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**No. 54 of 1982****COURT OF PETTY SESSIONS (CIVIL JURISDICTION)  
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**Court of Petty Sessions (Civil Jurisdiction)  
Ordinance 1982**

**No. 54 of 1982**

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act* 1910.

Dated 25 June 1982.

ZELMAN COWEN  
Governor-General

By His Excellency's Command,

P. DURACK  
Attorney-General

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An Ordinance relating to the civil jurisdiction of the Court of Petty Sessions

**PART I—PRELIMINARY**

**Short title**

1. This Ordinance may be cited as the *Court of Petty Sessions (Civil Jurisdiction) Ordinance* 1982.<sup>1</sup>

**Commencement**

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice in the *Gazette*.

**Interpretation**

3. (1) In this Ordinance, unless the contrary intention appears—  
“clerk” means the Clerk or a Deputy Clerk of the Court;

“copy”, in relation to a document to be served in proceedings, means—

- (a) if the document has been filed—a true copy sealed or stamped with the seal of the court; and
- (b) in any other case—a true copy;

“costs”, in relation to proceedings, means costs between party and party of and incidental to the proceedings;

“court” means the Court of Petty Sessions;

“cross-claim” means a claim (whether by way of counterclaim, cross-action, set-off or otherwise) pleaded in a notice of grounds of defence filed by a defendant in proceedings;

“defendant” means the person against whom proceedings have been instituted;

“examiner” means a person appointed by the court to conduct an examination under section 201 in pursuance of an order under sub-section 201 (1);

“file”, in relation to a document in proceedings, means lodge in the office of the court for inclusion in the record of the court;

“insurer” means a person who gives a bond referred to in section 83;

“originating process” means—

- (a) a claim; or
- (b) an application referred to in section 20;

“person named”, in relation to a summons issued under section 185, means the person to whom the summons is addressed;

“person under disability” means a person who has not attained full age or a person who is of unsound mind or incapable;

“plaintiff” means the person by whom proceedings have been instituted;

“pleading” means a claim, notice of grounds of defence, reply or third or subsequent party notice filed in proceedings;

“proceedings” means proceedings in the court;

“summons for production” means an order in writing requiring the person named to attend as directed by the order and to produce a document or thing for the purpose of evidence;

“summons to give evidence” means an order in writing requiring the person named to attend as directed by the order for the purpose of giving evidence.

(2) In this Ordinance—

- (a) a reference to the plaintiff in proceedings shall, in the case of proceedings in which there are 2 or more plaintiffs, be read, unless the contrary intention appears, as a reference to any or all of those plaintiffs, as the case requires; and
- (b) a reference to the defendant in proceedings shall, in the case of proceedings in which there are 2 or more defendants, be read as a reference to any or all of those defendants, as the case requires.

(3) In this Ordinance—

- (a) a reference to the plaintiff in proceedings shall, in relation to proceedings instituted by filing an application referred to in section 20, be read as a reference to the applicant in those proceedings; and
- (b) a reference to the defendant in proceedings shall, in relation to proceedings referred to in paragraph (a), be read as a reference to the respondent in those proceedings.

(4) In this Ordinance, a reference to the solicitor for a party to proceedings shall, in relation to a party whose solicitor has another solicitor acting as his agent for the purpose of the proceedings, be read as including a reference to that other solicitor.

(5) In this Ordinance, a reference to a form by number shall be read as a reference to the form so numbered in the Schedule.

### **Application**

4. This Ordinance applies in relation to all proceedings instituted in the court after the commencement of this Ordinance, other than—

- (a) proceedings under the *Small Claims Ordinance* 1974;
- (b) proceedings under the *Child Welfare Ordinance* 1957;
- (c) proceedings under the *Workmen's Compensation Ordinance* 1951;
- (d) proceedings under the *Maintenance Ordinance* 1968; and
- (e) proceedings on an information in respect of the alleged commission of an offence against a law in force in the Territory.

## **PART II—JURISDICTION**

### **Personal action at law—amount or value**

5. (1) Subject to this Ordinance, the court has jurisdiction to hear and determine any personal action at law where the amount claimed does not exceed \$10,000, including such an action where the amount claimed is the amount due on a balance of account, after an admitted set-off or otherwise.

(2) Without limiting the generality of sub-section (1), a reference in that sub-section to a personal action at law shall be read as including a reference to an action for the detention of goods, and in relation to such an action, the reference in that sub-section to the amount claimed shall be read as a reference to the amount claimed for the value of the goods together with the amount (if any) claimed for damages for the detention of the goods.

(3) Nothing in sub-section (1) limits the jurisdiction of the court in a case where, under any other law in force in the Territory, money may be recovered by action in the court irrespective of the amount.

(4) The jurisdiction referred to in sub-section (1) is in addition to any jurisdiction that the court has by virtue of any other law in force in the Territory.

**Power of court to grant relief**

**6. (1)** In any proceedings that the court has jurisdiction to hear and determine—

- (a) the court may grant such relief, redress or remedy as the Supreme Court has power to grant in an action of a like nature in that court, and for that purpose the court may make such orders as the Supreme Court has power to make in the like circumstances; and
- (b) the court shall give effect to any ground of defence or cross-claim, whether equitable or legal, in the same manner and to the same extent as the Supreme Court would do in the like circumstances.

**(2)** For the purpose of the exercise by the court of its power under sub-section (1) in any proceedings—

- (a) a magistrate constituting the court shall, in addition to any other powers conferred on him under this Ordinance, have all the powers and authority of a Judge of the Supreme Court in an action of a like nature in that court; and
- (b) the clerk, bailiff or other appropriate officer of the court shall, in relation to those proceedings, discharge any duties that a corresponding officer of the Supreme Court would discharge in relation to such an action in accordance with the practice and procedure of that court.

**(3)** In discharging a duty referred to in sub-section (2), the clerk, a bailiff or other officer of the court, as the case requires, shall comply with this Ordinance and any order of the court.

**Rules of equity to prevail**

**7.** In any proceedings, where there is any conflict or variance between the rules of equity and the rules of common law relating to the same matter, the rules of equity shall prevail.

**Nuisance**

**8. (1)** Subject to this Ordinance—

- (a) the court has the same jurisdiction as the Supreme Court to hear and determine a civil action for nuisance; and
- (b) in proceedings relating to such a cause of action, the court may grant the same relief as the Supreme Court may grant in proceedings of a like nature instituted in the Supreme Court.

**(2)** A person shall not contravene or fail to comply with an order made by the court in proceedings referred to in sub-section (1).

**Penalty:** \$500.

**Cause of action arising, or defendant situated, outside Territory**

9. The court has jurisdiction to hear and determine proceedings—

- (a) notwithstanding that part of the cause of action to which the proceedings relate arose outside the Territory, if a material part of that cause of action arose within the Territory;
- (b) notwithstanding that the whole of the cause of action to which the proceedings relate arose outside the Territory, if the defendant was resident within the Territory when the claim was served on him; and
- (c) notwithstanding that the defendant is not within the Territory, if—
  - (i) a material part of the cause of action to which the proceedings relate arose within the Territory; and
  - (ii) the defendant was within Australia or an external Territory when the claim was served on him.

**Proceedings affecting title to land**

10. (1) Subject to this section, the court does not have jurisdiction to hear and determine proceedings in which the title to land is genuinely in question.

(2) The jurisdiction of the court to hear and determine proceedings is not affected by reason only that the title to land incidentally comes in question in the proceedings.

(3) In proceedings referred to in sub-section (2), a judgment is not evidence of title to land between the parties to the proceedings or their privies for any purpose whatsoever.

**PART III—INSTITUTION OF PROCEEDINGS**

**Lodgment and filing of originating process**

11. (1) Originating process shall be lodged with the clerk in duplicate together with such number of copies as is equal to the number of defendants to be served.

(2) If the clerk is satisfied that originating process lodged in accordance with sub-section (1) complies with this Ordinance, he shall file the original of that process.

**Numbering of proceedings**

12. Where proceedings are instituted, the clerk shall cause a distinguishing number to be allotted to the proceedings and shall endorse that number on the original of the originating process filed by him and on each copy of that process sealed by him.

**Contents of originating process**

13. Originating process shall specify—

- (a) the full name and the full address of the residence or place of business of the plaintiff;

- (b) the full name, the full address of the residence or place of business, and the occupation, of the defendant insofar as those particulars are known to the plaintiff;
- (c) if the defendant is a company—the address of the registered office of the company;
- (d) if the full name of the defendant is not, but the sex of the defendant is, known to the plaintiff—the sex of the defendant;
- (e) the address for service of the plaintiff;
- (f) where the plaintiff has a solicitor acting for him in the proceedings—the name, address and telephone number of the solicitor; and
- (g) where the plaintiff's solicitor has another solicitor acting as his agent for the purpose of the proceedings—the name, address and telephone number of that other solicitor.

### **Signing of originating process**

14. Originating process shall be signed by the plaintiff, by his solicitor or by his agent authorized in writing for the purpose.

### **Proceedings by claim**

15. Subject to section 20 and Part XVII, proceedings shall be instituted by filing a claim for issue by the clerk.

### **Form of claim**

16. (1) A claim shall be—
- (a) in the case of proceedings to recover a debt or liquidated damages—a special claim or an ordinary claim; or
  - (b) in any other case—an ordinary claim.
- (2) An ordinary claim shall be in accordance with Form 2.
- (3) A special claim shall be in accordance with Form 3.
- (4) In addition to the particulars required under section 13 to be specified in a claim, a claim shall specify—
- (a) each cause of action in relation to which the proceedings are instituted;
  - (b) the amount of money or the other relief claimed in respect of each such cause of action;
  - (c) the prescribed costs;
  - (d) where the plaintiff institutes the proceedings in a representative capacity, or the proceedings are instituted against the defendant in a representative capacity—that capacity;
  - (e) where the plaintiff institutes the proceedings as assignee of a debt or other chose in action—the fact that he is such an assignee and the name, address and occupation of the assignor; and
  - (f) if the proceedings are in respect of the detention of goods—a description and the value of the goods.

### **More than one cause of action**

17. (1) A claim may specify more than one cause of action if those causes of action are by and against the same parties, but such a claim shall not be for a total amount in excess of the maximum amount for which the court has jurisdiction under this Ordinance (whether the total amount is calculated on a balance of account, after an admitted set-off, on an abandonment or otherwise), and this sub-section applies irrespective of any different capacities in which a party sues or is sued.

(2) Where a claim specifies 2 or more causes of action, those causes of action shall, as far as practicable, be stated separately and distinctly.

(3) Where any joinder of causes of action may complicate or delay the hearing of proceedings or is otherwise inconvenient, the court may order separate hearings or make such other order as the court thinks just.

### **Division of cause of action**

18. (1) A cause of action shall not be divided for the purpose of instituting 2 or more proceedings in relation to that cause of action.

(2) Where—

(a) proceedings have been instituted for the recovery of an amount that is less than the amount for which the plaintiff has a cause of action against the defendant (not being proceedings in which the amount by which the second-mentioned amount exceeds the first-mentioned amount is abandoned in pursuance of section 19); and

(b) final judgment has been given or entered in respect of the claim, the defendant is entitled to have judgment entered for him in any other proceedings instituted in any court in relation to that cause of action.

(3) Notwithstanding sub-sections (1) and (2) but otherwise subject to this Ordinance, where, in relation to a cause of action that a person has against another person, that other person has given 2 or more bills of exchange, promissory notes, bonds or other securities, the first-mentioned person may institute proceedings against that other person in respect of each of those bills of exchange, promissory notes, bonds or other securities as if each of them constituted a separate cause of action.

### **Abandonment of excess**

19. (1) A person who has a cause of action against another person for an amount exceeding \$10,000 may institute proceedings in relation to that cause of action in which he abandons the excess over \$10,000 by stating the abandonment in his claim.

(2) In proceedings referred to in sub-section (1)—

(a) the plaintiff may not recover an amount exceeding \$10,000; and

(b) final judgment in the proceedings shall operate in full discharge of all demands in relation to the cause of action.

(3) Where final judgment is given or entered in proceedings referred to in sub-section (1), the entry of the judgment in the records of the court shall record the abandonment.

### **Proceedings by application**

**20. (1)** This section has effect in relation to a matter arising under a law in force in the Territory (other than this Ordinance) subject to the provisions of that law.

(2) Where, by any law in force in the Territory (other than this Ordinance), jurisdiction is conferred on the court in respect of a matter arising under that law (not being a matter relating solely to the recovery of money), proceedings in respect of that matter shall be instituted by filing an application.

(3) An application shall be in accordance with Form 4.

(4) In addition to the particulars required under section 13 to be specified in an application, an application shall—

- (a) specify the place, date and time for the hearing of the application fixed by the clerk at the time of lodgment;
- (b) state concisely the nature of the order sought by the applicant or particulars of the decision appealed against, as the case may be;
- (c) state concisely the grounds on which the order is sought, or the grounds of the appeal, as the case may be, or refer to the affidavit in which those grounds are set out; and
- (d) where it is not intended to serve the application on any person—include a statement to that effect.

(5) An applicant shall, unless the court otherwise orders, serve a copy of the application, together with a copy of any supporting affidavit, on each respondent to the application not later than 14 days before the date fixed for the hearing of the application.

(6) Subject to sub-section (5), a party to an application who intends to rely on an affidavit at the hearing of the application shall file the affidavit, and shall serve a copy of the affidavit on each other party to the proceedings (except a party on whom service of a copy of the application was not required in pursuance of an order under sub-section (5))—

- (a) in sufficient time before the hearing to enable that other party to make and file, and serve a copy of, an affidavit in reply; or
- (b) within such time as the court orders.

(7) A respondent to an application shall—

- (a) in the first affidavit filed by him, specify an address for service; or
- (b) if he does not file an affidavit—file, and serve on the applicant a copy of, a notice of intention to appear in accordance with Form 5.



(8) On hearing an application, the court may make or refuse to make the order sought by the applicant, and where the court makes such an order, it may make the order—

(a) absolute in the first instance; or

(b) to become absolute at a specified time unless before that time, upon cause being shown, the court otherwise orders,

and the court may make such other orders and give such directions as it thinks just.

(9) Each party to proceedings on an application shall, unless the court otherwise orders, bear his own costs in the proceedings, and where the court makes an order for the payment of costs in such proceedings, the court shall direct the scale on which those costs are to be paid by any party.

## **PART IV—SERVICE**

### **Service of documents generally**

21. Subject to this Ordinance, a document in proceedings may be served—

(a) by delivering a copy of the document to the party to be served personally; or

(b) by leaving a copy of the document at the last known place of residence or business of the party to be served with a person apparently resident or employed at that place and apparently over the age of 16 years.

### **Service of originating process by post**

22. (1) Subject to sub-sections (3) and (4), on the plaintiff in proceedings completing an application for postal service in accordance with the form in Form 2 or 3, as the case requires, the clerk may serve originating process by sending a copy of the process by post addressed to the defendant at the address of the defendant specified in the process.

(2) Where originating process is served in accordance with sub-section (1), the clerk shall complete a certificate of postal service of the process in accordance with the form in Form 2 or 3, as the case requires.

(3) Originating process shall not be served in accordance with sub-section (1) unless the address of the defendant specified in the process is an address within the Territory.

(4) In relation to an application referred to in section 20, this section has effect subject to the provisions of the law under which the matter to which the application relates arose.

### **Substituted service**

23. If it appears to the court that it is not reasonably practicable to serve a document in proceedings in accordance with section 21 or 22, the court may make an order for substituted or other service of the document (whether by notice by advertisement or otherwise) as the court thinks just.

**Service on solicitor**

**24. (1)** Originating process in proceedings may be served by the solicitor acting for the defendant endorsing on a copy of the process a statement that he accepts service of the process on behalf of the defendant.

**(2)** Where a party to proceedings has a solicitor on the record acting for him in the proceedings, a document in the proceedings may be served on that party—

- (a) by delivering a copy of the document to the solicitor personally;
- (b) by leaving a copy of the document at the office of the solicitor;
- (c) by sending a copy of the document by post addressed to the solicitor at his office; or
- (d) where the solicitor has an exchange box at the Canberra Document Exchange—by leaving a copy of the document, in an envelope addressed to the solicitor, in that box.

**Service at address for service**

**25. (1)** Where the party to proceedings has an address for service, a document in proceedings may be served on that party—

- (a) by leaving a copy of the document at that address; or
- (b) by sending a copy of the document by post addressed to that party at that address.

**(2)** Where a document is served by the clerk by post in accordance with sub-section (1), the clerk shall complete a certificate of postal service in accordance with Form 6.

**Address for service**

**26. (1)** A party to proceedings shall, in the first document filed by him, specify an address for service.

**(2)** Subject to sub-section (3), the address for service of a party to proceedings shall be the address of a place within the City Area at which documents in the proceedings may, during ordinary business hours, be left for him or to which documents in the proceedings may be posted for him.

**(3)** Where a party to proceedings has a solicitor on the record acting for him in the proceedings, being a solicitor who has an office within the City Area, the address for service of that party is the office of that solicitor.

**(4)** Subject to this section, a party to proceedings may change his address for service by filing a notice of change of address for service in accordance with Form 7 and serving a copy of that notice on each other party to the proceedings.

**Time of service**

**27. (1)** Where a document in proceedings is served in the manner referred to in paragraphs 21 (b), 24 (2) (b) or 25 (1) (a), service shall be deemed to

have been effected on the date on which the copy was left in accordance with that paragraph.

(2) Where a document in proceedings is served by post in accordance with this Part, service shall be deemed to have been effected 2 days after the date of posting unless the contrary is proved.

(3) Where originating process in proceedings is served in accordance with sub-section 24 (1), service shall be deemed to have been effected on the date on which the endorsement is made.

(4) Where a document in proceedings is served in the manner referred to in paragraph 24 (2) (d), service shall be deemed to have been effected on the day after the date on which the document was left in accordance with that paragraph.

### **Proof of service of documents**

28. Service of a document in proceedings may be proved by the oath of the person who served the document, by affidavit, by production of the completed certificate of postal service or otherwise.

### **Doubtful service**

29. (1) Where—

- (a) a document in proceedings has been served in a manner other than that referred to in paragraph 21 (a) or 24 (2) (a); and
- (b) the court is satisfied that—
  - (i) the document did not come to the knowledge of the party served within a reasonable time; or
  - (ii) doubt exists whether the document came to the knowledge of the party served within a reasonable time,

the court, on application by the clerk or a party to the proceedings or of its own motion, shall not allow any fresh step in the proceedings to be taken against the party served, and the court shall—

- (c) strike out or adjourn the proceedings; or
- (d) order that such a document be re-served on that party in such manner (if any) as is specified in the order,

as the court thinks just, and the court may make such other orders and give such directions as it thinks just.

(2) Where the court is satisfied that—

- (a) it has been impracticable for any reason to effect service of any document in proceedings on a party; and
- (b) reasonable steps have been taken for the purpose of bringing the document to the notice of the party,

the court may, by order, direct that for the purpose of the proceedings service of that document shall be taken to have been effected on that party on a specified date.

**No need for production of original document**

30. When a copy of a document in proceedings is served on a person, it is not necessary for the original of that document to be produced to that person.

**Waiver of objection to service**

31. Where a party to proceedings files a document in reply, he shall be taken to have waived any objection he might otherwise have made as regards service on him of the document in reply to which the first-mentioned document was filed unless he files, with the first-mentioned document, a notice of objection in accordance with Form 8 and forthwith serves a copy of that notice on the party who filed the second-mentioned document.

**PART V—CESSATION AND RENEWAL OF CLAIM****Cessation of original claim**

32. A claim ceases to be in force 12 months after the date on which it was filed unless, within that period of 12 months, the claim has been served or renewed.

**Renewal of claim**

33. (1) The plaintiff in proceedings may, at any time while his claim remains in force, apply to the court or the clerk for the renewal or further renewal of the claim.

(2) On an application made under sub-section (1), the court or the clerk may, if satisfied that reasonable steps have been taken in an attempt to serve the claim to which the application relates or that there are other circumstances that justify doing so, renew or further renew the claim for any period not exceeding 6 months.

**Cessation of renewed claim**

34. Where a claim has been renewed in pursuance of section 33, the claim ceases to be in force at the expiration of the period for which it was renewed unless, within that period, it has been served or further renewed.

**PART VI—DEFENCE, JUDGMENT BY DEFAULT, CONFESSION OR AGREEMENT, AND SPECIAL DEFENCES*****Division 1—Notice of grounds of defence*****Filing of notice of grounds of defence**

35. (1) A defendant in proceedings may, at any time before judgment (whether final or interlocutory) is entered in the proceedings, file a notice of grounds of defence.

(2) A defendant in proceedings shall not, by reason only of his having filed a notice of grounds of defence, be taken to have waived any objection he may

have on the ground of want of jurisdiction in the court to hear and determine the proceedings.

**Form of notice of grounds of defence**

**36. (1)** A notice of grounds of defence shall be in accordance with Form 9.

**(2)** A notice of grounds of defence shall be signed by the defendant, by his solicitor or by his agent authorized in writing for the purpose.

**Service of notice of grounds of defence**

**37.** A notice of grounds of defence shall be served on the plaintiff by the clerk.

**Reliance upon defence not disclosed**

**38. (1)** A defendant in proceedings is not, except with the consent of the plaintiff or with the leave of the court, entitled, at the hearing of the proceedings, to rely on a ground of defence not specified in a notice of grounds of defence filed by him.

**(2)** Leave for the purpose of sub-section (1) may be granted on such terms, if any, as the court thinks just.

***Division 2—Judgment in default of defence***

**Interlocutory judgment by default on ordinary claim**

**39. (1)** Where, in proceedings instituted by the filing of an ordinary claim—

- (a) a period of 21 days has expired after the date of service of the claim;
- (b) the plaintiff has filed an affidavit of service of the claim or a certificate of postal service of the claim has been filed;
- (c) the defendant has not filed a notice of grounds of defence; and
- (d) judgment has not been given or entered in the proceedings,

the clerk shall, on the application of the plaintiff in accordance with Form 10 made within 12 months after the expiration of the period referred to in paragraph (a), enter interlocutory judgment in accordance with Form 11 for the plaintiff against the defendant.

**(2)** Subject to sub-section (3), where interlocutory judgment has been entered in pursuance of sub-section (1) against a defendant in proceedings—

- (a) the defendant shall be deemed to have admitted liability to the plaintiff in respect of the cause of action to which the proceedings relate; and
- (b) the proceedings shall be continued in relation to that defendant only for the purpose of the assessment of the amount to be recovered by the plaintiff.

(3) Interlocutory judgment entered in proceedings in pursuance of sub-section (1)—

- (a) may, on sufficient cause being shown, be set aside by the court at any time before final judgment is entered, on such terms, if any, as the court thinks just; and
- (b) shall be deemed to have been set aside if a notice of grounds of defence is filed by the defendant.

(4) Where interlocutory judgment in proceedings is set aside, or is deemed to have been set aside, in pursuance of sub-section (3)—

- (a) sub-section (2) ceases to have effect in relation to the proceedings; and
- (b) the court may at any time make such orders as it thinks just as to—
  - (i) the continuance of the proceedings; and
  - (ii) the costs incurred by any party by the entering of the judgment, by the judgment having been set aside or being deemed to have been set aside or by any adjournment of the hearing of the proceedings,

and the court may give such directions as to the subsequent conduct of the proceedings as it thinks just.

#### **Assessment of recoverable amount following interlocutory judgment**

**40. (1)** Subject to sub-section (2), where interlocutory judgment in proceedings has been entered against the defendant in pursuance of sub-section 39 (1) and a certificate of readiness for hearing has been filed in accordance with sub-section 176 (1), the clerk shall—

- (a) fix a date, time and place for the hearing in accordance with sub-section 176 (2) for the purpose of the assessment of the amount to be recovered by the plaintiff;
- (b) notify the plaintiff in accordance with Form 12 of the date, time and place so fixed; and
- (c) not later than 7 days before the date so fixed, send to the defendant, by post addressed to him at the best address known to the clerk, notice in accordance with Form 13 of the interlocutory judgment and of the date, time and place so fixed.

(2) At a hearing referred to in paragraph (1) (a) it is not necessary for the plaintiff in the proceedings to prove compliance by the clerk with the requirement of paragraph (1) (c).

(3) Where—

- (a) proceedings have been instituted in relation to more than one cause of action or against more than one defendant;
- (b) interlocutory judgment has been entered in pursuance of sub-section 39 (1) against the defendant in respect of one or more but less than all of those causes of action, or against one or more but less than all of those defendants, as the case may be; and

- (c) the proceedings are continuing with respect to the other causes of action, or against the other defendants, as the case may be,

the hearing for the purpose of the assessment of the amount to be recovered by the plaintiff in pursuance of the interlocutory judgment shall, unless the court otherwise orders, take place with the hearing of the proceedings with respect to those other causes of action, or against those other defendants, as the case requires.

### **Judgment by default on special claim**

**41.** Where, in proceedings instituted by the filing of a special claim

- (a) a period of 21 days has expired after the date of service of the claim;
- (b) the plaintiff has filed an affidavit of service of the claim or a certificate of postal service of the claim has been filed;
- (c) the defendant has not filed a notice of grounds of defence; and
- (d) judgment has not been given or entered in the proceedings,

the clerk shall, on the application of the plaintiff in accordance with Form 14 made within 12 months after the expiration of the period referred to in paragraph (a), enter final judgment in accordance with Form 15 for the plaintiff against the defendant for the amount then claimed to be owing and costs as prescribed.

### ***Division 3—Judgment by confession***

#### **Judgment by confession**

**42. (1)** At any time before final judgment has been entered in proceedings, the defendant may file a statement in accordance with Form 16 confessing to the whole or any part of the amount claimed by the plaintiff.

**(2)** A statement referred to in sub-section (1) shall be signed by the defendant or on his behalf by his solicitor or counsel, and such a statement signed by the defendant has no force or effect unless the execution of the statement is witnessed by the clerk, a solicitor or a justice of the peace.

**(3)** Where a statement under sub-section (1) is filed in proceedings, the clerk shall, as soon as practicable, serve on the plaintiff notice in accordance with Form 17 of the filing of the statement and of the amount to which the defendant has confessed.

**(4)** Where, in proceedings in which the plaintiff does not claim damages for personal injuries, the defendant files a statement under sub-section (1) in which he confesses to the whole of the amount claimed by the plaintiff, the clerk shall, as soon as practicable after giving the notice referred to in sub-section (3), enter judgment for the plaintiff against the defendant for the amount claimed.

**(5)** Where, in proceedings in which the plaintiff has claimed damages for personal injuries—

- (a) the defendant has filed a statement under sub-section (1) in which he confesses to the whole of the amount claimed by the plaintiff; and

(b) the plaintiff has not, within 14 days after the date on which notice of the filing of the statement was served on him in pursuance of sub-section (3)—

- (i) applied to the court for leave to amend his claim by increasing the amount of damages claimed; or
- (ii) applied for leave to have the proceedings removed into the Supreme Court,

the clerk shall enter judgment for the plaintiff against the defendant for the amount claimed.

(6) Where, in a statement under sub-section (1) filed in proceedings, the defendant confesses to a part only of the amount claimed by the plaintiff and the plaintiff does not, within 14 days after the date on which notice of the filing of the statement was served on him in pursuance of sub-section (3), file a notice in accordance with Form 18 refusing to accept the amount specified in the statement in full satisfaction of his claim, the clerk shall enter judgment for the plaintiff against the defendant for the amount specified in the statement.

(7) As soon as practicable after a notice refusing to accept an amount is filed by a plaintiff under sub-section (6), the clerk shall serve a copy of the notice on the defendant.

(8) Where judgment is entered for a plaintiff against a defendant in pursuance of this section, there shall be added to the judgment debt—

- (a) if the judgment is entered within 21 days after the date of service of the claim—an amount equal to the costs of the plaintiff in the preparation, issuing and service of the claim; or
- (b) in any other case—an amount equal to—
  - (i) the costs of the plaintiff in the preparation, issuing and service of the claim; or
  - (ii) the costs reasonably incurred by the plaintiff up to the date on which judgment is entered and allowed on taxation of the plaintiff's bill of costs,

whichever the plaintiff requires.

(9) A judgment entered in proceedings in pursuance of this section shall operate in full discharge of any other liability of the defendant in relation to the cause or causes of action with respect to which the statement was filed under sub-section (1).

(10) In this section, a reference to the plaintiff in proceedings shall, in the case of proceedings in which there are 2 or more plaintiffs, be read as a reference to all of those plaintiffs.



**Division 4—Judgment by agreement**

**Judgment by agreement**

**43. (1)** At any time before final judgment has been given or entered in proceedings—

(a) where a party has been joined otherwise than as a plaintiff or defendant—

(i) all the parties; or

(ii) the plaintiff and the defendant; or

(b) where a party has not been so joined—the plaintiff and the defendant, may enter into an agreement in accordance with Form 19 as to the judgment to be entered in the proceedings as between the parties to the agreement and as to the terms and conditions (if any) on which the judgment is to be satisfied.

(2) An agreement under sub-section (1) shall be signed by each party to the agreement or on his behalf by his solicitor or counsel, and such an agreement signed by a party has no force or effect unless the execution of the agreement by that party is witnessed by the clerk, a solicitor or a justice of the peace.

(3) Where an agreement under sub-section (1) is filed before final judgment is given or entered in proceedings, the clerk shall enter judgment in the proceedings in accordance with the agreement.

(4) Where—

(a) the clerk enters judgment in proceedings in pursuance of sub-section (3);

(b) a judgment debt arises by virtue of the judgment; and

(c) the agreement to which the judgment relates specifies the instalments by which and the times within which the judgment debt or part of that debt is to be paid,

the clerk shall order that the judgment debt or that part of the judgment debt be paid by those instalments and within those times, and where the clerk makes an order under this sub-section, section 229 applies in relation to that order as if it were an order of the court made under that section.

(5) Where judgment is entered for a plaintiff against a defendant in pursuance of this section, there shall be added to the judgment debt—

(a) if the judgment is entered within 21 days after the date of service of the claim—an amount equal to the costs of the plaintiff in the preparation, issuing and service of the claim; or

(b) in any case—an amount equal to—

(i) the costs of the plaintiff in the preparation, issuing and service of the claim; or

(ii) the costs reasonably incurred by the plaintiff up to the date on which judgment is entered and allowed on taxation of the plaintiff's bill of costs,

whichever the plaintiff requires.

(6) Where judgment has been entered in proceedings in pursuance of sub-section (3), the court may, on the application of any party to the proceedings who was not a party to the agreement and on sufficient cause being shown, set aside the agreement on such terms as the court thinks just.

(7) Subject to sub-section (6), a judgment entered in proceedings in pursuance of sub-section (3) shall, as between the parties to the agreement to which the judgment relates, operate in full discharge of any other liability of any of those parties in relation to the cause or causes of action with respect to which those parties entered into the agreement.

### ***Division 5—Special defences***

#### **Defence of tender before action**

44. A defendant in proceedings is not entitled to reply upon a defence of tender before action unless he has paid into court the amount alleged to have been tendered.

#### **Defence of set-off**

45. A defendant in proceedings may, in his notice of grounds of defence, include, as a defence by way of set-off to the whole or part of the plaintiff's claim, an amount (whether ascertained or not) that he alleges is due to him by the plaintiff, whether or not the defendant also pleads a cross-claim in respect of that amount.

#### **Cross-claim**

46. (1) A defendant in proceedings may, in his notice of grounds of defence, plead a cross-claim founded on any cause of action in respect of which he might have instituted proceedings in the court against the plaintiff, being a cross-claim for an amount that does not exceed the maximum amount for which the court has jurisdiction under this Ordinance, whether the amount of the cross-claim is calculated on a balance of account, after an admitted set-off or otherwise.

(2) A notice of grounds of defence in which a cross-claim is pleaded shall include such particulars in respect of the cause of action on which the cross-claim is founded as would be required to be included in a claim in respect of that cause of action.

(3) A defendant in proceedings may plead more than one cause of action against the plaintiff by way of cross-claim, but a cross-claim shall not be for a total amount in excess of the maximum amount for which the court has jurisdiction under this Ordinance (whether the total amount is calculated on a balance of account, after an admitted set-off, on an abandonment or otherwise).

### **Abandonment of excess of cross-claim**

**47. (1)** A defendant in proceedings who has a cause of action against the plaintiff for an amount exceeding \$10,000 may plead a cross-claim founded on that cause of action in which he abandons the excess over \$10,000 by stating the abandonment in his notice of grounds of defence.

**(2)** In proceedings on a cross-claim referred to in sub-section (1)—

- (a)** the defendant may not recover an amount exceeding \$10,000; and
- (b)** final judgment in those proceedings shall operate in full discharge of all demands in relation to the cause of action.

**(3)** Where final judgment is given or entered in proceedings on a cross-claim referred to in sub-section (1), the entry of the judgment in the records of the court shall record the abandonment.

### **Proceedings on cross-claim**

**48. (1)** Subject to this Ordinance, proceedings on a cross-claim shall be conducted, heard and determined, as far as practicable, in the same manner as proceedings instituted by the filing of a claim.

**(2)** Without limiting the generality of sub-section (1), this Ordinance applies to a cross-claim and to proceedings on a cross-claim as if—

- (a)** the notice of grounds of defence pleading the cross-claim were a claim;
- (b)** the defendant pleading the cross-claim were a plaintiff in proceedings instituted to recover the amount claimed on the cross-claim; and
- (c)** the plaintiff against whom the cross-claim is pleaded were a defendant in such proceedings.

**(3)** Withdrawal, abandonment or dismissal of the whole or part of a claim or discontinuance of proceedings on the whole or part of a claim does not prevent the continuance of proceedings on a cross-claim, and the withdrawal, abandonment or dismissal of the whole or part of a cross-claim or discontinuance of proceedings on the whole or part of a cross-claim does not prevent the continuance of proceedings on the claim in relation to which the cross-claim was pleaded.

### **Trial of cross-claim**

**49.** The court may, if it is of the opinion that the trial of a claim and cross-claim together would embarrass or delay the hearing of proceedings or be otherwise inconvenient, order that proceedings on the claim and proceedings on the cross-claim be heard and determined separately or make such other order as it thinks just.

## **PART VII—REPLY**

### **Filing of reply**

**50.** Where the defendant in proceedings has filed a notice of grounds of defence, the plaintiff may, within 21 days after the date on which a copy of that notice was served on him, file a reply.

### **Form of reply**

**51. (1)** A reply shall be in accordance with Form 20.

**(2)** A reply shall be signed by the plaintiff, by his solicitor or by his agent authorized in writing for the purpose.

### **Service of reply**

**52.** A reply shall be served on the defendant by the clerk.

### **Defence to cross-claim**

**53.** Where, in a notice of grounds of defence filed in proceedings, the defendant alleges a cross-claim, the plaintiff may, in a reply filed by him, plead a defence to the cross-claim.

## **PART VIII—THIRD PARTY PROCEDURE**

### **Interpretation**

**54.** In this Part, “third party” means a person joined as a party to proceedings in accordance with this Part.

### **Filing of third party notice**

**55. (1)** Where a defendant in proceedings claims that he is entitled to contribution or indemnity or any other relief or remedy from any other person in relation to the cause of action to which the proceedings relate or any judgment that may be given or entered in favour of the plaintiff in the proceedings, the defendant may—

- (a) at the time he files his notice of grounds of defence; or
- (b) if a notice of grounds of defence is not filed—within 21 days after the date of service of the claim,

join that other person as a party to the proceedings by filing a third party notice in accordance with Form 21.

**(2)** A third party notice shall contain such particulars of the defendant’s claim against the third party as the defendant would be required to include in a claim if he instituted separate proceedings against the third party.

### **Service of documents**

**56. (1)** As soon as practicable after a third party notice has been filed in proceedings, the clerk shall—

- (a) serve a copy of the notice on the plaintiff; and

- (b) return to the defendant the other copies of the notice that were lodged at the time of filing.

(2) When copies of a third party notice are returned to the defendant in proceedings in pursuance of sub-section (1), the defendant shall—

- (a) serve on the third party a copy of the third party notice and of each other pleading filed in the proceedings; and
- (b) serve on each other party to the proceedings (other than the plaintiff) a copy of the third party notice.

(3) As soon as practicable after a defendant in proceedings has served a third party notice on a third party in pursuance of sub-section (2), the defendant shall file an affidavit of service of the notice and inform each other party to the proceedings (other than the third party), in writing, of the date of that service.

### **Stay of proceedings**

57. (1) Subject to sub-section (2), where a defendant in proceedings who has filed a notice of grounds of defence files a third party notice, the proceedings are stayed until

- (a) the third party has filed a notice of grounds of defence; or
- (b) a period of 21 days has expired after the date on which a copy of the third party notice was served on the third party,

whichever first occurs.

(2) Where proceedings are stayed by virtue of sub-section (1), the court may, on the application of the plaintiff, remove that stay of proceedings if it is satisfied that a copy of the third party notice was not served on the third party, or an affidavit of that service was not filed, within a reasonable time.

### **Rights and liabilities of third party**

58. (1) A third party in proceedings shall, as from the time on which a copy of the third party notice was served on him, be a party to the proceedings and, subject to this Ordinance, he shall have the same rights, and be subject to the same liabilities, in the proceedings as he would have had and been subject to if the defendant had instituted separate proceedings against him.

(2) Without limiting the generality of sub-section (1), a third party in proceedings shall plead in his notice of grounds of defence any ground of defence in which he disputes the plaintiff's claim against the defendant or the defendant's claim against the third party.

(3) Where a person on whom a copy of a third party notice has been served fails to file a notice of grounds of defence within 21 days after the date of service, he shall be taken to have admitted liability to the defendant in respect of the subject of, and for the amount of, the defendant's claim against him specified in the third party notice.

**Procedure on hearing**

**59.** On hearing proceedings in which a third party has been joined—

- (a) the court may direct what part the third party shall take at the hearing;
- (b) the court may modify its procedures as necessary; and
- (c) the court may, as between the defendant and the third party—
  - (i) grant any relief or remedy that might properly have been granted if the defendant's claim against the third party had been the subject of separate proceedings; and
  - (ii) give such judgment as the court thinks just.

**Enforcement**

**60. (1)** Except with the leave of the court, the defendant in proceedings shall not enforce any judgment in his favour against a third party until any judgment given in favour of the plaintiff in the proceedings against the defendant has been satisfied.

**(2)** Leave under sub-section (1) may be granted on such terms, if any, as the court thinks just.

**Subsequent joinder of parties**

**61.** A third party in proceedings may join another person as a fourth party in the proceedings in accordance with this Ordinance, and subsequent parties may be joined in succession in the like circumstances, each by the party previous to him in order of joinder, and this Part applies in relation to each party so joined as if—

- (a) he were a third party so joined;
- (b) the party who joined him was the defendant; and
- (c) the party who joined the party referred to in paragraph (b) was the plaintiff.

**Separate trials**

**62.** The court may, if it is of the opinion that the trial of proceedings between a plaintiff and defendant together with proceedings between the defendant and a third party would embarrass or delay the hearing of the first-mentioned proceedings or be otherwise inconvenient, order that those proceedings be heard and determined separately or make such other order as it thinks just.

**Co-defendants**

**63. (1)** Where a defendant in proceedings claims that he is entitled to contribution or indemnity or any other relief or remedy from another defendant in the proceedings in relation to the cause of action to which the proceedings relate or any judgment that may be given or entered in favour of the plaintiff in the proceedings, the first-mentioned defendant may file, and serve on that other defendant a copy of, a notice in accordance with Form 22.

(2) A notice under sub-section (1) shall contain such particulars of the claim of the defendant who filed the notice against the other defendant as the first-mentioned defendant would be required to include in a claim if he instituted separate proceedings against the other defendant.

(3) Where a defendant in proceedings has filed, and served a copy of, a notice under sub-section (1), this Part applies in relation to the claim particulars of which are contained in the notice, and in relation to proceedings in respect of that claim, as if—

- (a) the notice were a third party notice filed and served under this Part; and
- (b) the defendant on whom the copy of the notice was served were a third party joined under this Part.

(4) Nothing in this section shall operate to prejudice any rights that the plaintiff in proceedings may have against any defendant in the proceedings other than the defendant who filed a notice under sub-section (1).

#### **Costs in proceedings where third party joined**

**64. (1)** In proceedings in which a third party has been joined in pursuance of this Part, the court may—

- (a) decide all questions of costs as between the third party and other parties to the proceedings;
- (b) order any one or more of the parties to pay the costs of any other party or parties; and
- (c) make such other orders as to costs as it thinks just.

(2) Subject to any order that the court makes in pursuance of sub-section (1), costs in proceedings in which a third party has been joined shall—

- (a) as between a party and the third party joined by him, follow the event of the issues between those parties;
- (b) be taxed on the scale appropriate to any amount separately recovered or unsuccessfully claimed between those parties or, if there is no such amount, the amount recovered or unsuccessfully claimed by the plaintiff against the defendant; and
- (c) be recoverable by a party against another party only to the extent of the costs of the issues between those parties and not to the extent of any other costs payable by the parties.

### **PART IX—DISCONTINUANCE AND WITHDRAWAL**

#### **Discontinuance**

**65. (1)** A party to proceedings may, at any time before the hearing of the proceedings is completed, discontinue the proceedings as regards the whole or any part of a claim by him by filing a notice of discontinuance in accordance with Form 23.

(2) A notice of discontinuance filed under sub-section (1) shall set out the extent of the discontinuance and shall, if the discontinuance is with the consent of another party to the proceedings, have that consent endorsed on it.

(3) A party to proceedings who has filed a notice of discontinuance under sub-section (1) shall, as soon as practicable, serve a copy of the notice on each other party.

### **Withdrawal**

66. (1) Subject to sub-section (2), a party to proceedings may, at any time before the hearing of the proceedings is completed, withdraw any matter contained in a notice of grounds of defence or subsequent pleading filed by him in the proceedings by filing a notice of withdrawal in accordance with Form 24.

(2) Sub-section (1) does not permit the withdrawal, without the consent of another party or the leave of the court, of an admission or other matter that operates for the benefit of that other party.

(3) A notice of withdrawal filed under sub-section (1) shall set out the extent of the withdrawal and shall, if the withdrawal is with the consent of another party to the proceedings, have that consent endorsed on it.

(4) A party to proceedings who has filed a notice of withdrawal under sub-section (1) shall, as soon as practicable, serve a copy of the notice on each other party.

### **Costs**

67. (1) Where a party to proceedings discontinues the proceedings against another party in pursuance of this Part as regards the whole or any part of a claim, the first-mentioned party shall, unless—

- (a) that other party consented to the discontinuance; or
- (b) the court otherwise orders,

pay that other party's costs in the proceedings occasioned by the discontinuance and reasonably incurred up to the date on which notice of the discontinuance was served on that other party.

(2) A party to proceedings who is, in pursuance of sub-section (1), entitled to his costs referred to in that sub-section may have those costs taxed without an order of the court, and if those costs as so taxed are not paid within 4 days, the payment of those costs may be enforced as if the court had made an order for payment of those costs.

### **Effect of discontinuance**

68. (1) Subject to the terms of any consent to the discontinuance of proceedings in pursuance of this Part, the discontinuance—

- (a) does not prevent further proceedings being instituted in relation to the same, or substantially the same, cause of action; and
- (b) is not a defence in any such further proceedings.



(2) Where, in relation to the same, or substantially the same, cause of action as that in relation to which proceedings have been discontinued against a party, further proceedings are instituted against that party, the court may, on the application of that party, order that those further proceedings be stayed until any costs in the earlier proceedings to which that party is entitled in pursuance of sub-section 67 (1) have been paid.

## **PART X—PAYMENT INTO COURT**

### **Manner of payment into court**

**69.** For the purposes of this Ordinance, money is paid into court by—

- (a) paying the money to the clerk or lodging a bond with the clerk in accordance with section 83; and
- (b) filing with the clerk a notice of payment into court.

### **Payment by defendant**

**70.** A defendant in proceedings may, from time to time—

- (a) pay money into court in answer to any one or more causes of action to which the plaintiff's claim relates; and
- (b) pay money into court in addition to money previously so paid under this section.

### **Form of notice of payment**

**71. (1)** A notice of payment into court shall be in accordance with Form 25.

(2) Where a claim relates to 2 or more causes of action and the defendant in the proceedings pays money into court, the notice of payment into court filed by him shall—

- (a) specify the cause or causes of action in answer to which the money is so paid; and
- (b) if the defendant allots part of the money to any cause or causes of action—specify the amount so allotted and the cause or causes of action to which that amount is allotted.

### **Service of notice**

**72.** A defendant in proceedings who files a notice of payment into court shall, as soon as practicable, serve a copy of the notice on each other party to the proceedings.

### **Abandonment of cross-claim**

**73.** Where a defendant in proceedings—

- (a) alleges a cross-claim against the plaintiff in respect of any cause of action;
- (b) has paid money into court; and

- (c) has, in so paying that money, taken into account his cause of action against the plaintiff to which the cross-claim relates with a view to its abandonment if the plaintiff accepts the money,

the defendant shall, in his notice of payment into court, specify that cause of action.

### **No admission of liability**

**74.** Payment of money into court shall not be taken to be an admission of liability.

### **Acceptance of amount paid into court**

**75. (1)** Subject to this section, a plaintiff in proceedings may, in accordance with this section, accept money paid into court in answer to one or more of the causes of action to which his claim relates by filing a notice of acceptance in accordance with Form 26.

**(2)** Where a notice of payment into court or the last notice of payment into court is filed before the hearing of the proceedings commences, the plaintiff may accept the money so paid within 14 days after service on him of the notice or that last notice, as the case may be, but before that commencement.

#### **(3) Where—**

- (a)** a notice of payment into court is filed after the hearing of the proceedings has commenced; or
- (b)** the defendant in proceedings, by notice served by him on the plaintiff after the hearing of the proceedings has commenced, confirms, in accordance with Form 27, a notice of payment into court previously filed,

the plaintiff may, subject to sub-section (6), accept the money so paid within 2 days after service on him of the notice of payment into court or the notice of confirmation by announcement to the court during the hearing or by filing a notice of acceptance.

**(4)** A defendant in proceedings who serves a notice of confirmation under sub-section (3) shall file the notice forthwith.

**(5)** A plaintiff who accepts money by announcement to the court under sub-section (3) shall file a notice of acceptance forthwith.

**(6)** A plaintiff in proceedings shall not accept money in a case referred to in sub-section (3) after the magistrate constituting the court has given his decision or has begun to give reasons for his decision.

**(7)** Where a claim relates to more than one cause of action and the plaintiff accepts money paid into court in answer to one or more but not all of those causes of action, he may, by filing a notice (which may be combined with his notice of acceptance), abandon all the causes of action to which his claim relates other than the cause or causes of action to which the acceptance relates.

**(8) Where—**

- (a) a plaintiff has instituted proceedings against 2 or more defendants in relation to a cause of action that he had against them jointly; and
- (b) he accepts money paid into court by one or more but not all of those defendants in answer to that cause of action,

he may, by filing a notice (which may be combined with his notice of acceptance), abandon that cause of action as against the other defendants or all of those other defendants.

**(9)** A plaintiff in proceedings who accepts money paid into court is, subject to sections 78 and 79, entitled to receive payment of the money without any order of the court.

**(10)** Money paid into court which a plaintiff in proceedings is entitled to receive in pursuance of this Part shall be paid to him or, if he has lodged a written authorization with the clerk, to his solicitor or other person specified in the authorization.

**Effect of acceptance of money paid into court**

**76. (1)** Where a plaintiff in proceedings accepts money paid into court in satisfaction of a cause of action as against any defendant, proceedings shall be stayed in relation to—

- (a) that cause of action as against that defendant;
- (b) any alternative cause of action that the plaintiff has against that or any other defendant;
- (c) any cause of action abandoned under section 75; and
- (d) where the defendant, in paying the money into court, had taken into account a cause of action to which a cross-claim relates—that cause of action as against the plaintiff.

**(2)** Where a defendant pays money into court in answer to a cause of action and the plaintiff accepts the money in satisfaction of that cause of action against that defendant, the liability of another person (whether a party to the proceedings or not) jointly with that defendant on the cause of action shall be satisfied in the amount of the money accepted but shall not be discharged on the acceptance except to the extent of that satisfaction.

**Withdrawal of money paid into court**

**77. (1)** Where money paid into court by a defendant in proceedings is not accepted in accordance with section 75, the defendant may, with the leave of the court, withdraw the whole or any part of the money so paid or any bond filed by him.

**(2)** A withdrawal under sub-section (1) shall be made by filing a notice of withdrawal of money paid into court in accordance with Form 28.

**(3)** On filing a notice of withdrawal of money paid into court, the defendant in proceedings is entitled to receive the money to which the notice relates or delivery of the bond, as the case may be.

**Order for payment out after acceptance**

**78. (1)** Where a plaintiff in proceedings accepts money paid into court in satisfaction of a cause of action, the money shall not be paid out except by leave of the court in the following circumstances:

- (a) if the plaintiff has instituted proceedings in relation to the cause of action against 2 or more defendants and any of those defendants has not joined in paying the money into court and did not consent to the payment out;
- (b) if the plaintiff has also instituted proceedings in relation to an alternative cause of action against a defendant who did not join in paying the money into court and did not consent to the payment out;
- (c) if the plaintiff accepted the money after the hearing of the proceedings commenced;
- (d) if the plaintiff represents other persons in the proceedings;
- (e) if the plaintiff is a person under disability.

**(2)** On an application for leave under sub-section (1), the court shall, so far as practicable, deal with the question of all the costs in the proceedings and shall make an order accordingly.

**Payment of money under defence of tender**

**79.** Where the plaintiff in proceedings files a notice of acceptance in accordance with section 75 in respect of money paid into court in connection with a defence of tender before action—

- (a) the money shall not be paid out except in accordance with an order of the court;
- (b) the plaintiff is not entitled to receive any amount in respect of his costs in the proceedings except in accordance with an order of the court; and
- (c) if the court makes an order that the plaintiff pay the defendant's costs in the proceedings, it may order that those costs be paid to the defendant by the clerk out of the money paid into court.

**Non-disclosure of payment into court**

**80. (1)** Subject to sub-section (2), the fact that money has been paid into court in proceedings—

- (a) shall not be disclosed in an affidavit filed in the proceedings; and
- (b) shall not be disclosed to the court at the hearing of the proceedings until all questions relating to liability or the amount of any debt or damages have been decided.

**(2)** Sub-section (1) does not apply—

- (a) where the money has been paid into court in connection with a defence of tender before action;
- (b) where the plaintiff accepts the money in accordance with section 75, or

- (c) where the disclosure of the payment is necessary for the purpose of an application under this Part.

**Costs where money paid into court**

**81. (1)** Where money has been paid into court in proceedings, the court shall, in exercising its discretion with regard to the making of any order for costs in the proceedings, take into account—

- (a) the time or times at which the money was so paid;
- (b) the amount or amounts so paid; and
- (c) the acceptance or non-acceptance by the plaintiff of the money so paid and the date of any such acceptance,

and may, if it thinks just, order that any costs allowed in the proceedings be a first charge on the amount so paid.

**(2)** Where, before the hearing of proceedings has commenced, the plaintiff—

- (a) accepts money paid into court by the defendant in answer to a cause of action;
- (b) abandons that cause of action as against all other defendants (if any); and
- (c) abandons all other causes of action to which the proceedings relate (if any),

the plaintiff may, unless the court otherwise orders, after that money has been paid out, tax his costs of the proceedings in respect of his claim against the defendant who paid the money into court incurred before service of the notice of payment into court and, if those costs are not paid within 4 days after those costs have been taxed, the clerk shall cause judgment to be entered for the plaintiff against the defendant for the amount of those costs as so taxed.

**Money paid into court remaining at judgment**

**82. (1)** Where any money paid into court in proceedings remains in court at the time judgment is given in the proceedings, the court—

- (a) may, where the money was paid into court by the lodging of a bond under section 83, make an order that the insurer pay to the clerk, in satisfaction in whole or in part of the judgment, the amount of money for which the bond was given or part of that money; and
- (b) shall give directions whether any money paid to the clerk by the defendant, or paid or ordered to be paid to the clerk by the insurer, shall be paid out to any party or parties and, if so, in what amount or respective amounts, or retained in court, and on what terms.

**(2)** An order made under paragraph (1) (a) may be enforced as if it were a judgment for the amount in respect of which the order was made given in favour of the plaintiff against the insurer.

**Lodgment of bond**

83. (1) Except where a defendant in proceedings relies upon a defence of tender before action, subject to this section, he may lodge with the clerk a bond in accordance with Form 29, being a bond given by—

- (a) an authorized insurer within the meaning of Part V of the *Motor Traffic Ordinance* 1936;
- (b) the nominal defendant for the purpose of that Part;
- (c) an approved insurer under the *Workmen's Compensation Ordinance* 1951; or
- (d) a corporation approved by the clerk.

(2) A bond lodged under sub-section (1) shall be under the seal of the insurer or, in the case of a bond given by a body corporate, under the hand of a manager or officer of that body corporate authorized in writing under the seal of the body corporate for the purpose.

(3) An authorization given for the purpose of sub-section (2)—

- (a) may be a general authorization or a special authorization;
- (b) shall be in accordance with Form 30; and
- (c) shall, unless it has already been lodged with the clerk, be so lodged together with the bond to which it relates.

(4) An authorization given for the purpose of sub-section (2) has effect until notice of revocation in writing is lodged with the clerk.

(5) Where a bond has been lodged with the clerk under sub-section (1), this Part applies as if an amount equal to the amount for which the bond is given has been paid into court, and a reference in this Part to money paid into court shall, in relation to proceedings in which a bond has been lodged under this section, be read as including a reference to the amount secured by the bond.

(6) An insurer may at any time pay to the clerk the amount of money secured by a bond lodged under this section, and where money is paid to the clerk in accordance with this sub-section—

- (a) the insurer shall have no further liability on the bond; and
- (b) the money so paid shall, unless the court otherwise orders, be dealt with as if the defendant in the proceedings had paid it into court.

(7) Where a defendant in proceedings lodges a bond under this section and, while the bond remains in court, the plaintiff files and serves a notice of acceptance of the money secured by the bond, the insurer who gave the bond shall, within 7 days after service of the notice of acceptance, pay to the clerk the amount of money so secured.

(8) Where an insurer does not pay to the clerk money which is required to be paid under sub-section (7) the defendant in the proceedings is not entitled to any advantage to which he would, but for this sub-section, be entitled by reason of having paid the money secured into court, and—

- (a) the plaintiff may withdraw his acceptance of the money; or

- (b) the court may, on the application of the plaintiff, order that the money be paid to the plaintiff.

(9) An order made by the court under sub-section (8) may be enforced as if it were a judgment for the amount in respect of which the order was made given in favour of the plaintiff against the insurer.

(10) Payment of money by an insurer under this section or in satisfaction, in whole or in part, of liability under any order shall operate, to the extent only of the amount of the payment, in satisfaction, in whole or in part, of any liability of the defendant in the proceedings.

(11) An insurer who is required under this section or by order of the court to pay money to the clerk may pay the money to or at the direction of the plaintiff, and if the plaintiff accepts money so paid, all proceedings to enforce the security shall be stayed.

## **PART XI—PERSONS UNDER DISABILITY**

### **Capacity as regards proceedings**

84. (1) Subject to section 307, a person under disability is not entitled to institute proceedings or continue proceedings as a plaintiff except by a next friend.

(2) A person under disability is not entitled to defend proceedings except by a guardian *ad litem*, and judgment shall not be entered in proceedings against a person under disability unless a guardian *ad litem* has been appointed for that person in the proceedings.

(3) Subject to this Ordinance, where a person under disability is a party to proceedings, anything which would, if he were not such a person, be required or authorized to be done by him in the proceedings shall or may be done by his next friend or guardian *ad litem*, as the case may be.

### **Liability for costs**

85. (1) A person who is a next friend of a person under disability in proceedings shall be liable for any costs for which the plaintiff, if he were not a person under disability, would have been liable, and an order for costs against the plaintiff or the next friend may be enforced against the next friend.

(2) A guardian *ad litem* of a person under disability in proceedings is not liable for any costs in the proceedings not occasioned by his own negligence or misconduct.

### **Entitlement to be next friend or guardian *ad litem***

86. (1) Subject to this Ordinance, it is not necessary for an appointment of a next friend or guardian *ad litem* of a person under disability in proceedings to be made by order of the court.

(2) Subject to sub-section (3), any individual may be a next friend or guardian *ad litem* of a person under disability in proceedings.

(3) A person is not entitled to be a next friend or guardian *ad litem* of a person under disability in proceedings —

- (a) if he is a person under disability;
- (b) if he has an interest in the proceedings adverse to the interest of the person under disability; or
- (c) if he does not consent.

(4) Where a committee or manager has been appointed in respect of a person under disability, a person other than that committee or manager shall not, without the leave of the court, be appointed as the guardian *ad litem* of the person under disability in proceedings.

(5) A body politic or corporate is not entitled to be a next friend or guardian *ad litem* of a person under disability in proceedings.

(6) A person shall not take any step in proceedings as a next friend or guardian *ad litem* of a person under disability unless he has been appointed under this Ordinance.

(7) Where a person has been or is a next friend or guardian *ad litem* of a person under disability in proceedings, no other person may act as the next friend or guardian *ad litem* of that person under disability in those proceedings except on appointment by the court.

#### **Appointment of next friend**

87. (1) A person shall be appointed as the next friend of a person under disability in proceedings by filing an undertaking in accordance with Form 31 to be responsible for any costs which the person under disability might otherwise be required to pay in the proceedings.

(2) An undertaking referred to in sub-section (1) shall be witnessed by the clerk, a solicitor or a justice of the peace.

(3) Where it appears to the clerk that the person seeking to institute proceedings is a person under disability, the clerk shall not permit originating process to be filed until an undertaking referred to in sub-section (1) has been filed.

(4) Where it appears to the court in the course of proceedings that —

- (a) the person who instituted the proceedings is a person under disability; or
- (b) that the next friend of the plaintiff in the proceedings is for any reason no longer able to act as next friend,

the court may, on the filing of an undertaking referred to in sub-section (1) by a person, make an order appointing that person as next friend of the person under disability in the proceedings.

(5) An order under sub-section (4) may, if the court so directs, be made without notice of the application for the order being given to any other party to the proceedings.



### **Appointment of guardian *ad litem***

**88.** (1) Where originating process has been served on a person under disability, a person shall be appointed as guardian *ad litem* of the person under disability by the filing, and service on the opposite party, of an affidavit in accordance with Form 32 by the solicitor for the person under disability or some other person cognisant of the facts to the effect that the proposed guardian *ad litem*—

- (a) consents to act as such;
- (b) is a proper person to be so appointed; and
- (c) has no interest in the proceedings adverse to the interest of the person under disability.

(2) An affidavit referred to in sub-section (1) shall have subscribed on it or annexed to it the consent in writing of the proposed guardian *ad litem*.

(3) Where—

- (a) the defendant in proceedings is a person under disability; and
- (b) no notice of grounds of defence has been filed,

subject to sub-section (4), the plaintiff shall not take any step in the proceedings until a guardian *ad litem* of the defendant in the proceedings has been appointed.

(4) Where—

- (a) the defendant in proceedings is a person under disability for whom a guardian *ad litem* has not been appointed;
- (b) the time for filing a notice of grounds of defence has expired; and
- (c) no notice of grounds of defence has been filed,

then—

- (d) the plaintiff may cause a person to be appointed under sub-section (1) as guardian *ad litem* of the defendant in the proceedings; or
- (e) if the plaintiff has no knowledge of a proper person to be so appointed—the court may, on the application of the plaintiff, appoint the clerk as guardian *ad litem* of the defendant in the proceedings.

(5) Unless the court otherwise directs, notice of an application referred to in sub-section (4) shall be served by the plaintiff in the proceedings on the defendant.

### **Record of appointee**

**89.** Where a person is appointed as next friend or guardian *ad litem* of a person under disability in proceedings, the name, address and description of the person so appointed shall be entered into and shall, for the purpose of any subsequent step taken in the proceedings, form part of the record of the proceedings.

**Removal of next friend or guardian *ad litem***

90. (1) The court may, on the application of a party to proceedings or of any other person, or of its own motion—

- (a) remove a next friend or guardian *ad litem* of a person under disability in the proceedings; and
- (b) order that the proceedings be stayed until another person has been appointed as next friend or guardian *ad litem* in place of the person so removed.

(2) An applicant for an order under sub-section (1) shall, unless the court otherwise directs, serve notice of the application on the person whose removal is sought and on the person under disability for whom he had been appointed as next friend or guardian *ad litem*.

**Admission on pleadings**

91. Sub-section 109 (1) does not apply in relation to a party to proceedings who is a person under disability.

**Judgment in proceedings where no guardian *ad litem* appointed**

92. (1) Where judgment has been given or entered, or an order for the payment of money has been made, in proceedings against a defendant who was, at the date of the judgment or order, a person under disability without a guardian *ad litem* in the proceedings, the court may, on application by the clerk or a party to the proceedings or of its own motion, set aside the judgment or order and order that the proceedings be continued on such terms as it thinks just, and where the court makes such an order, it may give directions for the subsequent conduct of the proceedings.

(2) A judgment given or entered in proceedings against a defendant who, at the date of the judgment or order, was a person under disability without a guardian *ad litem* in the proceedings shall not be enforced without the leave of the court.

(3) Where a bailiff or other person charged with the service or execution of a warrant or other process to enforce a judgment given or entered or order made by the court against a defendant in proceedings ascertains, or has reason to believe, that the defendant was, at the date of the judgment or order, a person under disability for whom a guardian *ad litem* had not been appointed, he shall forthwith report the matter to the clerk.

(4) Upon receiving a report under sub-section (3), the clerk shall forthwith apply to the court for directions.

**Compromise before action**

93. (1) Where a person under disability has a cause of action against another person, or a person has a cause of action against a person under disability, being a cause of action in relation to which proceedings might be instituted and, before proceedings are instituted, agreement is made by or on

behalf of the person under disability for a compromise or settlement in relation to the cause of action, the court may approve or disapprove the agreement.

(2) An agreement approved by the court under sub-section (1) is as binding on a person under disability by or on whose behalf it was made as if that person were not a person under disability and, where the agreement was made by another person on his behalf, that other person shall be deemed to have been his agent for the purpose of making the agreement.

(3) An agreement disapproved by the court under sub-section (1) is not binding on the person under disability by or on whose behalf it was made.

(4) A person may apply to the court for approval of an agreement referred to in sub-section (1).

(5) The court may approve an agreement referred to in sub-section (1) on such terms as it thinks just.

(6) Without limiting the generality of sub-section (5), the court may, as a term of its approval of an agreement referred to in sub-section (1), require that any money or property payable or applicable to or for the benefit of a person under disability in pursuance of the agreement be dealt with as though it became so payable or applicable in the settlement of proceedings or otherwise as the court thinks just for the benefit of the person under disability, and the court may make such orders as it thinks just for giving effect to such a requirement.

#### **Approval of settlement involving person under disability**

**94.** In proceedings for the recovery of money by or on behalf of a person under disability (whether alone or with another person), a settlement or compromise shall not be entered into, and money paid into court shall not be accepted, without the approval of the court.

#### **Money recovered by person under disability**

**95. (1)** This section applies to money ordered or agreed to be paid in proceedings referred to in section 94 (other than money due to a person who has not attained full age as salary, wages or otherwise in respect of his employment).

(2) Money to which this section applies shall, to the extent to which that money has not been paid into court or otherwise dealt with in pursuance of an order of the court, be paid into court.

(3) The court may, at any time and on the application of the clerk or of its own motion, by order, direct how money to which this section applies shall be dealt with and, in particular, but without limiting the generality of the foregoing, the court may, by order, direct—

- (a) the payment of all or part of the money to the person under disability, or to the next friend of that person, in respect of expenses incurred or amounts paid by, for or on behalf of the person under disability for his maintenance or benefit, or to his solicitor in respect of costs;

- (b) the investment of all or part of the money on behalf of the person under disability in a specified manner;
- (c) the investment of all or part of the interest received from an investment referred to in this section on behalf of the person under disability in a specified manner;
- (d) the variation of an investment referred to in this section;
- (e) the sale of securities in which all or part of the money is invested at a specified time and on specified conditions; and
- (f) the payment of all or part of the money, or the transfer of a security or an investment referred to in this section, to a person entitled to it.

(4) Upon receiving a request from a parent, guardian or next friend of a person who has not attained full age, the clerk shall apply to the court for directions under sub-section (3) as to the payment, out of money to which this section applies that has been invested or remains in court, of an amount for the maintenance or benefit of the person under disability, and the clerk shall transmit to the court, together with the application, his recommendations.

(5) A request under sub-section (4) shall—

- (a) be in writing;
- (b) specify the amount sought to be paid; and
- (c) be accompanied by an affidavit, or, with the consent of the clerk, a statutory declaration, verifying the amount sought to be paid and stating the reason for the request.

(6) Unless the court otherwise orders, it is not necessary for a person to appear before the court in connection with an application by the clerk for an order under sub-section (3).

(7) Where the court has not made an order under sub-section (3) for the investment or payment of any money to which this section applies that was paid into court, the clerk shall, on behalf of the person under disability, invest that money in securities of the Commonwealth or by deposit in a savings bank, and he shall invest in like manner any interest received from an investment referred to in this sub-section.

(8) Nothing in this section affects the lien of a solicitor for costs.

### **Service on a person under disability**

96. (1) Service of a document in proceedings on a person under disability shall be effected in accordance with this section.

(2) Where the person under disability has a solicitor, a next friend or guardian *ad litem* in proceedings, a document in the proceedings may be served on the solicitor, next friend or guardian *ad litem*.

(3) A document in proceedings may be served on any person, including a person under disability, approved, whether before or after the service, by the court or the clerk for that purpose under this section.

(4) Where a person under disability is such a person because he has not attained full age and he has no next friend or guardian *ad litem* in proceedings, a document in the proceedings may be served—

- (a) if he is 16 years of age or older—on him;
- (b) on a parent of his or on a guardian of his person or of his estate; or
- (c) if he has no parent and has no guardian of his person or of his estate—on a person with whom he resides or in whose care he is.

(5) Where the person under disability is such a person because he is of unsound mind or incapable and he has no next friend or guardian *ad litem* in proceedings, a document in the proceedings may be served—

- (a) if he has a committee or manager—on the committee or manager; or
- (b) if he has no committee or manager—on a person with whom he resides or in whose care he is.

(6) A document served in pursuance of this section shall be served in the manner required by this Ordinance for service of such a document on any other person.

## **PART XII—PLEADINGS AND PARTICULARS**

### ***Division 1—Pleadings generally***

#### **Paragraphs**

97. Where a pleading alleges or otherwise refers to several matters—

- (a) the pleading shall be divided into paragraphs;
- (b) each matter shall, so far as is convenient, be dealt with in a separate paragraph; and
- (c) the paragraphs shall be numbered consecutively.

#### **Facts in evidence**

98. Subject to this Ordinance, a pleading shall contain only a statement in a summary form of the material facts on which the party who filed the pleading relies, but need not specify the evidence by which those facts are to be proved.

#### **Brevity**

99. A pleading shall be as brief and concise as the nature of the case permits.

#### **Documents and spoken words**

100. Where any document is, or spoken words are, referred to in a pleading—

- (a) the effect of the document or of the spoken words shall, so far as is material, be stated; and
- (b) the precise terms of the document or words shall not be stated except so far as those terms are material.

**Presumed facts**

**101.** A party to proceedings is not required to plead a fact if—

- (a) the fact is presumed by law to be true; or
- (b) the burden of disproving the fact would lie on the opposite party,

except so far as may be necessary to meet a specific denial of that fact by the opposite party in his pleading.

**Conditions precedent**

**102.** Where it is a condition precedent necessary for the case of a party to proceedings that a thing has been done or an event has happened, a statement that the thing has been done or that the event has happened shall be included in his pleading.

**Money claims**

**103. (1)** This section applies to proceedings where the plaintiff's claim alleges money payable by the defendant to the plaintiff for—

- (a) goods sold and delivered by the plaintiff to the defendant;
- (b) goods bargained and sold by the plaintiff to the defendant;
- (c) work done and materials provided by the plaintiff for the defendant at the defendant's request;
- (d) money lent by the plaintiff to the defendant;
- (e) money paid by the plaintiff for the defendant at the defendant's request;
- (f) money had and received by the defendant for the use of the plaintiff;
- (g) interest upon money due from the defendant to the plaintiff and forborne at interest by the plaintiff to the defendant at the defendant's request; or
- (h) money found to be due from the defendant to the plaintiff on accounts stated between them.

**(2)** Subject to this section, in proceedings to which this section applies, it shall be sufficient to plead facts in the manner described in sub-section (1).

**(3)** The defendant in proceedings to which this section applies may, within 21 days after service on him of the claim, file, and serve on the plaintiff, a notice in accordance with Form 33 that the defendant requires the plaintiff to plead the facts on which he relies in accordance with the provisions of this Part other than this section.

**(4)** Where a defendant files and serves a copy of a notice under sub-section (3)—

- (a) the plaintiff shall, within 21 days after service of the notice upon him, amend his claim so as to plead the facts upon which he relies in accordance with the provisions of this Part other than this section; and
- (b) the plaintiff is not entitled to have judgment entered for him in the proceedings until the expiration of 21 days after service on the

defendant of the amended claim or of notice of the amendments of the claim.

(5) A plaintiff is not debarred from amending a claim in pursuance of section 125 by reason only of the fact that he has amended a claim under this section.

(6) This section does not affect the operation of Division 2.

### **Matters for specific pleading**

**104.** In a notice of grounds of defence or subsequent pleading, a party to proceedings shall plead specifically any performance, release, statute of limitation, fraud, any fact showing illegality, or any other matter—

- (a) which that party alleges makes any claim, defence or other case of the opposite party not maintainable;
- (b) which, if not pleaded specifically, may take the opposite party by surprise; or
- (c) which raises a matter of fact not arising out of preceding pleadings.

### **Contributory negligence**

**105.** A party to proceedings who relies on contributory negligence or voluntary assumption of risk shall plead that contributory negligence or voluntary assumption of risk.

### **New matter**

**106.** A party to proceedings may plead any matter notwithstanding that the matter has arisen after the commencement of the proceedings.

### **Departure**

**107. (1)** Subject to sub-section (2), a party to proceedings shall not, in any pleading, make an allegation of fact, or raise any ground or claim, inconsistent with a previous pleading filed by him.

(2) Sub-section (1) does not affect the right of a party to make allegations of fact, or raise grounds or claims, in the alternative.

### **Points of law**

**108.** A party to proceedings may, in a pleading, raise any point of law.

### **Admissions and traverse**

**109. (1)** Subject to sub-section (3), an allegation of fact made by a party to proceedings in his pleading shall stand admitted by an opposite party unless it is traversed by that opposite party in his pleading or an implied joinder of issue under section 110 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission, and either expressly or by necessary implication, and either generally or as regards any particular allegation.

(3) Where a pleading makes an allegation of the suffering of damage or of an amount of damages, a pleading in reply to that pleading shall be taken to traverse the allegation unless the allegation is specifically admitted.

### **Joinder of issue**

**110. (1)** No express joinder of issue shall be required in any proceedings.

(2) If no reply is filed, there shall be an implied joinder of issue on any ground of defence specified in a notice of grounds of defence filed in proceedings.

(3) An implied joinder of issue operates as a denial of every allegation of fact made in the relevant pleading except to the extent that any such allegation is expressly admitted.

### **Striking out of inadequate, &c., pleading**

**111. (1)** Where a pleading—

- (a) discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading;
- (b) has a tendency to cause prejudice, embarrassment or delay in the proceedings; or
- (c) is otherwise an abuse of the process of the court,

the court may, at any stage of the proceedings, on such terms as it thinks just, order that the whole or any part of the pleading be struck out.

(2) The court may receive evidence on the hearing of an application for an order under sub-section (1).

(3) Where the court makes an order under sub-section (1) in proceedings, it may make such other orders as it thinks just, including, without limiting the generality of the foregoing, any of the following orders:

- (a) an order as to subsequent steps in the proceedings being taken as if the matter contained in the pleading, or in that part of the pleading, that was struck out had not been pleaded;
- (b) an order granting time to any party to file amended documents;
- (c) if the pleading that was struck out was a notice of grounds of defence—an order granting leave for judgment to be entered for the plaintiff;
- (d) an order as to costs in the proceedings.

### **General issue abolished**

**112.** A party to proceedings shall not plead the general issue.

## ***Division 2—Particulars***

### **Sufficient particulars**

**113.** A party to proceedings shall, in a pleading filed by him, give such particulars of his claim, grounds of defence or any other matter pleaded by him



as are necessary to enable the opposite party to identify the case he is required by the pleading to meet.

**Fraud, &c.**

**114.** A party to proceedings shall, in a pleading filed by him, give particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence on which he relies.

**Condition of mind**

**115. (1)** A party to proceedings who pleads any condition of mind shall, in a pleading filed by him, give particulars of the facts on which he relies.

**(2)** In sub-section (1), "condition of mind" includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge.

**Negligence and breach of statutory duty**

**116. (1)** In proceedings in relation to a claim for damages in tort, a party who pleads negligence (whether contributory or otherwise) or breach of statutory duty shall give particulars of the matter pleaded.

**(2)** The particulars required by sub-section (1) to be pleaded shall be a statement of the facts on which the party relies as constituting the negligent act or omission or the breach of statutory duty alleged in the pleading.

**(3)** If a party relies on more than one negligent act or omission or breach of statutory duty, the particulars required by sub-section (1) shall, so far as is practicable, state separately each negligent act or omission or breach of statutory duty relied upon.

**Out-of-pocket expenses, &c.**

**117.** Where a party to proceedings claims damages and seeks to include as part of his claim money that he has paid, is liable to pay or has failed to receive, in consequence of the act or omission of the opposite party to which the claim relates, he shall give the best particulars he can of that money.

**Amount claimed for property damage**

**118.** Where a party to proceedings claims damages in respect of the death of or injury to any person caused by or arising out of the use of a motor vehicle as well as damages in respect of any other matter, he shall give the best particulars he can give, including the amount which he claims for damages, in respect of that other matter.

**Manner of giving particulars in pleadings**

**119. (1)** Where any provision of this Part requires particulars to be given of any pleading, the particulars shall be set out in the pleading or, if that is inconvenient, shall be set out in a separate document referred to in the pleading, and in such a case that document shall be filed and a copy served with the pleading.

(2) Notwithstanding sub-section (1), where the necessary particulars of debt, expenses or damages exceed 3 pages and have, before the date on which the pleading is filed, been given to the party on whom the pleading is required to be served and the pleading specifies the date on which the particulars were given, it is not necessary for the particulars to be filed or served unless the court otherwise orders.

### **Further and better particulars**

**120. (1)** Subject to sub-section (2), a party to proceedings may, by notice in writing served on another party, require that other party to furnish—

- (a) further and better particulars of any claim, ground of defence or other matter stated in a pleading of that other party filed in the proceedings; or
- (b) a statement of the nature of the case on which that other party relies.

(2) A party to proceedings is not entitled to require further and better particulars under sub-section (1) if a certificate of readiness for hearing has been filed unless the certificate has been withdrawn or struck out.

(3) Where a party to proceedings fails to furnish further and better particulars, or a statement, required under sub-section (1) within 14 days after the date on which the notice under that sub-section was served on him, the court may, on the application of the party who served the notice, order that the further and better particulars or the statement, as the case may be, be furnished to the last-mentioned party.

(4) Where the court makes an order under this section, it may, if it thinks just, direct that if the order is not complied with within a specified time, any proceedings instituted or any pleading filed by the party in default be struck out or that any such proceedings be stayed until the order is complied with.

(5) The court shall not make an order under this section before the filing of a notice of grounds of defence in any proceedings unless, in the opinion of the court—

- (a) it is necessary or desirable that the order be made to enable the defendant to plead; or
- (b) there are other circumstances that justify the making of the order.

## **PART XIII—INTERLOCUTORY MATTERS**

### ***Division 1—Interlocutory applications***

#### **Interlocutory applications**

**121. (1)** An application to the court in proceedings shall be made by motion and may be supported by affidavit.

(2) Subject to sub-section (4), an applicant shall not move the court for the order sought unless he has—

- (a) filed a notice of motion in accordance with Form 34; and
- (b) served a copy of the notice of motion on each interested party.

(3) Where a copy of a notice of motion is required to be served, it shall, unless the court otherwise orders, be served not later than 3 days before the date fixed for the hearing of the motion.

(4) An applicant may move the court without having filed, or served a copy of, a notice of motion if—

- (a) the preparation or filing of the notice, or the service, would cause undue delay or other mischief to the applicant;
- (b) each interested party consents to the order sought by the applicant;
- (c) under this Ordinance or by the practice of the court, the motion may properly be made without the filing, or service, of a notice of motion; or
- (d) the court by order dispenses with the requirements of sub-section (2).

(5) A notice of motion shall—

- (a) specify the place, date and time fixed for the hearing of the motion;
- (b) if the court has made an order under sub-section (4) dispensing with the requirements of sub-section (2) in relation to the notice of motion, bear a note of the order made;
- (c) state concisely the nature of the order sought by the applicant;
- (d) state concisely the grounds on which the order is sought, or refer to the affidavit in which those grounds are set out; and
- (e) specify each party who would be affected by the order sought.

(6) A person who intends to rely on an affidavit at the hearing of a motion shall file the affidavit, and shall serve a copy of the affidavit on each interested party (except a party on whom service of a copy of the notice of motion was not required in pursuance of this section)—

- (a) in sufficient time to enable that other party to make and file, and serve a copy of, an affidavit in reply; or
- (b) within such time as the court orders.

(7) A motion may be heard *ex parte*.

### **Hearing of motion**

**122. (1)** On the hearing of a motion, the court may, on such terms as it thinks just, make or refuse to make the order sought by the applicant, and it may make such other orders, and give such directions, as it thinks just.

(2) A motion shall include, so far as is practicable, as many applications as, having regard to the nature of the proceedings, can conveniently be dealt with at the one time.

(3) On the hearing of a motion, any respondent is entitled to make any application in relation to the proceedings.

(4) Where, on the hearing of a motion, a respondent makes an application in pursuance of sub-section (3), the court may—

- (a) on such terms as it thinks just, make or refuse to make the order sought by the respondent, and make such other orders, and give such directions, as it thinks just; or
- (b) adjourn the hearing of the application and direct such notice of the application to be given to any interested party as it thinks just.

### **Costs on application**

**123. (1)** Subject to this Ordinance, the costs of any application to the court in proceedings shall, unless the court otherwise orders, follow the event of the proceedings.

(2) Costs of an application to the court in proceedings made *ex parte* shall not be allowed except by order of the court.

(3) Where the court makes an order for the payment of the costs of an application to the court in proceedings, those costs shall not, unless the court otherwise orders, be taxed until the proceedings are determined.

(4) Where the court makes an order under sub-section (3) for the taxation of costs referred to in this section before the proceedings are determined, it shall give directions as to the scale on which those costs are to be taxed.

(5) This section applies in relation to the costs of an application to the court in proceedings whether or not costs are claimed in the notice of motion.

## **Division 2—Amendment**

### **General power of amendment**

**124. (1)** The court may, at any stage of proceedings, on application by a party or of its own motion, order that any document filed in the proceedings be amended, or give leave to any party to amend any document filed by him in the proceedings, in such manner as the court thinks just.

(2) All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the proceedings, of correcting any defect or error in the proceedings or of avoiding multiplicity of proceedings.

(3) Where, in a document filed in proceedings, there has been a mistake in the name of a party to proceedings, sub-section (1) applies in relation to the person intended to be made a party as if he were a party.

(4) This section does not apply in relation to the amendment of a judgment, order or certificate.

### **Amendment of pleading without leave**

**125. (1)** A party to proceedings may, without the leave of the court, amend any pleading of his once at any time before the pleadings are closed.

(2) A party to proceedings may further amend any pleading of his without the leave of the court before the pleadings are closed if he obtains the consent of all other parties.

**Consequential amendment of defence or reply**

**126. (1)** Where a plaintiff in proceedings amends his claim under section 125—

- (a) if the defendant has filed his notice of grounds of defence, he may amend that notice; and
- (b) the time for filing his notice of grounds of defence or amended notice of grounds of defence, as the case may be, shall be 21 days after service on him of the amended claim or a notice specifying the amendment.

(2) Where a defendant in proceedings amends his notice of grounds of defence under section 125—

- (a) if the plaintiff has filed a reply, he may amend his reply; and
- (b) the time for filing his reply or amended reply, as the case may be, shall be 21 days after service on him of the amended notice of grounds of defence or a notice specifying the amendment.

(3) The right to amend under this section is in addition to the right to amend under section 125.

(4) Where—

- (a) a party (in this section referred to as the first party) files a pleading (in this section referred to as the first pleading);
- (b) an opposite party files a pleading (in this section referred to as the second pleading) in answer (whether by way of defence, reply or otherwise) to the first pleading;
- (c) the first party amends the first pleading; and
- (d) the opposite party does not amend the second pleading within the prescribed time,

then—

- (e) the second pleading shall have effect as a pleading in answer to the amended first pleading; and
- (f) sub-section 110 (2) shall not apply but, if no further pleading between those parties is filed, there shall be, at the close of pleadings, an implied joinder of issue on the second pleading.

**Disallowance of amendment**

**127. (1)** Where a party to proceedings amends his pleading under section 125, the court, on application by an opposite party, may, by order, disallow the amendment.

(2) Where a party, having once amended his pleading, further amends that pleading without the leave of the court and without obtaining the consent of another party, the court, on application by that other party, may, by order, disallow the amendment.

(3) An application under sub-section (1) or (2) shall be filed and served within 14 days after the date of service on the applicant of the amended pleading or a notice specifying the amendment.

(4) Where, on the hearing of an application under sub-section (1), the court is satisfied that, if an application for leave to make the relevant amendment had been made on the date on which the amendment was made, the court would not have given leave to make the whole or a part of the amendment, the court shall disallow the amendment or that part, as the case may be.

#### **Duration of leave**

**128.** Subject to this Ordinance, where the court makes an order under this Ordinance giving a party to proceedings leave to amend a document filed in the proceedings, if the party does not amend the document in accordance with the order within the time specified for that purpose in the order or, if no time is so specified, within 14 days after the date on which the order was made, the order shall cease to have effect.

#### **Direction for mode of amendment**

**129.** Where the court orders, or gives leave for, the making of an amendment of a document filed in proceedings, the court may give such directions as it thinks just concerning the mode of amendment and service of the amended document or of notice of the amendment.

#### **Simple mode of amendment**

**130. (1)** Where the amendments authorized under this Ordinance to be made to a document in proceedings are not so numerous or lengthy or otherwise of such a nature as to render the document difficult or inconvenient to read, the amendments may be made by writing the alterations in the document.

**(2)** A document filed in proceedings amended in accordance with sub-section (1) shall be endorsed with a statement specifying the date of the amendment and—

- (a) if the amendment was made in pursuance of an order of the court—the date of the order; or
- (b) if the amendment was not so made—a reference to the section authorizing the amendment.

**(3)** An endorsement referred to in sub-section (2) shall

- (a) if the amendment was made in pursuance of an order of the court—be made by the clerk and sealed with the seal of the court; or
- (b) if the amendment was not so made—be made and initialled by the party making the amendment.

#### **Mode of amendment of fresh document**

**131.** Subject to section 130, amendments authorized under this Ordinance to a document filed in proceedings shall be made by filing a fresh document,

amended as so authorized and bearing a statement specifying the matters referred to in sub-section 130 (2).

### **Service after amendment**

**132.** Where a document filed in proceedings has been served and is later amended, the party making the amendment shall, as soon as practicable, serve on the parties on whom the document was served a copy of—

- (a) if the amendment is made under section 130—a notice specifying the amendment and the matters referred to in sub-section 130 (2); or
- (b) if the amendment is made under section 131—the fresh document filed.

### **Statutes of limitation**

**133. (1)** Subject to this Part, where any relevant period of limitation has expired after proceedings were instituted and, after that expiration, the plaintiff applies for leave to amend his claim by making an amendment referred to in any of the succeeding sub-sections, the court may, in accordance with the relevant sub-section, make an order giving leave accordingly notwithstanding that the period has expired.

(2) Where notice of a motion for leave to make an amendment is filed within 14 days after the date of filing the claim, leave may be given under sub-section (1) irrespective of the nature of the amendment.

(3) Where, in a claim, there is a mistake in the name of a party and the court is satisfied that the mistake is not misleading or such as to cause doubt as to the identity of the person referred to, leave may be given under sub-section (1) to correct the mistake, whether or not the effect of the amendment would be to substitute a new party.

(4) Where, on the date of filing of his claim, the plaintiff was entitled to sue in any capacity, leave may be given under sub-section (1) to make an amendment having the effect that he sues in that capacity.

(5) Where a claim specifies a cause of action arising out of any facts, leave may be given under sub-section (1) to make an amendment having the effect of adding or substituting a new cause of action arising out of the same or substantially the same facts.

(6) This section does not limit the powers of the court under section 124.

### **Amendment of judgment, order or certificate to correct error**

**134. (1)** Where there is a clerical mistake or an error arising from an accidental slip or omission in a judgment or order of the court, or in a certificate issued out of the court, the court may, on the application of any party to proceedings or of its own motion, at any time amend the judgment, order or certificate to correct the mistake or error.

(2) Sections 130 and 131 do not apply in relation to an amendment made under sub-section (1).

**Costs re amendment**

**135.** Where a party to proceedings amends a document with or without the leave of the court, he shall, unless the court otherwise orders, pay the costs of any other party of or occasioned by the amendment.

***Division 3—Summary judgment*****Summary judgment for plaintiff**

**136. (1)** Where the defendant in proceedings has filed a notice of grounds of defence and, in relation to any relief sought by the plaintiff—

- (a) there is evidence of the facts on which the claim for that relief is based; and
- (b) there is evidence given by or on behalf of the plaintiff that, to the belief of the person giving the evidence, the defendant has no defence to that claim for relief or has no defence except as regards the amount of any damages claimed,

subject to this Ordinance, the court may, on the application of the plaintiff, give such judgment for the plaintiff on that claim for relief as the court thinks just.

**(2)** Without limiting the generality of sub-section (1), the power of the court under that sub-section extends to giving judgment for the plaintiff in proceedings for damages to be assessed.

**(3)** In this section, a reference to damages shall, in relation to proceedings for the detention of goods, be read as including a reference to the value of the goods.

**Summary stay or dismissal**

**137. (1)** Where, in any proceedings, it appears to the court, in relation to the proceedings generally or in relation to any claim for relief in the proceedings, that—

- (a) no reasonable cause of action is disclosed; or
- (b) the proceedings are—
  - (i) frivolous or vexatious; or
  - (ii) an abuse of the process of the court,

the court may, on the application of the defendant or of its own motion, order that the proceedings be stayed or dismissed either generally or in relation to that claim for relief.

**(2)** The court may receive evidence on the hearing of an application for an order under sub-section (1).

**Residue of proceedings**

**138.** Where—

- (a) the court has given judgment for the plaintiff in proceedings in pursuance of section 136; or



- (b) proceedings have been dismissed or stayed in pursuance of an order under section 137,

and the proceedings are not wholly disposed of by the judgment or dismissal, or are not wholly stayed, the proceedings may be continued to the extent to which those proceedings have not been so disposed of or stayed.

### **Dismissal for want of prosecution**

#### **139. (1) Where—**

- (a) the plaintiff in proceedings does not, within a reasonable time, take any step necessary to have the proceedings heard; or
- (b) the plaintiff in proceedings unreasonably takes any step to avoid the proceedings being heard,

the court may, on the application of the defendant, order, on such terms as it thinks just, that the proceedings be dismissed for want of prosecution or may make such other order as it thinks just.

(2) Where proceedings are dismissed under sub-section (1), sections 67 and 68 apply as if those proceedings had been discontinued under Part IX.

## ***Division 4—Parties***

### **Joinder of parties generally**

#### **140. Persons may be joined as plaintiffs or defendants in proceedings—**

- (a) where, if separate proceedings were instituted by or against each of them, as the case may be, a common question of law or of fact would arise in all the proceedings;
- (b) where all rights to relief claimed in the proceedings (whether they are joint, several or in the alternative) are in respect of or arise out of the same transaction or series of transactions; or
- (c) where the court gives leave so to do.

### **Joint right**

**141.** Where, in proceedings, the plaintiff claims relief to which any other person is entitled jointly with him, then, unless the court otherwise orders—

- (a) all persons so entitled shall be parties to the proceedings; and
- (b) any such person who does not consent to being joined as a plaintiff shall be made a defendant.

### **Common liability**

**142. (1)** Where, in proceedings, relief is claimed against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant in the proceedings.

(2) Where persons may be jointly, but not severally, liable and relief is claimed against some but not all of those persons in proceedings, the court may stay the proceedings until the other persons so liable are joined as defendants.

**Inconvenient joinder of parties**

**143.** Where any joinder of parties may complicate or delay the hearing of proceedings or is otherwise inconvenient, the court may order separate hearings or make such other order as the court thinks just.

**Misjoinder and non-joinder of parties**

**144.** Proceedings shall not be defeated by reason of the misjoinder of a party or the non-joinder of any person as a party, and the court may determine the issues or questions in dispute so far as they affect the rights and interests of the parties.

**Joinder of parties by order**

**145. (1)** Where a person who is not a party to proceedings—

- (a) ought to have been joined as a party; or
- (b) is a person whose joinder as a party is necessary to ensure that all matters in dispute in the proceedings may be effectually and completely determined,

the court, on application by him or by any party or of its own motion, may order that he be joined as a party, and may make orders for the further conduct of the proceedings.

**(2)** A person shall not be joined as a plaintiff in proceedings without his consent.

**Removal of parties**

**146.** Where a party to proceedings—

- (a) has been improperly or unnecessarily joined; or
- (b) has ceased to be a proper or necessary party,

the court may, on application by any party or of its own motion, order that the first-mentioned party cease to be a party, and make orders for the further conduct of the proceedings.

**Death, transmission, &c.**

**147. (1)** Where a party to proceedings dies or becomes bankrupt and a cause of action to which the proceedings relate survives, the proceedings shall not abate by reason of the death or bankruptcy.

**(2)** Where the interest or liability of a party to proceedings passes by assignment, transmission, devolution or otherwise to another person, the court may, on application by a party, by the person to whom the interest or liability has passed or of its own motion, make an order for the joining, removal or re-arrangement of parties, and may make orders for the further conduct of the proceedings.

### **Further conduct of proceedings**

**148. (1)** Without limiting the generality of the powers of the court under sections 145 to 147 (inclusive), orders under any of those sections for the further conduct of proceedings may include orders relating to—

- (a) service of any order of the court and other documents filed in the proceedings;
- (b) amendment;
- (c) the filing of a notice of grounds of defence by a joined defendant; and
- (d) substitution of one party for another party or former party.

**(2)** Where, in proceedings, the court orders that a party be substituted for another party or a former party, all things done in the proceedings before the making of the order shall, unless the court otherwise orders, have effect in relation to the substituted party as those things had effect in relation to the other or former party, but the filing of a notice of grounds of defence by the other or former party does not dispense with the filing of a notice of grounds of defence by the substituted party.

**(3)** Subject to sub-section (2), where a person is joined as a party to proceedings in pursuance of an order under section 145 or 147, the date of commencement of the proceedings shall, so far as his interests are concerned, be—

- (a) if originating process, amended so as to join him as a party, was filed—the date of filing; or
- (b) if such process was not filed—the date on which the order was made.

### **Failure to proceed after death of party**

**149. (1)** Where—

- (a) a party to proceedings dies and a cause of action to which the proceedings relate survives his death; and
- (b) an order under section 147 for the joining of a party in substitution for the deceased party is not made within 3 months after the death,

the court may, on application by a party or by a person to whom liability on the cause of action has passed on the death, order that, unless, within a specified time after service of the order in accordance with sub-section (2), a party is joined in substitution for the deceased party, the proceedings be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability on the cause of action, as the case may be, has passed on the death.

**(2)** On making an order under sub-section (1), the court shall give such directions as it thinks just for service of the order on persons (whether parties or not) interested in continuing the proceedings.

### **Representation re concurrent interests**

**150. (1)** Where numerous persons have the same interest in any proceedings, the proceedings may be instituted and, unless the court otherwise

orders, continued by or against any one or more of those persons as representing all or as representing all except any one or more of those persons.

(2) At any stage of proceedings in pursuance of this section, the court may, on the application of the plaintiff, appoint any one or more of the defendants or other persons whom the defendants represent in the proceedings to represent all, or all except one or more, of those persons in the proceedings.

(3) Where the court appoints a person under sub-section (2) who is not a defendant in the proceedings, the court shall make an order under section 145 joining him as a defendant.

(4) A judgment entered or an order made in proceedings in pursuance of this section shall be binding on all the persons whom the plaintiffs or the defendants, as the case may be, represent in the proceedings, but shall not be enforced against any person not a party to the proceedings except with the leave of the court.

(5) An application for leave under sub-section (4) shall be served personally on the person against whom it is sought to enforce the judgment or order.

(6) Notwithstanding that a judgment or order to which an application under sub-section (5) relates is binding on the person against whom the application is made, that person may dispute his liability to have the judgment or order enforced against him on the ground that by reason of facts and matters relevant to his case he is entitled to be exempted from the liability.

(7) This section does not apply in relation to proceedings concerning property subject to a trust or included in a deceased estate.

### **Deceased person**

**151.** (1) Where, in proceedings, it appears to the court that a deceased person was interested, or that the estate of a deceased person is interested, in any matter in question in the proceedings and that he has no personal representative, the court may, on the application of a party—

- (a) order that the proceedings continue in the absence of a person representing the estate of the deceased person; or
- (b) by order, appoint, with his consent, a person to represent that estate for the purpose of the proceedings.

(2) An order under sub-section (1), and any judgment or order subsequently given, entered or made in the proceedings, shall bind the estate of the deceased person to the same extent as the estate would have been bound had a personal representative of the deceased person been a party to the proceedings.

(3) Before making an order under this section, the court may require notice of the application for the order to be given to such, if any, of the persons having an interest in the estate as it thinks fit.

***Division 5—Consolidation***

**Consolidation**

**152.** Where, in relation to 2 or more proceedings, it appears to the court that—

- (a) a common question of law or fact arises;
- (b) the relief sought in each of those proceedings is in respect of, or arises out of, the same transaction or series of transactions; or
- (c) for some other reason it is desirable to make an order under this section,

the court may, of its own motion or on the application of a party to any of those proceedings and on such terms as it thinks just, order that—

- (d) those proceedings be consolidated;
- (e) those proceedings be heard together or consecutively; or
- (f) any of those proceedings be stayed until any other of those proceedings have been determined.

***Division 6—Admissions***

**Voluntary admissions**

**153. (1)** A party to proceedings may, by notice in accordance with Form 36 served on another party, admit, in favour of the other party, the facts specified in the notice.

(2) An admission made under sub-section (1) in proceedings shall have effect only for the purpose of those proceedings.

(3) A party to proceedings may, with the leave of the court, withdraw an admission made by him under sub-section (1).

**Notice to admit facts**

**154. (1)** A party to proceedings may, by notice in accordance with Form 37 served on another party, require him to admit, for the purpose of the proceedings only, the facts or documents specified in the notice.

(2) Where a party on whom a notice referred to in sub-section (1) has been served does not, within 21 days after the date on which the notice was served on him, serve on the party who served the notice a notice in accordance with Form 38 disputing the fact or document specified in the first-mentioned notice, that fact or document shall, for the purpose of the proceedings, be taken to have been admitted by the party on whom the first-mentioned notice was served in favour of the other party.

(3) A party may, with the leave of the court, withdraw an admission taken to have been made by him under sub-section (2).

**Admission of documents discovered**

**155. (1)** Where an affidavit of discovery is served on a party under this Part and inspection of any document specified in the affidavit is permitted to that party under this Part, then, subject to sub-section (3), the prescribed admissions by that party in favour of the party serving that affidavit shall have effect unless the court otherwise orders.

**(2)** For the purposes of sub-section (1), the prescribed admissions are—

- (a)** if the document is described in the affidavit as an original document—that it is an original document and was printed, written, signed or executed as it purports to have been; or
- (b)** if the document is described in the affidavit as a copy—that it is a true copy.

**(3)** Where a party to proceedings—

- (a)** has, by his pleading, denied the authenticity of a document; or
- (b)** within 14 days after the time prescribed under this Part for inspection of a document, serves on the party giving inspection a notice that he disputes the authenticity of the document,

sub-section (1) does not operate as an admission by the first-mentioned party with regard to that document.

**(4)** Where a party to proceedings serves an affidavit of discovery on another party, those parties shall be in the position that they would be in if that other party had, on the date of service of the affidavit, served on the first-mentioned party a notice to produce at the hearing of the proceedings such of the documents specified in the affidavit as are in the possession, custody or power of the first-mentioned party.

**Judgment on admissions**

**156. (1)** Where admissions are made by a party to proceedings, whether by his pleading or otherwise, the court may, on the application of any other party, give or direct the entry of any judgment or make any order to which the applicant is, in the opinion of the court, entitled on the admissions.

**(2)** The court may exercise its powers under sub-section (1) notwithstanding that other questions in the proceedings have not been determined.

**Restricted effect of admissions**

**157.** An admission referred to in this Division made for the purpose of any proceedings shall not be used—

- (a)** against the party who made the admissions in any other proceedings; or
- (b)** in favour of any person other than the party in whose favour the admission was made.

### **Costs**

**158. (1)** Where a party to proceedings serves a notice on another party disputing a fact or a document and that fact or the authenticity of that document is proved in the proceedings, the first-mentioned party shall, unless the court otherwise orders, pay the other party's costs of so proving.

**(2)** On the taxation of a bill of costs in proceedings, the taxing officer shall not allow the costs of proving any fact or the authenticity of any document—

- (a) which is admitted, unless the costs were, in the opinion of the taxing officer, reasonably incurred before the admission was made; or
- (b) which was not but, in the opinion of the taxing officer, might reasonably have been, the subject of a notice under section 154 and which, in the case of a fact, could not reasonably have been the subject of a notice under section 153.

### ***Division 7—Interrogatories***

#### **Interrogatories**

**159. (1)** Subject to sub-section (2), a party to proceedings may, once without the leave of the court, file and serve on another party interrogatories relating to any matter in question in the proceedings between those parties, and the court may, by order, give the first-mentioned party leave to file and serve further interrogatories on that other party.

**(2)** A party to proceedings is not entitled to file and serve interrogatories on another party—

- (a) before the pleadings between those parties are closed; or
- (b) after a certificate of readiness for hearing has been filed unless the certificate has been withdrawn or struck out.

**(3)** Interrogatories shall be in accordance with Form 39.

**(4)** Subject to this section, a party on whom interrogatories are served in accordance with this section shall, within 21 days after the date of service, file an affidavit containing his answers to the interrogatories and serve a copy of that affidavit on—

- (a) the party who served the interrogatories; and
- (b) if the first-mentioned party is a defendant—each other defendant (if any) in the proceedings who has filed a notice of grounds of defence.

**(5)** An affidavit in answer to interrogatories shall be in accordance with Form 40.

**(6)** A party on whom interrogatories are served may, in his affidavit, object to answering any of the interrogatories on the ground that they are irrelevant, unnecessary, unreasonable, scandalous, vexatious, oppressive or not made in good faith, or on any other ground.

**(7) Where—**

- (a) a party to proceedings fails to comply with sub-section (4); or

- (b) answers contained in an affidavit filed and served by him under that sub-section are insufficient,

the party who served the interrogatories may apply to the court for an order that answers, or further and better answers, as the case requires, be furnished.

(8) On hearing an application under sub-section (7), the court may order that answers, or further and better answers, as the case requires, be furnished in such manner, whether by means of oral examination or otherwise, and within such time as is specified in the order.

- (9) Where—

- (a) the court has made an order in pursuance of sub-section (8); and  
(b) the person against whom the order was made fails to attend for oral examination at the time and place specified in the order, fails to furnish answers or further and better answers at the examination or fails to furnish answers, or further and better answers, as the case requires, in the manner and within the time specified in the order,

the court may, on the application of the party who served the interrogatories, make such orders as it thinks just, including—

- (c) if that last-mentioned party is the defendant—an order that the proceedings be stayed or dismissed wholly or in part as regards any relief claimed by the plaintiff in the proceedings; or  
(d) if that last-mentioned party is the plaintiff—an order that the defence be struck out and judgment be entered for the plaintiff accordingly.

(10) The cost of interrogatories and of answering interrogatories shall be borne by the party serving the interrogatories unless the court otherwise orders.

(11) Subject to sub-section (12), a party to proceedings who has served interrogatories is, subject to this section, entitled to use in evidence in the proceedings any of the answers, or any part of an answer, without so using any other answers or the whole of the answer, as the case may be.

(12) The court may examine all the answers given and if, in the opinion of the court, any answer or part of the answer is so connected with another answer or part of an answer, the court may refuse to admit in evidence the first-mentioned answer or part of an answer unless the party who served the interrogatories also tenders in evidence that other answer or part of an answer, as the case may be.

### ***Division 8—Discovery and inspection***

#### **Notice for discovery**

**160.** (1) Subject to sub-section (2), where there has been an implied joinder of issue between the parties to proceedings, any of those parties may, unless the court otherwise orders, by notice for discovery in accordance with Form 41 filed and served on any other of those parties, require the party served to give discovery of documents.



(2) A party to proceedings is not entitled to require discovery under sub-section (1) after a certificate of readiness for hearing has been filed unless the certificate has been withdrawn or struck out.

### **Discovery on notice**

**161.** (1) A party to proceedings who is required to give discovery of documents under section 160 shall do so within such time, not being less than 21 days after service of the notice for discovery on him, as may be specified in the notice.

(2) Subject to section 162, a party shall give discovery by filing and serving on the party who filed the notice for discovery an affidavit of discovery in accordance with Form 42 relating to any matter in question between him and the party who filed the notice for discovery.

### **Limitation of discovery on notice**

**162.** (1) The court may, before or after any party to proceedings has been required under section 160 to give discovery, order that discovery under section 161 by a party shall not be required or shall be limited to such documents or classes of documents, or to such of the matters in question in the proceedings, as may be specified in the order.

(2) The court shall, on application by a party to proceedings, make such orders under sub-section (1) as are necessary to prevent unnecessary discovery.

### **Co-defendants**

**163.** Where a plaintiff in proceedings claims relief against 2 or more defendants and requires any defendant to give discovery under section 161, that defendant shall serve his affidavit also on each other defendant who has filed a notice of grounds of defence.

### **Order for general discovery**

**164.** The court may, at any stage of proceedings, order any party to file and serve on any other party an affidavit of discovery.

### **Contents of affidavit of discovery**

**165.** (1) Subject to sub-section (2), an affidavit of discovery shall enumerate the documents which are or have been in the possession, custody or power of the party to proceedings making the affidavit in a convenient sequence and as concisely as possible.

(2) An affidavit of discovery shall describe each document which is or has been in the possession, custody or power of the party to proceedings making the affidavit or, in the case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.

(3) Where a party to proceedings making an affidavit of discovery claims that any document in his possession, custody or power is privileged from

production, he shall, in the affidavit, sufficiently state the grounds of the privilege.

(4) An affidavit of discovery shall distinguish those documents that are in the possession, custody or power of the party to proceedings making the affidavit from those that have been but are no longer in his possession, custody or power.

(5) An affidavit of discovery shall, as to any document that has been but is not then in the possession, custody or power of the party to proceedings making the affidavit, state when he parted with possession, custody or power of the document and what has become of it.

(6) An affidavit of discovery shall specify a time, within 7 days after service of the affidavit, when, and a place where, the documents in the affidavit may be inspected.

### **Absence of privilege**

**166. (1)** Except with the leave of the court, a party to proceedings may not claim privilege from production of any document on the ground that it relates solely to and does not tend to prejudice his own case and does not relate to or tend to support the case of an opposite party.

(2) Leave under sub-section (1) shall not be granted except for special cause.

(3) Any application to the court for leave under sub-section (1) may be made without serving notice of the motion.

(4) The court may, at any stage of proceedings, order a party to produce a document to any other party notwithstanding that leave under sub-section (1) has been granted and privilege claimed in respect of that document.

### **Order for particular discovery**

**167.** Where, at any stage of proceedings, it appears to the court from the evidence, from the nature or circumstances of the case or from any document filed in the proceedings that there are grounds for believing that a document or class of documents relating to any matter in question in the proceedings may be or may have been in the possession, custody or power of a party, the court may order that party to file, and serve on any other party, an affidavit stating whether that document or any document of that class is or has been in his possession, custody or power and, if it has been but is not then in his possession, custody or power, when he parted with possession, custody or power of the document and what has become of it.

### **Document referred to in pleading or affidavit**

**168. (1)** Where a pleading or affidavit filed by a party to proceedings refers to a document, any other party may, by notice to produce in accordance with Form 43 served on him, require him to produce the document for inspection.

(2) Where a notice to produce a document is served on a party under sub-section (1), he shall, within 4 days after that service, serve on the party requiring production a notice in accordance with Form 44—

- (a) specifying a time, within 7 days after service of the notice under this sub-section, when, and a place where, the document may be inspected;
- (b) claiming that the document is privileged from production and sufficiently stating the grounds of the privilege; or
- (c) stating that the document is not in his possession, custody or power and stating, to the best of his knowledge, information and belief, where the document is and in whose possession, custody or power it is.

### **Order for production**

**169. (1)** Where—

- (a) it appears from an affidavit of discovery filed by a party to proceedings that any document is in his possession, custody or power;
- (b) a pleading or affidavit filed by a party to proceedings refers to any document; or
- (c) it appears to the court from the evidence, from the nature or circumstances of the case or from any document filed in the proceedings that there are grounds for believing that any document relating to any matter in question in the proceedings is in the possession, custody or power of a party,

the court may, subject to any question of privilege which may arise, order the party—

- (d) to produce the document for inspection by any other party at a time and place specified in the order; or
- (e) to file and serve on any other party a copy of the whole or any part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.

(2) An affidavit made in pursuance of an order under paragraph (1) (e) shall, unless the court otherwise orders, state whether there are in the document copied any erasures, interlineations or alterations and, if so, specify them.

### **Power to take copies**

**170.** A party to proceedings to whom a document is produced for inspection under this Ordinance may make copies of the document.

### **Production to the court**

**171. (1)** The court may, at any stage of proceedings, order any party to produce to the court any document in his possession, custody or power relating to any matter in question in the proceedings.

(2) Upon production of a document to the court in pursuance of an order under sub-section (1), the court may deal with the document in such manner as the court thinks just.

**Inspection to decide objection**

**172.** Where an application is made for an order under section 169 for the production of any document for inspection by another party to proceedings, or for an order under section 171 for the production of any document to the court, and a claim is made that the document is privileged from production or an objection to production is made on any other ground, the court may inspect the document for the purpose of deciding the validity of the claim or objection.

**Order only if necessary**

**173.** The court shall not make an order for the filing or service of any affidavit of discovery or other document or for the production of any document unless satisfied that the order is necessary.

**Default**

**174.** Where a party to proceedings does not file or serve an affidavit of discovery or other document or does not produce any document as required under this Ordinance, the court may make such order as it thinks just, including—

- (a) an order that the party in default pay the costs of any other party occasioned by the default;
- (b) if the party in default is a plaintiff—an order that the proceedings be stayed or dismissed wholly or in part as regards any relief claimed by him in the proceedings; or
- (c) if the party in default is a defendant—an order that his defence be struck out and judgment be entered for the plaintiff accordingly.

**Public Interest**

**175.** This Division does not affect any rule of law which authorizes or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest.

**PART XIV—HEARING*****Division 1—Setting down for hearing*****Certificate of readiness for hearing**

**176. (1)** Subject to this Ordinance, proceedings shall not be set down for hearing unless a certificate of readiness for hearing in accordance with Form 45, signed by—

- (a) if the defendant has not filed a notice of grounds of defence—the plaintiff; or
  - (b) in any other case—all parties to the proceedings,
- has been filed.

(2) Where a certificate referred to in sub-section (1) has been filed, the clerk shall—

- (a) fix a date, time and place for the hearing of the proceedings; or
- (b) list the matter in the next available call-over and as soon as practicable after that call-over fix a date, time and place for the hearing of the proceedings,

and he shall serve on each party to the proceedings a notice in accordance with Form 46 of the date, time and place so fixed.

(3) A date fixed under sub-section (2) as the date for the hearing of proceedings shall be a date not less than 10 days after the date on which a certificate of readiness for hearing in relation to the proceedings was filed.

(4) Where a party to proceedings refuses or fails to sign a certificate of readiness for hearing within 14 days after he has, by notice in writing served on him, been requested to do so by any other party, the last-mentioned party may apply to the court for an order that the matter be set down for hearing.

(5) Where—

- (a) a party to proceedings who has been requested by any other party to sign a certificate of readiness for hearing does so; and
- (b) that other party refuses or fails to file the certificate within 10 days after it was so signed,

the first-mentioned party may apply to the court for an order that the matter be set down for hearing.

(6) On hearing an application under sub-section (4) or (5), the court may, if it is satisfied that a party to proceedings did not have a good and sufficient reason for refusing or failing to sign or file, as the case may be, a certificate of readiness for hearing, order that the matter be set down for hearing.

(7) Where, in relation to proceedings, the court has made an order under sub-section (6) that the matter be set down for hearing, the clerk shall, unless the court otherwise orders—

- (a) fix a date, time and place for the hearing of the proceedings; and
- (b) serve on each party a notice in accordance with Form 46 of the date, time and place so fixed.

(8) The date fixed under sub-section (7) as the date for the hearing of proceedings shall, unless the court otherwise orders, be a date not less than 10 days after the date on which the order under sub-section (6) was made.

(9) Where a party to proceedings has been notified under sub-section (2) or (7) of the date, time and place fixed for the hearing of the proceedings, he may lodge with the clerk a request in writing for another date or time to be so fixed, accompanied by each other party's consent in writing to the request.

(10) Upon receiving a request and the accompanying consents under sub-section (9), the clerk—

- (a) may, after consultation with the parties to the proceedings, fix another date or time for the hearing of the proceedings in substitution for the date or time fixed under sub-section (2) or (7), as the case may be; and
- (b) shall, if he does so, serve on each party a notice in accordance with Form 46 of the date or time fixed under this sub-section.

(11) A date fixed under sub-section (10) as the date for the hearing of proceedings shall, unless it was specified in a request under sub-section (9) or was agreed to during consultation with the clerk, be a date not less than 10 days after the date on which the request was lodged with the clerk.

### **Application for expedited hearing**

177. (1) Notwithstanding the provisions of section 176, a party to proceedings may apply to the court for an order that the matter be set down for hearing forthwith, or for an expedited hearing, as the case requires.

(2) On an application under sub-section (1), the court may, if it is satisfied that there are circumstances that justify it in doing so, by order, fix a date, time and place for the hearing of the proceedings.

(3) Where the court has made an order under sub-section (2) in relation to proceedings, the clerk shall serve on each party to the proceedings a notice in accordance with Form 46 of the date, time and place fixed under the order for the hearing of the proceedings.

### ***Division 2—Procedure on hearing***

#### **Usually open court**

178. (1) Subject to sub-section (2) and except as regards a matter which a magistrate may deal with in chambers, proceedings shall be heard and determined in open court, and any person is entitled, so far as is practicable, to be present in court during the hearing of proceedings.

(2) The court may order the exclusion of the public or of persons specified by the court from the hearing of proceedings where the court is satisfied that the presence of the public or of those persons, as the case may be, would be contrary to the interests of justice.

(3) A person who refuses or fails to comply with an order made under sub-section (2) is guilty of contempt of court.

#### **Right of appearance**

179. (1) At the hearing of proceedings, a party to the proceedings may appear—

- (a) by solicitor or counsel;
- (b) in the case of an individual—personally;

- (c) in the case of a corporation—by an officer of the corporation duly authorized by the corporation; or
- (d) with the leave of the court—by another person.

(2) Subject to this Ordinance, a person appearing at the hearing of proceedings may address the court and may examine and cross-examine witnesses.

(3) A person who is not a barrister or solicitor is not entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person at the hearing of proceedings.

(4) Sub-section (3) does not operate to prevent an employee who, in the ordinary course of his employment, appears on behalf of his employer at the hearing of proceedings from receiving wages or salary for so appearing.

(5) In this section, “corporation” includes a body that may by law sue or be sued, whether in its own name or in the name of any officer or other person.

#### **Court’s direction re conduct of hearing**

**180.** At the hearing of proceedings, the court may give directions with regard to the conduct of the hearing and, in particular, but without limiting the generality of the foregoing, with regard to the order in which the parties to the proceedings may adduce evidence or address the court.

#### **Order of presentation of cases**

**181. (1)** The provisions of this section have effect in relation to the hearing of proceedings—

- (a) subject to any directions given by the court under section 180 in relation to those proceedings; and
- (b) in relation to proceedings in which there is more than one plaintiff or defendant, proceedings on a cross-claim, proceedings in respect of more than one cause of action or proceedings in which a third party is joined—subject to such modifications as the nature of the case may require.

(2) The order in which the respective cases of the plaintiff and defendant in proceedings shall be presented at the hearing of those proceedings shall be as provided by the succeeding provisions of this section.

(3) Where the burden of proof on any issue lies on the plaintiff, he shall begin.

(4) Where the burden of proof on all the issues lies on the defendant, he shall begin.

(5) The beginning party may make an address opening his case and may then adduce his evidence.

(6) Where, at the conclusion of the evidence for the beginning party, no document or thing has been admitted in evidence on tender by the opposite

party, the opposite party may elect to adduce evidence or not to adduce evidence.

(7) If, in pursuance of sub-section (6), the opposite party elects not to adduce evidence, the beginning party may make an address closing his case and then the opposite party may make an address stating his case.

(8) If, in pursuance of sub-section (6), the opposite party elects to adduce evidence, the opposite party may make an opening address before adducing his evidence, and after adducing his evidence he may make an address closing his case, and then the beginning party may make an address closing his case.

### **Procedure where both parties appear**

182. Where each party to proceedings appears, either personally or by his representative, on the date and at the time and place fixed for the hearing of the proceedings, the court shall proceed to hear and determine the proceedings.

### **Procedure in absence of party**

183. Where, at the time fixed for the hearing of proceedings, any party to the proceedings fails to appear, either personally or by his representative, the court may—

- (a) order that the proceedings be again set down for hearing or that such other steps be taken before the hearing proceeds as the court directs;
- (b) adjourn the proceedings;
- (c) if the party is the plaintiff or, in the case of proceedings on a cross-claim, the defendant, dismiss the claim or the cross-claim, as the case requires; or
- (d) proceed with the hearing *ex parte* generally or as regards any relief claimed in the proceedings.

### **Procedure where neither party appears**

184. Where each party to proceedings fails to appear, either personally or by his representative, on the date and at the time and place fixed for the hearing of the proceedings, the court may order that the proceedings be struck out, and where the court so orders, it shall not make any order as to costs.

## ***Division 3—Summons to witness***

### **Issue of summons**

185. (1) In any proceedings, the court may issue a summons to give evidence, a summons for production, or a summons that is both a summons to give evidence and a summons for production for the attendance of the person named before the court or before any magistrate or examiner.

(2) On request by a party to proceedings, the clerk shall, subject to any order or directions of the court, issue a summons to give evidence, a summons for production, or a summons that is both a summons to give evidence and a



summons for production for the attendance of the person named before the court or before any magistrate or examiner.

(3) A summons to give evidence, a summons for production and a summons that is both a summons to give evidence and a summons for production shall be in accordance with Forms 47, 48 and 49 respectively.

(4) Subject to sub-section (5), a party to proceedings requesting the issue of a summons under this section shall produce the summons to the clerk in triplicate and shall file one of the copies so produced.

(5) Where a party to proceedings requests the issue of several summonses under this section to give evidence in similar terms but addressed to different persons, he is required to produce only one original and to file only one copy, but that original and copy shall each contain the name of each person to whom any of the summonses is addressed.

(6) A summons issued under this section shall be served upon the person named by—

- (a) delivering a copy of the summons to him personally; or
- (b) leaving a copy of the summons at his last known place of residence or business with a person apparently resident or employed at that place and apparently over the age of 16 years,

within a reasonable time before the date specified in the summons.

(7) Where—

- (a) a summons issued under this section has been served in accordance with sub-section (6) on the person named;
- (b) an amount in respect of expenses that the person would incur in complying with the summons on any day on which his attendance is required (being an amount equal to the amount that would be payable in respect of that person if the party on whose request the summons was issued were entitled to claim witnesses' expenses in respect of that person as costs in the proceedings) has been paid or tendered to him at the time of service of the summons or within a reasonable time before that day; and
- (c) the person refuses or fails, without reasonable excuse, to comply with the requirement of the summons,

that person is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$500.

(8) Where a person contravenes sub-section (7), the court may—

- (a) issue a warrant for the apprehension of the person and for him to be brought before the court to give evidence or to produce documents, as the case requires; and
- (b) order the person to pay any costs in the proceedings occasioned by the contravention.

(9) Notwithstanding anything contained in this section, a person is not required to produce a document or thing in pursuance of a summons for production issued under this section if—

- (a) the document or thing is not specified or otherwise sufficiently described in the summons; or
- (b) he would not be required to produce that document or thing upon a *subpoena duces tecum* in the Supreme Court.

### **Production by non-party**

186. (1) Where a person named in a summons for production of any document or thing, being a summons requiring attendance before the court or a magistrate, is not a party to the proceedings, that person may, unless the court otherwise orders, produce the document or thing to the clerk not later than the day before the first date on which his attendance is required, instead of attending and producing the document or thing as required by the summons.

(2) Where a document or thing is produced to the clerk in pursuance of sub-section (1), the clerk shall—

- (a) give a receipt to the person producing the document or thing; and
- (b) produce the document or thing as the nature of the case requires or as the court directs.

(3) This section does not apply in relation to so much of a summons as requires the person named to attend to give evidence in any proceedings.

### **Setting aside of summons**

187. (1) The court may, on the application of the person named, set aside a summons issued under section 185 wholly or in part.

(2) An application under sub-section (1) shall be filed and a copy served on the party to the proceedings on whose request the summons was issued.

### **Production on notice**

188. Where a party to proceedings serves on another party a notice in accordance with Form 50 requiring the other party to produce at the hearing of the proceedings or before the clerk or an examiner a document or thing for the purpose of evidence and that document or thing is in the possession, custody or power of that other party, that other party shall, unless the court otherwise orders, produce the document or thing in accordance with the notice notwithstanding that he has not been served with a summons for production in relation to that document or thing.

## ***Division 4—Adjournment, stay or postponement of proceedings***

### **Adjournment of proceedings**

189. The court may, at any time, adjourn the hearing or the further hearing of proceedings in such manner and on such terms as the court thinks just.

### **Stay of proceedings**

**190.** The court may, at any time, order that the proceedings be stayed on such terms as the court thinks just.

### **Postponement of hearing by clerk**

**191.** Where, on the date and at the time and place fixed for the hearing or further hearing of proceedings, a magistrate is not available to exercise the jurisdiction of the court, the clerk may, and shall at the request of a party to the proceedings made after a period of 1 hour has elapsed since that time without a magistrate becoming so available, postpone the hearing or further hearing to a date, time and place fixed by him.

## ***Division 5—Case stated for Supreme Court***

### **Case stated**

**192. (1)** At the request of a party to proceedings, the court may state, in the form of a special case, for the opinion of the Supreme Court any question of law that arises in the proceedings.

**(2)** Jurisdiction is vested in the Supreme Court to hear and determine a case stated under this section.

## **PART XV—EVIDENCE**

### ***Division 1—Evidence generally***

#### **Oral evidence**

**193.** Subject to this Part, the evidence of any witness in proceedings shall be given orally before the court.

#### **Evidence by affidavit**

**194. (1)** The court may, in its discretion and on such terms as it thinks just, order that any evidence in proceedings may be given by affidavit.

**(2)** Evidence in proceedings may, with the consent of all parties to the proceedings, be given by affidavit.

**(3)** Evidence in proceedings may be given by affidavit on an assessment of the amount to be recovered by a plaintiff after interlocutory judgment has been entered—

- (a)** as regards the identity of any motor vehicle, the damage sustained by a motor vehicle in a collision and the reasonable cost of repairing that damage; and
- (b)** as regards such other items of special damage as the Chief Magistrate from time to time directs.

**Examination on oath**

**195.** (1) Subject to sub-section (2), each person appearing as a witness in proceedings shall be examined on oath.

(2) Sub-section (1) does not apply where a person appears as a witness in proceedings only for the purpose of producing documents.

(3) For the purposes of this section, the court may administer, or cause to be administered, to a person any lawful form of oath that binds that person.

**Refusal to be sworn, to answer questions or to produce documents**

**196.** (1) A person appearing as a witness in proceedings shall not, without reasonable excuse—

- (a) refuse or fail to take an oath;
- (b) refuse or fail to answer a question that he is required by the court to answer; or
- (c) refuse or fail to produce a document that he is required by the court, or by a summons served on him under section 185, to produce.

Penalty: \$500.

(2) Subject to this section, where a person contravenes sub-section (1) in relation to proceedings, the court may—

- (a) adjourn the proceedings for a period not exceeding 8 days; and
- (b) issue a warrant for the committal of that person to a gaol, lock-up or remand centre until—
  - (i) the date fixed for the further hearing of the proceedings; or
  - (ii) the person consents to comply with sub-section (1),whichever first occurs.

(3) Subject to this section, where—

- (a) the court has adjourned proceedings in pursuance of sub-section (2) or this sub-section;
- (b) the person who was committed in pursuance of a warrant issued under either of those sub-sections is brought before the court on the further hearing of those proceedings; and
- (c) that person then again contravenes sub-section (1) in relation to those proceedings,

the court may again exercise the like powers with regard to an adjournment of the proceedings and the committal of that person as are referred to in sub-section (2).

(4) The periods for which a person is committed under this section shall not, in the aggregate, exceed one month.

(5) A person shall not be punished for an offence against sub-section (1), and in pursuance of sub-section (2) or (3), in respect of the same act or omission.

### **Proof of court documents**

**197. (1)** A document purporting to be sealed or stamped with the seal of the court is admissible in evidence in proceedings without further proof.

**(2)** An office copy of a document filed or issued out of the court is admissible in evidence in proceedings and between all parties to proceedings to the same extent as the original of that document would be admissible.

**(3)** A document purporting to be sealed or stamped with the seal of the court and to be a copy of a document filed or issued out of the court is admissible as an office copy of the last-mentioned document without further proof.

### **Medical evidence**

**198. (1)** This section does not apply in relation to proceedings against a medical practitioner in which damages are claimed in respect of alleged professional negligence on the part of that medical practitioner.

**(2)** This section has effect in relation to proceedings subject to—

- (a)** any order of the court; and
- (b)** any agreement made between the parties to the proceedings.

**(3)** At the hearing of proceedings, oral evidence of a medical practitioner as to the past, present or probable future physical or mental condition of a person is not admissible on any contested issue unless the party seeking to adduce that evidence has, not later than 14 days before the time fixed for the hearing, served on each other party to the proceedings a copy of a report in writing from that medical practitioner containing the substance of the matters sought to be adduced in evidence.

**(4)** Subject to sub-section (7), a report in writing made by a medical expert is admissible in evidence at the hearing of proceedings as regards—

- (a)** his opinion on any matter within the field of his expertise; and
- (b)** any fact that is known to him as a result of his own observation or of his knowledge or experience in that field,

if the party to the proceedings seeking to use the report in evidence has, not later than 14 days before the time fixed for the hearing, served a copy of the report on each other party to the proceedings.

**(5)** A party to proceedings on whom a copy of a report has been served in accordance with sub-section (4) may, by notice in writing served on the party who served that copy, require the attendance of the medical expert who made the report at the hearing of the proceedings for the purpose of cross-examination by the first-mentioned party.

**(6)** A notice referred to in sub-section (5) shall be served not later than 5 days before the time fixed for the hearing of the proceedings.

(7) Where—

(a) a notice referred in sub-section (5) in relation to a medical expert has been served in accordance with this section; and

(b) that expert does not attend as required by the notice,

the report of that expert is not admissible in evidence at the hearing of the proceedings.

(8) Where—

(a) a medical expert attends before the court at the hearing of proceedings in pursuance of a notice referred to in sub-section (5); and

(b) the party who served the notice cross-examines that expert,  
the party who tendered the relevant report may re-examine that expert.

(9) This section has effect notwithstanding any other law in force in the Territory.

### **Privilege**

199. (1) Where—

(a) the court, by summons or otherwise, orders any person to produce any document or thing for the purpose of proceedings; and

(b) any person makes and substantiates sufficient lawful objection to production on grounds of privilege,

the court shall not compel production of that document or thing except production to the court for the purpose of ruling on the objection.

(2) Where a question is put to a person in the course of examination in proceedings and any person makes and substantiates sufficient lawful objection on grounds of privilege to the question being answered, the court shall not compel an answer to the question.

(3) Sub-section (1) applies where an order is made for production to, and sub-section (2) applies where a question is put to a person in the course of examination before, the court or any magistrate or examiner, whether on the hearing of proceedings or on any other occasion.

(4) This section does not affect any rule of law which authorizes or requires the withholding of any document or thing or the refusal to answer any question on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest.

### **Dispensing with rules of evidence**

200. (1) At any stage of proceedings, the court may dispense with compliance with the rules of evidence—

(a) for proving any matter which is not *bona fide* in dispute; or

(b) where such compliance might occasion or involve unnecessary or unreasonable expense or delay.

(2) Without limiting the generality of sub-section (1), the power of the court under that sub-section includes a power to dispense with compliance with

the rules of evidence relating to proof of handwriting or of documents or proof of the identity of parties or of authority.

***Division 2—Examinations de bene esse***

**Order for examination of witnesses**

**201. (1)** The court may, for the purpose of any proceedings, make an order in accordance with Form 51, on such terms as the court thinks just, for the examination of any person on oath before a magistrate or such other person as the court appoints, whether within or outside the Territory.

**(2)** Unless the court otherwise orders, an examiner shall appoint a place and time for the examination, being a time as soon as practicable after the order appointing him was made having regard to the convenience of the person to be examined and to any other relevant circumstances.

**(3)** An examiner shall give reasonable notice of his appointment to the party to proceedings on whose application the order under sub-section (1) was made, and that party shall give reasonable notice of that appointment to each other party to the proceedings.

**(4)** Where the court makes an order under sub-section (1) in relation to proceedings, the party on whose application the order was made shall forthwith cause a copy of the order to be served on each other party to the proceedings.

**(5)** Where an examiner has been appointed in relation to proceedings, the party to the proceedings on whose application the order under sub-section (1) was made shall forthwith furnish the examiner with copies of any documents in the proceedings that are necessary to inform the examiner of the questions to which the examination is to relate.

**(6)** Where the documents filed in proceedings are not sufficient to inform an examiner of the questions to which the examination is to relate, the court shall, in the order under sub-section (1) or by a subsequent order, state those questions.

**(7)** At an examination taken in pursuance of this section in relation to proceedings—

- (a)** the examiner may administer to the person being examined any lawful form of oath that binds the person;
- (b)** subject to this section, the practice and procedure of the court in relation to the hearing of proceedings applies so far as is applicable;
- (c)** the examiner may adjourn the examination from time to time and from place to place;
- (d)** each party, and his solicitor and counsel, may attend;
- (e)** unless the court otherwise orders, each party has the same rights with respect to the examination, cross-examination and re-examination of the person being examined as that party would have had if that person had given evidence at the hearing of the proceedings;

- (f) the examiner may ask the person being examined any question as to the meaning of any answer given by the person or any other matter arising in the course of the examination;
- (g) the deposition of the person examined shall be taken down by the examiner or by a shorthand writer or some other person in the presence of the examiner;
- (h) the deposition shall contain, so far as practicable, the statement of the person examined;
- (i) the examiner may direct that the words of any question and the answer to the question be set out in the deposition, but otherwise, and subject to paragraphs (h) and (10) (b), the deposition need not set out every question and answer;
- (j) if a party to the proceedings so requests, the deposition of the person examined, or the shorthand notes of his examination, shall be read to him and the examiner shall ask him to sign his deposition or those notes; and
- (k) the examiner shall authenticate the deposition of the person examined by his signature and shall make on, or attach to, the deposition a note, signed by him, of the time occupied in the examination and the fees received by him in respect of the examination.

(8) An examiner shall, as soon as practicable after the examination has been completed, forward to the clerk any depositions taken at the examination and, unless the court otherwise orders, any exhibits that were before him.

(9) Upon receiving depositions from an examiner under sub-section (8), the clerk shall file the depositions in the proceedings, and upon receiving any exhibits from an examiner under that sub-section, the clerk shall deal with those exhibits in such manner as the court directs.

(10) Where, at an examination taken in pursuance of this section, a party to proceedings or the person being examined objects to any question asked of that person or to the production of any document or thing by that person, or that person objects to answering any question asked of him—

- (a) the examiner shall state to the parties present at the examination his opinion concerning the validity of the ground for the objection, but he shall not decide upon that validity;
- (b) the question, the ground for objection, the answer (if any) and the opinion of the examiner shall be set out in the deposition of the person being examined or in a statement attached to the deposition;
- (c) the court shall, on application by any party or at the hearing of the proceedings, decide upon the validity of the ground for the objection; and
- (d) if the court decides that there were no valid grounds for the objection, the court may order the objector to pay any costs of any party in the proceedings occasioned by the objection.



(11) Evidence given by a person in an examination taken in pursuance of this section in relation to proceedings is admissible, subject to all just exceptions, at the hearing of the proceedings unless the court is satisfied that the person who gave the evidence is then within a convenient distance of the court and is able to attend before the court to give evidence.

(12) An examiner may, with the consent in writing of each party to the proceedings, take the examination of another person in addition to the person for whose examination he was appointed, and where an examiner does so—

- (a) he shall annex to the deposition of that other person the consent of each party; and
- (b) the provisions of this section apply in relation to the examination of that other person in like manner as they apply to the examination of the person for whose examination he was appointed.

(13) A person attending before an examiner to be examined in pursuance of this section is entitled to be paid the same amount to meet his reasonable expenses in so attending as he would have been entitled to be paid if his attendance had been before the court to give evidence in the proceedings.

(14) An examiner may make a report to the court concerning the examination and, in particular, the conduct or absence of any person.

(15) On receiving a report under sub-section (14), the court may make such order as it thinks just.

### ***Division 3—Affidavits***

#### **Time for swearing affidavit**

202. An affidavit for use in proceedings may be sworn before or after the proceedings are instituted.

#### **Form of affidavit**

203. (1) An affidavit for use in proceedings shall be in accordance with Form 52.

(2) An affidavit for use in proceedings shall be—

- (a) in the first person;
- (b) divided into paragraphs numbered consecutively;
- (c) confined, as far as practicable, to one subject-matter in each paragraph; and
- (d) signed on each page by the deponent and the person before whom it is sworn.

#### **Irregularity in affidavit**

204. (1) An affidavit for use in proceedings may, unless the court or the clerk otherwise orders, be filed notwithstanding any irregularity in form.

(2) An affidavit may, with the leave of the court, be used in proceedings notwithstanding any irregularity in form.

**Filing and service of affidavit**

**205. (1)** Subject to section 121, a party to proceedings who intends to adduce evidence by affidavit shall—

- (a) file the affidavit with the clerk; and
- (b) serve a copy of the affidavit on each other party to the proceedings, not later than 10 days before the time fixed for the hearing of the proceedings.

**(2)** Where sub-section (1) is not complied with in relation to an affidavit, that affidavit shall not be used in the proceedings except with the leave of the court.

**Cross-examination of deponent**

**206. (1)** A party to proceedings on whom a copy of an affidavit has been served in accordance with sub-section 205 (1) may, by notice in writing served on the party who filed the affidavit, require the attendance of the deponent at the hearing of the proceedings for the purpose of cross-examination by the first-mentioned party.

**(2)** A notice referred to in sub-section (1) (other than a notice relating to an affidavit in interlocutory proceedings) shall be served not later than 5 days before the time fixed for the hearing of the proceedings.

**(3) Where—**

- (a) a notice referred to in sub-section (1) relating to an affidavit in proceedings has been served in accordance with this section; and
  - (b) the deponent does not attend as required by the notice,
- the affidavit shall not be used in the proceedings except with the leave of the court.

**(4) Where—**

- (a) a deponent attends before the court at the hearing of proceedings in pursuance of a notice referred to in sub-section (1) that has been served in accordance with this section; and
  - (b) the party who served the notice cross-examines the deponent,
- the party using the relevant affidavit may re-examine the deponent.

**Contents of affidavit**

**207. (1)** Subject to sub-section (2), an affidavit for use in proceedings shall be confined to facts within the knowledge of the deponent.

**(2)** An affidavit for use in interlocutory proceedings may contain statements of information and belief with the source of that information and the grounds of that belief.

**(3)** A party to proceedings who uses an affidavit that unnecessarily contains a matter of hearsay, argumentative matter or copies of or extracts from documents is not entitled to his costs in the proceedings in relation to that affidavit, or the part of the affidavit that contains that matter or those copies or extracts, as the case may be.

### **Deponents for affidavits answering interrogatories or of discovery**

**208.** (1) Subject to this section, an affidavit under section 159 of a party to proceedings containing answers to interrogatories, or an affidavit of discovery under sub-section 161 (2) of a party to proceedings may be made by—

- (a) the party;
- (b) where the party is a person under disability—his next friend or guardian *ad litem*;
- (c) where the party is a body corporate—a member or officer of the body corporate;
- (d) where the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer of the body or other person—a member or officer of the body; or
- (e) where the party is the Crown or an officer of the Crown suing or being sued in his official capacity—an officer of the Crown.

(2) Subject to sub-section (3), where a party to proceedings answering interrogatories or giving discovery is a party referred to in paragraph (1) (c), (d) or (e), the party shall choose a person to make the affidavit, being a person who is qualified to do so and who has knowledge of the relevant facts.

(3) Where—

- (a) a party to proceedings answering interrogatories or giving discovery is a party referred to in paragraph (1) (c), (d) or (e); and
- (b) the affidavit is to be filed and served in pursuance of an order of the court,

the court may, in the order—

- (c) specify the person to make the affidavit; or
- (d) specify the persons from whom the party may choose a person to make the affidavit.

### **Affidavit by illiterate or blind person**

**209.** (1) Where it appears to the person before whom an affidavit for use in proceedings is sworn that the deponent is illiterate or blind, the person shall certify in or below the jurat that the affidavit was read in his presence to the deponent and that the deponent appeared to understand the affidavit.

(2) Where an affidavit made by an illiterate or blind deponent does not bear a certificate in accordance with sub-section (1), the affidavit shall not be used in proceedings unless the court is satisfied that the affidavit was read over to the deponent and that he appeared to understand it.

### **Affidavit by person unable to understand English**

**210.** (1) Where it appears to the person before whom an affidavit for use in proceedings is sworn that the deponent is unable to understand the affidavit when read to him in English, that person shall certify in or below the jurat that

an interpreter, whose name and address is stated in the certificate, has sworn before him—

- (a) that he has, in the presence of the person taking the affidavit, interpreted to the deponent the contents of the affidavit;
- (b) that the deponent appeared to understand it;
- (c) that he has interpreted to the deponent the oath, affirmation or declaration in the affidavit; and
- (d) that the deponent has sworn, affirmed or declared that the contents of the affidavit so interpreted to him were true.

(2) Where it appears to the court that the deponent to an affidavit is unable to understand the affidavit when read to him in English, the affidavit shall not be used in proceedings unless—

- (a) the affidavit bears a certificate referred to in sub-section (1); or
- (b) the court is satisfied that the affidavit was interpreted to the deponent and that he appeared to understand it.

### **Annexures and exhibits to affidavits**

**211. (1)** A document to be used in connection with an affidavit filed in proceedings shall, where convenient, be annexed to the affidavit.

(2) If annexing a document to an affidavit in proceedings is not convenient, the document may be made an exhibit to the affidavit.

(3) An exhibit to an affidavit in proceedings shall be identified by a certificate entitled in the same manner as the affidavit and made by the person before whom the affidavit is sworn.

### **Alterations in affidavits**

**212. (1)** Where there is an interlineation, erasure or other alteration in the jurat or body of an affidavit—

- (a) the affidavit may nevertheless be filed unless the court otherwise orders; and
- (b) the affidavit may not be used in proceedings without the leave of the court unless the person before whom the affidavit is sworn has initialled the interlineation, erasure or alteration.

(2) Sub-section (1) applies to a document verified by affidavit as if the document were part of the affidavit.

### **Scandalous or offensive matter**

**213.** Where an affidavit filed in proceedings contains scandalous, frivolous, vexatious, irrelevant or otherwise oppressive matter, the court may direct that—

- (a) the matter be struck out; or
- (b) the affidavit be taken off the file.

## **PART XVI—JUDGMENT**

### **Powers of court on judgment**

**214. (1)** When the court has completed the hearing of proceedings the court shall proceed to determine the proceedings, and may give such judgment, and make such orders, as the court thinks just.

**(2)** Where, in proceedings for the recovery of money, the court finds in favour of the plaintiff in respect of his claim and in favour of the defendant in respect of any defence by way of cross-claim, the court may give judgment for the plaintiff or defendant, as the case may be, for an amount that is found to be due, on balance, from the defendant to the plaintiff or from the plaintiff to the defendant.

### **Damages to time of assessment in certain cases**

**215.** Where, in proceedings, damages are to be assessed in respect of—

- (a) any continuing cause of action;
- (b) repeated breaches of recurring obligations; or
- (c) intermittent breaches of a continuing obligation,

the damages shall include damages for breaches occurring after the commencement of the proceedings and shall be assessed as at the time of assessment.

### **Judgment in detainee**

**216. (1)** Subject to this Ordinance, where, in an action for the detention of goods, the court gives judgment for the plaintiff, judgment shall be for an amount comprising the aggregate of—

- (a) the value of the goods as determined by the court; and
- (b) damages, if any, awarded for the detention of the goods.

**(2)** In an action referred to in sub-section (1), the court may, if it thinks just, when giving judgment for the plaintiff, direct that on delivery of the goods to the judgment creditor and acceptance by him of the goods on or before a date specified in the judgment, the judgment debt shall be deemed to be satisfied to the extent of the amount determined by the court as the value of the goods.

### **Judgment for costs only**

**217.** Where—

- (a) the defendant in proceedings has satisfied the claim of the plaintiff after proceedings were instituted; and
- (b) the plaintiff would, but for the satisfaction of the claim, have been entitled to have final judgment entered in his favour,

the plaintiff is entitled to have final judgment entered for him for his costs in the proceedings.

**Judgment final and conclusive**

**218.** Subject to this Ordinance and to any other law in force in the Territory, a judgment given or entered in proceedings shall be final and conclusive between the parties to the proceedings.

**Setting aside of judgment or order****219. (1) Where—**

- (a) judgment is given or entered, or an order made, in proceedings in the absence of a party; or
- (b) judgment has been entered against the defendant in proceedings in pursuance of section 41,

the court may, on the application of the party in whose absence the judgment was given or entered or the order made, or the defendant against whom judgment was entered in pursuance of section 41, as the case may be, and on sufficient cause being shown, order that the judgment or order be set aside on such terms as it thinks just, and the court may give directions for the further conduct of the proceedings.

(2) Where the court makes an order under this section, it may, if it is satisfied that it is just to do so, by order, set aside any enforcement proceedings, warrant issued or order made as a consequence of the judgment or order set aside under this section.

(3) The making of an order under this section does not affect the title to any property sold in pursuance of a warrant before the date of making of the order.

**(4) Where—**

- (a) the originating process in proceedings was served by post in accordance with section 22; and
- (b) after judgment has been given or entered or an order has been made in the proceedings it appears to the court that the process did not come to the knowledge of the defendant within a reasonable time,

the court may, of its own motion, order that the judgment or order be set aside, and the court may make such other orders as it thinks just.

**Setting aside of judgment entered irregularly**

**220. (1)** Subject to sub-section (2), the court may, on sufficient cause being shown, order that a judgment or order be set aside if the court is satisfied that the judgment was given or entered, or the order was made, irregularly, illegally or against good faith.

(2) Sub-section (1) does not apply in relation to an irregularity referred to in section 304.

(3) The court may, by order, on such terms as it thinks just, set aside a judgment or order made in proceedings if the parties to the proceedings consent.

### **Time of effect of judgment or order**

**221. (1)** A judgment in proceedings shall take effect on the date on which it is given or entered.

**(2)** An order in proceedings shall take effect on the date on which it is made.

### **Reservation of judgment or decision**

**222.** When the hearing of proceedings has been completed, the magistrate constituting the court may reserve his judgment or his decision on any question of fact or law, and he may give his judgment or decision in court on a date to be fixed.

### **Minute of judgment**

**223.** Where the court gives judgment in proceedings or makes an order (whether final or interlocutory) in proceedings, a minute of the judgment or order shall be made and signed by the magistrate constituting the court.

### **Formal order for judgment**

**224.** Where judgment in proceedings has been given or entered or an order has been made by the court in proceedings, the clerk shall—

- (a) by direction of the court; or
- (b) upon receiving an application for a certificate, or certified copy, of the judgment or order,

arrange for the judgment or order of the court, as the case may be, to be formally drawn up and filed in the court.

### **Evidence of judgment**

**225.** In any proceedings before a court, a certificate, or certified copy, of a judgment or order of the court under this Ordinance is evidence of the judgment or order.

### **Joint liability**

**226. (1)** Subject to this Ordinance, where a plaintiff in proceedings has a cause of action to which the proceedings relate against 2 or more persons having joint liability in respect of that cause of action, it shall be sufficient if any one or more of those persons is or are served with originating process, and judgment in the proceedings may be given or entered and enforced against the defendant or defendants so served notwithstanding that other persons jointly liable were not served, were not parties to the proceedings or are not within the Territory.

**(2)** Where—

- (a) judgment in proceedings is given or entered against a party or parties to the proceedings;
- (b) another person is, or other persons are, jointly liable with that party or those parties in respect of the cause of action in respect of which the judgment is given or entered,

then—

- (c) that liability of that other person or those other persons is not discharged by the judgment or by any step taken to enforce the judgment;
- (d) that party or those parties and that other person or those other persons are, as between that party or those parties on the one hand and that other person or those other persons on the other hand, liable severally but not jointly;
- (e) if there are 2 or more such other persons, they are, as between themselves, jointly liable; and
- (f) if the judgment is satisfied wholly or in part, the liability of that other person or those other persons is discharged to the extent of the amount paid or recovered under the judgment.

(3) Sub-section (2) does not affect the right of a person to contribution or indemnity in respect of the satisfaction by him, wholly or in part, of a liability that he has jointly or severally, or jointly and severally, with another person or other persons.

### **Setting off of judgments**

**227. (1)** Where the judgment debtor in respect of proceedings (in this section referred to as “the first proceedings”) has judgment given or entered in his favour in other proceedings (in this section referred to as “the second proceedings”) against the judgment creditor in the first proceedings, the court may, on the application of the judgment debtor, order that the judgment against him in the first proceedings be set off against the judgment in the second proceedings.

**(2)** Where an order is made under sub-section (1)—

- (a) if the amount of the judgment debt in the first proceedings is equal to or less than the amount of the judgment debt in the second proceedings—the judgment in the first proceedings shall be deemed to be satisfied and the amount of the judgment debt in the second proceedings shall be reduced by an amount equal to the amount of the judgment debt in the first proceedings; or
- (b) if the amount of the judgment debt in the first proceedings is more than the amount of the judgment debt in the second proceedings—the amount of the judgment debt in the first proceedings shall be reduced by an amount equal to the amount of the judgment debt in the second proceedings and the judgment in the second proceedings shall be deemed to be satisfied.

### **Interest on judgment**

**228. (1)** Subject to this section, unless the court otherwise orders, interest is payable on so much of the amount of a judgment debt as remains from time to time unpaid.



(2) Interest payable under this section in respect of a judgment debt shall

- (a) subject to sub-section (4), be calculated as from the date on which the judgment took effect or from such later date (if any) as the court directs;
- (b) be calculated at the rate fixed for the purposes of section 54 of the *Australian Capital Territory Supreme Court Act 1933*; and
- (c) form part of the judgment debt.

(3) Sub-section (2) does not operate so as to require the payment of interest upon interest.

(4) Where—

- (a) the amount of a judgment debt (excluding the amount of any costs to be ascertained by taxation or otherwise) is paid in full within 21 days after the judgment took effect; or
- (b) an amount of costs ascertained by taxation or otherwise is paid in full within 21 days after that amount was so ascertained,

interest shall not be payable on the amount so paid unless the court otherwise orders.

#### **Payment of judgment debt by instalments**

229. (1) Where judgment is given or entered in proceedings, the court may, on the application of the defendant, order that the judgment debt be paid by such instalments and within such times as it thinks just.

(2) On application by a party to proceedings, the court may, on sufficient cause being shown, by order, vary or rescind an order made under sub-section (1), and where the court makes an order under this sub-section, it may make such further orders as to costs or otherwise as it thinks just.

(3) While an order under sub-section (1) remains in force, it operates as a stay of enforcement of the judgment to which it relates.

(4) Where a defendant in proceedings fails to make a payment in accordance with an order under sub-section (1)—

- (a) the order ceases to be in force; and
- (b) the judgment to which the order relates may, unless the court otherwise orders, be enforced as regards the balance of the judgment debt.

#### **Entry and enforcement of judgment in Supreme Court**

230. (1) Subject to sub-section (3), where—

- (a) judgment has been given or entered in proceedings; and
- (b) a warrant of execution issued out of the court in respect of the judgment has been returned unsatisfied in whole or in part,

on application made by or on behalf of the judgment creditor in accordance with Form 54, the clerk shall issue to the applicant a certificate, in accordance

with Form 55, of the judgment and of the amount remaining due and unpaid on the judgment.

(2) On application made by or on behalf of a judgment creditor in proceedings, the court may, if it thinks just, by order, dispense with the requirement referred to in paragraph (1) (b) for the purpose of the operation of sub-section (1) in relation to those proceedings, and where the court makes an order under this sub-section, sub-section (1) has effect in relation to those proceedings accordingly, notwithstanding that a warrant of execution has not been issued out of the court in respect of the judgment or that such a warrant has not been returned unsatisfied in whole or in part.

(3) A certificate under sub-section (1) shall not be issued after the expiration of any period during which the judgment may be enforced out of the court.

(4) Where a certificate under sub-section (1) has been issued, further proceedings, or a further step in proceedings, shall not be taken by way of enforcement of the judgment.

(5) Where the court makes an order under sub-section (2) in proceedings after a warrant of execution has been issued out of the court in respect of a judgment in those proceedings, a further step by way of execution of that warrant shall not be taken.

(6) A certificate under sub-section (1) may be filed in the Supreme Court, and upon such a certificate being so filed, final judgment may be entered in that court in favour of the judgment creditor for the amount specified in the certificate as unpaid together with—

- (a) interest, calculated in accordance with section 228, on that amount as from the date of the judgment to which the certificate relates until the date of that final judgment; and
- (b) the costs of obtaining the certificate and the entry of that final judgment.

(7) Upon the entry of final judgment under sub-section (6), that judgment may be enforced as if it had been a final judgment entered in an action of a like nature in the Supreme Court.

## **PART XVII—INTERPLEADER**

### **Interpretation**

**231.** In this Part, “property” means—

- (a) in relation to an application for relief by way of interpleader made by a defendant in proceedings—any debt, money or goods; and
- (b) in relation to such an application made by a bailiff—any money or goods.

**Interpleader by defendant**

**232. (1)** Where a person who is not a party to proceedings makes a claim against the defendant in the proceedings with respect to any property the subject of the proceedings, the defendant may apply for relief by way of interpleader by filing an application in accordance with Form 56.

**(2)** An application shall be supported by an affidavit stating that the defendant—

- (a) claims no interest in the property in dispute other than for charges or costs;
- (b) does not collude with the person making the claim in pursuance of which the application is made; and
- (c) is willing to pay or transfer the property in dispute into court or to give security to the clerk to the value of the property to the satisfaction of the clerk, as the clerk requires.

**Interpleader by bailiff**

**233. (1)** Where a person other than the judgment debtor makes a claim with respect to any property taken or to be taken in execution by a bailiff under a warrant of execution or in respect of the value of, or the proceeds of the sale of, any such property, the bailiff may apply for relief by way of interpleader by filing an application in accordance with Form 57.

**(2) Where—**

- (a) any property has been seized by a bailiff under a warrant of execution;
- (b) the property has not been sold under the warrant of execution;
- (c) a claim in accordance with Form 58 with respect to that property by a person other than the judgment debtor, verified by affidavit, is made to the bailiff; and
- (d) the claimant has—
  - (i) paid to the bailiff an amount equal to the value of the property; or
  - (ii) given to the bailiff security to the value of the property in accordance with Form 59,

the property shall be released from execution under the warrant of execution and the bailiff shall apply for relief by way of interpleader.

**(3)** For the purposes of paragraph (2) (d), the value of property shall be as agreed between the claimant and the bailiff or, in default of such agreement, as determined by a person appointed by the clerk for that purpose.

**(4) The costs of a determination under sub-section (3)—**

- (a) are payable in the first instance by the claimant; and
- (b) if the court so orders, may be added to the costs of the execution or of any proceedings on interpleader.

(5) A bailiff shall forthwith pay to the clerk any amount paid to the bailiff in pursuance of sub-paragraph (2) (d) (i), and the clerk shall pay out that amount in accordance with any order of the court.

(6) On the determination of an application for relief by way of interpleader, the costs of the levy of the property in dispute—

- (a) may be added to the amount of the costs of the execution;
- (b) are payable by the judgment creditor; or
- (c) are payable by the claimant,

as the court, by order, directs.

### **Notice of application for relief**

**234.** A defendant in proceedings or a bailiff who files an application for relief by way of interpleader shall serve a copy of that application on the plaintiff or the judgment creditor, as the case requires.

### **Interpleader proceedings**

**235. (1)** On an application for relief by way of interpleader being filed, the clerk shall issue and serve a summons in accordance with Form 60 requiring the claimant to state the nature and particulars of his claim in accordance with Form 61 within 14 days after service of the summons on him.

(2) On the issue of a summons under sub-section (1) and, if the application for relief by way of interpleader was made by a defendant, on—

- (a) the payment or transfer of the property in dispute into court; or
- (b) the defendant giving to the clerk security to the value of the property to the satisfaction of the clerk,

as the clerk requires, all proceedings or actions in the court or in the Supreme Court in respect of that property shall be stayed.

(3) Where a claimant complies with a summons under sub-section (1), the clerk shall issue and serve an interpleader summons in accordance with Form 62 or 63, as the case requires, requiring the plaintiff or the judgment creditor, as the case requires, and the claimant, to attend before the court, and shall serve notice of the hearing of the summons on the defendant or bailiff, as the case requires.

(4) On the hearing of proceedings on an interpleader summons issued under sub-section (3), the court shall determine the matter and may make such orders—

- (a) between the parties to those proceedings in respect of the competing claims with respect to the property in dispute;
- (b) as to costs in those proceedings;
- (c) as to the continuance of any other proceedings or actions stayed by virtue of sub-section (2); and
- (d) if any amount has been paid, or security given, to a bailiff in respect of that property—as to the payment of that amount, or the enforcement or discharge of that security,

as the court thinks just.

(5) Where a claimant fails to comply with a summons under sub-section (1)—

- (a) any stay of other proceedings or actions in force by virtue of sub-section (2) is removed; and
- (b) the claimant is debarred from instituting proceedings in respect of the property in dispute,

unless the court otherwise orders upon satisfactory explanation being given by the claimant within 14 days after the expiration of the period of 14 days referred to in sub-section (1) and where—

- (c) any money or the property in dispute has been paid or transferred into court; or
- (d) any security has been given to a bailiff or the clerk in respect of that property,

the court may, subject to sub-section (6), make such order as to the payment of that money, or the enforcement or discharge of that security, as the court thinks just.

(6) An order under sub-section (5) as to the payment of money or the enforcement or discharge of a security shall not be made except upon the application of a plaintiff or judgment creditor, as the case requires, or of the clerk.

### **Service of documents**

**236.** A document to be served on a person under this Part may be served by post addressed to that person at the best-known address of that person.

### **Adverse titles**

**237.** Relief by way of interpleader may be granted notwithstanding that the titles of the persons making competing claims with respect to the property in dispute or in respect of the value of, or the proceeds of the sale of, that property did not have a common origin and are adverse to and independent of each other.

## **PART XVIII—COSTS**

### ***Division 1—General***

#### **Costs in discretion of court or to follow event**

**238.** Costs in any proceedings, including costs in any interlocutory matter arising in the course of proceedings, shall—

- (a) be paid by or apportioned between the parties in such manner as the court in its discretion orders; or
- (b) if the court does not make an order referred to in paragraph (a)—except where otherwise provided by this Ordinance, follow the event of the proceedings.

**Time for exercise of court's powers re costs**

**239.** The powers of the court with regard to costs in proceedings may be exercised at any stage of the proceedings or after the proceedings have been completed.

**Fixing of costs**

**240. (1)** A magistrate may, if he thinks fit, fix the amount of the costs in any proceedings coming before him in court or in chambers.

**(2)** Where a magistrate does not, at the hearing of proceedings, fix the costs in those proceedings, those costs shall, subject to this Ordinance, be taxed by the clerk.

**Agreement as to costs**

**241. (1)** Where—

- (a) a party's costs in proceedings, or any part of those costs, are required to be paid by another party;
- (b) the parties agree upon the amount of those costs; and
- (c) evidence of that agreement has been produced to the clerk in the manner referred to in sub-section (2),

the amount of those costs shall be as so agreed.

**(2)** For the purposes of sub-section (1), evidence of an agreement referred to in that sub-section as to the amount of costs payable by a party shall be produced by lodging with the clerk, for his signature, an order in accordance with Form 64 for the payment of the amount of costs on which is endorsed the consent of the party signed by him or by his solicitor.

**(3)** Where a consent referred to in sub-section (2) is signed by a person other than a solicitor, the signature of the person shall be witnessed by the clerk, a solicitor or a justice of the peace.

**Entitlement to taxation**

**242.** Subject to this Ordinance, where, under this Ordinance or in pursuance of a judgment or other order of the court, the costs of a party in proceedings are to be paid to that party, that party is entitled to those costs taxed in accordance with this Part.

**Costs part of judgment debt**

**243.** Any costs in proceedings payable by a party against whom judgment has been given or entered shall form part of the judgment debt.

**Court's power as to costs where no jurisdiction**

**244.** Where—

- (a) proceedings purport to have been instituted; and
- (b) the court has no jurisdiction to hear and determine the proceedings,

notwithstanding that lack of jurisdiction, the court has power to make orders as to costs in the proceedings, and any such order may be enforced as if the court had that jurisdiction.

### **Power of court to vary entitlement to taxed costs**

**245.** Where, in pursuance of any judgment or other order of the court, the costs of a party in proceedings are to be paid to that party, the court may order that, as regards the whole or a specified part of those costs, that party shall be entitled to—

- (a) those costs taxed on a scale higher than that which would be otherwise applicable;
- (b) a specified proportion of the taxed costs; or
- (c) the taxed costs from or up to a specified stage of the proceedings.

### **Time for payment of costs**

**246. (1)** Where the court makes an order for the payment of costs in proceedings, it may order that those costs be paid forthwith or within a specified time, notwithstanding that those proceedings have not been completed.

**(2)** Where the court makes an order under sub-section (1), it shall direct the scale on which the costs are to be taxed.

### **Taxation where judgment subject to appeal, &c.**

**247.** Where costs in proceedings are to be taxed, those costs may, unless the court otherwise orders or the proceedings are stayed, be taxed accordingly notwithstanding that the judgment or order in pursuance of which the costs are payable is liable to be set aside, varied or discharged on appeal or otherwise.

### **Non-compliance with Ordinance or order**

**248.** Where a person fails to comply with this Ordinance, or with any judgment or order of the court, in proceedings, the court may order that he pay the costs in the proceedings of any other person occasioned by the failure.

### **Liability of solicitor for costs**

**249. (1)** Where it appears to the court that a solicitor for a party to proceedings is responsible (whether personally or by an employee or agent) for costs in the proceedings having been incurred improperly or without reasonable cause, or having been wasted by undue delay or by any other misconduct or default, the court may, after having given the solicitor a reasonable opportunity to be heard—

- (a) direct the solicitor to repay to his client such of those costs as the client has been ordered to pay to any other party to the proceedings; and
- (b) direct the solicitor to indemnify any party other than his client against such of those costs as are payable by the party indemnified.

**(2)** Without limiting the generality of the court's power under sub-section (1), a solicitor shall be taken to be responsible for a default for the purpose of

that sub-section where the proceedings cannot conveniently proceed, fail or are adjourned without useful progress having been made, because of the failure of the solicitor—

- (a) to attend court or chambers in person or by a proper representative;
- (b) to file any document;
- (c) to deliver any document for the use of the court;
- (d) to be prepared with any proper evidence or account; or
- (e) to take any other necessary step in the proceedings.

(3) Before making an order under sub-section (1) in proceedings, the court may refer the matter to the clerk for enquiry and report.

(4) The court may order that notice of any proceedings under this section, or of an order under sub-section (1), against a solicitor be given to his client in a specified manner.

### ***Division 2—Particular items***

#### **Nature of costs to be allowed or disallowed on taxation**

**250.** On a taxation of costs in proceedings—

- (a) the clerk shall allow all such costs as were, in his opinion, necessary or proper for the attainment of justice in the proceedings or for enforcing or defending the rights of the party whose costs are being taxed; and
- (b) the clerk shall disallow all such costs as were, in his opinion, incurred as a result of an excess of caution, negligence or mistake or merely at the desire of the party incurring those costs.

#### **Scale of costs**

**251. (1)** In this section—

“party who instituted the proceedings” means—

- (a) in the case of proceedings on a claim—the plaintiff;
- (b) in the case of proceedings on a cross-claim—the defendant;
- (c) in the case of third party proceedings—the defendant; or
- (d) in the case of fourth or subsequent party proceedings—the party who filed the fourth or subsequent party notice;

“relevant amount”, in relation to proceedings, means—

- (a) in relation to costs between party and party—
  - (i) on instituting proceedings—the amount for which the proceedings are instituted;
  - (ii) subject to sub-paragraph (iv), where judgment in the proceedings is given or entered for the party who instituted the proceedings—the amount for which the judgment is given or entered;
  - (iii) where judgment in the proceedings is given against the party who instituted the proceedings or where that party is otherwise required to pay the costs in the



proceedings—the amount for which the proceedings were instituted; or

- (iv) where judgment in the proceedings is entered for an amount that is less than the amount for which the proceedings were instituted, or judgment in the proceedings is given or entered for costs only, for the party who instituted the proceedings—the amount for which the proceedings were instituted less the amount of any payment made or credit accrued in reduction of that amount before the proceedings were instituted; and

- (b) in relation to costs between solicitor and client—unless the court otherwise orders, the amount for which the proceedings were instituted.

(2) Subject to this Ordinance, solicitors are entitled to charge costs, and on the taxation of costs in proceedings, costs shall be allowed, according to the prescribed scale of costs, and costs shall be determined having regard to the relevant amount in relation to those proceedings.

(3) Subject to this Ordinance, solicitors are entitled to charge for counsel's fees, and on the taxation of costs in proceedings, counsel's fees shall be allowed, according to the prescribed scale of costs, and counsel's fees shall be determined having regard to the relevant amount in relation to those proceedings.

(4) For the purposes of paragraph 16 (4) (c) and section 41, the prescribed costs in proceedings shall be determined having regard to the relevant amount in relation to those proceedings.

(5) Nothing in this section affects the operation of sections 120 and 121 of the *Legal Practitioners Ordinance 1970*.

### **Scale of costs for proceedings on cross-claim**

**252.** Unless the court otherwise orders, in proceedings in which the defendant pleads a cross-claim—

- (a) where judgment is given or entered for the plaintiff or the plaintiff otherwise succeeds on both the claim and the cross-claim, any costs payable to the plaintiff shall, on taxation, be allowed—
  - (i) as regards any such costs incurred before service on the plaintiff of the cross-claim—on the scale applicable to the proceedings on the claim; and
  - (ii) as regards any such costs incurred after that service—on the scale applicable to the proceedings on the claim or the scale applicable to the proceedings on the cross-claim, whichever is the higher;
- (b) where judgment is given or entered for the defendant or the defendant otherwise succeeds on both the claim and the cross-claim, any costs payable to the defendant shall, on taxation, be allowed on the scale applicable to the proceedings on the claim or the scale applicable to the proceedings on the cross-claim, whichever is the higher;

- (c) where judgment is given or entered for the plaintiff on the claim and for the defendant on the cross-claim—
  - (i) any costs payable to the plaintiff shall, on taxation, be allowed on the scale applicable to the proceedings on the claim; and
  - (ii) any costs payable to the defendant shall, on taxation, be allowed on the scale applicable to the proceedings on the cross-claim; and
- (d) where judgment is given or entered against the plaintiff on the claim and against the defendant on the cross-claim—
  - (i) any costs payable by the plaintiff shall, on taxation, be allowed on the scale applicable to the proceedings on the claim; and
  - (ii) any costs payable by the defendant shall, on taxation, be allowed on the scale applicable to the proceedings on the cross-claim.

#### **Scale of costs in enforcement proceedings**

**253.** Where any costs in proceedings relating to the enforcement or the attempted enforcement of a judgment in the proceedings are payable, those costs shall, on taxation, be allowed on the scale that would be applicable if those costs were costs incurred in obtaining the judgment.

#### **Scale of costs in proceedings where there are separate judgments against defendants**

**254. (1)** Where, in proceedings in which there are 2 or more defendants, judgment for or including costs in the proceedings has been given separately against each of those defendants, those costs shall, unless the court otherwise orders, be taxed once only, against all of those defendants, on the scale applicable to whichever of those judgments is for the larger or largest amount, and on such a taxation costs in the proceedings properly incurred against any defendant shall be allowed against all of those defendants.

**(2)** Payment of any costs taxed in accordance with sub-section (1) may be enforced by the plaintiff against any one or more of the defendants, but those defendants are liable as between themselves for contribution towards any such costs proportionately according to the respective amounts for which those judgments were given.

#### **Amount paid to non-legal representative**

**255.** On the taxation of costs in proceedings, an amount paid to a person (not being a barrister or solicitor) who appears on behalf of another person at the hearing of proceedings shall not be allowed.

#### **Retainer to counsel or solicitor**

**256.** On the taxation of costs in proceedings, a fee by way of retainer paid to counsel or to a solicitor shall not be allowed.

### **Brief fees paid to more than one counsel**

**257. (1)** On the taxation of costs in proceedings, the brief fees paid to more than one counsel shall not be allowed unless the court otherwise orders.

**(2)** Where the court makes an order under sub-section (1), it may direct the amount to be allowed in respect of any one or more of the counsel briefed.

### **Refresher fees**

**258. (1)** Subject to this Part, where—

- (a) counsel is briefed to appear at the hearing of proceedings; and
- (b) the hearing exceeds 5 hours in duration,

on a taxation of costs in the proceedings, the clerk may allow refresher fees paid to counsel in such amount as he thinks fit.

**(2)** Refresher fees paid to counsel allowed under sub-section (1) shall not exceed an amount calculated at the rate of two-thirds of the brief fee paid to counsel per 5 hours in respect of the period by which the duration of the hearing exceeds 5 hours.

**(3)** Refresher fees in respect of a hearing of proceedings may be allowed under sub-section (1) whether or not witnesses were examined at the hearing.

### **Fees when counsel absent**

**259. (1)** Where counsel has been briefed to appear at the hearing of proceedings, on a taxation of costs in the proceedings the brief fee paid to him shall not be allowed unless—

- (a) he was present at the hearing for a substantial part of the relevant period;
- (b) he gave substantial assistance during the relevant period in the conduct of the proceedings; or
- (c) the court otherwise orders.

**(2)** In sub-section (1), “relevant period” means—

- (a) if the hearing did not exceed 5 hours in duration—the duration of the hearing; or
- (b) if the hearing exceeded 5 hours in duration—the first 5 hours of the duration of the hearing.

**(3)** Where counsel was briefed to appear at the hearing of proceedings, on a taxation of costs in the proceedings refresher fees paid to him in respect of any period shall not be allowed unless—

- (a) he was present at the hearing for a substantial part of that period;
- (b) he gave substantial assistance during that period in the conduct of the proceedings; or
- (c) the court otherwise orders.

**Reckoning of 5 hour periods**

**260.** For the purposes of sections 258 and 259, in reckoning a period of 5 hours referred to in either of those sections on a taxation of costs in proceedings, any adjournment of the hearing of the proceedings shall not be taken into account unless the court otherwise orders.

**Amounts paid to witnesses**

**261. (1)** Subject to this section, on a taxation of costs in proceedings amounts paid to witnesses for their attendance at the court or other assistance at the hearing of the proceedings shall be allowed.

**(2)** The costs that may be awarded to a party to proceedings in respect of the attendance of a person at the court or before an examiner as a witness in the proceedings are—

- (a) such amount as the court, by order, directs at a rate not exceeding the rate applicable, and subject to the same conditions as are applicable, in relation to witnesses' expenses in an action in the Supreme Court; or
- (b) if such an order is not made in the proceedings—such amount as the clerk allows on taxation at a rate not exceeding those rates and subject to those conditions.

**(3)** On a taxation of costs in proceedings, an amount referred to in sub-section (1) or (2)—

- (a) in respect of a witness who gave evidence at the hearing of the proceedings—shall be allowed unless the court otherwise orders; or
- (b) in respect of a witness who did not give evidence at the hearing of the proceedings—may be allowed if the clerk thinks fit,

whether or not the witness was served with a summons under section 185 for his attendance before the court.

**Expenses of preparing plans, &c.**

**262.** In proceedings, the court may order that the expenses of preparing and proving plans, drawings, models, photographs or the like for the purposes of the proceedings be allowed or disallowed, and where—

- (a) the court orders that those expenses be so allowed; or
- (b) the court makes no order in relation to the allowance or disallowance of those expenses and the clerk thinks fit to allow those expenses,

on taxation, amounts paid in respect of those expenses shall be allowed in such amount as the clerk thinks fit.

**Disbursements**

**263. (1)** Subject to this Ordinance and to any order of the court, on a taxation of costs in proceedings the costs that may be allowed include all court fees and other disbursements (other than counsel's fees) that, in the opinion of the clerk, have been reasonably incurred.

(2) On a taxation of costs in proceedings, a disbursement referred to in sub-section (1) or counsel's fees shall not be allowed unless, before the taxation is completed, the clerk is satisfied, by the production of a receipt or otherwise as the clerk may direct, that the disbursement or fees has or have been paid.

**Costs not otherwise provided for**

**264.** On a taxation of costs in proceedings, the clerk may, in his discretion, allow such amount as he thinks just and reasonable having regard to all the circumstances of the case for work or labour properly performed for the purposes of or incidental to the proceedings, being work or labour that is not provided for in the prescribed scale of costs.

***Division 3—Taxation***

**Filing, and appointment to tax, bill of costs**

**265. (1)** A party to proceedings whose costs in the proceedings are to be taxed shall file a bill of those costs.

(2) On the filing of a bill of costs under sub-section (1), the clerk shall—

- (a) give an appointment in accordance with Form 65 to tax the bill; and
- (b) endorse that appointment on the bill.

(3) A party to proceedings whose costs in the proceedings are to be taxed shall serve a copy of his bill of costs, endorsed under sub-section (2), on each other party who will be affected by the taxation not later than 7 days before the date appointed for the taxation.

**Contents of bill of costs**

**266. (1)** A bill of costs prepared by a party whose costs in proceedings are to be taxed shall contain, in respect of those costs—

- (a) a detailed statement of the work done by the solicitor for the party, or an employee or agent of that solicitor;
- (b) the date on which each item of work was done;
- (c) the number of the item in the Schedule on which it is intended to rely in claiming an amount in respect of each item of costs;
- (d) a detailed statement of the disbursements made;
- (e) the date on which each disbursement was made; and
- (f) the costs claimed for each item of work done or disbursement made.

(2) Where any item of work specified in a bill of costs was done by a clerk or other employee of a solicitor and that fact is relevant to the amount of costs allowable for that work, a statement of that fact shall be included in the bill.

(3) Where an item of work is done once in respect of 2 or more proceedings, the item may be included in a bill of costs filed in relation to any of those proceedings.

(4) Where an item (not being an attendance in court by a solicitor or counsel) referred to in sub-section (3) is allowed on a taxation of costs in

proceedings, that item shall be allowed at such proportion of the appropriate amount for that item as the clerk thinks fit.

(5) The clerk may, if he thinks fit, proceed with the taxation of a bill of costs in proceedings notwithstanding that the bill does not comply with this section.

(6) The court or the clerk may, on such terms as it or he thinks fit, give leave for the amendment of a bill of costs filed in proceedings.

### **General powers of clerk on taxation**

**267.** On or in relation to the taxation of costs in proceedings, the clerk may—

- (a) if he is satisfied that service of a copy of the bill of costs cannot be effected within a reasonable time—dispense with that service;
- (b) extend or abridge the time for service of a copy of the bill of costs;
- (c) require any party to the proceedings represented jointly with any other party before him to be separately represented;
- (d) proceed to tax the costs in the absence of any party to the proceedings who does not appear at the time appointed for the taxation;
- (e) take evidence by the examination of witnesses or otherwise;
- (f) direct the production of any document;
- (g) control generally any proceedings before him;
- (h) strike out or adjourn any proceedings before him; and
- (i) do such other things as the court may, by order, direct.

### **Notice of adjournment of taxation proceedings**

**268.** Where the clerk adjourns a taxation of costs in proceedings, he may direct any party to the proceedings attending before him to give notice of the adjournment to any absent party.

### **Report to court**

**269.** The clerk may make a report in writing to the court on any taxation of costs in proceedings, whether as regards the whole of the costs or any item of those costs.

### **Reference to court for directions**

**270. (1)** The clerk may, of his own motion, refer any question arising on a taxation of costs in proceedings for the direction of the court.

**(2)** On a reference under sub-section (1), the court may, after hearing any party to the proceedings or without doing so—

- (a) give its direction on the question referred; or
- (b) decline to give such a direction.

**(3)** A direction given under sub-section (2) is binding on the clerk.

### **Default of party entitled**

**271. (1)** Where a party to proceedings who is entitled to have his costs in the proceedings taxed does not, within a reasonable time after the party liable to pay those costs has served on him a request in writing to do so, file and serve a bill of costs pursuant to section 265, the clerk may fix a time within which the first-mentioned party shall file and serve a bill of costs.

(2) Where a party to proceedings who is entitled to have his costs in the proceedings taxed fails to file and serve a bill of costs in accordance with sub-section (1) within the time fixed by the clerk under that sub-section, the clerk may—

- (a) certify the failure; and
- (b) disallow the costs of that party or allow those costs in such amount as the clerk thinks fit.

(3) Where a party to proceedings who is entitled to have his costs in the proceedings taxed fails to proceed to taxation, the clerk may, for the purpose of preventing any other party being adversely affected by the failure—

- (a) certify the failure;
- (b) disallow the costs of the first-mentioned party or allow those costs at such amount as the clerk thinks fit; and
- (c) certify the costs of those other parties in the proceedings.

### **Cross costs**

**272.** Where, under a judgment or order of the court, a party to proceedings is entitled to have his costs in the proceedings paid by another party and the first-mentioned party is also liable to pay costs of that other party in the proceedings, each of those parties is entitled to have his costs taxed whether or not the costs of that other party have been taxed, and—

- (a) where the costs of both parties have been taxed or otherwise determined, the judgment or order may, as regards costs between those parties, be enforced only for the balance ascertained after setting off the respective amounts of costs so taxed or determined; or
- (b) where the costs of only one of those parties have been taxed or otherwise determined, the judgment or order may be enforced for the amount of those costs.

### **Certificate of taxed costs**

**273. (1)** On completion of a taxation of costs in proceedings, the clerk shall make a certificate in accordance with Form 66 of the amount at which he allows the costs, and subject to this Ordinance, the amount so certified shall be the amount of the taxed costs for the purpose of the enforcement of the judgment or other order for costs in pursuance of which the costs were taxed.

(2) A certificate made by the clerk under sub-section (1) in proceedings shall, unless it was made on the bill of costs to which it relates, be filed.

**Review of taxation**

**274. (1)** Where the costs of a party in proceedings have been taxed, any party to the proceedings may, within 5 days after the date of completion of the taxation, apply to the court for a review of the taxation.

(2) An application under sub-section (1) shall specify the applicant's objections to the taxation and the grounds of those objections.

(3) On an application made in accordance with this section, the court may make such order as it thinks just in relation to the taxation generally or any item of costs included in the taxation.

(4) On a review of a taxation under this section, the court may—

- (a) exercise all the powers of the clerk in relation to the taxation under review;
- (b) make such orders as it thinks just for the alteration of the certificate made under section 273 in relation to the taxation;
- (c) make an order for the remission of the matter as regards the costs generally or any item of those costs to the clerk for taxation in accordance with a direction of the court; and
- (d) make such other orders as it thinks just, including an order as to the costs of the application.

**Costs of proceedings before clerk on taxation**

**275. (1)** On a taxation of costs in proceedings, the reasonable costs of the taxation shall be allowed unless the judgment or order of the court in pursuance of which those costs are payable otherwise provides.

(2) Subject to sub-section (1) and to any order of the court, the clerk may make orders in relation to the costs of or incidental to any taxation proceedings before him.

(3) Where the clerk makes an order under sub-section (2) allowing costs to a party whose costs in proceedings are being taxed, the clerk shall direct that the bill of costs prepared by that party be amended to include the costs so allowed.

(4) Where the clerk makes an order under sub-section (2) allowing costs to a party to proceedings liable to pay the costs being taxed, the clerk shall direct that the amount of the bill of costs prepared by the party whose costs he is liable to pay be reduced by the amount of the costs so allowed.

**Fee to counsel on taxation proceedings**

**276.** On a taxation of costs in proceedings, a fee paid to counsel for attending before the clerk on the taxation shall not be allowed unless the court otherwise orders.



**Attendance of parties on taxation**

**277. (1)** The clerk may—

- (a) direct which parties to proceedings should attend before him on a taxation of costs in proceedings; and
- (b) disallow on taxation the costs of attendance before him of any person whose attendance he considers unnecessary.

(2) Notwithstanding sub-section (1), any party to proceedings is entitled to attend before the clerk on a taxation of costs in the proceedings.

***Division 4—Security for costs***

**Security for costs**

**278. (1)** In this section—

- (a) a reference to a plaintiff shall be read as including a reference to any party who makes a claim for relief; and
- (b) a reference to a defendant shall be read as including a reference to any party against whom a claim for relief is made.

(2) Subject to sub-section (3), where, in any proceedings, it appears to the court that—

- (a) the plaintiff is ordinarily resident outside Australia;
- (b) the plaintiff is suing only for the benefit of another person and there is reason to believe that the plaintiff would be unable to pay the costs of the defendant in the proceedings;
- (c) the address of the plaintiff is not stated, or is misstated, in his originating process; or
- (d) that the plaintiff has changed his address after the proceedings were instituted with a view to avoiding any consequences of the proceedings,

the court may, on the application of the defendant, order that the plaintiff give such security as the court thinks fit for the costs of the defendant of and incidental to the proceedings.

(3) An order under sub-section (2) shall not be made in pursuance of paragraph (2)(c) in proceedings if it appears to the court that the failure of the plaintiff in the proceedings to state his address, or the misstatement of his address, in his originating process was without intention to deceive.

(4) Where the court makes an order under sub-section (2) in proceedings, the plaintiff in the proceedings shall give the security required by the order in such manner, at such time, and in such terms (if any), as the court may, by order, direct.

(5) Where the court makes an order under sub-section (2) in proceedings, it may order—

- (a) that the proceedings be stayed as regards any claim for relief by the plaintiff until the security required by the first-mentioned order is given; or

- (b) that if the plaintiff fails to give the security required by the first-mentioned order within the time (if any) specified in an order under sub-section (4), the proceedings be stayed or dismissed.

(6) Subject to sub-section (7), the court may, by order, set aside or vary any order made under this section.

(7) Where proceedings are dismissed in pursuance of an order under sub-section (5), that order shall not be set aside or varied unless the court considers that there are special circumstances that justify it so doing.

## **PART XIX—TRANSFER OF PROCEEDINGS FROM OR TO SUPREME COURT**

### **Transfer of action from Supreme Court**

**279. (1)** Where proceedings in relation to the cause of action on which a prescribed action pending in the Supreme Court is founded could properly have been instituted in the court, the Supreme Court may, if it thinks just, on the application of any party to the action or of its own motion, order that the action be transferred to the court.

(2) In sub-section (1), “prescribed action” means an action in which the amount claimed (whether initially or as reduced by payment, admitted set-off or otherwise) does not exceed the amount for which the court has jurisdiction under this Ordinance.

### **Procedure on transfer of action from Supreme Court**

**280. (1)** Where the Supreme Court has made an order under section 279 that an action pending in the Supreme Court be transferred to the court, any party to the action may lodge in the office of the court for inclusion in the record of the court a copy of the order and a copy of each of the pleadings (if any) in the action and any other relevant documents filed in the Supreme Court, and when those copies have been so lodged, the action —

- (a) ceases to be an action in the Supreme Court; and
  - (b) becomes proceedings in the court (being proceedings that shall be deemed to have been instituted on the date on which the action was commenced in the Supreme Court).
- (2) Costs in proceedings referred to in sub-section (1) shall be allowed—
- (a) in relation to costs incurred before the relevant order under section 279 was made (including the costs of obtaining the order) and the costs of obtaining the copies referred to in sub-section (1)—subject to any order of the Supreme Court and to sub-section (3), in accordance with the rules of court of the Supreme Court; and
  - (b) in relation to costs incurred after that order was made (other than the costs of obtaining the copies referred to in sub-section (1))—in accordance with this Ordinance.

(3) Where costs referred to in paragraph (2)(a) are to be taxed, those costs shall be taxed by the clerk in accordance with this Ordinance.

### **Removal of proceedings into Supreme Court**

**281.** On the application of a party to proceedings, the Supreme Court may order that the proceedings be removed into the Supreme Court on such terms as to costs, security for the amount claimed or costs, or otherwise, as the Supreme Court thinks just.

### **Stay of proceedings**

**282. (1)** Where an application under section 281 to have proceedings removed into the Supreme Court is pending, the Supreme Court may, on the application of any party to the proceedings, order that those proceedings be stayed until the first-mentioned application is determined or until the Supreme Court otherwise orders.

(2) An order under sub-section (1) that proceedings be stayed shall take effect immediately upon a copy of the order being filed.

## **PART XX—MISCELLANEOUS**

### **Directions as to procedure**

**283.** Where the procedure for taking any step in proceedings is not prescribed in this Ordinance or the law under which the step is to be taken, the court may give directions with respect to the procedure to be followed as regards that step.

### **Compliance with forms**

**284. (1)** In relation to any document to be filed or served in proceedings, it is sufficient compliance with any requirement of this Ordinance with regard to the form of such a document if the document is substantially in accordance with the requirement or has only such variations as the nature of the case requires.

(2) A form in the Schedule shall be completed in accordance with such directions as are specified in the form.

(3) Where there is no form in the Schedule for a document to be filed in proceedings, that document shall be framed to the satisfaction of the clerk.

### **How proceedings intitled**

**285. (1)** Subject to sub-section (2), a document to be filed in proceedings or served on a person in connection with proceedings shall be intitled, headed and concluded in accordance with Form 1.

(2) A document in proceedings (other than originating process, a document to be served on a person who is not a party to the proceedings, a judgment or an order) may bear an abbreviation of the title of the proceedings, being an abbreviation that is sufficient to identify the proceedings.

**Requirements with respect to documents**

**286. (1)** A document to be filed in proceedings shall, except to the extent to which the nature of the document renders compliance impracticable—

- (a) consist of paper of good and durable quality, being paper of the size known as International A4;
- (b) be in a clear and unobjectionable condition;
- (c) be written upon one side only of the paper with a margin of not less than 5 centimetres on the left hand side of the paper;
- (d) be legibly, clearly and permanently written without blotting, erasure or such alterations as cause material disfigurement;
- (e) have a space of not less than 6 millimetres between each line; and
- (f) bear, at the centre of the top of the first page, a description of the document; and
- (g) have each page numbered.

**(2)** Dates, amounts and other numbers in a document filed in proceedings shall be expressed in figures only.

**(3)** A document to be filed in proceedings shall be lodged at the office of the court in duplicate together with such number of copies as is equal to the number of parties to the proceedings, and other persons (if any), to be served with the document.

**(4)** A document shall not be filed if, by reason of a defect in the document or a failure to comply with this Ordinance or for any other reason, the document would, if filed, be ineffective for the purpose for which it was lodged for filing.

**Power of court with regard to scandalous, &c., documents**

**287.** The court may order that any matter contained in a document filed in proceedings be struck out as scandalous, frivolous, vexatious, irrelevant or otherwise oppressive.

**Notice of rejection of documents**

**288.** Where the clerk rejects a document lodged at the office of the court for filing in proceedings, he shall, either orally or in writing, give notice of the rejection and the reason for the rejection to the party who sought to file the document.

**Signature of solicitor on documents**

**289.** A document (other than an affidavit) to be filed by a party to proceedings that requires the signature of the solicitor for that party on the record in proceedings may be signed by the partner, or the clerk or other employee, of that solicitor or his agent.

### **Sealing duplicate documents**

**290.** Where any document filed in proceedings has been lost or destroyed, the clerk may seal a duplicate of the document upon being satisfied, by affidavit or otherwise, of the loss or destruction.

### **Seal of court**

**291. (1)** There shall be a seal of the court, and the seal shall be in the custody of the clerk.

**(2)** The clerk shall seal or stamp with the seal of the court—

- (a)** any judgment, order, notice, warrant, summons, certificate or process, or any copy of any of those documents, made, given or issued by the court or by him;
- (b)** any document filed in proceedings, and any copy of such a document lodged with him; and
- (c)** any document required under this Ordinance or any other law of the Territory to be sealed or stamped with the seal of the court.

### **Court fees**

**292. (1)** Subject to this Ordinance and to any other law in force in the Territory, court fees as prescribed are payable in respect of the respective prescribed matters.

**(2)** The clerk shall not accept a document lodged for filing in proceedings unless the prescribed fee payable in relation to that document has been paid.

**(3)** Sub-section (2) does not apply in relation to a fee for the service or execution of process or for an attempt to serve or execute process where the amount of the fee is to be calculated by reference to the expenses actually incurred in the service or execution or in the attempt, as the case may be.

**(4)** A court fee that would, but for this sub-section, be payable in accordance with sub-section (1) is not payable where the clerk is satisfied that—

- (a)** the person who would, but for this sub-section, be liable to pay the fee has been granted, in relation to the proceedings, legal aid from a legal aid scheme or service approved by the Attorney-General; or
- (b)** payment of the fee would impose hardship on that person.

### **Magistrate in chambers**

**293. (1)** Subject to sub-section (2), a magistrate may, in chambers, give any judgment or decision or make any order in relation to any proceedings which he could lawfully give or make in court and which he considers may be properly given or made in chambers.

**(2)** Sub-section (1) does not apply in relation to a judgment or decision in proceedings where a magistrate has reserved his judgment or decision on any question of fact or law, and this sub-section has effect irrespective of whether the judgment or decision is to be given after a hearing in court or in chambers.

(3) The jurisdiction of the court to hear and determine an application in proceedings may be exercised by a magistrate in chambers.

(4) A magistrate may adjourn into court the hearing of an application being heard in chambers.

### **Chamber business**

**294.** (1) Subject to sub-section 121 (4), an application to a magistrate in chambers in respect of any proceedings shall be made by filing—

- (a) notice of the application;
- (b) all affidavits and other documents on which it is intended to rely in support of the application; and
- (c) if the clerk so requires—a draft form of the order sought.

(2) The clerk shall, as soon as practicable, submit any documents filed under sub-section (1), together with any other documents filed in the proceedings, to a magistrate.

### **Consent orders**

**295.** (1) Subject to this Ordinance, the clerk may exercise the power of the court to make any order in proceedings, being an order consented to—

- (a) by the parties to the application for the order; and
- (b) by any other person who will be required to comply with the order or who will be affected by the order.

(2) This section does not apply in relation to any power of the court under Part XI.

### **Review of decisions of clerk**

**296.** Where the clerk makes an order, gives a direction or does any other act in connection with proceedings, the court may, on application made by any party to the proceedings, review the order, direction or other act and may make such order by way of confirmation, variation, discharge or otherwise as the court thinks just.

### **Representation by solicitor**

**297.** (1) Subject to sub-section (2), any matter or thing in relation to any proceedings which, under this Ordinance or otherwise by law, is required or allowed to be done by a party to the proceedings may be done by his solicitor on the record in the proceedings.

(2) Sub-section (1) does not apply where the context or subject matter otherwise indicates or requires.

### **Appointment of solicitor**

**298.** (1) Where a solicitor signs, and files on behalf of a party to proceedings, any originating process, notice of grounds of defence, reply or other document in the proceedings, the solicitor shall be taken to be the solicitor of the party on the record in the proceedings.

(2) Where, after proceedings are instituted, a party appoints a solicitor to act for him in the proceedings, the party or the solicitor shall sign and file a notice in accordance with Form 67 of the appointment and serve a copy of the notice on each other party to the proceedings.

### **Change of solicitor**

**299. (1)** A party to proceedings is entitled at any time to change his solicitor in the proceedings.

(2) Where a party changes his solicitor in proceedings, the party or his new solicitor shall sign and file notice of the appointment of the new solicitor and serve a copy of the notice on each other party to the proceedings and, where practicable, on the former solicitor of the party.

(3) Where—

(a) a solicitor (in this sub-section referred to as “the principal solicitor”) acts for a party in any proceedings;

(b) another solicitor acts as agent for the principal solicitor in the proceedings; and

(c) the principal solicitor changes the solicitor so acting as agent, the party, the principal solicitor or the new agent shall sign and file a notice of the change and serve a copy of the notice on each other party to the proceedings and, where practicable, on the solicitor who was the former agent.

(4) Where a party to proceedings, without changing his solicitor, determines the authority of a solicitor to act for him in the proceedings—

(a) the party shall sign and file notice of the determination and shall serve a copy of the notice on each other party to the proceedings and, where practicable, on his former solicitor; and

(b) the former solicitor may sign and file notice of the determination and serve a copy of the notice on each of those other parties.

(5) Where a solicitor ceases to act for a party to proceedings, the solicitor may, subject to sub-section (6), sign and file a notice of the cessation and serve a copy of the notice on each other party.

(6) A solicitor shall not file or serve a notice referred to in sub-section (5) without leave of the court unless he has, not less than 7 days before doing so, served on his former client notice of his intention to do so.

(7) A solicitor who files a notice under sub-section (5) shall, except where the notice is filed with the leave of the court, file and serve with the notice an affidavit showing compliance with sub-section (6).

(8) A solicitor may serve a notice under this section on a former client by posting it to the former client at the residential or business address of the former client last known to the solicitor.

(9) A notice under this section shall be in accordance with Form 67.

**Time of effect of change, &c., of solicitor**

**300.** A change referred to in section 299 shall take effect, and a solicitor shall become or cease to be the solicitor of a party in proceedings or the agent of that solicitor, as the case requires, when the notice required under that section has been filed and served.

**Reckoning of time**

**301.** Where a period of time, being a period of 5 days or less, is prescribed or allowed for any purpose under this Ordinance, that period shall be reckoned exclusive of any day on which the office of the court is closed.

**Extension and abridgment of time**

**302. (1)** In any proceedings, the court may, on such terms as it thinks just, by order, extend or abridge the time prescribed or allowed by or under this Ordinance for any purpose or fixed by any judgment or order of the court.

**(2)** The court may extend time under sub-section (1) either before or after the time prescribed, allowed or fixed expires or expired and whether or not an application for the extension was made before the time prescribed, allowed or fixed expired.

**(3)** The period within which a party to proceedings would otherwise be required by or under this Ordinance or by any order of the court to file, serve, or amend any pleading or other document may be extended by consent of the parties to the proceedings.

**Fixing of times**

**303.** Where no time is fixed by this Ordinance or by any judgment or order of the court for the doing of any thing in or in connection with proceedings, the court may, by order, fix the time within which the thing is to be done.

**Irregularity in proceedings**

**304. (1)** Where, in instituting proceedings or at any stage in the course of proceedings there is, by reason of any act or omission in or in connection with the proceedings (whether as regards time, place, manner, form, content or in any other respect) a failure to comply with any requirement of this Ordinance or a direction given by the court under section 283—

- (a)** the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken or document filed in the proceedings or any judgment given or entered or order made in the proceedings; and
- (b)** subject to sub-sections (2) and (3), the court may, on such terms as it thinks just, set aside, wholly or in part, the proceedings, any step taken or document filed in the proceedings or any judgment given or entered or order made in the proceedings, and exercise its powers under this Ordinance to allow amendments and to make orders relating to the conduct of the proceedings generally.



(2) The court shall not wholly set aside any proceedings in pursuance of sub-section (1) on the ground that the proceedings, not constituting an action for the recovery of a debt or liquidated demand, were instituted by the filing of a special claim.

(3) The court shall not set aside any proceedings, any step taken or document filed in proceedings or any judgment given or entered or order made in proceedings on the ground of an irregularity referred to in sub-section (1) on the application of a party to the proceedings unless the application is made within a reasonable time and before the applicant has taken any fresh step in the proceedings after becoming aware of the irregularity.

### **Restoration of proceedings struck out**

305. Where proceedings have been struck out in pursuance of an order of the court under this Ordinance, the court may, on the application of any party to the proceedings, order that the proceedings be restored on such terms as to costs, the staying of the proceedings until the payment of costs, the priority of the hearing of the proceedings or otherwise, as the court thinks just.

### **Copies of judgments, certificates, &c.**

306. (1) Subject to sub-section (2), upon receiving an application in accordance with Form 68 or 69, as the case requires, from a person together with the prescribed fee, the clerk shall furnish that person with—

- (a) a certificate in accordance with Form 70, or a copy, certified in accordance with Form 71, of a judgment or order of the court in proceedings; or
- (b) a copy, certified in accordance with Form 71, of any document filed in proceedings.

(2) The clerk shall not furnish a certificate or a certified copy of a judgment or order or document filed in proceedings to a person, not being a party to the proceedings, in pursuance of an application under sub-section (1) unless the person satisfies the clerk or a magistrate that he has a good and sufficient reason for so applying.

(3) A party to proceedings applying for a certificate, or a certified copy, of a judgment in the proceedings shall include in his application a statement of any amount that has been paid in respect of the judgment.

(4) At the request of a defendant in proceedings, the clerk shall furnish the defendant, free of charge, with a copy of the originating process.

### **Infant plaintiffs**

307. A person who has not attained full age may institute proceedings for the recovery of wages, salary or other money due to him in respect of his employment as if he were of full age.

## Regulations

**308.** The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

## PART XXI—TRANSITIONAL PROVISIONS

### Preservation of pending proceedings

**309.** Proceedings on a complaint within the meaning of the *Court of Petty Sessions Ordinance* 1930 pending in the court at the commencement of this Ordinance may be continued and determined as if this Ordinance had not been made, and for the purposes of this section, that Ordinance and the rules made under that Ordinance continue to apply in relation to those proceedings.

### Entry and enforcement in Supreme Court of orders on complaints

**310.** Where, in proceedings on a complaint within the meaning of the *Court of Petty Sessions Ordinance* 1930, an order for the payment of money has been made by the court (whether before or after the commencement of this Ordinance), section 230 applies in relation to that order as if it were a judgment given or entered in proceedings instituted after that commencement.

### Application of former procedural provisions to new proceedings

**311. (1)** Subject to this Ordinance, the provisions of the *Court of Petty Sessions Ordinance* 1930 specified in column 1 of the table in this sub-section, and the provisions of the Court of Petty Sessions Rules made under that Ordinance specified in column 2 of that table, continue to apply, so far as they are capable of application and with necessary modifications and adaptations, in relation to proceedings instituted after the commencement of this Ordinance:

Column 1 Applicable provisions of <i>Court of Petty Sessions Ordinance</i> 1930	Column 2 Applicable provisions of Court of Petty Sessions Rules
Part I	Part I
Part II	Part III
Division 1 of Part III	Part XVII
Section 54A	Part XVIII
Section 60	Part XIX
Division 4 of Part V	The First Schedule (in so far as the forms in it are relevant for the purposes of any of the abovementioned applicable provisions)
Part IX (other than Divisions 1 and 3)	
Part XI	
Part XII	
Section 248	
Part XV	
The First Schedule (in so far as the forms in it are relevant for the purposes of any of the abovementioned applicable provisions)	

**(2)** For the purposes of the application, by virtue of sub-section (1), of the provisions specified in the table in that sub-section in relation to proceedings

instituted after the commencement of this Ordinance, unless the contrary intention appears—

- (a) a reference in any of those provisions to the *Court of Petty Sessions Ordinance 1930* shall be read as a reference to this Ordinance; and
- (b) a reference in any of those provisions to a particular provision of that Ordinance, being a provision to which a provision of this Ordinance corresponds, shall be read as a reference to that corresponding provision.

(3) Without limiting the generality of sub-section (1), in the application, by virtue of that sub-section, of the provisions specified in the table in that sub-section in relation to proceedings instituted after the commencement of this Ordinance, unless the contrary intention appears—

- (a) a reference in any of those provisions to an action shall be read as a reference to proceedings;
- (b) a reference in any of those provisions to a complaint shall be read as a reference to a claim or an application under section 20, as the case requires;
- (c) a reference in any of those provisions to a notice of intention to defend shall be read as a reference to a notice of grounds of defence; and
- (d) a reference in any of those provisions to an order of the court shall be read as a reference to a judgment or order of the court given or entered in proceedings.

## SCHEDULE

### FORM 1

Sub-section 285 (1)

#### GENERAL FORM OF HEADING AND CONCLUSION

IN THE COURT OF PETTY SESSIONS AT CANBERRA	(Title of document)  Between A.B.  and C.D.  (Substance of form) 19 .	No.                      of 19  Plaintiff (or Applicant)  Defendant (or Respondent)  (Signature) Clerk or Plaintiff (or Plaintiff's solicitor) or Defendant (or Defendant's solicitor)
--------------------------------------------------	--------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**SCHEDULE—continued**

FORM 2

Sub-section 16 (2)

**ORDINARY CLAIM**

(page 1)

IN THE COURT OF  
PETTY SESSIONS  
AT CANBERRA

No. of 19

[

Between A.B.

]

and C.D.

Plaintiff

Defendant

*(Name and address of defendant to be served  
inserted if claim to be served by post)***To the defendant:**

1. The plaintiff claims the amount set out below. Particulars of the claim are set out on page 2.

Claim  
Court fees  
Costs  
Service fees

Total amount of claim and costs

2. If you intend to defend the whole or any part of the plaintiff's claim, you should, within 21 days after service on you of the claim, file a notice of grounds of defence.
3. Unless you file such a notice within that time, the plaintiff may proceed with his claim and interlocutory judgment may be entered in your absence. The claim would then proceed to hearing only for the purpose of the assessment of the amount to be recovered by the plaintiff.
4. You may at any time before judgment pay the amount claimed to the Clerk together with the costs incurred by the plaintiff before the payment. If you do so you will avoid further costs in the proceedings.
5. You may at any time before judgment confess to the whole or part of the plaintiff's claim and you may apply to the court for an order for leave to pay the amount due by instalments. You and the plaintiff may sign and file an agreement as to the amount due and terms of payment. Any order made, or agreement filed, as to instalments will be binding on the plaintiff so long as the instalments are paid when due.

Dated

19 .

Clerk

The plaintiff's solicitor is

and his office address is

(or the plaintiff's address for service is

)

(page 2)

**PARTICULARS OF PLAINTIFF'S CLAIM**

The plaintiff's claim is as follows:

Dated

19 .

Plaintiff  
(or Plaintiff's solicitor)

**SCHEDULE—continued**

(page 3)

**AFFIDAVIT OF SERVICE**

I, \_\_\_\_\_ of \_\_\_\_\_ being duly sworn, say:  
On \_\_\_\_\_ 19 \_\_\_\_ I served \_\_\_\_\_ at \_\_\_\_\_  
with this claim by—

\*(a) delivering a copy of it to that person personally;

\*(b) by leaving a copy of it at that person's last known place of residence (or business) with a person apparently resident (or employed) at that place and apparently over the age of 16 years.

Sworn before me at \_\_\_\_\_ on \_\_\_\_\_ 19 \_\_\_\_

Justice of the Peace

\*(Delete whichever is inapplicable)

**APPLICATION FOR POSTAL SERVICE OF CLAIM**

I hereby request that the defendant \_\_\_\_\_ be served with this claim by post, and  
I certify that—

(a) I have reason to believe that the claim, if sent to the defendant at the address specified in the claim, will come to the defendant's knowledge within a reasonable time after the date on which the claim would be delivered in the ordinary course of post; and

(b) I (or the plaintiff) understand(s) that if judgment is obtained as a result of postal service and is afterwards set aside on the ground that the service did not give the defendant adequate notice of the proceedings, I (or the plaintiff) may be ordered to pay the costs of setting aside the judgment.

Dated \_\_\_\_\_ 19 \_\_\_\_

Plaintiff  
(or Plaintiff's solicitor)

**CERTIFICATE OF POSTAL SERVICE OF CLAIM**

I certify that today I served the defendant named in the abovementioned application with the claim by sending a copy of it by pre-paid post addressed to the defendant at the address specified in the claim.

Dated \_\_\_\_\_ 19 \_\_\_\_

Clerk

**SCHEDULE—continued**

FORM 3

Sub-section 16 (3)

**SPECIAL CLAIM**

(page 1)

IN THE COURT OF  
PETTY SESSIONS  
AT CANBERRA

No. of 19

[

Between A.B.

Plaintiff

]

and C.D.

Defendant

*(Name and address of defendant to be served  
inserted if claim to be served by post)*

To the defendant:

1. The plaintiff claims the amount set out below. Particulars of the claim are set out on page 2.

Claim

Court fees

Costs

Service fees

Total amount of claim and costs

2. If you intend to defend the whole of any part of the plaintiff's claim, you should, within 21 days after service on you of the claim, file a notice of grounds of defence.
3. Unless you file such a notice within that time, the plaintiff may proceed with his claim and final judgment may be entered in your absence.
4. You may at any time before judgment pay the amount claimed to the Clerk together with the costs incurred by the plaintiff before the payment. If you do so you will avoid further cost in the proceedings.
5. You may at any time before judgment confess to the whole or part of the plaintiff's claim and you may apply to the court for an order for leave to pay the amount due by instalments. You and the plaintiff may sign and file an agreement as to the amount due and terms of payment. Any order made, or agreement filed, as to instalments will be binding on the plaintiff so long as the instalments are paid when due.

Dated

19

Clerk

The plaintiff's solicitor is

and his office address is

(or the plaintiff's address for service is

)

**SCHEDULE—continued**

(page 2)

**PARTICULARS OF PLAINTIFF'S CLAIM**

The plaintiff's claim is as follows:

Dated 19

Plaintiff (*or* Plaintiff's solicitor)

(page 3)

**AFFIDAVIT OF SERVICE**

I, of being duly sworn, say:

On 19 I served at with  
this claim by —

\*(a) delivering a copy of it to that person personally;

\*(b) by leaving a copy of it at that person's last known place of residence (*or* business) with a person apparently resident (*or* employed) at that place and apparently over the age of 16 years.

Sworn before me at on 19

Justice of the Peace

\*(Delete whichever is inapplicable)

**APPLICATION FOR POSTAL SERVICE OF CLAIM**

I hereby request that the defendant be served with this claim by post, and I certify that—

(a) I have reason to believe that the claim, if sent to the defendant at the address specified in the claim, will come to the defendant's knowledge within a reasonable time after the date on which the claim would be delivered in the ordinary course of post; and

(b) I (*or* the plaintiff) understand(s) that if judgment is obtained as a result of postal service and is afterwards set aside on the ground that the service did not give the defendant adequate notice of the proceedings, I (*or* the plaintiff) may be ordered to pay the costs of setting aside the judgment.

Dated 19

Plaintiff  
(*or* Plaintiff's solicitor)

**CERTIFICATE OF POSTAL SERVICE OF CLAIM**

I certify that today I served the defendant named in the abovementioned application with the claim by sending a copy of it by pre-paid post addressed to the defendant at the address specified in the claim.

Dated 19

Clerk

**SCHEDULE—continued****FORM 4**

Sub-section 20 (3)

**NOTICE OF APPLICATION (to commence proceedings)**

The applicant will at (time) on 19 at

move the court for orders that —

*(state concisely the nature of each order sought)**(or)*

appeal to the court against

*(state particulars of the decision appealed against sufficient to identify it)*

upon the grounds that

*(or upon the grounds set forth in the affidavit of A.B. sworn and filed herein)*To: *(name each person affected by any order sought)**(or It is not intended to serve this notice on any person)***FORM 5**

Paragraph 20 (7) (b)

**NOTICE OF INTENTION TO APPEAR BY RESPONDENT TO APPLICATION**

The respondent intends to appear in this matter.

**FORM 6**

Sub-section 25 (2)

**CERTIFICATE OF POSTAL SERVICE**I certify that today I served  
of it by pre-paid post addressed towith  
at

by sending a copy

Dated 19

Clerk

**FORM 7**

Sub-section 26 (4)

**NOTICE OF CHANGE OF ADDRESS FOR SERVICE**Take notice that *(the plaintiff's)* address for service in these proceedings is now:**FORM 8**

Section 31

**NOTICE OF OBJECTION TO SERVICE**

To the plaintiff:

The defendant in filing *(state title of document)* dated 19, objects to  
 the service by the plaintiff of *(state title of document served on defendant by plaintiff)* dated  
 19, on the ground that:



**SCHEDULE—continued****FORM 9**

Sub-section 36 (1)

**NOTICE OF GROUNDS OF DEFENCE**

The defendant intends to defend these proceedings on the following grounds:

*(Plead as required by the Ordinance, for example)*

1. The defendant denies *etc.* *(If cross-claim made)*
1. *(plead as required by the Ordinance)*

The defendant claims the sum of \$ \_\_\_\_\_

**FORM 10**

Sub-section 39 (1)

**APPLICATION FOR INTERLOCUTORY JUDGMENT**

To the Clerk:

The plaintiff applies for the entry of interlocutory judgment in these proceedings against the defendant(s) *(name(s))*  
\_\_\_\_\_**FORM 11**

Sub-section 39 (1)

**INTERLOCUTORY JUDGMENT**I enter interlocutory judgment in these proceedings in favour of the plaintiff against the defendant(s) *(name(s))*

Dated 19 \_\_\_\_\_

Clerk  
\_\_\_\_\_**FORM 12**

Paragraph 40 (1) (b)

**NOTICE TO PLAINTIFF OF ENTRY OF INTERLOCUTORY JUDGMENT  
AND NOTICE OF HEARING**

To the plaintiff:

Take notice:

1. On \_\_\_\_\_ I entered interlocutory judgment for you against *(name)* in these proceedings.
2. A certificate of readiness for hearing having been filed, the hearing of these proceedings for the purpose of the assessment of the amount to be recovered by you has been set down for 19 \_\_\_\_\_ at *(time)* at *(place)*.

Dated 19 \_\_\_\_\_

Clerk  
\_\_\_\_\_

**SCHEDULE—continued**

FORM 13

Paragraph 40 (1) (c)

**NOTICE TO DEFENDANT OF ENTRY OF INTERLOCUTORY JUDGMENT  
AND NOTICE OF HEARING**

To the defendant:

1. On \_\_\_\_\_ I entered interlocutory judgment against you in these proceedings.
2. The hearing of these proceedings for the purpose of the assessment of the amount to be recovered by the plaintiff has been listed for \_\_\_\_\_ 19 \_\_\_\_ at (time) at (place).
3. You are thereby deemed to have admitted liability for the plaintiff's claim and therefore the function of the Court at the hearing is the assessment of the amount to be recovered by the plaintiff.
4. You are not entitled to put any matter to the court in connection with the assessment unless you file a notice of grounds of defence.
5. Unless you file a notice of grounds of defence the court may, on the date of the hearing, give final judgment against you.
6. If you file a notice of grounds of defence before final judgment is given by the court the interlocutory judgment will be set aside and you will be permitted to defend the proceedings.
7. A notice of grounds of defence may indicate your intention to defend either as to your liability for the plaintiff's claim or only in respect of the amount claimed by the plaintiff.
8. Where you file a notice of grounds of defence you may, whether or not your defence is successful, be liable for any costs incurred by the plaintiff in obtaining interlocutory judgment or as a result of the setting aside of that judgment as well as for any costs arising by virtue of the proceedings being defended.

Dated \_\_\_\_\_ 19 \_\_\_\_ .

Clerk

FORM 14

Section 41

**APPLICATION FOR ENTRY OF JUDGMENT ON SPECIAL CLAIM**

To the Clerk:

The plaintiff applies for the entry of judgment in these proceedings against the defendant(s) (name(s))

The amount now due to the plaintiff in respect of the claim is \$ \_\_\_\_\_

The amount for the filing, issuing and serving of the claim, which has not been paid, is \$ \_\_\_\_\_

FORM 15

Section 41

**JUDGMENT ON SPECIAL CLAIM**

It is this day adjudged that the plaintiff do recover against the defendant(s) (name(s)) the sum of \_\_\_\_\_ and \_\_\_\_\_ for costs. And it is ordered that the defendant(s) do pay the same to the plaintiff.

Dated \_\_\_\_\_ 19 \_\_\_\_ .

Clerk

FORM 16

Sub-section 42 (1)

**STATEMENT OF CONFESSION**

The defendant confesses to the amount (or to \$ \_\_\_\_\_, part of the amount) claimed by the plaintiff. (Signature, if not of a solicitor or barrister, to be witnessed by the clerk, solicitor or justice of the peace.)

**SCHEDULE—continued**

FORM 17

Sub-section 42 (3)

**NOTICE OF CONFESSION**

To the plaintiff:

The defendant \_\_\_\_\_ has this day filed a statement confessing to the amount (or to \$ \_\_\_\_\_, part of the amount) claimed by you.

*Where the confession is to the full amount claimed and no damages are claimed for personal injuries:* I will this day enter up judgment in your favour for the amount confessed to and \$ \_\_\_\_\_ for costs (or costs to be taxed).

*Where the confession is to the full amount claimed and damages are claimed for personal injuries:* Unless within 14 days you apply for leave to amend the amount of your claim or for removal of the proceedings to the Supreme Court I will forthwith after that time enter up judgment in your favour for the amount confessed to and \$ \_\_\_\_\_ for costs (or costs to be taxed).

*Where the confession is to part of the amount claimed:* Unless within 14 days you file a notice refusing to accept the amount confessed to in full satisfaction of your claim I will forthwith after that time enter up judgment in your favour for the amount confessed to and \$ \_\_\_\_\_ for costs (or costs to be taxed).

Dated

19 \_\_\_\_\_

Clerk

FORM 18

Sub-section 42 (6)

**NOTICE REFUSING TO ACCEPT AMOUNT CONFERSED TO**

The plaintiff refuses to accept the amount confessed to in full satisfaction of his claim.

FORM 19

Sub-section 43 (1)

**AGREEMENT AS TO JUDGMENT**

The plaintiff and the defendant (or The plaintiff and C.D. one of the defendants or All the parties) agree that judgment shall be entered for the plaintiff against the defendant for \$ \_\_\_\_\_ and \$ \_\_\_\_\_ for costs (or costs to be taxed) (where appropriate: and for the defendant against the third party for \$ \_\_\_\_\_ and \$ \_\_\_\_\_ for costs) and that the judgment debt may be paid by instalments of \$ \_\_\_\_\_ per \_\_\_\_\_, the first payment to be made on or before \_\_\_\_\_, 19 \_\_\_\_\_.

*(To be signed by or on behalf of each party entering into the agreement, and each signature, if not of a solicitor or barrister, to be witnessed by the clerk, solicitor or justice of the peace.)*

FORM 20

Sub-section 51 (1)

**REPLY**

*(Plead as required by the Ordinance, for example:)*

1. The plaintiff denies (etc)

**SCHEDULE—continued**

FORM 21

Sub-section 55 (1)

**THIRD PARTY NOTICE**

To the third party:

The defendant claims against you contribution towards or indemnity for any judgment recovered against him by the plaintiff in the proceedings (*or specify any other relief or remedy claimed relating to or connected with the subject of the proceedings*) for the following reasons:

- |    |   |                                               |
|----|---|-----------------------------------------------|
| 1. | } | ( <i>plead as required by the Ordinance</i> ) |
| 2. |   |                                               |

You have the same rights, and are subject to the same liabilities, in respect of the proceedings as you would have had and been subject to if you had been sued in separate proceedings by the defendant.

You are liable to suffer judgment unless notice of the grounds of your defence, prepared in accordance with the Ordinance, is filed with the clerk within 21 days after service of this Third Party Notice upon you. The notice must include any grounds on which you dispute the plaintiff's claim against the defendant or the defendant's claim against you.

Copies of the pleadings in these proceedings are served herewith.

FORM 22

Sub-section 63 (1)

**NOTICE CLAIMING CONTRIBUTION OR INDEMNITY**

To the defendant (*name*):

The defendant (*name*) claims against you contribution towards or indemnity for any judgment recovered against him by the plaintiff in the proceedings (*or specify any other relief or remedy claimed relating to or connected with the subject of the proceedings*) for the following reasons:

- |    |   |                                               |
|----|---|-----------------------------------------------|
| 1. | } | ( <i>plead as required by the Ordinance</i> ) |
| 2. |   |                                               |

FORM 23

Sub-section 65 (1)

**NOTICE OF DISCONTINUANCE OF PROCEEDINGS**

The plaintiff discontinues these proceedings.

(*Where discontinuance is by consent:* The defendant consents to this discontinuance.

Defendant's solicitor)

FORM 24

Sub-section 66 (1)

**NOTICE OF WITHDRAWAL OF MATTER PLEADED**

The defendant withdraws his grounds of defence (*or the (third) ground of his defence or the words* " " appearing in the document filed by him on 19 ).

(*Where withdrawal is by consent:* The plaintiff consents to this withdrawal.

Plaintiff's solicitor)

**SCHEDULE—continued**

FORM 25

Sub-section 71 (1)

**NOTICE OF PAYMENT INTO COURT**

The defendant (*or* the defendant C.D.) has paid into Court \$

That amount is in answer to the cause of action (*or* all the causes of action) on which the plaintiff claims (and after taking into account this defendant's cause of action for (*specify*) on his cross-claim).

*or*

That amount is in answer to the following causes of action on which the plaintiff claims, namely (and after taking into account *etc as above*)

*or*

Of that amount, \$ is in answer to the cause of action for (*specify*) on which the plaintiff claims (and after taking into account *etc as above*) and \$ is in answer to the cause of action for (*specify*) on which the plaintiff claims (and after taking into account *etc as above*)

---

FORM 26

Sub-section 75 (1)

**NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT**

The plaintiff accepts \$ paid into court by the defendant in satisfaction of the cause(s) of action in answer to which it was paid in.

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FORM 27

Paragraph 75 (3)(b)

**NOTICE CONFIRMING PAYMENT INTO COURT**

To the plaintiff:

The defendant confirms the notice of payment into court dated  
of \$ paid into court before the commencement of the hearing.

19

---

FORM 28

Sub-section 77 (2)

**NOTICE OF WITHDRAWAL OF MONEY PAID INTO COURT**

The defendant withdraws the amount of \$ paid into court by him on  
19

**SCHEDULE—continued****FORM 29**

Sub-section 83 (1)

**BOND BY AN INSURER**

**BY THIS DEED** \_\_\_\_\_ of \_\_\_\_\_ is held and firmly bound to the Clerk of the Court of Petty Sessions of the Australian Capital Territory his successors and assigns for the sum of \$ \_\_\_\_\_ of lawful money of Australia to be paid to the said Clerk, his successors and assigns, for the due payment whereof the said \_\_\_\_\_ binds itself.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

The Common Seal of \_\_\_\_\_  
was hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
in the presence of:

**CONDITIONS**

- (a) If the said \_\_\_\_\_ pursuant to the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 pays into court the amount of this Bond;
- (b) If the court shall order the discharge thereof; or
- (c) If a consent to the discharge thereof signed by or on behalf of all the parties to the proceedings is filed in the office of the Clerk,

then this obligation shall be void and of no effect but otherwise shall remain in full force and effect.

**FORM 30**

Paragraph 83 (3)(b)

**AUTHORITY TO EXECUTE BOND**

**BY THIS DEED** \_\_\_\_\_ of \_\_\_\_\_ being an authorized insurer under the Motor Traffic Ordinance 1936 (*or as the case may be*) authorizes being the manager (*or as the case may be*) of the said corporation to give one or more bonds in or to the effect of Form 29 in the Schedule to the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 for and on behalf of the said \_\_\_\_\_ in any proceedings in the Court (*or in proceedings No. \_\_\_\_\_ 19 \_\_\_\_\_ between \_\_\_\_\_ and \_\_\_\_\_*) and it is acknowledged that this authority shall be of full force and effect and binding until notice of its revocation has been filed in the office of the Court.

The Common Seal of the said \_\_\_\_\_  
was hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_ in the presence of:—

**FORM 31**

Sub-section 87 (1)

**UNDERTAKING BY PERSON SEEKING TO BE APPOINTED NEXT FRIEND**

E.F. of (*address*) undertakes to be responsible for any costs which the plaintiff might, if he were not a person under disability, be required to pay in these proceedings.

Dated \_\_\_\_\_ 19 \_\_\_\_\_

Next friend

Witness

(*To be witnessed by the clerk, a solicitor or a justice of the peace*)

**SCHEDULE—continued**

FORM 32

Sub-section 88 (1)

**AFFIDAVIT SEEKING APPOINTMENT OF GUARDIAN AD LITEM**

1. I am the defendant's solicitor (*or as the case may be*).
2. The defendant is a person under disability.
3. E.F. of (*address*) is a proper person for appointment as guardian ad litem of the defendant, and has no interest in these proceedings adverse to the interest of the defendant.
4. The consent of E.F. to act as guardian ad litem of the defendant is subscribed hereunder (*or hereunto annexed and marked 'A'*).

Consent: E.F. of (*address*) consents to act as guardian ad litem of the defendant in these proceedings.

Dated 19 .

FORM 33

Sub-section 103 (3)

**NOTICE TO PLAINTIFF TO PLEAD RE COMMON MONEY COUNT**

To the plaintiff:

The defendant requires you to plead the facts on which you rely.

FORM 34

Paragraph 121 (2)(a)

**NOTICE OF MOTION**

The applicant will at 10 a.m. on 19 move the Court for orders that

(*state concisely the nature of each order sought*)

upon the grounds that (or upon the grounds set forth in the affidavit of A.B. sworn and filed herein)

TO: (*name each person affected by any order sought*)

(or It is not intended to serve this notice on any person)

FORM 35

**GENERAL FORM OF ORDER OF COURT OTHER THAN A JUDGMENT**

The Court this day orders that—

- 1.
- 2.

Dated 19 .

Magistrate (*or Clerk*)

FORM 36

Sub-section 153 (1)

**NOTICE OF ADMISSION**

The defendant admits, in favour of the plaintiff and for the purposes of these proceedings only, the facts hereunder specified.

1. (state each fact)
- 2.

**SCHEDULE—continued**

FORM 37

Sub-section 154 (1)

**NOTICE TO ADMIT FACTS AND AUTHENTICITY OF DOCUMENTS**

To the defendant:

The plaintiff requires you to admit for the purpose of these proceedings only—

1.

*(state each fact)*

2.

The plaintiff requires you to admit for the purpose of these proceedings only the authenticity of the following documents:

1.

*(describe each document)*

2.

If you do not, within 21 days after service of this notice upon you, serve a notice upon the plaintiff disputing any fact or the authenticity of any document above specified, that fact and the authenticity of that document shall, for the purpose of these proceedings, be admitted by you in favour of the plaintiff.

FORM 38

Sub-section 154 (2)

**NOTICE DISPUTING FACTS AND AUTHENTICITY OF DOCUMENTS**

The defendant disputes the following facts specified in the plaintiff's notice dated

19

1.

*(state each fact)*

2.

The defendant disputes the authenticity of the following documents which were specified in the plaintiff's notice dated

19 )

19 , (or affidavit of discovery sworn on

1.

*(describe each document)*

2.

The defendant admits—

1.

*(state each fact or describe each document)*

2.

FORM 39

Sub-section 159 (3)

**NOTICE TO ANSWER INTERROGATORIES**

Within 21 days after service of this notice upon each of them respectively, the defendant C.D. is required to answer interrogatories numbered to and the defendant E.F. is required to answer interrogatories numbered to

**INTERROGATORIES**1. *(State the question)*2. *(State the question)*



**SCHEDULE—continued****FORM 40**

Sub-section 159 (5)

**ANSWER TO INTERROGATORIES**

The defendant E.F. answers the plaintiff's interrogatories specified in notice filed on as follows, I, E.F., make oath and say as follows:

- 1A. (*State in full the interrogatory*)
- 1B. (*State the answer*)
- 2A. (*State in full the interrogatory*)
- 2B. (a) The defendant objects to answer on the grounds of privilege;  
(b) (*State the facts on which this objection is based*)

**FORM 41**

Sub-section 160 (1)

**NOTICE FOR DISCOVERY**

To the defendant:

The plaintiff requires you to give discovery of documents within (21) days after service of this notice upon you.

**FORM 42**

Sub-section 161 (2)

**AFFIDAVIT OF DISCOVERY**

Pursuant to notice filed (*or order made*) on , 19 , I, the plaintiff (*or defendant*) make oath and say as follows:

1. I have in my possession, custody or power the following documents:  
(*specify documents*)
2. The documents referred to below are privileged from production on the ground  
(a) as to documents numbered to above inclusive, that (*state the ground*);  
(b) as to documents and above, that (*state the ground*).
3. I have had, but do not now have, in my possession, custody or power the following documents:  
(*specify documents*)
4. Document specified in paragraph 3 was last in my possession, custody or power on (*state when*);  
(*state what has become of it*) or to the best of my knowledge, information and belief (*state in whose possession, custody or power it is and where it is*).
5. To the best of my knowledge, information and belief neither I nor my solicitor nor any other person on my behalf has now, or ever had, in my or his possession, custody or power any document relating to any matter in question between the plaintiff and myself in these proceedings other than the documents specified in this affidavit.
6. The documents specified in paragraph 1 may be inspected at (*address*) on , 19 , between (*specify time*).

**FORM 43**

Sub-section 168 (1)

**NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION**

To the plaintiff:

The defendant requires you to produce for his inspection the following documents referred to in your pleading (*or affidavit*) dated , 19 , —

(*Describe documents required*)

**SCHEDULE—continued**

FORM 44

Sub-section 168 (2)

**NOTICE TO INSPECT DOCUMENTS**

To the defendant:

Take notice that you can inspect the documents mentioned in your notice dated

19      except the document(s) numbered in that notice at      on  
19      between      and(or) that the plaintiff claims that the documents specified in your notice dated  
19      are privileged from production on the grounds that (*state the grounds*)(or) that the documents specified in your notice dated      19      are not in the plaintiff's possession, custody or power and that to the best of the plaintiff's knowledge, information and belief (*state in whose possession, custody or power they are and where they are*).

FORM 45

Sub-section 176 (1)

**CERTIFICATE OF READINESS FOR HEARING**

To the clerk:

I/We certify that all necessary interlocutory steps in these proceedings have been completed and these proceedings are in my/our opinion ready for hearing and I/we request that the matter be set down for hearing.

Dated

19      .

Plaintiff

(Defendant)

FORM 46

Sections 176 and 177

**NOTICE OF SETTING DOWN FOR HEARING**

To the plaintiff:

the defendant:

A certificate of readiness for hearing having been filed (*or as the case may be*), these proceedings have been set down for hearing on      19      at (*time*) at (*place*).

FORM 47

Sub-section 185 (3)

**SUMMONS TO GIVE EVIDENCE**To (*name*)(*address*)

You are hereby required to attend for the purpose of giving evidence—

- (a) before the Court;
- (b) at (*address where proceedings are to be heard*);
- (c) on      , 19      , at 10 a.m. and until you are excused from further attending, but you need not attend on any day unless reasonable expenses have been paid or tendered to you.

Dated

19      .

Clerk

NOTE. If you do not comply with this summons you may be arrested and brought before the Court. Issued at the request of (*name, address and telephone number*), the plaintiff's solicitor (*or as the case may be*).



**SCHEDULE—continued**

FORM 50

Section 188

**NOTICE TO PRODUCE AT HEARING**

To the plaintiff:

The defendant requires you to produce at the hearing the following documents or things for the purpose of evidence—

*(Enumerate the documents or things)*

FORM 51

Sub-section 201 (1)

**ORDER FOR TAKING OF EVIDENCE ON EXAMINATION**

The Court this day orders that the evidence of *(name)* of *(address)* be taken under section 201 of the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 before *(name and address, or describe examiner)*.

FORM 52

Sub-section 203 (1)

**GENERAL FORM OF AFFIDAVITS**

I, *(name, address and occupation)* make oath and say as follows:

- 1.
- 2.

Sworn on

19 at

before me:

Justice of the Peace

**ANNEXURE NOTE *(if necessary)***

This is the annexure *(or exhibit)* referred to in the affidavit of A.B. sworn before me on  
19

Justice of the Peace

FORM 53

**GENERAL FORM OF JUDGMENT**

19

It is this day adjudged that *—(terms of the judgment, in numbered paragraphs if necessary)—*.

By the Court

Clerk *(or Magistrate)*

FORM 54

Sub-section 230 (1)

**REQUEST FOR CERTIFICATE OF JUDGMENT FOR FILING IN  
SUPREME COURT**

1. The (judgment creditor) requests the issue of a certificate of judgment in these proceedings for the purpose of filing in the Supreme Court.
2. A warrant of execution issued out of the Court was returned unsatisfied on  
19 in whole *(or in part)*.

*or*

On 19 the Court by order dispensed with the requirement that a warrant of execution be issued out of the Court in respect of the judgment and be returned unsatisfied in whole or in part before the certificate applied for may be issued.

3. There now remains due and unpaid under the judgment the sum of \$ leaving a balance owing of \$

**SCHEDULE—continued**

FORM 55

Sub-section 230 (1)

**CERTIFICATE OF JUDGMENT FOR FILING IN SUPREME COURT**

This is to certify to the Supreme Court that:

1. In the Court of Petty Sessions on 19 , of  
 obtained judgment against of  
 for the sum of \$ and \$ for costs (or his costs of the proceedings to be taxed,  
 which costs have since been taxed and allowed at \$ ) (or such other extract as is appropriate to the judgment);

2. I am informed by the judgment creditor that no amount has been paid (or \$ has been  
 paid on , 19 ) in respect of the judgment debt leaving a balance owing of  
 \$ .

Dated 19 .

Clerk

FORM 56

Sub-section 232 (1)

**APPLICATION BY DEFENDENT FOR INTERPLEADER RELIEF***(Heading as per Form 1)*

I am the defendant in the above proceedings which have been brought for or in respect of the following  
 debt, money or goods, namely:

The subject-matter of the proceedings is claimed by  
 of

I hereby apply for relief by way of interpleader in the proceedings.

The address for service of notices upon me is:

Dated 19 .

Defendant

*Affidavit*

I,  
 of  
 make oath and say:

1. I am the defendant in these proceedings and the applicant for relief by way of interpleader.
2. I claim no interest in the subject-matter in dispute in these proceedings other than for charges or costs.
3. I am not in collusion with the person who claims the subject-matter in dispute in these proceedings.
4. I am willing to pay or transfer the subject-matter in dispute in these proceedings into court.

**SCHEDULE—continued**

FORM 57

Sub-section 233 (1)

**APPLICATION BY BAILIFF FOR INTERPLEADER RELIEF**

IN THE COURT OF }  
 PETTY SESSIONS AT }  
 CANBERRA }

No. 19 .

Warrant No. 19 .

Between

Judgment Creditor

and

Judgment Debtor

As bailiff, I have taken or intend to take in execution under a warrant of execution the following money or goods, namely:

A claim to the money or goods or to the proceeds or value of the goods has been made by  
 of

I hereby apply for relief by way of interpleader in this matter.

Dated 19 .

Bailiff

FORM 58

Paragraph 233 (2) (c)

**CLAIM AGAINST PROPERTY**

IN THE COURT OF }  
 PETTY SESSIONS AT }  
 CANBERRA }

No. 19 .

Warrant No. 19 .

Between

Judgment Creditor

and

Judgment Debtor

I have a claim to the undermentioned property which has been seized by the bailiff under a warrant of execution.

The property to which I have the claim is:

The address for service of notices upon me is

Dated 19 .

Claimant

*Affidavit*

I,  
 of  
 make oath and say that the grounds on which I have a claim to the abovementioned property are as follows:

**SCHEDULE—continued**

FORM 59

Sub-paragraph 233 (2) (d) (ii)

**SECURITY FOR PROPERTY SEIZED BY BAILIFF UNDER WARRANT OF EXECUTION**

IN THE COURT OF  
PETTY SESSIONS AT  
CANBERRA

No. 19

Between

(Plaintiff)  
(Judgment Creditor)

and

(Defendant)  
(Judgment Debtor)

and

Claimant

WHEREAS judgment in this matter was given or entered up in the Court of Petty Sessions in favour of the abovenamed judgment creditor against the abovenamed judgment debtor;

AND WHEREAS a warrant of execution to enforce the judgment has been issued;

AND WHEREAS certain property, namely has been seized by a bailiff under the warrant of execution, which property has been claimed by the abovenamed claimant;

AND WHEREAS under the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982, upon the giving of security to the value of the property, the property shall be released from execution,

NOW THIS DEED WITNESSES that we  
of

(the abovenamed claimant) and

of

of

and (hereinafter called the sureties) and our and each of our heirs, executors, administrators and assigns acknowledge ourselves to be jointly and severally bound hereby to pay to the bailiff by whom the said warrant of execution was executed, in accordance with any order made for the enforcement of this security under the Ordinance, such amount, not exceeding \*\$ as the said claimant and sureties, or any of them, may be ordered to pay in or by any such order.

Signed and sealed this day of 19

Claimant: Witness:

Surety: Witness:

Surety: Witness:

\* Insert value of property determined in accordance with the Ordinance.

FORM 60

Sub-section 235 (1)

**SUMMONS TO CLAIMANT**

IN THE COURT OF }  
PETTY SESSIONS AT }  
CANBERRA }

No. 19

Between

(Plaintiff)  
(Judgment Creditor)

and

(Defendant)  
(Judgment Debtor)

and

Claimant

An application has been made to me by for relief by way of interpleader. You are named as claimant in the application and are hereby summoned to state the nature and particulars of your claim within 14 days after service of this summons on you.

Dated 19

Clerk

**SCHEDULE—continued**

FORM 61

Sub-section 235 (1)

**NATURE AND PARTICULARS OF INTERPLEADER CLAIM**

IN THE COURT OF }  
 PETTY SESSIONS AT }  
 CANBERRA }

No. 19

Between

(Plaintiff)  
 (Judgment Creditor)

and

(Defendant)  
 (Judgment Debtor)

and

Claimant

I, \_\_\_\_\_ of \_\_\_\_\_ claim  
 an interest in the undermentioned property, namely:

The nature and particulars of my claim are as follows:

Dated 19 .

Claimant

FORM 62

Sub-section 235 (3)

**INTERPLEADER SUMMONS**

(Where defendant interpleads)

IN THE COURT OF }  
 PETTY SESSIONS AT }  
 CANBERRA }

No. 19

Between

Plaintiff

and

Defendant

and

Claimant

The abovenamed claimant has made a claim to the debt, money or goods for or in respect of which the proceedings between the abovenamed plaintiff and the abovenamed defendant have been brought, and the abovenamed defendant has made an application for relief by way of interpleader.

The abovenamed claimant has complied with the summons calling upon him to state the nature and particulars of his claim, which are as follows:

You, the abovenamed \_\_\_\_\_ are hereby summoned to appear  
 at the Court of Petty Sessions at \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_, at  
 \_\_\_\_\_ for the Court to adjudicate upon the claim and to make such order in this matter  
 as the Court thinks just.

Dated 19 .

Clerk



**SCHEDULE—continued**

FORM 63

**Sub-section 235 (3)**

## INTERPLEADER SUMMONS

(Where bailiff interpleads)

IN THE COURT OF }  
PETTY SESSIONS AT }  
CANBERRA }

No. 19

## Between

### Judgment Creditor

and

### Judgment Debtor

and

**Claimant**

The abovenamed claimant has made a claim to certain money or goods taken or intended to be taken in execution under the warrant of execution issued in the proceedings between the abovenamed judgment creditor and the abovenamed judgment debtor, or to the proceeds or value of certain goods so taken or intended to be taken.

The abovenamed claimant has complied with the summons calling upon him to state the nature and particulars of his claim, which are as follows:

You, the abovenamed \_\_\_\_\_ are hereby summoned  
to appear at the Court of Petty Sessions at \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_,  
at \_\_\_\_\_ for the Court to adjudicate upon the claim and to make such order  
in this matter as the Court thinks just.

Dated 19 .

**Clerk**

FORM 64

**Sub-section 241 (2)**

### ORDER FOR COSTS

The Court this day orders that the amount of the costs of the judgment creditor payable by the judgment debtor shall be \$

Dated 19 .

Clerk

**(Endorsement:** The judgment debtor consents to this order.

Judgment debtor's solicitor)

FORM 65

**Paragraph 265 (2) (a)**

## APPOINTMENT TO TAX

I appoint \_\_\_\_\_ 19\_\_\_\_, at (time) \_\_\_\_\_ at (place) \_\_\_\_\_ for  
the commencement of the taxation of the (judgment creditor's) bill of costs.

Dated 19

Clerk

FORM 66

**Sub-section 273 (1)**

### CERTIFICATE OF TAXATION

I certify that the judgment creditor's costs of these proceedings (or the defendant's costs of the order of \_\_\_\_\_, 19\_\_\_\_, or as the case may be) have been taxed and allowed at \$ \_\_\_\_\_.

Dated 19 .

Clerk

## SCHEDULE—continued

FORM 67

Sub-sections 298 (2) and 299 (9)

## NOTICE OF CHANGE OR APPOINTMENT OF SOLICITOR

The plaintiff who has employed E.F. as his solicitor (*or appeared in person*) in these proceedings now employs G.H. as his solicitor (*or as the case may be*), and his address for service is (*address of solicitor, party in person, etc.*).

Dated

19

Plaintiff (*or Plaintiff's Solicitor*)

FORM 68

Sub-section 306 (1)

## REQUEST FOR CERTIFICATE OF JUDGMENT

The (judgment creditor) requests the issue of a certificate of judgment in these proceedings for the purpose of (evidence, proof of debt, *etc.*). No amount has been paid (*or \$* has been paid on , 19 ) in respect of the judgment.

FORM 69

Sub-section 306 (1)

## REQUEST FOR CERTIFIED COPY OF DOCUMENT FILED

The (plaintiff) requests a certified copy of (*name of document*) filed in these proceedings for the purpose of (evidence, *etc.*).

FORM 70

Paragraph 306 (1) (a)

## CERTIFICATE OF JUDGMENT - GENERAL FORM

I, the Clerk of the Court of Petty Sessions, being the officer having ordinarily the custody of the records, documents, proceedings and minutes of the Court, do hereby certify that:—

1. In these proceedings the plaintiff recovered judgment against the defendant on , 19 , for \$ and his costs of the proceedings to be taxed, which costs have since been taxed and allowed at \$ (*or such other extract as is appropriate to the judgment*).

2. I am informed by the judgment creditor that no amount has been paid (*or \$* has been paid on , 19 ) in respect of the judgment.

3. Interest is payable at % per annum on so much of the judgment debt (including costs) as is from time to time unpaid.

4. (*Where appropriate*: The judgment creditor has incurred costs of attempting to enforce the judgment, recoverable against the judgment debtor, in the amount of \$ .)

Dated

19

Clerk

FORM 71

Paragraphs 306 (1) (a) and (b)

## CLERK'S CERTIFICATE ON CERTIFIED COPY OF DOCUMENT FILED

I certify the foregoing to be a true copy of a judgment given or entered (*or order made or affidavit, etc.*, filed) in these proceedings on , 19 .

Dated

19

Clerk

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 9 July 1982.