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# SUPREME COURT CIVIL PROCEDURE (AMENDMENT) RULES, 2023

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## OFFICE OF THE JUDICIARY

S.I. No. 17 of 2023

### SUPREME COURT ACT (CHAPTER 53)

### SUPREME COURT CIVIL PROCEDURE (AMENDMENT) RULES, 2023

The Rules Committee, in exercise of the powers conferred by section 76 of the Supreme Court Act (*Ch. 53*) hereby makes the following rules —

#### 1. Citation.

These Rules, which amend the Supreme Court Civil Procedure Rules, 2022<sup>1</sup>, may be cited as the Supreme Court Civil Procedure (Amendment) Rules, 2023.

#### 2. Amendment of rule 2 of the principal Rules.

Rule 2 of the principal Rules is amended —

- (a) by the deletion of subparagraph (2)(a) and the substitution of the following —
  - “(a) referred to in paragraph (1)(b)(i), the claimant must fix a date, time and place for a case management conference under Part 27 after a defence has been filed and give all parties at least twenty-eight days' notice of the conference; and”;
- (b) by the deletion of paragraph (4) and the substitution of the following —
  - “(4) These Rules shall not apply to —
    - (a) bankruptcy and insolvency proceedings, including winding up of companies;
    - (b) family proceedings except proceedings under the Child Protection Act (*Ch. 132*);
    - (c) probate proceedings except contentious probate proceedings as provided for in Part 63;
    - (d) proceedings in which the Court is acting as a Prize Court;
    - (e) any other proceedings in the Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.”.

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<sup>1</sup>*S.I. No. 76 of 2022.*

**3. Insertion of new rule 4 into the principal Rules.**

The principal Rules are amended by the insertion, immediately after rule 3, of the following new rule —

**“4. Savings and transitional.**

Notwithstanding rule 3, proceedings commenced in the Court prior to the commencement of these Rules, to which these Rules in accordance with rule 2(1)(b) do not apply, shall continue under the Rules of the Supreme Court (*S.I. 48 of 1978*).”

**4. Amendment of rule 8.7 of the principal Rules.**

Rule 8.7 of the principal Rules is amended in paragraph (5) by the deletion of the word, “certificate”, and the substitution of the word “statement”.

**5. Amendment of rule 8.10 of the principal Rules.**

Rule 8.10 of the principal Rules is amended in the headnote by the deletion of “Realtor” and substitution of the word, “Relator”.

**6. Amendment of rule 11.18 of the principal Rules.**

Rule 11.18 of the principal Rules is amended by the deletion of the headnote and the substitution of the following —

**“11.18 Application to set aside and vary order made on an application made without notice.”**

**7. Amendment of rule 11.19 of the principal Rules.**

Rule 11.19 of the principal Rules is amended in the headnote by the deletion of the words, “a card” and the substitution of the word, “Court”.

**8. Amendment of rule 14.4 of the principal Rules.**

Rule 14.4 of the principal Rules is amended in the headnote by the deletion of the word “attachment” and the substitution of the word “judgment”.

**9. Amendment of rule 17.2 of the principal Rules.**

Rule 17.2 of the principal Rules is amended in the headnote by the deletion of the word, “junction” and the substitution of the word, “injunction”.

**10. Amendment of rule 18.8 of the principal Rules.**

Rule 18.8 of the principal Rules is amended in paragraph(1)(a) by the deletion of the word “additional” and the substitution of the word, “existing”.

## **11. Revocation and replacement of Part 19 of the principal Rules.**

The principal Rules is amended by the revocation and replacement of Part 19 as follows —

### **“PART 19 – ADDITION, SUBSTITUTION AND REMOVAL OF PARTIES**

#### **19.1 Scope of this Part.**

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

#### **19.2 Change of parties.**

- (1) The Court may add, substitute or remove a party —
  - (a) on application by a party; or
  - (b) without an application.
- (2) A claimant may add a new defendant to proceedings without permission at any time before the case management conference by filing at the court office, an amended claim form and statement of claim.
- (3) Parts 5, 7, 9, 10 and 12 apply to an amended claim form referred to in paragraph (2) as they do to a claim form.
- (4) The Court may add a new party to proceedings without an application, 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.
- (5) The Court may, by order remove any party if it considers that it is not desirable for that person to be a party to the proceedings.
- (6) The Court may order a new party to be substituted for an existing one if —
  - (a) the Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or
  - (b) the existing party's interest or liability has passed to the new party.
- (7) The Court may add, remove or substitute a party at the case management conference.

- (8) The Court may not add a party, except by substitution, after the 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.

**19.3 Procedure for adding, and substituting or removing parties.**

- (1) 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.
- (2) An application for an order under rule 19.2(6) may be made without notice but must be supported by evidence on affidavit.
- (3) A person may not be added or substituted as a claimant unless that person's written consent is filed with the Court office.
- (4) 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.
- (5) If 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, and subject to such directions rule 19.2(2) applies.
- (6) These Rules apply to a new defendant as they apply to any other defendant where —
  - (a) the Court makes an order for the addition or substitution of a new defendant; and
  - (b) the claim form is served on the new defendant.

**19.4 Special provisions on adding, etc., parties after limitation period.**

- (1) The Court may add or substitute a party after the end of a relevant limitation period only if the —

- (a) addition or substitution is necessary; and
  - (b) relevant limitation period was current when the proceedings were started.
- (2) For the purposes of paragraph (1), the addition or substitution of a party is necessary only if the Court is satisfied that —
- (a) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant;
  - (b) the interest or liability of the former party has passed to the new party; or
  - (c) the new party is to be substituted for a party who was named in the claim form in mistake for the new party.”.

**12. Amendment of rule 20.1 of the principal Rules.**

Rule 20.1 of the principal Rules is amended in paragraph (5) by the deletion of the word, “certificate”, and the substitution of the word “statement”.

**13. Amendment of rule 23.2 of the principal Rules.**

Rule 23.2 of the principal Rules is amended in paragraph (6) by the deletion of the word, “certificate”, and the substitution of the word “statement”.

**14. Amendment of rule 47.3 of the principal Rules.**

Rule 47.3 of the principal Rules is amended in paragraph (2)(a), by the deletion of the words, “Public Treasury” and the substitution of the words “the Central Bank of The Bahamas”.

**15. Amendment of rule 47.4 of the principal Rules.**

Rule 47.4 of the principal Rules is amended in paragraph (3), by the deletion of the words, “Public Treasury” wherever they appear and the substitution of the words “the Central Bank of The Bahamas”.

**16. Insertion of new rules 47.5 – 47.14 into the principal Rules.**

The principal Rules are amended by the insertion immediately after rule 47.4 of the following new rules —

**“47.5 Making and effect of charging order absolute.**

- (1) Where on the further consideration of the matter, the Court, unless it appears that there is sufficient cause to the contrary, shall —
  - (a) make the order absolute with or without modifications.

- (b) not make the order absolute and discharge the order.
- (2) An order made absolute under this rule shall —
  - (a) have the same effect; and
  - (b) subject to paragraph (3), entitle the judgment creditor, in whose favour it is made, to the same remedies for enforcing it,  
as if it were a valid charge effectively made by the judgment debtor.
- (3) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of six months from the date of the order to show cause.

#### **47.6 Discharge, etc., of charging order.**

The Court, on the application of the judgment debtor or any other person interested in the securities to which an order made under rule 47.1 relates, may, whether before or after the order is made absolute, discharge or vary the order on such terms, if any, as to costs as it thinks just.

#### **47.7 Money in court: charging order.**

- (1) The Court may, by order, for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person, impose on any interest to which the judgment debtor is beneficially entitled to any money in court identified in the order, a charge for securing payment of the amount due under the judgment or order and interest thereon.
- (2) Any order made under paragraph (1), shall in the first instance be an order to show cause, specifying the time and place for the further consideration of the matter and imposing the charge until that time in any event.
- (3) Rules 47.2 and 47.3(1) shall, with the necessary modifications, apply in relation to an application for an order under this rule and to the order as they apply in relation to an application for an order under rule 47.1 and to such order.
- (4) Rules 47.4(1), 47.5(1) and 47.6 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 47.1.

#### **47.8. Jurisdiction of Registrar to grant injunction or appoint receiver to enforce charge.**

- (1) A Registrar shall have power to grant —



- (a) an injunction if it is ancillary or incidental to an order under rule 47.1 or 47.7; and
  - (b) an application for the appointment of a receiver.
- (2) An application for an injunction under this rule may be joined with the application for the order under rule 47.1 or 47.7 to which it relates.

**47.9 Funds in court: stop order.**

- (1) The Court, on the application of any person —
- (a) who has a mortgage or charge on the interest of any person in funds in court; or
  - (b) to whom an interest referred to in subparagraph (a) has been assigned; or
  - (c) who is a judgment creditor of the person entitled to an interest referred to in subparagraph (a),
- may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.
- (2) An application for an order under this rule must be made on notice in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by fixed date claim.
- (3) The application must be served on every person whose interest may be affected by the order applied for but shall not be served on any other person.
- (4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

**47.10 Securities not in court: stop notice.**

- (1) Any person claiming to be beneficially entitled to an interest in any securities to which rule 47.1 applies, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.
- (2) A person claiming to be so entitled must file in the Registry —
- (a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and

- (b) a notice in Form EX14, signed by the deponent to the affidavit, and annexed to it, addressed to the Central Bank of The Bahamas or the company concerned, and must serve an office copy of the affidavit, and a copy of the notice sealed with the seal of the Supreme Court on the Central Bank of The Bahamas or that company.
- (3) There must be indorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 47.11(1) is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.
- (4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 47.11 by serving on the Central Bank of The Bahamas, or the company concerned, a notice to that effect, and as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

#### **47.11 Effect of stop notice.**

- (1) Where a notice under rule 47.10 has been served on the Central Bank of The Bahamas or a company, then, so long as the notice is in force, the Central Bank of The Bahamas or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service a notice informing him of the request for such transfer or payment.
- (2) Where the Central Bank of The Bahamas or a company receive a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 47.10 relates, the Central Bank of The Bahamas or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than eight days after receipt of the request except under the authority of an order of the Court.

#### **47.12 Amendment of stop notice.**

If any securities are incorrectly described in a notice filed under rule 47.10 the person on whose behalf the notice was filed may file in the office or registry in which the notice was filed an amended

notice and serve on the Central Bank of The Bahamas or the company concerned a copy of that notice sealed with the seal of that office or registry, and where he does so the notice under rule 47.10 shall be deemed to have been served on the Central Bank of The Bahamas or company on the day on which the copy of the amended notice was served on it.

**47.13 Withdrawal, etc. of stop notice.**

- (1) The person on whose behalf a notice under rule 47.10 was filed may withdraw it by serving a request for its withdrawal on the Central Bank of The Bahamas or, as the case may be, the company on whom the notice was served.
- (2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising attorney.
- (3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 47.10 relates, may by order discharge the notice.
- (4) An application for an order under paragraph (3) must be made to the Court by on notice, and must be served on the person on whose behalf the notice under rule 47.10 was filed.

**47.14 Order prohibiting transfer, etc., of securities.**

- (1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any government stock or any stock of any company registered under any general Act of Parliament may by order prohibit the Central Bank of The Bahamas or that company from registering any transfer of such part of that stock as may be specified in the order or from paying any dividend thereof or interest thereon.
- (2) An order made under this rule shall state the name of the holder of the stock to which the order relates.
- (3) An application for an order under this rule must be made on notice.
- (4) The Court, on the application of any person claiming to be entitled to an interest in any stock to which an order under this rule relates, may vary or discharge the order on such terms, if any, as to costs as it thinks fit.”.

**17. Amendment of rule 63.3 of the principal Rules.**

Rule 63.3 of the principal Rules is amended in paragraph (1) by the insertion immediately after the words “fixed date” of the word “claim”.

**18. Amendment of rule 63.5 of the principal Rules.**

Rule 63.5 of the principal Rules is amended —

- (a) in paragraph (1)(b)(i), by the deletion of the word “writ” and the substitution therefor of the words “fixed date claim form and statement of claim”; and
- (b) in paragraph (1)(b)(ii), by the deletion of the word “writ” and the substitution therefor of the words “fixed date claim form and statement of claim”.

**19. Revocation and replacement of rule 63.11 of the principal Rules.**

Rule 63.11 of the principal Rules is revoked and replaced as follows —

**“63.11 Application for order to bring in will, etc.**

- (1) Any application in probate proceedings for an order requiring a person to bring a will or other testamentary paper into court or to attend in court for examination must be supported by evidence on affidavit setting out the grounds of the application.
- (2) An application under paragraph (1) shall be made by application in the action, which must be served on the person against whom the order is sought.
- (3) Any application for the issue of a subpoena in accordance with section 32 of the Probate and Administration of Estates Act (*No. 1 of 2011*) to require a person to bring a will or other testamentary paper into the Probate Registry may be made without notice but must be supported by evidence on affidavit setting out the grounds of the application.”.

**20. Revocation and replacement of rule 63.12 of the principal Rules.**

Rule 63.12 of the principal Rules is revoked and replaced as follows —

**“63.12 Administration *pendente lite*.**

- (1) An application under section 6 of the Probate and Administration of Estates Act (*No. 1 of 2011*) for the grant of representation shall be made by application if there are existing proceedings or otherwise by fixed date claim form and statement of claim.
- (2) Where an order for a grant of administration is made under section 9 of the Probate and Administration of Estates Act (*No. 1 of 2011*), rules 53.21, 53.42 and 53.63 and subject to subsection 9(2) of the Probate and Administration of Estates Act (*No. 1 of 2011*), rule 53.34, shall apply as if the administrator were a receiver appointed by the Court.”.

**21. Amendment of rule 63.13 of the principal Rules.**

The headnote of rule 63.13 of the principal Rules is amended by the deletion of the word “a”.

**22. Insertion of new rule 63.14 into the principal Rules.**

The principal Rules is amended by the insertion immediately after rule 63.13 of the following new rule —

**“63.14 Default of appearance.**

- (1) Where a defendant to a probate action fails to enter an appearance, the claimant, upon filing an affidavit proving due service of the fixed date claim form and statement of claim on that defendant may, after the time limited for appearing by the defendant, proceed with the action as if that defendant had entered an appearance.
- (2) Where a defendant to a probate action fails to enter an appearance, then, unless on the application of the claimant the Court orders the action to be discontinued, the claimant may, after the time limited for appearing by the defendant, apply to the Court for an order for trial of the action.
- (3) Before applying for an order under paragraph (2), the claimant must file an affidavit proving due service of the fixed date claim form and statement of claim on the defendant.
- (4) Where the Court grants an order on the paragraph (2), it may direct the action to be tried on affidavit evidence.”.

**23. Revocation and replacement of Parts 71 and 72 of the principal Rules.**

The principal Rules are amended by the revocation of Parts 71 and 72 and the replacement of the following —

**“ PART 71 - COSTS: GENERAL PROVISIONS**

**71.1 Scope of this Part.**

This Part contains general rules about costs and the entitlement to costs.

**71.2 Definitions and application.**

- (1) In this Part and Part 72, unless the context otherwise requires—  
“assessed costs” and “assessment” have the meanings given to them by Rules 72.8;  
“certificate” includes allocatur;

**“costs”** includes attorney fees, charges, disbursements, assessed costs, expenses, fixed costs, prescribed costs, and remuneration;

**“fixed costs”** refers to the costs fixed in accordance with rule 72.22;

**“prescribed costs”** refers to the costs determined in accordance with rule 72.23;

**“detailed assessment”** means the procedure by which the amount of costs is decided by the Registrar in accordance with Part 72;

**“fund”** includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in that capacity;

**“paying party”** means a party liable to pay costs;

**“receiving party”** means a party entitled to be paid costs;

**“summary assessment”** means the procedure by which the Court, when making an order about costs, orders payment of a sum of money instead of fixed costs.

- (2) The costs to which this Part applies include costs —
  - (a) of proceedings in the Court;
  - (b) if and so far as necessary, of proceedings before an arbitrator or umpire;
  - (c) of proceedings before a tribunal or other statutory body; and
  - (d) payable by a client to his attorney;
  - (e) which are payable by one party to another party under the terms of a contract, where the Court makes an order for an assessment of those costs.
- (3) When costs of —
  - (a) an attorney to his or her own client;
  - (b) arbitration proceedings; or
  - (c) proceedings before a tribunal or other statutory body;are to be taxed or assessed by the Court, they must be assessed in accordance with this Part and Part 72.
- (4) 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 this Part and Part 72, unless the enactment otherwise provides.

**71.3 Orders about costs.**

The Court may make an order requiring a party to pay the costs of another party arising out of, or related to all, or any part of any proceedings.

**71.4 Costs in an appeal.**

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.

**71.5 Entitlement to recover costs.**

A person may not recover the costs of proceedings from any other party or person except by virtue of—

- (a) an agreement between the parties;
- (b) an order of the Court; or
- (c) a provision of these Rules.

**71.6 Successful party generally entitled to costs.**

- (1) Where the Court 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, make no order as to costs or, in an exceptional case, order a successful party to pay all or part of the costs of an unsuccessful party.

**71.7 Two or more parties having same interest.**

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.

**71.8 Costs against person who is not a party.**

- (1) This rule applies where —
  - (a) an application is made for; or
  - (b) the Court is considering whether to make; an order that a person who is not a party to the proceedings nor the attorney to a party should pay the costs of some other person.
- (2) An application for an order under paragraph (1) must be on notice to the person against whom the costs order is sought and must be supported by evidence on affidavit.

- (3) If the Court is considering making an order against a person the Court must give that person notice of the fact that it is minded to make such an order.
- (4) A notice under paragraph (3), must state the grounds of the application on which the Court is minded to make the order.
- (5) A notice under paragraph (2) or (3), must state a date, time and place at which that person may attend to show cause why the order should not be made.
- (6) The person against whom the costs order is sought and all parties to the proceedings must be given fourteen days notice of the hearing.

#### **71.9 Court's discretion to order costs.**

- (1) The Court has discretion as to —
  - (a) whether costs are payable by one party to another;
  - (b) when to assess costs;
  - (c) the amount of those costs; and
  - (d) when they are to be paid.
- (2) Without limiting the Court's discretion or the range of orders open to it, the Court may order a person to pay —
  - (a) costs from or up to a certain date only;
  - (b) costs relating only to a certain distinct part of the proceedings; or
  - (c) only a specified proportion of another person's costs.
- (3) In deciding who, or if any person should be liable to pay costs, the Court must have regard to all the circumstances.
- (4) Without limiting the factors which may be considered, the Court must have regard to —
  - (a) the conduct of the parties both before and during the proceedings;
  - (b) whether a party has succeeded on particular issues, even if not ultimately successful in the case, although success on an issue that is not conclusive of the case confers no entitlement to a costs order;
  - (c) the manner in which a party has pursued —
    - (i) a particular allegation;
    - (ii) a particular issue; or
    - (iii) the case;



- (d) whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the costs of the proceedings;
- (e) whether it was reasonable for a party to —
  - (i) pursue a particular allegation; or
  - (ii) raise a particular issue; and
  - (iii) whether the successful party increased the costs of the proceedings by the unreasonable pursuit of issues; and
- (f) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.

**71.10 Circumstances to be taken in to account when exercising its discretion as to costs.**

- (1) In deciding what order, if any, to make about costs, the Court must have regard to all the circumstances, including —
  - (a) the conduct of all the parties;
  - (b) whether a party has succeeded on part of his case, even if he has not been wholly successful;
  - (c) any payment into court or admissible offer to settle made by a party which is drawn to the Court's attention and which is not an offer to which costs consequences under Part 35 and 36 apply.
- (2) For the purposes of paragraph (1)(a), the conduct of the parties includes —
  - (a) conduct before, as well as during, the proceedings;
  - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
  - (c) the manner in which a party has pursued or defended his case or a particular allegation or issue;
  - (d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and
  - (e) unreasonable conduct of any kind by any party in relation to the inclusion or exclusion of documents or authorities in any bundle and whether a joint bundle or otherwise.
- (3) The Court may make an order that a party must pay —
  - (a) a proportion of another party's costs;
  - (b) a stated amount in respect of another party's costs;
  - (c) costs from or until a certain date only;
  - (d) costs incurred before proceedings have begun;

- (e) costs relating to particular steps taken in the proceedings;
  - (f) costs relating only to a distinct issue in or part of the proceedings; and
  - (g) interest on costs from or until a certain date, including a date before judgment.
- (4) Where the Court would otherwise consider making an order under paragraph (3)(f), it must instead, if practicable, make an order under paragraph (3)(a) or (c).
  - (5) Where the Court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.
  - (6) Where a party entitled to costs is also liable to pay costs the Court may assess the costs which that party is liable to pay and either—
    - (a) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or
    - (b) make an order postponing the date of payment in respect of the costs to which the party is entitled until he has paid the amount which he is liable to pay.
  - (7) If 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.

**71.11 Factors to be taken into account in deciding the amount of costs.**

- (1) The Court is to have regard to all the circumstances in deciding whether costs were —
  - (a) proportionately and reasonably incurred; or
  - (b) were proportionate and reasonable in amount.
- (2) In particular, the Court must give effect to any orders which have already been made.
- (3) The Court must also have regard to —
  - (a) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
  - (b) the amount or value of any money or property involved;
  - (c) the importance of the matter to all the parties;
  - (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;

- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the case;
- (g) the place where and the circumstances in which work or any part of it was done;
- (h) the care, speed and economy with which the case was prepared; and
- (i) in the case of costs charged by an attorney to his or her client —
  - (i) any agreement about what grade of attorney should carry out the work;
  - (ii) any agreement that may have been made as to the basis of charging; and
  - (iii) whether the attorney 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.

#### **71.12 General rule: summary assessment.**

- (1) As a general rule, a judge hearing an application will summarily assess the costs of that application immediately or as soon as practicable after the same is disposed of.
- (2) As a general rule, a judge conducting the trial will summarily assess the costs of the entire claim immediately after he has delivered judgment in respect of the same or as soon as practicable thereafter.
- (3) A judge may, instead of summarily assessing the costs under paragraphs (1) or (2), direct that the whole or any part of the costs payable shall be subject to a detailed assessment and he may, when making such direction, indicate which particular matters the Registrar may or shall take into account or exclude in relation to such detailed assessment.

#### **71.13 Cases where costs orders deemed to have been made.**

- (1) A costs order will be deemed to have been made where a right to costs arises under rule 35.13 or 37.6.
- (2) Interest shall be payable on the costs deemed to have been ordered under paragraph (1), and shall begin to run from the date on which the event which gave rise to the entitlement to costs occurred.

#### **71.14 Time for complying with an order for costs.**

A party must comply with an order for the payment of costs within twenty-one days of —

- (a) the date of the judgment or order if it states the amount of those costs;
- (b) if the amount of those costs, or part of them, is decided later in accordance with this Part, the date of the certificate which states the amount; or
- (c) in either case, such later date as the Court may specify.

#### **71.15 Failure to comply to pay costs ordered during proceedings.**

- (1) Where, in the course of proceedings, an order for costs is made against a claimant who fails to pay the costs so ordered when those costs become due, the Court may —
  - (a) stay or strike out the claim or any defence to counterclaim or to third party proceedings; or
  - (b) make such other order as it thinks fit.
- (2) Where, in the course of proceedings, an order for costs has been made against a defendant who fails to pay the costs so ordered when those costs become due, the Court may —
  - (a) strike out the defence or any counterclaim or third party proceedings; or
  - (b) make such other order as it thinks fit.

#### **71.16 Special situations.**

- (1) Subject to paragraphs (3) and (4), where the Court makes an order which does not mention costs, the general rule is that no party is entitled to costs.
- (2) The general rule in paragraph (1) shall not affect the entitlement of a party to recover costs out of a fund held by that party as trustee or personal representative, or pursuant to any lease, mortgage or other security.
- (3) Where the Court makes —
  - (a) an order granting permission to appeal;
  - (b) an order granting permission to apply for judicial review; or
  - (c) any other order or direction sought by a party on an application without notice,and its order does not mention costs, it will be deemed to include an order for the applicant's costs in the case.

- (4) Any party affected by a deemed order for costs under paragraph (3) may apply at any time to vary the order.
- (5) The Court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.
- (6) Where proceedings are transferred from one court to another, the court to which they are transferred may deal with all the costs, including the costs before the transfer.

#### **71.17 Costs-only proceedings.**

- (1) This rule sets out a procedure which may be followed where —
  - (a) the parties to a dispute 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 form.
- (3) The claim form must contain or be accompanied by the agreement or confirmation on which party is to pay costs.
- (4) The Court may —
  - (a) assess the costs summarily;
  - (b) make an order for costs to be determined by detailed assessment; or
  - (c) dismiss the claim;
- (5) Rule 71.16 does not apply to claims started under the procedure in this rule.

#### **71.18 Amount of costs where costs are payable pursuant to a contract.**

Where the Court assesses costs, whether by summary or detailed assessment, which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which —

- (a) have been reasonably incurred; and
  - (b) are reasonable in amount,
- and the Court will assess them accordingly.

#### **71.19 Costs payable to a party out of a fund.**

- (1) Save as is provided in paragraph (2), where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be.
- (2) Where paragraph (1) of this rule would otherwise apply but the Court is of the opinion that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, such person has in substance acted for his own benefit rather than for the benefit of the fund, the Court may make such other order as it thinks fit.

#### **71.20 Wasted costs orders.**

- (1) In any proceedings the Court may by order —
  - (a) direct the attorney to pay; or
  - (b) disallow as against an attorney's client, the whole or part of any wasted costs.
- (2) In this rule “**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 or any employee of an attorney; 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.

#### **71.21 Wasted costs orders – procedure.**

- (1) This rule applies where —
  - (a) an application is made for; or
  - (b) the Court is considering whether to make, an order under rule 71.20(1).
- (2) An application for an order for wasted costs by a party must be —
  - (a) on notice to the attorney against whom the costs order is sought; and
  - (b) supported by evidence on affidavit setting out the grounds on which the order is sought.

- (3) Where the Court is considering whether to make such an order, the Court must give the attorney notice of the fact that it is considering whether to do so.
- (4) Notice under paragraph (3) must state the grounds on which the Court is minded to consider making the order.
- (5) A notice under paragraph (2) or (3) must state a date, time and place at which the attorney may attend to show cause why the order should not be made.
- (6) At least seven days notice of the hearing must be given to the attorney against whom the costs order is sought, or its making is being considered and all parties to the proceedings.

## **PART 72 PROCEDURE FOR DETAILED ASSESSMENT OF COSTS**

### **72.1 Scope of this Part.**

This Part deals with the way in which any costs awarded by the Court are quantified.

### **72.2 Powers of the Registrar to assess costs.**

The Registrar shall have power to assess —

- (a) any costs the assessment of which is directed by an order of the Court; and
- (b) the costs directed by an award made on a reference to arbitration or pursuant to an arbitration agreement to be paid.

### **72.2 Supplementary powers of the Registrar.**

The Registrar may, in the discharge of his functions with respect to the assessment of costs —

- (a) take an account of any dealings in money made in connection with the payment of the costs being assessed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) direct the production of any document which may be relevant in connection with those proceedings.

### **72.3 Interim certificates.**

- (1) The Registrar may, in the course of the assessment of any costs by him, issue an interim certificate for any part of those costs which has been assessed.

- (2) If, in the course of the assessment of an attorney's bill to his own client, it appears to the Registrar that in any event the attorney will be liable in connection with that bill to pay money to the client, he may issue an interim certificate specifying an amount which in his opinion is payable by the attorney to his client.
- (3) On the filing of a certificate issued under paragraph (2), the Court may order the amount specified therein to be paid forthwith to the client or into Court or in such other manner as the Court may direct.

#### **72.4 Power of Registrar where party liable to be paid and to pay costs.**

Where a party entitled to be paid costs is also liable to pay costs, the Registrar may—

- (a) assess the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

#### **72.5 Assessment of bill of costs comprised in account.**

- (1) Where the Court directs an account to be taken and the account consists, in part, of a bill of costs, the Court may direct the Registrar to assess those costs.
- (2) The Registrar, in assessing a bill of costs in accordance with a direction given under this rule, shall —
  - (a) have the same powers of the Court and apply the same fees payable in connection with the assessment as if the order for assessment of the costs had been made by the Court;
  - (b) return the bill of costs together with his report thereon to the Court.

#### **72.6 Registrar to fix certain fees payable to conveyancing counsel, etc.**

- (1) Where the Court refers any matter to a conveyancing counsel appointed by the Court, the Registrar shall fix the fees payable to that counsel in connection to the work he has done on the referred matter.



- (2) An appeal from the decision of the Registrar under this rule shall lie to the Court, and the decision of the Court thereon shall be final.

### **72.7 Procedure on assessment.**

- (1) A party entitled to require any costs to be assessed must begin proceedings for the assessment of those costs by producing the requisite document and leaving a copy thereof at the Registry.
- (2) For the purposes of paragraph (1), the “**requisite document**” means the judgment, order or directions, as the case may be which establishes a party's entitlement to require costs to be assessed.
- (3) Subject to paragraph (4) where a party is entitled to require any costs to be assessed —
  - (a) by virtue of a judgment, direction or order given or made in proceedings in the Court; or
  - (b) where these rules entitle him to costs without an order, he must begin proceedings for the assessment of those costs within twelve weeks after the judgment, direction or order was entered, signed or otherwise perfected or, as the case may be, within twelve weeks after service of the notice of acceptance of an offer or payment into Court given by him under Part 35 or Part 36.
- (4) In relation to the assessment of costs pursuant to an order under the Legal Profession Act (*Ch. 64*), paragraph (3), shall have effect as if for the period of twelve weeks first mentioned in that paragraph there shall be substituted a reference to fourteen days.
- (5) A party who begins proceedings for assessment must at the same time file in the Registry —
  - (a) a bill of costs showing —
    - (i) the sum in which the Court is being asked to assess the costs; and
    - (ii) how such sum was calculated; and
  - (b) a statement containing the following particulars of each party to the proceedings —
    - (i) his name and the capacity in which he is a party, to the proceeding,

- (ii) his position on the record of the proceedings which gave rise to the assessment proceedings;
- (iii) if any costs to which the assessment proceedings relate are to be paid out of a fund, the nature of his interest in the fund; and
- (iv) if he appears in person, his address;
- (v) if he does not appear in person, the name or firm and business address of the attorney; and
- (vi) if the attorney referred to in subparagraph (v) is the agent of another, the name of firm and business address of his principal.

**72.8 Notification of time appointed for assessment.**

- (1) Subject to paragraph (2), where proceedings for assessment have been begun in accordance with rule 72.7, the party who initiated the proceedings for assessment shall give to the other a party entitled to be heard in the assessment proceedings, not less than seven days' notice of the day and time appointed for assessment.
- (2) A notice under this rule need not be given to any party who has not filed an acknowledgment of service or taken any part in the proceedings which gave rise to the assessment proceedings.
- (3) Paragraph (2) shall not apply where an order for the assessment of an attorney's bill of costs made under any statute at the instance of the attorney gave rise to the assessment proceedings.

**72.9 Delivery of bills, etc.**

- (1) The Registrar shall, as soon as practicable, after proceedings for assessment under rule 72.7 have commenced, give notice to the party whose costs are to be assessed, of the period within which the bill of costs to be assessed is to be sent to the Registrar.
- (2) A party whose costs are to be assessed must within seven working days after beginning the proceedings or, as the case may be, receiving notice under paragraph (1), send a copy of his bill of costs to every other party entitled to be heard in the proceedings, who has filed an acknowledgment of service or taken any part in the proceedings which gave rise to the assessment proceedings.

- (3) Paragraph (2) shall not apply to assessment proceedings in which an attorney's costs are to be assessed by virtue of an order made under any statute.

**72.10 Provisions as to bills of costs.**

- (1) The form of a bill of costs shall be specified by practice direction.
- (2) Before a bill of costs is filed for assessment, it must be indorsed with the name or firm and business address of the attorney whose bill it is.

**72.11 Provisions as to assessment proceedings.**

- (1) If any party entitled to be heard in any assessment proceedings does not attend within a reasonable time after the time appointed for the assessment, the Registrar, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the assessment.
- (2) The Registrar by whom any assessment proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

**72.12 Powers of assessing costs payable out of fund.**

- (1) Where any costs are to be paid out of a fund, the Registrar may —
  - (a) give directions as to the parties who are entitled to attend on the assessment of those costs; and
  - (b) disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.
- (2) Where the Court has directed that an attorney's bill of costs be assessed for the purpose of being paid out of a fund, the Registrar may, if he thinks fit, adjourn the assessment for a reasonable period and direct the attorney to send to any person having any interest in the fund, free of charge together with a letter —
  - (a) enclosing a copy of the bill of costs;
  - (b) giving notice that the enclosed bill has been referred to the Registrar for assessment;
  - (c) providing —
    - (i) the address of the office at which the assessment is proceeding;

- (ii) the time appointed by the Registrar at which the assessment will be continued; and
- (d) such other information, if any, as the Registrar may direct.

### **72.13 Assessment of costs.**

- (1) This rule applies to costs which by, or under these Rules, or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund, other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative.
- (2) Subject paragraph (3), costs to which this rule applies shall be assessed on a standard basis, and on an assessment on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being assessed.
- (3) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if —
  - (a) the costs are to be paid out of a fund; or
  - (b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be assessed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, and where the Court so orders or directs, rule 72.16(2) shall have effect in relation to the assessment in substitution for paragraph (2) of this rule.

### **72.14 Costs payable to an attorney by his own client.**

- (1) On the assessment of an attorney's bill to his own client, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.
- (2) For the purposes of paragraph (1) —
  - (a) all costs incurred with the express or implied approval of the client shall, subject to subparagraph (b), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount;

- (b) any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on an assessment of costs in a case to which rule 72.13(2) applies shall, unless the attorney expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.
- (3) In paragraph (2)(a) and (b), a reference to “client” shall be construed —
  - (a) if the client was at the material time incapable by reason of mental disorder within the meaning of the Mental Health Act (*Ch. 236*), of managing and administering his property and affairs and represented by a person acting as a litigation guardian, as references to that person acting, where necessary, with the authority of the authority having jurisdiction under that Act;
  - (b) if the client was at the material time, a minor and represented by a person acting as a litigation guardian, as references to that person.

**72.15 Costs payable to attorney where money recovered by or on behalf of minor, etc.**

- (1) This rule applies to —
  - (a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is a minor or incapable by reason of mental disorder within the meaning of the Mental Health Act (*Ch. 236*), of managing and administering his property and affairs or in which money paid into Court is accepted by or on behalf of such a person; and
  - (b) any proceedings under the Fatal Accidents Act (*Ch. 71*), in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the spouse of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Act or in which money paid into Court is accepted by him or on his behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is a minor.

- (2) The costs payable by a claimant to his attorney in proceedings described in paragraphs (1)(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be assessed.
- (3) No costs shall be payable to the attorney of a claimant in respect of those proceedings described in paragraphs (1)(a) or (b), except such amount of costs as may be certified in accordance with this rule on the assessment under rule 72.14 of the attorney's bill to that claimant.
- (4) On the assessment under rule 72.14 of an attorney's bill to a claimant who is his own client in proceedings to which this rule applies, the Registrar shall also assess any costs payable to that claimant in those proceedings and shall certify —
  - (a) the amount —
    - (i) allowed on the assessment under rule 72.14;
    - (ii) allowed on the assessment of any costs payable to that claimant in those proceedings; and
    - (ii) if any, by which the amount specified in subparagraph (a)(i) exceeds the amount specified in subparagraph (a)(ii); and
  - (b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is an infant or incapable, by reason of mental disorder within the meaning of the Mental Health Act (*Ch. 236*), of managing and administering his property and affairs or the spouse of the person whose death gave rise to the proceedings and any other party.
- (5) Nothing in the foregoing provisions of this rule shall prejudice an attorney's lien for costs.
- (6) This rule shall apply to —
  - (a) a counterclaim by or on behalf of a person who is a minor or incapable by reason of mental disorder within the meaning of the Mental Health Act (*Ch. 236*), of managing or administering his property and affairs and a counterclaim consisting of or including a claim under the Fatal Accidents Act (*Ch. 71*) by or on behalf of the spouse of the person whose death gave rise to the claim; and
  - (b) a claim made by or on behalf of a person who is a minor or incapable as aforesaid in an action by any other person for relief under the Merchant Shipping

Act (*Ch. 268*), and a claim consisting of or including a claim under the Fatal Accidents Act (*Ch. 71*), made by or on behalf of that spouse in such an action, as if for references to a claimant there were substituted references to a defendant.

**72.16 Costs payable to a trustee out of the trust fund, etc.**

- (1) This rule applies to every assessment of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.
- (2) On any assessment to which this rule applies, no costs shall be disallowed, except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

**72.17 Review in relation to detailed assessment of costs.**

- (1) Any party to any detailed assessment proceeding who is dissatisfied with —
  - (a) the allowance or disallowance in whole or in part of any item by the Registrar; or
  - (b) the amount allowed by him in respect of any item,may apply to a judge to review the Registrar's decision in respect of that item.
- (2) An application under this rule for review of the Registrar's decision must be made by interlocutory application notice to a judge accompanied by a brief skeleton argument setting out succinctly the matter or matters complained of and why the Registrar was in error.
- (3) An application under this rule for review of the Registrar's decision may not be made later than fourteen days after the decision complained of or such longer period as may be fixed by the Registrar or by the judge to whom the application for review has been made.
- (4) On review, the judge may make such order as he sees fit including assessing any item of costs or any disbursement or item of expense.

**72.18 Costs capping orders – general.**

- (1) A costs capping order is an order limiting the amount of future costs, including disbursements, which a party may recover pursuant to an order for costs subsequently made.
- (2) In this rule, “**future costs**” means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.
- (3) A cost capping order may be in respect of —
  - (a) the whole litigation; or
  - (b) any issues which are ordered to be tried separately.
- (4) The Court may at any stage of proceedings, make a costs capping order against all of any of the parties, if —
  - (a) it is in the interests of justice to do so;
  - (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
  - (c) it is not satisfied that the risk in subparagraph (b) can be adequately controlled by —
    - (i) case management directions or orders made under Part 26; and
    - (ii) detailed assessment of costs.
- (5) In considering whether to exercise its discretion under this rule, the Court will consider all the circumstances of the case, including —
  - (a) whether there is a substantial imbalance between the financial position of the parties;
  - (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
  - (c) the stage which have been incurred to date and the future costs.
- (6) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order.
- (7) No such variation to a costs capping order will be made unless —
  - (a) there has been a material and substantial change of circumstances since the date when the order was made; or
  - (b) there is some other compelling reason why a variation should be made.

### **72.19 Application for a costs capping order.**



- (1) An application for a costs capping order must be made on notice in accordance with Part 11.
- (2) The application must —
  - (a) set out —
    - (i) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and
    - (ii) why a costs capping order should be made; and
  - (b) be accompanied by an estimate of cost setting out —
    - (i) the costs and disbursements incurred by the applicant to date; and
    - (ii) the costs and disbursements which the applicant is likely to incur in the future conduct of the proceedings.
- (3) The Court may give directions for the determination of the application and such directions may —
  - (a) direct any party to the proceedings to —
    - (i) file a schedule of costs;
    - (ii) file written submissions on all or any part of the issues arising;
  - (b) fix the date and estimate the time of the hearing of the application;
  - (c) include any further directions as the Court sees fit.

#### **72.20 Application to vary a costs capping order.**

An application to vary a costs capping order must be made by application notice pursuant to Part 11.

#### **72.21 Basis of quantification.**

- (1) Where the Court has a discretion as to the amount of costs allowed to a party, the sum to be allowed —
  - (a) is the amount that the Court deems to be reasonable were the work to be carried out by an attorney of reasonable competence; and
  - (b) which appears to the Court to be fair both to the person paying and the person receiving such costs.
- (2) Where the Court has a discretion as to the amount of costs to be paid to an attorney by his client the sum allowed is —
  - (a) the amount that the Court deems to be reasonable; and
  - (b) which appears to be fair both to the attorney and the client.

- (3) In deciding what would be reasonable the Court must take into account all the circumstances, including —
  - (a) any order that has already been made;
  - (b) the care, speed and economy with which the case was prepared;
  - (c) the conduct of the parties before as well as during the proceedings;
  - (d) the degree of responsibility accepted by the attorney;
  - (e) the importance of the matter to the parties;
  - (f) the novelty, weight and complexity of the case;
  - (g) the time reasonably spent on the case; and
  - (h) in the case of costs charged by an attorney to his client —
    - (i) any agreement about what grade of attorney should carry out the work;
    - (ii) any agreement that may have been made as to the basis of charging; and
    - (iii) whether the attorney 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.

#### **72.22 Fixed costs.**

- (1) A party is entitled to the costs set out in column 3 of Table 1 in the *Second Schedule* in the circumstances set out in column 2 of that same Table.
- (2) The Court may however direct that some other amount of costs be allowed or assessed for the work covered by any item in Part 2 of the *Second Schedule*.
- (3) Where the Court so directs, the Court must assess such costs.

#### **72.23 Prescribed costs for liquidated damages claims.**

- (1) Where a party is entitled to costs in a claim for liquidated damages, those costs must be determined in accordance with the *Third Schedule* and paragraphs (2) to (4) of this rule.
- (2) In determining prescribed costs, the value of the claim is to be decided —
  - (a) in the case of a claimant, by the amount of liquidated damages claimed or ordered to be paid; or

- (b) in the case of a defendant by the amount of liquidated damages claimed by the claimant in his claim form.
- (3) The amount of costs for claims for liquidated damages to be paid is to be calculated in accordance with the percentages specified in column 3 of the Table in Part A of the *Third Schedule* against the appropriate value.
- (4) The Court may however —
  - (a) award a proportion only of the sum referred to in paragraph (3) of this rule having taken into account the matters set out in rule 71.6(4) and (5); and
  - (b) order a party to pay costs —
    - (i) from or to a certain date; or
    - (ii) relating only to a certain distinct part of the proceedings in which case it must specify the proportion 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 Part B of the *Third Schedule*;
  - (c) order costs to be assessed.

**72.24 Applications to determine value of claim for purpose of prescribed costs in liquidated damages claims.**

- (1) A party may apply to the Court at any time before trial to direct that the prescribed costs be calculated on the basis of some higher or lower value than the liquidated damages claimed or that the said costs be assessed.
- (2) The Court may make an order under paragraph (1), only where it is satisfied that the costs as calculated in accordance with rule 72.23, are likely to be either —
  - (a) excessive; or
  - (b) substantially inadequate, taking into account the nature and circumstances of the particular case.
- (3) where an application is made for prescribed costs to be calculated on the basis of a higher value or assessed —
  - (a) the Court may not make an order unless there has been filed a document recording the express consent of the litigating party to the application and to any order made as a consequence of the application; and
  - (b) the consent under subparagraph (a) is in a separate document which —
    - (i) is signed by the litigating party;

- (ii) states the attorney's estimate of what the prescribed or assessed costs appropriate to the proceedings would be;
  - (iii) gives an estimate of the total costs of the proceedings as between the attorney and client; and
  - (iv) sets out the basis of that estimate, supported by a draft bill, including the amount of any hourly charge.
- (4) The written consent of the client must not be disclosed to the other party.
- (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 prescribed costs unless the Court is satisfied that there has been a change of circumstances which became known only after the order was made.

**72.25 What is included in prescribed costs in liquidated damages claims.**

- (1) Prescribed costs in liquidated damages claims include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in —
  - (a) instructing any expert;
  - (b) considering and disclosing any report made by the expert;
  - (c) arranging the expert witness' attendance at trial; and
  - (d) attendance at a case management conference and a pre-trial review.
- (2) Prescribed costs exclude —
  - (a) expert's fees for preparing a report and attending any conference, hearing or trial;
  - (b) costs incurred in enforcing any order, which are generally fixed in accordance with rule 72.22 but may, in certain cases, be assessed in accordance with rule 72.13;
  - (c) the cost of obtaining a daily transcript of the evidence where the trial judge certifies this as a reasonable disbursement in all the circumstances of the case; and
  - (d) the making or opposing of any interlocutory application except at a case management conference or pre-trial review.

## **72.26 Assessed costs – procedural applications.**

- (1) On determining any interlocutory 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 which 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 into account all the circumstances including the factors set out in rule 71.11 but where the application is —
  - (a) an application to amend a statement of case;
  - (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 for relief under rule 26.8; or
  - (d) one that could reasonably have been made at a case management conference or pre-trial review;
  - (e) 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.
- (5) A party seeking assessed costs must on making any such interlocutory application supply to the Court and to all other parties a brief statement showing —
  - (a) the attorney's fees incurred or estimated;
  - (b) how that party's attorney's costs are calculated; and
  - (c) the disbursements incurred or estimated.
- (6) The statement under paragraph (5) must comply with any relevant practice direction.”.

**24. Amendment of First Schedule to the principal Rules.**

The First Schedule to the principal Rules is amended by the deletion of the words, “**FORM G20: Witness Summons Form**” and the substitution of the words, “**FORM G21: Witness Summons Form**”.

**25. Consequential amendments.**

Part III of the Probate and Administration of Estates Rules, 2011 (*S.I. 50 No cf 2011*) is hereby revoked.

**Made this 27<sup>th</sup> day of March, 2023.**

**Signed  
IAN WINDER  
Chairman  
RULES COMMITTEE**