DELAY AT TRIAL — CONSIDERATION OF SUBSTANTIAL
HARDSHIP OR DETRIMENT TO GOOD ADMINISTRATION**

Hubert Sharpe v The Police Service Commission

CV 2007-01552 (2007.06.05)

**RULE 56.14(4) — ALTERNATIVE REMEDY — LEAVE REFUSED — ORDER FOR
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PART 57 *HABEAS CORPUS*

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Service of writ	Rule 57.4
Return to writ	Rule 57.5
Bringing up prisoner to give evidence, etc.	Rule 57.6

Scope of this Part

57.1 This Part deals with applications for the issue of a writ of *habeas corpus* and proceedings upon such a writ.

Application for issue of writ of *habeas corpus ad subjiciendum*

- 57.2 (1) An application for the issue of a writ of *habeas corpus ad subjiciendum* may be made without notice but must be supported by evidence on affidavit.
- (2) Such evidence must be given by the person restrained stating how he is restrained.
- (3) However, if the person restrained is not able to make the affidavit it may be made by some person on his behalf and must state why the person restrained is not able to make the affidavit.
- (4) The application must be heard in open court unless it is made on behalf of a minor when it must be heard in chambers.

Power of the court

- 57.3 (1) The court may—
- (a) make an order for the writ to issue; or
- (b) adjourn the application and give directions for notice to be given—
- (i) to the person against whom the issue of the writ is sought; and
- (ii) to such other person as the judge may direct.
- (2) The court may also order that the person restrained be released.

- (3) Such an order is sufficient warrant to any person for the release of the person under restraint.
- (4) On making an order for the writ to issue the court office must give directions as to the date and place of hearing.

Service of writ

- 57.4 (1) The general rule is that 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 that person at the place where the person restrained is confined or restrained.
 - (3) If the writ is addressed 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 paragraph (1) or (2).
 - (4) Each person served must also be served with a notice in the prescribed form of the date and time on, and place at, which the person restrained is to be brought and containing a warning that in default of compliance with the writ proceedings for committal may be taken.

Return to writ

- 57.5 (1) Each person served must indorse on or annex to the writ a return stating each cause of detainer of the person restrained.
- (2) The return may be amended or another substituted with the permission of the court.

Bringing up prisoner to give evidence, etc.

57.6 An application for—

- (a) a writ of *habeas corpus ad testificandum*;
- (b) a writ of *habeas corpus ad respondendum*; or
- (c) an order to bring up a prisoner to give evidence otherwise than by writ of *habeas corpus*,

may be made without notice to a judge in chambers but must be supported by evidence on affidavit.

CASES

2015

PRIVY COUNCIL/ COURT OF APPEAL

Edmund Q Muntslag v The Commissioner of Prisons

Civ App No P122 of 2015 (2015.07.20)

Appeal dismissed

CV 2015-00168 (2015.06.05)

EXTRADITION — DUTY OF CANDOUR — CONSIDERATIONS — SUFFICIENT EVIDENCE

2014

HIGH COURT

Yeshivia Hayon and Others v Chief Immigration Officer and Another

CV 2014-00759 (2014.03.06)

MINOR APPLICANTS — APPOINTMENT OF NEXT FRIEND — PROCEDURAL DEFECTS — INSUFFICIENT AFFIDAVIT EVIDENCE

(Also under Part 23)

PART 58 PROCEEDINGS BY AND AGAINST THE STATE

Contents of this Part

Scope of this Part	Rule 58.1
Transfer of proceedings	Rule 58.2
Service of claim form	Rule 58.3
Claimant's duty to give particulars	Rule 58.4
Claims to the court in certain revenue matters	Rule 58.5
Proceedings relating to postal packets	Rule 58.6
Applications under s. 31(2) of the Act	Rule 58.7
Enforcement against the State	Rule 58.8

Scope of this Part

- 58.1** (1) This Part deals with claims to which the State is a party.
- (2) In this Part—
- “the Act” means the State Liability and Proceedings Act, (Chap. 8:02);
- “civil proceedings by the State”, “civil proceedings against the State”, “civil proceedings by or against the State” and “civil proceedings to which the State is a party” have the same meanings as under the Act; and
- “order against the State” means any order made in civil proceedings or in an arbitration by or against the State.
- (3) References in these Rules to an action or claim for possession of land are to be construed as including references to proceedings against the State for an order declaring that the claimant is entitled as against the State to the land or to possession of the land.

Transfer of proceedings

- 58.2** No order may be made transferring any proceedings by or against the State except on the application, or with the consent, of the Attorney General.

Service of claim form

- 58.3** (1) Part 5 (Service of Claim form) and Part 6 (Service of other Documents) do not apply in civil proceedings against the State.
- (2) Service of any document including a claim form on the State must be effected in accordance with s. 20 of the Act.
- (Rule 9.2(6) deals with the entry of an appearance by the Attorney General)

Claimant's duty to give particulars

- 58.4** (1) Where a claim is made in proceedings against the State the claim form or statement of case must contain reasonable information as to the circumstances in which it is alleged that the liability of the State has arisen and as to the government department and officers of State involved.
- (2) At any time during the period for entering an appearance under rule 9.3(1) the defendant may request information under rule 35.1.
- (3) The defendant's time for entering an appearance is then extended until—
- (a) 4 days after the defendant gives notice in writing to the claimant that he is satisfied with the information supplied; or
- (b) 4 days after the court on the application of the claimant decides that no further information is reasonably required.

Claims to the court in certain revenue matters

- 58.5** (1) This rule applies to applications under section 16 of the Act.
- (2) An application must be made by fixed date claim.
- (3) The person from whom an account or information is claimed or by whom any books are required to be produced must be made defendant to the claim.
- (4) The claim form must be entitled—
- (a) in the matter or matters out of which the need for the application arose; and
- (b) in the matter of the State Liability and Proceedings Act.
- (5) The claim form or the statement of case must—
- (a) refer to the enactment under which the account or information or payment or the production of books is claimed; and
- (b) where information is claimed must show (by appropriate questions or otherwise) what information is required.
- (6) An affidavit by a duly authorised officer of the government department concerned setting out the facts on which the application is based and stating his belief in such facts is evidence of the facts so set out.

- (7) If the defendant files evidence disputing any such facts the State may file further evidence.
 - (8) The court may order that the deponents or any of them attend to be cross-examined.
 - (9) The court may—
 - (a) decide the matter upon the affidavit evidence after any cross-examination that may be ordered; or
 - (b) direct that it be decided by oral evidence in court.
 - (10) If the court makes an order in favour of the State it must specify a date by which the defendant is to comply with each of the terms of the order.
- (The procedure relating to fixed date claims is dealt with in rules 8.1(4) and 27.2)

Proceedings relating to postal packets

- 58.6** (1) This rule deals with applications under s. 12(5) of the Act for leave to bring proceedings in the name of a sender or addressee of a postal packet or his personal representative.
- (2) An application must be by fixed date claim.
 - (3) The defendants to the claim must be the Attorney General and the person in whose name the applicant seeks to bring the proceedings.
 - (4) No appearance need be entered to the claim.
- (The procedure relating to fixed date claims is dealt with in rules 8.1(4) and 27.2)

Applications under s. 31(2) of the Act

- 58.7** An application under s. 31(2) of the Act may be made in accordance with Part 11.

Enforcement against the State

- 58.8** (1) Parts 44 to 53 do not apply with regard to any order against, or money due or accruing due, or alleged to be due or accruing due from, the State.
- (2) Any application under section 27(1) of the Act for a direction that a separate certificate be issued under that section with respect to costs (if any) ordered to be paid to the applicant may be made without notice.
 - (3) Every application for an order under section 29(1) of the Act restraining any person from receiving money payable to him by the State and directing payment to the applicant or some other person must be served on the State at least 14 days before the date of hearing and, unless the court otherwise orders, on the person to be restrained or his attorney-at-law (if any).

- (4) Every application under paragraph (3) must be supported by evidence—
 - (a) of the facts giving rise to it; and
 - (b) identifying the particular debt from the State in respect of which it is made.
- (5) Rule 51.11 applies to an application under paragraph (3) except that the court may not order execution to issue against the State.

CASES

2013

HIGH COURT

Stanley Holder v The Attorney General of Trinidad and Tobago

CV 2011-04480 (2013.07.26)

RULE 58.4 — REQUEST FOR FURTHER INFORMATION BY STATE — FAILURE TO INFORM CLAIMANT — DEFENCE FILED — DEFENDANT DEEMED SATISFIED WITH INFORMATION PROVIDED

(Also under Parts 9 and 27)

2011

PRIVY COUNCIL/ COURT OF APPEAL

Steve Mc Gillvery v The Attorney General of Trinidad and Tobago

Civ App No P009 of 2011 (2011.02.07)

Appeal dismissed

CV 2010-4398 (2011.01.27)

RULE 58.4 — REQUEST FOR INFORMATION — ADDITIONAL INFORMATION NOT REASONABLY REQUIRED

PART 59 BAIL APPLICATIONS

Contents of this Part

Scope of this Part	Rule 59.1
How to apply to the court	Rule 59.2
Hearing of application	Rule 59.3

Scope of this Part

- 59.1** (1) This Part deals with applications to the court to review a decision by a magistrate about bail.
- (2) In this Part—
- “magistrate” includes a justice of the peace; and
- “the commissioner” means the Commissioner of Prisons.

How to apply to the court

- 59.2** (1) An application under this Part must be in Form 24.
- (2) Where the application is made by the applicant in person while in custody, the application shall be lodged with the commissioner or, when the applicant appears before a magistrate, with the clerk of the peace.
- (3) The commissioner or the clerk of the peace must forthwith file the application at the court office.
- (4) In all other cases the application must be filed at the court office by the applicant or his attorney-at-law.
- (5) The court office must immediately—
- (a) send a copy of the application to the Director of Public Prosecutions;
- (b) fix a date, time and place to hear the application; and
- (c) give notice of such date, time and place to—
- (i) the applicant (if the application was made in person) or his attorney-at-law;
- (ii) the Director of Public Prosecutions;
- (iii) the Commissioner of Police; and
- (iv) if the applicant is in custody, the commissioner.

Hearing of application

- 59.3** (1) The Director of Public Prosecutions is entitled to appear on behalf of the State.
- (2) The court may confirm, modify or reverse the decision of the magistrate.
- (3) The court office must serve a copy of any order on the commissioner and the Chief Magistrate.
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PART 60 APPEALS TO THE HIGH COURT

Contents of this Part

Scope of this Part	Rule 60.1
How to appeal to the court	Rule 60.2
Effect of appeal	Rule 60.3
Persons on whom claim form must be served	Rule 60.4
Time within which claim form must be served	Rule 60.5
Amendment of statement of case	Rule 60.6
First hearing	Rule 60.7
Hearing of appeal	Rule 60.8
Right of minister to be heard	Rule 60.9

Scope of this Part

- 60.1** (1) This Part deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated.
- (2) In this Part—
- “tribunal” means any tribunal established under an enactment other than a court of law;
- “clerk to the tribunal” means the clerk, secretary or other person responsible for the administration of the tribunal; and
- “decision” means the order, determination, decision or award appealed against.
- (3) This Part takes effect subject to any provisions in the relevant enactment.

How to appeal to the court

- 60.2** (1) Any appeal to the court must be made by issuing a fixed date claim.
- (2) The claim form must be entitled with the name of the enactment under which the appeal is made.
- (3) The claimant’s statement of case must state—
- (a) the decision against which the appeal is made;

- (b) the facts found by the tribunal or person whose decision is being appealed; and
 - (c) the grounds of the appeal identifying—
 - (i) any finding of fact; and
 - (ii) any finding of law,which the claimant seeks to challenge.
- (4) The date for the first hearing must not be less than 28, nor more than 56, days after issue of the claim.
- (The procedure relating to fixed date claims is dealt with in rules 8.1(4) and 27.2)

Effect of appeal

- 60.3** The making of an appeal does not operate as a stay of proceedings on the decision against which the appeal is brought unless—
- (a) the court; or
 - (b) the tribunal or person whose decision is being appealed,
- so orders.

Persons on whom claim form must be served

- 60.4** The claimant must serve the claim form and statement of case on—
- (a) the clerk to the tribunal, minister or other person by whom the decision appealed against was made; and
 - (b) every other party to the proceedings in which the decision was made.

Time within which claim form must be served

- 60.5** The claim form and statement of case must be served within 28 days of the date on which notice of the decision was given to the claimant.

Amendment of statement of case

- 60.6** (1) The claimant may amend his statement of case without permission not less than 7 days before the first hearing.
- (2) Permission to amend the statement of case may be given at the first hearing.
 - (3) The court may not give permission to amend the statement of case after the first hearing unless the claimant satisfies the court that the change is necessary because of some change in circumstance which became known after the first hearing.

First hearing

- 60.7** (1) The claimant must file at the court office a signed copy of any note made by the person presiding at the proceedings in which the decision was made not less than 7 days before the first hearing.
- (2) If the court does not hear the appeal at the first hearing it must fix a date, time and place for the full hearing.
- (Rule 27.2 deals with the court’s powers at the first hearing)

Hearing of appeal

- 60.8** (1) The appeal is to be by way of rehearing.
- (2) The court may receive further evidence on matters of fact.
- (3) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.
- (4) The court may—
- (a) give any decision or make any order which ought to have been given or made by the tribunal or person whose decision is appealed;
- (b) make such further or other order as the case requires; or
- (c) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.
- (5) The court is not bound to allow an appeal because of—
- (a) misdirection; or
- (b) the improper admission or rejection of evidence, unless it considers that a substantial wrong or a miscarriage has been caused.

Right of minister to be heard

- 60.9** A minister is entitled to be heard on any appeal against a decision made by him.

PART 61 APPEALS TO THE COURT BY WAY OF CASE STATED

Contents of this Part

Scope of this Part	Rule 61.1
Application for order to state a case	Rule 61.2
Persons on whom application must be served	Rule 61.3
Time within which application must be served	Rule 61.4
Signing and service of case	Rule 61.5
How to commence proceedings to determine a case	Rule 61.6
Determination of case	Rule 61.7

Scope of this Part

- 61.1** (1) This Part deals with the way in which the High Court or the Court of Appeal determines—
- (a) (i) a case stated; or
 - (ii) a question of law referred to it, by a minister, magistrate, judge of a tribunal, a tribunal or other person; or
 - (b) an application for an order directing a minister, magistrate, judge of a tribunal, tribunal or other person to refer a question of law to the court by way of case stated,
- where under any enactment the High Court or the Court of Appeal has power to determine such matters.
- (2) In this Part—
- “case” includes a special case;
 - “clerk to the tribunal” means the clerk, secretary or other person responsible for the administration of the tribunal;
 - “court” means the High Court or the Court of Appeal as required by the particular enactment;
 - “enactment” includes the Constitution; and
 - “tribunal” means—

- (a) in relation to proceedings brought under section 14(4) of the Constitution, a court other than the High Court, the Court of Appeal or a Court Martial; and
- (b) in relation to any other proceedings, any tribunal constituted by or under any enactment other than a court of law.

Application for order to state a case

- 61.2** (1) An application to the court for an order directing a minister, magistrate, judge of tribunal, tribunal or other person to state a case for determination by the court must—
- (a) state the grounds of the application;
 - (b) identify the question of law upon which it is sought to have a case stated; and
 - (c) set out any reasons given by the minister, magistrate, judge of tribunal, tribunal or other person for his, or its refusal to state a case.
- (2) The court office must fix a date for a hearing of the application and endorse on the application the date, time and place of that hearing.
- (3) The applicant must file at the court office a copy of the proceedings to which the application relates not less than 7 days before the date fixed for hearing of the application.

Persons on whom application must be served

- 61.3** The claimant must serve the application—
- (a) where the application relates to proceedings brought under section 14(4) of the Constitution on—
 - (i) the Attorney General;
 - (ii) the clerk to the tribunal; and
 - (iii) every other party to the proceedings to which the application relates; and
 - (b) in any other proceedings on—
 - (i) the minister; or
 - (ii) the clerk to the tribunal; or
 - (iii) other person; and
 - (iv) every other party to the proceedings to which the application relates.

(Service on the State and on the Attorney General is dealt with in rule 6.8 and rule 58.3)

Time within which application must be served

6I.4 The application must be served within 14 days of the date on which notice of the refusal to state a case was given to the applicant.

Signing and service of case

- 6I.5 (1) A case stated by a tribunal must be signed by the magistrate, judge, chairman or president of the tribunal.
- (2) A case stated by any other person must be signed by that person.
- (3) The case must be served—
- (a) if it relates to proceedings brought under section 6(3) of the Constitution, on the Attorney General and any other party on whose request or as a result of whose application the case was stated;
 - (b) if it relates to other proceedings, on the party on whose request or as a result of whose application the case was stated; or
 - (c) if the case was stated without a request being made by any party to the proceedings, on all parties to the proceedings to which the case relates.

How to commence proceedings to determine a case

- 6I.6 (1) Proceedings to determine a case must be commenced by issuing a fixed date claim.
- (2) The claim form may be issued by—
- (a) any party on whom a case was served under rule 6I.5(3); or
 - (b) where a minister, magistrate, judge of a tribunal, a tribunal, arbitrator or other person is entitled by any enactment to state a case or to refer a question of law by way of case stated to the court, that person or tribunal.
- (3) The claim form must have the case stated annexed.
- (4) The claim form, or a statement of case issued and served with it must set out the claimant's contentions on the question of law to which the case relates.
- (5) Such contentions may be in the form of a skeleton argument.
- (6) The court office must fix a date, time and place for the determination of the case.
- (7) The claim form must be served on the persons set out in rule 6I.5(3).
- (8) It must be served within 14 days after the service of the case stated.

Determination of case

- 61.7 (1) Not less than 7 days before the date fixed to determine the case, the claimant must file a copy of the proceedings to which the case relates.
- (2) The court may amend the case or order it to be returned to the person or tribunal stating the case for amendment.
- (3) The court may draw inferences of fact from the facts stated in the case.
- (4) A minister is entitled to be heard on any case stated by him.
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CASES

2014

PRIVY COUNCIL/COURT OF APPEAL***Bauhuis Coating International Limited v The Board of Inland Revenue***

Civ App No P187 of 2011 (2014.03.12)

Appeal allowed

RULE 61.7(2) — QUESTIONS OF LAW — AMENDMENT

2009

HIGH COURT***Urban Development Corporation of Trinidad and Tobago Limited and Another v Professor John Uff QC and Others***

CV 2009-01632 (2009.05.13)

PART 61 — COMMISSION OF ENQUIRY — FAILURE TO RAISE QUESTION — NOT FATAL TO ISSUE

PART 62 MISCELLANEOUS STATUTORY APPLICATIONS TO THE COURT

Contents of this Part

Scope of this Part	Rule 62.1
How to apply	Rule 62.2
Provisions relating to particular statutes	Rule 62.3
Payment of money, etc., into court under enactment	Rule 62.4

Scope of this Part

62.1 This Part deals with the procedure to be followed—

- (a) when any enactment (other than the Constitution) gives a right to apply to the court; and
 - (b) where money is paid into court under an enactment, unless any enactment or any other rule makes contrary provision.
- (Part 60 deals with appeals to the court)

How to apply

62.2 (1) The general rule is that applications to the High Court may be made by—

- (a) an application under Part 11 where the terms of the particular enactment exclude the need for notice of the application to be given; or
 - (b) a fixed date claim in Form 2 where—
 - (i) an enactment requires an application to be by originating summons, originating application or originating motion; and
 - (ii) in any other case not falling within paragraph (a).
- (2) This rule does not apply to applications made in pending proceedings or where any enactment or any of these Rules otherwise provides.

(Rule 8.1 deals with the issue of a fixed date claim and rule 27.2 with case management)

Provisions relating to particular statutes

62.3 (1) Bills of Sale Act (Chap. 82:32)—

An application under section 18 (Rectification of Register) must be made without notice but must be supported by evidence.

(2) Patents Act (Chap. 82:76)—

(a) At the case management conference in any proceedings under the Act, the court may with or without the application of any party, appoint an independent scientific assessor to assist the court, either—

(i) by sitting with the judge at the trial or hearing of the proceedings; or

(ii) by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction,

as the court may direct.

(b) The court may nominate the scientific assessor and, where appropriate, settle any question or instructions to be submitted or given to him.

(Part 33 contains further general provisions as to the appointment of assessors)

(3) Land Tenants (Security of Tenure) Act (Chap. 59:54)—

(a) Where a claimant wishes to exercise an option to purchase land under section 5(5) of the Act and is unable to trace or identify the landlord the claimant may apply for permission not to serve the claim form on the landlord; and

(b) the application must be supported by evidence giving full particulars of all efforts made to identify and trace the landlord.

Payment of money, etc., into court under enactment

62.4 (1) This rule applies where an enactment requires or enables a person to pay money in, or lodge securities into, court.

(2) The person paying such money in, or lodging securities into, court must file an affidavit stating—

(a) the reason for making the payment or lodgment;

(b) full details of all matters relevant to the payment in including—

(i) where the money or securities paid in or lodged are paid in under section 64 of the Trustee Ordinance, a short description of the trust and of the instrument creating it; and

(ii) where the money is deposited under section 17(2) of the Land Tenants (Security of Tenure) Act, details of the chattel, house and land to which the deposit relates;

- (c) the names and, so far as is practicable, the current addresses of all persons who have or may have an interest in the money or securities;
 - (d) where he is not able to give a current address details of the steps that he has taken to trace such persons;
 - (e) his address for service of any application, order, notice or proceedings relating to the money or securities; and
 - (f) his submission to answer any inquiries relating to the money or securities as the court may make or direct.
- (3) The person paying such money or securities into court must give notice of the payment in or deposit of securities to all persons named in paragraph (2)(c) for whom he is able to give an address.
- (4) Where the fund paid in consists of money or securities being or being part of, or representing a legacy or residue to which a minor or person outside the jurisdiction is absolutely entitled, and on which the trustee has paid the estate duty, or on which no duty is chargeable, the trustee may make the lodgment solely on production of the appropriate certificate of the Commissioners of Estate Duties.

PART 63 REFERENCE BY THE ATTORNEYS' DISCIPLINARY COMMITTEE

Contents of this Part

Scope of this Part	Rule 63.1
Reference to the court	Rule 63.2
Record of Proceedings before committee	Rule 63.3
Entry of alterations on roll	Rule 63.4

Scope of this Part

- 63.1** (1) This Part deals with the procedure by which a recommendation by the Attorneys' Disciplinary Committee that an attorney-at-law shall be suspended from practice or removed from the roll may be dealt with by the court.
- (2) In this Part—
- “the Act” means the Legal Profession Act (Chap. 90:03);
- “the committee” means the Disciplinary Committee established under section 36 of the Act;
- “the court” means a full court of three judges; and
- “the roll” means the Roll of Attorneys-at-law kept under section 13 of the Act.

Reference to the court

- 63.2** (1) On receiving the copy of the proceedings of the committee forwarded to him under section 39(3) of the Act, the Attorney General may apply for an order under section 41(1) of the Act.
- (2) The application must be by fixed date claim and must have attached to it a copy of the proceedings and findings of the committee but it shall not be necessary to serve with the claim form any statement of case or evidence.
- (3) The Attorney General must file three further copies of the proceedings and findings of the committee for use by the court.
- (4) There shall be no first hearing of the claim, but the court office must fix a date, time and place for the hearing of the application and endorse details of the hearing on the claim form prior to service.

Record of proceedings before committee

63.3 The evidence taken and all documents admitted at the inquiry before the committee may be used before the court but no further evidence may be produced without the permission of the court.

Entry of alterations on roll

63.4 The person responsible for keeping the roll must make any alterations required by the court's order.

PART 64 APPEALS TO THE COURT OF APPEAL

Contents of this Part

Scope of this Part	Rule 64.1
How to obtain leave to appeal	Rule 64.2
How to appeal	Rule 64.3
Contents of notice of appeal	Rule 64.4
Time for filing notice of appeal	Rule 64.5
Service of notice of appeal	Rule 64.6
Counter-notice	Rule 64.7
Action by court on receiving notice of appeal	Rule 64.8
Procedural appeal	Rule 64.9
Expedited appeals	Rule 64.10
Delay in providing notes of evidence, etc.	Rule 64.11
Record of appeal	Rule 64.12
Enforcement of time limits	Rule 64.13
Applications to Court of Appeal	Rule 64.14
Non-disclosure of payment into court, etc.	Rule 64.15
Stay of execution	Rule 64.16
General powers of the court	Rule 64.17
Powers of single judge	Rule 64.18
Security for costs of appeal	Rule 64.19
Failure of party to attend appeal	Rule 64.20
Application to set aside a decision made in party's absence	Rule 64.21
Adjournment of appeal	Rule 64.22
Appeals from the Registrar of Trade Unions	Rule 64.23

Scope of this Part

64.1 (1) This Part deals with any appeal to the Court of Appeal not being an appeal or application to the court for which other provision is made by these Rules nor appeals by way of case stated on a question of law for determination by the court.

(Part 60 deals with appeals to the High Court, Part 62 deals with applications to the High Court under enactments and Part 61 deals with appeals by way of case stated)

(2) In this Part—

“appellant” means the party who first files a notice of appeal;

“court” means the Court of Appeal;

“court below” means the court or tribunal from which the appeal is brought;

“procedural appeal” means an appeal from a decision of a master or judge which does not directly decide the substantive issues in a claim and excludes—

(a) any such decision made during the course of the trial or final hearing of the proceedings;

(b) an order granting any relief made at an application for judicial review (including an application for leave to make the application) or under section 14(1) of the Constitution under Part 56;

(c) the following orders under Part 17:

(i) an interim injunction or declaration;

(ii) a freezing injunction;

(iii) an order to deliver up goods; and

(iv) any order made before proceedings are commenced or against a non-party; and

(d) an order for committal or confiscation of assets under Part 53; and

“respondent” means any party to the appeal other than the appellant whether or not the respondent files a counter-notice.

How to obtain leave to appeal

64.2 (1) Where an appeal may be made only with the leave of the judge making the order or the court a party wishing to appeal must apply for leave within 14 days of the order against which leave to appeal is sought.

(2) The application for leave to appeal must set out concisely the grounds of the appeal.

(Section 38(2) of the Supreme Court of Judicature Act, sets out the circumstances in which leave is required, Part 11 of these Rules deals with applications)

How to appeal

64.3 An appeal is made by filing a notice of appeal at—

- (a) the court office in Tobago where the appeal is from proceedings there; or
- (b) the court office in Port of Spain in all other cases,

and is deemed to have been made on the day that it is received at the court office.

Contents of notice of appeal

64.4 (1) The notice of appeal must—

- (a) set out the decision which is being appealed identifying so far as practicable—
 - (i) any finding of fact; and
 - (ii) any finding of law,

which the appellant seeks to challenge;

- (b) set out the grounds of the appeal;
- (c) state what order the appellant is seeking; and
- (d) indicate any power which the appellant wishes the court to exercise.

(2) A copy of the judgment or order which is the subject of the appeal must wherever practicable be attached to the notice of appeal.

(3) Where leave to appeal is required a copy of the order giving leave to appeal must be attached to the notice of appeal.

(4) The notice of appeal must—

- (a) be signed by the appellant or his attorney-at-law;
- (b) give an address for service within three miles of the court office at Port of Spain or Tobago as the case may be;
- (c) state the names and addresses and the attorneys-at-law and their addresses for service of all parties affected by the appeal, including the appellant.

(5) The grounds of appeal under paragraph (1)(b) must set out concisely, and under distinct heads, and in consecutively numbered paragraphs, the grounds on which the appellant relies without any argument or narrative.

(6) The court may, with or without an application, strike out any ground which—

- (a) is in vague or general terms; or
 - (b) discloses no reasonable ground of appeal.
- (7) The appellant may, except on a procedural appeal, amend his grounds of appeal once without permission at any time before 28 days have expired from—
 - (a) receiving notice under rule 64.8(b) and (c) that a transcript of the evidence and judgment have been prepared; or
 - (b) the date of any hearing under rule 64.11.
- (8) The appellant may not rely on any ground not mentioned in his notice of appeal without the permission of the court.
- (9) However, the court—
 - (a) is not confined to the grounds set out in the notice of appeal; but
 - (b) must not make its decision on any ground not set out in the notice of appeal unless the respondent has had sufficient opportunity to contest such ground.

Time for filing notice of appeal

64.5 The notice of appeal must be filed at the court office—

- (a) in the case of a procedural appeal, within 7 days of the date the decision appealed against was made;
- (b) in the case of any other appeal, within 42 days of the date when the judgment was delivered or the order made; or
- (c) where leave is required, within 14 days of the date when such leave was granted.

Service of notice of appeal

64.6 (1) A copy of the notice of appeal must be served forthwith—

- (a) on all parties to the proceedings; and
 - (b) on any other person if the court so directs.
- (2) Where leave to appeal is required a copy of the order giving leave must be served with the copy notice of appeal.

(Part 6 deals with service)

Counter-notice

64.7 (1) Any party upon whom a notice of appeal is served may file a counter-notice.

- (2) The counter-notice must comply with rule 64.4.
- (3) The counter-notice must be filed within 14 days of service of the notice of appeal.
- (4) The party filing a counter-notice must forthwith serve a copy on—
 - (a) all other parties to the proceedings; and
 - (b) any other person if the court so directs.

Action by court on receipt of notice of appeal

64.8 Upon the notice of appeal being filed, the court office must forthwith—

- (a) if the appeal is a procedural appeal, appoint a date, time and place for the appeal and give notice to all parties;
- (b) if any other appeal is from the High Court, arrange for the court below to prepare a transcript or other record of the notes of evidence and of the judge’s reasons for giving the judgment and when these are prepared forthwith give notice to all parties that copies of the transcript or other record are available on payment of the prescribed fee; or
- (c) if the appeal is from a Magistrate’s Court, Petty Civil Court or a tribunal, apply to the clerk or other officer of the court or tribunal for—
 - (i) a certified copy of the record of the proceedings;
 - (ii) a certified copy of the notes of the evidence given; and
 - (iii) a statement of the judgment, of the reasons for the decision and of any finding on any question of law under appeal,
 and forthwith upon receipt give notice to all parties that copies of the record and other documents are available on payment of the prescribed fee.

Procedural appeal

- 64.9 (1) The court may not hear a procedural appeal from a decision made in the course of the trial or final hearing of the proceedings.
- (2) The general rule is that a procedural appeal is to be heard by two judges of the court.
 - (3) The hearing of the appeal is to take place in chambers.
 - (4) The hearing shall take place not more than 28 days after the notice of appeal was filed and, for the purposes of this paragraph, time shall not run during the vacations specified in rule 79.1(2).

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of 2011

LN 126
of 2011

- (5) The judges may exercise any power of the court whether or not any party other than the appellant has filed or served a counter-notice.
- (6) The decision and the reasons for it may be given orally but in any event, shall be given promptly.
- (7) The judges may, however, direct that the appeal be heard by the court.
- (8) Such an order may only be made where the judges consider that the decision may be of general importance and affect persons, other than the parties to the particular appeal.

Expedited appeals

- 64.10** (1) Any party to an appeal may apply for the appeal to be expedited.
- (2) On hearing the application the court may give such directions as are appropriate and in particular may direct that any part of rule 64.12 or 64.13 are not to apply or substitute different time limits for any time limits provided by those rules.

Delay in providing notes of evidence, etc.

- 64.11** (1) If the court office does not serve notice under rule 64.8 (*b*) or (*c*) within three months of the date the notice of appeal was filed, the appellant (and, where there is a counter-notice, the respondent serving such counter-notice) must apply to the court for directions as to the manner in which the evidence given in the court below and the judge's reasons for giving the judgment or making the order may be brought before the court.
- (2) On giving such directions the court must specify the dates on which—
 - (a) the appellant is to file the bundles (or core bundles) under rule 64.12; and
 - (b) the parties are to file and serve their skeleton arguments.

Record of appeal

- 64.12** (1) This rule and rule 64.13 apply to all appeals other than procedural appeals.
- (2) Within 28 days of receipt of the notice under rule 64.8 that the transcript or other record is available or within such time as may be directed on an application made under rule 64.11, the appellant must file with the court office four (or in the case of an appeal that may be heard by two judges of the Court of Appeal, three) bundles of documents comprising a copy of each of the following documents in the order set out below, bound, indexed and properly paginated:

- (a) the notice of appeal and any counter-notices that have been served on the appellant;
 - (b) the judgment or order appealed;
 - (c) the claim form;
 - (d) all statements of case;
 - (e) any written admissions or requests for information and replies;
 - (f) all expert reports contained in the bundle of documents before the court below which are relevant to any questions in issue on the appeal;
 - (g) such affidavits, exhibits or parts of exhibits which were in evidence in the court below and are relevant to any question at issue on the appeal which were put in evidence before the court below;
 - (h) such parts of the bundle of documents under rule 40.1(2) as are relevant to any question at issue on the appeal;
 - (i) any agreed statement of the applicable science or law filed in accordance with a direction under rule 39.6(2)(b)(vii) or (viii);
 - (j) such parts of the transcript, judge’s notes or other record of the evidence given in the court below as are relevant to any question at issue on the appeal;
 - (k) such parts of the transcript or other record of the judge’s reasons for giving the judgment or making the order of the court below as are relevant to any question at issue on the appeal or, in the absence of such a note or record, the judge’s note of his reasons or, if the note is not available, the attorney’s-at-law note of the judge’s reasons, approved if possible by the judge;
 - (l) where appropriate, the judge’s notes of any submissions made as are relevant to any question at issue on the appeal; and
 - (m) any legal aid certificates.
- (3) If the bundle under paragraph (2) consists of 100 pages or more the appellant must instead—
- (a) file one copy of the bundle under paragraph (2); and
 - (b) file three (or two as the case may be) core bundles, that is to say, a bundle comprising only such documents which the court will need to pre-read or to which it will be necessary to refer repeatedly at the appeal,
- such bundle must be properly bound, indexed and paginated.
- (4) The core bundle must include copies of the notice of appeal, any respondent’s notice and the judgment or order appealed against.

- (5) The appellant must serve one copy of the bundle under paragraph (2) and (where relevant) one copy of the bundle under paragraph (3) on all respondents to the appeal.

Enforcement of time limits

- 64.13** (1) Subject to any directions given under rule 64.10, if—
- (a) no notice is given under rule 64.8 and the appellant or any respondent who has served a counter-notice under rule 64.7 fails to make an application under rule 64.11;
 - (b) the appellant fails to file the bundles of documents (or core bundle where appropriate) as required by rule 64.12; or
 - (c) any party to the appeal fails to serve his skeleton argument, within the time limits specified by or under the relevant rule or any extension permitted by the court,

then any other party to the appeal may apply for the notice of appeal or counter-notice, as the case may be, to be struck out, or the court may with or without an application by any party to the appeal direct that notice be served on the appellant and on any respondent who has served a counter-notice to show cause why the notice of appeal or counter-notice should not be struck out.

Applications to the Court of Appeal

- 64.14** (1) Any application to the court must be made in accordance with Part 11 and must be heard in the first instance by a single judge.
- (2) The single judge may adjourn any application to be heard by the court.

Non-disclosure of payment into court, etc.

- 64.15** (1) Where—
- (a) any question on an appeal in a claim for debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof; and
 - (b) an offer of settlement was made under Part 36 or payment into court in support of such an offer was made under Part 37 in the proceedings in the court below before judgment, neither the fact of the offer or payment nor the amount thereof must be stated in any notice of appeal or counter-notice or be communicated to the court until all such questions have been decided.

This rule does not apply in the case of an appeal as to costs only or an appeal in a claim to which rule 36.5(4) applies.

- (2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by him every part which states that money was paid into court or an offer to settle was made in the proceedings in that court before judgment.

Stay of execution

64.16 Except so far as the court below or the court or a single judge may otherwise direct—

- (a) an appeal does not operate as a stay of execution or of proceedings under the decision of the court below; and
- (b) no intermediate act or proceeding is invalidated by an appeal.

General powers of the court

64.17 (1) In relation to an appeal the court has all the powers and duties of the High Court.

- (2) The court may receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) may be admitted except on special grounds.

Powers of single judge

64.18 (1) A single judge may make orders for—

- (a) the giving of security for any costs occasioned by an appeal;
- (b) a stay of execution on any judgment or order against which an appeal has been made pending the determination of the appeal; and
- (c) an injunction restraining any party from disposing of or parting with the possession of the subject matter of an appeal pending the determination of the appeal,

and may hear and determine any procedural application in the course of an appeal.

- (2) Any order made by a single judge may be varied or discharged by the court.

Security for costs of appeal

64.19 (1) No application for security may be made unless the applicant has made a prior written demand for such security.

- (2) On making an order for security for costs the court must order that the appeal stand dismissed with costs if the security is not provided in the amount, in the manner and by the time ordered.
- (3) Any costs to be paid under paragraph (2) must be assessed by the court.

Failure of party to attend appeal

- 64.20** (1) If neither party appears at the appeal the court may strike out the appeal and any cross-appeal.
- (2) If only one party appears the court may proceed in the absence of the other.

Application to set aside decision made in party's absence

- 64.21** (1) A party who was not present at an appeal at which a decision was made or the appeal struck out in his absence may apply to set aside that order.
- (2) The application must be made within 7 days after the date on which the order was served on the applicant.
 - (3) The application to set aside the order must be supported by evidence showing—
 - (a) a good reason for failing to attend the hearing; and
 - (b) that it is likely that had the applicant attended some other decision might have been made.

Adjournment of appeal

64.22 The court may adjourn an appeal on such terms as it thinks just.

Appeals from the Registrar of Trade Unions

- 64.23** (1) An appeal by a person aggrieved by a refusal of the Registrar of Trade Unions (in this rule referred to as the “registrar”) to register a combination as a trade union or by the withdrawal or cancellation of a certificate of registration must be made by application setting out the general grounds of appeal.
- (2) The appellant must file the application within 8 days of the decision or order complained of.
 - (3) The appellant must file his affidavit and serve a copy of the application and the affidavit in support on the registrar at least 14 days before the date of hearing as stated in the application.
 - (4) The court or a single judge may—

- (a) allow the application to be amended; and
 - (b) direct or permit a departure from the rules set out in this Part, where it appears just so to do.
- (5) Any time limits may be extended by the consent in writing of the appellant and the registrar.
 - (6) All orders made by the court must be served by the court office on the appellant and the registrar.

FORMER RULE

The **current** rule 64.9 was brought about by the deletion and substitution of sub-rules (4) and (6) by rule 13 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, sub-rules (4) and (6) read as follows:

- (4) The hearing must take place not more than 28 days after the notice of appeal was filed.
 - (6) The decision and the reasons for it must be given orally.
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CASES**2016****PRIVY COUNCIL/COURT OF APPEAL***Liloutie Deosaran and Others v George Ojar and Another*

Civ App No P092 of 2016 (2016.10.24)

Appeal allowed

CV 2011-02402 (2016.03.23)

**RULE 64.16 — JURISDICTION OF HIGH COURT — STAY OF PROCEEDINGS
PENDING APPEAL — TEST FOR GRANTING STAY**

*Doc's Engineering Works (1992) Limited and Others v First Caribbean International Bank
(Trinidad and Tobago) Limited*

Civ App No S034 of 2013 (2016.01.14)

Appeal dismissed

**TEST FOR PROCEDURAL APPEAL — INAPPLICABILITY OF PRE-CPR DECISIONS
(Also under Part 26)****2015****PRIVY COUNCIL/COURT OF APPEAL***The Presidential Insurance Company Limited v Shiroon Mohammed and Others*

[2015] UKPC 4 (2015.02.03)

Appeal allowed

Civ App No 101 of 2011 (2011.07.28)

Appeal allowed

**RULE 64.4(8) — PROCEDURAL APPEAL — DISCRETION — ENLARGEMENT OR
MODIFICATION OF GROUNDS**

(Also under Part 10)

2013

PRIVY COUNCIL/COURT OF APPEAL

Wayne Wills v Unilever Caribbean Limited

Civ App No S056 of 2009 (2013.12.18)

Appeal allowed

RULE 64.17(2) — FURTHER EVIDENCE OF MATTERS OCCURRING AFTER TRIAL — DISCRETION

2011

PRIVY COUNCIL/COURT OF APPEAL

Alan Dick and Company Limited v Fast Freight Forwarders Limited and Another

Civ App No P214 of 2010 (2011.05.23)

Appeal dismissed

RULE 64.1(2)(a) — MEANING OF ‘DURING THE COURSE OF THE TRIAL’
(Also under Parts 11 and 19)

2007

PRIVY COUNCIL/COURT OF APPEAL

The Prime Minister Patrick Manning v The Chief Justice Satnarine Sharma

Civ App No 21 of 2007 (2007.04.20)

Appeal allowed

RULE 64.9 — PROCEDURAL APPEAL — TIME-FRAME FOR HEARING — IMPACT OF CPR — AIM OF CPR



PART 65 CHANGE OF ATTORNEYS-AT-LAW

Contents of this Part

Scope of this Part	Rule 65.1
Change of attorney-at-law	Rule 65.2
Change of agent	Rule 65.3
Notice of appointment of attorney-at-law	Rule 65.4
Party acting in person	Rule 65.5
Application by another party to remove attorney-at-law from record	Rule 65.6
Application by attorney-at-law to be removed from record	Rule 65.7
Time when notice or order takes effect	Rule 65.8

Scope of this Part

65.1 This Part deals with the procedure where—

- (a) there is a change of attorney-at-law;
- (b) there is a change of agent;
- (c) an attorney-at-law acts in the place of a party in person; or
- (d) a party who has previously acted by an attorney-at-law acts in person.

Change of attorney-at-law

65.2 When a party changes his attorney-at-law the new attorney at-law must—

- (a) file notice of acting which states—
 - (i) his business name, address, telephone number, e-mail address and facsimile transmission number, if any; and
 - (ii) if his business address is not within 3 miles of the court office, an address for service that is within that distance of the court office; and
- (b) serve a copy of the notice on every other party and the former attorney-at-law; and
- (c) file a certificate of service in accordance with paragraph (b).

Change of agent

- 65.3 Where an attorney-at-law changes his agent, the attorney-at-law must—
- (a) file notice of change of agent at the court office which states—
 - (i) the business name, address, telephone number, e-mail address and facsimile transmission number, if any, of the new agent; and
 - (ii) if his business address is not within 3 miles of the court office, an address for service that is within that distance of the court office;
 - (b) serve a copy of the notice on every other party and the former agent; and
 - (c) file a certificate of service in accordance with paragraph (b).

Notice of appointment of attorney-at-law

- 65.4 Where a person who has previously acted in person instructs an attorney-at-law, that attorney-at-law must—
- (a) file notice of acting at the court office which states—
 - (i) his business name, address, telephone number, e-mail address and facsimile transmission number, if any; and,
 - (ii) if his business address is not within 3 miles of the court office, an address for service that is within that distance of the court office;
 - (b) serve a copy of the notice on every other party; and
 - (c) file a certificate of service in accordance with paragraph (b).

Party acting in person

- 65.5 Where a party who has previously been represented by an attorney-at-law decides to act in person he must—
- (a) file notice of acting in person at the court office states —
 - (i) his address, telephone number and e-mail address and facsimile transmission number, if any; and
 - (ii) if his address is not within 3 miles of the court office, an address for service within that distance of the court office;
 - (b) serve a copy of the notice on every other party and the former attorney-at-law; and
 - (c) file a certificate of service in accordance with paragraph (b).

Application by another party to remove attorney-at-law from record

- 65.6 (1) Where—
- (a) an attorney-at-law on record for a party has—
 - (i) died;
 - (ii) become bankrupt;
 - (iii) failed to take out a practising certificate; or
 - (iv) been removed from the roll; and
 - (b) notice of the appointment of a new attorney-at-law under rule 65.2 or of the party acting in person under rule 65.5 has not been received, any other party may apply to the court for an order declaring that the attorney-at-law in question has ceased to act.
- (2) An application under this Part must be supported by evidence and must be served on the client of that attorney-at-law.
 - (3) Any order made must be served by the applicant on the attorney-at-law or former attorney-at-law (if practicable) and personally on the client of that attorney-at-law.
 - (4) The applicant must file a certificate of service of the order.

Application by attorney-at-law to be removed from the record

- 65.7 (1) An attorney-at-law who wishes to be removed from the record as acting for a party may apply to the court for an order that he be removed from the record.
- (2) The application must be on notice to the client or former client and to all other parties.
 - (3) The application must be supported by evidence but such evidence must not be served on any other party.
 - (4) Any order made must be served by the applicant on the other parties' attorneys-at-law and personally on his lay client.
 - (5) The applicant must file a certificate of service of the order.

Time when notice or order takes effect

- 65.8 No notice under rule 65.2, 65.3, 65.4 or 65.5 or order under rule 65.6 or 65.7 takes effect until service.

PART 66 COSTS—GENERAL

Contents of this Part

Scope of this Part	Rule 66.1
Definitions and applications	Rule 66.2
Orders about costs	Rule 66.3
Costs where there is an appeal	Rule 66.4
Entitlement to costs—general principles	Rule 66.5
Successful party generally entitled to costs	Rule 66.6
Two or more parties having same interest	Rule 66.7
Wasted costs orders	Rule 66.8
Wasted costs orders—procedure	Rule 66.9
Duty to send copy orders to client when costs orders made against client or attorney-at-law	Rule 66.10

Scope of this Part

66.1 This Part contains general rules about costs and entitlement to costs.

Definitions and applications

- 66.2** (1) In this Part and in Part 67, unless the context otherwise requires—
- “costs” include attorney’s charges and disbursements, fixed costs, prescribed costs, budgeted costs or assessed costs;
 - “fixed costs” has the meaning placed on it by rule 67.4;
 - “prescribed costs” has the meaning placed on it by rule 67.5;
 - “budgeted costs” has the meaning placed on it by rule 67.8; and
 - “assessed costs” and “assessment” have the meanings placed on them by rules 67.11 and 67.12.
- (2) The rules in this Part and in Part 67 (so far as applicable) apply also where the costs of—
- (a) arbitration proceedings;
 - (b) proceedings before a tribunal or other statutory body; or
 - (c) an attorney-at-law to his client,
- are to be taxed or assessed by the court.

- (3) 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 such costs in accordance with rule 67.12.

Orders about costs

- 66.3** The court's powers to make orders about costs include power to make orders requiring a person to pay the costs of another person arising out of or related to all or any part of any proceedings.

Costs where there is an appeal

- 66.4** The court hearing an appeal may make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

Entitlement to costs—general principles

- 66.5** A party to proceedings may not recover the costs of those proceedings from any other party or person except by virtue of—
- (a) an order of the court;
 - (b) a provision of these Rules; or
 - (c) an agreement between the parties.

Successful party generally entitled to costs

- 66.6** (1) If the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.
- (2) The court may, however, order a successful party to pay all or part of the costs of an unsuccessful party.
 - (3) This rule gives the court power in particular—
 - (a) to order a person to pay only a specified proportion of another person's costs;
 - (b) to order a person to pay costs from or up to a certain date only; or
 - (c) to order a person to pay costs relating only to a certain distinct part of the proceedings,but the court may not make an order under paragraph 3(b) or 3(c) unless it is satisfied that an order under paragraph 3(a) would not be just.
 - (4) In deciding who should be liable to pay costs the court must have regard to all the circumstances.
 - (5) In particular it must have regard to—

- (a) the conduct of the parties;
 - (b) whether a party has succeeded on particular issues, even if he has not been successful in the whole of the proceedings;
 - (c) whether it was reasonable for a party—
 - (i) to pursue a particular allegation; and/or
 - (ii) to raise a particular issue;
 - (d) the manner in which a party has pursued—
 - (i) his case;
 - (ii) a particular allegation; or
 - (iii) a particular issue;
 - (e) whether a claimant who has won his claim caused the proceedings to be defended by claiming an unreasonable sum; and
 - (f) whether the claimant gave reasonable notice of his intention to issue a claim.
- (6) The conduct of the parties includes—
- (a) conduct before, as well as during, the proceedings, and in particular the extent to which the parties complied with any relevant pre-action protocol; and
 - (b) whether either or both parties refuse unreasonably to try an alternative dispute resolution procedure.

(Rule 67.11 sets out the way in which the court must deal with the costs of procedural hearings other than a case management conference or pre-trial review)

Two or more parties having the same interest

66.7 Where two or more parties having the same interest in relation to proceedings are separately represented the court may disallow more than one set of costs.

Wasted costs orders

- 66.8** (1) In any proceedings the court may by order—
- (a) disallow as against the attorney’s-at-law client; or
 - (b) direct the attorney-at-law to pay,
the whole or part of any wasted costs.

- (2) “Wasted costs” means any costs incurred by a party—
 - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any attorney-at-law or any employee of such attorney-at-law; or
 - (b) which, in the light of any act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.

Wasted costs orders—procedure

- 66.9** (1) This rule applies where the court is considering whether to make an order disallowing wasted costs or for ordering that an attorney-at-law pay wasted costs to another party.
- (2) The court must give an attorney-at-law notice of the fact that it is minded to make a wasted costs order.
 - (3) The notice to the attorney-at-law must state the grounds on which the court is minded to make the order and state a date, time and place at which the attorney-at-law may attend to show cause why the order should not be made.
 - (4) The court must give the attorney-at-law at least 7 days notice of the hearing.
 - (5) The court must also give notice directly to the attorney’s-at-law client —
 - (a) of any proceedings under this rule; and
 - (b) of any order made under it against his attorney-at-law.
 - (6) The notice to the attorney-at-law should be in writing unless made at the trial or hearing of the proceedings.

Duty to send copy orders to client when costs orders made against client or attorney-at-law

- 66.10** The court must give notice to a party of any costs order made against him or his attorney-at-law other than at the trial or hearing of any proceedings.

CASES

2016

PRIVY COUNCIL/COURT OF APPEAL

The Commissioner of Police v Leason Alcala and Others

Civ App Nos P099, P100 and P101 of 2016

Appeals pending

CV 2016-01018; CV 2016-01020; CV 2016-01022 (2016.03.29)

RULE 66.6(5) — HABEAS CORPUS — APPLICANTS RELEASED BEFORE HEARING — DISCRETION — ENTITLEMENT TO COSTS — REASONABLENESS OF APPLICATION

HIGH COURT

Clair Carimbocas and Others v Carrie Davidson

CV 2015-04011 (2016.04.18)

RULE 66.6 — ENTITLEMENT TO COSTS — GENERAL RULE — DISCRETION — DETERMINATION OF SUCCESSFUL PARTY — ISSUE-BASED APPROACH

(Also under Part 26)

2014

PRIVY COUNCIL/COURT OF APPEAL

Gerard Torres v Zeena Escovalez and Others

Civ App No P112 of 2014

Appeal pending

CV 2012-00801 (2014.03.21)

RULE 66.6 — ENTITLEMENT TO COSTS — GENERAL RULE — DISCRETION — CONSIDERATION OF FACTORS — CONDUCT — SUCCESS — REASONABLENESS — MANNER — REQUIREMENTS OF JUSTICE

(Also under Part 67)

Pearl Job v The Tobago Regional Health Authority

Civ App No T024 of 2014

Appeal pending

CV 2013-00972 (2014.02.25)

WASTED COSTS ORDER — GROUNDS FOR MAKING ORDER — CONDUCT OF MATTER — UNNECESSARY ALLOCATION OF RESOURCES — UNNECESSARY COSTS

Favianna Gajadhar v Public Service Commission

Civ App No P170 of 2012 (2014.01.31)

Appeal allowed

RULE 66.6 — COSTS — DECISION WITHOUT HEARING PARTIES — CORRECT APPROACH — OPPORTUNITY TO MAKE REPRESENTATIONS

(Also under Part 67)

HIGH COURT

Central Bank of Trinidad and Tobago and Another v Lawrence Duprey and Others

CV 2011-02140 (2014.07.30)

RULE 66.6 — ENTITLEMENT TO COSTS — CONSIDERATION OF ALL FACTORS — PROPORTIONAL PAYMENT

Balondemu Julius v The Commissioner of Police

CV 2014-02040 (No Date of Delivery)

RULE 66.5 — RULE 66.6 — WITHDRAWAL OF HABEAS CORPUS APPLICATION — APPLICANT RELEASED BEFORE HEARING — ENTITLEMENT TO COSTS — DEPARTURE FROM GENERAL RULE — CONDUCT OF PARTY — NON-COMPLIANCE WITH ORDER — WASTE OF COURT TIME

2012

HIGH COURT

Padma Dass v Ramnath Bally and Another

CV 2012-03309 (2012.II.16)

ENTITLEMENT TO COSTS — DEPARTURE FROM GENERAL RULE — DISCRETION — CONSIDERATION OF FACTORS — CONDUCT — REASONABLENESS — MANNER — TIME SPENT AT HEARING

Edmond Ali and Another v Aranguez Estates Limited and Another

CV 2011-01891 (2012.I0.29)

WASTED COURTS ORDER — GROUNDS FOR MAKING ORDER — CONDUCT OF ATTORNEY — BREACH OF ORDER — UNTRUE STATEMENTS — IMPROPER FILING OF DOCUMENTS — ERRONEOUS AND MISCONCEIVED RESISTANCE TO APPLICATION

(Also under Part 26)

2011

PRIVY COUNCIL/COURT OF APPEAL

The Chief Fire Officer and Another v Sumair Mohan

Civ App No P045 of 2008 (2011.II.16)

Appeal allowed

RULE 66.6 — APPEAL AGAINST COSTS ORDER — WITHDRAWAL OF CLAIM — GENERAL RULE — DISCRETION TO DEPART — NEED FOR REASONS — CONDUCT OF PARTIES

HIGH COURT

Ruby Thompson-Boddie and Another v The Cabinet of Trinidad and Tobago and Another

CV 2011-02027 (2011.06.08)

RULE 66.3 — RULE 66.6 — WITHDRAWAL OF APPLICATION — ENTITLEMENT TO COSTS — GENERAL RULE — DISCRETION — CONSIDERATION OF FACTORS — CONDUCT — SUCCESS — REASONABLENESS — MANNER — NOTICE OF INTENTION TO ISSUE CLAIM

David Lewis v The Police Service Commission

CV 2010-02803 (2011.06.06)

RULE 66.6 — JUDICIAL REVIEW — ACADEMIC ISSUES — ENTITLEMENT TO COSTS — DEPARTURE FROM GENERAL RULE

2008

PRIVY COUNCIL/COURT OF APPEAL

Sanatan Dharma Maha Sabha v The Attorney General of Trinidad and Tobago

Civ App No P106 of 2008

Appeal pending

CV 2006-01972 (2008.10.02)

ENTITLEMENT TO COSTS — GENERAL RULE — DISCRETION — DISCONTINUANCE — CONDUCT OF PARTIES — COMPLIANCE WITH PRE-ACTION PROTOCOLS

HIGH COURT

Stephen Jack and Others v The Commissioner of Prisons

CV 2007-01233 (2008.11.07)

WASTED COSTS ORDER — APPLICATION BY PARTY — TEST — DISCRETION — CONDUCT OF PARTIES — CIRCUMSTANCES OF CASE — THRESHOLD

Dennis Graham v Police Service Commission and Another

CV 2007-00828 (2008.06.27)

PART 66 — ENTITLEMENT TO COSTS — GENERAL RULE — DISCRETION — CONSIDERATION OF FACTORS — CONDUCT — COMPLIANCE WITH PRE-ACTION PROTOCOLS — SUCCESS — JUSTICE OF CASE

Visham Boodoosingh v Richard Ramnarace and Another

CV 2005-00600 (2008.02.07)

PART 66 — WASTED COSTS ORDER — TEST — REASONABLENESS OF FILING ACTION — UNNECESSARY COSTS — REASONABLENESS FOR ATTORNEY TO PAY

2007

PRIVY COUNCIL/COURT OF APPEAL

Basdeo Panday v Jacqueline Sampson

Civ App No P120 of 2007 (2007.10.19)

Appeal dismissed

**NO ORDER AS TO COSTS — NOVEL QUESTIONS — PUBLIC INTEREST —
REASONABLENESS OF PURSUING CLAIM**

(Also under Part 1)

HIGH COURT

Hubert Sharpe v The Police Service Commission

CV 2007-01552 (2007.06.05)

**RULE 66.6 — ENTITLEMENT TO COSTS — GENERAL RULE — DISCRETION —
CONSIDERATION OF FACTORS — CONDUCT — COMPLIANCE — PRE-ACTION
PROTOCOLS — SUCCESS — REASONABLENESS — REASONABLE NOTICE**

(Also under Part 56)

PART 67 COSTS—QUANTIFICATION

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Assessed costs – procedural applications	Rule 67.11
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Scope of this Part

67.1 This Part deals with the way in which any costs awarded by the court are quantified.

Basis of quantification

- 67.2 (1) Where the court has any discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount that the court deems to be reasonable were the work to be carried out by an attorney-at-law of reasonable competence and which appears to the court to be fair both to the person paying and the person receiving such costs.
- (2) Where the court has any discretion as to the amount of costs to be paid to an attorney-at-law by his client, the sum allowed is the amount that the court deems to be reasonable and which appears to be fair both to the attorney-at-law and the client concerned.
- (3) In deciding what would be reasonable the court must take into account all the circumstances, including—
- (a) any orders that have already been made;
 - (b) the conduct of the parties before as well as during the proceedings;
 - (c) the importance of the matter to the parties;
 - (d) the time reasonably spent on the case;
 - (e) the degree of responsibility accepted by the attorney-at-law;
 - (f) the care, speed and economy with which the case was prepared;
 - (g) the novelty, weight and complexity of the case; and
 - (h) in the case of costs charged by an attorney-at-law to his client—
 - (i) any agreement that may have been made as to the basis of charging;
 - (ii) any agreement about what grade of attorney-at-law should carry out the work; and
 - (iii) 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 having regard to the nature of the case.

Ways in which costs are to be quantified

- 67.3 Costs of proceedings under these Rules are to be quantified as follows:
- (a) where rule 67.4 applies, in accordance with the provisions of that rule; and
 - (b) in all other cases if, having regard to rule 66.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways:
 - (i) costs determined in accordance with rule 67.5 (“prescribed costs”);

- (ii) costs in accordance with a budget approved by the court under rule 67.8 (“budgeted costs”); or
- (iii) where neither prescribed nor budgeted costs are applicable, by assessment in accordance with rules 67.11 and 67.12.

Fixed costs

- 67.4 (1) A party is entitled to the costs set out in Part I of Appendix A.
- (2) The court may, however, direct that some other amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.
 - (3) If so, the court must assess such costs.
- (Rules 67.11 and 67.12 deal with the assessment of costs)

Prescribed costs

- 67.5 (1) The general rule is that where rule 67.4 does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2)–(4) of this rule.
- (2) In determining such costs the “value” of the claim shall be decided—
 - (a) in the case of a claimant, by the amount agreed or ordered to be paid;
 - (b) in the case of a defendant—
 - (i) by the amount claimed by the claimant in his claim form; or
 - (ii) if the claim is for damages and the claim form does not specify an amount that is claimed, by such sum as may be agreed between the party entitled to, and the party liable for, such costs or if not agreed, a sum stipulated by the court as the value of the claim; or
 - (iii) if the claim is not for a monetary sum, as if it were a claim for \$50,000.
 - (3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentage specified in column 2 of Appendix B against the appropriate value.
 - (4) The court may, however—
 - (a) award a percentage only of such sum having taken into account the matters set out in rule 66.6(4),(5) and (6); or
 - (b) order a party to pay costs—
 - (i) from or to a certain date; or

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- (ii) relating only to a certain distinct part of the proceedings, in which case it must specify the percentage of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.

Applications to determine value of a claim for the purpose of prescribed costs

- 67.6** (1) A party may apply to the court at a case management conference—
- (a) to determine the value to be placed on a case which has no monetary value; or
 - (b) where the likely value is known, to direct that the prescribed costs be calculated on the basis of some higher or lower value.
- (2) The court may make an order under paragraph (1)(b) if it is satisfied that the costs as calculated in accordance with rule 67.5 are likely to be excessive or substantially inadequate taking into account the nature and circumstances of the particular case.
- (3) Where an application is made for costs to be prescribed at a higher level rules 67.8(4)(a) and 67.9 apply.

What is included in prescribed costs

- 67.7** Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in instructing any expert, in considering and disclosing any report made by him or arranging his attendance at trial and for attendance and advocacy at the trial including attendance at any case management conference or pre-trial review but exclude—
- (a) the making or opposing of any application except at a case management conference or pre-trial review;
 - (b) expert's fees for preparing a report and attending any conference, hearing or trial; and
 - (c) costs incurred in enforcing any order (which are generally fixed in accordance with rule 67.4 but may, in certain cases, be assessed in accordance with rule 67.12).

Budgeted costs

- 67.8** (1) A party may, however, apply to the court to set a costs budget for the proceedings.
- (2) An application for such a costs budget must be made at or before the first case management conference.

- (3) The application may be made by either or both parties but an order setting a costs budget may not be made by consent.
- (4) An application for a costs budget must be accompanied by—
 - (a) a written consent from the client in accordance with rule 67.9;
 - (b) a statement of the amount that the party seeking the order wishes to be set as the costs budget; and
 - (c) a statement showing how such budget has been calculated and setting out in particular—
 - (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) the fees for advocacy, advising or settling any document that are anticipated to be paid to any attorney-at-law other than the attorney-at-law on record;
 - (iv) the disbursements other than expert witness fees that are included in the budget;
 - (v) the anticipated amount of any expert fees and whether or not such fees are included in the budget;
 - (vi) a statement of the number of hours of preparation time (including attendances upon the party, any witnesses and on any other parties to the proceedings) that the attorney-at-law for the party making the application has already spent and anticipates will be required to bring the proceedings to trial; and
 - (vii) what procedural steps or applications are or are not included in the budget.
- (5) A party may apply to vary the terms of an order made under this rule 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 became known after the order was made.

Client’s consent to application for a costs budget

- 67.9** (1) The court may not make an order for budgeted costs unless—
- (a) the lay party seeking the order is present, unless for some exceptional reasons this is impracticable, when the application is made;
 - (b) the court satisfies itself that each party fully understands the consequences of the order that is being sought as to—

- (i) the lay party's liability for costs to his own attorney-at-law whether he obtains an order for costs against any other party or not;
 - (ii) his liability to pay costs in the budgeted sum to the other party if that party obtains an order for costs against him; and
 - (iii) what his liability might be under paragraphs (i) and (ii) if rule 67.5 applied;
- (c) there has been filed a document recording the express consent of the lay party to the application and to any order made as a consequence of the application; and
- (d) such consent is in a separate document which—
- (i) is signed by the lay party;
 - (ii) deals only with the question of budgeted costs;
 - (iii) states the attorney's-at-law estimate of what the prescribed costs appropriate to the proceedings would be;
 - (iv) gives an estimate of the total costs of the proceedings as between attorney-at-law and client; and
 - (v) sets out the basis of that estimate including the amount of any hourly charge.
- (2) The written consent of the client must not be disclosed to the other party.
- (3) This rule also applies to any other lay party who consents to or does not oppose an order for a costs budget.

What is included in a costs budget

67.10 Unless the costs budget approved by the court specifies otherwise rule 67.7 applies to budgeted costs as it does to fixed costs.

Assessed costs—procedural applications

- 67.11** (1) On determining any application except at a case management conference, pre-trial review or the trial, the court must—
- (a) decide which party, if any, should pay the costs of that application;
 - (b) assess the amount of such costs; and
 - (c) direct when such costs are to be paid.
- (2) In deciding what party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.

- (3) The court must, however, take account of all the circumstances including the factors set out in rule 66.6(5) but where the application is—
- (a) one that could reasonably have been made at a case management conference or pre-trial review;
 - (b) an application to extend the time specified for doing any act under these Rules or an order or direction of the court;
 - (c) an application to amend a statement of case; or
 - (d) an application for relief under rule 26.7,
- the court must order the applicant to pay the costs of the respondent unless there are special circumstances.
- (4) In assessing the amount of costs to be paid by any party the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.

Assessment of costs—general

- 67.12 (1) This rule applies where costs fall to be assessed in relation to any matter or proceedings, or part of a matter or proceedings other than a procedural application.
- (2) Where the assessment relates to part of court proceedings it may be carried out by the judge or master hearing the proceedings, or the judge or master may give directions as to how the assessment is to be carried out.
 - (3) Where the assessment does not fall to be carried out at the hearing of any proceedings then the person entitled to the costs must apply to a master for directions as to how the assessment is to be carried out.
 - (4) The application must be accompanied by a bill or other document showing the sum in which the court is being asked to assess the costs and how such sum was calculated.
 - (5) On hearing any such application the master must either—
 - (a) assess the costs if there is sufficient material available for him to do so; or
 - (b) fix a date, time and place for the assessment to take place.
 - (6) The master may direct that the party against whom the bill is assessed pay the costs of the party whose bill is being assessed and, if so, must assess such costs and add them to the costs ordered to be paid.

Value added tax

67.13 A party who is not himself registered for value added tax may add the appropriate amount of value added tax to the amount of any prescribed, assessed or budgeted costs awarded to him.

Costs of proceedings in the Court of Appeal

67.14 Unless the Court of Appeal on an application made in accordance with rules 67.8 and 67.9 makes an order for budgeted costs, the costs of any appeal must be determined in accordance with rules 67.5, 67.6 and 67.7 and Appendix B but the costs must be determined at two thirds of the amount that would otherwise be allowed under Appendix B.

Court fees and marshal's fees and charges

- 67.15** (1) The fees specified in the second column of Appendix D to this Part shall be taken in the Supreme Court in respect of the items set out in the first column of the said Appendix.
- (2) The fees and charges specified in Appendix E to this Part shall be paid to the marshal.
- (3) Where it appears to the Chief Justice that the payment of any fee specified in Appendix D to this Part, would, owing to the exceptional circumstances of the particular case, involve undue hardship, the Chief Justice may reduce or remit the fee in that case.
- (4) Where by any convention entered into by the Government of Trinidad and Tobago with any foreign power it is provided that no fee shall be required to be paid in respect of any proceedings, the fees specified in Appendices D and E to this Part shall not be taken in respect of those proceedings.

Costs-only proceedings

- 67.16** (1) This rule sets out a procedure which may be followed where—
- (a) the parties have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
- (b) they have failed to agree the amount of those costs; and
- (c) no proceedings have been started.
- (2) Either party to the agreement may start proceedings under this rule by issuing a fixed date claim.
- (3) The claim form must contain or be accompanied by the agreement or confirmation.

-
- (4) In proceedings to which this rule applies the court—
- (a) may treat the agreement to pay costs as an agreement to pay costs to be assessed in accordance with rules 67.11 and 67.12 and order the costs to be determined by detailed assessment and proceed to assess the costs; or
 - (b) may dismiss the claim.

APPENDIX A

PART 1

This part of the appendix sets out the fixed costs applicable to a claim for a specified sum of money:

- (a) Table 1 — which a defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgment being entered against him under Part 12. These sums are to be entered on the claim form. The table also deals with claims for possession of land or delivery of goods and an application for an attachment of debts order.
- (b) Table 2 — which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in Table 1.

SCALE OF FIXED COSTS

TABLE 1

- 1. This Table shows the fixed costs to be entered on a claim form or provisional attachment of debts order in respect of attorney’s-at-law charges—
 - (a) in an action for payment of a specified sum of money;
 - (b) in attachment of debt proceedings; or
 - (c) in an action for the recovery of land.
- 2. In addition to the fixed costs hereunder the appropriate court fee is to be allowed.

	<i>Claim</i>	<i>Fixed Costs</i>
(1)	Claim not exceeding \$15,000	\$ 750.00
(2)	Claim exceeding \$ 15,000 but not exceeding \$25,000 or a claim for recovery of land or goods	\$ 1,000.00
(3)	Claim exceeding \$25,000 but not exceeding \$100,000 ...	\$ 1,200.00
(4)	Claim exceeding \$100,000 but not exceeding \$500,000 ...	\$ 1,400.00
(5)	Claim exceeding \$500,000 but not exceeding \$1m	\$ 1,600.00
(6)	Claim exceeding \$1m but not exceeding \$5m	\$ 2,000.00
(7)	Claim exceeding \$5m	\$ 2,500.00

TABLE 2

This Table shows additional costs which may be added to the entry of a default judgment under Part 12 or a judgment on admissions under Part 14 for a specified sum of money.

(1) Basic costs	\$ 650.00
(2) Where there is more than one defendant, in respect of each additional defendant served against whom judgment is entered ...	\$ 100.00
(3) Where an order is made under rule 5.12 (specified method of service), for each defendant served	\$ 800.00
(4) Where an order is made under Part 7, for service out of the jurisdiction (to cover the obtaining of an order under Part 7 and service)	\$ 800.00
(5) Where judgment is entered on an admission and the claimant accepts the defendant's proposal as to method of payment under rule 14.9	\$ 650.00
(6) Where judgment is entered on admission and the time and rate of payment are not agreed under rule 14.10	\$ 800.00

PART 2**MISCELLANEOUS ENFORCEMENT PROCEEDINGS**

The following table shows the amount to be allowed in respect of attorney's-at-law charges in the circumstances set out. The appropriate court fee is to be added.

(1) For filing a request for the issue of a writ of execution	\$ 350.00
(2) For each attendance at a hearing of—	
(a) an oral examination;	
(b) an application to suspend a writ of execution; or	
(c) an application for time to pay where the debt is admitted	\$ 750.00
(3) For the costs of the judgment creditor where allowed in proceedings for an attachment of debts order or an application for payment out of money in court under rule 51.15—	
(a) where the amount recovered is less than \$1,000 one-half of the amount recovered	
(b) where the amount recovered is not less than \$1,000 nor more than 15,000	\$ 500.00
(c) where the amount recovered exceeds \$15,000... ..	\$ 800.00
(4) For the costs of the judgment creditor where allowed in an application for a charging order	\$ 800.00

APPENDIX B
SCALE OF PRESCRIBED COSTS

<i>Value of Claim</i>	<i>Percentage</i>
not exceeding \$30,000	30%
exceeding \$30,000 but not exceeding \$50,000	25%
exceeding \$50,000 but not exceeding \$100,000	20%
exceeding \$100,000 but not exceeding \$250,000	15%
exceeding \$250,000 but not exceeding \$500,000	10%
exceeding \$500,000 but not exceeding \$1,000,000	7.5%
exceeding \$1,000,000 but not exceeding \$2,000,000	5%
exceeding \$2,000,000 but not exceeding \$5,000,000	2.5%
exceeding \$5,000,000 but not exceeding \$10,000,000	1%
exceeding \$10,000,0005%

Note: The costs for each stage of the scale are cumulative.

Example: Claim for \$670,000 to be calculated as follows:

First	\$ 30,000	x	30%		\$ 9,000
Next	\$ 20,000	x	25%		\$ 5,000
Next	\$ 50,000	x	20%		\$ 10,000
Next	\$ 150,000	x	15%		\$ 22,500
Next	\$ 250,000	x	10%		\$ 25,000
Next	<u>\$ 170,000</u>	x	7.5%		<u>\$ 12,750</u>
Total Claim	<u>\$ 670,000</u>			Total Costs	<u>\$ 84,250</u>

APPENDIX C
PRESCRIBED COSTS: PERCENTAGE TO BE ALLOWED AT
VARIOUS STAGES OF CLAIM

Table showing the percentage of the prescribed costs to be allowed under Appendix B where an action concludes prior to trial.

<i>Stage</i>	<i>Percentage</i>
Up to and including service of defence	45%
After defence and up to and including the case management conference	55%
From case management conference and up to and including listing questionnaire	70%
From listing questionnaire and up to and including pre-trial review (if any)	75%
To trial	100%
Up to default judgment and including assessment of damages	60%

APPENDIX D
COURT FEES PAYABLE IN THE HIGH COURT AND COURT
OF APPEAL

COMMENCEMENT OF A CAUSE OR MATTER

<i>Column 1</i>	<i>Column 2</i>
	\$
On sealing a claim	50.00
On sealing a fixed date claim	50.00
On sealing an amended claim	20.00
On filing application for leave to apply for judicial review	20.00
On filing application for bail under Part 59	20.00
On sealing a petition for admission to practise	50.00
On sealing a petition for winding up a company	50.00
On amending an originating petition	50.00
On sealing a bankruptcy notice	5.00
On sealing a bankruptcy petition	50.00

APPEARANCE

On entering an appearance, for each person	10.00
Request for time to pay	10.00
Statement of financial position	5.00

STATEMENTS OF CASE

On sealing a statement of case	20.00
On sealing an amended statement of case	10.00
On sealing defence and counterclaim	20.00
On sealing an amended defence and counterclaim	10.00
On sealing a reply	20.00
On sealing an amended reply	10.00

INTERIM APPLICATIONS

<i>Column 1</i>	<i>Column 2</i>
	\$
Application	20.00
Ancillary claim (third party notice)	20.00

FILING

On filing an affidavit	10.00
On filing a witness statement (per witness)	20.00
On filing a supplemental witness statement	10.00
On filing a listing questionnaire	10.00
On filing a list of documents	20.00
On filing a witness summary	20.00
On sealing a witness summons (per witness)	10.00
On filing a request for service through foreign governments, judicial authorities and consular authorities	10.00
On filing a request for service to be arranged by Minister responsible for foreign affairs	10.00
On filing a statement of names and residential addresses of all partners in a firm	10.00
On filing a request for judgment when party is in default of unless order	10.00
On filing a request for information	10.00
On filing a request for payment out of monies paid into court under Part 37	10.00
On filing a statement of agreed and disagreed issues	10.00
On filing a statement of “science” relevant to the matter	10.00
On filing any other document not specifically provided for	10.00

NOTICES

<i>Column 1</i>	<i>Column 2</i>
	\$
Notice of omissions or challenges to items on account	10.00
Notice of payment into court	10.00
Notice of discontinuance (copy)	10.00
Notice of change of agent	10.00
Notice of appointment	10.00
Notice of acting (change of attorney-at-law)	10.00
Notice of acting in person	10.00
Notice of objections to application made to vary time or method of payment	10.00
On filing any other notice not provided for	10.00

JUDGMENTS AND ORDERS

Request for default judgment (appearance or defence)	10.00
Request for judgment on admissions	10.00
Judgment in default (appearance or defence)	30.00
Judgment on admissions	30.00
Draft order

ENFORCEMENT PROCEEDINGS

On sealing writ of execution against goods (<i>feri facias</i>)	30.00
On sealing writ of possession	30.00
On sealing writ of delivery or value	30.00
On sealing writ of specific delivery	30.00
On sealing an application for sale of land by order of the court	20.00
Application for the appointment of a receiver	20.00
Financial position notice pursuant to Part 45.6	10.00

ENFORCEMENT PROCEEDINGS—Continued

<i>Column 1</i>	<i>Column 2</i>
	\$
Notice to marshal for return of writ of execution	10.00
Objections to provisional charging order	20.00
Notice of withdrawal of stop notice	10.00
Application for attachment of debt	20.00
Security by way of guarantee by receiver	10.00
Undertaking given under Part 53.7	10.00
Notice by third party claiming goods seized in execution	10.00
Notice by judgment creditor admitting or denying claim	10.00

SEARCHES

On a search of any file or document (by parties and their attorneys-at-law only)	10.00
On every search in the cause book or index or computer records	10.00

CERTIFICATES

On every certificate of funds in court	5.00
On every certificate of result of an account or inquiry	30.00
On certifying any document as an office copy	10.00
Certificate as to result of sale of land	10.00
Certificate of service	10.00
Certificate of an account of a public authority (rule 70.15)	10.00
For a certificate for which no fee has been specifically provided	10.00

COPIES

Column 1

Column 2
\$

For a photographic copy of all or any part of any document, whether or not issued as an office copy (by parties and their attorneys-at-law only)—for each photographic sheet	1.25
For a typewritten copy of any document per folio of 100 words, or part thereof	2.00
And for each folio of 100 words or part thereof of any additional carbon copy	1.00
For an office copy of a plan, map, section, drawing, photograph, or diagram the actual cost of making and examining the copy and, in addition, for marking and sealing the copy as an office copy	10.00

COURT TRANSCRIPTS AND ELECTRONIC RECORDINGS

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Day's proceedings	30.00
	per CD Rom
Additional days on same CD	6.00
	per day

WRITS OF HABEAS CORPUS

<i>Column 1</i>	<i>Column 2</i>
	\$
Writ of <i>habeas corpus ad subjiciendum</i>	10.00
Writ of <i>habeas corpus ad testificandum</i>	10.00
Writ of <i>habeas corpus ad respondendum</i>	10.00
Application for writ of <i>habeas corpus</i>	20.00

**FEES PAYABLE IN THE COURT OF APPEAL
ON APPEAL FROM HIGH COURT**

Application for leave to appeal	15.00
On filing notice of appeal against a final judgment or decision	50.00
On filing a counter-notice	30.00
For entering a special case, case stated point of law or demurrer for argument entering same for hearing and on judgment thereunder	50.00
On filing notice of appeal against an interim order or decision entering the appeal for hearing and on judgment thereunder	50.00
On making any other application not specifically provided for, and for filing judgment or order thereunder	30.00
On filing bond to secure costs of appeal	15.00
On filing application for leave to appeal to the Privy Council	30.00
On filing every bond where the appeal is to Privy Council	30.00
On filing order for leave to appeal to Privy Council	
On sealing record on appeal to Privy Council	30.00
For a copy of reasons for judgment of a court: per page or part thereof	3.00
but not to exceed	100.00

LN 126
of 2011

MISCELLANEOUS

<i>Column 1</i>	<i>Column 2</i>
	\$
On registrar, deputy registrar, or assistant registrar signing any deed	50.00
On perusing and allowing by a judge, master, registrar, deputy registrar or assistant registrar of any bond	20.00
On sealing a commission to take oaths or affidavits	200.00
On sealing every other commission	50.00
On taking an account of moneys for every \$500.00 or fraction of \$500.00 of the amount found to have been received without deducting any payment	2.00
up to a maximum of	50.00

ADMIRALTY CLAIMS

On sealing an admiralty claim <i>in rem</i>	50.00
On sealing an admiralty limitation claim	50.00
On sealing a warrant of arrest	50.00
Request for caveat against the issue of a warrant of arrest	20.00
Request for issue of release of property under arrest	20.00
Request for caveat against the release of property under arrest	20.00
Preliminary Act under Part 74.19	30.00
To inspect and bespeak a copy of the Preliminary Act	10.00
Request for a commission for appraisalment and sale of any property under rule 74.24(1)	20.00

APPENDIX E
MARSHAL'S FEES AND CHARGES
SERVICE OF DOCUMENTS

<i>Column 1</i>	<i>Column 2</i>
	\$
For the service of every document on any person	10.00
An additional fee of \$1.00 shall be charged for every mile beyond the first from the nearest court office to the address for service.	
Where in the same action or proceedings more than one party is to be served at the same address, no additional fees for mileage shall be charged.	
Where in the same action or proceedings, more than one party is to be served at different addresses but along the same route, only one additional fee of \$1.00 per mile for every mile beyond the first shall be charged in respect of the address which is furthest from court office.	
In any case in which the document shall have been returned to the marshal's or deputy marshal's office, as the case may be, not served after an attempt shall have been made to serve the same at the address given thereon, the marshal or deputy marshal, as the case may be, may in his discretion require the payment of another service fee in accordance with paragraph 1 for each subsequent attempt to serve the said document.	

WRITS OF EXECUTION

<i>Writ of execution against goods</i>	
For every endorsement upon an order for execution	20.00
For every notice filed by the execution creditor or his attorney-at-law	20.00
The fee for executing a writ of execution against goods shall be twice the service fee for a document and shall be calculated in the same way as with service of documents.	
Poundage fees at the rate of 3% of the amount recovered or the value of the goods seized where there is a sale of goods but reduced to 1% where the execution is withdrawn, satisfied or stopped, within 48 hours of seizure by the marshal.	
In every case where an execution is withdrawn, satisfied or stopped the poundage fees shall be paid by the person issuing the execution, or the person at whose instance the sale is stopped, as the case may be.	

WRITS OF EXECUTION—*Continued*

Column 1

Column 2
§

Poundage fees shall be paid in cash, by banker’s cheque or draft.

The judgment creditor shall at the time of lodging his request to enforce a writ of execution against goods, deposit a reasonable sum to defray the cost of possession charges, advertisement and expenses which may be incurred in connection with the seizure and sale. The marshal or deputy marshal, as the case may be, shall levy for such sum incurred over and above the sum endorsed on the writ.

Where a claim is made to the goods of the judgment debtor taken in execution, the marshal or the deputy marshal, shall call upon the judgment creditor and the party claiming the goods, for each to deposit immediately one-half of a sum which is reasonable to meet the expenses to be incurred and such further sum from time to time for the purpose of defraying such expenses. Any balance remaining shall be returned to the judgment creditor and the party claiming the goods.

If the party claiming the goods fails to make any such payment, the marshal or deputy marshal, as the case may be, shall proceed with the execution as if no such claim had been made in respect of such goods, unless the court or a judge orders otherwise; if the judgment creditor fails to make any such payment, the marshal or deputy marshal, as the case may be, may, in his discretion, withdraw from the levy.

WRITS OF POSSESSION OF LAND**Column 1****Column 2**
\$

For every endorsement upon a writ of possession 20.00

The fee for executing a writ of possession shall be the same as for service of a document and shall be calculated in the same way as with service of a document. Poundage fees at the rate of 3% of the net annual value for rating of the property seized shall be paid in cash by banker's cheque or draft.

WRITS OF DELIVERY (SPECIFIC OR DELIVERY OR VALUE)

For every endorsement upon a writ of delivery 20.00

The fee for executing a writ of delivery shall be the same as for service of a document and shall be calculated in the same way as with service of a document. Poundage fees at the rate of 3% of the value of the goods as stated in the claim form shall be paid in cash, by banker's cheque or draft.

ADMIRALTY

On issuing a warrant of arrest 100.00

On lodging a request for the issue of a release of property under arrest ... 100.00

On executing a commission for appraisalment and sale 50.00

On the appointment and swearing of appraisers 50.00

On the delivery of a ship or goods to a purchaser 50.00

For attending the discharge of a cargo or the removal of a ship or goods,
for each day of attendance 300.00

On the sale of a ship or goods, for every \$500.00 or fraction of \$500.00
of the price 10.00

On a report as to sufficiency of sureties 25.00

On a request to retain possession of a ship with or without cargo, the
marshal or deputy marshal, as the case may be, shall call upon the
party lodging the request to deposit a reasonable sum and such
further reasonable sums from time to time to meet—

- (a) the expenses of a ship keeper; and
- (b) his expenses for travelling, board and maintenance.

FORMER RULE

1. The **current** rule 67.5 was brought about by the deletion and substitution of sub-rule (2) by rule 14 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, sub-rule (2) read as follows:

- (2) In determining such costs the “value” of the claim is to be decided –
 - (a) in the case of a claimant, by the amount agreed or ordered to be paid; or
 - (b) in the case of a defendant –
 - (i) by the amount claimed by the claimant in his claim form; or
 - (ii) if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the client liable to, such costs or if not agreed a sum stipulated by the court as the value of the claim; or
 - (iii) if the claim is not for a monetary sum it is to be treated subject to rule 67.6 as a claim for \$50,000.

2. The **current** Appendix D of Part 67 was amended by the insertion of the section **COURT TRANSCRIPTS AND ELECTRONIC RECORDINGS** immediately before the heading “**WRITS OF HABEAS CORPUS**” and the deletion and substitution of the last entry under the heading “**FEES PAYABLE IN THE COURT OF APPEAL ON APPEAL FROM THE HIGH COURT**” by rule 15 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

As set out in the 2006 publication, the last entry under the heading “**FEES PAYABLE IN THE COURT OF APPEAL ON APPEAL FROM THE HIGH COURT**” of **Appendix D** read as follows:

For a copy of reasons for judgment of a court

per each page or part thereof	\$ 1.25
but not to exceed	\$ 50.00

CASES**2016****PRIVY COUNCIL/COURT OF APPEAL***The Commissioner of Police v Quincy Felix and Others*

Civ App No P021 of 2016

Appeal pending

CV 2014-04683; CV 2014-04685; CV 2014-04686 (2016.04.21)

RULE 67.5 — HABEAS CORPUS — VALUE OF CLAIM — DISCRETION — PERCENTAGE OF COSTS — CIRCUMSTANCES OF CASE

2015**PRIVY COUNCIL/COURT OF APPEAL***Brent M Primus v PC Anton Maxime (Regimental No 13349) and Another*

Civ App No P131 of 2015

Appeal pending

CV 2012-01650; CV 2012-01651; CV 2012-01652; CV 2012-01653; CV 2012-01654;
CV 2012-01708 (2015.05.05)**RULE 67.5(2)(b)(ii) — STIPULATION OF PRESCRIBED COSTS — USE OF QUANTUM OF DAMAGES CLAIMED**

Mukesh Maharaj v Attorney General of Trinidad and Tobago

Civ App No P118 of 2010; Civ App No P067 of 2011 (2015.03.25)

Appeals allowed

RULE 67.12 — ASSESSMENT OF BILL OF COSTS — DISCRETION — LACK OF REASONS FOR AWARD

(Also under Part 56)

Kurlene Pierre v Miles Almandoz and Company and Another

Civ App No P002 of 2012 (2015.03.10)

Appeal allowed

RULE 67.7 — PRESCRIBED COSTS — FEES FOR ATTENDANCE OF NON-EXPERT WITNESS — DISCRETION

HIGH COURT

Mukesh Sirju and Another v The Attorney General of Trinidad and Tobago

CV 2014-0345 (2015.11.03)

PURPOSE OF BUDGETED COSTS — APPLICABILITY — REQUIREMENTS — PRESCRIBED COSTS ON HIGHER SCALE — REQUIREMENTS OF CPR

Treasure Queen Tours Limited v Chaguaramas Development Authority and Another

CV 2014-01562 (2015.09.29)

ENTITLEMENT TO COSTS — BUDGETED COSTS — SUBSEQUENT APPLICATIONS — NOT CONTEMPLATED BY COSTS BUDGET — FURTHER QUANTIFICATION — DISCRETION — REASONABLENESS OF SUMS

Anthony Jordan v North Central Regional Health Authority

CV 2012-03889 (2015.06.02)

PRESCRIBED COSTS — DISCRETION — QUESTIONABLE PORTIONS OF CLAIM — CONSIDERATION OF FACTORS — CONDUCT — MANNER — REASONABLENESS OF SUMS

Capital Plaza Hotel Limited v Caribbean Football Union Limited

CV 2014-01668 (2015.05.27)

WRONG PARTY SUED — DISCONTINUANCE — CLAIM FOR SPECIFIED SUM — ENTITLEMENT TO COSTS — CORRECT COSTS REGIME — DISCRETION — CONDUCT OF PARTIES

(Also under Part 1)

George Nicholas III v Maxie Cuffie and Others

CV 2013-01962 (2015.01.23)

STATEMENT OF COSTS — INFORMATION REQUIRED — FORM — COMPLIANCE WITH CPR — REASONABLENESS OF SUMS — APPROPRIATE CURRENCY

2014

PRIVY COUNCIL/COURT OF APPEAL

Gerard Torres v Zeena Escovalez and Others

Civ App No P112 of 2014

Appeal pending

CV 2012-00801 (2014.03.21)

RULE 67.5(2)(b)(ii) — VALUE OF CLAIM — DISCRETION — DAMAGES FOR TRESPASS — VALUE OF LAND — PROPORTIONALITY AND EQUALITY

(Also under Part 66)

Villia Medford v Motiram Dhanpath and Another

Civ App No S276 of 2013

Appeal pending

CV 2012-02796 (2014.01.16)

RULE 67.5 — LACK OF SUBMISSIONS — QUANTIFICATION — VALUE OF CLAIM — DISCRETION — PERCENTAGE OF COSTS

Winston Barrow v The National Insurance Board of Trinidad and Tobago

Civ App No P059 of 2011 (2014.11.18)

Appeal allowed

COSTS IN HIGH COURT — PRESCRIBED COSTS INCLUDE INTEREST ON DAMAGES — COSTS OF APPEAL — UNREPRESENTED LITIGANT — DISCRETION

Trinidad Express Newspaper Limited and Others v Conrad Aleong

Civ App No P122 of 2009 (2014.06.25)

Appeal dismissed

ORDER FOR COSTS — DISCRETION — APPLICATION OF CPR — COSTS REGIME

(Also under Part 80)

Ashford Sankar v Public Service Commission

Civ App No P058 of 2007 (2014.04.28)

Appeal allowed

RULE 67.2 — DISCRETION — NEED FOR EXAMINABLE BASIS

The Chief Fire Officer and Another v Elizabeth Felix-Phillip and Others

Civ App No S049 of 2013 (2014.04.14)

Appeal allowed

RULE 67.2 — RULE 67.12 — INJUNCTION APPEAL — QUANTIFICATION OF COSTS — APPLICABLE REGIME — PRE-CPR APPROACH TO COSTS — RESPONDENTS TO PAY COSTS

Favianna Gajadhar v Public Service Commission

Civ App No P170 of 2012 (2014.01.31)

Appeal allowed

RULE 67.2 — RULE 67.12 — RULE 67.2(3) — PARTIES TO BE HEARD ON COSTS — QUANTIFICATION — CPR GUIDELINES — DISCRETION — REASONABLE AND FAIR SUM

(Also under Part 66)

Dhisha Moorjani v Deepak Kirpalani and Another

Civ App No S221 of 2009 (2014.01.21)

Appeal allowed

CV 2007-00485 (2009.09.28)

RULE 67.5 — PRESCRIBED COSTS — DISCRETION — CIRCUMSTANCES OF CASE — DEPARTURE FROM RULE 67.5(1) — COSTS TO BE ASSESSED

HIGH COURT*Jaime Dolan v Rene Katwaroo*

CV 2013-00267 (2014.09.18)

**RULE 67.2(3)—PURPOSE OF COSTS—QUANTIFICATION—PROPORTIONALITY
— REASONABLENESS — CONSIDERATION OF FACTORS — CONDUCT —
IMPORTANCE — TIME — RESPONSIBILITY — PREPARATION — NOVELTY,
WEIGHT AND COMPLEXITY**

Ricardo Welch v The Attorney General of Trinidad and Tobago and Others

CV 2013-04279 (2014.03.19)

**PART 67 — UNSUCCESSFUL LITIGANT IN PERSON — DISCRETION —
PROPORTIONALITY AND EQUALITY — ONE HALF COSTS TO SUCCESSFUL
PARTY**

(Also under Parts 2 and 11)

Global Dynamics Limited v Intercommercial Bank Limited

CV 2013-00258 (2014.02.03)

**RULE 67.6 — SCOPE — TIME FOR MAKING APPLICATION — VALUE OF CLAIM
— DISCRETION — NO MONETARY VALUE — FACTORS TO BE CONSIDERED —
PROPORTIONALITY AND FAIRNESS**

(Also under Parts 1 and 24)

2013

PRIVY COUNCIL/COURT OF APPEAL*Julio Almando Ready v The Attorney General of Trinidad and Tobago*

Civ App No P167 of 2009 (2013.12.13)

Appeal allowed

CV2007-02192 (2009.06.09)

**RULE 67.5 — CONVERTED FROM PRE-CPR — AWARD OF COSTS — APPLICABLE
REGIME**

Nizam Mohammed v The Attorney General of Trinidad and Tobago

Civ App No P075 of 2013 (2013.07.29)

Appeal allowed

**RULE 67.12 — ADMINISTRATIVE CLAIM — CONSTITUTIONAL RELIEF —
QUANTIFICATION — MEANING OF ‘ASSESS’ — APPROPRIATE PROCEDURE**

(Also under Part 56)

HIGH COURT

Bryan St Louis and Another v Lisa Ferreira and Others

CV 2012-00790 (2013.05.15)

**RULE 67.5(2) — RULE 67.6 — RULE 67.11 — PRESCRIBED COSTS —
DETERMINATION OF VALUE OF CLAIM — TIME FOR APPLICATION —
DISCRETION — QUANTIFICATION — CONSIDERATION OF FACTORS —
IMPORTANCE — COMPLEXITY**

CLICO Investment Bank v Louis Andre Monteil and Others

CV 2010-01352 (2013.03.04)

**PRESCRIBED COSTS — VALUE OF CLAIM — MEASURE OF DAMAGES —
DISCRETION**

2012

PRIVY COUNCIL/COURT OF APPEAL

Fazal Ghany (Regimental No 12858) v The Attorney General of Trinidad and Tobago and Another

Civ App No P197 of 2008 (2012.12.19)

Appeal dismissed

**PART 67 — DETERMINATION OF COSTS REGIME — LACUNA IN CPR — APPEAL
FROM TRIBUNAL — APPEAL ALREADY DECIDED — PUBLIC INTEREST —
CLAIM NOT FOR MONETARY SUM**

HIGH COURT*Gita Sakal v Michael Carballo*

CV 2009-02468 (2012.II.26)

**COSTS BUDGET FIXED — PARTIAL AWARD OF COSTS BUDGET —
CONSIDERATION OF FACTORS — ISSUES DETERMINED — PROGRESS OF
CASE — DAMAGES AWARDED**

Top Hat Yachts Limited v Evelyn Petersen and Others

CV 2006-03677 (2012.II.02)

**RULE 67.5(2) — COSTS — QUANTIFICATION — LIABILITY — VALUE OF
CLAIM — SPECIFIED AND UNSPECIFIED DAMAGES — PRESCRIBED COSTS —
APPORTIONMENT — RELATIONSHIP TO EVIDENCE LED AT TRIAL**

Denisha Mayers v Andy Derrick Wilson and Another

CV 2011-03655 (2012.07.27)

**RULE 67.5(2)(b)(ii) — RULE 67.6(2)(b)(iii) — WITHDRAWAL OF CLAIM AT
PTR — SCOPE AND MEANING OF CPR — PRESCRIBED COSTS — VALUE OF
CLAIM — STIPULATION OF VALUE — DISCRETION — MONETARY VALUE —
PERCENTAGE OF COSTS — LIABILITY**

Balgobin Rattan v Bally Ramnath and Others

CV 2005-00156 (2012.01.30)

**RULE 67.12(3) — RULE 67.2(3) — BILL OF COSTS — TIME FOR PRESENTATION
— FORM — QUANTIFICATION — DISCRETION — REASONABLENESS —
DISBURSEMENTS — PROFESSIONAL CHARGES — CONSIDERATION OF
FACTORS UNDER PREVIOUS ORDERS**

2011

PRIVY COUNCIL/COURT OF APPEAL*The Chief Fire Officer and Another v Sumair Mohan*

Civ App No P045 of 2008 (2011.II.16)

Appeal allowed

**RULE 67.5(2)(c) — RULE 67.14 — COSTS OF APPEAL — PRESCRIBED COSTS —
VALUE OF CLAIM**

Scotiabank Trinidad and Tobago Limited v Bank Employees Union

Civ App No P187 of 2010 (2011.06.30)

Appeal allowed

RULE 67.2 — INDUSTRIAL COURT — COSTS — QUANTIFICATION — APPLICATION OF CPR — PRINCIPLES TO BE FOLLOWED — FACTORS TO BE CONSIDERED — PERCENTAGE AWARDED — NEED FOR REASONS

HIGH COURT

Mitch Francis and Another v The Trinidad and Tobago Housing Development Corporation

CV 2009-01606 (2011.05.20)

RULE 67.2(3) — QUANTIFICATION OF COSTS — REASONABLENESS — CONSIDERATION OF FACTORS — IMPORTANCE — TIME — COMPLEXITY

Sarah Garcia v Peggy Bishop and Others

CV 2007-04320 (2011.05.10)

RULE 67.5 — PRESCRIBED COSTS — QUANTIFICATION — CLAIM FOR DAMAGES AND POSSESSION — UNQUANTIFIED — COUNTERCLAIM FOR NO MONETARY VALUE — VALUE OF CLAIMS

2010

PRIVY COUNCIL/ COURT OF APPEAL

Rajkumar Samlal v Ed Jacob and Another

Civ App P104 of 2008 (2010.10.27)

Appeals dismissed

CV 2005-00454 (2008.04.30)

RULE 67.5(2)(a) — TRESPASS — PRESCRIBED COSTS — VALUE OF CLAIM — SUBMISSIONS — TIME — APPLICATION TO INCREASE VALUE

Edward Boucher v The Attorney General of Trinidad and Tobago

Civ App No P052 of 2008 (2010.10.13)

Appeal dismissed

CV 2005-00111 (2008.03.12)

RULE 67.5 — CONVERTED FROM PRE-CPR — APPLICABLE REGIME — QUANTIFICATION OF COSTS — ASSESSED COSTS

2009

PRIVY COUNCIL/COURT OF APPEAL

TnT News Centre Limited v John Rahael

Civ App No P166 of 2006 (2009.07.09)

Appeal allowed

**RULE 67.14 — COSTS OF APPEAL — PARTIAL SUCCESS — TWO-THIRDS RULE
— REDUCTION**

HIGH COURT

Margaret Phillips v Anthony Walters and Others

HC 4168/2007 (2009.12.10)

**RULE 67.12 — APPLICABLE COSTS REGIME — EQUITABLE ASSESSMENT OF
COSTS — CONSIDERATION OF CIRCUMSTANCES**

Basdeo Panday and Another v Her Worship Ejenny Espinet and Another

CV 2008-02265 (2009.12.09)

**RULE 67.2(1) — RULE 67.12 — NO COSTS BUDGET — ASSESSMENT OF COSTS
— BILL OF COSTS — FORM — DISCRETION — REASONABLENESS OF SUMS
— PROPORTIONALITY — CONSIDERATION OF FACTORS — CONDUCT —
IMPORTANCE — COMPLEXITY — TIME — PREPARATION**

Krishna Persad v Rajendra Rambachan, Magistrate and Another

CV 2009-01582 (2009. 11. 17)

**RULE 67.2 — QUANTIFICATION — STATEMENT OF COSTS — DISCRETION
— REASONABLENESS — CONSIDERATION OF FACTORS — CONDUCT —
IMPORTANCE — TIME — COMPLEXITY — CARE, SPEED AND ECONOMY —
NOVELTY, WEIGHT AND COMPLEXITY**

June Prempeh v Henry Courtenay Clarke and Another

CV 2008—00168 (2009.07.30)

RULE 67.2(3) — RULE 67.3 — STATEMENT OF COSTS — QUANTIFICATION — REASONABLENESS

Krishna Persad v Rajendra Rambachan, Magistrate and Another

CV 2009—01582 (2009.07.24)

RULE 67.11 — EX PARTE APPLICATION — ASSESSMENT OF COSTS — APPLICABLE RULE — LIABILITY — DISCRETION — REASONABLENESS

2008

PRIVY COUNCIL/COURT OF APPEAL

Roopnarine Persaud and Another v Danny Balkissoon

Civ App No P108 of 2007 (2008.07.29)

Appeal dismissed

RULE 67.14 — COSTS OF APPEAL — APPLICABLE RULE — PRESCRIBED COSTS — VALUE OF CLAIM — SUM ORDERED — ANOMALY OF RULE — COSTS OF PROCEDURAL APPEAL ON SAME BASIS AS SUBSTANTIVE APPEAL

HIGH COURT

Ted Flemming v Wayne Roberts

CV 2007—02846 (2008.04.30)

RULE 67.5 — CLAIM FOR MONETARY AND OTHER RELIEF — PRESCRIBED COSTS — VALUE OF CLAIM

Osmond McKenzie and Another v George McKenzie

CV 2006—04038 (2008.01.08)

COSTS — QUANTIFICATION — INDEMNITY — EXECUTOR'S COSTS — REASONABLENESS OF SUMS

2007

PRIVY COUNCIL/COURT OF APPEAL

Nalene Mohammed v Barry Dwarika and Others

Civ App No P048 of 2006 (2007.12.10)

Appeal dismissed by consent

CV 2005-00347 (2006.06.16)

RULE 67.5(4) — RULE 67.12(3) — COSTS — CLAIM AND COUNTERCLAIM — PERCENTAGE OF AWARD — PRESCRIBED COSTS — NOTICE OF APPLICATION — COSTS IN THE CAUSE — APPLICATION TO MASTER FOR DIRECTIONS AND ASSESSMENT

2006

HIGH COURT

National Insurance Board v National Insurance Appeals Tribunal

CV 2005-00748 (2006.03.28)

RULE 67.3(b)(iii) — RULE 67.12 — JUDICIAL REVIEW — QUANTIFICATION — APPLICABLE REGIME — ASSESSMENT — BILL OF COSTS — DISCRETION — CONSIDERATION OF FACTORS — REASONABLENESS — TIME SPENT NOT SOLE BASIS FOR ASSESSMENT

PART 68 SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

Contents of this Part

Scope of this Part	Rule 68.1
Form of claim	Rule 68.2
Evidence in support	Rule 68.3
Service of claim form and evidence	Rule 68.4
Application by occupier to be made a defendant	Rule 68.5
Date of first hearing	Rule 68.6
Powers of court at first hearing	Rule 68.7

Scope of this Part

- 68.1** This Part deals with an application for possession of land where the claimant alleges that the land is occupied solely by a person or persons who—
- (a) are not tenants holding over after determination of the tenancy; and
 - (b) who entered into or remained in occupation without the licence or consent of—
 - (i) the claimant; or
 - (ii) any of his predecessors in title.

Form of claim

- 68.2** (1) Proceedings must be brought by way of a fixed date claim.
- (2) The claimant must name as defendants all persons in occupation of the land so far as known to him.
- (The procedure relating to fixed date claims is dealt with in rules 8.1(4) and 27.2)

Evidence in support

- 68.3** The claimant must file with the claim form evidence stating —
- (a) his interest in the land;
 - (b) the circumstances in which the land has been occupied without licence or consent;
 - (c) the circumstances in which his claim to possession arises;
 - (d) that he does not know the name of any person occupying the land who is not named in the claim form; and
 - (e) full particulars of the efforts he has taken to identify any person occupying the land who is not named in the claim form.

Service of claim form and evidence

- 68.4** The claimant shall serve a copy of the claim form and the evidence in support of his claim (“the documents”)—
- (a) on every named defendant in accordance with Part 5; and
 - (b) where he has not identified every person in occupation of the land, by—
 - (i) affixing the documents to the main door or other conspicuous part of the premises; and
 - (ii) placing stakes in the ground in conspicuous parts of the occupied land, to each of which must be affixed an envelope addressed to “the occupiers” containing the documents,
- unless the court directs service in some other way.

Application by occupier to be made a defendant

- 68.5** Any person—
- (a) in occupation of the land; and
 - (b) who wishes to be heard on the question of whether an order for possession should be made,
- may apply at any stage to be joined as a defendant.

Date of first hearing

- 68.6 (1) The general rule is that the date of hearing may not be—
- (a) in the case of residential property, less than 5 days; or
 - (b) in the case of other land, less than 2 days,
- after the date of service of the claim form and evidence but must be fixed as soon thereafter as practicable.
- (2) The court may, however, abridge time for service in cases of urgency.
 - (3) An application to abridge time may be made without notice but must be supported by evidence.

Powers of court at first hearing

- 68.7 (1) At the first hearing the general rule is that the court must give judgment unless there is a defendant who attends and satisfies the court that he has a defence with a realistic prospect of success.
- (2) Nothing in this Part prevents the court from ordering possession to be given on a specified date.
 - (3) If judgment is not given the court must give directions as if the hearing were a case management conference.
- (Parts 25 to 27 deal with case management conferences)

CASES**2016****PRIVY COUNCIL/COURT OF APPEAL***Wendell Marcano and Others v Bissram Kalladeen*

Civ App No 189 of 2012 (2016.03.07)

Appeal dismissed

CV 2011-02841 (2012.09.18)

RULE 68.7 — DEFENCE — REALISTIC PROSPECT OF SUCCESS — ADEQUACY OF PURPORTED DEFENCES — POWER OF COURT TO GIVE JUDGMENT

(Also under Part 1)

2015**HIGH COURT***Jacobes Company Limited v Courtney's Racing Service and Another*

CV 2014-02922 (2015.02.11)

RULE 68.7(1) — FIRST HEARING — ALLOWABLE EVIDENCE — EVIDENTIAL OBJECTIONS — DEFENCE — REALISTIC PROSPECT OF SUCCESS

(Also under Part 31)

Warren Elias v Deonarine Mahabir

CV 2013-05192 (2015.01.28)

PART 68 — TITLE CLAIMED — EVIDENCE — APPROPRIATENESS OF EXAMINATION OF ISSUES — CONFLICTS IN PLEADED CASE AND SUBMISSIONS

(Also under Part 4)

2012

HIGH COURT

Nazim Edoo and Another v Hemant Bridglalsingh and Another

CV 2012-01490 (2012.08.27)

**RULE 68.1 — SCOPE OF RULE — APPROPRIATENESS OF PROCEDURE —
DIFFERENCE BETWEEN TENANT AND TRESPASSER**

PART 69 MORTGAGE CLAIMS

Contents of this Part

Scope of this Part	Rule 69.1
Mortgage claim to be by fixed date claim	Rule 69.2
Evidence at first hearing	Rule 69.3
Claim for possession or payment of mortgage debt	Rule 69.4

Scope of this Part

69.1 (1) This Part deals with claims by a mortgagor or mortgagee for any of the following forms of relief:

- (a) payment of moneys secured by a mortgage;
- (b) sale of a mortgaged property;
- (c) foreclosure;
- (d) possession of a mortgaged property;
- (e) redemption of a mortgage;
- (f) reconveyance of the property or release from the mortgage; and
- (g) delivery of possession by the mortgagee,

which are referred to in this Part as “mortgage claims”.

(2) In this Part—

“mortgage” includes a legal or equitable mortgage and a legal or equitable charge;

“mortgagor” means the person who has granted a mortgage of the mortgaged property; and

“mortgagee” means the person to whom the mortgage was granted.

Mortgage claim to be by fixed date claim

69.2 A mortgage claim is made by issuing a fixed date claim.

(The procedure relating to fixed date claims is dealt with in rules 8.1(4) and 27.2)

Evidence at first hearing

- 69.3** If the claimant seeks final judgment at the first hearing he must—
- (a) file evidence in support of the claim;
 - (b) serve —
 - (i) a copy of the evidence but not the exhibits; and
 - (ii) a notice stating what relief he intends to seek, with the claim form; and
 - (c) file a certificate of service not less than 3 days before the first hearing.

Claim for possession or payment of mortgage debt

- 69.4** On a claim for possession of the mortgaged property or for payment of the mortgage debt, the claimant must file with the claim form evidence —
- (a) exhibiting a copy of the original mortgage;
 - (b) exhibiting a copy of any other document which sets out the terms of the mortgage;
 - (c) giving particulars of—
 - (i) the amount of the advance;
 - (ii) the interest payable under the mortgage;
 - (iii) the amount of any periodic payments required to be made stating whether or not such payments include interest;
 - (iv) the amount of repayments that have been made;
 - (v) the amount of any repayments or interest due but unpaid at the date of the claim and at the date of the affidavit;
 - (vi) the amount remaining due under the mortgage; and
 - (vii) where the claim includes a claim for interest to judgment, the daily rate at which such interest accrues;
 - (d) where the claimant seeks possession of the mortgaged property—
 - (i) stating the circumstances under which the right to possession arises; and
 - (ii) giving details of any person other than the defendant and his family who to the claimant's knowledge is in occupation of the mortgaged property; and
 - (e) if the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, showing how and when the tenancy was determined and if by service of a notice when and how that notice was served.

CASES

2015

HIGH COURT

Imitiaz Ali v Steve Ganeesingh and Others

CV 2009-04675 (2015.03.12)

PART 69 — CLAIM FOR POSSESSION — ADEQUACY OF EVIDENCE — POSSIBLE RELIEF

2014

PRIVY COUNCIL/COURT OF APPEAL

Jennifer Daniels and Others v First Citizens Bank Limited

Civ App No 281 of 2014 (2014.12.01)

Appeal dismissed

CV 2013-00136 (2014.11.07)

RULE 69.1(1) — SCOPE OF RULE — MORTGAGE CLAIM — CESSATION OF MORTGAGE

(Also under Part 13)

PART 70 PROTECTION OF PROPERTY OF PATIENTS

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Scope of this Part

- 70.1 (1) This Part deals with the procedures whereby the court can act to protect the property of a patient.
- (2) In this Part—
- “the Act” means the Mental Health Act (Chap. 28:02);
- “medical certificate” means a certificate by a government registered medical practitioner that because of mental disorder the patient is incapable of managing and administering his property and affairs;
- “receiver” means a receiver appointed under section 39(1) of the Act; and
- “stock” has the meaning assigned to it in section 40(2) of the Act.
- (3) Where in this Part any jurisdiction of the court may be exercised in a summary manner, this means that it may be exercised—
- (a) with or without any application; and
- (b) whether or not any proceedings have been commenced relating to the patient.

Summary order in small cases

- 70.2 Where it appears to the court that the property of a patient does not exceed \$10,000 in value and no claim has been issued, the court may make an order in summary manner directing—
- (a) the Public Trustee to deal with such property under section 42 of the Act; or
- (b) a fit and proper person to deal with any of such property in a manner which is—
- (i) authorised by the Act; and
- (ii) specified in the order,
- where the Public Trustee has been discharged of the responsibility under section 44 of the Act.

How to apply to the court

- 70.3 An application to the court under this Part must be made by way of a fixed date claim.
- (The procedure relating to fixed date claims is dealt with in rules 8.1(4) and 27.2)

Application under section 42 of Trustee Ordinance (Ch. 8. No. 3—1950. Rev. Ed.)

- 70.4 (1) Where an application is made under section 42 of the Trustee Ordinance (Ch. 8. No. 3—1950. Rev. Ed) for leave to appoint a new trustee in place of a patient, the person intending to make the appointment must be an applicant.
- (2) If a receiver has been appointed for the patient he must be a respondent unless he is an applicant.
- (3) No other person may be made a respondent unless the court directs.

Application under section 37(k) of the Act

- 70.5 (1) An application under section 37(k) of the Act for an order exercising any power vested in a patient to appoint trustees or retire from a trust may be made by—
- (a) the receiver for the patient;
- (b) the patient expressed to be acting by his receiver;
- (c) any person who has applied for the appointment of a receiver where the application has not yet been determined; or
- (d) any other person who is entitled to make the application.
- (2) If a receiver has been appointed for the patient he must be a respondent unless he is an applicant.
- (3) No patient may be made a respondent unless the court directs.

Application for settlement of patient’s property or for execution of will of patient

- 70.6 (1) An application for—
- (a) the settlement of any property of a patient under section 37(d) of the Act; or
- (b) an order for the execution of a will for a patient, must be made by a person for whom the benefit of the proposed settlement will ensue unless in the opinion of the court there is sufficient reason for it being made by—
- (i) the receiver for the patient;
- (ii) any person who, under any known will or codicil of the patient or the intestacy of the patient, might become entitled to any property of the patient or any interest in such property; or
- (iii) any person for whom the patient might be expected to provide if he were not mentally disordered.

- (2) If a receiver has been appointed for the patient he must be a respondent unless he is an applicant.
- (3) No other person may be made a respondent unless the court directs.

Respondents and person entitled to attend

- 70.7 (1) The court may direct that—
- (a) any relative of the patient; or
 - (b) any person who appears to be interested in the relief sought in any proceedings,
- be made a respondent or be given notice of the proceedings.
- (2) The court may determine who is entitled to attend at any stage of the proceedings.

Representation of patient by receiver

- 70.8 Where a receiver has been appointed on behalf of a patient, then—
- (a) except as provided by rule 70.5 an application on behalf of the patient must be made by the receiver unless the court otherwise directs;
 - (b) unless the court otherwise directs the receiver must represent the patient in any proceedings to which the patient is a party.

Power to direct action by Chief State Solicitor

- 70.9 (1) Where the court considers that an application ought to be made—
- (a) for the appointment or discharge of a receiver; or
 - (b) for the exercise of any other power conferred on the court with respect to the property and affairs of a patient,
- and there appears to be no other suitable person able and willing to make the application, or the court for any other reason thinks fit, the court may direct that the application be made by the Chief State Solicitor.
- (2) Where a receiver has been appointed on behalf of a patient but the court considers that the interests of the patient are not adequately represented by the receiver, the court may direct the Chief State Solicitor to act as attorney-at-law for the patient either—
- (a) generally in the proceedings; or
 - (b) for any particular purpose.

(Rule 70.19 deals with the power to appoint the Chief State Solicitor to act for the patient in cases of delay, etc.)

- (3) The court may direct the Chief State Solicitor to take out a witness summons requiring any person to attend court to give oral evidence or produce any document.
- (4) On making a direction under paragraph (3), the court may also direct the Chief State Solicitor to conduct any proceedings and carry out any other actions specified.
- (5) The court may direct the Chief State Solicitor to inspect any property of the patient, make any necessary inquiries and report to the court.

Inquiries

- 70.10** (1) Where the court has reason to believe that a receiver should be appointed for a patient or that any other power conferred on the court should be exercised with respect to the property and affairs of the patient, the court may—
- (a) direct the Chief State Solicitor to make inquiries and report to the court whether it is desirable in the interests of the patient that an application should be made for that purpose; or
 - (b) appoint a suitably qualified government medical practitioner to visit the patient and report to the court on the capacity of the patient to manage and administer his property and affairs.
- (2) On receiving any report pursuant to paragraph (1), the court may—
- (a) direct an application to be made under rule 70.9(1); or
 - (b) if—
 - (i) the report is by a person appointed by the court; and
 - (ii) the court is satisfied that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs,
 make an order in summary manner appointing a receiver or exercising any other power conferred on the court with respect to the patient's property and affairs.
- (3) In any proceedings relating to a patient the court may make or cause to be made inquiries about any dealings with the patient's property before the commencement of the proceedings and as to the mental capacity of the patient at the time of such dealings.
- (4) The court may—
- (a) make or cause to be made inquiries whether any person—
 - (i) has in his possession;
 - (ii) has under his control; or

- (iii) has any knowledge of, any testamentary document executed by a patient; and
- (b) may direct any such person—
 - (i) to answer the inquiries on oath;
 - (ii) to produce any such document which is in his possession or under his control; and
 - (iii) deal with it in such manner as the court may direct.
- (5) In any proceedings relating to the patient the court may make an order for the patient's attendance for examination—
 - (a) by the court;
 - (b) by any suitably qualified government medical practitioner; or
 - (c) by any fit and proper person appointed by the court, at such time and place as the court may direct.
- (6) The court may make or cause to be made any other inquiries of inspection which it considers desirable for the proper discharge of any of its functions under the Act or this Part.

Service of application for appointment of receiver, etc.

- 70.11 (1) Where—
- (a) an application is made for—
 - (i) the appointment of a receiver for a patient; or
 - (ii) an order authorising a person to do any act or carry out any transaction on behalf of the patient without appointing that person a receiver; or
 - (b) the court proposes to make an order with respect to a patient's property in summary manner,

the general rule is that the patient must be served with a notice in the appropriate practice form.
- (2) The court may, however, dispense with service if it considers that—
- (a) the patient is incapable of understanding the notice;
 - (b) service of the notice might be injurious to the patient's health; or
 - (c) for any other reason service ought to be dispensed with.
- (3) Where service has been dispensed with under paragraph (2) and the patient is within Trinidad and Tobago, the court may appoint some fit and proper person to visit him and report to the court as to his condition and welfare.

- (4) Service of notice in the appropriate practice form by a registered medical practitioner may be proved by a certificate of service signed by him stating where, when and how he effected service.
- (5) No order under paragraph (1) takes effect until 7 days have passed since service of notice in the appropriate practice form on the patient unless—
 - (a) the court has dispensed with such service; or
 - (b) the order is an interim order under rule 70.16.

Evidence—general

- 70.12** (1) In any proceedings under this Part the court is not bound by the strict rules of evidence and procedure and must give directions as to the manner in which evidence in any proceedings is to be given.
- (2) The general rule is that evidence must be given by affidavit unless any rule in this Part or any direction otherwise provides.
- (Part 31 deals with evidence by affidavit, Part 29 deals with witness statements)
- (3) Where the court has reason to believe that the patient has died or recovered, it may require any party to provide evidence of the death or recovery.
- (4) Unless the court otherwise directs, evidence used in any proceedings relating to a patient may be used—
- (a) at any subsequent stage in those proceedings;
 - (b) in any other proceedings relating to the patient; and
 - (c) in any other proceedings under this Part relating to another member of the patient’s family.
- (5) The court may direct any party to take out a witness summons.
- (Rule 70.9(3) deals with a direction to the Chief State Solicitor)

Evidence to be filed on application for receiver, etc.

- 70.13** (1) On an application for—
- (a) the appointment of receiver for a patient; or
 - (b) an order authorising a person to do any act or carry out any transaction on behalf of the patient without appointing that person a receiver,
- the general rule is that the applicant must file a medical certificate and an affidavit of kindred and fortune.

- (2) The court may, however, otherwise direct and in particular—
- (a) where the income of the patient does not exceed \$2,400 per annum or his capital does not exceed \$10,000, the applicant may file a certificate of kindred and fortune; or
 - (b) where the applicant is the Chief State Solicitor no affidavit or certificate of kindred and fortune need be filed if the Chief State Solicitor files a certificate or a report under rule 70.9(5) that—
 - (i) the patient is possessed of property; and
 - (ii) the relief asked for is desirable in order to manage or protect that property.
- (3) An “affidavit of kindred and fortune” is an affidavit giving particulars of the patient’s relatives, property and affairs and of the circumstances giving rise to the application.

Consent to act as trustee

70.14 No evidence of the consent of a person to act as a trustee is required—

- (a) where that person is an applicant; or
- (b) where the proceedings are brought under section 36(8) of the Trustee Ordinance.

(Rule 32.3 deals with evidence of consent to act as a trustee)

Proof of amount due to a public authority

70.15 The amount due to any public authority for the past maintenance of the patient may be proved by the filing of an account certified under the hand of the proper officer of the authority unless the court otherwise directs.

Interim provision

70.16 (1) Where the court considers that it is desirable to make immediate provision—

- (a) in relation to the property and affairs of the patient; or
- (b) for any of the matters referred to in section 36(1) of the Act,

it may in a summary manner—

- (i) by certificate direct or authorise any person named therein to do any act or carry out any transaction specified in the certificate; or
- (ii) by order appoint an interim receiver for the patient until further order.

- (2) An order under paragraph (1)(ii) must be served on the patient unless the court otherwise directs and must specify a time within which the patient may apply to set aside the order.

Order without appointing a receiver

- 70.17 Instead of appointing a receiver, the court may direct or authorise any person to deal with the patient’s property in any manner authorised by the Act and specified in the order.

Accountability of person authorised

- 70.18 (1) When making any order under rule 70.16 or 70.17, the court must direct when and in what manner any person directed or authorised to do any act or carry out any transaction should render accounts to the court.
- (2) Subject to such direction the provisions of rules 70.23 to 70.26 apply to such a person as they do to a receiver.

Powers of the court in cases of delay, etc.

- 70.19 Where the court is dissatisfied with the conduct of any proceedings or the carrying out of any order or direction whether because of delay or any other reason, the court may require the party having conduct of the proceedings or any person appearing to be responsible to explain the delay or other cause of dissatisfaction and may give directions including—
- (a) a direction that any party or the Chief State Solicitor take out any application, conduct any proceedings or carry out any directions specified; and
 - (b) appoint the Chief State Solicitor to act as attorney-at-law for the patient in the proceedings in the place of any attorney-at-law previously acting for him.

Stock in name of patient or receiver

- 70.20 (1) Where any stock—
- (a) is standing in the name of a patient beneficially entitled thereto; or
 - (b) is standing in the name of the receiver in trust for a patient or as part of his property and—
 - (i) the receiver dies intestate;
 - (ii) himself becomes incapable by reason of mental disorder of acting as receiver;
 - (iii) is out of the jurisdiction of the court;

- (iv) it is uncertain whether he is still alive; or
- (v) he neglects or refuses to transfer the stock or to receive and pay over the dividends as the court directs,

the court may order some fit and proper person to transfer the stock into the name of the receiver, or, as the case may be, a new receiver for the patient, or into court, or otherwise deal with it as the court may direct, and also to receive and pay over the dividends thereof in such manner as the court directs.

- (2) Where an order is made under paragraph (1) or under section 40 of the Act directing stock to be transferred into court, the person required to effect the transfer is to be—
 - (a) in the case of stock standing in the stock register kept by a bank, some proper officer of that bank; or
 - (b) in any other case, some proper officer of the company or other body, whose stock is to be transferred,

and that person may, if so ordered, recover any sum accrued due before the transfer by way of dividend, bonus or periodical payment in respect of the stock and pay it into court to the general account of the patient or to a separate account or otherwise deal with it as the court may direct.

Remuneration of receiver and trustee

- 70.21 (1) The court may allow remuneration to any person appointed as receiver or trustee for a patient at such amount or rate as the court directs and any such remuneration is a debt due to the receiver or trustee from the patient and his estate.
- (2) After the death or recovery of a patient no request by a receiver or trustee for remuneration may be allowed unless—
 - (a) the court has previously directed that remuneration be allowed; and
 - (b) the request is made within four years from the date when the receiver or trustee was discharged.

Security from receiver

- 70.22 (1) Where the court appoints a person other than the Chief State Solicitor as receiver of a patient—
- (a) the person appointed must, unless the court otherwise directs, give such security for the performance of his duties as the court may direct before acting as receiver; and
 - (b) the order does not take effect until such security is given.

- (2) The court may from time to time vary the amount of security required.
- (3) The court may direct that security be given in any way including—
 - (a) by a bond approved by the court and given by the person giving security and also by—
 - (i) an insurance company, group of underwriters or bank approved by the court; or
 - (ii) with the approval of the court two personal sureties; or
 - (b) by lodging in court a sufficient sum of money or stock.
- (4) A person giving security in whole or part by lodging money or stock must apply for leave to make the lodgment and for directions as to how such money is to be invested and how any dividends should be applied.
- (5) Every person who has given security by bond must, whenever his accounts are passed or the court so directs, satisfy the court—
 - (a) that any premiums payable in respect of the bond have been duly paid; or
 - (b) if the bond was given by personal sureties, that each surety—
 - (i) is living;
 - (ii) is within the jurisdiction; and
 - (iii) has neither been adjudicated bankrupt nor compounded with his creditors,
 and if the court is not satisfied, it may require new security to be given or give other directions.
- (6) Where a person is authorised or directed to give a new security and—
 - (a) the new security has been completed; and
 - (b) he has paid or secured to the satisfaction of the court any balance due from him,
 the former security is to be discharged unless the court otherwise directs.

Passing of accounts

70.23 (1) Every receiver must—

- (a) annually; or
- (b) at such other interval as may be directed by the court,

deliver his accounts to the court office and attend at or within such time as the court may direct to have the accounts taken and passed.

- (2) On the passing of any accounts the court may make all proper allowances out of the patient’s estate including an allowance in respect of the proper

costs of the receiver of passing the accounts and of any other person allowed to attend.

- (3) The court may—
- (a) direct that a receiver need not account under this rule; or
 - (b) dispense with the passing of accounts at any time at which they would otherwise require to be passed.

Application of balance due from receiver

70.24 The balance found due from a receiver on the passing of his accounts, or so much as the court directs, must—

- (a) be paid by the receiver into court to the credit of the proceedings and invested in such manner as the court directs; or
- (b) be invested or otherwise dealt with by the receiver in such way as the court directs.

Default by receiver

70.25 Where a receiver fails to comply with rule 70.23 or 70.24, the court may—

- (a) disallow any remuneration which would otherwise have been due to the receiver; and
- (b) if he has defaulted in—
 - (i) paying money into court;
 - (ii) investing money; or
 - (iii) otherwise dealing with money,may charge him the statutory rate of interest or such other rate as the court may fix, for the period of his default.

Payment of maintenance and costs

70.26 Unless the court otherwise directs—

- (a) maintenance ordered to be paid by the receiver is to be paid out of income; and
- (b) any costs due to the receiver is to be paid out of any moneys coming into his hand after providing for such maintenance.

Final accounts

70.27 (1) On—

- (a) the discharge or death of a receiver; or
- (b) the death or recovery of the patient,

the court must take and pass the accounts of the receiver from the foot of his last accounts or, if no account has previously passed, from the date of his appointment, unless in the opinion of the court the taking and passing of such accounts may properly be dispensed with.

- (2) Where a balance is found due from the receiver or his estate, he or his personal representatives must pay it into court, unless the court makes some other direction.
- (3) Where a balance is found due to the receiver or his estate, it must be paid to him or his personal representatives by the patient or out of the patient's estate.
- (4) The security of the receiver must be discharged, unless the court otherwise directs—
 - (a) if the passing of his accounts has been dispensed with; or
 - (b) on payment of any balance found due from the receiver.

Disposal of property on patient's death or recovery

70.28 (1) On the death or recovery of a patient, the court may order any money, securities or other property—

- (a) belonging to the patient;
- (b) forming part of his estate; or
- (c) remaining under the control of, or held under the directions of the court,

to be paid, transferred, delivered or released to the person who appears to be entitled thereto.

(2) Where—

- (a) no grant of representation has been taken out to the estate of a deceased person; and
- (b) it appears to the court that the assets of the estate do not exceed \$10,000 in value,

the court may—

- (i) provide for the payment of funeral expenses out of any funds in court standing to the credit of the deceased; and

- (ii) order that any such funds, or the balance thereof, or any property of the patient remaining under the control, or held under the directions, of the court be paid, transferred, delivered or released to the personal representative of the deceased when constituted or to the person who appears to be entitled to apply for a grant of representation to his estate.
- (3) The court may at any time pending notification to the court of the grant of representation to the estate of a patient, direct that any money or securities which belonged to the patient when he died and were not already in court be transferred into court.

Settlement and approval of deeds

- 70.29 (1) All mortgages, leases and other dispositions of a patient's land and such other deeds and documents relating to his estate as may be directed must be settled and approved by the court.
- (2) The seal of the court on any deed or document is evidence that it has been settled and approved by the court.
 - (3) Unless otherwise directed, no deed or other document may be sealed for the purpose of paragraph (2) unless —
 - (a) it bears a certificate by the person tendering it that it is an exact copy of a draft settled and approved by the court; and
 - (b) in the case of a deed or document containing a recital that any money has been lodged in court, a certificate of the Comptroller of Accounts is produced stating that the lodgment has been made.

Copies of documents in court

- 70.30 (1) Subject to the payment of any fee prescribed by these Rules and unless the court directs otherwise—
- (a) any party who has filed an affidavit or other document is entitled to be supplied by the court with a copy;
 - (b) the party having conduct of the proceedings is entitled to be supplied by the court with a copy of any order, certificate, authority, direction or other document made, given or prepared by the court in the proceedings; and
 - (c) any other person may be supplied by the court with a copy of any document mentioned in subparagraph (a) or (b), if the court is satisfied that he has good reason for requiring it.
- (2) Any copy of a document supplied under this rule is to be marked as an office copy if so requested.

PART 71 ADMINISTRATION CLAIMS

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Scope of this Part

71.1 This Part deals with the following claims:

- (a) a claim for—
 - (i) the administration of the estate of a deceased person; or
 - (ii) the execution of a trust under the direction of the court—
 such claims are referred to as “administration claims”; and
- (b) a claim to determine any question or grant any relief relating to the administration of the estate of a deceased person or the execution of a trust.

Parties to an administration claim

- 71.2 (1) An administration claim or a claim under rule 4 may be brought by any—
- (a) executor or administrator of the relevant estate;
 - (b) trustee of the relevant trust; or
 - (c) person having or claiming to have a beneficial interest in the estate of a deceased person or under a trust.
- (2) Any executor or administrator of the relevant estate or trustee of the relevant trust who is not a claimant must be a defendant to the claim.
- (3) The general rule is that the claimant need not join any person having a beneficial interest under the estate or trust as a defendant.
- (4) However—
- (a) the claimant may make any such person a defendant; and
 - (b) the court may direct that any such person be made a defendant.

Claims by third parties

- 71.3 (1) This rule applies where—
- (a) there are proceedings under a judgment or order made in an administration claim relating to the estate of a deceased person; and
 - (b) a person not a party to the claim makes a claim against the estate.
- (2) No person other than the executors or administrators may appear in proceedings relating to that claim unless the court otherwise directs.

Determination of questions without administration

- 71.4 (1) An executor, administrator or trustee may apply for—
- (a) the determination of any question; or
 - (b) any relief,
- without bringing an administration claim.
- (2) The “determination of any question” includes—
- (a) any question arising in the administration of the estate of a deceased person;
 - (b) any question arising in the execution of a trust;
 - (c) any question as to the composition of any class of persons having a claim against—
 - (i) the estate of a deceased person;
 - (ii) a beneficial interest in the estate of a deceased person; or

- (iii) 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.
- (3) “Any relief ” includes an order —
 - (a) requiring an executor, administrator or trustee to furnish and verify accounts;
 - (b) requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
 - (c) directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
 - (d) approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee; and
 - (e) 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.

Judgments and orders in an administration claim

- 71.5 (1) The court need not make any judgment or order in an administration claim unless satisfied that the question in issue cannot be determined by any other means.
- (2) Where an administration claim is brought by—
- (a) a creditor of the estate of a deceased person;
 - (b) a person claiming to be entitled under the will or the intestacy of a deceased person; or
 - (c) a person claiming to be beneficially entitled under a trust,
- and the claimant alleges that no, or no sufficient, accounts have been furnished by the executors, administrator or trustees, the court may—
- (i) stay the proceedings until a specified date and direct the executors, administrators or trustees to supply proper accounts to the claimant; or

- (ii) if it is necessary to prevent proceedings by other creditors or claimants, give judgment or make an order for the administration of the estate 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.

Conduct of sale of trust property

71.6 Where in an administration claim an order is made for the sale of any property vested in executors, administrators or trustees they are to have conduct of the sale unless the court otherwise directs.

Scope of rules 71.8–71.16

- 71.7** (1) Rules 71.8–71.16 apply—
- (a) where in proceedings for the administration of the estate of a deceased person under the direction of the court any judgment or order directs that—
 - (i) an account of debts or liabilities of the deceased's estate be taken; or
 - (ii) any inquiry be made for next of kin or unascertained claimants; and
 - (b) where in proceedings for the execution of a trust under the direction of the court, the judgment directs any such inquiry to be made, and also, with any necessary modifications, where any judgment directs that an account of debts or other liabilities or an inquiry be made.

Advertisements for creditors and other claimants

- 71.8** (1) The court may direct the making of advertisements for creditors or other claimants taking into account any advertisements previously issued by the personal representatives or trustees concerned.
- (2) The advertisement must be prepared by the party prosecuting the judgment.
 - (3) An advertisement for creditors must be signed by that party's attorney-at-law, or if he be not represented, be issued in the name of the court.
 - (4) An advertisement for other claimants must be approved by the court and issued in the name of the court.

- (5) The court must direct the time within which and the person to whom, any claimant is to send his name and address and particulars of his claim and such information must be stated in the advertisement.

Failure to apply within time specified

- 71.9 (1) A claimant who fails to send particulars of his claim to the person named in any advertisement directed by the court within the time specified in the advertisement is not entitled to prove his claim without the permission of the court.
- (2) In giving permission, the court may impose terms.

Examination of claims

- 71.10 (1) Where the court directs an account of the debts and liabilities of the estate of a deceased person it must appoint a party to—
 - (a) examine the claims of persons claiming to be creditors of the estate and determine, so far as he is able, to which of such claims the estate is liable; and
 - (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
 - (i) claims sent in pursuance of any advertisements;
 - (ii) claims which have been received by any of the personal representatives otherwise than in pursuance of an advertisement; and
 - (iii) debts of the deceased at the time of his death in respect of which no claim has been received but which are or may be still due and which have come to the knowledge of any of the personal representatives.
- (2) Where the court directs an inquiry for next of kin or unascertained claimants it must appoint a party to—
 - (a) examine the claims and determine, so far as he is able, which of them are valid claims; and
 - (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
 - (i) claims sent in in pursuance of any advertisements; and
 - (ii) claims received by any of the personal representatives or trustees concerned, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

- (3) The affidavit must, as the circumstances of the case require, specify—
 - (a) in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed in whole or in part; and
 - (b) in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.
- (4) If the personal representatives or trustees concerned are not the parties directed to examine claims, they must join with that party in making the affidavit required by this rule.

Adjudication on claims

- 71.11** (1) The court adjudicating the claims may—
- (a) allow any such claim with or without proof;
 - (b) direct any such claim to be investigated; or
 - (c) require the claimant to—
 - (i) attend and prove; or
 - (ii) furnish further particulars or evidence of his claim.
- (2) Where the court exercises the power conferred by paragraph (1)(c) such party as the court directs must serve on that claimant a notice requiring him to—
- (a) file an affidavit in support of his claim within a time specified by the court and to attend before the court on a date, time and place stated in the notice for the claim to be adjudicated; or
 - (b) produce to the court at a date, time and place specified such documents in support of his claim as may be specified and described.
- (3) Where a claimant fails to comply with a notice served on him under paragraph (2) his claim may be disallowed.
- (4) A claimant who files an affidavit under paragraph (2)(a) must also serve a copy on the party serving the notice on him.
- (5) Any person claiming to be a secured creditor must produce his security to the court.
- (6) References to a claim include part of a claim.

Adjournment of adjudication

- 71.12 Where any claim is not disposed of on the day appointed for adjudication the court—
- (a) must adjourn the adjudication to a specified date; and
 - (b) may fix the time by which any evidence in support of or in opposition to the claim must be filed.

Service of notice of judgment on certain claimants

- 71.13 (1) Where a claimant other than a creditor has established his claim, then, unless—
- (a) he is a party to the proceedings; or
 - (b) has previously been served with a copy of the judgment; or
 - (c) the court otherwise directs,
- the party having conduct of the proceedings must serve a copy of the judgment on him.
- (2) A person served with a copy of the judgment may, within one month after service of the copy judgment apply to the court to discharge, vary or add to the judgment.
 - (3) Subject to such an application, a person served with a copy of the judgment is bound by it to the same extent as he would have been had he been a party to the proceedings.
 - (4) Such a person may take part in any proceedings under the judgment.
 - (5) If the court makes a direction under paragraph (1)(c), it may direct that that person is bound by the judgment, unless the judgment has been obtained by fraud or non-disclosure of material facts.

Notice of claims allowed

- 71.14 (1) Such party as the court directs must serve on every creditor whose claim or any part thereof has been allowed or disallowed and who did not attend when the claim was adjudicated, a notice informing him of that fact.
- (2) Such party must also make out a list of the creditors' claims and a list of any other claims and file it at the court office.

Service of notices

- 71.15 The address for service of any notice on a claimant is the address stated in the claim or, if an attorney-at-law is acting for him, the address of that attorney-at-law.

Interest on debts

- 71.16** (1) Where an account of the debts of a deceased person is directed by any judgment, then, unless —
- (a) the deceased's estate is insolvent; or
 - (b) the court otherwise directs,
- interest must be allowed—
- (i) on any debt that carries interest, at the rate it carries; and
 - (ii) on any other debt at the statutory rate of interest from the date of judgment.
- (2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest is entitled to interest on his debt at the statutory rate from the date of the judgment out of any assets which may remain after satisfying the costs of the proceedings, the debts which have been established and the interest on such of the debts as by law carry interest.

Interest on legacies

- 71.17** Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the court, interest must be allowed on each legacy at the statutory rate of interest beginning at the expiration of one year after the testator's death.
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PART 72 CONTENTIOUS PROBATE PROCEEDINGS

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Scope of this Part

- 72.1 (1) This Part applies to probate causes and matters, including applications for the rectification of a will, and the other provisions of these Rules apply to those causes and matters subject to this Part.
- (2) In this Part “probate proceedings” means proceedings for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being proceedings which is non-contentious or common form probate business; and “will” includes a codicil.

How to commence probate proceedings

- 72.2 (1) Probate proceedings must be begun by issuing a fixed date claim.
- (2) The claim form must be indorsed with a statement of the nature of the interest of the claimant and of the defendant in the estate of the deceased to which the proceedings relates.

- (3) The claimant must file with his claim form his statement of case.

Parties to proceedings for revocation of grant

- 72.3 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 his will or letters of administration of his estate must be made a party to any proceedings for revocation of the grant.

Lodgment of grant in proceedings for revocation

- 72.4 (1) Where, at the commencement of proceedings for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration, as the case may be, have not been lodged in court then—
- (a) if the proceedings are commenced by a person to whom the grant was made, he must lodge the probate or letters of administration at the court within 7 days after the issue of the claim; or
 - (b) if any defendant to the claim has the probate or letters of administration in his possession or under his control, he must lodge it or them at the court within 14 days after the service of the claim form upon him.
- (2) Any person who fails to comply with paragraph (1) may, on the application of any party to the proceedings, be ordered by the court to lodge the probate or letters of administration within a specified time, and any person against whom such an order is made may not be entitled to take any step in the proceedings without the permission of the court until he has complied with the order.

Affidavit of testamentary scripts

- 72.5 (1) Unless the court otherwise directs, the claimant and every defendant who has entered an appearance in probate proceedings must swear an affidavit—
- (a) describing any testamentary script of the deceased person, whose estate is the subject of the proceedings, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and
 - (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

- (2) Any affidavit required by this rule must be filed, and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged at the court within 14 days after the entry of an appearance by a defendant to the proceedings or, if no defendant enters an appearance and the court does not otherwise direct, before the first hearing.
- (3) Where any testamentary script required by this rule to be lodged or any part thereof is written in pencil, then, unless the court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged and the words which appear in pencil in the original must be underlined in red ink in the copy.
- (4) Except with the leave of the court, no party to probate proceedings may be allowed to inspect an affidavit filed, or any testamentary script lodged, by any other party to the proceedings under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.
- (5) In this rule “testamentary script” means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

Failure to enter appearance

- 72.6 (1) Part 12 does not apply to probate proceedings.
- (2) Where any of several defendants to probate proceedings fails to enter an appearance or to file and serve a defence, the claimant may—
 - (a) after the time for entering an appearance or filing a defence has expired; and
 - (b) upon filing an affidavit proving due service of the claim form and statement of case on that defendant,
 proceed with the claim as if that defendant had entered an appearance.
 - (3) Where the defendant, or all the defendants, to probate proceedings, fails or fail to enter an appearance or file and serve a defence, then, unless on the application of the claimant the court orders the claim to be dismissed or discontinued, the claimant may, after the time limited for entering an appearance, or for serving a defence, by the defendant, apply to the court for an order for trial of the proceedings.
 - (4) Before applying for an order under paragraph (3) the claimant must file an affidavit proving due service of the claim form and his statement of case on the defendant.
 - (5) An application under paragraph (3) must be dealt with at the first hearing.

- (6) Where the court grants an order under paragraph (3), it may direct the proceedings to be tried on affidavit evidence.

Counterclaim

72.7 A defendant to probate proceedings who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the proceedings, must add to his defence a counterclaim in respect of that matter.

Contents of statements of case

- 72.8 (1) Where the claimant in probate proceedings disputes the interest of a defendant he must allege in his statement of case that he denies the interest of that defendant.
- (2) In probate proceedings in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his statement of case that if the allegations made therein are proved he would be entitled to an interest in the estate.
- (3) Any party who pleads that at the time when a will, the subject of the proceedings, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say:
- (a) that the will was not duly executed;
 - (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; or
 - (c) that the execution of the will was obtained by undue influence or fraud,
- must be made by that party unless that other plea is also set out in his statement of case.

Discontinuance and dismissal

- 72.9 (1) Part 38 does not apply in relation to probate proceedings.
- (2) At any stage of the proceedings the court may, on the application of the claimant or of any party to the proceedings who has entered an appearance, order the proceedings to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate,

of the deceased person, as the case may be, which is the subject of the proceedings, be made to the person entitled.

Compromise of proceedings—trial on affidavit evidence

72.10 Where, whether before or after the service of the defence in probate proceedings, the parties to the proceedings agree to a compromise, the court may order the trial of the proceedings on affidavit evidence.

Application for order to bring in will, etc.

- 72.11 (1) Any application in probate proceedings for an order under section 22 of the Wills and Probate Ordinance (Ch. 8 No. 2) is to be for an order requiring a person to bring a will or other testamentary paper into court or to attend in court for examination.
- (2) An application under paragraph (1) may be made without notice but must be supported by evidence setting out the grounds of the application.
- (3) Any person against whom an order made under paragraph (1) and who denies that the will or other testamentary paper referred to in the order is in his possession or under his control may file an affidavit to that effect.

Administration *pendente lite*

72.12 Where an order for a grant of administration is made under section 17 of the Wills and Probate Ordinance (Ch. 8 No. 2), Part 52 applies as if the administrator were a receiver appointed by the court.

Probate counterclaim in other proceedings

- 72.13 (1) In this rule “probate counterclaim” means a counterclaim in any claim other than probate proceedings by which the defendant claims any such relief as is mentioned in rule 1(2).
- (2) Subject to the following paragraphs, this Part applies with the necessary modifications to a probate counterclaim as it applies to probate proceedings.
- (3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.



CASES**2016****HIGH COURT***Rabia Khan v Annisa Sammy Khan*

CV 2015-03256 (2016.03.22)

RULE 72.2(2) — RULE 72.8 — COMPLIANCE WITH REQUIREMENTS — SUFFICIENCY OF PLEADINGS — JURISDICTION OF COURT

2013**PRIVY COUNCIL/COURT OF APPEAL***Hugh Lee King v Leo Martinez a/c Leon Martinez*

Civ App No P250 of 2013

Appeal pending

CV 2012-03303 (2013.09.27)

RULE 72.5 — PURPOSE OF RULE — NEED FOR COMPLIANCE — ADEQUACY OF EVIDENCE

PART 73 DEFAMATION CLAIMS

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Evidence in mitigation of damages	Rule 73.7

Scope of this Part

73.1 This Part deals with claims for damages for libel or slander.

Claimant's statement of case

73.2 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 matters set out in Part 8—

- (a) give sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified;
- (b) where the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, give particulars of the facts and matters relied on in support of such sense; and
- (c) where the claimant alleges that the defendant maliciously published the words or matters, give particulars in support of the allegation.

Defendant's statement of case

73.3 Where the defendant (or in the case of a counterclaim, the claimant) alleges that, in so far as the words complained of consist of statements of facts, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

Payments into court and offers

- 73.4 Where the claimant claims against several defendants sued jointly, and accepts money paid into court under Part 37 or a written offer under Part 36 by any one or more but not all of those defendants, the claim must be stayed against that defendant or defendants only, but—
- (a) the sum recoverable under any judgment in favour of the claimant against any other defendant must not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court or the offer by the defendant or defendants against whom the claim has been stayed; and
 - (b) the claimant is not entitled to any costs after the date of acceptance of the payment into court or the offer to settle unless either—
 - (i) the damages awarded exceed the amount paid into court or offered; or
 - (ii) the court is satisfied that there was reasonable ground to continue the claim against the other defendant.

Statement in open court

- 73.5 Where a defamation claim is settled before trial either party may apply to a judge in chambers for leave to make a statement in open court in terms agreed by the judge.

Requests for information

- 73.6 In a defamation claim where the defendant states that the words or matters complained of—
- (a) are fair comment on a matter of public interest; or
 - (b) were published on a privileged occasion,
- the claimant may not make a request for information under Part 35 as to the defendant's sources of information or grounds of belief.

Evidence in mitigation of damages

73.7 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 in chief—

(a) as to the circumstances under which the libel or slander was published; or

(b) as to the character of the claimant,

with a view to mitigating damages unless particulars are given in a witness statement served at least 42 days before the trial.

CASES**2015****HIGH COURT***Jack Warner v Anand Ramlogan*

Civ App No 216 of 2015

Appeal pending

CV 2014-00134 (2015.07.30)

SLANDER — SUFFICIENCY OF PLEADINGS — INAPPLICABILITY OF UK CPR

2012**HIGH COURT***Phillip Ayoung-Chee v Lester Goetz*

CV 2010-04799 (2012.01.31)

RULE 73.2(c) — LIBEL — REPLY — MALICE — NEED FOR PARTICULARS

2007**HIGH COURT***George August Joseph v Harry Partap and Others*

CV 2005-00437 (2007.03.29)

RULE 73.3 — LIBEL — NEED FOR SUFFICIENT PARTICULARS

PART 74 ADMIRALTY PROCEEDINGS

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Scope of this Part

- 74.1 (1) This Part applies to admiralty proceedings including those proceedings listed in rule 74.2 and all other admiralty jurisdiction which the High Court has had in the past and the other provisions of these Rules apply to those proceedings subject to the provisions of this Part.
- (2) In this Part—
- “the Act” means the Shipping Act (Chap. 50:10);
 - “claim *in rem*” means any such claim as is mentioned in rule 74.3;
 - “caveat against arrest” means a caveat entered in the caveat book under rule 74.10;
 - “caveat against release and payment” means a caveat entered in the caveat book under rule 74.15;
 - “caveat book” means the book in which caveats issued under this Part are entered;
 - “collision regulations” means regulations made under section 204 of the Act or in accordance with any international convention or treaty applicable to Trinidad and Tobago;
 - “limitation claim” means any proceedings by shipowners or other persons under Part XVIII of the Act for the limitation of the amount of their liability in connection with a ship or other property; and
 - “ship” includes every description of vessel used in navigation and not propelled by oars.

- (3) Any reference to acknowledging service (or issue) of a claim form is to be construed as doing so by entering an appearance in accordance with Part 9.

Claims to be dealt with under this Part

74.2 The following claims, questions and proceedings, namely—

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein, including power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, must be sold, and to make such other order as the court thinks fit;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage received by a ship;
- (e) any claim for damage done by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or fault of—
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of a ship, in the loading, carriage or disembarkation of persons on, in or from the ship;
- (g) all proceedings to enforce a claim for damage, loss of life or personal injury arising out of—
 - (i) a collision between ships;
 - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
 - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;
- (h) any claim for loss or damage to goods carried in a ship;
- (i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

- (j) any claim—
 - (i) under the International Convention on Salvage 1989;
 - (ii) under any contract for or in relation to salvage services; or
 - (iii) in the nature of salvage not falling within (i) or (ii) above, or any corresponding claim in connection with an aircraft;
- (k) any claim in the nature of towage in respect of a ship or an aircraft;
- (l) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (o) subject to the limitations imposed by section 136 of the Act, any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
- (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (q) any claim arising out of an act which is or is claimed to be a general average act;
- (r) any claim arising out of bottomry;
- (s) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty;
- (t) any application to the court under the Act; and
- (u) every limitation claim, in relation to—
 - (i) all ships or aircraft whether Trinidadian or not and whether registered or not and wherever the residence or domicile of their owners may be;
 - (ii) all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
 - (iii) (so far as they relate to mortgages or charges) all mortgages or charges, whether registered or not and whether legal or equitable including mortgages and charges created under foreign law,

are to be dealt with as admiralty claims.

Admiralty claims *in rem*

- 74.3 (1) In the case of any such claim or question as is mentioned in rule 74.2 (a), (b), (c) or (s) a claim *in rem* may be brought against the ship or property in connection with which the claim or question arises.
- (2) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, a claim *in rem* may be brought against that ship, aircraft or property.
- (3) In the case of any such claim as is mentioned in rule 74.2(e), (f) and (h) to (r) where—
- (a) the claim arises in connection with a ship; and
- (b) the person who would be liable in a claim *in personam* (“the relevant person”) was, when the cause of action arose, the owner or charterer, or in possession or in control, of the ship,
- a claim *in rem* may (whether or not the claim gives rise to a maritime lien on that ship) be brought against—
- (i) that ship, if at the time when the claim is made the relevant person is the beneficial owner of that ship as respects all the shares in it; or
- (ii) any other ship of which, at the time when the claim is made the relevant person is the beneficial owner as respects all the shares in it.
- (4) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, a claim *in rem* may be brought against that aircraft if, at the time when the claim is made, it is beneficially owned by the person who would be liable on the claim in a claim *in personam*.
- (5) For the purpose of determining under paragraphs (3) and (4) whether a person would be liable on a claim *in personam* it shall be assumed that he has a habitual residence or place of business in Trinidad and Tobago.
- (6) In this rule “the time when the claim is made” means the date on which the claim is issued in accordance with rule 8.1(2).
- (7) Where, as regards any claim as is mentioned in rule 74.3(3), a ship has been served with a claim form or arrested in a claim *in rem* brought to enforce that claim, no other ship may be served with a claim form or arrested in that or any other claim *in rem* brought to enforce that claim: but this paragraph does not prevent the issue, in respect of any one such claim, of a claim form naming more than one ship or two or more claim forms each naming a different ship.
- (8) No claim *in rem* may be brought against the State.

How to make an admiralty claim

- 74.4 (1) A claim *in rem* must be begun by a claim form in Form No. 16.
- (2) A claim *in personam* must be begun by a claim form in Form No. 1.
- (3) A limitation claim must be begun by a claim form in Form No. 17.
- (4) A claim *in rem* and a claim *in personam* may not be combined in the same claim form.
- (Part 8 deals with the issue of a claim form, Part 5 deals with the service of a claim form)

Service of claim *in rem*

- 74.5 (1) Subject to paragraph (2), a claim form by which a claim *in rem* is begun must be served on the property against which the proceedings is brought, save that—
- (a) where the property is freight, the claim must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried; and
- (b) where the property has been sold by the marshal, the claim may not be served on that property but a sealed copy of it must be filed and the claim shall be deemed to have been duly served on the day on which the copy was filed.
- (2) A claim form need not be served or filed as mentioned in paragraph (1) if it is deemed to have been duly served on the defendant by virtue of rule 5.17(2) or (3).
- (3) Where by virtue of this rule a claim form is required to be served on any property, the claimant may request service of the claim to be effected by the marshal if, but only if, a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the claimant must file a request in the appropriate practice form and lodge—
- (a) the claim form and a copy thereof; and
- (b) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the claim form, and thereupon the marshal or his substitute must serve the claim form on the property described in the request.
- (4) Where a claim form is served on any property by the marshal or his substitute, the person effecting service must endorse on the claim the following particulars:
- (a) where it was served;
- (b) the property on which it was served;

- (c) the day of the week and the date on which it was served;
 - (d) the manner in which it was served; and
 - (e) the name and the address of the person effecting service,
- and the endorsement is evidence of the facts stated.
- (5) Where the claimant in a claim *in rem*, or his attorney-at-law, becomes aware that there is in force a caveat against arrest with respect to the property against which the proceedings is brought, he must serve the claim forthwith on the person at whose instance the caveat was entered.
 - (6) The general rule is that where a claim form by which a claim *in rem* is begun is amended after service under Part 20, the amended claim form must be served on any intervener and any defendant who has acknowledged issue or service of the claim form or, if no defendant has acknowledged issue or service of the claim, it must be served or filed in accordance with paragraph (1).
 - (7) The court may, however, otherwise direct.
 - (8) An application for such a direction may be made without notice but must be supported by evidence.

Service on ships, etc.,—how effected

- 74.6 (1) The general rule is that service of a warrant of arrest or claim form in proceedings *in rem* against a ship, freight or cargo is to be effected by—
- (a) affixing the warrant or claim form for a short time on any mast of the ship or on the outside of any suitable part of the ship’s superstructure; and
 - (b) on removing the warrant or claim form, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the claim form) on a sheltered, conspicuous part of the ship.
- (2) However, service of a warrant of arrest or claim form in proceedings *in rem* against freight or cargo or both, if the cargo has been landed or transhipped, is to be effected—
- (a) by placing the warrant or claim form for a short time on the cargo and, on removing the warrant or claim form, leaving a copy of it on the cargo; or
 - (b) if 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 form with that person.

Service of claim form out of jurisdiction

- 74.7 (1) A claim form under rule 74.2(g) or (u) other than a claim *in rem* may be served out of the jurisdiction with the permission of the court if—
- (a) the defendant has his habitual residence or a place of business within Trinidad and Tobago;
 - (b) the facts out of which the claim arises took place within waters of Trinidad and Tobago or within the limits of a port of Trinidad and Tobago; or
 - (c) a claim arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.
- (2) An application to serve a claim form out of the jurisdiction must be made in accordance with rule 7.5.
- (3) In this rule—
- “waters of Trinidad and Tobago” has the meaning placed on it by section 2 of the Act; and
 - “port” includes a place and a harbour.

Appearance

- 74.8 A defendant to a claim *in rem* which has not been served, or a defendant to a limitation claim who has not been served with the claim, may, if he desires to take part in the proceedings, acknowledge the issue of the claim by entering an appearance, substituting for the references to service of, references to issue of the claim.

Warrant of arrest

- 74.9 (1) In a claim *in rem* the claimant or defendant may, after the issue of the claim in the proceedings and subject to the provisions of this rule, issue a warrant in Form No. 18 for the arrest of the property against which the claim or counterclaim is brought.
- (2) Before a warrant to arrest any property is issued the party intending to use it must procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.
- (3) The general rule is that a warrant of arrest may not be issued until the party intending to issue the same has filed an affidavit made by him or his agent containing the following particulars:
- (a) in every case—

- (i) the nature of the claim or counterclaim and that it has not been satisfied and, if it arises in connection with a ship, the name of that ship; and
- (ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs;
- (b) in the case of a claim against a ship under rules 74.2(e) to (f) and (h) to (r)—
 - (i) the name of the person who would be liable on the claim in a claim *in personam* (“the relevant person”);
 - (ii) that the relevant person was when the cause of proceedings arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose; and
 - (iii) that at the time of the issue of the claim the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and
- (c) in the case of a claim for possession of a ship or for wages, the nationality of the ship in respect of which the warrant is required and that the notice (if any) required by paragraph (7) has been sent.
- (4) Where appropriate a copy of any notice sent to a consul under paragraph (7) must be exhibited to an affidavit required by paragraph (3).
- (5) The court may, however, give permission to issue the warrant notwithstanding that the affidavit does not contain all those particulars.
- (6) A warrant of arrest may not be issued without the permission of the court in the case of property whose beneficial ownership has, since the issue of the claim, changed as a result of a sale or disposal by the court.
- (7) The general rule is that a warrant of arrest may not be issued in a claim *in rem* against a foreign ship belonging to a port of a State having a consulate in Port-of-Spain being a claim for possession of the ship or for wages, until notice that the proceedings have been begun has been sent to the consul or the court gives permission.
- (8) Issue of a warrant of arrest takes place upon it being sealed by the court office.

Caveat against arrest

- 74.10 (1) Except in a case to which paragraph (2) applies, a person who wishes to prevent the arrest of any property must file a request in the appropriate practice form signed by him or his attorney-at-law undertaking—

(a) to acknowledge issue or service (as may be appropriate) of the claim form in any claim that may be made against the property described in the request; and

(b) within 3 days after receiving notice that such a claim has been made, to give bail in that claim in a sum not exceeding an amount specified in the request or to pay the amount so specified into court,

and on the filing of the request a caveat against the issue of a warrant to arrest the property described in the request must be entered in the caveat book.

(2) Where a claimant in a limitation proceedings has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976 and rule 74.35, and desires to prevent the arrest of any property for a claim which may be or has been made against the fund, he must file in the court office a request, in the appropriate practice form signed by him or his attorney-at-law—

(a) stating that a limitation fund in respect of damage arising from the relevant incident has been constituted; and

(b) undertaking to acknowledge issue or service (as may be appropriate) of the claim form in any claim that may be begun against the property described in the request,

and on the filing of the request a caveat against the issue of a warrant to arrest the property described in the request must be entered in the caveat book.

(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 apply to the court for an order discharging the warrant and, on the hearing of the application, the court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

Committal of attorney-at-law for failing to comply with undertaking

74.11 Where the attorney-at-law for a party to a claim *in rem* fails to comply with a written undertaking given by him to any other party or his attorney-at-law to acknowledge issue or service of the claim form, give bail or pay money into court in lieu of bail, he is liable to committal.

Execution, etc., of warrant of arrest

- 74.12 (1) A warrant of arrest is valid for 12 months beginning with the date of its issue.
- (2) A warrant of arrest may be executed only by the marshal or his substitute.
- (3) A warrant of arrest may not be executed until an undertaking to pay on demand the fees of the marshal and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the marshal's office.
- (4) A warrant of arrest may not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.
- (5) The general rule is that a warrant of arrest must be served on the property against which it is issued.
- (6) However, 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.
- (7) Within 7 days after the service of a warrant of arrest, the warrant must be filed.

Directions with respect to property under arrest

- 74.13 (1) The marshal may at any time apply to the court for directions with respect to property under arrest in any proceedings and may, and if the court so directs, must give notice of the application to any or all of the persons referred to in paragraph (2).
- (2) The marshal must send by post a copy of any order made on an application under paragraph (1) to all those persons who, in relation to that property, have—
- (a) entered a caveat which is still in force;
- (b) caused a warrant for the arrest of the property to be executed by the marshal;
- (c) acknowledged issue or service of the claim form in any claim in which the property is under arrest; or
- (d) intervened in any claim in which the property is under arrest.
- (3) A person other than the marshal may make an application under this rule.
- (4) The application together with copies of any affidavits in support must be served upon the marshal and all persons referred to in paragraph (2) unless the court otherwise orders.
- (5) An application for an order dispensing with service may be made without notice.

Release of property under arrest

- 74.14 (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, such property may only be released under the authority of a release in the appropriate practice form.
- (2) A release may not be issued with respect to property as to which a caveat against release is in force, unless, either—
- (a) at the time of the issue of the release the property is under arrest in one or more other proceedings; or
- (b) the court so orders.
- (3) A release may be issued at the instance of any party to the claim in which the warrant of arrest was issued if the court so orders, or, subject to paragraph (2), if all the other parties, except a defendant who has not acknowledged issue or service of the claim form, consent.
- (4) Before a release is issued, the party applying for its issue must, unless paragraph (2)(a) applies, give notice to any person at whose instance a subsisting caveat against release has been entered, or to his attorney-at-law, requiring the caveat to be withdrawn.
- (5) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal either—
- (a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the 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.
- (6) The court, on the application of any party who objects to directions given to him by the marshal under paragraph (5), may vary or revoke the directions.

Caveat against release, etc.

- 74.15 (1) Where a person, claiming to have a right to claim *in rem* against any property which is under arrest or the proceeds of sale thereof, wishes to be served with notice of any application to the court in respect of that property or those proceeds, he must file a request in the appropriate practice form and, on the filing of that request, a caveat must be entered in the caveat book.

- (2) 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 apply to the court 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 the court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.
- (3) Where the court makes an order under paragraph (2), it must assess the costs.

Duration of caveats

- 74.16** (1) Every caveat entered in the caveat book is valid for 12 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a request in the appropriate practice form.
- (2) The period of validity of a caveat may not be extended, but this provision is not to be taken as preventing the entry of successive caveats.

Bail

- 74.17** (1) Except in the case where a ship or aircraft has been arrested in respect of a claim under rule 74.2 (a) or (b), the court must permit the release of a ship or aircraft which has been arrested upon sufficient bail being provided.
- (2) Where a ship or aircraft has been arrested in respect of a claim under rule 74.2 (a) or (b) the court may—
- (a) permit the person in possession of the ship or aircraft to continue trading upon such person providing sufficient bail; or
 - (b) deal otherwise with the operation of the ship during the period of arrest.
- (3) In default of agreement between the parties as to the amount of bail, the court must determine the nature and amount of such bail.
- (4) Bail on behalf of a party to a claim *in rem* may be given by—
- (a) bond in the appropriate practice form; or
 - (b) bank guarantee or other security from a reputable financial institution acceptable to the marshal.
- (5) Sureties to a bond must enter into the bond before a commissioner of affidavits not being a commissioner who, or whose partner or associate, is acting as attorney-at-law or agent for the party on whose behalf the bail is to be given.

- (6) Subject to paragraph (7), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.
- (7) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit may be made under paragraph (6) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.
- (8) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner before whom the bail bond was entered into.
- (9) After the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) the party on whose behalf bail is given may file the bond and must at the same time file—
 - (a) the affidavits (if any) made under paragraph (2); and
 - (b) an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

Intervenors

- 74.18** (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 defendant to the proceedings may, with the permission of the court, intervene in the proceedings.
- (2) An application for permission must not be made on notice.
 - (3) It must, however, be supported by evidence showing the interest of the applicant in the property against which the proceedings is brought, or in the money in court.
 - (4) A person to whom leave is granted under this rule becomes a party to the proceedings.
 - (5) The court may order that a person to whom it grants leave to intervene in proceedings must, within such period or periods as may be specified in the order, serve on any other party to the proceedings such notice of his intervention and such pleading as may be specified.

Preliminary acts

- 74.19** (1) The rule deals with proceedings relating to damage, loss of life or personal injury arising out of a collision between ships.
- (2) The following provisions apply unless the court otherwise orders.

- (3) The claimant must within two months after service of the claim form on any defendant and the defendant must within two months of acknowledging issue or service of the claim file in the court office a document in two parts (in these rules referred to as a “preliminary act”) containing a statement of the following:

Part One

- (a) the names of the ships which came into collision and their ports of registry;
- (b) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;
- (c) the date and time (including the time zone) of the collision;
- (d) the place of the collision;
- (e) the direction and force of the wind;
- (f) the state of the weather;
- (g) the state, direction and force of the tidal or other current;
- (h) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (i) the lights or shapes (if any) carried by the ship;
- (j)
 - (i) the distance and bearing of the other ship if and when her echo was first observed by radar; and
 - (ii) the distance, bearing and approximate heading of the other ship when first seen;
- (k) what lights or shapes or combinations of lights or shapes (if any) of the other ship were first seen;
- (l) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
- (m) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in Part One (h) 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, and when;
- (n) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact, what light or shape or combination of lights or shapes (if any) of the other ship was first seen;

- (o) what sound signals (if any) were given, and when; and
- (p) what sound signals (if any) were heard from the other ship, and when.

Part Two

- (a) a statement that the particulars in Part One are incorporated in Part Two;
 - (b) any other facts and matters upon which the party filing the preliminary act relies;
 - (c) all allegations of negligence or other fault which the party filing the preliminary act makes; and
 - (d) the remedy or relief which the party filing the preliminary act claims.
- (4) Part Two of the preliminary act shall be deemed to be the statement of case of the person filing the preliminary act including, in the case of the defendant, a counterclaim, and rules 8.4 to 8.10 and 10.5 to 10.8 apply to it save insofar as this rule and rule 74.21 provides otherwise.
- (5) The court may order that Part Two of the preliminary act need not be filed by the claimant or defendant and give directions for the further conduct of the proceedings.
- (6) Every preliminary act must be sealed before filing and be filed in a sealed envelope which must not be opened except as provided in paragraph (8) or by order of the court.
- (7) A claimant must serve notice of filing his preliminary act on every defendant who acknowledges issue or service of the claim within 3 days of receiving notice of that acknowledgement or upon filing his preliminary act, whichever is the later. A defendant must, upon filing his preliminary act, serve notice that he has done so on the claimant and on every other defendant who has acknowledged issue or service of the claim.
- (8) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing a consent signed by that other party or his attorney-at-law.
- (9) Within 14 days after the last preliminary act in the proceedings is filed each party must serve on every other party a copy of his preliminary act.
- (10) At any time after all preliminary acts have been filed any party may apply to the court for an order that—
- (a) one or more parties file a schedule of the damages claimed by them and serve a copy thereof on every other party; and
 - (b) the damages be assessed prior to or at the trial on liability.
- (11) Wherever practicable such an application must be dealt with at the case management conference.

Failure to file preliminary act—proceedings against party in default

- 74.20 (1) Where in proceedings covered by rule 74.19(1) the claimant fails to file a preliminary act within the prescribed period, any defendant who has filed such an act may apply to the court for an order to dismiss the proceedings, and the court may by order dismiss the proceedings or make such other order on such terms as it thinks fit.
- (2) Where in such proceedings, being a claim *in personam*, a defendant fails to file a preliminary act within the prescribed period, Part 12 applies as if the defendant's failure to file the preliminary act within that period were a failure by him to file a defence on the claimant within the period fixed for service of the defence, and the claimant, if he has filed a preliminary act may, subject to rule 12.2(2)(a), enter judgment against that defendant.
- (Rule 12.2(2)(a) deals with proceedings against a State)
- (3) Where in such proceedings, being a claim *in rem*, a defendant fails to file a preliminary act within the prescribed period, the claimant, if he has filed such an act, may apply to the court for judgment against that defendant, and it shall not be necessary for the claimant to file or serve a statement of case or an affidavit before the hearing.
- (4) On the hearing of an application under paragraph (3) the court may make such order as it thinks fit, and where the defendant does not appear on the hearing and the court is of the opinion that judgment should be given for the claimant provided he proves his case, it must order the claimant's preliminary act to be opened and require the claimant to satisfy the court that his claim is well founded. The claimant's evidence may, unless the court otherwise orders, be given by affidavit without any order or direction in that behalf.
- (5) Where the claimant in accordance with a requirement under paragraph (4) satisfies the court that his claim is well founded, the court may give judgment for the claim and may at the same time order the property against which the proceedings is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks fit.
- (6) The court may, on such terms as it thinks fit, set aside any judgment entered in pursuance of this rule.
- (7) In this rule references to the prescribed period are to be construed as references to the period within which by virtue of rule 74.19(3) or of any order of the court a party is required to file a preliminary act.

Special provisions as to statements of case in collision, etc., proceedings

- 74.21 (1) The claimant in any such proceedings as is referred to in rule 74.2(g) may not serve a reply or a defence to counterclaim on the defendant without the permission of the court.

- (2) Subject to paragraph (3), in any such proceedings there is an implied joinder of issue on the facts set out in the preliminary acts which shall stand as the statements of case of the claimant and the defendants.
- (3) Paragraph (2) does not apply to a counterclaim if the claimant has served a defence to counterclaim pursuant to permission given under paragraph

Judgment by default

74.22 (1) Where a claim is served under rule 74.5(5) on a party at whose instance a caveat against arrest was issued, then if—

- (a) the sum claimed in the proceedings begun by the claim does not exceed the amount specified in the undertaking given by that party or his attorney-at-law to procure the entry of that caveat; and
- (b) that party or his attorney-at-law does not within 14 days after service of the claim fulfil the undertaking given by him as aforesaid,

the claimant may, after filing an affidavit verifying the facts on which the proceedings is based, apply to the court for judgment by default.

- (2) Judgment given under paragraph (1) may be enforced by the arrest and an order for sale of the property against which the proceedings was brought and by committal of the party at whose instance the caveat with respect to that property was entered.
- (3) Where a defendant to a claim *in rem* fails to acknowledge service of the claim within the time limited for doing so, then, on the expiration of 14 days after service, of the claim and upon filing an affidavit proving due service of the claim, an affidavit verifying the facts on which the proceedings is based and, if a statement of case was not served with the claim form, a copy of the statement of case, the claimant may apply to the court for judgment by default and an order for sale.
- (4) Where the claim is deemed to have been duly served on the defendant by virtue of rule 5.17(2) (deemed service where defendant's attorney-at-law accepts service), or was served by the marshal or his substitute under rule 74.5(3), an affidavit proving due service of the claim need not be filed under this paragraph, but the certificate of service of the defendant's attorney-at-law or the indorsement of the marshal under rule 74.5(4) must be lodged with the affidavit verifying the facts on which the claim is based.
- (5) Where a defendant to a claim *in rem* fails to serve a defence on the claimant then, after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the proceedings is based and, if a statement of case was not served with the claim, a copy of the statement of

case, the claimant may apply to the court for judgment by default and an order for sale.

- (6) Where a defendant to a counterclaim in a claim *in rem* fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (7), after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the court for judgment by default.
- (7) No application may be made under paragraph (6) against the claimant in any such proceedings as is referred to in rule 74.2(g).
- (8) If the court is satisfied that the applicant's claim is well founded it may give judgment for the claim and may at the same time order the property against which the claim or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.
- (9) In default proceedings *in rem* evidence may, unless the court otherwise orders, be given by affidavit without any order or direction in that behalf.
- (10) The court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.
- (11) Part 12 does not apply to a claim *in rem*.

Order for sale of ship—determination of priority of claims

74.23 (1) Where in a claim *in rem* against a ship the court has ordered the ship to be sold, any party, who has obtained or obtains judgment against the ship or proceeds of sale of the ship, may—

(a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a); or

(b) in any other case, after obtaining judgment,

apply to the court for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(Part 11 deals with applications to the court)

(2) Where in a claim *in rem* against a ship the court orders the 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 is not to be determined until after the expiration of 90 days, or

- such other period as the court may specify, beginning with the day on which the proceeds of sale are paid into court;
- (b) any party to the proceedings or to any other claim *in rem* against the ship or the proceeds of sale thereof may apply to the court in the proceedings to which he is a party to extend the period specified in the order; and
 - (c) within 7 days after the date of payment into court of the proceeds of sale the marshal must send for publication in the *Trinidad and Tobago Gazette* and such other newspaper, if any, as the court may direct, a notice complying with paragraph (3).
- (3) The notice referred to in paragraph (2)(c) must state that—
- (a) the ship (naming her) has been sold by order of the High Court in a claim *in rem*, identifying the claim;
 - (b) the gross proceeds of the sale as specified have been paid into court;
 - (c) the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and
 - (d) any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.
- (4) The marshal must lodge in the court a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.
- (5) The expenses incurred by the marshal in complying with an order of the court under this rule are to be included in his expenses relating to the sale of the ship.
- (6) A copy of any application to the court to extend the period referred to in paragraph (2)(a) must be served on each party who has begun a claim *in rem* against the ship or the proceeds of sale thereof at least 3 days before the day fixed for the hearing.

Appraisalment and sale of property

- 74.24** (1) A commission for the appraisalment and sale of any property under an order of the court may not be issued until the party applying for it has filed a request in the appropriate practice form.
- (2) Such a commission must—
- (a) be executed by the marshal unless the court otherwise orders; and
 - (b) be in the appropriate practice form.
- (3) A commission for appraisalment and sale may not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and

expenses of the marshal on demand has been lodged in the marshal's office.

- (4) The sale must be by public auction unless the court gives permission for a sale by private treaty.
- (5) The court may allow the sale to be completed at a price lower than the value shown in the appraisalment.
- (6) The marshal must pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and bring into court the account relating to the sale (with vouchers in support) for assessment.
- (7) 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.

(Rule 67.12 deals with the assessment of costs)

Undertakings as to expenses, etc.

- 74.25** (1) Every undertaking under rule 74.5(3), 74.12(3), 74.14(5) or 74.24(3) must be given in writing to the satisfaction of the marshal.
- (2) Where a party is required by any of the rules mentioned in paragraph (1) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept instead of an undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.
 - (3) The court may on the application of any party who is dissatisfied with a direction or determination of the marshal under this rule, vary or revoke the direction or determination.

Payment into and out of court

- 74.26** (1) Parts 36 and 37 apply in relation to an admiralty claim (other than limitation proceedings).
- (2) However, money paid into court may not be paid out except in pursuance of an order of a judge of the High Court.

Case management conference

- 74.27** (1) Parts 25 to 27 and 39 apply to admiralty claims except that—
- (a) the date, time and place for the case management conference must be fixed by the court office on the happening of the following events:
 - (i) in any proceedings other than one to which rule 74.19 or 74.36 applies, on the filing of a defence; and
 - (ii) where rule 74.19 applies, on the filing of the second preliminary act;

- (b) where rule 74.36 applies then, if the court does not make a decree limiting the claimant's liability, it must treat the hearing of the application under that rule as a case management conference; and
 - (c) the case management conference must be conducted by a judge of the High Court.
- (2) At the case management conference the court must determine whether the trial is to be without assessors or with one or more assessors and the qualifications for such assessors.
 - (3) Rule 39.6 applies to admiralty claims subject to the following and any other necessary modifications:
 - (a) the bundles referred to in paragraph (2)(b) of that rule must include any preliminary acts and any further information supplied under Part 35; and
 - (b) where trial with one or more assessors has been ordered an additional bundle of the documents listed in paragraph (2)(b) of that rule must be lodged for the use of each assessor.

Trial

- 74.28** (1) Part 40 applies to the trial of admiralty proceedings.
- (2) Where the claim has been ordered to be tried with an assessor or assessors the attorney-at-law for the party setting it down must file in the court office an undertaking to pay the proper fees and expenses of such assessor or assessors.
 - (3) If all the parties to a claim consent, the proceedings may be withdrawn without the permission of the court at any time before trial by producing to the court a written consent to the proceedings being withdrawn signed by all the parties.

Stay of proceedings in collision, etc., proceedings until security given

- 74.29** Where a claim *in rem*, being proceedings to enforce any such claim as is referred to in rule 74.2(g), is begun and a cross-claim *in rem* arising out of the same collision or other occurrence as the first-mentioned proceedings is subsequently begun, or a counterclaim arising out of that occurrence is made in the first-mentioned proceedings, then—
- (a) if the ship in respect of or against which the first-mentioned proceedings is brought has been arrested or security given to prevent her arrest; but
 - (b) the ship in respect of or against which the cross-proceedings is brought or the counterclaim made cannot be arrested and security

has not been given to satisfy any judgment given in favour of the party bringing the cross-proceedings or making the counterclaim, the court may stay proceedings in the first-mentioned claim until security is given to satisfy any judgment given in favour of that party.

Inspection of ship, etc.

74.30 The court may, on the application of any party, make an order for the inspection by the assessors (if the proceedings are tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be desirable for the purpose of obtaining full information or evidence in connection with any issue in the claim.

Examination of witnesses and other persons—evidence by affidavit

- 74.31** (1) The powers of rules 34.8 to 34.18 extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the claim.
- (2) In proceedings in which preliminary acts fall to be filed under rule 74.19, an order shall not be made authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the court otherwise orders.
- (3) Unless the court otherwise directs, affidavits made for the purpose of rules 74.20(4), 74.22 and 74.36(2) may contain statements of information and belief provided that the sources and grounds are given.

Proceedings for apportionment of salvage

- 74.32** (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained must be commenced by a fixed date claim.
- (2) The claimant need not file or serve a statement of case but must file an affidavit in support of the claim.
- (3) On the first hearing the judge may exercise any of the jurisdiction conferred by section 352 of the Act or may give directions as on a case management conference.

Applications in proceedings *in rem*

- 74.33** (1) The affidavits, if any, in support of an application in a claim *in rem* must be filed unless the court gives permission to the contrary.
- (2) Notice of an application except an application for judgment in default, must be served on all caveators together with copies of the affidavits, if

any, in support of the application 2 clear days at least before the hearing, unless the court gives permission to the contrary.

Limitation proceedings—parties

- 74.34** (1) In a limitation claim the person seeking relief is to be the claimant and must be named in the claim by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.
- (2) The claimant must make one of the persons with claims against him, in respect of the casualty to which the proceedings relates, defendant to the proceedings and may make any or all of the others defendants also.
- (3) At least one of the defendants to the proceedings must be named in the claim by his name but the other defendants may be described generally and not named by their names.
- (4) The claim must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.
- (5) In this rule and rules 74.36, 74.37 and 74.38 “name” includes a firm name or the name under which a person carries on his business, and where any person with a claim against the claimant in respect of the casualty to which the proceedings relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the claim and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the claim by his name.

Limitation proceedings—payment into court

- 74.35** (1) The claimant may constitute a limitation fund by paying into court the Trinidad and Tobago dollar equivalent of the number of special drawing rights to which he claims to be entitled to limit his liability under Part XVIII of the Act together with interest thereon from the date of the occurrence giving rise to his liability to the date of payment into court.
- (2) Where the claimant does not know the Trinidad and Tobago dollar equivalent of the said number of special drawing rights on the date of payment into court he may calculate the same on the basis of the latest available published Trinidad and Tobago dollar equivalent of a special drawing right as fixed by the International Monetary Fund, and in the event of the Trinidad and Tobago dollar equivalent of a special drawing right on the date of payment into court under paragraph (1) being different from that used for calculating the amount of that payment into court the claimant may—
- (a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court under

- paragraph (1), shall be treated, except for the purposes of the rules relating to the accrual of interest on money paid into court, as if it had been made on the date of that payment into court; or
- (b) apply to the court for payment out of any excess amount (together with any interest accrued thereon) paid into court under paragraph (1).
- (3) An application under paragraph (2)(b) may be made without notice.
- (4) It must, however, be supported by evidence proving the Trinidad and Tobago dollar equivalent of the appropriate number of special drawing rights on the date of payment into court.
- (5) On making any payment into court under this rule, the claimant shall give notice thereof in claiming to every defendant, specifying the date of payment in the amount paid in, the amount of interest included therein, the rate of such interest and the period to which it relates.
- (6) The claimant must also give notice in claiming to every defendant of any excess amount (and any interest thereon) paid out to him under paragraph (2)(b).

Application for decree or directions in limitation proceedings

- 74.36 (1) The claimant must—
- (a) within 7 days after the acknowledgment of issue or service of the claim by one of the defendants identified by his name; or
- (b) if none of the defendants acknowledges issue or service, within 7 days after the time limited for entering an appearance,
- apply to the court for a decree limiting his liability or, in default of such a decree, for directions as to the future proceedings in the claim.
- (2) The application must be supported by an affidavit—
- (a) verifying the claimant’s case in the proceedings;
- (b) if no defendant identified in the claim by his name has acknowledged service, proving service of the claim on at least one of the defendants so identified; and
- (c) stating—
- (i) the names of all the persons who, to the knowledge of the claimant, have claims against him in respect of the casualty to which the proceedings relates, not being defendants to the claim who are identified in the claim form by their names; and
- (ii) the address of each of those persons if known to the claimant.

- (3) The application and every affidavit in support must be served on every defendant who has acknowledged issue or service of the claim at least 28 days before the hearing of the application.
- (4) Any defendant who disputes the claimant's claim to limit his liability or alleges that he is unable to decide whether to dispute that claim must, within 14 days of the service upon him of the application and any affidavit in support, serve upon the claimant an affidavit stating the grounds upon which he relies to dispute the claimant's claim to limit his liability or such facts and matters as could justify the court in giving a direction under paragraph (7) of this rule.
- (5) The claimant may, within 7 days of service upon him of any affidavit under paragraph (4), serve such further affidavit evidence as he may wish upon any defendant who has served an affidavit under paragraph (4) of this rule.
- (6) If on the hearing of the application it appears to the court that the claimant's claim to limit his liability is not disputed, he must make an order limiting the claimant's liability to a specified amount.
- (7) If on the hearing of the application it appears to the court that any defendant has not sufficient information to enable him to decide whether to dispute the claimant's claim to limit his liability, it may, on such terms as seem just, give such directions as appear appropriate to enable the defendant to obtain such information and adjourn the hearing to a specified date, time and place.
- (8) Any defendant who thereafter disputes the claimant's claim to limit his liability must state on affidavit the grounds upon which he relies and serve such affidavit on the claimant at least 10 clear days before the adjourned hearing of the application.
- (9) If on the hearing or the adjourned hearing of the application, the court does not make a decree limiting the claimant's liability, it must proceed to deal with the application as a case management conference.
- (10) Any defendant who, after the court has given directions under paragraph (7) or (9), ceases to dispute the claimant's right to limit his liability, must forthwith file a notice to that effect and serve a copy on the claimant and on any other defendant who has acknowledged issue or service of the claim.
- (11) If every defendant who disputes the claimant's right to limit his liability serves a notice on the claimant under paragraph (10), the claimant may apply to the court for an order limiting his liability, and paragraphs (3) and (6) apply to such an application.

Limitation proceedings—proceedings under decree

- 74.37 (1) Where the only defendants in a limitation proceedings are those named in the claim by their names and all the persons so named have either been served with the claim or acknowledged the issue thereof, any order in the claim limiting the claimant's liability—
- (a) need not be advertised; but
 - (b) operates only to protect the claimant in respect of claims by the persons so named or persons claiming through or under them.
- (2) In any case not falling within paragraph (1), any order in the claim limiting the claimant's liability —
- (a) must be advertised by the claimant in such manner and within such time as may be provided by the order; and
 - (b) must fix a time within which persons with claims against the claimant in respect of the casualty to which the proceedings relates may file their claims, and, in cases to which rule 74.38 applies, apply to set the order aside.
- (3) The advertisement to be required under paragraph (2)(a) must, unless for special reasons the court otherwise directs, be a single advertisement in each of three newspapers specified in the order, identifying the claim, the casualty and the relation of the claimant thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the order has been made and specifying the amounts fixed thereby as the limits of the claimant's liability and the time allowed for the filing of claims and applying to set the order aside.
- (4) The claimant must within the time fixed under paragraph (2)(b) file a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.
- (5) The time to be allowed under paragraph (2)(b) must, unless for special reasons the court otherwise directs, be not less than 2 months from the latest date allowed for the appearance of the advertisements, and after the expiration of the time so allowed, no claim may be filed or application made to set aside the order except with the permission of the court.
- (6) Save as aforesaid, on the making of any order limiting the claimant's liability arising out of an occurrence the court may distribute the limitation fund and may stay any proceedings relating to any claim arising out of that occurrence which are pending against the claimant.

Limitation proceedings—proceedings to set aside decree

- 74.38 (1) Where an order limiting the claimant’s liability fixes a time in accordance with rule 74.37(2), any person with a claim against the claimant in respect of the casualty to which the proceedings relates, who—
- (a) was not named by his name in the claim as a defendant to the proceedings; or
 - (b) if so named, neither was served with the claim nor has acknowledged the issue thereof,
- may, within that time, after acknowledging issue of the claim, apply for the order to be set aside.
- (2) The application must be supported by an affidavit or affidavits showing that the defendant in question has a *bona fide* claim against the claimant in respect of the casualty in question and that he has sufficient *prima facie* grounds for the contention that the claimant is not entitled to the relief given him by the decree.
 - (3) The application and every affidavit in support thereof must, at least 7 clear days before the hearing of the application, be served on the claimant and any defendant who has acknowledged issue or service of the claim.
 - (4) On the hearing of the application the court, if satisfied that the defendant in question has a *bona fide* claim against the claimant and sufficient *prima facie* grounds for the contention that the claimant is not entitled to the relief given him by the decree, must set the decree aside and give directions as if the hearing were a case management conference.

CASES

2014

HIGH COURT

KGC Company Limited v The Owners and/or Parties interested in the motor vessel “Bywater Liberty”

CV 2013-01209 (2014.03.18)

**RULE 74.22(3) — CLAIM IN REM — JUDGMENT IN DEFAULT OF APPEARANCE
— TIME FOR ENTERING APPEARANCE — FAILURE TO FILE DEFENCE**

(Also under Parts 9 and 10)

PART 75 DEBENTURE HOLDERS CLAIMS

Contents of this Part

Receiver's register	Rule 75.1
Registration of transfers, etc.	Rule 75.2
Application for rectification of register	Rule 75.3
Evidence of transfers, etc.	Rule 75.4
Proof of title of holder of bearer debentures, etc.	Rule 75.5
Requirements in connection with payments	Rule 75.6
Power to make order for sale in debenture holder's claim	Rule 75.7

Receiver's register

- 75.1 (1) This Part deals with actions by a receiver of registered debentures or registered debenture stock.
- (2) If the court so directs, the receiver must keep a register of transfers of, and other transmissions of title to, such debentures or stock.

Registration of transfers, etc.

- 75.2 (1) Any person entitled to the debenture or stock may apply to the receiver to register any transfer or transmission of any such debentures or stock.
- (2) That person must supply to the receiver such evidence of identity or title as the receiver may reasonably require.
- (3) Before registering any transfer or other transmission, the receiver must send to the registered holder of such debentures or stock at his registered address a notice stating—
- (a) that an application for registration of the transfer has been made; and
- (b) that the registration will be made unless the registered holder notifies the receiver of his objection to the registration within a time stated in the notice.
- (4) That time must not be less than 14 days from the date on which the registered holder should have received the notice in the ordinary course of post.

- (5) The transfer or transmission must not be registered until the time stated in the notice has passed.
- (6) On registering the transfer or transmission the receiver must endorse a memorandum on the debenture or certificate of debenture stock identifying the action and the order appointing him as receiver.

Application for rectification of register

- 75.3 (1) Any person aggrieved by any act or omission under rule 75.2 may apply to rectify the register.
- (2) The application must be on notice to the claimant, or person having conduct of the proceedings in which the receiver was appointed.
 - (3) The court may direct that notice be given to any other person appearing to be interested.
 - (4) The application must be supported by evidence.

Evidence of transfers, etc.

- 75.4 (1) An entry in the receiver's register verified by an affidavit of—
- (a) the receiver; or
 - (b) such other person as the court may direct,
- is evidence of the transfer or transmission of title to which the entry relates in the action or claim in which the receiver was appointed.
- (2) This shall be the case even though the transfer or transmission took place after the making of a certificate in the proceedings as to the holders of the debentures or debenture stock certificates.

Proof of title of holder of bearer debentures, etc.

- 75.5 (1) This rule deals with a claim to enforce—
- (a) bearer debentures; or
 - (b) debenture stock in respect of which the company has issued debenture stock certificates.
- (2) In the absence of notice of any defect in the title, the title of any person claiming to be a holder is proved by—
 - (a) production of the debenture or debenture stock certificate; with
 - (b) a certificate of identification signed by the person producing the debenture or certificate—
 - (i) identifying the debenture or certificate produced; and

- (ii) certifying the person (giving his name and address) who is the holder.
- (3) This shall be the case even though judgment has been given in the proceedings or a certificate has been made in the action or claim certifying the holders of such debentures or certificates.
- (4) Where a debenture or certificate is produced, the attorney-at-law, for the claimant must endorse on the debenture or certificate a notice stating—
 - (a) that the person identified under paragraph (2)(b)(ii) whose name and address is certified in the notice has been recorded as the holder of the debenture or debenture stock certificate;
 - (b) that that person will be entitled to payment of any dividend in respect of the debenture or debenture stock certificate unless a new holder proves title in accordance with paragraph (2) before payment of the dividend; and
 - (c) that if a new holder fails to prove his title in accordance with paragraph (2) he may incur additional delay, trouble and expense in obtaining payment.
- (5) The attorney-at-law for the claimant must—
 - (a) preserve any certificates of identification produced under paragraph (2); and
 - (b) keep a record of—
 - (i) the debentures or debenture stock certificates so produced;
 - (ii) the names and addresses of the persons producing them; and
 - (iii) the holders thereof,
 and must verify the record by affidavit if the court so requires.

Requirements in connection with payments

- 75.6 (1) Where in an action to enforce any debentures or debenture stock an order is made for payment in respect of any debentures or stock, the receiver must not make any payment unless either—
- (a) there is produced to him a certificate under rule 75.5(2); or
 - (b) the court has directed that the payment be made without such certificate.
- (2) The person entitled to receive payment must produce the debenture or debenture stock certificate to the attorney-at-law for the claimant or such other person as the court may direct.
 - (3) The attorney-at-law or such other person must—

- (a) endorse on the debenture or debenture stock certificate a memorandum of payment;
- (b) make and sign a certificate that the statement set out in the certificate has been endorsed on the debenture or debenture stock certificate; and
- (c) send the certificate to the receiver.

Power to make order for sale in debenture holder's claim

75.7 In a debenture holder's claim the court may direct a sale before judgment or after judgment, but before all the persons interested have been ascertained, if—

- (a) the debenture holders are entitled to a charge by virtue of the debentures or of a trust deed or otherwise;
 - (b) the claimant is suing on behalf of himself and other debenture holders; and
 - (c) the court is of the opinion that there must eventually be a sale.
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PART 76 SERVICE OF FOREIGN PROCESS

Contents of this Part

Scope of this Part	Rule 76.1
Service of process	Rule 76.2
Appointment of process server	Rule 76.3

Scope of this Part

76.1 (1) This Part deals with the service on a person in Trinidad and Tobago of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the court receives a written request for service—

(a) from the Minister with responsibility for External Affairs, with a recommendation by him that service should be effected; or

(b) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

(2) In this Part—

“a convention country” means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the High Court, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15th November, 1965;

“process” includes a citation; and

“process server” means the process server appointed under rule 76.3 or his authorised agent.

Service of process

76.2 (1) The request must be accompanied by a translation thereof in English, two copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, two copies of a translation thereof.

- (2) Subject to paragraphs (3) and (5) and to any enactment providing for the manner of service of documents on corporate bodies, the process must be served by the process server leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.
- (3) On an application by the Attorney General, the court may make an order for service by a specified method under rule 5.12.
- (4) The process server must file at the court office a copy of the process and an affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be, and may, if the court so directs, specify the costs incurred in effecting or attempting to effect service.
- (5) The court office must send a certificate, together with a copy of the process, to the consular or other authority or the Minister, as the case may be, stating—
 - (a) when and how service was effected or the reason why service could not be effected, as the case may be; and
 - (b) where appropriate, the amount assessed by the court to be the costs of effecting or attempting to effect service.
- (6) The certificate under paragraph (5) must be sealed with the seal of the High Court.

Appointment of process server

76.3 The Chief Justice may appoint a process server for the purposes of this Part.

PART 77 OBTAINING EVIDENCE FOR FOREIGN COURTS

Contents of this Part

Scope of this Part	Rule 77.1
Application for order	Rule 77.2
Application by Attorney General in certain cases	Rule 77.3
Person to take and manner of taking examination	Rule 77.4
Dealing with deposition	Rule 77.5
Claim to privilege	Rule 77.6

Scope of this Part

- 77.1 (1) This Part deals with the procedure by which evidence may be obtained from a witness in Trinidad and Tobago for the purpose of proceedings in a court or tribunal outside the jurisdiction.
- (2) In this Part “the Act of 1856” means the Foreign Tribunals (Evidence) Act, 1856 and the “Act of 1859” means the Evidence by Commission Act, 1859.
- (3) The power of the High Court to make an order under the Act of 1856 or the Act of 1859 may be exercised by a judge in chambers or master.

Application for order

- 77.2 (1) Subject to paragraph (3) and rule 77.3, an application for an order under the Act of 1856 or the Act of 1859 must be made without notice but be supported by evidence.
- (2) There must be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.
- (3) After an application has been made under paragraph (1) any application for a further order or directions must be on notice.

Application by Attorney General in certain cases

77.3 Where a request—

- (a) is received by the Minister with responsibility for External Affairs and sent by him to the court office with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Trinidad and Tobago of any party to the matter pending or contemplated before the foreign court or tribunal; or
- (b) is received by the court in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Trinidad and Tobago 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 such party,

the court office must send the document to the Attorney General.

Person to take and manner of taking examination

- 77.4 (1) Any order made in pursuance of this Part for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the court or before such other qualified person as to the court seems fit.
- (2) Subject to rule 77.6 and to any special directions contained in any order made in pursuance of this Part for the examination of any witness, the examination must be taken in manner provided by rules 34.8 to 34.17 and an order may be made under rule 34.15, for payment of the fees and expenses due to the examiner.

Dealing with deposition

77.5 Unless any order made in pursuance of this Part for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the court, and the court must—

- (a) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the request, the order of the court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the Minister with responsibility for External Affairs, or, where the request was sent to the court office by some other person in accordance with a Civil Procedure Convention, to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination.

Claim to privilege

- 77.6 (1) The provisions of this rule have effect where a claim by a witness to be exempt from giving any evidence on the ground of a claim of right to withhold evidence is not conceded.
- (2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so the court may do so, on the application of the person who obtained the order under rule 77.2 or 77.3.
- (3) Such an application may be made without notice.
- (4) If such evidence is taken—
- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
- (b) the examiner must send to the court with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made; and
- (c) on receipt of the statement the court must, notwithstanding anything in rule 77.5, retain the document containing the part of the witness’s evidence to which the claim relates and must send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 77.5.
- (5) If the claim is rejected by the foreign court or tribunal, the court office must send to that court or tribunal the document containing that part of the witness’s evidence to which the claim relates, but if the claim is upheld it must send the document to the witness, and must in either case notify the witness and the person who obtained the order under rule 77.2 or 77.3 of the court or tribunal’s determination.



PART 78 RECIPROCAL ENFORCEMENT OF JUDGMENTS

Contents of this Part

Scope of this Part	Rule 78.1
Application for registration	Rule 78.2
Security for costs	Rule 78.3
Order for registration	Rule 78.4
Register of judgments	Rule 78.5
Notice of registration	Rule 78.6
Application to set aside registration	Rule 78.7
Issue of execution	Rule 78.8
Certified copy of High Court judgment	Rule 78.9

Scope of this Part

- 78.1** (1) This Part deals with the procedure under which a judgment of a foreign court or tribunal may be registered in the High Court for enforcement in Trinidad and Tobago.
- (2) In this Part “the Act” means the Judgments Extension Act (Chap. 5:02).

Application for registration

- 78.2** (1) An application to have a judgment within the meaning of the Act and to which the Act applies registered in the High Court may be made without notice but must be supported by evidence—
- (a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and, where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;
 - (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;
 - (c) stating to the best of the information or belief of the deponent—
 - (i) that the judgment creditor is entitled to enforce the judgment; and either

- (ii) that at the date of the application the judgment has not been satisfied; or
 - (iii) the amount in respect of which it remains unsatisfied, and, in either case;
 - (iv) that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under section 4 of the Act; and
 - (v) that the registration would not be, or be liable to be, set aside; and
- (d) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration.

Security for costs

78.3 The court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

Order for registration

- 78.4** (1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.
- (2) Except where the order is made following an application on notice, it need not be served on the judgment debtor.
- (3) Every such order must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period.
- (4) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.
- (5) The court hearing the application may, however, direct that notice be given to any person.

Register of judgments

- 78.5** (1) A register of the judgments ordered to be registered under the Act must be kept in the court office.
- (2) There must be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

Notice of registration

- 78.6 (1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to him personally or in such other manner as the court may direct.
- (2) Service of such a notice out of the jurisdiction is permissible without leave, and rules 7.8, 7.9 and 7.10 apply in relation to such a notice as they apply in relation to a claim form.
- (3) The notice of registration must state—
- (a) full particulars of the judgment registered and the order for registration;
 - (b) the name and address of the judgment creditor or of his attorney-at-law or agent on whom, and at which, any application issued by the judgment debtor may be served;
 - (c) the right of the judgment debtor to apply to have the registration set aside; and
 - (d) the period within which an application to set aside the registration may be made.

Application to set aside registration

- 78.7 (1) An application to set aside the registration of a judgment must be supported by affidavit.
- (2) Where the court hearing an application to set aside the registration of a judgment registered under the Act is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 4 of the Act or that it is not just or convenient that the judgment should be enforced in Trinidad and Tobago, it may order the registration of the judgment to be set aside on such terms as it directs.

Issue of execution

- 78.8 (1) Execution may not issue on a judgment registered under the Act until after the expiration of the period which, in accordance with rule 78.4(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of that period as so extended.
- (2) If an application is made to set aside the registration of a judgment, execution on the judgment may not issue until after such application is finally determined.

- (3) Any party wishing to issue execution on a judgment registered under the Act must produce to the proper officer an affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment.

Certified copy of High Court judgment

- 78.9** (1) An application under section 7 of the Act for a certified copy of a judgment entered in the High Court must be made without notice on affidavit to a judge in chambers or master.
- (2) An affidavit by which an application under section 7 of the Act is made must—
 - (a) give particulars of the judgment; and
 - (b) show that the judgment creditor wishes to secure the enforcement of the judgment in a part (stating which) of the United Kingdom or other Commonwealth country to which the Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.
 - (3) The certified copy of the judgment must be an office copy sealed with the seal of the Supreme Court and indorsed with a certificate signed by a master as follows:

“I certify that the above copy judgment is a true copy of a judgment obtained in the Supreme Court of Trinidad and Tobago and that this copy is issued in accordance with section 7 of the Judgments Extension Act (Chap. 5:02).”

PART 79 VACATIONS AND OFFICE HOURS

Contents of this Part

Terms and vacations	Rule 79.1
Hearing of applications in vacation	Rule 79.2
Days on which court open and office hours	Rule 79.3

Terms and vacations

- 79.1** (1) There shall be three terms, namely—
- (a) the first term which begins—
 - (i) in the case of the Court of Appeal, on the 11th January; and
 - (ii) in the case of the High Court on the 3rd January, and ends on the Thursday before Easter;
 - (b) the second term which begins on the Monday following Easter Monday and ends on the 31st July; and
 - (c) the third term which begins on the 16th September and ends—
 - (i) in the case of the Court of Appeal on the 21st December; and
 - (ii) in the case of the High Court on the 19th December, such dates are inclusive.
- (2) Accordingly the vacations are as follows:
- (a) the long vacation which begins on 1st August and ends on 15th September;
 - (b) first short vacation which—
 - (i) in the case of the Court of Appeal begins on the 22nd December and ends on the 10th January; and
 - (ii) in the case of the High Court begins on the 20th December and ends on the 2nd January; and
 - (c) the second short vacation which begins on Good Friday and ends on the Sunday following Easter Monday, such dates are inclusive.

Hearing of applications, etc., in vacations

- 79.2** (1) During vacations the court shall hear and determine only such matters as it certifies as urgent or requiring prompt attention.
- (2) A party may apply to the court for any matter to be heard in vacation.

Days on which court offices open and office hours

- 79.3** The court offices shall be open on every day of the year except—
- (a) Saturdays and Sundays;
 - (b) Carnival Monday and Tuesday;
 - (c) public holidays;
 - (d) the next following working day after Christmas day;
 - (e) Monday and Tuesday after Easter; and
 - (f) such other days as the Chief Justice may direct,
- between 8.00 a.m. and 4.00 p.m.
-

PART 80 TRANSITIONAL PROVISIONS

Contents of this Part

Scope of this Part	Rule 80.1
New proceedings	Rule 80.2
Old proceedings	Rule 80.3

Scope of this Part

- 80.1** (1) This Part deals with the extent to which the Rules of the Supreme Court 1975 (“the 1975 Rules”) remain in force after the commencement of these Rules and the way in which actions, matters and other proceedings in existence as at the commencement date may become subject to these Rules.
- (2) In this Part “commencement date” means the 16th day of September, 2005 for the coming into force of these Rules.

New proceedings

- 80.2** These Rules apply to all proceedings commenced on or after the commencement date.

Old proceedings

- 80.3** (1) Subject to subparagraph (2), these Rules shall also apply to proceedings begun before the commencement date—
- (a) upon a request being made to have a matter set down for trial; or
- (b) if a judge or master so orders,
- and the court office issues a notice to the parties requiring them to attend a case management conference or pre-trial review.
- (2) These Rules shall not apply to any proceedings which stands abated under Order 3 rule 6 of the 1975 Rules unless leave to proceed has been granted under that rule.
- (3) Save as provided in (1) above, the 1975 Rules shall continue to apply to proceedings commenced before the commencement date.

CASES**2014****PRIVY COUNCIL/COURT OF APPEAL***Trinidad Express Newspaper Limited and Others v Conrad Aleong*

Civ App No P122 of 2009 (2014.06.25)

Appeal dismissed

CASE STARTED PRE-CPR — CASE CONTINUED UNDER CPR — APPLICATION OF CPR — EFFECT ON COSTS

(Also under Part 67)

2012**HIGH COURT***Trinidad and Tobago Mortgage Finance Company Limited v Stephen Roberts and Another*

CV 2010-00448 (2012.01.27)

PART 80 — CASE STARTED PRE-CPR — APPLICATION OF CPR — DIFFERENCE IN REQUIREMENTS FOR PLEADINGS

*Vinesh Mahadeo v Kardway Contractors Limited and Others**Ian Seepersad v Kardway Contractors Limited and Others*

CV 2012-02409 (2012.01.25)

CASE STARTED PRE-CPR — CONVERTED TO CPR — INCORPORATION OF CPR ELEMENTS BEFORE CONVERSION

* Made by the Rules Committee the 29th day of June 1998.

M. A. de la Bastide
Chief Justice

R. L. Maharaj
Attorney General

R. Hamel-Smith
Judge of the Court of Appeal

C. Best
Judge of the High Court

R. M. Doyle
Master of the High Court

E. A. Petersen
Registrar

R. Nelson, S.C.
Attorney-at-law

D. Gurley
Attorney-at-law

* See LN 200/2005 for the date of commencement of these Rules.



APPENDIX TO
CIVIL PROCEEDINGS RULES 1998

PRESCRIBED FORMS

APPENDIX TO CIVIL PROCEEDINGS RULES 1998 PRESCRIBED FORMS

The Appendix to the Rules was amended by the insertion of Form 7A, after Form 7, by rule 16 of the **Civil Proceedings (Amendment) Rules, 2011** Legal Notice No 126 of 2011.

FORM 1:	CLAIM FORM
FORM 1A:	NOTES FOR DEFENDANT
FORM 2:	FIXED DATE CLAIM FORM
FORM 3:	APPEARANCE TO CLAIM FORM
FORM 3A:	APPLICATION TO PAY BY INSTALMENTS
FORM 4:	APPEARANCE TO FIXED DATE CLAIM
FORM 5:	DEFENCE AND COUNTERCLAIM
FORM 6:	REQUEST FOR DEFAULT JUDGMENT
FORM 7:	REQUEST FOR ENTRY OF JUDGMENT ON ADMISSION
FORM 7A:	HEARING ON QUANTUM OF DAMAGES
FORM 8:	LIST OF DOCUMENTS
FORM 9:	LISTING QUESTIONNAIRE
FORM 10:	APPLICATION
FORM 11:	WITNESS SUMMONS
FORM 12:	WRIT OF EXECUTION AGAINST GOODS (<i>FERI FACIAS</i>)
FORM 13:	WRIT OF POSSESSION
FORM 14:	WRIT OF DELIVERY OR VALUE
FORM 15:	WRIT OF SPECIFIC DELIVERY
FORM 16:	ADMIRALTY CLAIM <i>IN REM</i>
FORM 17:	ADMIRALTY LIMITATION CLAIM
FORM 18:	WARRANT OF ARREST (ADMIRALTY)
FORM 19:	NOTICE OF APPEAL
FORM 20:	FINANCIAL POSITION NOTICE
FORM 21:	ANCILLARY CLAIM /THIRD PARTY NOTICE
FORM 22:	NOTICE TO NON-PARTY SERVED WITH ORDER
FORM 23:	WRIT OF <i>HABEAS CORPUS</i>
FORM 24:	APPLICATION TO REVIEW DECISION OF MAGISTRATE OR JUSTICE OF THE PEACE REFUSING/GRANTING BAIL

FORM 1: CLAIM FORM [Rule 8.1 (3)].

(Nature of Case)

Filing Attorney: (Name of attorney) (Bar no.)

[Firm (if any)]

(Address)

(Tel. no., fax no., e-mail address)

Advocate: (Name of Advocate) (Bar no.)

(Tel no., fax no., e-mail address)

**The Republic of Trinidad and Tobago
In the High Court of Justice**

Claim No. CV

Between

A.B. Claimant

And

C.D. Defendant

CLAIM FORM

The Claimant, **A.B.** (full names), of (full address)

claims against the Defendant, **C.D.** (full names), of (full address)

(Set out briefly the nature of the claim and state any specific amount or remedy that you are claiming)

(to be completed only where the claim is for a specified amount)

Amount claimed	\$
Court fees	\$
Attorney's fixed costs on issue	\$
Together with interest from _____ to date	\$
(Daily rate thereafter @ \$ _____ per day)	\$ _____
Total Claim	\$ _____

NOTICE TO THE DEFENDANT — See the notes served with this claim form

This claim form must contain or have served with it either a statement of case or a copy of a court order entitling the claimant to serve the claim form without a statement of case.

If you do not complete the form of appearance served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within EIGHT days of service of this claim form on you, the claimant will be entitled to apply to have judgment entered against you. The form of appearance may be completed by you or an attorney-at-law acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within four months of the date below unless it is accompanied by an order extending that time.

Certificate of truth

I believe that the contents of this claim form/statement of case are true and that I am entitled to the remedy claimed.

Signed:
[Claimant]

Dated



The claimant's address for service is:

Signed:
[Claimant in person] [Attorney-at-law for the Claimant]

The court office is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8.00 a.m.] and [4.00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 1A: NOTES FOR DEFENDANT

NOTES FOR DEFENDANT

This Form is important. When you get this document you should consider getting legal advice.

ACTION TO BE TAKEN ON RECEIPT OF THIS FORM

The claimant is making a claim against you in the court. **If you do nothing judgment may be entered against you.** That means that the claimant will be entitled to take steps to enforce payment from you of any money he is claiming and you will have no right to be heard except as to the amount of any costs claimed or as to the way in which you can pay the judgment unless you apply to set judgment aside.

What you can do

You can

A. Defend the claim

If you would like to do this you must:

Complete the form of appearance and return it to the court office so that they receive it within EIGHT DAYS of the date on which you received this form.

AND, provided that a statement of case was served on you with the claim form—

Complete the form of defence or submit some other form of defence showing why you dispute the claim and giving full details of all the facts on which you intend to rely if there is a trial. This must be delivered or sent to the court office so that they receive it within TWENTY-EIGHT days of the date on which you received this form and a copy must be served on the claimant’s attorney-at-law (or the claimant if he has no attorney-at-law) at the address for service given.

If no statement of case is served with the claim form you need not file and serve a defence until TWENTY-EIGHT days after the statement of case is served on you.

After you have filed your defence you will be given details of the date, time and place of a case management conference at which a Judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried. You **MUST** attend that hearing.

B. Admit the whole of the claim

Complete the form of appearance stating that you admit the claim and return it to the court office so that they receive it within EIGHT DAYS of the date on which you received this form.

If you can pay the amount stated on the claim form including fees, costs and interest you should pay this to the claimant within EIGHT days and no further steps can be taken against you. You must add interest at the daily rate shown from the date stated on the claim form. If you cannot pay this sum in full you may apply to the court to pay by instalments. If you wish to do so you must complete the Application to pay by instalments form (Form 3A) and return this to the court with your appearance.

C. Admit part of the claim and defend the rest

Complete the form of appearance stating how much you admit and return it to the court office so that they receive it within EIGHT DAYS of the date on which you received this form AND complete the form of defence as outlined under section A above.

You **may** also—

Pay the amount that you admit direct to the claimant OR apply to pay that sum by instalments. If so you should follow the procedure as outlined under section B above.

D. Make a claim against the claimant

If you would like to do this you **must**

Complete the form of appearance and return it to the court office so that they receive it within EIGHT DAYS of the date on which you received this Form AND complete the form of defence giving details of your defence (if any) to the claim as under A above and also the claim that you are making against the claimant and return it to the court office so that they receive it within TWENTY-EIGHT days of the date on which you received this form.

If you admit the claim but wish to counterclaim you should say so. If your counterclaim is for a lower sum than the claim you **may** pay the difference between the amount that the claimant claims from you and the amount that you claim from him direct to the claimant OR apply to pay that sum by instalments. If so you should follow the procedure indicated under B. You will then be given details of the date, time and place of a case management conference at which a Judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried. You **MUST** attend that hearing.

REMEMBER IF YOU DO NOTHING, JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT ANY FURTHER WARNING.

FORM 2: FIXED DATE CLAIM FORM Rule 8.1 (4)

(Nature of Case)

Filing Attorney: (Name of Attorney) (Bar no.)

[Firm (if any)]

(Address)

(Tel no., fax no., e-mail address)

Advocate: (Name of Advocate) (Bar no.)

(Tel no., fax no., e-mail address)

**The Republic of Trinidad and Tobago
In the High Court of Justice**

Claim No. CV

Between

A.B. Claimant

And

C.D. Defendant

CLAIM FORM

The Claimant, **A.B.** (full names), of (full address)
claims against the Defendant, **C.D.** (full names), of (full address)

(Set out briefly the nature of the claim and remedy you seek from the Court)

NOTICE TO THE DEFENDANT—

The first hearing of this claim will take place at [the Hall of Justice, Knox Street, Port-of-Spain] on the day of 20....., at a.m./p.m. in courtroom

If you do not attend at that hearing, judgment may be entered against you in accordance with the claim.

If you do attend, the Judge may—

- (a) deal with the claim; or
- (b) give directions for the preparation of the case for a further hearing.

A statement of case or an affidavit giving full details of the claimant’s claim should be served on you with this claim form. If not and there is no order permitting the claimant not to serve the statement of case or affidavit you should contact the court office immediately.

You should complete the form of appearance served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within EIGHT days of service of this claim form on you. The form of appearance may be completed by you or an attorney-at-law acting for you.

You should consider obtaining legal advice with regard to this claim. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within four months of the date below unless it is accompanied by an order extending that time.

Certificate of truth

I believe that the contents of this claim form are true and that I am entitled to the remedy claimed.

Signed:
[Claimant]



Dated the
The claimant’s address for service is:

Signed:
[Claimant in person] [Attorney-at-law for the Claimant]

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

NOTES FOR DEFENDANT (FIXED DATE CLAIM)

The claimant is seeking an order from the court as set out in the claim form overleaf on the basis of the facts or evidence set out in the statement of case or affidavit which was served with it. The claimant will not be entitled to enter judgment against you without a hearing.

You may:

A. Admit the claim

If so, you should complete and return the form of appearance to the court office stating this. You may attend the first hearing if you wish to do so.

B. Dispute the claim

If so, you should complete and return the form of appearance as under A. You should also file at the court office and serve on the claimant’s attorney-at-law (or the claimant if he has no attorney-at-law):

- (a) a defence if the claim form was accompanied by the claimant’s statement of case; OR
- (b) an affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the claimant.

Your statement of case or affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

C. Make a claim against the claimant

If so, you should complete and return the form of appearance as under A. You **must** file a statement of case (a counterclaim) setting out full details of what you claim against the claimant and the facts on which you will rely. The statement of case should also set out ALL the facts on which you rely in disputing any part of the claimant’s claim against you.

You should also attend the first hearing. If you do not the Judge may deal with the claim in your absence.

FORM 3 – APPEARANCE TO CLAIM FORM (Part 9)

(HEADING AS IN FORM 1)

APPEARANCE

Please enter appearance for
[State name(s) of Defendant(s)]

WARNING: If this form is not fully completed and returned to the court at the address below within EIGHT days of service of the claim form on you, the claimant will be entitled to apply to have judgment entered against you. If he does so you will have no right to be heard by the court except as to costs or the method of paying any judgment unless you apply to set judgment aside.

- 1. Have you received the claim form with the above claim number? YES/NO
- 2. If so, when?/...../....
- 3. Did you also receive the claimant’s statement of case? YES/NO
- 4. If so, when/...../....
- 5. Are your names properly stated on the claim form? YES/NO
If not, what are your full names?
- 6. Do you intend to defend the claim? YES/NO
If so you must file a defence within 28 days of the service of the claim form on you.
- 7. Do you admit the whole of the claim? YES/NO
If you do you should either—
(a) pay the claim direct to the claimant or his Attorney-at-law; or
(b) complete the application form to pay the claim by instalments.
If you pay the whole debt together with the costs and interest as shown on the claim form you will have no further liability for costs.
- 8. Do you admit any part of the claim? YES/NO
If you do you may either—
(a) pay the money that you admit direct to the claimant or his Attorney-at-law; or
(b) complete the application form to pay the claim by instalments.
- 9. If so, how much do you admit?
If you dispute the balance of the claim you must also file a defence within 28 days of service of the claim form on you or judgment may be entered against you for the whole amount claimed.
- 10. What is your own address?
.....
- 11. What is your address for service?
If you are acting in person you must give an address within 3 miles of the court office to which documents may be sent either from other parties or from the court. You should also give your telephone number, FAX number and e-mail address, if any.

Signed:
Dated [Defendant in person] [Defendant’s Attorney-at-law]
The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 3A—APPLICATION TO PAY BY INSTALMENTS *Rule 8.15 (1)(c).*

(HEADING AS IN FORM 1)

The applicant,..... A.B. (full name), of.....(full address)
owes the claimant the amount of \$.....claimed on the claim form and cannot pay the amount in one lump sum.

The applicant applies to the court for an order to pay the amount due by instalments of \$.....per week/month and provides the following information:

1. Marital status: Married Single Other (specify)
2. Age:
3. Dependants: children: (state names and ages)
4. Other dependants (state names and give details)
5. If employed, state nature of employment and name and address of employer.
6. If self-employed, give particulars of annual receipts of the business and particulars of the expenses of the business.
7. Give details of any job other than main job.
8. Give details of—
 - (a) contracts and other work in hand; and
 - (b) any sums due for work done.
9. If unemployed, say how long unemployed, when last employed, nature of employment and total income received.
10. Pensioner: Yes/No
11. List cash assets and other assets.
12. I live in my own property jointly owned property rented property
lodgings other (specify)

(a) My usual take home pay is; or	\$.....
(b) My pension is	\$.....
(c) Other income	\$.....
Total Income	\$.....
13. My regular expenses are as follows:

(a) Mortgage	\$.....
(b) Rent	\$.....
(c) Electricity	\$.....
(d) Water and sewerage rates	\$.....
(e) Cooking gas	\$.....
(f) Telephone	\$.....
(g) Hire—purchase repayments	\$.....
(h) Food	\$.....

(i) School fees	\$.....
(j) Travelling expenses	\$.....
(k) Children’s clothing	\$.....
(l) Maintenance payments	\$.....
(m) Others (do not include court orders and debts listed in 14, 15 and 16	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
Total Expenses	\$.....

14. I am in arrears as follows:

(a) Rent arrears	\$.....
(b) Mortgage arrears	\$.....
(c) Water and sewerage rates arrears	\$.....
(d) Electricity arrears	\$.....
(e) Telephone arrears	\$.....
(f) Maintenance arrears	\$.....
(g) Others	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
Total Arrears	\$.....

15. I am making court ordered payments as follows: [specify particulars of case(s)] and instalments or amounts ordered to be paid

\$.....

16. I have loans and credit card debts as follows:

.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....

Of the above payments, I am behind with payments
(please list)

.....
.....
.....
.....

I declare that the details I have given above are true to the best of my knowledge.

Dated.....

Signed..... Applicant

NOTICE

The application will be heard by [the Judge in Chambers] [Master xxxxx] on
the day of , at a.m./p.m.
at [xxx xxx xxx]

If you do not attend this hearing an order may be made in your absence.

or

The [Judge in Chambers] [Master] will deal with this application by—

NB: This notice of application must be served as quickly as possible on the respondent to the application.

The **court office** is at [xxx.xxx.xxx] Telephone number xxx-x, Fax xxx.xxxx.

The office is open between [8.00 a.m.] and [4.00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 4: APPEARANCE TO FIXED DATE CLAIM (Part 9)

(HEADING AS IN FORM 1)

APPEARANCE TO FIXED DATE CLAIM

Please enter appearance for
[State name(s) of Defendant(s)]

WARNING: This form should be completed and returned to the court at the address below within EIGHT days of service of the claim form on you. However, the claimant will not be entitled to have judgment entered against you except at the first or subsequent hearing of the claim.

- 1. Have you received the claim form with the above number? YES/NO
- 2. If so, when did you receive it?/...../....
- 3. Did you also receive the claimant’s statement of case or affidavit in support? YES/NO
- 4. If so, on what date did you receive them?/...../....
- 5. Are your names properly stated on the claim form? YES/NO
If not, what are your full names?
- 6. Do you intend to defend the claim? YES/NO
**(If so you should file a defence or affidavit in answer within 28 days of the service of the claim form on you.)*
- 7. Do you admit the whole claim? YES/NO
- 8. Do you admit any part of the claim? YES/NO
- 9. If so, what do you admit?
- 10. What is your own address?
.....
.....
- 11. What is your address for service?
** (If you are acting in person you must give an address within 3 miles of the court office to which documents may be sent either from other parties or from the court. You should also give your telephone number, FAX number and e-mail address, if any.*

Signed: Dated
(Defendant in person) (Defendant’s Attorney-at-law)

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 5—DEFENCE AND COUNTERCLAIM [Part 10 and Rule 18.5(1)]

(HEADING AS IN FORM 1)

DEFENCE

I dispute the claim on the following grounds:

I certify that all the facts set out in my defence are true to the best of my knowledge information and belief. My address for service is

Telephone no. **Fax no.** **e-mail address**

Signed **Dated**

Defendant

We are acting for the defendant, our address for service is:

Signed (Attorneys-at-law for the defendant)

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

COUNTERCLAIM

I claim against the claimant

(set out details of the remedy or relief sought)

on the following grounds:

I certify that all the facts set out in my counterclaim are true to the best of my knowledge information and belief and that I am entitled to the remedy claimed

Signed **Dated**
Defendant

We are acting for the defendant, our address for service is—
Signed (Attorneys-at-law for the defendant)

Notes:

- (a) The defendant may set out his defence in any way he chooses — it is not necessary to use this form.
- (b) The defendant must—
 - state which allegations in the claim he admits
 - which he denies
 - which he neither admits or denies because he does not know whether they are true
 - identify any documents which he considers necessary to his case.
- (c) He must give his reasons for denying any allegations made by the claimant.
- (d) The defendant must set out clearly all the facts on which he relies to dispute the claim and must set out any different version of events on which he relies.
- (e) The defendant may not be allowed to give evidence about any fact which is not set out in the defence.
- (f) If the defendant wishes to counterclaim he must—
 - specify any remedy that he seeks against the claimant
 - include a short statement of all facts on which he relies
 - identify any documents which he considers necessary to his case.
- (g) Where the defendant is represented by an attorney-at-law he must also sign the form and give his address for service, which must be within 3 miles of the court office.

FORM 6: REQUEST FOR DEFAULT JUDGMENT (Rule 12.5)

(HEADING AS IN FORM 1)

REQUEST FOR ENTRY OF JUDGMENT IN DEFAULT

I/We the claimant/claimant's attorneys-at-law request entry of judgment against the defendant in default of—

Appearance	YES/NO
Defence	YES/NO

(in case of failure to enter appearance) Evidence of service of the claim form and statement of case is filed with this form—

- (a) the period for entering an appearance has expired; and
- (b) the defendant has not entered an appearance; or
- (c) the defendant has not filed a defence to the claim or any part of it; or
- (d) (where appropriate) the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it; or
- (e) the claimant has not satisfied the claim;
- (f) (where appropriate) permission to enter judgment was given by the court on (date).

(in case of failure to serve defence) I/We certify that—

- (a) the time for the defendant to file and serve his defence has expired (including any extension of time agreed between the parties or granted by the court); and
- (b) that no defence or counterclaim has been served on me/us; and
- (c) (where appropriate) the defendant has not filed and served an admission of liability to pay all of the money claimed together with a request for time to pay it;
- (d) that the defendant has not paid any money in settlement of the claim except such sum as is stated below;
- (e) (where appropriate) permission to enter judgment was given by the court on (date)

Judgment should be entered for—

Amount claimed	\$
Court fees on claim	\$
Attorney's fixed costs on issue	\$
Together with interest from date of issue to today	\$
Court fees on entering judgment	\$
Attorney's fixed costs on entering judgment	\$
Total	\$
Less paid since issue of claim	\$
Amount for which judgment is to enter	\$

to be paid [forthwith] [on (state date)] or by weekly/monthly instalments of \$

Dated

Signed:
[Attorney-at-law for the] Claimant

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 7: REQUEST FOR ENTRY OF JUDGMENT ON ADMISSION (Rule 14.3)

(HEADING AS IN FORM 1)

REQUEST FOR ENTRY OF JUDGMENT ON ADMISSION

I/We the claimant/claimant’s attorneys-at-law
request entry of judgment against the defendant on his admission—

(Admission of whole debt)

A.	Judgment should be entered for—	
	Amount claimed	\$
	Court fees on claim	\$
	Attorney’s fixed costs on issue	\$
	Together with interest from date of issue	
	to today	\$
	Court fees on entering judgment	\$
	Attorney’s fixed costs on entering judgment	\$ _____
	Total	\$ _____
	Less paid since issue of claim	\$ _____
	Amount for which judgment is to enter	\$ _____

(Admission of part of debt)

B.	Judgment should be entered for—	
	Amount admitted by defendant	\$
	Court fees on claim	\$
	Attorney’s fixed costs on issue	\$
	<i>(These must be the fees and costs appropriate to the amount admitted)</i>	
	Together with interest from date of issue	
	to today	\$
	Court fees on entering judgment	\$
	Attorney’s fixed costs on entering judgment	\$ _____
	<i>(These must be the fees and costs appropriate to the amount admitted)</i>	
	Total	\$ _____
	Less paid since issue of claim	\$ _____
	Amount for which judgment is to enter	\$ _____

C. (i) I/We accept the defendant’s offer to pay the amount due—
on _____ (date);
or, by instalments of \$ _____ per week/month
and ask for judgment to be entered accordingly [the first payment to be on
_____]

OR

(ii) I/We do not accept the defendant’s proposals for payment of the amount due but would accept—

payment on _____ (date);

or, by instalments of \$ _____ per week/month
the first payment to be on _____ (date)

OR

(iii) I/We do not accept the defendant’s proposals as to payment and ask for judgment to be entered for the balance due to be paid forthwith.

D. (in cases (ii) and (iii) above) My/our reasons for objecting to the defendant’s proposals are—

I/We do not accept that the defendant’s financial statement is correct in the following ways:

Dated

Signed: [Attorneys-at-law for] the claimant

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 8: LIST OF DOCUMENTS (Rule 28.7)

(HEADING AS IN FORM 1)

LIST OF DOCUMENTS

This list is completed in accordance with an order for—

- (a) Standard disclosure YES/NO
- (b) Specific disclosure YES/NO

dated

and is served on behalf of the claimant/defendant/other.

I, [claimant] [defendant] [other]

certify that I have had explained to me—

- (a) the duty of standard disclosure; and
- (b) the terms of the order dated [] for specific disclosure and my duty to disclose documents in accordance with that order,

and that I have complied with that duty.

(in the case of a list served by a company, firm, association or other organisation, the certificate must continue)—

I am the [] of the [claimant][defendant][other].

I accept responsibility for identifying any individuals who might be aware of any document which should be disclosed. I have asked the following individuals whether they are aware of any such documents:

NAME	POSITION
------	----------

The following is a list of ALL the documents which—

- (a) are or were in the physical possession of the [claimant][defendant][other]; or
- (b) the [claimant] [defendant][other] has or has had a right to possession of; or
- (c) the [claimant] [defendant] [other] has or has had a right to inspect or take copies of,

on which the [claimant][defendant][other] relies or intends to rely in these proceedings, [together with such documents or classes of documents which the [claimant] [defendant] [other] was ordered to disclose by the order of the court dated.

I/We claim a right to withhold disclosure and inspection of the documents listed in Part 2 of Schedule 1 on the basis stated in the Schedule.

I/We am/are not in physical possession of the documents listed in Schedule 2 and the Schedule states what has happened to those documents.

Neither [the claimant] [the defendant] [other] nor his attorney-at-law nor anyone else on his behalf has now, or ever has had in his physical possession, nor has [the claimant] [the defendant] [other] now or ever has had the right to possession or the right to take copies of any documents which should be disclosed and inspected under the terms of the court’s order other than those listed in this list of documents.

Dated

Signed: [Claimant] [Defendant] [Other]
[named representative for Claimant/Defendant][Other]



SCHEDULE 1

PART 1

No.	Details of document or class of documents
-----	---

PART 2

No.	Details of document or class of documents	Reason for claiming a right not to disclose
-----	---	---

SCHEDULE 2

No.	Details of document or class of documents	What has happened to the documents including (to the best of my/our information and belief) where they are.
-----	---	---

NOTICE TO INSPECT

The documents listed in Part 1 of Schedule 1 may be inspected at on any normal working day between the hours _____ of _____ a.m. and _____ p.m. until _____ (date).

Signed: _____ [Attorneys-at-law for] the [Claimant] [Defendant] [Other]

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 9: LISTING QUESTIONNAIRE (Rule 27.10)

(HEADING AS IN FORM 1)

LISTING QUESTIONNAIRE

WARNING: This is an important document. The information is required by the court to list your case accurately. Inaccurate information may lead to a waste of court time and delays to other people’s cases. Failure to return the form to the court office within FOURTEEN DAYS or to complete it fully will lead to a Listing Hearing being fixed. You may have to pay the costs of this hearing.

- 1. Have all the directions given by the court been carried out? YES/NO
- 2. If not, which directions have not been carried out?
 - Disclosure of documents YES/NO
 - Inspection of documents YES/NO
 - Service of witness statements YES/NO
 - Service of expert reports YES/NO
 - Other (state which) YES/NO
- 3. Why have they not been carried out?
- 4. When can the direction be complied with?
- 5. Will any application for relief be made by you? YES/NO
- 6. Has ADR been tried? YES/NO
- 7. If not, why?
- 8. Is ADR likely to be tried?
- 9. Are you ready for trial? YES/NO
- 10. If not, why?
- 11. How many witnesses do you intend to call
- 12. What is your present estimate for trial length hours
- 13. What dates within the stated trial period will cause difficulty to the claimant/defendant

His Attorney-at-law
 Any trial Attorney-at-law
 Any non-expert witness
 Any expert witness.

14. Please give names, addresses and telephone numbers of—

Any trial Attorney you propose to instruct.

Any expert witness whom you are entitled to call to give oral evidence

15. Please state the name of the Attorney-at-law who has conduct of this matter and give his direct telephone number or fax number.

Dated

Signed:

Attorney for the Claimant/Defendant
Claimant/Defendant in person

This form must be returned to the court office within 14 days. [by _____]

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 10: APPLICATION (Part 11)

(HEADING AS IN FORM 1)

NOTICE OF APPLICATION

The [claimant] [defendant] applies to the court for an order that—

A draft of the order that I seek is attached.
The grounds of the application are—

I/We hereby certify that the facts stated above are true to the best of my/our knowledge, information and belief.

[An affidavit in support accompanies this application]

Dated

Signed: [Attorney-at-law for] [Claimant] [Defendant]

NOTICE:

This application will be heard by [the Judge] [Master] on the _____ day of _____, at _____ am/pm at [place] in court room

If you of not attend this hearing an order may be made in your absence.

OR

The [Judge] [Master] will deal with this application by—(method of hearing)

NB: This notice of application must be served as quickly as possible on the respondent to the application.

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 11: WITNESS SUMMONS (Rule 34.2)

(HEADING AS IN FORM 1)

WITNESS SUMMONS

To (Witness' name)
of (Witness' address)

You are summoned to attend at the High Court of Justice at [the Hall of Justice, Knox Street, Port-of-Spain] at a.m. on the day of.....20....., the day fixed for the hearing of this claim and from day to day till the end of the trial to give evidence [and to bring with you and produce the following documents:

]

Sum to be paid to the witness \$



DATED

This summons was issued on the application of the [claimant] [defendant] whose Attorney-at-law is of

Tel. No. Fax. No.

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 12: WRIT OF EXECUTION AGAINST GOODS (*FIERI FACIAS*) (Part 47)

(HEADING AS IN FORM 1)

REQUEST FOR ISSUE OF WRIT OF EXECUTION (*FIFA*)

To the Court

We [I] _____ of _____
[Attorneys-at-law for the judgment creditor] [judgment creditor in person]
apply for the issue of a writ of execution against the judgment debtor to recover the sum stated below.

Amount of Judgment	\$ _____
Costs	\$ _____
Interest to date	\$ _____
Total sum due	\$ _____
Less: Paid since judgment	\$ _____
Balance of judgment now due	\$ _____
Plus: fee on issue	\$ _____
Attorney's costs on issue	\$ _____
Amount for which writ to issue	\$ _____

We[I] certify that

- (a) the whole or part of any instalment due under the judgment has not been paid; and
- (b) the balance of judgment now due is as shown above.

Dated _____

Signed:

[Attorneys-at-law for the] [judgement creditor] [in person]

WRIT OF EXECUTION

To: The Marshal [Deputy Marshal]

You are required to levy the sum stated above together with interest at the rate of _____ % per annum from the _____ day of _____ 20____, until payment together with Marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [judgement creditor].

You are also required to indorse on this writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [judgement creditor].

Dated _____



.....
[Signed] [Registrar]

Notice to Judgment Debtor

Notice of levy

The marshal has levied on your goods. This means that you must not dispose of them as the marshal may have to take them and sell them, at a public auction.

Payment of the judgment debt

If you pay the total amount due under this writ including the marshal’s poundage fees, costs of levying and any other legal incidental expenses, your goods will not be taken and you will not have to pay any more costs. You must pay the money to the marshal and will be given a receipt.

If you do not want the Marshal to remove your goods

You can ask the Marshal not to do so but you **must** sign the walking possession agreement below.

If your goods are removed

- you will be given a list of the goods removed
- the goods will not be sold for at least [] days—unless they are perishable
- you will be given [] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

Walking Possession Agreement

(request **not** to remove goods)

Please do not take my goods listed here—

I agree that until payment is made or the writ withdrawn, I will—

- not remove or damage the goods or allow anyone to do so
- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- **allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.**

Dated

Signed:

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 13: WRIT OF POSSESSION (Part 47)

(HEADING AS IN FORM 1)

REQUEST FOR ISSUE OF WRIT OF POSSESSION

To the Court

We [I] of
[Attorneys-at-law for the judgment creditor] [judgment creditor in person]
apply for the issue of a writ of possession against the judgment debtor to recover possession of the land
and property known as
[description of property] and also to recover the sum stated below.

Amount of judgment (if any)	\$
Costs	\$
Interest	\$
Rent/ <i>mesne</i> profits to date	\$ _____
Total sum due	\$
Less: Paid since judgment	\$ _____
Balance of judgment now due	\$
Plus: fee on issue	\$
Attorney's costs on issue	\$ _____
Amount for which writ to issue	\$

We [I] certify that

- (a) the judgment creditor is entitled to possession and that the judgment debtor has not complied with any conditions upon which the order for possession was suspended.**
- (b) the balance of judgment and rent/*mesne* profits now due is as shown above.**

Dated:..... Signed:.....
[Attorneys-at-law for the] [judgment creditor] [in person]

WRIT OF POSSESSION

To: The Marshal [Deputy Marshal]

You are required to take possession of the property known as
[description of property]
and to deliver the same to the judgment creditor or his representative and also to levy the sum stated
above together with interest at the rate of % per annum from the day of 20.....
until payment together with Marshal's poundage fees, costs of levying and all other legal incidental
expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the
[judgment creditor].

You are also required to indorse on this writ immediately after execution a statement of the manner in
which you have executed it and send a copy to the [judgment creditor].

Dated



.....
[Signed] [Registrar]

Notice to Judgment Debtor

Notice of taking Possession

You have failed to give up possession of the property described overleaf and the marshal is authorised to take enter the land to take possession of the property and deliver such possession to the claimant.

Notice of levy

The marshal has levied on your goods in order to discharge the judgment for [arrears of rent] [damages] [rent] [*mesne profit*] and [costs]. This means that you must not dispose of them as the marshal may have to take them and sell them, at a public auction.

Payment of the money judgment

If you are able to pay the money judgment in full the marshal will not need to remove your goods. You will have to pay the full amount of the judgment plus interest and the costs of issuing this writ together with the marshal’s fees. You will be given a receipt for any money that you pay.

If your goods are removed

- you will be given a list of the goods removed
- the goods will not be sold for at least [] days — unless they are perishable
- you will be given [] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

(Page 2 of 2)

FORM 14: WRIT OF DELIVERY OR VALUE (Part 47)

(HEADING AS IN FORM 1)

REQUEST FOR WRIT OF DELIVERY OR VALUE

To the court

We [I] of
[Attorneys-at-law for the judgment creditor] [judgment creditor in person]
apply for the issue of a writ of delivery against the judgment debtor to recover possession of
[description of goods]
or to recover the assessed value of the goods, namely \$

And also to recover	
Damages	\$ _____
Costs	\$ _____
Total sum due	\$ _____
Less: Paid since judgment	\$ _____
Balance of judgment now due	\$ _____
Plus: fee on issue	\$ _____
Attorney's costs on issue	\$ _____
Amount for which writ to issue	\$ _____

We [I] certify that—

- (a) **the judgment creditor is entitled to recover the goods which are the subject of the court's order or the value of \$ _____ assessed by the court; and**
- (b) **the balance of judgment now due is as shown above.**

Dated:

Signed:

[Attorneys for the] [judgment creditor] [in person]

WRIT OF DELIVERY OR VALUE

To: The Marshal [Deputy Marshal]

You are required to cause the goods [description of goods]
to be delivered to the judgment creditor, and if you are not able to do so to levy the sum of
\$ the assessed value.

You are also required to levy the sum of \$as stated above together with interest at the rate of
..... % per annum from the day of 20..... , until payment together
with marshal's poundage fees, costs of levying and all other legal incidental expenses and to pay the
amount levied in respect of the judgment debt, fees, costs and interest to the [judgment creditor].

You are also required to indorse on this writ immediately after execution a statement of the manner in
which you have executed it and send a copy to the judgment creditor.

Dated:



.....
[Signed] [Registrar]

Notice to Judgment Debtor

Notice of taking Possession

You have failed to deliver up the goods described overleaf and the marshal is authorised to take possession of the goods and deliver them to the judgment creditor. If the marshal is not able to take possession of the goods he is authorised to levy the sum stated overleaf being the value of the goods as assessed by the court.

Notice of levy

The marshal has levied on your goods in order to—

- (a) discharge the claim for the assessed value of the goods; and
- (b) discharge the judgment for [damages] and [costs].

This means that you must not dispose of them as the Marshal may have to take them and sell them, at a public auction.

Payment of the money judgment

If you are able to—

- (a) deliver the goods described overleaf; or
- (b) pay the assessed value of the goods; **and**
- (c) pay the money judgment in full,

the marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the marshal’s fees. You will be given a receipt for any money that you pay.

If you do not want the marshal to remove your goods

You can ask the Marshal not to do so but you **must** sign the walking possession agreement below.

If your goods are removed

- you will be given a list of the goods removed
- the goods will not be sold for at least [] days — unless they are perishable
- you will be given [] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

(Page 2 of 3)

**Walking Possession Agreement**

(request **not** to remove goods)

Please do not take my goods listed here—

I agree that until payment is made or the writ withdrawn, I will—

- not remove or damage the goods or allow anyone to do so
- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- **allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.**

Dated

Signed:

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

(Page 3 of 3)

FORM 15: WRIT OF SPECIFIC DELIVERY (Part 47)

(HEADING AS IN FORM 1)

REQUEST FOR WRIT OF SPECIFIC DELIVERY

To the Court

We [I] of
 [Attorneys-at-law for the judgment creditor] [judgment creditor in person]
 apply for the issue of a writ of specific delivery against the judgment debtor to recover possession of
 [description of goods]

And also to recover

Damages	\$
Costs	\$
Total sum due	\$ _____
Less: Paid since judgment	\$ _____
Balance of judgment now due	\$ _____
Plus: fee on issue	\$ _____
Attorney's costs on issue	\$ _____
Amount for which writ to issue	\$ _____

We [I] certify that

- (a) **the judgment creditor is entitled to recover the goods which are the subject of the court's order and that the court has given permission for the issue of a writ of specific delivery on [date]; and**
- (b) **the balance of judgment now due is as shown above.**

Dated Signed:.....
 [Attorneys for the] [judgment creditor] [in person]

WRIT OF SPECIFIC DELIVERY

To: The Marshal [Deputy Marshal]

You are required to cause the goods [description of goods]
 to be delivered to the judgment creditor.

You are also required to levy the sum of \$ as stated above together with interest at the rate of
 % per annum from the day of 20....., until payment together
 with marshal's poundage fees, costs of levying and all other legal incidental expenses and to pay the
 amount levied in respect of the judgment debt, fees, costs and interest to the [judgment creditor].

You are also required to indorse on this writ immediately after execution a statement of the manner in
 which you have executed it and send a copy to the [judgment creditor].

Dated



.....
 [Signed] [Registrar]

Notice to Judgment Debtor

Notice of taking Possession

You have failed to deliver up the goods described overleaf and the marshal is authorised to take possession of the goods and deliver them to the judgment creditor.

Notice of levy

The marshal has levied on your goods in order to discharge the judgment for [damages] and [costs]. This means that you must not dispose of them as the marshal may have to take them and sell them, at a public auction.

Payment of the money judgment

If you are able to pay the money judgment in full, the marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the marshal’s fees. You will be given a receipt for any money that you pay.

If you do not want the marshal to remove your goods (other than the goods which the court order you to deliver up to the judgment creditor)

You can ask the marshal not to do so but you **must** sign the walking possession agreement below; if the marshal so allows.

If your goods are removed

- you will be given a list of the goods removed
- the goods will not be sold for at least [] days—unless they are perishable
- you will be given [] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the costs of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

Walking Possession Agreement

(request **not** to remove goods)

Please do not take my goods listed here—

I agree that until payment is made or the writ withdrawn, I will—

- not remove or damage the goods or allow anyone to do so
- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- **allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.**

Dated

Signed [judgment debtor]:

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 16: ADMIRALTY CLAIM IN REM (Rule 74.4)

(Nature of Case)

Filing Attorney: (Name of Attorney) (Bar no.)
 [Firm (if any)]
 (Address)
 (Tel no., fax no., e-mail address)

Advocate: (Name of Advocate) (Bar no.)
 (Tel no., fax no., e-mail address)

**The Republic of Trinidad and Tobago
 In the High Court of Justice**

**Claim No. of
 Admiralty**

Between

A.B.

Claimant

And

C.D.

Defendant

CLAIM FORM IN REM

Admiralty claim *in rem* against
 [The ship "X" or other *res*]

The Claimant, A.B. (full names), of (full address)
 claims against

the Defendant, C.D. (full names), of (full address)

Set out briefly the nature of the claim and state any specific sum that you are claiming.

	Amount Claimed	\$
	Court fees	\$
	Attorney's costs on issue	\$
Together with interest from	to date	\$
(Daily rate thereafter =	\$ per day)	\$ _____
	Total Claim	\$

**NOTICE TO THE DEFENDANTS the owners of and other persons interested in the ship
of the port of [or cargo or as may be].**

If you do not complete the form of appearance served on you with this claim form and deliver or send it to the [Hall of Justice, Knox Street, Port-of-Spain] within EIGHT days of service of this claim form on you, the claimant will be entitled to apply to have judgment entered against you for the amount of his claim. If the *res* described in this claim form is then under arrest of the court it may be sold by order of the court.

**The form of appearance may be completed by you or an attorney-at-law acting for you.
You should consider obtaining legal advice with regard to this claim.**

This claim form has no validity if it is not served within twelve months of the date below unless you are also served with an order that extends the time for service.

Certificate of truth

I believe that the contents of this claim form are true and that I am entitled to the remedy claimed.

Signed:
[Claimant]



Dated the _____ day of _____ 20 ____ .
The claimant's address for service is:

.....
Signed

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 17: ADMIRALTY LIMITATION CLAIM (Rule 74.4)

(HEADING AS IN FORM 16)

LIMITATION CLAIM FORM

The Claimant, A.B. (full names), of (full address)
 claims against
 the Defendant, C.D. (full names), of (full address)

Set out briefly the nature of the claim

NOTICE TO THE DEFENDANTS

Unless you admit the claim against you, you must complete the form of appearance served on you with this claim form and deliver or send it to the [Hall of Justice, Knox Street, Port-of-Spain] so that it is received within EIGHT days of service of this claim form on you. If you fail to do so the claimant may proceed with the claim without further notice to you. The form of appearance may be completed by you or an attorney-at-law acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within twelve months of the date below unless you are also served with an order that extends the time for service.

Certificate of truth

I believe that the contents of this claim form/statement of case are true and that I am entitled to the remedy claimed.

Signed:
[Claimant]



Dated the day of 20 .

The claimant's address for service is:

Signed

The **court office** is at [the Hall of Justice, Knox Street, Port--of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8.00 a.m.] and [4.00 p.m.] Mondays to Fridays except Public Holidays.

FORM 18: WARRANT OF ARREST (ADMIRALTY) (Rule 74.9)

(Nature of Case)

Filing attorney: (Name of Attorney) (Bar no.)

[Firm (if any)]

(Address)

(Tel no., fax no., e-mail address)

Advocate: (Name of advocate) (Bar no.)

(Tel no., fax no., e-mail address)

**The Republic of Trinidad and Tobago
In the High Court of Justice**

**Claim No.
Admiralty**

Between

A.B. Claimant

And

C.D. Defendant

Admiralty claim *in rem* against

[The ship "X" or other *res*]

REQUEST FOR WARRANT OF ARREST

We _____ of _____
[Attorneys-at-law for] the claimant request a warrant to arrest

(description of property, giving name and port if a ship)

Dated

Signed:

WARRANT OF ARREST

To: the Marshal

You are required to arrest the ship _____ of the port of _____
[and the cargo now or lately laden in her together with the freight due for the transportation of it,] or
[and the freight due for the transportation of the cargo now or lately laden in her] and to keep the same
under safe arrest until you receive further orders from the court.

The claimant claims: [as in claim form]



Taken out by _____ of _____

Attorneys-at-law for the claimant [Signed]

[Marshal's indorsement as to service]

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 19: NOTICE OF APPEAL (Rule 64.4)

(Nature of Case)

Filing attorney: (Name of Attorney) (Bar no.)

[Firm (if any)]

(Address)

(Tel no., fax no., e-mail address)

Advocate: (Name of advocate) (Bar no.)

(Tel no., fax no., e-mail address)

**The Republic of Trinidad and Tobago
In the High Court of Justice**

Civil Appeal No.

Between

A.B.

Appellant

And

C.D.

Respondent

NOTICE OF APPEAL

TAKE NOTICE that the appellant (being the [claimant] [defendant] in the court below) hereby appeals to the Court of Appeal against the decision of [Mr. Justice] [Master] [the Magistrates Court] [] contained in the order dated [copy of which is attached to this Notice].

- 1. Details of order appealed:
- 2. Details of—
 - (a) any finding of fact:

(b) any finding of law:

which are challenged.

3. Grounds of Appeal:

(a)

(b)

(c)

4. Order sought:

5. Any specific power which the court is asked to exercise:

6. Details of the other parties to the proceedings in the court below:

Name

Address for Service

Dated

Signed:

[Attorneys-at-law for] the appellant

whose address for service is:

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 20: FINANCIAL POSITION NOTICE (Rule 45.6)

[HEADING AS IN FORM 1]

FINANCIAL POSITION NOTICE

To:

TAKE NOTICE that an application has been made to orally examine you as to your income, assets and liabilities [the income, assets and liabilities of the (defendant) (claimant) company] and the means by which the judgment debt may be paid. There is served with this notice an order giving the date, time and place of the oral examination.

You are required to complete and return the attached questionnaire as to your means [the means of the company]. A copy will be sent to the judgment creditor and the judgment creditor may withdraw his application for an oral examination if he is satisfied with the information that you provide.

Unless you are notified by the court that your attendance is not required you **must** attend court on the date, time and place stated in the attached order, if you fail to do so further proceedings may be taken which may result in your being imprisoned.

Dated

.....
Signed [Registrar]

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8.00 a.m.] and [4.00 p.m.] Mondays to Fridays except public holidays and court holidays.

If you telephone or write to the court you must quote the claim number at the top left-hand corner of this form.

FORM 21: ANCILLARY CLAIM /THIRD PARTY NOTICE (Rule 18.3)

Between

A.B. Claimant

And

C.D. Defendant

And

C.D. Defendant/Ancillary Claimant

And

E.F. Ancillary Defendant

ANCILLARY CLAIM /THIRD PARTY NOTICE

To _____ **of** _____

This claim has been brought by the claimant against the defendant in accordance with the claim form and statement of case served with this notice. Copies of the defendant’s statement of case (his defence) and of all other statements of case that have been filed in the proceedings are also served with this notice.

The defendant claims against you

on the grounds that

[The defendant will also ask the court to determine the following matters not only between the claimant and himself but also between himself and you:

]

If you wish to dispute the claimant’s claim against the defendant or the defendant’s claim against you, you must—

- (a) send or deliver a completed form of appearance to the court office (address below) so that it is received by them within EIGHT days; and
 - (b) also send or deliver a defence to this notice to the court office so that it is received by them within TWENTY-EIGHT days,
- of the day on which this notice was served on you. You must also serve a copy of your defence on the defendant’s Attorneys whose address is given below.

If you do not file a defence you will be—

- (a) deemed to have admitted the defendant’s claim against you; and
- (b) bound by any judgment or decision in the main proceedings in so far as it is relevant to any claim made against you, and judgment may be entered against you.

Dated

This Notice was issued by

of

[Attorneys-at-law for the defendant/Ancillary Claimant]



The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 22: NOTICE TO NON-PARTY SERVED WITH ORDER (*Rule 43.12*)

(HEADING AS IN FORM 1)

NOTICE

To _____ of _____

A judgment or order of this court was given or made on the _____ day of _____ and a copy of that judgment or order is attached to this notice.

You [_____] are bound by the terms of the judgment or order to the same extent *vas* you [_____] would have been had you been a party to the proceedings in which the judgment was given or order made.

However you may apply to the court within TWENTY-EIGHT days after service of this notice to—
 (a) discharge;
 (b) vary; or
 (c) add to,
 the judgment or order.

You may do this by completing and issuing a form of application at the court office whose address is given below saying what order you want the court to make and the grounds on which you make the application.

Dated _____



This notice was issued by _____ [Attorney-at-law for the claimant/defendant] whose address for service is _____

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.

FORM 23: WRIT OF *HABEAS CORPUS*

(HEADING AS IN FORM 1)

To: the Commissioner of Prisons:

You are required to produce to the High Court [Hall of Justice, Knox Street, Port-of-Spain] on the day of _____ at _____ a.m./p.m. the body of _____ by whatsoever name he is called, said to be detained in your custody and be prepared to state the day and cause of his being taken and detained so that the court may then and there examine whether such cause is legal.

TAKE NOTICE that if you fail to produce the body of _____ before the court on the date and at the time stated above the court may commit you to prison for your contempt in not obeying the order contained in the writ.

Dated



Issued by _____ of _____
Attorneys-at-law for the Claimant

The **court office** is at [the Hall of Justice, Knox Street, Port-of-Spain] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open between [8:00 a.m.] and [4:00 p.m.] Mondays to Fridays except public holidays and court holidays.



PRACTICE DIRECTIONS

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This Practice Direction is to be read in conjunction with the Practice Direction: Filing of Documents under the Civil Proceedings Rules 1998 (“CPR 1998”) dated the 22nd day of November, 2007.

**SUPREME COURT OF JUDICATURE OF TRINIDAD AND TOBAGO
PRACTICE DIRECTION FILING OF DOCUMENTS**

Practice-Efficient Administration of the Civil Proceedings Rules of Trinidad and Tobago 1998 (CPR)-Filing of Documents-Information and Designation Form to accompany all documents-CPR Part 4, rule 4.1

In order to promote the efficient administration of the Civil Proceedings Rules of Trinidad and Tobago 1998, as amended (CPR), it has become necessary to develop a system by which, not only may documents be tracked between the filing of a matter or application and its disposition, but by which data necessary to support the listing and calendaring requirements of the CPR may be collected.

In light of this, the Chief Justice, under the provisions of CPR Part 4, rule 4.1 has decided to direct that, with effect from the 16th day September 2005, every document pertaining to civil (including public law) and matrimonial matters which is filed at the Court Office must be accompanied by a completed Information and Designation Form in the form annexed hereto as Appendix A.

Dated this 1st day of September, 2005

Satnarine Sharma
Chief Justice

Appendix A
Civil Information and Designation Form
High Court Action No.

I.

Parties

Document Description

Filing Date

Attorneys-at-law

(Names to be completed Surname, Middle Name, First Name)

PLAINTIFF(S)	DEFENDANT(S)
DESCRIPTION OF DOCUMENT	DESCRIPTION OF DOCUMENT
DATE OF DOCUMENT	DATE OF DOCUMENT
DATE OF FILING	DATE OF FILING
DOCUMENT FILED ON BEHALF OF	DOCUMENT FILED ON BEHALF OF
FILING ATTORNEY	FILING ATTORNEY
Bar No.:	Bar No.:
Name of Firm or Chambers:	Name of Firm or Chambers:
Name of Attorney:	Name of Attorney:
Address:	Address:
Primary Telephone:	Primary Telephone:
Secondary Telephone:	Secondary Telephone:
Fax No.:	Fax No.:
E-Mail:	E-Mail:
ADVOCATE ATTORNEY	ADVOCATE ATTORNEY
SENIOR COUNSEL (IF ANY)	SENIOR COUNSEL (IF ANY)
Bar No.:	Bar No.:
Name of Firm or Chambers:	Name of Firm or Chambers:
Name of Senior Counsel:	Name of Senior Counsel:
Address:	Address:
Primary Telephone:	Primary Telephone:
Secondary Telephone:	Secondary Telephone:
Fax No.:	Fax No.:
E-Mail:	E-Mail:

I.—Continued

<p>ADVOCATE ATTORNEY JUNIOR COUNSEL (IF ANY) Bar No.: Name of Firm or Chambers: Name of Junior Counsel: Address:</p> <p>Primary Telephone: Secondary Telephone: Fax No.: E-Mail:</p>	<p>ADVOCATE ATTORNEY JUNIOR COUNSEL (IF ANY) Bar No.: Name of Firm or Chambers: Name of Junior Counsel: Address:</p> <p>Primary Telephone: Secondary Telephone: Fax No.: E-Mail:</p>
--	--

II.

Nature and Classification of Action

(Weights to be assigned by the Court Office: Parties or their Attorneys-at-Law to place “x” next to a single case type. Do not select more than one case type, even if claim may involve multiple matters).

LAND		ADMINISTRATIVE LAW	
Type	Weight	Type	Weight
<input type="checkbox"/> Adverse Possession		<input type="checkbox"/> Breach of Statutory Duty by Public Authority	
<input type="checkbox"/> Boundary Dispute		<input type="checkbox"/> Compulsory Acquisition	
<input type="checkbox"/> Charities		<input type="checkbox"/> Constitutional Matters	
<input type="checkbox"/> Deed		<input type="checkbox"/> Election Matters	
<input type="checkbox"/> Easements-Rights of way		<input type="checkbox"/> Judicial Review	
<input type="checkbox"/> Equity on Land		<input type="checkbox"/> Matters relating to Public Institutions	
<input type="checkbox"/> Leases-Landlord and Tenant		<input type="checkbox"/> Public International Law	
<input type="checkbox"/> Licences (with respect to land)		<input type="checkbox"/> Striking-off of lawyers	
<input type="checkbox"/> Mortgages and charges on land		<input type="checkbox"/> Writs of Prohibition, Mandamus, Certiorari	
<input type="checkbox"/> Recovery of Possession		<input type="checkbox"/> Habeas Corpus	
<input type="checkbox"/> Restrictive Covenants on land		PROBATE ADMIRALTY AND INTELLECTUAL PROPERTY	
<input type="checkbox"/> Rylands v. Fletcher		<input type="checkbox"/> Estate-Wills, Executors and Administrators etc.	
<input type="checkbox"/> Specific Performance		<input type="checkbox"/> Admiralty-Ship arrests, cargo claims, limitation actions etc.	
<input type="checkbox"/> Title to land		<input type="checkbox"/> Trade Marks, Patents, Design, Copyright, infringement cases, passing off actions and other intellectual property claims	

Type	Weight	Type	Weight
<input type="checkbox"/> Trespass to land		COMMERCIAL	
PERSONAL ACTIONS		<input type="checkbox"/> Arbitration	
<input type="checkbox"/> Assault and Battery and False Imprisonment		<input type="checkbox"/> Bills of Exchange-Banking Matters and Promissory Notes	
<input type="checkbox"/> Bailment		<input type="checkbox"/> Clubs, Associations, Trade Unions	
<input type="checkbox"/> Choses in Action-Assignment etc.		<input type="checkbox"/> Commercial Licences	
<input type="checkbox"/> Conflict of Laws-Private International Law		<input type="checkbox"/> Companies	
<input type="checkbox"/> Conversion and Detinue		<input type="checkbox"/> Consumer Matters	
<input type="checkbox"/> Employer's Liability		<input type="checkbox"/> Contract	
<input type="checkbox"/> Libel and Slander		<input type="checkbox"/> Debt Collection	
<input type="checkbox"/> Negligence		<input type="checkbox"/> Guarantee	
<input type="checkbox"/> Nuisance		<input type="checkbox"/> Hire Purchase	
<input type="checkbox"/> Running Down Action		<input type="checkbox"/> Insurance Policy Claim	
<input type="checkbox"/> (1) Including a claim for damages for personal injury		<input type="checkbox"/> International Trade	
<input type="checkbox"/> (2) Not including a claim for damages for personal injury		<input type="checkbox"/> Partnership	
<input type="checkbox"/> Trespass (to goods)		<input type="checkbox"/> Receivers	
<input type="checkbox"/> Wrongful dismissal		<input type="checkbox"/> Restraint of Trade	
<input type="checkbox"/> Malicious Prosecution		<input type="checkbox"/> Sale of Goods	
FAMILY		<input type="checkbox"/> Bankruptcy, Liquidation, Winding Up	
<input type="checkbox"/> Any such matter			

III.**Related Case(s)**

- A. A new case is deemed related to a case *pending* in the Supreme Court of Judicature of Trinidad and Tobago, if the new case (check appropriate box(es) below):
- relates to common property
 - involves common issues of fact
 - grows out of the same event or transaction
 - involves the validity or infringement of the same patent
 - is filed by the same litigant in person
-
- B. A new case is deemed related to a case *dismissed*, or *withdrawn*, or *discontinued* in the Supreme Court of Judicature of Trinidad and Tobago, if the new case involved the *same parties* and *same subject matter*, which includes but is not confined to the five categories set out in “A” immediately above. Check box below if new case is related to a *dismissed*, *withdrawn*, or *discontinued* case:
- New case is related to a dismissed, withdrawn or discontinued case.
-
- C. Caption and action number of related case(s):

SERVICE BY ELECTRONIC MEANS

Practice - Service of documents by fax - e-mail - other electronic means -CPR Part 6, Rule 6.2 (d) - CPR Part 4, Rule 4.1.

In order to establish certain pre-conditions to provide for a uniform approach for service by facsimile transmission or other methods of electronic communication in accordance with CPR Part 6, Rule 6.2 (d) as amended, the Chief Justice issues the following directions pursuant to Part 4, Rule 4.1 CPR 1998.

1. Subject to the provisions of paragraphs 3 and 4 below, where a document is to be served by electronic means—
 - (a) The party who is to be served or his legal representative must previously have expressly indicated in writing to the party serving—
 - (i) that he is willing to accept service of documents by electronic means; and
 - (ii) the fax number, e-mail address or electronic identification to which it should be sent; and
 - (b) The following shall be taken as sufficient written indication for the purposes of paragraph 1 (a)—
 - (i) a fax number or an e-mail address set out on the writing paper of the legal representative of the party who is to be served; or
 - (ii) a fax number, e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court.
2. Where a party seeks to serve a document by electronic means he should first seek to clarify with the party who is to be served:
 - (a) whether there are any limitations to the recipient’s agreement to accept service by such means; and
 - (b) the format in which documents are to be sent; and
 - (c) the maximum size of attachments that may be received.
3. An address for service given by a party must be within the jurisdiction and any fax number must be at the address for service.
4. Where an e-mail address or electronic identification is given in conjunction with an address for service, the e-mail address or electronic identification will be deemed to be at the address for service.
5. Where a document is served by electronic means, the party serving the document need not in addition send a hard copy by post or otherwise.

Dated this 16th day of September, 2005

Satnarine Sharma
Chief Justice

PRE-ACTION PROTOCOLS

1. GENERAL

- 1.1. The following practice direction is issued by the Honourable Chief Justice pursuant to Part 4 of the Civil Proceedings Rules 1998 (as amended) (hereinafter referred to as the “CPR”) in relation to pre-action protocols.
- 1.2. The approved pre-action protocols for specific areas of practice are annexed hereto as Appendix A, B, C and D respectively. Other pre-action protocols may subsequently be added.
- 1.3. Pre-action protocols outline the steps parties should take to seek information from and to provide information to each other about a prospective legal claim.
- 1.4. The objectives of pre-action protocols are:
 - (1) to encourage the exchange of early and full information about the prospective legal claim,
 - (2) to enable parties to avoid litigation by agreeing a settlement of the claim before the commencement of proceedings,
 - (3) to support the efficient management of proceedings under the CPR where litigation cannot be avoided.

2. COMPLIANCE WITH PROTOCOLS

- 2.1. The court may treat the standards set out in protocols as the normal reasonable approach to pre-action conduct. The court will expect all parties to have complied in substance with the terms of an approved protocol. If proceedings are issued the court may take into account the failure of any party to comply with a pre-action protocol when deciding whether or not to make an order under Part 26 (Powers of the Court) or Part 66 (Costs—General).
- 2.2. Parties will not be expected to observe this direction in urgent claims or where a period of limitation is about to expire and the period between the expiration of the limitation period and the date the claimant instructs an attorney-at-law to act on his behalf in relation to the proposed claim is too short to allow for compliance with this direction, or for other good and sufficient reason there should not be compliance provided that the reasons for non-compliance are set out fully in the claim form or statement of case. However, in the case where the limitation period is about to expire, the claimant’s attorney-at-law should give as much notice of the intention to issue proceedings as is practicable, and in appropriate cases the court might be invited to extend the time for service of the claimant’s supporting documents, if any, and/or for service of any defence or alternatively, to stay proceedings while the recommended steps are followed.

- 2.3 The court will expect all parties to have complied as far as reasonably possible with the terms of an approved protocol. If proceedings are issued and parties have not complied with this practice direction or specific protocol, it will be for the court to decide whether sanctions should be applied. The court is not likely to be concerned with minor infringements of the practice direction or protocol. The court is likely to look at the effect of non-compliance on the other party when deciding to impose sanctions.
- 2.4 If, in the opinion of the court, non-compliance has led to the commencement of proceedings which might otherwise not have needed to be commenced, or has led to costs being incurred in the proceedings that might otherwise not have been incurred, the orders the court may make include:
- (a) an order that the party at fault pay the costs of the proceedings, or part of those costs, of the other party or parties;
 - (b) an order that the party at fault pay those costs on an indemnity basis.
- 2.5 The Court will exercise its powers under paragraph 2.4 with the object of placing the innocent party in no worse a position than he would have been in if the protocol had been complied with.
- 2.6 Without prejudice to the generality of the foregoing the Court may take into account in determining whether compliance was not reasonably possible that any of the parties has had to obtain legal aid from the Legal Aid and Advisory Authority.

3. NON-COMPLIANCE WITH PROTOCOLS

- 3.1 A claimant may be found to have failed to comply with a protocol in, for example, failing to:
- (a) provide sufficient information, or
 - (b) follow the procedure required by the protocol to be followed.
- 3.2 A defendant may be found to have failed to comply with a protocol in, for example, failing to:
- (a) make a preliminary response to the letter of claim within the time fixed for that purpose by the relevant protocol;
 - (b) make a full response within the time fixed for that purpose by the relevant protocol;
 - (c) disclose documents required to be disclosed by the relevant protocol.

4. PRE-ACTION CONDUCT IN OTHER CASES

- 4.1 In cases not covered by an approved protocol, the court will expect the parties, in accordance with the overriding objective and the matters referred to in Part 1.1. (2) (a), (b) and (c) of the CPR, to act reasonably in exchanging information and documents relevant to the claim and generally in trying to avoid litigation.
- 4.2 Parties to a potential dispute should follow a reasonable procedure, suitable to their particular circumstances, which is intended to avoid litigation. The procedure should not be regarded as a prelude to inevitable litigation. It should normally include—
- (a) the claimant writing to give details of the claim;
 - (b) the defendant acknowledging the claim letter promptly;
 - (c) the defendant giving within a reasonable time a detailed written response; and
 - (d) the parties conducting genuine and reasonable negotiations with a view to settling the claim economically and without court proceedings;
- 4.3 The claimant's letter should—
- (a) give sufficient concise details to enable the recipient to understand and investigate the claim without extensive further information;
 - (b) enclose copies of the essential documents which the claimant relies on;
 - (c) ask for a prompt acknowledgement of the letter, followed by a full written response within a reasonable stated period; (For many claims, a normal reasonable period for a full response may be one month);
 - (d) state whether court proceedings will be issued if the full response is not received within the stated period;
 - (e) identify and ask for copies of any essential documents, not in his possession, which the claimant wishes to see;
 - (f) state (if this is so) that the claimant wishes to enter into mediation or another alternative method of dispute resolution; and
 - (g) draw attention to the court's powers to impose sanctions for failure to comply with this practice direction, and if the recipient is likely to be unrepresented, enclose a copy of the practice direction.
- 4.4 The defendant should acknowledge the claimant's letter in writing within 7 days of receiving it. The acknowledgement should state when the defendant will give a full written response. If the time for this is longer than the period stated by the claimant, the defendant should give reasons why a longer period is needed.

- 4.5 The defendant’s full written response should as appropriate—
- (a) accept the claim in whole or in part and make proposals for settlement; or
 - (b) state that the claim is not accepted.
- 4.6 If the defendant does not accept the claim or part of it, the response should—
- (a) give detailed reasons why the claim is not accepted, identifying which of the claimant’s contentions are accepted and which are in dispute;
 - (b) enclose copies of the essential documents which the defendant relies on;
 - (c) enclose copies of documents asked for by the claimant, or explain why they are not enclosed;
 - (d) identify and ask for copies of any further essential documents, not in his possession, which the defendant wishes to see; and the claimant should provide these within a reasonable time or explain in writing why he is not doing so;
 - (e) state whether the defendant is prepared to enter into mediation or another alternative method of dispute resolution.
- 4.7 If the claim remains in dispute, the parties should promptly engage in appropriate negotiations with a view to settling the dispute and avoiding litigation;
- 4.8 Documents disclosed by a party in accordance with this practice direction may not be used for any purpose other than resolving the dispute, unless the other party agrees.
- 4.9 The resolution of some claims, but by no means all, may need help from an expert. If an expert is needed, the parties should wherever possible and to save expense engage an agreed expert.
- 4.10 Parties should be aware that, if the matter proceeds to litigation, the court may not allow the use of an expert’s report, and that the cost of it is not always recoverable.

5. COMMENCEMENT

- a. The Court will take compliance or non-compliance with a relevant protocol into account where the claim was started after the coming into force of that protocol but will not do so where the claim was started before that date.
- b. Parties in a claim started after a relevant protocol came into force, who have, by work done before that date, achieved the objectives sought to be achieved by certain requirement of that protocol, need not take any further steps to comply with those requirements. They will not be considered to have not complied with the protocol for the purposes of paragraphs 2 and 3.

6. NEGOTIATIONS/SETTLEMENT

- 6.1 Parties and their legal representatives are encouraged to enter into appropriate negotiations with a view to settling their dispute and avoiding litigation. The protocol does not specify when or how this might be done but parties should bear in mind that the courts increasingly take the view that litigation should be a last resort, and that parties should take all reasonable steps to resolve their dispute amicably before a claim is issued.

7. SERVICE

- 7.1 A claimant's letter and the defendant's response and any other communication in writing in compliance with this protocol may be personally delivered to the intended recipient or may be sent by pre-paid post or by delivery. This however is without prejudice to the parties agreeing on some other mode of transmission.
- 7.2 Where the claimant's letter or the defendant's response or other communication is sent by post, it shall be deemed to have been received by the intended recipient on the 14th day after posting.

Dated the 15th day of November 2005.

Satnarine Sharma
Chief Justice

APPENDIX A

**PRE-ACTION PROTOCOL FOR CLAIMS FOR
A SPECIFIED SUM OF MONEY**

1.1 This protocol has been kept deliberately simple to promote ease of use and general acceptability. It applies where the only claim (not taking into account interest and costs) is for a specified sum of money, but it does not apply to claims for damages whether or not it is a claim arising out of an accident as a consequence of negligence for the cost of repairs executed to a vehicle or any property in, on or abutting a road or any other financial losses (*See* CPR Part 12.6).

LETTER OF CLAIM

1.2 The claimant shall send to the proposed defendant a letter of claim which should contain a clear summary of the facts on which the claim is based together with any relevant statement of account and the essential documents on which the claimant relies to support the claim.

1.3 The letter shall also state—

- (a) the amount due and owing to the claimant;
- (b) where the claimant is claiming interest—
 - (i) the entitlement to interest (whether by agreement or otherwise);
 - (ii) the amount of interest due down to the date of the letter;
 - (iii) the rate(s) at which interest is calculated; and
 - (iv) the rate and the amount *per diem* at which interest accrues after the date of the letter;
- (c) the amount of costs which the claimant claims.

LETTER IN RESPONSE

1.4 The defendant should reply within 14 calendar days of the date of receipt of the letter indicating whether he admits the claim by filling out the defendant’s form in Annex A. If there is no reply the claimant is entitled to issue proceedings.

1.5 If the claim is not admitted the defendant should give detailed reasons why the claim is not admitted and enclose copies of the essential documents in his possession on which he relies. If he relies on documents which are not in his possession, he should identify the documents.

1.6 If the claim is admitted the defendant should provide proposals for the repayment of the debt and give full particulars of his income and assets and send any documents that support the particulars, so as to enable the claimant to properly evaluate the proposal.

-
- 1.7 The claimant is not obliged to accept any proposal made by the defendant. If he rejects the proposal, he should notify the defendant of the rejection and the reasons for it and of his intention to commence proceedings.
 - 1.8 The Court will expect the parties to act reasonably in the making and considering of proposals.
 - 1.9 The admission of the claim with or without an agreement on terms of payment, of course, does not preclude the claimant from issuing a claim and obtaining judgment in accordance with CPR Part 14.

ANNEX A
LETTER OF CLAIM

To

Defendant

Dear Sirs

Re: Claimant's full name

Claimant's full address

We are instructed by the above named to claim against you the following sums (set out details) pursuant to (set out a summary of the facts on which the claim is based and enclose relevant documents).

You are required to respond within 14 calendar days from the date of receipt of this letter by filling out the form attached and returning it to (specify). Failure to do so will result in legal proceedings being commenced against you without further notice.

Yours faithfully

APPENDIX B**PRE-ACTION PROTOCOL FOR ROAD TRAFFIC ACCIDENTS
AND PERSONAL INJURY CLAIMS****1. GENERAL:**

- 1.1 The aims of the pre-action protocols are:
- (a) to foster more pre-action contact between the parties, better and earlier exchange of information and better pre-action investigation by both sides;
 - (b) to put the parties in a position where they may be able to settle cases fairly and early without litigation;
 - (c) to enable proceedings to run to the court's timetable and efficiently, if litigation does become necessary.
- 1.2 This protocol is primarily designed for road traffic accidents that include property damage and personal injury. However, the substance of the protocol, should be followed for all personal injury cases. Further parties are urged to follow the substance of the protocol so far as same may be applicable to claims arising out of road traffic accidents where there is no personal injury.
- 1.3 The court will be able to treat the standards set in this protocol as the normal reasonable approach to pre-action conduct. If proceedings are issued, it will be for the court to decide whether non-compliance with a protocol should merit adverse consequences.
- 1.4 If the court has to consider the question of compliance after proceedings have begun, it will not be concerned with minor infringements, e.g., failure by a short period to provide relevant information. One minor breach will not exempt the "innocent" party from following the protocol. The court will look at the effect of non-compliance on the other party when deciding whether to impose sanctions.
- 1.5 The timetable and the arrangements for disclosing documents and obtaining expert evidence may need to be varied to suit the circumstances of the case. Where one or both parties consider the details of the protocol is not appropriate to the case, and proceedings are subsequently issued, the court will expect an explanation as to why the protocol has not been followed, or has been varied.
- 1.6 The Letter Before Claim
The specimen letter of claim at Annex A will usually be sent to the individual defendant. In practice, he/she may have no personal financial interest in the

financial outcome of the claim/dispute because he/she is insured. Court-imposed sanctions for non-compliance with the protocol may be ineffective against an insured. This is why the protocol emphasises the importance of passing the letter of claim to the insurer and the possibility that the insurance cover might be affected. If an insurer receives the letter of claim only after some delay by the insured, it would not be unreasonable for the insurer to ask the claimant for additional time to respond.

1.7 The priority at letter of claim stage is for the claimant to provide sufficient information for the defendant to assess liability. Sufficient information should also be provided to enable the defendant to estimate the likely amount of the claim.

1.8 Reasons for Early Issue

The protocol recommends that a defendant be given 28 days to investigate and respond to a claim before proceedings are issued. This may not always be possible, particularly where a claimant only consults an attorney-at-law close to the end of any relevant limitation period. In these circumstances, the claimant's attorney-at-law should give as much notice of the intention to issue proceedings as is practicable and the parties should consider whether the court might be invited to extend the time for service of the claimant's supporting documents and for service of any defence, or alternatively, to stay the proceedings while the recommended steps are followed.

1.9 Status of Letters of Claim and Response

Letters of claim and response are not intended to have the same status as a statement of case in proceedings. Matters may come to light as a result of investigation after the letter of claim has been sent, or after the defendant has responded, particularly if disclosure of documents takes place outside the recommended 28-day period. These circumstances could mean that the pleaded case of one or both parties is presented slightly differently than in the letter of claim and response. It would not be consistent with the spirit of the protocol for a party to take a point on this in the proceedings, provided that there was no obvious intention by the party who changed their position to mislead the other party.

1.10 Disclosure of Documents

The aim of the early disclosure of documents by the defendant is not to encourage fishing expeditions by the claimant, but to promote an early exchange of relevant information to help in clarifying or resolving issues in dispute. The claimant's attorney-at-law can assist by identifying in the letter of claim or in a subsequent letter the particular categories of documents which they consider are relevant.

1.11 Experts

The protocol encourages joint selection of, and access to, experts. Most frequently this will apply to the medical expert, but on occasions also to liability experts. The protocol promotes the practice of the claimant obtaining a medical report, disclosing it to the defendant who then asks questions and/or agrees it and does not obtain his own report.

- 1.12 The protocol provides for nomination of the expert by the claimant in personal injury claims because of the early stage of the proceedings and the particular nature of such claims. If proceedings have to be issued, a medical report must be attached to these proceedings. However, if necessary, after proceedings have commenced and with the permission of the court, the parties may obtain further expert reports. It would be for the court to decide whether more than one expert's evidence should be admitted or whether the costs of more than one expert's report should be recoverable.

2. THE PROTOCOL

LETTER OF CLAIM

- 2.1 The claimant shall send to the proposed defendant two copies of a letter of claim immediately sufficient information is available to substantiate a realistic claim whether or not he is able to address issues of quantum in detail. One copy of the letter is for the defendant, the second for passing on to his insurers.
- 2.2 The letter shall contain—
- (a) a clear summary of the facts on which the claim is based;
 - (b) an indication of the nature of any injuries suffered;
 - (c) where the claimant was treated and the attending physician;
 - (d) the date/s of receiving treatment;
 - (e) the extent of injuries to date;
 - (f) details of property damage;
 - (g) if the claimant can address issues of quantum in detail, the quantum of the overall claim with particulars of same and supporting documents; and
 - (h) any other relevant information specific to the individual case.
- 2.3 Attorneys-at-law are recommended to use a standard format for such a letter an example is at Annex A: this can be amended to suit the particular case.
- 2.4 Sufficient information should be given in order to enable the defendant's insurer/attorneys-at-law to commence investigations and at least put a broad valuation on the proposed claim.

- 2.5 If the claimant has information relating to the identity of the defendant's insurers, he may also send a copy of the letter of claim directly to the insurers together with a letter to the insurers enquiring as to their position with respect to the prospective claim. Where the claimant intends in road traffic accidents to institute proceedings against the insurers, the claimant may in this letter to the insurers give to them any notice of his intention to do so as required by law.

LETTER IN RESPONSE

- 2.6 The defendant ('s insurers) will have 28 days (or such longer period as may be agreed) from the date of receipt of the letter of claim to investigate the claim and reply to the letter, stating whether liability is accepted and if not, giving reasons for denial of liability including any alternative version of events relied upon. If there is no reply by the defendant or insurers within 28 days, the claimant is entitled to issue proceedings.
- 2.7 If the defendant ('s insurers) require more time to investigate the claim and reply fully to the letter of claim, the parties may of course agree to extend the time. Parties are expected to act reasonably in requesting and/or agreeing to further time.
- 2.8 Where liability is admitted, the presumption is that the defendant will be bound by this admission for all claims.
- 2.9 Where it is the intention of the claimant to institute proceedings against the insurers under section 10A of the Motor Vehicles Insurance (Third-Party Risks) Act Chap. 48:51, the claimant is reminded of the requirement to give to the insurers 28 days notice under section 10A(5) of the Act.

DOCUMENTS

- 2.10 If the defendant denies liability, he should enclose with the letter of reply, documents in his possession which are material to the issues between the parties, and which would be likely to be ordered to be disclosed by the court, either on an application for pre-action disclosure, or on disclosure during proceedings.
- 2.11 Where the defendant admits primary liability, but alleges contributory negligence by the claimant, the defendant should give reasons supporting those allegations and disclose those documents which are relevant to the issues in dispute. The

claimant should respond to the allegations of contributory negligence before proceedings are issued.

SPECIAL DAMAGES

- 2.12 Where the claimant has not addressed the question of quantum in the letter of claim, the claimant should send to the defendant as soon as practicable a Schedule of Damages with supporting documents, particularly where the defendant has admitted liability.

EXPERTS

- 2.13 The general rule is that parties must give instructions to a single expert. So that before any party instructs an expert the parties should attempt to agree to the appointment of a joint expert.
- 2.14 Here parties instruct experts of their own choice. It would be for the court to decide subsequently, if proceedings are issued, whether either party acted unreasonably.
(Part 33 deals, *inter alia*, with experts' evidence and the power of the court to permit parties to call an expert witness and to put into evidence an expert's report.)

ANNEX A
LETTER OF CLAIM

To

Defendant

Dear Sirs

Re: Claimant's full name

Claimant's age:

Claimant's full address

Claimant's work identification number if any

Claimant's Employer (name and address)

We are instructed by the above named to claim damages in connection with an accident at work/road traffic accident/tripping accident

on _____ day _____ of _____ (year)

at (place of accident which must be sufficiently detailed to establish location)

Please confirm the identity of your insurers. Please note that the insurers will need to see this letter as soon as possible and it may affect your insurance cover and/or the conduct of any subsequent legal proceedings if you do not send this letter to them.

The circumstances of the accident are:—

(brief outline)

The reason why we are alleging fault is:

(simple explanation, e.g., defective machine, broken ground)

A description of our clients' injuries is as follows:—

(brief outline)

Our client received treatment for the injuries at name and address of hospital or clinic or doctor's office, etc., and name of attending physician, if known.

Our client is still suffering from the effects of his/her injury.

He is employed as (occupation) and has had the following time off work (dates of absence). His income is (insert if known).

[Or if you are our client's employers, please provide us with the usual earnings details which will enable us to calculate his financial loss.]

[We are obtaining a police report and will let you have a copy of the same upon your undertaking to meet half the fee.]

[Where the claimant's loss can be calculated: He is claiming \$
in damages (give details identifying the claims for property damage, if any, the claims for other special damage with particulars of same and the claim for general damages with appropriate particulars.)]

We have also sent a letter of claim to (name and address) and a copy of that letter is attached. We understand their insurers are

(name, address and claims number if known).

At this stage of our enquiries we would expect the documents contained in parts (insert appropriate parts of standard disclosure list) to be relevant to this action.

A copy of this letter is attached for you to send to your insurers.

Finally we expect a reply to this letter within 28 days by yourselves or your insurers.

Yours faithfully

APPENDIX C

PRE-ACTION PROTOCOL FOR DEFAMATION

1. GENERAL

- 1.1 A pre-action protocol for Defamation is critical and of utmost importance. Too often the experience has been that a defamation matter is settled only after the matter is before the courts and which could and should have been settled long before. This is undoubtedly a waste of judicial time and also legal costs incurred by the litigant.
- 1.2 There are also rare instances where defamation actions are filed without a letter preceding the action. This again is not a desirable practice as the matter could have been easily resolved once the issues and facts were fully ventilated by the parties prior to the commencement of the action.
- 1.3 The purposes of the pre-action protocol are as follows:
- (1) To establish a general code of good practice with respect to defamation matters which parties should follow when litigation is being considered;
 - (2) To encourage the early exchange of full information about the prospective claim. The parties involved should disclose all relevant information about themselves pertaining to the claim. This will assist the parties in understanding each other and each other's case;
 - (3) To set a timetable for responding to claims to ensure that the matter is dealt with and resolved in a speedy fashion;
 - (4) To set a standard for the contents of the pre-action letter and the letter in a response to same;
 - (5) To enable parties to avoid litigation by agreeing to a settlement before the commencement of proceedings of a defamation claim;
 - (6) To keep the cost of resolving defamation disputes at a minimum;
 - (7) To support the efficient managing of proceedings under the Civil Proceedings Rules, 1998 where litigation cannot be avoided.

2. THE PROTOCOL

2.1 Having regard to the general nature of a defamatory action it is essential for the claimant to notify the defendant of his claim in writing at the earliest possible time. A pre-action letter should be sent to the person who allegedly made the defamatory publication at the earliest possible opportunity.

2.2 Pre-Action Letter:

The Pre-Action Letter should include the following:

- Name of claimant;
- Identify whether the claim is made for slander, libel or both. If the claim is made in slander the letter should identify the person(s) who uttered the words, where and when they were uttered and also the person(s) to whom the words were communicated and if the claim is maintainable only on proof of special damage, the damage suffered;
- Details of the publication/broadcast which contained the words complained of, for example, date, time, name of newspapers, name of radio station, author's name;
- Details of the words complained of, and the meaning(s) attributed to the words;
- Where possible, the newspaper clipping or a copy of the transcript of the words complained of;
- An explanation as to why the words are defamatory;
- General details of the claimant himself, for example, job title, position, accreditation;
- Nature and details of remedies sought, for example, a retraction, apology, correction, monetary compensation;
- Where relevant, any facts or matters which make the claimant identifiable from the words complained of as well as the details of any special facts relevant to the interpretation of the words complained of and any particular damage caused by the words complained of.

3. DEFENDANT'S LETTER IN RESPONSE

3.1 The defendant should respond to the pre-action letter of claim as soon as reasonably possible. If the defendant believes that he would be unable to respond within 14 days (or such shorter time limit as may be specified in the letter of claim) then he should specify a reasonable date by which he intends to respond.

3.2 The defendant's response should include the following:

- Whether the claimant's claim is accepted wholly or in part;
- If the claim is accepted in whole or in part the Defendant should indicate what remedies he/she is willing to offer;

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- Whether the defendant has already published a retraction or an apology;
 - Whether more information is required to answer to the claimant's claim;
 - If the claim is rejected the defendant should explain the reasons why it is rejected;
 - Any facts on which the defendant is likely to rely in support of any substantive defence;
 - Any relevant documents on which he may be relying;
 - The defendant should also include in his/her response the meaning(s) he/she attributes to the words complained of, if different from the meanings attributed to them by the claimant, and, where relevant, details of any special facts relevant to the interpretation of the words complained of.

APPENDIX D**PRE-ACTION PROTOCOL FOR ADMINISTRATIVE ORDERS****1. THE PROTOCOL**

- 1.1 This protocol sets out a code of good practice and contains the steps which parties should generally follow before making a claim for judicial review or other administrative order under Part 56 of the Civil Proceedings Rules 1998 (as amended) hereinafter referred to as “CPR”.
- 1.2 This protocol does not impose a greater obligation on a public body to disclose documents or give reasons for its decision than that already provided for in statute or common law. However, where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may take this into account in exercising its discretion pursuant to Part 66.6 or Part 26 of the CPR.
- 1.3 This protocol will not be appropriate where the defendant does not have the legal power to change the decision being challenged.
- 1.4 This protocol will not be appropriate in urgent cases, for example, where there is an urgent need for an interim order to compel a public body to act. Where it has unlawfully refused to do so a claim should be made immediately. A letter before claim will not stop the implementation of a disputed decision in all instances.
- 1.5 All claimants will need to satisfy themselves whether they should follow the protocol, depending upon the circumstances of his or her case. Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it and will take into account compliance or non-compliance when making orders for costs.
- 1.6 Where possible, it is good practice to fax to the defendant the draft Claim Form which the claimant intends to issue. A claimant is also normally required to notify a defendant when an interim mandatory order is being sought.
- 1.7 This protocol does not affect the time limits specified by Rule 56.5(2) of the CPR, the Judicial Review Act, 2000 or the Freedom of Information Act, 1999.
- 1.8 Applications for an administrative order may not be appropriate in every instance. Claimants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before adopting this protocol or making a claim.

2. THE LETTER BEFORE CLAIM

- 2.1 Before making a claim, the claimant should send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and establish whether litigation can be avoided.
- 2.2 Claimants should normally use the suggested standard format for the letter outlined at Annex A.
- 2.3 The letter should state the claimant's interest in the decision being challenged and how he is affected by it. Where the claimant intends to rely on section 7 of the Judicial Review Act, 2000 he must say so in the letter and state why the proposed claim is justifiable in the public interest. The letter should also contain the date and details of the decision, act or omission being challenged and a clear summary of the facts on which the claim is based. Without prejudice to the generality of the last sentence, the letter should, where applicable, and so far as is known to the claimant, identify the government department(s) and the public officer(s) involved in the decision or act complained of. The letter should also contain the details of any relevant information that the claimant is seeking and an explanation of why this is considered relevant.
- 2.4 The letter should specify the relief claimed and where damages are claimed the claimant should state the quantum or identify the basis on which the quantum of damages may be assessed.
- 2.5 The letter should normally contain the details of any interested parties known to the claimant. They should be sent a copy of the letter before claim for information. Claimants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before sending the letter before claim to other interested parties or making a claim.
- 2.6 A claim should not normally be made until the proposed reply date given in the letter before claim has passed, unless the circumstances of the case or enactment require more immediate action.
- 2.7 A copy of the letter should be sent to the Solicitor General.

3. THE LETTER IN RESPONSE

- 3.1 Defendants should normally respond within 30 days using the standard format at Annex B. Failure to do so will be taken into account by the court in exercising its discretion pursuant to Part 26 or Part 66 of the CPR.

- 3.2 Where it is not possible to reply within the proposed time limit the defendant should send an interim reply and propose a reasonable extension. Where an extension is sought, reasons should be given and, where required, additional information requested. This will not affect the time limit for making a claim for judicial review nor will it bind the claimant where he or she considers this to be unreasonable. However, where the court considers that a subsequent claim is made prematurely it may impose sanctions.
- 3.3 If the claim is being conceded in full, the reply should say so in clear and unambiguous terms.
- 3.4 If the claim is being conceded in part or not being conceded at all, the reply should say so in clear and unambiguous terms, and—
- (a) where appropriate, contain a new decision, clearly identifying what aspects of the claim are being conceded and what are not, or, give a clear timescale within which the new decision will be issued;
 - (b) provide a more detailed explanation for the decision, if considered appropriate to do so;
 - (c) address any points of dispute, or explain why they cannot be addressed;
 - (d) enclose any relevant documentation requested by the claimant, or explain why the documents are not being enclosed; and
 - (e) where appropriate, confirm whether or not they will oppose any application for an interim remedy.
- 3.5 The response should be sent to all interested parties identified by the claimant and contain details of any other parties who the defendant considers also have an interest.

ANNEX A**LETTER BEFORE CLAIM****SECTION 1. INFORMATION REQUIRED IN A LETTER BEFORE CLAIM**

PROPOSED CLAIM FOR AN ADMINISTRATIVE ORDER

To

(Insert the name and address of the proposed defendant—see details in section 2)

2. The claimant

(Insert the title, first and last name and the address of the claimant)

3. Reference details

(When dealing with large organisations it is important to understand that the information relating to any particular individual's previous dealings with it may not be immediately available, therefore it is important to set out the relevant reference numbers for the matter in dispute and/or the identity of those within the public body who have been handling the particular matter in dispute—see details in section 3)

4. The details of the matter being challenged

(Set out clearly the matter being challenged, particularly if there has been more than one decision)

5. The issue

(Set out the date and details of the decision, or act or omission being challenged, a brief summary of the facts and why it is contented to be wrong)

6. The details of the action that the defendant is expected to take

(Set out the details of the remedy sought, including whether a review or any interim remedy are being requested)

7. The details of the legal advisers, if any, dealing with this claim

(Set out the name, address and reference details of any legal advisers dealing with the claim)

8. The details of any interested parties

(Set out the details of any interested parties and confirm that they have been sent a copy of this letter)

9. The details of any information sought

(Set out the details of any information that is sought. This may include a request for a fuller explanation of the reasons for the decision that is being challenged)

10. The details of any documents that are considered relevant and necessary

(Set out the details of any documentation or policy in respect of which the disclosure is sought and explain why these are relevant. If you rely on a statutory duty to disclose, this should be specified)

11. The address for reply and service of court documents

(Insert the address for the reply)

12. Proposed reply date

(The precise time will depend upon the circumstances of the individual case. However, although a shorter or longer time may be appropriate in a particular case, 30 days is a reasonable time to allow in most circumstances)



ANNEX B**RESPONSE TO A LETTER BEFORE CLAIM
INFORMATION REQUIRED IN A RESPONSE TO A LETTER
BEFORE CLAIM****PROPOSED CLAIM FOR AN ADMINISTRATIVE ORDER****1. The claimant**

(Insert the title, first and last names and the address to which any reply should be sent)

2. From

(Insert the name and address of the defendant)

3. Reference details

(Set out the relevant reference numbers for the matter in dispute and the identity of those within the public body who have been handling the issue)

4. The details of the matter being challenged

(Set out details of the matter being challenged, providing a fuller explanation of the decision, where this is considered appropriate)

5. Response to the proposed claim

(Set out whether the issue in question is conceded in part, or in full, or will be contested. Where it is not proposed to disclose any information that has been requested, explain the reason for this. Where an interim reply is being sent and there is a realistic prospect of settlement, details should be included)

6. Details of any other interested parties

(Identify any other parties who you consider have an interest who have not already been sent a letter by the claimant)

7. Address for further correspondence and service of court documents

(Set out the address for any future correspondence on this matter)

VACATION BUSINESS

The following Practice Direction is issued by the Honourable Chief Justice pursuant to Part 4 of the Civil Proceedings Rules 1998 in relation to vacation business.

1. Judges will be available during the Long Vacation (August 1st to September 15th inclusive) to deal with matters that are urgent or require prompt attention.
2. Any party may apply to the court without notice for a matter to be heard in the Long Vacation. Such matters must be urgent or require prompt attention.
3. Such applications must be supported by evidence on affidavit setting out the necessary facts and reasons which make the matter urgent or requiring prompt attention.
4. The judge dealing with the application may grant the application without hearing the applicant, or may direct a hearing of the application, and may direct that notice be given to such other person or persons as the judge deems appropriate.
5. In cases where the applicant intends to apply without notice for the grant of interim or other relief or order he may place that application before the judge at the same time as the application for the matter to be heard in vacation. If the judge orders that the application be heard in vacation, he or she may deal with that application immediately if thought appropriate.
6. When the judge grants an application for a matter to be heard in vacation and does not deal with the matter immediately, he or she shall fix a date and time for the hearing of the matter.
7. Matters that are urgent or require prompt attention in the two Short Vacations at Christmas and Easter will be dealt with by the Emergency Judge.

Dated this 29th day of May, 2006.

Satnarine Sharma
Chief Justice

PROCEDURAL APPEALS

The following Practice Direction is issued by the Honourable Chief Justice pursuant to rule 4.2(2) of the Civil Proceedings Rules 1998 in relation to procedural appeals.

1. This Practice Direction applies to proceedings under rule 64.9.
2. The appellant's Notice of Appeal must state in the heading that the appeal is a procedural appeal and is made under rule 64.9 of the Civil Proceedings Rules 1998 as amended.
3. Upon the filing of the Notice of Appeal the appellant shall be required to file along with it three bundles of documents comprising a copy of each of the following documents in the order set out below bound, indexed and paginated:
 - (a) the judgment (if any) or order appealed;
 - (b) such affidavits or exhibits relevant to the question at issue on the appeal which were put in evidence before the court below;
 - (c) any written admissions or requests for information and replies;
 - (d) the judge's notes of any submission made (if any); and
 - (e) any other relevant documents applicable to the appeal.
4. On the filing of the Notice of Appeal the court office will fix a date for the hearing of the appeal.
5. Upon the filing of any counter-notice pursuant to rule 64.7, the person filing the counter-notice must file with it three copies of any documents relevant to the issue raised by the counter-notice and which have not been filed pursuant to paragraph 3 hereof. The documents must be bound, indexed and paginated.
6. Not less than four days before the date fixed for the hearing of the appeal the parties must lodge with the court office three copies of the arguments that they intend to advance and three copies of the authorities on which they intend to rely.
7. When the parties have lodged the written arguments they must forthwith serve a copy of them on each other.

Dated this 24th day of July, 2006.

Satnarine Sharma
Chief Justice

**FILING OF DOCUMENTS UNDER THE
CIVIL PROCEEDINGS RULES 1998 (“CPR 1998”)**

Practice – Efficient Administration of the CPR 1998 – Filing of Documents – Civil Information and Designation Form (Originating Documents) – Civil Information Filing Form (Non-Originating Documents) – CPR 1998 Part 4.1

Since the Civil Information and Designation Form (“the Form”) came into effect on the 16th September 2005 by Practice Direction dated 1st September 2005 (“the Former Practice Direction”) with respect to the filing of documents under the CPR 1998, experience has shown that, save for originating documents, not all sections of the Form are required to be completed when accompanying the filing of non-originating documents.

In light of the above and with a view to the continued promotion of the efficient administration of the CPR 1998 as outlined in paragraph 1 of the Former Practice Direction, the Acting Chief Justice, pursuant to the provisions of the CPR 1998 Part 4.1, issues the following directions with effect from December 3, 2007:

1. Every originating document pertaining to any civil (including public law) matters to be filed at any of the court offices of the Supreme Court of Judicature of Trinidad and Tobago must be accompanied by a completed Form in the form annexed to the Former Practice Direction as Appendix A with the modifications as outlined in (2) below.
2. The Form is modified as follows:
 - (a) The Form shall now be called the “Civil Information and Designation Form (Originating Documents)”.
 - (b) The word “PLAINTIFF(S)” appearing at the top left hand column of the Form is replaced by the word “CLAIMANT(S)”.
 - (c) The description “Trusts” is added to the list of case types listed in Part II of the Form under the heading “PERSONAL ACTIONS”.
3. Every other non-originating document pertaining to any civil (including public law) matters to be filed at any of the court offices of the Supreme Court of Judicature of Trinidad and Tobago must be accompanied by a “Civil Information Filing Form (Non-Originating Documents)” in the form annexed hereto as Appendix B.

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4. The directions contained in this Practice Direction shall modify those contained in the Former Practice Direction and to the extent that those contained in the Former Practice Direction are so modified they shall cease to have effect and are hereby revoked.

Dated this 22nd day of November, 2007

Roger Hamel-Smith
Acting Chief Justice

Appendix B
Civil Information Filing Form
(Non-Originating Documents)

I. Parties Document Description Filing Date Attorneys-at-Law (Names to be completed Surname, Middle Name, First Name)	
<p>CLAIMANT(S) DESCRIPTION OF DOCUMENT</p> <p>DATE OF DOCUMENT DATE OF FILING DOCUMENT FILED ON BEHALF OF</p> <p>FILING ATTORNEY Bar No: Name of Firm or Chambers: Name of Attorney: Address:</p> <p>Primary Telephone: Secondary Telephone: Fax No: E-Mail:</p> <p>ADVOCATE ATTORNEY SENIOR COUNSEL (IF ANY) Bar No: Name of Firm or Chambers: Name of Senior Counsel: Address:</p> <p>Primary Telephone: Secondary Telephone: Fax No: E-Mail:</p> <p>ADVOCATE ATTORNEY JUNIOR COUNSEL (IF ANY) Bar No: Name of Firm or Chambers: Name of Junior Counsel: Address:</p> <p>Primary Telephone: Secondary Telephone: Fax No: E-Mail:</p>	<p>DEFENDANT(S) DESCRIPTION OF DOCUMENT</p> <p>DATE OF DOCUMENT DATE OF FILING DOCUMENT FILED ON BEHALF OF</p> <p>FILING ATTORNEY Bar No: Name of Firm or Chambers: Name of Attorney: Address:</p> <p>Primary Telephone: Secondary Telephone: Fax No: E-Mail:</p> <p>ADVOCATE ATTORNEY SENIOR COUNSEL (IF ANY) Bar No: Name of Firm or Chambers: Name of Senior Counsel: Address:</p> <p>Primary Telephone: Secondary Telephone: Fax No: E-Mail:</p> <p>ADVOCATE ATTORNEY JUNIOR COUNSEL (IF ANY) Bar No: Name of Firm or Chambers: Name of Junior Counsel: Address:</p> <p>Primary Telephone: Secondary Telephone: Fax No: E-Mail:</p>

THE FOLLOWING Practice Direction is issued by the Honourable Chief Justice Ivor Archie, pursuant to Part 4 of the Civil Proceedings Rules, 1998, in relation to oral examination in aid of enforcement:

In order to promote the efficient use of Part 45 of the Civil Proceedings Rules, it has become necessary to authorize designated officers to conduct oral examinations of judgement debtors.

The Chief Justice hereby directs that Judges, Masters and Registrars of the Court be so authorized.

Dated this 1st day of May, 2009.

I. ARCHIE
Chief Justice

This Practice Direction is superseded and replaced by the Practice Direction Late Filing of Document dated the 30th day of January, 2013.

PRACTICE DIRECTION LATE FILING OF DOCUMENT

IN ORDER to ensure uniformity of practice at all court offices of the Supreme Court of Judicature and in order to give effect to the proper administration of the Civil Proceedings Rules, 1998 (CPR) it has become necessary to give directions in respect of documents to be filed after the date prescribed by any rule, practice direction, court order or direction.

Accordingly, under provisions of the CPR Part 4 rules 4.1 and 4.2 the Chief Justice directs that with effect from the 14th day of June, 2010—

1. Subject to the provisions of CPR Parts 9.3(3), 10.3(6) and 27.9(4), every document pertaining to any civil matter that is lodged at a court office after the date or period prescribed by any rule, practice direction, court order or direction shall be accompanied by—
 - (a) an application for an extension of time;
 - (b) where the particular rule, practice direction, court order or direction imposes an expressed or implied sanction for non-compliance, an application for relief from sanction(s);
 - (c) evidence in support of the above applications! s); and
 - (d) a draft of the order sought.
 - Attention is drawn to CPR Part 26 rules 26.6 and 26.7).
2. For the avoidance of doubt both applications mentioned in \a) and (b) above may conveniently be made in one document in the prescribed form (Form 10).

3. The court office shall immediately refer any document(s) and application(s) filed under (a)–(d) above to the judge to whom the matter is assigned.
4. The defaulting party shall as soon as practicable serve copies of any such document(s) and application(s) filed on all other parties in the matter so that the application for an extension of time, and where appropriate, relief from sanction(s) can be dealt with at the next case management conference or so soon as the judge may direct.
 - Attention is drawn to CPR Part 11.10).
5. The judge may deal with the above application(s) without a hearing in accordance with any of the provisions of CPR Part 11.13.

Dated this 26th day of May, 2010.

IVOR ARCHIE
Chief Justice

ALTERNATIVE DISPUTE RESOLUTION PILOT PROJECT

Practice - Alternative Dispute Resolution - Part 4 - CPR 1998 (as amended)

The objective of this Practice Direction is to establish a Supreme Court Civil Alternative Dispute Resolution Pilot Project (‘hereinafter referred to as the “pilot”) to provide for alternative dispute resolution in certain civil disputes in the Supreme Court of Trinidad and Tobago with a view to:

- (a) improving the pace of litigation;
- (b) promoting early and fair resolution of disputes;
- (c) reducing the cost of litigation to the parties and the court system;
- (d) improving access to the court;
- (e) enhancing participants’ satisfaction with dispute resolution in the justice system; and
- (f) providing litigation outcomes that meet the needs of the parties;

1. Duration of pilot project

This pilot project commences on 23rd January, 2013 and ends on 22nd January, 2014.

2. Application of the Practice Direction

These rules apply to all civil disputes in the High Court only where the Practice Direction permits.

3. Definitions

In this Practice Direction —

“the Act“ means the Mediation Act, Chap. 5:32;

“ADR” means a collection of methods of resolving disputes otherwise than through the trial process including, in particular, mediation and settlement conferencing;

“ADR co-ordinator” means the Assistant Registrar so designated by the Chief Justice to be responsible for the management of disputes referred for mediation or a settlement conference under this Practice Direction;

“ADR Implementation Committee” means the committee appointed by the Chief Justice to oversee the implementation of this Pilot Project;

“certified mediator” means a person whose name has been entered on the register of certified mediators under section 7 of the Act;

“court” means the High Court;

“court-annexed mediation services” means mediation services provided as the result of a referral by the court;

“court-annexed panel” means the roster of certified mediators maintained by the mediation agency for this Pilot Project and approved by the Chief Justice;

“court office” means:-

- (a) the place where documents are to be filed etc., and includes a registry or sub-registry; and
- (b) the place where work of a formal or administrative nature under rule 2.5(1) of the CPR is to be dealt with by members of the court staff;

“dispute” means any matter or part of any matter in which there is a disagreement between the parties which they seek to have resolved;

“mediation agency” means the mediation agency known as the Dispute Resolution Centre of Trinidad and Tobago located at the Ground Floor, Chamber Building, Columbus Circle, Westmoorings-by-the-Sea, Trinidad and Tobago;

“mediation brief” means copies of the pre-action protocol correspondence passing between the mediation parties (or their attorneys-at-law) and the bundle of copy pleadings together with the documents annexed thereto.

“mediation party” has the meaning given to it by the Act;

“mediation session” has the meaning given to it by the Act;

“pleadings” means the originating document, statement of case, defence, reply, counterclaim, and any other pleading and amended pleading (including any document annexed thereto) filed by the mediating parties in the court proceedings;

“referral order” means an order made in a matter to attend mediation or a settlement conference by the docketed Judge, Master or Registrar;

“Registrar” means ‘the Registrar of the Supreme Court and includes Deputy Registrar and Assistant Registrar;

“settlement conference” means a non-adversarial, co-operative decision-making process in which a settlement officer assists the parties in resolving their dispute.

“settlement conference brief” means a bundle comprising the pleadings, any witness statements, the Claimant’s summary of facts, issues and applicable law and the Defendant’s summary of facts, issues and applicable law;

“settlement officer” means a Judge, Master or other person appointed by the Chief Justice for the purpose of presiding at a settlement conference who is assigned by the ADR co-ordinator to conduct a settlement conference.

4. Selection of Matters
 - (1) Matters shall be randomly selected to participate in this Pilot Project.
 - (2) When a matter has been selected, the attorneys-at-law for both parties shall be notified by letter from the ADR co-ordinator.
 - (3) This Practice Direction does not apply to the following matters:
 - (a) Insolvency (including winding-up of companies);
 - (b) Non-contentious probate proceedings;
 - (c) Proceedings subject to the Family Proceedings Rules;
 - (d) Proceedings when the High Court is acting as a Prize Court;
 - (e) Administrative Law claims under Part 56 of the CPR; and
 - (f) Habeus Corpus claims under Part 57 of the CPR.

5. Referral of matters to mediation
 - (1) A matter selected for this pilot project may be referred to mediation by the docketed Judge, Master or Registrar at any time during the course of proceedings with consent of the parties.
 - (2) This Practice Direction does not restrict the right of the parties to engage in private mediation sessions before or at any stage of the proceedings.

6. Selection of mediator and Compilation of the Mediation Brief
 - (1) Within 14 days from the making of the referral order under paragraph 7(1) of the Practice Direction, the mediation parties must contact the mediation agency to request a copy of the current roster of mediators and shall choose a mediator from the roster.
 - (2) The Claimant shall advise the ADR co-ordinator, in writing, of the parties' choice of mediator.

7. Compilation of the Mediation Brief
 - (1) Within 14 days of the making of the referral order, the parties shall send to the ADR co-ordinator, their pre-action protocol correspondence, unless annexed to the pleadings.
 - (2) The ADR Co-ordinator shall compile and forward the mediation brief to the mediation agency.

8. Scheduling the Mediation

- (1) Within 7 days of receipt of the mediation brief from the ADR co-ordinator and the letter from the Claimant indicating the parties' choice of mediator, the mediation agency shall inform the mediator so chosen.
- (2) If the mediation parties had failed to agree to a mediator then, within 7 days of receipt of the mediation brief from the ADR co-ordinator, the mediation agency shall assign the next available rostered mediator to the matter and shall inform the parties and the mediator so chosen.
- (3) Once a mediator has been chosen, the mediation agency will-
 - (a) co-ordinate with the parties, or their attorneys-at-law if they are represented, to schedule the mediation session; and
 - (b) notify the mediation parties once the date, time and place for the mediation session is fixed.

9. Preparation for mediation

Parties shall provide the mediator with any document or applicable law which he requests in preparation for the mediation session.

10. Attendance at mediation

- (1) Where a referral order is made under this practice direction, the mediation parties together with their attorneys-at-law (where they are represented), shall attend one mediation session of up to 5 hours.
- (2) A party attending mediation who requires the approval of some other person before agreeing to a settlement shall, prior to the mediation session, arrange to have ready access to that person for the duration of the session.
- (3) Where a mediation party is not a natural person, the person attending the mediation session on behalf of that party must be authorized to settle the dispute or be in a position to be able to obtain such authority during the mediation session.

11. Conducting Mediation

- (1) All mediation sessions shall be conducted in accordance with the Act and in particular in accordance with the Code of Ethics in the First Schedule of the Act.
- (2) The parties shall sign an Agreement to Mediate prior to the start of the mediation session.
- (3) If a mediator cannot conduct a session due to illness or for any other cause, the mediation agency shall offer the mediation parties the services of another rostered mediator.

- (4) The mediator may, with the consent of the parties, extend the mediation session or schedule one further session with the parties if necessary.
- (5) A mediation session may be adjourned at any time with the consent of all parties, in which case the session must be rescheduled within the time limits set out in the Practice Direction.
- (6) Any agreement reached by the mediation parties at the mediation session must be recorded in writing and signed by the mediation parties and witnessed by the mediator.

12. Referral of matters to settlement conference

Matters selected for this pilot project may be referred to a settlement conference by the docketed Judge, Master or Registrar at any time during the course of proceedings, with the consent of the parties.

13. Procedure prior to settlement conference

- (1) Within 14 days of the making of the referral order, the Judicial Support Officer of the docketed Judge, Master or Registrar shall send a copy of the pleadings to the ADR co-ordinator.
- (2) Within 21 days of the making of the referral order, the parties shall send to the ADR co-ordinator:
 - (a) A summary of the claimant's facts, issues and applicable law;
 - (b) A summary of the defendant's facts, issues and applicable law.

14. Selection of settlement officer and scheduling of settlement conference

- (1) Within 14 days of the making of the referral order, the ADR co-ordinator shall select the next available rostered settlement officer and issue a Notice of Assignment to the parties and to the settlement officer;
- (2) The ADR co-ordinator shall compile and forward a settlement conference brief to the settlement officer at the same time as the Notice of Assignment.
- (3) The settlement officer will schedule the settlement conference and shall issue to the parties a Notice of Appointment setting out the date, time and place of the settlement conference.

15. Attendance at a settlement conference

- (1) Where a referral order is made under this practice direction, all parties together with their attorneys-at-law (where they are represented), shall attend
 - (a) a preliminary meeting with the settlement officer, if the settlement officer so directs, at which the parties will discuss the case including whether further documents should be included in the settlement conference brief, what issues are to be dealt with and the order in which that will be done, whether the opinion of an expert is required, and the timeline for receiving supplemental briefs, if required; and
 - (b) one settlement conference of up to 2 hours.
- (2) A party who will be attending a settlement conference and who requires the approval of some other person before agreeing to a settlement shall, prior to the settlement conference, arrange to have ready access to that person for the duration of the session.
- (3) Where a party is not a natural person, the person attending the settlement conference on behalf of that party must be authorized to settle the dispute or be in a position to be able to obtain such authority during the conference.

16. Conducting a settlement conference

- (1) The parties will be required to execute a confidentiality agreement at the start of the settlement conference.
- (2) The settlement conference shall be conducted on a “without prejudice” basis so that views expressed, statements or suggestions made by the parties during the settlement conference or the substance thereof shall not be referred to or otherwise utilized by the parties in any proceedings between the parties.
- (3) Documents produced in a settlement conference and not otherwise discoverable, are not subject to disclosure through discovery or any other process and are not admissible into evidence for any purpose, including impeaching credibility.
- (4) The views expressed and statements made by the settlement officer conducting the session, as well as his notes, records and recollections, are confidential and protected from disclosure for all purposes; and at no time shall any party summon, subpoena or call the settlement officer as a witness to testify to any oral or written communication made at any stage of the settlement conference.
- (5) Parties will use their best efforts to engage in a meaningful and productive settlement conference and the settlement officer will assist them to reach a satisfactory resolution to their dispute.
- (6) The settlement officer, together with the parties, is free to determine the manner in which the settlement conference proceeds.

- (7) A party to a settlement conference may withdraw from the conference at any time but must explain to the settlement officer why he feels compelled to withdraw and must give the settlement officer an opportunity to address that issue before doing so.
 - (8) The parties in the matter are expected to be active participants in the settlement conference and their attorneys-at-law are expected to assist them wherever possible.
 - (9) The settlement officer may conduct private meetings with the individual parties and their attorneys-at-law.
 - (10) The settlement officer may, by consent, extend the settlement conference or schedule one further session with the parties if necessary.
 - (11) A settlement conference may be adjourned at any time with the consent of all parties, in which case the conference must be rescheduled within the time limit set out in the Practice Direction.
 - (12) Any agreement reached by the parties at a settlement conference must be recorded in writing and signed by the parties and witnessed by the settlement officer.
17. Time within which Mediation or Settlement Conference is to be conducted
- (1) Where a referral has been made to mediation or settlement conference under this Practice Direction, the mediation or settlement conference shall be completed within 70 days of the date of referral unless otherwise ordered by the court on an application by a party.
 - (2) The docketed Judge, Master or Registrar in a matter referred to mediation or settlement conference may, on application by a party to a claim, extend the time within which a mediation or settlement conference is to be conducted after taking into account all circumstances, including-
 - (a) the number of parties and the complexity of the issues in the action; and
 - (b) whether an extension of time to allow the parties to acquire more information would increase the chances for the success of the mediation or the settlement conference.
18. Reporting the Results of Mediation
- (1) Where a referral has been made to mediation under this Practice Direction, immediately upon completion of the mediation session, the mediator must complete an ADR Outcome Report which shall state -
 - (a) the date or dates of the mediation and its duration;
 - (b) whether the parties attended the mediation session;
 - (c) whether there was —

- (i) full agreement; or
- (ii) partial agreement; or
- (iii) no agreement;
- (d) where no agreement or a partial agreement was reached, whether the mediation parties were prepared to continue with mediation;
- (e) where the mediation parties are prepared to continue mediation, whether the mediator considers that there are reasonable prospects of agreement if an extension of time was to be given.
- (2) Where the written agreement is not being submitted with the ADR Outcome Report, the mediator must state in the Report which party will be responsible for delivering the agreement to the ADR co-ordinator and the date by which that party will do so.
- (3) Within 4 days of the completion of the mediation session, the mediation agency shall send to the ADR co-ordinator, the ADR Outcome Report together with any attached agreement.

19. Reporting the Results of a Settlement Conference

- (1) Where a referral has been made to a settlement conference under this Practice Direction, then, immediately upon completion of the conference, the settlement officer must complete an ADR Outcome Report which shall state-
 - (a) the date or dates of the settlement conference and its duration;
 - (b) whether the parties attended the settlement conference session;
 - (c) whether there was:
 - (i) full agreement; or
 - (ii) partial agreement; or
 - (iii) no agreement
 - (d) where no agreement or a partial agreement was reached, whether the parties were prepared to continue with the settlement conference;
 - (e) where the parties are prepared to continue the settlement conference, whether the settlement officer considers that there are reasonable prospects of agreement if an extension of time was to be given.
- (2) Within 4 days of the completion of the settlement conference, the settlement officer shall send to the ADR co-ordinator the ADR Outcome Report as well as any agreement arrived at by the parties.
- (3) Where the written agreement is not submitted to the ADR co-ordinator with the ADR Outcome Report, the settlement officer must state in the Report which party will be responsible for delivering the agreement to the ADR co-ordinator and the date by which that party will do so.

21. Failure to Comply with this Practice Direction

- (1) Where a referral order has been made under this Practice Direction and a party fails to supply the documents required to compile a mediation or settlement conference brief, the ADR co-ordinator shall bring that party's default to the attention of the docketed Judge, Master or Registrar who will make such order as to costs as he sees fit.
- (2) Where a referral order has been made under this Practice Direction and a party-
 - (a) fails to comply with a request by a mediator or settlement officer for further documentation in preparation for a mediation session or settlement conference; or
 - (b) fails to attend a mediation session or settlement conference, without notice, within half-hour of the appointed time, or
 - (c) attends the mediation session or settlement conference without having authority to settle the dispute:

then,

- (i) in the case of a mediation, the mediator shall cancel the session and the mediation agency shall inform the ADR co-ordinator in writing and the ADR co-ordinator shall bring that party's default to the attention of the docketed Judge, Master or Registrar who will make such order as to costs as he sees fit; and
- (ii) in the case of a settlement conference, the settlement officer shall cancel the settlement conference and shall inform the ADR Co-ordinator in writing and the ADR Co-ordinator shall bring that party's default to the attention of the docketed Judge, Master or Registrar who will make such order as to costs as he sees fit.

22. Action by the Court after Completion of Mediation or Settlement Conference

- (1) Where parties have arrived at an agreement through either mediation or settlement conference, at the next scheduled hearing of the matter the docketed Judge, Master or Registrar may, if the parties so desire, enter the agreement which the parties arrived at, or any part thereof, as a consent order.
- (2) Where no agreement was reached by the parties, at the next scheduled hearing of the matter the matter will be subject to further case management by the docketed Judge, Master or Registrar.

23. Costs

Where there has been a settlement of the issues in a matter referred to mediation or a settlement conference but there is no agreement by the parties on the issue

of costs, the docketed Judge, Master or Registrar shall determine the issue of the costs of the proceedings.

24. Complaints

- (1) Complaints about issues related to the administration of this Pilot Project shall, in the case of mediation, be made to the mediation agency and, in the case of settlement conferencing, shall be made to the ADR Co-ordinator.
- (2) All complaints shall be in writing and shall contain particulars of the issue complained of.
- (3) The mediation agency, in the case of a complaint dealing with mediation, or the ADR Co-ordinator, in the case of a complaint dealing with a settlement conference, shall review and attempt to resolve informally any complaint received. If the complaint cannot be resolved informally, the mediation agency or the ADR Co-ordinator shall refer the complaint to the ADR Pilot Project Implementation Committee to be dealt with as the Committee sees fit.
- (4) If a party or his attorney-at-law forms the view that a mediator on the court-annexed panel has violated the Code of Ethics in the First Schedule of the Act in the conduct of a mediation in which that party or his attorney at law participated, the party or his attorney-at-law shall refer the complaint to the Mediation Board pursuant to Section 5(1)(b) of the Act.
- (5) Pending the outcome of the deliberations of the Mediation Board, the mediator against whom the complaint has been made will not be rostered on the court-annexed panel.

25. Research and Evaluation

- (1) For purposes of research and evaluation, parties, attorneys-at-law, mediators and settlement officers participating in this Pilot Project shall be required to complete Evaluation Forms which shall not disclose any confidential information as defined in the Act, and which shall not disclose the identities of the parties to the mediation or settlement conference.
- (2) The Evaluation Forms as well as the ADR Outcome Reports may be disclosed to persons authorized by the Chief Justice.

26. Forms

The approved forms for use in this pilot project are annexed in Appendix A.

Dated this 17th day January, 2013.

A. MENDONCA
Chief Justice (Ag.)

APPENDIX A

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Letter Advising of Selection for Pilot Project

Date

Address of Claimant / Claimant’s Attorney

Address of Defendant / Defendant’s Attorney

Dear ,

Re: Case Number and names of parties

As you are aware, the Judiciary has launched a Pilot Project to test the effectiveness of mediation and settlement conferencing in the civil litigation system.

I am pleased to inform you that the above-captioned case has been selected for the Pilot Project. Both you and your client could save expense and delay through the utilization of either of these processes.

I am enclosing a brochure which explains a little about these two processes as well as a copy of the Practice Direction for the Pilot Project. I urge you to read and then discuss them with your client so that at the appropriate time you will be aware of the procedure to be followed and what each of the processes involves.

If you have any questions, please call

Yours faithfully,

Asst. Registrar
Supreme Court of Trinidad and Tobago /
ADR Co-ordinator

Encl. ~ ADR Pilot Project Brochure

IT IS BY CONSENT ORDERED THAT:

1. The parties to these proceedings do attend a mediation session to be arranged by the Dispute Resolution Centre (DRC) within 70 days of the date hereof.
2. The Claimant shall deliver copies of the pre-action correspondence exchanged between the parties to the ADR co-ordinator at the court office within 14 days of the date hereof.
3. The parties shall select a mediator from the Roster of Mediators maintained by DRC within 14 days of the date hereof. The Claimant shall provide the ADR co-ordinator with the name of the mediator selected at the time of delivery of his / its mediation brief.
4. DRC shall select the next available mediator from the said roster and notify the parties of the name of the selected mediator failing agreement by the parties on the selection of a mediator.
5. The cost of the mediator and the administrative costs of the DRC shall be borne by the Judiciary.
6. All further proceedings in this matter are stayed pending the outcome of the mediation session.
7. The parties will attend before this Court for further case management on the day of 20 in Courtroom POS at the Hall of Justice, Knox Street, Port of Spain at

.....

Assistant Registrar

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 201 -0000

Between

A. B.

CLAIMANT

And

C. D.

DEFENDANT

Settlement Conference Referral Order

Dated this day of , 20

Before The Honourable

UPON this matter coming on for hearing at a (Case Management Conference / Pre-Trial Review)

AND UPON Hearing attorney-at-law for the Claimant and attorney-at-law for the Defendant

AND UPON the parties agreeing to participate in a settlement conference to resolve the claim herein.

IT IS BY CONSENT ORDERED THAT-

1. The parties to these proceedings do attend a settlement conference to be arranged by the court office within 70 days of the date hereof.
2. Each party shall deliver a settlement conference brief to the court office within 21 days of the date hereof.
3. All further proceedings in this matter are stayed pending the outcome of the settlement conference.
4. The parties will attend before this Court for further case management on the day of 20 in Courtroom POS at the Hall of Justice,.....(address) at.....(time).

.....
 Assistant Registrar

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 20 -0000

Between

A. B. CLAIMANT

And

C. D. DEFENDANT

Notice of Assignment of Settlement Officer

TAKE NOTICE that further to the Settlement Conference referral order of made on the
.....
..... has been appointed as the settlement officer in this matter.

TAKE FURTHER NOTICE that you are required to contact the Judicial Support Officer to at (Tel / e-mail) in order to make arrangements to schedule your settlement conference.

.....
Assistant Registrar

To: Attorneys for Parties & Settlement Officer

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 20 -0000

Between

A. B. CLAIMANT

And

C. D. DEFENDANT

Notice of Appointment for Settlement Conference

TAKE NOTICE that further to the Settlement Conference Referral Order of made on the and in which has been appointed as the settlement officer, that the Settlement Conference will take place on at in Hall of Justice,

TAKE FURTHER NOTICE that you are required to attend a preliminary meeting on ..
..... at in
..... Hall of Justice,

.....

Judicial Support Officer to

Justice

Tel:

Fax:

E-mail:

To: Attorneys-at-law for the parties.

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 20 -0000

Between

A. B. CLAIMANT

And

C. D. DEFENDANT

Settlement Conference Confidentiality Agreement

THE PARTIES HEREBY AGREE:

1. To participate in a settlement conference.
2. That the discussions and any draft agreements shall be treated as if they are made in a mediation session and will therefore be strictly confidential, subject to any of the exceptions set out in the Mediation Act, Chap. 5:32 of the Laws of Trinidad and Tobago, and shall not be admissible in any future proceedings between the parties.
3. That they will not subpoena the settlement officer to give evidence with respect to what transpired in the settlement conference or, to provide any materials from the settlement conference in any future proceedings between the parties.

Dated this day of , 20

.....
Claimant

.....
Defendant

.....
Claimant’s Attorney-at-law

.....
Defendant’s Attorney-at-law

To: ADR Co-ordinator

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 20 -0000

Between

A. B. CLAIMANT

And

C. D. DEFENDANT

ADR Outcome Report (Mediation/ Settlement Conference)

(Please circle the applicable process)

1. Participants:

The following persons attended the mediation session /settlement conference:
(Please state their names)

(a) Claimant:

(b) Claimant's attorney-at-law:

(c) Defendant:

(d) Defendant's attorney-at-law:

(e) Others: (Please state relationship to the Claimant/Defendant in parentheses)

.....

.....

.....

2. Session

A Mediation Session / Settlement Conference was held on

(Give all dates and times including duration of each session).

.....
.....

3. Result

- (a) The parties met but were unable to arrive at an agreement.
- (b) The parties arrived at a partial agreement.
- (c) The parties and the mediator/ settlement officer met and the mediator/ settlement officer considers that there are reasonable prospects of agreement and an extension of time is required to pursue these prospects.
- (d) The parties have reached full agreement and a copy of the agreement
 - (i) is attached, or
 - (ii) will be delivered to the ADR co-ordinator by
.....
on or before

.....
Mediator / Settlement Officer

To: ADR Co-ordinator

LATE FILING OF DOCUMENT

IN ORDER to ensure uniformity of practice at all court offices of the Supreme Court of Judicature and in order to give effect to the proper administration of the Civil Proceedings Rules, 1998 (CPR), it has become necessary to give directions in respect of documents to be filed after the date prescribed by any rule, practice direction, court order or direction.

Accordingly, under the provisions of CPR Part 4, rules 4.1 and 4.2, the Chief Justice directs that with effect from the 1st day of March, 2013—

1. Subject to the provisions of CPR Parts 9.3(3), 10.3(6), 16.4 and 27.9(4), every document pertaining to any civil matter that is lodged at a court office after the date or period prescribed by any rule, practice direction, court order or direction shall be accompanied by—

- (a) an application for an extension of time;
- (b) where the particular rule, practice direction, court order or direction imposes a sanction for non-compliance, an application for relief from sanction(s);
- (c) evidence in support of the above application(s); and
- (d) a draft of the order sought.

*Attention is drawn to CPR Part 26, rules 26.6 and 26.7.

2. For the avoidance of doubt, both applications mentioned in paragraph 1(a) and (b) above may conveniently be made in one document in the prescribed form (Form 10).

3. The court office shall immediately refer any document(s) and application(s) filed under 1(a) to (d) above to the Judge or Master to whom the matter is assigned.

4. The defaulting party shall, as soon as practicable, serve copies of any such document(s) and application(s) filed on all other parties in the matter so that the application for an extension of time, and where appropriate, relief from sanction(s) can be dealt with at the next case management conference or so soon as the Judge or Master may direct.

*Attention is drawn to CPR Part 11.10.

5. The Judge or Master may deal with the above application(s) without a hearing in accordance with any of the provisions of CPR Part 11.13.

6. The directions contained in this Practice Direction shall supersede and replace those contained in the Practice Direction for Late Filing of Document dated the 26th day of May, 2010 and to the extent that the latter are so superseded and replaced, they shall cease to have effect and are revoked.

Dated this 30th day of January, 2013.

I. ARCHIE
Chief Justice

PRACTICE GUIDES



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This Practice Guide is to be read together with the Second Practice Guide to the Assessment of Costs issued on the 20th day of October 2015 and where there is an inconsistency that Practice Guide takes precedence.

PRACTICE GUIDE TO THE ASSESSMENT OF COSTS

INTRODUCTION

Since the commencement of the Civil Proceedings Rules 1998 (CPR), Judges are, for the first time, required to assess costs –

- (a) summarily at the end of every procedural application; and
- (b) by detailed assessment at the end of certain claims where fixed, budgeted or prescribed costs do not apply.

Rules 67.11 and 67.12 provide the court’s power to carry out assessment as a method for the quantification of costs.

With the implementation of this new regime of costs it has become clear that there exists a great measure of uncertainty among Judges and lawyers as to the proper approach to be adopted in carrying out an assessment of costs under the CPR.

This Practice Guide is therefore issued by the Acting Chief Justice pursuant to CPR Part 4.6(1) to guide Judges, other costs assessment officers and the legal profession as to the approach to the assessment of costs, the basis of assessment, the grades/bands of fee earner and the guideline figures for attorneys’-at-law hourly rates.

The grades/bands of fee earner and the guideline figures for attorneys’-at-law hourly rates, established by this Practice Guide, have been formulated after consultation with the Judges and Registrars of the Supreme Court, key members of the legal profession with long and established experience in taxation of costs, and after a survey was conducted by the Monitoring Committee of the CPR of a wide cross-section of the legal profession in relation to the hourly rates charged by attorneys-at-law.

The approach to the assessment of costs

1. The general approach to the summary and detailed assessment of costs should be the same. Where assessment of costs falls to be carried out by a Judge, the Judge should as far as practicable assess such costs in keeping with the overriding philosophy of the CPR and should not lightly refer such costs to be assessed before another costs assessment officer notwithstanding the discretion to do so.
2. For the assessment to be fair and reasonable the court must be informed about all previous assessments carried out in the case. This is particularly important where the court is assessing costs at the conclusion of a case.
3. The court should not be seen to be endorsing disproportionate and unreasonable costs. Accordingly –

- (a) when the amount of the costs to be paid has been agreed the court should make this clear by recording that the order is by consent;
 - (b) if the court is to make an order which is not by consent, it should, so far as possible, ensure that the final figure is not disproportionate and/or unreasonable having regard to the overriding objective of the CPR. The court should retain this responsibility notwithstanding the absence of challenge to the individual items comprised in the figure sought.
4. Where a case is simple and straightforward it is obviously easier to decide whether the final figure is disproportionate than where the case is more complex. For this reason, it is impossible to ignore the work on the case which has to be done.
5. The fact that the paying party is not disputing the amount of costs can be taken as some indication that the amount is proportionate and reasonable. The court should intervene only if satisfied that the costs are so disproportionate and unreasonable that it is right to do so.

The basis of assessment

The standard basis

6. Where the court assesses the amount of costs on the standard basis, for example, on a party and party basis, it will not allow costs which have been unreasonably incurred or are unreasonable in amount and will only allow costs which are proportionate to the matters in issue. The court will resolve in favour of the paying party any doubt which it may have as to whether the costs were reasonably incurred or were reasonable and proportionate in amount.

The indemnity basis

7. Where the court assesses the amount of costs on the indemnity basis, for example, on an attorney-at-law and client basis, it will not allow costs which have been unreasonably incurred or are unreasonable in amount. The court will resolve in favour of the receiving party any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount. The test of proportionality is not applicable to the indemnity basis.

Proportionality

8. The concept of proportionality was given paramountcy by the overriding objective in Part 1 and, therefore, in applying the test of proportionality the court must have regard to rule 1.1(2)(c) by dealing with the case, so far as practicable, in ways which are proportionate to—

- (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party.
9. The English Court of Appeal, in the case of *Home Office v Lownds* [2002] EWCA Civ 365; [2002] 1WLR 2450; [2002] 4 All ER 775 CA., has given guidance on the correct approach to proportionality when assessing costs by introducing a two-stage approach:
- “There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which Part 44.5(3) (equivalent to Part 67.2(3) of the Trinidad and Tobago CPR) states are relevant. If the costs as a whole are not disproportionate according to the test then all that is normally required is that each item should have been reasonably incurred and the costs for that item should be reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work in relation to each item was necessary, and if necessary, the cost of the item was reasonable.”
10. The relevant costs for consideration at the first stage are the base costs only before VAT is added (see *Giambrone v JMC Holidays* [2003] 2 Costs LR 189).
11. The fact that, at the first stage, the costs as a whole appear to be proportionate does not prevent the court from finding individual items are disproportionate and applying the test of necessity to them alone (*Giambrone* (supra)).

Factors to be taken into account in deciding the amount of costs

12. Attention is drawn to Part 67.2 which sets out the factors the court must take into account when assessing costs. Those factors include the conduct of all the parties before as well as during the proceedings, the efforts made, if any, before and during the proceedings to try to resolve the dispute, and in particular, the extent to which the parties complied with any relevant pre-action protocol.

Grades of fee earner

13. It is hereby established that for the purposes of assessing costs the grades of fee earner shall be in the following categories:

BAND A	Instructing under 5 years call
	Advocate under 5 years call
BAND B	Instructing over 5 years but under 10 years call
	Advocating over 5 years but under 10 years call
BAND C	Instructing over 10 years but under 20 years call
	Advocating over 10 years but under 20 years call
BAND D	Instructing over 20 years call
	Advocate over 20 years call
BAND E	Senior Counsel / Queen's Counsel

Guideline figures for fee earners on the basis of hourly rates

14. When considering what fee should be allowed for work done by instructing or advocate attorneys-at-law the court should calculate such fee on the basis of an hourly rate in accordance with the guideline figures set out in the table below:

Guideline figures for Instructing and Advocate Attorney's hourly rates

BAND A	Instructing under 5 years call	\$ 650.00 per hr
	Advocate under 5 years call	\$ 800.00 per hr
BAND B	Instructing over 5 years but under 10 years call	\$ 1,000.00 per hr
	Advocating over 5 years but under 10 years call	\$ 1,200.00 per hr
BAND C	Instructing over 10 years but under 20 years call	\$ 1,700.00 per hr
	Advocating over 10 years but under 20 years call	\$ 2,000.00 per hr
BAND D	Instructing over 20 years call	\$ 2,250.00 per hr
	Advocate over 20 years call	\$ 2,500.00 per hr
BAND E	Senior Counsel / Queen's Counsel	\$ 3,500.00 per hr

15. Refresher fees awarded to counsel should also be calculated on the basis of an hourly rate as set out in the table below:

Guideline figures for Counsel's Refreshers at hourly rates

BAND A	Under 5 years call	\$ 550.00 per hr
BAND B	Over 5 years but under 10 years call	\$ 800.00 per hr
BAND C	Over 10 years but under 20 years call	\$ 1,300.00 per hr
BAND D	Over 20 years call	\$ 1,650.00 per hr
BAND E	Senior Counsel / Queen's Counsel	\$ 2,300.00 per hr

16. The hourly rates suggested in the preceding paragraphs (paragraphs 14 and 15) are guideline figures and are intended as a starting point only to assist Judges and other costs assessment officers who are faced with the task of assessing costs. They are not intended to replace the court's discretion to allow appropriate fees to attorneys in particular cases. The court may, therefore, allow a higher or lower fee, where appropriate, having regard to all the relevant circumstances of the case. It is important to note, however, the need to attain a significant measure of consistency and predictability in the award of costs.
17. Since it is virtually impossible to give guidance as to whether the time claimed by attorneys has been reasonably spent, it is for the court in each case to consider the work properly undertaken by instructing and advocate attorneys and to arrive at a figure which is in all circumstances reasonable.
18. In calculating the hourly rate for attorneys and allowing fees at a multiple of that rate according to the number of hours reasonably spent, the court must be careful not to reward the indolent and less efficient lawyer and penalize the diligent and more efficient counterpart.

19. The basic guidelines laid down in *Simpsons Motor Sales (London) Ltd. v Hendon Borough Council* [1965] 1 W.L.R. 112 *per Pennycuik J* on the proper assessment of counsel's fee, remain sound law. Thus the proper measure of counsel's fees is to estimate what fee a hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particularly high fee sometimes demanded by counsel of pre-eminent reputation, would be content to take on the brief: but there is, in the nature of things, no precise standard of measurement and the costs assessment officer must, employing his knowledge and experience, determine what he considers the proper figure.

Fees to senior counsel and junior counsel

20. In determining whether to allow costs for senior counsel the following factors are to be considered:
- (a) the nature of the case, including in personal injury cases
 -
 - (i) the nature and severity of the plaintiff's injury;
 - (ii) the likely duration of the trial;
 - (iii) difficult questions regarding the quantum of damages, including medical evidence and questions of law;
 - (iv) difficult questions of fact including expert engineering evidence, or issues as to causation;
 - (b) its importance to the client;
 - (c) the amount of damages likely to be recovered;
 - (d) the general importance of the case, e.g. as affecting other cases;
 - (e) any particular requirements of the case, e.g. the need for legal advice, or for special expertise, e.g. examining or cross-examining witnesses; and
 - (f) other reasons why an experienced and senior advocate may be required.
21. The fact that the other side has instructed senior counsel is a relevant factor but not conclusive.

22. It is important to note that the two counsel rule has long ceased to be of relevance in this jurisdiction as senior counsel need not appear with a junior. It therefore does not follow from the fact that a fee to senior counsel is allowed that a fee to junior counsel, if one is also instructed, should also be allowed. In determining whether a fee to junior counsel should be allowed, in addition to a fee to senior counsel, the test is one of reasonableness.

23. It has been suggested that the following particular reasons may justify the appointment of junior counsel:
 - (a) to assist with the court proceedings either by taking an active part or by keeping a full note of the evidence, editing transcripts, etc;
 - (b) dealing with documents generally, particularly when the same junior counsel has taken part in discovery;
 - (c) to carry out legal or other research, e.g. on matters on which expert evidence is given; but a fee for preparation relating to the law will not normally be allowed save in unusual, or infrequent or cases or where the point arose unexpectedly at the beginning or during the course of the trial (see *Perry v. The Lord Chancellor, The Times, May 26, 1994*);
 - (d) to assist leading counsel in negotiations with the other party.

24. If it has been decided to allow costs to junior counsel he is entitled to a reasonable fee determined in accordance with the matters hereinbefore set out and not necessarily two-thirds of senior counsel's fee.

25. In assessing counsel's brief fee it is always relevant to take into account what work that fee, together with any refreshers, is intended to cover. The brief fee should cover all work done by way of preparation for representation at the trial and attendance at the first day of the trial. *Loveday v Renton and The Wellcome Foundation Ltd (No.2) [1992] 3 All E.R. 184* held that the preparation by counsel of his examinations in chief, cross-examinations and final submissions are an ordinary part of his conduct of a trial on behalf of a client and fall within the brief fee together with:
 - preparation work before the delivery of the brief on the faith of a solicitor's (instructing attorney's) statement that it will be delivered;

- preparatory work in counsel satisfying himself that he should accept the brief;
- evening preparation;
- any consultations between members of the team of counsel (other than conferences or consultations at the behest of the client or instructing solicitor (attorney));
- advising experts at weekends;
- conferring with experts without separate instructions;
- lost opportunities;
- chronologies, etc.;
- skeleton arguments save for the Court of Appeal. See *Hornsby v Clark Kenneth Leventhal (A Firm)* [2000] 4 All E.R. 567;
- *dramatis personae*;
- opportunities to prepare further when the court is not sitting;
- preparation of draft terms of collateral arguments;
- where a case is sufficiently complex, a separate fee for final written submissions can be claimed, where it has been specifically agreed and not covered by the brief fee. See *Chohan v Times Newspaper* unreported, September 17, 1998 per Nelson J;
- note of judgment.

26. The guideline figures set out in the tables in paragraphs 14 and 15 shall be reviewed from time to time, as may be deemed necessary, after due survey and consultation with all relevant parties.

Dated this 20th day of December, 2007

Roger Hamel-Smith
Acting Chief Justice

SECOND PRACTICE GUIDE TO THE ASSESSMENT OF COSTS

INTRODUCTION

This Practice Guide is issued in keeping with the intention expressed in the Practice Guide to the Assessment of Costs issued on the 20th December 2007 that there be a review, from time to time, of the guideline figures set out in the tables in paragraphs 14 and 15 of that Practice Guide and that such review would be after due consultation with all relevant parties.

The matter of the review of guideline figures arose and a Costs Committee was established and commissioned to consider the matter. The Costs Committee comprised Judges, Registrars of the Supreme Court and representatives from the Law Association. In considering the matter, the Costs Committee had regard to, inter alia, the retail price/consumer price index.

This Practice Guide is issued in keeping with the recommendations made by the Costs Committee on the grades/bands and guideline figures for hourly rates for attorneys at law.

As it relates to the assessment of costs this Practice Guide is intended to only affect the guideline figures for Instructing and Advocate Attorney’s hourly rates as well as the hourly rates for Counsel’s Refreshers. This Practice Guide is to be read together with the Practice Guide issued on the 20th day of December 2007 and where there is an inconsistency the later Practice Guide takes precedence.

This Practice Guide takes effect from the date of issue.

BAND A	Instructing under 5 years call	\$ 750.00 per hr.
	Advocate under 5 years call	\$ 900.00 per hr.
BAND B	Instructing over 5 years but under 10 years call	\$ 1,200.00 per hr.
	Advocate over 5 years but under 10 years call	\$ 1,400.00 per hr.
BAND C	Instructing over 10 years but under 20 years call	\$ 1,950.00 per hr.
	Advocate over 10 years but under 20 years call	\$ 2,300.00 per hr.
BAND D	Instructing over 20 years call	\$ 2,600.00 per hr.
	Advocate over 20 years call	\$ 2,850.00 per hr.
BAND E	Senior Counsel / Queen’s Counsel	\$ 4,000.00 per hr.

Guideline figures for Counsel's Refreshers at hourly rates

BAND A	Under 5 years call	\$ 650.00 per hr.
BAND B	Over 5 years but under 10 years call	\$ 900.00 per hr.
BAND C	Over 10 years but under 20 years call	\$ 1,500.00 per hr.
BAND D	Over 20 years call	\$ 1,900.00 per hr.
BAND E	Senior Counsel / Queen's Counsel	\$ 2,650.00 per hr.

Dated the 20th day of October 2015.

Ivor Archie
Chief Justice

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