Judicature Modernisation Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Judicature Modernisation and recommends that it be passed with the amendments shown.

Introduction

The Judicature Modernisation Bill is an omnibus bill that seeks to make courts more transparent and to provide for more modern, efficient court processes. The bill is intended to help make the justice system more people-centred, modern, and accessible by reforming the composition, jurisdiction, powers, and procedure of New Zealand's courts.

The bill seeks to implement the Government's response to the Law Commission's report *Review of the Judicature Act 1908: Towards a New Courts Act*, which recommended the reorganisation, consolidation, and updating of courts legislation. The bill includes related changes to the courts systems, including enabling electronic processes for courts and tribunals.

The bill is in six parts. Part 1 would create a new act, the Senior Courts Act, to provide a single statute for the High Court, the Court of Appeal, and the Supreme Court. Part 2 of the bill would repeal the District Courts Act 1947, replacing it with a new District Court Act establishing a single District Court in New Zealand. Part 3 would create a new Judicial Review Procedure Act, repealing the Judicature Amendment Act 1972 but continuing the substance of it redrafted in contemporary language. Part 4 of the bill would cover the courts' award of interest on money, creating an Interest on Money Claims Act. Part 5 would mirror in part the Electronic Transactions Act 2002 in creating an Electronic Courts and Tribunals Act, and Part 6 of the bill would amend 17 other enactments.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

Panels

Clause 18 of the bill provides for the establishment of a panel of High Court judges to hear commercial cases, and of other panels to hear other proceedings. We recommend inserting new subclause 18(6) so that any party to a case could request that their case be heard by a panel judge, subject to the Chief High Court Judge's power to determine otherwise.

We recommend the removal of subclause 18(6) in the bill as drafted regarding matters of practice or procedure. We consider that the High Court Rules provisions in the bill would allow rules to be made for any other matters of practice and procedure concerning panels without this additional provision.

Orders limiting commencement or continuation of civil proceedings

Clause 162 provides for the High Court to make limited orders, extended orders, and general orders restricting, to varying degrees, a person from commencing or continuing civil proceedings. We recommend inserting new subclause 162(6) to clarify that powers limiting civil proceedings would not derogate from a court's inherent powers to control its own proceedings. This would make it clear that the court could still control its processes as it saw fit for proceedings "without merit" in situations where clauses 162 to 165 do not apply.

We also recommend the addition of subclause 162(7) to make it clear that an appeal is part of a substantive proceeding, rather than a separate proceeding. This would allow a litigant's overall behaviour to be considered when making an order restricting the commencing or continuing of civil proceedings.

We recommend amending subclause 163(1) so that the test for the number of proceedings considered by a Judge before making an order under clause 162 would be "at least 2 proceedings" rather than "more than one". This would clarify the minimum number of proceedings required, while recognising that a small number of substantive proceedings can lead to a substantial amount of related litigation that is totally without merit. We also recommend defining "proceedings" further in subclause 163(5), as proceedings "instituted or conducted by the person to be restrained, whether against the same person or different persons."

We recommend amending subclause 164(2) to provide for an order to be made "for up to three years". This would provide more flexibility than specifying a three-year period.

Clause 165 includes a number of procedural provisions concerning limited orders, extended orders, and general orders, including appeals against orders made by the High Court. We recommend inserting new subclause 165(2A) to allow the court, of its own volition, to make any of the three types of order restricting a person from continuing or initiating a civil proceeding. We are aware that comparable overseas jurisdictions allow the court to initiate proceedings, and consider this would be consistent with a court's inherent powers to control its own proceedings.

We also recommend amending subclause 165(3A) to prevent a person with an order against them from appealing a decision refusing leave to file a new proceeding. We consider that such a person would have had appeal opportunities to test the validity of the order itself; and in deciding whether an application to file the proceedings was appropriate, the court would be well apprised of the person's background and the merits of the application. Our amendments to this subclause would also require applications for leave to file proceedings to be determined by written submission, while allowing the court to conduct an oral hearing if it considered there were exceptional circumstances and it was appropriate to do so in the interests of just-

ice. Finally, we recommend consequential amendments to provisions concerning orders restricting civil proceedings in other courts.

Publishing of final written judgments on internet

Clause 167 of the bill as introduced would require every final written judgment of a senior court to be published online unless there was good reason not to do so. We consider that while the presumption in favour of publication is warranted, some amendments to the clause are needed.

Specifically, we recommend inserting new subclause 167(4) defining a "final written judgment" as either a written reserved judgment or an oral judgment transcribed by an official transcription service, which determines or substantially determines the outcome of a case. This would include sentencing decisions in criminal cases.

We also recommend inserting subclause 167(3) to include as good reasons not to publish part or all of a judgment, the existence of a pertinent suppression order or statutory requirement; judgments of limited public value (for example, default judgments issued in the civil jurisdiction of the District Court); and the judge having determined against publication in the interests of justice, having considered the general presumption in favour of publication. These amendments would reduce uncertainty about what might constitute good reason not to publish.

We also recommend inserting new subclause 167(1) to require the publication of final written judgments as soon as practicable. We recognise that this would not guarantee that every case was published quickly (for example appeal processes may delay some judgments for a considerable time), but it would encourage the timely publication of judgments in general.

Information sharing

We recommend inserting new clause 171A into Part 1 of the bill (and related clauses elsewhere) to allow the Ministry of Justice to disclose information held on its databases to other agencies in response to bulk requests for permitted information. Permitted information would be defined in the bill as a sub-category of court records that could be shared with other agencies which had entered into Approved Information Sharing Agreements with the Ministry of Justice. Such agree-

ments would not require the Ministry of Justice to disclose any matters suppressed by court order or statute.

Obligations on Registrars

A number of pieces of legislation require court registrars to disclose information to registration authorities about people with certain convictions. For example, a registrar must notify the Veterinary Council if he or she knows that a person convicted of offences against the Animal Welfare Act 1999 is a vet. However, most legislative provisions requiring disclosure of information are silent about the effect of a suppression order, and some create additional uncertainty. To address this we recommend inserting new clauses 171B and 419B to exempt a requirement for a registrar to notify a registration authority of certain information from the effects of any suppression order; and to provide that where the registrar's obligation to disclose information to the registration authority is subject to the Court expressly ordering otherwise, the disclosure requirement is not affected by any suppression order that does not specifically address disclosure to a registration authority.

Maximum number of District Court judges

We do not recommend any change to clause 193, which sets the maximum permitted number of permanent District Court judges and sets out how full- and part-time judges count towards this cap. We consider that the existing mechanisms for assessing and delivering judicial resources, including the judicial cap, appointment of acting judges, semi-regular review of judicial capacity, and examination of the likely judicial resource required for new legislation, work well. However, some of us would like provision for a regular review of judicial capacity and expectations to be included in the bill, considering that this would provide more transparency.

Equity and good conscience

Clause 291 of the bill would allow the court, in proceedings where the amount claimed or the value of property is $3,000 or less, to receive any evidence and make a decision based on the principles of equity and good conscience. We recommend amending clause 291 to increase the amount to $5,000 to reflect inflation since the amount

was last adjusted in 1989. We decided not to recommend aligning the monetary amount with the threshold of the Disputes Tribunal, as the mandates of the District Court and the tribunal differ fundamentally to the extent that the two amounts seem not to be comparable.

Warrant to seize property

Clause 349 sets out the effect of a warrant to seize property, the powers it would confer on a bailiff or constable, and the types of property that would be protected from seizure under such a warrant. We recommend adjusting the value of the tools of trade and necessary household furniture and effects which may not be seized, to make them consistent with the equivalent provision (rule 17.62) in the High Court Rules. This would mean amending subclauses 349(2)(a)(i) and (ii) to raise the value of personal property of the judgment debtor that would be exempt from seizure to $5,000 for their necessary tools of trade, and $10,000 for their necessary household furniture and effects. We consider that the value of property deemed necessary to ensure a person's basic livelihood should be treated consistently in the District and High Courts.

Interest on money claims

Part 4 of the bill would provide for interest to be paid as compensation for delay in the payment of debts, damages and other money claims in respect of which civil proceedings had been commenced. We recommend amending clause 452 and inserting a worked example to clarify the calculation of interest to be awarded under clause 450. We also recommend the insertion of new subclauses 453(4) to (6) concerning the rights of parties to a proceeding if the court is satisfied that there is an error in the internet site interest rate calculations.

In the bill as drafted the award of interest was only to apply to judgment amounts exceeding $5,000. As the internet site interest rate calculator can calculate interest on smaller judgment sums, we recommend the removal of subclauses 460(3) and 464(1)(b) so that when a money judgment is given for an amount of $5,000 or less the court must award interest on the same basis as applies for higher judgment amounts. We also recommend the insertion of new subclause 465(4) so that the court is not precluded from awarding interest if a party claiming interest fails to specify that claim in accordance with sub-

clause 465(1), provided the claim (or counterclaim) is later remedied according to the rules of the court.

Regulations

Clause 502 sets out the regulation-making powers under Part 5 of the bill (electronic courts and tribunals) including the power to set conditions on the use of permitted documents. To allow the flexible implementation of electronic technology in courts and tribunals, we recommend inserting new subclause 502(ea) providing for regulations to mandate electronic dealing for classes of court or tribunal users. We recognise that certain classes of court users, such as lawyers, tend to be better equipped technologically than members of the public. Therefore, we consider it desirable to include the ability to compel certain classes of court users to deal electronically.

Labour Party minority view

Although Labour supports this bill we are, nevertheless, concerned about two aspects. The first is the omission from the purposes clause (clause 3) of any reference to a commitment to parliamentary sovereignty, the rule of law, judicial independence and the Treaty of Waitangi. These concepts comprise fundamental values in the New Zealand justice system, and it is surprising they have not been drafted into this very important re-write of the statute governing our judicial system. The terms appear in the present Supreme Court Act 2003, and they should be in this bill.

The second aspect that is a cause for concern is the age of retirement of judges. Under the existing Human Rights Act discrimination on the grounds of age is declared to be unlawful and employers may not contract for, or otherwise insist upon, a fixed age of retirement. We see no good reason to allow such discrimination in the case of judges.

Appendix

Committee process

The Judicature Modernisation Bill was referred to the committee on 5 December 2013. The closing date for submissions was 21 February 2014. We received and considered 25 submissions from interested groups and individuals, and heard 13 submissions. We received advice from the Ministry of Justice. We also considered a report from the Regulations Review Committee on the regulation-making powers in the bill.

Committee membership

Scott Simpson (Chairperson)
Paul Foster-Bell
Joanne Hayes
Raymond Huo
Andrew Little
Alfred Ngaro
Denis O'Rourke
Holly Walker
Hon Kate Wilkinson

Key to symbols used in reprinted bill

As reported from a select committee

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Hon Judith Collins

Judicature Modernisation Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Judicature Modernisation Act 2013**.

2 Commencement

(1) This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

(2) The power conferred by **subsection (1)** includes (without limitation) the power to bring different provisions of the High Court Rules set out in **Schedule 1** into force on different dates.

Part 1
Senior courts

Subpart 1—Preliminary provisions

3 Purposes

The purposes of this **Part** are to—

(a) consolidate in a single statute the provisions of the Judicature Act 1908 and the Supreme Court Act 2003; and

(b) continue the High Court, the Court of Appeal, and the Supreme Court, and provide for their—

(i) constitution and jurisdiction; and
(ii) practice and procedure; and
(iii) judicial and other officers, including their—
(A) selection; and
(B) appointment and conditions; and

(c) make provision for any other related matters; and
(d) improve the transparency of court arrangements in a manner consistent with judicial independence.

4 Interpretation

(1) In this **Part**, unless the context otherwise requires,—

Associate Judge means an Associate Judge of the High Court

Chief High Court Judge—

(a) means the person holding that office under **section 100**; and
(b) includes a Judge of the High Court acting in place of the Chief High Court Judge under **section 108**

Chief Justice means the Chief Justice of New Zealand holding office under **section 100**

Court of Appeal means the Court of Appeal of New Zealand continued under **section 43**

defendant means a person served or intended to be served with any application to the High Court for the exercise of its civil or criminal jurisdiction

Gazette means the *New Zealand Gazette*

High Court means the High Court of New Zealand continued under **section 6**

High Court Rules means the rules set out in **Schedule 1**, as amended from time to time

interlocutory application—

(a) means any application to the High Court in any civil proceedings or criminal proceedings, or intended civil proceedings or intended criminal proceedings, for—
(i) an order or a direction relating to a matter of procedure; or
(ii) in the case of civil proceedings, for some relief ancillary to that claimed in a pleading; and
~~(b) includes an application for a new trial; and~~

(c) includes an application to review an order made, or a direction given, on any application to which **paragraph (a) ~~or (b)~~** applies:

Judge means a Judge of the High Court

judgment includes decree

lawyer has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

Minister means the Minister or Ministers of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is or are for the time being responsible for the administration of this **Part**

plaintiff means a person who makes an application (other than an interlocutory application) to the High Court for the exercise of its civil or criminal jurisdiction

President of the Court of Appeal means the Court of Appeal Judge holding office under **section 100**

Supreme Court means the Supreme Court of New Zealand continued under **section 66**

working day, in relation to the High Court and the Court of Appeal, means a day that is not—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, or Waitangi Day; or

(b) the day observed as the anniversary day of the ~~former~~ province in which the court is located; or

(c) a day in the period commencing on 25 December in one year and ending with 15 January in the next year

working day, in relation to the Supreme Court, has the meaning given in **section 65**.

(2) A reference in any enactment to a senior court in New Zealand must, unless the context otherwise requires, be read as a reference to the High Court, the Court of Appeal, or the Supreme Court.

(3) A reference in any enactment to a senior court of a country other than New Zealand must, unless the context otherwise requires, be read as a reference to a court that has jurisdiction comparable to the jurisdiction of a senior court in New Zealand.

5 This Part binds the Crown

This **Part** binds the Crown.

Subpart 2—High Court

Constitution of High Court

6 High Court continued

(1) There continues to be a High Court of New Zealand.

(2) The High Court consists of—

(a) the Chief Justice of New Zealand; and

(b) the other High Court Judges who are from time to time appointed.

~~(3) The number of High Court Judges appointed from time to time referred to in **subsection (2)(b)** may not exceed 55.~~

~~(4) For the purposes of **subsection (3)**,—~~

~~(a) a permanent Judge who is sitting on a full-time basis counts as 1:~~

~~(b) a permanent Judge who is sitting on a part-time basis counts as an appropriate fraction of 1:~~

~~(c) an acting Judge counts as 0:~~

~~(d) the aggregate number (for example, 54.5) must not exceed 55.~~

~~(5) Despite **subsection (3)**, the Governor-General may appoint more than 55 High Court Judges (**additional judges**) if the Governor-General thinks that 1 or more additional Judges are required because of—~~

~~(a) the absence of any Judge on leave preliminary to retirement; or~~

~~(b) the anticipated absence of any Judge on leave preliminary to retirement.~~

~~(6) The appointment of an additional Judge under **subsection (5)** must fill the vacancy next occurring in the office of Judge,~~

~~not being a vacancy filled by an earlier appointment under **subsection (5)**~~.

(7) The High Court is a court of record.

(8) The High Court is the same court as the High Court continued by section 3(1) of the Judicature Act 1908.

Compare: 1908 No 89 ~~ss 3, 4(1)–(1D)~~ s 4(1)

6A Number of High Court Judges

(1) The number of High Court Judges appointed from time to time referred to in **section 6(2)(b)** may not exceed 55.

(2) For the purposes of **subsection (1)**—

(a) a permanent Judge who is sitting on a full-time basis counts as 1:

(b) a permanent Judge who is sitting on a part-time basis counts as an appropriate fraction of 1:

(c) the aggregate number (for example 54.5) must not exceed 55.

(3) Despite **subsection (1)**, the Governor-General may appoint more than 55 High Court Judges (**additional Judges**) if the Governor-General thinks that 1 or more additional Judges are required because of—

(a) the absence of any Judge on leave preliminary to retirement; or

(b) the anticipated absence of any Judge on leave preliminary to retirement.

(4) The appointment of an additional Judge under **subsection (3)** must fill the vacancy next occurring in the office of Judge, not being a vacancy filled by an earlier appointment under **subsection (3)**.

7 Seal

(1) The High Court must have a seal, and the Registrar of the court is responsible for the seal.

(2) The seal must be used for sealing judgments, orders, certificates, and any other document issued by the court that must be sealed.

Compare: 1908 No 89 s 50

8 Powers of High Court to be exercised by High Court Judges

(1) The powers of the High Court may be exercised in any part of New Zealand by a High Court Judge or 2 or more High Court Judges.

(2) **Subsection (1)** is subject to any enactment that—

(a) requires the powers of the High Court to be exercised by the full court or by a specified number of High Court Judges; or

(b) provides for the appointment of persons other than High Court Judges to sit with the High Court or as members of the court in any specified proceeding or class of proceeding.

Compare: 1908 No 89 s 19

9 Sessions of High Court and adjournments

(1) A High Court Judge may hold a session of the High Court at any time and place the Judge thinks fit.

(2) A High Court Judge may adjourn a session of the High Court to a time and place the Judge thinks fit.

(3) If a High Court Judge is not present at the time appointed for a session of the court, a Registrar must adjourn the session and may determine the time and place of the next session.

Compare: 1908 No 89 s 52

10 Court offices

(1) The Governor-General may, by notice in the *Gazette*, declare that an office of the High Court is established at a place and on and after a date stated in the notice.

(2) The Governor-General may, by notice in the *Gazette*, abolish an office of the High Court.

(3) The following provisions apply on the abolition of an office of the High Court (the **abolished office**):

(a) the Minister may direct that the documents and records in the abolished office must be transferred to another office of the court (the **substituted office**):

(b) when delivered to the Registrar of the substituted office, the documents and records become subject to the custody of that Registrar:

(c) the Registrar of the substituted office may do anything that could under an enactment or a rule have been done by the Registrar of the abolished office:

(d) a step in a proceeding that could under an enactment or a rule have been taken in the abolished office may be taken in the substituted office:

(e) an act or thing required or authorised by an enactment or a rule to be done by a person at the abolished office in relation to a proceeding or transaction or document may be done by a person at the substituted office:

(f) an address for service given by a party in relation to a proceeding in the abolished office continues to be the address for service of the party, but if the address does not comply with any enactment or rule the party must give a new address for service on first filing a document in the proceeding in the substituted office:

(g) a High Court Judge may—

(i) decide a question as to the application of this section or the procedure to be followed; and

(ii) make any order the Judge thinks fit.

Compare: ~~1989~~ 1908 No 89 s 23A

Jurisdiction of High Court

11 Jurisdiction of High Court

The High Court has—

(a) the jurisdiction that it had on the commencement of this **Part**; and

(b) the judicial jurisdiction that may be necessary to administer the laws of New Zealand~~.~~; and

(c) the jurisdiction conferred on it by any other Act.

Compare: 1908 No 89 s 16

12 Power to award damages as well as, or in substitution for, injunction or specific performance

The High Court may award damages in addition to or in substitution for an injunction or specific performance.

Compare: 1908 No 89 s 16A

13 Jurisdiction in relation to persons who lack competence to manage their affairs

(1) The High Court has jurisdiction and control in relation to—

(a) mentally impaired persons who, in the opinion of the court, lack wholly or partly the competence to manage their own affairs; and

(b) the property and managers of those persons.

(2) **Subsection (1)** is subject to other enactments making provision in relation to those persons or their property or managers.

Compare: 1908 No 89 s 17

14 When civil proceeding to be tried before Judge alone

(1) A civil proceeding must be tried before a High Court Judge sitting alone.

(2) This section is subject to **section 15**.

Compare: 1908 No 89 s 19B

15 Certain civil proceedings may be tried by High Court Judge with jury

(1) Any party to a proceeding for defamation, false imprisonment, or malicious prosecution may, on giving notice in accordance with the High Court Rules, require the proceeding to be tried by a High Court Judge with a jury.

(2) Any party to a counterclaim in ~~the proceeding~~ a proceeding for defamation, false imprisonment, or malicious prosecution may, on giving notice in accordance with the High Court Rules, require the counterclaim to be tried by a High Court Judge with a jury.

(3) If a notice is given under **subsection (1) or (2)**, the proceeding or counterclaim must be tried in accordance with the subsection that applies.

(3A) A High Court Judge may, on the application of either party, order that a proceeding for defamation, false imprisonment, or malicious prosecution or any issue in the proceeding be tried before a Judge without a jury if it appears to the Judge before the trial that the trial of the proceeding or the issue will—

(a) involve mainly the consideration of difficult questions of law; or

(b) require any prolonged examination of documents or accounts, or any investigation in which difficult questions in relation to scientific, technical, business, or professional matters are likely to arise, being an examination or investigation which cannot conveniently be made with a jury.

(3B) A proceeding for defamation, false imprisonment, or malicious prosecution that also contains other causes of action may be tried only before a Judge without a jury.

(4) No civil proceeding other than for defamation, false imprisonment, or malicious prosecution may be tried by a High Court Judge with a jury.

Compare: 1908 No 89 s 19A(1)–~~(4)~~(5)

16 Question of foreign law must be decided by High Court Judge

(1) A question about the effect of evidence of a foreign law that arises in a civil or criminal proceeding that is tried by a High Court Judge with a jury must be decided by the Judge alone.

(2) This section overrides **section 15**.

Compare: 1908 No 89 s 19C

17 Proceedings in place of writs

(1) This section applies in any case where, before the commencement of the Judicature Amendment Act (No 2) 1985,—

(a) the High Court had jurisdiction to grant relief or a remedy or do any other thing by way of a writ; or

(b) the High Court could issue a writ for the commencement or conduct of a proceeding or in relation to a proceeding.

(2) If this section applies,—

(a) the court continues to have jurisdiction to grant the relief or remedy or to do the thing; but
(b) the court may not issue the writ; and
(c) the court may grant the remedy or relief or do the thing by way of a judgment or order in accordance with this **Part** and the High Court Rules; and
(d) a proceeding for the remedy or relief or for the court to do the thing must be commenced and conducted in accordance with this **Part** and the High Court Rules.

(3) This section does not apply to—
(a) a writ of habeas corpus under the Habeas Corpus Act 2001; or
(b) any writ of execution for the enforcement of a judgment or order of the court; or
(c) any writ in aid of any writ of execution.

(4) **Subsection (3)** is subject to the High Court Rules.

Compare: 1908 No 89 s 98A

Panels of Judges

18 Panels

(1) The commercial panel of the High Court from which Judges may be selected to hear and determine commercial proceedings is established and may operate subject to this section.

(2) The Governor-General may, by Order in Council made on the recommendation of the Attorney-General after consultation with the Chief Justice and the Chief High Court Judge,—
(a) specify a commencement date for the operation of the commercial panel:
(b) specify the types of proceedings that may be assigned to the commercial panel:
(c) if the Governor-General considers it necessary, provide for the commercial panel to cease its operations on or from a specified date.

(3) The Chief High Court Judge, in consultation with the Attorney-General and the Chief Justice, may establish other panels of High Court Judges for the purposes of dealing with proceedings other than commercial proceedings.

(4) The Chief High Court Judge may determine how many High Court Judges are to be on the commercial panel or any other panel and assign Judges to the panels.

(5) The Chief High Court Judge may decide the basis on which cases are to be distributed as between Judges on the commercial panel or another panel and Judges who are not on any panel.

~~(6) The Chief High Court Judge may decide any other matters of practice or procedure relating to the commercial panel or other panels that are not prescribed or provided for by the High Court Rules.~~

(6) A party may nominate that the party's case be dealt with by a Judge on a panel and the Chief High Court Judge may assign to the case a Judge or Judges from a panel.

Jurisdiction of Associate Judges

19 Associate Judge may exercise certain powers of High Court

(1) An Associate Judge has the jurisdiction and powers of the High Court in relation to the following matters:

(a) an application for summary judgment:

(b) an application to stay or dismiss an application for the appointment of a liquidator under the Companies Act 1993:

(ba) reinstating a company to the Register of Companies:

(bb) any matter arising under the Insolvency Act 1967:

(bc) case management of proceedings under the Admiralty Act 1973:

(c) a proceeding in which relief is claimed solely under any of sections 140, 143, 144, 145, 145A, and 148 of the Land Transfer Act 1952 (which relate to caveats):

(d) an assessment of damages where liability has been determined or the trial of a proceeding in which only the amount of a debt or damages is in dispute:

(e) the entry of a judgment by consent or the making of an order by consent:

(f) the making of an order (other than an arrest order or an order relating to an arrest order) that may be made under

the High Court Rules against a judgment debtor who has been ordered to attend the court for an examination:

(g) the making, variation, suspension, or discharge of an attachment order under the High Court Rules:

(h) any other matter that an Associate Judge has jurisdiction to deal with under an enactment.

(2) An Associate Judge has the jurisdiction and powers of the court or a High Court Judge under the following enactments:

(a) article 11 of Schedule 1 of the Arbitration Act 1996:

(b) sections 123, 154, 165 to 168, 173, 179, 232 to 234, 236 to 238, Part 15A, and Part 16 of the Companies Act 1993:

(c) section 42(2) of the Corporations (Investigations and Management) Act 1989:

(d) the Insolvency Act 2006 (except sections 150, 166(3), 180, and 236(2)):

(e) regulations or rules made under the Insolvency Act 2006:

(f) regulations relating to liquidations made under the Companies Act 1993:

(g) sections 118, 128, 131, 167, 168, 170, 179, 181, 182, and 186 of the Personal Property Securities Act 1999:

(h) the Model Law on Cross-Border Insolvency as set out in Schedule 1 of the Insolvency (Cross-border) Act 2006.

(3) An Associate Judge may adjourn a proceeding even though the Associate Judge does not have jurisdiction in relation to the proceeding.

(4) An Associate Judge has the jurisdiction and powers of the court to deal with costs and other matters incidental to the matters over which the Associate Judge has jurisdiction under this section.

(5) Rules made under **section 145** or under any other Act in the same manner as rules under that section may contain any provisions that may be necessary to enable the proper exercise by Associate Judges of the jurisdiction and powers conferred by this section.

Compare: 1908 No 89 ss 26I(1)–(3), (4)(a), 26O

20 Ancillary powers of Associate Judge

(1) An Associate Judge has, in relation to a proceeding (including a proceeding on an interlocutory application) that is properly before the Associate Judge, the same jurisdiction and power to make an order or exercise an authority as a Judge of the High Court.

(2) Despite **subsection (1)**, an Associate Judge does not have the jurisdiction or powers referred to in **section 21(4)**.

Compare: 1908 No 89 s 26IA

21 Rules conferring on Associate Judges specified jurisdiction and powers of High Court Judge in chambers

(1) Rules made under **section 145** and rules made under any other Act in the manner provided in that section may confer on an Associate Judge the jurisdiction and powers of a High Court Judge in chambers specified in the rules.

(2) The rules may specify limitations and restrictions on the jurisdiction and powers.

(3) The rules may contain any provisions that may be necessary to enable the proper exercise by Associate Judges of the jurisdiction and powers so conferred.

(4) Despite **subsection (1)**, no rules may be made that confer on Associate Judges jurisdiction and power in relation to any of the following:

- (a) a criminal proceeding other than an uncontested application for bail or an application to set aside a witness summons:
- (b) an application for a writ of habeas corpus:
- (c) a proceeding for the issue or renewal of a writ of sequestration:
- (d) a proceeding under the Care of Children Act 2004:
- (e) an action *in rem* under the Admiralty Act 1973:
- (f) an application to review, or appeal against, the exercise, or the refusal to exercise, by a Registrar or a Deputy Registrar of any jurisdiction or power conferred on a Registrar or Deputy Registrar by **this Part** or any other enactment:
- (g) an application for a search order or an interlocutory or permanent injunction:

(h) an application for review or other relief under **Part 3 of the Judicature Modernisation Act 2013**:

(i) a proceeding for a writ or order in the nature of mandamus, prohibition, or certiorari, or for a declaration or an injunction:

(j) a proceeding to remove a person from public office:

(k) a proceeding to try the right of a person to hold public office.

Compare: 1908 No 89 s 26J

22 Application of provisions relating to witnesses and contempt

Sections 40, 41, and 161 (which relate to the power to deal with witnesses and contempt) apply to a proceeding before an Associate Judge in the same way as they apply to a proceeding before a High Court Judge.

Compare: 1908 No 89 s 26K

23 No power to order committal, attachment, or arrest

(1) An Associate Judge does not have power to make an order for the committal, attachment, or arrest of a person.

(2) This section is subject to **section 22**.

Compare: 1908 No 89 s 26L

24 Power to act as referee

An Associate Judge may act as a referee under the High Court Rules in a proceeding or on a question that arises in a proceeding.

Compare: 1908 No 89 s 26M

25 Transfer of proceeding to High Court Judge

(1) An Associate Judge may, on the application of a party to a proceeding before the Associate Judge or on the Associate Judge's own initiative, refer the proceeding or a matter in the proceeding to a High Court Judge if the Associate Judge is satisfied that because of the complexity of the proceeding or matter it is desirable to do so.

(2) A High Court Judge may, on the application of a party to a proceeding that is being or is to be dealt with by an Associate Judge, order that the proceeding or any part of it be transferred to and dealt with by a High Court Judge if the Judge making the order is satisfied that it is desirable to do so.

(3) A High Court Judge may—

(a) dispose of the proceeding; or

(b) refer the proceeding or matter back to the Associate Judge with any directions the High Court Judge thinks fit.

Compare: 1908 No 89 s 26N

26 Appeals against decisions of Associate Judges

(1) A party to any proceedings may appeal to the Court of Appeal against any order or decision of an Associate Judge in those proceedings.

(2) **Section 57** applies to an appeal under **subsection (1)**.

Compare: 1908 No 89 s 26P(1)–(1A)

27 Jurisdiction of High Court Judges not affected

Nothing in this **Part** or the High Court Rules prevents the exercise by a High Court Judge of the jurisdiction and powers conferred on an Associate Judge by this **Part** or those rules.

Compare: 1908 No 89 s 26R

Commissioners for oaths, affidavits, and affirmations

28 Power to appoint Commissioners

(1) A High Court Judge may appoint a person to be a Commissioner of the High Court to administer and take an oath, affidavit, or affirmation outside New Zealand in connection with a proceeding or matter before a court in New Zealand.

(2) Notification of the appointment must be published in the *Gazette*.

Compare: 1908 No 89 s 47

29 Effect of oath, affidavit, or affirmation

An oath, affidavit, or affirmation administered or taken by a Commissioner has the same effect as if it had been administered or taken by a person authorised to administer or take the oath, affidavit, or affirmation in New Zealand.

Compare: 1908 No 89 s 48

30 Revocation of ~~Commission~~ commission

(1) A High Court Judge may revoke a ~~Commission~~ commission for any reason the Judge considers sufficient.

(2) Revocation of a ~~Commission~~ commission does not affect the validity of anything done by the Commissioner before notice of the revocation was given or sent to the Commissioner.

(3) Notice of the revocation and of the date on which it was given or sent to the Commissioner must be published in the *Gazette*.

Compare: 1908 No 89 s 49

Registrars, Sheriffs, and officers of High Court

31 Appointment of Registrars, Deputy Registrars, and other officers of High Court

Registrars, Deputy Registrars, and other officers may be appointed under the State Sector Act 1988 for the conduct of the business of the High Court.

Compare: 1908 No 89 s 27

32 Powers of Registrars

(1) A Registrar has the duties and powers—

(a) conferred by this **Part**, any other enactment, or the High Court Rules:

(b) necessary or desirable to ensure the efficient and effective administration of the business of the High Court.

(2) A Deputy Registrar has the same duties and powers as a Registrar.

(3) **Subsection (2)** is subject to a provision to the contrary in any other enactment or the High Court Rules.

Compare: 1908 No 89 s 28

33 Sheriffs

(1) A Registrar is also a Sheriff for New Zealand.

(2) Deputy Sheriffs may be appointed under the State Sector Act 1988 for offices of the High Court.

(3) In the absence of the Sheriff or when acting for the Sheriff, a Deputy Sheriff has the same duties and powers as a Sheriff.

Compare: 1908 No 89 s 29

34 Powers of Sheriffs

A Sheriff has—

(a) the power to enforce an order of the High Court:

(b) the power to serve a process of the High Court:

(c) the power to arrest a person in accordance with an order of the High Court:

(d) any other powers conferred by this **Part**, any other enactment, or the High Court Rules.

Compare: 1908 No 89 s 32

35 Sheriff not to act as lawyer or agent

No Sheriff may be in any way concerned in any action in any court in New Zealand either as a lawyer or an agent.

Compare: 1908 No 89 s 34

36 Service of process when Sheriff disqualified

(1) If the Sheriff is disqualified by law from executing any process that has been issued, the court must authorise a fit person to execute the process.

(2) The cause of the process must be entered in the records of the court.

Compare: 1908 No 89 s 35

37 Persons arrested by Sheriffs may be committed to prison at once

A Sheriff, Sheriff's officer, bailiff, or any other person employed to assist the Sheriff who arrests any person under or by virtue of any writ or process that authorises the committal of

the arrested person may, without delay, take steps to have the arrested person taken to a prison and committed there.

Compare: 1908 No 89 s 36

Miscellaneous matters

38 Arrest of defendant about to leave New Zealand

(1) A Judge may, on the application of a plaintiff in a proceeding to recover an amount of money, issue a warrant to arrest a defendant in the proceeding and bring the defendant before the court.

~~(2) A warrant may not be issued unless the Judge is satisfied there are reasonable grounds to suspect that the defendant is about to leave New Zealand with the intention of evading payment of the amount claimed.~~

(2) A Judge must not issue a warrant unless the Judge is satisfied that—

(a) the plaintiff has a good cause of action against the defendant; and

(b) there are reasonable grounds to suspect that the defendant is about to leave New Zealand with the intention of evading payment of the amount claimed.

(3) The Judge may require the applicant for the warrant to deposit in the court an amount not exceeding the amount claimed in the proceeding or give a surety for that amount for the purposes of payment of any compensation that may be ordered to be paid to the defendant under **subsection (9)**.

(4) The defendant must be brought before the court unless the amount claimed in the proceeding is paid to the plaintiff before the warrant is executed.

(5) The Judge may—

(a) release the defendant; or

(b) release the defendant on bail on any terms and conditions the Judge thinks fit and with a surety of an amount the Judge thinks fit (but not exceeding the amount claimed in the proceeding and costs) or without a surety; or

(c) remand the defendant in custody.

(6) A defendant who is remanded in custody must be brought before the court within 4 days after the date of the order.

(7) A defendant arrested under the warrant may either give to the enforcing officer or deposit in the court the amount shown on the warrant as the amount of the claim plus costs. If the defendant does so, he or she must be released and the amount must be retained and,—

(a) if judgment in the proceeding is given in favour of the plaintiff, paid or applied in accordance with the judgment; or

(b) if judgment in the proceeding is given in favour of the defendant, paid to the defendant.

(8) The Judge may,—

(a) if the defendant consents, hear and determine the proceeding at the time the defendant is brought before the court; or

(b) fix a date and time for the hearing of the proceeding.

(9) If judgment is given for the defendant, the Judge may order that the defendant be paid compensation for his or her arrest or arrest and detention of an amount not exceeding $2,000.

(10) Where a Judge is not available though absence, illness, or any other cause, a Registrar may exercise any of the powers conferred on a Judge by **subsections (1) to (3) and (5)(a) and (b)**.

Compare: 1908 No 89 s 55; 1947 No 16 ss 109, 110

39 Witness not required to attend hearing of civil proceeding unless allowances and expenses paid

A witness is not required to attend the hearing of a civil proceeding in the High Court unless allowances and travelling expenses in accordance with regulations made under the Criminal Procedure Act 2011 have been paid or tendered to the witness—

(a) at the time of service on the witness of the subpoena; or

(b) a reasonable time before the hearing.

Compare: 1908 No 89 s 56A(3)

40 Failure of witness to attend

(1) The High Court may, in civil proceedings, issue a warrant to arrest and bring before the court a witness who—
- (a) is compellable to attend the court to give evidence; and
- (b) has been summoned to attend the court to give evidence; and
- (c) fails to attend the court.

(2) The High Court may impose a fine not exceeding $1,000 on a witness brought before the court under **subsection (1)** who did not have a reasonable excuse for failing to attend the court.

(3) The onus of proving a reasonable excuse is on the witness.

Compare: 1908 No 89 s 56A(1), (2)

41 Refusal to give evidence

(1) This section applies to a witness in a civil proceeding who, without reasonable excuse,—
- (a) refuses to give evidence when required; or
- (b) refuses to produce a document the witness has been required to produce; or
- (c) refuses to be sworn; or
- (d) having been sworn, refuses to answer a question.

(2) The High Court may order that, unless the witness complies with **subsection (1)**, the witness is to be detained in custody for a period not exceeding 7 days and may issue a warrant to arrest and detain the witness.

(3) The High Court may exercise the powers in **subsection (2)** if the witness is again brought before the court, whether on 1 or more occasions, and still fails to comply with **subsection (1)**.

(4) This section does not limit the power of the High Court to punish the witness for contempt.

Compare: 1908 No 89 s 56B

42 High Court may require person to undergo medical examination

(1) The High Court may order a party to a civil proceeding to undergo a medical examination by a registered medical practitioner at a time and place specified in the order if the court is satisfied, in the interests of justice, that the physical or mental

condition of the person is relevant to a matter in the proceeding.

(2) The person to be examined may have a registered medical practitioner of the person's own choice present at the examination.

(3) The court may order a party seeking the order to pay to the person to be examined a reasonable sum to meet—

(a) the person's travelling and other expenses in connection with the examination; and

(b) the expenses of having a registered medical practitioner chosen by the person attend the examination.

(4) The person to be examined must do the things reasonably requested and answer the reasonable questions asked by the medical practitioner who conducts the examination.

(5) If the person to be examined fails, without reasonable excuse, to comply with the order or wilfully obstructs the medical examination, the High Court may—

(a) stay the proceeding; or

(b) strike out a notice, statement, or other document filed, or a step taken, in the proceeding by the person to be examined.

Compare: 1908 No 89 s 100

Subpart 3—Court of Appeal

Constitution

43 Court of Appeal continued

(1) There continues to be a Court of Appeal of New Zealand.

(2) The Court of Appeal consists of—

(a) a Judge of the High Court appointed by the Governor-General as a Judge of the Court of Appeal and as President of that court; and

(b) no fewer than 5 nor more than 9 other Judges of the High Court appointed by the Governor-General as Judges of the Court of Appeal.

(3) The Court of Appeal is a court of record.

(4) The Court of Appeal is the same court as the Court of Appeal continued by section 57 of the Judicature Act 1908.
Compare: 1908 No 89 s 57(1), (2)

44 Seal

(1) The Court of Appeal must have a seal, and the Registrar of the court is responsible for the seal.

(2) The seal must be used for sealing judgments, orders, certificates, and any other document issued by the court that must be sealed.
Compare: 1908 No 89 s 74

45 Court of Appeal to sit in divisions

(1) For the purposes of proceedings in the Court of Appeal, the Court of Appeal sits in divisions comprising 3 Judges.

~~(2) There are—~~

~~(a) 1 or more divisions of the Court of Appeal for the purposes of criminal proceedings; and~~

~~(b) 1 or more divisions of the Court of Appeal for the purposes of civil proceedings.~~

(3) Each division may exercise all the powers of the Court of Appeal.

(4) A division may exercise the powers of the Court of Appeal even though 1 or more divisions of the court or a full court exercises those powers at the same time.

(5) A majority of the members of a division may, if they consider it desirable, refer a proceeding, or state a case, or reserve a question for consideration by a full court of the Court of Appeal. A full court has power to hear and determine the proceeding, case, or question.
Compare: 1908 No 89 s 58

~~46 Composition of criminal appeals division or divisions~~

~~(1) For the purposes of a criminal proceeding that is heard by a division, the Court of Appeal comprises—~~

~~(a) 3 Judges of the Court of Appeal holding office under section 43(2) or 111; or~~

(b) 2 Judges of the Court of Appeal holding office under **section 43(2) or 111** and 1 Judge of the High Court appointed under **subsection (2)**; or

(c) 1 Judge of the Court of Appeal holding office under **section 43(2) or 111** and 2 Judges of the High Court appointed under **subsection (2)**.

(2) The President of the Court of Appeal and the Chief High Court Judge may jointly appoint Judges of the High Court to be members of the Court of Appeal for the purposes of a proceeding or proceedings to which **subsection (1)** relates.

(3) Judges may be appointed under **subsection (2)** either—

(a) in respect of a specified case or specified cases; or

(b) in respect of every case to be heard by the Court of Appeal during a specified period not exceeding 3 months.

(4) An appointment under **subsection (2)** may be made for 1 or more 3-month periods, but no Judge may be a member of the Court of Appeal under that subsection or **section 47(2)** for more than 4 months in any calendar year.

(5) For the purposes of this section, **criminal proceeding** means an appeal or application to the Court of Appeal under the Criminal Procedure Act 2011.

Compare: 1908 No 89 s 58A

47 Composition of civil appeals division or divisions

(1) For the purposes of a civil proceeding that is heard by a division, the Court of Appeal comprises—

(a) 3 Judges of the Court of Appeal holding office under **section 43(2) or 111**; or

(b) 2 Judges of the Court of Appeal holding office under **section 43(2) or 111** and 1 Judge of the High Court appointed under **subsection (2)**; or

(c) 1 Judge of the Court of Appeal holding office under **section 43(2) or 111** and 2 Judges of the High Court appointed under **subsection (2)**.

(2) The President of the Court of Appeal and the Chief High Court Judge may jointly appoint Judges of the High Court to be members of the Court of Appeal for the purposes of a proceeding or proceedings to which **subsection (1)** relates.

~~(3) Judges may be appointed under **subsection (2)** either—~~
~~(a) in respect of a specified case or specified cases; or~~
~~(b) in respect of every case to be heard by the Court of Appeal during a specified period not exceeding 3 months.~~

~~(4) An appointment under **subsection (2)** may be made for 1 or more 3-month periods, but no Judge may be a member of the Court of Appeal under that subsection or **section 46(2)** for more than 4 months in any calendar year.~~

~~(5) For the purposes of this section, **civil proceeding** means—~~
~~(a) an appeal to the Court of Appeal against a judgment or order given or made in a proceeding other than a criminal proceeding:~~
~~(b) an application relating to an appeal of the kind referred to in **paragraph (a)**:~~
~~(c) an application for leave to bring an appeal of the kind referred to in **paragraph (a)**:~~
~~(d) a proceeding transferred to the Court of Appeal under **section 60**:~~

~~Compare: 1908 No 89 s 58B~~

46 Composition of divisions

(1) For the purposes of a proceeding that is heard by a division, the Court of Appeal comprises—
(a) 3 Judges of the Court of Appeal holding office under **section 43(2) or 111**; or
(b) 2 Judges of the Court of Appeal holding office under **section 43(2) or 111** and 1 Judge of the High Court appointed under subsection (2); or
(c) 1 Judge of the Court of Appeal holding office under **section 43(2) or 111** and 2 Judges of the High Court appointed under **subsection (2)**.

(2) The President of the Court of Appeal and the Chief High Court Judge may jointly appoint Judges of the High Court to be members of the Court of Appeal for the purposes of any proceedings.

(3) Judges may be appointed under **subsection (2)** either—
(a) in respect of a specified case or specified cases; or
(b) in respect of every case to be heard by the Court of Appeal during a specified period not exceeding 3 months.

(4) An appointment under **subsection (2)** may be made for 1 or more 3-month periods, but no Judge may be a member of the Court of Appeal under that subsection for more than 4 months in any calendar year.

(5) **Section 173** applies to an appointment under **subsection (2)** despite anything in **subsection (3) or (4)**.

(6) Each division may exercise all the powers of the Court of Appeal.

(7) A division may exercise the powers of the Court of Appeal even though 1 or more divisions of the court or a full court exercises those powers at the same time.

(8) A majority of the members of a division may, if they consider it desirable, refer a proceeding, or state a case, or reserve a question for consideration by a full court of the Court of Appeal. A full court has power to hear and determine the proceeding, case, or question.

Compare: 1908 No 89 ss 58A, 58B

48 Assignment of Judges to divisions

(1) Judges are assigned to act as members of a criminal or civil division of the Court of Appeal in accordance with a procedure adopted from time to time by the Judges of the Court of Appeal holding office under **section 43(2)**.

(2) The President of the Court of Appeal must publish the procedure on an Internet site maintained by or on behalf of the court.

~~(3) A Judge of the High Court who is eligible to act as a Judge of a division of the Court of Appeal may not be assigned to a division without the concurrence of the Chief High Court Judge.~~

Compare: 1908 No 89 s 58C

~~**49 Certain applications can be dealt with by 1 or 2 Judges**~~

~~(1) Two Judges of the Court of Appeal (of whom at least 1 must hold office under **section 43(2)** and the other may be appointed under **section 47(2) or 111**) can hear and determine in civil proceedings—~~

~~(a) contested applications for leave to appeal to the Court of Appeal:~~

~~(b) contested applications for extension of time to appeal to the Court of Appeal.~~

~~(2) If the 2 Judges are unable to agree on how the application should be decided, the application must be declined.~~

~~(3) Any other application to or matter in the Court of Appeal (other than an appeal) may be heard and determined by a single Judge of the Court of Appeal (whether holding office under **section 43(2)** or appointed under **section 47(2) or 110**) on the papers, at an oral hearing, or in any other manner the Judge considers just.~~

~~Compare: 1908 No 89 s 61A(1), (2)~~

49 Powers exercisable by Judges

(1) This section applies to all proceedings before the Court of Appeal other than proceedings under the Criminal Procedure Act 2011.

(2) Any 2 or more Judges of the Court of Appeal may act as the court to determine—

(a) any contested application for leave to appeal:

(b) any contested application for extension of time to appeal:

(c) any other contested application that effectively determines or disposes of the substantive proceeding.

(3) A single Judge of the Court of Appeal may act as the court to determine any uncontested application of the kind referred to in **subsection (2)** or other uncontested matter in the court (other than an appeal).

(4) If a single Judge acting under **subsection (2)** determines not to grant an application or not to resolve a matter in favour of a party, the party may apply to have the Judge's determination confirmed by 2 or more Judges of the Court of Appeal.

(5) The Judges who determine an application under **subsection (4)** may confirm, modify, or reverse the single Judge's determination.

(6) Every application or matter dealt with under this section must be determined on the papers, unless the Judge or Judges order

that it be determined at an oral hearing or in any other manner considered just by the Judge or Judges.

Compare: 1908 No 89 s 61A(1), (2)

~~**50 Review of determination of single Judge of Court of Appeal**~~

~~(1) The Court of Appeal may, on application by a person who is dissatisfied with the determination of a Judge of the court under **section 49(3)**, review the determination.~~

~~(2) The court may—~~

~~(a) confirm or vary the decision; or~~

~~(b) set the decision aside and make any other decision the court thinks fit.~~

~~Compare: 1908 No 89 s 61A(3)~~

51 Court of Appeal to sit as full court in certain cases

(1) The Court of Appeal must sit as a full court to hear and determine—

(a) cases that are considered, in accordance with the procedure adopted under **section 52**, to be of sufficient significance to warrant the consideration of a full court:

(b) a proceeding, case, or question referred under **section 45(5)** for hearing and determination by a full court:

(c) an appeal from a decision of the Court Martial Appeal Court under section 10 of the Court Martial Appeals Act 1953.

(2) A full court of the Court of Appeal consists of 5 Judges.

(3) A full court is constituted only by Judges of the Court of Appeal holding office under **section 43(2)**.

(4) Despite **subsection (2)**, it is not necessary for a proceeding to be reheard if, before the determination of the proceeding, 1 or more members of the full court before whom the proceeding is being or was heard—

(a) dies; or

(b) becomes seriously ill; or

(c) is unavailable for any other reason.

(5) The remaining members of the full court may continue to act as a full court for the purposes of this section and have power

to determine the proceeding or any incidental matter, including the question of costs, that may arise in the proceeding.
Compare: 1908 No 89 s 58D

52 Cases of sufficient significance for full court

(1) The question whether a case is of sufficient significance to warrant the consideration of a full court must be determined in accordance with the procedure adopted by the Judges of the Court of Appeal holding office under **section 43(2)**.

(2) The President of the Court of Appeal must publish the procedure on an Internet site maintained by or on behalf of the court.
Compare: 1908 No 89 s 58E

53 Authority of High Court Judges to act as Judges of Court of Appeal

(1) The fact that a High Court Judge acts as a Judge of the Court of Appeal is conclusive evidence of the Judge's authority to do so. No judgment or determination given or made by the Court of Appeal while the Judge so acts may be questioned on the ground that the occasion for the Judge acting had not arisen or had ceased to exist.

(2) A Judge of the High Court who has acted as a Judge of the Court of Appeal may attend sessions of the Court of Appeal for the purpose of giving a judgment or imposing a sentence or completing a proceeding heard by the Court of Appeal while the Judge acted as a Judge of the court.
Compare: 1908 No 89 s 58G

54 Judgment of Court of Appeal

(1) The judgment of the Court of Appeal must be in accordance with the opinion of a majority of the Judges hearing the proceeding.

(2) If the Judges are equally divided, the judgment or order appealed from or under review is taken as affirmed.

(3) A judgment of the Court of Appeal may be given in the manner prescribed by rules made under **section 145**.
Compare: 1908 No 89 s 59

55 Sessions of Court of Appeal

(1) The President of the Court of Appeal presides at a session of the court at which he or she is present.

(2) If the President is not present, the senior Judge of the Court of Appeal who is present presides.

Compare: 1908 No 89 s 60(2), (3)

56 Adjournments

(1) The Court of Appeal may adjourn a session of the court to a time and place appointed by the court.

(2) One of more Judges of the Court of Appeal may adjourn a session of the Court of Appeal to a time and place appointed by the Judge or Judges if it is necessary to do so because 1 or more Judges of the Court of Appeal are not present at the session.

(3) If none of the Judges is present at the time appointed for a session of the court, the Registrar of the Court of Appeal must adjourn the session and may determine the time and place of the next session.

Compare: 1908 No 89 ss 60(4), 61

Jurisdiction

57 Jurisdiction

(1) The Court of Appeal ~~has jurisdiction and power to~~ may hear and determine appeals—

(a) from a judgment, decree, or order of the High Court:

(b) under the Criminal Procedure Act 2011:

(c) from any court or tribunal under any other Act that confers on the Court of Appeal jurisdiction and power to hear and determine an appeal.

(2) **Subsection (1)** is subject to **subsections ~~(3)~~ (2A) and (4)** and to rules made under **section 145**.

~~(3) No appeal lies from an interlocutory order of the High Court in respect of any civil proceeding unless leave to appeal to the Court of Appeal is given by the High Court on application made within 10 working days after the date of the decision being given or within any further time that the High Court may allow.~~

(2A) No appeal, except an appeal under **subsection (3)**, lies from any order or decision of the High Court made on an interlocutory application in respect of any civil proceeding unless leave to appeal to the Court of Appeal is given by the High Court on application made within 20 working days after the date of that order or decision or within any further time that the High Court may allow.

(3) Any party to any proceedings may appeal without leave to the Court of Appeal against any order or decision of the High Court—

(a) striking out or dismissing the whole or part of a proceeding, claim, or defence; or

(b) granting summary judgment.

(4) If the High Court refuses leave to appeal under **subsection ~~(3)~~ (2A)**, the Court of Appeal may grant that leave on application made to the Court of Appeal within 20 working days after the date of the refusal of leave by the High Court.

(5) If leave to appeal under **subsection (2A) or (4)** is refused in respect of an order or decision of the High Court made on an interlocutory application, nothing in this section prevents any point raised in the application for leave to appeal from being raised in an appeal against the substantive High Court decision.

Compare: 1908 No 89 s 66

58 Court of Appeal may remit proceeding to High Court

The Court of Appeal may—

(a) remit a proceeding to the High Court; or

(b) order a new trial in the High Court of a civil or criminal proceeding that is the subject of an appeal to the Court of Appeal.

Compare: 1908 No 89 s 62

59 Judgment of Court of Appeal may be enforced by High Court

A judgment, order, or decree of the Court of Appeal may be enforced by the High Court as if it had been given or made by the High Court.

Compare: 1908 No 89 s 63

60 Transfer of civil proceeding from High Court to Court of Appeal

(1) A party to a civil proceeding in the High Court may~~,~~ ~~with the leave of the Court of Appeal,~~ apply for an order transferring the proceeding to the Court of Appeal.

(2) In determining whether to ~~grant leave and in determining whether to~~ make an order transferring the proceeding, the Court of Appeal must be satisfied that the circumstances of the proceeding are exceptional.

(3) Without limiting **subsection (2)**, the circumstances may be exceptional if—

- (a) the party to the proceeding intends to submit that a relevant decision of the Court of Appeal should be overruled:
- (b) the proceeding raises an issue of considerable public importance that—
  - (i) needs to be determined urgently; and
  - (ii) is unlikely to be determined urgently if the proceeding is heard and determined by both the High Court and the Court of Appeal:
- (c) the proceeding does not raise a question of fact or a significant question of fact, but raises a question of law that is the subject of conflicting decisions of the Court of Appeal.

(4) In deciding whether to ~~grant leave and in determining whether to~~ make an order transferring the proceeding, the Court of Appeal must have regard to the following matters:

- (a) the primary purpose of the Court of Appeal as an appellate court:
- (b) the desirability of obtaining a determination of the proceeding in the High Court and a review of that determination on appeal:
- (c) whether a full court of the High Court could effectively determine the question in issue:
- (d) whether the proceeding raises a question of fact or a significant question of fact:
- (e) whether the parties have agreed to the transfer of the proceeding:

(f) any other matter to which regard should be had in the public interest.

(5) It is not a sufficient ground ~~to grant leave~~ that the parties agree to the transfer.

(6) The Court of Appeal has the jurisdiction of the High Court to hear and determine a proceeding transferred under this section.

(7) The Court of Appeal may transfer back to the High Court a proceeding that has been transferred to the Court of Appeal.

Compare: 1908 No 89 s 64

61 Appeals against decisions of High Court on appeal from District Court, Family Court, or Youth Court

(1) The decision of the High Court on appeal from the District Court, the Family Court, or the Youth Court is final unless a party, on application, obtains leave to appeal against the decision to the Court of Appeal.

(2) An application under **subsection (1)** for leave to appeal to the Court of Appeal must be made to the High Court or, if the High Court refuses leave, to the Court of Appeal.

(3) If leave to appeal is obtained under **subsection (1)**, the decision of the Court of Appeal is final unless a party obtains leave to appeal against that decision to the Supreme Court.

(3A) If there is non-compliance with any procedural rules in relation to an application or appeal under this section before the Court of Appeal, the court may dismiss the application or appeal or deal with it in any other manner and on any terms that the court decides.

(4) **Subsections (1) to ~~(3)~~ (3A)** are subject to **subpart 4**.

Compare: 1908 No 89 s 67

62 Reasons for granting or refusing leave to appeal

(1) The Court of Appeal may, but does not have to, give reasons for granting ~~or refusing~~ leave to appeal to the Court of Appeal.

(1A) The Court of Appeal must give reasons for refusing leave to appeal to the Court of Appeal.

(2) Reasons given by the Court of Appeal may be stated—

(a) briefly; and

(b) in general terms only.

Compare: 2003 No 53 s 16

62A Procedure if Judges absent

(1) This section applies if, because of the death or unavailability of 1 of the Judges of the Court of Appeal who are about to begin or have begun hearing a proceeding, only 2 of those Judges remain available to hear and determine the proceeding.

(2) The remaining Judges must decide whether the proceeding must be adjourned or reheard, or may continue.

(3) If the remaining Judges decide that the proceeding may continue,—

(a) they may—

(i) act as the Court of Appeal in relation to the proceeding and hear and determine the proceeding; and

(ii) make any order or decision on any interlocutory application; and

(iii) make any order or decision as to costs; and

(b) a reference in **section 54(1)** to a majority of the Judges hearing the proceeding must be read as a reference to a majority of those remaining Judges.

(4) If the death or unavailability occurs while judgment is reserved in the proceeding, the remaining Judges must decide—

(a) whether the judgment should be produced or completed, and (if so) who should produce or complete the judgment; or

(b) whether the proceeding should be reheard.

(5) If, at the time appointed for a session of the Court of Appeal, 1 or more Judges are absent, the Judge or Judges present may adjourn or further adjourn the session to some other time.

(6) If none of the Judges of the Court of Appeal is present at the time appointed for a session of the court, the Registrar of the Court of Appeal must adjourn the session and may determine the time and place of the next session.

Compare: 2003 No 53 s 30

Registrar and other officers of Court of Appeal

63 Appointment of Registrar, Deputy Registrar, and other officers of Court of Appeal

A Registrar, a Deputy Registrar, and other officers may be appointed under the State Sector Act 1988 for the conduct of the business of the Court of Appeal.

Compare: 1908 No 89 s 72

64 Powers of Registrar and Deputy Registrar

(1) The Registrar has the powers and duties—

(a) conferred by this **Part**, any other enactment, or rules made under **section 145**:

(b) necessary or desirable to ensure the efficient and effective administration of the business of the Court of Appeal.

(2) The Deputy Registrar has the same duties and powers as the Registrar.

(3) **Subsection (2)** is subject to a provision to the contrary in any rules made under **section 145** or any other enactment.

Compare: 1908 No 89 s 73

Subpart 4—Supreme Court

Preliminary matters

65 Interpretation

In this subpart, unless the context otherwise requires,—

civil proceeding—

(a) means a proceeding that is not a criminal proceeding; and

(b) includes a proceeding under the Bail Act 2000

decision includes a judgment, decree, order, direction, or determination

District Court includes—

(a) the Family Court and the Youth Court; and

(b) the District Court sitting in its admiralty jurisdiction

High Court includes the High Court sitting—

(a) in its admiralty jurisdiction; or

(b) as a permanent Prize Court under the jurisdiction conferred by section 8 of the Admiralty Act 1973

interlocutory application—

(a) means an application in a proceeding or intended proceeding for—
  (i) an order or a direction relating to a matter of procedure; or
  (ii) in the case of a civil proceeding, for relief ancillary to the relief claimed in the proceeding; and

(b) includes an application for a new trial; and

(c) includes an application to review a decision made on an interlocutory application

New Zealand court means—

(a) the Supreme Court, the Court of Appeal, the High Court, or the District Court: or

(b) any of the following specialist courts: the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007, the Court Martial Appeal Court constituted by the Court Martial Appeals Act 1953, the Employment Court, the Environment Court, the Māori Appellate Court, and the Māori Land Court

Registrar means the Registrar of the Supreme Court appointed under **section 87**

Supreme Court means the Supreme Court continued by **section 66**

working day means a day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and

(b) the day observed as anniversary day in Wellington; and

(c) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(d) a day in the period commencing on 25 December in any year and ending with 15 January in the following year.

Compare: 2003 No 53 s 4

Constitution of Supreme Court

66 Supreme Court continued

(1) There continues to be a Supreme Court of New Zealand.

(2) The Supreme Court consists of—

(a) the Chief Justice; and

(b) no fewer than 4 nor more than 5 other Judges appointed by the Governor-General as Judges of the Supreme Court.

(3) The Supreme Court is a court of record.

(4) The jurisdiction of the Supreme Court is not affected by a vacancy in its membership.

Compare: 2003 No 53 ss 6, 17

67 Seal

(1) The Supreme Court must have a seal, and the Registrar of the Supreme Court is responsible for the seal.

(2) The seal must be used for sealing judgments, orders, certificates, and any other document issued by the Supreme Court that must be sealed.

Compare: 2003 No 53 s 38

Jurisdiction of Supreme Court

68 Appeals against decisions of Court of Appeal in civil cases

The Supreme Court ~~can~~ may hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against a decision made in the proceeding, unless—

(a) an enactment other than this **Part** makes provision to the effect that there is no right of appeal against the decision; or

(b) the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.

Compare: 2003 No 53 s 7

69 Appeal against decisions of High Court in civil proceedings

The Supreme Court ~~can~~ may hear and determine an appeal by a party to a civil proceeding in the High Court against a decision made in the proceeding, unless—

(a) an enactment other than this **Part** makes provision to the effect that there is no right of appeal against the decision; or
(b) the decision is a refusal to give leave or special leave to appeal to the High Court or the Court of Appeal; or
(c) the decision was made on an interlocutory application.

Compare: 2003 No 53 s 8

70 Appeals against decisions of other courts in civil proceedings

The Supreme Court ~~can~~ may hear and determine an appeal against a decision made in a civil proceeding in a New Zealand court other than the Court of Appeal or the High Court to the extent only that an enactment other than this **Part** provides for the bringing of an appeal against the decision to the Supreme Court.

Compare: 2003 No 53 s 9

71 Appeals against decisions in criminal proceedings

The Supreme Court ~~can~~ may hear and determine appeals authorised by—

(a) Part 6 of the Criminal Procedure Act 2011; or
(b) section 10 or 10A of the Court Martial Appeals Act 1953.

Compare: 2003 No 53 s 10

72 Procedural requirements

Sections 68 to 71 are subject to—

(a) this **Part**; and
(b) all applicable rules, orders, and directions for regulating the terms and conditions on which appeals may be allowed, made, or given under this **Part**.

Compare: 2003 No 53 s 11

Leave to appeal

73 Appeals to be by leave

(1) Appeals to the Supreme Court ~~can~~ may be heard only with the court's leave.

(2) A reference in an enactment other than this **Part** to the leave of the Supreme Court must be read subject to **sections 74 and 75**.

Compare: 2003 No 53 s 12

74 Criteria for leave to appeal

(1) The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the court to hear and determine the appeal.

(2) It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—

(a) the appeal involves a matter of general or public importance; or

(b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or

(c) the appeal involves a matter of general commercial significance.

(3) For the purposes of **subsection (2)(a)**, a significant issue relating to the Treaty of Waitangi is a matter of general or public importance.

(4) The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.

(5) **Subsection (2)** does not limit the generality of **subsection (1)** and **subsection (3)** does not limit the generality of **subsection (2)(a)**.

Compare: 2003 No 53 s 13

75 No direct appeal from court other than Court of Appeal unless exceptional circumstances established

The Supreme Court must not give leave to appeal directly to it against a decision made, a conviction entered, or a sentence imposed, in a proceeding in a New Zealand court other than the Court of Appeal unless the court is satisfied,—

(a) in accordance with **section 74**, that it is necessary in the interests of justice for the court to hear and determine the appeal; and

(b) that there are exceptional circumstances that justify taking the proposed appeal directly to the court.

Compare: 2003 No 53 s 14

76 Applications for leave

(1) The parties to an application for leave to appeal to the Supreme Court may make written submissions to the court, and may include in the submissions—

(a) additional relevant written material; and

(b) responses to submissions made by another party.

(2) Neither the parties nor their representatives have a right to appear before the court on the application; but the court may, if it thinks fit,—

(a) authorise the parties, their representatives, or both to appear:

(b) exclude from any authority to appear a party who is an appellant in custody.

(3) In determining the application, the court must consider—

(a) the written submissions before it; and

(b) if an oral hearing was held, the matters raised at the hearing.

(4) The court may consider the written submissions in any manner it thinks fit.

Compare: 2003 No 53 s 15

77 Court to state reasons for refusal to give leave

(1) The Supreme Court must state its reasons for refusing to give leave to appeal to it.

(2) The reasons may be stated—

(a) briefly; and

(b) in general terms only.

Compare: 2003 No 53 s 16

Powers and judgment of Supreme Court

78 Appeals to proceed by way of rehearing

Appeals to the Supreme Court proceed by way of rehearing.

Compare: 2003 No 53 s 24

79 General powers

(1) On an appeal in a proceeding that has been heard in a New Zealand court, the Supreme Court—

(a) ~~can~~ may make any order or grant any relief that could have been made or granted by that court; and

(b) even if the proceeding has not been heard in the Court of Appeal, has the powers the Court of Appeal would have if hearing the appeal.

~~(2) In a proceeding, the Supreme Court can make any ancillary or interlocutory order (including an order as to costs) it thinks fit.~~

(2) In a proceeding, the Supreme Court may, as it thinks fit, make—

(a) any ancillary order; and

(b) any order or decision on an interlocutory application; and

(c) any order as to costs.

Compare: 2003 No 53 s 25

80 Power to remit proceeding

The Supreme Court ~~can~~ may remit a proceeding that began in any New Zealand court to a New Zealand court that has jurisdiction to deal with it.

Compare: 2003 No 53 s 26

81 Exercise of powers of court

(1) For the purposes of the hearing and determination of a proceeding, the Supreme Court comprises 5 Judges of the court.

(2) Two or more permanent Judges of the Supreme Court ~~can~~ may act as the court—

(a) to decide whether an oral hearing of an application for leave to appeal to the court should be held, or the application should be determined just on the basis of written submissions:

(b) to determine an application for leave to appeal to the court.

(3) A judgment of the Supreme Court may be delivered in the manner and by the number of Judges provided by rules made under **section 145**.

(4) This section is subject to **sections 82(1)** and **84(1)**.

Compare: 2003 No 53 s 27

82 ~~Interlocutory orders and directions~~ Orders and directions on interlocutory applications may be made or given by 1 Judge

~~(1) In a proceeding before the Supreme Court, a permanent Judge of the court may make an interlocutory order and give an interlocutory direction the Judge thinks fit.~~

(1) In a proceeding before the Supreme Court, a permanent Judge of the court may, on an interlocutory application, make any order and give any direction that the Judge thinks fit (other than an order or direction excluded by **subsection (2)**).

(2) **Subsection (1)** does not apply to an order or a direction that determines the proceeding or disposes of a question or an issue that is before the court in the proceeding.

(3) A permanent Judge of the Supreme Court may—

(a) review a decision of the Registrar made within the civil jurisdiction of the court under a power conferred on the Registrar by a rule made under **section 145**; and

(b) confirm, modify, or revoke that decision as the Judge thinks fit.

(4) The Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may—

(a) discharge or vary an order or a direction made or given under **subsection (1)**; or

(b) confirm, modify, or revoke a decision confirmed or modified under **subsection (3)**.

Compare: 2003 No 53 s 28

83 Presiding Judge

(1) The Chief Justice presides over the Supreme Court.

(2) If the Chief Justice is absent, or the office of Chief Justice is vacant, the most senior available Judge of the Supreme Court presides over the court.

(3) The fact that a Judge of the Supreme Court other than the Chief Justice presides over the court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no judgment or decision of the court, may be questioned on the ground that the occasion for the Judge to preside over the court had not arisen or had ceased.

Compare: 2003 No 53 s 29

84 Procedure if Judges absent

(1) This section applies if, because of the death or unavailability of 1 or 2 of the Judges of the Supreme Court who are about to begin or have begun hearing a proceeding, only 3 or 4 of those Judges remain available to hear and determine the proceeding.

(2) The remaining Judges must decide whether the proceeding must be adjourned or reheard, or may continue.

~~(3) If the remaining Judges decide that the proceeding may continue,—~~

~~(a) they may act as the Supreme Court in relation to the proceeding and can hear and determine it and any interlocutory matters (including the question of costs); and~~

~~(b) a reference in **section 85(1)** to a majority of the Judges hearing the proceeding must be read as a reference to a majority of those remaining Judges.~~

(3) If the remaining Judges decide that the proceeding may continue,—

(a) they may—

(i) act as the Supreme Court in relation to the proceeding and hear and determine the proceeding; and

(ii) make any order or decision on any interlocutory application; and

(iii) make any order or decision as to costs; and

(b) a reference in **section 85(1)** to a majority of the Judges hearing the proceeding must be read as a reference to a majority of those remaining Judges.

(3A) If the death or unavailability occurs while judgment is reserved in the proceeding, the remaining Judges must decide—

(a) whether the judgment should be produced or completed, and (if so) who should produce or complete the judgment; or

(b) whether the proceeding should be reheard.

(4) If, at the time appointed for a session of the Supreme Court, 1 or more Judges are absent, the Judge or Judges present may adjourn or further adjourn the session to some other time.

(5) If none of the Judges of the Supreme Court is present at the time appointed for a session of the court, the Registrar of the Supreme Court must adjourn the session and may determine the time and place of the next session.

Compare: 2003 No 53 s 30

85 Judgment of Supreme Court

(1) The judgment of the Supreme Court must be in accordance with the opinion of a majority of the Judges hearing the proceeding concerned.

(2) If the Judges are equally divided in opinion, the decision appealed from or under review is taken to be affirmed.

Compare: 2003 No 53 s 31

86 Decisions of Supreme Court may be enforced by High Court

A judgment, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by the High Court.

Compare: 2003 No 53 s 32

Registrar and other officers of Supreme Court

87 Appointment of Registrar, Deputy Registrar, and other officers of Supreme Court

(1) A Registrar of the Supreme Court must be appointed under the State Sector Act 1988.

(2) There may also be appointed under that Act Deputy Registrars of the Supreme Court, and any other officers required for the conduct of the court's business.
Compare: 2003 No 53 s 36

88 Powers of Registrar
The Registrar, Deputy Registrars, and other officers of the Supreme Court have the powers and duties conferred or imposed by this **Part**, rules made under **section 145**, or any other enactment.
Compare: 2003 No 53 s 37

Subpart 5—Senior court Judges

Head Judges

89 Head of New Zealand judiciary
The Chief Justice is the head of the New Zealand judiciary.
Compare: 2003 No 53 s 18(1)

90 Head of Supreme Court
(1) The Chief Justice is the head of the Supreme Court and is responsible for ensuring the orderly and efficient conduct of the Supreme Court's business.
(2) The Chief Justice may make all necessary arrangements for—
(a) the sessions of the Supreme Court; and
(b) the conduct of the Supreme Court's business.

91 Head of Court of Appeal
(1) The President of the Court of Appeal is the head of the Court of Appeal and is responsible to the Chief Justice for ensuring the orderly and efficient conduct of the Court of Appeal's business.
(2) The President of the Court of Appeal may make all necessary arrangements for—
(a) the sessions of the Court of Appeal; and
(b) the conduct of the Court of Appeal's business.

92 Head of High Court

(1) The Chief High Court Judge is the head of the High Court and is responsible to the Chief Justice for ensuring the orderly and efficient conduct of the High Court's business.

(2) The Chief High Court Judge may make all necessary arrangements for—

(a) the sessions of the High Court; and

(b) the conduct of the High Court's business.

Compare: 1908 No 89 s 4B

Judicial appointment process

93 Attorney-General to publish information concerning judicial appointment process

The Attorney-General must publish information explaining his or her process for—

(a) seeking expressions of interest for the appointment of Judges and Associate Judges; and

(b) recommending persons for appointment as a Judge or an Associate Judge.

Eligibility for appointment

94 Eligibility for appointment as Judge or Associate Judge

A person may only be appointed a Judge or an Associate Judge if—

(a) that person has, for at least 7 years, held a New Zealand practising certificate as a barrister or as a barrister and solicitor; or

(b) that person—

(i) holds a degree in law granted or issued by any university within New Zealand; and

(ii) has been admitted as a barrister and solicitor of the High Court; and

(iii) has held a practising certificate in a jurisdiction specified by Order in Council—

(A) for at least 7 years; or

(B) for a lesser number of years, but, when that number of years is added to the number of years that the person has held a

New Zealand practising certificate, the total number of years is at least 7 years.

Compare: 1908 No 89 ss 6, 26C(4)

95 Eligibility for appointment as Court of Appeal Judge

A person may only be appointed a Court of Appeal Judge if that person is—

(a) a High Court Judge; or

(b) appointed a High Court Judge at the same time as being appointed a Court of Appeal Judge.

Compare: 1908 No 89 s 57(3)

96 Eligibility for appointment as Supreme Court Judge

A person may only be appointed a Supreme Court Judge if that person is—

(a) a Court of Appeal Judge; or

(b) a High Court Judge; or

(c) appointed a High Court Judge at the same time as being appointed a Supreme Court Judge.

Compare: 2003 No 53 s 20(1)

97 Eligibility for appointment as Chief High Court Judge

A person may only be appointed the Chief High Court Judge if that person—

(a) is—

(i) a High Court Judge; or

(ii) appointed a High Court Judge at the same time as being appointed the Chief High Court Judge; but

(b) is not—

(i) a Supreme Court Judge; or

(ii) a Court of Appeal Judge.

Compare: 1908 No 89 s 4A(1)

~~98 Eligibility for appointment as President of Court of Appeal~~

~~A person may only be appointed the President of the Court of Appeal if that person—~~

~~(a) is—~~

~~(i) a High Court Judge; or~~

~~(ii) appointed a High Court Judge at the same time as being appointed the President of the Court of Appeal; but~~

~~(b) is not a Supreme Court Judge.~~

~~**99 Eligibility for appointment as Chief Justice**~~

~~A person may only be appointed the Chief Justice if that person—~~

~~(a) is—~~

~~(i) a High Court Judge; or~~

~~(ii) appointed a High Court Judge at the same time as being appointed the Chief Justice; but~~

~~(b) is not a Court of Appeal Judge.~~

98 Eligibility for appointment as President of Court of Appeal

(1) A person may only be appointed the President of the Court of Appeal if that person is—

(a) a High Court Judge; or

(b) appointed a High Court Judge at the same time as being appointed the President of the Court of Appeal.

(2) If a person who is a Supreme Court Judge is appointed the President of the Court of Appeal, the person immediately ceases to hold office as a Supreme Court Judge.

(3) A person who ceases to hold office as a Supreme Court Judge under **subsection (2)** may nevertheless continue in that office to determine, give judgment in, or otherwise complete a proceeding heard by that person (either alone or with others) when he or she sat in the Supreme Court.

99 Eligibility for appointment as Chief Justice

(1) A person may only be appointed the Chief Justice if that person is—

(a) a High Court Judge; or

(b) appointed a High Court Judge at the same time as being appointed the Chief Justice.

(2) If a person who is a Court of Appeal Judge is appointed the Chief Justice, the person immediately ceases to hold office as a Court of Appeal Judge.

(3) A person who ceases to hold office as a Court of Appeal Judge under **subsection (2)** may nevertheless continue in that office to determine, give judgment in, or otherwise complete a proceeding heard by that person (either alone or with others) when he or she sat in the Court of Appeal.

Appointments

100 Judges appointed by Governor-General

(1) The Chief Justice is appointed by the Governor-General on the recommendation of the Prime Minister.

(2) Every other Judge, and every Associate Judge, is appointed by the Governor-General on the recommendation of the Attorney-General.

Compare: 1908 No 89 ss 4(2); 2003 No 53 s 17(1)(b)

101 Appointment as permanent Judge

(1) A Judge is appointed as a permanent Judge of a court unless the Judge is appointed as an acting Judge.

(2) An Associate Judge is appointed as a permanent Associate Judge of the High Court unless the Associate Judge is appointed as an acting Associate Judge.

Compare: 1908 No 89 ss 4C(1), 26D(1), 57A(1)

101A High Court Judge or Associate Judge may not hold lower judicial office

(1) When a person who is a District Court Judge is appointed a High Court Judge or an Associate Judge, that person ceases to hold office as a District Court Judge.

(2) A person who ceases to hold office as a District Court Judge under **subsection (1)** may nevertheless continue in that office to determine, give judgment in, or otherwise complete a proceeding heard by that person (either alone or with others) when he or she sat in the District Court.

(3) When a person who is an Employment Court Judge is appointed a High Court Judge or an Associate Judge, that person ceases to hold office as an Employment Court Judge.

(4) A person who ceases to hold office as an Employment Court Judge under **subsection (3)** may nevertheless continue in that

office to determine, give judgment in, or otherwise complete a proceeding heard by that person (either alone or with others) when he or she sat in the Employment Court.

101B Court of Appeal Judge continues as Judge of High Court

When appointed a Judge of the Court of Appeal, that Judge continues to be a Judge of the High Court and may sit as, or exercise the powers of, a Judge of the High Court.

Compare: 1908 No 89 s 57(4)

102 Supreme Court Judge continues as Judge of High Court but no other court

(1) When appointed a Supreme Court Judge, a person—

(a) continues to be a High Court Judge and may exercise any of the powers of a High Court Judge; but

(b) ~~vacates~~ ceases to hold office as a Court of Appeal Judge if, immediately before being appointed a Supreme Court Judge, the person was a Court of Appeal Judge.

(2) A Supreme Court Judge who ~~has vacated~~ ceases to hold office as a Judge of the Court of Appeal (under **subsection (1)(b)**) may nevertheless continue in office to determine, give judgment in, or otherwise complete a proceeding heard by the Judge (either alone or with others) when he or she sat in that court.

Compare: 2003 No 53 ss 20(2), 21

~~**103 Court of Appeal Judge continues as Judge of High Court**~~

~~When appointed a Judge of the Court of Appeal, that Judge continues to be a Judge of the High Court and may sit as, or exercise the powers of, a Judge of the High Court.~~

~~Compare: 1908 No 89 s 57(4)~~

104 Terms and conditions of appointment not to be changed without consent

(1) No changes may be made to the terms and conditions of a Judge's appointment without the Judge's consent.

(2) No changes may be made to the terms and conditions of an Associate Judge's appointment without the Associate Judge's consent.

Compare: 1908 No 89 ss 4C(7), 26D(7), 57A(7)

Part-time Judges

105 Attorney-General may authorise Judges to sit part-time

(1) Judges (other than Supreme Court Judges) and Associate Judges may seek the authorisation of the Attorney-General to sit part-time for a specified period.

(2) The Attorney-General may grant an authorisation sought by a Judge or an Associate Judge under **subsection (1)** only with the agreement of—

(a) the President of the Court of Appeal, if the Judge is a Court of Appeal Judge:

(b) the Chief High Court Judge, if—

(i) the Judge is a High Court Judge but not a Court of Appeal Judge; or

(ii) the Judge is an Associate Judge.

(3) An authorisation may take effect from—

(a) the date the Judge or Associate Judge commences office; or

(b) any other date specified in the authorisation.

(4) A Judge or an Associate Judge may be authorised to sit part-time for a specified period on more than 1 occasion.

(5) A Judge or an Associate Judge authorised to sit part-time for a specified period resumes sitting on a full-time basis at the end of that period.

Compare: 1908 No 89 ss 4C(1)–(6), 26D(2)–(6), 57A(2)–(6)

Acting Judges

106 Acting Chief Justice

~~(1) While the office of the Chief Justice is vacant, the senior Judge of the Supreme Court is authorised to act as Chief Justice.~~

~~(2) While the Chief Justice is outside New Zealand, the Chief Justice may authorise a Supreme Court Judge who is available to act as Chief Justice.~~

~~(3) If, because of illness or a reason other than absence from New Zealand, the Chief Justice is unable to perform the duties of that office, the Attorney-General may authorise a Supreme Court Judge who is available to act as Chief Justice until the Chief Justice resumes those duties.~~

(1) During any period that the office of the Chief Justice is vacant, the most senior available Judge of the Supreme Court is authorised to act as Chief Justice.

(2) During any period that the Chief Justice is unable for any reason (including illness) to perform the duties of that office, the next most senior available Judge of the Supreme Court is authorised to act as Chief Justice.

(4) A Judge authorised under **subsections ~~(1) to (3)~~ (1) or (2)** to act as Chief Justice is empowered while so acting to—

(a) perform the duties of the Chief Justice; and

(b) exercise any power of the Chief Justice.

(5) This section does not affect clause 12 of the Letters Patent Constituting the Office of Governor-General of New Zealand.

Compare: 2003 No 53 s 19(1)–(3), (5)

107 Acting President of Court of Appeal

~~(1) While the office of the President of the Court of Appeal is vacant, the senior Judge of the Court of Appeal is authorised to act as President of the Court of Appeal.~~

~~(2) While the President of the Court of Appeal is outside New Zealand, the President of the Court of Appeal may authorise a Court of Appeal Judge who is available to act as President of the Court of Appeal.~~

~~(3) If, because of illness or a reason other than absence from New Zealand, the President of the Court of Appeal is unable to perform the duties of that office, the Attorney-General may authorise a Court of Appeal Judge who is available to act as President of the Court of Appeal until the President of the Court of Appeal resumes those duties.~~

(1) During any period that the office of the President of the Court of Appeal is vacant, the most senior available Judge of the Court of Appeal is authorised to act as President of the Court of Appeal.

(2) During any period that the President of the Court of Appeal is unable for any reason (including illness) to perform the duties of that office, the next most senior available Judge of the Court of Appeal is authorised to act as President of the Court of Appeal.

(4) A Judge authorised under **subsections ~~(1) to (3)~~ (1) or (2)** to act as President of the Court of Appeal is empowered while so acting to—

(a) perform the duties of the President of the Court of Appeal; and

(b) exercise any power of the President of the Court of Appeal.

Compare: 1908 No 89 s 57(7)

108 Acting Chief High Court Judge

~~(1) While the office of the Chief High Court Judge is vacant, the senior Judge of the High Court is authorised to act as Chief High Court Judge.~~

~~(2) While the Chief High Court Judge is outside New Zealand, the Chief High Court Judge may authorise a High Court Judge who is available to act as Chief High Court Judge.~~

~~(3) If, because of illness or a reason other than absence from New Zealand, the Chief High Court Judge is unable to perform the duties of that office, the Attorney-General may authorise a High Court Judge who is available to act as Chief High Court Judge until the Chief High Court Judge resumes those duties.~~

(1) During any period that the office of the Chief High Court Judge is vacant, the most senior available Judge of the High Court is authorised to act as Chief High Court Judge.

(2) During any period that the Chief High Court Judge is unable for any reason (including illness) to perform the duties of that office, the next most senior available Judge of the High Court is authorised to act as Chief High Court Judge.

(4) A Judge authorised under **subsections ~~(1) to (3)~~ (1) or (2)** to act as Chief High Court Judge is empowered while so acting to—

(a) perform the duties of the Chief High Court Judge; and

(b) exercise any power of the Chief High Court Judge.

Compare: 1908 No 89 s 4A(4), (5)

109 Appointment of acting Judges of Supreme Court by Chief Justice

(1) The Chief Justice, in consultation with the President of the Court of Appeal, may appoint a Court of Appeal Judge as an acting Supreme Court Judge to hear and determine 1 or more specified proceedings.

(2) An appointment under **subsection (1)** may be made during the illness or absence of any Judge of the Supreme Court, or for any other temporary purpose.

(3) Only 1 Court of Appeal Judge appointed under **subsection (1)** may be present at a sitting of the Supreme Court for the hearing of a proceeding.

(4) To avoid doubt, **section 102** does not apply to a Court of Appeal Judge appointed under **subsection (1)**.

Compare: 2003 No 53 s 23(1)

110 Appointment of acting Judges of Supreme Court by Governor-General

(1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Judges of the Supreme Court.

(2) A person under the age of 75 years is eligible for appointment under **subsection (1)** if that person is a retired Supreme Court Judge.

(3) An appointment under **subsection (1)** may be made during the illness or absence of any Judge of the Supreme Court, or for any other temporary purpose.

(4) During the term of his or her appointment under **subsection (1)**, an acting Judge of the Supreme Court may only act to the extent authorised by the Chief Justice under **subsection (5)**.

(5) An acting Judge of the Supreme Court may be authorised by the Chief Justice to—

(a) hear and determine proceedings within a specified period:

(b) hear and determine 1 or more specified proceedings.

Compare: 2003 No 53 s 23(1), (3), (4)

111 Appointment of acting Judges of Court of Appeal

(1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Judges of the Court of Appeal.

(2) A person under the age of 75 years is eligible for appointment under **subsection (1)** if that person has retired or resigned from office as—

(a) a Court of Appeal Judge; or

(b) a High Court Judge.

(3) An appointment under **subsection (1)** may be made during the illness or absence of any Judge of the Court of Appeal, or for any other temporary purpose.

(4) During the term of his or her appointment, an acting Judge of the Court of Appeal may only act to the extent authorised by the President of the Court of Appeal.

(5) An acting Judge of the Court of Appeal may be authorised by the President of the Court of Appeal to hear and determine proceedings within a specified period.

112 Appointment of acting Judges of High Court

(1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Judges of the High Court.

(2) A person under the age of 75 years is eligible for appointment under **subsection (1)** if that person—

(a) has retired or resigned from office as—

(i) a High Court Judge; or

(ii) an Associate Judge; or

(iii) a District Court Judge; or

(b) is—

(i) an Associate Judge; or

(ii) a District Court Judge.

(3) An appointment under **subsection (1)** may be made during the illness or absence of any Judge of the High Court, or for any other temporary purpose.

(4) During the term of his or her appointment, an acting Judge of the High Court may only act to the extent authorised by the Chief High Court Judge.

(5) An acting Judge of the High Court may be authorised by the Chief High Court Judge to—

(a) act during 1 or more specified periods; and

(b) act in 1 or more specified places.

Compare: 1908 No 89 ss 11(1), 11A(1), (2)

113 Appointment of acting Associate Judges

(1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Associate Judges.

(2) A person is eligible for appointment under **subsection (1)** if the person—

(a) is eligible under **section 94** to be appointed an Associate Judge and is under the age of 75 years; or

(b) is a District Court Judge; or

(c) has retired or resigned from office as a District Court Judge.

(3) An appointment under **subsection (1)** may be made during the illness or absence of any Associate Judge, or for any other temporary purpose.

(4) During the term of his or her appointment, an acting Associate Judge may only act to the extent authorised by the Chief High Court Judge.

(5) An acting Associate Judge may be authorised by the Chief High Court Judge to—

(a) act during 1 or more specified periods; and

(b) act in 1 or more specified places.

Compare: 1908 No 89 s 26H(1)

114 Requirements before Attorney-General gives advice on appointment of acting Judge

(1) Before advising the Governor-General to make an appointment under any of **sections 110 to 113**, the Attorney-General must have received a certificate certifying that the appointment is necessary for the proper conduct of the court in respect of which the appointment is to be made.

(2) A certificate required by **subsection (1)** must be signed by the Chief Justice.

Compare: 1908 No 89 s 11B; 2003 No 53 s 23(6)

115 Term of acting Judges appointed by Governor-General

(1) An appointment under any of **sections 110 to 113** must be for a specified term that—

(a) is not more than the time until the Judge will reach the age of 75 years; and

(b) in any case, is not more than 2 years.

(2) When an acting Judge's term of appointment ends, the acting Judge, if under the age of 75 years, may at any time be reappointed for a further 1 or more terms.

(3) However, an acting Judge may not be reappointed for a term that, when aggregated with all previous terms, exceeds 5 years if that acting Judge is—

(a) an acting Court of Appeal Judge appointed under **section 111**; or

(b) an acting High Court Judge appointed under **section 112**.

Compare: 1908 No 89 s 11(2); 2003 No 53 s 23(2)

116 Term of appointment of acting Associate Judges

(1) An appointment under **section 113** must be for a specified term that—

(a) is not more than the time until the Associate Judge will reach the age of 75 years; and

(b) in any case, is not more than 2 years.

(2) When an acting Associate Judge's term of appointment ends, the acting Associate Judge, if under the age of 75 years, may at any time be reappointed under **section 113** for a further 1 or more terms.

(3) However, an acting Associate Judge may not be reappointed under **section 113** for a term that, when aggregated with all previous terms, exceeds 5 years.

Compare: 1908 No 89 s 26H(2)–(4)

117 Jurisdiction, powers, protections, etc, of acting Judges

(1) An acting Judge, while acting to the extent authorised as a member of a court, has the jurisdiction, powers, protections, privileges, and immunities of a Judge of that court.

(2) An acting Associate Judge, while acting to the extent authorised as a member of the High Court, has the jurisdiction, powers, protections, privileges, and immunities of a Judge of that court.

Compare: 1908 No 89 ss 11A(4), 26Q; 2003 No 53 s 23(7)

118 Conclusive proof of authority to act

The fact that an acting Judge or acting Associate Judge does the following is conclusive proof of the Judge's authority to do so:

(a) performs or exercises any function, duty, or power in reliance on **section 106(4), 107(4), or 108(4)**:

(b) acts to the extent authorised under **section 109(1), 110(5), 111(5), 112(5), or 113(5)** as a member of a court.

Compare: 1908 No 89 s 4A(6); 2003 No 53 ss 19(4), 23(9)

Seniority of Judges

119 Chief Justice most senior Judge

The Chief Justice is senior to all other Judges.

Compare: 2003 No 53 s 18(1)

120 Seniority of Supreme Court Judges

(1) Supreme Court Judges are senior to—

(a) Court of Appeal Judges; and

(b) High Court Judges who are not Supreme Court Judges.

(2) Supreme Court Judges (other than the Chief Justice) are senior to each other in order of date of appointment.

(3) If 2 or more Supreme Court Judges (other than the Chief Justice) have the same date of appointment, then seniority among those Judges is determined as follows:

(a) Judges who have been Court of Appeal Judges are senior to Judges who have not been Court of Appeal Judges:

(b) Judges who have been Court of Appeal Judges have among themselves the seniority they would have if still Court of Appeal Judges:

(c) Judges who have not been Court of Appeal Judges but have previously been High Court Judges have seniority among themselves according to their seniority as High Court Judges:

(d) Judges who have not previously been High Court Judges but have previously held other judicial office in New Zealand are senior to Judges who have not previously held judicial office in New Zealand.

Compare: 2003 No 53 s 18(2)–(4)

121 Seniority of Court of Appeal Judges

(1) Court of Appeal Judges are senior to High Court Judges.

(2) The President of the Court of Appeal is senior to all other Court of Appeal Judges.

(3) Court of Appeal Judges (other than the President) are senior to each other in order of date of appointment.

(4) If 2 or more Court of Appeal Judges (other than the President) have the same date of appointment, then seniority among those Judges is determined according to their seniority as High Court Judges.

Compare: 1908 No 89 s 57(6)–(6C)

122 Seniority of High Court Judges

(1) High Court Judges are senior to—

(a) Associate Judges; and

(b) District Court Judges.

(2) As between the High Court Judges who are not Supreme Court Judges or Court of Appeal Judges,—

(a) the Chief High Court Judge is senior to those Judges:

(b) the other Judges are senior to each other in order of date of appointment:

(c) 2 or more High Court Judges having the same date of appointment—

(i) have seniority according to the precedence assigned to them by the Governor-General on appointment; or

(ii) if no precedence was assigned to them, according to the order in which they took the judicial oath.

(3) To avoid doubt, a Court of Appeal Judge who resigns from that office without resigning as a High Court Judge has, as a High Court Judge, the seniority that he or she would have had if he or she had not been appointed a Court of Appeal Judge.

Compare: 1908 No 89 ss 4(3), 57(6D)

123 Permanent Judges senior to acting Judges

A permanent Judge of a court is senior to an acting Judge of the same court.

Compare: 1908 No 89 s 4(3A); 2003 No 53 s 18(5)

124 Seniority of acting Judges

Acting Judges of a court have among themselves the seniority they would have if they were permanent Judges of that court.

125 Seniority of Associate Judges

(1) Associate Judges are senior to each other in order of date of appointment.

(2) If 2 or more Associate Judges have the same date of appointment, then seniority among those Judges is determined according to—

(a) the precedence assigned to them by the Governor-General on appointment; or

(b) if no precedence was assigned to them, the order in which they took the judicial oath.

Tenure of office

126 Tenure of Chief Justice

The Chief Justice continues to hold the office of Chief Justice until the earliest of the following:

(a) the Chief Justice resigns from that office:

(b) the Chief Justice ~~ceases to hold office~~ resigns from office as a High Court Judge:

(c) the Chief Justice retires:
(d) the Chief Justice is removed from that office.

127 Tenure of President of Court of Appeal

The President of the Court of Appeal continues to hold the office of President of the Court of Appeal until the earliest of the following:

(a) the President is appointed a Supreme Court Judge:
(b) the President resigns from that office:
(c) the President ~~ceases to hold office~~ resigns from office as a High Court Judge:
(d) the President retires:
(e) the President is removed from that office.

128 Tenure of Chief High Court Judge

The Chief High Court Judge continues to hold the office of Chief High Court Judge until the earliest of the following:

(a) the Judge is appointed a Supreme Court Judge:
(b) the Judge is appointed a Court of Appeal Judge:
(c) the Judge resigns from that office:
(d) the Judge ~~ceases to hold office~~ resigns from office as a High Court Judge:
(e) the Judge retires:
(f) the Judge is removed from that office.

Compare: 1908 No 89 s 4A(2)

129 Tenure of Supreme Court Judges, Court of Appeal Judges, High Court Judges, and Associate Judges

(1) A Supreme Court Judge (other than the Chief Justice) continues to hold the office of Supreme Court Judge until the earliest of the following:

(a) the Judge resigns from that office:
(ab) the Judge ceases to hold office as a Supreme Court Judge:
(b) the Judge ~~ceases to hold office~~ resigns from office as a High Court Judge:
(c) the Judge retires:
(d) the Judge is removed from that office.

(2) A Court of Appeal Judge (other than the President of the Court of Appeal) continues to hold the office of Court of Appeal Judge until the earliest of the following:
(a) the Judge resigns from that office:
(ab) the Judge ceases to hold office as a Court of Appeal Judge:
(b) the Judge ~~ceases to hold office~~ resigns from office as a High Court Judge:
(c) the Judge retires:
(d) the Judge is removed from that office.

(3) A High Court Judge (other than the Chief High Court Judge) continues to hold the office of High Court Judge until the earliest of the following:
(a) the Judge resigns from that office:
(b) the Judge retires:
(c) the Judge is removed from that office.

(4) An Associate Judge continues to hold the office of Associate Judge until the earliest of the following:
(a) the Judge resigns from that office:
(b) the Judge retires:
(c) the Judge is removed from that office.

Compare: 1908 No 89 ss 26C(6), 57(5); 2003 No 53 s 22

130 Resignation

~~(1) A Judge may resign from office at any time by written notice to the Attorney-General.~~

(1) A Judge may at any time, by written notice to the Attorney-General,—
(a) resign from office as a High Court Judge; or
(b) resign from any of the following offices without resigning from office as a High Court Judge:
(i) Chief Justice:
(ii) President of the Court of Appeal:
(iii) Court of Appeal Judge:
(iv) Chief High Court Judge.

(2) In **subsection (1)**, **Judge** includes—
(a) an acting Judge; and
(b) an Associate Judge; and

(c) an acting Associate Judge.

Compare: 1908 No 89 s 26E(2); 2003 No 53 s 23(10)

131 Governor-General must approve certain resignations

~~The~~ ~~prior~~ Before written notice is given to the Attorney-General under **section 130(1)**, the approval of the Governor-General is required if—

(a) the Chief Justice proposes to resign from that office without resigning from office as a Supreme Court Judge or High Court Judge:

(b) the President of the Court of Appeal proposes to resign from that office without resigning from office as a Court of Appeal Judge or a High Court Judge:

(c) a Court of Appeal Judge (other than the President of the Court of Appeal) proposes to resign from office without resigning from office as a High Court Judge:

(d) the Chief High Court Judge proposes to resign from that office without resigning from office as a High Court Judge.

Compare: 1908 No 89 ss 4A(3), 57(5)

132 Judges to retire at 70 years

(1) Every Judge must retire on attaining the age of 70 years, but may be appointed an acting Judge.

(2) Every Associate Judge must retire on attaining the age of 70 years, but may be appointed an acting Associate Judge.

Compare: 1908 No 89 ss 13, 26E(3)

133 Removal from office

(1) A High Court Judge may be removed from office only in accordance with section 23 of the Constitution Act 1986.

(2) The Governor-General may, if the Governor-General thinks fit, remove an Associate Judge from office for inability or misbehaviour.

Compare: 1908 No 89 s 26E(1)

Salaries and allowances

134 Salaries and allowances of permanent Judges and Associate Judges

Permanent Judges and Associate Judges must be paid, out of public money, without further appropriation than this section,—

(a) salaries at such rates as the Remuneration Authority from time to time determines; and

(b) such allowances as the Remuneration Authority from time to time determines; and

(c) such additional allowances, being travelling allowances or other incidental or minor allowances, as the Governor-General may from time to time determine.

Compare: 1908 No 89 ss 9A(1), 26F(1); 1947 No 16 s 6(1)

135 Salaries and allowances of part-time Judges

The salary and allowances payable for a period during which a Judge or an Associate Judge acts on a part-time basis must be calculated and paid as a pro rata proportion of the salary and allowances for a permanent Judge of that court (other than the head of that court) or an Associate Judge.

Compare: 1908 No 89 ss 9A(4), 26F(5)

136 Salaries and allowances of acting Judges

An acting Judge or acting Associate Judge, while acting as a member of a court to the extent authorised, but not otherwise, must be paid, out of public money, without further appropriation than this section,—

(a) a salary at the rate for the time being payable to a permanent Judge of that court (other than the head of that court) or an Associate Judge; and

(b) the allowances referred to in **section 134(c)** payable to a Judge of that court (other than the head of that court) or an Associate Judge.

Compare: 1908 No 89 ss 11(3), 11A(3); 2003 No 53 s 23(8)

137 Superannuation or retiring allowances of Associate Judges

For the purpose of providing a superannuation fund or retiring allowance for persons appointed as Associate Judges, sums by

way of subsidy or contribution may from time to time be paid under Part 5B of the Government Superannuation Fund Act 1956 or to any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) in accordance with a determination of the Remuneration Authority.

Compare: 1908 No 89 s 26G

138 Higher duties allowance

(1) In addition to the payments specified in **sections 134 to 137**, a higher duties allowance calculated in accordance with **subsection (2)** is—

- (a) payable to a High Court Judge who—
  - (i) is, or has been, serving as a member of—
    - (A) a criminal or civil division of the Court of Appeal; or
    - (B) the full Court of Appeal; but
  - (ii) is not, or was not, a permanent Court of Appeal Judge; and
- (b) payable only in respect of the periods of the Judge's service as a member of the division or full Court of Appeal.

(2) The higher duties allowance is calculated at a rate expressed per day of service as a member of the division or full court in accordance with the following formula:

$$(a - b) \times c/d$$

where—

- a is the applicable yearly rate of salary determined by the Remuneration Authority to be payable to a permanent Court of Appeal Judge
- b is the applicable yearly rate of salary determined by the Remuneration Authority to be payable to a Judge who is not a permanent Court of Appeal Judge
- c is 0.0383561 (the standard payroll factor, which represents the proportion of an annual salary that is paid per fortnight)
- d is 10 (the number of working days per fortnight).

(3) In this section **permanent Court of Appeal Judge** means a Court of Appeal Judge holding office under **section 43(2)**.
Compare: 1908 No 89 s 9A(1A)

139 Salary of Judge not to be ~~diminished~~ reduced

(1) ~~The~~ As provided in section 24 of the Constitution Act 1986, the salary of a Judge or an Associate Judge must not be ~~diminished~~ reduced during the continuance of the Judge's appointment.

(2) For the purpose of **subsection (1)**, neither of the following is a ~~diminution~~ reduction of salary:

(a) the payment of a salary on a pro rata basis under **section 135**:

(b) the cessation of the payment of a higher duties allowance payable and calculated under **section 138**.

Compare: 1908 No 89 ss 9A(5), 26F(2), (6)

Restrictions

140 Judge not to undertake other employment or hold other office

(1) A Judge or an Associate Judge must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the Chief Justice in consultation (in the case of an Associate Judge, a High Court Judge, or a Court of Appeal Judge) with the appropriate head of court.

(2) An approval under **subsection (1)** may only be given if the appropriate head of court is satisfied that undertaking the employment or holding the office is ~~compatible~~ consistent with the Judge's judicial office.

~~(3) However, there is no need to obtain approval under subsection (1) for the appointment of a Judge to another office if an enactment permits or requires a Judge to hold that office.~~

(3) However, **subsection (1)** does not apply to another office if an enactment permits or requires the office to be held by a Judge.

(4) In this section, **appropriate head of court** means—

(a) the President of the Court of Appeal, if the Judge is a Court of Appeal Judge:

(b) the Chief High Court Judge, if—

(i) the Judge is a High Court Judge but not a Court of Appeal Judge; or

(ii) the Judge is an Associate Judge.

Compare: 1908 No 89 ss 4(2A), 26C(5)

141 Protocol relating to activities of Judges

(1) The Chief Justice must develop and publish a protocol containing guidance on—

(a) the employment, or types of employment, that he or she considers may be undertaken consistent with being a Judge or an Associate Judge; and

(b) the offices, or types of offices, that he or she considers may be held consistent with being a Judge or an Associate Judge.

(2) The Chief Justice may only develop and publish a protocol under **subsection (1)** after consultation with—

(a) the President of the Court of Appeal; and

(b) the Chief High Court Judge.

142 Judge not to practise as lawyer

(1) A Judge must not practise as a lawyer.

(2) In **subsection (1)**, **Judge** includes—

(a) an acting Judge; and

(b) an Associate Judge; and

(c) an acting Associate Judge.

Subpart 6—Rules of court and miscellaneous provisions

Rules of practice and procedure

143 Purpose of rules of practice and procedure

The purpose of rules of practice and procedure is to facilitate—

(a) the just, speedy, and inexpensive dispatch of the business of the High Court, the Court of Appeal, and the Supreme Court; and

(b) the administration of justice.

Compare: 1908 No 89 s 51C(1)

144 High Court Rules

(1) The practice and procedure of the High Court in all civil proceedings is regulated by the High Court Rules.

(2) The High Court Rules are subject to any other rules that are made under **section 145** that regulate the practice and procedure of any senior court in any class of civil proceedings.

(3) If any provision of the High Court Rules or of any rules made under **section 145** restricts or excludes the application of any provisions of the High Court Rules, the provision giving effect to the restriction or exclusion has effect according to its terms.

(4) If in any civil proceedings any question arises as to the application of any provision of the High Court Rules or of any rules made under **section 145**, the court may, either on the application of any party or of its own motion, determine the question and give any directions that it thinks fit.

(5) **Subsection (1)** is subject to—

(a) **subsections (2) to (4)**; and

(b) **sections 9, 38 to 41, 145 to 152, 158, 161, 170, 172, 177, and 178**.

Compare: 1908 No 89 s 51

145 Rules of practice and procedure generally

(1) The Governor-General may, by Order in Council, make rules of practice and procedure for each of the senior courts relating to the purpose stated in **section 143**.

(2) Rules may be made only with the concurrence of the Chief Justice and 2 or more members of the Rules Committee of whom at least 1 is a Judge of the High Court.

(3) The power to make rules includes the power to—

(a) alter, amend, add to, or revoke existing High Court Rules, other rules of the High Court, rules of the Court of Appeal, or rules of the Supreme Court; and

(b) revoke existing High Court Rules, other rules of the High Court, rules of the Court of Appeal, or rules of the Supreme Court, and replace them with new rules; and

(c) fix scales of costs.

Compare: 1908 No 89 s 51C

146 Rules of practice and procedure of High Court

Without limiting the matters on which rules may be made under **section 145**, rules may be made under that section in relation to the practice and procedure of the High Court—

(a) providing for the enforcement of judgments or orders, including by any of the following:
  (i) an attachment order:
  (ii) a charging order:
  (iii) a sale order:
  (iv) a possession order:
  (v) a freezing order:
  (vi) an arrest order:
  (vii) a search order:
  (viii) a contempt order:
  (ix) a sequestration order:

(b) providing that the purchaser of personal property sold by order of the court by way of enforcement of a judgment obtains good title to the property free of all ownership interests and other proprietary interests held in the property before that sale.

147 Rules of practice and procedure of Court of Appeal and Supreme Court

Without limiting the matters on which rules may be made under **section 145**, rules may be made under that section in relation to the practice and procedure of the Court of Appeal and the Supreme Court—

(a) providing for the appointment of technical advisers, including—
  (i) the information to be given to a party to an appeal, before a technical adviser is appointed for the appeal,—
    (A) about the persons who are considered suitable for appointment; and
    (B) about the matters on which the assistance of the proposed technical adviser is to be sought:
  (ii) the submissions that those parties may make to the court about the proposed appointment of a

technical adviser and the assistance to be given by the technical adviser:

(b) providing for the conduct of proceedings involving technical advisers.

Compare: 1908 No 89 s 99D

148 Rules conferring specified jurisdiction and powers of High Court Judge on Registrars and Deputy Registrars

(1) Rules may be made under **section 145**—

(a) conferring on a Registrar or Deputy Registrar of the High Court or the Court of Appeal or the Supreme Court the jurisdiction and powers of a Judge in chambers conferred by this **Part** or any other Act or by rules made under that section:

(b) containing any provisions that may be necessary to enable ~~the~~ a Registrar ~~and~~ or Deputy Registrar to exercise the jurisdiction and powers of a Judge in chambers.

(2) The jurisdiction and powers may be conferred on any of those specified offices or classes of those offices.

(3) A Registrar or Deputy Registrar on whom jurisdiction and powers are conferred may refer a matter to a Judge of the same court if the Registrar or Deputy Registrar considers the matter to be of special difficulty. The Judge may—

(a) dispose of the matter; or

(b) refer the matter back to the Registrar or Deputy Registrar with any directions the Judge thinks fit.

(4) A party to a proceeding or intended proceeding who is dissatisfied with an order or decision made by a Registrar or Deputy Registrar under rules made under **section 145** may apply to the same court to review the order or decision. The court may then make any order or decision the court thinks just.

(5) The fact that a Registrar or Deputy Registrar has jurisdiction and powers under the rules does not prevent a Judge of the same court from exercising the jurisdiction and powers.

Compare: 1908 No 89 s 51F

149 Rules of practice and procedure under other Acts

The power to make rules of practice and procedure in relation to civil proceedings in the High Court, the Court of Appeal, or the Supreme Court under an Act other than this **Part** must be exercised in the manner prescribed by **section 145**.

Compare: 1908 No 89 s 51D

150 Power to prescribe procedure on applications to High Court, Court of Appeal, or Supreme Court

(1) Despite anything to the contrary in any Act, rules may be made under **section 145** prescribing the form and manner in which any class or classes of applications to the High Court or a High Court Judge or to the Court of Appeal or to the Supreme Court are to be made.

(2) To the extent that the provisions of any Act prescribing the form or manner in which any of those applications are to be made (whether by petition, motion, summons, or otherwise) are inconsistent with or repugnant to rules made or having effect under this **Part**, the Act prescribing that form or manner is deemed to be subject to the rules made or having effect under this **Part**.

Compare: 1908 No 89 s 51E

151 Publication of High Court Rules under Legislation Act 2012

(1) The High Court Rules, and any reprint of the High Court Rules, may be published under the Legislation Act 2012 as if the rules were a legislative instrument within the meaning of that Act.

(2) The Legislation Act 2012 applies accordingly to rules published in that way.

Compare: 1908 No 89 s 51A

152 Rules Committee

(1) For the purposes of this **Part**, **Part 2**, the Criminal Procedure Act 2011, and any other relevant Act, there continues to be a Rules Committee consisting of—

(a) the Chief Justice:

(b) the Chief High Court Judge:

(c) 2 other Judges of the High Court appointed by the Chief Justice:
(d) the Chief District Court Judge:
(e) 1 other District Court Judge appointed by the Chief Justice on the recommendation of the Chief District Court Judge:
(f) the Attorney-General:
(g) the Solicitor-General:
(h) the chief executive of the ministry responsible for the administration of this **Part**:
(i) 2 persons, who are barristers and solicitors of the High Court, nominated by the Council of the New Zealand Law Society and approved by the Chief Justice.

(2) The Chief Justice may appoint any other person to be a member of the Rules Committee for a special purpose. That person holds office during the pleasure of the Chief Justice.

(3) The members appointed under **subsection (1)(c), (e), and (i)**—
(a) must be appointed for terms not exceeding 3 years:
(b) may be reappointed:
(c) may resign office by notice in writing to the Chief Justice.

(4) The Rules Committee is a statutory board within the meaning of the Fees and Travelling Allowances Act 1951.

(5) The members of the Rules Committee referred to in **subsections (1)(i) and (2)** may be paid fees, salary, and allowances in accordance with the Fees and Travelling Allowances Act 1951.

Compare: 1908 No 89 s 51B

Regulations

153 Regulations

(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
(a) prescribing the applications, matters, and proceedings for which fees are payable under this **Part**:
(b) prescribing scales of fees for the purposes of this **Part** and for the purposes of any applications, matters, and

proceedings before a senior court under this **Part** or any other enactment:

(c) prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this **Part** applies:

(d) in relation to a service performed by a Registrar or Deputy Registrar under this **Part** and specified in regulations made under **paragraph (e)**, authorising a Registrar or Deputy Registrar to charge a reasonable fee calculated on the actual expense incurred in performing the service:

(e) specifying the services (other than services for which a fee is already prescribed under this **Part**) performed by a Registrar or Deputy Registrar under this **Part** for which that person may charge a fee:

(f) making provision in relation to the postponement, under the regulations, of the payment of any fee, which provision may (without limitation) include provision—

(i) for the recovery of the fee after the expiry of the period of postponement; and

(ii) for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable:

(g) altering or revoking any rules relating to fees contained in the High Court Rules, any rules made under **section 145**, or any other rules of court:

(h) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this **Part** and for its due administration.

(2) Regulations made under this section may prescribe different fees in respect of proceedings in different courts.

Compare: 1908 No 89 s 100A

154 Regulations providing for waiver, etc, of fees

(1) In order to promote access to justice, the Governor-General may, by Order in Council, make regulations authorising a Registrar or Deputy Registrar of a senior court to waive, re-

duce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding, or to refund in whole or in part a fee that has already been paid.

(2) Regulations made under **subsection (1)** must provide that a Registrar or Deputy Registrar may only exercise a power under the regulations if he or she is satisfied on the basis of prescribed criteria that—

(a) the person responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or

(b) unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued.

(3) For the purposes of **subsection (2)**, regulations may prescribe criteria—

(a) for assessing a person's ability to pay a fee; and

(b) for identifying proceedings that concern matters of genuine public interest.

(4) No fee is payable for an application for the exercise of a power specified in **subsection (1)**.

Compare: 1908 No 89 s 100A(1)(d), (da)

155 Postponement of fees

(1) The Governor-General may, by Order in Council, make regulations authorising a Registrar or Deputy Registrar to postpone the payment of a fee pending the determination of—

(a) an application for the exercise of a power specified in **section 154(1)**; or

(b) an application for review under **section 157**.

(2) No fee is payable for an application for the exercise of a power specified in **subsection (1)**.

Compare: 1908 No 89 s 100A(1)(db)

156 Manner in which section 154 or 155 applications to be made

Regulations made under **section 153** may provide for the manner in which an application for the exercise of a power specified in **section 154(1) or 155** is to be made, including,

without limitation, requiring an application to be in a form approved for the purpose by the chief executive of the Ministry of Justice.

Compare: 1908 No 89 s 100A(1)(dd)

157 Review of Registrar's decision concerning fees

(1) A person who disagrees with a decision of a Registrar or Deputy Registrar under regulations made under **section 154(1)** may apply to a Judge or an Associate Judge of the relevant court to review the decision.

(2) The application must be made within—

(a) 20 working days after the date on which the applicant is notified of the decision; or

(b) any further time that the Judge or Associate Judge allows on application, which may be made either before or after the expiry of that period.

(3) The application may be made informally.

(4) A review is—

(a) conducted by way of rehearing of the matter in respect of which the Registrar or Deputy Registrar made the decision; and

(b) dealt with on the papers, unless the Judge or Associate Judge directs otherwise.

(5) The Judge or Associate Judge may confirm, modify, or reverse the decision of the Registrar or Deputy Registrar.

(6) No fee is payable on the application.

Compare: 1908 No 89 s 100B

157A Judge or Registrar may waive certain fees

A Judge or Registrar of a senior court may, subject to any terms or conditions that the Judge or Registrar thinks fit, waive the payment of a fee prescribed under **section 153** for accessing documents (in whole or in part) if the Judge or Registrar is satisfied that the person is unable, or should not be required, to pay the fee.

Costs

158 Jurisdiction of court to award costs in all cases

(1) If any Act confers jurisdiction on the High Court or a Judge of the High Court for the purpose of any civil proceedings or any criminal proceedings or any appeal, without expressly conferring jurisdiction to award or otherwise deal with the costs of the proceedings or appeal, jurisdiction to award and deal with those costs and to make and enforce orders relating to costs must be treated as also having been conferred on the court or Judge.

(2) Costs may be awarded or otherwise dealt with under **subsection (1)** at the discretion of the court or Judge, and may, if the court or Judge thinks fit, be ordered to be charged on or paid out of any fund or estate before the court.

Compare: 1908 No 89 s 51G

Appointment of technical advisers

159 Court of Appeal and Supreme Court may appoint technical advisers

(1) The Court of Appeal or the Supreme Court may appoint a suitably qualified person (a **technical adviser**) to assist it by giving advice in an appeal in a proceeding involving a question arising from evidence relating to scientific, technical, or economic matters, or from other expert evidence, if the court is of the opinion that it is desirable to have expert assistance.

(2) The technical adviser must give the advice in the manner directed by the court during the course of the proceeding on any question referred to the technical adviser.

(3) Advice given by a technical adviser—

(a) is information provided to the court; and

(b) may be given the weight the court thinks fit.

Compare: 1908 No 89 s 99B

160 Appointment and other matters

(1) A technical adviser may be appointed by the court under **section 159** on—

(a) its own initiative; or

(b) the application of a party to the proceeding.

(2) A technical adviser may be removed from office by the court for disability affecting the performance of duty, neglect of duty, bankruptcy, or misconduct proved to the satisfaction of the court.

(3) A technical adviser may resign office by notice in writing to the court.

(4) The remuneration of a technical adviser must—
- (a) be fixed by the court; and
- (b) include a daily fee for each day on which the technical adviser is required to assist the court.

(5) Civil or criminal proceedings may not be commenced against a technical adviser in relation to advice given to the court in good faith.

Compare: 1908 No 89 s 99C

Contempt

161 Contempt of court

(1) This section applies if any person—
- (a) wilfully insults a judicial officer, or any Registrar, or any officer of the court, or any juror, or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or
- (b) wilfully interrupts the proceedings of a court or otherwise misbehaves in court; or
- (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings.

(2) If this section applies,—
- (a) any constable or officer of the court, with or without the assistance of any other person, may, by order of a judicial officer, take the person into custody and detain him or her until the rising of the court; and
- (b) the judicial officer may, if he or she thinks fit, sentence the person to—
  - (i) imprisonment for a period not exceeding 3 months; or
  - (ii) a fine not exceeding $1,000 for each offence.

(3) Nothing in this section limits or affects any power or authority of a court to punish any person for contempt of court in any case to which~~—~~ this section does not apply.
~~(a) this section does not apply; and~~
~~(b) the criminal law does not apply.~~
Compare: 2011 No 81 s 365

Restriction on commencing or continuing proceeding

162 Judge may make order restricting commencement or continuation of proceeding

(1) A Judge of the High Court may make an order (a **section 162 order**) restricting a person from commencing or continuing a civil proceeding.

(2) The order may have—
(a) a limited effect (a **limited order**); or
(b) an extended effect (an **extended order**); or
(c) a general effect (a **general order**).

(3) A limited order restrains a party from continuing or commencing civil proceedings on a particular matter in a senior court, another court, or a tribunal.

(4) An extended order restrains a party from continuing or commencing civil proceedings on a particular or related matter in a senior court, another court, or a tribunal.

(5) A general order restrains a party from continuing or commencing civil proceedings in a senior court, another court, or a tribunal.

(6) Nothing in this section limits the court's inherent power to control its own proceedings.

163 Ground for making section 162 order

(1) A Judge may make a limited order if, in ~~more than 1 proceeding~~ at least 2 proceedings about the same matter in any court or tribunal, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

(2) A Judge may make an extended order if, in ~~more than 1 proceeding~~ at least 2 proceedings about any matter in any court

or tribunal, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

(3) A Judge may make a general order if, in ~~more than 1 proceeding~~ at least 2 proceedings about any matter in any court or tribunal, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

(4) In determining whether proceedings are or were totally without merit, the Judge may take into account the nature of any interlocutory applications, appeals, or criminal prosecutions involving the party to be restrained, but is not limited to those considerations.

(5) The proceedings concerned must be proceedings instituted or conducted by the party to be restrained, whether against the same person or different persons.

(6) For the purpose of this section and **sections 164 and 165**, an appeal in a civil proceeding must be treated as part of that proceeding and not as a distinct proceeding.

164 Terms of section 162 order

(1) A **section 162** order may restrain a party from commencing or continuing any proceeding (whether generally or against any particular person or persons) of any type specified in the order without first obtaining the leave of the High Court.

(2) A **section 162** order, whether limited, extended, or general, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or she is satisfied that there are exceptional circumstances justifying the longer period.

165 Procedure and appeals relating to section 162 orders

(1) A party to any proceeding may apply for a limited order or an extended order.

(2) Only the Attorney-General may apply for a general order.

(2A) A Judge of the High Court may make a limited order, an extended order, or a general order either on application (under **subsection (1) or (2)**, as applicable) or on his or her own initiative.

(3) An application for leave to continue or issue a proceeding by a party subject to a **section 162** order may be made without notice, but the court may direct that the application for leave be served on any specified person.

(3A) An application for leave must be determined on the papers, unless the Judge considers that an oral hearing should be conducted because there are exceptional circumstances and it is appropriate to do so in the interests of justice. The Judge's determination of the application for leave is final.

(4) A **section 162** order does not prevent or affect the commencement of a private criminal prosecution in any case.

(5) The party against whom a **section 162** order is made may appeal against the order to—

(a) the Court of Appeal:

(b) the Supreme Court, with the leave of that court, in any case.

(6) The appellant in an appeal to the Court of Appeal under **subsection (5)** or the applicant for the **section 162** order concerned may, with the leave of the Supreme Court, appeal to the Supreme Court against the determination of that appeal by the Court of Appeal.

(7) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be.

Compare: 1908 No 89 s 88B

Reserved judgments and publication of final judgments

166 Reserved judgments

(1) The Chief High Court Judge must, in consultation with the Chief Justice,—

(a) publish information about the process by which parties to proceedings before the High Court may obtain information about the status of any reserved judgment in those proceedings; and

(b) periodically publish information about the number of judgments of the court that he or she considers is outstanding beyond a reasonable time for delivery; and

(c) publish any other information about reserved judgments that he or she considers is useful.

(2) The President of the Court of Appeal must, in consultation with the Chief Justice,—

(a) publish information about the process by which parties to proceedings before the Court of Appeal may obtain information about the status of any reserved judgment in those proceedings; and

(b) periodically publish information about the number of judgments of the court that he or she considers is outstanding beyond a reasonable time for delivery; and

(c) publish any other information about reserved judgments that he or she considers is useful.

(3) The Chief Justice must—

(a) publish information about the process by which parties to proceedings before the Supreme Court may obtain information about the status of any reserved judgment in those proceedings; and

(b) periodically publish information about the number of judgments of the court that he or she considers is outstanding beyond a reasonable time for delivery; and

(c) publish any other information about reserved judgments that he or she considers is useful.

167 Final written judgments to be published on Internet

(1) Every final written judgment of a senior court must be published on the Internet as soon as practicable unless there is good reason not to publish the complete judgment.

(2) A final written judgment may be published on the Internet in part if there are good reasons for not publishing the other parts of the judgment.

(3) Good reason not to publish a judgment or part of it includes the following:

(a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:

(b) the judgment falls into a category of judgments that are of limited public value:

(c) taking into account the presumption in **subsection (1)** in favour of publication, a Judge nevertheless determines that the judgment or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.

(4) In this section, **final written judgment** means a written decision that determines or substantially determines the outcome of any proceedings and that is either—

(a) a written reserved judgment; or

(b) an oral judgment transcribed by an official transcription service.

Recusal

168 Recusal guidelines

(1) The Chief High Court Judge and the President of the Court of Appeal must, in consultation with the Chief Justice, develop and publish guidelines for their respective courts to assist Judges to decide if they should recuse themselves from a proceeding.

(2) The Chief Justice must develop and publish guidelines to assist Supreme Court Judges to decide if they should recuse themselves from a proceeding.

~~*Non-party participants*~~

~~**169 Persons who may support self-represented litigant**~~

~~(1) A self-represented litigant is entitled to be supported in court by any person other than a barrister or solicitor of the High Court.~~

~~(2) A Judge of the court may refuse to allow a self-represented litigant to be supported in court by another person only if he or she considers it would be contrary to the interests of justice and fairness to allow such support.~~

Foreign creditors

170 Memorials of judgments obtained out of New Zealand may be registered

(1) This section applies to any judgment, decree, rule, or order (the **judgment**) obtained in any court of any Commonwealth country (the **overseas court**) for the payment of money.

(2) A person in whose favour the judgment was obtained may file in the High Court a memorial containing the specified particulars that is authenticated by the seal of that court. Once filed, the memorial becomes a record of the judgment and execution may issue upon it in accordance with this section.

(3) The memorial must be signed by a party in whose favour the judgment was obtained or by the party's lawyer, and must contain—

(a) the names and additions of the parties; and

(b) the form or nature of the action or other proceeding; and

(c) when commenced, the date of the signing or entering-up of the judgment, the passing of the decree, or the making of the rule or order; and

(d) the amount recovered, or the decree pronounced, or rule or order made; and

(e) if there was a trial, the date of the trial and amount of verdict given.

(4) A seal purporting to be the seal of an overseas court is deemed and taken to be the seal of the court until the contrary is proved, and the onus of proving that the seal is not the seal of the court lies on the party denying or objecting to the seal.

(5) A party in whose favour the judgment was obtained, or the party's lawyer, may apply to the High Court or any Judge of the court for the making of a rule or the issue of a summons calling on the person against whom the judgment was obtained to show cause, within the time after personal or other service of the rule or summons as the court or Judge directs, why execution should not issue upon the judgment.

(6) The rule or summons must give notice that, in default of appearance, execution may issue accordingly, and if the person served with the rule or summons does not appear, or does not show sufficient cause against such rule or summons, the court

or Judge, on due proof of service under **subsection (5)**, may make the rule absolute or make an order for issuing execution, subject to any terms and conditions (if any) that the court or Judge thinks fit.

(7) The judgment may be enforced in the same manner as a judgment of the High Court.

(8) This section is subject to section 13 of the Reciprocal Enforcement of Judgments Act 1934.

Compare: 1908 No 89 s 56

Access to information

171 Access to court records, judicial information, or ~~other~~ ministry information

(1) Any person may have access to court records of a senior court to the extent provided by, and in accordance with, rules of court.

~~(2) The head of a senior court may, at his or her absolute discretion and on any terms and conditions he or she thinks fit, allow any person to have access to any judicial information held by the court.~~

(2) Access to judicial information is not subject to any enactment that applies to the provision of, or access to, any other information.

(3) Any person may have access to any ministry information to the extent provided by, and in accordance with, the Official Information Act 1982, the Privacy Act 1993, the Public Records Act 2005, or any other enactment providing for or regulating access to the information.

(4) In this section, **court records**, **judicial information**, and **ministry information** respectively mean the documents and information described as such in **Schedule 2**.

~~(5) The Governor-General may, by Order in Council,—~~

~~(a) amend the third column (headed **Description**) of **Schedule 2** by adding, omitting, or amending any item or description:~~

~~(b) replace the schedule in whole or in part for the purposes of making any amendments authorised by **paragraph (a)**.~~

171A Sharing of permitted information with other departments

(1) This section applies to permitted information specified in **Part B** of the items about the court record in **Schedule 2**, regardless of whether it is controlled by the judiciary.

(2) In response to a request from an agency for information to which this section applies, the Ministry may, by way of an approved information sharing agreement under the Privacy Act 1993, share any permitted information with the agency.

(3) The Ministry holds permitted information solely for the purpose of entering into approved information sharing agreements under the Privacy Act 1993, and that information is not otherwise subject to the Privacy Act 1993 and is not subject to the Official Information Act 1982 or the Public Records Act 2005.

(4) Nothing in this section or an approved information sharing agreement under the Privacy Act 1993 requires the Ministry to disclose any matter suppressed by or under a court order or any enactment.

(5) The Governor-General may, by Order in Council made on the recommendation of the Minister of Justice, amend or replace **Part B** of the items about the court record in **Schedule 2**.

(6) The Minister of Justice may make a recommendation under **subsection (5)** only after consultation with the Attorney-General and with the consent of the Chief Justice.

171B Requirements that Registrars disclose information

(1) If any enactment requires a Registrar to notify a registration authority of certain information about any court proceedings, that requirement is not affected by any suppression order imposed by the court.

(2) Even if the enactment provides that the court may order otherwise in any case, the requirement is not affected by any suppression order imposed by the court unless the court specifically orders otherwise in that case.

Payment of fees collected

172 Fees to be paid into Crown Bank Account

All fees taken or received under this **Part** must be paid into a Crown Bank Account.

Compare: 1908 No 89 ss 42, 53

Provisions and rules of general application

173 Judicial officers to continue in office to complete proceedings

(1) This section applies to proceedings in a senior court, another court, or a tribunal.

(2) A judicial officer whose term of office has expired or who has retired may continue in office for the purpose of completing the hearing of a matter, or determining or giving judgment in proceedings, that the judicial officer has heard either alone or with others.

(3) A judicial officer must not continue in office under **subsection (1)** for longer than 3 months without the consent of the nominating Minister.

(4) The fact that a judicial officer continues in office does not affect the power to appoint another person to that office.

(5) A judicial officer who continues in office is entitled to be paid the appropriate rate for the days or half-days worked in completing the proceedings, and that rate is the rate of the remuneration and allowances to which the officer would have been entitled for those days or half-days if the term of office had not expired or the officer had not retired.

(6) In this section, **judicial officer** means a person who has in New Zealand authority under an enactment to hear, receive, and examine evidence.

Compare: 1908 No 89 s 88A

174 Costs where intervener or counsel assisting court appears

(1) This section applies to proceedings in any senior court or other court.

(2) If the Attorney-General or the Solicitor-General or any other person appears as an intervener or counsel to assist the court in

any civil proceedings or in any proceedings on any appeal and argues any question of law or of fact arising in the proceedings, the court may, subject to the provisions of any other Act, make any order it thinks just—

(a) as to the payment by any party to the proceedings of the costs incurred by the Attorney-General or the Solicitor-General in so doing; or

(b) as to the payment by any party to the proceedings or out of public funds of the costs incurred by any other person in so doing; or

(c) as to the payment by the Attorney-General or the Solicitor-General or that other person of any costs incurred by any of those parties by reason of his or her so doing.

(3) If the court makes an order under **subsection (2)(b)**, the Registrar of the court must forward a copy of the order to the chief executive of the Ministry of Justice who must make the payment out of money appropriated by Parliament for the purpose.

Compare: 1908 No 89 s 99A

175 Judgment against one of several persons jointly liable not a bar to action against others

(1) This section applies to proceedings in any senior court or other court.

(2) A judgment against 1 or more of several persons jointly liable does not operate as a bar or defence to civil proceedings against any of the persons against whom judgment has not been recovered, except to the extent to which the judgment has been satisfied.

(3) This section does not apply to any action or other proceeding to which Part 5 of the Law Reform Act 1936 applies.

Compare: 1908 No 89 s 94

176 Rules of equity prevail over rules of common law

(1) This section applies to proceedings in a senior court, another court, or a tribunal where equitable jurisdiction may be exercised.

(2) If there is any conflict or variance between the rules of equity and the rules of the common law in relation to the same matter, the rules of equity prevail.

Compare: 1908 No 89 s 99

Service of process on Sundays

~~177~~ **Service of process on Sundays void**

~~(1)~~ ~~Subject to any rule of court, no person may serve or execute, or cause to be served or executed, on Sunday any statement of claim, application, writ, process, warrant, order, or judgment of the High Court or Court of Appeal (except in cases of crime or of breach of the peace), and service or execution that contravenes this requirement is void for all purposes.~~

~~(2)~~ ~~Nothing in **subsection (1)** applies to—~~

~~(a) the service of any writ *in rem* or warrant of arrest in respect of any proceedings heard or to be heard in the High Court in its admiralty jurisdiction; or~~

~~(b) the service of any subpoena or interlocutory injunction.~~

~~(3)~~ ~~Nothing in this section annuls, repeals, or in any way affects the common law, or the provisions of any statute or rule of practice or procedure, now or subsequently in force, authorising the service of any statement of claim, application, writ, process, or warrant, in cases other than those excepted in **subsection (1)**.~~

~~Compare: 1908 No 89 s 54~~

Discharge of jurors

178 Discharge of juror or jury

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

Compare: 1908 No 89 s 54B

Repeals, revocations, consequential amendments, and savings and transitional provisions

179 Repeals

(1) The Judicature Act 1908 (1908 No 89) is repealed.

(2) The Supreme Court Act 2003 (2003 No 53) is repealed.

180 Consequential amendments

The enactments specified in **Schedule 3** are consequentially amended in the manner indicated in that schedule.

181 Regulations continued

(1) The following regulations continue in force and are deemed to have been made under **section 153**:

(a) the Court of Appeal Fees Regulations 2001:

(b) the High Court Fees Regulations 2013:

(c) the Supreme Court Fees Regulations 2003:

(d) the Witnesses and Interpreters Fees Regulations 1974.

(2) The regulations continued in force by this section may be amended, revoked, or replaced under **section 153**.

182 Rules continued

(1) The following rules continue in force and are deemed to have been made under **section 145**:

(a) the Court of Appeal (Access to Court Documents) Rules 2009:

(b) the Court of Appeal (Civil) Rules 2005:

(c) the Court of Appeal (Criminal) Rules 2001:

(d) the Court of Appeal (List Election Petitions) Rules 1998:

(e) the Evidence (Trans-Tasman Service of, and Compliance with, New Zealand Subpoenas and Australian Subpoenas Issued in Criminal Proceedings) Rules 2013:

(f) the Supreme Court Rules 2004.

(g) the Trans-Tasman Proceedings Regulations and Rules 2013.

(2) The rules continued in force by this section may be amended, revoked, or replaced under **section 145**.

(3) The repeal of the Judicature Act 1908 by **section 179** does not affect—

(a) the Constituency Election Petition Rules 2008:

(b) the Court Martial Appeal Court Rules 2008:

(c) the Criminal Procedure Rules 2012:

(d) the Criminal Proceedings (Enforcement of Fines) Rules 2011:

(e) the Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008.

183 Transitional provisions

The transitional provisions set out in **Schedule 4** apply.

Part 2
District Court

Preliminary provisions

184 Purposes

The purposes of this **Part** are—

(a) to reconstitute District Courts as a single court with divisions for a Family Court, a Youth Court, and a Disputes Tribunal; and

(b) to provide for—

(i) the constitution and jurisdiction of the court; and

(ii) the practice and procedure of the court; and

(iii) the selection, appointment, removal, and conditions of the judicial and other officers of the court; and

(c) to make provision for any other related matters; and

(d) to improve the transparency of court arrangements in a manner consistent with judicial independence.

185 Interpretation

In this **Part**, unless the context otherwise requires,—

acting Judge means a Judge appointed as an acting Judge under **section 214(1)**

authenticate means,—

(a) in relation to a document other than a document under **subpart 10**,—

(i) signing and dating the document; or

(ii) in the case of a document in electronic form, using any electronic means that adequately identifies the person responsible for its content and the date of authentication; or

(b) in relation to a document under **subpart 10**, using any means that adequately identifies the person responsible for its content and the date of authentication; or

(c) in relation to a warrant, authenticate in the manner provided in **paragraph (a) or (b)** or by a Registrar entering the particulars of the warrant into a computer system accessible to a constable or a bailiff

bailiff means a bailiff appointed under **section 248**, and includes any deputy bailiff and any person acting as a bailiff under **section 248(2)**

Chief District Court Judge means the Chief District Court Judge appointed under **section 207(1)**

chief executive means the chief executive of the Ministry of Justice

Community Magistrate means a person appointed under **section 221(1)**

constable has the same meaning as in section 4 of the Policing Act 2008

court means the District Court constituted under **section 188**

District Court Judge or Judge means a Judge appointed under **section 192(1)**

document—

(a) means a document in any form (including, without limitation, a document in an electronic form); and

(b) includes, without limitation, any of the following:

(i) any writing on any material:

(ii) information recorded or stored by means of a tape recorder, computer, or other device:

(iii) material subsequently derived from information recorded or stored in the manner described in **subparagraph (ii)**:

(iv) a label, marking, or any other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(v) a book, map, plan, graph, or drawing:

(vi) a photograph, film, negative, tape, or any other device in which 1 or more visual images are em-

bodied so as to be capable (with or without the aid of some other equipment) of being reproduced

electronic includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

financial assessment hearing means a hearing under **section 330 or 331**

financial statement has the meaning given to it in **section 327(1)**

freezing order means an order restraining a person from removing any assets located in or outside New Zealand from disposing of, dealing with, or diminishing the value of those assets

Justice has the same meaning as in section 2 of the Justices of the Peace Act 1957

landlord, in relation to any land, means the person entitled to the immediate reversion of that land or, if the land is held in joint tenancy or tenancy in common, includes any one of the persons entitled to the immediate reversion

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

Minister means the Minister of the Crown who under any warrant or with the authority of the Prime Minister is responsible for the administration of this **Part**

officer of the court means any Registrar, Deputy Registrar, or other employee appointed under the State Sector Act 1988 for the conduct of the business of the court

part-time Judge means a Judge who is authorised under **section 213(1)** to act on a part-time basis

permanent Judge does not include an acting District Court Judge

Police employee has the meaning given by section 4 of the Policing Act 2008

prescribed means prescribed by regulations made under **section 413**

prescribed rate, in relation to a rate of interest, means the interest rate as defined in **Part 4 of the Judicature Modernisation Act 2013**

principal Judge means a Judge who is appointed the principal Judge of a division of the court

proceeding means any application to the court for the exercise of the civil jurisdiction of the court other than an interlocutory application

Registrar means a District Court Registrar appointed under **section 244**

rules means the rules of the practice and procedure of the court made under **section 411**

search order means an order in a proceeding, or before a proceeding commences, with or without notice to the respondent, to secure or preserve evidence and to require the respondent to permit persons to enter premises for the purpose of securing the preservation of evidence

~~**trial Judge** means a District Court Judge appointed under **section 195** to exercise the criminal jurisdiction of the District Court in relation to jury trials under the Criminal Procedure Act 2011~~

working day, in relation to the court, means a day other than—

(a) a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, or Waitangi Day; or

(b) the day observed as the anniversary day of the former province in which the relevant office of the court is located; or

(c) a day in the period commencing on 25 December in a year and ending on 15 January in the following year.

Compare: 1947 No 16 s 2

186 Part binds the Crown

This **Part** binds the Crown.

187 Application of this Part

Schedule 7 contains application, savings, and transitional provisions that affect other provisions of this **Part** as from time to time amended, repealed, or repealed and replaced.

Subpart 1—Establishment of District Court

188 District Court

(1) This **Part** establishes a District Court of New Zealand (the **court**).

(2) The court consists of—

(a) the Chief District Court Judge; and

(aa) the Principal Family Court Judge and the Principal Youth Court Judge; and

(b) the other District Court Judges.

(3) The court has civil and criminal jurisdiction and is a court of record.

(4) The court is a single court that replaces the District Courts that were continued by the District Courts Act 1947.

(5) On and after the coming into force of this **Part**,—

(a) a District Court in existence immediately before the coming into force of this **Part** is part of the court:

(b) any act or thing that was done in relation to a proceeding commenced in a District Court before the coming into force of this **Part** is to be treated as having been done in the court sitting in the same place as that District Court:

(c) any act or thing that could have been done in relation to a proceeding commenced in a District Court before the coming into force of this **Part** must be done in relation to the proceeding in the court sitting in the same place as that District Court.

(6) In **subsection (5)**, **District Court** includes a Family Court or a Youth Court that was a division of the particular District Court.

Compare: 1947 No 16 s 3(1)

189 Seal

The court must have a seal, and ~~the~~ each Registrar of the court is responsible for the seal.

Compare: 1947 No 16 s 3(2)

Divisions of court

190 Divisions of court

The court has the following divisions:

(a) a general division, to exercise the ordinary civil and criminal jurisdiction of the court, including common law and equitable jurisdiction and admiralty jurisdiction:

(b) a division known as the Family Court, to exercise the jurisdiction conferred under section 11 of the Family Courts Act 1980:

(c) a division known as the Youth Court, to exercise the jurisdiction conferred under section 272 of the Children, Young Persons, and Their Families Act 1989:

(d) a division known as the Disputes Tribunal, to exercise the jurisdiction conferred under section 10 of the Disputes Tribunal Act 1988 and a provision of any other enactment.

Compare: 1947 No 16 s 9(4)

Court offices

191 Court offices

(1) The Governor-General may, by notice in the *Gazette*,—

(a) declare that an office of the court is established at or for a place; and

(b) specify the date on and after which the office of the court is established.

(2) An office of the court may be housed in more than 1 building and, if it is established for a place, need not be physically established at that place or at all.

(3) The Governor-General may, by notice in the *Gazette*, abolish an office of the court.

(4) The following provisions apply on the abolition of an office of the court (**the abolished office**):

(a) the Minister may direct that the documents and records in the abolished office must be transferred to another office of the court (**the substituted office**):

(b) when delivered to the Registrar of the substituted office, the documents and records become subject to the custody of that Registrar:

(c) the Registrar of the substituted office may do anything that could under an enactment or a rule have been done by the Registrar of the abolished office:

(d) a step in a proceeding that could, under an enactment or a rule, have been taken in the abolished office may be taken in the substituted office:

(e) an act or a thing required or authorised by an enactment or a rule to be done by a person at the abolished office in relation to a proceeding or transaction or document may be done by a person at the substituted office:

(f) an address for service given by a party in relation to a proceeding in the abolished office continues to be the address for service of the party, but, if the address does not comply with any enactment or rule, the party must give a new address for service on first filing a document in the proceeding in the substituted office:

(g) a Judge may—

(i) decide a question as to the application of this section or the procedure to be followed; and

(ii) make an order that the Judge thinks fit.

(5) The Governor-General may from time to time appoint cities, towns, or other places in which courts may be held for the exercise of jurisdiction to conduct jury trials in accordance with the Criminal Procedure Act 2011.

(6) The Governor-General may at any time in like manner amend or revoke any appointment made under **subsection (5)**.

(7) The appointment under section 4(2A) of the District Courts Act 1947 of a city, borough, or other place that is in force immediately before the commencement of this section continues in force as if it were an appointment made under **subsection (5)**.

Subpart 2—Judges

Appointment of Judges

192 Appointment of Judge

(1) The Governor-General may, on the advice of the Attorney-General, appoint a Judge.

(2) The Governor-General appoints a Judge by a signed warrant of appointment.

(3) The Attorney-General must publish information explaining his or her process for—

(a) seeking expressions of interest for the appointment of Judges; and

(b) nominating persons for appointment as a Judge.

193 Maximum number of Judges

(1) The maximum number of Judges is 156.

(2) For the purposes of **subsection (1)**,—

(a) a Judge who is acting on a full-time basis counts as 1:

(b) a Judge who is acting on a part-time basis counts as an appropriate fraction of 1:

(c) the aggregate number (for example, 155.5) must not exceed the maximum number of Judges that is for the time being permitted.

Compare: 1947 No 16 s 5(2), (2A)

194 Appointment of Judge to sit in other jurisdiction or division of court

~~A Judge may be appointed by warrant, designation, or other prescribed means to sit in another jurisdiction or division of the court.~~

(1) A Judge may be appointed to sit in another jurisdiction or division of the court by—

(a) warrant of the Governor-General; or

(b) designation by Chief District Court Judge; or

(c) other prescribed means.

(2) An appointment under **subsection (1)(a) or (b)** is subject to the procedure prescribed (if any) in any enactment for the issue of the warrant or the making of the designation.

195 Appointment of jury trial Judges

(1) The Governor-General must by warrant appoint sufficient Judges to exercise the criminal jurisdiction of the court in relation to jury trials under the Criminal Procedure Act 2011.

(2) The fact that a Judge is appointed under this section does not limit or affect the power of that Judge to exercise any other jurisdiction of the court or the powers of a Judge.
Compare: 1947 No 16 s 5B

~~**196 Appointment of Judge for Chatham Islands**~~

~~(1) The Governor-General may appoint a person as a Judge to exercise the criminal and civil jurisdiction of the court in the Chatham Islands.~~

~~(2) The Judge appointed holds office during the pleasure of the Governor-General and must be paid the salary that is appropriated for the purpose by Parliament.~~

~~(3) This **Part** applies to the person appointed, except those provisions relating to the procedure for appointment, eligibility, remuneration, and tenure of Judges.~~
~~Compare: 1947 No 16 s 11~~

197 Who is eligible for appointment as Judge

~~(1) A person may be appointed as a Judge if he or she satisfies the criteria in **subsection (2) or (3)**.~~

(2) A person may be appointed as a Judge if—
- (a) that person has for at least 7 years held a New Zealand practising certificate as a barrister or as a barrister and solicitor; or
- (b) that person—
  - (i) holds a degree in law granted or issued by any university within New Zealand; and
  - (ii) has been admitted as a barrister and solicitor of the High Court; and
  - (iii) has held a practising certificate in a jurisdiction specified by Order in Council—
    - (A) for at least 7 years; or
    - (B) for a lesser number of years, but, when that number of years is added to the number of years that the person has held a New Zealand practising certificate, the total number of years is at least 7 years.

~~(3) A person may be appointed as a Judge if he or she,—~~

~~(a) for at least 7 years, has been admitted, or has been qualified to be admitted, as a barrister and solicitor of the High Court; and~~

~~(b) for at least 10 years, has been continuously employed by the Ministry of Justice; and~~

~~(c) for at least 7 of the 10 years referred to in **paragraph (b)**, has been employed as a Registrar of the court.~~

~~(4) In this section, **court** includes a District Court constituted under the District Courts Act 1947.~~

Compare: 1947 No 16 s 5

198 Tenure of Judges

(1) A Judge is appointed as a permanent Judge and holds office until he or she resigns, retires, or is removed.

(2) The terms and conditions of the appointment of a Judge may be changed only with the consent of the Judge.

Compare: 1947 No 16 s 5AA(7)

~~199 Seniority~~

~~(1) The Chief District Court Judge is senior to all other District Court Judges.~~

~~(2) As between permanent Judges, seniority is determined by date of appointment.~~

~~(3) As between permanent Judges appointed on the same day, seniority is determined by the precedence assigned to them by the Governor-General or, if no precedence is assigned, by the order in which they take the judicial oath.~~

~~(4) A permanent Judge is senior to an acting Judge.~~

~~(5) Acting Judges have among themselves the seniority they would have if they were permanent Judges.~~

200 Restrictions on Judges

(1) A Judge must not practise as a lawyer.

(2) A Judge must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the ~~Chief~~ Justice ~~given after consultation with the~~ Chief District Court Judge.

~~(3) However, there is no need to obtain approval under **subsection (1)** for the appointment of a Judge to another office if an enactment permits or requires a Judge to hold that office.~~

(3) However, **subsection (1)** does not apply to another office if an enactment permits or requires the office to be held by a Judge.

(4) The Chief ~~Justice~~ District Court Judge may approve other employment or office only if he or she is satisfied that the other employment or office is ~~compatible with the Judge's office of District Court Judge~~ consistent with judicial office.

Compare: 1947 No 16 s 5(4), (5)

201 Protocol relating to activities of Judges

(1) The Chief Justice must develop and publish a protocol containing guidance on—

(a) the employment, or types of employment, that he or she considers may be undertaken consistent with being a Judge; and

(b) the offices, or types of offices, that he or she considers may be held consistent with being a Judge.

(2) The protocol required by **subsection (1)** must be prepared in consultation with the Chief District Court Judge.

Powers of Judges

202 Powers of Judges

(1) A Judge has the power—

(a) to exercise the civil and criminal jurisdiction of the court in accordance with his or her warrant of appointment; and

(b) if applicable, to exercise the jurisdiction conferred by a warrant to sit in the Family Court or to conduct jury trials, or conferred by a designation to sit in the Youth Court.

(2) A Judge exercises the jurisdiction of the court by—

(a) hearing and determining proceedings in the court; and

(b) exercising the powers conferred by this **Part** or any other enactment on the court or Judges of the court.

(3) Nothing in **subsection (1)** limits section 436 of the Children, Young Persons, and Their Families Act 1989.

Compare: 1947 No 16 s 58

203 Exercise of jurisdiction

The jurisdiction of the court may be exercised by—

(a) a Judge; or

(b) if authorised by this **Part** or any other Act or by the rules, a Registrar or any person authorised to carry out the functions of a Registrar.

Compare: 1947 No 16 s 40

204 Additional powers of Judges

(1) A Judge has the same powers and may make the same orders in relation to a proceeding pending before the court as a Judge of the High Court in chambers in a similar proceeding.

(2) Despite **subsection (1)**, an interim injunction restraining a party to a proceeding (whether domiciled, resident, or present in New Zealand) from removing from New Zealand, or otherwise dealing with, assets in New Zealand is the only interlocutory injunction in the nature of a freezing order that a Judge may grant.

(3) A Judge has no power to make a search order.

(4) **Subsection (3)** does not limit the power of a Judge to make an order for the detention, custody, or preservation of property.

Compare: 1947 No 16 s 42

205 Other functions of Judges

A Judge, by virtue of his or her appointment as a Judge,—

(a) is also a coroner for New Zealand; and

(b) is also a Justice of the Peace for New Zealand; and

(c) although sitting alone, has the powers, functions, and discretions that must be exercised by 2 Justices sitting together; and

(d) has the power to do alone whatever is authorised by any enactment to be done by 2 Justices together.

Compare: 1947 No 16 s 8

206 Immunity of Judges

A Judge has the same immunities as a High Court Judge.

Compare: 1947 No 16 s 119

Chief District Court Judge

207 Chief District Court Judge

(1) There must be a Chief District Court Judge appointed by the Governor-General on the advice of the Attorney-General.

(2) The Chief District Court Judge is head of the court ~~and each division of the court~~.

(3) The Chief District Court Judge must ensure the orderly and efficient ~~operation of the court~~ conduct of the court's business, and for that purpose may, among other things,—

(a) determine the sessions of the court; and

(b) assign Judges to those sessions; and

(c) assign Judges to particular divisions or jurisdictions; and

(ca) assign Judges to the hearing of cases and other duties; and

(d) determine the places and schedules of sessions for individual Judges (including varying the place and schedules of sessions for Judges from time to time); and

(e) manage the workload of individual Judges; and

(f) delegate administrative duties to individual Judges; and

(g) oversee and promote the professional development, continuing education, and training of Judges; and

(h) make directions and set standards for best practice and procedure in the court.

~~(4) The Chief District Court Judge may, after consultation with the Principal Family Court Judge and the Principal Youth Court Judge, give any directions in relation to the particular jurisdictions to which Judges may be assigned that the Chief District Court Judge thinks are necessary.~~

(4) The Chief District Court Judge, in assigning a Judge to the Family Court or the Youth Court, may give directions in relation to the Family Court or the Youth Court, as the case may be, but must first consult the Principal Judge of the court in question.

(5) The fact that a Judge sits in any particular court is conclusive evidence of his or her authority so to do, and no exercise of any jurisdiction or power by a Judge may be questioned on the ground that he or she was not authorised to sit in the court where the jurisdiction or power was so exercised.

(6) The reference in **subsections (3), (4), and (5)** to jurisdictions means—

(a) the ordinary civil and criminal jurisdiction of the District Court, including common law and equitable jurisdiction and admiralty jurisdiction:

(b) the specialist jurisdiction of the District Court by virtue of the constitution of the Family Court and the Youth Court as divisions of the District Court.

(7) The power conferred by this section on the Chief District Court Judge does not include the power to give directions in relation to any District Court Judge who for the time being presides over, or holds office as a member of, or holds office as, a tribunal.

Compare: 1947 No 16 ss 5A, 9

208 Tenure of Chief District Court Judge

The Chief District Court Judge holds office until he or she—

(a) resigns from that office; or

(b) ceases to hold office as a Judge.

Compare: 1947 No 16 s 5A(2)

209 Acting Chief District Court Judge

(1) The Chief District Court Judge may, with the concurrence of the Chief Justice, nominate a Judge to act in place of the Chief District Court Judge for any period during which—

(a) the office of the Chief District Court Judge is vacant; or

(b) the Chief District Court Judge is absent from New Zealand; or

(c) the Chief District Court Judge is unable for any reason (including illness) to perform the duties of the office.

(2) The Chief Justice may nominate a Judge to act in place of the Chief District Court Judge for any period during which the Chief District Court Judge is unable for any reason (including illness) to perform the duties of the office.

(3) For the period of his or her appointment, the Acting Chief District Court Judge is empowered to perform the functions and duties, and to exercise all the powers, of the office of Chief District Court Judge.

Compare: 1947 No 16 s 5A(4)

Resignation, retirement, and removal

210 Resignation

(1) A Judge may resign from office at any time by written notice to the Attorney-General.

~~(2) The Chief District Court Judge may resign from that office without resigning from the office of District Court Judge, but only with the approval of the Attorney-General.~~

~~(3) A principal Judge may resign from that office without resigning from the office of District Court Judge, but only with the approval of the Attorney-General.~~

211 Retirement

(1) A Judge must retire from office on reaching the age of 70 years.

(2) This section does not apply to an acting Judge.

212 Removal

(1) The Governor-General may, on the advice of the Attorney-General, remove a Judge from office on the grounds of inability or misbehaviour.

(2) To avoid doubt, a Judge may be removed under **subsection (1)** for inability or misbehaviour related to the exercise, contemplated by **section 205(a)**, of the judicial authority conferred on a coroner by the Coroners Act 2006.

(3) The removal of a Judge may be initiated in accordance with sections 33 and 34 of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.

(4) A Judge may not be removed from office except under this section.

Compare: 1947 No 16 s 7(1), (1A)

Part-time Judges

213 Attorney-General may authorise permanent Judge to sit part-time

(1) The Attorney-General may, on application by a permanent Judge, authorise the Judge to sit on a part-time basis for a specified period.

(2) The Attorney-General must not authorise a Judge to sit part-time unless the Chief District Court Judge agrees and, in considering whether to agree, the Chief District Court Judge must have regard to the need to ensure the orderly and efficient ~~operation of the court~~ conduct of the court's business.

(3) In the case of an Environment Judge, the Chief District Court Judge must first consult the Principal Environment Judge before agreeing to the Judge sitting part-time.

(4) The Attorney-General may authorise a Judge to sit part-time with effect from—

(a) the date on which the Judge takes up office; or

(b) any other date.

(5) The Attorney-General may authorise a Judge to sit part-time for a specified period on more than 1 occasion.

Acting Judges

214 Appointment of acting Judges

(1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Judges.

(2) Only a former Judge under the age of 75 years is eligible for appointment as an acting Judge.

~~(3) The Attorney-General must not advise the Governor-General to make an appointment unless the Attorney-General has received a certificate from the Chief District Court Judge certifying that the appointment is necessary due to the illness or absence of a Judge, the requirement for a Judge for other office, or other temporary need.~~

(3) Before advising the Governor-General to make an appointment under **subsection (1)**, the Attorney-General must have received a certificate signed by the Chief District Court Judge

certifying that the appointment is necessary for the proper conduct of the court.

(4) Despite section 435 of the Children, Young Persons, and Their Families Act 1989, any person appointed under **subsection (1)** may at the same time or at any subsequent time during the term of that person's appointment be designated as a Youth Court Judge, and the designation takes effect during any period when and in any place where that person is entitled to act as a Judge.

(5) In this section, **former Judge** means a person who has retired or resigned from holding office as a District Court Judge.

215 Term of appointment of acting Judge

(1) An acting Judge may be appointed for a term of not more than 2 years and may be reappointed for 1 or more terms.

(2) However, an acting Judge must not be appointed—

(a) for a term that extends beyond the date on which the Judge reaches the age of 75 years; or

(b) for multiple terms collectively totalling more than 5 years.

216 Acting Judge must be authorised to act

(1) An acting Judge may only act to the extent that he or she is authorised to do so by the Chief District Court Judge under **subsection (2)**.

(2) The Chief District Court Judge may authorise an acting Judge to act—

(a) during 1 or more specified periods; and

(b) in 1 or more specified places.

(3) An acting Judge, while acting as authorised by the Chief District Court Judge, has the jurisdiction, powers, protections, privileges, and immunities of a Judge.

Compare: 1947 No 16 s 10A(4), (5)

Remuneration

217 Remuneration of Chief District Court Judge, principal Judges, and permanent Judges

The Chief District Court Judge, each principal Judge, and each permanent Judge must be paid, out of public money, without further appropriation than this section,—

(a) a salary at the rate determined by the Remuneration Authority; and

(b) allowances (if any) as determined by the Remuneration Authority; and

(c) any additional allowances, such as travelling allowances or other incidental or minor allowances, as the Government determines.

Compare: 1947 No 16 s 6(1)

218 Remuneration of part-time or acting Judge

(1) The salary and allowances of a part-time Judge must be calculated and paid as a pro rata proportion of the salary and allowances of a full-time Judge.

(2) For the period that an acting Judge acts as authorised under **section 216**, the acting Judge must be paid a salary and allowances calculated as a pro rata proportion of the salary and allowances of a full-time Judge under **section 217(a) and (c)**.

Compare: 1947 No 16 s 6(2A)

219 Reduction in remuneration of Chief District Court Judge or principal Judge

(1) This section applies if the Chief District Court Judge or a principal Judge ceases to hold the position of Chief District Court Judge or principal Judge but continues to hold office as a Judge.

(2) The salary and allowances of the Judge must be reduced by the amount of any salary and allowances that the Judge received solely by virtue of being the Chief District Court Judge or a principal Judge.

Compare: 1947 No 16 s 6(2B)

220 Judge's remuneration must not be reduced

(1) The remuneration payable to a Judge must not be reduced while the Judge holds office.

(2) For the purposes of **subsection (1)**, none of the following is a diminution of remuneration:

(a) the payment of salary on a pro rata basis under **section 218**:

(b) the payment of reduced salary and allowances under **section 219**.

Compare: 1947 No 16 s 6(2), (2C)

Subpart 3—Community Magistrates

Community Magistrates

221 Appointment of Community Magistrate

(1) The Governor-General may, on the advice of the Minister, appoint a Community Magistrate.

(2) Before advising the Governor-General, the Minister may consult with any persons that the Minister considers appropriate.

Compare: 1947 No 16 s 11A(1), (3)

222 Who is eligible for appointment as Community Magistrate

A person may be appointed as a Community Magistrate if he or she—

(a) is capable, through his or her personal qualities, experience, and skills, of performing the functions of a Community Magistrate; and

(b) has been designated under the prescribed selection process as a person eligible for appointment as a Community Magistrate.

Compare: 1947 No 16 s 11A(2)

223 Functions and powers of Community Magistrate

(1) A Community Magistrate must carry out the functions and may exercise the powers conferred on Community Magistrates by the Criminal Procedure Act 2011, the Summary Offences Act 1981, or any other enactment.

(2) Each Community Magistrate must sit in the court and at the times that the Chief District Court Judge directs after consulting—
  (a) the Chief Community Magistrate; or
  (b) if there is no Chief Community Magistrate, any other Community Magistrate as the Chief District Court Judge thinks fit.

(3) The fact that a Community Magistrate sits in the court is conclusive evidence of his or her authority to do so.

Compare: 1947 No 16 s 11C

224 Tenure of Community Magistrate

A Community Magistrate holds office until he or she resigns, retires, or is removed.

225 Retirement, resignation, and removal

(1) A Community Magistrate must retire from office on reaching the age of 70 years.

(2) A Community Magistrate may resign from office at any time by written notice to the Minister.

(3) The Governor-General may, on the advice of the Minister, remove a Community Magistrate from office if any of the following grounds for removal is proved to the satisfaction of the Governor-General:
  (a) neglect of duty:
  (b) inability:
  (c) disability affecting performance of duty:
  (d) bankruptcy:
  (e) misconduct.

Compare: 1947 No 16 s 11F

226 Remuneration of Community Magistrate must not be reduced

The remuneration payable to a Community Magistrate must not be reduced while the Community Magistrate holds office.

Compare: 1947 No 16 s 11G(3)

227 Restrictions on Community Magistrates

A Community Magistrate must not—

(a) hold any office or engage in any employment or occupation that will, in the opinion of the Governor-General, impair the proper discharge of his or her functions as a Community Magistrate; or

(b) be a lawyer; or

(c) be a Police employee; or

(d) be employed by the Ministry of Justice or the Department of Corrections; or

(e) be an officer of the High Court or of the District Court; or

(f) be a party to a prison management contract entered into under section 198(1) of the Corrections Act 2004 or to a security contract entered into under section 166 of the Corrections Act 2004; or

(g) be a security officer as defined in section 3(1) of the Corrections Act 2004; or

(h) be a social worker as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989.

Compare: 1947 No 16 s 11B

Immunity for Community Magistrates

228 No proceeding against Community Magistrate unless he or she acted without jurisdiction

(1) No proceeding may be commenced against any Community Magistrate for any act done by him or her, unless he or she has exceeded his or her jurisdiction or has acted without jurisdiction.

(2) If a warrant to seize property or a warrant of commitment is granted by a Community Magistrate in good faith in reliance on a conviction or an order entered or made by a Justice or Community Magistrate, no proceeding may be commenced against the Community Magistrate who granted the warrant by reason of any defect in the conviction or order, or by reason of any want of jurisdiction in the Justice or Community Magistrate who entered or made it.

Compare: 1947 No 16 s 11CA

229 No proceeding against Community Magistrate to be commenced in District Court

No proceeding against any Community Magistrate by any person claiming to have been injured by an act done by the Community Magistrate in excess of jurisdiction or without jurisdiction may be commenced in the District Court.

Compare: 1947 No 16 s 11CB

230 Onus of proof

In any proceeding commenced against a Community Magistrate by a person claiming to have been injured by an act done by the Community Magistrate in excess of jurisdiction or without jurisdiction, the onus of proving the excess or want of jurisdiction lies on the person alleging it.

Compare: 1947 No 16 s 11CC

231 Plaintiff may be ordered to give security for costs

(1) This section applies to any proceeding commenced against a Community Magistrate by a person claiming to have been injured by an act done by the Community Magistrate in excess of jurisdiction or without jurisdiction.

(2) The High Court or any Judge of that court, on application by the Community Magistrate at any time before the day fixed for the trial of the proceeding, may order the plaintiff to give security for the costs of the proceeding to the satisfaction of the Registrar of the High Court in an amount not exceeding $~~500~~2,000.

(3) If security is ordered to be given, the High Court or Judge may direct that in the meantime all proceedings are stayed.

Compare: 1947 No 16 s 11CD

232 Indemnity to Community Magistrate

(1) **Subsection (2)** applies to any Community Magistrate against whom a judgment has been entered to pay damages or costs to any person injured as a result of any act done by the Community Magistrate in excess of jurisdiction or without jurisdiction.

(2) The Community Magistrate must be indemnified by the Crown to the full amount of the judgment if he or she produces a certificate authenticated by a Judge of the High Court stating that, in the Judge's opinion,—

(a) the Community Magistrate acted in good faith under the belief that he or she had in fact jurisdiction; and

(b) in all the circumstances the Community Magistrate ought fairly and reasonably to be excused.

(3) **Subsections (4) and (5)** apply if a Community Magistrate settles a claim against him or her by paying or agreeing to pay an agreed amount of damages or costs before proceedings are commenced, or before or during trial of the proceeding.

(4) The Community Magistrate must be indemnified by the Crown to the full amount of the amount paid or agreed to be paid if he or she produces a certificate authenticated by a Judge of the High Court stating that, in the Judge's opinion,—

(a) the Community Magistrate acted in good faith under the belief that he or she had in fact jurisdiction; and

(b) in all the circumstances the Community Magistrate ought fairly and reasonably to be excused; and

(c) the amount paid or agreed to be paid was fair and reasonable.

(5) If the High Court Judge is not satisfied of the matter in **subsection (4)(c)**, the Judge may issue the certificate in respect of any lesser amount that in the Judge's opinion is adequate to settle the plaintiff's claim, and in that case the Community Magistrate must be indemnified by the Crown to the amount specified in the certificate.

(6) Application for a certificate under any of **subsections (2), (4), and (5)** may be made by a Community Magistrate at any time to a Judge in chambers, and the Judge has power to grant the certificate after considering all evidence that is given before him or her either orally or in the form of affidavits.

(7) A copy of the application must be served by the Community Magistrate on the Attorney-General, who is entitled to appear and oppose it.

Compare: 1947 No 16 s 11CE

Chief Community Magistrate

233 Chief Community Magistrate

There may be a Chief Community Magistrate.

234 Appointment of Chief Community Magistrate

(1) The Governor-General may, on the advice of the Minister, appoint the Chief Community Magistrate.

(2) Regulations made under this **Part** may prescribe the criteria and procedure for the appointment of the Chief Community Magistrate, but the absence of those regulations does not preclude an appointment.

Compare: 1947 No 16 s 11D(1), (3)

235 Who is eligible for appointment as Chief Community Magistrate

A person may be appointed as Chief Community Magistrate if he or she has held a practising certificate as a lawyer for at least 5 years.

Compare: 1947 No 16 s 11D(2)

236 Tenure of Chief Community Magistrate

(1) The Chief Community Magistrate holds office for as long as he or she holds office as a Community Magistrate.

(2) The Chief Community Magistrate may resign from that office without resigning from the office of Community Magistrate, but only with the approval of the Governor-General.

Compare: 1947 No 16 s 11D(4), (5)

237 Functions of Chief Community Magistrate

(1) The functions of the Chief Community Magistrate include—

(a) taking appropriate steps to ensure that the integrity of the office of Community Magistrate is maintained and that Community Magistrates operate effectively and efficiently within the framework of the District Court:

(b) the other functions conferred on the Chief Community Magistrate by regulations made under this **Part** or by any other enactment.

(2) Without limiting **subsection (1)**, the Chief Community Magistrate—

(a) may sit as a Community Magistrate and exercise the jurisdiction of a Community Magistrate:

(b) must be consulted by the Chief District Court Judge, in accordance with **section 223(2)**, with regard to the rostering of Community Magistrates:

(c) may be involved in the design and implementation of training programmes for Community Magistrates in consultation with the Ministry of Justice and the Chief District Court Judge:

(d) may, where appropriate, liaise with interested persons on matters affecting the office of Community Magistrate.

Compare: 1947 No 16 s 11E

238 Acting Chief Community Magistrate

(1) The Governor-General may, on the advice of the Minister, appoint a Community Magistrate to act in place of the Chief Community Magistrate for any period during which—

(a) the office of the Chief Community Magistrate is vacant; or

(b) the Chief Community Magistrate is absent from New Zealand; or

(c) the Chief Community Magistrate is unable for any reason (including illness) to perform the duties of the office.

(2) For the period of his or her appointment, the Acting Chief Community Magistrate is empowered to perform the functions and duties, and to exercise all the powers, of the office of Chief Community Magistrate.

Compare: 1947 No 16 s 11D(6)

Acting Community Magistrates

239 Appointment of acting Community Magistrates

(1) The Governor-General, on the advice of the Minister, may appoint an acting Community Magistrate.

(2) Only a former Community Magistrate is eligible for appointment as an acting Community Magistrate.

(3) In this section, **former Community Magistrate** means a person who has retired or resigned from holding office as a Community Magistrate.

Compare: 1947 No 16 s 11H(1)

240 Term of appointment of acting Community Magistrate

(1) An acting Community Magistrate may be appointed for a term of not more than 2 years and may be reappointed for 1 or more further terms.

(2) However, an acting Community Magistrate must not be appointed for a term that extends beyond the date on which the acting Community Magistrate reaches the age of 73 years.

Compare: 1947 No 16 s 11H(2)

241 Acting Community Magistrate must be authorised to act

(1) An acting Community Magistrate may only act to the extent that he or she is authorised to do so by the Chief District Court Judge.

(2) Before authorising an acting Community Magistrate, the Chief District Court Judge must consult with the Chief Community Magistrate or, if there is no Chief Community Magistrate, any other Community Magistrate that the Chief District Court Judge thinks appropriate.

(3) The Chief District Court Judge may authorise an acting Community Magistrate to act—

(a) during 1 or more specified periods; and

(b) in 1 or more specified places.

(4) An acting Community Magistrate, while acting as authorised by the Chief District Court Judge, has the jurisdiction, powers, protections, privileges, and immunities of a Community Magistrate.

Compare: 1947 No 16 s 11H(3), (5)

Remuneration

242 Remuneration of Chief Community Magistrate and Community Magistrates

(1) The Chief Community Magistrate must be paid, out of public money, without further appropriation than this section,—

(a) a salary or a fee, or an allowance, at the rate determined by the Remuneration Authority; and

(b) any additional allowances, such as travelling allowances or other incidental or minor allowances, as determined by the Governor-General by Order in Council.

(2) Each Community Magistrate must be paid, out of public money, without further appropriation than this section,—

(a) a salary, or a fee, or an allowance at the rate determined by the Governor-General by Order in Council; and

(b) any additional allowances, such as travelling allowances or other incidental or minor allowances, as determined by the Governor-General by Order in Council.

(3) An Order in Council made under **subsection ~~(2)(a)~~ (1)(b) or (2)** is a legislative instrument, but not a disallowable instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1947 No 16 s 11G(2)

243 Remuneration of acting Community Magistrate

For the period that an acting Community Magistrate acts as authorised under **section 241**, the acting Community Magistrate must be paid the salary, fee, and allowances determined for a Community Magistrate under **section 242**.

Compare: 1947 No 16 s 11H(4)

Registrars, bailiffs, and other officers of court

244 Appointment of Registrars, Deputy Registrars, and other officers of court

(1) Registrars, Deputy Registrars, and other officers of the court may be appointed under the State Sector Act 1988 for the conduct of the business of the court.

(2) In any case where a Registrar or Deputy Registrar has died or is prevented by illness or other cause from acting in his or her office, a Judge may appoint a Deputy Registrar to act for such period as the Judge thinks fit, and a Judge may at any time terminate that person's appointment.

Compare: 1947 No 16 ss 12(1), 14(1), (2)

245 Powers of Registrars and Deputy Registrars

(1) A Registrar has the duties and powers—

(a) conferred by this **Part**, any other enactment, or the rules:

(b) necessary or desirable to ensure the efficient and effective administration of the operations of the court.

(2) A Deputy Registrar has and may perform and exercise the same duties and powers as a Registrar.

(3) **Subsection (2)** is subject to any provision to the contrary in the rules.

Compare: 1947 No 16 ss 12, 14(1A)

246 Registrar must hold record of proceedings

(1) The Registrar must hold such records of, and in relation to, proceedings as the chief executive requires.

(2) If the existence of the record of the court is in dispute, the existence of the record must be determined by the court.

Compare: 1947 No 16 s 13(1), (3)

247 Admissibility of document required to be held by Registrar

(1) This section applies to—

(a) a document or part of a document required by the rules to be held by a Registrar; or

(b) a copy of or an extract from the document or part of the document that has been sealed with the seal of the court and authenticated and certified by a Registrar as a true copy or correct extract.

(2) A document or part of a document or a copy of or an extract from it referred to in **subsection (1)** is admissible without further proof as evidence of—

(a) the document or part of it; and

(b) the proceeding to which it relates; and
(c) the regularity of that proceeding.

Compare: 1947 No 16 s 13(2)

248 Appointment of bailiffs

(1) Bailiffs and deputy bailiffs may be appointed under the State Sector Act 1988 for the exercise of the powers of bailiffs set out in **section 250**.

(2) A Judge may authorise a constable or other person to act on a particular occasion as a bailiff.

(3) A bailiff must take an oath of office in the following form (or make an affirmation as provided by section 4 of the Oaths and Declarations Act 1957):

English form

I, [*name*], swear that I will faithfully and diligently serve Her (*or* His) Majesty [*specify the name of the reigning Sovereign, as in: Queen Elizabeth the Second*], Queen (*or* King) of New Zealand, her (*or* his) heirs and successors, as a bailiff at [*place*], without favour or affection, malice or ill-will. While I hold this office I will, to the best of my power, keep the peace and prevent offences against the peace and will, to the best of my skill and knowledge, perform all the duties of the office of bailiff according to law. So help me God.

Māori form

Tēnei au, a [*ingoa*], e kī taurangi nei, ka rato pirihonga, urupū hoki ahau i Ia Arikinui [*tohua te ingoa o te Arikinui kei runga i te torona, pērā ki a Kuini Irahāpeti te Tuarua*], Kuini (Kīngi *rānei*) o Niu Tīreni, me ōna uri whakaheke, hei kaituku hāmene ki [*wāhi*] i roto i te kore tautoko, kore aroha rānei, kore mahi kino, kore whakaaro kino rānei. I te wā ke tēnei tūranga ahau ka pōkaikaha ahau ki te hohou i te rongo me te kaupare atu i nga mahi kotikoti i te rongo, ā, i roto i ōku tino pūkenga me ōku mōhio, ka whakatutuki i ngā mahi kua whakaritea hei mahi mā te kaituku hāmene, e ai ki te ture. Nō reira, āwhina mai i ahau e te Atua.

Compare: 1947 No 16 s 15(1), (2), 17(1)(a), (3)

249 Appointment of deputy bailiffs

(1) A Judge may—

(a) appoint a deputy to act for a bailiff who is prevented from illness or other cause from acting as bailiff; and

(b) in the case of the death of a bailiff, may appoint a deputy to act as bailiff until another appointment is made.

(2) A Judge may at any time terminate the appointment of a deputy bailiff appointed under **subsection (1)**.

Compare: 1947 No 16 s 16(1)

250 Powers and duties of bailiffs

(1) A bailiff has—

(a) the powers of a constable:

(b) the power to serve a court document or an order:

(c) the power to enforce an order of the court:

(d) the power to execute a warrant:

(e) any other powers conferred by this **Part**, any other enactment, or the rules.

(2) A bailiff must—

(a) attend each session of the court to which he or she is appointed for such time as required, unless his or her presence is excused by the court:

(b) as required serve the summonses and orders, and execute the warrants, issued by the court, but may authorise any person to act for him or her in effecting the service or execution:

(c) conform to the rules and regulations governing the execution of the office of bailiff, and in other respects be subject to the directions of a Judge or Registrar.

(3) In enforcing an order of the court, a bailiff has the same powers and is subject to the same liabilities as a sheriff of the High Court.

(4) Sections 121, 128, and 129 of the Search and Surveillance Act 2012 (which relate to a general power to stop vehicles) do not apply to a bailiff.

Compare: 1947 No 16 ss 17(1), (2), 17A

251 Powers, etc, of deputy bailiffs

A deputy bailiff, under this **Part** and any other Act, has the same powers and privileges, must perform the same duties, and is subject to the same penalties and provisions as if he or she were a bailiff.

Compare: 1947 No 16 s 16(2)

252 Misconduct of officers

(1) This section applies if an officer of the court is charged with—

(a) extortion or misconduct while acting on court business; or

(b) failing to account for or pay money received by him or her under the authority of this **Part**.

(2) A Judge may inquire into the matter and may require the attendance of all necessary persons as if those persons were witnesses in a proceeding.

(3) After inquiry, the Judge may—

(a) make orders for the repayment of money extorted or received and for the payment of damages and costs; and

(b) impose a fine on the officer not exceeding $2,000 for each offence.

Compare: 1947 No 16 s 19

253 Officer of court must not act as lawyer in court proceedings

(1) Except as provided by this **Part** or the rules or by any other enactment, an officer of the court must not directly or indirectly act as a lawyer or an agent for any party in any proceedings in any court.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding $1,000.

Compare: 1947 No 16 s 20

Court business

254 Sessions of court and adjournments

(1) Subject to a direction by the Chief District Court Judge, a Judge may hold a session of the court at a time and place the Judge thinks fit.

(2) Subject to the power of a Judge under **subsection (1)**, a Registrar may hold a session of the court at a time and place the Registrar thinks fit, if—

(a) the Registrar is satisfied that the session could more conveniently or fairly be held at that time and place; and

(b) all the parties to the proceeding consent.

(3) A Judge may adjourn a session of the court to a time and place the Judge thinks fit.

(4) A Registrar must adjourn a session of the court if a Judge is not present at the time appointed for that session, and may adjourn it to the time and place that the Registrar determines.

(5) Nothing in **section 191** affects the power of a Judge under **subsection (1)**.

Compare: 1947 No 16, ss 4A, 22, and 23

Subpart 4—Jurisdiction

Criminal jurisdiction of District Court

255 Criminal jurisdiction of court

The court has the jurisdiction in relation to criminal proceedings conferred by—

(a) the Criminal Procedure Act 2011; and

(b) any other enactment.

Civil jurisdiction of District Court

256 General civil jurisdiction

(1) The court has jurisdiction to hear and determine a proceeding—

(a) in which the amount claimed or the value of the property in dispute does not exceed $350,000:

(b) that under any enactment other than this **Part** may be heard and determined in the court.

(2) The amount claimed in a proceeding under **subsection (1)** may be for the balance not exceeding $350,000 of an amount owing after a set-off of any claim by the defendant that is admitted by the claimant.

Compare: 1947 No 16 s 29

257 Money recoverable by statute

(1) The court has jurisdiction to hear and determine a proceeding—

(a) for the recovery of any penalty, expenses, costs, contribution, or similar monetary liability that is recoverable under any enactment; and

(b) in which the amount claimed does not exceed $350,000 excluding interest under the **Judicature Modernisation Act 2013**.

(2) **Subsection (1)** does not apply if an enactment expressly provides that the proceeding can only be brought in another court.

(3) In **subsection (1)(a)**, **penalty** does not include a fine to which a person is liable on conviction of an offence.

Compare: 1947 No 16 s 30

258 Jurisdiction in equity

(1) Subject to other provisions in this **Part**, the court has the same equitable jurisdiction as the High Court.

(2) However, the court does not have jurisdiction under **subsection (1)** to hear and determine a proceeding in which the amount claimed or the value of the property that is the subject of the proceeding exceeds $350,000.

(3) **Subsection (1)** does not apply if an enactment (other than **section 11 of the Judicature Modernisation Act 2013**) expressly provides that the proceeding is a proceeding or class of proceeding that another court has jurisdiction to hear and determine.

(4) Despite **subsection (3)**, the court may make orders under section 49 of the Administration Act 1969.

Compare: 1947 No 16 s 34(1)(a), (2), (2A), (3)

259 Jurisdiction in relation to partnerships

(1) The court has jurisdiction to hear and determine any proceeding for the dissolution or winding up of any partnership (whether or not the existence of the partnership is in dispute), if the total assets of the partnership do not exceed $350,000 in amount or value.

(2) No proceeding in the court for the dissolution or winding up of a partnership, nor any order made in the proceeding, prevents a creditor from applying for the adjudication of a member of the partnership as a bankrupt.

Compare: 1947 No 16 s 34(1)(b), (3)

260 Exceptions

(1) The court does not have jurisdiction to hear and determine the following classes of proceedings:

(a) proceedings for the recovery of land (but see section 261(1)(a)):

(b) proceedings relating to the title to a royal privilege or other grant of a Crown prerogative:

(c) proceedings relating to the validity or interpretation of a will:

(d) proceedings or applications that under any enactment must be heard and determined by a court other than the District Court.

(2) However, despite **subsection (1)(c)**, the court does have jurisdiction to hear and determine any proceedings in which title to inheritable property is in issue if the proceedings are otherwise within its jurisdiction.

Compare: 1947 No 16 ss 29(1), 35

261 Jurisdiction to recover land in certain cases

(1) Despite **section 260(1)(a)**, the court has jurisdiction to hear and determine a proceeding for the recovery of land in the situations specified in **subsection (2)** if—

(a) the annual rent does not exceed $62,500; or

(b) the value of the land does not exceed $500,000.

(2) The situations are—

(a) a lessee or other person occupying premises has failed to vacate the whole or part of the premises after—

(i) the lease has ended or been terminated by the lessor or the lessee; and

(ii) the lessor or the lessee (in the case of another person occupying the whole or part of the premises) has given notice to vacate the premises or has de-

manded possession of the premises, as the case may be:

(b) a lessor is entitled to exercise a right to re-enter premises for non-payment of rent:

(c) a person without right, title, or licence is in possession of the land.

(3) For the purposes of **subsection (1)(b)**, if the capital value of the land appears in a district valuation roll under the Rating Valuations Act 1998, that value is the value of the land.

Compare: 1947 No 16 s 31

262 Abandonment of part of claim to give court jurisdiction

(1) This section applies to a proceeding that, apart from this section, the court would not have jurisdiction to hear and determine because the amount of the claim or the value of the property or relief claimed or in issue exceeds the monetary limit of the court's jurisdiction.

(2) If the claimant abandons the excess,—

(a) the court has jurisdiction to hear and determine the proceeding; and

(b) the claimant cannot recover an amount exceeding the monetary limit of jurisdiction plus costs.

(3) The judgment of the court in the proceeding operates as a full discharge of the cause of action.

Compare: 1947 No 16 s 36

263 Extension of jurisdiction by consent

(1) This section applies to a proceeding (including a proceeding in admiralty) that, apart from this section, the court would not have jurisdiction to hear and determine because the amount of the claim or the value of the property or relief claimed or in issue exceeds the monetary limit of the court's jurisdiction.

(2) If the parties to the proceeding or to a counterclaim in the proceeding consent,—

(a) the monetary limit of the court's jurisdiction is extended, for the purposes of the proceeding, to the limit of the amount of the claim or the value of the property or relief claimed; and

(b) the court may hear and determine the proceeding on that basis.

Compare: 1947 No 16 s 37

264 Jurisdiction exclusive of interest

Interest included in the amount for which a judgment is given under the **Judicature Modernisation Act 2013** is not to be taken into account for the purposes of determining the jurisdiction of the court.

Compare: 1947 No 16 s 42A

265 Causes of action not to be divided

(1) A cause of action may not be divided for the purpose of bringing 2 or more proceedings or a counterclaim.

(2) Nothing in **subsection (1)** prevents a party from including in a single proceeding multiple causes of action that in the aggregate, but not individually, exceed the jurisdiction of the court.

Compare: 1947 No 16 s 38

266 Remedies

Subject to **section 291**, in a proceeding a Judge may, in the same way as a Judge of the High Court in the same or a similar proceeding,—

(a) grant the same remedies, redress, or relief:

(b) dispose of the proceeding:

(c) give the same effect to every ground of defence or counterclaim, whether legal or equitable.

Compare: 1947 No 16 s 41

267 Proceedings against absent defendant

The court must not determine any proceeding against a defendant who is absent from New Zealand unless the court is satisfied that—

(a) service has been effected in any of the ways provided by the rules; or

(b) service has been effected in accordance with the rules on an agent of the defendant who is authorised to accept service.

Compare: 1947 No 16 s 39

Subpart 5—Transfer of proceedings

268 Transfer of proceeding in which amount or value of claim exceeds $90,000

(1) This section applies to a proceeding in which the amount of the claim or the value of the property or relief claimed or in issue exceeds $90,000.

(2) A defendant in the proceeding may by notice require that the proceeding be transferred to the High Court.

(3) On receipt of the notice, a Judge must order that the proceeding is transferred to the High Court.

(4) This section does not apply to a proceeding for the recovery of land, unless a Judge certifies that, in the Judge's opinion,—

(a) an important question of law is likely to arise; or

(b) a question of title to an hereditament is likely to arise other than incidentally.

Compare: 1947 No 16 s 43(1), (5)

269 Transfer of proceeding in which amount or value of claim does not exceed $90,000

(1) This section applies to a proceeding in which the amount of the claim or the value of the property or relief claimed or in issue does not exceed $90,000.

(2) A Judge may, on application by a defendant in the proceeding, transfer the proceeding to the High Court if the Judge is satisfied that—

(a) an important question of law or fact is likely to arise; or

(b) a question of title to an hereditament is likely to arise other than incidentally.

Compare: 1947 No 16 s 43(2), (5)

270 Procedure for transfer of proceeding

(1) A notice or an application for the transfer of a proceeding under **section 268 or 269** must be given or made within the

prescribed period or, with the leave of a Judge, within any further time.

(2) An order transferring the proceeding may be made on such conditions as the Judge thinks fit requiring the defendant to give security for the costs of the proceeding in the High Court.

(3) **Sections 268 and 269** apply to a counterclaim as if—

(a) the counterclaim were a proceeding; and

(b) the defendant in the counterclaim were the defendant in the proceeding.

(4) On the transfer of a proceeding in which there is a counterclaim or on the transfer of a counterclaim, the whole proceeding, including the claim and the counterclaim, must be transferred to the High Court.

(5) For the purposes of **subsection (4)**, the Registrar of the District Court must send to the Registrar of the High Court—

(a) a sealed copy of the order transferring the proceeding; and

(b) a copy of the documents by which the proceeding was commenced and of all other documents filed in the District Court in the proceeding; and

(c) a copy of such other documents as the Judge of the District Court directs.

Compare: 1947 No 16 s 43(3), (4)

271 High Court Judge may order removal of proceeding into High Court

(1) A High Court Judge may, on application by a party to a proceeding, order the removal of the proceeding into the High Court if the Judge is satisfied that it is desirable to do so.

(1A) In deciding whether to make an order under **subsection (1)**, the Judge must have regard to the following factors:

(a) the nature of the case:

(b) the complexity of the case:

(c) the general or public importance of the case:

(d) the amount in issue:

(e) the likely length of the hearing:

(f) the financial resources of the parties:

(g) whether it is otherwise in the interests of justice to make the order.

(2) The order may be made on conditions, including conditions as to costs or giving security for costs, that the Judge thinks fit.

(3) This section overrides **sections 268 to 270**.

Compare: 1947 No 16 s 43(6)

272 Transfer of proceeding if no jurisdiction

(1) A Judge may order the transfer of a proceeding for which the court does not have jurisdiction to the High Court or to another court that has jurisdiction. This subsection is subject to **subsection (2)**.

(2) A Judge may strike out a proceeding if satisfied that the claimant knew or ought to have known that the court did not have jurisdiction to hear and determine the proceeding.

(3) A Judge who strikes out a proceeding under **subsection (2)** may award costs as if the court did have jurisdiction and the claim failed.

Compare: 1947 No 16 s 44

273 Transfer of proceeding to High Court if counterclaim exceeds jurisdiction

(1) This section applies to a proceeding in the court in which a counterclaim or set-off and counterclaim involves a matter that is outside the jurisdiction of the court.

(2) A party to the proceeding may apply, within the time prescribed by the High Court Rules, to the High Court for an order transferring the proceeding, or the proceeding on the counterclaim or set-off and counterclaim, to the High Court.

(3) A Judge of the High Court may order that—

(a) the proceeding is transferred to the High Court; or

(b) the proceeding is heard and determined in the District Court; or

(c) only the proceeding on the counterclaim or set-off and counterclaim is heard in the High Court and that the rest of the proceeding is heard and determined in the District Court.

(4) Execution of a judgment of the court in favour of a claimant in a proceeding to which **subsection (3)(c)** applies must, unless the High Court orders otherwise, be stayed until the proceeding transferred to the High Court is heard and determined.

(5) The court has jurisdiction to hear and determine a proceeding to which this section applies if—

(a) no application is made under **subsection (2)** within the time prescribed by the High Court Rules; or

(b) the High Court orders that the proceeding is heard and determined in the District Court.

(6) **Subsection (5)** overrides anything to the contrary in any other enactment.

(7) Where the High Court makes an order under this section, the Registrar of the High Court must send a copy of the order to the Registrar of the District Court.

Compare: 1947 No 16 s 45

274 Transfer of summary judgment applications to High Court

(1) ~~A~~ Subject to **subsection (1A)**, a Judge may, on the application of a party to a summary judgment application made in the court or on the Judge's own initiative, order that the summary judgment application or a matter arising in the summary judgment application is transferred to the High Court.

(1A) A Judge may make the order if the Judge is satisfied that an important question of law is likely to arise.

(2) The High Court may—

(a) hear and determine the summary judgment application or a matter arising in it; or

(b) refer the summary judgment application or a matter arising in it back to the District Court with any directions that the High Court thinks fit.

Compare: 1947 No 16 s 45A

275 Determination of question of law by High Court

(1) A Judge may order that a question of law in a proceeding in the court must be determined by the High Court.

(2) The High Court has the same power to determine the question as the District Court.

Compare: 1947 No 16 s 45B

276 Transfer of proceeding from High Court to District Court

(1) A Judge of the High Court may, on the application of a party to a proceeding commenced in the High Court, transfer the proceeding to the District Court if—

(a) an agreement under **section 263** applies to the proceeding; or

(b) the subject matter of the proceeding is within the jurisdiction of the District Court.

(2) A Judge of the High Court may, on the Judge's own initiative, order the transfer to the District Court of a proceeding commenced in the High Court if—

(a) the subject matter of the proceeding is within the jurisdiction of the District Court; and

(b) the Judge is satisfied that no important question of law or fact is likely to arise in the proceeding.

Compare: 1947 No 16 s 46

277 Procedure on transfer of proceeding to District Court

(1) If an order is made under **section 276** to transfer a proceeding to the District Court, the Registrar of the High Court must send to the Registrar of the District Court—

(a) a sealed copy of the order transferring the proceeding; and

(b) a copy of the documents by which the proceeding was commenced and of all other documents filed in the High Court in the proceeding; and

(c) a copy of such other documents as the Judge of the High Court directs.

(2) Subject to the rules, the District Court has jurisdiction to hear and determine the proceeding on the transfer to the court of the documents, despite anything contained in any other enactment, and must do so as if the proceeding had originally commenced in the District Court.

(3) The transfer of the proceeding to the District Court does not affect—

(a) any right of appeal or the right to apply for leave to appeal against any decision of the High Court in the proceeding or against the order transferring the proceeding; or

(b) the right to enforce a judgment or an order of the High Court made in the proceeding.

Compare: 1947 No 16 s 47

278 Costs in cases transferred

(1) This section applies to a proceeding or counterclaim or set-off and counterclaim (**a transferred proceeding**) that is transferred—

(a) from the District Court to the High Court; or

(b) from the High Court to the District Court~~; or~~.

~~(c) within the District Court.~~

(2) Any order for costs in a transferred proceeding must be made by the court to which the proceeding is transferred.

(3) **Subsection (2)** is subject to an order of the court that made the order to transfer the proceeding.

(4) An order for costs in relation to part of a proceeding transferred to the District Court that takes place in the High Court—

(a) must be made in accordance with the High Court Rules; and

(b) subject to any order by a High Court Judge, may be made by a District Court Judge.

(5) **Subsection (6)** applies to—

(a) a summary judgment application or a matter arising on a summary judgment application that has, after having been transferred to the High Court under **section 274**, been referred back to the District Court:

(b) a proceeding continued in the District Court after a question of law in the proceeding has, under **section 275**, been determined in the High Court.

(6) An order for costs in the proceeding or matter in relation to the proceeding in the District Court both before and after transfer to the High Court must be made by a District Court Judge.

(7) Despite **subsection (6)**, an order for costs incurred in the High Court may be made only by a High Court Judge in ac-

cordance with the High Court Rules, but may be included in a judgment or an order made by the District Court.

Compare: 1947 No 16 s 48

Subpart 6—Procedure

Parties

279 Trustees, executors, and administrators

(1) Any trustee, executor, or administrator may be a party to a proceeding as if he or she were a party in his or her own right, without joining any of the persons beneficially interested in the trust or estate, and is taken to represent those persons in the proceeding.

(2) The court may at any stage of the proceeding make an order joining any of the persons beneficially interested as parties to the proceeding, whether as an additional party or in substitution for an existing party.

Compare: 1947 No 16 s 49

280 Minors

(1) Any minor ~~under the age of 18 years~~ who is or has been married or in a civil union may be a party to a proceeding in contract or tort in his or her own name.

(2) A judgment in a proceeding under **subsection (1)** may be given and enforced in the minor's own name.

(3) In this section, **minor** means a person who is under the age of 18 years.

(4) Any minor ~~under the age of 18 years~~ who is or has been married or in a civil union and any ~~minor over the age of 18 years~~ person over the age of 18 years but under the age of 21 years may make or be a party to an application under section 8 of the Domestic Actions Act 1975 without a next friend or guardian *ad litem*.

(5) The court may make orders on an application referred to in **subsection (4)**, and proceedings to enforce an order may be taken, in the minor's own name.

Compare: 1947 No 16 s 50(1)–(3)

281 Persons jointly liable

In a claim against 2 or more persons who are jointly liable,—

(a) it is sufficient to serve any 1 or more of those persons; and

(b) judgment may be obtained, and execution issued, against a person served, whether or not the others jointly liable have been served or sued or are within the jurisdiction of the court; and

(c) a person against whom judgment is obtained and who has satisfied the amount of the judgment in full or in part may recover contribution from any other person jointly liable.

Compare: 1947 No 16 s 51

282 Bankruptcy of plaintiff

(1) The bankruptcy of a plaintiff in a proceeding that the Official Assignee might continue for the benefit of creditors does not bring the proceeding to an end if, within a reasonable time as ordered by the court, the Official Assignee elects to continue it.

(2) The court may adjourn the proceeding to enable an election to be made.

(3) If the Official Assignee does not elect to continue the proceeding within the time allowed by the court, the defendant may rely on the bankruptcy as a defence to the proceeding.

Compare: 1947 No 16 s 52

Witnesses

283 Witness expenses

(1) The following persons are entitled, in the prescribed amount, to witness expenses and compensation for loss of time:

(a) a person who comes to the court on a witness summons:

(b) a person who gives evidence in a proceeding.

(2) Despite **subsection (1)**, the court may disallow the whole or part of any witness expenses or compensation for loss of time.

(3) The person who calls the witness is liable to pay the amount of witness expenses and compensation for loss of time.

Compare: 1947 No 16 s 53

284 Offence to disobey witness summons

(1) Every person commits an offence and is liable on conviction to a fine not exceeding $~~1~~2,000 who,—

(a) having been served with a witness summons, fails without reasonable excuse to appear or to produce any documents required to be produced in accordance with the summons; or

(b) refuses to be sworn or to give evidence.

(2) It is a defence to a charge under **subsection (1)** that the person's witness expenses in the prescribed amount have not been paid or tendered to him or her at the time the witness summons is served or within a reasonable time before the hearing.

(3) The conviction of a person for an offence against this section does not prevent a civil claim against the person for failing to comply with a witness summons or for refusing to be sworn or to give evidence.

Compare: 1947 No 16 s 54

285 Examination of witnesses and service of process overseas

On an application made in accordance with the rules, the court may—

(a) issue a commission, request, or order for the examination of witnesses overseas for the purpose of any proceeding:

(b) direct and supervise the service overseas of any process of the court.

Compare: 1947 No 16 s 55

286 Who may take affidavit

(1) Any of the following persons may ~~swear~~ take an affidavit or ~~take~~ an affirmation to be used in the court:

(a) a Judge:

(b) a Registrar:

(c) a Justice of the Peace:

(d) a Community Magistrate:

(e) a lawyer.

(2) However, a lawyer may not ~~swear~~ take an affidavit or ~~take~~ an affirmation for use in a proceeding in which the lawyer is

engaged, unless the affidavit or affirmation is for use in an *ex parte* application in a non-contentious proceeding.

Compare: 1947 No 16 s 56

Discovery

287 Pre-commencement discovery

(1) The court may, in the circumstances set out in the rules, make the orders set out in **subsection (2)** if—

(a) a person (**A**) has made an application for those orders in accordance with the rules; and

(b) it appears to the court that A is or may be entitled to bring a proceeding in the court; and

(c) it appears to the court that another person (**B**) is likely to have or have had in B's possession, custody, or power a document or class of documents that is relevant to an issue arising or likely to arise in A's proceeding.

(2) The court may order B—

(a) to disclose to the court and to any other prescribed person whether the document or documents are in B's possession, custody, or power; and

(b) if a document has been but is no longer in B's possession, custody, or power, to disclose to the court and to any other prescribed person when B parted with it and what has become of it; and

(c) to produce such of those documents as are in B's possession, custody, or power to the court or to any other prescribed person.

Compare: 1947 No 16 s 56A

288 Discovery against non-party after proceeding commenced

(1) This section applies if it appears to the court, at any stage of a proceeding and in such circumstances as may be prescribed, that a document or class of documents may be or may have been in the possession, custody, or power of a person (**C**) who is not a party to the proceeding.

(2) The court may order C—

(a) to disclose to the court and to any other prescribed person whether the document or documents are in C's possession, custody, or power; and

(b) if a document has been but is no longer in C's possession, custody, or power, to disclose to the court and to any other prescribed person when C parted with it and what has become of it; and

(c) to produce such of those documents as are in C's possession, custody, or power to the court or to any other prescribed person.

Compare: 1947 No 16 s 56B

Subpart 7—Hearing

289 Right to appear

(1) A natural person ~~(P)~~ who is a party to a proceeding in the court may—

(a) appear and act for himself or herself; or

(b) be represented by a lawyer.

~~(2) In special circumstances and with the permission of the court, P may be represented—~~

~~(a) by an agent authorised in writing by P, if P is in New Zealand; or~~

~~(b) if P is not in New Zealand, by an agent authorised by a person holding P's power of attorney to become a party to the proceeding in P's name.~~

(3) A corporation may—

(a) appear and act through any officer~~, attorney, or agent~~ or attorney of the corporation; or

(b) ~~may~~ be represented by a lawyer.

(3A) In special circumstances and with the permission of the court, a person (**P**), whether a natural person or a corporation, may be represented—

(a) by an agent authorised in writing by P, if P is in New Zealand or carries on business in New Zealand; or

(b) if P is not in New Zealand or does not carry on business in New Zealand, by an agent authorised by a person holding P's power of attorney to become a party to the proceeding in P's name.

(4) An agent who represents a person under **subsection (2) or (3A)** is not entitled to receive any fee or reward for doing so.

~~(5) A self-represented litigant is entitled to be supported in court by any person other than a barrister or solicitor of the High Court.~~

~~(6) A Judge may refuse to allow a self-represented litigant to be supported in court by another person only if he or she considers it would be contrary to the interests of justice and fairness to allow such support.~~

Compare: 1947 No 16 s 57

290 Trial by Judge

(1) In all proceedings brought in the court, the Judge is the sole judge and must determine all questions of fact and law.

(2) However, nothing in this section affects the power to make rules authorising the Registrar to exercise jurisdiction and powers conferred on the court by this or any other enactment.

Compare: 1947 No 16 s 58

291 Equity and good conscience

In a proceeding in which the amount claimed or the value of the property in issue does not exceed $~~3,000~~5,000, the court may—

(a) receive any evidence the court thinks fit, even though the evidence may not be admissible under the Evidence Act 2006; and

(b) determine the proceeding according to equity and good conscience.

Compare: 1947 No 16 s 59; 1988 No 110 s 18(6)

292 Judge must record various matters

(1) The Judge at a hearing in a proceeding in which there is a right of appeal without leave must record or cause to be recorded, whether by way of transcript or otherwise, the following matters:

(a) the facts in evidence; and

(b) any question of law or equity raised at the hearing; and

(c) the Judge's decision of his or her determination of the proceeding.

(2) On the application of a party to the proceeding, and on payment of the prescribed fee (if any), the Judge must ensure that a copy of the records, whether in hard copy or electronic form, is provided to that party.

(3) **Subsection (2)** applies whether or not a notice of appeal has been served.

Compare: 1947 No 16 s 60

293 Reference to arbitration

(1) The court may, with the consent of the parties to a proceeding, order the proceeding or any issue in dispute in the proceeding to be referred to arbitration under the Arbitration Act 1996.

(2) The Judge may, on the application of a party to the proceeding, revoke the reference.

(3) Without limiting **subsection (2)**, a reference may be revoked if the arbitral tribunal does not make an award within 20 working days after the date of the order of reference.

(4) An award has the same effect as a judgment of the court and must be entered as a judgment in the proceeding.

Compare: 1947 No 16 s 61(1)–(4)

294 Application to set arbitral award aside

(1) Despite **section 293(4)**, the court may, on the application of a party to the proceeding,—

(a) set aside an arbitral award made on a reference under **section 293**; or

(b) set the award aside and, with the consent of the parties, order the proceeding or the issue in dispute to be referred to arbitration again.

(2) An application under **subsection (1)** must be made within 10 working days after the entry of the award as a judgment or within any further time as a Judge may allow.

(3) A judgment may not be enforced until an application under **subsection (1)** is determined.

(4) On hearing an application under **subsection (1)**, the court—

(a) may consider any evidence that is placed before it; or

(b) may call for evidence to be placed before it.

(5) The decision of the court after hearing the application must be entered as a judgment of the court.

Compare: 1947 No 16 s 61(4)–(6)

295 Judge may refer matter to Registrar or referee

(1) Subject to the rules, a Judge may refer the following to a Registrar or a referee to make inquiry and report:

(a) any proceedings that require the prolonged examination of documents or any scientific or local examination that the Judge considers cannot conveniently be made before him or her:

(b) any proceedings where the question in dispute consists wholly or partly of matters of account:

(c) with the consent of the parties, any other proceedings:

(d) any question arising in any proceedings.

(2) When a reference is made under **subsection (1)**, the Judge may—

(a) give directions to the Registrar or referee for the conduct of the reference:

(b) remit a report for further inquiry and report:

(c) on consideration of the report or further report, make a judgment or an order in the proceedings that the Judge thinks fit.

Compare: 1947 No 16 s 62

296 Judge may refer matter of account to Registrar, etc

(1) A Judge may, after deciding or reserving any question of liability, refer to a Registrar or a Registrar and an accountant any matter of account only that is disputed between the parties.

(2) After deciding the question of liability, the Judge may give judgment on the Registrar's report.

Compare: 1947 No 16 s 62(3)

297 Reference by consent

(1) With the consent of the parties, a Judge may refer any question in any proceedings that requires any scientific, technical,

business, or professional investigation to a Registrar or a referee for inquiry and report.

(2) Where a reference is made under **subsection (1)**, the Judge may—

(a) give directions to the Registrar or referee for the conduct of the reference:

(b) with the consent of the parties, direct that the Registrar or referee make the inquiry and report without any requirement to hear the parties or to act judicially.

(3) The report of a Registrar or referee on any question referred under this section is binding on the parties, unless the Judge has directed otherwise.

Compare: 1947 No 16 s 62A

Subpart 8—Judgments, orders, and removal of judgments

Judgments and orders

298 Finality of judgments and orders

(1) A judgment or an order of the court is final and conclusive between the parties.

(2) **Subsection (1)** is subject to this **Part**, any other enactment, and the rules.

Compare: 1947 No 16 s 63

299 Technical defects do not invalidate judgment, order, or proceeding

A technical defect or an irregularity does not invalidate a judgment, an order, or a proceeding.

Compare: 1947 No 16 s 64

300 Payment of judgments or orders

(1) When giving a judgment or making an order for the payment of an amount of money (whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise), the court may order the amount of money to be paid—

(a) in 1 amount, whether immediately or within the time that the court determines; or

(b) in instalments, as determined by the court.

(2) Except when the court makes an express order for payment in instalments, every judgment or order for the payment of an amount of money is taken to include an order for the payment immediately of the whole amount.

Compare: 1947 No 16 s 65(1), (2)

301 Stay if party unable to pay judgment amount

(1) The court may suspend or stay or vary any judgment or order for the payment of an amount of money if the court considers that the party who must pay the money is unable to do so.

(2) The court may suspend or stay or vary the judgment or order for the period and on the terms that the court thinks fit, and may extend the suspension or stay or variation for as long as the cause of the inability continues.

Compare: 1947 No 16 s 65(3)

Removal of judgments

302 Removal of judgment of District Court into High Court

(1) A judgment creditor or a person on the judgment creditor's behalf may apply to the court to remove into the High Court a final judgment or an order of the District Court (the **judgment**) for the payment of an amount of money.

(2) The Registrar must issue a certificate of removal in the prescribed form, which may be filed by the judgment creditor in the High Court.

(3) The Registrar must not issue a certificate of removal—

(a) before the expiry of the time for giving notice of an appeal against the judgment:

(b) if an enforcement proceeding has been issued in relation to the judgment, until the enforcement proceeding has been withdrawn or completed.

(4) No further steps may be taken in relation to the proceeding in which the judgment was given after the Registrar's certificate has been filed in the High Court.

(5) On the removal of the judgment,—

(a) the judgment may be enforced as a judgment of the High Court, with such fees and costs as may be paid or al-

lowed in connection with the removal and entry of judgment:

(b) no appeal may be brought against the judgment.

(6) A Judge of the High Court may, on the application of the judgment creditor or judgment debtor, set the removal aside on such terms as to costs or otherwise that the Judge thinks fit.

Compare: 1947 No 16 s 66

303 Proceeding in High Court on judgment or order of District Court

(1) A proceeding may be brought in the High Court on a judgment or an order of the District Court.

(2) Costs may be awarded to the plaintiff in the proceeding only if a Judge of the High Court is satisfied that the proceeding was necessary and proper to enforce the judgment or order against the person or property of the defendant.

Compare: 1947 No 16 s 67

304 Removal of judgment or order of High Court into District Court

(1) A judgment creditor or a person on behalf of the judgment creditor may apply to the High Court to remove into the District Court a judgment or an order or a decree (the **judgment**) of the High Court for payment of an amount of money.

(2) The Registrar of the High Court must issue a certificate of removal in the prescribed form, which may be filed by the judgment creditor in the District Court.

(3) No further steps may be taken in relation to the proceeding in which the judgment was given in the High Court after the Registrar of the High Court has issued the certificate.

(4) On the filing of the certificate,—

(a) if the District Court has jurisdiction in relation to the amount of the judgment, the judgment plus interest may be enforced in the District Court; or

(b) if the District Court has jurisdiction in relation to the unpaid balance of the judgment, the unpaid balance of the judgment plus interest may be enforced in the District Court; or

(c) if the District Court has jurisdiction in relation to the amount of part of the judgment and the judgment creditor abandons any amount in excess of that amount, the part of the judgment or of the unpaid balance of that part plus interest may be enforced in the District Court.

(5) A judgment may also be enforced for any fees and costs awarded in connection with removing it into the District Court.

(6) Except as provided by this section, no proceeding on a judgment of the High Court may be brought in the District Court.

Compare: 1947 No 16 s 68

Subpart 9—Appeals

Appeals to High Court

305 Interpretation

In this **subpart**,—

appeal means an appeal under **section 306**

decision includes a judgment and an interim or a final order, but does not include an order under **section 394** (which relates to an order for contempt of court)

make includes give.

Compare: 1947 No 16 s 71

306 General right of appeal

(1) This **subpart** applies to a decision of the court, other than a decision of a kind in respect of which an enactment other than this **Part**—

(a) expressly confers a right of appeal; or

(b) expressly provides that there is no right of appeal.

(2) A party to a proceeding in the District Court may appeal to the High Court against the whole or a part of a decision made by the District Court in or in relation to the proceeding.

Compare: 1947 No 16 s 72

307 No appeal if agreement that decision would be binding

(1) An appeal may not be brought if, before the decision of the court, all the parties to the proceeding agree in writing that the decision will be binding on them.

(2) This section overrides **section 306**.
Compare: 1947 No 16 s 73

308 Security for appeal

(1) An appellant under **section 306** may be required under the High Court Rules to give the Registrar of the High Court security for costs.

(2) **Subsection (1)** does not apply if the appellant has been granted legal aid for the proceeding under the Legal Services Act 2011.

(3) If security for costs is not given within the time required by the High Court Rules, the appeal is abandoned.
Compare: 1947 No 16 s 74

309 Appeals to be by way of rehearing

Appeals must be by way of rehearing.
Compare: 1947 No 16 s 75

310 Powers of High Court on appeal

(1) The High Court may, after hearing an appeal,—
- (a) make any decision it thinks should have been made:
- (b) direct the District Court—
  - (i) to rehear the proceeding; or
  - (ii) to consider, whether for the first time or again, any matters the High Court directs; or
  - (iii) to enter judgment for a party to the proceeding the High Court directs:
- (c) make any further or other orders the High Court thinks fit:
- (d) make an order as to costs.

(2) The High Court must state its reasons for giving a direction under **subsection (1)(b)**.

(3) The High Court may give the District Court any direction it thinks fit relating to—
- (a) rehearing the proceeding; or
- (b) considering and determining any particular matter.

(4) The High Court may act under **subsection (1)** in respect of the whole decision even though the appeal is against only part of it.

(5) Even though an interlocutory decision made in a proceeding has not been appealed against, the High Court may—

(a) act under **subsection (1)**; and

(b) set the interlocutory decision aside; and

(c) if it sets the interlocutory decision aside, make in its place any interlocutory decision or decisions the District Court could have made.

(6) The powers under this section may be exercised in favour of a respondent or party to the proceeding even though the respondent or party did not appeal against the decision.

Compare: 1947 No 16 s 76

311 Repayment of judgment amount and interest

(1) This subsection applies if—

(a) a party to a proceeding in the District Court (**A**) has, in accordance with a judgment or an order of the court, paid an amount to another party to the proceeding (**B**); and

(b) on appeal, the effect of the High Court's determination is that some or all of the amount did not need to be paid.

(2) The High Court—

(a) may order B to repay to A some or all of the amount paid by A; and

(b) may also order B to pay to A interest at a rate not greater than the prescribed rate on the amount ordered to be repaid.

Compare: 1947 No 16 s 77

312 Enforcement proceedings

For the purposes of enforcement proceedings, a judgment or an order of the High Court under **section 310(1)(a) or (b)** or under **section 311(2)** must be treated as if it were a judgment or order of the District Court in which the decision appealed against was made.

Compare: 1947 No 16 s 78

Subpart 10—Enforcement of judgments

Enforcement proceedings

313 Types of enforcement proceeding

The types of enforcement proceeding in the court are—

(a) a proceeding to enforce a judgment or an order for the payment of money (*see* **section 315**):

(b) a proceeding to enforce a judgment or an order in the nature of an injunction (*see* **section 316**):

(c) a proceeding to enforce a discovery order made under **section 287 or 288** (*see* **section 317**):

(d) a proceeding to enforce a judgment or an order for the recovery of land (*see* **section 318**):

(e) a proceeding to enforce a judgment or an order for the delivery of specific chattels (*see* **section 319**).

314 Judgment may be enforced in any District Court

(1) A judgment or an order of the District Court or of a District Court Judge may be enforced in any court comprising the District Court in its general division and need not be enforced in the court in which the judgment was entered or the order made.

(2) Two or more proceedings for the enforcement of a judgment or an order may be taken concurrently, but the judgment creditor is not entitled to recover a greater amount than the amount owing under the judgment or order and the costs and fees of any proceeding for enforcement.

(3) Enforcement proceedings may be taken concurrently in accordance with **subsection (2)** in more than 1 court comprising the District Court in its general division.

Compare: 1947 No 16, ss 79(6), 79A

315 Judgment or order for payment of money

Any judgment or order of any court or of any Judge for the payment of an amount of money may be enforced in the District Court by any 1 or more of the following proceedings:

(a) execution against the goods and chattels of the judgment debtor under a warrant to seize property:

(b) garnishee proceedings for the attachment of money due to the judgment debtor:

(c) proceedings for a charging order in respect of any property held by the judgment debtor and specified in **section 366(2)**:

(d) proceedings for an attachment order against the salary or wages of the judgment debtor.

Compare: 1947 No 16 s 79(1)

316 Judgment or order in nature of injunction, etc

(1) This section—

(a) applies to a judgment or an order in the nature of an injunction; and

(b) applies to a judgment or an order within the competence of the court ~~which~~ that, if it were given or made in the High Court, could be enforced in the High Court by a writ of arrest; but

(c) does not apply to an order for the recovery of land.

(2) A judgment or an order to which this section applies may be enforced, by order or warrant of a Judge, by detention for a term not exceeding 3 months.

Compare: 1947 No 16 s 79(2)

317 Discovery order

An order of the court made under **section 287** (which relates to pre-commencement discovery) or **section 288** (which relates to discovery against a non-party) may be enforced, by order or warrant of a Judge,—

(a) by detention for a term not exceeding 3 months; or

(b) by a fine not exceeding $1,000.

Compare: 1947 No 16 s 79(2A)

318 Judgment or order for recovery of land

A judgment or an order for the recovery of land may be enforced under a warrant for the recovery of land.

Compare: 1947 No 16 s 79(3)

319 Judgment or order for delivery of specific chattels

A judgment or an order for the delivery of specific chattels may be enforced, by order of a Judge,—

(a) under a warrant for the recovery of chattels; or

(b) by detention for a term not exceeding 3 months; or
(c) by a fine not exceeding $1,000.

Compare: 1947 No 16 s 79(4)

Time when enforcement proceeding may commence

320 Time when enforcement proceeding may commence: general rule

(1) Except as provided in **section 321**, proceedings to enforce a judgment or an order may not be commenced unless—
(a) at least 48 hours have expired after the judgment was entered or the order was made; or
(b) a Judge grants leave.

(2) However, if a judgment or an order may be appealed against without the leave of the court, a Judge may—
(a) order a stay of any proceedings to enforce the judgment or order; or
(b) order that an attachment order to enforce the judgment or order not take effect until after the time allowed for giving notice of an appeal has expired.

Compare: 1947 No 16 s 79(5A), (5B)

321 Exception to general rule: attachment orders

(1) An attachment order to enforce a judgment or an order for the payment of money may be made, and proceedings for such an attachment order may be commenced, at any time after the judgment is entered or the order is made.

(2) An attachment order may be made, and proceedings for such an attachment order may be commenced, immediately after a judgment or an order for the payment of money is filed if,—
(a) in the case of a money order (as defined in section 19(1A) of the Disputes Tribunals Act 1988 or, as the case may be, section 78(2AB) of the Residential Tenancies Act 1986),—
(i) the money order records that the parties have agreed to enforce the payment of money specified in the money order by way of an attachment order made under this **Part**; and

(ii) section 19(1B) of the Disputes Tribunals Act 1988 or, as the case may be, section 78(2AC) of the Residential Tenancies Act 1986 is complied with; or

(b) in the case of a judgment or an order made by a court,—

(i) the judgment or order records that the parties have agreed to enforce the payment of money specified in the judgment or order by way of an attachment order made under this **Part**; and

(ii) **subsection (3)** is complied with.

(3) ~~This subsection~~ **Subsection (2)** is complied with if—

(a) the judgment or order was given or made at or following a hearing at which both parties were present; and

(b) the party ordered to pay money consented to the payment of the money being enforced by way of an attachment order; and

(c) both parties agreed on the terms of the attachment order, including the details specified in **section 338**; and

(d) the judgment or order includes the details specified in **section 338**.

(4) Nothing in **subsection (3)(c)** allows the parties to agree on a net amount to be paid for an earnings period that would otherwise derogate from **section 339(3)**.

(5) For the purposes of **subsection (3)**, **hearing** includes a judicial settlement conference held under the rules.

Compare: 1947 No 16 s 79(5), (5C)–(5F)

Restrictions on enforcement proceeding

322 ~~No enforcement without leave~~ Restriction on enforcement of judgment more than 6 years old

(1) A judgment or an order of the court that is more than 6 years old must not be enforced unless—

(a) a Judge grants leave; or

(b) there has been a payment into court ~~by the party liable for payment~~ or to the judgment creditor by the judgment debtor within the period of 12 months immediately before the issue of the enforcement proceeding.

(2) For the purposes of **subsection (1)**, a judgment that is an arbitral award entered as a judgment is more than 6 years old if 6 years have elapsed since the date on which the award became enforceable by action in New Zealand.

(3) A Judge may grant leave on an application without notice.

Compare: 1947 No 16 s 80

323 No enforcement of order for payment by instalments without default

(1) An order for the payment of an amount of money by instalments must not be enforced unless there has occurred a default in the payment of an instalment according to the order.

(2) If there is a default, an enforcement proceeding or successive enforcement proceedings may be taken for the whole of the amount owing, including any unpaid costs, unless the court on the application of the liable party orders otherwise.

Compare: 1947 No 16 s 81

324 Proceeding on cross-judgment

(1) This section applies if there are cross-judgments between the parties.

(2) An enforcement proceeding can be taken only by the party who has obtained judgment for the larger amount, and then only for so much of the larger amount that remains owing after deducting the smaller amount (the **remainder**).

~~(3) Satisfaction must be entered for the remainder as well as satisfaction for the smaller amount, and, if both amounts are equal, satisfaction must entered for both.~~

Compare: 1947 No 16 s 82

Stay of enforcement proceeding

325 Stay of enforcement proceeding for inability to pay

(1) A Judge may stay an enforcement proceeding against a party if satisfied that the party is unable from any cause to pay any amount that is recoverable against that party (whether by way of meeting the claim or counterclaim in the proceedings or by way of costs or otherwise) or any instalment of that amount.

(2) The Judge may stay the enforcement proceeding for the period and on the terms that the Judge thinks fit, and may renew the stay from time to time until the liable party is able to pay.
Compare: 1947 No 16 s 83

326 Stay of proceeding on appeal

A notice of appeal operates as a stay of proceedings under the decision appealed from only if—

(a) a Judge orders that the proceedings are stayed; or

(b) the appellant has deposited with the Registrar the amount of the judgment or order under appeal and costs pending determination of the appeal; or

(c) the appellant has given security to the satisfaction of the Registrar for the amount of the judgment or order and costs.

Compare: 1947 No 16 s 84

Information about judgment debtor's means

327 Filing of financial statement

(1) In this **Part**, **financial statement** means a statement, in a form approved by the chief executive, of a judgment debtor's—

(a) assets and liabilities; and

(b) income and expenditure for the preceding 52 weeks.

(2) A financial statement may be completed by the judgment creditor or the judgment debtor.

(3) If the financial statement is completed by the judgment creditor, the statement must include details of the source of the information contained in the statement and the date to which the information relates.

(4) A completed financial statement may be filed in the court at any time after a judgment or an order for the payment of money is entered or made.

(5) The party who files a completed financial statement must serve a copy of the statement on the other party.
Compare: 1947 No 16 s 84A

328 Notice to complete financial statement

(1) If a judgment creditor serves a notice to complete a financial statement on the judgment debtor, the judgment debtor must, within 10 working days after the date of service,—

(a) complete a financial statement; and

(b) return it to the judgment creditor.

(2) The notice to complete a financial statement must be—

(a) in a form approved by the chief executive; and

(b) accompanied by 2 copies of the approved form for a financial statement (1 for the judgment debtor to complete and return, the other for the judgment debtor's use).

Compare: 1947 No 16 s 84B

329 Court to request information about judgment debtor's means

(1) If a judgment creditor makes an application in a form approved by the chief executive, the court must request the judgment debtor to provide the court with information about the judgment debtor's means for satisfying the judgment debt.

(2) The request may be made by any means of communication that the court considers appropriate.

(3) The information may be provided at any place and using any means of communication that the court considers appropriate, and the court may request the person providing the information to verify it on oath.

~~(4) The jurisdiction of the court under this section may be exercised by the Registrar.~~

Compare: 1947 No 16 s 84C

330 Court may order hearing if information about judgment debtor's means not provided, etc

(1) This section applies if—

(a) no information about the judgment debtor's means for satisfying the judgment debt is provided to the court following a request under **section 329**; or

(b) the court wishes to obtain information about the judgment debtor's means for satisfying the judgment debt

in addition to information provided under **section 329** before exercising its powers under **section 335**; or

(c) a person providing information to the court under **section 329** refuses to verify it on oath.

(2) The court may issue a summons, in a form approved by the chief executive, requiring the judgment debtor or, if the judgment debtor is a body corporate, an officer of the judgment debtor to attend a hearing ~~(a **financial assessment hearing**)~~ and be questioned by the court about the judgment debtor's means for satisfying the judgment debt.

(3) If the court issues a summons, the court may also—

(a) order any of the judgment debtor's books or other documents to be produced at the hearing:

(b) order that the hearing be held at a place other than in a court:

(c) impose such other terms and conditions as the court thinks proper in respect of the hearing.

(4) The summons must be served on the judgment debtor by a person referred to in **section 390(3)(a)** and, at the same time as the summons is served, the judgment debtor must be notified of the court's power to cancel the hearing in the circumstances referred to in **subsection (5)**.

(4A) The hearing must not be held until at least 3 working days or any shorter period agreed by the judgment debtor has passed after the date on which the summons was served.

(5) The court may cancel a hearing if, before the date of the hearing,—

(a) such information about the judgment debtor's means for satisfying the judgment debt is provided that, in the opinion of the court, it is unnecessary for the hearing to take place; and

(b) if the court so requests, the person providing the information verifies it on oath.

(6) If a hearing takes place,—

(a) the judgment debtor or, if the judgment debtor is a body corporate, an officer of the judgment debtor must appear in person:

(b) the court may require the judgment debtor or officer and any witness to take an oath before giving evidence:

(c) the judgment debtor may be represented by a lawyer who may question the judgment debtor or officer and be heard on the matter of the judgment debtor's means for satisfying the judgment debt:

(d) the judgment debtor or officer may be questioned by the court:

(e) any witness may be questioned by or on behalf of the judgment debtor or by the court.

(7) A hearing may from time to time be adjourned by the court to a time and place to be appointed.

Compare: 1947 No 16 s 84D

331 Application for financial assessment hearing

(1) This section applies if a judgment creditor applies, in a form approved by the chief executive, for a hearing (a **financial assessment hearing**) for the judgment debtor or, if the judgment debtor is a body corporate, an officer of the judgment debtor to be questioned about the judgment debtor's means for satisfying the judgment debt.

(2) The court must issue a summons, in a form approved by the chief executive, requiring the judgment debtor or an officer of the judgment debtor to attend the hearing.

(3) The court may also—

(a) order any of the judgment debtor's books or other documents to be produced at the hearing:

(b) order that the hearing be held at a place other than in a court:

(c) impose such other terms and conditions as the court thinks proper in respect of the hearing.

(4) The summons must be served on the judgment debtor by a person referred to in **section 390(3)(b)**.

(5) The court may cancel a hearing at the request of the judgment creditor.

Compare: 1947 No 16 s 84E

332 Power to arrest judgment debtor or officer

(1) This section applies if a summons issued under **section 330 or 331** cannot be served on a judgment debtor.

(2) This section also applies if—

(a) a summons was served on a judgment debtor at least 3 working days or any shorter period agreed under **section 330(4A) or 333(1)** before the date of the hearing to which the summons relates; and

(b) the judgment debtor fails to appear in person at the hearing or at any subsequent adjournment of the hearing.

(3) This section applies in relation to a judgment debtor that is a body corporate if—

(a) a summons was served on an officer of the judgment debtor (the **relevant officer**) at least 3 working days, or any shorter period agreed under **section 330(4A) or 333(1)**, before the date of the hearing to which the summons relates; and

(b) an officer of the judgment debtor (whether or not the relevant officer) fails to appear in person at the hearing or at any subsequent adjournment of the hearing.

(4) The summons must not be enforced by detention, but a Judge or Registrar may issue a warrant to arrest the judgment debtor or the relevant officer.

(5) If the judgment debtor or the relevant officer is arrested under this section, the following provisions apply:

(a) the judgment debtor or the relevant officer must be brought before a Judge or Registrar as soon as possible for the purpose of commencing or continuing the hearing:

(b) the judgment debtor or relevant officer is bailable as of right:

(c) section 168 of the Criminal Procedure Act 2011 and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if an appearance at the hearing before a Judge or Registrar constituted part of the hearing of a charge, and as if references in those provisions to a court included references to a Judge or Registrar:

(d) if the judgment debtor or relevant officer cannot practicably be brought before a Judge or Registrar, then a

Police employee or bailiff may grant bail to the judgment debtor or relevant officer, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.

(6) In this section, **summons** means—

(a) a summons to attend a hearing under **section ~~333~~ 330**:

(b) a summons to attend a financial assessment hearing.

Compare: 1947 No 16 s 84EA

333 Financial assessment hearing

(1) A financial assessment hearing must not be held until at least 3 working days, or any shorter period agreed by the judgment debtor, has passed after the date on which the summons was served.

(2) The judgment debtor or, if the judgment debtor is a body corporate, an officer of the judgment debtor must appear in person at a financial assessment hearing.

(3) The court may require the judgment debtor or the officer and any witness to take an oath before giving evidence.

(4) The judgment debtor may be represented at the hearing by a lawyer, who may question the judgment debtor or the officer and be heard on the matter of the judgment debtor's means for satisfying the judgment debt.

(5) The judgment debtor or the officer may be questioned by or on behalf of the judgment creditor or by the court.

(6) Any witness may be questioned by or on behalf of the judgment creditor or the judgment debtor or by the court.

(7) A financial assessment hearing may from time to time be adjourned by the court to a time and place to be appointed.

Compare: 1947 No 16 s 84EB

334 Registrar may exercise jurisdiction of court under sections ~~330, 331, and 333~~ 329, 330, 331, 333, 335, 337, and 343

The exercise of the jurisdiction of the court under **sections ~~330, 331, and 333~~ 329, 330, 331, 333, 335, 337, and 343** may be exercised by a Registrar.

335 Orders by court following filing of financial statement, etc

(1) This section applies if, after a judgment or an order for the payment of money has been entered or made,—

(a) a financial statement is filed in the court; or

(b) the judgment debtor provides the court with information about the judgment debtor's means for satisfying the judgment debt under **section 329**; or

(c) a hearing under **section 330** or a financial assessment hearing takes place.

(2) The court may do any 1 or more of the following:

(a) direct that 1 or more of the proceedings referred to in **section ~~313~~ 315** be commenced or continued (as the case may be), and direct that any steps be taken in such proceedings, and, for any such purpose, issue any warrant or summons or make any order:

~~(b) make an attachment order under **section 337**:~~

(c) order that the money owing under the judgment or order be paid in instalments:

(d) stay any proceedings to enforce the judgment or order:

(e) vary any order made under this **Part** relating to the enforcement of the judgment or order.

(3) The court may do any of the things referred to in **subsection (2)** even though—

(a) no application is made for the direction, order, stay, or variation in question; or

(b) an application is made for a different direction, order, stay, or variation; or

(c) no hearing takes place; or

(d) in a case where a financial statement is filed in the court by 1 party, the other party has not had the opportunity to make representations to the court about the financial statement.

~~(4) The jurisdiction of the court under this section may be exercised by the Registrar.~~

Compare: 1947 No 16 s 84EC

Attachment orders

336 Interpretation

In **sections 337 to 343**, unless the context otherwise requires,—

earnings period has the meaning given by **section 338(b)**

employer, in relation to a judgment debtor, includes—

(a) a person by whom a retiring allowance or pension or other payment of a similar nature is payable to the judgment debtor:

(b) the Accident Compensation Corporation in respect of weekly compensation payable to the judgment debtor under the Accident Compensation Act 2001:

(c) the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 in respect of a benefit payable to the judgment debtor

salary or wages includes—

(a) a retiring allowance or other payment of a similar nature:

(b) a bonus or an incentive payment:

(c) a payment of commission:

(d) a payment in consideration of work performed under a contract for services:

(e) all payments of weekly compensation made under the Accident Compensation Act 2001 by the Accident Compensation Corporation:

(f) a benefit within the meaning of the Social Security Act 1964.

Compare: 1947 No 16 s 84F

337 Attachment orders

(1) The court may make an attachment order to enforce a judgment or an order for the payment of money—

(a) in the circumstances referred to in **section 321(2)**; or

(b) in the circumstances referred to in **section 335(1)**; or

(c) on the application of the judgment creditor or judgment debtor.

(2) If an application is made under **subsection (1)(c)**,—

(a) the party who makes the application must serve a copy of it on the other party; and

(b) the court may make the attachment order even though the other party has not had the opportunity to make representations to the court about the application.

(3) If an attachment order is made, it must be served on the employer to whom the order relates, the judgment creditor, and the judgment debtor.

(4) Except as otherwise ordered by the court, an attachment order takes effect when a copy of the order is served on the employer.

~~(5) The jurisdiction of the court under this section may be exercised by the Registrar.~~

Compare: 1947 No 16 s 84G

338 Content of attachment orders

An attachment order must be in a form approved by the chief executive and must specify—

(a) the employer to whom the order relates; and

(b) whether deductions are to be made every week, fortnight, or month, or by reference to some other period (the **earnings period**); and

(c) the amount or percentage to be deducted from the judgment debtor's salary or wages for the earnings period; and

(d) the amount or percentage below which the net amount paid to the judgment debtor for the earnings period must not fall; and

(e) the name and ~~address~~ the address or bank account number of the person to whom the amounts deducted are to be paid; and

(f) that the order is to remain in force until the judgment debt has been paid in full or, if the order is to remain in force for a fixed period, that period.

Compare: 1947 No 16 s 84H

339 Effect of attachment orders

(1) An attachment order must direct that the money due and payable under the judgment or order being enforced is, by way of such amounts, and payable by reference to such earn-

ings period, as are specified in the attachment order, a charge on any salary or wages that from time to time while the attachment order is in force become due and payable by the employer to the judgment debtor.

(2) The charge created—

(a) accrues from earnings period to earnings period, and on the day of the earnings period specified in the order; and

(b) attaches to all salary or wages that become due by the employer to the judgment debtor at any time while the attachment order is in force, whether or not the contract of employment in respect of which the salary or wages so become due existed at the date of the attachment order; and

(c) is subject to any charge created by an attachment order under the Family Proceedings Act 1980 or the Summary Proceedings Act 1957 and to any item referred to in **subsection (5)(a) and (b)** (whether created, issued, or authorised before or after the date on which the order referred to in **subsection (1)** was made); but

(d) prevails over and has priority to any assignment or charge created by the judgment debtor (whether before or after the making of the attachment order under this **Part**) and so that the attachment order has the same effect as if no such assignment or charge had been made or created by the judgment debtor.

(3) Despite **subsections (1) and (2)**, no attachment order is to operate so that, when its effect is considered either alone or with the effect of any item referred to in **subsection (5)**, the net amount paid to a judgment debtor for an earnings period is below the protected earnings rate for the earnings period and, where necessary, the amount to be deducted from the judgment debtor's salary or wages for the earnings period is treated as being reduced or cancelled accordingly.

(4) Nothing in section 84 of the Social Security Act 1964 applies to an attachment order.

(5) The items are—

(a) a deduction notice under the Child Support Act 1991, the Family Proceedings Act 1980, the Social Security Act 1964, or the Tax Administration Act 1994:

(b) a deduction for the recovery of payments under section 86 of the Social Security Act 1964:

(c) a charge created by an attachment order under this or any other Act.

(6) In this section,—

net earnings, in relation to an earnings period, means the balance left after deducting from the judgment debtor's salary or wages for the earnings period the amount of tax required to be withheld or deducted in accordance with the PAYE rules of the Income Tax Act 2007 if the salary or wages were the only salary or wages paid to the judgment debtor by the employer for the earnings period

protected earnings rate, in relation to an earnings period, means the higher of—

(a) 60% of net earnings for the earnings period; and

(b) the amount or percentage referred to in **section 338(d)**.

Compare: 1947 No 16 s 84I

340 Liability of employer

(1) Subject to **section 339(3)**, as long as an attachment order remains in force, the employer to whom it relates must from time to time, whenever any ~~money becomes~~ salary and wages are due and payable by the employer to the judgment debtor ~~by way of salary or wages~~,—

(a) deduct from that money a sufficient amount to satisfy the charge on the money so far as the same has accrued before the day on which the salary or wages becomes due and payable; and

(b) not later than the 20th day of the next month after the month in which the deduction is made, pay the amount so deducted to the person specified in the attachment order.

(2) All amounts so deducted and paid must be taken to have been paid by the employer in satisfaction of the salary or wages payable by the employer to the judgment debtor.

(3) All amounts so deducted must be taken to have been paid by the judgment debtor in satisfaction of the judgment debtor's liability to pay the judgment debt.

(4) If the judgment debtor gives notice of resignation, or is given notice of dismissal, from the employment of the employer to whom the attachment order relates, the employer must, within 5 working days after receiving or giving the notice, notify the person referred to in **section 338(e)** of the date of the last day of the judgment debtor's employment.

(5) If the employer to whom the attachment order relates ceases to pay salary or wages to the judgment debtor for a reason other than the judgment debtor's dismissal or resignation from the employment of the employer, the employer must, within 5 working days after ceasing to pay the salary or wages, notify the person referred to in **section 338(e)** of the day on which the salary or wages ceased to be paid.

(6) Where the employer makes default in the payment of any money in satisfaction of a charge created by an attachment order, that money becomes a debt due by the employer to the judgment creditor and may be recovered by the judgment creditor by action in any court of competent jurisdiction.

(7) An employer who fails without reasonable excuse to comply with **subsection (1)(a) or (b)** commits an offence and is liable on conviction to a fine not exceeding $1,000.

Compare: 1947 No 16 s 84J

341 Wrongful treatment of employee

An employer commits an offence, and is liable on conviction to a fine not exceeding $1,000, who dismisses any employee or alters any employee's position in the employer's business or undertaking to the employee's prejudice by reason of—

(a) the employee having been ordered to pay money owing under 1 or more judgments or orders imposed by the District Court or the High Court for the payment of an amount of money; or

(b) an attachment order having been served on the employer; or

(c) the employer becoming aware that an attachment order is being made or has been made in respect of the employee.

Compare: 1947 No 16 s 84K

342 Extent to which attachment orders bind the Crown

(1) In this section,—

employing department means—

(a) a department of State in which a person is employed; and

(b) in relation to a person to whom any retiring allowance or pension or other payment of a similar nature is payable—

(i) out of the Government Superannuation Fund, the Government Superannuation Fund Authority:

(ii) out of the National Provident Fund, the Board of Trustees of the National Provident Fund

servant of the Crown—

(a) means a person in the service of Her Majesty in respect of the Government of New Zealand:

(b) includes a person in temporary or casual service:

(c) does not include a person in honorary service:

(d) includes any person serving in any of the New Zealand Armed Forces:

(e) includes a person to whom any retiring allowance or pension or other payment of a similar nature is payable out of the Government Superannuation Fund or the National Provident Fund.

(2) **Sections 337 to 341 and section 343** bind the Crown to the extent of and subject to **subsections (3) and (4)**.

(3) If the judgment debtor is a servant of the Crown, an attachment order may be made against the Crown as employer.

(4) Where the judgment debtor is entitled to a benefit within the meaning of the Social Security Act 1964, an attachment order may be made against the chief executive of the department for the time being responsible for the administration of that Act, and—

(a) service of the order must be effected—

(i) by leaving a copy of the order at, or sending a copy of the order by post to, either the district office of the department nearest to the judgment debtor's place of residence or an address notified by the chief executive of the department to the chief executive; or

(ii) by sending the order by email or other electronic means to an email address notified by the chief executive of the department to the chief executive of the Ministry of Justice; and

(b) **section 341** does not apply.

Compare: 1947 No 16 s 84L

343 Variation, suspension, and discharge of attachment orders

(1) A judgment creditor or judgment debtor may apply to the court at any time for an attachment order to be varied, suspended, or discharged.

(2) The party who makes an application under **subsection (1)** must serve a copy of the application on the other party.

(3) If an application under **subsection (1)** is made, the court may vary, suspend, or discharge the attachment order if good cause is shown to the satisfaction of the court why the order should be so varied, suspended, or discharged.

(4) The court may vary, suspend, or discharge the attachment order even though the other party has not had the opportunity to make representations to the court about the application.

(5) If an attachment order is varied, suspended, or discharged under **subsection (3)**, notice of the variation, suspension, or discharge must be served on the employer to whom the order relates, the judgment creditor, and the judgment debtor.

(6) A variation, suspension, or discharge of an attachment order takes effect when the notice referred to in **subsection (5)** is served on the employer, unless (in the case of a discharge) **subsection (7)** applies.

(7) An attachment order may also be discharged at any time by written notice (which may be given by email or other electronic means) from the judgment creditor to the employer to whom the order relates, and the discharge takes effect when the notice is given to the employer.

~~(8) The jurisdiction of the court under this section may be exercised by the Registrar.~~

Compare: 1947 No 16 s 84M

344 Review of Registrar's decision

(1) Any person affected by any order or direction made by a Registrar under **section ~~330, 331, 333, 335, 337, or 343~~332, 335, 337, 343, or 347** may apply to a Judge for a review of the order or direction.

(2) However, a judgment creditor may apply for a review of an order or a direction made by a Registrar under **section 335 or section 337** only if a financial assessment hearing that was attended by the judgment creditor or his or her representative has taken place.

(3) An application under **subsection (1)** must be made within 15 working days of the making of the order or direction, or within the further time that the Judge, on application, may allow.

(4) On receiving an application under **subsection (1)**, the Judge may order that the order or direction under review is suspended pending the review.

(5) On review, the Judge may confirm, rescind, or vary the Registrar's order or direction, and the order or direction has effect, or ceases to have effect, as the case may be.

Compare: 1947 No 16 s 84N

Contempt of enforcement proceedings

345 Contempt of enforcement proceedings

(1) No order may be made under **subsection (3)** unless any of the circumstances described in **subsection (2)** apply and the court is satisfied beyond reasonable doubt that—

- (a) the judgment debtor has sufficient means to pay the judgment debt but refuses to do so; and
- (b) all other methods of enforcing the judgment have been considered or tried and are inappropriate or have been unsuccessful.

(2) The circumstances referred to in **subsection (1)** are as follows:

- (a) a financial statement has been filed in court:
- (b) the court has been provided with information about the judgment debtor's means for satisfying the judgment debt under **section 329**:

(c) a hearing under **section 330** or a financial assessment hearing has taken place.

(3) The court may, on the application of a judgment creditor, order the judgment debtor to do community work, not exceeding 200 hours, as the court thinks fit.

(4) Alternatively, the court may impose any of the orders referred to in **section 315, section 318, or section 319** or do any of the things referred to in **section 335(2)** instead of or in addition to ordering the judgment debtor to do community work under **subsection (3)**.

(5) An order made under **subsection (3)** has effect as if it were a sentence of community work, and the relevant provisions of Part 2 of the Sentencing Act 2002, with any necessary modifications, apply accordingly.

(6) If the District Court, acting under this section, orders a judgment debtor to do community work, the judgment debtor has the same right of appeal to the High Court against the order as the judgment debtor would have had if the judgment debtor had been convicted and sentenced by the District Court before a Judge alone in relation to a charge.

(7) An order made under **subsection (3)** does not operate to extinguish or affect the liability of the judgment debtor to pay the judgment debt.

(8) A proceeding under this section may from time to time be adjourned by the court to a time and place to be appointed.

Compare: 1947 No 16 s 84O

346 Process for dealing with application for contempt of enforcement proceedings

(1) On receipt of an application under **section 345(3)**, the Registrar must—

(a) appoint a time and place for the hearing of the application if satisfied, on the basis of information provided with the application, that the judgment debtor has sufficient means to pay the judgment debt but refuses to do so; or

(b) if not so satisfied, refer the application to a Judge.

(2) On the referral of an application under **subsection (1)(b)**, the Judge must—
  (a) deal with the application on the papers; and
  (b) consider whether he or she is satisfied, on the basis of information provided with the application, that the judgment debtor has sufficient means to pay the judgment debt but refuses to do so.

(3) If the Judge is so satisfied, he or she must direct the Registrar to appoint a time and place for the hearing of the application.

(4) If the Judge is not so satisfied, he or she must decline the application.

(5) If the Registrar appoints a time and place for the hearing of the application under **subsection (1)(a) or (3)**, the judgment debtor must be served with a copy of the application, and a notice of the time and place so appointed, by a person referred to in **section 390(3)(c)**.

(6) The Registrar must notify the judgment creditor of the time and place so appointed.

(7) If the application is declined under **subsection (4)**, the Registrar must notify the judgment creditor that the application has been declined.

Compare: 1947 No 16 s 84OA

347 Warrant to arrest may be issued if judgment debtor cannot be served or fails to appear at hearing

(1) If a copy of the application cannot be served on the judgment debtor under **section 346(5)**, or if the judgment debtor fails to appear at the hearing of the application (or the resumption of the hearing, in the case of an adjourned hearing), a Judge or Registrar may issue a warrant to arrest the judgment debtor and bring the judgment debtor before the court as soon as possible.

(2) A warrant under **subsection (1)** ceases to have effect if the judgment debtor pays, or causes to be paid, the amount due under the judgment debt.

(3) If a judgment debtor is arrested under a warrant issued under **subsection (1)**, the following provisions apply:
  (a) the judgment debtor must be brought before a Judge or, if a Judge is not available, the Registrar:

(b) if the judgment debtor is brought before the Registrar, the Registrar must appoint a time and place for the judgment debtor to appear before a Judge for the purpose of commencing or continuing the hearing:

(c) the judgment debtor is bailable as of right:

(d) section 168 of the Criminal Procedure Act 2011 and Parts 1 to 3 of the Bail Act 2000 apply, with any modifications that may be necessary, as if the hearing of the application referred to in **subsection (1)** were the hearing of a charge:

(e) if the judgment debtor cannot practicably be brought immediately before a Judge or Registrar, then any Police employee or any bailiff may grant bail to the judgment debtor, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.

Compare: 1947 No 16 s 84OB

348 Judgment debtor doing community work is discharged on payment

(1) If a judgment debtor doing community work under an order made under **section 345** pays, or causes to be paid, the amount due in respect of the judgment debt,—

(a) the Registrar must notify a probation officer that the payment has been made; and

(b) the probation officer, on notification from the Registrar, must notify the judgment debtor that he or she is no longer required to report for community work.

(2) **Subsection (1)(b)** does not apply if there is some other reason for the judgment debtor being required to report for community work.

Compare: 1947 No 16 s 84Q

Warrants to seize property

349 Warrant to seize property

(1) A warrant to seize property is a warrant that requires the bailiff or constable to whom it is directed to seize and sell ~~personal~~

~~property~~ goods of a judgment debtor for payment of the following debts:

(a) the judgment debt, or so much of it that remains unpaid; and

(b) the costs of executing the warrant; and

(c) the costs of previous proceedings (if any) for enforcement of the judgment debt.

(2) By the warrant, the bailiff or constable is authorised to seize—

(a) the ~~personal property~~ goods of the judgment debtor, except—

(i) his or her tools of trade to a value not exceeding ~~$500~~ $5,000; and

(ii) his or her necessary household furniture and effects, including clothing for the judgment debtor and his or her family, to a value not exceeding ~~$2,000~~ $10,000; and

(b) money, bank notes, and securities (that is, bills of exchange, promissory notes, bonds, specialties, or other securities for money).

(3) The warrant must be in a form approved by the chief executive.

(4) The Governor-General may from time to time, by Order in Council, amend **subsection (2)** by increasing any amount specified in that subsection.

Compare: 1947 No 16 s 85

350 Immobilisation of motor vehicles

(1) A bailiff or constable executing a warrant to seize property may, while seizing, or instead of seizing, a motor vehicle, immobilise the vehicle by attaching to it any device designed for the purpose, pending payment of the unpaid amount.

(2) A vehicle may not be immobilised under **subsection (1)** unless, at the time of its immobilisation, the vehicle—

(a) is on private property; or

(b) is in a public place and the bailiff or constable is satisfied that immobilising the vehicle will not cause undue inconvenience to other persons.

(3) If a motor vehicle is immobilised under this section, a bailiff or constable—

(a) may seize the vehicle at any time:
(b) on the direction of the Registrar, must seize the vehicle.

(4) A person commits an offence if, without reasonable excuse, the person—
(a) tampers with, removes, or attempts to remove a device attached to a motor vehicle under **subsection (1)**; or
(b) removes, or attempts to remove,—
(i) a motor vehicle to which a device is, or has been, attached under **subsection (1)**; or
(ii) any part of that vehicle; or
(iii) any other property from that vehicle.

(5) A person who commits an offence under **subsection (4)** is liable on conviction to a fine not exceeding $1,000.
Compare: 1947 No 16 s 85A

351 Disposal of securities seized

(1) The bailiff who seizes securities referred to in **section 349(2)(b)** must deliver them to the Registrar.

(2) The Registrar must hold the securities for the benefit of the ~~execution~~ enforcement creditor as security for the ~~execution~~ enforcement debtor's debts under **section 349(1)**.

(3) The execution creditor may sue for the money secured by or payable under the securities on their due date and may sue—
(a) in the name of the ~~execution~~ enforcement debtor; or
(b) in the name of any person in whose name the person against whom execution has issued might have sued.
Compare: 1947 No 16 s 86

352 Offence of rescuing goods seized

(1) A person who rescues or attempts to rescue goods seized in execution under a warrant to seize property commits an offence and is liable on conviction to a fine not exceeding $300.

(2) A bailiff or a constable may arrest that person with or without a warrant.
Compare: 1947 No 16 s 87

Sale of goods seized under warrant to seize property

353 Period to elapse before sale

(1) Goods seized under a warrant to seize property must not be sold before 5 working days after the date of seizure have elapsed.

(2) **Subsection (1)** does not apply if—

(a) the goods are perishable; or

(b) the owner of the goods makes a written request (which may be by email or other electronic means) for earlier sale.

Compare: 1947 No 16 s 88

354 Goods must be sold by public auction unless court orders otherwise

(1) Goods seized under a warrant to seize property must be sold by public auction unless a court orders otherwise.

(2) A bailiff who is authorised to execute a warrant to seize property may, if he or she first obtains the Registrar's written approval (which may be given by email or other electronic means), sell goods seized under the warrant without the necessity of taking out an auctioneer's licence.

(3) **Subsection (2)** overrides ~~the Auctioneers Act 1928 or any other~~ any enactment or rule of law to the contrary.

(4) The jurisdiction of a court under this section may be exercised by the Registrar.

Compare: 1947 No 16 s 89

355 Purchaser from bailiff acquires goods free of all ownership and other proprietary interests

(1) A person who purchases from a bailiff goods seized under a warrant to seize property, and who purchases without ~~any claim to the goods having been made to the bailiff~~ a claimant to the goods having paid a deposit or provided security in accordance with **section 360(2)**, acquires good title to the goods free of all ownership interests and other proprietary interests held in them before the sale.

(2) This section is subject to—

(a) sections 108 to 112 of the Insolvency Act 2006; and
(b) sections 251 and 252 of the Companies Act 1993.

Compare: 1947 No 16 s 90(1)(a), (3)

356 Immunity of bailiff who sells without notice of claim to goods

(1) Except under **subsection (2)**, no person has any claim against a bailiff or any person acting under a bailiff's authority (an **agent**) for the sale of goods seized under a warrant to seize property or for the payment of the proceeds of the sale.

(2) The immunity of a bailiff or agent set out in **subsection (1)** does not apply if the bailiff or agent, before the goods were sold or the proceeds paid, knew or ought reasonably to have known that the goods were not the property of the judgment debtor.

(3) Nothing in this section affects the right of a person who proves that the person had an ownership or other proprietary interest in the goods at the time of sale to a remedy against any person other than the bailiff.

Compare: 1947 No 16 s 90(1)(b), (2)

357 Goods seized under warrant to seize property that are subject to security interest

(1) This section applies if a third person claims a security interest in goods that have been seized under a warrant to seize property.

(2) The court may order the sale of all or part of the goods on terms as to the application of the proceeds of sale to all or part of the secured debt or otherwise as the court thinks fit.

(3) The purchaser of goods sold under this section obtains good title to the property free of all ownership interests and other proprietary interests held in the property before that sale.

Compare: 1947 No 16 s 91

358 Personal property securities register to be checked

(1) If ~~property is~~ goods are seized under a warrant to seize property, the Registrar must, on the next working day after the ~~property is~~ goods are seized, check whether a financing state-

ment that relates to the ~~property~~ goods has been registered on the personal property securities register kept under the Personal Property Securities Act 1999.

(2) If a financing statement has been registered, the bailiff must promptly notify the person named as the secured party in the financing statement of the following:

(a) that the court may, under **section 354**, sell the ~~property~~ goods after the expiration of 5 working days from the date of seizure if the judgment debt remains unpaid and no claim has been made in respect of the ~~property~~ goods by a person other than the judgment debtor:

(b) the rights that may be available to the person under **sections 360 and 361**.

Compare: 1947 No 16 s 91A

Claims in respect of goods seized under warrant to seize property

359 Priority of High Court and District Court executions

(1) This section determines priority as between a sale order issued from the High Court and a warrant to seize property against the goods of the same person issued under this **Part**.

(2) The right to the goods seized must be determined according to which of the following occurred first:

(a) delivery to the Sheriff of the sale order to be executed:

(b) delivery to the Registrar of the application for the warrant to seize property.

(3) On request by the bailiff to whom the warrant to seize property is directed, the Sheriff must inform the bailiff in a notice, authenticated by the Sheriff, of the precise time of delivery of the ~~writ or warrant~~ sale order.

(4) On request by ~~any Sheriff's officer~~ the Sheriff, the bailiff to whom the warrant to seize property is directed must produce the warrant to any Sheriff's officer.

(5) The time recorded in a notice given under **subsection (3)**, and the time endorsed on the warrant as the time of application to the Registrar, are conclusive for any Sheriff or bailiff to act in reliance on the priority so determined.

Compare: 1947 No 16 s 92

360 Sale of goods subject to third party claim

(1) Unless a claimant to or in respect of goods seized under a warrant to seize property complies with **subsection (2)**, the bailiff must—

(a) sell the goods as if no claim had been made; and

(b) pay the proceeds into court pending a decision on the claim.

(2) To halt the sale of the goods under **subsection (1)**, a claimant may—

(a) deposit with the bailiff—

(i) the amount of value of the goods; or

(ii) the amount that the bailiff may charge for the custody of the goods pending a decision on the claim; or

(b) give the bailiff ~~in the prescribed manner~~, in the manner prescribed in the rules, security for the value of the goods.

(3) The bailiff must pay the amount of the value of the goods deposited under **subsection (2)(a)(i)** into court pending a decision on the claim.

(4) If the amount of the value of the goods is disputed, that amount must be fixed by appraisement in the prescribed manner.

(5) The purchaser of goods sold under this section obtains good title to the property free of all ownership interests and other proprietary interests held in the property before that sale.

Compare: 1947 No 16 s 93

361 Third party claim process

(1) If a claim is made under **section 360** to or in respect of goods seized under a warrant to seize property, the bailiff may obtain a summons from the Registrar requiring the execution creditor and the claimant to appear before the court.

(2) If a claim is made under **section 360** in respect of property that is the subject of a financing statement registered on the personal property securities register kept under the Personal Property Securities Act 1999, the bailiff must obtain from the Registrar a summons requiring the claimant to appear before the court.

(3) The bailiff may obtain the summons, either before or after the return of the warrant, and whether or not a proceeding has been brought against the bailiff in respect of the seizure.

(4) On the issue of the summons, any proceeding brought in the District Court or other court in respect of the claim of any damage arising out of the execution of the warrant is stayed.

(5) On hearing the summons, the court must—

(a) decide the claim; and

(b) decide any claim by 1 or more of the parties against the bailiff for damages arising out of the execution of the warrant; and

(c) make an order as to costs as the court thinks fit.

Compare: 1947 No 16 s 94

Garnishee proceedings

362 Garnishee proceedings

A person (**A**) who has obtained a judgment or an order for the payment of money may take a proceeding (a **garnishee proceeding**) under the rules to obtain—

(a) the payment to A of a debt owing or accruing to the judgment debtor from another person (**B**) and the costs of bringing the garnishee proceeding; or

(b) the payment to A of so much of the debt as will meet the amount of the judgment or order and the costs of bringing the garnishee proceeding.

Compare: 1947 No 16 s 96(1)

363 Money held on deposit or in account

For the purposes of a garnishee proceeding, a debt owing or accruing to a judgment debtor (**D**) and, subject to **section 364** and the rules, accordingly attachable, includes money that—

(a) stands to D's credit with any person (including a bank); and

(b) is held on deposit with that person or held by that person in a current or other account (including a deposit account).

Compare: 1947 No 16 s 96(2)

364 Application of section 363

(1) **Section 363** applies whether or not any of the following conditions of the deposit or account has been satisfied:

(a) a condition that notice must be given before any money can be withdrawn; or

(b) a condition that a demand for payment must be made; or

(c) a condition that a personal application must be made before any money can be withdrawn; or

(d) subject to **subsection (2)**, any other condition.

(2) **Section 363** does not apply if it is a condition of the deposit or account that a deposit book, deposit receipt, or other similar document must be produced before any money can be withdrawn and that condition has not been satisfied.

365 Liability to deliver or disclose deposit book, deposit receipt, etc

The rules may—

(a) require a person who is in possession of a deposit book, deposit receipt, or other similar document relating to a deposit or an account of a judgment debtor to deliver it to the court:

(b) require a person who knows the location of a deposit book, deposit receipt, or other similar document relating to a deposit or an account of a judgment debtor to disclose it to the court.

Compare: 1947 No 16 s 96(3)

Charging orders

366 Charging orders

(1) A person who has obtained a judgment or an order for the payment of money may apply to the court in accordance with the rules for a charging order.

(2) The court may make a charging order in respect of any of the following property:

(a) any estate, right, title, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land held by the judgment debtor in the judgment debtor's own name:

(b) any right or interest of the judgment debtor in any partnership:

(c) any shares held by the judgment debtor in any company incorporated in New Zealand or having an office in New Zealand in which transfers of shares may be registered:

(d) any estate, right, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land, or in any money, shares, or other chattels held under or by virtue of any express or implied trust for the judgment debtor.

(3) A charging order must specify the property charged with sufficient detail to identify it.

Compare: 1947 No 16 s 96A(1), (1A), (3)

367 Variation or discharge of charging order

(1) The court may vary or discharge a charging order at any time.

(2) An order discharging or varying a charging order may be registered or recorded in the same manner as the charging order.

(3) There must be no charge for the registration or recording of the discharge or variation of a charging order.

Compare: 1947 No 16 s 96A(4), (7)

368 Effect of charging order

A charging order has the following effect (subject, in the case of a charging order over a registered estate or interest in any land, to registration under **section 370**):

(a) it charges the estate, right, title, or interest of the judgment debtor in the property described in the order with payment of the amount for which the judgment creditor has obtained judgment:

(b) except with the leave of the court or in accordance with the rules, it restrains the person served with it—

(i) from making, or concurring in making or permitting any conveyance, transfer, assignment, or disposition of any estate, right, or interest, or of any share in a partnership or company, of the judgment debtor; or

(ii) from paying over any income, interest, dividends, bonus, profits, or other money due or accruing due to the judgment debtor.

Compare: 1947 No 16 s 96A(2)(a), (b)

369 Charging order in respect of land expires after 2 years

(1) A charging order in respect of land expires after 2 years from the date of the order.

(2) However, the order expires earlier than 2 years from the date of the order if, within that 2-year period, an instrument of transfer or a deed of conveyance or assignment is registered following the execution of a sale order.

(3) Despite **subsection (1)**, the court may extend the period for which a charging order is in force beyond the 2-year period.

Compare: 1947 No 16 s 96A(2)(d)

370 Registration of charging order over land or mining privilege

(1) This section applies when a charging order is made in respect of the registered estate or interest of the judgment debtor in land.

(2) The order may, on receipt of a duplicate or copy of the order under the seal of the court,—

(a) be registered by the Registrar-General of Land, if the title to the land is under the Land Transfer Act 1952; or

(b) be registered by the appropriate Registrar of Deeds, if the title to the land is not under the Land Transfer Act 1952; or

(c) be recorded, in the case of a mining privilege under the Mining Act 1971, by the Registrar-General of Land.

(3) There must be no charge for the registration or recording of the charging order.

Compare: 1947 No 16 s 96A(5), (6)

371 Removal of charging order into High Court

(1) A charging order may be removed into the High Court in accordance with **section 302**, which applies with any necessary modification.

(2) A charging order removed into the High Court is enforceable in the same way as if it had been issued by that court.
Compare: 1947 No 16 s 96A(2)(c), (8)

Order or warrant to detain in prison

372 Issue and execution of order or warrant to detain in prison

(1) This section applies when, under this **Part** or the rules, the court makes an order or issues a warrant for the detention of a person in prison.

(2) The order or warrant must be directed to a bailiff or a constable.

(3) On the making of the order or the issue of the warrant,—
(a) the person to whom it is directed is authorised to detain the person to be detained; and
(b) it is the duty of every constable to assist in the detention of that person.
Compare: 1947 No 16 s 97(1)

373 Form of warrant to detain
A warrant to detain a person in prison must contain the information required by the rules.

374 Person to be detained in prison

(1) A person detained in prison under an order made or a warrant issued under **section 372** must be detained in a prison established under, or deemed to be established under, the Corrections Act 2004.

(2) The prison manager of the prison specified in the order or warrant must detain the person in question in the prison until that person is lawfully discharged.
Compare: 1947 No 16 s 97(2)

375 Power of judge to order discharge

(1) A Judge may at any time order the discharge of a person detained under **section 374** if the Judge considers for any reason that the person should be discharged.

(2) The order may be made on the terms, if any, that the Judge thinks fit, including a term that the person may be further detained if the terms of discharge are not complied with.
Compare: 1947 No 16 s 98

Warrant for recovery of land

376 Warrant for recovery of land

(1) The court may issue a warrant (a **warrant for the recovery of land**) authorising the bailiff or the constable to whom it is directed to give possession of the land to the person named in the warrant.

(2) In executing the warrant, the bailiff or constable—
- (a) may take possession of the land; and
- (b) may use force if necessary in obtaining entry; and
- (c) may be assisted by others as the bailiff or constable thinks necessary; and
- (d) may give possession to the person named in the warrant; but
- (e) is not required to remove goods or chattels from premises on the land.

Compare: 1947 No 16 s 99

377 Time for executing warrant of recovery of land

A bailiff or a constable to whom a warrant for the recovery of land is directed may execute the warrant only at a time that is between 9 am and 4 pm ~~on a working day~~.
Compare: 1947 No 16 s 99(1)

378 Effect of possession given under warrant for recovery of land

(1) The person to whom possession is given in accordance with a warrant for the recovery of land holds the land free of any tenancy.

(2) The person (**A**) from whom possession is taken in accordance with a warrant for the recovery of land, and any person claiming through A, is not entitled to any relief for so long as the

~~issue~~ ~~of~~ ~~the~~ ~~warrant~~ judgment or order under which the warrant was issued has not been reversed.

Compare: 1947 No 16 s 99(1)

379 Irregularity or informality in execution of warrant

(1) A person (**A**) who applies for the issue of a warrant for the recovery of land and is lawfully entitled to possession of the land at the date of issue of the warrant is not liable as a trespasser by reason only of any irregularity or informality in the execution of the warrant.

(2) A person aggrieved by an irregularity or informality in the execution of a warrant for the recovery of land may sue A only for special damage, and, if the special damage proved is not more than ~~$5~~ $30, is not entitled to costs, unless the court orders otherwise.

(3) In **subsection (1)**, **A** includes A's agent or other person acting on A's behalf.

Compare: 1947 No 16 s 100

380 Person illegally obtaining warrant liable for trespass

A person who applies for the issue of a warrant for the recovery of land and is not lawfully entitled to the possession of the land at the date of issue of the warrant commits a trespass against the tenant or occupier of the land, even without execution of the warrant.

Compare: 1947 No 16 s 101(1)

381 Immunity of Judge, etc, when warrant illegally obtained

No proceeding or action may be taken against any of the following persons by reason only that a warrant for the recovery of land was issued on the application of a person who at the date of issue was not lawfully entitled to possession of the land:

(a) the Judge who ~~issued~~ ~~the~~ ~~warrant~~ made the order for the issue of the warrant:

(ab) the Registrar who issued the warrant:

(b) the bailiff or the constable who executed the warrant.

Compare: 1947 No 16 s 101(3)

382 Execution of warrant may be stayed on giving bond

(1) The execution of a warrant for the recovery of land must be stayed if the tenant or occupier of the land (**A**) gives a bond to the landlord in accordance with this section.

(2) The bond must—
- (a) bind A to bring a proceeding for trespass against the person to whom the warrant was issued (**B**); and
- (b) bind A to bring the proceeding without delay; and
- (c) bind A to pay all the costs of the proceeding if unsuccessful; and
- (d) secure an amount fixed by the court that the court considers reasonable, having regard to the value of the land and the probable costs of the proceeding; and
- (e) be executed by 2 sureties approved by the court; and
- (f) be approved by the court; and
- (g) be prepared at A's expense.

(3) For the purposes of **subsection (2)(c)**, the proceeding is unsuccessful if—
- (a) judgment is given for B; or
- (b) A discontinues the proceeding; or
- (c) A fails to prosecute the proceeding without delay.

(4) B may sue on the bond if—
- (a) the bond is forfeited; or
- (b) the judge in A's proceeding for trespass does not endorse on the record that the conditions of the bond have been fulfilled.

(5) In a proceeding by B suing on the bond, the court may order such relief to the parties to the bond as it thinks just, and the order has the nature and effect of voiding the bond.

Compare: 1947 No 16 s 102(1), (3)

383 Effect of judgment for tenant or occupier in proceeding for trespass

If a tenant or an occupier of land (**A**) obtains judgment in a proceeding for trespass when the execution of a warrant for the recovery of land has been stayed,—
- (a) the judgment supersedes the warrant; and
- (b) A is entitled to costs.

Compare: 1947 No 16 s 102(2)

Recovery of chattels

384 Warrant for recovery of chattels

(1) The court may issue a warrant for the recovery of chattels on the application of a person who has obtained a judgment or an order for the recovery of specific chattels.

(2) The warrant must require the bailiff or the constable to whom it is directed to demand and seize the chattels referred to in the warrant, if they can be found by the bailiff or constable, and to deliver them to the person named in the warrant.

Compare: 1947 No 16 s 103

385 Further proceedings if chattels not recovered

If chattels are not recovered on the execution of a warrant for their recovery,—

(a) the court may make an order or issue a warrant for detention in prison of the person named for a period not exceeding 1 month; and

(b) whether or not it makes an order or issues a warrant under **paragraph (a)**, the court may issue a warrant to seize property to the value of the chattels as assessed as the court directs.

Compare: 1947 No 16 s 104

Liability and protection of officers

386 Neglect by bailiffs

(1) On the ~~complaint~~ application of a person aggrieved, the court may order a bailiff to pay that person damages if the opportunity of executing a warrant to seize property is lost through the fault of the bailiff or a person acting under his or her authority.

(2) The damages ordered must not exceed the value of the chattels as assessed as the court directs.

Compare: 1947 No 16 s 105

387 Liability of court officer for irregularity or informality in execution of warrant

(1) An officer of the court who executes a warrant, and the person who applied for the issue of the warrant, are not liable as a trespasser by reason only of any irregularity or informality in—

(a) any proceeding on which the validity of the warrant depends; or
(b) the form of the warrant; or
(c) the execution of the warrant.

(2) A person aggrieved by an irregularity or informality in the execution of the warrant may sue only for special damage, and, if the special damage proved is not more than $30, is not entitled to costs, unless the court orders otherwise.

Compare: 1947 No 16 s 106

388 Liability of bailiff acting under warrant

(1) No proceeding may be brought against a bailiff for anything done under a warrant issued under this **Part**, unless the conditions set out in **subsection (2)** are satisfied.

(2) The conditions are as follows:
(a) the intended plaintiff (**P**), or P's lawyer or agent, has delivered to the office of the court a notice to produce the warrant authenticated by P or P's lawyer or agent; and
(b) the bailiff has failed to comply with the notice within 5 working days after the notice is received.

(3) If a proceeding is commenced against a bailiff where the conditions in **subsection (2)** have been satisfied,—
(a) judgment must be given for the bailiff if the warrant is produced or proved at trial, despite any defect of jurisdiction or other irregularity in the warrant; but
(b) the officer who issued the warrant may be joined as a defendant in the proceeding.

(4) If the plaintiff obtains judgment against the officer joined under **subsection (3)(b),** the plaintiff may recover from that officer the costs that the plaintiff is liable to pay to the bailiff.

Compare: 1947 No 16 s 107

389 Warrant is proof of court's authority

In any proceeding against a person for anything done under this **Part**, the production of the warrant of the court is sufficient proof of the authority of the court previous to the issue of the warrant.

Compare: 1947 No 16 s 108

Service

390 Service of documents under ~~sections 327 to 361~~ this Part

(1) If a person is required to serve a document under **~~sections 327 to 361~~** this **Part**, the requirement may be met in any of the following ways:

(a) by—

(i) delivering the document to the recipient or bringing it to the recipient's notice if the recipient refuses to accept it; or

(ii) leaving the document for the recipient at the recipient's place of residence with another person who appears to be of or over the age of 14 years; or

(iii) leaving the document for the recipient at the recipient's place of business or place of work with another person:

(b) by sending the document to the recipient by prepaid post addressed to the recipient's last known place of residence or business:

(c) if the recipient has a known electronic address, by sending it to the recipient at that address in electronic form:

(d) by compliance with a means of service prescribed by regulations made under this Act.

(2) For recipients to whom **section 391** applies, **subsection (1)** is modified to the extent provided by that section.

(3) Despite **subsection (1)**, the following documents must be served in accordance with **subsection (1)(a)** or, where applicable, **section 391(2)(b) or (4)**:

(a) a summons issued under **section 330**, which must be served by an authorised process server:

(b) a summons issued under **section 331**, which must be served by or on behalf of the judgment creditor or by an authorised process server:

(c) a copy of the application and notice of the time and place appointed for the hearing of the application that is required to be served on the judgment debtor under **section 346(5)**, which must be served by or on behalf of the judgment creditor or by an authorised process server.

(4) This section is subject to **section 342(4)(a)**.

(5) In this section and in **section 391**,—

authorised process server means a person who is—

(a) a constable; or

(b) a Police employee authorised by the Commissioner of Police to serve documents under this **Part**; or

(c) an officer of the court; or

(d) a person or a member of a class of persons authorised by a Judge or Registrar to serve documents either generally or in respect of a particular case or class of case; or

(e) an officer or employee of a corporation that is authorised by the Secretary for Justice to serve documents under this **Part**:

(f) an individual who is authorised by the Secretary for Justice to serve documents under this **Part**

officer, in relation to a body corporate or Crown organisation, includes a person involved in the decision making or management of the body or organisation

recipient means the person required to be served

serve, in relation to a document,—

(a) includes giving the document to a person; but

(b) does not include filing the document in a court under rules of court.

Compare: 1947 No 16 s 108A

391 Service provisions modified in special cases

(1) If a document is served in accordance with this section, it is, for the purposes of **section 390**, taken to be served on the recipient concerned.

(2) If the recipient is a body corporate or a Crown organisation, a document may be served,—

(a) if it may be served under **section 390(1)(b) or (c)**, by being sent, in accordance with either of those paragraphs, to the body corporate or Crown organisation for the attention of an officer or employee of that body or organisation:

(b) by being delivered to an officer or employee of the body corporate or Crown organisation at its head office, prin-

cipal place of business, or registered office, or by bringing it to the officer's notice or the employee's notice if that person refuses to accept it.

(3) If a lawyer has authenticated a memorandum stating that the lawyer is authorised to accept service of a document on behalf of the recipient, the document may be served on the lawyer in any way authorised by **section 390**.

(4) In addition to the ways of service authorised by **section 390**, a document may be served by delivering or sending it to, or by leaving it with,—

(a) in the case of a recipient who lives or works on board a vessel (including a vessel belonging to the Royal New Zealand Navy), the person on board who is apparently in charge of the vessel:

(b) in the case of a recipient who is a member of the New Zealand Armed Forces, the officer apparently in command of the unit or detachment to which the recipient belongs:

(c) in the case of a recipient who is a prisoner, the manager or other officer apparently in charge of the prison.

Compare: 1947 No 16 s 108B

Subpart 11—Miscellaneous and general provisions

Warrants to arrest

392 Arrest of debtor about to leave New Zealand

(1) A Judge may, on the application of a plaintiff in a proceeding to recover an amount of money, issue a warrant to arrest a defendant in the proceeding and bring the defendant before the court.

~~(2) A warrant may not be issued unless the Judge is satisfied there are reasonable grounds to suspect that the defendant is about to leave New Zealand with the intention of evading payment of the amount claimed.~~

(2) A Judge must not issue a warrant unless the Judge is satisfied that—

(a) the plaintiff has a good cause of action against the defendant; and

(b) there are reasonable grounds to suspect that the defendant is about to leave New Zealand with the intention of evading payment of the amount claimed.

(3) The Judge may require the applicant for the warrant to deposit in the court an amount not exceeding ~~$2,000~~ $10,000 or to give surety for that amount for the purposes of payment of any compensation that may be ordered to be paid to the defendant under **subsection (9)**.

(4) The defendant must be brought before the court unless the amount claimed in the proceeding is paid to the plaintiff before the warrant is executed.

(5) The Judge may—

(a) release the defendant; or

(b) release the defendant on bail on any terms and conditions the Judge thinks fit and with a surety of an amount the Judge thinks fit (but not exceeding the amount claimed in the proceeding plus costs) or without a surety; or

(c) remand the defendant in custody.

(6) A defendant who is remanded in custody must be brought before the court within 4 days after the date of the order.

(7) A defendant arrested under the warrant may either give to the enforcing officer, or deposit in the court, the amount shown on the warrant as the amount of the claim plus costs. If the defendant does so, he or she must be released and the amount must be retained and,—

(a) if judgment in the proceeding is given in favour of the plaintiff, paid or applied in accordance with the judgment; or

(b) if judgment in the proceeding is given in favour of the defendant, paid to the defendant.

(8) The Judge may,—

(a) if the defendant consents, hear and determine the proceeding at the time the defendant is brought before the court; or

(b) fix a date and time for the hearing of the proceeding.

(9) If judgment is given for the defendant, the Judge may order that the defendant be paid compensation for his or her arrest,

or arrest and detention, of an amount not exceeding ~~$2,000~~ $10,000.

(10) Where a Judge is not available through absence, illness, or any other cause, a Registrar may exercise any of the powers conferred on a Judge by **subsections (1) to (3) and (5)(a) and (b)**.

Compare: 1947 No 16 ss 109, 110

Interpleader

393 Interpleader

If a person expects to be sued by 2 or more persons making adverse claims to the same subject matter, that person may, if the subject matter does not exceed $350,000 in value, apply for relief by way of interpleader in accordance with the rules.

Compare: 1947 No 16 s 111

Contempt

394 Contempt of court

(1) This section applies if any person—

(a) wilfully insults a judicial officer, or any Registrar, or any officer of the court, or any juror, or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or

(b) wilfully interrupts the proceedings of a court or otherwise misbehaves in court; or

(c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings.

(2) If this section applies,—

(a) any constable or officer of the court, with or without the assistance of any other person, may, by order of a judicial officer, take the person into custody and detain him or her until the rising of the court; and

(b) the judicial officer may, if he or she thinks fit, sentence the person to—

(i) imprisonment for a period not exceeding 3 months; or

(ii) a fine not exceeding $1,000 for each offence.

(3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

Compare: 2011 No 81 s 365

Restriction on commencing or continuing civil proceeding

395 Judge may make order restricting commencement or continuation of civil proceeding

(1) A Judge may make an order (a **section 395** order) restricting a person from commencing or continuing civil proceedings.

(2) The order may have—

(a) a limited effect (a **limited order**); or

(b) an extended effect (an **extended order**).

(3) A limited order restrains a party from continuing or commencing civil proceedings on a particular matter in the District Court.

(4) An extended order restrains a party from continuing or commencing civil proceedings on a particular or related matter in the District Court.

(5) Nothing in this section limits the court's inherent power to control its own proceedings.

396 Ground for making section 395 order

(1) A Judge may make a limited order if, in ~~more than 1 proceeding~~ at least 2 proceedings about the same matter in the court, the Judge considers that 2 or more of the proceedings are or were totally without merit.

(2) A Judge may make an extended order if, in ~~more than 1 proceeding~~ at least 2 proceedings about any matter ~~considered by~~ in the court, the Judge considers that 2 or more of the proceedings are or were totally without merit.

(3) In determining whether the proceedings are or were totally without merit, the Judge may take into account the nature of any other interlocutory application, appeal, or criminal prosecution involving the party to be restrained, but is not limited to those considerations.

(4) The proceedings concerned must be proceedings instituted or conducted by the party to be restrained, whether against the same person or different persons.

(5) For the purposes of this section and **sections 397 and 398**, an appeal in a civil proceeding must be treated as part of that proceeding and not as a distinct proceeding.

397 Terms of section 395 order

(1) A **section 395** order may restrain a party from instituting any civil proceeding (whether generally or against any particular person or persons) of any type specified in the order without first obtaining the leave of the court.

(2) A **section 395** order, whether limited or extended, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or she is satisfied that there are exceptional circumstances justifying the longer period.

398 Procedure and appeals relating to section 395 orders

(1) A party to any proceeding may apply for a limited order or an extended order.

(1A) A Judge may make a **section 395** order either on an application under **subsection (1)** or on his or her own initiative.

(2) An application for leave to continue or issue a civil proceeding by a party subject to a **section 395** order may be made without notice, but the court may direct that the application for leave be served on any specified person.

(3) A **section 395** order does not prevent or affect the commencement of a private criminal prosecution in any case.

(4) The party against whom a **section 395** order is made in the District Court may appeal against the order to the High Court.

(5) The appellant in an appeal under **subsection (4)** or the applicant for the **section 395** order concerned may, with the leave of the High Court, appeal against the determination of that appeal to the Court of Appeal.

(6) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be.

Recusal

399 Recusal guidelines

The Chief District Court Judge must, in consultation with the Chief Justice, develop and publish guidelines to assist Judges to decide if they should recuse themselves from a proceeding.

Reserved judgments and Internet publication of final written judgments

400 Information regarding reserved judgments

The Chief District Court Judge must, in consultation with the Chief Justice,—

(a) publish information about the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and

(b) periodically publish information about the number of judgments of the court that he or she considers is outstanding beyond a reasonable time for delivery; and

(c) publish information ~~about any other information~~ about reserved judgments that he or she considers is useful.

401 Final written judgments to be published on Internet

(1) Every final written judgment of the court (excluding the Family Court, the Youth Court, and the Disputes Tribunal) must be published on the Internet as soon as practicable unless there is good reason not to publish.

(2) Good reason not to publish a judgment or part of it includes the following:

(a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:

(b) the judgment falls into a category of judgments that are of limited public value:

(c) taking into account the presumption in **subsection (1)** in favour of publication, a Judge nevertheless determines that the judgment or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.

(3) In this section, **final written judgment** means a written decision that determines or substantially determines the outcome of any proceedings and is either—

(a) a written reserved judgment; or

(b) an oral judgment transcribed by an official transcription service.

Financial provisions

402 Payment and recovery of fees

(1) All fees, except fees for keeping possession of, or for storing, removing, and selling, goods under a warrant, must be paid in the first instance by the party on whose behalf proceedings are taken.

(2) **Subsection (1)** applies despite the fact that the party on whose behalf any proceedings are taken is the Crown or an agency of the Crown.

(3) A Registrar or Deputy Registrar may not do anything for which a fee is payable unless the amount of the fee prescribed or determined under any enactment is paid or unless payment of the fee amount is waived or postponed.

(4) An act for which a fee is payable is not invalid simply because the fee has not been paid.

(5) If a person defaults on the payment of a fee,—

(a) the court may order that payment be enforced; and

(b) if the court makes the order, payment is enforced in the same way as the enforcement of a debt for which judgment has been given.

(6) A schedule of the fees payable under this **Part** must be available to, and easily accessible by, members of the public.

Compare: 1947 No 16 s 113

403 Enforcement of fines

If a person defaults on the payment of a fine,—

(a) the court may order that payment be enforced; and

(b) if the court makes the order, payment is enforced in the same way as enforcement under the Criminal Procedure Act 2011 of payment of a fine imposed on conviction.

Compare: 1947 No 16 s 114

404 Fines and fees must be paid to Crown Bank Account

(1) A fee or fine payable in respect of proceedings in courts or before Judges must be paid into a Crown Bank Account or a Departmental Bank Account in accordance with the Public Finance Act 1989.

(2) However, a fee for keeping possession of, or for storing, removing, and selling, goods under a warrant must be paid by the person entitled to the goods to the bailiff or person executing the warrant.

Compare: 1947 No 16 s 115

Miscellaneous

405 Prescribed documents to be sealed

(1) A document that is of a prescribed class and that is issued by the court must be sealed with the seal of the court.

(2) A document sealed under **subsection (1)** must be received in evidence in New Zealand without further proof.

Compare: 1947 No 16 s 116

406 Proof of service of documents

(1) If any summons or any other document is served by a person who is authorised to do so under this **Part**, the rules, or any other enactment, the service may be proved—

(a) by an endorsement on a copy of the document or, where applicable, on a printout that records an electronic document, showing the fact, date, time, and mode of service; or

(b) in any other manner prescribed by the rules.

(2) An endorsement under **subsection (1)(a)** must be signed by the person who served the summons or document.

(3) A person who wilfully endorses a false statement on a copy of a summons or document commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding $2,000, or to both.

(4) If a document is served by sending it by prepaid post, then, unless the contrary is shown, the document is served when it would have been delivered in the ordinary course of post,

and in proving service it is sufficient to prove that the letter concerned was properly addressed and posted.

(5) If a document is served by sending it in electronic form, then, unless the contrary is shown, the document is served at the time the electronic communication first enters an information system that is outside the control of the document's originator, and in proving service it is sufficient to prove that the document concerned was properly addressed and sent.

(6) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

Compare: 1947 No 16 s 116A

407 Subtenant to give notice of proceeding to subtenant's immediate landlord

(1) A subtenant (**S**) must immediately advise S's immediate landlord (**L**) if S is given a notice of a proceeding under this **Part** for the recovery of land occupied by S.

(2) If S fails to advise L as required by **subsection (1)**, S is liable to forfeit to L an amount equal to not more than 3 years' improved or rack rent of the land.

(3) L may recover the amount liable to be forfeited in any court having jurisdiction in respect of a claim for the amount.

Compare: 1947 No 16 s 117

408 No privilege for lawyers

A lawyer has no privilege that exempts him or her from the jurisdiction of the court.

Compare: 1947 No 16 s 120

409 Constable must assist court or Judge

(1) Every constable must assist the court or a Judge in the execution of duties imposed upon the court or a Judge by this **Part** or any other Act.

(2) A constable who neglects or refuses to assist as required by **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding $1,000.

Compare: 1947 No 16 s 121(1)

410 Keeper of prison must detain prisoner on request of bailiff or constable

(1) The keeper of a prison or lock-up must detain a prisoner or defendant at the request of the bailiff or constable to whom a warrant for the arrest or for the detention in prison of the prisoner or defendant has been issued.

(2) The keeper must detain the prisoner or defendant until that person may, by the most convenient means of transport, be taken to the place of imprisonment or be brought before the court that is named in the warrant.

Compare: 1947 No 16 s 121(2)

411 Rules of practice and procedure

(1) The Governor-General may, by Order in Council, make rules regulating the practice and procedure of the court under this **Part** or any other enactment.

(2) Rules may be made only with the concurrence of the Chief District Court Judge and 2 or more members of the Rules Committee continued under **section 152 of the Judicature Modernisation Act 2013**, of whom at least 1 is a District Court Judge.

(3) The power to make rules includes the power to—

(a) alter, amend, or revoke existing rules; and

(b) revoke existing rules and replace them with new rules.

(4) Without limiting the matters on which rules may be made under **subsection (1)**, rules may be made—

(a) applying, with or without modification, provisions of the High Court Rules:

(b) prescribing the circumstances in which a proceeding may be transferred within the District Court and the procedure following transfer:

(c) prescribing the procedure following the transfer of a proceeding from the District Court to the High Court or from the High Court to the District Court:

(d) prescribing—

(i) the procedure in the District Court in relation to the removal into the High Court, under **section 274**, of a summary judgment application or any

matter arising in a summary judgment application; and

(ii) the procedure in relation to the removal into the High Court, under **section 275**, of a question of law:

(e) prescribing the procedure following the removal of a judgment of the District Court to the High Court or a judgment of the High Court to the District Court:

(f) providing for discovery and inspection of documents before the commencement of a proceeding:

(g) providing for discovery by, and the inspection of the documents of, a person who is not a party to a proceeding:

(h) requiring a party to a proceeding to obtain the leave of the District Court or the High Court to appeal against or to seek review of a decision given or an order made in a proceeding:

(i) providing for the examination of a judgment debtor:

(j) prescribing, according to the nature of the proceeding and the amount involved in the proceeding, the costs and charges to be paid by 1 party or the parties in the proceeding to the other party or parties, in addition to the moneys paid out of pocket:

(k) providing for custody of District Court records:

(l) providing for the receipt of and accounting for money paid into or from the District Court:

(m) authorising a Registrar to hear and determine any proceeding under this **Part** (but not if the proceeding is a proceeding under any of **sections 256 to 261**):

(n) authorising a Registrar to hear and determine any proceeding under this **Part**, including a proceeding under any of **sections 256 to 261**, in which a defendant fails to appear at the hearing or admits the claim:

(o) prescribing the circumstances in which the powers, privileges, and duties of a Deputy Registrar are not the same as those of a Registrar:

(p) prescribing the circumstances in which the court may appoint an expert witness, and prescribing—

(i) the procedure to be followed after the expert witness is appointed; and
(ii) the rights of the parties in relation to the evidence given by the expert witness; and
(iii) the manner in which the expert witness is to be remunerated:

(q) prescribing the circumstances in which an order under **section 287 or 288** can be made:

(r) providing for documents to be sent in electronic form under **section 390(1)(c)**, including (without limitation) provisions for the retention of records that evidence the fact that, and the date and time when, those documents were sent to electronic addresses:

(s) regulating and providing for any other matters that were regulated or provided for by the District Courts Rules in force immediately before this **Part** comes into force:

(t) providing for any other matters in respect of which rules are contemplated or specially authorised by this **Part**:

(u) providing for any matter for which rules may be necessary or desirable.

Compare: 1947 No 16 s 122

412 Application of rules

The court may, on application by a party to a civil proceeding or on its own initiative,—

(a) determine a question in the proceeding about the application of the rules or the High Court Rules; and

(b) give any direction it thinks fit in the interests of justice.

Compare: 1947 No 16 s 70A

413 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(aa) prescribing the applications, matters, and proceedings for which fees are payable under this **Part**:

(a) prescribing fees payable in respect of applications, matters, and proceedings, including fees for the filing and service of documents, in the District Court ~~pursuant to~~ under this **Part** or other Acts:

(b) prescribing fees payable to persons giving evidence and to referees and arbitrators in proceedings in the District Court ~~pursuant to~~ under this **Part** or other Acts:

(c) in relation to a service performed by a Registrar or Deputy Registrar under this **Part** and specified in regulations made under **paragraph (d)**, authorising a Registrar or Deputy Registrar to charge a reasonable fee calculated on the actual expense incurred in performing the service:

(d) specifying the services (other than services for which a fee is already prescribed under this **Part**) performed by a Registrar or Deputy Registrar under this **Part** for which that person may charge a fee:

(e) making provision in relation to the postponement, under the regulations, of the payment of any fee, which provision may (without limitation) include provision—

(i) for the recovery of the fee after the expiry of the period of postponement; and

(ii) for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable:

(f) providing for the manner in which an application for the exercise of a power specified in **section 414(1) or 415(1)** is to be made, including, without limitation, requiring the application to be in a form approved for the purpose by the chief executive:

(g) providing for the refund of fees paid for a review of a decision of a Registrar or Deputy Registrar, if the decision is overturned in its entirety by a Judge:

(h) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this **Part** and for its due administration.

Compare: 1947 No 16 s 123

414 Regulations providing for waiver, etc, of fees

(1) In order to promote access to justice, the Governor-General may, by Order in Council, make regulations authorising a

Registrar or Deputy Registrar to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding (including a proceeding in a Disputes Tribunal), or to refund in whole or in part a fee that has already been paid.

(2) Regulations made under **subsection (1)** must provide that a Registrar or Deputy Registrar may only exercise a power under the regulations if he or she is satisfied on the basis of prescribed criteria that—

(a) the person responsible for payment of the fee is unable to pay or to absorb the fee in whole or in part; or

(b) unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued.

(3) For the purposes of **subsection (2)**, regulations may prescribe criteria—

(a) for assessing a person's ability to pay or to absorb a fee; and

(b) for identifying proceedings that concern matters of genuine public interest.

(4) No fee is payable for an application for the exercise of a power specified in **subsection (1)**.

Compare: 1947 No 16 s 123(1)(ba), (bb), (2)

415 Regulations providing for postponement of fees

(1) The Governor-General may, by Order in Council, make regulations authorising a Registrar or Deputy Registrar to postpone the payment of a fee pending the determination of—

(a) an application for the exercise of a power specified in **section 414(1)**; or

(b) an application for review under **section 417**.

(2) No fee is payable for an application for the exercise of a power specified in **subsection (1)**.

Compare: 1947 No 16 s 123(1)(bc), (2)

416 Chief executive may approve forms

(1) The chief executive may approve and issue forms that the chief executive considers necessary for the purposes of this **Part**, not being forms required to be prescribed by regulations or rules made under this **Part**.

(2) Without limiting **subsection (1)**,—

(a) more than 1 form may be approved and issued in relation to the same matter; and

(b) a form may be described by any name that the chief executive considers appropriate, even though the form relates to a matter that is described by a different name under this **Part**, so long as the form refers to the appropriate provision of this **Part**.

(3) Every document purporting to be a form approved and issued by the chief executive under and for the purposes of this **Part** is deemed to have been so approved and issued unless the chief executive otherwise certifies.

Compare: 1947 No 16 s 123AA

417 Reviews of decisions of Registrars concerning fees

(1) A person who disagrees with a decision of a Registrar or Deputy Registrar under regulations made under **section 414(1) or 415(1)** may apply to a Judge to review that decision.

(2) The application must be made within—

(a) 20 working days after the date on which the applicant is notified of the decision; or

(b) any further time that the Judge allows on application, which may be made either before or after the expiry of that period.

(3) The application may be made informally.

(4) A review is—

(a) conducted by way of rehearing of the matter in respect of which the Registrar or Deputy Registrar made the decision; and

(b) dealt with on the papers, unless the Judge directs otherwise.

(5) The Judge may confirm, modify, or reverse the decision of the Registrar or the Deputy Registrar.

(6) No fee is payable on the application.

Compare: 1947 No 16 s 123A

418 Application of Part

(1) Where under any Act any power, authority, or jurisdiction is given to a District Court Judge,—

(a) the proceedings must be conducted and determined in the court in accordance with this **Part** and the rules unless some other procedure is specially provided or required; and

(b) a Judge, in the exercise of the power, authority, or jurisdiction in question, has all the powers given under this **Part** to a Judge and to the Court.

(2) However, except as provided in **subsection (1)** or as expressly provided in this **Part** or the rules, nothing in this **Part** or the rules derogates from or affects the provisions of any other enactment that confers any power, authority, or jurisdiction on a Judge or on the court.

Compare: 1947 No 16 s 124

419 Access to court records, judicial information, or ~~M~~ ministry information

(1) Any person may have access to court records of the District Court to the extent provided by, and in accordance with, rules of court.

~~(2) The Chief District Court Judge may, at his or her absolute discretion and on any terms and conditions he or she thinks fit, allow any person to have access to any judicial information held by the court.~~

(2) Access to judicial information is not subject to any enactment that applies to the provision of, or access to, any other information.

(3) Any person may have access to any ~~M~~ ministry information to the extent provided by, and in accordance with, the Official Information Act 1982, the Privacy Act 1993, the Public Records

Act 2005, or any other enactment providing for or regulating access to the information.

(4) In this section, **court records**, **judicial information**, and ~~M~~**ministry information** respectively mean the documents and information described as such in **Schedule 5**.

~~(5) The Governor-General may from time to time, by Order in Council,—~~

~~(a) amend **Schedule 5** by adding, omitting, or amending any item or description set out in the third column (headed **Description**);~~

~~(b) replace the schedule in whole or in part for the purposes of making any amendments authorised by **paragraph (a)**.~~

419A Sharing of permitted information with other departments

(1) This section applies to permitted information specified in **Part B** of the items about the court record in **Schedule 5**, regardless of whether it is controlled by the judiciary.

(2) In response to a request from an agency for information to which this section applies, the Ministry may, by way of an approved information sharing agreement under the Privacy Act 1993, share any permitted information with the agency.

(3) The Ministry holds permitted information solely for the purpose of entering into approved information sharing agreements under the Privacy Act 1993, and that information is not otherwise subject to the Privacy Act 1993 and is not subject to the Official Information Act 1982 or the Public Records Act 2005.

(4) Nothing in this section or an approved information sharing agreement under the Privacy Act 1993 requires the Ministry to disclose any matter suppressed by or under a court order or any enactment.

(5) The Governor-General may, by Order in Council made on the recommendation of the Minister of Justice, amend or replace **Part B** of the items about the court record in **Schedule 5**.

(6) The Minister of Justice may make a recommendation under **subsection (5)** only after consultation with the Attorney-General and with the consent of the Chief Justice.

419B Requirements that Registrars disclose information

(1) If any enactment requires a Registrar to notify a registration authority of certain information about any court proceedings, that requirement is not affected by any suppression order imposed by the court.

(2) Even if the enactment provides that the court may order otherwise in any case, the requirement is not affected by any suppression order imposed by the court unless the court specifically orders otherwise in that case.

419C Judge or Registrar may waive certain fees

A Judge or Registrar may, subject to any terms or conditions that the Judge or Registrar thinks fit, waive the payment of a fee prescribed under **section 413** for accessing documents (in whole or in part) if the Judge or Registrar is satisfied that the person is unable, or should not be required, to pay the fee.

Subpart 12—Repeals, consequential amendments, and transitional provisions

420 ~~Repeals and revocations~~District Courts Act 1947 repealed

The District Courts Act 1947 (1947 No 16) is repealed and the courts constituted under section 3 of that Act are reconstituted under this **Part** as the District Court.

421 Consequential amendments

(1) The enactments specified in **Schedule 6** are consequentially amended in the manner indicated in that schedule.

(2) In any enactment, unless the context otherwise requires, and with any necessary modifications (including modification to grammar),—

(a) a reference to "the District Courts Rules 2009" or "the District Courts Rules" is to be read as a reference to "the District Courts Rules **2013**" or "the District Court rules", as the case may be:

(b) a reference to "a District Court", "any District Court", "every District Court", or "District Courts" is to be read as a reference to "the District Court", except where the words are part of the phrase "District Court Judge":

(c) a reference to "the nearest District Court" is to be read as a reference to "the nearest office of the District Court":

(d) in a heading, a reference to "**District Courts**" is to be read as a reference to "**District Court**".

(3) In any enactment, unless the context otherwise requires, and with any necessary modifications (including modification to grammar),—

(a) a reference to "a Disputes Tribunal", "any Disputes Tribunal", "every Disputes Tribunal", or "Disputes Tribunals" is to be read as a reference to "the Disputes Tribunal":

(b) a reference to "the nearest Disputes Tribunal" is to be read as a reference to "the nearest office of the Disputes Tribunal":

(c) in a heading, a reference to "**Disputes Tribunals**" is to be read as a reference to "**Disputes Tribunal**".

(4) In any enactment, unless the context otherwise requires, and with any necessary modifications (including modification to grammar),—

(a) a reference to "a Youth Court", "any Youth Court", "every Youth Court", or "Youth Courts" is to be read as a reference to "the Youth Court", except where the words are part of the phrase "Youth Court Judge":

(b) a reference to "the nearest Youth Court" is to be read as a reference to "the nearest office of the Youth Court":

(c) in a heading, a reference to "**Youth Courts**" is to be read as a reference to "**Youth Court**".

(5) In any enactment, unless the context otherwise requires, and with any necessary modifications (including modification to grammar),—

(a) a reference to "a Family Court", "any Family Court", "every Family Court", or "Family Courts" is to be read as a reference to "the Family Court":

(b) a reference to "the nearest Family Court" is to be read as a reference to "the nearest office of the Family Court":

(c) in a heading, a reference to "**Family Courts**" is to be read as a reference to "**Family Court**".

(6) As from the commencement of this section,—

(a) the Family Courts Act 1980 is called the Family Court Act 1980:

(b) every reference in any enactment and in any document to the Family Courts Act 1980 must, unless the context otherwise provides, be read as a reference to the Family Court Act 1980.

(7) As from the commencement of this section,—

(a) the Disputes Tribunals Act 1988 is called the Disputes Tribunal Act 1988:

(b) every reference in any enactment and in any document to the Disputes Tribunals Act 1988 must, unless the context otherwise provides, be read as a reference to the Disputes Tribunal Act 1988.

(8) As from the commencement of this section,—

(a) the Disputes Tribunals Amendment Act 2011 is called the Disputes Tribunal Amendment Act 2011:

(b) every reference in any enactment and in any document to the Disputes Tribunal Amendment Act 2011 must, unless the context otherwise provides, be read as a reference to the Disputes Tribunal Amendment Act 2011.

422 Transitional provisions

The transitional provisions set out in **Schedule 7** apply.

Part 3
Judicial review procedure

Preliminary provisions

423 Purpose of this Part

(1) The purpose of this **Part** is to re-enact Part 1 of the Judicature Amendment Act 1972, which sets out procedural provisions for the judicial review of—

(a) the exercise of a statutory power:

(b) the failure to exercise a statutory power:

(c) the proposed or purported exercise of a statutory power.

(2) The reorganisation in this **Part** of those provisions, and the changes made to their style and language, are not intended to alter the interpretation or effect of those provisions as they appeared in the Judicature Amendment Act 1972.

424 Interpretation

In this **Part**, unless the context otherwise requires,—

applicant means a person who has filed an application

application for judicial review and **application** mean an application for judicial review in relation to the exercise, refusal to exercise, or proposed or purported exercise by any person of a statutory power

court means the High Court of New Zealand

decision includes a determination or an order

High Court Rules means the rules set out in **Schedule 1 of the Judicature Modernisation Act 2013**, as amended from time to time

Judge means a Judge of the High Court

licence includes any permit, warrant, authorisation, registration, certificate, approval, or similar form of authority required by law

person includes a corporation sole, and also a body of persons whether incorporated or not; and, in relation to the exercise, refusal to exercise, or proposed or purported exercise by any person of a statutory power of decision, includes—

(a) the District Court:
(b) the Māori Land Court:
(c) the Māori Appellate Court

presiding officer includes—

(a) a Judge:
(b) a Registrar

statutory power has the meaning given to it by **section 425**

statutory power of decision means a power or right conferred by or under any Act, or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate, to make a decision deciding or prescribing or affecting—

(a) the rights, powers, privileges, immunities, duties, or liabilities of any person; or
(b) the eligibility of any person to receive, or to continue to receive, a benefit or licence, whether that person is legally entitled to it or not.

Compare: 1972 No 130 s 3

425 Meaning of statutory power

(1) In this **Part**, **statutory power** means a power or right to do any of the things specified in **subsection (2)** that is conferred by or under—

(a) any Act; or

(b) the constitution or other instrument of incorporation, rules, or bylaws of any body corporate.

(2) The things referred to in **subsection (1)** are—

(a) to make any regulation, rule, bylaw, or order, or to give any notice or direction that has effect as subordinate legislation; or

(b) to exercise a statutory power of decision; or

(c) to require any person to do or refrain from doing anything that, but for such requirement, the person would not be required by law to do or refrain from doing; or

(d) to do anything that would, but for such power or right, be a breach of the legal rights of any person; or

(e) to make any investigation or inquiry into the rights, powers, privileges, immunities, duties, or liabilities of any person.

Compare: 1972 No 130 s 3

426 Part binds the Crown

(1) This **Part** binds the Crown.

(2) However, in its application to the Crown, this Part must be read subject to the Crown Proceedings Act 1950.

Compare: 1972 No 130 ss 13, 14(2)

427 This Part subject to certain provisions of Employment Relations Act 2000

(1) This **Part** is subject to the provisions of the Employment Relations Act 2000 relating to the jurisdiction of the Employment Court and High Court in respect of—

(a) applications for review; or

(b) proceedings for a writ or order of, or in the nature of, mandamus, prohibition, or certiorari; or

(c) proceedings for a declaration or injunction against any body constituted by, or any person acting under, the Employment Relations Act 2000.

(2) In particular, this **Part** is subject to the following provisions of the Employment Relations Act 2000:

(aa) section 184 (which restricts review proceedings being brought in respect of any matter before the Employment Relations Authority):

(a) section 187(1)(h), (i), (j), and **(ka)** (which confers on the Employment Court exclusive jurisdiction to hear and determine certain proceedings and applications):

(ab) section 194A (which provides that review proceedings in relation to an employment relationship problem may not be brought in either the Employment Court or the High Court):

(b) section 213 (which confers on the Court of Appeal exclusive jurisdiction in relation to the review of any proceedings before the Employment Court).

Compare: 1972 No 130 s 3A

Judicial review

428 Application for judicial review

(1) An application must be commenced by filing in the High Court—

(a) a statement of claim; and

(b) a notice of proceeding.

(2) **Part 5 of the High Court Rules** applies in relation to the commencement and filing of an application as if—

(a) references to a plaintiff were references to an applicant; and

(b) references to a defendant were references to a respondent.

(3) The statement of claim need not state that any of the following relief is sought:

(a) mandamus:

(b) prohibition:

(c) certiorari:

(d) declaration:

(e) injunction.

Compare: 1908 No 89 Schedule 2 r 30.3(1); 1972 No 130 s 9(1), (3), (7); ~~1908 No 89 Schedule 2 r 30.3(1)~~

429 Respondents

(1) The following persons must be named as a respondent to an application:

(a) the person whose act or omission is the subject matter of the application; and

(b) if the application relates to any decision made in proceedings, every party to those proceedings.

(2) If the act or omission is that of 2 or more persons acting together under a collective title, then those persons by their collective title must be named as respondents to the application.

(3) For the purposes of **subsection (1)(a)**, where the act or omission is that of a presiding officer of any court or tribunal, that court or tribunal, and not the presiding officer, must be named as the respondent to the application.

(4) **Subsection (1)(b)** is subject to any direction made by a Judge under **section 434**.

Compare: 1972 No 130 s 9(4), (4A)(a), (5)

430 Respondent to file statement of defence

(1) A respondent to an application must file a statement of defence unless otherwise directed by a Judge under **section 434**.

(2) Where, in accordance with **section 429(3)**, a court or tribunal is named as a respondent to an application, the presiding officer of that court or tribunal whose act or omission is the subject matter of the application may file a statement of defence on behalf of the court or tribunal.

(3) **Part 5 of the High Court Rules** applies in relation to the filing of a statement of defence as if—

(a) references to a defendant were references to a respondent; and

(b) references to a plaintiff were references to an applicant.

Compare: 1972 No 130 s 9(4A)(b), (6)

431 Proceedings for mandamus, prohibition, or certiorari must be treated as application for review

(1) This section applies if, in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power,

proceedings are commenced for a writ or an order of or in the nature of—

(a) mandamus; or

(b) prohibition; or

(c) certiorari.

(2) If this section applies, the proceedings must be treated and disposed of as if they were an application for judicial review.

Compare: 1972 No 130 s 6

432 Proceedings for declaration or injunction may be treated as application for review

(1) This section applies if—

(a) proceedings are commenced for a declaration or an injunction, or both, with or without a claim for other relief; and

(b) the exercise, refusal to exercise, or proposed or purported exercise of a statutory power is an issue in the proceedings.

(2) If this section applies, the court on the application of any party may, if it considers it appropriate, direct that the proceedings be treated and disposed of, so far as they relate to the issue in **subsection (1)(b)**, as if they were an application for judicial review.

Compare: 1972 No 130 s 7

433 ~~Convening of~~ Case management conference

(1) A Judge may, at any time, ~~convene~~ direct that a case management conference (a **conference**) be held for—

(a) the parties; or

(b) the intended parties; or

(c) the lawyers for the parties or intended parties.

(2) The purpose of a conference is to ensure that—

(a) any application or intended application may be determined in a convenient and expeditious manner; and

(b) all matters in dispute may be effectively and completely determined.

(3) A ~~conference may be convened by a~~ Judge may make a direction under **subsection (1)** on the Judge's own initiative or on the application of 1 or more parties or intended parties.

(4) A conference may be ~~convened~~ held on such terms as the Judge thinks fit.

(5) At a conference, the presiding Judge may make any of the orders and directions specified in **section 434**.

Compare: 1972 No 130 s 10(1)

434 Orders and directions

(1) A Judge may make any of the orders and directions specified in **subsection (2)**—

(a) at a case management conference convened under **section 433**; or

(b) at any other time before the hearing of the application.

(2) The orders and directions referred to in **subsection (1)** are orders and directions to—

(a) settle the issues to be determined at the hearing:

(b) direct that—

(i) a person be named, or not named, as a respondent; or

(ii) the name of any party be added or struck out:

(c) direct which parties are to be served:

(d) direct a person to file a statement of defence within a specified time:

(e) require a party to make an admission in respect of a question of fact and, if the party refuses or fails to make an admission of that kind, require that the party bear the costs of proving that question at the hearing (unless the Judge who finally determines the application is satisfied that the party's refusal was reasonable in all of the circumstances, and accordingly orders otherwise in respect of those costs):

(f) fix a time by which any affidavits or other documents must be filed:

(g) require the provision of further or better particulars of—

(i) any facts; or

(ii) the grounds for relief; or

(iii) the relief sought; or

(iv) the grounds of defence; or
(v) any other circumstances connected with the application:

(h) require a party to make discovery, produce documents, or both:

(i) permit a party to administer interrogatories:

(j) in the case of an application for review of a decision made in the exercise of a statutory power of decision, determine whether the whole or any part of the record of the proceedings in which the decision was made should be filed, and give any directions as to its filing:

(k) exercise any powers of direction or appointment vested in the court or a Judge by the High Court Rules in respect of originating applications:

(l) fix a time and a place for the hearing of the application:

(m) give any consequential directions that the Judge considers necessary.

Compare: 1972 No 130 s 10(2), (3)

435 Interim orders

(1) At any time before the final determination of an application, the court may, on the application of a party, make an interim order of the kind specified in **subsection (2)** if, in its opinion, it is necessary to do so to preserve the position of the applicant.

(2) The interim orders referred to in **subsection (1)** are interim orders—

(a) prohibiting a respondent from taking any further action that is, or would be, consequential on the exercise of the statutory power:

(b) prohibiting or staying any proceedings, civil or criminal, in connection with any matter to which the application relates:

(c) declaring that any licence that has been revoked or suspended in the exercise of the statutory power, or that will expire by the passing of time before the final determination of the application, continues and, where necessary, that it be deemed to have continued in force.

(3) However, if the Crown is a respondent,—

(a) the court may not make an order against the Crown under **subsection (2)(a) or (b)**; but

(b) the court may, instead, make an interim order—

(i) declaring that the Crown ought not to take any further action that is, or would be, consequential on the exercise of the statutory power:

(ii) declaring that the Crown ought not to institute or continue any proceedings, civil or criminal, in connection with any matter to which the application relates.

(4) An order under **subsection (2) or (3)** may—

(a) be made subject to such terms and conditions as the court thinks fit; and

(b) be expressed to continue in force until the application is finally determined or until such other date, or the happening of such other event, as the court may specify.

Compare: 1972 No 130 s 8

436 Relief that court may grant

(1) The High Court may, by order, grant an applicant any relief that the applicant would be entitled to in proceedings for—

(a) a writ or an order of, or in the nature of,—

(i) mandamus; or

(ii) prohibition; or

(iii) certiorari; or

(b) a declaration or an injunction.

(2) If an applicant is entitled to an order declaring that a decision made in the exercise of a statutory power of decision is unauthorised or otherwise invalid, the court may, instead of making that order, set aside the decision.

(3) This section applies even if—

(a) the applicant has a right of appeal in relation to the subject matter of the application:

(b) the person who has exercised, or is proposing to exercise, a statutory power to which the application relates was not under any duty to act judicially.

Compare: 1972 No 130 s 4(1)–(2A)

437 Court may direct reconsideration of matter to which statutory power of decision relates

(1) This section applies if the court is satisfied that an applicant who has filed an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision is entitled to relief under **section 436**.

(2) The court may make a direction under **subsection (3)** in addition to or instead of granting any relief under **section 436**.

(3) The court may direct any person whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of any specified matters, the whole or any part of any matter to which the application relates.

(4) In giving a direction to any person under **subsection (3)**, the court must—

(a) advise the person of the reasons for the direction; and

(b) give the person such directions as it thinks just as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(5) If the court makes a direction under **subsection (3)**, it may make an interim order under **section 435**, and that section applies so far as it is applicable and with all necessary modifications.

(6) If a matter is referred back to any person under **subsection (3)**,—

(a) the act or omission that is to be reconsidered continues to have effect (subject to any interim order) unless and until it is revoked or amended by that person:

(b) the person has jurisdiction to reconsider and determine the matter in accordance with the court's directions despite anything in any other enactment:

(c) the person must have regard to—

(i) the court's reasons for giving the direction; and

(ii) the court's directions.

Compare: 1972 No 130 s 4(5)–(6)

438 Discretion of court to refuse to grant relief

(1) The court may refuse to grant relief to an applicant on any ground if, before 1 January 1973, the court had discretion to refuse to grant relief on that ground in any of the proceedings specified in **section 436(1)**.

(2) However, the court may not exercise its discretion in **subsection (1)** to refuse to grant relief on the ground that the relief sought in any of the proceedings specified in **section 436(1)** should have been sought in any other of those proceedings.

Compare: 1972 No 130 s 4(3), (4)

439 Discretion of court to refuse to grant relief for defect in form or technical irregularity

(1) This section applies if, in any application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision,—

- (a) the sole ground of relief established is a defect in form or a technical irregularity; and
- (b) the court finds that no substantial wrong or miscarriage of justice has occurred.

(2) If this section applies, the court may—

- (a) refuse to grant relief; and
- (b) where a decision has already been made, make an order validating the decision despite the defect or irregularity.

(3) An order made under **subsection (2)(b)** has effect from such time and on such terms as the court thinks fit.

Compare: 1972 No 130 s 5

440 Appeals

Any party who is dissatisfied with any interlocutory or final order made in respect of an application may appeal to the Court of Appeal in accordance with **section 57 of the Judicature Modernisation Act 2013**.

Compare: 1972 No 130 s 11

441 References in enactments

Every reference in an enactment to proceedings for a writ or an order of, or in the nature of, mandamus, prohibition, or

certiorari, or for a declaration or an injunction, must, unless the context otherwise requires, be read as including a reference to an application for review.

Compare: 1972 No 130 s 16

Repeal ~~and~~, transitional provisions~~,~~, and consequential amendments

442 Repeal

The Judicature Amendment Act 1972 (1972 No 130) is repealed.

443 Transitional provision

(1) This section applies to all judicial review proceedings commenced under the Judicature Amendment Act 1972 that are pending or in progress immediately before the commencement date.

(2) Despite the repeal of the Judicature Amendment Act 1972, judicial review proceedings to which this section applies are to be continued and completed under that Act as if that Act had not been repealed.

(3) If any question arises as to the continuation or completion of a proceeding under **subsection (2)**, the court may, either on the application of a party to the proceeding or on its own initiative, determine the question and give any directions that it thinks fit in the interests of justice.

(4) In this section, **commencement date** means the date on which this **Part** comes into force.

444 Consequential amendments

The enactments specified in **Schedule 8** are consequentially amended in the manner indicated in that schedule.

Part 4
Interest on money claims

Preliminary provisions

445 Purpose

(1) The purpose of this **Part** is to provide for the award of interest as compensation for delay in the payment of debts, damages, and other money claims in respect of which civil proceedings are commenced.

(2) That purpose is to be achieved by the award of interest in accordance with the following principles:

- (a) interest is to be awarded on all money claims except those expressly excluded by this **Part**:
- (b) interest is to be paid from the day on which the money claim is quantified until the day of payment:
- (c) the interest rate to be used for the purposes of this **Part** is to reflect fairly and realistically the cost to a creditor of the delay in payment of a money claim by a debtor and in particular—
  - (i) the rate is to be capable of fluctuating in accordance with changes in the retail 6-month ~~retail~~ term deposit rate published by the Reserve Bank of New Zealand; and
  - (ii) interest is to be compounded at daily intervals; and
  - (iii) interest is to be calculated using a calculator that is publicly available on an Internet site maintained by or on behalf of the Ministry:
- (d) in special circumstances, a court is to have power to award any interest or compensatory lump sum it may direct, or make no award.

446 Application

This **Part** applies to every civil proceeding commenced after the commencement of this **Part**.

447 Interpretation

(1) In this **Part**, unless the context otherwise requires,—

court—

(a) does not include a tribunal or an arbitral tribunal; and

(b) in relation to a matter, means the court by or before which the matter falls to be determined

initial amount means the amount specified, in accordance with **section 451**, by the court in a money judgment on which interest is awarded for a specified period under **section 450, 457, or 458**

interest,—

(a) in relation to the payment or non-payment of interest under another Act or a contract, includes the payment of any amount, however calculated, as compensation for delay in payment; and

(b) in relation to a claim for, or an award of, interest under this **Part**, includes a claim for or an award of a lump sum under **section 458 or 464**

interest rate has the meaning set out in **section 452(2)**

Internet site calculator means the calculator established and maintained under **section 453**

judgment debt means the sum of the amounts, if any, that are required to satisfy the liability of a party under a money judgment, together with interest awarded under this **Part** or any other Act, rule of law, or rule of equity, in respect of any period or periods specified in the judgment

last day, in respect of a period, means—

(a) the day specified in **section 449(1)(b)**; or

(b) if the period is specified under **section 449(2)(b)**, the date that is at the end of that period

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this **Part**

money judgment—

(a) means a judgment or an order given or made by a court in a civil proceeding that requires the payment of money; and

(b) includes a judgment obtained by default or in accordance with a summary judgment procedure

pay, in relation to the satisfaction of a party's liability or a judgment debt, includes to satisfy that liability or judgment debt in any way other than by the payment of money

prescribed means prescribed by regulations made under **section 467**

start date, in respect of a period, means—

(a) the date on which the period begins under **section 449(1)(a)**; or

(b) if the period is specified under **section 449(2)(b)**, the date that is at the beginning of that period.

(2) An example used in this **Part** has the following status:

(a) the example is only illustrative of the provision to which it relates and does not limit the provision; and

(b) if the example and the provision to which it relates are inconsistent, the provision prevails.

448 Part binds the Crown

This **Part** binds the Crown.

Subpart 1—Award of interest

Interest to be awarded

449 Period for mandatory award of interest

(1) When giving a money judgment, a court must award interest under this **Part** for the period that—

~~(a) begins on the day on which the cause of action arose or, if the amount on which interest is to be awarded was not quantified at that day, on a later day that the court specifies in the judgment as the day at which that amount was quantified; and~~

(a) begins either—

(i) on the day on which the cause of action arose; or

(ii) if the amount on which interest is to be awarded was not quantified at the day on which the cause of action arose, on a later day that the court specifies in the judgment as the day at which that amount was quantified; and

(b) ends on the day on which the judgment debt (including all interest payable under this **Part**) is paid in full.

(2) **Subsection (1)** applies unless—

(a) this **Part** expressly provides that interest cannot be awarded under this **Part**; or

(b) the court, in accordance with this **Part**, specifies in the judgment any 1 or more shorter periods as the period or periods for which interest is to be awarded under this **Part**.

(3) Despite **subsections (1) and (2)**, interest under this **Part** does not accrue after the date of payment on an amount paid—

(a) after the proceeding has been commenced but before the date of judgment, in or towards satisfying a party's liability; or

(b) after the date of judgment, towards satisfying a judgment debt.

450 Mandatory award of interest

(1) In every money judgment, a court must award interest under this section as compensation for delay in the payment of money.

(2) **Subsection (1)** does not apply if this **Part** expressly provides otherwise.

(3) If, after a proceeding for a money claim is commenced but before a money judgment is given, any amount is paid so that the entire amount due, except for interest, is paid, then (unless this **Part** expressly provides otherwise)—

(a) the party who had the money claim is still entitled to interest under this section; and

(b) the court must award interest under this section although the judgment requires no other payment to satisfy the liability of a party.

451 Initial amount

(1) When the court awards interest under **section 450** for a period, the court must specify the amount on which interest is awarded for that period (an **initial amount**).

(2) The initial amount in respect of a period must include any amount paid in or towards satisfying a party's liability after a proceeding for a money claim is commenced but before a

money judgment is given if that period begins at a date earlier than the date of that payment.

(3) The initial amount in respect of a period must include accrued interest on any amount on which interest is awarded, for any earlier period specified in the judgment, under—

(a) **section 450** or any other section of this **Part**; or

(b) any other Act; or

(c) a contract.

452 Calculation of interest awarded under section 450

(1) Interest awarded under **section 450** for a period is to be calculated at the relevant interest rate or interest rates on a daily compounding basis using the Internet site calculator in accordance with **sections 454 and 455**, except if this **Part** expressly provides otherwise.

~~(2) In this section, **interest rate** means— an annual rate equivalent to the 6-month retail deposit rate as published from time to time by the Reserve Bank of New Zealand (or, if some other indicator interest rate is prescribed as the base rate for the purposes of this section, the prescribed base rate), plus 0.15% (or, if some other percentage is prescribed as the premium for the purposes of this section, the prescribed premium).~~

(2) In this section, **interest rate**, for any given day (day **A**), means the base rate plus the premium expressed as a daily compound rate, where—

(a) **base rate** means—

(i) the average of the 6 observations for the retail 6-month term deposit rate most recently published by the Reserve Bank of New Zealand before day A; or

(ii) if some other indicator interest rate is prescribed as the base rate that applies for the purposes of this section from a specified date, the prescribed rate, if day A is after the specified date; and

(b) **premium** means—

(i) 0.15%; or

(ii) if some other percentage is prescribed as the premium that applies for the purposes of this section

from a specified date, the prescribed premium, if day A is after the specified date.

(3) For the purposes of **subsection (2)(a)(i)**, every observation for the retail 6-month term deposit rate published by the Reserve Bank of New Zealand—

(a) before this Act comes into force is deemed to have been published on the first day of the month following the month to which the observation relates; and

(b) after this Act comes into force is published on the date that it is first published on the Internet site of the Reserve Bank of New Zealand.

Example

Assumed facts

For 15 November 2012 the 6 most recent observations for the retail 6-month term deposit rate that had been published by the Reserve Bank of New Zealand* at that date are 4.13%, 4.11%, 4.11%, 4.10%, 3.96% and 3.95%, being the rates observed on the last business day of the months from June 2012 to October 2012. The average of these 6 observations is 4.06%. This is the **base rate**.

The base rate and the premium, namely 0.15%, are added, with the result for 15 November 2012 being 4.21%. This is a "per annum simple interest rate". This is required to be converted to a "daily compound interest rate". The formula for this conversion is:

Daily compound interest rate = ((1+"per annum simple interest rate as %"/100)^(1/365)-1) x 100

The result of applying this formula to 4.21% is:

Daily compound interest rate = 0.0112986952452543. This is the **interest rate** expressed as a daily compound rate for 15 November 2012.

If the debt was not paid on 16 November 2012 the amount on which interest would accrue would be the $10,000 plus the interest in respect of 15 November 2012 as calculated without rounding.

**See* "B3 Retail interest rates on lending and deposits" at http://www.rbnz.govt.nz.

453 Internet site calculator

(1) The chief executive of the Ministry must—

(a) establish and maintain a calculator to be used for the purposes of this **Part**; and

(b) make the calculator publicly available at all reasonable times on an Internet site maintained by, or on behalf of, the Ministry.

(2) The chief executive of the Ministry must ensure that the calculator—

(a) allows interest to be—

(i) calculated at the relevant interest rate or interest rates expressed as a daily compound rate; and

(ii) compounded at daily intervals; and

(b) complies with any prescribed rules or requirements governing the establishment or operation of the Internet site calculator.

(3) The calculator is presumed, unless the contrary is shown, to have been established and maintained in accordance with **subsection (2)**.

(4) The court, on an application by a party to a proceeding made before the judgment is sealed or, if permitted by the rules of court, any later date permitted by those rules, may make such orders as it considers just if it is satisfied that the Internet site calculator has not allowed interest to be calculated in accordance with **subsection (2)(a)**, resulting in an error in an award of interest made in the proceeding.

(5) However, no action lies against the Crown, the Reserve Bank of New Zealand, or an officer or employee or Minister of the Crown or the Reserve Bank of New Zealand, or any other person, to recover any damages or other amount for any loss, damage, or other adverse effect due directly or indirectly to any act or omission in respect of the establishment and operation of the Internet site calculator.

(6) No person is exempted from liability under **subsection (5)** for any act or omission that constitutes bad faith on the part of that person.

454 Calculation if judgment debt paid in full in 1 payment

(1) If a party pays, or were to pay, a judgment debt in full in 1 payment, the amount payable is to be calculated using the Internet

site calculator by inserting the initial amount, the start date, and the end date.

(2) The resulting amount is the total amount, including interest, that is required to satisfy the judgment debt.

Example

Assumed facts

~~On 1 March 2012, the debtor purchased goods from the creditor for $10,000 and failed to pay for them. On 1 July 2012, a court gave judgment in respect of the goods sold for an amount of $10,000 plus interest under this **Part**. The cause of action arose, and the amount on which interest was awarded was quantified, on 1 March 2012 (the date of the sale). The judgment debtor paid in full on 15 December 2012. The six-month retail term deposit rate varied throughout the period between 3.95% and 4.38% per annum. Accordingly, the interest rate used by the Internet site calculator is the weighted average of each daily rate plus 0.15%.~~

Calculation

~~The start date (1 March 2012), the end date (15 December 2012), and the initial amount ($10,000) are entered into the Internet site calculator.~~

~~Using that information, the total amount, including interest, required to satisfy the judgment debt on 15 December 2012 is calculated. That total amount is $10,346.68.~~

~~All calculations are made by the Internet site calculator.~~

Assumed facts

On 15 March 2012, the debtor purchased goods from the creditor for $10,000 and failed to pay for them. On 1 July 2012, a court gave judgment in respect of the goods sold for an amount of $10,000 plus interest under this **Part**. The cause of action arose, and the amount on which interest was awarded was quantified, on 15 March 2012 (the date of the sale). The judgment debtor paid in full on 15 December 2012. For each day in the period between 15 March 2012 and 15 December 2012, the average of the 6 most recent observations of the retail 6-month term deposit rate published by the Reserve Bank of New Zealand at that date is used as the base interest rate. The margin of 0.15% is added to the base rate and the result is expressed as a daily compound interest rate.

Calculation

The start date (15 March 2012), the end date (15 December 2012), and the initial amount ($10,000) are entered into the Internet site calculator.

Example—*continued*

Using that information, the total amount, including interest, required to satisfy the judgment debt on 15 December 2012 is calculated, on a daily compounding basis. That total amount is $10,323.25.

All calculations are made by the Internet site calculator.

455 Calculation if judgment debt paid in instalments

(1) If a party has paid an instalment or instalments of a judgment debt, the balance required to pay the judgment debt in full on a particular date is to be calculated using the Internet site calculator by entering the initial amount, the start date, the end date, the amount of each instalment, and the date of payment of each instalment.

(2) The resulting amount is the total amount, including interest, required to satisfy the balance of the judgment debt in full on the particular date.

Example

Assumed facts

~~On 1 July 2012, a court gave judgment for negligent advice for a sum of $10,000 damages plus interest under this **Part**. For the purposes of **section 449**, the court specified the date of judgment as the date at which the amount on which interest is awarded was quantified. The judgment debtor paid instalments of $1,000 on 15 October 2012 and 15 November 2012 and paid the remainder of the money judgment, including interest in full, on 15 December 2012. The 6-month retail term deposit rate throughout the period was between 3.85% and 4.42% per annum. Accordingly, the interest rate used by the Internet site calculator is the weighted average of each daily rate over the period plus 0.15%.~~

Calculation

~~The start date (1 July 2012), the end date (15 December 2012), and the initial amount ($10,000) are entered into the Internet site calculator. Using that information, the total amount from which the value of the instalments will be subtracted is calculated. This total amount is $10,197.55.~~

~~Then the amount of each instalment and the corresponding date of payment are entered into the Internet site calculator ($1,000 on 15 October 2012 and 15 November 2012). After the 2 instal-~~

Example—*continued*

~~ments are entered, a total value of instalments is calculated. This amount is $2,010.48.~~

~~The total value of instalments is subtracted from $10,190.50$10,197.55 to give the total amount, including interest, required to satisfy the judgment debt on 15 December 2012. That amount is $8187.07.~~

~~All calculations are made by the Internet site calculator.~~

Assumed facts

On 15 July 2012, a court gave judgment for negligent advice for a sum of $10,000 damages plus interest under this **Part**. For the purposes of **section 449**, the court specified the date of judgment as the date at which the amount on which interest is awarded was quantified. The judgment debtor paid instalments of $1,000 on 15 October 2012 and 15 November 2012 and paid the remainder of the money judgment, including interest in full, on 15 December 2012. For each day in the period between 15 July 2012 and 15 December 2012, the average of the 6 most recent observations of the retail 6-month term deposit rate published by the Reserve Bank of New Zealand at that date is used as the base interest rate. The margin of 0.15% is added to the base rate and the result is expressed as a daily compound interest rate.

Calculation

The start date (15 July 2012), the end date (15 December 2012), and the initial amount ($10,000) are entered into the Internet site calculator. Using that information, the total amount from which the value of the instalments will be subtracted is calculated. This total amount is $10,177.63.

Then the amount of each instalment and the corresponding date of payment are entered into the Internet site calculator ($1,000 on 15 October 2012 and 15 November 2012). After the 2 instalments are entered, a total value of instalments is calculated. This amount is $2,010.31.

The total value of instalments is subtracted from $10,177.63 to give the total amount, including interest, required to satisfy the judgment debt on 15 December 2012. That amount is $8,167.32. All calculations are made by the Internet site calculator.

456 References to paying debt in full or paying instalments

In **sections 454 and 455**, a reference to paying a judgment debt in full in 1 payment, or paying an instalment or instalments of a judgment debt, is to be taken to include paying, after

a proceeding for a money claim has been commenced (but before judgment has been entered), an amount or instalment in or towards satisfaction of the claim.

457 Discretion if money judgment expressed in foreign currency

(1) If an initial amount specified in a money judgment in respect of a period is expressed in a foreign currency, the court may,—

(a) instead of awarding interest to be calculated as provided in **sections 452 to 456**, award interest on that initial amount for that period at a rate that the court considers fairly and realistically reflects relevant economic circumstances; and

(b) determine the manner (with or without compounding) by which interest at that rate is to be calculated.

(2) The court may not award interest under this section on an amount for any period unless interest could have been, but was not, awarded as provided in **sections 450 to 456** on that amount for that period.

458 Discretion in special circumstances

(1) If, in the opinion of the court, special circumstances make it inequitable to award interest in a money judgment under **sections 450 to 456, or section 457**, for a period, the court may, for all or part of that period,—

(a) award interest on all or part of the amount of the money judgment at the rate and calculated in the manner (with or without compounding) that the court directs; or

(b) award a lump sum as compensation for delay in the payment of all or part of that amount; or

(c) determine not to award interest or a lump sum.

(2) The court may not award interest under this section on an initial amount for any period unless interest could have been, but was not, awarded as provided in **sections 450 to 456** on that amount for that period.

Subpart 2—Where interest is not to be awarded

459 No interest to be awarded on penalty

A court may not award interest under this **Part** on an amount that is a penalty or in the nature of a penalty.

460 Restrictions on award of interest for certain specified periods

(1) A court may not award interest under this **Part** on costs awarded to a party for a period before the date when the costs are awarded.

(2) A court may not award interest under this **Part** on an award of exemplary damages for a period before the date on which judgment is given for those damages.

~~(3) A court may not award interest under this **Part** or otherwise for a period after the date of judgment if the judgment is given for an amount not exceeding $5,000, excluding the amount of any interest included in the judgment for a period before the date of judgment.~~

461 No interest to be awarded for period contrary to provisions of another Act

(1) A court may not award interest under this **Part** in a money judgment for a period if a court has awarded interest on that judgment under another Act for that period.

(2) A court may not award interest under this **Part** in a money judgment if it would be inconsistent with the provisions of another Act to do so.

462 Award of interest if contract makes relevant provision

(1) This section and **section 463** apply to a period for which a contract provides for the award of interest, or provides that no interest is payable, on any amount payable under, or for the breach of, the contract.

(2) A court may award interest for a period to which this section applies in accordance with the rights and obligations of the parties specified in the contract.

(3) **Subsection (2)** applies despite—

(a) **subpart 1 or section 464**; or
(b) any rule of law that after judgment is given rights and obligations under a contract merge in the judgment.

(4) A court may not award interest under this **Part** for a period to which this section applies in respect of an amount payable under a contract, or for the breach of a contract, if the court has awarded interest under the contract for that period.

(5) A court may not award interest under **subpart 1 or section 464** for a period to which this section applies if it would be inconsistent with the provisions of the contract to do so.

463 Rules of interpretation for contractual provisions

Unless the contract expressly provides otherwise, a provision in the contract as to—

(a) the payment or non-payment of interest on an unpaid amount payable under, or for the breach of, the contract must be taken to apply for the purposes of **section 462** to the periods before and after the date on which a money judgment is given in respect of that amount; and
(b) a rate of interest payable on any unpaid amount must be taken to be inconsistent with an award of interest under **subpart 1 or section 464**.

464 Special provision for interest or lump sum ~~in specified circumstances~~ relating to contracts entered into before commencement

(1) This section applies to the period before the date of a money judgment if the judgment is given for~~—~~ an amount under, or for breach of, a contract entered into before the coming into force of this **Part**.

~~(a) an amount under, or for the breach of, a contract entered into before the coming into force of this **Part**; or~~
~~(b) an amount not exceeding $5,000, exclusive of any interest awarded for that period.~~

(2) Where this section applies to a period before the date of a money judgment,—

(a) the court may not award interest under **subpart 1** for the period; but
(b) the court may—

(i) award interest on all or part of the amount of the money judgment at a rate not exceeding the rate prescribed for the purposes of this section, calculated in the manner (with or without compounding) that the court directs; or

(ii) award a lump sum that is not greater than could be awarded under **subparagraph (i)** as compensation for delay in the payment of all or part of that amount; or

(iii) determine not to award interest or a lump sum.

Subpart 3—Supplementary and miscellaneous provisions

465 Court may not award interest unless procedural requirements complied with

(1) A court may not award interest under a section of this **Part** for a period unless the party who claims interest under the section for that period specifies the section and, as far as possible, the period in that party's statement or notice of claim or counterclaim.

Examples

In the case of the example in **section 454**, the creditor would specify in its statement of claim **section 450** as the section under which interest is claimed and 1 March 2012 to the date of payment as the period for which interest is claimed.

In the case of the example in **section 455**, the plaintiff would specify in its statement of claim **section 450** as the section under which interest is claimed and the date of judgment to the date of payment as the period for which interest is claimed.

If the plaintiff wanted to claim that special circumstances make it inequitable to award interest under **sections 450 to 456, or section 457**, the plaintiff could specify in its statement of claim **section 458** as the section under which interest is claimed (the plaintiff would also specify the period for which interest is claimed).

(2) If a party claims interest under **section 457, 458, 462, or 464**,—

(a) the party must specify in that party's statement or notice of claim or counterclaim the amount or rate of interest claimed; and

(b) the court may not award interest—

(i) exceeding the amount claimed under **paragraph (a)**; or

(ii) at a rate exceeding the rate claimed under **paragraph (a)**.

(3) Nothing in this section prevents interest being claimed in a statement or notice of claim or counterclaim in the alternative.

(4) Nothing in this section prevents a court from making an award of interest where the court has at any time made or accepted an amendment to a statement or notice of claim or counterclaim in accordance with the rules of court and that statement or notice of claim or counterclaim, as amended, complies with the requirements in **subsections (1) and (2)**.

466 Preservation of common law and equitable rights

(1) This **Part** does not limit or affect the ability of any person to bring a claim, or to continue any existing claim, in any court for interest at common law or in equity.

(2) However, a court may not award interest under this **Part** in a money judgment for a period if a court has awarded interest on that judgment at common law, or in equity, for that period.

467 Regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

(a) prescribing an indicator interest rate (or a formula or other methodology for setting another indicator interest rate) as the base rate for the purposes of **section 452(2)** from a specified date:

(b) prescribing a percentage as the premium for the purposes of **section 452(2)** from a specified date:

(c) prescribing rules or requirements governing the establishment or operation of the Internet site calculator:

(d) prescribing the rate of interest for the purposes of **section 464(2)(b)(i)**:

(e) providing for any other matters contemplated by this **Part** or necessary for its administration or necessary for giving it full effect.

(2) The Minister may recommend the making of regulations under **subsection (1)(a) or (b)** only if the Minister is satisfied that the change to the interest rate in **section 452(2)** that would result is for the purpose of achieving the following objectives:

(a) simple, accessible, and predictable law:

(b) commercially realistic, and fair, compensation for creditors:

(c) a method of calculating interest owed using a published interest multiplier that is updated regularly and administratively, and is easy to use.

468 Transitional provisions for civil proceedings already commenced in ~~superior~~ senior court

Despite the repeal of section 87 of the Judicature Act 1908 by **section 179 of the Judicature Modernisation Act 2013**, that section continues to apply to every civil proceeding commenced before this **Part** comes into force as if this **Part** had not been enacted.

469 Transitional provision for civil proceedings already commenced in ~~inferior~~ District court

Despite the repeal of sections 62B and 65A of the District Courts Act 1947 by **section 420 of the Judicature Modernisation Act 2013**, those sections continue to apply to every civil proceeding commenced before this **Part** comes into force as if this **Part** had not been enacted.

470 Amendments to other enactments

The enactments specified in **Schedule 9** are amended in the manner indicated in that schedule.

Part 5
Electronic courts and tribunals

Preliminary provisions

471 Purpose

The purpose of this **Part** is to—

(a) facilitate the use of permitted documents in, or with respect to, the proceedings of courts and tribunals; and

(b) allow references to documents in existing enactments relating to the processes of courts and tribunals to be interpreted as including permitted documents; and

(c) permit the filing of permitted documents at any specified place.

~~**472 Principles**~~

~~A person exercising a power under this **Part** must have regard to the following principles:~~

~~(a) all persons should be able to deal with courts and tribunals in a technology-neutral way:~~

~~(b) electronic technology should be used where it—~~

~~(i) reduces costs:~~

~~(ii) speeds up the delivery of services:~~

~~(iii) makes information more accessible:~~

~~(c) access to justice should be preserved for all persons, including those without access to electronic technology.~~

473 Interpretation

(1) In this **Part**, unless the context otherwise requires,—

associated process means a process that a court or tribunal, or a participant in proceedings before a court or tribunal, uses to create a document, including signing, sealing, witnessing, and filing the document

electronic includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

head of bench means,—

(a) in relation to the Supreme Court, the Chief Justice:

(b) in relation to the Court of Appeal, the President of the Court of Appeal:

(c) in relation to the High Court, the Chief High Court Judge:
(d) in relation to the Employment Court, the Chief Judge of the Employment Court:
(e) in relation to the Court Martial, the Judge Advocate General:
(f) in relation to the Court Martial Appeal Court, the Chief High Court Judge:
(g) in relation to the Summary Appeal Court of New Zealand, the Judge Advocate General:
(h) in relation to the District Court and all of its divisions, the Chief District Court Judge:
(i) in relation to the Environment Court, the Principal Environment Judge:
(j) in relation to the Māori Land Court, the Chief Judge of the Māori Land Court:
(k) in relation to a coroner, the chief coroner:
(l) in relation to a tribunal, the head or chair of the tribunal or, if the tribunal has no head or chair, the longest-serving judicial officer

information system means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications

Minister means the Minister or Ministers of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is or are for the time being responsible for the administration of this **Part**

paper-based form means a format or layout that applies to information in paper or other non-electronic form, including (but not limited to) the material that must be used

permitted document means a document, including its associated process, in electronic form that is made by, or for use in, a court or tribunal.

(2) None of the following documents is a permitted document unless and until the Governor-General, by Order in Council made on the recommendation of the Minister, declares it to be a permitted document:
(a) a document that is required to be served by personal service:

(b) a document given on oath or affirmation:
(c) a statutory declaration:
(d) a will, codicil, or any other testamentary instrument:
(e) a power of attorney or an enduring power of attorney:
(f) a negotiable instrument:
(g) any notice required to be attached to any thing or left or displayed in any place:
(h) any warrant or other instrument authorising entry into premises, or the search or seizure of any person or thing:
(i) any other document specified by the Governor-General by Order in Council made on the recommendation of the Minister.

474 Part binds the Crown

This **Part** binds the Crown.

General provisions

475 Part applies to certain courts and tribunals

This **Part** applies to any court or tribunal, or any particular jurisdiction of a court or tribunal specified by the Governor-General by Order in Council made on the recommendation of the Minister.

~~(2) The Minister may not make a recommendation in respect of a court or tribunal unless the head of bench has certified in writing to the Minister that the court or tribunal is ready to use electronic technology in the whole of its jurisdiction or in part of its jurisdiction.~~

476 Permitted documents may be used

(1) A court or tribunal, or a participant in proceedings before a court or tribunal, may use permitted documents in, or with respect to, the proceedings of the court or tribunal.

(2) However, nothing in this **Part** requires a person to use, provide, or accept a permitted document without the person's consent.

(3) Despite **subsection (2)**, a class of persons specified in regulations made under **section 502** may be required to use, provide, or accept a permitted document—

(a) in a specified court or tribunal; or
(b) in a specified jurisdiction of a court or tribunal; or
(c) in specified circumstances.

(4) Nothing in **subsection (2)** overrides any provision in any other Act that requires a person to use, provide, or accept a permitted document.

477 Consent may be inferred from person's conduct

A person's consent to use, provide, or accept a permitted document may be inferred from the person's conduct, including (but not limited to)—

(a) filing a permitted document with a court or tribunal:
(b) providing to a court or tribunal an electronic address where permitted documents may be sent.

Compare: 2006 No 40 s 219(1)

478 Presumption of validity

In the absence of proof to the contrary, a document is not invalid merely because it is a permitted document.

479 Certain documents to be treated as permitted documents

A court or tribunal must treat a reference to a document, or its associated process, in an enactment relating to the processes of a court or tribunal as a reference to a permitted document unless—

(a) the enactment explicitly provides otherwise; or
(b) the context of the enactment requires a different interpretation.

Compare: 1999 No 85 s 4(1)

Manner in which permitted documents meet certain non-electronic requirements

480 Requirement for information to be in writing

A requirement that information be in writing is met by information in a permitted document if the information is readily accessible ~~and~~ so as to be usable for subsequent reference.

Compare: 2002 No 35 s 18

481 Requirement for information to be recorded in writing

A requirement that information ~~must~~ be recorded in writing is met by recording the information in a permitted document if the information is readily accessible ~~and~~ so as to be usable for subsequent reference.

Compare: 2002 No 35 s 19

482 Requirement for information to be given in writing

(1) A requirement to give information in writing is met by giving the information in a permitted document if the information is readily accessible ~~and~~ so as to be usable for subsequent reference.

(2) **Subsection (1)** applies even if the information must be given in a specified manner (for example, by filing, sending, serving, delivering, lodging, or posting the information).

(3) In this section, **requirement to give information** includes (but is not limited to)—

(a) making an application:
(b) making or lodging a claim:
(c) giving, sending, or serving a notification:
(d) lodging a return:
(e) making a request:
(f) making a declaration:
(g) lodging or issuing a certificate:
(h) making, varying, or cancelling an election:
(i) lodging an objection:
(j) giving a statement of reasons:
(k) lodging an appeal.

Compare: 2002 No 35 s 20(1), (3), (4)

483 Requirement to provide multiple copies of information

A requirement to provide multiple copies of information to the same person at the same time is met by providing a single electronic version of the information in a permitted document.

Compare: 2002 No 35 s 20(2)

484 Requirement to provide information in certain form

A requirement to provide information in a manner that complies with a paper-based form is met by providing the infor-

mation in a permitted document if the information is readily accessible ~~and~~ so as to be usable for subsequent reference.

Compare: 2002 No 35 s 21

485 Requirement for signatures

A requirement for a signature, other than a witness's signature, is met in a permitted document by means of an electronic signature if the electronic signature—

(a) adequately identifies the signatory and adequately indicates the signatory's approval of the information to which the signature relates; and

(b) is as reliable as is appropriate ~~for~~ given the purpose for which, and the circumstances in which, the signature is required.

Compare: 2002 No 35 s 22(1)

486 Requirement for signatures of witnesses

A requirement for a signature or a seal to be witnessed is met in a permitted document by means of a witness's electronic signature if,—

(a) in the case of the witnessing of a signature, the signature to be witnessed is an electronic signature that complies with **section 485**; and

(b) in the case of the witnessing of a signature or a seal, the electronic signature of the witness—

(i) adequately identifies the witness and adequately indicates that the signature or seal has been witnessed; and

(ii) is as reliable as is appropriate ~~for~~ given the purpose for which, and the circumstances in which, the witness's signature is required.

Compare: 2002 No 35 s 23(1)

487 Requirement for seals

A requirement for a seal is met in a permitted document by means of an electronic seal if the electronic seal—

(a) adequately identifies the party attaching the seal; and

(b) is as reliable as is appropriate ~~for~~ given the purpose for which, and the circumstances in which, the seal is required.

488 Presumption about reliability of electronic signatures

(1) For the purposes of **sections 485 and 486**, an electronic signature is presumed to be as reliable as is appropriate if—

(a) the means of creating the electronic signature is linked to the signatory and to no other person; and

(b) the means of creating the electronic signature was under the control of the signatory and of no other person; and

(c) any alteration to the electronic signature made after the time of signing is detectable; and

(d) where the purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

(2) **Subsection (1)** does not prevent any person from proving on other grounds or by other means that an electronic signature—

(a) is as reliable as is appropriate; or

(b) is not as reliable as is appropriate.

Compare: 2002 No 35 s 24

489 Requirement to retain document or information that is in paper-based form

(1) A requirement to retain information that is in paper-based form is met by retaining an electronic form of the information in a permitted document if—

(a) the electronic form provides a reliable means of maintaining the integrity of the information; and

(b) the information is readily accessible so as to be usable for subsequent reference.

(2) **Subsection (1)** applies to information that is a public record within the meaning of the Public Records Act 2005 only if the Chief Archivist has approved the retention of that information in electronic form.

(3) To avoid doubt, if information is retained in electronic form in accordance with **subsection (1)**, the paper-based form of that information need not be retained.

Compare: 2002 No 35 s 25

490 Requirement to retain information that is in electronic form

A requirement to retain information that is in a permitted document is met by retaining the information—

(a) in paper-based form~~,~~ if the paper-based form provides a reliable means of maintaining the integrity of the information; or

(b) in electronic form~~,~~ if—

(i) the electronic form provides a reliable means of maintaining the integrity of the information; and

(ii) the information is readily accessible ~~and~~ so as to be usable for subsequent reference.

Compare: 2002 No 35 s 26

491 Extra conditions for electronic communications

In addition to the conditions specified in **section 490**, if a person is required to retain information in a permitted document that consists of or includes an electronic communication,—

(a) the person must also retain the details obtained by that person that enable the identification of—

(i) the origin of the electronic communication; and

(ii) the destination of the electronic communication; and

(iii) the time when the electronic communication was sent and the time when it was received; and

(b) the details referred to in **paragraph (a)** must be readily accessible ~~and~~ so as to be usable for subsequent reference.

Compare: 2002 No 35 s 27

492 Requirement to provide or produce information that is in paper-based form

A requirement to provide or produce information in paper-based form is met by providing or producing the information

in electronic form, whether by means of an electronic communication or otherwise, if—

(a) the form and means of the provision or production of the information reliably maintain the integrity of the information, given the purpose for which, and the circumstances in which, the information is required to be provided or produced; and

(b) the information is readily accessible ~~and~~ so as to be usable for subsequent reference.

Compare: 2002 No 35 s 28(a), (b)

493 Requirement to provide or produce information that is in electronic form

A requirement to provide or produce information that is in a permitted document is met by providing or producing the information—

(a) in paper-based form; but, if the integrity of the information cannot be reliably maintained, the person who must provide or produce the information must—

(i) notify every person to whom the information is required to be provided or produced of that fact; and

(ii) if requested to do so, provide or produce the information in electronic form in accordance with **paragraph (b)**; or

(b) in electronic form if—

(i) the form and means of the provision or production of the information reliably maintain the integrity of the information, given the purpose for which, and the circumstances in which, the information is required to be provided or produced; and

(ii) the information is readily accessible ~~and~~ so as to be usable for subsequent reference.

Compare: 2002 No 35 s 29(a), (b)(i), (ii)

494 Requirement to provide access to information that is in paper-based form

A requirement to provide access to information that is in paper-based form is met by providing access to the information in a permitted document if the form and means of access to the information reliably maintain the integrity of the information, given the purpose for which, and the circumstances in which, access to the information is required to be provided.

Compare: 2002 No 35 s 30(a)

495 Requirement to provide access to information that is in electronic form

A requirement to provide access to information that is in a permitted document is met by providing access to the information—

(a) in paper-based form; but, if the integrity of the information cannot be reliably maintained, the person who must provide access to the information must—

(i) notify every person to whom access is required to be provided of that fact; and

(ii) if requested to do so, provide access to the information in electronic form in accordance with **paragraph (b)**; or

(b) in electronic form, whether by means of an electronic communication or otherwise, if the form and means of access to the information reliably maintain the integrity of the information, given the purpose for which, and the circumstances in which, access to the information is required to be provided.

Compare: 2002 No 35 s 31(a), (b)(i)

496 Requirement relating to content of information

Nothing in this **Part** affects any requirement in any enactment to the extent that the requirement relates to the content of information.

Compare: 2002 No 35 s 33

497 Copyright in permitted documents

The copyright in a work is not infringed by any of the following acts if they are carried out for the purposes of meeting a paper-based requirement by electronic means in a permitted document:

(a) the generation of an electronic form of a document:

(b) the production of information by means of an electronic communication.

Compare: 2002 No 35 s 34

Rules regarding transmission of permitted documents

498 Time of dispatch of permitted documents

A permitted document is taken to be dispatched at the time the permitted document first enters an information system outside the control of the originator.

Compare: 2002 No 35 s 10(1)

499 Time of receipt of permitted documents

A permitted document is taken to be received at the time the permitted document first enters the information system that the addressee has designated for the purpose of receiving the permitted document.

Compare: 2002 No 35 s 11(a)

500 Place of filing

(1) Despite **section 505(2)** or any provision ~~to the contrary~~ in any other enactment, a court or tribunal, or a participant in proceedings before a court or tribunal, may file a permitted document at any place that is specified in regulations made under **section 502**.

(2) The place for filing may be—

(a) centralised or located within the jurisdiction of the relevant court or tribunal:

(b) physical or electronic.

Fees and regulations

501 Filing fees payable for permitted documents

(1) Despite **section 505(2)** or any provision to the contrary in any other enactment, a person who files a permitted document with a court or a tribunal must pay—

(a) the fee that is prescribed for that document in regulations made under **section 502**; or

(b) if a fee is not prescribed for that document in regulations made under **section 502**, the fee (if any) that would apply under the relevant enactment if the person were to file the document in its paper-based form less any discount prescribed in regulations made under **section 502**.

(2) A fee that is payable under **subsection (1)(a)** is inclusive of goods and services tax.

(3) Whether a fee that is payable under **section (1)(b)** is inclusive or exclusive of goods and services tax is to be determined under the relevant enactment.

502 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing any conditions that a permitted document must meet to be used, provided, or accepted by a court or tribunal, or a participant in proceedings before a court or tribunal:

(b) prescribing the form or forms of permitted documents:

(c) prescribing any fees for the filing of permitted documents:

(d) prescribing any fee discount, which may be expressed as—

(i) a specified amount that applies to a specified document; or

(ii) a percentage that applies to a range of documents:

(e) prescribing the place or places for filing permitted documents:

(ea) specifying any classes of persons required to use, provide, or accept a permitted document—

(i) in a specified court or tribunal in which the permitted document must be used, provided, or accepted:

(ii) in a specified jurisdiction of a court or tribunal in which the permitted document must be used, provided, or accepted:

(iii) in specified circumstances in which the permitted document must be used, provided, or accepted:

(f) providing for any other matters that are contemplated by, or necessary for, giving full effect to this **Part** and its due administration.

Consequential amendments and transitional provisions

503 Amendment to Electronic Identity Verification Act 2012

(1) This section amends the Electronic Identity Verification Act 2012.

(2) After section 67(1)(c), insert:

"(ca) a court or tribunal specified in an order made under **section 475 of the Judicature Modernisation Act 2013**:".

504 Amendment to Electronic Transactions Act 2002

(1) This section amends the Electronic Transactions Act 2002.

(2) In the Schedule, Part 1, after the item relating to the Electoral Regulations 1996, insert:

"**Part 5 of the Judicature Modernisation Act 2013** (**2013 No 00**)".

504A Amendment to Resource Management Act 1991

(1) This section amends the Resource Management Act 1991.

(2) After section 352(1), insert:

"(1A) Nothing in subsection (1) overrides the provisions of **Part 5 of the Judicature Modernisation Act 2013**."

505 Transitional provisions

(1) If any relevant provision of this **Part** applies to a court or tribunal, it applies to all proceedings commenced in that court or tribunal before, on, or after the application of that provision except—

(a) the continuation of a hearing that commenced before the application of that provision; and

(b) any appeal from, or review of, a determination made at a hearing of that kind.

(2) Any legislative instrument amending the rules of court that is made after the commencement of this section must be consistent with the provisions of this **Part**.

Compare: 2006 No 69 s 5

Part 6
Amendments to other enactments

Subpart 1—Amendments to Arbitration Act 1996

506 Principal Act

This **subpart** amends the Arbitration Act 1996 (the **principal Act**).

507 Section 2 amended (Interpretation)

In section 2(1), replace the definition of **arbitral tribunal** with:

"**arbitral tribunal**—

"(a) means a sole arbitrator, a panel of arbitrators, or an arbitral institution; and

"(b) includes any emergency arbitrator appointed under—

"(i) the arbitration agreement that the parties have entered into; or

"(ii) the arbitration rules of any institution or organisation that the parties have adopted".

508 New section 6A inserted (Minister of Justice to appoint body to resolve certain matters)

After section 6, insert:

"**6A Minister of Justice to appoint body to resolve certain matters**

"(1) The Minister of Justice ~~must~~ must, by notice in the *Gazette*, appoint a suitably qualified body to resolve the matters specified in article 11(3) to (6) of Schedule 1.

"(2) The Minister of Justice may, by notice in the *Gazette*, revoke any appointment made under **subsection (1)**."

509 Schedule 1 amended

(1) In Schedule 1, article 11(3)(a), replace "the High Court" with "the appointed body".

(2) In Schedule 1, article 11(3)(b), replace "the High Court" with "the appointed body".

(3) In Schedule 1, article 11(4), replace "the High Court" with "the appointed body".

(4) In Schedule 1, article 11(5), replace "the High Court" with "the appointed body".

(5) In Schedule 1, article 11(5), replace "The court" with "The appointed body".

(6) In Schedule 1, article 11(6), replace "the High Court" with "the appointed body".

(7) In Schedule 1, after article 11(6), insert:

"(7) A party may apply to the High Court to appoint an arbitrator or arbitrators if—

"(a) the appointed body is unable or fails to appoint an arbitrator under paragraph (3) within 30 days of receiving a request to do so; or

"(b) a dispute arises in respect of the appointment process that the appointed body uses.

"(8) In this article, **appointed body** means a body that the Minister of Justice has appointed under **section 6A**."

Subpart 2—Amendment to Bills of Exchange Act 1908

510 Principal Act

This **subpart** amends the Bills of Exchange Act 1908 (the **principal Act**).

511 New section 96A inserted (Actions on other lost instruments)

After section 96, insert:

"**96A Actions on other lost instruments**

Section 70 applies to a negotiable instrument that is not a bill in the same way as it applies to a bill.

"Compare: 1908 No 89 s 88; 1947 No 16 s 118".

Subpart 3—Amendment to Building Societies Act 1965

512 Principal Act amended

This **subpart** amends the Building Societies Act 1965 (the **principal Act**).

513 New section 136A inserted (Jurisdiction of District Court)

After section 136, insert:

"**136A Jurisdiction of District Court**

The District Court has jurisdiction in relation to—

"(a) the settlement of disputes between any building society and its members where the amount involved does not exceed $350,000:

"(b) the recovery of money and enforcement of claims by or against any building society not exceeding in amount or value the sum of $350,000:

"(c) all other matters arising under this Act not exceeding in amount or value the sum of $350,000.

"Compare: 1947 No 16 s 33".

Subpart 4—Amendment to Children, Young Persons, and Their Families Act 1989

514 Principal Act

This **subpart** amends the Children, Young Persons, and Their Families Act 1989 (the **principal Act**).

515 Section 434 amended (Principal Youth Court Judge)

After section 434(7), insert:

"(8) The Chief District Court Judge may authorise a Youth Court Judge to act in place of the Principal Youth Court Judge if—

"(a) the Principal Youth Court Judge is absent for any reason; or

"(b) the office of the Principal Youth Court Judge is vacant."

Subpart 5—Amendments to Companies Act 1993

516 Principal Act

This **subpart** amends the Companies Act 1993 (the **principal Act**).

517 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

"**association**, in Parts 15 and 16 and in **Schedule 10**, includes—

"(a) a body corporate (other than a company, an overseas company, or a body corporate that may be put into liquidation under or in accordance with the Act under which it is incorporated or registered); and

"(b) a partnership; and

"(c) an unincorporated body of persons".

518 Section 235 amended (Interpretation)

(1) In section 235, definition of **company**, paragraph (c), replace "that may be put into liquidation under section 17A of the Judicature Act 1908" with ":".

(2) In section 235, definition of **company**, after paragraph (c), insert:

"(d) any other body corporate to which this Part applies under any enactment".

(3) In section 235, insert in its appropriate alphabetical order:

"**shareholder** or **persons entitled to surplus assets** includes, in relation to an association, members of the association or persons that the court determines as being justly entitled to surplus assets of the association after the satisfaction of the claims of all of the creditors".

519 Section 240 amended (Interpretation)
After section 240(1), insert:

"(1A) In this Part, **company** means—
"(a) a company within the meaning of section 2:
"(b) an overseas company to which this Part applies (*see* section 342):
"(c) an association (*see* **section 240B**):
"(d) any other body corporate to which this Part applies under any other enactment".

520 New section 240B inserted (Liquidation of associations)
After section 240A, insert:

"**240B Liquidation of associations**
An association may be put into liquidation under this Part, and this Part applies to an association, subject to the modifications and exclusions set out in **Schedule 10**."

521 New Schedule 10 inserted
After Schedule 9, insert the **Schedule 10** set out in **Schedule 10** of this Act.

Subpart 6—Amendment to Contractual Remedies Act 1979

522 Principal Act
This **subpart** amends the Contractual Remedies Act 1979 (the **principal Act**).

523 New section 4A inserted (Stipulations not essence of contracts)
After section 4, insert:

"**4A Stipulations not essence of contracts**
Stipulations in contracts as to time or otherwise that would not, before 13 September 1882 (the date of the coming into force of the Law Amendment Act 1882), have been deemed to be or to have become the essence of such contracts in a court of equity must receive in all courts the same construction and effect as they would have received in equity before that date.
"Compare: 1908 No 89 s 90".

Subpart 7—Amendment to Copyright Act 1994

524 Principal Act

This **subpart** amends the Copyright Act 1994 (the **principal Act**).

525 New section 222A inserted (Power to award interest)

After section 222, insert:

"**222A Power to award interest**

"(1) This section applies where the Tribunal makes an order under Part 8 for the payment of an amount of money (including money required to be repaid, or further money required to be paid, in respect of charges already paid).

"(2) The Tribunal's order may include an award of interest on the whole or part of the money, payable at the rate, not exceeding the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the order), and for the period, ending not later than the date that the money is paid, that the Tribunal thinks appropriate as compensation for delay in payment of the money."

Subpart 8—Amendments to Courts (Remote Participation) Act 2010

526 Principal Act

This **subpart** amends the Courts (Remote Participation) Act 2010 (the **principal Act**).

527 Section 8 replaced (Use of audio-visual links in criminal procedural matters)

Replace section 8 with:

"**8 Use of audio-visual links in criminal procedural matters**

"(1) AVL must be used for the appearance of a participant in a criminal procedural matter if AVL is available and the participant is in prison, unless a judicial officer or Registrar determines that the use of AVL is contrary to the interests of justice.

"(1A) AVL must be used for the appearance of a participant in a sentencing matter if AVL is available and the participant is in

prison, unless a judicial officer determines that the use of AVL is contrary to the interests of justice.

"(2) Before making a determination under **subsection (1) or (1A)**, the judicial officer or Registrar (as the case may be) must take into account the criteria specified in sections 5 and 6."

528 Section 13 replaced (Determining place of hearing)

Replace section 13 with:

"**13 Determining place of hearing**

The place of hearing of any proceeding in which 1 or more of the participants appear by the use of AVL ~~is the place that the relevant judicial officer or Registrar considers appropriate in the circumstances.~~—

"(a) is the place that the relevant judicial officer determines as appropriate in the circumstances; or

"(b) is, in the case where the participants consent to having a Registrar make the decision, the place that the relevant Registrar determines as appropriate in the circumstances."

Subpart 9—Amendments to Criminal Procedure Act 2011

529 Principal Act

This **subpart** amends the Criminal Procedure Act 2011 (the **principal Act**).

530 Section 74 amended (Category 4 offences)

In section 74(5)(c), after "different", insert "or an alternative".

531 Section 133 amended (Amendment of charge)

After section 133(2), insert:

"(3) A Registrar may, in respect of any offence other than a category 4 offence, exercise the power under subsection (1) if the prosecutor and the defendant consent to the amendment."

532 Section 146 amended (Withdrawal of charge)

After section 146(2), insert:

"(3) A Registrar may, in respect of any offence other than a category 4 offence, exercise the power under subsection (1) if the defendant consents to the prosecutor withdrawing the charge."

533 New section 362A inserted (Jurisdiction of Justices and Community Magistrates relating to amendment or withdrawal of charges)

After section 362, insert:

"**362A Jurisdiction of Justices and Community Magistrates relating to amendment or withdrawal of charges**

"(1) A presiding Justice or Community Magistrate (as the case may be) may exercise the power specified in—

"(a) section 133 (Amendment of charge) if the prosecutor and the defendant consent to the amendment:

"(b) section 146 (Withdrawal of charge) if the defendant consents to the prosecutor withdrawing the charge.

"(2) This section applies to category 1, 2, and 3 offences but not to category 4 offences.

"(3) Nothing in this section applies when a District Court presided over by 1 or more Justices or 1 or more Community Magistrates is exercising jurisdiction in accordance with section 355 or 356."

534 Section 365 repealed (Contempt of court)

Repeal section 365.

Subpart 10—Amendments to Employment Relations Act 2000

535 Principal Act

This **subpart** amends the Employment Relations Act 2000 (the **principal Act**).

536 Section 5 amended (Interpretation)

(1) In section 5, definition of **Judge**, replace "a temporary" with "an acting".

(2) In section 5, insert in its appropriate alphabetical order:

"**lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006".

537 Section 187 amended (Jurisdiction of court)

After section 187(1)(k), insert:

"(ka) to hear and determine any application for review of the type referred to in **section 237D**:".

538 Section 196 replaced (Contempt of court or Authority)

Replace section 196 with:

"**196 Contempt of court or Authority**

"(1) This section applies if any person—

"(a) wilfully insults a member of the Authority, a Judge, an officer of the Authority, a Registrar of the court, any other officer of the court, or any witness during his or her sitting or attendance in the Authority or the court, or in going to or returning from the Authority or the court; or

"(b) wilfully interrupts the proceedings of the Authority or the court or otherwise misbehaves in an investigation meeting or a hearing of the Authority or the court; or

"(c) wilfully and without lawful excuse disobeys any order or direction of the Authority or the court in the course of an investigation meeting or the hearing of any proceedings.

"(2) If this section applies,—

"(a) any constable or officer of the court, with or without the assistance of any other person, may, by order of the Authority or the court, take the person into custody and detain him or her until the rising of the Authority or the court; and

"(b) the Judge may, if he or she thinks fit, sentence the person to—

"(i) imprisonment for a period not exceeding 3 months; or

"(ii) a fine not exceeding $5,000 for each offence; and

"(c) in default of payment of any such fine, the Judge may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid.

"(3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.
"Compare: 2011 No 81 s 365".

539 New section 198A inserted (Registrar may take affidavit)
After section 198, insert:

"**198A Registrar may take affidavit**
A Registrar may take an affidavit."

540 Section 200 amended (Appointment of Judges)
(1) Replace section 200(2) with:

"(2) A person may ~~only~~ be appointed a Judge only if—
"(a) that person has for at least 7 years held a New Zealand practising certificate as a barrister or as a barrister and solicitor; or
"(b) that person—
"(i) holds a degree in law granted or issued by any university within New Zealand; and
"(ii) has been admitted as a barrister and solicitor of the High Court; and
"(iii) has held a practising certificate in a jurisdiction specified by Order in Council—
"(A) for at least 7 years; or
"(B) for a lesser number of years but when that number of years is added to the number of years the person has held a New Zealand practising certificate the total number of years is at least 7."

(2) Replace section 200(4) with:

"(4) The Attorney-General must publish information explaining his or her process for—
"(a) seeking expressions of interest for the appointment of Judges of the court; and
"(b) nominating persons for appointment as a Judge of the court.

"(5) A Judge must not practise as a lawyer."

541 New sections 200AA and 200AB inserted

After section 200, insert:

"**200AA Judge not to undertake other employment or hold other office**

"(1) A Judge of the court must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of ~~the Chief Justice in consultation with~~ the Chief Judge.

"(2) An approval under **subsection (1)** may be given only if the Chief Judge is satisfied that undertaking the employment or holding the office is ~~compatible~~ consistent with the Judge's judicial office.

~~"(3) However, there is no need to obtain approval under **subsection (1)** for the appointment of a Judge to another office if an enactment permits or requires a Judge to hold that office.~~

"(3) However, **subsection (1)** does not apply to another office if an enactment permits or requires the office to be held by a Judge.

"**200AB Protocol relating to activities of Judges**

"(1) The Chief Justice must develop and publish a protocol containing guidance on—

"(a) the employment, or types of employment, that he or she considers may be undertaken consistent with being a Judge; and

"(b) the offices, or types of offices, that he or she considers may be held consistent with being a Judge.

"(2) The Chief Justice may only develop and publish a protocol under **subsection (1)** after consultation with the Chief Judge."

542 Section 201 amended (Seniority)

In section 201(3), replace "temporary" with "acting".

543 Section 207 amended (Appointment of temporary Judges)

(1) In the heading to section 207, replace "**temporary**" with "**acting**".

(2) In section 207(1), replace "temporary Judges" with "acting Judges".

(3) Replace section 207(4) with:

"(4) A person may, subject to subsection (2), be appointed as an acting Judge under this section if he or she is a ~~current or~~ former Judge of the court or a current or former District Court Judge."

(4) A person holding office as a temporary Judge under section 207 of the principal Act immediately before the commencement of this section continues to hold office on the same terms and as if he or she were appointed as an acting Judge under section 207 of that Act.

544 New sections 222A to 222G inserted

After section 222, insert:

"**222A Information regarding reserved judgments**

"(1) The Chief Judge must, in consultation with the Chief Justice, publish information about—

"(a) the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and

"(b) the number of judgments of the court that he or she considers to be outstanding beyond a reasonable time for delivery; and

"(c) any other information about reserved judgments that he or she wishes to publish.

"(2) The information referred to in **subsection (1)(b)** must be published periodically or regularly.

"**222B Final written judgments to be published on Internet**

"(1) Every final written judgment of the court must be published on the Internet as soon as practicable unless there is good reason not to publish the complete judgment.

"(2) A final written judgment may be published on the Internet in part if there are good reasons for not publishing the other parts of the judgment.

"(3) Good reason not to publish a judgment or part of it includes the following:

"(a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:

"(b) the judgment falls into a category of judgments that are of limited public value:

"(c) taking into account the presumption in **subsection (1)** in favour of publication, a Judge nevertheless determines that the judgment or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.

"(4) In this section, **final written judgment** means a written decision that determines or substantially determines the outcome of any proceedings and that is either—

"(a) a written reserved judgment; or

"(b) an oral judgment transcribed by an official transcription service.

"**222C Recusal guidelines**

The Chief Judge must, in consultation with the Chief Justice, develop and publish guidelines to assist Judges to decide if they should recuse themselves from a proceeding.

"**222D Judge may make order restricting commencement or continuation of proceeding**

"(1) A Judge may make an order (a **section 222D order**) restricting a person from commencing or continuing civil proceedings in the Employment Court.

"(2) The order may have—

"(a) a limited effect (a **limited order**); or

"(b) an extended effect (an **extended order**).

"(3) A limited order restrains a party from continuing or commencing civil proceedings on a particular matter in the Employment Court.

"(4) An extended order restrains a party from continuing or commencing civil proceedings on a particular or related matter in the Employment Court.

"(5) Nothing in this section limits the court's inherent power to control its own proceedings.

"**222E Grounds for making section 222D order**

"(1) A Judge may make a limited order if, in ~~more than 1 proceeding~~ at least 2 proceedings about the same matter in the court, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

"(2) A Judge may make an extended order if, in ~~more than 1 proceeding~~ at least 2 proceedings about any matter considered by the court, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

"(3) In determining whether the proceedings are or were totally without merit, the Judge may take into account the nature of any other interlocutory application, appeals, or criminal prosecutions involving the party to be restrained, but is not limited to those considerations.

"(4) The proceedings concerned must be proceedings instituted or conducted by the party to be restrained, whether against the same person or different persons.

"**222F Terms of section 222D order**

"(1) A **section 222D** order may restrain a party from instituting any civil proceeding (whether generally or against any particular person or persons) of any type specified in the order without first obtaining the leave of the court.

"(2) A **section 222D** order, whether limited or extended, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or she is satisfied that there are exceptional circumstances justifying the longer period.

"**222G Procedure and appeals relating to section 222D orders**

"(1) A party to any proceeding may apply for a limited order or an extended order.

"(2) An application for leave to continue or issue a proceeding by a party subject to ~~an order under~~ a **section 222D** order may be made without notice, but the court may direct that the application for leave be served on any specified person.

"(2A) An application for leave must be determined on the papers, unless the Judge considers that an oral hearing should be con-

ducted because there are exceptional circumstances and it is appropriate to do so in the interests of justice. The Judge's determination of the application for leave is final.

"(3) A **section 222D** order does not prevent or affect the commencement of a criminal prosecution in any case.

"(4) The party against whom a **section 222D** order is made may appeal against the order to the Court of Appeal.

"(5) The appellant in an appeal under **subsection (4)** or the applicant for the **section 222D** order concerned may, with the leave of the Supreme Court, appeal against the determination of that appeal to the Supreme Court.

"(6) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be."

545 ~~New section 236A inserted (Persons who may support self-represented litigant)~~

~~After section 236, insert:~~

~~"236A Persons who may support self-represented litigant~~

~~"(1) A self-represented litigant is entitled to be supported in court by any person other than a barrister or solicitor of the High Court.~~

~~"(2) A Judge may refuse to allow a self-represented litigant to be supported in court by another person only if the Judge considers that it would be contrary to the interests of justice and fairness to allow such support."~~

546 Section 237 amended (Regulations)

After section 237(f), insert:

"(fa) in relation to a service performed by a Registrar of the court under this Act and specified in regulations made under **paragraph (fb)**, authorising a Registrar of the court to charge a reasonable fee calculated on the actual expense incurred in performing the service:

"(fb) specifying the services (other than services for which a fee is already prescribed under this Act) performed by a Registrar of the court under this Act for which that person may charge a fee:

"(fc) making provision in relation to the postponement, under the regulations, of the payment of any fee, which provision may (without limitation) include provision—

"(i) for the recovery of the fee after the expiry of the period of postponement; and

"(ii) for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable:

"(fd) providing for the manner in which an application for the exercise of a power specified in **section 237B(1) or 237C(1)** is to be made, including, without limitation, requiring the application to be in a form approved for the purpose by the chief executive:

"(fe) providing for the refund of fees paid for a review of a decision of a Registrar of the court, if the decision is overturned in its entirety by a Judge:".

547 New sections 237B to 237D inserted

After section 237A, insert:

"**237B Regulations providing for waiver, etc, of fees**

"(1) In order to promote access to justice, the Governor-General may, by Order in Council, make regulations authorising a Registrar of the court to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding, or to refund in whole or in part a fee that has already been paid.

"(2) Regulations made under **subsection (1)** must provide that a Registrar of the court may ~~only~~ exercise a power under the regulations only if he or she is satisfied on the basis of prescribed criteria that—

"(a) the person responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or

"(b) unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued.

"(3) For the purposes of **subsection (2)**, regulations may prescribe criteria—

"(a) for assessing a person's ability to pay a fee; and

"(b) for identifying proceedings that concern matters of genuine public interest.

"(4) No fee is payable for an application for the exercise of a power specified in **subsection (1)**.

"Compare: 1947 No 16 s 123(1)(ba), (bb), (2)

"**237C Postponement of fees**

"(1) The Governor-General may, by Order in Council, make regulations authorising a Registrar of the court to postpone the payment of a fee pending the determination of—

"(a) an application for the exercise of a power specified in **section 237B(1)**; or

"(b) an application for review under **section 237D**.

"(2) No fee is payable for an application for the exercise of a power specified in **subsection (1)**.

"Compare: 1947 No 16 s 123(1)(bc), (2)

"**237D Reviews of decisions of Registrars concerning fees**

"(1) A person who disagrees with a decision of a Registrar of the court under regulations made under **section 237B(1)** may apply to a Judge for a review of that decision.

"(2) The application must be made within—

"(a) 20 working days after the date on which the applicant is notified of the decision; or

"(b) any further time that the Judge allows on application, which may be made either before or after the expiry of that period.

"(3) The application may be made informally.

"(4) A review is—

"(a) conducted by way of rehearing of the matter in respect of which the Registrar of the court made the decision; and

"(b) dealt with on the papers, unless the Judge directs otherwise.

"(5) The Judge may confirm, modify, or reverse the decision of the Registrar of the court.

"(6) No fee is payable on the application.

"Compare: 1947 No 16 s 123A".

Subpart 11—Amendment to Family Courts Act 1980

548 Principal Act

This **subpart** amends the Family Courts Act 1980 (the **principal Act**).

549 Section 7 amended (Acting Family Court Judges)

Replace section 7(1) with:

"(1) The Chief District Court Judge may authorise a Family Court Judge to act in place of the Principal Family Court Judge if—

"(a) the Principal Family Court Judge is absent for any reason; or

"(b) the office of the Principal Family Court Judge is vacant."

Subpart 12—Amendment to Insolvency Act 2006

550 Principal Act

This **subpart** amends the Insolvency Act 2006 (the **principal Act**).

551 Section 6 amended (Corporations and other entities not subject to Act)

In section 6, insert as subsection (2):

"(2) However,—

"(a) Part 16 of the Companies Act 1993 applies to the liquidation of companies, overseas companies, and associations within the meaning of section 2(1) of that Act; and

"(b) other bodies corporate may be put into liquidation under or in accordance with the Acts under which they are incorporated or registered."

Subpart 13—Amendments to Local Government (Rating) Act 2002

552 Principal Act

This **subpart** amends the Local Government (Rating) Act 2002 (the **principal Act**).

553 Section 70 amended (Rating unit may be sold or leased)

~~In section 70, insert as subsection (3):~~After section 70(2), insert:

"(3) The Registrar may charge the fee, and require the fee to be paid, before the work required of the Registrar in effecting the sale or lease is begun."

554 Section 75 amended (Application of proceeds of rating sale or lease)

In section 75(a), after "fee", insert "(unless the fee has already been paid)".

Subpart 14—Amendments to Property Law Act 2007

555 Principal Act

This **subpart** amends the Property Law Act 2007 (the **principal Act**).

556 New section 27A inserted (Writing required for discharge of debt by acceptance of part in satisfaction)

After section 27, insert:

"**27A Writing required for discharge of debt by acceptance of part in satisfaction**

"(1) An acknowledgement in writing by a creditor, or by any person authorised by the creditor in writing, of the receipt of a part of the creditor's debt in satisfaction of the whole debt operates as a discharge of the debt.

"(2) This section applies despite anything to the contrary in any rule of law.

"Compare: 1908 No 89 s 92".

557 New subpart 5A of Part 2 inserted

After section 53, insert:

"Subpart 5A—Assignment of securities and rights of creditor to surety who pays debt

"**53A Interpretation**

In this subpart, **debt** and **payment of a debt** have the same meanings as in section 48.

"**53B Surety who pays debt entitled to assignment of all securities held by creditor**

"(1) Every person (**A**) who pays the debt of another person (being surety for the debt or liable with another person for the debt) is entitled to have assigned to A, or a trustee for A, every judgment, specialty, or other security held by the creditor in respect of the debt.

"(2) **Subsection (1)** applies whether the judgment, specialty, or other security is or is not deemed at law to be satisfied by the payment of the debt.

"Compare: 1908 No 89 s 84

"**53C Rights of surety**

"(1) Person A is entitled to stand in the place of the creditor, and to use all the remedies, and if need be, and upon a proper indemnity, to use the name of the creditor in any civil proceedings in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by person A in paying the debt.

"(2) The payment by person A may not be pleaded as a defence against any action or other proceeding by person A referred to in **subsection (1)**.

"(3) In this section, **person A** means the person referred to as A in **section 53B**.

"Compare: 1908 No 89 s 85

"**53D Rights of co-sureties, etc, as between themselves**

A co-surety, co-contractor, or co-debtor is not entitled to recover from any other co-surety, co-contractor, or co-debtor (**B**)

by the means referred to in **section 53C** more than the proportion to which, as between those parties themselves, B is liable.
"Compare: 1908 No 89 s 86".

558 New sections 74A and 74B inserted

After section 74, insert:

"**74A Recovery of payments made under mistake of law**

"(1) If relief in respect of any payment that has been made under mistake is sought in any court (whether in civil proceedings or by way of defence, set-off, counterclaim, or otherwise) and that relief could be granted if the mistake were wholly one of fact, that relief must not be denied by reason only that the mistake is one of law, whether or not it is in any degree also one of fact.

"(2) Nothing in this section enables relief to be given in respect of any payment made at a time when the law required, or allowed, or was commonly understood to require or allow, the payment to be made or enforced, by reason only that the law was subsequently changed or shown not to have been as it was commonly understood to have been at the time of the payment.
"Compare: 1908 No 89 s 94A

"**74B Payments made under mistake of law or fact not always recoverable**

Relief, whether under **section 74A** or in equity or otherwise, in respect of any payment made under mistake, whether of law or of fact, must be denied wholly or in part if the person from whom relief is sought received the payment in good faith and has so altered his or her position in reliance on the validity of the payment that in the opinion of the court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.
"Compare: 1908 No 89 s 94B".

Subpart 15—Amendments to Resource Management Act 1991

559 Principal Act

This **subpart** amends the Resource Management Act 1991 (the **principal Act**).

560 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

"**lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006".

561 Section 250 amended (Appointment of Environment Judges and alternate Environment Judges)

After section 250(4), insert:

"(5) The Attorney-General must publish information explaining his or her process for—

"(a) seeking expressions of interest for the appointment of Environment Judges and alternate Environment Judges; and

"(b) nominating persons for appointment as an Environment Judge or an alternate Environment Judge.

"(6) Environment Judges and alternate Environment Judges must not practise as lawyers."

562 New sections 250A and 250B inserted

After section 250, insert:

"**250A Judge not to undertake other employment or hold other office**

"(1) Environment Judges and alternate Environment Judges must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of ~~the Chief Justice in consultation with~~ the Principal Environment Judge.

"(2) An approval under **subsection (1)** may ~~only~~ be given only if the Principal Environment Judge is satisfied that undertaking the employment or holding the office is ~~compatible~~ consistent with the Judge's judicial office.

~~"(3) However, there is no need to obtain approval under **subsection (1)** for the appointment of a Judge to another office if an enactment permits or requires a Judge to hold that office.~~

"(3) However, **subsection (1)** does not apply to another office if an enactment permits or requires the office to be held by a Judge.

"**250B Protocol relating to activities of Judges**

"(1) The Chief Justice must develop and publish a protocol containing guidance on—

"(a) the employment, or types of employment, that he or she considers may be undertaken consistent with being an Environment Judge or alternate Environment Judge; and

"(b) the offices, or types of offices, that he or she considers may be held consistent with being an Environment Judge or alternate Environment Judge.

"(2) The Chief Justice may only develop and publish a protocol under **subsection (1)** after consultation with the Principal Environment Judge."

~~563 New section 274A inserted (Persons who may support self-represented litigant)~~

~~After section 274, insert:~~

~~"274A Persons who may support self-represented litigant~~

~~"(1) A self-represented litigant is entitled to be supported in the Environment Court by any person other than a barrister or solicitor of the High Court.~~

~~"(2) A Judge of the court may refuse to allow a self-represented litigant to be supported in court by another person only if the Judge considers that it would be contrary to the interests of justice and fairness to allow such support."~~

564 Section 282 replaced (Power to commit for contempt)

Replace section 282 with:

"**282 Contempt of court**

"(1) This section applies if any person—

"(a) wilfully insults an Environment Judge, an alternate Environment Judge, an Environment Commissioner, a Registrar of the court, any other officer of the court, any special adviser to the court, or any witness during his or her sitting or attendance in court, or in going to or returning from the court; or

"(b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court; or

"(c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of ~~the hearing of~~ any proceedings.

"(2) If this section applies,—

"(a) any constable or officer of the court, with or without the assistance of any other person, may, by order of a Judge, take the person into custody and detain him or her until the rising of the court; and

"(b) the Judge may, if he or she thinks fit, sentence the person to—

"(i) imprisonment for a period not exceeding 3 months; or

"(ii) a fine not exceeding $1,000 for each offence.

"(3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

"Compare: 2011 No 81 s 365".

565 New sections 288A to 288G inserted

After section 288, insert:

"**288A Information regarding reserved judgments**

"(1) The Principal Environment Judge must, in consultation with the Chief Justice, publish information about—

"(a) the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and

"(b) the number of judgments of the court that he or she considers to be outstanding beyond a reasonable time for delivery; and

"(c) any other information about reserved judgments that he or she wishes to publish.

"(2) The information referred to in **subsection (1)(b)** ~~may~~ must be published periodically or regularly.

"**288B Final written judgments to be published on Internet**

"(1) Every final written judgment of the court must be published on the Internet as soon as practicable unless there is good reason not to publish the complete judgment.

"(2) A final written judgment may be published on the Internet in part if there are good reasons for not publishing the other parts of the judgment.

"(3) Good reason not to publish a judgment or part of it includes the following:

"(a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:

"(b) the judgment falls into a category of judgments that are of limited public value:

"(c) taking into account the presumption in **subsection (1)** in favour of publication, a Judge nevertheless determines that the judgment or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.

"(4) In this section, **final written judgment** means a written decision that determines or substantially determines the outcome of any proceedings and that is either—

"(a) a written reserved judgment; or

"(b) an oral judgment transcribed by an official transcription service.

"**288C Recusal guidelines**

The Principal Environment Judge must, in consultation with the Chief Justice, develop and publish guidelines to assist Judges to decide if they should recuse themselves from a proceeding.

"**288D Judge may make order restricting commencement or continuation of proceeding**

"(1) ~~An Environment~~ A Judge may make an order (a **section 288D order**) restricting a person from commencing or continuing civil proceedings in the Environment Court.

"(2) The order may have—

"(a) a limited effect (a **limited order**); or

"(b) an extended effect (an **extended order**).

"(3) A limited order restrains a party from continuing or commencing civil proceedings on a particular matter in the Environment Court.

"(4) An extended order restrains a party from continuing or commencing civil proceedings on a particular or related matter in the Environment Court.

"(5) Nothing in this section limits the court's inherent power to control its own proceedings.

"**288E Grounds for making section 288D order**

"(1) ~~An Environment~~ A Judge may make a limited order if, in ~~more than 1 proceeding~~ at least 2 proceedings about the same matter in the court, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

"(2) A Judge may make an extended order if, in ~~more than 1 proceeding~~ at least 2 proceedings about any matter considered by the court, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

"(3) In determining whether the proceedings are or were totally without merit, the Judge may take into account the nature of any other interlocutory application, appeals, or criminal prosecutions involving the party to be restrained, but is not limited to those considerations.

"(4) The proceedings concerned must be proceedings instituted or conducted by the party to be restrained, whether against the same person or different persons.

"**288F Terms of section 288D order**

"(1) A **section 288D** order may restrain a party from instituting any civil proceeding (whether generally or against any particu-

lar person or persons) of any type specified in the order without first obtaining the leave of the court.

"(2) A **section 288D** order, whether limited or extended, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or she is satisfied that there are exceptional circumstances justifying the longer period.

"**288G Procedure and appeals relating to section 288D orders**

"(1) A party to any proceeding may apply for a limited order or an extended order.

"(2) An application for leave to continue or issue a civil proceeding by a party subject to ~~an order under~~ a **section 288D** order may be made without notice, but the court may direct that the application for leave be served on any specified person.

"(2A) An application for leave must be determined on the papers, unless the Judge considers that an oral hearing should be conducted because there are exceptional circumstances and it is appropriate to do so in the interests of justice. The Judge's determination of the application for leave is final.

"(3) A **section 288D** order does not prevent or affect the commencement of a private criminal prosecution in any case.

"(4) The party against whom a **section 288D** order is made may appeal against the order to the High Court.

"(5) The appellant in an appeal under **subsection (4)** or the applicant for the **section 288D** order concerned may, with the leave of the High Court, appeal against the determination of that appeal to the Court of Appeal.

"(6) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be."

Subpart 16—Amendments to Te Ture Whenua Maori Act 1993

566 Principal Act

This **subpart** amends Te Ture Whenua Maori Act 1993 (the **principal Act**).

567 Section 4 amended (Interpretation)

In section 4, insert in their appropriate alphabetical order:

"**Chief Justice** has the meaning given by **section 4 4(1) of the Judicature Modernisation Act 2013**

"**lawyer** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006".

568 Section 7 amended (Appointment of Judges)

(1) Replace section 7(3) with:

"(3) A person may ~~only~~ be appointed a Judge only if—

"(a) that person has for at least 7 years held a New Zealand practising certificate as a barrister or as a barrister and solicitor; or

"(b) that person—

"(i) holds a degree in law granted or issued by any university within New Zealand; and

"(ii) has been admitted as a barrister and solicitor of the High Court; and

"(iii) has held a practising certificate in a jurisdiction specified by Order in Council—

"(A) for at least 7 years; or

"(B) for a lesser number of years but when that number of years is added to the number of years the person has held a New Zealand practising certificate the total number of years is at least 7."

(2) Replace section 7(6) and (7) with:

"(6) The Attorney-General must publish information explaining his or her process for—

"(a) seeking expressions of interest for the appointment of Judges of the court; and

"(b) nominating persons for appointment as a Judge of the court.

"(7) If the Attorney-General is not for the time being responsible for recommending the appointment of Judges of the court, he or she must publish information explaining the responsible Minister's process for doing the things referred to **subsection (6)**.

"(8) A Judge must not practise as a lawyer."

569 New sections 7AA and 7AB inserted

After section 7, insert:

"**7AA Judge not to undertake other employment or hold other office**

"(1) A Judge of the court must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of ~~the Chief Justice in consultation with~~ the Chief Judge.

"(2) An approval under **subsection (1)** may be given only if the Chief Judge is satisfied that undertaking the employment or holding the office is ~~compatible~~ consistent with the Judge's judicial office.

~~"(3) However, there is no need to obtain approval under **subsection (1)** for the appointment of a Judge to another office if an enactment permits or requires a Judge to hold that office.~~

"(3) However, **subsection (1)** does not apply to another office if an enactment permits or requires the office to be held by a Judge.

"**7AB Protocol relating to activities of Judges**

"(1) The Chief Justice must develop and publish a protocol containing guidance on—

"(a) the employment, or types of employment, that he or she considers may be undertaken consistent with being a Judge; and

"(b) the offices, or types of offices, that he or she considers may be held consistent with being a Judge.

"(2) The Chief Justice may only develop and publish a protocol under **subsection (1)** after consultation with the Chief Judge."

570 Section 90 replaced (Power to remove for contempt)

Replace section 90 with:

"**90 Contempt of court**

"(1) This section applies if any person—

"(a) wilfully insults a judicial officer, or any Registrar, or any officer of the court, or any juror, or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or

"(b) wilfully interrupts the proceedings of a court or otherwise misbehaves in court; or

"(c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings.

"(2) If this section applies,—

"(a) any constable or officer of the court, with or without the assistance of any other person, may, by order of a judicial officer, take the person into custody and detain him or her until the rising of the court; and

"(b) the judicial officer may, if he or she thinks fit, sentence the person to—

"(i) imprisonment for a period not exceeding 3 months; or

"(ii) a fine not exceeding $1,000 for each offence.

"(3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

"Compare: 2011 No 81 s 365".

571 New sections 98A to ~~98G~~ 98H inserted

After section 98, insert:

"**98A Information regarding reserved judgments**

"(1) The Chief Judge must, in consultation with the Chief Justice, publish information about—

"(a) the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and

"(b) the number of judgments of the court that he or she considers to be outstanding beyond a reasonable time for delivery; and

"(c) any other information about reserved judgments that he or she wishes to publish.

"(2) The information referred to in **subsection (1)(b)** must be published periodically.

"**98B Final written judgments to be published on Internet**

"(1) Every final written judgment of the court must be published on the Internet as soon as practicable unless there is good reason not to publish the complete judgment.

"(2) A final written judgment may be published on the Internet in part if there are good reasons for not publishing the other parts of the judgment.

"(3) Good reason not to publish a judgment or part of it includes the following:

"(a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:

"(b) the judgment falls into a category of judgments that are of limited public value:

"(c) taking into account the presumption in **subsection (1)** in favour of publication, a Judge nevertheless determines that the judgment or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.

"(4) In this section, **final written judgment** means a written decision that determines or substantially determines the outcome of any proceedings and that is either—

"(a) a written reserved judgment; or

"(b) an oral judgment transcribed by an official transcription service.

"**98C Recusal guidelines**

The Chief Judge must, in consultation with the Chief Justice, develop and publish guidelines to assist Judges to decide if they should recuse themselves from a proceeding.

"**98D Judge may make order restricting commencement or continuation of proceeding**

"(1) A Judge may make an order (a **section 98D order**) restricting a person from commencing or continuing ~~civil~~ proceedings in the court.

"(2) The order may have—

"(a) a limited effect (a **limited order**); or

"(b) an extended effect (an **extended order**).

"(3) A limited order restrains a party from continuing or commencing ~~civil~~ proceedings on a particular matter in the court.

"(4) An extended order restrains a party from continuing or commencing ~~civil~~ proceedings on a particular or related matter in the court.

"(5) Nothing in this section limits the court's inherent power to control its own proceedings.

"**98E Grounds for making section 98D order**

"(1) A Judge may make a limited order if, in ~~more than 1 proceeding~~ at least 2 proceedings about the same matter in the court, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

"(2) A Judge may make an extended order if, in ~~more than 1 proceeding~~ at least 2 proceedings about any matter considered by the court, the Judge considers that ~~2 or more of~~ the proceedings are or were totally without merit.

"(3) In determining whether the proceedings are or were totally without merit, the Judge may take into account the nature of any other interlocutory application~~, appeals, or criminal prosecutions~~ or appeal involving the party to be restrained, but is not limited to those considerations.

"(4) The proceedings concerned must be proceedings instituted or conducted by the party to be restrained, whether against the same person or different persons.

"**98F Terms of section 98D order**

"(1) A **section 98D** order may restrain a party from instituting any ~~civil~~ proceeding (whether generally or against any particular person or persons) of any type specified in the order without first obtaining the leave of the court.

"(2) A **section 98D** order, whether limited or extended, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or she is satisfied that there are exceptional circumstances justifying the longer period.

"**98G Procedure and appeals relating to section 98D orders**

"(1) A party to any proceeding may apply for a limited order or an extended order.

"(2) An application for leave to continue or issue a proceeding by a party subject to ~~an order under~~ a **section 98D** order may be made without notice, but the court may direct that the application for leave be served on any specified person.

"(2A) An application for leave must be determined on the papers, unless the Judge considers that an oral hearing should be conducted because there are exceptional circumstances and it is appropriate to do so in the interests of justice. The Judge's determination of the application for leave is final.

~~"(3) A **section 98D** order does not prevent or affect the commencement of a private criminal prosecution in any case.~~

"(4) The party against whom a **section 98D** order is made may appeal against the order to the ~~High Court~~ Maori Appellate Court.

"(5) The appellant in an appeal under **subsection (4)** or the applicant for the **section 98D** order concerned may, with the leave of the ~~High Court~~ Maori Appellate Court, appeal against the determination of that appeal to the Court of Appeal.

"(6) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be.

"**98H References to Judge in sections 98D to 98G**

The functions and powers of a Judge under **sections 98D to 98G** are exercisable by individual Judges of the Maori Land Court, and are exercisable also by the Judges acting as the Maori Appellate Court as if references in those sections to a Judge were references to the Judges acting as that court."

Subpart 17—Amendments to Trans-Tasman Proceedings Act 2010

572 Principal Act

This **subpart** amends the Trans-Tasman Proceedings Act 2010 (the **principal Act**).

573 Section 3 amended (Purpose of, and guides to, this Act)
After section 3(6), insert:

"(7) Part 3 of this Act, which stands apart from Parts 1 and 2, sets out special provisions applying to certain proceedings in the High Court of New Zealand and the Federal Court of Australia."

574 Section 4 amended (Interpretation)

(1) In section 4(1), replace "In this Act" with "In Parts 1 and 2".

(2) In section 4(1), definition of **procedural rules**, replace "this Act or any regulations made under it" with "Parts 1 and 2 or any regulations made under those Parts".

(3) In section 4(2), replace "this Act" with "Parts 1 and 2".

575 Section 6 repealed (Trans-Tasman market proceedings provisions not affected)
Repeal section 6.

576 Section 53 amended (When registrable Australian judgments are enforceable in New Zealand)
In section 53(2)(a), replace "section 56 of the Judicature Act 1908" with "**section 170 of the Judicature Modernisation Act 2013**".

577 New Part 3 inserted
After section 78, insert:

"Part 3
"Special provisions applying to certain proceedings in High Court of New Zealand and Federal Court of Australia

"**79 Part not limited by Part 1 or 2**
This Part is not limited or affected by Part 1 or 2.

"**80 Courts (Remote Participation) Act 2010 does not apply to remote appearances under this Part**

Nothing in the Courts (Remote Participation) Act 2010 applies to any remote appearance in accordance with this Part.

"Compare: 2010 No 108 s 36

"**81 Interpretation**

In this Part, unless the context otherwise requires,—

"**Australian proceeding**—

"(a) means a proceeding in which a matter for determination arises, whether or not any other matter arises for determination, under—

"(i) any of sections 46A, 155A, and 155B of the Competition and Consumer Act 2010 (Aust); or

"(ii) a provision of Part VI or XII of the Competition and Consumer Act 2010 (Aust) in so far as it relates to any of sections 46A, 155A, and 155B of that Act; and

"(b) includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment, an order, or an injunction given, made, or granted in such a proceeding

"**Federal Court** means the Federal Court of Australia

"**New Zealand proceeding**—

"(a) means a proceeding in which a matter for determination arises, whether or not any other matter arises for determination, under—

"(i) any of sections 36A, 98H, and 99A of the Commerce Act 1986; or

"(ii) a provision of Part 6 or 7 of the Commerce Act 1986 in so far as the provision relates to any of sections 36A, 98H, and 99A of that Act; and

"(b) includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment, an order, or an injunction given, made, or granted in such a proceeding.

"Compare: 1908 No 89 s 56D

"**82 High Court may order New Zealand proceedings to be heard in Australia**

"(1) The High Court may, if it is satisfied that a New Zealand proceeding could more conveniently or fairly be tried or heard by the High Court in Australia or that the evidence in a New Zealand proceeding could more conveniently be given in Australia, as the case may be, order that the proceeding be tried or heard in Australia, or that the evidence be taken in Australia, and may sit in Australia for that purpose.

"(2) The order must specify—

"(a) the place in Australia where the proceeding will be tried or heard or the evidence taken, as the case may be:

"(b) the date or dates of the trial or hearing or on which the evidence will be taken, as the case may be:

"(c) any other matters relating to the trial or the hearing or the taking of the evidence, as the case may be, as the court thinks fit.

"(3) Without limiting the powers of the High Court in relation to the proceeding, the High Court may give judgment in, or make any determination for the purposes of, a New Zealand proceeding in Australia.

"Compare: 1908 No 89 s 56E

"**83 Australian counsel entitled to practise in High Court**

A person who is entitled to practise as a barrister or solicitor, or both, in the Federal Court is entitled to practise as a barrister or solicitor, or both, in relation to—

"(a) a New Zealand proceeding before the High Court sitting in Australia:

"(b) the examination, cross-examination, or re-examination of a witness in Australia whose evidence is being taken by audio link or audiovisual link in a New Zealand proceeding before the High Court in New Zealand:

"(c) the making of submissions by audio link or audiovisual link to the High Court in New Zealand in a New Zealand proceeding.

"Compare: 1908 No 89 s 56F

"**84 High Court may set aside subpoena issued in New Zealand proceeding**

"(1) On application, the High Court may set aside an order of subpoena issued by the High Court requiring the attendance of a person in Australia to give evidence or to produce documents to the High Court for the purposes of a New Zealand proceeding.

"(2) An application under **subsection (1)** must be made by the person served with the order of subpoena and may be made *ex parte*.

"(3) Without limiting the grounds on which the order of subpoena may be set aside, the High Court may set the order aside on any of the following grounds:

"(a) that the witness does not have, and cannot reasonably be expected to obtain, the necessary travel documents:

"(b) that the witness is liable to be detained for the purpose of serving a sentence:

"(c) that the witness is liable to prosecution for an offence:

"(d) that the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or 83 of the Commerce Act 1986:

"(e) that the evidence of the witness can be obtained without significantly greater expense by other means:

"(f) that compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:

"(g) in the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to give evidence, that the court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means.

"(4) Every application to set aside an order of subpoena under **subsection (1)** must be made by affidavit.

"(5) The affidavit must—

"(a) be sworn by the applicant; and

"(b) set out the facts on which the applicant relies; and

"(c) be filed in the office of the court that issued the order of subpoena.

"(6) The Registrar of the court must ensure that a copy of the affidavit is served on the solicitor on the record for the party to the proceedings who obtained the order of subpoena, or, if there is no solicitor on the record, on that party.

"Compare: 1908 No 89 s 56G

"**85 Injunctions and orders in New Zealand proceedings**

Despite any rule of law, the High Court may, in a New Zealand proceeding, make an order or grant an injunction that the court is empowered to make or grant that requires a person to do an act, or refrain from engaging in conduct, in Australia.

"Compare: 1908 No 89 s 56H

"**86 Issue of subpoenas in New Zealand proceedings**

"(1) An order of subpoena may, with the leave of a Judge, be obtained in a New Zealand proceeding to require a person in Australia to give evidence, or to produce documents or things, or both, to the High Court at a sitting of that court in New Zealand or in Australia.

"(2) An order of subpoena, issued for the purposes of a New Zealand proceeding, that requires a witness in Australia to produce documents or things, but does not require the witness to give evidence, must permit the witness to comply with the order of subpoena by producing the documents or things to a specified registry of the Federal Court.

"Compare: 1908 No 89 s 56I

"**87 Powers of Federal Court of Australia**

"(1) The Federal Court of Australia may exercise all the powers of that court—

"(a) at a sitting of that court in New Zealand held for the purposes of an Australian proceeding:

"(b) at a sitting of that court in Australia held for the purposes of an Australian proceeding at which the evidence of a witness in New Zealand is taken by audio link or audiovisual link or at which submissions are made in New Zealand by a barrister or solicitor, or both, or by a party to the proceedings by audio link or audiovisual link.

"(2) Without limiting **subsection (1)**, the Federal Court of Australia Act 1976 (Aust) and the rules of court made under that Act that are applicable in relation to Australian proceedings generally apply to the practice and procedure of the Federal Court at any sitting of that court of the kind referred to in that subsection.

"(3) Without limiting **subsection (1)**, the Federal Court may, at any such sitting of the court in New Zealand or in Australia, by order—

"(a) direct that the hearing or any part of the hearing be held in private:

"(b) require any person to leave the court:

"(c) prohibit or restrict the publication of evidence or the name of any party or any witness.

"(4) Nothing in **subsection (1) or (2)** applies in relation to—

"(a) the power of the court to punish any person for contempt; or

"(b) the prosecution of any person for an offence committed as a witness; or

"(c) the enforcement or execution of any judgment, order, injunction, writ, or declaration given, made, or granted by the court.

"(5) An order made under **subsection (3)** may be enforced by a Judge of the High Court who, for that purpose, has and may exercise the powers, including the power to punish for contempt, that would be available to enforce the order if it had been made by that Judge.

"Compare: 1908 No 89 s 56J

"**88 Issue of subpoenas in Australian proceedings**

"(1) An order of subpoena, issued by the Federal Court with the leave of a Judge of that court, requiring the attendance of a person in New Zealand to give evidence or to produce documents for the purposes of an Australian proceeding may be served on that person in New Zealand by leaving a sealed copy of the subpoena with that person personally, together with a statement setting out the rights and obligations of that person, including information as to the manner in which an application may be made to that court to have the subpoena set aside.

"(2) A person who has been served with an order of subpoena under **subsection (1)** may not be compelled to comply with the order unless, at the time of service of the order or at some other reasonable time before the hearing, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.

"Compare: 1908 No 89 s 56K

"**89 Failure of witness to comply with subpoena issued in Australian proceeding**

"(1) The court may, on receiving a certificate under the seal of the Federal Court stating that a person named in the certificate has failed to comply with an order of subpoena requiring that person to attend as a witness for the purposes of an Australian proceeding, issue a warrant requiring any constable to arrest that person and bring that person before the court.

"(2) The court may, on the appearance of that person before the court, impose a fine not exceeding $1,000, unless the court is satisfied that the failure to comply with the order of subpoena, the onus of proof of which lies with that person, should be excused.

"(3) In determining whether the failure to comply with the order of subpoena should be excused, the High Court may have regard to—

"(a) any matters that were not brought to the attention of the Federal Court if the High Court is satisfied that—

"(i) the Federal Court would have been likely to have set aside the order of subpoena if those matters had been brought to the attention of that court; and

"(ii) the failure to bring those matters to the attention of the Federal Court was not because of any fault on the part of the person alleged to have failed to comply with the order of subpoena or was because of an omission by that person that should be excused; and

"(b) any matters to which the High Court would have regard if the order of subpoena had been issued by the High Court.

"(4) For the purposes of this section, but subject to **subsection (3)**, a certificate under the seal of the Federal Court is conclusive evidence of the matters stated in it if the certificate states—

"(a) that the order of subpoena was issued by that court:

"(b) that the witness failed to comply with the order of subpoena:

"(c) the decision of that court, or any orders or findings of fact made by that court, in relation to any application made to that court to have the order of subpoena set aside.

"(5) Subject to **subsection (3)**, no findings of fact made by the Federal Court on an application to that court to have the order of subpoena set aside may be challenged by any person alleged to have failed to comply with the order unless the court was deliberately misled in making those findings of fact.

"Compare: 1908 No 89 s 56L

"**90 Federal Court of Australia may administer oaths in New Zealand**

"(1) The Federal Court may administer an oath or affirmation in accordance with the practice and procedure of that court—

"(a) at any sitting of that court in New Zealand held for the purposes of an Australian proceeding; or

"(b) for the purposes of obtaining the evidence of a person in New Zealand by audio link or audiovisual link at a sitting of that court in Australia.

"(2) Evidence given by a person on oath or affirmation administered by the Federal Court under **subsection (1)**, for the purposes of section 108 of the Crimes Act 1961 (which relates to perjury), is to be deemed to have been given as evidence in a judicial proceeding on oath.

"Compare: 1908 No 89 s 56M

"**91 Orders made by Federal Court of Australia not subject to review**

No application for review under ~~the~~ **Part 3 of the Judicature Modernisation Act 2013** and no application for an order of mandamus, prohibition, or certiorari or for a declaration or injunction may be brought in respect of any judgment, order,

or determination of the Federal Court made or given at a sitting of that court in New Zealand in an Australian proceeding.

"Compare: 1908 No 89 s 56N

"**92 Contempt of Federal Court of Australia**

"(1) Every person commits an offence who, at any sitting of the Federal Court in New Zealand,—

"(a) assaults, threatens, intimidates, or wilfully insults—

"(i) a Judge of that court; or

"(ii) a Registrar or an officer of that court; or

"(iii) a person appearing as a barrister or solicitor, or both, before that court; or

"(iv) a witness in proceedings before that court; or

"(b) wilfully interrupts or obstructs the proceedings; or

"(c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the proceedings.

"(2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000.

"Compare: 1908 No 89 s 56O

"**93 Arrangements to facilitate sittings**

"(1) The Chief Justice of New Zealand may make arrangements with the Chief Justice of the Federal Court for the purposes of giving effect to this Part.

"(2) Without limiting **subsection (1)**, arrangements may be made—

"(a) to enable the High Court to sit in Australia in New Zealand proceedings in the courtrooms of the Federal Court or in other places in Australia:

"(b) to enable the Federal Court to sit in New Zealand in Australian proceedings in the courtrooms of the High Court or in other places in New Zealand:

"(c) to enable evidence to be given and submissions of counsel to be made in New Zealand proceedings or in Australian proceedings by audio link or audiovisual link:

"(d) for the provision of registry facilities and court staff for the purposes of a New Zealand proceeding or an Australian proceeding.

"Compare: 1908 No 89 s 56P

"**94 Privileges and immunities of Judges, counsel, and witnesses in Australian proceedings**

"(1) A Judge of the Federal Court sitting as a Judge of that court in New Zealand in an Australian proceeding has all the protections, privileges, and immunities of a Judge of the High Court.

"(2) A witness has all the privileges and immunities of a witness in the High Court when the witness gives evidence in an Australian proceeding—

"(a) at a sitting in New Zealand of the Federal Court; or

"(b) by audio link or audiovisual link at a sitting in Australia of the Federal Court.

"(3) A person has all the privileges and immunities of counsel in the High Court when appearing as a barrister or solicitor, or both, in an Australian proceeding—

"(a) at a sitting in New Zealand of the Federal Court; or

"(b) by audio link or audiovisual link at a sitting in Australia of the Federal Court.

"(4) A person has all the privileges and immunities of a party in the High Court when appearing as a party in an Australian proceeding—

"(a) at a sitting in New Zealand of the Federal Court; or

"(b) by audio link or audiovisual link at a sitting in Australia of the Federal Court.

"Compare: 1908 No 89 s 56Q

"**95 High Court may take evidence at request of Federal Court**

"(1) The High Court may, at the request of the Federal Court, take evidence in New Zealand for the Federal Court for the purposes of an Australian proceeding and may, by order, make any provision it considers appropriate for the purpose of taking that evidence.

"(2) An order may require a specified person to take such steps as the High Court considers appropriate for taking the evidence.

"(3) Without limiting **subsections (1) and (2)**, an order may, in particular, make provision for—

"(a) the examination of witnesses, either orally or in writing; or

"(b) the production of documents or things; or

"(c) the inspection, photographing, preservation, custody, or detention of any property; or

"(d) the taking of samples of property and carrying out experiments on or with property.

"(4) The High Court may make an order requiring a person to give evidence either orally or by tendering a written document otherwise than on oath or affirmation if the Federal Court requests it to do so.

"(5) A person who has been served with an order made under this section may not be compelled to comply with the order unless, at the time of service of the order or at some other reasonable time before that person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.

"(6) A person may not be compelled to give evidence pursuant to an order under this section that he or she is not compelled to give in the Australian proceeding to which the request relates.

"Compare: 1908 No 89 s 56R

"**96 Power to make rules for purposes of this Part**

"(1) Rules may be made under **section 145 of the Judicature Modernisation Act 2013** for, or in relation to, Australian proceedings and New Zealand proceedings.

"(2) Without limiting **subsection (1)**, rules may be made that make provision for, or in relation to,—

"(a) the giving of evidence and the making of submissions in New Zealand proceedings by audio link or audiovisual link:

"(b) receiving, for the purposes of subpart 8 of Part 3 of the Evidence Act 2006, facsimiles as evidence of documents or things:

"(c) the issuing of subpoenas for service in Australia for the purposes of New Zealand proceedings and the service of those subpoenas:

"(d) the payment to witnesses required to comply with orders of subpoena served in Australia for the purposes of New Zealand proceedings of amounts in respect of expenses and loss of income occasioned by compliance with those orders:

"(e) the lodging of documents or things with the Federal Court in compliance with orders of subpoena issued in New Zealand proceedings that require only the production of documents or things by witnesses:

"(f) the transmission to the Federal Court of documents (or certified copies of those documents) or things lodged with the High Court in Australian proceedings in compliance with orders of subpoena issued by the Federal Court:

"(g) the hearing of applications to set aside orders of subpoena under **section 84**:

"(h) sittings of the High Court in Australia:

"(i) giving effect to arrangements made under **section 93**:

"(j) the form of certification of judgments, orders, and injunctions in New Zealand proceedings:

"(k) the taking of evidence under **section 95**:

"(l) any other matters as are contemplated by or necessary for giving effect to this Part.

"Compare: 1908 No 89 s 56S

"**97 Transitional provision for certain proceedings commenced before commencement of this Part**

"(1) This section applies to any proceeding commenced, but not yet determined, under Part 1A of the Judicature Act 1908 before the commencement of this section.

"(2) If this section applies, the proceeding must be treated as if it had been commenced under this Part."

578 Consequential amendment to Evidence Act 2006

(1) This section amends the Evidence Act 2006.

(2) In section 153, replace "Part 1A of the Judicature Act 1908" with "**Part 3** of the Trans-Tasman Proceedings Act 2010".

579 Consequential amendment to Judicature Act 1908

(1) This section amends the Judicature Act 1908.

(2) Repeal Part 1A.

580 Consequential amendments for Part 6

The enactments specified in **Schedule 11** are amended in the manner set out in that schedule.

~~581~~ ~~Transitional provision for Part 6~~

~~The transitional provisions set out in **Schedule 12** have effect for the purposes of **Part 6**.~~

Schedule 1
High Court Rules

s 4

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High Court Rules—*continued*

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Part 1
Rules of general application
Subpart 1—Objective and interpretation

1.1 Title

These rules are the High Court Rules.

Compare: 1908 No 89 Schedule 2 r 1.1 (as substituted by 2008 No 90 s 8)

1.2 Objective

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

Compare: 1908 No 89 Schedule 2 r ~~4~~ 1.2 (as substituted by 2008 No 90 s 8)

1.3 Interpretation

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

Act means **Part 1 of the Judicature Modernisation Act 2013**

address for service, in relation to a party, means the address of a place in New Zealand at which a document may be left for that party, or to which it may be sent by post to that party, under these rules or, if the party is a defendant as defined in section 4(1) of the Trans-Tasman Proceedings Act 2010 who is served in Australia under section 13 of that Act with an initiating document for a proceeding, the address of a place in New Zealand or Australia that, under section 18 of that Act, is or is to be treated as the defendant's address for service for the proceeding

High Court Rules—*continued*
Part 1—*continued*
Subpart 1—*continued*

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

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

case management conference means a conference conducted under subpart 1 of Part 7

chattels includes all things that are not land

civil means not criminal

civil proceedings, in relation to the Crown, has the same meaning as in section 2(1) of the Crown Proceedings Act 1950

control, in relation to a document, means—

(a) possession of the document; or
(b) a right to possess the document; or
(c) a right, otherwise than under these rules, to inspect or copy the document

court means the High Court; and includes—

(a) a Judge of the High Court; and
(b) an Associate Judge of the High Court exercising the jurisdiction conferred on an Associate Judge by the Act or by rules made under **section 145** of the Act

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

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

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

document means—

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or from which such symbols, images, or sounds can be derived, and includes—

High Court Rules—*continued*
Part 1—*continued*
Subpart 1—*continued*

(i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached:
(ii) a book, map, plan, graph, or drawing:
(iii) a photograph, film, or negative; and

(b) information electronically recorded or stored, and information derived from that information

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

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

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

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

hearing date, in relation to an interlocutory application or a proceeding, means the date on which, and the time at which, the application or the proceeding is to be heard

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

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

interlocutory order—

(a) means an order or a direction of the court that—
(i) is made or given for the purposes of a proceeding or an intended proceeding; and

High Court Rules—*continued*
Part 1—*continued*
Subpart 1—*continued*

(ii) concerns a matter of procedure or grants some relief ancillary to that claimed in a pleading; and

(b) includes—

(i) an order for a new trial; and

(ii) an order striking out the whole or part of a pleading; and

(iii) an order varying or rescinding an interlocutory order

Judge means a Judge of the High Court; and includes an Associate Judge of the High Court exercising the jurisdiction conferred on an Associate Judge by the Act or by rules made under **section 145** of the Act

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

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

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

nearer or **nearest**, in relation to any place, means nearer or nearest by the most practicable route

notice of proceeding means a notice filed under rule 5.22

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

opposite party means, in relation to any party, any other party whose interests are opposed to those of that party

party means any person who is a plaintiff or a defendant or a person added to a proceeding

plaintiff means the person by whom or on whose behalf a proceeding is brought

pleading includes a statement of claim, a statement of defence, a reply, and a counterclaim

proceeding means any application to the court for the exercise of the civil jurisdiction of the court other than an interlocutory application

High Court Rules—*continued*
Part 1—*continued*
Subpart 1—*continued*

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

Registrar includes a Deputy Registrar

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

these rules means the High Court Rules

trial includes a hearing before a Judge alone

working day means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

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

(3) In these rules, unless the context otherwise requires, a reference to a numbered form is a reference to the form so numbered in Schedule 1.

(4) In a judgment, order, direction, or other document forming part of a proceeding or of an interlocutory application, unless the context otherwise requires,—

month means a calendar month

working day has the same meaning as in subclause (1).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.3 (as substituted by 2008 No 90 s 8)

Subpart 2—Application and compliance

1.4 Application

(1) The practice and procedure of the court in all civil proceedings and interlocutory applications is regulated by these rules.

High Court Rules—*continued*
Part 1—*continued*
Subpart 2—*continued*

(2) Despite subclause (1), these rules do not apply to—
  (a) appeals to the Court of Appeal; or
  (b) appeals to the Supreme Court.

(3) These rules are subject to—
  (a) the enactments referred to in **section 144(5)** of the Act:
  (b) the Evidence Act 2006:
  (c) any statute prescribing the practice and procedure of the court in a proceeding or an appeal or application for leave to appeal under that statute:
  (d) rules made under **section 145** of the Act prescribing the procedure applicable in respect of any class of civil proceedings.

(4) If in any civil proceedings any question arises as to the application of any provision of these rules, the court may, either on the application of a party or on its own initiative, determine the question and give any directions it thinks just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.4 (as substituted by 2008 No 90 s 8)

1.5 Non-compliance with rules

(1) A failure to comply with the requirements of these rules—
  (a) must be treated as an irregularity; and
  (b) does not nullify—
    (i) the proceeding; or
    (ii) any step taken in the proceeding; or
    (iii) any document, judgment, or order in the proceeding.

(2) Subject to subclauses (3) and (4), the court may, on the ground that there has been a failure to which subclause (1) applies, and on any terms as to costs or otherwise that it thinks just,—
  (a) set aside, either wholly or in part,—
    (i) the proceeding in which the failure occurred; or
    (ii) any step taken in the proceeding in which the failure occurred; or

High Court Rules—*continued*
Part 1—*continued*
Subpart 2—*continued*

(iii) any document, judgment, or order in the proceeding in which the failure occurred; or

(b) exercise its powers under these rules to allow any amendments to be made and to make any order dealing with the proceeding generally as it thinks just.

(3) The court must not wholly set aside any proceeding or the originating process by which the proceeding was begun on the ground that the proceeding was required by the rules to be begun by an originating process other than the one employed.

(4) The court must not set aside any proceeding or any step taken in a proceeding or any document, judgment, or order in any proceeding on the ground of a failure to which subclause (1) applies on the application of a party unless the application is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.5 (as substituted by 2008 No 90 s 8)

1.6 Cases not provided for

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

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.6 (as substituted by 2008 No 90 s 8)

1.7 Oral applications for relief

(1) A Judge may grant relief on an oral application if the case is urgent and the interests of justice so require.

High Court Rules—*continued*
Part 1—*continued*
Subpart 2—*continued*

(2) This rule applies despite any rule requiring a written application.

(3) Relief may be granted on terms and conditions considered just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.7 (as substituted by 2008 No 90 s 8)

1.8 Consent instead of leave of court

(1) When, by these rules, the leave of the court is required in any matter of procedure, and all parties and persons who are affected consent to the grant of leave, a party may file a memorandum signed by all those parties and persons evidencing that consent and its terms and conditions.

(2) The Registrar must either—

(a) make and seal an order in terms of the memorandum; or

(b) refer the memorandum to the court, in which case the memorandum must be treated as an interlocutory application for the leave.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.8 (as substituted by 2008 No 90 s 8)

1.9 Amendment of defects and errors

(1) The court may, before, at, or after the trial of any proceeding, amend any defects and errors in the pleadings or procedure in the proceeding, whether or not there is anything in writing to amend, and whether or not the defect or error is that of the party (if any) applying to amend.

(2) The court may, at any stage of a proceeding, make, either on its own initiative or on the application of a party to the proceedings, any amendments to any pleading or the procedure in the proceeding that are necessary for determining the real controversy between the parties.

(3) All amendments under subclause (1) or (2) may be made with or without costs and on any terms the court thinks just.

High Court Rules—*continued*
Part 1—*continued*
Subpart 2—*continued*

(4) This rule is subject to rule 7.7 (which prohibits steps after the close of pleadings date without leave).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.9 (as substituted by 2008 No 90 s 8)

1.10 Security

(1) An officer who is empowered to take security from a person for any purpose may determine the appropriate number of sureties and the form and the amount of the security.

(2) Any person required to give security may appeal to the court against any decision under subclause (1).

(3) If a surety becomes bankrupt or insolvent, or makes a composition with that surety's creditors, the court may stay all further steps in the proceeding by the principal party to the security until another surety has been found.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.10 (as substituted by 2008 No 90 s 8)

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

1.11 Speaking in Māori

(1) This rule applies to a person entitled under section 4(1) of the Maori Language Act 1987 to speak Māori in a proceeding or at the hearing of an interlocutory application.

(2) If a person to whom this rule applies wishes to speak Māori in a proceeding or at the hearing of an interlocutory application, that person, or, if the person is a witness, the party intending to call that person, must file and serve on every other party to the proceeding a notice of his or her intention to speak Māori.

(3) The notice must state that the person intends to speak Māori at—

(a) all case management conferences and hearings; or

High Court Rules—*continued*
Part 1—*continued*
Subpart 3—*continued*

(b) all case management conferences and hearings held after a specified case management conference or hearing; or

(c) a specified case management conference or hearing.

(4) The notice must be in form G 12.

(5) The notice must be filed and served,—

(a) if the person intends to speak Māori at all case management conferences and hearings, not less than 10 working days before the first case management conference or hearing; or

(b) if the person intends to speak Māori at case management conferences and hearings held after a particular case management conference or hearing, not less than 10 working days before the first case management conference or hearing at which the person intends to speak Māori; or

(c) if the person intends to speak Māori at a particular case management conference or hearing, not less than 10 working days before the case management conference or hearing.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.11 (as substituted by 2008 No 90 s 8)

1.12 Translation of documents into te reo Māori

(1) A person upon whom a document is served in any proceeding is entitled to receive a translation of the document into the Māori language if he or she—

(a) applies, orally or in writing, to the Registrar in the place where the proceeding is pending, within 10 working days after the date of service, for a translation into the Māori language of the document; and

(b) states a postal address for the service of the translation (if an address for service has not already been given); and

High Court Rules—*continued*
Part 1—*continued*
Subpart 3—*continued*

(c) satisfies the Registrar that he or she is unable to read the document but could read it if it were translated into the Māori language.

(2) The Registrar must require that translation to be prepared by the party or person on whose behalf the document was served.

(3) The translation must be certified correct by a person holding an endorsed certificate of competency under section 18 of the Maori Language Act 1987.

(4) The translation may be served—
(a) personally; or
(b) at the address for service (if any) of the person entitled to the translation; or
(c) by sending it by registered post addressed to that person at the stated postal address.

(5) When the translation is sent by registered post, it is to be treated as having been served when it would be delivered or available for delivery at its address in the ordinary course of registered post.

(6) The costs of preparing, certifying, and serving the translation are in the discretion of the court as costs in the proceeding.

(7) Unless the court otherwise orders,—
(a) the document is deemed not to have been served until the translation is served in accordance with subclause (4); and
(b) the proceeding in which the document is issued must be stayed as far as the person entitled to the translation is concerned until the translation is so served; and
(c) every subsequent document served on that person in the proceeding and every execution process or other process issued against that person to enforce any judgment entered or order made in the proceeding must, unless that person is at the time represented by a solici-

High Court Rules—*continued*
Part 1—*continued*
Subpart 3—*continued*

tor, be accompanied by a translation into the Māori language complying with this rule.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.12 (as substituted by 2008 No 90 s 8)

1.13 Failure to give notice

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

(a) the court may adjourn the conference or hearing to enable the Registrar to arrange for a person who holds a certificate of competency under section 15(2)(a) or (c) of the Maori Language Act 1987 or some other person competent to interpret Māori to be available at the adjourned case management conference or hearing:

(b) the court may treat the failure to comply as a relevant consideration in an award of costs.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.13 (as substituted by 2008 No 90 s 8)

1.14 Translation may be ordered by court

(1) The court may at any time order that a translation into the Māori language, complying with rule 1.12(2) to (7), of any document served, before or after the making of the order, upon a Māori concerned in a proceeding be served on that Māori, whether or not he or she has applied for it under rule 1.12(1).

(2) An order may be made subject to such terms and conditions as the court thinks just.

(3) The court may, on ordering a translation under this rule, grant an adjournment of the proceeding if justice so requires.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.14 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 1—*continued*
Subpart 3—*continued*

1.15 Affidavit in language other than English

(1) An affidavit in a language other than English (**non-English language affidavit**) may be filed in a proceeding.

(2) The non-English language affidavit must be accompanied by an affidavit by an interpreter to which is exhibited—

(a) a copy of the non-English language affidavit; and

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.15 (as substituted by 2008 No 90 s 8)

1.16 Sign language

(1) Any person permitted by the New Zealand Sign Language Act 2006 to use New Zealand Sign Language in a proceeding or at the hearing of any interlocutory application or at a case management or pre-trial conference must give the court and all other parties 10 working days' notice of that person's intention to do so.

(2) A Judge may at any time, on application by or on behalf of a party, make any order thought just relating to—

(a) providing, with the Registrar's assistance, a competent interpreter, and ensuring that the interpreter is available; and

(b) the interpretation of the sign language into English or Māori and the interpretation of English or Māori words used in court into sign language; and

(c) the cost of any interpretation ordered and its incidence; and

(d) the method of making and recording the sign language communication.

(3) A failure to give notice as required by subclause (1) does not prevent any permitted person using New Zealand Sign Language, however—

(a) the failure is a relevant consideration in an award of costs; and

High Court Rules—*continued*
Part 1—*continued*
Subpart 3—*continued*

(b) the Judge may adjourn the conference or hearing or trial to enable the Registrar to arrange for a competent interpreter to be available at the adjourned conference or hearing or trial.

(4) In this rule, **competent interpreter** means an interpreter who meets the standards of competency specified in regulations made under the New Zealand Sign Language Act 2006; and in the absence of such regulations means a person whom the Judge is satisfied is competent to translate from English or Māori (as the case requires) into New Zealand Sign Language and from New Zealand Sign Language into English or Māori (as the case requires).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.16 (as substituted by 2008 No 90 s 8)

Subpart 4—Time

1.17 Calculating periods of time

(1) A period of time fixed by the rules or by a judgment, order, or direction or by a document in a proceeding must be calculated in accordance with this rule and rule 1.18.

(2) When a time of 1 day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event must not be counted.

(3) Nothing in this rule or in rules 1.18 and 1.19 affects the reckoning of a period of time fixed by the Limitation Act 2010 or any other statute or the application of the Interpretation Act 1999 in relation to the Limitation Act 2010 or any other statute.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.17 (as substituted by 2008 No 90 s 8)

1.18 When time expires when court registry is closed

When the time for doing any act at a registry of the court expires on a day on which that registry is closed, so that that act

High Court Rules—*continued*
Part 1—*continued*
Subpart 4—*continued*

cannot be done on that day, the act is in time if done on the next day on which that registry is open.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.18 (as substituted by 2008 No 90 s 8)

1.19 Extending and shortening time

(1) The court may, in its discretion, extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding, on such terms (if any) as the court thinks just.

(2) The court may order an extension of time although the application for the extension is not made until after the expiration of the time appointed or fixed.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.19 (as substituted by 2008 No 90 s 8)

Subpart 5—Lawyers' obligations

1.20 Lawyers' duties

(1) The duties imposed by these rules on lawyers do not limit a lawyer's obligations to a client or another lawyer or the court under the rules of conduct and client care for lawyers in New Zealand or other applicable ethical rules or guidelines.

(2) A lawyer who acts for a party to a proceeding, or is a party to any proceeding, must not, without the leave of the court, act for any other party to the proceeding who does not have the same interest in the subject matter of the proceeding.

(3) In this rule, **lawyer** includes the partner of a solicitor to whom subclause (1) applies.

(4) In applying these rules, the court may have regard to the obligations referred to in subclause (1).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.20 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 1—*continued*

Subpart 6—Forms

1.21 Variation of forms

(1) Variations may be made to any form directed or authorised by these rules to be used, as the circumstances of a particular case require.

(2) Subclause (1) does not apply if a Judge orders that a court document be prepared in a particular format or with prescribed content.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.21 (as substituted by 2008 No 90 s 8)

Subpart 7—International co-operation

1.22 Communication with foreign court

(1) This rule applies if, and to the extent that, the court is required, or wishes, to seek the co-operation of a court in another country when dealing with an application under these rules.

(2) The court is entitled to communicate with the foreign court if—

(a) the parties consent; and

(b) the communication is not prohibited by the law of the other country.

(3) When the court acts under subclause (2) it must give the parties to the proceeding an opportunity to be heard on the form of the communication.

(4) The communication and any reply must be treated as part of the record of the proceeding or interlocutory application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 1.22 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*

Part 2
Jurisdiction and powers of Associate Judges and Registrars

Subpart 1—Associate Judges

2.1 Jurisdiction and powers

(1) An Associate Judge has the jurisdiction and powers of a Judge in chambers conferred by the Act or these rules or another enactment.

(2) The jurisdiction and powers referred to in subclause (1) are in addition to the jurisdiction and powers conferred by **section 19** of the Act.

(3) Despite subclause (1), an Associate Judge does not have jurisdiction or powers in respect of the matters specified in **section 21(4)** of the Act.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.1 (as substituted by 2008 No 90 s 8)

2.2 Interim order on transfer of proceeding

An Associate Judge who refers a proceeding or a matter arising in a proceeding to a Judge under **section 25(1)** of the Act may, before the final disposal of the proceeding or matter, make any interim order he or she considers just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.2 (as substituted by 2008 No 90 s 8)

Subpart 2—Registrars

2.5 Registrars' jurisdiction and powers relating to interlocutory applications

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

(a) hear and determine an application to extend or shorten the time for filing a statement of defence or notice of interlocutory application:

(b) hear and determine an application under rule 6.28 (relating to service out of New Zealand):

High Court Rules—*continued*
Part 2—*continued*
Subpart 2—*continued*

(c) adjourn a trial, reserving to the court the costs of, or arising out of, the adjournment:
(d) order a stay on an application made to vary or rescind an order or a decision of a Registrar:
(e) make an order in an interlocutory application on notice—
  (i) if the consent of all relevant parties is endorsed on the application or filed; or
  (ii) on receiving a draft order consented to in writing by all relevant parties or by their solicitor or counsel.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.5 (as substituted by 2008 No 90 s 8)

2.6 Additional jurisdiction for certain Registrars

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

(a) rule 1.9, so far as it applies to—
  (i) rule 5.73:
  (ii) rule 8.15:
  (iii) rule 9.69:
  (iv) rule 9.70:
  (v) rule 9.71:
(b) rule 4.35(4):
(c) rule 5.1(4):
(d) subpart 2 of Part 17:
(e) rule 17.24.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.6 (as substituted by 2008 No 90 s 8)

2.7 Limits on jurisdiction

(1) A Registrar must exercise jurisdiction under rules 2.5 and 2.6—
(a) in chambers; and

High Court Rules—*continued*
Part 2—*continued*
Subpart 2—*continued*

(b) subject to any judicial direction.

(2) However, a Registrar may exercise his or her jurisdiction under those rules without further direction.

(3) In exercising a jurisdiction conferred by these rules a Registrar is not subject to direction by any person except a Judge acting under rule 2.11.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.7 (as substituted by 2008 No 90 s 8)

2.8 Powers ancillary to jurisdiction

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.8 (as substituted by 2008 No 90 s 8)

2.9 Jurisdiction in other registries

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.9 (as substituted by 2008 No 90 s 8)

2.10 Form of order

An order made by a Registrar under rules 2.5 and 2.6 must—

(a) be headed "Before the Registrar at [*place*], in chambers"; and

(b) be signed by a Registrar or Deputy Registrar, and sealed with the seal of the court; and

(c) state the rule under which it is made.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.10 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 2—*continued*
Subpart 2—*continued*

2.11 Review of Registrar's decision

(1) An affected party to a proceeding or an intended proceeding may apply to a Judge by interlocutory application for a review of any of the following:
  (a) a Registrar's exercise of jurisdiction:
  (b) a Registrar's refusal to file a document tendered for filing:
  (c) a Registrar's refusal to perform a duty placed on him or her under these rules.

(2) The Judge may, on review, make any orders he or she thinks just.

(3) It is not necessary to apply for an order for an extraordinary remedy under Part 30 or to make an application for review under the **Part 3 of the Judicature Modernisation Act 2013** when seeking a review under subclause (1)(b) or (c).

(4) Notice of an application for review must be filed,—
  (a) if it is made by a party who was present or represented when the decision or refusal of the Registrar was given, within 5 working days of the decision or refusal; or
  (b) if it is made by a party who was not present or represented, within 5 working days after the receipt by the party of notice of the decision or refusal.

(5) An application for review under this rule is not a stay of proceeding or a step in the proceeding, unless a Judge, or a Registrar acting under rule 2.5, so directs.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 2.11 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*

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

3.1 Registry hours

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.1 (as substituted by 2008 No 90 s 8)

3.2 Court holidays

(1) The following are court holidays for the court and the court's registries:

(a) the period beginning on Good Friday and ending on the close of the Tuesday after Easter:

(b) the period beginning on 24 December and ending on the close of 3 January:

(c) Saturdays and Sundays:

(d) the Sovereign's birthday:

(e) Anzac Day:

(f) Labour Day:

(g) Waitangi Day:

(h) the anniversary day of the region in which the court is situated:

(i) in each place where a registry of the court is situated, any day which is in that place—

(i) a public holiday; or

(ii) a proclaimed holiday; or

(iii) a day observed by the Government as a holiday:

(j) any days on which the court and its registries are closed under an order made under rule 3.4.

(2) The Holidays Act 2003 overrides subclause (1).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.2 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 3—*continued*
Subpart 1—*continued*

3.3 Sitting on court holidays

(1) The court may sit on a court holiday if a Judge considers it desirable to do so in order to dispose of business.

(2) Despite subclause (1), the court may sit on a Sunday, Christmas Day, New Year's Day, or Good Friday only if a Judge is of the view that the business to be disposed of is extremely urgent.

(3) If the court sits on a court holiday, it may—

(a) authorise the receipt or issue of any document complying with these rules; and

(b) despite **section 177** of the Act, authorise the service of any document received or issued under paragraph (a).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.3 (as substituted by 2008 No 90 s 8)

3.3A Vacations

(1) There is to be a long vacation beginning on 20 December and ending with the close of 31 January.

(2) There is to be an Easter vacation beginning on the day before Good Friday and ending with the close of the Saturday following Easter.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.3A (as inserted by r 4 of the High Court Amendment Rules (No 2) 2009)

3.4 Epidemics and emergencies

(1) Despite rule 3.1, a Judge may order that the court and its registries be closed for a period specified in the order (not exceeding 1 week) if an epidemic or emergency exists in the place where the court is located.

(2) A Registrar must ensure that an order made under this rule is immediately advertised in the manner the Judge directs.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.4 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 3—*continued*

Subpart 2—Access to court documents

3.5 Interpretation

In this subpart, unless the context otherwise requires,—

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

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

document—

(a) means any written material in the custody or control of the court that relates to a proceeding (including any interlocutory application associated with the proceeding), whether or not kept on a court file; and

(b) includes documentary exhibits, video recordings, records in electronic form, films, photographs, and images in electronic form; but

(c) excludes—

(i) notes made by or for a Judge for his or her personal use; and

(ii) any material that relates to the administration of the court

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

(a) a register or index:

(b) any published list that gives notice of a hearing:

(c) a document that—

(i) may be accessed under an enactment other than these rules; or

(ii) constitutes notice of its contents to the public:

(d) a judgment, order, or minute of the court, including any record of the reasons given by the Judge:

(e) the rolls of barristers and solicitors kept under section 56 of the Lawyers and Conveyancers Act 2006 or any former corresponding enactment.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.5 (inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

High Court Rules—*continued*
Part 3—*continued*
Subpart 2—*continued*

3.6 Application

(1) This subpart applies to documents while they are in the custody or control of the court and until they are transferred to Archives New Zealand.

(2) These rules do not require any person to prepare a document that is not in existence at the time the document is sought.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.6 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

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

(1) Subject to rule 3.12, every person has the right to access the formal court record kept in a registry of the court.

(2) Subject to rule 3.12, every person has the right to access any document or court file that relates to an application or action for a grant of administration under the Administration Act 1969 or to a proceeding for the recall of any such grant.

(3) Despite subclause (1) or (2), a Judge may direct that judgments or orders, or documents or files of the kind described in subclause (2), not be accessed without the permission of the court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.7 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

3.8 Right of parties to access court file or documents

(1) The parties to a proceeding, and their counsel, may (whether during or after the completion of the proceeding), under the supervision of an officer of the court,—

(a) search and inspect the court file or any document relating to the proceeding, without payment of a fee; and

(b) copy any part or parts of the court file or any document relating to the proceeding on payment of any prescribed fee.

(2) Despite subclause (1), a record of court proceedings in electronic form may be copied only with the permission of the court.

High Court Rules—*continued*
Part 3—*continued*
Subpart 2—*continued*

(3) Despite subclause (1), a Judge may direct that the court file or any document relating to the proceeding not be accessed by the parties or their counsel without the permission of the court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.8 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

3.9 Access to documents during substantive hearing stage

(1) This rule applies during the hearing of a proceeding (other than the hearing of an interlocutory application) and until—

(a) the close of the 20th working day after the court has given the final judgment on the proceeding; or

(b) the discontinuance of the proceeding before the final judgment is given.

(2) During the period to which this rule applies, any person may access any of the following documents relating to the proceeding:

(a) any pleading, reference, notice, or application filed in the court:

(b) affidavits, depositions, or other written statements admitted into evidence for the purposes of the hearing:

(c) documents admitted into evidence for the purposes of the hearing:

(d) if any evidence given orally at the hearing has been transcribed, a transcript of that evidence.

(3) Despite subclause (2), a Judge may, on his or her initiative or on request, direct that any document, or part of a document, relating to the proceeding not be accessed without the permission of a Judge.

(4) A request for access to a document under this rule is made informally to the Registrar by letter that—

(a) identifies the requested document; and

(b) gives the reasons for the request.

(5) The following provisions apply when a request for access to a document is made under subclause (4):

High Court Rules—*continued*
Part 3—*continued*
Subpart 2—*continued*

(a) the Registrar must promptly give the parties or their counsel a copy of the request:

(b) a party who wishes to object must, before the relevant deadline (within the meaning of rule 3.10), give written notice of the objection to the Registrar, to the person who made the request, and to the other parties or their counsel:

(c) on receipt of an objection, the Registrar must promptly refer the objection and the request to the Judge for determination:

(d) unless the document is subject to a restriction stated in subclause (3) or in rule 3.12, the Registrar must promptly give the person who made the request access to the document—

(i) if the Registrar receives no objection before the expiry of the relevant deadline (within the meaning of rule 3.10); or

(ii) if the parties or their counsel earlier agree that the person be given access to the document:

(e) every request that relates to a document that is subject to a restriction stated in subclause (3) or in rule 3.12 is taken to be a request for the permission of a Judge, and must be promptly referred to the Judge by the Registrar.

(6) The Judge may determine an objection referred to the Judge under subclause (5)(c) or a request for permission under subclause (3) or (5)(e) in any manner the Judge considers just.

(7) For the purposes of subclause 2(b) and (c), **admitted into evidence** does not include evidence admitted provisionally.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.9 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

3.10 Meaning of relevant deadline in rule 3.9

(1) For the purpose of rule 3.9, where a party or counsel receives a copy of a request given to the party or counsel under that rule,

High Court Rules—*continued*
Part 3—*continued*
Subpart 2—*continued*

relevant deadline means whichever of the following times is applicable:

(a) if the copy of the request is received on a day on which the hearing is proceeding, 3 pm on the first working day after the day on which the copy is received:

(b) if the copy of the request is received on any other day, 3 pm on the third working day after the day on which the copy is received.

(2) For the purposes of subclause (1), a person is deemed to receive a request—

(a) on the day on which it is emailed, faxed, or handed to the person:

(b) on the day after the day on which it is posted to the person.

(3) This rule overrides rule 6.6.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.~~11~~10 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

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

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.11 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

3.12 Restrictions on access

(1) Any right or permission conferred or given by these rules to access a document, court file, or any part of the formal court record is subject to—

(a) any enactment, court order, or direction limiting or prohibiting access or publication; and

(b) the payment of any prescribed fees for access.

High Court Rules—*continued*
Part 3—*continued*
Subpart 2—*continued*

(2) A person may not access a document, court file, or any judgment or order, that relates to a proceeding brought under an enactment specified in subclause (3) unless—
  (a) the person is a party to that proceeding; or
  (b) the court permits the person to do so.

(3) The enactments are as follows:
  (a) Adoption Act 1955:
  (b) Alcoholism and Drug Addiction Act 1966:
  (c) Arbitration Act 1996:
  (d) Care of Children Act 2004:
  (e) Civil Union Act 2004:
  (f) Family Proceedings Act 1980:
  (g) Family Protection Act 1955:
  (h) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
  (i) Marriage Act 1955:
  (j) Mental Health (Compulsory Assessment and Treatment) Act 1992:
  (k) Property (Relationships) Act 1976:
  (l) Protection of Personal and Property Rights Act 1988:
  (m) Status of Children Act 1969:
  (n) any former provisions corresponding to provisions of any of the Acts mentioned in paragraphs (a) to (m).

(4) A person may search, inspect, or copy a document, court file, or any judgment or order relating to an application under rule 9.60 or 28.4 (which relate to the service of New Zealand subpoenas in Australia) only with the leave of a Judge.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.12 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

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

(1) This rule applies whenever the permission of the court is necessary under these rules and is sought to access a document,

High Court Rules—*continued*
Part 3—*continued*
Subpart 2—*continued*

court file, or any part of the formal court record, except where access may be sought under rule 3.9.

(2) An application under this rule is made informally to the Registrar by a letter that—

(a) identifies the document, court file, or part of the formal court record that the applicant seeks to access; and

(b) gives the reasons for the application.

(3) The application is heard and determined by a Judge or, if a Judge directs the Registrar to do so, by the Registrar.

(4) On receipt of an application made in accordance with subclause (2), the Judge or Registrar may direct that the person file an interlocutory application or originating application.

(5) The applicant must give notice of the application to any person who is, in the opinion of the Judge or Registrar, adversely affected by the application.

(6) The Judge or Registrar may dispense with the giving of notice under subclause (5) if it would be impracticable to require notice to be given.

(7) The Judge or Registrar may deal with an application on the papers, at an oral hearing, or in any other manner the Judge or Registrar considers just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.13 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

3.14 Decisions on applications under rule 3.13

(1) The Judge or Registrar may refuse an application made under rule 3.13 or grant it in whole or in part without conditions or subject to any conditions that the Judge or Registrar thinks appropriate.

(2) A Judge may permit access to a series of files for the purposes of research.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.14 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

High Court Rules—*continued*
Part 3—*continued*
Subpart 2—*continued*

3.15 Review of decisions by Registrar

(1) Any decision by a Registrar under rule 3.14 is subject to review by a Judge on the application of the applicant or any person affected.

(2) Rule 2.11 applies to subclause (1) as if the reference in that rule to a party were a reference to the applicant or any person affected.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.15 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

3.16 Matters to be taken into account

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

(a) the orderly and fair administration of justice:

(b) the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:

(c) the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, court hearings and decisions:

(d) the freedom to seek, receive, and impart information:

(e) whether a document to which the application or request relates is subject to any restriction under rule 3.12:

(f) any other matter that the Judge or Registrar thinks just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.16 (as inserted by r 4 of the High Court (Access to Court Documents) Amendment Rules 2009)

Subpart 3—Investment of funds in court

3.17 Application for order

(1) Subclause (2) applies if money has been, or is to be, paid into court in a proceeding under—

High Court Rules—*continued*
Part 3—*continued*
Subpart 3—*continued*

(a) an order of the court; or
(b) a provision of these rules.

(2) If this subclause applies, a party to the proceeding may apply to the court for an order directing the Registrar to invest the money on whatever security or securities the court thinks just.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.17 (as substituted by 2008 No 90 s 8)

3.18 Powers of court in relation to application

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

(2) An order may be varied by the court on the application of a party to the proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.18 (as substituted by 2008 No 90 s 8)

3.19 Disposal of securities and income

(1) The court may, on the application of a party to a proceeding, direct that—
(a) the security on which money is invested under rule 3.17 be transferred to a party or parties in the shares or proportions the court thinks just; or

High Court Rules—*continued*
Part 3—*continued*
Subpart 3—*continued*

(b) the security be converted into money and the resulting capital and income be paid to a party or parties in the shares or proportions the court thinks just; or

(c) the capital be paid to a party or parties and the income be paid to another party or parties in the shares or proportions the court thinks just.

(2) An application may be made—

(a) at the time of making an order under rule 3.17; or

(b) at a later time.

(3) Unless the court directs otherwise, the income received from an investment under an order under rule 3.17 must be paid to the party or parties who are found by the court to be entitled to the capital, in the shares or proportions the court thinks just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 3.19 (as substituted by 2008 No 90 s 8)

Part 4
Parties

Subpart 1—Limit on parties

4.1 Limit on parties

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

(a) persons whose presence before the court is necessary to justly determine the issues arising; and

(b) persons who ought to be bound by any judgment given.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.1 (as substituted by 2008 No 90 s 8)

Subpart 2—Plaintiffs

4.2 Plaintiffs

(1) Persons may be joined jointly, severally, or in the alternative as plaintiffs,—

(a) if it is alleged that they have a right to relief in respect of, or arising out of, the same transaction, matter, event,

High Court Rules—*continued*
Part 4—*continued*
Subpart 2—*continued*

instrument, document, series of documents, enactment, or bylaw; and

(b) if each of those persons brought a separate proceeding, a common question of law or fact would arise.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.2 (as substituted by 2008 No 90 s 8)

Subpart 3—Defendants

4.3 Defendants

(1) Persons may be joined jointly, individually, or in the alternative as defendants against whom it is alleged there is a right to relief in respect of, or arising out of, the same transaction, matter, event, instrument, document, series of documents, enactment, or bylaw.

(2) It is not necessary for every defendant to be interested in all relief claimed or every cause of action.

(3) The court may make an order preventing a defendant from being embarrassed or put to expense by being required to attend part of a proceeding in which the defendant has no interest.

(4) A plaintiff who is in doubt as to the person or persons against whom the plaintiff is entitled to relief may join 2 or more persons as defendants with a view to the proceeding determining—

(a) which (if any) of the defendants is liable; and

(b) to what extent.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.3 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*

Subpart 4—Third, fourth, and subsequent parties

4.4 Third parties

(1) A defendant may issue a third party notice if the defendant claims any or all of the following:

(a) that the defendant is entitled to a contribution or an indemnity from a person who is not a party to the proceeding (a **third party**):

(b) that the defendant is entitled to relief or a remedy relating to, or connected with, the subject matter of the proceeding from a third party and the relief or remedy is substantially the same as that claimed by the plaintiff against the defendant:

(c) that a question or issue in the proceeding ought to be determined not only between the plaintiff and the defendant but also between—

(i) the plaintiff, the defendant, and the third party; or

(ii) the defendant and the third party; or

(iii) the plaintiff and the third party:

(d) that there is a question or an issue between the defendant and the third party relating to, or connected with, the subject matter of the proceeding that is substantially the same as a question or an issue arising between the plaintiff and the defendant.

(2) A third party notice must be issued within—

(a) 10 working days after the expiry of the time for filing the defendant's statement of defence; or

(b) a longer time given by leave of the court.

(3) A third party notice may be issued only with the leave of the court if an application for judgment is pending under rule 12.2 or 12.3.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.4 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 4—*continued*

4.5 Fourth parties

(1) A third party claiming any or all of the matters in rule 4.4(1) in relation to a person who is not a party to the proceeding (a **fourth party**) may issue a fourth party notice.

(2) A fourth party notice must be issued within—
- (a) 10 working days after the expiry of the time for filing the third party's statement of defence; or
- (b) a longer time given by leave of the court—
  - (i) on an application on notice to all existing parties; or
  - (ii) with the written consent of all existing parties.

(3) Rule 4.4(3) applies to fourth party notices.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.5 (as substituted by 2008 No 90 s 8)

4.6 Subsequent parties

(1) A fourth party who claims any or all of the matters in rule 4.4(1) in relation to a person who is not a party to the proceeding (a **subsequent party**) may issue a subsequent party notice and so on.

(2) A subsequent party notice may be issued only with—
- (a) the written consent of all existing parties; or
- (b) the leave of the court made on an application on notice to all existing parties.

(3) Rules 4.4(3) and 4.5(2) apply, with all necessary modifications, to subsequent party notices.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.6 (as substituted by 2008 No 90 s 8)

4.7 Status of third, fourth, and subsequent parties

(1) A third, fourth, or subsequent party is a party to the proceeding from the time a notice is served on that party.

High Court Rules—*continued*
Part 4—*continued*
Subpart 4—*continued*

(2) A third, fourth, or subsequent party has the same rights of defence as a defendant to the proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.7 (as substituted by 2008 No 90 s 8)

4.8 Court's power and discretion

(1) On an application seeking leave to issue a third, fourth, or subsequent party notice, the court must have regard to all relevant circumstances, including delay to the plaintiff.

(2) On the making of an application of that kind, the court may grant or refuse leave or grant leave on just terms.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.8 (as substituted by 2008 No 90 s 8)

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

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.9 (as substituted by 2008 No 90 s 8)

4.10 Requirements of third party notice

(1) A third party notice must be signed by the defendant and inform the third party of—

- (a) the plaintiff's claim against the defendant; and
- (b) the defendant's claim against the third party; and
- (c) the steps the third party is required to take if the third party wishes to dispute either claim; and
- (d) the consequences that will follow if the third party fails to dispute either claim.

(2) A third party notice may be in form G 14.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.10 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 4—*continued*

4.11 Filing of third party notice

(1) A third party notice must be filed in the court together with a statement of the defendant's claim against the third party.

(2) The statement of claim must—
- (a) comply with rules 5.27 to 5.35; and
- (b) state the nature of the question or issue to be determined; and
- (c) state the nature and extent of any relief or remedy claimed against the third party.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.11 (as substituted by 2008 No 90 s 8)

4.12 Service on third party

A defendant must, within 25 working days after the date of the filing of the third party notice or the date of the order granting leave to issue the third party notice, serve the following on the third party:
- (a) a copy of the third party notice:
- (b) a copy of the defendant's statement of claim against the third party:
- (c) a copy of the plaintiff's statement of claim:
- (d) a copy of the notice of proceeding:
- (e) a copy of the defendant's statement of defence or appearance:
- (f) a list of other documents that have been served—
  - (i) by the plaintiff on the defendant; or
  - (ii) by the defendant on the plaintiff.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.12 (as substituted by 2008 No 90 s 8)

4.13 Service on plaintiff

(1) The defendant must, within 25 working days after the date of the filing of the third party notice or the date of the order granting leave to issue the third party notice, serve the plaintiff with—
- (a) a copy of the third party notice; and

High Court Rules—*continued*
Part 4—*continued*
Subpart 4—*continued*

(b) a copy of the defendant's statement of claim against the third party.

(2) The plaintiff must not, without the leave of the court, do the following until the expiry of the time for the third party to file a defence:
(a) enter judgment in the proceeding; or
(b) apply for the allocation of a hearing date for the proceeding.

(3) An application for leave to the court must be made on notice—
(a) to the defendant; and
(b) if the third party has been served, to the third party.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.13 (as substituted by 2008 No 90 s 8)

4.14 Filing and service of statement of defence

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

(1A) Subclause (1) is subject to rule 6.35 (which, unless the court otherwise orders, requires a defendant who has been served out of New Zealand to file a statement of defence within 30 working days from the date of service).

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.14 (as substituted by 2008 No 90 s 8)

4.15 Service of application for leave

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.15 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 4—*continued*

4.16 Setting aside third party notice

(1) A third party may apply to the court to have a third party notice issued and served with the leave of the court set aside.

(2) A party to a proceeding served with a third party notice issued and served without leave of the court may apply to the court to have the notice set aside.

(3) In either case, the court may—

(a) set the third party notice aside and dismiss the defendant's statement of claim against the third party—

(i) on the merits; or

(ii) without prejudice to the right of the defendant to pursue that claim against the third party in an independent proceeding; or

(b) give other directions.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.16 (as substituted by 2008 No 90 s 8)

4.17 Default in filing statement of defence

(1) A third party defaulting in filing a statement of defence—

(a) admits the validity of, and is bound by,—

(i) any judgment (whether by consent, default, or otherwise) given in the proceeding; and

(ii) any decision on a question specified in the defendant's statement of claim; and

(b) admits liability if a contribution, indemnity, relief, or remedy is claimed against the third party in the defendant's statement of claim.

(2) Subclause (1) does not apply in third party proceedings against the Crown, unless—

(a) an application is made to that effect and the court orders it; and

(b) the application was served on the Crown not less than 5 working days before the day for hearing the application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.17 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*

Subpart 5—Claims between defendants

4.18 Right to give notice

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.18 (as substituted by 2008 No 90 s 8)

4.19 Statement of claim to be filed and served

(1) A defendant who files a notice under rule 4.18 must file and serve with it a statement of that defendant's claim against the other defendant.

(2) The statement of claim—

(a) must comply with the requirements of subpart 6 of Part 5; and

(b) in particular, must state the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed against the other defendant.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.19 (as substituted by 2008 No 90 s 8)

4.20 Statement of defence

(1) Unless a defendant served with a notice under rule 4.18 wishes to raise an affirmative defence to the claim made against that defendant by the defendant serving the notice, it is not necessary to file a statement of defence to that claim.

(2) A statement of defence to a claim made in a notice served under rule 4.18 must, within 10 working days after the day of service of the notice, be filed and served—

(a) on the defendant serving the notice; and

High Court Rules—*continued*
Part 4—*continued*
Subpart 5—*continued*

(b) on the plaintiff.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.20 (as substituted by 2008 No 90 s 8)

4.21 Form of notice

(1) A notice filed and served under rule 4.18 must be in form G 15.

(2) Every such notice must be signed by the defendant or the defendant's solicitor.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.21 (as substituted by 2008 No 90 s 8)

4.22 Effect of omission to give notice

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.22 (as substituted by 2008 No 90 s 8)

Subpart 6—Impact of certain capacities

4.23 Trustees, executors, and administrators

(1) Trustees, executors, and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees, executors, or administrators.

(2) There is no need to join persons beneficially interested in a trust or an estate to a proceeding because the trustees, executors, and administrators represent those persons.

(3) However, the court may, at any stage, order that a beneficially interested person be made a party, either in addition to or instead of the trustees, executors, or administrators.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.23 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 6—*continued*

4.24 Persons having same interest

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

(a) with the consent of the other persons who have the same interest; or

(b) as directed by the court on an application made by a party or intending party to the proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.24 (as substituted by 2008 No 90 s 8)

4.25 Partners

(1) Any 2 or more persons making a claim as partners or alleged to be liable as partners may sue or be sued in the name of the firm (if any).

(2) The opposite party may apply to the firm for the names of the persons who are partners in the firm and, until an affidavit has been filed stating the names and addresses of the partners, all further steps in the proceeding on the part of the partners are stayed.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.25 (as substituted by 2008 No 90 s 8)

4.26 Person trading as firm

(1) A person carrying on business in the name of a firm may be sued in the name of the firm.

(2) The opposite party may apply to the court for an order—

(a) directing that an affidavit be filed stating the name and address of the person carrying on the business; and

(b) staying any further step in the proceeding on the part of the person carrying on the business until the affidavit has been filed.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.26 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 6—*continued*

4.27 Representation by other persons

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

(a) direct an executor or a trustee to represent minors, unborn persons, absentees, or unrepresented persons:

(b) appoint a counsel who agrees to represent minors, unborn persons, absentees, or unrepresented persons:

(c) appoint a litigation guardian to represent a person if it appears necessary:

(d) direct the Public Trust to represent a person or class of persons:

(e) direct that the Attorney-General or the Solicitor-General be served:

(f) direct, with the consent of the Attorney-General, that a head of a government department or other officer represent the public interest:

(g) direct that a local authority, public body, or other representative body represent the inhabitants of a locality or any class of persons, unless their interests, or the interests of a considerable section of them, may be adverse to those of the local authority, public body, or other representative body:

(h) if a local authority, public body, or other representative body is a plaintiff or a party whose interests appear to be adverse to those of the inhabitants of a locality or any class of persons, or a considerable section of them, direct the manner in which the inhabitants, class, or section are to be represented.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.27 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 6—*continued*

4.28 Relators

(1) In this rule, a **relator** is a person who has been approved by the Attorney-General to bring a proceeding in the name of the Attorney-General.

(2) A person who seeks to bring a proceeding in the name of the Attorney-General must obtain the approval of the Attorney-General.

(3) A relator is liable for the costs of a proceeding.

(4) A proceeding does not come to an end because a relator or all relators die or become incapable of acting.

(5) However, the court may stay a proceeding until the name of a new relator, who has been approved by the Attorney-General, has been substituted.

(6) A person must not be named as a relator in a proceeding until the person has authorised the solicitor issuing the proceeding to name him or her as a relator.

(7) The authority must be—

(a) in writing; and

(b) signed by the proposed relator; and

(c) filed in the registry of the court in which the proceeding is to commence.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.28 (as substituted by 2008 No 90 s 8)

Subpart 7—Incapacitated persons

4.29 Incapacitated person, litigation guardian, and minor defined

For the purposes of these rules,—

incapacitated person means a person who by reason of physical, intellectual, or mental impairment, whether temporary or permanent, is—

(a) not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings; or

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

(b) unable to give sufficient instructions to issue, defend, or compromise proceedings

litigation guardian

(a) means—

(i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor (but only in a proceeding to which the authority extends); or

(ii) a person who is appointed under rule 4.35 to conduct a proceeding; and

(b) has the same meaning as the expression "guardian *ad litem*"

minor means a person who has not attained the age of 18 years; and a person is of **full age** if he or she has attained the age of 18 years.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.29 (as substituted by 2008 No 90 s 8)

4.30 Incapacitated person must be represented by litigation guardian

(1) An incapacitated person must have a litigation guardian as his or her representative in any proceeding, unless the court otherwise orders.

(2) If a person becomes an incapacitated person during a proceeding, a party must not take any step in the proceeding without the permission of the court until the incapacitated person has a litigation guardian.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.30 (as substituted by 2008 No 90 s 8)

4.31 Minor must be represented by litigation guardian

(1) A minor must have a litigation guardian as his or her representative in any proceeding, unless the court otherwise orders.

(2) Subclause (1) does not apply to a minor who—

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

(a) is required by an enactment to conduct a proceeding without a litigation guardian; or
(b) is permitted by an enactment to conduct a proceeding without a litigation guardian and elects to do so; or
(c) is authorised under rule 4.32 to conduct a proceeding without a litigation guardian.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.31 (as substituted by 2008 No 90 s 8)

4.32 Minor may apply to conduct proceeding without litigation guardian

(1) This rule applies to a minor who—
(a) is not required or permitted by an enactment to conduct a proceeding without a litigation guardian; and
(b) is not prohibited by an enactment from conducting a proceeding without a litigation guardian.

(2) A minor who wishes to conduct a proceeding in his or her own name may apply to the court for authorisation to conduct the proceeding without a litigation guardian.

(3) On an application under subclause (2), the court may make an order allowing the minor to conduct the proceeding without a litigation guardian if it is satisfied that—
(a) the minor is capable of making the decisions required or likely to be required in the proceeding; and
(b) no reason exists that would make it in the interests of the minor to be represented by a litigation guardian.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.32 (as substituted by 2008 No 90 s 8)

4.33 Application of rules 4.34 to 4.46 to minors

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.33 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

4.34 Court may set aside step in proceeding

The court may set aside a step in a proceeding if an incapacitated person did not have a litigation guardian when that step was taken and the court considers that the incapacitated person was unfairly prejudiced.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.34 (as substituted by 2008 No 90 s 8)

4.35 Appointment of litigation guardian

(1) This rule applies if an incapacitated person does not have a litigation guardian within the meaning of paragraph (a)(i) of the definition of litigation guardian in rule 4.29.

(2) The court may appoint a litigation guardian if it is satisfied that—

(a) the person for whom the litigation guardian is to be appointed is an incapacitated person; and

(b) the litigation guardian—

(i) is able fairly and competently to conduct proceedings on behalf of the incapacitated person; and

(ii) does not have interests adverse to those of the incapacitated person; and

(iii) consents to being a litigation guardian.

(3) In deciding whether to appoint a litigation guardian, the court may have regard to any matters it considers appropriate, including the views of the person for whom the litigation guardian is to be appointed.

(4) The court may appoint a litigation guardian under this rule at any time—

(a) on its own initiative; or

(b) on the application of any person, including a person seeking to be appointed as litigation guardian.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.35 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

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

(1) Unless the court otherwise orders, an application under rule 4.35—
  (a) may be made without notice; and
  (b) must be served on the person for whom the litigation guardian is to be appointed.

(2) When the person for whom the litigation guardian is to be appointed is a minor,—
  (a) subclause (1)(b) does not apply; and
  (b) unless the court otherwise orders, the application must be served instead on—
    (i) the minor's parent or guardian; or
    (ii) if there is no parent or guardian, a person of full age who has the care of the minor or with whom the minor lives.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.36 (as substituted by 2008 No 90 s 8)

4.37 Notification of appointment

(1) A litigation guardian within the meaning of paragraph (a)(i) of the definition of litigation guardian in rule 4.29 must file a copy of the order or other document that empowers him or her to conduct the proceeding, at the same time as the first document relating to the proceeding is filed.

(2) A person appointed under rule 4.35 as a litigation guardian of a party to a proceeding must give notice of the appointment to other parties in the proceeding as soon as practicable after the appointment.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.37 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

4.38 Powers of litigation guardian

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.38 (as substituted by 2008 No 90 s 8)

4.39 Heading on documents when incapacitated person is represented

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

(a) the name of the incapacitated person followed by the words "by his (*or* her) litigation guardian"; and

(b) the litigation guardian's name.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.39 (as substituted by 2008 No 90 s 8)

4.40 Service of documents

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

(a) on the litigation guardian, unless the litigation guardian has filed an address for service:

(b) where the litigation guardian has filed an address for service, at that address for service.

(2) Subclause (3) applies to a party who believes on reasonable grounds that a person is an incapacitated person but does not know if that person has a litigation guardian.

(3) The party—

(a) may apply to the court for the appointment of a litigation guardian under rule 4.35; and

(b) may apply for directions as to service; and

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

(c) must serve any documents in the proceeding in accordance with any directions as to service.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.40 (as substituted by 2008 No 90 s 8)

4.41 Representation to be disregarded in making award of costs

The fact that an incapacitated person is, or has been, represented by a litigation guardian must be disregarded in making an award of costs under the rules in favour of or against the incapacitated person.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.41 (as substituted by 2008 No 90 s 8)

4.42 Award of costs enforceable against incapacitated person or litigation guardian

(1) Unless the court otherwise orders, an award of costs made against an incapacitated person may be enforced against any 1 or more of the following:

(a) the incapacitated person:

(b) the person who is the litigation guardian of the incapacitated person at the time the costs determination is made:

(c) a person against whom an order for indemnity or contribution has been made under rule 4.43, to the extent of the amount of the indemnity or contribution.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.42 (as substituted by 2008 No 90 s 8)

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

The court may make an order—

(a) directing a person who has ceased to be a litigation guardian of an incapacitated person (a **former litigation guardian**) to indemnify the incapacitated person or

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

a current litigation guardian for any costs subsequently awarded against the incapacitated person in relation to steps taken in the proceeding by the former litigation guardian:

(b) directing a former litigation guardian to indemnify the incapacitated person or the current litigation guardian on a basis specified by the court for any costs subsequently awarded against the incapacitated person in relation to steps taken in the proceeding after the former litigation guardian ceased to be the litigation guardian:

(c) directing the former litigation guardian to make a contribution to the costs referred to in paragraph (a) or (b):

(d) declaring that the former litigation guardian is not liable for any of the costs referred to in paragraph (a) or (b).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.43 (as substituted by 2008 No 90 s 8)

4.44 Compliance with liability order

(1) A former litigation guardian may be required by the incapacitated person or the current litigation guardian to give effect to an order made under paragraph (a), (b), or (c) of rule 4.43.

(2) The court may, on the application of a former litigation guardian, declare that the former litigation guardian is not required to comply with that order if it is satisfied, having regard to circumstances occurring after the order was made, that it is no longer just that the former litigation guardian be required to comply with the order.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.44 (as substituted by 2008 No 90 s 8)

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

Unless the court otherwise orders, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs (including solicitor and client costs) paid

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

or incurred, or that are to be paid or incurred, by the litigation guardian on behalf of the incapacitated person.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.45 (as substituted by 2008 No 90 s 8)

4.46 Retirement, removal, or death of litigation guardian

(1) A litigation guardian may retire only with the leave of the court.

(2) Unless the court otherwise orders, the appointment of a litigation guardian under rule 4.35 ends if another person is subsequently authorised by or under an enactment to conduct the proceeding in the name of, or on behalf of, the incapacitated person.

(3) A litigation guardian may be removed by the court when it is in the interests of the person he or she represents.

(4) In the case of retirement, removal, or death of a litigation guardian, no further step may be taken in the proceeding without the leave of the court until the incapacitated person is represented by another litigation guardian.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.46 (as substituted by 2008 No 90 s 8)

4.47 Procedure when person ceases to be incapacitated person

(1) The court must make an order terminating the appointment of a litigation guardian if it is satisfied that the person the litigation guardian represents is no longer an incapacitated person.

(2) The court may make an order at any time—
- (a) on its own initiative; or
- (b) on the application of—
  - (i) the incapacitated person; or
  - (ii) his or her litigation guardian; or
  - (iii) a party.

(3) From the date of the order,—

High Court Rules—*continued*
Part 4—*continued*
Subpart 7—*continued*

(a) all subsequent steps in the proceeding must be carried on by the person formerly represented by the litigation guardian; and

(b) the person formerly represented by the litigation guardian is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not an incapacitated person.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.47 (as substituted by 2008 No 90 s 8)

4.48 Procedure when minor attains full age

(1) A minor who attains full age must file and serve an affidavit confirming that he or she is no longer a minor.

(2) Unless the court otherwise orders, from the date a minor attains full age—

(a) the appointment of his or her litigation guardian ends; and

(b) all subsequent steps in the proceeding must be carried on by that person; and

(c) that person is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not a minor.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.48 (as substituted by 2008 No 90 s 8)

Subpart 8—Change of parties by death, bankruptcy, or devolution

4.49 Proceeding not to come to end

(1) A proceeding does not come to an end on the death or bankruptcy of a party if a cause of action survives or continues.

High Court Rules—*continued*
Part 4—*continued*
Subpart 8—*continued*

(2) A proceeding does not become defective because of the assignment, creation, or devolution of an estate or a title when the proceeding is pending.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.49 (as substituted by 2008 No 90 s 8)

4.50 Procedure on death, bankruptcy, and devolution

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

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

(b) may make orders it thinks just for the disposal of the proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.50 (as substituted by 2008 No 90 s 8)

4.51 Devolution when proceeding pending

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.51 (as substituted by 2008 No 90 s 8)

4.52 New parties order

(1) Subclause (2) applies if, after a proceeding has commenced, there is an event causing a change or transmission of interest or liability (including death or bankruptcy) or an interested person comes into existence, making it necessary or desirable—

(a) that a person be made a party; or

(b) an existing party be made a party in another capacity.

High Court Rules—*continued*
Part 4—*continued*
Subpart 8—*continued*

(2) An application without notice may be made for an order that the proceeding be carried on between the continuing parties and the new party (a **new parties order**).

(3) The new parties order must, unless the court otherwise directs, be served on—

(a) the continuing parties to the proceeding; and

(b) each new party, unless the person making the application is the only new party.

(4) The new parties order is binding on a person served from the time of service.

(5) A person who is not already a party who is served with a new parties order must file a statement of defence in the same time frame and manner as a person served with a statement of claim.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.52 (as substituted by 2008 No 90 s 8)

4.53 Discharge or variation of new parties order

(1) A person may apply to the court to discharge or vary a new parties order within 10 working days from the service of the order.

(2) An incapacitated person who is served with a new parties order who does not have a litigation guardian may apply to the court within 10 working days from the appointment of a litigation guardian for the new parties order to be discharged or varied.

(3) Until the period of 10 working days has expired, the new parties order has no force or effect on the incapacitated person.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.53 (as substituted by 2008 No 90 s 8)

Subpart 9—Adjusting parties

4.54 Change of name

A party's name that is incorrectly stated in pleadings or changed by marriage, civil union, deed poll, or other means, may be amended, without an application to the court, by a

High Court Rules—*continued*
Part 4—*continued*
Subpart 9—*continued*

notice signed by the party and filed and served on all other parties.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.54 (as substituted by 2008 No 90 s 8)

4.55 Parties wrongly joined

(1) A proceeding is not defeated by reason of parties having been wrongly joined.

(2) Despite a misjoinder, the court may deal with a proceeding in accordance with the rights and interests of the parties.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.55 (as substituted by 2008 No 90 s 8)

4.56 Striking out and adding parties

(1) A Judge may, at any stage of a proceeding, order that—

(a) the name of a party be struck out as a plaintiff or defendant because the party was improperly or mistakenly joined; or

(b) the name of a person be added as a plaintiff or defendant because—

(i) the person ought to have been joined; or

(ii) the person's presence before the court may be necessary to adjudicate on and settle all questions involved in the proceeding.

(2) An order does not require an application and may be made on terms the court considers just.

(3) Despite subclause (1)(b), no person may be added as a plaintiff without that person's consent.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.56 (as substituted by 2008 No 90 s 8)

Subpart 10—Interpleader

4.57 Interpretation

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

High Court Rules—*continued*
Part 4—*continued*
Subpart 10—*continued*

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

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

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

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.57 (as substituted by 2008 No 90 s 8)

4.58 Right to interplead

(1) When a person (**A**) who is under a liability in respect of a debt or in respect of any money or chattels is, or expects to be, sued for or in respect of the debt, money, or chattels by 2 or more persons making adverse claims, A may apply to the court, on notice to the persons making the adverse claims, for relief under rule 4.63.

(2) If a person (**B**) who is not a person against whom a sale order (described in rule 17.62) or a possession order (described in rule 17.80) is issued claims money or chattels taken or intended to be taken by an officer giving effect to either of those orders, or the proceeds or value of those chattels, the officer may apply to the court, serving notice on the execution creditor, the execution debtor, and B for relief under rule 4.63.

(3) Subclause (2) applies—

(a) whether or not there has been a return of the order; and

(b) whether or not a proceeding has been commenced against the officer in respect of the money or chattels.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.58 (as substituted by 2008 No 90 s 8)

4.59 Form of application

(1) When a claimant has issued a proceeding against the applicant in respect of the debt or money or chattels referred to in rule

High Court Rules—*continued*
Part 4—*continued*
Subpart 10—*continued*

4.58(1), and in cases within rule 4.58(2), the application must be an interlocutory application in the proceeding.

(2) Subject to rules 4.61 to 4.64, subpart 2 of Part 7 of these rules applies to the application.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.59 (as substituted by 2008 No 90 s 8)

4.60 Affidavit in support

(1) An application under rule 4.58 must be supported by an affidavit stating—

(a) that the applicant claims no interest in the subject matter in dispute other than the charges or costs; and

(b) that adverse claims (of which details must be given) have been made by the claimants and the steps already taken by the respective claimants in support of their claims; and

(c) that the applicant is not colluding with any of the claimants to that subject matter; and

(d) that the applicant is willing to pay or transfer that subject matter into court or dispose of it as the court may direct.

(2) A copy of the affidavit must be served on each claimant when the application under rule 4.58 is served.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.60 (as substituted by 2008 No 90 s 8)

4.61 Time for applying

(1) If a claimant has commenced a proceeding against the applicant to enforce the claim, an application under rule 4.58 must be made before a statement of defence has been filed by the applicant.

High Court Rules—*continued*
Part 4—*continued*
Subpart 10—*continued*

(2) If no statement of defence has been filed by the applicant, it must be made before judgment has been entered against the applicant.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.61 (as substituted by 2008 No 90 s 8)

4.62 Claimants to file affidavits

(1) Subject to subclauses (2) and (3), a claimant who wishes to justify a claim must, within 5 working days after service of an application made under subclause (1) or (2) of rule 4.58, file and serve on other claimants and on the applicant an affidavit stating the facts and matters relied on.

(2) When, in accordance with rule 4.59(3), a statement of claim and notice of proceeding have been filed and served together with an affidavit under rule 4.60, the claimant must file and serve a statement of defence with the claimant's affidavit.

(3) If the claimant, had the claimant been a defendant, might have filed an appearance under rules 5.49 to 5.51, the claimant may, instead of filing and serving an affidavit under subclause (1), file and serve an appearance.

(4) An appearance filed and served under subclause (3), for all the purposes of rules 4.63 and 4.64, has effect as though the claimant were a defendant in a proceeding brought by the applicant or by any other claimant referred to in the appearance.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.62 (as substituted by 2008 No 90 s 8)

4.63 Powers of court

(1) Upon hearing an application under rule 4.58, the court may make whatever orders and directions justice requires.

(2) In particular, and without limiting subclause (1), the court may—

(a) stay a proceeding commenced by a claimant:

(b) bar the claim of a claimant who has not filed and served either—

High Court Rules—*continued*
Part 4—*continued*
Subpart 10—*continued*

(i) an affidavit justifying the claim under rule 4.62(2); or
(ii) an appearance under rule 4.62(3):

(c) adjudicate upon the competing claims on the affidavits filed, or adjourn the application for that purpose:

(d) if the question appears to be one of law only, direct that the question be determined by the court:

(e) direct the trial of the issues involved by the method that the court directs:

(f) order that one of the claimants commence a proceeding against any other or others to try the question involved or, if a proceeding has been commenced by a claimant, order that any other claimant be joined as a defendant to that proceeding:

(g) order that the chattels in dispute or any part of them be sold, and that the proceeds of the sale be applied in such manner and on such terms as are just.

(3) Subclause (4) applies to a claimant who has been served with an application and—

(a) does not appear on the hearing of the application; or

(b) having appeared, fails or refuses to comply with an order.

(4) The court may make an order declaring that the claimant and all persons claiming under that claimant may not continue or subsequently prosecute that claim against the applicant and all persons claiming under the applicant but that order does not affect the rights of the claimants as between themselves.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.63 (as substituted by 2008 No 90 s 8)

4.64 Costs of applicant

(1) Unless the court otherwise orders, an applicant is entitled to the indemnity costs (as defined by rule 14.6(1)(b)) of and incidental to the application.

High Court Rules—*continued*
Part 4—*continued*
Subpart 10—*continued*

(2) The court may order that the applicant's costs be paid by any 1 or more of the claimants and may apportion the liability between any 2 or more claimants, as it thinks just.

(3) The court may charge any property in dispute, or the proceeds of the sale of it, or both, with payment of the costs of the applicant.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 4.64 (as substituted by 2008 No 90 s 8)

Part 5
Commencement of proceedings and filing of documents

Subpart 1—Proper registry of court

5.1 Identification of proper registry

(1) The proper registry of the court, for the purposes of rules 5.25 and 19.7, is,—

(a) when a sole defendant is resident or has a principal place of business in New Zealand, the registry of the court nearest to the residence or principal place of business of the defendant, but when there are 2 or more defendants, the proper registry is determined by reference to the first-named defendant who is resident or has a principal place of business in New Zealand:

(b) when no defendant is resident or has a principal place of business in New Zealand, the registry the plaintiff selects:

(c) when the Crown is a defendant, the registry nearest to the place where the cause of action or a material part of it arose:

(d) despite paragraphs (a) to (c), the court at Wellington in the case of proceedings that consist of or include 1 or more of the following kinds of action or application:

(i) an application for judicial review under ~~the~~ **Part 3 of the Judicature Modernisation Act 2013**

High Court Rules—*continued*
Part 5—*continued*
Subpart 1—*continued*

that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:

(ii) an application for, or in the nature of, an extraordinary remedy under Part 30 of these rules that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:

(iii) an application under section 35, 47E, or 55 of the Terrorism Suppression Act 2002:

(e) despite paragraphs (a) to (c), the court at Wellington or the court at Auckland in the case of applications under the Immigration Act 2009 in proceedings involving classified information.

(2) Despite subclause (1)(a), if the place where the cause of action sued on, or some material part of it, arose is nearer to the place where the plaintiff or the plaintiff first-named in the statement of claim resides than to the place where the defendant resides, the proper registry of the court for the purposes of subclause (1) is, at the option of the plaintiff or the plaintiff first-named, as the case may be, the registry nearest to the residence of the plaintiff or the plaintiff first-named, as the case may be.

(3) If a plaintiff proposes to exercise the option conferred by subclause (2), the plaintiff must file with the statement of claim and notice of proceeding an affidavit by the plaintiff or the plaintiff's solicitor stating the place where the cause of action or the material part of it arose, and that that place is nearer to the place where the plaintiff or the plaintiff first-named in the statement of claim resides than to the place where the defendant resides.

(4) If it appears to a Judge, on application made, that the statement of claim has been filed in the wrong registry of the court, he or she may direct that the statement of claim or all documents filed in the proceeding be transferred to the proper registry.

High Court Rules—*continued*
Part 5—*continued*
Subpart 1—*continued*

(5) If it appears to a Judge, on application made, that a different registry of the court would be more convenient to the parties, he or she may direct that the statement of claim or all documents be transferred to that registry and that registry becomes the proper registry.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.1 (as substituted by 2008 No 90 s 8)

Subpart 2—Formal requirements for documents

5.2 Non-complying documents

(1) A document that does not comply with rules 5.3 to 5.16 may be received for filing only by leave of a Judge or the Registrar.

(2) The cost of an application under subclause (1) must be borne by the party making it, and may not be claimed as costs against another party under Part 14.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.2 (as substituted by 2008 No 90 s 8)

5.3 Paper

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

(2) Each sheet of paper must be of international size A4.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.3 (as substituted by 2008 No 90 s 8)

5.4 Contents to be typed, etc

(1) The contents of each document must be legible and clearly typewritten, printed, or produced in permanent form by photocopying.

(2) Despite subclause (1), handwriting may be used for the date of the document.

(3) Subclause (1) does not apply to the signature on a document.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.4 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 2—*continued*

5.5 Margin

(1) A margin of at least one-quarter of the width of the paper must be left on the left-hand side of each page.

(2) If, however, the reverse side of a page is used, a margin of that width must be left on the right-hand side of that page.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.5 (as substituted by 2008 No 90 s 8)

5.6 Signature to be original

If a document is signed,—

(a) the signature must be an original signature; and

(b) immediately below the original signature, the name of the signatory must be—

(i) legibly typed, printed, or stamped; or

(ii) legibly written in the style of printed matter.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.6 (as substituted by 2008 No 90 s 8)

5.7 Cover sheet, numbering, and fastening of document

(1) The first sheet of a document must be a cover sheet, showing the matters specified in rules 5.8 and 5.11.

(2) The cover sheet must not be numbered, even if the heading is continued on another sheet under rule 5.10(2).

(3) Each page after the cover sheet must be numbered consecutively, starting with the number 1.

(4) All sheets of a document must be securely fastened together.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.7 (as substituted by 2008 No 90 s 8)

5.8 Description of document

(1) The cover sheet must show, immediately below the heading, an accurate description of the document.

(2) The description must include—

(a) words indicating the party by whom or on whose behalf the document is filed; and

High Court Rules—*continued*
Part 5—*continued*
Subpart 2—*continued*

(b) the words "application without notice" in the case of an application so made.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.8 (as substituted by 2008 No 90 s 8)

5.9 Heading generally

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.9 (as substituted by 2008 No 90 s 8)

5.10 Format of cover sheet

(1) The cover sheet of an originating document and of a notice of interlocutory application must—

(a) include only—

(i) the heading; and

(ii) the description of the document; and

(iii) if applicable, the next event date; and

(iv) if applicable, the name of the Judge or Associate Judge to whom the proceeding has been assigned; and

(v) the information required by rule 5.16; and

(b) leave ample space between the description of the document and the information referred to in paragraph (a)(v) for the inclusion of a minute.

(2) The heading may, if necessary, be continued on another sheet.

(3) In subclause (1)(a)(iii), **next event date** means, if allocated, the date and nature of a hearing or conference that is to be held next after the date on which the document is filed.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.10 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*

Subpart 3—Heading of court documents

5.11 Heading on statement of claim and counterclaim

(1) The heading of a statement of claim, and of any counterclaim intended to be served upon a person other than the plaintiff, must show—

(a) the number of the proceeding:

(b) the registry of the court in which it is filed:

(c) if the statement of claim or counterclaim seeks relief in reliance on jurisdiction conferred by an enactment, the title of that enactment:

(d) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of a will, the name of the testator:

(e) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an instrument other than a will, the name of the maker of, or the names of the parties to, the instrument and its date:

(f) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an enactment, the title and the relevant section or sections of the enactment:

(g) the full name, and the place of residence and occupation, of every plaintiff and defendant, so far as they are known to the party presenting the document for filing.

(2) Form G 1 must be used for the purposes of subclause (1).

(3) The names of parties in the heading of a statement of claim must not be repeated in the heading of a counterclaim, which may, for example, refer to the "Plaintiff and First Counterclaim Defendant".

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.11 (as substituted by 2008 No 90 s 8)

5.12 Heading on judgment and certain orders

The heading of a judgment and of an order that is required to be registered under any enactment must be the same as the

High Court Rules—*continued*
Part 5—*continued*
Subpart 3—*continued*

heading on the statement of claim or other document by which the proceeding was commenced.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.12 (as substituted by 2008 No 90 s 8)

5.13 Heading on other documents

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

(a) first names of persons may be denoted by initials only, unless full names are necessary to distinguish between persons having the same initials:

(b) if 2 or more persons are joined in the same interest, the name of the first-named person may be set out, followed by the words "and another" or "and others", as the case may be:

(c) places of residence and descriptions of persons (unless necessary to distinguish 2 or more persons required to be named and with the same name) and indications of the interest in which a person is a party must be omitted:

(d) the names of corporations must be set out without abbreviation, but without stating the fact of incorporation or referring to the registered office or making other addition.

(2) Despite subclause (1), a fuller title may be used upon change of parties or if any party considers that a person has in a previous document been wrongly named or described or for other sufficient reason.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.13 (as substituted by 2008 No 90 s 8)

5.14 Division into paragraphs

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

High Court Rules—*continued*
Part 5—*continued*
Subpart 3—*continued*

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.14 (as substituted by 2008 No 90 s 8)

5.15 Numbers

Numbers must be expressed in figures and not in words.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.15 (as substituted by 2008 No 90 s 8)

5.16 Information at foot of cover sheet

(1) The following information must appear at the foot of the cover sheet of every document for filing:

(a) the name of the solicitor or firm of solicitors (if any) presenting it for filing and the name of any agent by whom the document is filed; and

(b) when the document is presented for filing by or on behalf of a solicitor or firm of solicitors,—

(i) the name and telephone number of the principal or employee dealing with the proceeding; and

(ii) the address of any post office box or document exchange used by the solicitor or firm; and

(iii) any fax number and any email address used by the solicitor or firm.

(2) The fact that the name of a solicitor or firm of solicitors is subscribed on a document is prima facie evidence that the document was filed by that solicitor or firm of solicitors.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.16 (as substituted by 2008 No 90 s 8)

Subpart 4—Pleadings generally

5.17 Distinct matters to be stated separately

(1) Distinct causes of action and distinct grounds of defence, founded on separate and distinct facts, must if possible be stated separately and clearly.

High Court Rules—*continued*
Part 5—*continued*
Subpart 4—*continued*

(2) If a party alleges a state of mind of a person, that party must give particulars of the facts relied on in alleging that state of mind.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.17 (as substituted by 2008 No 90 s 8)

5.18 Denial of representative character

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.18 (as substituted by 2008 No 90 s 8)

5.19 Denial of contract

(1) A bare denial of a contract will be treated as denying only the making of the contract in fact, and a party must specifically plead an assertion as to the legality or enforceability of a contract, whether with reference to section 24 of the Property Law Act 2007 or otherwise, or as to the interpretation of the contract advanced by that party.

(2) A party asserting that a contract is illegal or unenforceable must plead the enactment or rule of law relied on.

(3) A party asserting that the interpretation of a contract advanced by another party is wrong must assert its own interpretation.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.19 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 4—*continued*

5.20 Effect of document to be stated

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.20 (as substituted by 2008 No 90 s 8)

5.21 Notice requiring further particulars or more explicit pleading

(1) A party may, by notice, require any other party—

(a) to give any further particulars that may be necessary to give fair notice of—

(i) the cause of action or ground of defence; or

(ii) the particulars required by these rules; or

(b) to file and serve a more explicit statement of claim or of defence or counterclaim.

(2) A notice must indicate as clearly as possible the points on which the pleading is considered defective.

(3) If the party on whom a notice is served neglects or refuses to comply with the notice within 5 working days after its service, the court may, if it considers that the pleading objected to is defective or does not give particulars properly required by the notice, order a more explicit pleading to be filed and served.

(4) Even if no notice has been given under this rule, the court may on its own initiative order a more explicit pleading to be filed and served.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.21 (as substituted by 2008 No 90 s 8)

Subpart 5—Notice of proceeding

5.22 Notice of proceeding to be filed with statement of claim

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.22 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 5—*continued*

5.23 Requirements as to notice of proceeding

(1) The notice of proceeding must—

(a) be signed by the plaintiff or the plaintiff's solicitor:

(b) state the place for the filing of a statement of defence and the time within which the statement of defence is required to be filed, in accordance with these rules:

(c) warn the defendant that if a statement of defence is not filed within the required time, the plaintiff may at once proceed to judgment on the plaintiff's claim and judgment may be given in the absence of the defendant.

(2) The notice of proceeding must be in form G 2 and must advise the defendant of the defendant's obligations under rule 8.4 (initial disclosure).

(3) If the court has directed that any person other than the defendant named in the title of the proceeding be served, a statement to that effect signed by the Registrar and setting out the name, place of residence, and occupation of that person must be annexed to the notice of proceeding.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.23 (as substituted by 2008 No 90 s 8)

5.24 When not necessary to file notice of proceeding

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

(a) if no relief against any person is claimed in the statement of claim (as, for example, in the case of a company's application to be put into liquidation by the court, or a person's application to be adjudicated bankrupt); or

(b) if service of the notice is dispensed with—

(i) by statute; or

(ii) under these rules; or

High Court Rules—*continued*
Part 5—*continued*
Subpart 5—*continued*

(iii) by order of the court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.24 (as substituted by 2008 No 90 s 8)

Subpart 6—Statement of claim

5.25 Proceeding commenced by filing statement of claim

(1) A proceeding must be commenced by filing a statement of claim in the proper registry of the court.

(2) Subclause (1) does not apply to—

(a) an unopposed application under Part 27:

(b) an appeal under Part 20:

(c) a proceeding commenced by originating application under Part 18, 19, or 26:

(d) an application under Part 31:

(e) a proceeding, commenced in accordance with the Trans-Tasman Proceedings Regulations and Rules 2013, to register under subpart 5 of Part 2 of the Trans-Tasman Proceedings Act 2010 a registrable Australian judgment.

(3) Despite subclause (1), the statement of claim may be filed in any registry of the court if the parties agree, by endorsement on the statement of claim, to the filing of the statement of claim in that registry.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.25 (as substituted by 2008 No 90 s 8)

5.26 Statement of claim to show nature of claim

The statement of claim—

(a) must show the general nature of the plaintiff's claim to the relief sought; and

(b) must give sufficient particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances to inform the court and the party or parties against whom relief is sought of the plaintiff's cause of action; and

High Court Rules—*continued*
Part 5—*continued*
Subpart 6—*continued*

(c) must state specifically the basis of any claim for interest and the rate at which interest is claimed; and

(d) in a proceeding against the Crown that is instituted against the Attorney-General, must give particulars of the government department or officer or employee of the Crown concerned.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.26 (as substituted by 2008 No 90 s 8)

5.27 Statement of claim to specify relief sought

(1) The statement of claim must conclude by specifying the relief or remedy sought.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.27 (as substituted by 2008 No 90 s 8)

5.28 Inclusion of several causes of action

(1) A plaintiff may include several causes of action in the same statement of claim.

(2) Despite subclause (1), claims by or against an Official Assignee in bankruptcy, or a liquidator or a receiver of a company, in that capacity, must not, without leave of the court, be joined with any claim by or against that person in any other capacity.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.28 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 6—*continued*

5.29 Joint plaintiffs

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.29 (as substituted by 2008 No 90 s 8)

5.30 Joining claims by or against spouses or partners

Claims by or against spouses, civil union partners, or de facto partners may be joined with claims by or against either of those spouses, civil union partners, or de facto partners if the opposite party is the same person.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.30 (as substituted by 2008 No 90 s 8)

5.31 Specifying relief sought

(1) The relief claimed must be stated specifically, either by itself or in the alternative.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.31 (as substituted by 2008 No 90 s 8)

5.32 Amount of money claim

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.32 (as substituted by 2008 No 90 s 8)

5.33 Special damages

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.33 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 6—*continued*

5.34 Set-off

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.34 (as substituted by 2008 No 90 s 8)

5.35 Representative capacity of party

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.35 (as substituted by 2008 No 90 s 8)

Subpart 7—Authority of solicitors to act

5.36 Authority to file documents

(1) No solicitor may file a document on behalf of a party unless the solicitor is—

(a) authorised by, or on behalf of, the party to file the document; and

(b) the holder of a current practising certificate as a solicitor or as a barrister and solicitor issued under section 39 of the Lawyers and Conveyancers Act 2006.

(2) Subclause (1) does not prevent a person from filing a document on behalf of a party if the person is authorised by, or on behalf of, the party to file the document, and—

(a) is not the holder of a current practising certificate as a barrister or as a barrister and solicitor issued under section 39(1) of the Lawyers and Conveyancers Act 2006; but

(b) is allowed to appear for, or to represent, the party, in connection with the proceedings, under section 27(1)(b)(i) or (ii) of the Lawyers and Conveyancers Act 2006.

High Court Rules—*continued*
Part 5—*continued*
Subpart 7—*continued*

(3) The following rules allow certain Australian solicitors to represent a party by filing certain documents:
- (a) rule 5.36A (documents in certain trans-Tasman proceedings):
- (b) rule 9.62(1)(b) (application to set aside New Zealand subpoena served on witness in Australia).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.36 (as substituted by 2008 No 90 s 8)

5.36A Authority of certain Australian solicitors in certain trans-Tasman proceedings

(1) This rule applies to a defendant and a solicitor if the defendant is served with an initiating document in Australia under section 13 of the Trans-Tasman Proceedings Act 2010 and the solicitor is—
- (a) entitled to practise as a solicitor of a Supreme Court of a State or Territory of Australia; and
- (b) authorised by, or on behalf of, the defendant to file a document for the defendant in respect of, or in, the proceeding to which the initiating document relates.

(2) The solicitor may file the document if the court has under section 38 of the Trans-Tasman Proceedings Act 2010 given the solicitor leave or, as the case requires, he or she is entitled under section 23(4) of that Act, to appear remotely in 1 or more hearings relating to the proceeding.

(3) The solicitor may file the document even though the solicitor has neither sought, nor been given, leave under section 38 of the Trans-Tasman Proceedings Act 2010 or, as the case requires, he or she has neither made, nor had accepted, a request under section 23(4)(c) of that Act, if the document is—
- (a) an appearance or response document (as defined in section 17(2) of that Act); or
- (b) an application under section 22 of that Act for a stay of the proceeding; or

High Court Rules—*continued*
Part 5—*continued*
Subpart 7—*continued*

(c) a request under section 23(4)(c) of that Act to appear remotely in a hearing to determine an application under section 22 of that Act; or

(d) an application for leave under section 38 of that Act; or

(e) a document related to a document, application, or request in any of paragraphs (a) to (d).

(4) A solicitor who files a document under subclause (3) may, even if not the holder of a current practising certificate as a barrister or as a barrister and solicitor issued under section 39(1) of the Lawyers and Conveyancers Act 2006, be the solicitor on the record under rule 5.38 until—

(a) the court declines an application by the solicitor for leave under section 38 of that Act; or

(b) a document to which subclause (3) does not apply is filed in the proceeding by or on behalf of the defendant and, when that document is filed, the court has not given the solicitor leave under section 38 of that Act.

(5) Subclause (4) does not enable the solicitor to appear remotely in a hearing relating to the proceeding without leave under section 38 of that Act or, as the case requires, without being entitled to do so under section 23(4) of that Act.

Compare: 1908 No 89 Schedule 2 r 5.36A (as inserted by r 8 of the High Court (Trans-Tasman Proceedings Act 2010) Amendment Rules 2013)

5.37 Solicitor's warranty as to authorisation to file documents

A solicitor by whom, or on whose behalf, a document is filed in the court is to be treated as warranting to the court and to all parties to the proceeding that he or she is authorised, by the party on whose behalf the document purports to be filed, to file the document.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.37 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 7—*continued*

5.38 Solicitor on record

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

(2) This rule is subject to rules 5.36A(4) and 5.42.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.38 (as substituted by 2008 No 90 s 8)

5.39 Authority to sign documents

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

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.39 (as substituted by 2008 No 90 s 8)

5.40 Change of representation or address for service

(1) A party must file and serve on every other party to the proceeding a notice of change of representation if—

(a) the party has acted in person and appoints a solicitor to act for that party; or

(b) the party wishes to change that party's solicitor; or

(c) the party for whom a solicitor has acted wishes to act in person.

(2) If the party's address for service after the change of representation will be different from that which applied before the change, the party must also serve a copy of the notice at the address that was, immediately before the change, the party's address for service.

(3) The notice—

(a) must be signed by the party personally or by the party's attorney; and

High Court Rules—*continued*
Part 5—*continued*
Subpart 7—*continued*

(b) in the case of a notice under subclause (1)(a) or (b), must contain the information about the new solicitor required by paragraphs (b) to (e) of rule 5.44(1); and

(c) in the case of a party referred to in subclause (1)(c), must state that the party's intention is to act in person.

(4) For the purpose of the proceeding, the change of representation takes effect on the filing of an affidavit proving service in accordance with subclause (1) and attaching and verifying a copy of the notice served.

(5) A party may change that party's address for service by—

(a) filing a notice of the change showing the new address for service or specifying an address for a method of service set out in rule 6.1(1)(d); and

(b) serving a copy of the notice on every other party.

(6) A change of address for service may be combined with a notice under subclause (1).

(7) A notice of change of address for service need not be filed under subclause (5)(a) if an affidavit is filed under subclause (4).

(8) Form G 11 may be used.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.40 (as substituted by 2008 No 90 s 8)

5.41 Withdrawal of solicitor who has ceased to act for party

(1) If the solicitor on the record for a party to a proceeding has ceased to act for the party, the solicitor may apply to the court for an order declaring that the solicitor has ceased to be the solicitor on the record for the party in that proceeding and the court may make the order.

(2) It is not necessary to make an application if—

(a) the party has effected a change of solicitor in accordance with rule 5.40; or

(b) the party—

High Court Rules—*continued*
Part 5—*continued*
Subpart 7—*continued*

(i) has filed a notice stating that the party intends to act in person and the party's new address for service; and

(ii) has served a copy of the notice on the solicitor on the record and on every other party to the proceeding who has given an address for service; and

(iii) has filed an affidavit proving that service and attaching and verifying a copy of the notice served.

(3) Unless subclause (2)(a) or (b) applies, the solicitor on the record for a party to a proceeding, for the purposes of that proceeding, is the solicitor on the record for that party until the final conclusion of the proceeding unless and until the solicitor—

(a) obtains an order under subclause (1); and

(b) serves on every party to the proceeding who has given an address for service a copy of the order obtained under that subclause; and

(c) files an affidavit proving that service.

(4) Every application under subclause (1) must be made by interlocutory application and must be supported by an affidavit giving the grounds of the application.

(5) Unless the court otherwise directs, notice of every application under subclause (1), and a copy of the affidavit in support of the application, must be served on the party for whom the solicitor acted, and that notice must inform the party of the effect that rule 5.42 will have on the party's address for service if the solicitor obtains an order under subclause (1).

(6) An order made under subclause (1) does not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.41 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 7—*continued*

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

(1) This rule applies whenever the solicitor on the record for a party has obtained an order under rule 5.41 and has complied with rule 5.41(3)(b) and (c).

(2) The last known address of the party, or, when the party is a body corporate, its registered or principal registry is, for the purpose of serving the party with any document not required to be served personally, the party's address for service until the party either—

(a) appoints another solicitor and complies with rule 5.40; or

(b) if entitled to act in person,—

(i) files a notice stating that the party intends to act in person and showing the party's new address for service or specifying an address for a method of service set out in rule 6.1(1)(d); and

(ii) serves on the solicitor who obtained the order under rule 5.41 and on every other party to the proceeding who has given an address for service a copy of that notice; and

(iii) files an affidavit proving that service and attaching and verifying a copy of the notice served.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.42 (as substituted by 2008 No 90 s 8)

5.43 Solicitors to inform clients of orders or directions

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.43 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*

Subpart 8—Memorandum on first document

5.44 Memorandum at end of first document filed by party

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

(a) that the document is filed by a party in person, or by the party's solicitor, as the case may be; and

(b) if it is filed by a solicitor,—

(i) the name of the solicitor; and

(ii) if the solicitor is a member of a firm or practises under a firm's name, the name of the firm; and

(c) if it is filed by a solicitor who has another solicitor acting as the solicitor's agent in the proceeding,—

(i) the name of the agent or of the agent's firm (if any); and

(ii) the postal address of the party's solicitor; and

(d) an address for service; and

(e) any post office box address, document exchange box number, fax number, or email address by which the solicitor or the party in person will accept service in the course of the proceeding.

(2) The memorandum may be in one of the paragraphs of form G 10.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.44 (as substituted by 2008 No 90 s 8)

Subpart 9—Security for costs

5.45 Order for security of costs

(1) Subclause (2) applies if a Judge is satisfied, on the application of a defendant,—

(a) that a plaintiff—

(i) is resident out of New Zealand; or

(ii) is a corporation incorporated outside New Zealand; or

High Court Rules—*continued*
Part 5—*continued*
Subpart 9—*continued*

(iii) is a subsidiary (within the meaning of section 5 of the Companies Act 1993) of a corporation incorporated outside New Zealand; or

(b) that there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding.

(2) A Judge may, if the Judge thinks it is just in all the circumstances, order the giving of security for costs.

(3) An order under subclause (2)—

(a) requires the plaintiff or plaintiffs against whom the order is made to give security for costs as directed for a sum that the Judge considers sufficient—

(i) by paying that sum into court; or

(ii) by giving, to the satisfaction of the Judge or the Registrar, security for that sum; and

(b) may stay the proceeding until the sum is paid or the security given.

(4) A Judge may treat a plaintiff as being resident out of New Zealand even though the plaintiff is temporarily resident in New Zealand.

(5) A Judge may make an order under subclause (2) even if the defendant has taken a step in the proceeding before applying for security.

(6) References in this rule to a **plaintiff** and **defendant** are references to the person (however described on the record) who, because of a document filed in the proceeding (for example, a counterclaim), is in the position of plaintiff or defendant.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.45 (as substituted by 2008 No 90 s 8)

5.46 Solicitor not to be surety

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.46 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*

Subpart 10—Statement of defence and appearance

5.47 Filing and service of statement of defence

(1) A defendant who intends to defend the proceeding must,—

(a) within the number of working days stated in the notice of proceeding, file in the registry of the court named in that notice a statement of defence to the plaintiff's claim; and

(b) serve a copy of the statement of defence on the plaintiff and any other party.

(2) Unless otherwise ordered by the court,—

(a) the place for filing the statement of defence must be the registry of the court in which the statement of claim was filed or into which it has been transferred:

(b) the time within which the statement of defence is required to be filed is 25 working days after the day on which the statement of claim and notice of proceeding are served on the defendant.

(3) Subclause (2)(b) is subject to rule 6.35 (which, unless the court otherwise orders, requires a defendant who has been served out of New Zealand to file a statement of defence within 30 working days from the date of service).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.47 (as substituted by 2008 No 90 s 8)

5.48 Requirements of statement of defence

(1) The statement of defence must either admit or deny the allegations of fact in the statement of claim, but a defendant does not have to plead to an allegation that does not affect that defendant.

(2) A denial of an allegation of fact in the statement of claim must not be evasive. Points must be answered in substance. If for example, it is alleged that the defendant received a sum of money, it is not sufficient to deny receipt of the particular amount. Rather, the defendant must deny receipt of that sum or any part of it, or set out how much was received. When a

High Court Rules—*continued*
Part 5—*continued*
Subpart 10—*continued*

matter is alleged with circumstances it is not sufficient to deny it as alleged with those circumstances. In all cases a fair and substantial answer must be given.

(3) An allegation not denied is treated as being admitted.

(4) An affirmative defence must be pleaded.

(5) The statement of defence must give particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances sufficient to inform the court, the plaintiff, and any other parties of the defendant's defence.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.48 (as substituted by 2008 No 90 s 8)

5.49 Appearance and objection to jurisdiction

(1) A defendant who objects to the jurisdiction of the court to hear and determine the proceeding may, within the time allowed for filing a statement of defence and instead of so doing, file and serve an appearance stating the defendant's objection and the grounds for it.

(2) The filing and serving of an appearance does not operate as a submission to the jurisdiction of the court.

(3) A defendant who has filed an appearance may apply to the court to dismiss the proceeding on the ground that the court has no jurisdiction to hear and determine it.

(4) The court hearing an application under subclause (3) must,—

(a) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss the proceeding; but

(b) if it is satisfied that it has jurisdiction to hear and determine the proceeding, dismiss the application and set aside the appearance.

(5) At any time after an appearance has been filed, the plaintiff may apply to the court by interlocutory application to set aside the appearance.

(6) The court hearing that application must,—

(a) if it is satisfied that it has jurisdiction to hear and determine the proceeding, set aside the appearance; but

High Court Rules—*continued*
Part 5—*continued*
Subpart 10—*continued*

(b) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss both the application and the proceeding.

(7) To the extent that an application under this rule relates to service of process effected outside New Zealand under rule 6.27 or 6.28, it must be determined under rule 6.29.

(7A) But both this rule and rule 6.29 are subject to section 27(1) of the Trans-Tasman Proceedings Act 2010, which provides that a New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia otherwise than in accordance with subpart 2 of Part 2 of that Act.

(8) The court, in exercising its powers under this rule, may do so on any terms and conditions the court thinks just and, in particular, on setting aside the appearance it may extend the time within which the defendant may file and serve a statement of defence and may give any directions that appear necessary regarding any further steps in the proceeding.

(9) If the appearance set aside has been filed in relation to a proceeding in which the plaintiff has applied for judgment under rule 12.2 or 12.3, the court—

(a) must fix the time within which the defendant may file and serve—

(i) a notice of opposition; and

(ii) an affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff; and

(b) may, under subclause (8), give any other directions that appear necessary regarding any further steps in the proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.49 (as substituted by 2008 No 90 s 8)

5.50 Appearance for ancillary purposes

A defendant who does not oppose the plaintiff's claim but who wishes to be heard on any ancillary matter (including costs)

High Court Rules—*continued*
Part 5—*continued*
Subpart 10—*continued*

may, without filing a statement of defence, file and serve an appearance stating those matters, which must not subsequently be determined without notice to that defendant.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.50 (as substituted by 2008 No 90 s 8)

5.51 Appearance reserving rights

(1) This rule applies to a defendant who does not oppose the plaintiff's claim but who wishes to reserve the defendant's rights—
- (a) in the event that any other person may become a party to the proceeding; or
- (b) in the event that any person, already a party, may take some steps in the proceeding adverse to the defendant's interests.

(2) The defendant—
- (a) may, without filing a statement of defence, file and serve an appearance reserving those rights; and
- (b) is subsequently entitled to be served with all documents relevant to the rights so reserved that are filed in the proceeding by a person who is or becomes a party.

(3) A defendant who has filed an appearance under subclause (2) may at any time, by leave of the court, file and serve a statement of defence and any other document within the time and upon any terms and conditions prescribed by the court when granting leave.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.51 (as substituted by 2008 No 90 s 8)

5.52 Forms

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.52 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*

Subpart 11—Counterclaims

5.53 Counterclaim against plaintiff only

(1) A defendant who intends to raise a counterclaim against the plaintiff only must file a statement of counterclaim in the registry of the court in which the statement of defence must be filed.

(2) This rule is subject to rule 5.54.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.53 (as substituted by 2008 No 90 s 8)

5.54 Heading of counterclaim

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.54 (as substituted by 2008 No 90 s 8)

5.55 Filing and service

A counterclaim must be filed in the court and a copy served on the plaintiff within the time stated in the notice of proceeding for filing a statement of defence or, if no such time is stated, within a time fixed by the court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.55 (as substituted by 2008 No 90 s 8)

5.56 Defence to counterclaim

(1) A plaintiff who intends to defend a counterclaim that has been served must, within 25 working days after the day on which the counterclaim is served, file a statement of defence to it and serve a copy on the defendant.

(2) The statement of defence must be headed with the words "Defence to Counterclaim" but in all other respects it must conform with the rules applying to statements of defence.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.56 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 11—*continued*

5.57 Counterclaim against plaintiff and another person

(1) A defendant who has a counterclaim against the plaintiff along with any other person (whether a party to the proceeding or not) for any relief relating to or connected with the original subject matter of the proceeding may, within the time allowed for filing a statement of defence, file a statement of the counterclaim and serve a copy on the plaintiff and that other person (to be referred to as a counterclaim defendant).

(2) Subclause (1) is subject to rule 5.61.

(3) A counterclaim defendant must file a statement of defence to a counterclaim within 25 working days after the day on which the counterclaim was served.

(4) A notice of proceeding in form G 2 must be served with each copy of a counterclaim served under subclause (1).

(5) Rules 5.53 to 5.56 apply with respect to the counterclaim and any defence to it.

(6) The court may at any time order that a counterclaim to which subclause (1) applies be struck out, upon such terms as it thinks just, if it appears—

(a) that, by reason of the counterclaim, the plaintiff is likely to be unduly delayed in obtaining relief; or

(b) that the trial (if a trial is necessary) is to be held at a place where it could not be held if a counterclaim defendant had been made defendant to an independent proceeding by the defendant in respect of the subject matter of the counterclaim; or

(c) that the relief sought in the counterclaim is not related to or connected with the original subject matter of the proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.57 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 11—*continued*

5.58 Place of trial of counterclaim

(1) A counterclaim must be tried at the same place as the statement of claim in the original proceeding and either simultaneously or immediately afterwards.

(2) Despite subclause (1), if it appears to the court that a counterclaim and the statement of claim can more fairly or conveniently be tried separately, it may, subject to such conditions as it thinks fit, make an order that the counterclaim be tried at some other place or time.

(3) Subject to subclauses (1) and (2), after a counterclaim has been served it must proceed in the same manner as if the defendant had commenced an independent proceeding against the plaintiff.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.58 (as substituted by 2008 No 90 s 8)

5.59 Status of counterclaim if proceeding stayed

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.59 (as substituted by 2008 No 90 s 8)

5.60 Counterclaim by counterclaim defendant

(1) Rules 5.56 to 5.59 apply to a counterclaim by a counterclaim defendant in the same way as if the counterclaim defendant were a defendant in a separate proceeding brought by the defendant.

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.60 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 5—*continued*
Subpart 11—*continued*

5.61 Restriction when the Crown involved

(1) In a proceeding by the Crown for the recovery of taxes, duties, or penalties, a defendant is not entitled to advance any set-off or counterclaim.

(2) In a proceeding of any nature by the Crown, a defendant is not entitled to advance any set-off or counterclaim arising out of a right or claim to payment in respect of any taxes, duties, or penalties.

(3) In a proceeding by or against the Crown, being a proceeding to which neither subclause (1) nor (2) applies, a defendant is not entitled, without leave of the court, to advance a set-off or counterclaim—

(a) if the Crown sues or is sued either—

(i) in the name of the Attorney-General on behalf of a government department or an officer or employee of the Crown; or

(ii) in the name of a government department or an officer or employee of the Crown; and

(b) if the subject matter of the set-off or counterclaim does not relate to that department or officer.

(4) An application for leave under subclause (3) that is made by a defendant other than the Crown must be served on the Crown not less than 5 working days before the date specified for hearing the application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.61 (as substituted by 2008 No 90 s 8)

Subpart 12—Reply

5.62 Duty to file and serve reply

If a statement of defence asserts an affirmative defence or contains any positive allegation affecting any other party, the plaintiff or that other party must, within 10 working days after

High Court Rules—*continued*
Part 5—*continued*
Subpart 12—*continued*

the day on which that statement of defence is served, file a reply and serve it on the party serving the statement of defence.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.62 (as substituted by 2008 No 90 s 8)

5.63 Contents of reply

(1) A reply must be limited to answering the affirmative defence or positive allegation and otherwise must comply with the rules governing statements of defence so far as they are applicable.

(2) An affirmative defence or positive allegation in a statement of defence that is not denied is treated as being admitted.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.63 (as substituted by 2008 No 90 s 8)

Subpart 13—Proceedings and actions transferred from District Court

5.64 Application of rules

(1) This subpart applies to every action, counterclaim, and other proceeding transferred to the court from the District Court under an order made under any of **sections 268 to 273 of the Judicature Modernisation Act 2013**.

(2) However, this subpart does not apply to a proceeding removed to the court by an order made under **section 271 of the Judicature Modernisation Act 2013**.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.64 (as substituted by 2008 No 90 s 8)

5.65 Documents to be filed in proper registry

If the registry of the court at which the documents are received from the District Court is not the registry in which, had the action, counterclaim, or other proceeding been commenced in the High Court, the statement of claim would have been filed in accordance with rule 5.25, the Registrar receiving the

High Court Rules—*continued*
Part 5—*continued*
Subpart 13—*continued*

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.65 (as substituted by 2008 No 90 s 8)

5.66 On filing treated as proceeding

(1) Documents filed under rule 5.65 must be treated as documents in a proceeding commenced under these rules.

(2) Subject to subclause (3) and rules 5.67 and 5.68, these rules apply with all necessary modifications.

(3) Any party who has not given an address for service complying with these rules must immediately do so.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.66 (as substituted by 2008 No 90 s 8)

5.67 Title of documents

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.67 (as substituted by 2008 No 90 s 8)

5.68 Time for filing statement of defence

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

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.68 (as substituted by 2008 No 90 s 8)

5.69 Transfer under section 273 of Judicature Modernisation Act 2013

(1) An application under **section 273 of the Judicature Modernisation Act 2013** must be by interlocutory application.

(2) It must,—

High Court Rules—*continued*
Part 5—*continued*
Subpart 13—*continued*

(a) if made by the counterclaimant, be made within 5 working days after the counterclaim or set-off and counterclaim is filed in the District Court:

(b) if made by the party against whom the counterclaim or set-off and counterclaim is made, be made within 5 working days after service on that party.

(3) At any time after an application under subclause (1) has been filed, the court may order the proceedings in the District Court to be stayed pending its disposal.

(4) The order in subclause (3) may be made without notice and subject to any conditions or undertakings that the court thinks just.

(5) If the court orders that the counterclaim or set-off and counterclaim alone be transferred, references in rules 5.64 to 5.68 and in other provisions of these rules to the plaintiff must be read as references to the counterclaimant and references to the defendant must be read as references to the party against whom the counterclaim or set-off and counterclaim is made.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.69 (as substituted by 2008 No 90 s 8)

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

5.70 Service generally

(1) Except as otherwise provided by any Act or these rules or an order made under these rules, a statement of claim and notice of proceeding must be served—

(a) on every defendant named in it; and

(b) on every other person directed to be served with it.

(2) Despite subclause (1), in a civil proceeding against the Crown in which the Attorney-General is named as defendant or is directed to be served on behalf of the Crown or in which the Attorney-General is joined as a party or third or subsequent

High Court Rules—*continued*
Part 5—*continued*
Subpart 14—*continued*

party, service on the Crown must be effected in accordance with section 16 of the Crown Proceedings Act 1950.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.70 (as substituted by 2008 No 90 s 8)

5.71 Personal service required

(1) Except when the court directs or these rules require or permit a different mode of service, the statement of claim and notice of proceeding must be served personally.

(2) Rule 5.73(2) overrides subclause (1).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.71 (as substituted by 2008 No 90 s 8)

5.72 Prompt service required

(1) The statement of claim and notice of proceeding must be served—

(a) as soon as practicable after they are filed; or

(b) when directions as to service are sought, as soon as practicable after the directions have been given.

(2) Unless service is effected within 12 months after the day on which the statement of claim and notice of proceeding are filed or within such further time as the court may allow, the proceeding must be treated as having been discontinued by the plaintiff against any defendant or other person directed to be served who has not been served.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.72 (as substituted by 2008 No 90 s 8)

5.73 Extension of time for service

(1) The plaintiff may, before or after the expiration of the period referred to in rule 5.72, apply to the court for an order extending that period in respect of any person (being a defendant or other person directed to be served) who has not been served.

(2) The court, if satisfied that reasonable efforts have been made to effect service on that defendant or person, or for other good reason, may extend the period of service for 6 months from

High Court Rules—*continued*
Part 5—*continued*
Subpart 14—*continued*

the date of the order and so on from time to time while the proceeding has not been disposed of.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.73 (as substituted by 2008 No 90 s 8)

5.73A Notice of service to Registrar

(1) The plaintiff must notify the Registrar of the date of service of the statement of claim and notice of proceeding on each defendant or other person directed to be served.

(2) Notification under subclause (1) must be made within 7 working days after service and in writing.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 5.73A (as inserted by r 9 of the High Court Amendment Rules (No 2) 2012)

Subpart 15—Registration of users for e-filing purposes

5.74 Interpretation

In this subpart and in subpart 16, unless the context otherwise requires,—

e-file means to file a document electronically (as those concepts are defined in rule 1.3)

formal undertaking is an undertaking by a party or a party's solicitor on the record to do or abstain from doing some specified thing

registered user means a lawyer or a firm of lawyers registered to e-file documents under these rules

working hours means hours, whether on the same day as that on which a document was received in a registry or on that day and the next day during which the registry of the court is open.

5.75 Registration procedure

(1) A lawyer or a firm of lawyers may apply in writing to a Registrar for registration under this subpart.

High Court Rules—*continued*
Part 5—*continued*
Subpart 15—*continued*

(2) The Registrar must register the applicant as a registered user if—
  (a) the applicant has, in the Registrar's opinion, instituted sufficient measures to prevent persons unauthorised by the applicant filing documents in the applicant's name; and
  (b) the applicant has nominated an acceptable electronic address for service; and
  (c) the applicant's name is sufficiently distinctive to avoid later confusion between the applicant and another firm or lawyer (including that part of a partnership that has an office in a different place).

(3) The Registrar may require an applicant to supply the names of those persons who are, from time to time, authorised to e-file on behalf of the applicant.

(4) No fee is chargeable for registration.

(5) When granting the application, the Registrar must—
  (a) assign the registered user an electronic identity for use whenever a document is e-filed; and
  (b) open an account in the name of the registered user.

(6) The Registrar must keep a register recording the name, electronic address for service, and electronic identity of each registered user and the date of that user's registration under this subpart.

(7) The register kept under subclause (6) may be searched by or on behalf of a registered user.

5.76 Effect of registration

(1) A registered user may e-file any document that complies with subpart 16.

(2) A registered user may file any document in hard copy by physical lodgment (whether or not that document has already been e-filed).

High Court Rules—*continued*
Part 5—*continued*
Subpart 15—*continued*

(3) If there is any difference between the content of an e-filed document and the filed hard-copy version of the same document, the hard-copy version prevails, and the document is treated as filed when it is physically lodged.

5.77 Renewal of registration

Registration lasts 36 months and is then renewable.

Subpart 16—E-filing documents

5.78 Requirements for e-filing

(1) A document may be e-filed if it complies with this rule.

(2) An electronic communication sent with a document for e-filing must be authenticated by an electronic identity currently assigned by the Registrar.

(3) A document that is e-filed, and any electronic communication by which the document is e-filed, must comply with the requirements set out in a practice note issued by the Chief Judge or by a list Judge for a particular registry of the court with the approval of the Chief Judge.

(4) The practice note may also limit the number of documents that may be filed on a single occasion or in a stated period, and impose other requirements to ensure that electronic filing is convenient to registered users and efficient and reliable and causes no injustice to other parties.

(5) A document that is e-filed other than in imaged form need not comply with the rules as to shape, size, and format in subpart 2 of this Part (formal requirements for documents).

(6) A document that is e-filed in imaged form must comply with subpart 2 of this Part.

(7) An e-filed document must be adequately labelled so that it is obvious what it is, for example, "Interlocutory application without notice for interim injunction".

(8) If, under these rules, a document can be filed only if it is signed or otherwise authenticated, use of the registered user's elec-

High Court Rules—*continued*
Part 5—*continued*
Subpart 16—*continued*

tronic identity to authenticate the electronic communication sent with the document must be treated for all purposes as equivalent to that user's signature or other authentication of that document.

(9) This rule is subject to rule 5.81.

5.79 Provisional filing

(1) An e-filed document must be treated as provisionally filed at the time it enters the information system designated for this purpose in the applicable practice note issued under rule 5.78(3), and that date and time must be recorded on the court file.

(2) The Registrar or a Deputy Registrar must ensure that every provisionally filed document is checked to ensure it meets the requirements imposed by this subpart and by that practice note.

(3) Checking must—

(a) be completed within 2 working hours of the provisional filing of an e-filed document; and

(b) comply with operational standards not conflicting with this subpart issued by the Ministry of Justice and available on request to registered users and any person considering registration under subpart 15 or the practice note issued under rule 5.78(3).

5.80 Acceptance of provisionally filed documents

(1) Acceptance of a document by the Registrar or a Deputy Registrar must be recorded by dating and timing that acceptance and endorsing the document "Accepted for filing" and verifying that date, time, and endorsement.

(2) The Registrar must immediately notify the registered user if an e-filed document is not accepted.

(3) If an e-filed document is accepted it must be treated for all purposes as having been filed on the date and at the time when it is recorded as having been provisionally filed.

High Court Rules—*continued*
Part 5—*continued*
Subpart 16—*continued*

(4) Upon acceptance of an e-filed document the Registrar must direct debit the registered user with the appropriate fee for that document.

5.81 Affidavits and formal undertakings

(1) An affidavit or a formal undertaking may be e-filed if the e-filing complies with this rule.

(2) If an affidavit or a formal undertaking is being e-filed, it must be transmitted to the court in imaged form.

(3) Rule 5.78(2), (3), and (7) applies to the e-filing of an affidavit or a formal undertaking.

(4) The original hard-copy form of the affidavit or formal undertaking, sworn or signed or authenticated as required by these rules, must be retained by the registered user,—

(a) if the affidavit or formal undertaking is filed in connection with an application under Part 18 or 19, or in a proceeding that does not go to trial, for 12 months from the date of e-filing:

(b) if it is filed in connection with a proceeding, and that proceeding goes to trial, until no appeal or further appeal from a judgment given in that proceeding is possible.

(5) If uncertainty as to the content of an affidavit or formal undertaking arises, or a Judge considers that justice requires its production, the Judge, on application or on the Judge's own initiative, may order that it be filed in court and served on the other party or parties in hard copy form, and may make such order as to a further hearing as the Judge thinks just.

High Court Rules—*continued*

Part 6
Service

Subpart 1—Methods and proof of service

6.1 Methods of service

(1) Any of the following methods may be used for serving a document that is required by these rules to be served:

(a) personal service:

(b) service at an address for service given in accordance with these rules:

(c) service at an address directed by the court as the address for service for the party or person:

(d) if the solicitor for the party or person, or the party or person, has, under rule 5.40(5)(a), 5.42(2)(b)(i), or 5.44(1)(e), specified a post office box address, document exchange box number, fax number, or email address,—

(i) by posting the document to that post office box address; or

(ii) by leaving the document at a document exchange for direction to that document exchange box number; or

(iii) by transmitting the document electronically to that fax number or email address:

(e) if a defendant has been served in Australia under section 13 of the Trans-Tasman Proceedings Act 2010 with an initiating document for the proceeding, by posting the document to an address for service of the party or person to be served.

(2) In any case not provided for by these rules, service must be effected by the method and at the place the court directs.

(3) This rule does not apply if an Act or a rule requires a special and exclusive method of service.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.1 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 6—*continued*
Subpart 1—*continued*

6.2 Service of copies

Unless an Act or a rule expressly requires an original document to be served, service of a true copy is to be treated as service of the document.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.2 (as substituted by 2008 No 90 s 8)

6.3 Notices

Rules 6.1 and 6.2 and rules 6.4 to 6.25 apply to any notice that by these rules, or by any order made under these rules, is required to be given to any person, whether or not that person is a party or the notice is required to be filed in the court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.3 (as substituted by 2008 No 90 s 8)

6.4 Personal service on spouses or partners

(1) This rule applies when defendants to a proceeding are—

(a) a married couple; or

(b) civil union partners; or

(c) de facto partners.

(2) Service on one spouse, civil union partner, or de facto partner is not to be treated as service on the other unless the court so orders.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.4 (as substituted by 2008 No 90 s 8)

6.5 Service at address for service

A document may be served at an address for service by leaving the document at that address at any time between 9 am and 5 pm.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.5 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 6—*continued*
Subpart 1—*continued*

6.6 Service by means of post office box, document exchange, fax, or email

(1) When a document is served on a party or person in accordance with rule 6.1(1)(d)(i) or (ii), that document must,—

(a) if posted to a post office box address, be treated as served on the earlier of—

(i) the third working day after the day on which it was posted; or

(ii) the day on which it was received; and

(b) if left at a document exchange, be treated as served on the earlier of—

(i) the second working day after the day on which it was left; or

(ii) the day on which it was received.

(2) A document served on a party or person in accordance with rule 6.1(1)(d)(iii) must—

(a) be treated as dispatched at the time the electronic communication first enters an information system outside the control of its originator; and

(b) be treated as received,—

(i) in the case of a party who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or

(ii) in any other case, at the time the electronic communication comes to the attention of the party or person being served, or the solicitor or other agent of that party or person.

(3) When a document is transmitted electronically on a day that is not a working day, or after 5 pm on a working day, it must be treated as served on the first subsequent working day.

(4) When a document is served electronically under this rule, the party or person served must, on receiving the document, immediately give to the person who served the document, or that

High Court Rules—*continued*
Part 6—*continued*
Subpart 1—*continued*

person's solicitor or agent, an acknowledgement in writing or electronically—

(a) that the document has been received; and

(b) of the date and time of receipt.

(5) In this rule, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

(6) Subclauses (7) to (11) apply to a document to be served in a proceeding if—

(a) the proceeding is one an initiating document for which is to be or has been served on a defendant in Australia under section 13 of the Trans-Tasman Proceedings Act 2010; and

(b) the document is one to be served—

(i) by a party in New Zealand and on a party in Australia; or

(ii) by a party in Australia and on a party in New Zealand.

(7) Despite subclause (1), when a document is served in accordance with rule 6.1(1)(d)(i) or (ii) or (e), it is to be treated as served on the earlier of—

(a) the sixth working day after the day on which it was posted; and

(b) the day on which it was received.

(8) Subclause (9) applies to a document that is—

(a) a document in response to a requirement of or under these rules; and

(b) served in accordance with rule 6.1(1)(d)(i) or (ii) or (e).

(9) The party serving the document is entitled to an extra 5 working days within which to comply with that requirement.

(10) Despite subclause (8), subclause (9) does not apply when a rule requires a document to be served a prescribed number of days before a hearing or other specified event.

(11) Despite subclause (3), when a document is, under rule 6.1(1)(d)(iii), transmitted electronically to the fax number or

High Court Rules—*continued*
Part 6—*continued*
Subpart 1—*continued*

email address of a solicitor in a State or Territory of Australia at a time later than 5 pm in that State or Territory, it is to be treated as having been served on the first subsequent working day.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.6 (as substituted by 2008 No 90 s 8)

6.7 Service under agreement

Service by a method agreed to in writing by a party is sufficient service on that party.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.7 (as substituted by 2008 No 90 s 8)

6.8 Substituted service

If reasonable efforts have been made to serve a document by a method permitted or required under these rules, and either the document has come to the knowledge of the person to be served or it cannot be promptly served, the court may—

(a) direct—

(i) that instead of service, specified steps be taken that are likely to bring the document to the notice of the person to be served; and

(ii) that the document be treated as served on the happening of a specified event, or on the expiry of a specified time:

(b) when steps have been taken for the purpose of bringing, or which have a tendency to bring, the document to the notice of the person on whom it is required to be served, direct that the document be treated as served on that person on a specified date:

(c) subject to any conditions that the court thinks just to impose, dispense with service of a document on a person and give to the party by whom the document is required

High Court Rules—*continued*
Part 6—*continued*
Subpart 1—*continued*

to be served leave to proceed as if the document had been served.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.8 (as substituted by 2008 No 90 s 8)

6.9 Notices to be given by Registrar

When notice is required to be given by the Registrar to a person, whether a party or not, it may be given,—

(a) if the person is acting by a solicitor, by sending it by ordinary post addressed to the solicitor at the address for service (if given) or at the solicitor's place of business:

(b) if the person is not acting by a solicitor, by sending it by ordinary post addressed to that person at that person's address for service (if given) or last known or usual place of residence or business in New Zealand:

(c) in any other manner the court directs.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.9 (as substituted by 2008 No 90 s 8)

6.10 Proof of service

(1) The service of a document may be proved on oath before the court or by affidavit in form G 16.

(2) If the service of a document is proved by affidavit in form G 16, it is unnecessary, unless the court otherwise directs, for a copy of that document to be annexed if—

(a) either the original of the document or a copy of the document has, at the time of service, been filed in the registry of the court; and

(b) the affidavit contains a description of the document that—

(i) is sufficient to enable the document to be identified; and

(ii) includes the date of the document (if the document is dated).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.10 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 6—*continued*
Subpart 1—*continued*

6.11 Personal service

A document may be personally served by leaving the document with the person to be served, or, if that person does not accept it, by putting it down and bringing it to the notice of that person.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.11 (as substituted by 2008 No 90 s 8)

Subpart 2—Corporations, partners, attorneys, and agents

6.12 Personal service on New Zealand corporations

(1) A document may be served on a company incorporated under the Companies Act 1993 in accordance with section 387 of that Act.

(2) A document may be served on a corporation incorporated in New Zealand other than a company incorporated under the Companies Act 1993—

- (a) by service in accordance with rule 6.11 on—
  - (i) the mayor, chairman, president, town clerk, managing director, secretary, treasurer, or other similar officer of the corporation; or
  - (ii) any member, officer, or employee of the corporation at the corporation's head office or principal place of business; or
- (b) by leaving the document at the corporation's registered office; or
- (c) by serving the document on a member, officer, or employee of the corporation in any manner that the court directs; or
- (d) by complying with any enactment that provides for service of a document on a corporation.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.12 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 6—*continued*
Subpart 2—*continued*

6.13 Personal service in New Zealand on foreign corporations

(1) An overseas company (within the meaning of section 2 of the Companies Act 1993) that is served in New Zealand must be personally served in accordance with section 389 of the Companies Act 1993.

(2) A corporation (other than an overseas company within the meaning of section 2 of the Companies Act 1993) may be served in New Zealand in accordance with rule 6.11 by service on a person appearing to have control of the business of that corporation at the principal or only place of business of that corporation in New Zealand if the corporation—

(a) is incorporated outside New Zealand; and

(b) has a place or places of business in New Zealand.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.13 (as substituted by 2008 No 90 s 8)

6.13A Personal service on Australian corporations, partnerships, and attorneys

A document in a proceeding in which an initiating document is to be or has been served on a defendant under section 13 of the Trans-Tasman Proceedings Act 2010 may be served in Australia—

(a) on a company registered in Australia under the Corporations Act 2001 (Aust) in the same way as if it were a company to which section 387 of the Companies Act 1993 applies:

(b) on a corporation incorporated in Australia (other than a company specified in paragraph (a)) in the same way as if it were a corporation to which rule 6.12(2) applies:

(c) on a partnership, or on a person carrying on business in the name of a firm apparently consisting of more than 1 person, by serving it in accordance with rule 6.11 either on any partner or on that person, or—

High Court Rules—*continued*
Part 6—*continued*
Subpart 2—*continued*

(i) on any person appearing to have control of the business of the partnership or apparent partnership; and
(ii) at the principal place in Australia of the business of the partnership or apparent partnership

(d) on a person who is out of Australia and New Zealand by serving, in accordance with rule 6.11, an attorney or agent of that person in Australia if the attorney or agent is authorised—
(i) to transact that person's affairs generally and to defend proceedings; or
(ii) to transact the person's affairs in respect of the subject matter of the proceeding and to defend the particular proceeding.

Compare: 1908 No 89 Schedule 2 r 6.13A (as inserted by the High Court (Trans-Tasman Proceedings Act 2010) Amendment Rules 2013)

6.13B Personal service in Australia on foreign corporations

(1) A document in a proceeding in which an initiating document is to be or has been served on a defendant under section 13 of the Trans-Tasman Proceedings Act 2010 may be served in Australia—
(a) on a foreign company registered under section 601CE of the Corporations Act 2001 (Aust) as follows:
(i) by delivery to a person named in the register kept for the purposes of Division 2 of Part 5B.2 of that Act as a director of the foreign company and who is resident in Australia; or
(ii) by delivery to a person named in that register as being authorised to accept service in Australia of documents on behalf of the foreign company; or
(iii) by delivery to an employee of the foreign company at the foreign company's place of business in Australia or, if the foreign company has more than 1 place of business in Australia, at the for-

High Court Rules—*continued*
Part 6—*continued*
Subpart 2—*continued*

eign company's principal place of business in Australia; or

(iv) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceeding; or

(v) in accordance with an agreement made with the foreign company:

(b) on a foreign corporation of the kind specified in subclause (2) by serving it in accordance with rule 6.11—

(i) on a person appearing to have control of the business of that corporation; and

(ii) at the principal place of business of that corporation in Australia.

(2) Subclause (1)(b) applies to a foreign corporation that—

(a) is not a foreign company registered under section 601CE of the Corporations Act 2001 (Aust); and

(b) is incorporated but not in Australia and not in New Zealand; and

(c) has a place of business in Australia; and

(d) does not have a place of business in New Zealand.

Compare: 1908 No 89 Schedule 2 r 6.13B (as inserted by r 14 of the High Court (Trans-Tasman Proceedings Act 2010) Amendment Rules 2013)

6.14 Personal service on unincorporated societies

A document may be served on an unincorporated society by serving the president, chairperson, secretary, or any similar officer of the society under rule 6.11.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.14 (as substituted by 2008 No 90 s 8)

6.15 Personal service on partnership or apparent partnership

A document may be served on a partnership or on a person carrying on business in the name of a firm apparently consisting of more than 1 person by serving it in accordance with rule 6.11—

(a) on any partner or on that person; or

High Court Rules—*continued*
Part 6—*continued*
Subpart 2—*continued*

(b) at the principal place in New Zealand of the business of the partnership or apparent partnership, on any person appearing to have control of the business there.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.15 (as substituted by 2008 No 90 s 8)

6.16 Personal service on attorney or agent of absentee

A document may be served on a person who is out of New Zealand by serving, in accordance with rule 6.11, an attorney or agent of that person in New Zealand if the attorney or agent is authorised—

(a) to transact that person's affairs generally and to defend proceedings; or

(b) to transact the person's affairs in respect of the subject matter of the proceeding and to defend the particular proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.16 (as substituted by 2008 No 90 s 8)

6.17 Service on representatives

(1) This rule applies to a person (a **representative**) who—

(a) is appointed by the court to represent any person or persons, or any class of persons; or

(b) sues or defends on behalf of himself or herself and any other person or persons.

(2) Service on the representative is to be treated as service on behalf of all persons for whom the representative has been appointed to represent or on whose behalf the representative sues or defends.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.17 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 6—*continued*
Subpart 2—*continued*

6.18 Service on solicitor

A document is treated as served on a person on the date on which the solicitor for that person signs on a copy of the document a note accepting service of it, or a proved earlier date.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.18 (as substituted by 2008 No 90 s 8)

6.19 Service of statement of claim on certain days void

(1) A statement of claim must not be served on Christmas Day, New Year's Day, or Good Friday.

(2) **Section 177** of the Act is not affected.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.19 (as substituted by 2008 No 90 s 8)

6.20 Failure to give address for service

A party to a contentious proceeding who has not given an address for service is not entitled to be served with notice of any step in the proceeding or with copies of any further documents filed in the proceeding or to address the court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.20 (as substituted by 2008 No 90 s 8)

Subpart 3—Foreign process

6.21 Service of foreign process

(1) This subpart applies when a request is made to the court to effect service of a foreign process on a person in New Zealand.

(2) A request may be made to the court to effect service of a foreign process on a person in New Zealand in any manner permitted or required by the provisions of a convention.

(3) Service in New Zealand of a foreign process must be in accordance with a convention if—

(a) the convention contains an express provision governing the service of that process in New Zealand; and

(b) that convention excludes other methods of service.

High Court Rules—*continued*
Part 6—*continued*
Subpart 3—*continued*

(4) When service is in accordance with a convention, no court fees are to be charged for the filing of any document or the doing of any act relating to the service or the certification of service.

(5) A letter of request from a foreign court requesting service of process on any person in New Zealand in connection with any civil matter pending before that foreign court must be forwarded through diplomatic channels to the Secretary of Foreign Affairs and Trade who must send it to the Secretary for Justice for further transmission to the Registrar with an intimation that it is desirable that effect should be given to that request.

(6) A letter of request must be accompanied by—
- (a) a translation of it in English if it is not in English; and
- (b) 2 copies of the process or citation to be served; and
- (c) 2 copies of the process or citation in English or translated into English.

(7) Subclauses (5) and (6) and rules 6.22 to 6.25 apply subject to the provisions of any relevant convention.

(8) In this rule, **convention** means any treaty to which New Zealand is a party that makes provision for service of foreign process in New Zealand.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.21 (as substituted by 2008 No 90 s 8)

6.22 Sheriff to effect service

Service of the process or citation must be effected by the Sheriff whose registry is nearest to the place where the person to be served resides, or by any officer appointed by that Sheriff.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.22 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 6—*continued*
Subpart 3—*continued*

6.23 Method of service

Service must be effected by leaving, in accordance with these rules, a copy of the process or citation and of any translation with the person to be served.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.23 (as substituted by 2008 No 90 s 8)

6.24 Return as to service

After service of the process or citation has been effected or (if that is the case) attempts to effect service of the process or citation have failed, the Sheriff or the officer effecting or attempting to effect service must return to the Registrar of the court nearest to the place of service or attempted place of service—

(a) 1 copy of the process or citation; and

(b) an affidavit made by the Sheriff or the officer stating when, where, and how the Sheriff or officer effected service or attempted to effect service; and

(c) a statement of the costs incurred in effecting, or attempting to effect, service.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.24 (as substituted by 2008 No 90 s 8)

6.25 Certification

The Registrar must give a certificate in form G 17—

(a) identifying the documents annexed, namely the letter of request for service, a copy of the process or citation received with the letter, and a copy of the affidavit referred to in rule 6.24(b); and

(b) certifying—

(i) that the method of service of the process and the proof of service comply with the law and practice of the High Court of New Zealand regulating the service of New Zealand legal process in New Zealand and its proof; or

High Court Rules—*continued*
Part 6—*continued*
Subpart 3—*continued*

(ii) if that is the case, that service of the process could not be effected for the reason specified in the certificate; and

(c) certifying the cost of effecting, or attempting to effect, service.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.25 (as substituted by 2008 No 90 s 8)

6.26 Sealing and transmission of certificate

The certificate given under rule 6.25 must be sealed with the seal of the court and sent to the Secretary for Justice who must send it to the Secretary of Foreign Affairs and Trade for further transmission through diplomatic channels to the foreign court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.26 (as substituted by 2008 No 90 s 8)

Subpart 4—Service out of New Zealand

6.27 When allowed without leave

(1) This rule applies to a document that initiates a civil proceeding, or is a notice issued under subpart 4 of Part 4 (third, fourth and subsequent parties), which under these rules is required to be served but cannot be served in New Zealand under these rules (an **originating document**).

(2) An originating document may be served out of New Zealand without leave in the following cases:

(a) when a claim is made in tort and—

(i) any act or omission in respect of which damage was sustained was done or occurred in New Zealand; or

(ii) the damage was sustained in New Zealand:

(b) when a contract sought to be enforced or rescinded, dissolved, annulled, cancelled, otherwise affected or interpreted in any proceeding, or for the breach of which damages or other relief is demanded in the proceeding—

High Court Rules—*continued*
Part 6—*continued*
Subpart 4—*continued*

(i) was made or entered into in New Zealand; or
(ii) was made by or through an agent trading or residing within New Zealand; or
(iii) was to be wholly or in part performed in New Zealand; or
(iv) was by its terms or by implication to be governed by New Zealand law:

(c) when there has been a breach in New Zealand of any contract, wherever made:

(d) when the claim is for—
(i) a permanent injunction to compel or restrain the performance of any act in New Zealand; or
(ii) interim relief in support of judicial or arbitral proceedings commenced or to be commenced outside New Zealand:

(e) when the subject matter of the proceeding is land or other property situated in New Zealand, or any act, deed, will, instrument, or thing affecting such land or property:

(f) when the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged according to the law of New Zealand:

(g) when any relief is sought against any person domiciled or ordinarily resident in New Zealand:

(h) when any person out of the jurisdiction is—
(i) a necessary or proper party to proceedings properly brought against another defendant served or to be served (whether within New Zealand or outside New Zealand under any other provision of these rules), and there is a real issue between the plaintiff and that defendant that the court ought to try; or

High Court Rules—*continued*
Part 6—*continued*
Subpart 4—*continued*

(ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by proceedings in the court:

(i) when the proceeding is for the administration of the estate of any deceased person who at the time of his or her death was domiciled in New Zealand:

(j) when the claim arises under an enactment and either—

(i) any act or omission to which the claim relates was done or occurred in New Zealand; or

(ii) any loss or damage to which the claim relates was sustained in New Zealand; or

(iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside New Zealand in the circumstances alleged; or

(iv) the enactment expressly confers jurisdiction on the court over persons outside New Zealand (in which case any requirements of the enactment relating to service must be complied with):

(k) when the person to be served has submitted to the jurisdiction of the court:

(l) when a claim is made for restitution or for the remedy of constructive trust and the defendant's alleged liability arises out of acts committed within the jurisdiction:

(m) when it is sought to enforce any judgment or arbitral award.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.27 (as substituted by 2008 No 90 s 8)

6.28 When allowed with leave

(1) In any proceeding when service is not allowed under rule 6.27, an originating document may be served out of New Zealand with the leave of the court.

(2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.

High Court Rules—*continued*
Part 6—*continued*
Subpart 4—*continued*

(3) A sealed copy of every order made under this rule must be served with the document to which it relates.

(4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction under rule 6.29, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is a New Zealand citizen.

(5) The court may grant an application for leave if the applicant establishes that—

(a) the claim has a real and substantial connection with New Zealand; and

(b) there is a serious issue to be tried on the merits; and

(c) New Zealand is the appropriate forum for the trial; and

(d) any other relevant circumstances support an assumption of jurisdiction.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.28 (as substituted by 2008 No 90 s 8)

6.29 Court's discretion whether to assume jurisdiction

(1) If service of process has been effected out of New Zealand without leave, and the court's jurisdiction is protested under rule 5.49, the court must dismiss the proceeding unless the party effecting service establishes—

(a) that there is—

(i) a good arguable case that the claim falls wholly within 1 or more of the paragraphs of rule 6.27; and

(ii) the court should assume jurisdiction by reason of the matters set out in rule 6.28(5)(b) to (d); or

(b) that, had the party applied for leave under rule 6.28,—

(i) leave would have been granted; and

(ii) it is in the interests of justice that the failure to apply for leave should be excused.

High Court Rules—*continued*
Part 6—*continued*
Subpart 4—*continued*

(2) If service of process has been effected out of New Zealand under rule 6.28, and the court's jurisdiction is protested under rule 5.49, and it is claimed that leave was wrongly granted under rule 6.28, the court must dismiss the proceeding unless the party effecting service establishes that in the light of the evidence now before the court leave was correctly granted.

(3) When service of process has been validly effected within New Zealand, but New Zealand is not the appropriate forum for trial of the action, the defendant may apply for a stay, or for a dismissal of the proceeding under rule 15.1.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.29 (as substituted by 2008 No 90 s 8)

6.30 Service of other documents outside New Zealand

Any document other than an originating document required by any rule to be served personally may be served abroad with the leave of the court, which may be given with any directions that the court thinks just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.30 (as substituted by 2008 No 90 s 8)

6.31 Notice to defendant served outside New Zealand

If a defendant is to be served out of New Zealand, the memorandum required by rule 5.23(4) must also include a notice, which may be in form G 6, informing the defendant of—

(a) the scope of the jurisdiction of the court in respect of claims against persons who are not resident in New Zealand; and

(b) the grounds alleged by the plaintiff in relying on that jurisdiction; and

(c) the defendant's right to enter an appearance and objection to the jurisdiction of the court under rule 5.49.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.31 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 6—*continued*
Subpart 4—*continued*

6.32 Service outside New Zealand

(1) An originating document permitted under these rules to be served outside New Zealand may be served by a method—
  (a) specified in rule 6.1; or
  (b) permitted by the law of the country in which it is to be served; or
  (c) provided for in rules 6.33 and 6.34.

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) When a convention relating to service of process is in force between New Zealand and the country where service is to be effected, service must be effected in accordance with a method provided for, or permitted by, that convention.

(4) No service outside New Zealand is valid if effected contrary to the law of the country where service is effected.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.32 (as substituted by 2008 No 90 s 8)

6.33 Service through official channels

(1) When a party seeks service outside New Zealand through official channels, the request must be sent by the Registrar to the Secretary for Justice who must forward it to the Secretary of Foreign Affairs and Trade for further transmission to the appropriate authorities in the foreign country.

(2) Proof of service must be returned to the Registrar through the same channels.

(3) In respect of each person to be served, the request for service must be accompanied by—
  (a) the document to be served; and
  (b) a copy of the document to be exhibited to the evidence verifying service; and
  (c) when the language of the person to be served is not English,—
    (i) a translation of the document into the language (verified as correct to the satisfaction of the

High Court Rules—*continued*
Part 6—*continued*
Subpart 4—*continued*

Registrar) of the person to be served for service with the document; and

(ii) a copy of that translation, which must be exhibited to the evidence verifying service.

(4) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a New Zealand consular officer, is sufficient proof of that fact and date.

(5) This rule is subject to any relevant convention that requires or permits any other method of service through official channels.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.33 (as substituted by 2008 No 90 s 8)

6.34 Service in convention countries

(1) This rule applies when—

(a) a convention is in force between New Zealand and any other country relating to the service of documents in proceedings in the courts of the respective countries; and

(b) a party to a proceeding in New Zealand desires to take advantage of any provision made in the convention for service in that other country by official means.

(2) When this rule applies, the party seeking service may file a request in form G 18 stating the official means of service desired and containing the undertaking set out in that form covering the payment of expenses.

(3) Subclause (2) is subject to the provisions of the convention.

(4) In respect of each person to be served, the request for service must be accompanied by—

(a) the document to be served; and

(b) a copy of it exhibited to the evidence verifying service; and

(c) when the language of the person to be served is not English,—

High Court Rules—*continued*
Part 6—*continued*
Subpart 4—*continued*

(i) a translation of the document into his or her language (verified as correct to the satisfaction of the Registrar) for service with the document; and

(ii) a copy of that translation to be exhibited to the evidence verifying service.

(5) The document and translation to be served must be sealed by the Registrar with the seal of the court and the documents required to accompany the request for service forwarded by the Registrar to the Secretary for Justice for transmission through the appropriate channels to the country concerned for service in accordance with the request for service.

(6) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a British or New Zealand consular officer, and transmitted by the Secretary for Justice to the Registrar is sufficient proof of that service.

(7) A certificate filed by the Registrar is equivalent to an affidavit of service of the documents referred to in the certificate.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.34 (as substituted by 2008 No 90 s 8)

6.35 Time for filing defence

Except when the court otherwise orders, a defendant who has been served out of New Zealand must file a statement of defence or appearance within 30 working days from the date of service.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 6.35 (as substituted by 2008 No 90 s 8)

6.36 Subpart does not apply to service in Australia of documents for or in certain trans-Tasman proceedings

This subpart (which contains rules on service out of New Zealand) does not apply to service in Australia of an initiating document for, or of any other document to be served in or for, a proceeding an initiating document for which may be served

High Court Rules—*continued*
Part 6—*continued*
Subpart 4—*continued*

in Australia under subpart 1 of Part 2 of the Trans-Tasman Proceedings Act 2010.

Compare: 1908 No 89 Schedule 2 r 6.36 (as inserted by r 15 of the High Court (Trans-Tasman Proceedings Act 2010) Amendment Rules 2013)

Part 7
Case management, interlocutory applications, and interim relief

Subpart 1—Case management

7.1AA Outline of case management procedures for different types of proceedings

(1) An ordinary defended proceeding or a complex defended proceeding—

(a) is subject to a first case management conference (*see* rule 7.3):

(b) may be the subject of 1 or more further case management conferences (*see* rule 7.4):

(c) may also be the subject of an issues conference (*see* rule 7.5):

(d) if the proceeding is being, or has been, allocated a hearing or trial date, may be the subject of a pre-trial conference (*see* rule 7.8).

(2) An application for leave to appeal, or an appeal, under Part 20 (Appeals), Part 21 (Case stated), or Part 26 (Arbitration Act 1996) is subject to case management under different provisions (*see* rules 7.14 and 7.15).

(3) A proceeding commenced by originating application is subject to limited case management through the ability of the parties to seek directions (*see* rules 19.11 and 7.43A).

(~~5~~4) An application for judicial review may be subject to case management under **section 433 of the Judicature Modernisation Act 2013** and any rules relating to the case management of such proceedings.

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

(65) The following proceedings are not subject to case management:
(a) undefended proceedings:
(b) an application under Part 24 (insolvency) or Part 31 (companies: liquidation).

(76) This rule operates only as a guide, and if any other provision of these rules or any other enactment is inconsistent with this rule, that other provision or enactment prevails.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.1AA (as inserted by r 10 of the High Court Amendment Rules (No 3) 2013)

7.1 Proceedings subject of case management

(1) Case management in accordance with this subpart will be applied to the following proceedings in order to promote their just, speedy, and inexpensive determination:
(a) ordinary or complex defended hearings:
(b) an application for leave to appeal, or an appeal, under Part 20 (Appeals), Part 21 (Cases stated), or Part 26 (Arbitration Act 1996).

(3) The purpose of a case management conference is to enable the Judge to assist the parties—
(a) to identify, define, and refine the issues requiring judicial resolution; and
(b) to determine what steps need to be taken in order to prepare the proceeding for hearing or trial; and
(c) to decide how best to facilitate the conduct of the hearing or trial; and
(d) to ensure that the costs of the proceeding are proportionate to the subject matter of the proceeding.

(4) In this rule,—

complex defended proceeding means one that, in a Judge's opinion, needs intensive case management and therefore needs more than 1 case management conference before a fixture is allocated

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

ordinary defended proceeding means one that, in a Judge's opinion, does not require intensive case management and therefore does not need more than 1 case management conference before a fixture is allocated.

(5) For the purposes of this subpart, a proceeding must be classified as—
- (a) an ordinary defended proceeding; or
- (b) a complex defended proceeding; or
- (c) an application under Part 24 (Insolvency) or Part 31 (Companies: liquidation); or
- (d) an application for leave to appeal, or an appeal, under Part 20 (Appeals), Part 21 (Cases stated), or Part 26 (Arbitration Act 1996); or
- (e) an undefended proceeding; or
- (f) an application commenced by originating application under Part 19 (originating applications).

(6) The proper classification of a proceeding as either an ordinary defended proceeding or a complex defended proceeding in terms of subclause (5) must be—
- (a) resolved by a Judge not later than the date of the first case management conference; and
- (b) promptly advised to the parties.

(7) A Judge may at any time review the classification assigned under subclause (5) and decide whether to maintain or alter it.

(8) Proceedings under subclause (5)(f) ~~and (g)~~ are subject to limited case management through the ability of the parties to seek directions.

(9) The following proceedings are not subject to case management:
- (a) undefended hearings:
- (b) an application under Part 24 (insolvency) or Part 31 (companies: liquidation).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.1 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

7.2 Case management conferences generally

(1) A Judge may hold a case management conference at any time.

(2) A case management conference may be convened by a Judge on the Judge's own initiative or on the application of 1 or more of the parties.

(3) At any case management conference, the Judge may give directions to secure the just, speedy, and inexpensive determination of the proceedings, including the fixing of timetables and directing how the hearing or trial is to be conducted.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.2 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.3 First case management conferences

(1) This rule does not apply if—

(a) no statement of defence has been filed in a proceeding; or

(b) the proceeding is an appeal within rule 7.14.

(2) Unless otherwise ordered by a Judge, the first case management conference for the proceeding must be held on a date fixed by the Registrar that is the first available date not less than 25 working days after the date when the first statement of defence is filed in the proceeding, but, in any event, not less than 50 working days after the filing of the proceeding.

(3) The agenda for the conference is—

(a) the Schedule 5 matters; and

(b) the making of a discovery or other order under rule 8.5; and

(c) the hearing, and if practicable the disposal, of any outstanding interlocutory application; and

(d) the fixing of—

(i) a close of pleadings date; and

(ii) a hearing or trial date for a proceeding classified as an ordinary defended proceeding and the making of appropriate trial directions; and

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

(iii) a date and arrangements for any further case management, issues, or pre-trial conference; and

(e) other appropriate matters that have already been discussed by the parties.

(4) The parties must either file a joint memorandum addressing the Schedule 5 matters no later than 10 working days before the conference, or file separate memoranda addressing those matters in accordance with subclause (5).

(5) If separate memoranda are filed, the plaintiff or applicant must file the first memorandum stating that party's position on the matters in Schedule 5. That memorandum must be filed 10 working days before the conference, followed no later than 5 working days before the conference by memoranda from the other parties, each memorandum stating the party's agreement or disagreement with memoranda already filed, and, in the case of disagreement, the reasons for disagreement and the different position contended for.

(6) Memoranda filed under subclause (4) or (5) may also address matters that fall within subclause (3)(e).

(7) The joint memorandum referred to in subclause (4) may be combined with any joint memorandum filed in relation to discovery under rule 8.11.

(8) A separate memorandum referred to in subclause (5) may be combined with any separate memorandum filed in relation to discovery under rule 8.11.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.3 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.4 Further case management conferences

(1) The Judge at the first case management conference of any defended proceeding may require a further case management conference or order one on the application of a party.

(2) The agenda for a conference under this rule—

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

(a) will be set out in the order directing the conference, but a party may add a further item or items (if practicable, giving advance notice to the other parties); and
(b) will include or adapt the Schedule 5 matters; and
(c) may prescribe steps to be taken in preparation for the conference.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.4 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.5 Issues conferences

(1) The Judge may at any time, on the Judge's own initiative or if the parties agree, order an issues conference for any defended proceeding to advance the identification and refinement of the issues, and set the date and agenda for that issues conference.

(2) The Judge may issue a direction before an issues conference that requires the attendance at the conference of all or any of the following:
(a) instructing solicitors:
(b) all counsel engaged:
(c) the parties (or, in the case of corporate parties, their senior officers or authorised representatives).

(3) If any conflict arises between the pleadings and the issues as identified and refined before or at an issues conference, the pleadings prevail.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.5 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.6 Allocation of key dates

(1) If it appears to the Judge at the first case management conference that a proceeding can be readied for hearing or trial, the Judge must immediately allocate a date for hearing or trial.

(2) If a proceeding has not been allocated a hearing or trial date at the first case management conference, the Judge must allocate a date for its hearing or trial when the Judge is satisfied that it can be readied for hearing or trial.

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

(3) A proceeding can be readied for hearing or trial for the purpose of subclauses (1) and (2) if it is reasonably anticipated that it will be able to proceed to hearing or trial without the need for—
  (a) any significant amendment of the pleadings; or
  (b) any significant interlocutory application; or
  (c) any significant refinement of the issues in the proceeding.

(4) In addition to allocating a hearing or trial date under subclause (1) or (2), the Judge must fix a close of pleadings date.

(5) It is the duty of all parties to a proceeding for which a date for hearing or trial has been allocated to notify the Registrar, without delay, if the proceeding is settled.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.6 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.7 Steps after close of pleadings date restricted

(1) No statement of defence or amended pleading or affidavit may be filed, and no interlocutory application may be made or step taken, after the close of pleadings date without the leave of a Judge.

(2) Subclause (1) does not apply to—
  (a) an application for leave under that subclause; or
  (b) a pleading or an affidavit that merely brings up to date the information before the court; or
  (c) an application for amendment of a defect or an error under rule 1.9.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.7 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.8 Pre-trial conferences

(1) The Judge or Registrar may order a pre-trial conference for a proceeding that is being or has been allocated a hearing or trial date.

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

(2) Any matter may be considered at a pre-trial conference, including—
- (a) whether background facts can be agreed to avoid hearing uncontested evidence:
- (b) the size, contents, and format of the agreed bundle of documents:
- (c) the amount of detail in any chronology of facts:
- (d) whether it will be helpful to direct the provision of lists of enactments and cases likely to be referred to:
- (e) whether any oral evidence direction should be made under rule 9.10.

(3) The Judge at a pre-trial conference may give directions to secure the just, speedy, and inexpensive determination of the proceeding, including directions as to how the hearing or trial is to be conducted.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.8 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.9 Cancellation of conference

A Judge may cancel a case management or issues conference if, after reading the memoranda prepared for the conference, the Judge is satisfied that the parties have achieved the goals of this subpart and, in particular, that they have—
- (a) identified, defined, and refined the issues requiring judicial resolution; and
- (b) completed all steps needed to prepare the proceeding for hearing or trial; and
- (c) devised an efficient way of conducting the hearing or trial that is proportionate to the subject matter.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.9 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.10 Limitation of right of appeal

(1) The parties may agree to exclude or limit any right of appeal from any judgment or order made in the proceeding.

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

(2) Any agreement under subclause (1) may be recorded on the court file in any form the Judge directs.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.10 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.11 Timetable and monitoring obligations

The Registrar must—

(a) arrange the date of the first case management conference under rule 7.3(2):

(b) remind parties or their counsel of the timetable obligations associated with any case management or pre-trial conference:

(c) communicate with parties or their counsel who have a duty to file a memorandum or other documents and remind them of that duty.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.11 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.12 Lists of proceedings

The Registrar must cause the following lists to be kept:

(a) a list of proceedings that have been allocated a hearing or trial date under rule 7.6(1) or (2); and

(b) a list of proceedings that have had their first case management conference but have not been allocated a date for hearing or trial.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.12 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.13 Registrar's functions in relation to hearing dates

(1) After a Judge has allocated a hearing or trial date for a proceeding under rule 7.6(1) or (2), the Registrar must promptly—

(a) record the proceeding in the list kept under rule 7.12(a); and

(b) record the hearing date and the close of pleadings date in that list; and

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

(c) give written confirmation of both dates to all parties to the proceeding.

(2) The performance of the Registrar's functions under this rule is subject to any direction by a Judge.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.13 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.14 Case management conferences for appeals

(1) In the case of an appeal under Part 20 or 26, the Registrar must make arrangements for a case management conference to be held on the first available date that is 15 working days after any of the following dates:
  (a) the date on which a notice of appeal under rule 20.6 or an originating application under rule 26.3 is filed:
  (b) the date on which leave to appeal is granted on an application under rule 20.3 or 26.15.

(2) A case management conference under this rule may be held as part of an appeals list.

(3) The appellant must, as soon as practicable after being notified of the date of the case management conference, give notice of that date to everyone who has been, or is to be, served with a copy of the notice of appeal or the originating application.

(4) The parties must, not later than 2 working days before the case management conference,—
  (a) file a joint memorandum; or
  (b) each file a memorandum.

(5) Any memorandum filed must—
  (a) address the matters set out in Schedule 6; and
  (b) specify any directions in Schedule 6 that should be deleted or modified, and why; and
  (c) set out any additional directions sought, and why; and
  (d) set out the issues raised by the appeal if they are not fully set out, or are different from those set out, in the notice of appeal.

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

(6) The directions set out in Schedule 6 apply except to the extent that those directions are modified by directions given by the Judge.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.14 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.15 Directions for conduct of appeal

(1) At a case management conference held under rule 7.14, the Judge will give directions for the conduct of the appeal that may, without limitation, include directions—

(a) as to service of the notice of appeal or the originating application, including service on persons not currently parties:

(b) about any cross-appeal, including directions as to service:

(c) in the case of an appeal under Part 20, as to how and when any application to adduce further evidence on appeal is to be dealt with:

(d) in the case of an appeal under Part 26,—

(i) as to the preparation of the record in accordance with rule 26.10 or in any other manner the Judge thinks fit:

(ii) as to the transcription of the evidence in accordance with rule 26.11:

(e) on any other matter for the purpose of best securing the just, speedy, and inexpensive determination of the appeal.

(2) In the case of an appeal or reference by way of case stated under Part 21, this rule and rule 7.14 apply as if the appeal or reference were an appeal under Part 20, except that the references in rule 7.14(5) and (6) to Schedule 6 must be read as references to Schedule 7.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.15 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

High Court Rules—*continued*
Part 7—*continued*
Subpart 1—*continued*

7.16 Jury notice

If either party to a proceeding to which **section 15** of the Act applies requires the proceeding to be tried before a Judge and a jury, the party must give notice to that effect to the court and to the other party not later than—

(a) 5 working days before the close of pleadings date for the proceeding; or

(b) a date fixed by a Judge for the purpose.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.16 (as substituted by r 10 of the High Court Amendment Rules (No 2) 2012)

7.17 Parties to keep Registrar informed

[revoked]

7.18 No steps after setting down date without leave

[revoked]

Subpart 2—Interlocutory applications and interlocutory orders

7.19 Contents, form, and filing of interlocutory application

(1) An interlocutory application must—

(a) state the relief sought and the grounds justifying that relief; and

(b) refer to any particular enactments or principles of law or judicial decisions on which the applicant relies.

(2) The application need not ask for general or other relief.

(3) The application is made by filing it in the court.

(4) The application must be in form G 31 or G 32.

(5) This subpart applies to the application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.19 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

7.20 Affidavit to be filed with application

Any affidavit in support of the application must be filed at the same time as the application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.20 (as substituted by 2008 No 90 s 8)

7.21 Filing by post

(1) An applicant may post an application and related documents together with the applicable fee to the Registrar at the proper registry of the court.

(2) A posted application is filed when that Registrar receives it with the applicable fee.

(3) The Registrar must acknowledge the receipt of all documents sent by post and notify the applicant of the hearing date (if any) allocated for the application.

(4) If the application is made without notice and does not require any attendance by or on behalf of the applicant, the Registrar must notify the applicant of the result of the application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.21 (as substituted by 2008 No 90 s 8)

7.22 Service of application and supporting affidavit

(1) After filing an application and any affidavit in support of it, the applicant must promptly serve a copy of the application and affidavit on every party.

(2) After the applicant is notified of the hearing date for the application, the applicant must promptly notify every respondent of the hearing date.

(3) This rule does not apply to an application made without notice in accordance with rule 7.23.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.22 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

7.23 Application without notice

(1) If the applicant wishes the application to be determined without any other party being served (in these rules referred to as an **application without notice**), the applicant must use form G 32.

(2) An application without notice must contain a certificate that—
  (a) uses the words "I certify that this application complies with the rules"; and
  (b) is personally signed by the applicant's lawyer.

(3) The lawyer who signs the certificate must, before signing it, be personally satisfied that—
  (a) the application and every affidavit filed in support of it complies with these rules:
  (b) the order sought is one that ought to be made:
  (c) there is a proper basis for seeking the order in an application without notice.

(4) The lawyer is responsible to the court for those matters.

(5) Despite subclause (2), a Judge may dispense with the certificate if the applicant is unrepresented and justice so requires, and if dispensation is sought, the applicant must state the reasons for the absence of a lawyer's certificate.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.23 (as substituted by 2008 No 90 s 8)

7.24 Notice of opposition to application

(1) A respondent who intends to oppose an application must file and serve on every other party a notice of opposition to the application within—
  (a) the period of 10 working days after being served with the application; or
  (b) if the hearing date for the application is within that period, 3 working days before the hearing date.

(2) The notice of opposition must—
  (a) state the respondent's intention to oppose the application and the grounds of opposition; and

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

(b) refer to any particular enactments or principles of law or judicial decisions on which the respondent relies.

(3) The notice of opposition must be in form G 33.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.24 (as substituted by 2008 No 90 s 8)

7.25 Affidavit to be filed with notice of opposition

Any affidavit setting out evidence in support of the notice of opposition must be filed and served at the same time as the notice of opposition.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.25 (as substituted by 2008 No 90 s 8)

7.26 Affidavit in reply

(1) Any reply by the applicant to the respondent's notice of opposition or affidavit must be by affidavit, which must be filed and served within—

(a) the period of 5 working days after service of the notice of opposition; or

(b) if the hearing date for the application is within that period, 1 pm on the working day before that hearing date.

(2) The affidavit in reply must be limited to new matters raised in the notice of opposition or in an affidavit filed by the respondent.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.26 (as substituted by 2008 No 90 s 8)

7.27 Evidence normally given by affidavit

(1) Evidence relating to interlocutory applications is given by affidavit.

(2) Despite subclause (1), in special circumstances, a Judge may accept oral evidence.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.27 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

7.28 Cross-examination of maker of affidavit

A Judge may in special circumstances, on the application of a party, order the attendance for cross-examination of a person who has made an affidavit in support of, or in opposition to, an interlocutory application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.28 (as substituted by 2008 No 90 s 8)

7.29 Rules governing affidavits

Rules 9.75 to 9.88 apply, with all necessary modifications, to affidavits filed for interlocutory applications.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.29 (as substituted by 2008 No 90 s 8)

7.30 Statements of belief in affidavits

(1) A Judge may accept statements of belief in an affidavit in which the grounds for the belief are given if—

(a) the interests of no other party can be affected by the application; or

(b) the application concerns a routine matter; or

(c) it is in the interests of justice.

(2) Subclause (1) overrides rule 7.29.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.30 (as substituted by 2008 No 90 s 8)

7.31 When admissions binding

An admission of a fact expressly made only for the purpose of an application binds the party only for the application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.31 (as substituted by 2008 No 90 s 8)

7.32 Previous affidavits and agreed statements of fact

(1) Affidavits already filed in the court and agreed statements of fact, if made in the same proceeding or, with the leave of a Judge, in any other proceeding between the same parties, may be used on the disposal of any application if—

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

(a) prior notice of the intention to use them has been given to the opposite party (whether in the notice of application or in the notice of opposition or otherwise); or

(b) in the case of an application without notice, they are referred to in the notice of application.

(2) Subclause (1) does not apply to an affidavit or to an agreed statement to the extent that the affidavit or statement contains any admission of the kind described in rule 7.31.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.32 (as substituted by 2008 No 90 s 8)

7.33 Allocation of hearing date

On or following the filing of an application (other than an application without notice), the Registrar must allocate a hearing date for the application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.33 (as substituted by 2008 No 90 s 8)

7.34 Mode of hearing

(1) An interlocutory application for which a hearing is required must be heard in chambers unless a Judge otherwise directs.

(2) On the Judge's own initiative or on the application of 1 or more of the parties, the Judge may conduct a hearing in chambers by telephone or video link.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.34 (as substituted by 2008 No 90 s 8)

7.35 Publication about hearing in chambers

Particulars of the hearing in chambers of an interlocutory application or of the decision or both (including the reasons for the decision) may be published unless a Judge or Registrar, exercising jurisdiction in chambers, otherwise directs.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.35 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

7.36 Application for summary judgment to be heard in open court

Despite rule 7.34(1), every application for summary judgment must be heard in open court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.36 (as substituted by 2008 No 90 s 8)

7.37 No hearing required if respondents consent or do not oppose

(1) Subclause (2) applies if each respondent to an interlocutory application has stated on the application or in a memorandum filed in the court that the respondent consents to, or does not oppose, the orders sought in the application.

(2) A Judge may—

(a) make the orders sought without holding a hearing; or

(b) direct that the application be heard on the hearing date allocated under rule 7.33.

(3) If the Judge makes the orders without holding a hearing, the Registrar must promptly advise the parties of the orders made and the cancellation of the hearing date.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.37 (as substituted by 2008 No 90 s 8)

7.38 Respondent who consents, or who does not oppose, need not attend hearing

(1) If a hearing of an interlocutory application is held, a respondent need not attend the hearing if the respondent consents to, or does not oppose, the application and has notified the court in writing.

(2) Subclause (1) does not apply if, on the hearing date allocated for the interlocutory application, a case management conference is also due to be held.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.38 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

7.39 Synopsis of argument

(1) This rule applies to a defended interlocutory application unless, or to the extent that, a Judge directs otherwise.

(2) The applicant must file and serve a synopsis of argument (**synopsis**) on every other party,—

(a) if the respondent has filed a notice of opposition under rule 7.24(1)(a), at least 3 working days before the hearing of the interlocutory application; or

(b) if the respondent has filed a notice of opposition under rule 7.24(1)(b), at least 2 working days before the hearing of the interlocutory application.

(3) The applicant's synopsis must—

(a) identify the general nature of the case:

(b) include a chronology of the material facts:

(c) outline the applicant's principal submissions:

(d) be accompanied by or have annexed to it—

(i) an indexed and paginated set of relevant documents; and

(ii) a list of authorities.

(4) The material required to be included in the applicant's synopsis under subclause (3)(a) to (c) must not exceed 10 pages.

(5) The respondent must, at least 1 working day before the hearing, file and serve a synopsis on every other party.

(6) The respondent's synopsis must—

(a) identify any material facts that are not referred to in the applicant's synopsis:

(b) state any facts that are disputed:

(c) outline the respondent's principal submissions:

(d) be accompanied by or have annexed to it—

(i) an indexed and paginated set of any relevant documents not included in the applicant's synopsis; and

(ii) a list of any authorities not included in the applicant's synopsis.

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

(7) The material required to be included in the respondent's synopsis under subclause (6)(a) to (c) must not exceed 10 pages.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.39 (as substituted by 2008 No 90 s 8)

7.40 Failure to attend

(1) If a party is neither present nor represented at the hearing of an application, the Judge may—
  (a) determine the application in the party's absence in any manner that appears just; or
  (b) adjourn the application; or
  (c) strike out the application.

(2) If an order determining an application is made in the absence of a party, a Judge may, if the Judge thinks it just to do so, recall the order at any time before a formal record of it has been drawn up and sealed.

(3) A Judge may, in any manner that the Judge thinks just, reinstate an application that has been struck out for non-appearance.

(4) A Judge may make a determination referred to in subclause (2) or (3) on the Judge's own initiative or on the application of a party.

(5) Notice of an application under subclause (4) must be filed and served,—
  (a) if it is made by a party who was present or represented at the hearing, within 5 working days after the hearing:
  (b) if it is made by a party who was neither present nor represented, within 5 working days after receipt by the party of notice of the decision given at the hearing.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.40 (as substituted by 2008 No 90 s 8)

7.41 Certain applications may be made orally at hearing

(1) At a hearing, the Judge may agree to hear an oral application for an interlocutory order if—

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

(a) all parties interested consent to the order sought; or
(b) these rules permit the application to be made without filing a notice of the application; or
(c) the order sought has been outlined in a memorandum filed for a case management conference, and no party will be unduly prejudiced by the absence of a formal notice of the application; or
(d) because of the nature of the order sought, no party will be unduly prejudiced by the absence of a formal notice.

(2) If the Judge agrees to hear an oral application, the Judge may make any interlocutory order or grant any interlocutory relief the Judge could have made or granted on a formal notice of the application.

(3) This rule overrides rule 7.19.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.41 (as substituted by 2008 No 90 s 8)

7.42 Adjournment

The hearing of an application may, from time to time, be adjourned on any terms that the Judge thinks just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.42 (as substituted by 2008 No 90 s 8)

7.43 Making of interlocutory orders

(1) A Judge may make any interlocutory order that—
(a) is provided for in these rules; or
(b) may be made under rule 1.6.

(2) An interlocutory order may be made—
(a) on the interlocutory application of a party; or
(b) on a Judge's own initiative.

(3) Before making an order under subclause (2)(b), the Judge must give the parties an opportunity to be heard.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.43 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

7.43A Directions as to conduct of proceedings

(1) A Judge may, by interlocutory order,—
- (a) fix the time by which a step in a proceeding must be taken:
- (b) fix the time by which all interlocutory steps must be completed:
- (c) direct the steps that must be taken to prepare a proceeding for a substantive hearing:
- (d) direct how the hearing is to be conducted:
- (e) make any other direction or order that the court may make under these rules.

(2) A party or intended party may apply without notice to a Judge for directions if in doubt about—
- (a) whether it is correct or appropriate to join a person as a party; or
- (b) the proper court in which to commence or take a step in a proceeding; or
- (c) the correct method of proceeding under these rules.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.43A (as inserted by r 12 of the High Court Amendment Rules (No 3) 2013)

7.44 Power to grant interlocutory order or interlocutory relief

A Judge may make any interlocutory order or grant any interlocutory relief the Judge thinks just, even though the order or relief has not been specifically claimed and there is no claim for general or other relief.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.44 (as inserted by r 13 of the High Court Amendment Rules (No 3) 2013)

7.45 Interlocutory orders may be made subject to conditions

A Judge may make an interlocutory order subject to any just terms or conditions, including, without limitation, any condition that—
- (a) a party give an undertaking:

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

(b) the order operate only for a specified period.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.45 (as substituted by 2008 No 90 s 8)

7.46 Determination of application without notice

(1) The Registrar must refer an application without notice to a Judge for direction or decision.

(2) The Judge, on receiving an application without notice, must determine whether the application can properly be dealt with without notice.

(3) The Judge may determine that an application can properly be dealt with without notice only if the Judge is satisfied that—
- (a) requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant; or
- (b) the application affects only the applicant; or
- (c) the application relates to a routine matter; or
- (d) an enactment expressly permits the application to be made without serving notice of the application; or
- (e) the interests of justice require the application to be determined without serving notice of the application.

(4) If the Judge determines that the application can properly be dealt with without notice, the Judge may—
- (a) make the order sought in the application; or
- (b) make any other order that the Judge thinks just in the circumstances; or
- (c) dismiss the application.

(5) If the Judge determines that the application cannot properly be dealt with without notice, the Judge may—
- (a) give directions as to service and adjourn the determination of the application until the application has been served on persons who are affected by the application; or

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

(b) if the Judge considers that the application has no chance of success, dismiss the application.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.46 (as substituted by 2008 No 90 s 8)

7.47 Drawing up and sealing interlocutory order

(1) A party may draw up an interlocutory order and submit it to the Registrar for sealing.

(2) Despite subclause (1), a party who obtains an interlocutory order must draw up the order and submit it to the Registrar for sealing if the order—

(a) affects a person who is not a party; or
(b) joins a person as a party; or
(c) directs that it be served on a person.

(3) If a party elects to have an order sealed, or is required by the court or by these rules to have an order sealed, the following provisions apply:

(a) the party must file an original order together with sufficient copies so that the party and the other parties who have given an address for service can each receive a duplicate sealed order:
(b) the order must be in form G 34:
(c) the order must specify the date on which it was made:
(d) the Registrar, when satisfied with the form of the order, must sign and seal the original and every copy:
(e) the Registrar must mark every copy with the word "duplicate":
(f) the Registrar must retain the original on the file:
(g) the party who submitted the order for sealing must promptly serve a sealed copy on every other party who has given an address for service and on any person affected by the order.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.47 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

7.48 Enforcement of interlocutory order

(1) If a party (the **party in default**) fails to comply with an interlocutory order or any requirement imposed by or under subpart 1 of Part 7 (case management), a Judge may, subject to any express provision of these rules, make any order that the Judge thinks just.

(2) The Judge may, for example, order—

(a) that any pleading of the party in default be struck out in whole or in part:

(b) that judgment be sealed:

(c) that the proceeding be stayed in whole or in part:

(d) that the party in default be committed:

(e) if any property in dispute is in the possession or control of the party in default, that the property be sequestered:

(f) that any fund in dispute be paid into court:

(g) the appointment of a receiver of any property or of any fund in dispute.

(3) An order must not be enforced by committal unless the order has been served personally on the party in default or that party had notice or knowledge of the order within sufficient time for compliance with the order.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.48 (as substituted by 2008 No 90 s 8)

7.49 Order may be varied or rescinded if shown to be wrong

(1) A party affected by an interlocutory order (whether made on a Judge's own initiative or on an interlocutory application) or by a decision given on an interlocutory application may, instead of appealing against the order or decision, apply to the court to vary or rescind the order or decision, if that party considers that the order or decision is wrong.

(2) A party may not apply under subclause (1) if the order or decision was made or given—

(a) with the consent of the parties; or

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

(b) on an interlocutory application for summary judgment under rule 12.4~~;~~ ~~or~~.

~~(c) by an Associate Judge in chambers.~~

(3) Notice of an application under subclause (1) must be filed and served,—

(a) if it is made by a party who was present or represented when the order was made or the decision given, within 5 working days after the order was made or the decision was given:

(b) if it is made by a party who was not present and not represented, within 5 working days after receipt by the party of notice of the making of the order or the giving of the decision, and of its terms.

(4) The application does not operate as a stay unless a Judge so orders.

(5) Unless a Judge otherwise directs, the application must be heard by the Judge who made the order or gave the decision.

(6) The Judge may,—

(a) if satisfied that the order or decision is wrong, vary or rescind the order or decision; or

(b) on the Judge's own initiative or on the application of a party, transfer the application to the Court of Appeal.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.49 (as substituted by 2008 No 90 s 8)

7.50 Order relating to management of proceeding may be varied if circumstances change

(1) This rule applies to an order or direction (a **determination**) that—

(a) relates to the management of a proceeding; and

(b) has been made by a Judge in chambers.

(2) If there has been a change in circumstances affecting a party or the party's solicitor or counsel since the making of a determination, a Judge may, on application, vary the determination.

High Court Rules—*continued*
Part 7—*continued*
Subpart 2—*continued*

(3) Despite subclause (2), a Judge may, on application or on the Judge's own initiative, direct that an application under subclause (2) to vary a determination made by a Judge in chambers be heard as an application under rule 7.49(1) or be transferred to the Court of Appeal.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.50 (as substituted by 2008 No 90 s 8)

7.51 Order may be rescinded if fraudulently or improperly obtained

(1) A Judge may rescind any order that has been fraudulently or improperly obtained.

(2) The Judge may grant any further relief by way of costs that the interests of justice require.

(3) This rule does not limit any other remedies of a party who has been adversely affected by an order that has been fraudulently or improperly obtained.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.51 (as substituted by 2008 No 90 s 8)

7.52 Limitation as to second interlocutory application

(1) A party who fails on an interlocutory application must not apply again for the same or a similar order without first obtaining the leave of a Judge.

(2) A Judge may grant leave only in special circumstances.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.52 (as substituted by 2008 No 90 s 8)

Subpart 3—Interim relief

7.53 Application for injunction

(1) An application for an interlocutory injunction may be made by a party before or after the commencement of the hearing of a proceeding, whether or not an injunction is claimed in the party's statement of claim, counterclaim, or third party notice.

High Court Rules—*continued*
Part 7—*continued*
Subpart 3—*continued*

(2) The plaintiff may not make an application for an interlocutory injunction before the commencement of the proceeding except in case of urgency, and any injunction granted before the commencement of the proceeding—

(a) must provide for the commencement of the proceeding; and

(b) may be granted on any further terms that the Judge thinks just.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.53 (as substituted by 2008 No 90 s 8)

7.54 Undertaking as to damages

(1) An applicant for an interlocutory injunction under rule 7.53 must file a signed undertaking that the applicant will comply with any order for the payment of damages to compensate the other party for any damage sustained through the injunction.

(2) The undertaking must be referred to in the order granting the interlocutory injunction and is part of it.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.54 (as substituted by 2008 No 90 s 8)

7.55 Preservation of property

(1) A Judge may at any stage in a proceeding make orders, subject to any conditions specified by the Judge, for the detention, custody, or preservation of any property.

(2) An order may authorise a person to enter any land or to do any other thing for the purpose of giving effect to the order.

(3) The Judge may order that a fund be paid into court or otherwise secured if the proceeding concerns the right of a party to the fund.

(4) The Judge may treat an application under this rule as an application for directions under rule 7.43A and give directions accordingly.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.55 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 3—*continued*

7.56 Sale of perishable property before hearing

(1) A Judge may, on application, make an order authorising a person to sell property (other than land) in a manner and subject to any conditions stated in the order if—

(a) the proceeding concerns the property or raises, or may raise, questions about the property; and

(b) the property—

(i) is perishable or likely to deteriorate; or

(ii) should for any other reason be sold before the hearing.

(2) The Judge may treat an application under this rule as an application for directions under rule 7.43A and give directions accordingly.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.56 (as substituted by 2008 No 90 s 8)

7.57 Order to transfer part of property to person with interest in property

(1) At any stage of a proceeding concerning property a Judge may order, subject to any conditions, that a part of the property be transferred or delivered to a person who has an interest in the property.

(2) The order may be made if the Judge is satisfied—

(a) that the part of the property transferred or delivered is not required for the provision that ought to be made to meet the claims on the property; and

(b) that the order is necessary or desirable—

(i) to exclude the part of the property from an injunction or other order; or

(ii) to protect the person who is to transfer or deliver the property.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.57 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 3—*continued*

7.58 Interim payment of income to person with interest in income

(1) At any stage of a proceeding concerning property a Judge may order, subject to any conditions, that the whole or part of the income from the property be paid, during a period stated in the order, to 1 or more persons who have an interest in the income.

(2) The order may be made if the Judge is satisfied—

(a) that the income stated in the order is not required for any provision that ought to be made to meet the claims on the property or its income; and

(b) that the order is necessary or desirable—

(i) to exclude the income from a freezing injunction or other order; or

(ii) to protect the person who is to pay the income.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.58 (as substituted by 2008 No 90 s 8)

Subpart 4—Receivers

7.59 Application

Rules 7.60 to 7.67 apply to a receiver appointed under an order of the court to the extent that the order does not expressly provide otherwise.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.59 (as substituted by 2008 No 90 s 8)

7.60 Address for service

The receiver must, within 5 working days after appointment, file a notice specifying an address for service.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.60 (as substituted by 2008 No 90 s 8)

7.61 Receiver must give security

(1) A Judge may give directions as to the security that the receiver is required to give in accordance with this rule.

High Court Rules—*continued*
Part 7—*continued*
Subpart 4—*continued*

(2) If a Judge directs that a receiver be appointed, no appointment may be made until the person to be appointed has given security in accordance with this rule.

(3) Any security given under this rule must be approved by the Registrar.

(4) The Registrar must be satisfied that the security is sufficient to ensure that the receiver will—

(a) account for everything received in his or her capacity as receiver; and

(b) comply with any direction given by a Judge.

(5) A Judge may vary any directions given and may, in particular, order that the security be varied or discharged.

(6) Subclauses (1) and (2) are subject to any enactment.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.61 (as substituted by 2008 No 90 s 8)

7.62 Remuneration of receiver

(1) A receiver must be paid the remuneration fixed by a Judge.

(2) A Judge may, in the order appointing a receiver or in a later order, name the party or parties who must pay the remuneration and, if more than 1 party is named, the proportion to be paid by each party.

(3) A Judge may order any party or parties to give security for the receiver's remuneration.

(4) Subclause (3) does not affect subclause (2).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.62 (as substituted by 2008 No 90 s 8)

7.63 Accounts of receiver

A receiver must file accounts at the intervals or on the dates specified in directions given by a Judge.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.63 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*
Subpart 4—*continued*

7.64 Examination of accounts

(1) The receiver must—

(a) on filing the accounts, request the Registrar to examine the accounts and to allocate a date and time for that examination; and

(b) serve on each party interested who has given an address for service in the proceeding—

(i) a copy of the accounts; and

(ii) a notice of the date and time allocated for the examination of the accounts.

(2) The receiver must, unless a Judge otherwise orders, attend at the examination of the accounts.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.64 (as substituted by 2008 No 90 s 8)

7.65 Default by receiver

(1) A Judge may make any orders and give any directions that the Judge thinks fit if a receiver does not comply with a requirement, under these rules or an order or a direction,—

(a) to file any accounts or an affidavit; or

(b) to attend at the examination of the accounts; or

(c) to do any other thing.

(2) Orders and directions made under subclause (1) may include orders and directions for—

(a) the discharge of the receiver; and

(b) the appointment of another receiver; and

(c) the payment of costs.

(3) If a receiver does not comply with a requirement under these rules or an order or direction of a Judge to pay into court a sum shown by the accounts as due from the receiver, a Judge may order the receiver to pay interest at the rate prescribed under **section 452(2) of the Judicature Modernisation Act 2013**.

(4) This rule does not limit the powers of the court to enforce orders or to punish contempt.

High Court Rules—*continued*
Part 7—*continued*
Subpart 4—*continued*

(5) Subclause (3) does not limit subclause (1) or (2).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.65 (as substituted by 2008 No 90 s 8)

7.66 Powers of receiver

(1) A Judge may authorise a receiver to do (either in the receiver's own name or in that of 1 or more parties) any act or thing that 1 or more parties could do if of full age and capacity.

(2) An authority given under subclause (1)—

(a) may apply generally or be limited to a particular instance; and

(b) has effect even if 1 or more parties are not of full age and capacity.

(3) This rule does not limit the powers of a Judge to authorise a receiver to do any act or thing.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.66 (as substituted by 2008 No 90 s 8)

7.67 Accounts on death of receiver

(1) If the receiver in any proceeding dies, a Judge may, on application, make any orders the Judge thinks fit for the filing and examining of accounts by the personal representatives of the deceased receiver and for the payment into court of any amount shown to be due.

(2) A Judge may not make any order under subclause (1) unless notice of the application has been served on the personal representatives.

(3) Notice of the application may be served in any manner in which a statement of claim may be served.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.67 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*

Subpart 5—Interim payments

7.68 Interpretation

In rules 7.69 to 7.76, **interim payment** means a payment on account of any damages, debt, or other sum (excluding costs) that the defendant in a proceeding may be held liable to pay to, or for the benefit of, the plaintiff in that proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.68 (as substituted by 2008 No 90 s 8)

7.69 Application for interim payment

(1) The plaintiff in a proceeding may, at any time after the time for the filing of a statement of defence by the defendant has expired, apply to the court for an order requiring the defendant to make an interim payment.

(2) An application under subclause (1) must be supported by an affidavit—

(a) stating the amount of the damages, debt, or other sum to which the application relates and the reasons for making the application; and

(b) attaching any documentary evidence relied on by the plaintiff in support of the application.

(3) The application and a copy of the affidavit in support and any documents annexed to it must be served on the defendant against whom the order is sought at least 10 working days before the date allocated for the hearing of the application.

(4) A second or subsequent application for an interim payment may be made if it is shown to be justified, even if such an order has previously been made or refused.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.69 (as substituted by 2008 No 90 s 8)

7.70 Order for interim payment in respect of damages

(1) A Judge may make an order under subclause (2) if, on hearing the application, the Judge is satisfied that—

(a) the defendant against whom the order is sought has admitted liability for the plaintiff's damages; or

High Court Rules—*continued*
Part 7—*continued*
Subpart 5—*continued*

(b) the plaintiff has a judgment against the defendant for damages to be assessed; or

(c) on a trial of the proceeding, the plaintiff would obtain judgment for substantial damages against the defendant or, if there are several defendants, against 1 or more of them.

(2) A Judge may, within the limits in subclause (3), order the defendant to make an interim payment of an amount that the Judge thinks just.

(3) The amount must not exceed a reasonable proportion of the damages the plaintiff is, in the opinion of the Judge, likely to recover after taking into account—

(a) any relevant contributory negligence; and

(b) any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.70 (as substituted by 2008 No 90 s 8)

7.71 Order for interim payment in respect of sums other than damages

(1) A Judge may make an order under subclause (2) if, on hearing the application, the Judge is satisfied—

(a) that the plaintiff has obtained an order for an account to be taken as between the plaintiff and the defendant and for the payment of any amount certified to be payable on the basis of that account; or

(b) in the case of a claim for the possession of land, that even if the proceeding was finally determined in favour of the defendant, the defendant would still be required to compensate the plaintiff for the defendant's use and occupation of the land before the determination of the proceeding; or

(c) that, on the trial of the proceeding, the plaintiff is likely to obtain judgment against the defendant for a substantial sum of money apart from any damages or costs.

High Court Rules—*continued*
Part 7—*continued*
Subpart 5—*continued*

(2) A Judge may order that the defendant pay an amount the Judge thinks just, after taking into account any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

(3) The order does not prejudice any contentions of the parties as to the nature or character of the sum to be paid by the defendant.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.71 (as substituted by 2008 No 90 s 8)

7.72 Method of payment

(1) The amount of any interim payment ordered to be made must be paid to the plaintiff unless the order provides for it to be paid into court.

(2) If the amount is paid into court, a Judge may, on the application of the plaintiff, order the whole or any part of it to be paid out to the plaintiff at a time or times the Judge thinks just.

(3) If the person entitled to an interim payment or to a part of an interim payment belongs to a class of persons stated in subclause (4), acceptance of the interim payment is subject to the approval of a Judge and payment out of court may not be made without the leave of a Judge.

(4) The classes are—

(a) minors (not including a minor to whom rule 4.31(2) applies):

(b) persons subject to a property order under the Protection of Personal and Property Rights Act 1988:

(c) incapacitated persons within the meaning of rule 4.29.

(5) An application under subclause (2) for money in court to be paid out may be made without notice, but a Judge hearing the application may direct that notice of the application be served on the other party.

(6) An interim payment may be ordered to be made in 1 sum or by any instalments a Judge thinks just.

High Court Rules—*continued*
Part 7—*continued*
Subpart 5—*continued*

(7) If a payment is ordered in respect of the defendant's use and occupation of land, the order may provide for periodical payments to be made while the proceeding awaits determination.

(8) Subclause (1) is subject to subclause (3).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.72 (as substituted by 2008 No 90 s 8)

7.73 Directions on interim payment application

When an application is made under rule 7.69, a Judge may give any directions as to the further conduct of the proceeding that the Judge thinks just, and may, in particular, order an early trial of the proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.73 (as substituted by 2008 No 90 s 8)

7.74 Non-disclosure of interim payment

(1) The fact that an order has been made under rule 7.70(2) or 7.71(2) must not be pleaded.

(2) The fact that the order has been made or that an interim payment has been made, whether voluntarily or under an order, must not be disclosed at the trial, or hearing, of any question or issue as to liability or damages.

(3) Subclause (2) does not prevent the disclosure of any fact—

(a) to the extent that the defendant consents to, or a Judge directs, the disclosure; or

(b) after all questions of liability and amount have been determined.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.74 (as substituted by 2008 No 90 s 8)

7.75 Adjustment on final judgment or order or on discontinuance

(1) A Judge may, on the application of a party, make an order with respect to an interim payment made under an order or voluntarily that the Judge thinks just.

High Court Rules—*continued*
Part 7—*continued*
Subpart 5—*continued*

(2) A Judge may, in particular, make an order for—
  (a) the repayment by the plaintiff of all or part of the interim payment; or
  (b) the variation or discharge of the interim payment; or
  (c) the payment by another defendant of part of the interim payment, if the defendant who made the interim payment is entitled to recover from the other defendant an amount—
    (i) by way of contribution or indemnity; or
    (ii) in respect of a remedy or relief relating to, or connected with, the plaintiff's claim.

(3) A Judge may make an order under this rule—
  (a) when giving or making a final judgment or order; or
  (b) when granting the plaintiff leave to discontinue the proceeding or to withdraw the claim in respect of which the interim payment has been made; or
  (c) at any other stage of the proceeding.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.75 (as substituted by 2008 No 90 s 8)

7.76 Counterclaims and other proceedings

Rules 7.68 to 7.75 apply, with all necessary modifications, to any counterclaim or proceeding in which one party seeks an order for an interim payment from another.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.76 (as substituted by 2008 No 90 s 8)

Subpart 6—Amendment of pleading

7.77 Filing of amended pleading

(1) A party may before trial file an amended pleading and serve a copy of it on the other party or parties.

(2) An amended pleading may introduce, as an alternative or otherwise,—
  (a) relief in respect of a fresh cause of action, which is not statute barred; or

High Court Rules—*continued*
Part 7—*continued*
Subpart 6—*continued*

(b) a fresh ground of defence.

(3) An amended pleading may introduce a fresh cause of action whether or not that cause of action has arisen since the filing of the statement of claim.

(4) If a cause of action has arisen since the filing of the statement of claim, it may be added only by leave of the court. If leave is granted, the amended pleading must be treated, for the purposes of the law of limitation defences, as having been filed on the date of the filing of the application for leave to introduce that cause of action.

(5) Subclause (4) overrides subclause (1).

(6) If an amended pleading introduces a fresh cause of action, the other party must file and serve that party's defence to it within 10 working days after the day on which the amended pleading is actually served on the other party.

(7) When an amended pleading does not introduce a fresh cause of action, the other party may, within 5 working days after the day on which the amended pleading is served on that other party, file and serve an amended defence to it.

(8) If an amended pleading has been filed under this rule, the party filing the amended pleading must bear all the costs of and occasioned by the original pleading and any application for amendment, unless the court otherwise orders.

(9) This rule does not limit the powers conferred on the court by rule 1.9.

(10) This rule is subject to rule 7.7 (which prohibits steps after the close of pleadings date without leave).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.77 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 7—*continued*

Subpart 7—Recovery of specific property subject to lien

7.78 Recovery of specific property subject to lien or other security

(1) This rule applies if a party (**A**) seeks to recover specific property other than land and the party from whom recovery is sought (**B**) does not dispute the title of A, but claims to retain the property by virtue of a lien or otherwise as security for a sum of money.

(2) The court may order that A may pay into court the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the court directs, and money so paid in must be held by the court until the result of the proceeding is known.

(3) If payment into court is made, the court may order that the property claimed be delivered to its claimant.

(4) Subclause (1) is applicable as soon as the claim to retain the property appears from the statement of defence or otherwise.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.78 (as substituted by 2008 No 90 s 8)

Subpart 8—Negotiations for settlement

7.79 Court may assist in negotiating for settlement

(1) A Judge may, at any time before the hearing of a proceeding, convene a conference of the parties in chambers for the purpose of negotiating for a settlement of the proceeding or of any issue, and may assist in those negotiations.

(2) A Judge who presides at a conference under subclause (1) may not preside at the hearing of the proceeding unless—

(a) all parties taking part in the conference consent; and

(b) the Judge is satisfied there are no circumstances that would make it inappropriate for the Judge to do so.

(3) A Judge may, at any time during the hearing of a proceeding, with the consent of the parties, convene a conference of the

High Court Rules—*continued*
Part 7—*continued*
Subpart 8—*continued*

parties for the purpose of negotiating for a settlement of the proceeding or of any issue.

(4) A Judge who convenes a conference under subclause (3) may not assist in the negotiations, but must arrange for an Associate Judge or another Judge to do so unless—
  (a) the parties agree that the Judge should assist and continue to preside at the hearing; and
  (b) the Judge is satisfied there are no circumstances that would make it inappropriate for the Judge to do so.

(5) A Judge may, with the consent of the parties, make an order at any time directing the parties to attempt to settle their dispute by the form of mediation or other alternative dispute resolution (to be specified in the order) agreed to by the parties.

(6) The parties, and a Judge or Associate Judge who presides at a conference or assists in negotiations under this rule, must not disclose any statement made during a conference, either—
  (a) in court; or
  (b) otherwise.

(7) This rule must be read with subpart 8 of Part 2 of the Evidence Act 2006 (privilege).

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.79 (as substituted by 2008 No 90 s 8)

7.80 Arbitration by consent

(1) The parties to a proceeding may agree to arbitration of their dispute or any part of it under the Arbitration Act 1996 at any time during the course of the proceeding.

(2) If an arbitration agreement entered into during the course of a proceeding relates to all the matters in dispute in the proceeding, the court must, on application by a party, stay the proceeding.

(3) If an arbitration agreement entered into during the course of a proceeding relates to some but not all of the matters in dispute in the proceeding, the court must, on application by a

High Court Rules—*continued*
Part 7—*continued*
Subpart 8—*continued*

party, stay those parts of the proceeding to which the arbitration agreement relates.

(4) The court may make the stay on terms as to costs or other ancillary matters.

(5) Subclauses (2) and (3) do not apply if the court finds that the agreement has no effect or is inoperative or incapable of being performed.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.80 (as substituted by 2008 No 90 s 8)

Subpart 9—Interim relief in respect of overseas proceedings

7.81 Interim relief in support of overseas proceedings

(1) On the application of a party or an intended party to judicial proceedings commenced or to be commenced outside New Zealand (**overseas proceedings**), the court may, if the court thinks it just to do so, give interim relief in support of the overseas proceedings.

(2) These rules apply to an application under subclause (1) as if the overseas proceedings for which support is sought had been commenced under these rules.

(3) Subclause (1) does not apply to—
- (a) an application for an interim payment under subpart 5:
- (b) an application for discovery under subpart 3 of Part 8:
- (c) an application in relation to evidence under Part 9:
- (d) an application for a freezing order under Part 32.

(4) Before making an order under this rule, the court must be satisfied that there is a real connecting link between the subject matter of the interim relief and the territorial jurisdiction of the court.

(5) An order under subclause (1) must not be inconsistent with interim relief granted in the overseas proceedings by the court outside New Zealand.

High Court Rules—*continued*
Part 7—*continued*
Subpart 9—*continued*

(6) This rule does not apply to a civil proceeding commenced or to be commenced in an Australian court.

Compare: ~~2008 No 90 Schedule~~ 1908 No 89 Schedule 2 r 7.81 (as substituted by 2008 No 90 s 8)

Part 8
Discovery and inspection and interrogatories

Subpart 1—Discovery and inspection

8.1 Interpretation

In this subpart,—

discovery order means an order that requires each party to a proceeding to discover the existence of documents to every other party

standard discovery means discovery that complies with rule 8.7

tailored discovery means discovery that complies with rule 8.8.

Compare: 1908 No 2 Schedule 2 r 8.1 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.2 Co-operation

(1) The parties must co-operate to ensure that the processes of discovery and inspection are—

(a) proportionate to the subject matter of the proceeding; and

(b) facilitated by agreement on practical arrangements.

(2) The parties must, when appropriate,—

(a) consider options to reduce the scope and burden of discovery; and

(b) achieve reciprocity in the electronic format and processes of discovery and inspection; and

(c) ensure technology is used efficiently and effectively; and

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

(d) employ a format compatible with the subsequent preparation of an electronic bundle of documents for use at trial.

Compare: 1908 No 2 Schedule 2 r 8.2 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.3 Preservation of documents

(1) As soon as a proceeding is reasonably contemplated, a party or prospective party must take all reasonable steps to preserve documents that are, or are reasonably likely to be, discoverable in the proceeding.

(2) Without limiting the generality of subclause (1), documents in electronic form which are potentially discoverable must be preserved in readily retrievable form even if they would otherwise be deleted in the ordinary course of business.

Compare: 1908 No 2 Schedule 2 r 8.3 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.4 Initial disclosure

(1) After filing a pleading, a party must, unless subclause (2) applies, serve on the other parties, at the same time as the service of that pleading, a bundle consisting of—

(a) all the documents referred to in that pleading; and

(b) any additional principal documents in the filing party's control that that party has used when preparing the pleading and on which that party intends to rely at the trial or hearing.

(2) A party need not comply with subclause (1) if—

(a) the circumstances make it impossible or impracticable to comply with subclause (1); and

(b) a certificate to that effect, setting out the reasons why compliance is impossible or impracticable, and signed by counsel for that party, is filed and served at the same time as the pleading.

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

(3) A party acting under subclause (2) must, unless the other parties agree that initial disclosure is not required, or that a longer period is acceptable, either serve the bundle referred to in subclause (1) within 10 working days from the service of the pleading or apply for a variation of that requirement within that period.

(4) If a party fails to comply with subclause (1) or (3), a Judge may make any of the orders specified in rule 7.48.

(5) Despite subclause (1), a party does not need to disclose any document in which the party claims privilege or that a party claims to be confidential.

(6) Despite subclause (1), a party does not need to disclose any document that either—

(a) is the subject of a claim of public interest immunity; or

(b) is reasonably apprehended by the party to be the subject of such a claim.

(7) Despite subclause (1), a party does not need to include in a bundle served by that party any document contained in a bundle already served by any party or any document attached to an affidavit already filed in court.

(8) The bundle of documents may be served either electronically or as a bundle of copies in hard copy form.

(9) If an amended pleading is filed prior to the making of a discovery order, this rule applies to that amended pleading if it either—

(a) refers to documents not referred to in any earlier pleading filed by the party who files the amended pleading; or

(b) pleads additional facts.

Compare: 1908 No 89 Schedule 2 r 8.4 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

8.5 Discovery orders to be made at case management conferences

(1) A Judge must make a discovery order for a proceeding unless he or she considers that the proceeding can be justly disposed of without any discovery.

(2) An order under subclause (1) must be made at the first case management conference that is held for the proceeding, unless there is good reason for making the order later.

Compare: 1908 No 89 Schedule 2 r 8.5 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.6 Two kinds of discovery

Discovery orders made under this subpart may direct either—

(a) standard discovery; or

(b) tailored discovery.

Compare: 1908 No 89 Schedule 2 r 8.6 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.7 Standard discovery

Standard discovery requires each party to disclose the documents that are or have been in that party's control and that are—

(a) documents on which the party relies; or

(b) documents that adversely affect that party's own case; or

(c) documents that adversely affect another party's case; or

(d) documents that support another party's case.

Compare: 1908 No 89 Schedule 2 r 8.7 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.8 Tailored discovery

Tailored discovery must be ordered when the interests of justice require an order involving more or less discovery than standard discovery would involve.

Compare: 1908 No 89 Schedule 2 r 8.8 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

8.9 Presumption as to tailored discovery

It is to be presumed, unless the Judge is satisfied to the contrary, that the interests of justice require tailored discovery in proceedings—

(a) where the costs of standard discovery would be disproportionately high in comparison with the matters at issue in the proceeding; or

(b) that involve 1 or more allegations of fraud or dishonesty; or

(c) in which the total of the sums in issue exceeds $2,500,000; or

(d) in which the total value of any assets in issue exceeds $2,500,000; or

(e) in which the parties agree that there should be tailored discovery.

Compare: 1908 No 89 Schedule 2 r 8.9 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.10 Obligation of party ordered to make tailored discovery

Tailored discovery requires a party against whom it is ordered to disclose the documents that are or have been in that party's control either in categories as indicated in clause 3(2) of Part 1 of Schedule 9 or under some other method of classification that facilitates the identification of particular documents.

Compare: 1908 No 89 Schedule 2 r 8.10 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.11 Preparation for first case management conference

(1) The parties must, not less than 10 working days before the first case management conference, discuss and endeavour to agree on an appropriate discovery order, and the manner in which inspection will subsequently take place, having addressed the matters in the discovery checklist in accordance with Part 1 of Schedule 9.

(2) The joint memorandum, or separate memoranda, filed under rule 7.3 must, in addition to the matters required to be ad-

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

dressed under rule 7.3(3), set out the terms of the discovery order that the Judge is requested to make and the reasons for a discovery order in those terms.

(3) If the parties agree to vary the listing and exchange protocol set out in Part 2 of Schedule 9, they need advise the Judge only that variation has been agreed, not the details of that variation.

Compare: 1908 No 89 Schedule 2 r 8.11 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.12 Orders that may be made

(1) At the case management conference the Judge may, under rule 8.5, make—
- (a) an order dispensing with discovery; or
- (b) an order for standard discovery; or
- (c) an order for tailored discovery, setting out categories (by, for example, subject headings and date periods) or another method of classification by which documents are to be identified.

(2) The discovery order may—
- (a) incorporate the listing and exchange protocol set out in Part 2 of Schedule 9; or
- (b) vary that protocol; or
- (c) contain other obligations that are considered appropriate.

(3) The discovery order may include specific directions as to the manner of discovery.

(4) A discovery order does not require a party to discover electronically stored information that is not primary data.

(5) Despite subclause (4), the Judge may order a party to discover electronically stored information that is not primary data if the Judge is satisfied that the need for, and the relevance and materiality of, the non-primary data sought justify the cost and burden of retrieving and producing that data.

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

(6) For the purposes of this rule, **primary data** means active data and readily retrievable archival data.

Compare: 1908 No 89 Schedule 2 r 8.12 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.13 Solicitor's discovery obligations

As soon as practicable after a party becomes bound to comply with a discovery order, the solicitor who acts for the party in the proceeding must take reasonable care to ensure that the party—

(a) understands the party's obligations under the order; and

(b) fulfils those obligations.

Compare: 1908 No 89 Schedule 2 r 8.13 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.14 Extent of search

(1) A party must make a reasonable search for documents within the scope of the discovery order.

(2) What amounts to a reasonable search depends on the circumstances, including the following factors:

(a) the nature and complexity of the proceeding; and

(b) the number of documents involved; and

(c) the ease and cost of retrieving a document; and

(d) the significance of any document likely to be found; and

(e) the need for discovery to be proportionate to the subject matter of the proceeding.

Compare: 1908 No 89 Schedule 2 r 8.14 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.15 Affidavit of documents

(1) Each party must file and serve an affidavit of documents that complies with this rule, subject to any modifications or directions contained in a discovery order.

(2) In the affidavit of documents, the party must—

(a) refer to the discovery order under which the affidavit is made; and

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

(b) state that the party understands the party's obligations under the order; and
(c) give particulars of the steps taken to fulfil those obligations; and
(d) state the categories or classes of documents that have not been searched, and the reason or reasons for not searching them; and
(e) list or otherwise identify the documents required to be discovered under the order in a schedule that complies with rule 8.16 and Part 2 of Schedule 9; and
(f) state any restrictions proposed to protect the claimed confidentiality of any document.

(3) The affidavit may be in form G 37.

(4) Each party must file and serve the affidavit of documents within such time as the court directs or, if no direction is made, within 20 working days after the date on which the discovery order is made.

Compare: 1908 No 89 Schedule 2 r 8.20 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.16 Schedule appended to affidavit of documents

(1) The schedule referred to in rule 8.15(2)(e) must, in accordance with that discovery order, list or otherwise identify documents that—
(a) are in the control of the party giving discovery and for which the party does not claim privilege or confidentiality:
(b) are in the control of the party giving discovery for which privilege is claimed, stating the nature of the privilege claimed:
(c) are in the control of the party giving discovery for which confidentiality is claimed, stating the nature and extent of the confidentiality:
(d) have been, but are no longer, in the control of the party giving discovery, stating when the documents ceased to

High Court Rules—*continued*
Part 8—*continued*
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be in that control, and the person who now has control of them:

(e) have not been in the control of the party giving discovery but which that party knows would be discoverable if that party had control of them.

(2) Subject to Part 2 of Schedule 9, documents of the same nature falling within subclause (1)(b), (d), or (e) may be described as a group or groups.

(3) The description of documents for which privilege is claimed under subclause (1)(b) must be sufficient to inform the other parties of the basis on which each document is included in a group under subclause (2).

(4) The schedule must include documents that have previously been disclosed under rule 8.4.

(5) The schedule need not include—

(a) documents filed in court; or

(b) correspondence that may reasonably be assumed to be in the possession of all parties.

Compare: 1908 No 89 Schedule 2 r 8.21 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.17 Variation of discovery order

(1) Subject to rule 7.18, a party may apply for an order varying the terms of a discovery order.

(2) The variation may be granted by a Judge on the ground that—

(a) compliance or attempted compliance with the terms of the order has revealed a need for a variation; or

(b) there has been a change of circumstances that justifies reconsideration.

Compare: 1908 No 89 Schedule 2 r 8.22 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.18 Continuing obligations

(1) Each party against whom a discovery order is made has a continuing obligation to give discovery and offer inspection at all

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

stages of the proceeding, even if that party has filed and served an affidavit of documents that complies with this subpart.

(2) A party must discover a document if, in the course of complying with an order for tailored discovery, that party becomes aware of a document that is not required to be discovered under the order, but that—

(a) adversely affects that party's own case; or

(b) adversely affects another party's case; or

(c) supports another party's case.

Compare: 1908 No 89 Schedule 2 r 8.18 (as substituted by r 4 of the High Court Amendment Rules (No 2) 2011)

8.19 Order for particular discovery against party after proceeding commenced

If at any stage of the proceeding it appears to a Judge, from evidence or from the nature or circumstances of the case or from any document filed in the proceeding, that there are grounds for believing that a party has not discovered 1 or more documents or a group of documents that should have been discovered, the Judge may order that party—

(a) to file an affidavit stating—

(i) whether the documents are or have been in the party's control; and

(ii) if they have been but are no longer in the party's control, the party's best knowledge and belief as to when the documents ceased to be in the party's control and who now has control of them; and

(b) to serve the affidavit on the other party or parties; and

(c) if the documents are in the person's control, to make those documents available for inspection, in accordance with rule 8.27, to the other party or parties.

Compare: 1908 No 89 Schedule 2 r 8.24 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

8.20 Order for particular discovery before proceeding commenced

(1) This rule applies if it appears to a Judge that—
- (a) a person (the **intending plaintiff**) is or may be entitled to claim in the court relief against another person (the **intended defendant**) but that it is impossible or impracticable for the intending plaintiff to formulate the intending plaintiff's claim without reference to 1 or more documents or a group of documents; and
- (b) there are grounds to believe that the documents may be or may have been in the control of a person (the **person**) who may or may not be the intended defendant.

(2) The Judge may, on the application of the intending plaintiff made before any proceeding is brought, order the person—
- (a) to file an affidavit stating—
  - (i) whether the documents are or have been in the person's control; and
  - (ii) if they have been but are no longer in the person's control, the person's best knowledge and belief as to when the documents ceased to be in the person's control and who now has control of them; and
- (b) to serve the affidavit on the intending plaintiff; and
- (c) if the documents are in the person's control, to make those documents available for inspection, in accordance with rule 8.27, to the intending plaintiff.

(3) An application under subclause (2) must be by interlocutory application made on notice—
- (a) to the person; and
- (b) to the intended defendant.

(4) The Judge may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

Compare: 1908 No 89 Schedule 2 r 8.25 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

8.21 Order for particular discovery against non-party after proceeding commenced

(1) This rule applies if it appears to a Judge that a person who is not a party to a proceeding may be or may have been in the control of 1 or more documents or a group of documents that the person would have had to discover if the person were a party to the proceeding.

(2) The Judge may, on application, order the person—

(a) to file an affidavit stating—

(i) whether the documents are or have been in the person's control; and

(ii) if the documents have been but are no longer in the person's control, the person's best knowledge and belief as to when the documents ceased to be in the person's control and who now has control of them; and

(b) to serve the affidavit on a party or parties specified in the order; and

(c) if the documents are in the control of the person, to make those documents available for inspection, in accordance with rule 8.27, to the party or parties specified in the order.

(3) An application for an order under subclause (2) must be made on notice to the person and to every other party who has filed an address for service.

Compare: 1908 No 89 Schedule 2 r 8.26 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.22 Costs of discovery

(1) If it is manifestly unjust for a party to have to meet the costs of complying with an order made under this subpart, a Judge may order that another party meet those costs, either in whole or in part, in advance or after the party has complied.

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

(2) Despite subclause (1), the court may subsequently discharge or vary an order made under that subclause if satisfied that a different allocation of those costs would be just.

(3) If an order is made under rule 8.20(2) or 8.21(2), the Judge may, if the Judge thinks it just, order the applicant to pay to the person from whom discovery is sought the whole or part of that person's expenses (including solicitor and client costs) incurred in relation to the application and in complying with any order made on the application.

Compare: 1908 No 89 Schedule 2 r 8.27 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.23 Incorrect affidavit of documents to be amended

If, by reason of any change of circumstances or an error or omission, an affidavit of documents filed in response to a discovery order appears to the person making discovery to be defective or erroneous, the person must promptly file and serve an affidavit that corrects or supplements the affidavit of documents.

Compare: 1908 No 89 Schedule 2 r 8.28 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.24 Who may swear affidavit of documents

(1) When a Judge makes a discovery order, the Judge may—

(a) specify by name or otherwise the person who has to make the affidavit of documents; or

(b) specify by description or otherwise a group of persons or a class of persons each of whom may make the affidavit.

(2) If the Judge does not specify the person or the group or class of persons, the affidavit of documents may be made as follows:

(a) if the person required to make discovery is an individual person, by that individual person:

(b) if the person required to make discovery is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

of the holder of an office), by a person who meets the requirements of rule 9.82:

(c) if the person required to make discovery is the Crown, or an officer of the Crown who sues or is sued in an official capacity, or as representing a government department, by an officer of the Crown.

Compare: 1908 No 89 Schedule 2 r 8.30 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.25 Challenge to privilege or confidentiality claim

(1) If a party challenges a claim to privilege or confidentiality made in an affidavit of documents, the party may apply to the court for an order setting aside or modifying the claim.

(2) In considering the application, a Judge may require the document under review to be produced to the Judge and may inspect it for the purpose of deciding the validity of the claim.

(3) The Judge may—

(a) set aside the claim to privilege or confidentiality; or

(b) modify the claim to privilege or confidentiality; or

(c) dismiss the application; or

(d) make any other order with respect to the document under review that the Judge thinks just.

Compare: 1908 No 89 Schedule 2 r 8.31 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.26 Crown documents and public interest

An order made under section 27(1) of the Crown Proceedings Act 1950 must be construed as not requiring disclosure of the existence of any document if—

(a) the Prime Minister certifies that the disclosure of the existence of that document would be likely to prejudice—

(i) the security or defence of New Zealand or the international relations of the Government of New Zealand; or

(ii) any interest protected by section 7 of the Official Information Act 1982; or

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

(b) the Attorney-General certifies that the disclosure of the existence of that document would be likely to prejudice the prevention, investigation, or detection of offences.

Compare: 1908 No 89 Schedule 2 r 8.32 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.27 Inspection of documents

(1) As soon as a party who is required to make discovery has filed and served an affidavit of documents, that party must, subject to rule 8.28, make the documents that are listed in the affidavit and that are in that party's control available for inspection by way of exchange.

(2) Documents must be exchanged in accordance with the listing and exchange protocol in Part 2 of Schedule 9.

(3) If a discovery order exempts a party from giving discovery and inspection electronically, that party must make the documents listed in the affidavit of documents available for inspection in hard copy form, and must promptly make those documents available for copying if requested.

(4) A party who has received a document electronically under this rule may, on giving reasonable notice in writing, require the person giving discovery to produce the original document for inspection.

(5) This rule also applies to documents listed in an affidavit filed and served under rule 8.20 or 8.21.

(6) This rule is subject to the terms of any discovery order made under rule 8.5.

Compare: 1908 No 89 Schedule 2 r 8.33 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.28 Privilege and confidentiality

(1) A party is not required to make privileged documents available for inspection.

(2) If a document contains both privileged and non-privileged information, a party must make the document available for in-

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

spection, but may redact the privileged information by rendering the privileged information in the document unreadable.

(3) A party may limit inspection of confidential documents to the persons specified in the affidavit of documents, subject to the restrictions proposed in the affidavit.

8.29 Order facilitating inspection

(1) A Judge may, on application, make any order the Judge thinks appropriate to facilitate the efficient inspection of documents.

(2) An order under subclause (1) may, for example, require the person who is to produce the documents for inspection to do either or both of the following:

(a) arrange the documents in a stated manner or order:

(b) assist the party inspecting the documents to locate and identify particular documents or groups of documents.

Compare: 1908 No 89 Schedule 2 r 8.34 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.30 Use of documents

(1) A party to whom a document has been made available electronically or is produced for inspection under rule 8.27 or 8.29 may make copies of the document.

(2) On the application of a party to whom a document is produced for inspection under rule 8.27 or 8.29, a Judge may order the person who has control of the document to give the applicant a legible copy.

(3) An order under subclause (2) may be made on any terms the Judge thinks just, and, in particular, the Judge may order that—

(a) the applicant pay the reasonable expenses of the other party:

(b) the document be marked to the effect that it is a copy given for purposes of inspection only.

(4) A party who obtains a document by way of inspection or who makes a copy of a document under this rule—

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

(a) may use that document or copy only for the purposes of the proceeding; and

(b) except for the purposes of the proceeding, must not make it available to any other person (unless it has been read out in open court).

Compare: 1908 No 89 Schedule 2 r 8.36 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.31 Effect of failure to include document

A document that should have been included in a party's affidavit of documents may be produced in evidence at the hearing only with the consent of the other party or parties or the leave of the court.

Compare: 1908 No 89 Schedule 2 r 8.37 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.32 Notice to produce documents or things

(1) A party to a proceeding may serve on another party a notice requiring the other party to produce a document or thing for the purpose of evidence at the hearing of the proceeding, or before a Judge, an officer, an examiner, or other person who has authority to take evidence in the proceeding.

(2) If the document or thing is in the control of the party who is served with the notice, the party must, unless a Judge otherwise orders, produce the document or thing in accordance with the notice, without the need for a subpoena for production.

(3) The notice must be treated as an order of the court to produce the document or thing specified in the notice.

Compare: 1908 No 89 Schedule 2 r 8.39 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.33 Contempt of court

(1) Every person is guilty of contempt of court who, being a person against whom a discovery order or other order under this subpart has been made, wilfully and without lawful excuse disobeys the order or fails to ensure the order is complied with.

High Court Rules—*continued*
Part 8—*continued*
Subpart 1—*continued*

(2) This rule does not limit or affect any power or authority of the court to punish a person for contempt of court.

Compare: 1908 No 89 Schedule 2 r 8.42 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

Subpart 2—Interrogatories

8.34 Interrogatories by notice

(1) After a statement of defence has been filed, a party who has filed a pleading may file and serve on another party who has filed a pleading a notice requiring that party to answer specified interrogatories relating to any matter in question in the proceeding between the interrogating party and the party served.

(2) The notice may require that the answers be verified even if the interrogating party has not previously required any answers to interrogatories to be verified.

(3) The notice must be in form G 35.

Compare: 1908 No 89 Schedule 2 r 8.1 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.35 Duties of party served

(1) A party required by notice under rule 8.34 to answer interrogatories must answer the interrogatories within the period specified in the notice.

(2) The period specified commences on the first working day after the day on which the notice under rule 8.34 is served and may not be less than 10 working days (or, if the party is resident out of New Zealand, 20 working days).

(3) The party required to answer the interrogatories must file and serve on the party requiring the answers—

(a) if the answers do not have to be verified, a statement in accordance with rule 8.39; or

High Court Rules—*continued*
Part 8—*continued*
Subpart 2—*continued*

(b) if the answers do have to be verified, an affidavit verifying the statement together with the statement verified unless it has already been filed and served.

(4) This rule is subject to rule 8.36.

Compare: 1908 No 89 Schedule 2 r 8.2 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.36 Limitation of interrogatories by notice

(1) A Judge may, on the application of a party required to answer interrogatories, order that answers to interrogatories under rule 8.34 by that party—

(a) are not required; or

(b) need to be given only to specified interrogatories or classes of interrogatories or to specified matters that are in question in the proceeding.

(2) The application may be made before or after the party has been served with a notice under rule 8.34.

(3) In determining the application, the Judge must make any orders required to prevent unnecessary or oppressive interrogatories or unnecessary answers to interrogatories.

Compare: 1908 No 89 Schedule 2 r 8.3 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.37 Multiple parties

If there are more than 2 parties, a party who is required under rule 8.34 to answer interrogatories must serve the documents required to be served under that rule on every party who has given an address for service.

Compare: 1908 No 89 Schedule 2 r 8.4 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.38 Order to answer

(1) A Judge may, at any stage of any proceeding, order any party to file and serve on any other party (whether the interrogating party or not) a statement prepared in accordance with rule 8.39 in answer to interrogatories specified or referred to in the order.

High Court Rules—*continued*
Part 8—*continued*
Subpart 2—*continued*

(2) The interrogatories must relate to matters in question in the proceeding.

(3) The order may require the statement to be verified by affidavit.

(4) The Judge must not make an order under subclause (1) unless satisfied that the order is necessary at the time when it is made.

Compare: 1908 No 89 Schedule 2 r 8.5 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.39 Contents of statement

(1) A statement in answer to interrogatories must, unless a Judge otherwise orders, comply with this rule.

(2) A statement in answer to interrogatories must deal with each interrogatory specifically, either—

(a) by answering the substance of the interrogatory without evasion; or

(b) by objecting to answer the interrogatory on 1 or more of the grounds mentioned in rule 8.40(1) and briefly stating the facts on which the objection is based.

(3) The statement must set out above or opposite to each answer or objection the interrogatory to which it relates.

Compare: 1908 No 89 Schedule 2 r 8.6 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.40 Objection to answer

(1) A party may object to answer an interrogatory on the following grounds only:

(a) that the interrogatory does not relate to a matter in question between the parties involved in the interrogatories:

(b) that the interrogatory is vexatious or oppressive:

(c) that the information sought is privileged:

(d) that the sole object of the interrogatory is to ascertain the names of witnesses.

(2) It is not a sufficient objection that the answer to an interrogatory will determine a substantial issue in the proceeding.

High Court Rules—*continued*
Part 8—*continued*
Subpart 2—*continued*

(3) On an application under rule 8.36 in respect of an interrogatory, a Judge may—
  (a) require the applicant to specify on what grounds the applicant objects to answer that interrogatory; and
  (b) determine the sufficiency of the objection.

(4) If the Judge determines that the objection is not sufficient, the application is not entitled to object to answer the interrogatory.

Compare: 1908 No 89 Schedule 2 r 8.7 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.41 Who may swear affidavit verifying statement in answer to interrogatories

(1) An affidavit verifying a statement of a party in answer to interrogatories may be made as follows:
  (a) by the person required to make the statement:
  (b) if the person required to make the statement is a minor (other than a minor to whom rule 4.31(2) applies) or is an incapacitated person within the meaning of rule 4.29, by the person's litigation guardian:
  (c) if the person required to make the statement is a corporation or a body of persons empowered by law to sue or to be sued (whether in the name of the body or in the name of the holder of a registry), by a person who meets the requirements of rule 9.82:
  (d) if the person required to make the statement is the Crown, or an officer of the Crown who sues or is sued in an official capacity, or as representing a government department, by an officer of the Crown.

(2) Despite subclause (1), if paragraph (c) or (d) of that subclause applies, and if the affidavit is to be filed and served in accordance with an order, a Judge may—
  (a) specify by name or otherwise the person who has to make the affidavit; or

High Court Rules—*continued*
Part 8—*continued*
Subpart 2—*continued*

(b) specify by description or otherwise a group or class of persons, any 1 of whom may make the affidavit.

Compare: 1908 No 89 Schedule 2 r 8.8 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.42 Insufficient answer

If a party fails to answer an interrogatory sufficiently, a Judge may, in addition to acting under rule 7.48,—

(a) if the party has made an insufficient answer, order the party to make a further answer verified by affidavit in accordance with rule 8.38; or

(b) order the party, or any of the persons mentioned in rule 8.41(1)(b) to (d), as the case requires, to attend to be orally examined.

Compare: 1908 No 89 Schedule 2 r 8.9 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.43 Incorrect answer to be amended

(1) If, by reason of a change of circumstances or an error or omission, a statement filed in response to a notice given or order made under rule 8.34, 8.38, or 8.42 appears to the party who filed it or on whose behalf it was filed to be defective or erroneous, that party must promptly file and serve a further statement that corrects or supplements the original statement.

(2) If the original statement was verified, the further statement must also be verified.

Compare: 1908 No 89 Schedule 2 r 8.10 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.44 Answers as evidence

(1) A party may give in evidence—

(a) 1 or more answers to interrogatories without giving the others:

(b) part of an answer to an interrogatory without giving the whole of the answer.

High Court Rules—*continued*
Part 8—*continued*
Subpart 2—*continued*

(2) If a party proposes to give in evidence an answer (or part of an answer) to an interrogatory (**answer A**), the Judge may look at the other answers, and if the Judge considers that answer A is so connected with another answer (**answer B**) that answer A ought not to be received without answer B, the Judge may refuse to receive answer A unless answer B is also given in evidence.

Compare: 1908 No 89 Schedule 2 r 8.11 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.45 Public interest

The rules that relate to interrogatories do not affect any rule of law that authorises or requires the withholding of a matter on the ground that its disclosure would be injurious to the public interest.

Compare: 1908 No 89 Schedule 2 r 8.12 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.46 Defamation proceedings

If, in a proceeding for defamation, the defendant pleads that the words or matters complained of are honest opinion on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief may be allowed unless the interrogatories are necessary in the interests of justice.

Compare: 1908 No 89 Schedule 2 r 8.13 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

Subpart 3—Notice to admit facts

8.47 Notice to admit facts

(1) A party who is entitled to serve a notice under rule 8.34 may at any time serve on another party a notice requiring the party to admit, for the purpose of the proceeding only, the facts specified in the notice.

(2) The notice must be in form G 36.

High Court Rules—*continued*
Part 8—*continued*
Subpart 3—*continued*

(3) An admission made in compliance with a notice under subclause (1)—
  (a) may be amended or withdrawn by the party by whom it was made at any time if a Judge so allows, and this may be done on any terms the Judge thinks just:
  (b) must not be used against the party by whom it was made in a proceeding or interlocutory application other than the proceeding or interlocutory application for which it was made.

(4) If the party on whom a notice to admit facts has been served under subclause (1) refuses or neglects to admit the facts within 5 working days after the day of service or within any longer time allowed by a Judge, the costs of proving the facts must be paid by that party, unless a Judge otherwise orders.

Compare: 1908 No 89 Schedule 2 r 8.14 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

8.48 Judgment on admission of facts

A judgment or order may be made on an admission of facts under rule 15.15.

Compare: 1908 No 89 Schedule 2 r 8.15 prior to 1 February 2012 (as substituted by 2008 No 90 s 8)

Part 9
Evidence

Subpart 1—Briefs, oral evidence directions, common bundles, and chronologies

9.1 Objective and scope

(1) When applying the rules in this subpart to a proceeding, the court and the parties must pursue the just, speedy, and inexpensive determination of that proceeding.

(2) The parties must also ensure that the briefs and the common bundle are commensurate with the goal of keeping the cost

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

of the proceeding proportionate to the subject matter of the proceeding.

(3) The documents to be produced at the trial or hearing and the evidence-in-chief of witnesses must be prepared, produced, and led in accordance with this subpart.

Compare: 1908 No 89 Schedule 2 r 9.1 (as substituted by r 20 of the High Court Amendment Rules (No 2) 2012)

9.2 Exchange of documents and index

(1) In this rule, **documents to be relied upon** means—

(a) documents referred to in a brief or to be referred to by a witness; and

(b) documents intended to be put to witnesses called by another party; and

(c) documents to be referred to in opening.

(2) When a party discloses documents to be relied upon at the trial or hearing, that party must supply a list of those documents incorporating any list previously supplied, so that the other parties always have an up-to-date list of the documents that party intends to rely upon. The list may be in any format and is to be labelled and referred to as that party's index.

(3) Documents to be relied upon at the trial or hearing but additional to those already disclosed may be disclosed at any time, but not later than a date fixed by the court at a case management, issues, or pre-trial conference.

(4) Subclause (3) does not affect a party's ongoing obligations in relation to discovery.

Compare: 1908 No 89 Schedule 2 r 9.2 (as substituted by r 20 of the High Court Amendment Rules (No 2) 2012)

9.3 Timing

(1) Unless otherwise ordered by the court, a common bundle of documents must not be prepared until all the briefs of the parties have been served.

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

(2) The common bundle must be prepared by the plaintiff (or a different party, if the court so orders) and filed and served by a date fixed by the court at a case management, issues, or pre-trial conference.

Compare: 1908 No 89 Schedule 2 r 9.3 (as substituted by r 20 of the High Court Amendment Rules (No 2) 2012)

9.4 Preparation of common bundle

(1) The parties must co-operate in the preparation of a bundle of documents (in this subpart referred to as the **common bundle**).

(2) The duty to co-operate includes—

(a) advising the plaintiff or the plaintiff's counsel promptly, after the date when the last brief of any party is served under rule 9.7, of the documents that the party requires the plaintiff to include in the common bundle; and

(b) taking all practicable steps to assist the plaintiff in the preparation of the common bundle, for example, by making copies of documents available, or agreeing to the excision of part of a document if that part cannot be relevant; and

(c) conferring as to the format of the common bundle and, in particular, whether an electronic format of the common bundle is appropriate.

(3) If a party other than the plaintiff has been ordered to prepare the common bundle, the references in subclause (2) to the plaintiff are to be read as references to that different party.

(4) Subject to rule 9.6, the common bundle must contain all the documents listed in the index of each party, and no other documents.

(5) The common bundle must—

(a) arrange the documents chronologically, or in any other appropriate sequence or manner agreed by counsel and approved by the court:

(b) number each page of the common bundle in a consecutive sequence:

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

(c) set out before the first document a common bundle index that shows—
  (i) a short description of each document:
  (ii) the date of each document:
  (iii) the party from whose custody each document has been produced:
  (iv) the page number of each document as it appears in the common bundle:

(d) use a format that is, so far as possible, compatible with that used by the parties when listing documents under rule 8.16 (schedule appended to affidavit of documents).

(~~5A~~6) If the parties have agreed to use an electronic format for the common bundle, the parties must have regard to any practice note on electronic formats issued from time to time by the Chief High Court Judge.

(~~6~~7) Unless the court directs otherwise, the common bundle must be served not later than 15 working days after the date when the last brief of any party is served under rule 9.7.

Compare: 1908 No 89 Schedule 2 r 9.13 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

9.5 Consequences of incorporating document in common bundle

(1) Each document contained in the common bundle is, unless the court otherwise directs, to be considered—
  (a) to be admissible; and
  (b) to be accurately described in the common bundle index; and
  (c) to be what it appears to be; and
  (d) to have been signed by any apparent signatory; and
  (e) to have been sent by any apparent author and to have been received by any apparent addressee; and
  (f) to have been produced by the party indicated in the common bundle index.

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

(2) If a party objects to the admissibility of a document included in the common bundle, or to the application of any of subclause (1)(b) to (f) to a document, the objection must, if practicable, be recorded in the common bundle, and must be determined by the court at the hearing or at any prior time that the court directs.

(3) The fact that a document has been included in the common bundle is not relevant to the determination under subclause (2) of an objection that relates to the document.

(4) A document in the common bundle is automatically received into evidence (subject to the resolution of any objection to admissibility) when a witness refers to it in evidence or when counsel refers to it in submissions (made otherwise than in a closing address).

(5) A document in the common bundle may not be received in evidence except under subclause (4).

(6) The court may direct that this rule or any part of it is not to apply to a particular document.

Compare: 1908 No 89 Schedule 2 r 9.14 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

9.6 Consequence of not incorporating document in common bundle

(1) A document not incorporated in the common bundle may be produced at the trial or hearing only with the leave of the court.

(2) The court may grant leave to produce a discovered document not so incorporated unless its production would cause an injustice.

(3) The court may refuse leave to produce a document not so incorporated and not discovered if its production might cause an injustice.

Compare: 1908 No 89 Schedule 2 r 9.15 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

9.7 Requirements in relation to briefs

(1) In this subpart, **brief**, in relation to the evidence of a witness to be called by a party, means a written statement setting out evidence proposed to be given by that witness.

(2) The date by which the parties must complete and serve briefs upon each other, simultaneously or sequentially, must be determined by the court at a case management or issues conference, having regard to the needs of the case.

(3) Whether or not some evidence is directed to be led orally, the brief must contain the testimony intended to be taken from that witness on that subject.

(4) Every brief—

(a) must be signed by the witness by whom the brief is made:

(b) must be in the words of the witness and not in the words of the lawyer involved in drafting the brief:

(c) must not contain evidence that is inadmissible in the proceeding:

(d) must not contain any material in the nature of a submission:

(e) must avoid repetition:

(f) must avoid the recital of the contents or a summary of documents that are to be produced in any event:

(g) must be confined to the matters in issue.

(5) If the brief does not comply with the requirements of subclause (4) the court, prior to or during the trial, may direct that it not be read in whole or in part, and may make such order as to costs as the court sees fit.

(6) When a brief is served, the party serving it must as soon as practicable advise the Registrar what has been served, upon whom, and the date of service.

Compare: 1908 No 89 Schedule 2 r 9.4 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

9.8 Supplementary briefs

(1) A party wishing to offer a supplementary brief must serve it as soon as possible.

(2) The acceptance and use of the supplementary brief in court will be at the discretion of the trial Judge.

Compare: 1908 No 89 Schedule 2 r 9.5 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

9.9 Exchange of chronology of facts intended to be relied upon at trial or hearing

(1) The plaintiff must, not later than 15 working days after the common bundle has been served, file and serve a chronology of the facts it intends to rely upon at the trial or hearing.

(2) In preparing the chronology, the plaintiff must—
- (a) set out the facts in chronological order; and
- (b) cross-reference the facts to—
  - (i) 1 or more documents; or
  - (ii) 1 or more statements in written briefs; and
- (c) include, when available, common bundle index references or page references.

(3) The other parties must, not later than 15 working days after service of the plaintiff's chronology, file and serve their responses to it, identifying which facts they dispute, and adding any other facts they intend to rely upon.

(4) In preparing their responses, the other parties must—
- (a) cross-reference disputed facts to different or contradictory facts in the plaintiff's chronology; and
- (b) list any additional facts; and
- (c) comply with subclause (2)(b).

(5) The court may modify the requirements of this rule at a conference under rule 7.5.

Compare: 1908 No 89 Schedule 2 r 9.9 (as substituted by r 20 of the High Court Amendment Rules (No 2) 2012)

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

9.10 Oral evidence directions

(1) After the preparation and service of the chronologies of facts, the parties must bring significant facts that are disputed to the attention of the court.

(2) The obligation in subclause (1) may be discharged at a case management or issues or pre-trial conference, or at another time, but must, in any event, be discharged not later than 15 working days after service of the chronologies of fact has been completed.

(3) The court may, before the giving of evidence, and either before or at the trial or hearing, direct that evidence be given orally (an **oral evidence direction**).

Compare: 1908 No 89 Schedule 2 r 9.10 (as substituted by r 20 of the High Court Amendment Rules (No 2) 2012)

9.11 Compliance with Evidence Act 2006

(1) Any challenge to the admissibility of a brief, in whole or in part, must be notified to the party or parties concerned within 20 working days after receipt of the brief by the challenging party.

(2) If the issue is not resolved between counsel in a further 10 working days, notice that there is an admissibility issue must be given to the court by the challenging party.

Compare: 1908 No 89 Schedule 2 r 9.11 (as substituted by r 20 of the High Court Amendment Rules (No 2) 2012)

9.12 Evidence-in-chief at trial

(1) A brief signed by a witness—

(a) must, subject to the terms of an oral evidence direction made under rule 9.10, be read by the witness at the trial as the witness's evidence-in-chief; and

(b) is, when read by the witness at the trial, the evidence-in-chief given by the witness at the trial; and

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

(c) must, after being read by the witness at the trial, be endorsed by or on behalf of the Registrar with the words "Given in evidence on [*date*]".

(2) Any portion of the brief that is the subject of an oral evidence direction under rule 9.10 becomes part of the evidence-in-chief of the witness only if and when it is given orally.

Compare: 1908 No 89 Schedule 2 r 9.6 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

9.13 Briefs not given in evidence

(1) If, by the time that a party opens the party's case, the brief of another party's witness has not been given in evidence, the party may, in opening, refer to that brief only with the leave of the trial Judge.

(2) When any part of the evidence contained in a brief is not given in evidence at the trial by the person who signed the brief, any other party to the proceeding may, unless the trial Judge otherwise directs, put that part of the evidence to that person in cross-examination.

Compare: 1908 No 89 Schedule 2 rr 9.8, 9.9 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

9.14 Privilege and admissibility not affected by briefs

Nothing in this subpart—

(a) deprives any party of that party's right to treat any communication as privileged; or

(b) changes inadmissible evidence into admissible evidence; or

(c) changes admissible evidence into inadmissible evidence; or

(d) deprives any party of that party's right to cross-examine any party to a proceeding on a brief, served under these rules, that is inconsistent with a statement previously made by that party; or

High Court Rules—*continued*
Part 9—*continued*
Subpart 1—*continued*

(e) allows a brief, served under these rules, to be made available, before it is given in evidence, for use for another purpose or proceeding.

Compare: 1908 No 89 Schedule 2 r 9.10 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

9.15 Cross-examination duties

The exchange of briefs under this subpart does not affect the cross-examination duties referred to in section 92 of the Evidence Act 2006.

Compare: 1908 No 89 Schedule 2 r 9.11 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

9.16 Plaintiff's synopsis of opening

The plaintiff must, not later than 2 working days before the trial or hearing, file in the court and serve on every other party to the proceeding a copy of the plaintiff's opening.

Compare: 1908 No 89 Schedule 2 r 9.16 (as substituted by r 20 of the High Court Amendment Rules (No 2) 2012)

Subpart 2—Evidence by depositions

9.17 Order for examination of witness or for letters of request

(1) When, in a proceeding or on an interlocutory application, a party desires to have the evidence of a person or persons taken otherwise than at the trial or the hearing of that interlocutory application, the court may, on application by that party, make orders on any terms the court thinks just—

(a) for the examination of a person on oath before a Judge, Registrar, or Deputy Registrar or before a person that the court appoints (in rules 9.18 to 9.23 referred to as the **examiner**) at any place whether in or out of New Zealand; or

(b) for the sending of a letter of request to the judicial authorities of another country, to take, or cause to be taken, the evidence of a person.

High Court Rules—*continued*
Part 9—*continued*
Subpart 2—*continued*

(2) On the application of an opposite party, the court may, if it is satisfied that the party who obtained the order under subclause (1) is not implementing the order with due diligence, rescind the order and may make any other order justice requires.

Compare: 1908 No 89 Schedule 2 r ~~369~~ 9.17 (as substituted by 2008 No 90 s 8)

9.18 Security for costs for taking evidence outside New Zealand

The court may, as a condition of making an order under rule 9.17 for the taking of evidence outside New Zealand, require the party applying to give security for—

(a) the estimated fees and expenses of the examiner, or other person by or before whom the evidence is to be taken; and

(b) the costs of any opposite party of and incidental to the taking of the evidence, for the amount the court thinks just, but not exceeding the estimated reasonable indemnity costs and disbursements of that opposite party.

Compare: 1908 No 89 Schedule 2 r ~~370~~ 9.18 (as substituted by 2008 No 90 s 8)

9.19 Documents for examiner

(1) The party obtaining an order for examination before an examiner must, unless the examination is conducted by the Registrar or Deputy Registrar at the court where the file of the proceeding is held, furnish the examiner with copies of those documents in the proceeding that are necessary to inform the examiner of the matters to which the examination is to relate.

(2) If the documents in the proceeding are not sufficient to inform the examiner of the matters to which the examination is to relate, the court must, in the order for examination or in a later order, state those matters.

Compare: 1908 No 89 Schedule 2 r ~~371~~ 9.19 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 2—*continued*

9.20 Procedure for examination before examiner

(1) On receipt of a copy of the order for examination, the examiner must appoint a time and place for the examination and notify all parties of the time and place.

(2) The examiner may adjourn the examination from time to time and from place to place as is necessary or expedient.

(3) The examiner may administer an oath to each witness examined and each witness may be examined, cross-examined, and re-examined as at the trial of a proceeding.

(4) The examiner must ensure that evidence given at the examination is recorded, together with notes of any objections to the evidence.

(5) The depositions so taken must be signed on each page by the witness and by the examiner.

(6) The depositions when taken must be securely fastened together and must, together with the exhibits and the report of the examiner, be sent without delay to the registry of the court in which the file of the proceeding is for the time being held.

(7) The examiner may send to the registry of the court in which the file of the proceeding is for the time being held a certificate stating that—

(a) at the time and place appointed for the examination or at any adjournment, there was no appearance by or on behalf of the party obtaining the order; or

(b) the witness did not attend at that time and place; or

(c) at that time and place, the applicant intimated that it was not intended to proceed with the taking of the evidence.

(8) On application to the Registrar a party may inspect any depositions taken under this rule and make copies of them or extracts from them.

Compare: 1908 No 89 Schedule 2 r ~~372~~ 9.20 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 2—*continued*

9.21 Examination of additional persons

(1) The examiner may, with the consent in writing of all parties to the proceeding, take the examination of a person in addition to the person named or referred to in the order for examination.

(2) The consent of each of the parties must be attached to the deposition of that person.

Compare: 1908 No 89 Schedule 2 r ~~373~~ 9.21 (as substituted by 2008 No 90 s 8)

9.22 Objection to question

When objection is taken to a question to a person being examined before an examiner, or a witness takes objection to answering a question or to producing a document or a thing,—

(a) the examiner must give the parties the examiner's opinion on the objection, but must not rule on it; and

(b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) to the question must be set out in the deposition of the witness or in a statement attached to the deposition; and

(c) the court may, on application by a party, decide the validity of the objection.

Compare: 1908 No 89 Schedule 2 r ~~374~~ 9.22 (as substituted by 2008 No 90 s 8)

9.23 Form of report

The report of the examiner may be in form G 19.

Compare: 1908 No 89 Schedule 2 r ~~375~~ 9.23 (as substituted by 2008 No 90 s 8)

9.24 Depositions as evidence

Depositions taken in accordance with these rules under an order under rule 9.17 may be produced as evidence at the trial of the proceeding and must be received subject to any objection on the ground of admissibility.

Compare: 1908 No 89 Schedule 2 r ~~376~~ 9.24 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 2—*continued*

9.25 Letters of request where convention exists

When a convention is in force between a country and New Zealand relating to the taking of evidence in that country for use in New Zealand, rules 9.26 to 9.28 apply subject to any special provisions contained in the convention.

Compare: 1908 No 89 Schedule 2 r ~~377~~ 9.25 (as substituted by 2008 No 90 s 8)

9.26 Issue of letters of request

(1) When an order has been made for the issue of a letter of request, the party obtaining the order must—

(a) lodge with the Registrar—

(i) a form of the appropriate letter of request; and

(ii) the interrogatories and cross-interrogatories (if any) to accompany the letter of request; and

(iii) where required by the convention, a translation of each of the documents mentioned in subparagraphs (i) and (ii) into the language, or an appropriate language, of the country concerned; and

(b) file—

(i) a copy of each of the documents mentioned in paragraph (a); and

(ii) a personal undertaking by the party obtaining the order or the party's solicitor to be responsible for all expenses in respect of the execution of the letter of request incurred by the court or by any person at the request of the court, and, on being given notice of the amount of those expenses, to pay the amount forthwith into a Crown Bank Account and produce evidence of the payment to the Registrar.

(2) The correctness of every translation must be certified or otherwise verified to the satisfaction of the Registrar.

(3) The Registrar may require security of a reasonable amount instead of an undertaking under subclause (1)(b)(ii).

High Court Rules—*continued*
Part 9—*continued*
Subpart 2—*continued*

(4) The letter of request must be in such form as the court approves and be issued under the hand of a Judge and the seal of the court.

Compare: 1908 No 89 Schedule 2 r ~~378~~ 9.26 (as substituted by 2008 No 90 s 8)

9.27 Agents of parties

The party who obtains an order for the issue of a letter of request must file a statement of the names and addresses of the parties' agents in the country in which the letter of request is to be executed.

Compare: 1908 No 89 Schedule 2 r ~~379~~ 9.27 (as substituted by 2008 No 90 s 8)

9.28 Consequences of non-compliance with undertaking as to expenses

When a party who has given an undertaking under rule 9.26(1)(b)(ii) does not, within 5 working days after being served with notice of the amount of the expenses concerned, pay that amount to the Registrar, the court may, on application by the Registrar,—

(a) order the party to pay the amount of the expenses to the Registrar; and

(b) until payment, stay the proceeding as far as concerns the whole or any part of any claim for relief by that party; and

(c) strike out any pleading filed by that party.

Compare: 1908 No 89 Schedule 2 r ~~380~~ 9.28 (as substituted by 2008 No 90 s 8)

9.29 Application by Solicitor-General on letters of request from abroad

(1) The Registrar must transmit to the Solicitor-General a letter of request received if—

(a) the letter relates to a proceeding to which sections 184 and 185 of the Evidence Act 2006 apply; and

(b) it appears that the letter is not to be given effect by an application by a party to the proceeding.

High Court Rules—*continued*
Part 9—*continued*
Subpart 2—*continued*

(2) The Solicitor-General may then make an application and take any steps that are necessary to give effect to the letter.
Compare: 1908 No 89 Schedule 2 r ~~381~~ 9.29 (as substituted by 2008 No 90 s 8)

Subpart 3—Medical examinations

9.30 Order for medical examination

(1) An order under **section 42(1)** of the Act may be made—
(a) at any time after the time for filing a statement of defence to the plaintiff's statement of claim has expired, on the application of any party to the proceeding; or
(b) by the court on its own initiative.

(2) The time and place of the examination must be fixed by the order.
Compare: 1908 No 89 Schedule 2 r ~~318~~ 9.30 (as substituted by 2008 No 90 s 8)

9.31 Report

When an order is made under **section 42(1)** of the Act the court may require a medical practitioner making the examination—
(a) to furnish to the court, within the time specified in the order, a report in writing setting out—
(i) the medical practitioner's clinical findings; and
(ii) the medical practitioner's opinion of the physical condition or mental condition or both of the person examined, so far as relevant; and
(iii) if appropriate, the medical practitioner's prognosis in respect of the condition; and
(b) to deliver, within the same time, a copy of the report to the party (if any) who applied for the order.
Compare: 1908 No 89 Schedule 2 r ~~319~~ 9.31 (as substituted by 2008 No 90 s 8)

9.32 Service of report

(1) Unless the court otherwise directs, the party to whom the copy of the report is delivered under rule 9.31(b) must immediately

High Court Rules—*continued*
Part 9—*continued*
Subpart 3—*continued*

serve a copy of the report on the person examined or that person's solicitor and the other parties.

(2) If the order under **section 42(1)** of the Act was made by the court on its own initiative, the Registrar must, as soon as practicable after the report is furnished to the court, serve a copy of the report on the parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~320~~ 9.32 (as substituted by 2008 No 90 s 8)

9.33 Evidence of medical practitioner when medical examination ordered

If the parties do not agree to accept a report obtained under an order under **section 42(1)** of the Act, the court—

(a) may summon the medical practitioner named in the order to attend at the trial; and

(b) may, at any appropriate stage of the trial before counsels' addresses, examine the medical practitioner on the report; and

(c) may permit any party to cross-examine the medical practitioner on the evidence then given.

Compare: 1908 No 89 Schedule 2 r ~~321~~ 9.33 (as substituted by 2008 No 90 s 8)

Subpart 4—Inspection and testing

9.34 Order for inspection, etc

(1) The court may, for the purpose of enabling the proper determination of any matter in question in a proceeding, make orders, on terms, for—

(a) the inspection of any property:

(b) the taking of samples of any property:

(c) the observation of any property:

(d) the measuring, weighing, or photographing of any property:

(e) the conduct of an experiment on or with any property:

(f) the observation of a process.

(2) An order may authorise a person to enter any land or do anything else for the purpose of getting access to the property.

High Court Rules—*continued*
Part 9—*continued*
Subpart 4—*continued*

(3) In this rule, **property** includes any land and any document or other chattel, whether in the control of a party or not.
Compare: 1908 No 89 Schedule 2 r ~~322~~ 9.34 (as substituted by 2008 No 90 s 8)

9.35 Notice of application
A party applying for an order under rule 9.34 must, so far as practicable, serve notice of the application on each person who would be affected by the order if made.
Compare: 1908 No 89 Schedule 2 r ~~323~~ 9.35 (as substituted by 2008 No 90 s 8)

Subpart 5—Experts

9.36 Appointment of court expert
(1) In a proceeding that is to be tried by Judge alone and in which a question for an expert witness arises, the court may at any time, on its own initiative or on the application of a party, appoint an independent expert, or, if more than 1 such question arises, 2 or more such experts, to inquire into and report upon any question of fact or opinion not involving questions of law or of construction.
(2) An expert appointed under subclause (1) is referred to in this rule and in rules 9.37 to 9.42 as a **court expert**.
(3) A court expert in a proceeding must, if possible, be a person agreed upon by the parties and, failing agreement, the court must appoint the court expert from persons named by the parties.
(4) A person appointed as an independent expert in a proceeding under rule 9.44(3) may not be appointed as a court expert unless the parties agree.
(5) In this rule, **expert**, in relation to a question arising in a proceeding, means a person who has the knowledge or experience of, or in connection with, that question that makes that person's opinion on it admissible in evidence.
Compare: 1908 No 89 Schedule 2 r ~~324~~ 9.36 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 5—*continued*

9.37 Submission of question to court expert

The question to be submitted to the court expert and the instructions (if any) given to the court expert must, failing agreement between the parties, be settled by the court.

Compare: 1908 No 89 Schedule 2 r ~~325~~ 9.37 (as substituted by 2008 No 90 s 8)

9.38 Report of court expert

(1) The court expert must send his or her report to the court, together with whatever number of copies the court directs.

(2) The Registrar must send copies of the report to the parties or their solicitors.

(3) The court may direct the court expert to make a further or supplemental report.

(4) Any part of the court expert's report not accepted by all the parties must be treated as information furnished to the court and given appropriate weight.

Compare: 1908 No 89 Schedule 2 r ~~326~~ 9.38 (as substituted by 2008 No 90 s 8)

9.39 Experiments and tests

(1) If the court expert is of the opinion that an experiment or test of any kind (other than one of a trifling character) is necessary for the making of a satisfactory report, the court expert—

(a) must inform the parties or their solicitors; and

(b) must, if possible, make an arrangement with the parties or their solicitors about—

(i) the expenses involved; and

(ii) the persons to attend the experiment or test; and

(iii) any other relevant matters.

(2) The court must settle any matters on which the parties or their solicitors are unable to agree.

Compare: 1908 No 89 Schedule 2 r ~~327~~ 9.39 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 5—*continued*

9.40 Cross-examination of court expert

(1) Any party may, within 10 working days after receiving a copy of the court expert's report, apply to the court for an order under subclause (2).

(2) On an application under subclause (1), the court must make an order for the cross-examination of the court expert by all parties, either—

(a) at the trial; or

(b) before an examiner at such time and place as may be specified in the order.

Compare: 1908 No 89 Schedule 2 r ~~328~~ 9.40 (as substituted by 2008 No 90 s 8)

9.41 Remuneration of court expert

(1) The remuneration of the court expert must be fixed by the court and include—

(a) a fee for the report; and

(b) a proper sum for each day during which he or she is required to be present either in court or before an examiner.

(2) The court may, by the order appointing the court expert or subsequently, make any order it thinks just for and incidental to the payment of the remuneration of the court expert including either or both of the following:

(a) an order directing that the remuneration of the court expert must be paid by 1 or more of the parties and, if more than 1, in the proportions the court thinks just:

(b) an order that any party or parties give security, on any terms the court thinks just, for the remuneration of the court expert.

(3) When the court appoints the court expert on its own initiative, the court, instead of making an order under subclause (2), may, by the order appointing the expert or subsequently, order that the remuneration of the court expert must be paid by the chief executive of the Ministry of Justice out of money appropriated by Parliament for the purpose.

High Court Rules—*continued*
Part 9—*continued*
Subpart 5—*continued*

(4) Subclauses (2) and (3) do not affect the power of the court to make an order providing for the payment of the court expert's remuneration as part of the costs of the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~329~~ 9.41 (as substituted by 2008 No 90 s 8)

9.42 Calling of expert witnesses

(1) If a court expert is appointed in a proceeding or an interlocutory application, a party may call 1 expert witness, or with leave, more than 1, to give evidence on the question reported on by the court expert, if the party gives notice of the intention to do so a reasonable time before the trial.

(2) The court must not grant leave under subclause (1) unless the circumstances are exceptional.

Compare: 1908 No 89 Schedule 2 r ~~330~~ 9.42 (as substituted by 2008 No 90 s 8)

9.43 Expert witness to comply with code of conduct

(1) A party to a proceeding who engages an expert witness must give the expert witness a copy of the code of conduct set out in Schedule 4.

(2) An expert witness must—

(a) state in any written statement of the proposed evidence of the witness served under rule 9.2 or 9.3, or at the time of giving any oral evidence, or in any affidavit containing the evidence of the expert witness, that the expert witness has read the code of conduct and agrees to comply with it:

(b) comply with the code of conduct in preparing any written statement of the proposed evidence of the witness to be served under rule 9.2 or 9.3 or in giving any oral or affidavit evidence in any proceeding.

(3) The evidence of an expert witness who has not complied with subclause (2)(a) may be offered only with the leave of the court.

Compare: 1908 No 89 Schedule 2 r ~~330A~~ 9.43 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 5—*continued*

9.44 Court may direct conference of expert witnesses

(1) The court may, on its own initiative or on the application of a party to a proceeding, direct expert witnesses to—
  (a) confer on specified matters:
  (b) confer in the absence of the legal advisers of the parties:
  (c) try to reach agreement on matters in issue in the proceeding:
  (d) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement:
  (e) prepare the joint witness statement without the assistance of the legal advisers of the parties.

(2) The court must not give a direction under subclause (1)(b) or (e) unless the parties agree.

(3) The court may, on its own initiative or on the application of a party to the proceeding,—
  (a) appoint an independent expert to convene and conduct the conference of expert witnesses:
  (b) give any directions for convening and conducting the conference the court thinks just.

(4) The court may not appoint an independent expert or give a direction under subclause (3) unless the parties agree.

(5) Subject to any subsequent order of the court as to costs, the court may determine the remuneration of an independent expert and the party by whom it must be paid.

(6) The matters discussed at the conference of the expert witnesses must not be referred to at the hearing unless the parties by whom the expert witnesses have been engaged agree.

(7) An independent expert appointed under subclause (3) may not give evidence at the hearing unless the parties agree.

Compare: 1908 No 89 Schedule 2 r ~~330B~~ 9.44 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 5—*continued*

9.45 Status of joint witness statement by expert witnesses

(1) A joint witness statement prepared by expert witnesses under rule 9.44—

(a) must be circulated by the parties to the proceeding by whom the expert witnesses have been engaged to every other party who has given an address for service; and

(b) may be produced in evidence by any expert witness who signed the statement; and

(c) may, if the parties to the proceeding agree, be produced in evidence without the need to call any of the expert witnesses who signed the statement.

(2) Rules 9.4 to 9.11 apply, with all necessary modifications, to a joint witness statement as if the statement were a written statement under rule 9.2 or 9.3.

(3) An expert witness is not precluded from giving evidence on any matter at the hearing simply because the expert witness has participated in the preparation of a joint witness statement under rule 9.44 or because the witness statement is evidence at the hearing under rule 9.6.

Compare: 1908 No 89 Schedule 2 r ~~330C~~ 9.45 (as substituted by 2008 No 90 s 8)

9.46 Evidence of expert witnesses at trial

The court may, at the hearing, direct that the evidence of expert witnesses is given after all or certain factual evidence is given or in a sequence the court thinks best suited to the circumstances of the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~330D~~ 9.46 (as substituted by 2008 No 90 s 8)

Subpart 6—Preserving evidence

9.47 Right to preserve evidence

A person may apply by originating application for an order for the examination of a witness whose evidence may be material for establishing a right or claim—

High Court Rules—*continued*
Part 9—*continued*
Subpart 6—*continued*

(a) to any estate or interest in property, or to any other relief, to which the person would, in the circumstances alleged to exist, become entitled, on the happening of a future event; and

(b) that cannot be established before the happening of the future event.

Compare: 1908 No 89 Schedule 2 r ~~443~~ 9.47 (as substituted by 2008 No 90 s 8)

9.48 Procedures in which the Crown may have interest

If the Crown may have an estate or interest in the property or in the right or claim, the applicant may join the Crown as a respondent.

Compare: 1908 No 89 Schedule 2 r ~~444~~ 9.48 (as substituted by 2008 No 90 s 8)

9.49 Examination of witness

An application under rule 9.47 is not to be set down for hearing but the court may make an appropriate order under rules 9.17 to 9.19 for the examination of a witness (whether offered by the applicant or another party).

Compare: 1908 No 89 Schedule 2 r ~~445~~ 9.49 (as substituted by 2008 No 90 s 8)

9.50 Subsequent admissibility

Evidence taken under rule 9.49 may subsequently be offered at the trial of a proceeding to enforce the claim or interest to which it relates and is admissible unless it is inadmissible in whole or in part under the Evidence Act 2006.

Compare: 1908 No 89 Schedule 2 r ~~446~~ 9.50 (as substituted by 2008 No 90 s 8)

Subpart 7—Evidence at trial

9.51 Evidence to be given orally

Unless otherwise directed by the court or required or authorised by these rules or by an Act, disputed questions of fact arising at the trial of any proceeding must be determined on evi-

High Court Rules—*continued*
Part 9—*continued*
Subpart 7—*continued*

dence given by means of witnesses examined orally in open court.

Compare: 1908 No 89 Schedule 2 r ~~496~~ 9.51 (as substituted by 2008 No 90 s 8)

9.52 Issue of subpoenas

(1) Orders of subpoena in form G 25 to require the attendance of witnesses at the trial to testify or to produce documents, or both, may be obtained by any party, at any time after the filing of the statement of claim.

(2) A party requiring the issue of an order of subpoena must file a written request to obtain it.

(3) The names of more than 1 witness may be included in an order of subpoena, but it is not necessary to show the names on the written request.

(4) Upon receiving a written request under this rule the Registrar must forthwith issue the order or orders of subpoena requested.

Compare: 1908 No 89 Schedule 2 r ~~497~~ 9.52 (as substituted by 2008 No 90 s 8)

9.53 Service of subpoena

The order of subpoena must be served on the witness personally, by leaving a sealed copy of it with the witness, together with any allowances and travelling expenses required by **section 39** of the Act.

Compare: 1908 No 89 Schedule 2 r ~~498~~ 9.53 (as substituted by 2008 No 90 s 8)

9.54 Evidence of person in custody

An application for an order under section 65 of the Corrections Act 2004 may be made without notice.

Compare: 1908 No 89 Schedule 2 r ~~499~~ 9.54 (as substituted by 2008 No 90 s 8)

9.55 Affidavit evidence by agreement

(1) In a proceeding heard by a Judge alone, the parties may file an agreement signed by the parties, that the evidence, or any part of the evidence, is to be given by affidavit.

High Court Rules—*continued*
Part 9—*continued*
Subpart 7—*continued*

(2) Despite an agreement filed under subclause (1), the court may direct that evidence of any disputed fact or issue be given in accordance with rule 9.51.

Compare: 1908 No 89 Schedule 2 r ~~500~~ 9.55 (as substituted by 2008 No 90 s 8)

9.56 Affidavit evidence under order of court

(1) The court may, even though no agreement for the giving of evidence by affidavit has been made, at any time for sufficient reason order, on reasonable conditions,—

(a) that any particular fact or facts may be proved by affidavit; or

(b) that the evidence of any witness may be given by affidavit read at the trial or on any application for judgment.

(2) Despite subclause (1), an order must not be made authorising the evidence of the witness to be given by affidavit if—

(a) an opposite party desires the production of a witness for cross-examination; and

(b) the witness can be produced.

(3) Subclause (2) is subject to any order made under rule 7.2 or 7.8, as the case requires.

Compare: 1908 No 89 Schedule 2 r ~~501~~ 9.56 (as substituted by 2008 No 90 s 8)

9.57 Agreed statement of facts

(1) If the parties so agree, the evidence at the trial of any proceeding heard by a Judge alone, or any issue in that proceeding, may be given, without examining any witnesses or filing any affidavits, by a statement of facts agreed upon by the parties.

(2) Despite the agreement, the court may direct that evidence of any fact or matter be given in accordance with rule 9.51 or 9.56.

(3) Every agreement under subclause (1) must be in writing signed by the parties and must be filed.

High Court Rules—*continued*
Part 9—*continued*
Subpart 7—*continued*

(4) The agreement must set out the facts agreed upon and the court is entitled to draw any necessary inferences from the agreed facts.

Compare: 1908 No 89 Schedule 2 r ~~502~~ 9.57 (as substituted by 2008 No 90 s 8)

Subpart 8—Evidence in Trans-Tasman proceedings

9.58 Interpretation

In rules 9.59 to 9.67, unless the context otherwise requires, terms that are defined in the Evidence Act 2006 have the meanings given to them by that Act.

Compare: 1908 No 89 Schedule 2 r ~~502A~~ 9.58 (as substituted by 2008 No 90 s 8)

9.59 Issue of subpoenas by High Court for service in Australia

(1) An order of subpoena of the High Court for service on a witness in Australia that requires the witness to testify, whether or not it also requires the witness to produce documents or things, must be in form G 26.

(2) An order of subpoena of the High Court for service on a witness in Australia that requires the witness to produce documents or things, but does not require the witness to testify, must be in form G 27.

(3) An order of subpoena referred to in subclause (1) or (2) may be obtained in the same manner and subject to the same conditions as an order of subpoena under rule 9.52.

Compare: 1908 No 89 Schedule 2 r ~~502B~~ 9.59 (as substituted by 2008 No 90 s 8)

9.60 Leave to serve New Zealand subpoena on witness in Australia

(1) An application for leave to serve a New Zealand subpoena on a witness in Australia must be made without notice by originating application and Part 19 applies, with all necessary modifications, to the application.

High Court Rules—*continued*
Part 9—*continued*
Subpart 8—*continued*

(2) Every application for leave to serve a New Zealand subpoena on a witness in Australia must be accompanied by an affidavit containing the following matters:

(a) the name, occupation, and residential address of the witness:

(b) proof that the witness has attained the age of 18 years:

(c) if the subpoena requires the witness to testify and to attend at the New Zealand court, whether consideration has been given to requiring the witness to testify from Australia by remote appearance medium and the reason it is not considered appropriate that the witness do so:

(d) the latest date proposed for service of the subpoena:

(e) if the subpoena requires the witness to attend at the New Zealand court or at any other place,—

(i) the availability of suitable means of transport to enable the witness to comply with the subpoena:

(ii) an estimate of the length of time that the witness will be required to attend at the court or other place:

(iii) an estimate of the cost of transport and accommodation likely to be incurred by the witness in complying with the subpoena:

(f) the amounts or the amounts represented by vouchers, as the case may be, proposed to be paid or tendered to the witness to enable the witness to comply with the subpoena:

(g) if the applicant is aware of any fact or circumstance that may constitute a ground for setting the subpoena aside under section 160 of the Evidence Act 2006, the fact or circumstance.

(3) A Judge may direct that a New Zealand subpoena be served in Australia on a body corporate by serving the subpoena on a member, officer, or employee of the body corporate in the manner the Judge directs.

High Court Rules—*continued*
Part 9—*continued*
Subpart 8—*continued*

(4) The file relating to an application must be kept separate from the file relating to the proceeding to which the subpoena relates.

(5) As provided in rule ~~3.11~~ 3.12(4), no document relating to an application under this rule may be searched, inspected, or copied without the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r ~~502C~~ 9.60 (as substituted by 2008 No 90 s 8)

9.61 Service of subpoena on witness in Australia

Every statement that, in accordance with section 156 of the Evidence Act 2006, is required to accompany a subpoena that is served on a witness in Australia must be in form G 28.

Compare: 1908 No 89 Schedule 2 r ~~502D~~ 9.61 (as substituted by 2008 No 90 s 8)

9.62 Application to set aside New Zealand subpoena

(1) An application to set aside a New Zealand subpoena served on a witness in Australia may be filed by—

(a) a person who is entitled to file documents under these rules; or

(b) a person who is entitled to practise as a solicitor of a Supreme Court of a State or Territory of Australia.

(2) The application—

(a) may state (for the purposes of rule 9.64(1)) that a hearing is required to determine the application; and

(b) may be filed by sending it by fax or email to the registry of the relevant court in which leave to serve the subpoena was given.

(3) Every application must be made by way of interlocutory application.

(4) The heading on the application may be the same as the heading on the order granting leave to serve the subpoena.

(5) Every application—

High Court Rules—*continued*
Part 9—*continued*
Subpart 8—*continued*

(a) must state an address in New Zealand or Australia that is the applicant's address for service:
(b) may state a fax number in New Zealand or Australia to which documents relating to the application may be sent to the applicant.

(6) If the application is filed by fax or email, the Registrar—
(a) must send by fax or email to the applicant or the applicant's solicitor, as the case may be, an acknowledgement that the application has been received:
(b) may, if the application is not clear or legible, require the applicant or the applicant's solicitor, as the case may be, to transmit the application by fax or email again.

Compare: 1908 No 89 Schedule 2 r ~~502E~~ 9.62 (as substituted by 2008 No 90 s 8)

9.63 Service of documents on applicant

(1) A document relating to an application to set aside a New Zealand subpoena may be served on the applicant by—
(a) leaving it at, or posting it to, the address for service of the applicant stated in the application; or
(b) if a fax number is stated in the application, sending it by fax to that number.

(1A) If a document relating to the application is served on the applicant by post in accordance with subclause (1)(a), it is to be treated as having been served on the earlier of—
(a) the sixth working day after the day on which it was posted; and
(b) the day on which it was received.

(2) If a document relating to the application is served on the applicant by fax, the document must, subject to subclauses (3) and (4), be treated as having been served on the day on which it was sent.

(3) If a document is sent by fax to a fax number in a State or Territory of Australia at a time later than 5 pm in that State or Territory, the document must, subject to subclause (4), be

High Court Rules—*continued*
Part 9—*continued*
Subpart 8—*continued*

treated as having been served on the first working day after the day on which it was sent.

(4) A document sent to a fax number in Australia must, unless the contrary is proved, be treated as having been received in a complete and legible condition.

Compare: 1908 No 89 Schedule 2 r ~~502F~~ 9.63 (as substituted by 2008 No 90 s 8)

9.64 Hearing of application

(1) Despite any other rule, if neither the applicant for an order to set aside a New Zealand subpoena nor the person at whose request the subpoena was issued states that a hearing is required, the court may determine an application to set the subpoena aside without a hearing.

(2) For the purposes of determining an application, the court may, if it thinks fit, hold a hearing by remote appearance medium under section 168 of the Evidence Act 2006.

(3) Subject to the Evidence Act 2006, the court must hold a hearing by remote appearance medium if the applicant requests, either in the application or within a reasonable time after the filing of the application, that a hearing be held by video link or telephone conference.

Compare: 1908 No 89 Schedule 2 r ~~502G~~ 9.64 (as substituted by 2008 No 90 s 8)

9.65 Failure to comply with subpoena

A certificate under section 161 of the Evidence Act 2006 must be in form G 29.

Compare: 1908 No 89 Schedule 2 r ~~502H~~ 9.65 (as substituted by 2008 No 90 s 8)

9.66 Transmission of documents or things to Australian Court

(1) Every person who produces a document or thing at a registry of the court in compliance with an Australian subpoena must provide the Registrar with a copy of the subpoena.

High Court Rules—*continued*
Part 9—*continued*
Subpart 8—*continued*

(2) When a document or thing is produced at a registry of the court, the Registrar must, on compliance with subclause (1),—
(a) issue a receipt for the document or thing that states the date and time of its production; and
(b) send to the Registrar of the Australian Court that issued the subpoena, by fax or other means of communication, a copy of the receipt and of the subpoena; and
(c) send the document or thing together with a copy of the subpoena, without delay, to the Australian Court by means enabling it to be received before the date on which it is required to be produced to that court.

Compare: 1908 No 89 Schedule 2 r ~~502~~ 9.66 (as substituted by 2008 No 90 s 8)

9.67 Evidence and submissions by remote appearance medium from Australia

(1) An application under section 168 of the Evidence Act 2006 for a direction that evidence be given from Australia or submissions be made from Australia by remote appearance medium may be made without notice. Except in the case of an application under section 160 of that Act, the application must be accompanied by an affidavit stating—
(a) the nature of the evidence or the submissions:
(b) the place in Australia from which the evidence is to be given or the submissions are to be made:
(c) if it is proposed that evidence be given or submissions be made by audiovisual link, particulars of the audiovisual link facilities available at the courtroom or other place where the court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:
(d) if it is proposed that evidence be given or submissions be made by audio link, particulars of the audio link facilities available at the courtroom or other place where the court is to sit in New Zealand and at the place where

High Court Rules—*continued*
Part 9—*continued*
Subpart 8—*continued*

the evidence is to be given or the submissions are to be made in Australia:

(e) in a case where evidence is proposed to be given, an estimate of the time the evidence will take:

(f) whether issues of character or credibility are likely to be raised:

(g) in a case in which submissions are proposed to be made, an estimate of the time required to make the submissions.

(2) When the court gives a direction under section 168 of the Evidence Act 2006, it must instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions that the court may make.

(3) Without limiting subclause (2), the court may—

(a) direct that the evidence be given or the submissions be made at an Australian court or at another place in Australia:

(b) request that an officer of an Australian court or other person approved by the Judge be present to assist in the transmission of evidence or submissions, and in particular to—

(i) introduce witnesses giving evidence or a barrister or solicitor (or both) making submissions:

(ii) assist with the administration of oaths:

(iii) assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions.

(4) In this rule, **evidence** includes the related examination of a person giving evidence.

Compare: 1908 No 89 Schedule 2 r ~~502J~~9.67 (as substituted by r 21 of the High Court (Trans-Tasman Proceedings Act 2010) Amendment Rules 2013)

High Court Rules—*continued*
Part 9—*continued*

Subpart 9—Procedure when evidence given by affidavit

9.68 Application of rules 9.69 to 9.74

(1) Rules 9.69 to 9.74 apply subject to a direction by the court and to any rule affecting a particular kind of proceeding.

(2) In this subpart, **taker** means the person before whom an affidavit is sworn or an affirmation is made.

Compare: 1908 No 89 Schedule 2 r ~~503~~ 9.68 (as substituted by 2008 No 90 s 8)

9.69 Time for filing plaintiff's affidavits

(1) In this rule, **the prescribed date** means,—

(a) if the parties have agreed under rule 9.55 that evidence be given by affidavit, the date when the agreement was filed:

(b) when these rules provide that the evidence be given by affidavit, the close of pleadings date fixed under rule 7.6.

(2) Within 10 working days after the prescribed date the plaintiff must, subject to rule 19.11, file the plaintiff's affidavits and serve copies on the other parties.

Compare: 1908 No 89 Schedule 2 r ~~504~~ 9.69 (as substituted by 2008 No 90 s 8)

9.70 Time for filing defendant's affidavits

The defendant must, within 10 working days after service of the plaintiff's affidavits, file the defendant's affidavits and serve copies of them on the plaintiff and on any other party.

Compare: 1908 No 89 Schedule 2 r ~~505~~ 9.70 (as substituted by 2008 No 90 s 8)

9.71 Time for filing affidavits in reply

Within 10 working days after service on the plaintiff of the defendant's affidavits, the plaintiff must file the plaintiff's affidavits in reply and serve copies of them on the defendant and on any other party.

Compare: 1908 No 89 Schedule 2 r ~~506~~ 9.71 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 9—*continued*

9.72 Use of affidavits

(1) No affidavit may be read or used until it has been filed.

(2) When an affidavit has been filed, it may be used by any party.

(3) An affidavit may not be taken off the file without the leave of the court.

Compare: 1908 No 89 Schedule 2 r ~~507~~ 9.72 (as substituted by 2008 No 90 s 8)

9.73 Swearing of affidavits

(1) An affidavit may be read and used in a proceeding only if it complies either with subclause (2) or (3).

(2) A sworn affidavit must be sworn—

(a) in accordance with the Oaths and Declarations Act 1957; and

(b) before a person authorised to administer oaths under that Act or under rule 9.85 or 9.86.

(3) An affirmed affidavit must comply with the Oaths and Declarations Act 1957.

Compare: 1908 No 89 Schedule 2 r ~~520~~ 9.73 (as substituted by 2008 No 90 s 8)

9.74 Cross-examination of person who has sworn affidavit

(1) A party desiring to cross-examine a person who has sworn or affirmed an affidavit on behalf of an opposite party may serve on that opposite party a notice in writing (which may be by letter addressed to the opposite party's solicitor) requiring the production of that person for cross-examination before the court at the trial.

(2) The notice must be served, and copies of it filed in the court and delivered to all other parties who have taken any step in the proceeding, not less than 3 working days before the day fixed for the trial.

(3) The affidavit of a person who is not produced must not be used as evidence unless the evidence is routine, or there are exceptional circumstances, and in either case the court grants leave.

High Court Rules—*continued*
Part 9—*continued*
Subpart 9—*continued*

(4) The party to whom the notice is given is entitled to compel the attendance of the person who has sworn an affidavit for cross-examination in the same way as that party might compel the attendance of a witness to be examined.

Compare: 1908 No 89 Schedule 2 r ~~508~~ 9.74 (as substituted by 2008 No 90 s 8)

9.75 Person refusing to make affidavit

(1) If a person having information relevant to a proceeding or an interlocutory application refuses to make an affidavit as to that information, a party may apply for an order directing the person to appear and be examined on oath before the court, or any person the court appoints, as to that information.

(2) The court may—

(a) make any orders the court thinks just for the attendance of that person before the court, or before the person named in the order, for the purpose of being examined, and for the production of any documents specified in the order; and

(b) impose any terms the court thinks just, as to the examination and the costs of and incidental to the application and examination.

Compare: 1908 No 89 Schedule 2 r ~~509~~ 9.75 (as substituted by 2008 No 90 s 8)

9.76 Form and contents of affidavits

(1) An affidavit—

(a) must be expressed in the first person; and

(b) must state the full name, occupation, and place of residence of the person making it; and

(c) must either—

(i) be signed by that person; or

(ii) if that person cannot write, have that person's mark set to it by that person; and

(d) must be confined—

(i) to matters that would be admissible if given in evidence at trial by the deponent; and

High Court Rules—*continued*
Part 9—*continued*
Subpart 9—*continued*

(ii) if in reply, to matters strictly in reply.

(2) The court—

(a) may refuse to read an affidavit that—

(i) unnecessarily sets forth any argumentative matter or copies of or extracts from documents; or

(ii) being in reply, introduces new matter; and

(b) may order that the costs incurred in respect of or occasioned by an affidavit to which paragraph (a) applies be paid by the party filing the affidavit.

(3) The taker must sign the affidavit after the signature of the person making it, and must state the date and place of swearing or affirming the affidavit and the taker's qualification (in this subpart referred to as the **statement by the taker**).

(4) If an affidavit has more than 1 page,—

(a) the deponent must initial or set the deponent's mark on each page (not including the cover sheet) that precedes the page on which the statement by the taker in accordance with subclause (3) appears; and

(b) the taker must initial each of those pages.

(5) This rule does not limit the extent to which subpart 2 of Part 5 applies in respect of affidavits.

Compare: 1908 No 89 Schedule 2 r ~~510~~ 9.76 (as substituted by 2008 No 90 s 8)

9.77 Exhibits to affidavits

(1) Exhibits to an affidavit—

(a) must be marked, in each case, with a distinguishing letter or number; and

(b) must be annexed to the affidavit—

(i) if this is practicable; and

(ii) if none of them exceed international size A4; and

(c) must, in each case, be identified by a note made on it and signed by the taker.

High Court Rules—*continued*
Part 9—*continued*
Subpart 9—*continued*

(2) Exhibits that are not annexed to the affidavit must, subject to subclause (3), be filed with the affidavit in a separate bundle, which bundle must—
  (a) be securely bound; and
  (b) include a sheet bearing a proper heading, endorsement, and subscription.

(3) If the size, shape, or nature of an exhibit makes it impracticable to comply with subclause (1)(b) or (2), that exhibit must have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.

Compare: 1908 No 89 Schedule 2 r ~~511~~ 9.77 (as substituted by 2008 No 90 s 8)

9.78 Interlineation, alteration, or erasure in affidavit

An affidavit having in the statement by the taker or its contents an interlineation, alteration, or erasure must not, without leave of the court, be read or made use of in a proceeding unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the taker, or, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the taker.

Compare: 1908 No 89 Schedule 2 r ~~513~~ 9.78 (as substituted by 2008 No 90 s 8)

9.79 Irregularity in form of affidavit

The court may receive any affidavit sworn or affirmed for the purpose of being used in any proceeding, despite any defect by misdescription of parties in the title or statement by the taker, or any other irregularity in its form, and may direct that a note be made on the document that it has been so received.

Compare: 1908 No 89 Schedule 2 r ~~514~~ 9.79 (as substituted by 2008 No 90 s 8)

9.80 Service copies of affidavits

Every service copy of an affidavit must be legible and, when practicable, include legible copies of all exhibits.

Compare: 1908 No 89 Schedule 2 r ~~515~~ 9.80 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 9—*continued*

9.81 Affidavit may be sworn on Sunday

An affidavit may be sworn or affirmed on any day, including Sunday.

Compare: 1908 No 89 Schedule 2 r ~~516~~ 9.81 (as substituted by 2008 No 90 s 8)

9.82 Affidavits made on behalf of corporation

A person may make an affidavit on behalf of a corporation or body of persons empowered by law to sue or to be sued (whether in the name of the body or in the name of the holder of an office) if the person—

(a) knows the relevant facts; and

(b) is authorised to make the affidavit.

Compare: 1908 No 89 Schedule 2 r ~~517~~ 9.82 (as substituted by 2008 No 90 s 8)

9.83 Affidavit by 2 or more persons

In an affidavit made by 2 or more persons, the names of each of those persons must be inserted in the statement by the taker. If, however, the affidavit of those persons is sworn (or affirmed) at the same time before the same person, it is sufficient to state that it was sworn (or affirmed) by both (or all) of the "persons named above".

Compare: 1908 No 89 Schedule 2 r ~~518~~ 9.83 (as substituted by 2008 No 90 s 8)

9.84 Affidavit by blind or illiterate person

If it appears to the taker that the person making the affidavit is wholly or partially blind, or (whether because of physical handicap or otherwise) is unable to read or has severe difficulty in reading, the taker must certify in the affidavit—

(a) that the affidavit was read and explained by him or her to the person; and

(b) that the person appeared perfectly to understand the affidavit; and

(c) that the person wrote his or her signature or made his or her mark in the presence of the taker.

Compare: 1908 No 89 Schedule 2 r ~~519~~ 9.84 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 9—*continued*

9.85 Authority to take affidavits in New Zealand

(1) An affidavit may be sworn in New Zealand before a solicitor of the court or a Registrar or a Justice of the Peace.

(2) No affidavit, other than one sworn in respect of a non-contentious proceeding, may be read or used if it was sworn before a solicitor who, at the time of taking it, was acting as—
- (a) the solicitor of a party to the proceeding; or
- (b) a partner in, or a solicitor employed or engaged by, the firm of the solicitor of a party to the proceeding; or
- (c) the agent of the solicitor of a party to the proceeding.

(3) Subclause (2) overrides subclause (1).

(4) In this rule,—

Registrar includes—
- (a) a Deputy Registrar of the High Court:
- (b) a Registrar of the District Court:
- (c) a Deputy Registrar of the District Court

solicitor means a person enrolled as a barrister and solicitor of the High Court.

Compare: 1908 No 89 Schedule 2 r ~~521~~ 9.85 (as substituted by 2008 No 90 s 8)

9.86 Authority to take affidavits in places outside New Zealand

(1) An affidavit may be sworn in a place outside New Zealand before—
- (a) a Commissioner of the High Court of New Zealand who has authority in that place; or
- (b) a person who is authorised to administer oaths by the law of that place; or
- (c) a person who is authorised by a Judge to administer the oath required for the affidavit.

(2) The person administering an oath under subclause (1) must state in the affidavit which qualification that person has.

(3) An affidavit that appears to comply with subclauses (1) and (2) must be taken to have been properly sworn unless the court

High Court Rules—*continued*
Part 9—*continued*
Subpart 9—*continued*

requires verification by evidence or other means of any matter relating to compliance with either of those subclauses.

(4) Nothing in this rule affects the administering of oaths under the Oaths and Declarations Act 1957.

Compare: 1908 No 89 Schedule 2 r ~~522~~ 9.86 (as substituted by 2008 No 90 s 8)

9.87 Meaning of authenticated deposition

In rules 9.88 and 9.89, **authenticated deposition** means a written statement—

(a) made in a place outside New Zealand before a court or a judicial or other authority or person; and

(b) the maker of which is, under the law in force in the place in which the statement is made, liable to punishment if the statement is false; and

(c) that purports to be—

(i) signed by a person holding judicial office or by an official exercising authority under the law in force in the place in which the statement is made; or

(ii) sealed with an official or public seal or with the seal of a Minister of State, or with the seal of a department or an official of the government exercising authority in the place in which the statement is made; or

(iii) endorsed with or accompanied by a certificate, given by a person having authority under the law in force in the place in which the statement is made to give the certificate, that the statement complies with the requirements of the law in force in that place and that, under that law, the maker of the statement is liable to punishment if the statement is false.

Compare: 1908 No 89 Schedule 2 r ~~523~~ 9.87 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 9—*continued*
Subpart 9—*continued*

9.88 Admissibility of authenticated deposition

Evidence that may, under these rules, be given by affidavit, may be given in an authenticated deposition.

Compare: 1908 No 89 Schedule 2 r ~~524~~ 9.88 (as substituted by 2008 No 90 s 8)

9.89 Application of other rules

(1) Rules 9.69 to 9.75 apply, with any necessary modifications, in relation to an authenticated deposition as if the deposition were an affidavit.

(2) Rule 9.88 and this rule do not affect rules 9.17 to 9.29.

Compare: 1908 No 89 Schedule 2 r ~~524A~~ 9.89 (as substituted by 2008 No 90 s 8)

Part 10
Trial
Subpart 1—Place

10.1 Venue and changing it

(1) The place of trial is the town where the registry of the court in which the statement of defence is to be filed is situated.

(2) Despite subclause (1), if that registry is in Masterton, the place of trial is Wellington.

(3) Despite subclause (1), if that registry is in Tauranga, the court may direct at any time that the place of trial is either Hamilton or Rotorua.

(4) Despite subclauses (1) to (3), the court may at any time order that the proceeding be tried at a place—

(a) that the parties consent to; or

(b) where the proceeding can be more conveniently or more fairly tried.

(5) When the court orders a change of venue, it may direct that all subsequent steps in the proceeding be taken at the place where the trial is to take place.

Compare: 1908 No 89 Schedule 2 ~~rr 123, 479~~ r 10.1 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 10—*continued*

Subpart 2—Adjournments, methods of trial, and verdicts

10.2 Adjournment of trial

The court may, before or at the trial, if it is in the interests of justice, postpone or adjourn the trial for any time, to any place, and upon any terms it thinks just.

Compare: 1908 No 89 Schedule 2 r ~~480~~ 10.2 (as substituted by 2008 No 90 s 8)

10.3 Method of trial

A proceeding must be tried either before a Judge alone or before a Judge and a jury.

Compare: 1908 No 89 Schedule 2 r ~~481~~ 10.3 (as substituted by 2008 No 90 s 8)

10.4 Court may order separate trials

When justice requires, the court may order separate trials of causes of action and it may also direct the sequence of the separate trials and make any supplementary order that is just.

Compare: 1908 No 89 Schedule 2 r ~~113~~ 10.4 (as substituted by 2008 No 90 s 8)

10.5 Existence or accuracy of record

In any proceeding tried before a Judge and a jury, any question as to the existence or accuracy of a record of the court must be determined by the Judge and not by the jury.

Compare: 1908 No 89 Schedule 2 r ~~482~~ 10.5 (as substituted by 2008 No 90 s 8)

10.6 When neither party appears

(1) If neither party appears when the proceeding is called, the court may order it to be struck out.

(2) The court may order it to be reinstated on good cause shown by either party and on any terms it thinks just.

Compare: 1908 No 89 Schedule 2 r ~~483~~ 10.6 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 10—*continued*
Subpart 2—*continued*

10.7 When only plaintiff appears

If the plaintiff appears and the defendant does not, the plaintiff must prove the cause of action so far as the burden of proof lies on the plaintiff.

Compare: 1908 No 89 Schedule 2 r ~~484~~ 10.7 (as substituted by 2008 No 90 s 8)

10.8 When only defendant appears

If the defendant appears but the plaintiff does not, the defendant,—

(a) if the claim is not admitted, is entitled to judgment dismissing the proceeding; and

(b) if there is a counterclaim, must prove it so far as the burden of proof lies on the defendant.

Compare: 1908 No 89 Schedule 2 r ~~485~~ 10.8 (as substituted by 2008 No 90 s 8)

10.9 Judgment following non-appearance may be set aside

Any verdict or judgment obtained when one party does not appear at the trial may be set aside or varied by the court on any terms that are just if there has, or may have been, a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r ~~486~~ 10.9 (as substituted by 2008 No 90 s 8)

10.10 When both parties appear

(1) If both the plaintiff and the defendant appear, the plaintiff or any other party that has the right to begin must open the case and offer any evidence in support of it.

(2) When the party who begins has closed that party's case, the other party must state his or her case and offer any evidence in support of it.

(3) After the evidence has been given, the party who did not begin may address the court generally on the case, and then the other party may address the court in reply.

(4) If, however, the party who did not begin has not offered evidence, the sequence stated in subclause (3) is reversed.

(5) This rule applies subject—

High Court Rules—*continued*
Part 10—*continued*
Subpart 2—*continued*

(a) to any directions given under rule 7.2 or 7.8, as the case requires; and
(b) to the provisions of any Act.

Compare: 1908 No 89 Schedule 2 r ~~487~~ 10.10 (as substituted by 2008 No 90 s 8)

10.11 When proceeding tried with jury

(1) When the proceeding is tried with a jury, the Judge must, after the conclusion of counsels' addresses, direct the jury on the evidence given in the case and on any relevant points of law.
(2) The Judge may leave the case to the jury generally to find for either party, or may ask the jury to answer the issues the Judge has settled, and take the verdict of the jury on those issues only.
(3) The jury may, instead of finding a verdict for either party, state the facts as they find them to have been proved.
(4) The statement must be put into writing and signed by the foreman of the jury before the jury is discharged.
(5) The jury may give a verdict for either party, subject to a special case to be stated by the parties.
(6) This rule applies subject to the provisions of any Act.

Compare: 1908 No 89 Schedule 2 r ~~488~~ 10.11 (as substituted by 2008 No 90 s 8)

Subpart 3—Consolidation of proceedings

10.12 When order may be made

The court may order that 2 or more proceedings be consolidated on terms it thinks just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them, if the court is satisfied—

(a) that some common question of law or fact arises in both or all of them; or
(b) that the rights to relief claimed therein are in respect of or arise out of—
  (i) the same event; or
  (ii) the same transaction; or

High Court Rules—*continued*
Part 10—*continued*
Subpart 3—*continued*

(iii) the same event and the same transaction; or
(iv) the same series of events; or
(v) the same series of transactions; or
(vi) the same series of events and the same series of transactions; or

(c) that for some other reason it is desirable to make an order under this rule.

Compare: 1908 No 89 Schedule 2 r ~~382~~ 10.12 (as substituted by 2008 No 90 s 8)

10.13 Application of rule 10.12

Rule 10.12 applies even though—

(a) the relief claimed in the proceedings is not the same; or
(b) 1 or more of the proceedings—
  (i) is pending in the court in the exercise of its admiralty jurisdiction; or
  (ii) is brought under the provisions of an Act conferring special jurisdiction on the court.

Compare: 1908 No 89 Schedule 2 r ~~383~~ 10.13 (as substituted by 2008 No 90 s 8)

Subpart 4—Separate decision of questions

10.14 Definition of question

In rules 10.15 to 10.21, **question** includes any question or issue in any proceeding, whether of fact or of law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties, or otherwise.

Compare: 1908 No 89 Schedule 2 r ~~417~~ 10.14 (as substituted by 2008 No 90 s 8)

10.15 Orders for decision

The court may, whether or not the decision will dispose of the proceeding, make orders for—

(a) the decision of any question separately from any other question, before, at, or after any trial or further trial in the proceeding; and

High Court Rules—*continued*
Part 10—*continued*
Subpart 4—*continued*

(b) the formulation of the question for decision and, if thought necessary, the statement of a case.

Compare: 1908 No 89 Schedule 2 r ~~418~~ 10.15 (as substituted by 2008 No 90 s 8)

10.16 Removal into Court of Appeal

If the court orders the separate decision of a question of law under rule 10.15, it may further order that it be removed into the Court of Appeal.

Compare: 1908 No 89 Schedule 2 r ~~419~~ 10.16 (as substituted by 2008 No 90 s 8)

10.17 Agreed result

(1) The parties to a proceeding in which an order is sought or has been made under rule 10.15 may agree that, on any question being decided in the sense specified in the agreement, a specified direction for entry of judgment or a specified order will be made.

(2) On that question being so decided, the court may make the agreed direction or order.

(3) Where an agreement is made under subclause (1) before a case is stated, the terms of the agreement must be set out in the case stated.

Compare: 1908 No 89 Schedule 2 r ~~420~~ 10.17 (as substituted by 2008 No 90 s 8)

10.18 Record, etc, of decision

When any question is decided under an order made under rule 10.15, the court must, subject to rule 10.19, either—

(a) cause the decision to be recorded; or

(b) direct the entry of an appropriate declaratory judgment or order.

Compare: 1908 No 89 Schedule 2 r ~~421~~ 10.18 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 10—*continued*
Subpart 4—*continued*

10.19 Disposal of proceeding if proceeding substantially affected by decision of question

(1) This rule applies if a decision of a question under an order made under rule 10.15—

(a) substantially disposes of the proceeding or of the whole or any part of any claim for relief in the proceeding; or

(b) renders unnecessary any trial or further trial in the proceeding or on the whole or any part of any claim for relief in the proceeding.

(2) The court, at the time of deciding the question or at any subsequent time, may, as appropriate,—

(a) dismiss the proceeding or the whole or any part of any claim for relief in the proceeding; or

(b) direct the entry of any judgment; or

(c) make any other order.

Compare: 1908 No 89 Schedule 2 r ~~422~~ 10.19 (as substituted by 2008 No 90 s 8)

10.20 Form and contents of case

A case stated under an order under rule 10.15—

(a) must be divided into paragraphs numbered consecutively; and

(b) must state concisely any facts, and attach any documents that are necessary to enable the court to hear and decide the questions arising on the case stated; and

(c) must state the questions and matters to be decided.

Compare: 1908 No 89 Schedule 2 r ~~423~~ 10.20 (as substituted by 2008 No 90 s 8)

10.21 Insufficient case or disputed facts or documents

If a case stated does not state the facts and documents sufficiently to enable the court to decide the questions arising, or otherwise to hear and determine the questions and matters on the case stated, or in any case in which any relevant fact or document is disputed, the court may,—

(a) with the consent of all parties interested, amend the case stated; or

High Court Rules—*continued*
Part 10—*continued*
Subpart 4—*continued*

(b) receive evidence, make findings of fact, and amend the case stated in accordance with the findings of fact of the court.

Compare: 1908 No 89 Schedule 2 r ~~424~~ 10.21 (as substituted by 2008 No 90 s 8)

Subpart 5—Counsel assisting

10.22 Counsel assisting

At the request of the court, the Solicitor-General must appoint counsel to appear and be heard as counsel assisting the court.

Compare: 1908 No 89 Schedule 2 r ~~438A~~ 10.22 (as substituted by 2008 No 90 s 8)

Subpart 6—Hearings by video link

10.23 Interpretation

In this subpart,—

eligible persons means the persons that the Judge considers should be treated as eligible persons for the purposes of a hearing by video link

judicial location means the courtroom or other place where the Judge hearing a matter by video link is located

remote location means the courtroom or other place, outside the judicial location, where a party, witness, counsel, or other person participating in the hearing of a matter by video link is located

video link means facilities that enable audio and visual communication between persons at a judicial location and persons at a remote location.

Compare: 1908 No 89 Schedule 2 r 10.23 (as inserted by r 7 of the High Court Amendment Rules (No 2) 2009)

10.24 Judge may preside at hearing of certain matters by video link

(1) A Judge may, by video link, preside at the hearing of any matter referred to in **section 19** of the Act.

High Court Rules—*continued*
Part 10—*continued*
Subpart 6—*continued*

(2) A Judge may direct that a matter be heard by video link on the application of 1 or more parties or on the Judge's own initiative.

(3) This rule is subject to rule 10.25.

(4) This rule does not limit or affect the inherent jurisdiction of the court.

Compare: 1908 No 89 Schedule 2 r 10.24 (as inserted by r 7 of the High Court Amendment Rules (No 2) 2009)

10.25 Requirements for hearing by video link

A Judge must not preside at the hearing of a matter by video link under rule 10.24 unless he or she is satisfied that—

(a) the judicial location and every remote location is equipped with facilities that will—

(i) enable all eligible persons at every remote location to see and hear the Judge and all eligible persons at the judicial location; and

(ii) enable the Judge and all eligible persons at the judicial location to see and hear all eligible persons at every remote location; and

(iii) enable any document necessary for the purposes of the hearing to be viewed at both the judicial location and every remote location; and

(b) use of a video link is, in all the circumstances, consistent with fairness and the interests of justice.

10.26 Incidental directions

(1) A Judge presiding at the hearing of a matter by video link under rule 10.24 may give directions concerning the procedure for the hearing as he or she thinks fit.

(2) Without limiting subclause (1), the Judge may—

(a) direct that an officer of the court, or other person approved by the court, be present to operate video equipment:

High Court Rules—*continued*
Part 10—*continued*
Subpart 6—*continued*

(b) direct that an officer of the court, or other person approved by the court, be present to assist in the hearing, and in particular to—
  (i) introduce persons appearing or witnesses giving evidence:
  (ii) assist with the administration of oaths and affirmations:
  (iii) assist with the implementation of any directions or requests given or made by the Judge:
(c) direct seating arrangements at a remote location to ensure all participants in the hearing can be seen and heard:
(d) direct when the video link must be operational in relation to his or her own entry to, or rising from, the judicial location.

Compare: 1908 No 89 Schedule 2 r 10.26 (as inserted by r 7 of the High Court Amendment Rules (No 2) 2009)

Part 11
Judgment

Subpart 1—General provisions

11.1 Interpretation

In this Part,—

delivery time has the meaning set out in rule 11.5

judgment includes a decree or order of the court

reasons for judgment means—

(a) the written reasons given by a Judge for his or her decision; or
(b) when the Judge gives reasons orally, means a report, approved by the Judge, of those reasons.

Compare: 1908 No 89 Schedule 2 r ~~539~~ 11.1 (as substituted by 2008 No 90 s 8)

11.2 Types of judgment

A judgment may—

High Court Rules—*continued*
Part 11—*continued*
Subpart 1—*continued*

(a) be interim; or
(b) be final; or
(c) deal with any question or issue; or
(d) order any accounts, inquiries, acts, or steps that the court considers necessary.

Compare: 1908 No 89 Schedule 2 r ~~531(1)~~ 11.2 (as substituted by 2008 No 90 s 8)

11.3 How judgment given

(1) A Judge may give a judgment—
(a) in writing; or
(b) orally—
(i) if the conditions in subclause (2) apply; or
(ii) on an application without notice.

(2) The conditions are that the affected parties or their counsel have been given a reasonable opportunity—
(a) to be present when the judgment is given; or
(b) to hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.

Compare: 1908 No 89 Schedule 2 r ~~540(1), (2)~~ 11.3 (as substituted by 2008 No 90 s 8)

11.4 Time judgment given

(1) A judgment is given orally when the Judge pronounces it, with or without reasons.

(2) A written judgment is given at the delivery time directed or nominated under rule 11.5.

Compare: 1908 No 89 Schedule 2 r ~~540(3), (4)~~ 11.4 (as substituted by 2008 No 90 s 8)

11.5 Delivery time of written judgment

The **delivery time** of a written judgment is—
(a) the date and time directed by the Judge responsible for it; or

High Court Rules—*continued*
Part 11—*continued*
Subpart 1—*continued*

(b) if no direction is given under paragraph (a), a date and time nominated by the Registrar under rule 11.14.

Compare: 1908 No 89 Schedule 2 r ~~540(4), (5)~~ 11.5 (as substituted by 2008 No 90 s 8)

11.6 Form of judgment

(1) Judgments must be drawn up in a form approved by the Registrar.

(2) Forms J 1 to J 4 must be used, as appropriate.

Compare: 1908 No 89 Schedule 2 r ~~541(1), (2)~~ 11.6 (as substituted by 2008 No 90 s 8)

11.6A General court order

(1) This rule applies to any order of the court, other than an order on an interlocutory application or an order that under these rules must or may be drawn up in a particular form.

(2) When this rule applies, the order of the court must be in form G 40.

Compare: 1908 No 89 Schedule 2 r 11.6A (as inserted by r 6 of the High Court Amendment Rules (No 2) 2010)

11.7 Duplicate judgments

Duplicates of a judgment, with the word duplicate on the front page, may be issued to any party.

Compare: 1908 No 89 Schedule 2 r ~~541A~~ 11.7 (as substituted by 2008 No 90 s 8)

11.8 Death or incapacity of Judge before judgment

(1) A Judge or the Registrar may give a judgment or deliver the reasons for a judgment signed by a Judge who becomes incapable or dies after signing and before giving the judgment or delivering the reasons.

(2) A decision is the judgment of the court, if—

(a) subclause (1) does not apply; and

(b) a court of 3 or more Judges sitting without a jury completes the trial of a proceeding or issue; and

High Court Rules—*continued*
Part 11—*continued*
Subpart 1—*continued*

(c) 1 of the Judges becomes incapable of giving judgment or dies; and

(d) a majority of the Judges who constituted the court when the trial began concur in the decision on the proceeding or issue.

(3) A proceeding or issue must be retried if—

(a) neither subclause (1) nor (2) applies; and

(b) a Judge who is sitting without a jury on the trial of the proceeding or issue becomes incapable of giving judgment or dies.

(4) A Judge or the Registrar must discharge the jury and order a new trial if another Judge sitting with a jury on the trial of the proceeding or issue dies or becomes incapable of acting for any other reason before the jury retires to consider its verdict.

(5) A Judge may do any 1 or more of the following if another Judge sitting with a jury on the trial of a proceeding or issue dies or becomes incapable of acting for any other reason after the jury retires to consider its verdict and before judgment is given:

(a) give any further directions required by the jury:

(b) take the verdict and give judgment on it:

(c) discharge the jury without verdict:

(d) do whatever is necessary, up to and including the sealing of judgment.

Compare: 1908 No 89 Schedule 2 r ~~543~~ 11.8 (as substituted by 2008 No 90 s 8)

11.9 Recalling judgment

A Judge may recall a judgment given orally or in writing at any time before a formal record of it is drawn up and sealed.

Compare: 1908 No 89 Schedule 2 r ~~542(3)~~ 11.9 (as substituted by 2008 No 90 s 8)

11.10 Correction of accidental slip or omission

(1) A judgment or order may be corrected by the court or the Registrar who made it, if it—

High Court Rules—*continued*
Part 11—*continued*
Subpart 1—*continued*

(a) contains a clerical mistake or an error arising from an accidental slip or omission, whether or not made by an officer of the court; or

(b) is drawn up so that it does not express what was decided and intended.

(2) The correction may be made by the court or the Registrar, as the case may be,—

(a) on its or his or her own initiative; or

(b) on an interlocutory application.

Compare: 1908 No 89 Schedule 2 r ~~12~~ 11.10 (as substituted by 2008 No 90 s 8)

Subpart 2—Sealing and notification

11.11 Judgments to be sealed, dated, and served

(1) A Registrar must seal judgments with the seal of the court.

(2) A judgment must be sealed—

(a) in accordance with any direction given by the Judge relating to the sealing of the judgment; or

(b) if no direction is given, at any time after the judgment is given.

(3) Except with the leave of the court, a judgment must not be sealed until any application under rule 11.9 for the recall of the judgment is determined.

(4) A sealed judgment must state—

(a) the date on which the judgment is given; and

(b)

(5) A party who has a judgment sealed must immediately serve a sealed copy of it on—

(a) every other party who has given an address for service; and

(b) any other person who, although not a party, is affected by the judgment.

Compare: 1908 No 89 Schedule 2 r ~~541(1),~~ ~~(3)–(5)~~ 11.11 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 11—*continued*
Subpart 2—*continued*

11.12 When judgment takes effect

(1) A judgment takes effect when it is given.

(2) Rule 11.13 overrides subclause (1).

Compare: 1908 No 89 Schedule 2 r ~~542(1), (5)(a)~~ 11.12 (as substituted by 2008 No 90 s 8)

11.13 Steps before judgment sealed

(1) A step may be taken on a judgment before it is sealed only with the leave of a Judge.

(2) A party may appeal under rule 31 of the Court of Appeal (Civil) Rules 2005 against a judgment before it is sealed but must take steps to ensure the judgment is sealed without delay after the appeal is brought.

Compare: 1908 No 89 Schedule 2 r ~~542(2), (4)~~ 11.13 (as substituted by 2008 No 90 s 8)

11.14 Registrar's role on receipt of judgment

(1) The Registrar must endorse a written judgment with the delivery time when the Registrar receives it from the Judge responsible for it.

(2) The date and time nominated by the Registrar under rule 11.5(b) must not be earlier than the date and time the Registrar endorses the judgment under subclause (1).

(3) The Registrar must attempt to notify the parties of the delivery time, by telephone or otherwise, immediately after endorsing a judgment.

(4) A party may request the Registrar to—

(a) send the party a copy of the written judgment by email or fax immediately after the delivery time; or

(b) make a copy of the written judgment available for collection from the court registry immediately after the delivery time.

(5) The Registrar must, immediately after the delivery time, post a copy of the written judgment to a party that—

(a) has given an address for service; and

High Court Rules—*continued*
Part 11—*continued*
Subpart 2—*continued*

(b) does not make a request under subclause (4).

(6) A failure by the Registrar to comply with any of subclauses (3) to (5) does not affect a judgment's validity or its delivery time.

Compare: 1908 No 89 Schedule 2 r ~~540(4), (6)–(9)~~ 11.14 (as substituted by 2008 No 90 s 8)

Subpart 3—Judgment if proceeding tried with jury

11.15 Judgment after proceeding tried with jury

After a Judge takes the jury's verdict in a proceeding, he or she may—

(a) give judgment immediately; or

(b) adjourn the proceeding for further consideration; or

(c) give judgment for either party and reserve leave for either party to apply—

(i) to set aside the judgment; and

(ii) for another judgment.

Compare: 1908 No 89 Schedule 2 r ~~525~~ 11.15 (as substituted by 2008 No 90 s 8)

11.16 Leave to apply to set aside judgment

A party to whom leave is reserved under rule 11.15(c) and who wishes to apply must do so—

(a) within the time fixed by the court for the purpose; or

(b) if paragraph (a) does not apply, within 10 working days after leave is reserved.

Compare: 1908 No 89 Schedule 2 r ~~526~~ 11.16 (as substituted by 2008 No 90 s 8)

11.17 Judgment not in accordance with verdict

(1) Either party to a proceeding tried with a jury may apply to set aside the judgment and for another judgment, on the ground that the judgment given is not in accordance with the verdict of the jury.

(2) An application under subclause (1)—

(a) may be made without leave reserved; and

High Court Rules—*continued*
Part 11—*continued*
Subpart 3—*continued*

(b) must be made within 10 working days after judgment is given.

Compare: 1908 No 89 Schedule 2 r ~~527~~ 11.17 (as substituted by 2008 No 90 s 8)

11.18 Application for judgment on special verdict or subject to special case

(1) Either party may apply for the judgment to which the party considers the party is entitled within 10 working days after the jury states the facts or finds a verdict subject to a special case.

(2) A copy of the case must be filed in court with the notice of application if it is on a special case.

Compare: 1908 No 89 Schedule 2 r ~~529~~ 11.18 (as substituted by 2008 No 90 s 8)

11.19 Application for judgment by both parties

Applications for judgment by 2 or more parties must be heard together, unless the court thinks it preferable to hear them separately.

Compare: 1908 No 89 Schedule 2 r ~~530~~ 11.19 (as substituted by 2008 No 90 s 8)

Subpart 4—Giving effect to judgments

11.20 Conduct of proceedings after judgment

The court may give the conduct of the proceeding after judgment to whichever party the court thinks proper, if the court makes an order under rule 11.2(d).

Compare: 1908 No 89 Schedule 2 r ~~531(2)~~ 11.20 (as substituted by 2008 No 90 s 8)

11.21 Applying for dismissal because of inactivity

(1) A party may apply to dismiss the proceeding if the opposite party has the conduct of the proceeding and does not—

(a) proceed with the accounts, inquiries, acts, or steps ordered; or

(b) take all necessary steps to have them completed.

(2) On an application under subclause (1), the court may make any 1 or more of the following orders it considers just:

High Court Rules—*continued*
Part 11—*continued*
Subpart 4—*continued*

(a) an order as to the prosecution of the account, inquiries, acts, or steps:
(b) an order for the dismissal of the proceeding:
(c) an order giving the conduct of the proceeding to another party.

Compare: 1908 No 89 Schedule 2 r ~~532~~ 11.21 (as substituted by 2008 No 90 s 8)

11.22 Judgment directing sale of property

(1) Property to be sold because of a direction in a judgment or order must be sold in a way that ensures that the best price is obtained for it, unless the court directs otherwise.

(2) The court may do any 1 or more of the following, when giving the judgment or making the order or at a later time:
(a) give directions about the method of the sale:
(b) give directions about the terms and conditions of sale:
(c) if the sale is by auction,—
(i) fix a reserve price, if appropriate; and
(ii) define the rights of parties to bid at the sale.

(3) All parties must co-operate in effecting the sale of the property and do everything necessary to give effect to the sale, including signing any documents required to transfer or convey the property to the purchaser.

(4) To effect the sale of the property, the court may—
(a) give all necessary directions, including directions in relation to the transfer or conveyance of the property sold; and
(b) appoint a person to sign any documents required to transfer or convey to the purchaser the property sold.

Compare: 1908 No 89 Schedule 2 r ~~533~~ 11.22 (as substituted by 2008 No 90 s 8)

11.23 Judgment for balance of claim over counterclaim

The plaintiff is entitled to judgment on the cause of action for the balance of his or her claim, after deducting the amount of the counterclaim proved by the defendant, if a counterclaim is

High Court Rules—*continued*
Part 11—*continued*
Subpart 4—*continued*

proved to an amount less than that recovered on the cause of action.

Compare: 1908 No 89 Schedule 2 r ~~534~~ 11.23 (as substituted by 2008 No 90 s 8)

11.24 Judgment for balance of counterclaim

The defendant is entitled to judgment for the excess if a counterclaim is proved to an amount exceeding that recovered on the cause of action.

Compare: 1908 No 89 Schedule 2 r ~~535~~ 11.24 (as substituted by 2008 No 90 s 8)

11.25 Cross judgments

(1) Cross judgments may be set off against each other by leave of the court if they are between the same parties and for any 1 or more of the following:
- (a) money:
- (b) costs:
- (c) debt:
- (d) damages.

(2) Leave must not be granted under subclause (1) if the set-off would prejudice any solicitor's lien for costs in the particular proceeding against which the set-off is sought.

Compare: 1908 No 89 Schedule 2 r ~~536~~ 11.25 (as substituted by 2008 No 90 s 8)

11.26 Judgment if third party defends

(1) The court may do the following if a third party files a statement of defence to a third party notice:
- (a) order judgment to be entered for or against the defendant giving the notice against or for the third party; and
- (b) grant to the defendant or to the third party any relief or remedy that might properly have been granted if the defendant had instituted a proceeding against the third party; and
- (c) make another appropriate order, instead of or in addition to the orders in paragraphs (a) and (b).

(2) The court may act under subclause (1)—

High Court Rules—*continued*
Part 11—*continued*
Subpart 4—*continued*

(a) at or after the trial; or
(b) on application, whether the proceeding is decided by trial or otherwise.

(3) This rule applies, with all necessary modifications, whenever a fourth or subsequent party notice is issued.

Compare: 1908 No 89 Schedule 2 r ~~537~~ 11.26 (as substituted by 2008 No 90 s 8)

11.27 Interest on judgment debt

(1) A judgment debt carries interest from the time judgment is given until it is satisfied.

(2) The interest is at the rate prescribed by or under **section 452(2) of the Judicature Modernisation Act 2013** or at a lower rate fixed by the court.

(3) The interest may be levied on the judgment under an enforcement process (as defined in rule 17.3).

Compare: 1908 No 89 Schedule 2 r ~~538~~ 11.27 (as substituted by 2008 No 90 s 8)

11.28 Satisfaction of judgment

(1) As soon as a judgment is satisfied by payment, levy, or in another way, the party against whom the judgment was given is entitled to have satisfaction of that judgment formally entered.

(2) For the purposes of subclause (1), the party against whom the judgment was given must produce and file in the registry of the court an acknowledgment of satisfaction signed by or on behalf of the party obtaining judgment.

(3) Despite subclause (2), the court may order satisfaction to be entered upon proof that the judgment has been satisfied.

Compare: 1908 No 89 Schedule 2 r ~~544~~ 11.28 (as substituted by 2008 No 90 s 8)

Part 12
Summary judgment

12.1 Application of summary judgment procedure

Rules 12.2 to 12.16 apply to all proceedings except—

(a) a proceeding under Part 19, 20, or 21; or

High Court Rules—*continued*
Part 12—*continued*

(b) an application for a writ of habeas corpus; or
(c) an application for administration in common form under Part 27.

Compare: 1908 No 89 Schedule 2 r ~~135~~ 12.1 (as substituted by 2008 No 90 s 8)

12.2 Judgment when there is no defence or when no cause of action can succeed

(1) The court may give judgment against a defendant if the plaintiff satisfies the court that the defendant has no defence to a cause of action in the statement of claim or to a particular part of any such cause of action.

(2) The court may give judgment against a plaintiff if the defendant satisfies the court that none of the causes of action in the plaintiff's statement of claim can succeed.

Compare: 1908 No 89 Schedule 2 r ~~136~~ 12.2 (as substituted by 2008 No 90 s 8)

12.3 Summary judgment on liability

The court may give judgment on the issue of liability, and direct a trial of the issue of amount (at the time and place it thinks just), if the party applying for summary judgment satisfies the court that the only issue to be tried is one about the amount claimed.

Compare: 1908 No 89 Schedule 2 r ~~137~~ 12.3 (as substituted by 2008 No 90 s 8)

12.4 Interlocutory application for summary judgment

(1) Application for judgment under rule 12.2 or 12.3 must be made by interlocutory application.

(2) An application by a plaintiff may be made either at the time the statement of claim is served on the defendant, or later with the leave of the court.

(2A) If an application by a plaintiff is made at the time that the statement of claim is served on the defendant in Australia under section 13 of the Trans-Tasman Proceedings Act 2010, the hearing date allocated (under rule 7.33) for the application must be after the period (under section 17(1)(a) or (b) of that

High Court Rules—*continued*
Part 12—*continued*

Act) within which the defendant may file an appearance or response document.

(3) An application by a defendant may be made either at the time the statement of defence is served on the plaintiff, or later with the leave of the court.

(4) The party making the application must file and serve on the other party the following documents:
- (a) an interlocutory application on notice in form G 31:
- (b) a supporting affidavit:
- (c) if the party is a plaintiff applying at the time the statement of claim is served,—
  - (i) a notice of proceeding in form G 13; and
  - (ii) a statement of claim:
- (d) if the party applying is a defendant applying at the time the statement of defence is served, a statement of defence.

(5) The affidavit—
- (a) must be by or on behalf of the person making the application:
- (b) if given by or on behalf of the plaintiff, must verify the allegations in the statement of claim to which it is alleged that the defendant has no defence, and must depose to the belief of the person making the affidavit that the defendant has no defence to the allegations and set out the grounds of that belief:
- (c) if given by or on behalf of the defendant, must show why none of the causes of action in the plaintiff's statement of claim can succeed.

Compare: 1908 No 89 Schedule 2 r ~~138~~ 12.4 (as substituted by 2008 No 90 s 8)

12.5 Service out of New Zealand

A plaintiff who makes an application under rule 12.2 or 12.3 must serve the documents referred to in rule 12.4(4) on a de-

High Court Rules—*continued*
Part 12—*continued*

fendant who is overseas not less than 25 working days before the date for hearing the application.

Compare: 1908 No 89 Schedule 2 r ~~138A~~ 12.5 (as substituted by 2008 No 90 s 8)

12.6 Requirements as to notice of proceeding

Rule 5.23 does not apply to a proceeding under Part 12.

Compare: 1908 No 89 Schedule 2 r ~~139~~ 12.6 (as substituted by 2008 No 90 s 8)

12.7 Time for service

(1) The documents specified in rule 12.4(4) must be served on the other party to the proceeding not less than 25 working days before the date for hearing the application.

(2) Rule 12.5 overrides this rule.

Compare: 1908 No 89 Schedule 2 r ~~140~~ 12.7 (as substituted by 2008 No 90 s 8)

12.8 Postponement of hearing

If the documents specified in rule 12.4(4) have not been served within the time prescribed by rule 12.7(1), or rule 12.5 if applicable, the Registrar, on request, may postpone the hearing by—

(a) deleting the original date of hearing shown in the notice of interlocutory application; and

(b) inserting a new date; and

(c) initialling the new date in the margin opposite the alteration.

Compare: 1908 No 89 Schedule 2 r ~~140A~~ 12.8 (as substituted by 2008 No 90 s 8)

12.9 Notice of opposition and affidavit in answer

(1) A party who intends to oppose an application for judgment under rule 12.2 or 12.3 must, at least 3 working days before the date for hearing the application, file in the court and serve on the applicant—

(a) a notice of opposition in form G 33; and

High Court Rules—*continued*
Part 12—*continued*

(b) an affidavit by or on behalf of the party intending to oppose the application in answer to the affidavit by or on behalf of the applicant.

(2) For the purposes of subclause (1), **in answer to** means,—

(a) in the case of a defendant, setting out the defence to the cause or causes of action that are subject to the summary judgment application; or

(b) in the case of a plaintiff, setting out the reasons why the defendant's defences do not succeed against the plaintiff's cause or causes of action.

(3) If an opposing party does not file and serve the documents required by subclause (1), the party may not be heard in opposition to the application without the leave of the court.

(4) Rule 7.24(2) and (3) apply, with all necessary modifications, to a notice of opposition filed under subclause (1)(a).

Compare: 1908 No 89 Schedule 2 r ~~141~~ 12.9 (as substituted by 2008 No 90 s 8)

12.10 Statement of defence

A defendant who has filed both a notice of opposition and an affidavit under rule 12.9 may, in addition, file a statement of defence in the registry of the court in which the notice of opposition and the affidavit were filed.

Compare: 1908 No 89 Schedule 2 r ~~141A~~ 12.10 (as substituted by 2008 No 90 s 8)

12.11 Affidavits in reply

(1) An affidavit may be filed by or on behalf of the party making the application in reply to an affidavit filed by or on behalf of the party opposing the application.

(2) Every affidavit filed under subclause (1)—

(a) must be limited to new matters in the affidavit of the party opposing the application; and

High Court Rules—*continued*
Part 12—*continued*

(b) must be filed in the court and served on the party opposing the application not later than 1 pm on the last working day before the date for hearing the application.

Compare: 1908 No 89 Schedule 2 r ~~141B~~ 12.11 (as substituted by 2008 No 90 s 8)

12.12 Disposal of application

(1) If the court dismisses an application for judgment under rule 12.2 or 12.3, the court must give directions as to the future conduct of the proceeding as may be appropriate.

(2) If it appears to the court on an application for judgment under rule 12.2 or 12.3 that the defendant has a counterclaim that ought to be tried, the court—

(a) may give judgment for the amount that appears just on any terms it thinks just; or

(b) may dismiss the application and give directions under subclause (1).

Compare: 1908 No 89 Schedule 2 r ~~142~~ 12.12 (as substituted by 2008 No 90 s 8)

12.13 Time for filing statement of defence on dismissal of plaintiff's application

(1) The statement of defence in the proceeding, if not already filed, must be filed within 10 working days after the date on which any application by a plaintiff for judgment under rule 12.2 or 12.3 is dismissed in whole or in part.

(2) Rule 12.12(1) overrides this rule.

Compare: 1908 No 89 Schedule 2 r ~~142A~~ 12.13 (as substituted by 2008 No 90 s 8)

12.14 Setting aside judgment

A judgment given against a party who does not appear at the hearing of an application for judgment under rule 12.2 or 12.3 may be set aside or varied by the court on any terms it thinks just if it appears to the court that there has been or may have been a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r ~~143~~ 12.14 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 12—*continued*

12.15 Discontinuance

(1) The party making the application may, at any time before an application for judgment under rule 12.2 or 12.3 is heard, discontinue the application—

(a) by filing in the registry of the court in which the application is filed a memorandum of discontinuance; and

(b) by serving a copy of the memorandum on the other party to the application.

(2) The court may give directions about the future conduct of the proceeding after an application for judgment under rule 12.2 or 12.3 is discontinued.

Compare: 1908 No 89 Schedule 2 r ~~143A~~ 12.15 (as substituted by 2008 No 90 s 8)

12.16 Application to counterclaims and claims against third parties

Rules 12.1 to 12.15 apply, with all necessary modifications, to counterclaims and to claims against third parties.

Compare: 1908 No 89 Schedule 2 r ~~144~~ 12.16 (as substituted by 2008 No 90 s 8)

Part 13
Summary proceeding for recovery of land

13.1 Interpretation

In this Part, **unlawful occupier** means a person who—

(a) occupies or continues to occupy land of the plaintiff without the licence or consent of the plaintiff or the plaintiff's predecessor in title; and

(b) is not a tenant or subtenant holding over after the termination of a tenancy or subtenancy.

Compare: 1908 No 89 Schedule 2 r ~~134A(1)~~ 13.1 (as substituted by 2008 No 90 s 8)

13.2 Application of Part

(1) This Part applies to every proceeding in which the plaintiff claims the recovery of land that is occupied solely by 1 or more unlawful occupiers.

High Court Rules—*continued*
Part 13—*continued*

(2) This Part does not affect the application of Part 12 (summary judgment) to a proceeding for the recovery of land.
Compare: 1908 No 89 Schedule 2 r ~~134A~~ 13.2 (as substituted by 2008 No 90 s 8)

13.3 Defendants

(1) The plaintiff must name as a defendant in the statement of claim each unlawful occupier who is known to the plaintiff.

(2) If no unlawful occupier is known to the plaintiff by name, the statement of claim need not name any person as defendant.

(3) Subclause (1) is subject to subclause (2).
Compare: 1908 No 89 Schedule 2 r ~~134B~~ 13.3 (as substituted by 2008 No 90 s 8)

13.4 Affidavit in support

The plaintiff must file with the statement of claim an affidavit that—

(a) states the interest of the plaintiff in the land; and

(b) states the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and

(c) if no person is named as defendant in the statement of claim, states that the plaintiff does not know the name of any of the unlawful occupiers.

Compare: 1908 No 89 Schedule 2 r ~~134C~~ 13.4 (as substituted by 2008 No 90 s 8)

13.5 Service

(1) The plaintiff must serve the following documents on each defendant, if any, and on each unlawful occupier who is not a defendant:

(a) the statement of claim:

(b) the notice of proceeding:

(c) a copy of the affidavit required by rule 13.4:

(d) a copy of any exhibit referred to in that affidavit.

(2) In the case of a defendant, service must be effected in accordance with rule 5.71.

High Court Rules—*continued*
Part 13—*continued*

(3) In the case of an unlawful occupier who is not a defendant, service (unless the court directs or permits a different method of service) must be effected—

(a) by affixing to some conspicuous part of the land the documents required to be served under subclause (1); and

(b) if practicable, by leaving in the letterbox or other receptacle for mail on the land the documents required to be served under subclause (1) (those documents must be enclosed in a sealed envelope addressed to "The Occupiers").

Compare: 1908 No 89 Schedule 2 r ~~134D~~ 13.5 (as substituted by 2008 No 90 s 8)

13.6 Time for filing statement of defence

Despite rule 5.47(2)(b), if service is effected in accordance with rule 13.5(3), the statement of defence must be filed within 25 working days after the day on which that service is effected.

Compare: 1908 No 89 Schedule 2 r ~~134E~~ 13.6 (as substituted by 2008 No 90 s 8)

13.7 Power of court to make unlawful occupiers defendants

A Judge may order that an unlawful occupier who is not a defendant be made a defendant or be added as a defendant.

Compare: 1908 No 89 Schedule 2 r ~~134F~~ 13.7 (as substituted by 2008 No 90 s 8)

13.8 Judgment for possession

Rule 15.8 (which allows the plaintiff to seal judgment immediately upon certain defaults by the defendant) does not apply to proceedings to which this Part applies.

Compare: 1908 No 89 Schedule 2 r ~~134G~~ 13.8 (as substituted by 2008 No 90 s 8)

13.9 Possession order

(1) Once 3 months have elapsed after the date on which a judgment is given in a proceeding to which this Part applies, a possession order to enforce the judgment may issue only with the leave of the court.

High Court Rules—*continued*
Part 13—*continued*

(2) An application for leave under subclause (1) may be made without notice unless a Judge otherwise directs.
Compare: 1908 No 89 Schedule 2 r ~~134H~~ 13.9 (as substituted by 2008 No 90 s 8)

Part 14
Costs

Subpart 1—Costs generally

14.1 Costs at discretion of court

(1) All matters are at the discretion of the court if they relate to costs—
- (a) of a proceeding; or
- (b) incidental to a proceeding; or
- (c) of a step in a proceeding.

(2) Rules 14.2 to 14.10 are subject to subclause (1).

(3) The provisions of any Act override subclauses (1) and (2).

Compare: 1908 No 89 Schedule 2 r ~~46~~ 14.1 (as substituted by 2008 No 90 s 8)

14.2 Principles applying to determination of costs

The following general principles apply to the determination of costs:
- (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:
- (b) an award of costs should reflect the complexity and significance of the proceeding:
- (c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application:
- (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:
- (e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or ex-

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

perience of the solicitor or counsel involved or on the time actually spent by the solicitor or counsel involved or on the costs actually incurred by the party claiming costs:

(f) an award of costs should not exceed the costs incurred by the party claiming costs:

(g) so far as possible the determination of costs should be predictable and expeditious.

Compare: 1908 No 89 Schedule 2 r ~~47~~ 14.2 (as substituted by 2008 No 90 s 8)

14.3 Categorisation of proceedings

(1) For the purposes of rule 14.2(b), proceedings must be classified as falling within one of the following categories:

Category 1 proceedings	Proceedings of a straightforward nature able to be conducted by counsel considered junior in the High Court
Category 2 proceedings	Proceedings of average complexity requiring counsel of skill and experience considered average in the High Court
Category 3 proceedings	Proceedings that because of their complexity or significance require counsel to have special skill and experience in the High Court

(2) The court may at any time determine in advance a proceeding's category, which applies to all subsequent determinations of costs in the proceeding, unless there are special reasons to the contrary.

Compare: 1908 No 89 Schedule 2 r ~~48~~ 14.3 (as substituted by 2008 No 90 s 8)

14.4 Appropriate daily recovery rates

For the purposes of rule 14.2(c), the appropriate daily recovery rates for the categories referred to in rule 14.3—

(a) are the rates specified in Schedule 2; and

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

(b) must be applied to those categories.

Compare: 1908 No 89 Schedule 2 r ~~48A~~ 14.4 (as substituted by 2008 No 90 s 8)

14.5 Determination of reasonable time

(1) For the purposes of rule 14.2(c), a reasonable time for a step is—

(a) the time specified for it in Schedule 3; or

(b) a time determined by analogy with that schedule, if Schedule 3 does not apply; or

(c) the time assessed as likely to be required for the particular step, if no analogy can usefully be made.

(2) A determination of what is a reasonable time for a step under subclause (1) must be made by reference—

(a) to band A, if a comparatively small amount of time is considered reasonable; or

(b) to band B, if a normal amount of time is considered reasonable; or

(c) to band C, if a comparatively large amount of time for the particular step is considered reasonable.

Compare: 1908 No 89 Schedule 2 r ~~48B~~ 14.5 (as substituted by 2008 No 90 s 8)

14.6 Increased costs and indemnity costs

(1) Despite rules 14.2 to 14.5, the court may make an order—

(a) increasing costs otherwise payable under those rules (**increased costs**); or

(b) that the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party (**indemnity costs**).

(2) The court may make the order at any stage of a proceeding and in relation to any step in it.

(3) The court may order a party to pay increased costs if—

(a) the nature of the proceeding or the step in it is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

(b) the party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in it by—

(i) failing to comply with these rules or with a direction of the court; or

(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) failing, without reasonable justification, to admit facts, evidence, documents, or accept a legal argument; or

(iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or other similar requirement under these rules; or

(v) failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or

(c) the proceeding is of general importance to persons other than just the parties and it was reasonably necessary for the party claiming costs to bring it or participate in it in the interests of those affected; or

(d) some other reason exists which justifies the court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

(4) The court may order a party to pay indemnity costs if—

(a) the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or

(b) the party has ignored or disobeyed an order or direction of the court or breached an undertaking given to the court or another party; or

(c) costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund,

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

and the party claiming costs has acted reasonably in the proceeding; or

(d) the person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to it; or

(e) the party claiming costs is entitled to indemnity costs under a contract or deed; or

(f) some other reason exists which justifies the court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: 1908 No 89 Schedule 2 r ~~48C~~ 14.6 (as substituted by 2008 No 90 s 8)

14.7 Refusal of, or reduction in, costs

Despite rules 14.2 to 14.5, the court may refuse to make an order for costs or may reduce the costs otherwise payable under those rules if—

(a) the nature of the proceeding or the step in a proceeding is such that the time required by the party claiming costs would be substantially less than the time allocated under band A; or

(b) the property or interests at stake in the proceeding were of exceptionally low value; or

(c) the issues at stake were of little significance; or

(d) although the party claiming costs has succeeded overall, that party has failed in relation to a cause of action or issue which significantly increased the costs of the party opposing costs; or

(e) the proceeding concerned a matter of public interest, and the party opposing costs acted reasonably in the conduct of the proceeding; or

(f) the party claiming costs has contributed unnecessarily to the time or expense of the proceeding or step in it by—

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

(i) failing to comply with these rules or a direction of the court; or
(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or
(iii) failing, without reasonable justification, to admit facts, evidence, or documents, or accept a legal argument; or
(iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or other similar requirement under these rules; or
(v) failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or

(g) some other reason exists which justifies the court refusing costs or reducing costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: 1908 No 89 Schedule 2 r ~~48D~~ 14.7 (as substituted by 2008 No 90 s 8)

14.8 Costs on interlocutory applications

(1) Costs on an opposed interlocutory application, unless there are special reasons to the contrary,—
(a) must be fixed in accordance with these rules when the application is determined; and
(b) become payable when they are fixed.

(2) Despite subclause (1), the court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.

(3) This rule does not apply to an application for summary judgment.

Compare: 1908 No 89 Schedule 2 r ~~48E~~ 14.8 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

14.9 Costs may be determined by different Judge or Associate Judge

Costs may be determined by a Judge or an Associate Judge other than the one who heard the matter to which the costs relate, if he or she is not available conveniently to make the determination.

Compare: 1908 No 89 Schedule 2 r ~~48F~~ 14.9 (as substituted by 2008 No 90 s 8)

14.10 Written offers without prejudice except as to costs

(1) A party to a proceeding may make a written offer to another party at any time that—
  (a) is expressly stated to be without prejudice except as to costs; and
  (b) relates to an issue in the proceeding.

(2) The fact that the offer has been made must not be communicated to the court until the question of costs is to be decided.

Compare: 1908 No 89 Schedule 2 r ~~48G~~ 14.10 (as substituted by 2008 No 90 s 8)

14.11 Effect on costs

(1) The effect (if any) that the making of an offer under rule 14.10 has on the question of costs is at the discretion of the court.

(2) Subclauses (3) and (4)—
  (a) are subject to subclause (1); and
  (b) do not limit rule 14.6 or 14.7; and
  (c) apply to an offer made under rule 14.10 by a party to a proceeding (**party A**) to another party to it (**party B**).

(3) Party A is entitled to costs on the steps taken in the proceeding after the offer is made, if party A—
  (a) offers a sum of money to party B that exceeds the amount of a judgment obtained by party B against party A; or
  (b) makes an offer that would have been more beneficial to party B than the judgment obtained by party B against party A.

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

(4) The offer may be taken into account, if party A makes an offer that—
  (a) does not fall within paragraph (a) or (b) of subclause (3); and
  (b) is close to the value or benefit of the judgment obtained by party B.

Compare: 1908 No 89 Schedule 2 r ~~48GA~~ 14.11 (as substituted by 2008 No 90 s 8)

14.12 Disbursements

(1) In this rule,—

disbursement, in relation to a proceeding,—
  (a) means an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from legal professional services in a solicitor's bill of costs; and
  (b) includes—
    (i) fees of court for the proceeding:
    (ii) expenses of serving documents for the purposes of the proceeding:
    (iii) expenses of photocopying documents required by these rules or by a direction of the court:
    (iv) expenses of conducting a conference by telephone or video link; but
  (c) does not include counsel's fee.

relevant issue, in relation to a disbursement, means the issue in respect of which the disbursement was paid or incurred.

(2) A disbursement must, if claimed and verified, be included in the costs awarded for a proceeding to the extent that it is—
  (a) of a class that is either—
    (i) approved by the court for the purposes of the proceeding; or
    (ii) specified in paragraph (b) of subclause (1); and
  (b) specific to the conduct of the proceeding; and

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

(c) reasonably necessary for the conduct of the proceeding; and

(d) reasonable in amount.

(3) Despite subclause (2), a disbursement may be disallowed or reduced if it is disproportionate in the circumstances of the proceeding.

(4) A Judge or an Associate Judge may direct a Registrar to exercise the powers of the court under subclause (2) or (3).

(5) When considering whether a disbursement paid or payable for an expert witness's fee or expenses is reasonable for the purposes of subclause (2)(d), a Judge or an Associate Judge may—

(a) call for a report or an assessment from a professional organisation or otherwise; and

(b) make any incidental order considered just, including an order as to the cost of that report or assessment.

Compare: 1908 No 89 Schedule 2 r ~~48H~~ 14.12 (as substituted by 2008 No 90 s 8)

14.13 Proceedings within jurisdiction of District Court

Costs ordered to be paid to a successful plaintiff must not exceed the costs and disbursements that the plaintiff would have recovered in the District Court if the proceeding could have been brought there, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r ~~49~~ 14.13 (as substituted by 2008 No 90 s 8)

14.14 Joint and several liability for costs

The liability of each of 2 or more parties ordered to pay costs is joint and several, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r ~~50~~ 14.14 (as substituted by 2008 No 90 s 8)

14.15 Defendants defending separately

The court must not allow more than 1 set of costs, unless it appears to the court that there is good reason to do so, if—

High Court Rules—*continued*
Part 14—*continued*
Subpart 1—*continued*

(a) several defendants defended a proceeding separately; and
(b) it appears to the court that all or some of them could have joined in their defence.

Compare: 1908 No 89 Schedule 2 r ~~51~~ 14.15 (as substituted by 2008 No 90 s 8)

14.16 Claim and counterclaim both established

The court must award costs as if each party had succeeded in an independent proceeding, unless, in the court's opinion, the justice of the case otherwise requires, if—

(a) the plaintiff succeeds in his or her proceeding; and
(b) the defendant succeeds in a counterclaim.

Compare: 1908 No 89 Schedule 2 r ~~52~~ 14.16 (as substituted by 2008 No 90 s 8)

14.17 Set-off if costs allowed to both parties

If opposite parties are awarded costs against each other, their respective costs must be set off and the lesser sum must be deducted from the greater, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r ~~53~~ 14.17 (as substituted by 2008 No 90 s 8)

Subpart 2—Taxation of costs between parties

14.18 Appointment to tax costs

(1) Any party entitled to costs subject to taxation may obtain from the Registrar an appointment for taxation of the costs.

(2) The party entitled to the costs must serve a copy of the appointment on the party liable to pay the costs at least 2 working days before the day appointed if the party liable to pay the costs has given an address for service.

Compare: 1908 No 89 Schedule 2 r ~~54~~ 14.18 (as substituted by 2008 No 90 s 8)

14.19 Taxation of disbursements

(1) On taxation, all disbursements claimed must be proved to the satisfaction of the Registrar.

High Court Rules—*continued*
Part 14—*continued*
Subpart 2—*continued*

(2) Only disbursements that may be included in an award of costs under rule 14.12(2) may be claimed under subclause (1).
Compare: 1908 No 89 Schedule 2 r ~~55~~ 14.19 (as substituted by 2008 No 90 s 8)

14.20 No charge allowed for bill of costs
No charge is allowed on taxation for the preparation or service of the bill of costs or of any copy of it.
Compare: 1908 No 89 Schedule 2 r ~~56~~ 14.20 (as substituted by 2008 No 90 s 8)

14.21 Registrar sole judge of questions of fact
The Registrar is the sole judge of all questions of fact that may arise on taxation, and his or her decision is final.
Compare: 1908 No 89 Schedule 2 r ~~57~~ 14.21 (as substituted by 2008 No 90 s 8)

14.22 Direction to Registrar to ascertain expenses
Without ordering taxation of costs, the court may direct the Registrar to ascertain what amount should be allowed in respect of witnesses' expenses and other disbursements to a party to whom costs are awarded.
Compare: 1908 No 89 Schedule 2 r ~~58~~ 14.22 (as substituted by 2008 No 90 s 8)

14.23 Review of taxation
The court may, on the application of a party dissatisfied with the Registrar's decision, refer a matter back to the Registrar with any necessary directions, or may itself make any amendments that appear necessary, if—

(a) the Registrar has ascertained or fixed the amount of costs or disbursements or the head under which costs are allowed; and

(b) the Registrar's actions referred to in paragraph (a) were done under these rules or by a direction of the court; and

(c) it appears that the Registrar acted erroneously as to amount or principle.

Compare: 1908 No 89 Schedule 2 r ~~59~~ 14.23 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*

Part 15
Disposal other than by trial

Subpart 1—Dismissal or stay without trial

15.1 Dismissing or staying all or part of proceeding

(1) The court may strike out all or part of a pleading if it—
- (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
- (b) is likely to cause prejudice or delay; or
- (c) is frivolous or vexatious; or
- (d) is otherwise an abuse of the process of the court.

(2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.

(3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.

(4) This rule does not affect the court's inherent jurisdiction.

Compare: 1908 No 89 Schedule 2 ~~rr 186, 477~~ r 15.1 (as substituted by 2008 No 90 s 8)

15.2 Dismissal for want of prosecution

Any opposite party may apply to have all or part of a proceeding or counterclaim dismissed or stayed, and the court may make such order as it thinks just, if—
- (a) the plaintiff fails to prosecute all or part of the plaintiff's proceeding to trial and judgment; or
- (b) the defendant fails to prosecute all or part of the defendant's counterclaim to trial and judgment.

Compare: 1908 No 89 Schedule 2 r ~~478~~ 15.2 (as substituted by 2008 No 90 s 8)

Subpart 2—Judgment by default

15.3 Application where appearance

(1) If the defendant has filed an appearance under rule 5.49, rules 15.7 and 15.8 do not apply.

High Court Rules—*continued*
Part 15—*continued*
Subpart 2—*continued*

(2) If the defendant has filed an appearance under rule 5.50 or 5.51, rules 15.7 and 15.8 apply subject to that appearance.

Compare: 1908 No 89 Schedule 2 r 15.3 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.4 Affidavits to be filed

Before judgment by default can be sealed, there must be filed—

(a) an affidavit of service of the statement of claim and notice of proceeding; and

(b) if the statement of claim and notice of proceeding have not been served personally on the defendant or on a solicitor accepting service on the defendant's behalf, an affidavit verifying the statement of claim.

Compare: 1908 No 89 Schedule 2 r 15.4 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.5 When several causes of action

The plaintiff may proceed separately under rule 15.7 or 15.8 in respect of each cause of action to which no pleading by way of defence in a statement of defence has been filed.

Compare: 1908 No 89 Schedule 2 r 15.5 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.6 When several defendants

The plaintiff may proceed against any 1 or more defendants under rule 15.7 or 15.8 and may, despite any judgment given under those rules, continue the proceeding against any other defendant against whom the cause of action subsists.

Compare: 1908 No 89 Schedule 2 r 15.6 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.7 Liquidated demand

(1) If the relief claimed by the plaintiff is payment of a liquidated demand in money and the defendant does not file a statement of defence within the number of working days required by

High Court Rules—*continued*
Part 15—*continued*
Subpart 2—*continued*

the notice of proceeding, the plaintiff may seal judgment in accordance with this rule for a sum not exceeding the sum claimed in the statement of claim and—

(a) interest (if any) payable as of right calculated up to the date of judgment (if interest has been specifically claimed in the statement of claim); and

(b) costs and disbursements as fixed by the Registrar.

(2) If the plaintiff claims costs and disbursements, the plaintiff must file a memorandum setting out the amount claimed and how that amount is calculated, together with any submissions in support of the claim.

(3) A Judge or a Registrar may authorise the sealing of a judgment under subclause (1) if satisfied that the relief claimed by the plaintiff falls within this rule.

(4) A Registrar has the jurisdiction and powers of the court under these rules to fix costs and disbursements under subclause (1)(b).

(5) For the purpose of this rule and rule 15.9, **liquidated demand** means a sum that—

(a) has been quantified in, or can be precisely calculated on the basis of, a contract relied on by the plaintiff; or

(b) has been determined by agreement, mediation, arbitration, or previous litigation between the same parties; or

(c) is a reasonable price for goods supplied or services rendered (when no contract quantifies the price).

Compare: 1908 No 89 Schedule 2 r 15.7 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.8 Recovery of land or chattels

(1) If the relief claimed by the plaintiff is the recovery of land or chattels and the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, the plaintiff may seal judgment that the person whose title is asserted in the statement of claim recover pos-

High Court Rules—*continued*
Part 15—*continued*
Subpart 2—*continued*

session of the land or the chattels together with costs and disbursements as fixed by the Registrar.

(2) A Registrar has the jurisdiction and powers of the court under these rules to fix costs and disbursements.

Compare: 1908 No 89 Schedule 2 rr 15.8, 15.9 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.9 Formal proof for other claims

(1) This rule applies if, or to the extent that, the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, and the plaintiff seeks judgment by default for other than a liquidated demand.

(2) The proceeding must be listed for formal proof and no notice is required to be given to the defendant.

(3) After a proceeding is listed for a formal proof hearing, no statement of defence may be filed without the leave of a Judge granted on the ground that there will or may be a miscarriage of justice if judgment by default is entered, and on such terms as to time or otherwise as the Judge thinks just.

(4) The plaintiff must, before or at the formal proof hearing, file affidavit evidence establishing, to a Judge's satisfaction, each cause of action relied on and, if damages are sought, providing sufficient information to enable the Judge to calculate and fix the damages.

(5) If the Judge before or at the formal proof hearing considers that any deponent of an affidavit filed under subclause (4) should attend to give additional evidence, the Judge may direct accordingly and adjourn the hearing for that purpose.

Compare: 1908 No 89 Schedule 2 rr 15.10, 15.11, 15.12 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.10 Judgment may be set aside or varied

Any judgment obtained by default under rule 15.7, 15.8, or 15.9 may be set aside or varied by the court on such terms as

High Court Rules—*continued*
Part 15—*continued*
Subpart 2—*continued*

it thinks just, if it appears to the court that there has been, or may have been, a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r 15.13 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.11 Overseas service cases

(1) When a document has been served on a party outside New Zealand under rule 6.27 and that party has not appeared, judgment by default against that party must not be sealed without the leave of the court.

(2) Leave must not be granted unless the court is satisfied that—

(a) the party applying for leave was entitled to effect service without leave under rule 6.27; and

(b) there is no reason to believe that the service was effected, or may have been effected, contrary to the law of the country concerned relating to the method of serving documents in domestic actions on persons in that country; and

(c) the service was effected in sufficient time to enable that party to appear.

Compare: 1908 No 89 Schedule 2 r 15.14 prior to 1 February 2013 (as substituted by 2008 No 90 s 8)

15.12 Other proceeding

[revoked]

15.13 Judgment may be set aside

[revoked]

15.14 Overseas service cases

[revoked]

High Court Rules—*continued*
Part 15—*continued*

Subpart 3—Judgment on admission

15.15 Judgment on admission of facts

(1) If a party admits facts (in the party's pleadings or otherwise), any other party to the proceeding may apply to the court for any judgment or order upon those admissions the other party may be entitled to, without waiting for the determination of any other question between the parties, and the court may give any judgment or order on the application as it thinks just.

(2) This rule is not affected by rules 15.16 and 15.17.

Compare: 1908 No 89 Schedule 2 r ~~292~~ 15.15 (as substituted by 2008 No 90 s 8)

15.16 Admission of cause of action

(1) At any time after a party has been served with a notice of proceeding, that party may file and serve (separately from the party's pleadings) an admission of all, some, or part of the alleged causes of action on all other parties to the proceeding.

(2) An admission can be withdrawn only with the leave of the court.

(3) When an admission is filed and served under subclause (1), a party on whom the admission is served may seal judgment on the cause of action admitted, without prejudice to that party's right (if any) to proceed on any other cause of action.

(4) An admission under subclause (1) relating to any cause of action in which a sum of money is claimed must state the exact amount admitted.

(5) Any judgment entered on an admission filed and served under subclause (1) may, upon application, be set aside by the court if—

(a) the plaintiff, being under a duty or obligation to the defendant not to enter judgment on the admission, acted contrary to that duty or obligation in entering judgment; or

(b) the plaintiff, in entering judgment, acted fraudulently, unconscionably, or in wilful or reckless disregard of the defendant's rights.

High Court Rules—*continued*
Part 15—*continued*
Subpart 3—*continued*

(6) Upon an application under subclause (5), the court may direct that a proceeding be brought to determine whether judgment was wrongfully entered.

(7) This rule does not affect rule 8.48.

Compare: 1908 No 89 Schedule 2 ~~rr 471, 473~~ r 15.16 (as substituted by 2008 No 90 s 8)

15.17 Admission of defence

(1) When a party's original or amended statement of defence alleges any ground of defence that goes to the whole of any cause of action alleged by the other party, the other party may file and serve an admission of that ground of defence.

(2) If the admitted ground of defence arose after the filing of the pleading containing the cause of action to which it refers, the party filing and serving the admission is entitled to an order for that party's costs in respect of the cause of action to which the admission applies, up to the time of filing the statement of defence, unless the court otherwise orders.

(3) Subject to subclause (2), a party on whom an admission has been served under subclause (1) may at any time afterwards seal judgment upon the cause of action to which the admission relates.

(4) This rule does not affect rule 8.48.

Compare: 1908 No 89 Schedule 2 ~~rr 472, 473~~ r 15.17 (as substituted by 2008 No 90 s 8)

Subpart 4—Discontinuance

15.18 Interpretation

For the purposes of rules 15.19 to 15.25, a reference to discontinuing a proceeding means discontinuing a proceeding against 1 or more defendants.

Compare: 1908 No 89 Schedule 2 r ~~474~~ 15.18 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 15—*continued*
Subpart 4—*continued*

15.19 Right to discontinue proceeding

(1) At any time before the giving of judgment or a verdict, a plaintiff may discontinue a proceeding by—
  (a) filing a notice of discontinuance and serving a copy of the notice on every other party to the proceeding; or
  (b) orally advising the court at the hearing that the proceeding is discontinued.

(2) A notice of discontinuance under subclause (1)(a) must be in form G 24.

(3) This rule is subject to rule 15.20.

Compare: 1908 No 89 Schedule 2 r ~~475~~ 15.19 (as substituted by 2008 No 90 s 8)

15.20 Restrictions on right to discontinue proceeding

(1) A plaintiff may discontinue a proceeding only with the leave of the court if—
  (a) the court—
    (i) has granted an interim injunction; or
    (ii) made an interim order under rule 30.4; or
    (iii) made an interim order under **section 435 of the Judicature Modernisation Act 2013**; or
  (b) a party to the proceeding has given an undertaking to the court.

(2) A plaintiff to whom an interim payment has been made, whether voluntarily or under an order made under rule 7.70 or 7.71, may discontinue the proceeding only with the written consent of the party by whom the payment was made or with the leave of the court.

(3) A plaintiff may discontinue a proceeding in which there is more than 1 plaintiff only with the consent of every other plaintiff or with the leave of the court. If the plaintiff files a notice of discontinuance under rule 15.19(1)(a), the consent of every other plaintiff must be in writing.

(4) If there is more than 1 defendant in a proceeding, a plaintiff may discontinue a proceeding against a particular defendant only with the consent of every other defendant or with the

High Court Rules—*continued*
Part 15—*continued*
Subpart 4—*continued*

leave of the court. If the plaintiff files a notice of discontinuance under rule 15.19(1)(a), the consent of every other defendant must be in writing.

Compare: 1908 No 89 Schedule 2 r ~~476~~ 15.20 (as substituted by 2008 No 90 s 8)

15.21 Effect of discontinuance

(1) A proceeding ends against a defendant or defendants on—
  (a) the filing and service of a notice of discontinuance under rule 15.19(1)(a); or
  (b) the giving of oral advice of the discontinuance at the hearing under rule 15.19(1)(b); or
  (c) the making of an order under rule 15.20.

(2) The discontinuance of a proceeding does not affect the determination of costs.

(3) Rule 15.22 overrides this rule.

Compare: 1908 No 89 Schedule 2 r ~~476A~~ 15.21 (as substituted by 2008 No 90 s 8)

15.22 Court may set discontinuance aside

(1) The court may, on the application of a defendant against whom a proceeding is discontinued, make an order setting the discontinuance aside if it is satisfied that the discontinuance is an abuse of the process of the court.

(2) An application under subclause (1) must be made within 25 working days after discontinuance under rule 15.19.

Compare: 1908 No 89 Schedule 2 r ~~476B~~ 15.22 (as substituted by 2008 No 90 s 8)

15.23 Costs

Unless the defendant otherwise agrees or the court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

Compare: 1908 No 89 Schedule 2 r ~~476C~~ 15.23 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 15—*continued*
Subpart 4—*continued*

15.24 Restriction on subsequent proceedings

A plaintiff who discontinues a proceeding (**proceeding A**) against a defendant may not commence another proceeding (**proceeding B**) against the defendant if proceeding B arises out of facts that are the same or substantially the same as those relating to proceeding A, unless the plaintiff has paid any costs ordered to be paid to the defendant under rule 15.23 relating to proceeding A.

Compare: 1908 No 89 Schedule 2 r ~~476D~~ 15.24 (as substituted by 2008 No 90 s 8)

15.25 Certain remedies not affected

If a plaintiff discontinues a proceeding in which a defendant has issued a third party notice under rules 4.9 to 4.17 or has filed a notice under rules 4.18 to 4.21, the discontinuance does not affect the continuation of the proceeding in relation to the third party notice or the notice filed under rules 4.18 to 4.21.

Compare: 1908 No 89 Schedule 2 r ~~476E~~ 15.25 (as substituted by 2008 No 90 s 8)

Part 16
Accounts and inquiries

16.1 Interpretation

In this Part,—

account-taker has the meaning set out in rule 16.6

accounting party means—

(a) the party required by an order for the taking of an account to account to the other party; and

(b) in a case coming within rule 16.5, each party.

Compare: 1908 No 89 Schedule 2 r ~~390~~ 16.1 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 16—*continued*

16.2 Orders for accounts and inquiries

The court may, on the application of any party, before, at, or after the trial of a proceeding, order an account or an inquiry, whether or not it has been claimed in that party's pleading.

Compare: 1908 No 89 Schedule 2 r ~~384~~ 16.2 (as substituted by 2008 No 90 s 8)

16.3 Directions

(1) At the time of ordering an account or an inquiry, or at another time, the court may—

(a) give directions or further directions about the account or inquiry:

(b) order additional accounts or inquiries:

(c) direct that the relevant books of account are prima facie evidence of the truth of the matters contained in them.

(2) An order or direction under subclause (1) overrides rules 16.6 to 16.21.

Compare: 1908 No 89 Schedule 2 r ~~385~~ 16.3 (as substituted by 2008 No 90 s 8)

16.4 Summary order for accounts

(1) If a party's pleading claims an account or makes a claim that involves taking an account, the court may, on application by that party at any stage of the proceeding, order—

(a) an account; and

(b) that any amount certified on the account as due to any party be paid to that party.

(2) The court must not make an order under subclause (1)—

(a) if there is some preliminary question to be determined; or

(b) against a defendant who has not filed a statement of defence or an appearance, until the time for filing a statement of defence has expired.

Compare: 1908 No 89 Schedule 2 r ~~386~~ 16.4 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 16—*continued*

16.5 Mutual accounts

(1) The court may order that each party account to the other if it considers that each is accountable to the other because of—
  (a) the relationship between the parties; or
  (b) their course of dealing; or
  (c) any other reason.

(2) At the time of making an order under subclause (1), or at any time afterwards, the court may direct—
  (a) that the result of the account be certified as the net balance found to be due to 1 party; or
  (b) that the certificate show the amounts found to be due to each party.

(3) An order under this rule overrides rules 16.6 to 16.21.

Compare: 1908 No 89 Schedule 2 r ~~387~~ 16.5 (as substituted by 2008 No 90 s 8)

16.6 Account-taker

(1) The court may order accounts to be taken before an **account-taker** who may be—
  (a) the Registrar; or
  (b) an accountant; or
  (c) the Registrar and an accountant.

(2) Unless otherwise ordered, an accountant who takes an account must be a chartered accountant in public practice who is a member of the New Zealand Institute of Chartered Accountants.

Compare: 1908 No 89 Schedule 2 r ~~388~~ 16.6 (as substituted by 2008 No 90 s 8)

16.7 Direction as to evidence

The court may direct that any evidence relevant to the account be given to the account-taker, with any incidental order the court thinks just.

Compare: 1908 No 89 Schedule 2 r 16.7 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 16—*continued*

16.8 Remuneration of accountant

(1) The court must fix the remuneration of an accountant who is an account-taker. The order doing so may cover incidental matters including (for example) 1 or more of the following:
   (a) that the remuneration be paid by 1 or more of the parties in any proportions:
   (b) that 1 or more of the parties give security for the remuneration of the accountant, on terms the court thinks just.

(2) Subclause (1) does not limit the court's power to make an order providing for the payment of the remuneration as part of the costs of the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~389~~ 16.8 (as substituted by 2008 No 90 s 8)

16.9 Form and verification of account

(1) The items on each side of an account must be numbered consecutively.

(2) An accounting party must verify the account by affidavit, and must attach the account as an exhibit.

Compare: 1908 No 89 Schedule 2 r ~~391~~ 16.9 (as substituted by 2008 No 90 s 8)

16.10 Filing and service of account

Within 10 working days after the order to account has been served on an accounting party, that party must—
   (a) file the account and verifying affidavit; and
   (b) serve a copy of the account and verifying affidavit on each other party.

Compare: 1908 No 89 Schedule 2 r ~~392~~ 16.10 (as substituted by 2008 No 90 s 8)

16.11 Notice of receipt that is not admitted

A party who alleges an accounting party has received an amount that is not admitted in the accounting party's account must, within 10 working days after being served with the ac-

High Court Rules—*continued*
Part 16—*continued*

count, notify the accounting party of the allegation, stating (as far as possible) the amount and brief particulars.
Compare: 1908 No 89 Schedule 2 r ~~393~~ 16.11 (as substituted by 2008 No 90 s 8)

16.12 Notice of error

A party who alleges that any item in an accounting party's account is erroneous in amount or otherwise must, within 10 working days after being served with the account, notify the accounting party of the allegation, stating the grounds for alleging the error.
Compare: 1908 No 89 Schedule 2 r ~~394~~ 16.12 (as substituted by 2008 No 90 s 8)

16.13 Admission of items

Except to the extent shown in a notice given under rule 16.11 or 16.12, all items in the account must be treated as correct.
Compare: 1908 No 89 Schedule 2 r ~~395~~ 16.13 (as substituted by 2008 No 90 s 8)

16.14 Appointment and notice for taking accounts

As soon as possible after the accounting party has filed the account, the account-taker must—

(a) appoint a time (no less than 15 working days after the filing date) and a place for taking the account (the **account hearing**); and

(b) give notice of that time and place to the parties no less than 5 working days before the account hearing date.

Compare: 1908 No 89 Schedule 2 r ~~396~~ 16.14 (as substituted by 2008 No 90 s 8)

16.15 Parties to attend account hearing

(1) The parties or their solicitors or counsel must attend the account hearing.

(2) If the account-taker is satisfied that notice of the time and place has been given and received, the account-taker may proceed with the account hearing, even if any party is absent.

Compare: 1908 No 89 Schedule 2 r ~~397~~ 16.15 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 16—*continued*

16.16 Adjournment of account hearing

The account-taker may adjourn the time and place of the account hearing as necessary or expedient.

Compare: 1908 No 89 Schedule 2 r ~~398~~ 16.16 (as substituted by 2008 No 90 s 8)

16.17 Power of summary decision

(1) The account-taker may decide all disputed items of account summarily.

(2) Despite subclause (1),—

(a) any item may be referred for the decision of the court by—

(i) any party; or

(ii) the account-taker; and

(b) all items of account in respect of which the Registrar and an accountant disagree must be referred for the decision of the court.

Compare: 1908 No 89 Schedule 2 r ~~399~~ 16.17 (as substituted by 2008 No 90 s 8)

16.18 Examination of accounting party

If an item has been referred to the court under rule 16.17(2), the court may, on the application of a party who has given a notice under rule 16.11 or 16.12, order that the accounting party appear before the court to be examined orally about the disputed item of account.

Compare: 1908 No 89 Schedule 2 r ~~400~~ 16.18 (as substituted by 2008 No 90 s 8)

16.19 Production of documents

The accounting party must, when required by written notice, produce all invoices, statements of account, receipts, and any other documents in that party's possession or power relating to any disputed item of account specified in the notice at—

(a) the taking of the account; or

(b) the examination of the accounting party under rule 16.18.

Compare: 1908 No 89 Schedule 2 r ~~401~~ 16.19 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 16—*continued*

16.20 Interest on debts of deceased person

A court ordering an account of the debts of a deceased person may order—

(a) which debts carry interest; and

(b) the date from which the debts carry interest (for example, from the date of the order); and

(c) the rate of interest for each debt, which may be—

(i) the rate prescribed by the instrument or instruments creating the debt or debts; or

(ii) if no rate is so prescribed, the rate prescribed for the purposes of **section 452(2) of the Judicature Modernisation Act 2013** or any lower rate.

Compare: 1908 No 89 Schedule 2 r ~~402~~ 16.20 (as substituted by 2008 No 90 s 8)

16.21 Interest on legacies

A court ordering an account of legacies may order interest to be paid—

(a) at the rate prescribed by or under section 39 of the Administration Act 1969 from the end of 1 year after the death of the deceased; or

(b) at any rate of interest and time of payment directed by the will.

Compare: 1908 No 89 Schedule 2 r ~~403~~ 16.21 (as substituted by 2008 No 90 s 8)

16.22 Accounting and estimates

(1) Any amount which has been paid or credited must be brought into account.

(2) If there is no material before the account-taker which enables an amount to be ascertained with certainty, the account-taker may estimate the amount which in all the circumstances should reasonably be included.

Compare: 1908 No 89 Schedule 2 r ~~404~~ 16.22 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 16—*continued*

16.23 Directions for inquiries

The court may direct the Registrar or any other person to make inquiries (in any manner and within any time period) about—

(a) next of kin:
(b) creditors:
(c) other claimants:
(d) any other similar matters.

Compare: 1908 No 89 Schedule 2 r ~~405~~ 16.23 (as substituted by 2008 No 90 s 8)

16.24 Powers of persons taking accounts or making inquiries

The account-taker or the person whom the court directs to make an inquiry may—

(a) issue advertisements; and
(b) summon parties and witnesses; and
(c) administer oaths; and
(d) receive affidavits and acknowledgments; and
(e) examine parties and witnesses either by interrogatories or by hearing them in person.

Compare: 1908 No 89 Schedule 2 r ~~406~~ 16.24 (as substituted by 2008 No 90 s 8)

16.25 Duty of persons summoned to attend

(1) A person must attend an account-taker or a person taking an inquiry—
   (a) in accordance with a summons; and
   (b) at any other time required without a further summons.

(2) A person who fails to attend after being summoned is liable to the same extent as if he or she had disobeyed a court order.

Compare: 1908 No 89 Schedule 2 r ~~407~~ 16.25 (as substituted by 2008 No 90 s 8)

16.26 Time for proving claims

(1) The court must fix and advertise the time within which persons must prove their claims (for example, as creditors or next of kin).

High Court Rules—*continued*
Part 16—*continued*

(2) The time must not be less than 25 working days after the date on which the advertisement is first published.
Compare: 1908 No 89 Schedule 2 r ~~408~~ 16.26 (as substituted by 2008 No 90 s 8)

16.27 Statement of claim to be filed
A person claiming as a creditor, next of kin, or otherwise must file a statement of claim verified by an affidavit.
Compare: 1908 No 89 Schedule 2 r ~~409~~ 16.27 (as substituted by 2008 No 90 s 8)

16.28 Failure to claim within time
(1) A person who does not prove a claim within the advertised time is excluded from the benefit of the judgment or order directing accounts or inquiries.
(2) Sections 75, 76, and 76A of the Trustee Act 1956 override subclause (1).
Compare: 1908 No 89 Schedule 2 r ~~410~~ 16.28 (as substituted by 2008 No 90 s 8)

16.29 Result to be certified
The result of any account or inquiry must be stated in a short certificate to the court, unless the court orders the result to be recorded in a formal report.
Compare: 1908 No 89 Schedule 2 r ~~411~~ 16.29 (as substituted by 2008 No 90 s 8)

16.30 Party may ask for court's decision
At any time before the end of 10 working days after a certificate or report has been completed, but before it has been signed by a Judge, any party may ask for the court's decision on any particular point or on the result.
Compare: 1908 No 89 Schedule 2 r ~~413~~ 16.30 (as substituted by 2008 No 90 s 8)

16.31 Certificate when approved to be signed by Judge
(1) A Judge must sign a certificate or report stated or recorded under rule 16.29 when he or she has approved it.

High Court Rules—*continued*
Part 16—*continued*

(2) The Registrar must file the signed certificate or report in the court.

Compare: 1908 No 89 Schedule 2 r ~~412~~ 16.31 (as substituted by 2008 No 90 s 8)

16.32 Effect of certificate when filed

(1) A certificate or report that has been filed in the court is binding on all parties to the proceeding, unless discharged or varied by the court after an application made within 25 working days.

(2) Subclause (1) does not prevent the court from re-opening a certificate or report at any time on the grounds of fraud, surprise, or mistake.

Compare: 1908 No 89 Schedule 2 r ~~414~~ 16.32 (as substituted by 2008 No 90 s 8)

16.33 Distribution before all persons entitled are ascertained

The court may order the immediate payment of a party's share to that party—

(a) even if the other persons who are entitled to shares are not ascertained and there is likely to be difficulty or delay in ascertaining those others; and

(b) without reserving any part of the share to meet the subsequent costs of ascertaining those others.

Compare: 1908 No 89 Schedule 2 r ~~415~~ 16.33 (as substituted by 2008 No 90 s 8)

16.34 Payment of share carried over to separate trust account

(1) If the rights or circumstances of the parties at the time of judgment do not enable the court to order absolutely that payment be made to the persons entitled, the court may order any party's share that has not become absolute to be carried over on trust to a separate account.

(2) A party that becomes entitled to a share held in trust under subclause (1) may apply for payment of the share on notice to the other persons interested in the matter, and the court may order payment to that party.

Compare: 1908 No 89 Schedule 2 r ~~416~~ 16.34 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*

Part 17
Enforcement
Subpart 1—General provisions

17.1 Interpretation

In this Part, unless the context otherwise requires,—

enforcement process includes every order referred to in rule 17.3

enforcing officer means the court officer to whom an enforcement process is issued, and includes any court officer who may carry out any functions, duties, or powers provided for in this Part in the course of his or her employment duties

entitled party means—

(a) a judgment creditor; or

(b) a party other than a judgment creditor entitled to relief against another party under a judgment; or

(c) a party entitled to issue a charging order because the party may obtain judgment for—

(i) the payment of a sum of money; or

(ii) the return of the property the party seeks to charge

judgment creditor means the party entitled to enforce a judgment for the recovery or payment of a sum of money

judgment debtor means the party liable under a judgment to return or pay a sum of money or the party whose estate, right, title, or interest in property is liable to be charged under a charging order

liable party means—

(a) a judgment debtor; or

(b) a party who is liable to another party under a judgment, though not a judgment debtor; or

(c) the party whose estate, right, title, or interest in property is liable to be charged under a charging order

personal property has the same meaning as in section 16(1) of the Personal Property Securities Act 1999.

Compare: 1908 No 89 Schedule 2 r ~~545~~ 17.1 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 1—*continued*

17.2 Method of enforcing orders

A court order, except an order made on an interlocutory application, may be enforced in the same way as a judgment in the proceeding to the same effect.

Compare: 1908 No 89 Schedule 2 r ~~546~~ 17.2 (as substituted by 2008 No 90 s 8)

17.3 Method of enforcing judgments

(1) A judgment may be enforced by 1 or more of the following enforcement processes:
- (a) an attachment order:
- (b) a charging order:
- (c) a sale order:
- (d) a possession order:
- (e) an arrest order:
- (f) a sequestration order.

(2) Subclause (1) is subject to the rules in this Part.

(3) No enforcement process may be issued until any period specified in the judgment for payment or performance has expired.

Compare: 1908 No 89 Schedule 2 r ~~547;~~ ~~Civil Procedure Rules 1998 r 70.2 (UK)~~ 17.3 (as substituted by 2008 No 90 s 8)

17.4 No excessive recovery

(1) An entitled party is not entitled to recover a greater sum than the amount owing under the judgment or order, the costs and expenses of and incidental to issuing and effecting an enforcement process, and any interest due under the judgment or order.

(2) A claim that excessive recovery has occurred, or may occur, may be resolved by the Judge on application.

Compare: 1908 No 89 Schedule 2 r 17.4 (as substituted by 2008 No 90 s 8)

17.5 No enforcement against the Crown

(1) No enforcement process can be issued to enforce satisfaction of any judgment, order, decree, rule, award, or declaration

High Court Rules—*continued*
Part 17—*continued*
Subpart 1—*continued*

given or made in any civil proceedings under the Crown Proceedings Act 1950 against—

(a) the Crown; or
(b) the Attorney-General; or
(c) any government department; or
(d) any officer of the Crown.

(2) Subclause (1) does not limit section 24 of the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 r ~~553~~ 17.5 (as substituted by 2008 No 90 s 8)

17.6 Enforcement by or against non-parties

(1) A non-party is entitled to the same enforcement process as a party to the proceeding if—

(a) the non-party obtains an order; or
(b) an order is made in the non-party's favour.

(2) A non-party is liable to the same enforcement process as a party to the proceeding if—

(a) a judgment is given against the non-party; or
(b) an order is made against the non-party.

Compare: 1908 No 89 Schedule 2 r ~~554~~ 17.6 (as substituted by 2008 No 90 s 8)

17.7 Enforcement against partners or alleged partners

(1) A judgment against partners sued in the name of the firm may be enforced without the court's leave—

(a) against any property of the partners:
(b) against any person who—
  (i) has admitted in pleadings that he or she is a partner; or
  (ii) has been held by the court to be a partner:
(c) against any person who has been served as a partner with the notice of proceeding and has failed to file and serve a statement of defence.

(2) Subclause (1) is subject to rule 17.8.

High Court Rules—*continued*
Part 17—*continued*
Subpart 1—*continued*

(3) A judgment against partners sued in the name of the firm may be enforced against any person as a partner of that firm with the court's leave in any case not covered by subclause (1).

(4) On an application under subclause (3), the court,—

(a) if liability is not disputed by the person against whom the applicant claims to be entitled to issue enforcement, may grant leave; or

(b) if liability is disputed by the person against whom the applicant claims to be entitled to issue enforcement, may order that the liability of that person be tried and determined as it thinks just.

Compare: 1908 No 89 Schedule 2 r ~~555~~ 17.7 (as substituted by 2008 No 90 s 8)

17.8 Issuing enforcement process as of right

(1) An enforcement process may be issued as of right unless leave is required under rule 17.9.

(2) An enforcement process is issued under subclause (1) by the entitled party, or that party's solicitor, filing—

(a) a written request that a particular enforcement process should be issued; and

(b) an affidavit stating that none of paragraphs (c) to (e) of rule 17.9(2) apply.

(3) The court may set aside an enforcement process issued under subclause (1) if it is satisfied that any of paragraphs (c) to (e) of rule 17.9(2) applied when the enforcement process was issued.

Compare: 1908 No 89 Schedule 2 r ~~556~~ 17.8 (as substituted by 2008 No 90 s 8)

17.9 When leave to issue enforcement process necessary

(1) The court's leave is required before issuing an arrest order or a sequestration order.

(2) The court's leave is required to issue an enforcement process—

(a) if judgment has not been sealed; or

(b) if 6 years have elapsed since the date of the judgment (which for a judgment that is an arbitral award entered

High Court Rules—*continued*
Part 17—*continued*
Subpart 1—*continued*

as a judgment has the meaning given to it by subclause (2A)); or

(c) if any change has taken place (whether by death or otherwise) in the parties entitled or liable to enforcement under the judgment; or

(d) if the judgment is against the assets of a deceased person, enforcement is sought against those assets, and that person's executor or administrator has taken possession of those assets after the date of the judgment; or

(e) if a person is entitled to relief under the judgment only if that person has fulfilled a condition, and that person alleges that condition has been fulfilled; or

(f) if goods sought to be seized under an enforcement process are in the possession of—

(i) a receiver appointed by the court; or

(ii) a sequestrator.

(2A) **Date of the judgment** in subclause (2)(b) for a judgment that is an arbitral award entered as a judgment means the date on which the award became enforceable by action in New Zealand.

(3) If the court grants leave to issue an enforcement process (under this rule or otherwise) and the process is not issued within 1 year after the date of the order granting leave, that order expires but that does not prevent the making of a new order granting leave.

Compare: 1908 No 89 Schedule 2 r ~~556~~ 17.9 (as substituted by 2008 No 90 s 8)

Subpart 2—Obtaining information from liable party for enforcement purposes

17.10 Notice to liable party to complete financial statement

(1) An entitled party may serve on the liable party a notice in form E 1 with 2 copies of form E 2.

High Court Rules—*continued*
Part 17—*continued*
Subpart 2—*continued*

(2) A notice in form E 1 requires the liable party to complete and serve on the entitled party a statement in form E 2 of the liable party's—
  (a) receipts and payments for the preceding 52 weeks; and
  (b) assets and liabilities; and
  (c) income and expenditure; and
  (d) means of satisfying the judgment.

(3) The liable party must serve the statement in form E 2 on the entitled party within 10 working days after the date on which the notice in form E 1 is served on the liable party.

Compare: 1908 No 89 Schedule 2 r ~~620~~ 17.10 (as substituted by 2008 No 90 s 8)

17.11 Interpretation

In rules 17.12 to 17.20, unless the context otherwise requires,—

examinee means the party to be examined under rule 17.12 (or if the party is a corporation, an officer of the corporation)

examining party means a party seeking the recovery or payment of money in a proceeding who applies for an order for examination under rule 17.12.

Compare: 1908 No 89 Schedule 2 r 17.11 (as substituted by 2008 No 90 s 8)

17.12 Order for examination

(1) Whether or not a notice has been served under rule 17.10, an examining party may apply for an order—
  (a) at any time after the proceeding has commenced, if that party seeks a charging order under subpart 5 of this Part; and
  (b) in all other cases, at any time after judgment is sealed.

(2) An examining party may apply to the court for an order requiring the examinee to attend the court or a person whom the court appoints, and to be orally examined on oath about—
  (a) the standard issues in subclause (3); and
  (b) any additional issues suggested by the examining party that the court considers are necessary.

High Court Rules—*continued*
Part 17—*continued*
Subpart 2—*continued*

(3) The standard issues are—
  (a) if judgment has been given, about the examinee's—
    (i) receipts and payments for the preceding 52 weeks; and
    (ii) assets and liabilities; and
    (iii) income and expenditure; and
    (iv) means of satisfying the judgment:
  (b) if judgment has not been given, about any matters that are relevant to the issue of a charging order.

(4) When granting the application, the court may order the production of documents at the examination and may impose terms and conditions it thinks just in respect of the conduct of the examination or otherwise.

(5) An application under this rule may be made without notice, and may be granted by a Judge without a hearing.

(6) An order under this rule must contain a notice in the following terms:

"You must obey this order. If you do not, you may be sent to prison for contempt of court."

Compare: 1908 No 89 Schedule 2 r ~~621;~~ ~~Civil Procedure Rules 1998 rr 71.2, 71.6 (UK);~~ ~~Practice Direction Supplementing Part 71 of the Civil Procedure Rules 1998 paras 4.1, 5.1 (UK)~~ 17.12 (as substituted by 2008 No 90 s 8)

17.13 Service of order for examination

(1) Unless the court otherwise orders, an order to attend court for examination must be served on the examinee not less than 10 working days before the examination.

(2) The examining party must inform the court not less than 5 working days before the date of the hearing if the order has not been served.

Compare: ~~Civil Procedure Rules 1998 r 71.3 (UK)~~1908 No 89 Schedule 2 r 17.13 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 2—*continued*

17.14 Examining party's affidavit

At the examination, the examining party must file an affidavit or affidavits—

(a) by the person who served the order (unless it was served by an enforcing officer) giving details of how and when it was served; and

(b) stating how much remains unpaid of the amount for which the examining party may obtain or has obtained judgment.

Compare: ~~Civil Procedure Rules 1998 r 71.5 (UK)~~1908 No 89 Schedule 2 r 17.14 (as substituted by 2008 No 90 s 8)

17.15 Procedure for examination

(1) The examinee—

(a) must appear personally:

(b) may be represented by counsel, who may examine the examinee and be heard on the matter of the examinee's means:

(c) may be cross-examined by the examining party.

(2) A witness who is not the examinee may be cross-examined by or on behalf of the examinee or the examining party.

Compare: ~~1947 No 16 s 84D; Civil Procedure Rules 1998 r 71.6 (UK)~~1908 No 89 Schedule 2 r 17.15 (as substituted by 2008 No 90 s 8)

17.16 Adjournment of hearing

If the hearing is adjourned, the court must give directions about the manner in which notice of the new hearing is to be served on the examinee.

Compare: ~~Civil Procedure Rules 1998 r 71.7 (UK)~~1908 No 89 Schedule 2 r 17.16 (as substituted by 2008 No 90 s 8)

17.17 Orders by court

(1) After an examination is completed, a Judge may, after giving the examining party and the examinee an opportunity to be heard, do any 1 or more of the following:

High Court Rules—*continued*
Part 17—*continued*
Subpart 2—*continued*

(a) direct that 1 or more of the processes referred to in rule 17.3 be commenced or continued, direct any steps to be taken in those processes, and issue any warrant or summons or make any order for the purpose of those processes:

(b) make an order that the money owing under the judgment be paid by instalments payable at times fixed by the court:

(c) stay any processes for the enforcement of the judgment:

(d) make an order varying any order relating to the enforcement of the judgment.

(2) The Judge may do any 1 or more of the things referred to in subclause (1), even though—

(a) no application was made for the particular direction, order, or stay; or

(b) that application was made for a different direction, order, or stay.

Compare: ~~1947 No 16 s 84E~~1908 No 89 Schedule 2 r 17.17 (as substituted by 2008 No 90 s 8)

17.18 Failure to comply with order for examination

(1) A Judge may make an arrest order against an examinee who—

(a) fails to attend the examination; or

(b) refuses at the examination to take the oath or to answer any question; or

(c) fails to comply with the order for examination in any other way.

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) An arrest order for failing to attend the examination must not be made unless the examining party has filed the affidavit required by rule 17.14.

(4) If an arrest order is made, the Judge must direct that—

(a) the order is suspended provided the examinee—

High Court Rules—*continued*
Part 17—*continued*
Subpart 2—*continued*

(i) attends the court or any person whom the court has appointed for examination at a time and place specified in the order; and

(ii) complies with all the terms of the arrest order and the order for examination; and

(b) if the examinee fails to comply with any term on which the arrest order is suspended, the examinee may be brought before a Judge so that the Judge may consider whether to commit the examinee to prison.

Compare: ~~Civil Procedure Rules 1998 r 71.8 (UK)~~1908 No 89 Schedule 2 r 17.18 (as substituted by 2008 No 90 s 8)

17.19 Certification of breach of arrest order

(1) If an examinee who has been served with an arrest order fails to attend the examination or fails to comply with any other term on which the arrest order was suspended, an enforcing officer may issue a certificate to that effect.

(2) The certificate need not be served on the examinee.

(3) After seeing a certificate under subclause (1), a Judge or enforcing officer may issue a warrant to bring the examinee before a Judge.

Compare: ~~Civil Procedure Rules 1998 r 71.8 (UK)~~1908 No 89 Schedule 2 r 17.19 (as substituted by 2008 No 90 s 8)

17.20 Discharge of arrest order

(1) When an examinee is brought before a Judge on a warrant under rule 17.19(3), the Judge must discharge the arrest order unless the Judge is satisfied beyond reasonable doubt that—

(a) the examinee has failed to comply with—

(i) the original order to attend court; and

(ii) the terms on which the arrest order was suspended; and

(b) both orders have been served on the examinee.

High Court Rules—*continued*
Part 17—*continued*
Subpart 2—*continued*

(2) If the Judge does not discharge the arrest order, the Judge may commit the examinee to prison for a term of imprisonment of not more than 3 months.
Compare: 1908 No 89 Schedule 2 r 17.20 (as substituted by 2008 No 90 s 8)

Subpart 3—Preparation and issue of enforcement process

17.21 Enforcement process to conform with judgment

An enforcement process must strictly conform with the judgment or order it is enforcing or state why it does not.
Compare: 1908 No 89 Schedule 2 r ~~557~~ 17.21 (as substituted by 2008 No 90 s 8)

17.22 Preparation and issue of enforcement processes

(1) An entitled party issuing an enforcement process must also file an original order for the particular enforcement process sought, and a copy for the court.

(2) The Registrar must seal the original order and give it to an enforcing officer.

(3) An enforcement process is issued at the time when the original sealed order is given to an enforcing officer under subclause (2).
Compare: 1908 No 89 Schedule 2 r ~~558~~ 17.22 (as substituted by 2008 No 90 s 8)

17.23 Date of enforcement process

The date of an enforcement process is the date it is issued.
Compare: 1908 No 89 Schedule 2 r ~~559~~ 17.23 (as substituted by 2008 No 90 s 8)

17.24 Currency and renewal of enforcement processes (except for charging orders)

(1) An enforcement process that is not executed expires 1 year after the date it is issued.

(2) Subclauses (3) and (7) override subclause (1).

(3) An enforcement process may be renewed with the leave of a Judge once only for 1 year from the original expiry date.

High Court Rules—*continued*
Part 17—*continued*
Subpart 3—*continued*

(4) Leave under subclause (3) may be given before or after the enforcement process expires.

(5) When an enforcement process is renewed, it retains its original priority unless a Judge orders otherwise.

(6) The Registrar must note the fact and date of renewal on the enforcement process, and that is sufficient evidence of its having been renewed.

(7) Nothing in this rule applies in respect of a charging order.

Compare: 1908 No 89 Schedule 2 r ~~560~~ 17.24 (as substituted by 2008 No 90 s 8)

17.25 Expenses of enforcement

(1) An entitled party is entitled to the costs and expenses in respect of and incidental to issuing and effecting an enforcement process, and may levy those costs and expenses from the liable party.

(2) Subclause (1) is subject to rule 17.26.

Compare: 1908 No 89 Schedule 2 r ~~561~~ 17.25 (as substituted by 2008 No 90 s 8)

17.26 Concurrent enforcement processes

(1) Two or more enforcement processes (of the same or different kinds) may be issued to 1 or more places and addressed to different enforcing officers.

(2) The costs and expenses of more than 1 concurrent enforcement process may be allowed to a party only with the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r ~~562~~ 17.26 (as substituted by 2008 No 90 s 8)

17.27 Return of enforcement process

The enforcing officer must return an enforcement process as soon as possible to the court registry it was issued from with a memorandum stating,—

(a) if the officer succeeded in enforcing it, the way in which it was enforced; or

High Court Rules—*continued*
Part 17—*continued*
Subpart 3—*continued*

(b) if the officer did not succeed in enforcing it, despite reasonable attempts, the reason why it was not enforced.

Compare: 1908 No 89 Schedule 2 r ~~563~~ 17.27 (as substituted by 2008 No 90 s 8)

17.28 Reissue of enforcement process

If an enforcement process is returned unenforced and there are grounds for believing it can be successfully enforced, the entitled party may request that it be issued again to an enforcing officer.

Compare: 1908 No 89 Schedule 2 r ~~564~~ 17.28 (as substituted by 2008 No 90 s 8)

17.29 Stay of enforcement

A liable party may apply to the court for a stay of enforcement or other relief against the judgment upon the ground that a substantial miscarriage of justice would be likely to result if the judgment were enforced, and the court may give relief on just terms.

Compare: 1908 No 89 Schedule 2 r ~~565~~ 17.29 (as substituted by 2008 No 90 s 8)

17.30 Enforcement process may be set aside

The court may set aside an enforcement process if it is issued contrary to—

(a) any order of the court; or
(b) the agreement of the entitled party; or
(c) good faith.

Compare: 1908 No 89 Schedule 2 r ~~566~~ 17.30 (as substituted by 2008 No 90 s 8)

Subpart 4—Attachment orders

17.31 Interpretation

In this subpart, unless the context otherwise requires,—

employer, in relation to a liable party, includes—

(a) a person by whom a retiring allowance or pension or other payment of a similar nature is payable to the liable party:

High Court Rules—*continued*
Part 17—*continued*
Subpart 4—*continued*

(b) the Accident Compensation Corporation in respect of weekly compensation payable to the liable party under the Accident Compensation Act 2001:
(c) the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 in respect of a benefit payable to the liable party:
(d) a person for whom work is performed under a contract for services

protected earnings amount means an amount specified in an attachment order below which the net earnings or benefit paid to the liable party must not be reduced

salary or wages includes—
(a) a retiring allowance or pension or other payment of a similar nature:
(b) a bonus or an incentive payment:
(c) a payment of commission:
(d) a payment in consideration of work performed under a contract for services:
(e) all payments of weekly compensation made under the Accident Compensation Act 2001 by the Accident Compensation Corporation:
(f) a benefit within the meaning of the Social Security Act 1964.

Compare: ~~1947 No 16 s 84F~~1908 No 89 Schedule 2 r 17.31 (as substituted by 2008 No 90 s 8)

17.32 Effect of attachment order

(1) An attachment order directs that money due under a judgment is a charge on any salary or wages that are due and payable by an employer to the liable party.
(2) The charge—
(a) accrues from week to week on the day of the week specified in the attachment order; and

High Court Rules—*continued*
Part 17—*continued*
Subpart 4—*continued*

(b) accrues by way of weekly payments of the amount specified in the attachment order; and

(c) attaches to all salary or wages that become due by the employer to the liable party at any time while the attachment order is in force, whether or not the contract of employment or contract for services under which the salary or wages become due existed at the date of the attachment order.

Compare: ~~1947 No 16 s 84I~~1908 No 89 Schedule 2 r 17.32 (as substituted by 2008 No 90 s 8)

17.33 When attachment order may be issued

(1) If the liable party has been examined under rule 17.15, the court, on the written or oral application of the entitled party, may make an attachment order at any time after judgment is sealed.

(2) An attachment order—

(a) may be made against a person who the court is satisfied is an employer of the liable party:

(b) may be made for a fixed period or until the judgment debt has been fully paid:

(c) must specify the person to whom the amounts to be deducted must be paid:

(d) must specify the protected earnings amount.

(3) Form E 3 must be used.

Compare: ~~1947 No 16 s 84G~~1908 No 89 Schedule 2 r 17.33 (as substituted by 2008 No 90 s 8)

17.34 Attachment order to be served on employer

(1) A copy of an attachment order must be served on the employer to whom it relates—

(a) personally; or

(b) by leaving it at the employer's place of residence or business; or

(c) by sending it by post, addressed to the employer at the employer's place of residence or business.

High Court Rules—*continued*
Part 17—*continued*
Subpart 4—*continued*

(2) In the absence of proof to the contrary, any order served by post is deemed to have been served on the fourth working day after the day on which it was posted.

(3) To prove service it is sufficient to prove that the letter was properly addressed and posted.

(4) Every attachment order takes effect when a copy of the order is served on the employer in accordance with this rule.

Compare: ~~1947 No 16~~ s ~~84H~~1908 No 89 Schedule 2 r 17.34 (as substituted by 2008 No 90 s 8)

17.35 Priority of attachment order

(1) The charge under an attachment order is subject to the following charges, adjustments, and deductions (whether the charge was created or the adjustment or deduction was authorised before or after the making of the attachment order under this subpart):

- (a) a charge created by an attachment order or deduction notice made under the Family Proceedings Act 1980:
- (b) a charge created by an attachment order made under the Summary Proceedings Act 1957:
- (c) a deduction notice issued under the Child Support Act 1991:
- (d) a deduction notice issued under section 157 of the Tax Administration Act 1994 (as applied by section 193 of the Student Loan Scheme Act 2011):
- (e) a deduction from or adjustment to a benefit under section 86 of the Social Security Act 1964.

(2) Subclause (3) applies if the liable party assigns or charges the liable party's salary or wages before or after the making of the attachment order.

(3) The attachment order has the same effect as it would have if the assignment or charge had not occurred.

High Court Rules—*continued*
Part 17—*continued*
Subpart 4—*continued*

(4) Section 84 of the Social Security Act 1964 does not apply to an attachment order under this rule.

Compare: ~~1947 No 16 ss 84G, 84I~~1908 No 89 Schedule 2 r 17.35 (as substituted by 2008 No 90 s 8)

17.36 Protected earnings amount

(1) The sum of an amount charged under an attachment order and any other amounts described in subclause (2) must not reduce the net earnings or any benefit of the liable party below the protected earnings amount, and if necessary the amount to be deducted under an attachment order must be reduced or cancelled accordingly.

(2) For the purposes of subclause (1), **other amounts** means the amounts stated in any or all of the following:

(a) an attachment order under another Act; and

(b) a deduction notice made under the Family Proceedings Act 1980 or issued under section 86 or 86A of the Social Security Act 1964.

Compare: ~~1947 No 16 s 84G~~1908 No 89 Schedule 2 r 17.36 (as substituted by 2008 No 90 s 8)

17.37 Liability of employer

(1) While an attachment order remains in force and whenever any salary or wages become due and payable by an employer to the liable party, the employer must—

(a) deduct from the salary or wages a sufficient amount to satisfy the charge on the money that has accrued before the day on which the salary or wages becomes due and payable; and

(b) not later than the 20th day of the next month after the month in which the deduction is made, pay the deducted amount to the person specified in the attachment order.

(2) All sums deducted are treated as having been paid by the employer in satisfaction of the salary or wages payable by the employer to the liable party.

High Court Rules—*continued*
Part 17—*continued*
Subpart 4—*continued*

(3) All sums deducted are treated as having been paid by the liable party in satisfaction of the liable party's liability to pay the judgment debt.

(4) The employer must notify a court officer within 5 working days if the liable party leaves or is dismissed from the employer's employment.

(5) If an employer defaults in paying any money in satisfaction of a charge under an attachment order, that money becomes a debt due by the employer to the entitled party, and may be recovered by the entitled party in any court of competent jurisdiction.

(6) Subclause (1) is subject to rule 17.36.

Compare: ~~1947 No 16 s 84J~~1908 No 89 Schedule 2 r 17.37 (as substituted by 2008 No 90 s 8)

17.38 Attachment orders in State services

(1) In this rule,—

employee has the same meaning as in the State Sector Act 1988

State services has the same meaning as in the State Sector Act 1988.

(2) This subpart binds the Crown to the extent of and subject to subclauses (3) and (4).

(3) If the liable party is an employee in the State services, an attachment order may be made against the employer of that employee, and—

(a) the order must be served on the chief executive of the employee's department or agency or other instrument of the Crown, and also on any officer of the Crown specified in the order; and

(b) the order must be served in accordance with rule 17.34.

(4) When service is effected by post, it is sufficient if the letter is addressed to the person to be served by that person's official title or any sufficient description.

High Court Rules—*continued*
Part 17—*continued*
Subpart 4—*continued*

(5) If the liable party is entitled to a benefit within the meaning of the Social Security Act 1964, an attachment order may be made against the chief executive of the department for the time being responsible for the administration of that Act.

(6) If subclause (5) applies, the order must be served by leaving a copy of the order at, or sending a copy of the order by post to,—

(a) the district office of that department nearest to the liable party's place of residence; or

(b) an address notified by the chief executive of that department to the chief executive of the Ministry of Justice.

Compare: ~~1947 No 16~~ s ~~84L~~1908 No 89 Schedule 2 r 17.38 (as substituted by 2008 No 90 s 8)

17.39 Variation, suspension, and discharge of attachment orders

(1) An entitled party or a liable party may apply to a Judge for relief under this rule at any time.

(2) If a Judge is satisfied that there is a good reason to do so, he or she may—

(a) vary or suspend the order; or

(b) discharge the order.

(3) The variation, suspension, or discharge takes effect when notice of it is served on the employer in accordance with rule 17.34.

(4) The powers of the Judge under this rule are in addition to the court's powers under rule 7.49.

Compare: ~~1947 No 16~~ s ~~84M~~1908 No 89 Schedule 2 r 17.39 (as substituted by 2008 No 90 s 8)

Subpart 5—Charging orders

17.40 Effect of charging order

(1) A charging order charges the estate, right, title, or interest of the liable party in the property described in the order with payment of the amount for which the entitled party may obtain or has obtained judgment.

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

(2) A charging order may be in form E 4, ~~form~~ E 5, or ~~form~~ E 6.
Compare: 1908 No 89 Schedule 2 r ~~548~~ 17.40 (as substituted by 2008 No 90 s 8)

17.41 Leave to issue charging order

Leave to issue a charging order before judgment may be granted only on proof that the liable party, with intent to defeat either his or her creditors or the entitled party or both,—

(a) is removing, concealing, or disposing of the liable party's property; or

(b) is absent from or about to leave New Zealand.

Compare: 1908 No 89 Schedule 2 r ~~567~~ 17.41 (as substituted by 2008 No 90 s 8)

17.42 Issue of charging order without leave after judgment

After judgment is sealed, the entitled party may issue a charging order without leave.
Compare: 1908 No 89 Schedule 2 r ~~568~~ 17.42 (as substituted by 2008 No 90 s 8)

17.43 Charging order where amount involved small

If the amount involved is so small that the issue of a charging order is vexatious or worthless, the court may—

(a) refuse the application for a charging order; or

(b) if the charging order has been issued (whether as of right or on application), revoke the charging order.

Compare: 1908 No 89 Schedule 2 r ~~569~~ 17.43 (as substituted by 2008 No 90 s 8)

17.44 Application for relief by persons prejudicially affected

(1) At any time, a person alleging that he or she is prejudicially affected by a charging order may apply to the court for relief.

(2) The court may—

(a) vary or rescind the order; or

(b) cancel the registration or modify the effect of registration of any order affecting land.

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

(3) The powers of the court under this rule are in addition to its powers under rule 7.49.

Compare: 1908 No 89 Schedule 2 r ~~570~~ 17.44 (as substituted by 2008 No 90 s 8)

17.45 Claim of third party on property charged

(1) For the purposes of this rule, **interested third party** means a person other than the entitled party or liable party who allegedly—
  (a) owns the charged property; or
  (b) has a lien, charge, or other claim on the charged property.

(2) The court may order an interested third party to attend the court and state the nature and details of the third party's interest in the charged property.

(3) An interested third party may attend and state the nature and particulars of that party's claim to the court without the court's leave at the hearing of—
  (a) an application to make the charging order final:
  (b) an application to set aside or vary the charging order.

(4) An interested third party must give 24 hours' notice to the court and all affected parties of an intention to attend the court under subclause (3).

Compare: 1908 No 89 Schedule 2 r ~~571~~ 17.45 (as substituted by 2008 No 90 s 8)

17.46 Apportionment when more than 1 charging order

(1) Subclause (2) applies if more than 1 charging order has been issued against the same liable party.

(2) The court may, on the application of the liable party or any other person claiming to be affected, determine how much or what part of the relevant property is for the separate use of each entitled party who has obtained a charging order.

Compare: 1908 No 89 Schedule 2 r ~~572~~ 17.46 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

17.47 Charging order for land final when issued

(1) A charging order may charge an estate, right, title, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent) in any land held in the liable party's own name.

(2) A charging order issued under this rule is a final charging order when it is issued.

Compare: 1908 No 89 Schedule 2 r ~~573~~ 17.47 (as substituted by 2008 No 90 s 8)

17.48 Registration of charging order under Land Transfer Act 1952

(1) A final charging order in respect of land that is under the Land Transfer Act 1952 must be registered under that Act against the land's certificate of title.

(2) The charging order must sufficiently refer to the affected land so as to identify that land by—

(a) a description of the land; or

(b) a reference to a certificate of title or other instrument containing a description of the land.

(3) Unless the land is the whole of the land comprised in a certificate or certificates of title, or is shown separately on a plan deposited under the Land Transfer Act 1952, the charging order must have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

(4) The entitled party must deposit a duplicate of the charging order with the District Land Registrar (unless that Registrar has dispensed with the production of duplicate instruments in accordance with the Land Transfer Act 1952).

Compare: 1908 No 89 Schedule 2 r ~~574~~ 17.48 (as substituted by 2008 No 90 s 8)

17.49 Registration of charging order not under Land Transfer Act 1952

(1) A final charging order in respect of land that is not under the Land Transfer Act 1952 must be registered with the district Registrar of Deeds under the Deeds Registration Act 1908 or

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

otherwise in accordance with the current law about the registration of deeds.

(2) The charging order must sufficiently refer to the affected land so as to identify that land by—
  (a) a description of the land; or
  (b) a reference to a Crown grant or other instrument containing a description of the land.

(3) The charging order must have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

Compare: 1908 No 89 Schedule 2 r ~~575~~ 17.49 (as substituted by 2008 No 90 s 8)

17.50 Sale before registration of charging order

An unregistered charging order has no effect against a purchaser for valuable consideration.

Compare: 1908 No 89 Schedule 2 r ~~576~~ 17.50 (as substituted by 2008 No 90 s 8)

17.51 Discharge of land from charging order

Land subject to a final charging order is discharged from that order on registration with the District Land Registrar or Registrar of Deeds of—
  (a) a memorandum of satisfaction of the judgment in the proceeding in which the charging order has been issued or other sufficient evidence of satisfaction; or
  (b) an order of the court to the effect that the land is discharged from the charging order; or
  (c) the consent of the person who registered the charging order to the discharge of the land from the charging order.

Compare: 1908 No 89 Schedule 2 r ~~577~~ 17.51 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

17.52 Lapse of charging order after 2 years

(1) A charging order no longer binds the land affected and is treated as discharged after 2 years from the date of the charging order unless it is extended under subclause (2).

(2) The court may within that period, if it thinks just, extend the effect of a charging order for any necessary period.

(3) Subclause (1) does not apply if the charging order has led to a sale order, and a person registers any of the following in relation to the land under that sale order:

- (a) an instrument of transfer:
- (b) a deed of conveyance:
- (c) an assignment.

Compare: 1908 No 89 Schedule 2 r ~~578~~ 17.52 (as substituted by 2008 No 90 s 8)

17.53 Personal property may be charged

A charging order may charge all personal property, including—

- (a) debts payable by or accruing due from the Crown to the liable party that are not excepted by section 26 of the Crown Proceedings Act 1950:
- (b) a debt or sum of money due or accruing due to the liable party, including money—
  - (i) due or accruing due to the liable party by a public body; or
  - (ii) standing to the credit of the liable party in a proceeding or interlocutory application; or
  - (iii) standing to the credit of the liable party in the possession of a Sheriff or court officer:
- (c) the right or interest of the liable party in a partnership:
- (d) shares held by the liable party in any company that—
  - (i) is incorporated in New Zealand; or
  - (ii) has a registry in New Zealand in which transfers of shares may be registered:
- (e) the estate, right, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent)

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

in any land, or in any money, shares, or other personal property, held under or because of any express or implied trust for the liable party.

Compare: 1908 No 89 Schedule 2 r ~~579~~ 17.53 (as substituted by 2008 No 90 s 8)

17.54 Interim charging order in first instance

(1) A charging order under rule 17.53—
  (a) is a limited charging order until the court discharges or finalises it in accordance with these rules; and
  (b) is called an **interim charging order** in this rule and in rules 17.55 to 17.60.

(2) An interim charging order must be served—
  (a) on the person it is intended to affect; or
  (b) on any person the court directs, if money is—
    (i) due by the Crown or a public body; or
    (ii) standing to the credit of a liable party in a proceeding or interlocutory application.

(3) If an interim charging order is intended to affect an estate, right, or interest in land under or because of any trust,—
  (a) that interim charging order may also be registered against the land; or
  (b) a caveat may be lodged against the land in respect of the interim charging order.

Compare: 1908 No 89 Schedule 2 r ~~580~~ 17.54 (as substituted by 2008 No 90 s 8)

17.55 Effect of interim charging order

A person served with an interim charging order may not, except under rules 17.56 to 17.61 or with the leave of the court,—
  (a) pay over any debt, income, interest, dividends, bonus, profits, or other money due or accruing due to the liable party named in the interim charging order; or
  (b) make, concur in making, or permit any conveyance, transfer, assignment, or disposition of any estate, right,

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

or interest, or of any share in a partnership or company, of the liable party named in the interim charging order.

Compare: 1908 No 89 Schedule 2 r ~~581~~ 17.55 (as substituted by 2008 No 90 s 8)

17.56 Liability of persons breaching interim charging order

(1) If a person who has been served with an interim charging order breaches rule 17.55, the court may order that person to pay the entitled person either of the following:
   (a) the amount of the money paid or the value of the property disposed of in breach of that rule; or
   (b) a sufficient part of the money paid or the value of the property disposed of in breach of that rule to satisfy any judgment the entitled party may obtain or may have obtained in the proceeding.

(2) The court's orders under subclause (1) may be in addition to or instead of a penalty that may be imposed by or under another rule.

Compare: 1908 No 89 Schedule 2 r ~~582~~ 17.56 (as substituted by 2008 No 90 s 8)

17.57 Money may be paid into court

(1) A person served with an interim charging order may pay the money affected by the order into court.

(2) The money paid into court must be paid out in accordance with the result of the proceeding or an order of the court.

Compare: 1908 No 89 Schedule 2 r ~~583~~ 17.57 (as substituted by 2008 No 90 s 8)

17.58 Court may order sale of property affected

(1) On an application by the entitled party or by the person affected by the order, the court may do 1 or more of the following:
   (a) order that any property affected be sold:
   (b) give directions about the sale as the court thinks just:

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

(c) order that the net proceeds of the sale be paid into court, to be paid out later in accordance with the result of the proceeding or an order of the court.

(2) The court may act under subclause (1) when making an interim charging order or at any later time before judgment.

Compare: 1908 No 89 Schedule 2 r ~~584~~ 17.58 (as substituted by 2008 No 90 s 8)

17.59 Application to make final charging order after judgment

(1) The entitled party may apply to the court to have an interim charging order made final at any time after judgment is sealed.

(2) The court may make orders and give directions for the disposal of money paid into court under rule 17.57 or 17.58.

Compare: 1908 No 89 Schedule 2 r ~~585~~ 17.59 (as substituted by 2008 No 90 s 8)

17.60 Execution after charging order made final

After a charging order has been made final, the entitled party may do either or both of the following:

(a) if a person is affected by an interim charging order because he or she owes any money due or accruing due to the liable party,—

(i) issue a sale order under rules 17.62 to 17.82 against that person's property; and

(ii) execute the sale order as if judgment had been sealed by the liable party against that person:

(b) sell any property referred to in paragraphs (c) to (e) of rule 17.53 under a sale order in the same way (as nearly as possible) as a sale of land under rules 17.62 to 17.82.

Compare: 1908 No 89 Schedule 2 r ~~586~~ 17.60 (as substituted by 2008 No 90 s 8)

17.61 Discharge of person served with order

(1) A person served with a final charging order who pays money under it to a court officer (whether because of an enforcement process or otherwise) is discharged from that person's obligation to the liable party to the extent of the amount paid.

(2) Subclause (1) applies even if the court sets aside or reverses—

High Court Rules—*continued*
Part 17—*continued*
Subpart 5—*continued*

(a) the final charging order; or
(b) the judgment in the proceeding in which the final charging order was obtained.

Compare: 1908 No 89 Schedule 2 r ~~587~~ 17.61 (as substituted by 2008 No 90 s 8)

Subpart 6—Sale orders and possession orders

17.62 Effect of sale order

(1) A sale order authorises and requires an enforcing officer to seize all the liable party's personal property except—
  (a) necessary tools of trade to a value not exceeding $5,000; and
  (b) necessary household furniture and effects to a value not exceeding $10,000 (necessary household furniture and effects includes the clothes of the liable party and his or her family).

(2) An enforcing officer must take the actions described in subclause (3) if money seized under a sale order is not enough to—
  (a) discharge any claims which by law are entitled to be paid in priority to the entitled party's claim; and
  (b) pay the costs and expenses of executing the order; and
  (c) satisfy the amount of the judgment and interest payable to the entitled party.

(3) In the situation described in subclause (2), an enforcing officer must—
  (a) receive and recover the sum or sums—
    (i) payable under any cheques, bills of exchange, and promissory notes; or
    (ii) secured by bonds or other securities for money; and
  (b) sell, in accordance with rules 17.63 to 17.82, the seized chattels and the liable party's estate, right, title, or interest in any land (whether it is in possession, remainder, reversion, or expectancy).

High Court Rules—*continued*
Part 17—*continued*
Subpart 6—*continued*

(4) A sale order may be in form E 7.

Compare: 1908 No 89 Schedule 2 r ~~549~~ 17.62 (as substituted by 2008 No 90 s 8)

17.63 When sale order may be issued

An entitled party may issue a sale order at any time after judgment for a sum of money is sealed.

Compare: 1908 No 89 Schedule 2 r ~~588~~ 17.63 (as substituted by 2008 No 90 s 8)

17.64 Execution for less than full amount of judgment

(1) An entitled party must endorse the sale order with the amount claimed.

(2) The amount claimed must reflect any of the following that apply:

- (a) money paid on account of the judgment:
- (b) the entitled party's wish to waive—
  - (i) any part of the money due on account of the judgment; or
  - (ii) payment of the entitled party's costs or any part of those costs:
- (c) that the judgment has been given for a larger amount than is due.

(3) If the amount due under a judgment is less than the amount of the judgment and the entitled party has not endorsed that on the sale order as required by this rule, the court may set aside or vary the order and make whatever restitutionary or incidental orders are thought just.

Compare: 1908 No 89 Schedule 2 r ~~589~~ 17.64 (as substituted by 2008 No 90 s 8)

17.65 Recovery of money owing on cheques and other securities

(1) If money seized under a sale order is not the full amount required by the sale order, the enforcing officer may seize any of the following as security for the balance of the full amount:

- (a) cheques:
- (b) bills of exchange:
- (c) promissory notes:

High Court Rules—*continued*
Part 17—*continued*
Subpart 6—*continued*

(d) bonds:
(e) other securities for money.

(2) The officer may sue the issuer of the security in the officer's own name for the sum or sums secured by it in accordance with the terms of the particular security seized.

(3) The officer need not sue under subclause (2) unless the entitled party enters into a bond with 2 sufficient guarantors that indemnifies the officer against—
(a) all costs and expenses of suing; and
(b) all costs and expenses to which the officer may become liable as a result of the suit.

(4) The expenses of the bond referred to in subclause (3) must be deducted out of any money recovered in the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~590~~ 17.65 (as substituted by 2008 No 90 s 8)

17.66 Discharge of person paying on cheque or other security

A person liable to the liable party under a security seized under rule 17.65 who pays money under the security to a court officer (whether because of an enforcement process or otherwise) is discharged from liability to the liable party to the extent of the amount paid.

Compare: 1908 No 89 Schedule 2 r ~~591~~ 17.66 (as substituted by 2008 No 90 s 8)

17.67 Disposal of proceeds

The order in which an enforcing officer must apply the proceeds of the sale order is—
(a) discharging all claims that have priority over the entitled party's claim:
(b) paying the costs and expenses of executing the sale order:
(c) paying the entitled party a sufficient sum to satisfy the amount required by the sale order:
(d) paying any surplus to the liable party.

Compare: 1908 No 89 Schedule 2 ~~rr 592, 605~~ r 17.67 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 6—*continued*

17.68 Not necessary to seize land

An enforcing officer need not seize land before selling the land.

Compare: 1908 No 89 Schedule 2 r ~~593~~ 17.68 (as substituted by 2008 No 90 s 8)

17.69 Moving seized chattels

(1) An enforcing officer must move chattels seized under a sale order to an appropriate selling place as soon as possible.

(2) The liable party may consent in writing to the chattels—

(a) remaining in the place where they were seized; and

(b) being kept in the custody of a person the officer considers appropriate; and

(c) being sold in that place.

(3) Subclause (2) is an exception to subclause (1).

Compare: 1908 No 89 Schedule 2 r ~~594~~ 17.69 (as substituted by 2008 No 90 s 8)

17.70 Place of sale

(1) An enforcing officer must sell seized chattels in the place he or she considers best.

(2) With the written consent of the liable party, the officer may—

(a) sell chattels at the place of seizure; and

(b) sell land to be sold on the land itself.

Compare: 1908 No 89 Schedule 2 r ~~595~~ 17.70 (as substituted by 2008 No 90 s 8)

17.71 Advertising of notice of sale

(1) An enforcing officer must give notice of the sale of seized chattels in whichever newspaper or newspapers the officer considers sufficient.

(2) The notice must be first published,—

(a) for a land sale, at least 15 working days before the date of the intended sale:

(b) for any other sale, at least 5 working days before the date of the intended sale.

High Court Rules—*continued*
Part 17—*continued*
Subpart 6—*continued*

(3) The notice may be republished in the same or other newspaper or newspapers in the way and to the extent the officer considers sufficient.

(4) The notice—

(a) must contain the information specified in rule 17.73; and

(b) must be in the form and give the particulars the officer considers sufficient.

Compare: 1908 No 89 Schedule 2 r ~~596~~ 17.71 (as substituted by 2008 No 90 s 8)

17.72 Service of notice of sale on liable party

At least 7 working days before the sale, an enforcing officer must serve a copy of the notice referred to in rule 17.71 on the liable party—

(a) at the liable party's address for service; or

(b) if the liable party has not filed an address for service, at the liable party's last known residential address.

Compare: 1908 No 89 Schedule 2 r ~~597~~ 17.72 (as substituted by 2008 No 90 s 8)

17.73 Contents of notice of sale

The notice referred to in rule 17.71—

(a) must state that the sale is made on behalf of the entitled party; and

(b) must specify—

(i) the chattels, or the right or interest in the chattels, or the land, or the estate, right, title, or interest in the land, intended to be sold; and

(ii) the name of the enforcing officer; and

(iii) the name of the solicitor (if any) for the entitled party.

Compare: 1908 No 89 Schedule 2 r ~~598~~ 17.73 (as substituted by 2008 No 90 s 8)

17.74 Method and conditions of sale

(1) All sales under a sale order must be—

High Court Rules—*continued*
Part 17—*continued*
Subpart 6—*continued*

(a) by public auction on terms and conditions approved by the Registrar; or
(b) by private treaty—
(i) with the parties' consent; or
(ii) by order of the court made on the application of either party.

(2) An enforcing officer may choose whether to sell property seized under a sale order in 1 lot or in several lots.

(3) Unless the court directs otherwise, all sales—
(a) must be for cash on delivery, assignment, or transfer; and
(b) must be of the estate, right, title, or interest only of the liable party in the chattels or land put up for sale.

Compare: 1908 No 89 Schedule 2 r ~~599~~ 17.74 (as substituted by 2008 No 90 s 8)

17.75 Powers of enforcing officer in relation to sale by auction

An enforcing officer—
(a) may sell property seized under a sale order by public auction without an auctioneer's licence (despite anything in any Act to the contrary); and
(b) may place a reserve on the property; and
(c) may put the property up for sale as often as required until it is sold.

Compare: 1908 No 89 Schedule 2 r ~~600~~ 17.75 (as substituted by 2008 No 90 s 8)

17.76 Power of enforcing officer to seize title deeds

(1) The enforcing officer may require the liable party—
(a) to provide (if they are in the liable party's possession) the certificate of title and any title deeds for land that is to be sold; and
(b) to disclose—
(i) the name of any person who has possession of the certificate of title and any title deeds for land that is to be sold; and
(ii) the address where those documents are kept.

High Court Rules—*continued*
Part 17—*continued*
Subpart 6—*continued*

(2) If the person who possesses the documents referred to in subclause (1) refuses to give them to the officer, the officer may seize those documents.

(3) The officer may give copies of the certificate of title and any title deeds to an intending purchaser.

Compare: 1908 No 89 Schedule 2 r ~~601~~ 17.76 (as substituted by 2008 No 90 s 8)

17.77 Order of sale of land and chattels

(1) An enforcing officer must sell chattels first if both land and chattels were seized from a liable party under the same sale order unless another sequence is—
- (a) preferred by the liable party; or
- (b) directed by the court.

(2) Despite any preferences of the liable party, the court may direct under subclause (1)(b) that the land be sold—
- (a) before the chattels; or
- (b) at the same time as a specified chattel or a specified class of chattels.

(3) If the proceeds of the sale of the chattels or of the land or of the land and some of the chattels are insufficient to satisfy the amount required by the sale order, the enforcing officer must sell the remaining seized property.

Compare: 1908 No 89 Schedule 2 r ~~602~~ 17.77 (as substituted by 2008 No 90 s 8)

17.78 Power of liable party or mortgagee to give directions concerning sale of land

(1) A liable party whose interest in land is to be sold or a mortgagee of that interest may by notice require that any specified portions of the land that may lawfully be sold separately be sold first.

(2) A notice under subclause (1) must be—
- (a) in writing; and
- (b) delivered to an enforcing officer at least 10 working days before the date of the sale.

High Court Rules—*continued*
Part 17—*continued*
Subpart 6—*continued*

(3) If the liable party and a mortgagee deliver conflicting requirements under subclause (1), the mortgagee's requirement prevails.

(4) An enforcing officer must sell the specified portions first in accordance with a notice under subclause (1) or any prevailing mortgagee's requirement under subclause (3).

(5) If the sum realised by the sale of the specified portions is sufficient to satisfy the execution, interest, costs, and expenses, the officer may not sell any other part of the land.

(6) Unless subclause (5) applies, the officer must, after selling the specified portions, proceed with the sale of the remainder.

Compare: 1908 No 89 Schedule 2 r ~~603~~ 17.78 (as substituted by 2008 No 90 s 8)

17.79 Transfers, etc, to purchaser

(1) A valid instrument of transfer, deed of conveyance, or assignment to the purchaser of the estate, right, title, or interest of the liable party in any land or chattels sold—

(a) must be prepared by the purchaser at the purchaser's own expense; and

(b) must be left for approval with the enforcing officer 4 working days before it is to be executed.

(2) The officer must (if required by the purchaser) execute the instrument if and when the officer approves it.

(3) The instrument, when executed by the officer,—

(a) is equally effective for all purposes as if it had been executed by the liable party; and

(b) is prima facie evidence of—

(i) the existence of a valid judgment and sale order supporting the seizure by the officer; and

(ii) all necessary notices having been given and published; and

(iii) a valid seizure; and

(iv) a sale having taken place according to law.

Compare: 1908 No 89 Schedule 2 r ~~604~~ 17.79 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 6—*continued*

17.80 Effect of possession order

(1) A possession order authorises and requires an enforcing officer to deliver possession of the land or chattels described in the order to the person named in the order.

(2) For the purpose described in subclause (1), the officer may—
  (a) eject any other person from land; or
  (b) seize and take possession of the chattels.

(3) A possession order may be in form E 8.

Compare: 1908 No 89 Schedule 2 r ~~550~~ 17.80 (as substituted by 2008 No 90 s 8)

17.81 When possession order may be issued

If a judgment orders a party to deliver possession of land or chattels to another party, that other party may issue a possession order.

Compare: 1908 No 89 Schedule 2 r ~~606~~ 17.81 (as substituted by 2008 No 90 s 8)

17.82 Combined sale and possession order

If a judgment orders a party to pay a sum of money and to deliver possession of land or chattels to another party, that other party may issue a sale and possession order.

Compare: 1908 No 89 Schedule 2 r ~~607~~ 17.82 (as substituted by 2008 No 90 s 8)

Subpart 7—Arrest orders and sequestration orders

17.83 Effect of arrest order

(1) An arrest order authorises and requires an enforcing officer to arrest any person named in the order and to bring that person before the court at the time and place specified in the order, and until then, to keep the person in safe custody.

(2) An arrest order may be in form E 9.

Compare: 1908 No 89 Schedule 2 r ~~551~~ 17.83 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 7—*continued*

17.84 Power to issue arrest order

(1) In this subpart, an **original court order** means, whether or not the order is in a judgment, a court order to do or abstain from doing something that is not paying a sum of money.

(2) If a party has been served with an original court order but does not comply, a Judge may issue an order arresting the non-complying party on the application of a party entitled to the benefit of that order.

Compare: 1908 No 89 Schedule 2 r ~~608~~ 17.84 (as substituted by 2008 No 90 s 8)

17.85 Power to commit to prison for disobedience

(1) A court may commit to prison a party brought before the court on an arrest order unless the party complies with the original court order.

(2) A court may commit a party to prison under subclause (1) for a term that—

(a) the court considers necessary; and

(b) is allowed by law.

Compare: 1908 No 89 Schedule 2 r ~~609~~ 17.85 (as substituted by 2008 No 90 s 8)

17.86 Effect of sequestration order

(1) A sequestration order authorises and requires the sequestrator to enter and take possession of all the real and personal property of the party against whom it is directed.

(2) The sequestrator must obtain the rents and profits from the property until—

(a) the party clears the party's contempt of court in the way specified in the order; or

(b) the court orders otherwise.

(3) A sequestration order may be in form E 10.

Compare: 1908 No 89 Schedule 2 r ~~552~~ 17.86 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 7—*continued*

17.87 Power to issue sequestration order

(1) If a party has been served with an original court order or an order to pay money into court but does not comply, the court may issue a sequestration order against the property of the non-complying party.

(2) The court can issue a sequestration order under subclause (1) only on notice to the non-complying party.

(3) The court must appoint a sequestrator of the property and the provisions of rules 7.61 to 7.67 apply, with all necessary modifications, as if the sequestrator were a receiver.

Compare: 1908 No 89 Schedule 2 r ~~610~~ 17.87 (as substituted by 2008 No 90 s 8)

Subpart 8—Absconding debtors and imprisonment for debt

17.88 Arrest of absconding debtor

(1) The plaintiff may make an application without notice for an order to arrest and imprison a defendant under **section 38** of the Act.

(2) The defendant may at any time before or after arrest apply to the court to rescind or vary the order or to be discharged from custody, or for other relief.

(3) The court may make any order that is just on an application under subclause (2).

Compare: 1908 No 89 Schedule 2 r ~~611(1)–(3)~~ 17.88 (as substituted by 2008 No 90 s 8)

17.89 Process for order to arrest and imprison defendant

(1) An order to arrest and imprison a defendant under **section 38** of the Act must be—

(a) in form E 11; or

(b) if in civil proceedings for a penalty it is necessary to prove material prejudice, in form E 12.

(2) Concurrent orders may be issued for arrest in different places.

High Court Rules—*continued*
Part 17—*continued*
Subpart 8—*continued*

(3) The order must be endorsed with the address for service of the plaintiff before it is delivered to the Sheriff.

(4) The Sheriff or other enforcing officer must endorse the actual date of the arrest on the order within 2 working days after the arrest.

Compare: 1908 No 89 Schedule 2 r ~~611(4)–(7)~~ 17.89 (as substituted by 2008 No 90 s 8)

17.90 Security by absconding debtor

(1) The security to be given by a defendant to discharge an order to arrest and imprison him or her under **section 38** of the Act may be—

(a) a deposit in court of the amount mentioned in the order; or

(b) a bond to the plaintiff by the defendant and 2 sufficient sureties; or

(c) with the plaintiff's consent, any other form of security.

(2) Within 4 working days of receiving details of the names and addresses of the proposed sureties and the form of the proposed bond, the plaintiff may give a notice of objection to the sureties and form of bond, with details of the reasons for objection.

(3) If the plaintiff gives a notice under subclause (2), the Registrar must determine the sufficiency of the security, and the Registrar has the power to award the costs of the reference to either party.

Compare: 1908 No 89 Schedule 2 r ~~612~~ 17.90 (as substituted by 2008 No 90 s 8)

17.91 Orders about security

The court may, at any time, order—

(a) that the whole or part of a sum of money paid or secured under rule 17.90 be paid to the plaintiff; or

(b) that any security given under rule 17.90 by the defendant be enforced.

Compare: 1908 No 89 Schedule 2 r ~~613~~ 17.91 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 17—*continued*
Subpart 8—*continued*

17.92 Discharge on payment

(1) An enforcing officer must give a receipt for the payment into court of the amount required by an order under rule 17.91.

(2) The plaintiff or the plaintiff's solicitor must give a certificate of receipt of the bond or other security required by an order under rule 17.91.

(3) The defendant is entitled to be discharged out of prison when a receipt or certificate under this rule is given to the Sheriff.

Compare: 1908 No 89 Schedule 2 r ~~614~~ 17.92 (as substituted by 2008 No 90 s 8)

Part 18
Applications in equity and under statutes
Subpart 1—Application

18.1 Types of proceedings

This Part applies to the following types of proceedings:

Equitable jurisdiction

(a) proceedings in which the relief claimed is wholly within the equitable jurisdiction of the court, such as—

(i) the determination of a claim to an entitlement as beneficiary under a will or trust or on the intestacy of a deceased person, or as creditor of a deceased person, whether the claim is made by the person claiming to be entitled or by that person's assignee or successor:

(ii) the ascertainment of a class of creditors, beneficiaries under a will, or persons entitled on the intestacy of a deceased person, or of beneficiaries under a trust:

(iii) the giving of particular accounts by executors, administrators, or trustees:

(iv) the payment into court of money held by executors, administrators, or trustees:

(v) the giving of directions to persons in their capacity as executors, administrators, trustees, or

High Court Rules—*continued*
Part 18—*continued*
Subpart 1—*continued*

beneficiaries to do or abstain from doing a particular act:

(vi) the approval of a sale, purchase, compromise, or other transaction by executors, administrators, or trustees:

(vii) the carrying-on of a business authorised to be carried on by any deed or instrument creating a trust or by the court:

(viii) the interpretation of a deed or instrument creating a trust:

(ix) the determination of a question that arises in the administration of an estate or trust or whose determination is necessary or desirable to protect the executors, administrators, or trustees:

Determinations by court under statutes

(b) proceedings in which the relief is claimed solely under the following enactments:

(i) the Care of Children Act 2004:

(ii) the Charitable Trusts Act 1957:

(iii) the Companies Act 1993 (not being a proceeding properly brought under Part 19 or 31 of these rules):

(iv) the Corporations (Investigation and Management) Act 1989:

(v) the Declaratory Judgments Act 1908:

(vi) the Family Protection Act 1955:

(vii) the Incorporated Societies Act 1908:

(viii) the Industrial and Provident Societies Act 1908:

(ix) the Insolvency Act 2006 and the Insolvency (Cross-border) Act 2006:

(x) sections 140, 143, 144, 145, 145A, and 148 of the Land Transfer Act 1952 (which relate to caveats):

(xi) the Law Reform (Testamentary Promises) Act 1949:

High Court Rules—*continued*
Part 18—*continued*
Subpart 1—*continued*

(xii) the Mental Health (Compulsory Assessment and Treatment) Act 1992:
(xiii) the Trustee Act 1956:
(xiv) any repealed enactment to which Part 4 of the High Court Rules applied immediately before commencement of the Schedule of the Judicature (High Court Rules) Amendment Act 2008 if the enactment continues to apply to the plaintiff:

Contracts for sale of land

(c) any proceeding by a party to, or an assignee of, a contract for the sale of the freehold or leasehold in any land, for relief in respect of—
(i) any requisitions or objections; or
(ii) any claim for compensation; or
(iii) any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract):

Mortgages and charges over land

(d) any proceeding by a person affected by a mortgage or charge (whether legal or equitable) of an interest in land for the purpose of determining—
(i) the person's rights or obligations under the mortgage or charge; or
(ii) the exercise or purported or threatened exercise of any right or power alleged to arise out of the mortgage or charge:

Proceedings directed by court

(e) any other proceeding to which the court directs that this Part is to apply.

Compare: 1908 No 89 Schedule 2 ~~rr 447, 448, 448B, 448C, 449~~ r 18.1 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 18—*continued*
Subpart 1—*continued*

18.2 Limited application of this Part to proceedings under Property (Relationships) Act 1976

Rule 18.14 (which relates to joinder of claims and consolidation) and rule 18.15 (which relates to evidence) apply to proceedings transferred to the court by order of a Family Court Judge under section 22(3) of the Property (Relationships) Act 1976, but no other rule in this Part applies to proceedings under that Act.

Compare: 1908 No 89 Schedule 2 r ~~448D~~ 18.2 (as substituted by 2008 No 90 s 8)

18.3 This Part subject to rules under other Acts

The application of this Part to a proceeding brought under an Act is subject to any rules in force under that Act.

Compare: 1908 No 89 Schedule 2 r ~~448(2)~~ 18.3 (as substituted by 2008 No 90 s 8)

18.4 Commencement of proceedings

(1) A proceeding under this Part must be—

(a) commenced by statement of claim; and

(b) accompanied by an application for directions as to service and representation under rule 18.7.

(2) The application of this Part to a proceeding does not prevent the commencement of that proceeding by originating application if it is eligible to be so commenced under Part 19, in which event this Part does not apply.

Compare: 1908 No 89 Schedule 2 r ~~449A~~ 18.4 (as substituted by 2008 No 90 s 8)

Subpart 2—Special provisions concerning pleadings, directions, and affidavits

18.5 Naming of defendants in cases involving deceased estates or trusts

(1) This rule applies to a proceeding that—

(a) involves a deceased estate or a trust; and

High Court Rules—*continued*
Part 18—*continued*
Subpart 2—*continued*

(b) is not commenced by the personal representative of the deceased person or the trustee of the trust.

(2) The only defendant that may be named in the statement of claim is the personal representative or the trustee.

(3) In proceedings under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, the only defendant that may be named in the statement of claim is the personal representative of the deceased person against whose estate the claim is brought.

Compare: 1908 No 89 Schedule 2 r ~~450(1), (2)~~ 18.5 (as substituted by 2008 No 90 s 8)

18.6 Persons served by direction of court need not be named as defendant

A person who becomes a defendant to a proceeding by being served under a direction of the court need not be named as defendant.

Compare: 1908 No 89 Schedule 2 r ~~450(3)~~ 18.6 (as substituted by 2008 No 90 s 8)

18.7 Applications for directions as to service

(1) This rule applies when—

(a) the law requires the making of an application for directions as to service; or

(b) the plaintiff is in doubt regarding the persons on whom the statement of claim should be served; or

(c) an order is sought that any person represent any other person or class of persons who should be served; or

(d) the proceeding is under the Companies Act 1993 and is not a proceeding in the liquidation of a company or an application to set aside a statutory demand under section 290 of that Act; or

(e) the court directs that the plaintiff should apply to the court under this rule.

High Court Rules—*continued*
Part 18—*continued*
Subpart 2—*continued*

(2) The plaintiff must apply to the court without notice for directions as to service and for any orders for representation that may be required.

(3) In support of the application, the plaintiff must provide (by affidavit or otherwise) the information that may be necessary to enable the court to decide what persons or classes of persons are interested in, or may be adversely affected by, the relief sought by the plaintiff and by what means the interests of each such person or class of persons may be adequately represented.

(4) In the case of claims under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, the information required by subclause (3) includes—

(a) the date of death of the deceased and the date of grant of probate or letters of administration:

(b) whether the deceased died testate or intestate, and, if testate, a copy of his or her last will with codicils (if any):

(c) the value of the estate, so far as it is known to the plaintiff:

(d) the names, addresses, occupations, and ages of the beneficiaries under the will or persons entitled on intestacy, as the case may be:

(e) the names, addresses, occupations, and ages of the persons of each class entitled to claim under the Family Protection Act 1955:

(f) any other information that is relevant.

(5) The application must specify the directions sought and be accompanied by a memorandum by the plaintiff's solicitor or counsel stating why the directions are sought.

Compare: 1908 No 89 Schedule 2 r ~~451(1)–(4)~~ 18.7 (as substituted by 2008 No 90 s 8)

18.8 Orders giving directions as to service

(1) On an application under rule 18.7, the Judge may make any orders for service or representation that the Judge thinks just.

High Court Rules—*continued*
Part 18—*continued*
Subpart 2—*continued*

(2) If, in a proceeding involving an incapacitated person or minor, the Judge considers it is not necessary to appoint a litigation guardian, the Judge may make orders with regard to the representation of that person, without the appointment of a litigation guardian under rule 4.35.

(3) The effect of every order for directions as to service or for representation made under this rule must be set out in the notice of proceeding in accordance with rule 5.23.

Compare: 1908 No 89 Schedule 2 r ~~451(5), (6)~~ 18.8 (as substituted by 2008 No 90 s 8)

18.9 Proceeding without service

(1) This rule applies to a statement of claim that need not be served because of an enactment or a direction of a Judge.

(2) The facts alleged in the statement of claim must be verified by or on behalf of the plaintiff by an affidavit (which may be appended to the statement of claim or filed separately) stating that, so far as they relate to matters within the personal knowledge of the person making the affidavit, they are true, and, so far as they relate to matters not within that person's personal knowledge, the person believes them to be true.

(3) Despite subclause (2), the Judge may require any fact not within the personal knowledge of the person to be proved by the affidavit of a person who has such personal knowledge.

Compare: 1908 No 89 Schedule 2 r ~~452~~ 18.9 (as substituted by 2008 No 90 s 8)

18.10 Time for serving claimant's affidavit in proceedings under Family Protection Act 1955

A claimant against the estate of a deceased person under the Family Protection Act 1955 must, at the time of serving his or her statement of claim, serve his or her own affidavit in support of his or her statement of claim.

Compare: 1908 No 89 Schedule 2 r ~~456~~ 18.10 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 18—*continued*
Subpart 2—*continued*

18.11 Time for serving affidavit in support of appearance

(1) If a defendant in any proceeding to which this Part applies files an appearance in lieu of a statement of defence, the defendant may, at the time of serving the defendant's appearance, without leave, and at any time afterwards with leave of the court, serve the defendant's affidavits in support of any matters referred to in the appearance.

(2) These rules apply to affidavits filed under subclause (1) as though they were affidavits filed by a plaintiff in support of a statement of claim.

Compare: 1908 No 89 Schedule 2 r ~~457~~ 18.11 (as substituted by 2008 No 90 s 8)

18.12 Statement of defence to be filed

(1) No affidavit may be filed by a defendant in opposition to the claim of the plaintiff or of any claimant under rule 18.13 unless the defendant has filed and served a statement of defence to the claim or an appearance.

(2) Affidavits filed by any party after a statement of defence or appearance has been filed must be confined to matters put in issue by pleadings or by the appearance.

(3) Subclause (1) is subject to rule 18.11.

Compare: 1908 No 89 Schedule 2 r ~~458~~ 18.12 (as substituted by 2008 No 90 s 8)

Subpart 3—Multiple claims, joinders, and consolidations of claims

18.13 Joining in proceedings under Family Protection Act 1955 and Law Reform (Testamentary Promises) Act 1949

(1) A person who is a defendant in a proceeding under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949 (**party A**) must make any claim against the same estate by filing a statement of claim in the proceeding, and, when that statement of claim is filed, these rules apply as if—

(a) party A were a plaintiff; and

High Court Rules—*continued*
Part 18—*continued*
Subpart 3—*continued*

(b) the plaintiff were a defendant.

(2) When a statement of claim is filed under subclause (1), it is not necessary for party A to apply for directions for service or to file or serve a notice of proceeding but party A must serve party A's statement of claim and affidavits—

(a) on the personal representative; and
(b) on the plaintiff; and
(c) on all other persons (except party A) whom the plaintiff has been directed to serve.

(3) A person, who has not been directed to be served in a proceeding under the Acts specified in subclause (1), must make any claim under those Acts against the same estate by filing a statement of claim in the proceeding, and, when that statement of claim is filed, subclauses (1) and (2) apply as if that person were party A.

Compare: 1908 No 89 Schedule 2 r ~~453~~ 18.13 (as substituted by 2008 No 90 s 8)

18.14 Joinder of claims and consolidation

(1) Claims under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949 may be joined in 1 statement of claim, whether or not the claims are made in the alternative.

(2) Separate proceedings against the estate of the same deceased person may be consolidated under rules 10.12 and 10.13 if they are—

(a) proceedings under the Family Protection Act 1955; or
(b) proceedings under the Law Reform (Testamentary Promises) Act 1949; or
(c) proceedings under the Property (Relationships) Act 1976, transferred to the court by order of a Family Court Judge under section 22(3) of that Act.

Compare: 1908 No 89 Schedule 2 r ~~454~~ 18.14 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 18—*continued*
Subpart 3—*continued*

18.14A Procedure under section 174 of Companies Act 1993

(1) In a proceeding under section 174 of the Companies Act 1993,—
  (a) the statement of claim must be in form C 2; and
  (b) the notice of proceeding must be in form C 3; and
  (c) an appearance in support or in opposition must be in form C 9.

(2) Subpart 2 of Part 7, which relates to interlocutory applications, applies to applications to the court that relate to a company in respect of which an application under section 174 of the Companies Act 1993 is pending.

Compare: 1908 No 89 Schedule 2 r 18.14A (as substituted by r 22 of the High Court Amendment Rules (No 2) 2012)

18.14B Service of order made under section 174 of Companies Act 1993

(1) When an order is made under section 174 of the Companies Act 1993, a registry copy of the order must, unless the court otherwise orders, be served by the plaintiff on—
  (a) the defendant company in accordance with the Companies Act 1993; and
  (b) the Registrar of Companies.

(2) If the order involves an alteration of the constitution of the company, the Companies Act 1993 applies as the court directs.

Compare: 1908 No 89 Schedule 2 r 18.14B (as inserted by r 7 of the High Court Amendment Rules (No 2) 2011)

Subpart 4—Evidentiary requirements

18.15 Evidence generally by agreed statement of facts or affidavit

(1) Unless a Judge otherwise directs, evidence in a proceeding to which this Part applies must be given—
  (a) by means of an agreed statement of facts in accordance with rule 9.57; or
  (b) by affidavit in accordance with rules 9.72 to 9.89.

High Court Rules—*continued*
Part 18—*continued*
Subpart 4—*continued*

(2) Unless a Judge otherwise directs, evidence must be given orally in a proceeding—
  (a) under the Law Reform (Testamentary Promises) Act 1949:
  (b) in which relief by way of specific performance is sought.

(3) Subclause (1) applies to a proceeding in respect of which a direction has been given under subclause (2).

Compare: 1908 No 89 Schedule 2 r ~~455~~ 18.15 (as substituted by 2008 No 90 s 8)

Part 19
Originating applications

Subpart 1—Proceedings eligible to be commenced by originating application

19.1 Meaning of originating application

In these rules, **originating application** means an application made in accordance with this Part.

Compare: 1908 No 89 Schedule 2 r 19.1 (as substituted by 2008 No 90 s 8)

19.2 Applications under certain enactments

Applications to the court under the following enactments must be made by originating application:

  (a) the Arbitration Act 1996 (other than article 35 of Schedule 1 and clause 5 of Schedule 2 of that Act):
  (b) section 21(1)(a) and (b) and Parts 3, 4, and 5 of the Charitable Trusts Act 1957:
  (c) sections 228(1)(d), 233(1)(c), 233(2)(c), 236, 290, 294(5), 295, and 299 and Part 15A of the Companies Act 1993:
  (d) sections 34, 41, 95, 97, and 126 of the Coroners Act 2006:
  (e) sections 58 and 59 of the Corporations (Investigation and Management) Act 1989:

High Court Rules—*continued*
Part 19—*continued*
Subpart 1—*continued*

(ea) sections 32 and 33 of the Cultural Property (Protection in Armed Conflict) Act 2012:
(f) section 166E of the Customs and Excise Act 1996:
(g) **section 271 of the Judicature Modernisation Act 2013**:
(h) the Habeas Corpus Act 2001:
(i) section 23A of the Incorporated Societies Act 1908:
(j) section 10A of the Industrial and Provident Societies Act 1908:
(k) **section 170 of the Judicature Modernisation Act 2013**:
(l) sections 132, 133, 140, 143, 145, 145A, 148, and 217 of the Land Transfer Act 1952:
(m) sections 30, 37, 52, 166, 180, and 182 of the Lawyers and Conveyancers Act 2006:
(n) section 9A(3) of the Law Reform Act 1936:
(na) sections 100 and 111 of the Marine and Coastal Area (Takutai Moana) Act 2011:
(o) section 12(1)(a) of the Minors' Contracts Act 1969:
(p) section ~~41 of the Patents Act 1953~~ 112 of the Patents Act 2013 (subject to Part 22 of these rules):
(q) sections 128, 131, 167, 168, 179, 181, 182, and 186 of the Personal Property Securities Act 1999:
(r) the Criminal Proceeds (Recovery) Act 2009:
(s) sections 126, 136, 244, 248, 253, 254, 258, 261, and 357 of the Property Law Act 2007:
(t) the Protection of Personal and Property Rights Act 1988:
(u) the Reciprocal Enforcement of Judgments Act 1934:
(v) section 44C(2) and (8) of the Securities Act 1978:
(w) section 47E of the Terrorism Suppression Act 2002:
(x) section 76 of the Trustee Act 1956:
(y) rule 7.81, 9.60, 24.11, 24.56, 28.4, or 32.2 of these rules:
(z) any repealed enactment if—
(i) the application under that enactment could have been made by originating application immedi-

High Court Rules—*continued*
Part 19—*continued*
Subpart 1—*continued*

ately before the commencement of these rules; and

(ii) the enactment continues to apply to the applicant:

(za) sections 74, 140, 141, 165, 187, 193, 196, 197, 210, 211, and 214 of the Unit Titles Act 2010.

Compare: 1908 No 89 Schedule 2 r ~~458D(1)(a)~~ 19.2 (as substituted by 2008 No 90 s 8)

19.3 Application of this Part to certain kinds of proceeding

This Part applies to the following kinds of proceeding:

(a) an originating proceeding for contempt of court:

(b) an originating proceeding for relief against forfeiture for non-payment of rent.

Compare: 1908 No 89 Schedule 2 r ~~458D(1)(b), (c)~~ 19.3 (as substituted by 2008 No 90 s 8)

19.4 Certain directions may be sought by originating application

The following office holders may seek the directions of the court by originating application:

(a) a liquidator:

(b) a receiver:

(c) a judicial manager appointed under Part 1A of the Life Insurance Act 1908:

(d) a statutory manager appointed under the Corporations (Investigation and Management) Act 1989:

(e) a statutory manager appointed under the Reserve Bank of New Zealand Act 1989.

Compare: 1908 No 89 Schedule 2 r ~~458D(1)(d)~~ 19.4 (as substituted by 2008 No 90 s 8)

19.5 Court may permit proceeding to be commenced by originating application

(1) The court may, in the interests of justice, permit any proceeding not mentioned in rules 19.2 to 19.4 to be commenced by originating application.

High Court Rules—*continued*
Part 19—*continued*
Subpart 1—*continued*

(2) The court's permission may be sought without notice.

(3) The proposed originating application must be filed with an application for permission under this rule.

Compare: 1908 No 89 Schedule 2 r ~~458D(1)(c)~~ 19.5 (as substituted by 2008 No 90 s 8)

19.5A Directions as to filing of statement of claim and defence

A Judge may, by interlocutory order, on the Judge's own initiative direct the parties to file a statement of claim and a statement of defence respectively.

Compare: 1908 No 89 Schedule 2 r 19.5A (as inserted by r 23 of the High Court Amendment Rules (No 3) 2013)

19.6 Certain proceedings must be commenced by interlocutory application

(1) This rule applies if—

(a) an application under the Arbitration Act 1996 or the Personal Property Securities Act 1999 has been made by originating application; and

(b) a party to the application wishes to make another application in respect of the same arbitration or the same security.

(2) The other application must be made by an interlocutory application that relates to the proceeding commenced by the originating application.

(3) This rule overrides rule 19.2(a) and (q).

Compare: 1908 No 89 Schedule 2 r ~~458D(5), (6)~~ 19.6 (as substituted by 2008 No 90 s 8)

Subpart 2—Procedure for originating applications

19.7 Commencement of proceeding

(1) A proceeding that may be commenced by originating application is commenced when the originating application is filed in the proper registry of the court, as determined in accordance

High Court Rules—*continued*
Part 19—*continued*
Subpart 2—*continued*

with rule 5.1, or when the court gives permission under rule 19.5(1).

(2) This rule—

(a) prevails over rule 5.25 and Part 18; but

(b) is subject to the special rules for company liquidations in Part 31.

Compare: 1908 No 89 Schedule 2 r ~~458E(1), (5)~~ 19.7 (as substituted by 2008 No 90 s 8)

19.8 Memorandum relating to filing and address for service

(1) At the end of the originating application there must be a memorandum stating the matters set out in rule 5.44.

(2) The memorandum may be in one of the paragraphs of form G 10.

Compare: 1908 No 89 Schedule 2 r ~~458E(3)~~ 19.8 (as substituted by 2008 No 90 s 8)

19.9 Heading of documents

(1) The heading of a document presented for filing in a proceeding commenced by originating application must be in form G 1.

(2) However, if there is neither a defendant nor a respondent to the proceeding, the heading must be in the following form:

In the matter of [*title of enactment*]

And

In the matter of an application by

[*full name, place of residence, occupation*] for an order that [*specify nature of the order(s) being sought*].

Compare: 1908 No 89 Schedule 2 r ~~458E(4)~~ 19.9 (as substituted by 2008 No 90 s 8)

19.10 Application of rules relating to interlocutory applications

(1) The following rules concerning interlocutory applications apply with all necessary modifications to proceedings commenced by originating application:

High Court Rules—*continued*
Part 19—*continued*
Subpart 2—*continued*

(a) rule 7.19 (Contents, form, and filing of interlocutory application):
(b) rule 7.20 (Affidavit to be filed with application):
(c) rule 7.21 (Filing by post):
(d) rule 7.22 (Service of application and supporting affidavit):
(e) rule 7.23 (Application without notice):
(f) rule 7.24 (Notice of opposition to application):
(g) rule 7.25 (Affidavit to be filed with notice of opposition):
(h) rule 7.26 (Affidavit in reply):
(i) rule 7.29 (Rules governing affidavits):
(j) rule 7.30 (Statements of belief in affidavits):
(k) rule 7.40 (Failure to attend):
(l) rule 7.42 (Adjournment):
(m) rule 7.45 (Interlocutory orders may be made subject to conditions):
(n) rule 7.46 (Determination of application without notice):
(o) rule 7.47 (Drawing up and sealing interlocutory order).

(2) Subclause (1) is subject to the rules in this Part.

(3) Despite subclause (1), rule 7.45, in its application to a proceeding commenced by originating application, is subject to the Act under which the originating application is made.

Compare: 1908 No 89 Schedule 2 r ~~458F~~ 19.10 (as substituted by 2008 No 90 s 8)

19.11 Directions as to parties and conduct of applications

Rule 7.43A applies, with all necessary modifications, to an originating application.

Compare: 1908 Schedule 2 r 19.10 (as substituted by 2008 No 90 s 8)

19.12 Originating applications relating to certain proceedings under Companies Act 1993

(1) Despite rule 19.7, an originating application under section 294(5) or 295 of the Companies Act 1993 must be filed in

High Court Rules—*continued*
Part 19—*continued*
Subpart 2—*continued*

the same office of the court in which the notice under section 294(1) of that Act was filed.

(2) An originating application under section 299 of the Companies Act 1993 must be filed in the proper office of the court, as determined in accordance with rule 31.38.

(3) The affidavit filed in support of an originating application under section 294(5) or 295 of the Companies Act 1993 must have attached to it a copy of the notice under section 294(1) of that Act.

Compare: 1908 No 89 Schedule 2 r ~~458EA~~ 19.12 (as substituted by 2008 No 90 s 8)

19.12A Special provisions for service of applications to remove caveats or set aside statutory demands

(1) An originating application under section 143 of the Land Transfer Act 1952 for the removal of a caveat may be served, in accordance with rule 6.5, at the address for service stated in the caveat.

(2) An originating application under section 290 of the Companies Act 1993 to set aside a statutory demand may be served, in accordance with rule 6.5, at the address shown in the statutory demand as the creditor's address or the address for payment.

Compare: 1908 No 89 Schedule 2 r 19.12A (as inserted by r 8 of the High Court Amendment Rules (No 2) 2009)

Subpart 3—Evidence in originating applications

19.13 Evidence

Despite rules 7.20 and 7.25 (as applied by rule 19.10), in a proceeding commenced by originating application evidence may be taken orally on oath if the court, on application before or at the hearing, so directs.

Compare: 1908 No 89 Schedule 2 r ~~458L~~ 19.13 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 19—*continued*
Subpart 3—*continued*

19.14 Cross-examination of person making affidavit

Rule 9.74 applies to a proceeding commenced by originating application.

Compare: 1908 No 89 Schedule 2 r ~~458M~~ 19.14 (as substituted by 2008 No 90 s 8)

Part 20
Appeals

Subpart 1—Preliminary provisions

20.1 Application of this Part

(1) This Part applies to appeals to the court under any enactment other than—

(a) the Criminal Procedure Act 2011:

(b) the Arbitration Act 1996:

(c) the Bail Act 2000:

(d) appeals by way of case stated under Part 21 of these rules.

(2) For the purposes of subclause (1)(a), appeals under an enactment that incorporates provisions (whether modified or not) of the Criminal Procedure Act 2011 are not appeals under the Criminal Procedure Act 2011.

(3) This Part applies subject to any express provision in the enactment under which the appeal is brought or sought to be brought.

Compare: 1908 No 89 Schedule 2 r ~~701~~ 20.1 (as substituted by 2008 No 90 s 8)

20.2 Interpretation

In this Part,—

administrative office means the registry or office at which the decision-maker gave the decision appealed against

administrative officer means the Registrar, secretary, or other officer responsible for the administration of the administrative office

High Court Rules—*continued*
Part 20—*continued*
Subpart 1—*continued*

decision includes a finding, order, or judgment made by a decision-maker

decision-maker means a court, tribunal, person, or body of persons—

(a) that exercises a power of decision from which there is, or may be, a right of appeal to the court; and

(b) against the decision of which an appeal is brought or sought to be brought

registry means the registry of the court—

(a) at which an appeal is required to be filed under rule 20.8(1); or

(b) to which documents relating to an appeal are transferred under rule 20.8(3).

Compare: 1908 No 89 Schedule 2 r ~~702~~ 20.2 (as substituted by 2008 No 90 s 8)

Subpart 2—Application for leave to appeal

20.3 Application for leave to appeal to court

(1) An application for leave to appeal in a case when an enactment provides that an appeal to the court against a decision may not be brought without leave must be made—

(a) to the decision-maker or, as the case requires, the court; and

(b) within 20 working days after the decision is given.

(2) An application for leave to appeal must be made within 20 working days after the refusal of the decision-maker if—

(a) an enactment provides that the court may grant leave to appeal to it against a decision after the decision-maker refuses leave; and

(b) the decision-maker refuses leave.

(3) The appeal must be brought—

(a) by the date fixed when the decision-maker or the court grants leave; or

(b) within 20 working days after the grant of leave, if the decision-maker or the court does not fix a date.

High Court Rules—*continued*
Part 20—*continued*
Subpart 2—*continued*

(4) Any date fixed by the decision-maker is to be treated as a determination for the purposes of rule 7.50.

(5) The decision-maker or, as the case requires, the court may, on application, extend the period for bringing an application under this rule, if the enactment under which the appeal is sought to be brought—
  (a) permits the extension; or
  (b) does not limit the time prescribed for making the application.

(6) A party may apply for the extension of a period before or after the period expires.

(7) An application under this rule must be made on notice to every party affected by the proposed appeal and, if made to the court, must be made by interlocutory application.

(8) In this rule, **leave** includes special leave.

Compare: 1908 No 89 Schedule 2 r ~~703~~ 20.3 (as substituted by 2008 No 90 s 8)

Subpart 3—Commencement of appeal

20.4 Time for appeal if there is right of appeal

(1) This rule applies if a party has a right of appeal to the court.

(2) An appeal must be brought—
  (a) within the specified period if the enactment that confers the right of appeal specifies a period within which the appeal must be brought; or
  (b) in every other case, within 20 working days after the decision appealed against is given.

(3) By special leave, the court may extend the time prescribed for appealing if the enactment that confers the right of appeal—
  (a) permits the extension; or
  (b) does not limit the time prescribed for bringing the appeal.

(4) An application for an extension—
  (a) must be made by an interlocutory application on notice to every other party affected by the appeal; and

High Court Rules—*continued*
Part 20—*continued*
Subpart 3—*continued*

(b) may be made before or after the expiry of the time for appealing.

Compare: 1908 No 89 Schedule 2 r ~~704~~ 20.4 (as substituted by 2008 No 90 s 8)

20.5 Commencement of periods in rules 20.3 and 20.4

For the purposes of rules 20.3 and 20.4, a period begins when the decision to which it relates is given, whether or not—

(a) reasons for the decision are given then or later; or

(b) formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.

Compare: 1908 No 89 Schedule 2 r ~~705~~ 20.5 (as substituted by 2008 No 90 s 8)

20.6 When appeal brought

(1) An appeal is brought when the appellant—

(a) files a notice of appeal in the court; and

(b) files a copy of the notice of appeal in the administrative office; and

(c) serves a copy of the notice of appeal on every other party directly affected by the appeal.

(2) Service at the address for service stated in the proceedings to which the appeal relates is sufficient service for the purposes of subclause (1).

Compare: 1908 No 89 Schedule 2 r ~~706~~ 20.6 (as substituted by 2008 No 90 s 8)

20.7 Power to dispense with service

Despite rule 20.6(1)(c), the court may dispense with service on a party of a notice of appeal on any terms the court thinks just.

Compare: 1908 No 89 Schedule 2 r ~~707~~ 20.7 (as substituted by 2008 No 90 s 8)

20.8 Filing notice of appeal

(1) Subject to any contrary enactment, a notice of appeal must be filed in—

(a) the registry of the court nearest to the place where the hearing took place of the matter under appeal; or

High Court Rules—*continued*
Part 20—*continued*
Subpart 3—*continued*

(b) if no hearing took place, in the registry of the court nearest to the place where the decision appealed against was given; or

(c) any other registry of the court in which the parties agree that the notice of appeal may be filed.

(2) If subclause (1)(c) applies, the parties must endorse on, or file with, the notice of appeal a memorandum recording their agreement to the filing of the notice of appeal in the registry of the court in which it is filed.

(3) The court may on application or on its own initiative in the circumstances set out in subclause (4) direct as follows:

(a) the notice of appeal must be filed in another registry of the court; or

(b) the documents relating to the appeal must be transferred to another registry of the court.

(4) The circumstances are that it appears to the court that—

(a) a notice of appeal has been filed in the wrong registry of the court; or

(b) another registry of the court would be more appropriate.

(5) Filing a notice of appeal in the wrong registry of the court does not invalidate an appeal.

Compare: 1908 No 89 Schedule 2 r 20.8 (as substituted by 2008 No 90 s 8)

20.9 Contents of notice of appeal

(1) Unless the court otherwise directs, a notice of appeal must—

(a) have a heading stating the full name and description of each party and referring to the enactment under which the appeal is brought; and

(b) specify the decision or part of the decision appealed against; and

(c) specify the grounds of the appeal in sufficient detail to fully inform the court, the other parties to the appeal, and the decision-maker of the issues in the appeal; and

(d) specify the relief sought.

High Court Rules—*continued*
Part 20—*continued*
Subpart 3—*continued*

(2) The notice of appeal must not name the decision-maker as a respondent.

(3) Subclause (2) does not—
- (a) apply to appeals to the court under the Commerce Act 1986:
- (b) limit or affect rule 20.17 (which entitles a decision-maker, other than the District Court, to be represented and heard on an appeal).

(4) An appellant may amend a notice of appeal at any time with the leave of a Judge.

(5) If the notice of appeal does not attach a copy of the decision against which the appeal is brought, the appellant must file a copy of that decision immediately it becomes available.

Compare: 1908 No 89 Schedule 2 r ~~709~~ 20.9 (as substituted by 2008 No 90 s 8)

20.10 Stay of proceedings

(1) An appeal does not operate as a stay—
- (a) of the proceedings appealed against; or
- (b) of enforcement of any judgment or order appealed against.

(2) Despite subclause (1), the decision-maker or the court may, on application, do any 1 or more of the following pending determination of an appeal:
- (a) order a stay of proceedings in relation to the decision appealed against:
- (b) order a stay of enforcement of any judgment or order appealed against:
- (c) grant any interim relief.

(3) An order made or relief granted under subclause (2) may—
- (a) relate to enforcement of the whole of a judgment or order or to a particular form of enforcement:
- (b) be subject to any conditions for the giving of security the decision-maker or the court thinks just.

Compare: 1908 No 89 Schedule 2 r ~~710~~ 20.10 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 20—*continued*
Subpart 3—*continued*

20.11 Cross-appeal

(1) A respondent wishing to contend at the hearing of an appeal that the decision appealed against should be varied must—
  (a) file a notice of cross-appeal in the registry of the court; and
  (b) file a copy of the notice in the administrative office; and
  (c) serve a copy of the notice on every other party directly affected by the cross-appeal.

(2) A notice of cross-appeal must be filed no later than 2 working days before the case management conference relating to the appeal, except with the leave of the court.

(3) A notice of cross-appeal must specify—
  (a) the decision or part of the decision to which the cross-appeal relates; and
  (b) the grounds of the cross-appeal in sufficient detail to fully inform the court, the other parties to the appeal, and the decision-maker of the issues in the cross-appeal; and
  (c) the relief sought.

(4) The court may, despite a respondent's failure to file and serve a notice of cross-appeal,—
  (a) allow the respondent to contend at the hearing that the decision appealed against should be varied; or
  (b) adjourn the hearing to allow the respondent time to file and serve a notice; or
  (c) make any other order the court thinks just, including an order for the payment of costs.

(5) A respondent may amend a notice of cross-appeal at any time with the leave of the court.

Compare: 1908 No 89 Schedule 2 r ~~711~~ 20.11 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 20—*continued*
Subpart 3—*continued*

20.12 Dismissal or stay or abandonment of appeal or cross-appeal

(1) The court may, on application, dismiss or stay an appeal or a cross-appeal if the court is satisfied that the appellant or the respondent has failed to proceed with it, or has failed to comply with a direction under rule 7.5.

(2) The appeal is taken to have been dismissed, subject to the respondent's right to apply for an order as to costs, if the appellant signs, files, and serves on every other party a statement to the effect that the appellant abandons the appeal.

(3) The cross-appeal is taken to have been dismissed, subject to the appellant's right to apply for an order as to costs, if the respondent signs, files, and serves on every other party a statement to the effect that the respondent abandons the cross-appeal.

Compare: 1908 No 89 Schedule 2 r ~~712~~ 20.12 (as substituted by 2008 No 90 s 8)

20.13 Security for appeal

(1) This rule applies to an appeal other than an appeal for which the appellant has been granted legal aid under the Legal Services Act 2011.

(2) The Judge must fix security for costs at the case management conference relating to the appeal, unless the Judge considers that in the interests of justice no security is required.

(3) The amount of security must be fixed in accordance with the following formula, unless the Judge otherwise directs:

$$\frac{a}{2} \times b$$

where—

a is the daily recovery rate for the proceeding as classified by the Judge under rule 14.4; and

b is the number of half days estimated by the Judge as the time required for the hearing.

High Court Rules—*continued*
Part 20—*continued*
Subpart 3—*continued*

(4) Security must be paid to the Registrar at the registry of the court no later than 10 working days after the case management conference, unless the Judge otherwise directs.

(5) Except in the case of an appeal under ~~the~~ **Part 2 of the Judicature Modernisation Act 2013** (where non-compliance with the security order results in a deemed abandonment of the appeal under **section 308** of that Act), if the security is not paid within the time specified under subclause (4), the respondent may apply for an order dismissing the appeal.

(6) The Judge must defer the fixing of security until the application for legal aid has been determined if—
- (a) an appellant has applied for legal aid under the Legal Services Act 2011; and
- (b) at the time of the case management conference, the application has not been determined.

Compare: 1908 No 89 Schedule 2 r ~~713~~ 20.13 (as substituted by 2008 No 90 s 8)

Subpart 4—Matters leading up to hearing

20.14 Order for transcript of evidence

(1) The court may order, on application, that—
- (a) a transcript be made of all or part of the evidence given at the hearing before the decision-maker; and
- (b) the transcript be sent to the Registrar at the registry of the court.

(2) An application under subclause (1) must be filed no later than the first of the following dates:
- (a) the date that is 20 working days after the date on which notice of appeal is filed in the court:
- (b) the working day before the date of the case management conference.

(3) The Registrar of the court must give notice in writing to the administrative officer of any order under subclause (1).

(4) The administrative officer must—
- (a) arrange for the transcript to be made; and

High Court Rules—*continued*
Part 20—*continued*
Subpart 4—*continued*

(b) certify that the transcript is correct; and
(c) send the certified copy of the transcript to the Registrar at the registry of the court.

(5) The court may order, on application by the administrative officer, that a party to the appeal pay some or all of the costs of making the transcript.

(6) An order made under subclause (1) or (5) may be made on any conditions the court thinks just.

Compare: 1908 No 89 Schedule 2 r ~~714~~ 20.14 (as substituted by 2008 No 90 s 8)

20.15 Report by decision-maker

(1) The decision-maker must, if the court directs, provide to the Registrar at the registry of the court a report setting out—
(a) any considerations, other than findings of fact, not set out in the decision but to which the decision-maker had regard in making the decision appealed against:
(b) any information about the effect that the decision might have on the general administration of the enactment under which the decision was made:
(c) any other matters relevant to the decision or to the general administration of the enactment under which the decision was made that should be drawn to the attention of the court.

(2) The Registrar must provide a copy of the report to every party to the appeal.

(3) Every party to the appeal is entitled to be heard, and tender evidence, on any matter referred to in the report.

Compare: 1908 No 89 Schedule 2 r ~~715~~ 20.15 (as substituted by 2008 No 90 s 8)

20.16 Further evidence

(1) Without leave, a party to an appeal may adduce further evidence on a question of fact if the evidence is necessary to determine an interlocutory application that relates to the appeal.

(2) In all other cases, a party to an appeal may adduce further evidence only with the leave of the court.

High Court Rules—*continued*
Part 20—*continued*
Subpart 4—*continued*

(3) The court may grant leave only if there are special reasons for hearing the evidence. An example of a special reason is that the evidence relates to matters that have arisen after the date of the decision appealed against and that are or may be relevant to the determination of the appeal.

(4) Further evidence under this rule must be given by affidavit, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r ~~716~~ 20.16 (as substituted by 2008 No 90 s 8)

Subpart 5—Conduct of appeal

20.17 Decision-maker entitled to be heard on appeal

The decision-maker is entitled to be represented and heard at the hearing of an appeal on all matters arising in it, unless—

(a) the decision-maker is the District Court; or

(b) the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r ~~717~~ 20.17 (as substituted by 2008 No 90 s 8)

20.18 Appeal is rehearing

Appeals are by way of rehearing.

Compare: 1908 No 89 Schedule 2 r ~~718~~ 20.18 (as substituted by 2008 No 90 s 8)

20.19 Powers of court on appeal

(1) After hearing an appeal, the court may do any 1 or more of the following:

(a) make any decision it thinks should have been made:

(b) direct the decision-maker—

(i) to rehear the proceedings concerned; or

(ii) to consider or determine (whether for the first time or again) any matters the court directs; or

(iii) to enter judgment for any party to the proceedings the court directs:

(c) make any order the court thinks just, including any order as to costs.

High Court Rules—*continued*
Part 20—*continued*
Subpart 5—*continued*

(2) The court must state its reasons for giving a direction under subclause (1)(b).

(3) The court may give the decision-maker any direction it thinks fit relating to—

(a) rehearing any proceedings directed to be reheard; or

(b) considering or determining any matter directed to be considered or determined.

(4) The court may act under subclause (1) in respect of a whole decision, even if the appeal is against only part of it.

(5) Even if an interlocutory or similar decision in the proceedings has not been appealed against, the court—

(a) may act under subclause (1); and

(b) may set the interlocutory or similar decision aside; and

(c) if it sets the interlocutory or similar decision aside, may make in its place any interlocutory or similar decision the decision-maker could have made.

(6) The powers given by this rule may be exercised in favour of a respondent or party to the proceedings concerned, even if the respondent or party did not appeal against the decision concerned.

Compare: 1908 No 89 Schedule 2 r ~~718A~~ 20.19 (as substituted by 2008 No 90 s 8)

20.20 Repayment of judgment sum and interest

(1) Subclause (2) applies when—

(a) a party to proceedings before a decision-maker (**party A**) has, in accordance with a judgment or order of the decision-maker, paid an amount to another party to the proceedings (**party B**); and

(b) on appeal to the court, the effect of the court's determination is that some or all of the amount did not need to be paid.

(2) When this subclause applies, the court—

(a) may order party B to repay to party A some or all of the amount paid by party A; and

High Court Rules—*continued*
Part 20—*continued*
Subpart 5—*continued*

(b) may also order party B to pay to party A interest at a rate no greater than the prescribed rate (within the meaning of **section 452(2) of the Judicature Modernisation Act 2013**) on the sum ordered to be repaid.

Compare: 1908 No 89 Schedule 2 r ~~718B~~ 20.20 (as substituted by 2008 No 90 s 8)

20.21 Registrar to notify result of appeal

On the determination of an appeal, the Registrar must—

(a) give notice in writing to the administrative officer of the result of the appeal; and

(b) return to the administrative officer any documents and exhibits filed in accordance with any direction given at a case management conference relating to the appeal.

Compare: 1908 No 89 Schedule 2 r ~~718C~~ 20.21 (as substituted by 2008 No 90 s 8)

Subpart 6—Appeals to Court of Appeal

20.22 Applications for leave

(1) This rule applies when an enactment provides that a decision of the court may be appealed to the Court of Appeal with leave of the court.

(2) If this rule applies, an application for leave to appeal must be made to the court within 20 working days after the decision is given.

(3) A respondent who wishes to cross-appeal must apply for leave to cross-appeal within 10 working days after the date on which a copy of the application under subclause (2) is served on the respondent.

(4) An application for leave to appeal under subclause (2) or to cross-appeal under subclause (3) must be made by interlocutory application.

Compare: 1908 No 89 Schedule 2 ~~rr 718E, 718F~~ r 20.22 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*

Part 21
Cases stated

21.1 Application

(1) This Part applies to—

(a) appeals to the court under any Act by way of case stated for a decision on a question of law or fact (or both):

(b) other references to the court under any Act by way of case stated for a decision on a question of law or fact (or both).

(2) This Part does not apply to cases stated by an order under rule 10.15.

(3) This Part applies subject to any express provision in the enactment under which the appeal is brought or sought to be brought.

Compare: 1908 No 89 Schedule 2 r ~~719~~ 21.1 (as substituted by 2008 No 90 s 8)

21.2 Some rules in Part 20 apply

The following rules apply, with all necessary modifications, to every appeal to which this Part applies:

(a) rule 20.4(3) and (4) (extension of time for appeal):

(b) rule 20.7 (power to dispense with service):

(c) rule 20.10 (stay of proceedings).

Compare: 1908 No 89 Schedule 2 r ~~722~~ 21.2 (as substituted by 2008 No 90 s 8)

21.3 Interpretation

In this Part, unless the context otherwise requires,—

appropriate officer, in relation to a tribunal, means the Registrar, secretary, clerk, or any other officer of the tribunal who is responsible for the administration of the tribunal

appropriate registry means the registry of the court where the appeal or reference is to be filed

decision includes any order made by a tribunal or person

tribunal includes any—

(a) Minister of the Crown

(b) government department or officer

High Court Rules—*continued*
Part 21—*continued*

(c) any other person or body that may be required, or is authorised, by or under any Act to state or refer a case for the opinion of the court.

Compare: 1908 No 89 Schedule 2 r ~~721~~ 21.3 (as substituted by 2008 No 90 s 8)

21.4 Method of commencing appeal or reference

(1) An appellant must commence an appeal to which this Part applies by—

(a) giving a notice of appeal to the appropriate officer of the tribunal by which the decision was made, or if there is no such officer, to the person who made the decision; and

(b) filing a copy of the notice of appeal in the appropriate registry of the court; and

(c) serving a copy of the notice of appeal on every party to the matter in which the decision was given (either before or immediately after the giving and filing of the notice of appeal).

(2) References to which this Part applies that are not appeals (except for references on a tribunal's own initiative) commence in accordance with the tribunal's direction made on application by a party to the matter in which the question of law or fact (or both) arose.

(3) A reference under subclause (2) must comply with rule 21.9(1).

(4) A reference by a tribunal on its own initiative must be commenced by filing a case stated, which is signed by the chairman or other authorised officer of the tribunal, and complies with rule 21.9(1).

Compare: 1908 No 89 Schedule 2 ~~rr 723(1), (2), 724~~ r 21.4 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 21—*continued*

21.5 Time for appeal

A notice of appeal must be given to the tribunal and filed within 20 working days after the date of the decision to which the appeal relates.

Compare: 1908 No 89 Schedule 2 r ~~724A~~ 21.5 (as substituted by 2008 No 90 s 8)

21.6 Notice of appeal

Unless otherwise provided by any enactment, every notice of appeal must specify—

(a) the decision or the part of the decision appealed from; and

(b) the error of law alleged by the appellant (if any); and

(c) the question of law or fact (or both) to be resolved; and

(d) the relief sought.

Compare: 1908 No 89 Schedule 2 r ~~724B~~ 21.6 (as substituted by 2008 No 90 s 8)

21.7 Place for filing notice

(1) The appropriate registry in which to file a notice of appeal is—

(a) the registry of the court nearest to the place where the matter was or is being heard; or

(b) any other registry of the court in which the parties agree that the notice or case may be filed.

(2) If subclause (1)(a) applies, the court may direct that the notice of appeal be filed in another registry of the court if it appears to the court (on an application by a party) that—

(a) the notice of appeal has been filed in the wrong registry of the court; or

(b) another registry of the court would be more convenient to the parties.

(3) If subclause (2)(b) applies, the parties must endorse on or file with the notice of appeal a memorandum of their agreement.

Compare: 1908 No 89 Schedule 2 r ~~724C~~ 21.7 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 21—*continued*

21.8 Lodging of draft case stated

(1) Every person who gives a notice of appeal must, as soon as practicable after giving that notice, lodge a draft case with—

(a) the appropriate officer of the tribunal by which the decision was made or, if there is no such officer, with the person who made the decision; and

(b) every party to the matter in which the question of law or fact (or both) arose.

(2) Where the case stated is a reference from a tribunal, the tribunal must serve a draft case on every party to the matter in which the question of law or fact (or both) arose.

Compare: 1908 No 89 Schedule 2 r ~~723(3)~~ 21.8 (as substituted by 2008 No 90 s 8)

21.9 Contents of case

(1) A case must state concisely—

(a) the circumstances relating to the matter leading to the statement of the case; and

(b) the relevant facts as determined by the tribunal (attaching copies of documents, if any) necessary to enable the court to decide the questions; and

(c) where appropriate, the respective contentions of the parties with reference to the questions; and

(d) the questions on which the opinion of the court is sought.

(2) Subclause (3) applies when a ground of appeal is—

(a) that there was no evidence on which the tribunal could properly reach its decision, or a specified part of it; or

(b) that the tribunal reached a wrong conclusion on a question of fact.

(3) When this subclause applies, there must be attached to the case—

(a) copies of the documents, affidavits, and exhibits that were placed before the tribunal; and

(b) a copy of any evidence given at the hearing that has been transcribed.

High Court Rules—*continued*
Part 21—*continued*

(4) A transcript certified as correct by or on behalf of the tribunal requires no further verification of its contents.

(5) No document or transcript of any evidence may be attached to the case unless it is necessary for a proper determination by the court of the question of law or fact (or both) specified in the case.

(6) The draft case may be amended by the tribunal only to correct errors of fact.

(7) The case must be signed by or on behalf of the tribunal.

Compare: 1908 No 89 Schedule 2 r ~~724D~~ 21.9 (as substituted by 2008 No 90 s 8)

21.10 Order for transcription of evidence

(1) In any case stated on a question of law or fact (or both), the court may order, on any conditions it thinks just, that a transcript be made of all or any part of the evidence that was material to the issues specified in the notice of appeal if—

(a) there has been a hearing before the tribunal by which the decision was made and the evidence given at the hearing was recorded but has not been transcribed; and

(b) a ground of appeal is either of those referred to in rule 21.9(2).

(2) Rule 20.14(2) to (6) applies, with all necessary modifications, in relation to an application for an order for a transcript as if the application were an application for an order under rule 20.14(1).

Compare: 1908 No 89 Schedule 2 r ~~724E~~ 21.10 (as substituted by 2008 No 90 s 8)

21.11 When case deemed to be stated

(1) The appellant or the party who sought the stating of a case must ensure that, when the case has been settled and signed by or on behalf of the tribunal,—

(a) the case is filed in the appropriate registry; and

(b) immediately after the case has been filed in the appropriate registry, the party filing it must serve a copy on

High Court Rules—*continued*
Part 21—*continued*

every party to the matter in which the question of law or fact (or both) arose.

(2) A case is deemed to have been stated when a case stated has been filed.

Compare: 1908 No 89 Schedule 2 r ~~724F~~ 21.11 (as substituted by 2008 No 90 s 8)

21.12 Power to amend case

(1) The court may send a case back to the tribunal for amendment—

(a) to clarify the question of law or fact (or both) on which the opinion of the court is sought; or

(b) to provide any further information necessary to enable the court to dispose of the questions in the case stated.

(2) The court may amend the case at the hearing.

Compare: 1908 No 89 Schedule 2 r ~~724G~~ 21.12 (as substituted by 2008 No 90 s 8)

21.13 Security for costs

The court may order the appellant in a case stated to give security for costs.

Compare: 1908 No 89 Schedule 2 r ~~724I~~ 21.13 (as substituted by 2008 No 90 s 8)

21.14 Determination of questions

After hearing and determining the question of law or fact (or both) in a case stated, the court must do 1 or more of the following things:

(a) in the case of an appeal, reverse, confirm, or amend the decision in respect of which the case was stated:

(b) in the case of an appeal, remit the matter to the tribunal for reconsideration and decision in accordance with the opinion of the court on the question of law or fact (or both):

(c) in every other case, remit the matter to the tribunal with the opinion of the court:

High Court Rules—*continued*
Part 21—*continued*

(d) in any case, make any other order that is just.

Compare: 1908 No 89 Schedule 2 r ~~725~~ 21.14 (as substituted by 2008 No 90 s 8)

Part 22
Patents

22.1 Interpretation

In this Part,—

Act means the Patents Act ~~1953~~ 2013

Commissioner means the Commissioner of Patents

journal means the ~~*New Zealand Patent Office Journal*~~ *Journal of the Intellectual Property Office of New Zealand*

report means a report by a scientific adviser

respondent's notice means a notice given under rule 22.32

scientific adviser includes—

(a) an accountant:
(b) an actuary:
(c) an architect:
(d) an engineer:
(e) a medical practitioner:
(f) a person with scientific qualifications:
(g) a surveyor:
(h) other specially skilled persons whose opinion in relation to any matter may be of assistance to the court.

Compare: 1908 No 89 Schedule 2 r ~~725A~~ 22.1 (as substituted by 2008 No 90 s 8)

Subpart 1—Scientific advisers

22.2 Appointment

(1) In a proceeding under the Act or for infringement of a patent, the court may (with or without an application) appoint an independent scientific adviser to—

(a) assist the court; or
(b) inquire into and report on any questions of fact or opinion that do not involve questions of law or construction.

High Court Rules—*continued*
Part 22—*continued*
Subpart 1—*continued*

(2) The court must appoint an independent scientific adviser if all parties request it.

Compare: 1908 No 89 Schedule 2 r ~~725B~~ 22.2 (as substituted by 2008 No 90 s 8)

22.3 Nominating scientific adviser and settling questions and instructions

(1) A scientific adviser is nominated by the court.

(2) Questions or instructions to be submitted or given to the scientific adviser must be settled by the court.

Compare: 1908 No 89 Schedule 2 r ~~725C~~ 22.3 (as substituted by 2008 No 90 s 8)

22.4 Report

(1) A report by a scientific adviser must—

(a) be made in writing to the court; and

(b) be accompanied by the number of copies the court requires.

(2) The court must forward copies of the report to the parties.

(3) If a report is not accepted by all parties to a proceeding, it must be—

(a) treated as information furnished to the court; and

(b) given the weight the court considers appropriate.

Compare: 1908 No 89 Schedule 2 r ~~725D~~ 22.4 (as substituted by 2008 No 90 s 8)

22.5 Cross-examination

(1) A party may, within 10 working days of receiving a copy of a report, or within any longer time the court directs, apply for leave to cross-examine a scientific adviser on his or her report.

(2) The court may make an order for cross-examination of the scientific adviser at the hearing.

(3) At the hearing, the court must direct at what stage the scientific adviser will be called.

Compare: 1908 No 89 Schedule 2 r ~~725E~~ 22.5 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 22—*continued*
Subpart 1—*continued*

22.6 Experiment or test

(1) If the scientific adviser considers that an experiment or test (other than one of an insignificant nature) is necessary in order to report in a satisfactory manner, he or she must—
  (a) inform the parties; and
  (b) endeavour to get agreement between the parties on expenses for, and the persons to attend, the experiment or test.

(2) If there is no agreement between the parties, those matters are to be determined by the court.

Compare: 1908 No 89 Schedule 2 r ~~725F~~ 22.6 (as substituted by 2008 No 90 s 8)

22.7 Further or supplementary report

(1) The court may direct a scientific adviser to make a further or supplementary report.

(2) Rules 22.4 and 22.5 apply to further or supplementary reports.

Compare: 1908 No 89 Schedule 2 r ~~725G~~ 22.7 (as substituted by 2008 No 90 s 8)

22.8 Remuneration

A scientific adviser's remuneration must be fixed by the court, and includes—
  (a) the costs of making a report; and
  (b) a proper daily fee for attendance at court.

Compare: 1908 No 89 Schedule 2 r ~~725H~~ 22.8 (as substituted by 2008 No 90 s 8)

Subpart 2—Amending specification

22.9 Application of subpart to application under section ~~39~~ 89

This subpart applies to an application made by a patentee under section ~~39~~ 89 of the Act for an order to amend the patentee's complete specification.

Compare: 1908 No 89 Schedule 2 r ~~725X~~ 22. 9 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 22—*continued*
Subpart 2—*continued*

22.10 Notifying Commissioner

The patentee must notify the Commissioner of an intention to make an application to amend.

Compare: 1908 No 89 Schedule 2 r ~~725Y~~ 22.10 (as substituted by 2008 No 90 s 8)

22.11 Advertisement

(1) A notice must be accompanied by a copy of a suitable advertisement of the proposed amendment.

(2) The Commissioner must publish the advertisement in the journal (on 1 occasion).

(3) The advertisement must—

(a) contain particulars of the proposed amendment and of the patentee's address for service within New Zealand; and

(b) state that any person who wishes to oppose the amendment must, within 10 working days after the date of the actual issue of the journal, give written notice to the patentee.

Compare: 1908 No 89 Schedule 2 r ~~725Z~~ 22.11 (as substituted by 2008 No 90 s 8)

22.12 Right to be heard

A person giving notice under rule 22.11(3)(b) is entitled to be heard, subject to any direction of the court on costs.

Compare: 1908 No 89 Schedule 2 r ~~725ZA~~ 22.12 (as substituted by 2008 No 90 s 8)

22.13 Time for making application

The patentee must, as soon as practicable after the expiration of 15 working days after the date of the issue of the journal in which an advertisement of the proposed amendment is published, proceed by way of interlocutory application.

Compare: 1908 No 89 Schedule 2 r ~~725ZB~~ 22.13 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 22—*continued*
Subpart 2—*continued*

22.14 Service of notice of interlocutory application

The patentee must serve notice of the interlocutory application, together with a copy of the specification certified by the Commissioner showing the proposed amendment in distinguishing ink or type, on—

(a) the Commissioner; and

(b) the parties; and

(c) any person who has given notice of an intention to oppose.

Compare: 1908 No 89 Schedule 2 r ~~725ZC~~ 22.14 (as substituted by 2008 No 90 s 8)

22.15 Duty of court to give directions

On hearing the interlocutory application, the court must—

(a) decide whether and on what terms an application is allowed to proceed (whether in relation to costs or otherwise); and

(b) direct whether the application is to be heard on oral or affidavit evidence, and, if on affidavit evidence, fix the times within which affidavits must be filed by the parties and other persons entitled to be heard under the Act or the rules.

Compare: 1908 No 89 Schedule 2 r ~~725ZD~~ 22.15 (as substituted by 2008 No 90 s 8)

22.16 Procedure when amendment allowed

(1) If the court makes an order allowing a specification to be amended,—

(a) the patentee must immediately lodge a copy of the order with the Commissioner; and

(b) the Commissioner must advertise the order on 1 occasion in the journal and otherwise as the court may direct.

(2) A patentee must, if required by the court or the Commissioner, leave a new specification and drawings as amended and prepared under the ~~Patents Regulations 1954 at the Patent Office~~.

High Court Rules—*continued*
Part 22—*continued*
Subpart 2—*continued*

Patents Regulations 2014 of the Intellectual Property Office of New Zealand.

Compare: 1908 No 89 Schedule 2 r ~~725ZE~~ 22.16 (as substituted by 2008 No 90 s 8)

Subpart 3—Revoking patent

22.17 Application by originating application

(1) An application to the court to revoke a patent under ~~section 41~~ section 112 of the Act (not being an application made in the course of a proceeding) must be by way of an originating application.

(2) The originating application must be filed in the registry of the court at Wellington (unless the court otherwise directs).

Compare: 1908 No 89 Schedule 2 r ~~725ZF~~ 22.17 (as substituted by 2008 No 90 s 8)

22.18 Respondent begins proceeding

(1) The respondent is entitled—

(a) to begin and give evidence in support of the patent; and

(b) to reply, if the applicant gives evidence impeaching the validity of the patent.

(2) This rule has effect despite rule 10.10.

Compare: 1908 No 89 Schedule 2 r ~~725ZG~~ 22.18 (as substituted by 2008 No 90 s 8)

Subpart 4—Objections

22.19 Particulars if validity of patent disputed

~~Particulars of an objection to the validity of a patent must—~~

~~(a) be delivered with—~~

~~(i) an application for revocation under section 41 of the Act; or~~

~~(ii) a defence in a proceeding for infringement of a patent; or~~

~~(iii) a counterclaim for revocation under section 70 of the Act; and~~

High Court Rules—*continued*
Part 22—*continued*
Subpart 4—*continued*

~~(b) include the grounds on which the validity of the patent is disputed; and~~
~~(c) include particulars clearly stating issues intended to be raised.~~

Particulars of an objection to the validity of a patent must—
(a) be delivered with—
(i) an application for revocation under section 112 of the Act; or
(ii) a defence in a proceeding for infringement of a patent; or
(iii) a counterclaim for revocation under section 147 of the Act; and
(b) include the grounds on which the validity of the patent is disputed; and
(c) include particulars clearly stating issues intended to be raised.

Compare: 1908 No 89 Schedule 2 r ~~725ZH~~ 22.19 (as substituted by r 12 of the High Court Amendment Rules 2014)

22.20 Particulars if want of novelty alleged

(1) The particulars of an objection on the basis of want of novelty must state the time and place of the alleged previous knowledge, publication, or use.

(2) The particulars of an objection on the basis that the invention has been used prior to the date of the patent must—
(a) state the name and address of the alleged prior user and the place of prior use; and
(b) state whether the prior use is alleged to have continued to the date of the patent, and, if not, the earliest and latest dates on which the prior use is alleged to have taken place; and
(c) contain a description (accompanied by drawings, if necessary) sufficient to identify the alleged prior use; and
(d) if the use relates to machinery or apparatus, specify whether it is in existence and where it may be inspected.

High Court Rules—*continued*
Part 22—*continued*
Subpart 4—*continued*

(3) Evidence that exists at the date of delivery of the particulars about machinery or apparatus in relation to which prior use is alleged is not able to be received, unless it is proved that the party relying on the prior use has,—

(a) if the machinery or apparatus is in that party's own possession, offered an inspection of it; or

(b) if the machinery or apparatus is not in that party's own possession, used best endeavours to obtain an inspection of it for the other parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~725ZI~~ 22.20 (as substituted by 2008 No 90 s 8)

22.21 Service of notice on Solicitor-General

A party that intends to dispute the validity of a patent in a proceeding must—

(a) give notice of that intention to the Solicitor-General at least 15 working days before the hearing; and

(b) supply the Solicitor-General with a copy of papers filed in the proceeding by that party or papers filed by any other party that the Solicitor-General requires.

Compare: 1908 No 89 Schedule 2 r ~~725ZI~~ 22.21 (as substituted by 2008 No 90 s 8)

22.22 Particulars supplied by plaintiff

In a proceeding for infringement of a patent, the plaintiff must—

(a) deliver particulars of the breaches relied on with the plaintiff's statement of claim; and

(b) state which aspects of the specification of the patent are alleged to be infringed; and

(c) give at least 1 instance of each type of infringement.

Compare: 1908 No 89 Schedule 2 r ~~725ZK~~ 22.22 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 22—*continued*
Subpart 4—*continued*

~~22.23 Particulars supplied by defendant~~

~~(1) A defendant in a proceeding for infringement of a patent who intends to rely on a defence that the patentee inserted a condition in a contract that is void (by virtue of section 66 of the Act) must deliver with the defendant's statement of claim—~~

~~(a) full particulars of the dates of, and parties to, all contracts on which the defendant intends to rely; and~~

~~(b) full particulars of the conditions on which the defendant intends to rely.~~

~~(2) The defendant is not entitled to rely on a defence under section 66(2) of the Act if those particulars are not delivered.~~

~~Compare: 1908 No 89 Schedule 2 r 725ZL~~

22.23 Particulars supplied by defendant

[repealed]

22.24 Evidence restricted to particulars delivered

(1) No person may be heard or adduce evidence in support of an alleged infringement, objection, or defence so far as it relates to matters that are not specified in, or are at variance with, the particulars that person has delivered.

(2) Despite subclause (1), the court may grant leave on terms it considers appropriate.

Compare: 1908 No 89 Schedule 2 r ~~725ZM~~ 22.24 (as substituted by 2008 No 90 s 8)

22.25 Amendment of particulars

(1) Particulars filed in the court under these rules may be amended by leave of the court on terms the court considers just.

(2) Further and better particulars may at any time be ordered by the court.

(3) This rule has effect despite rule 7.77.

Compare: 1908 No 89 Schedule 2 r ~~725ZN~~ 22.25 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 22—*continued*

Subpart 5—Appeals

22.26 Application of Part 20

Part 20 applies to an appeal under the Act, unless modified by or inconsistent with this Part or the Act.

Compare: 1908 No 89 Schedule 2 r ~~725ZZA~~ 22.26 (as substituted by 2008 No 90 s 8)

22.27 Method and time of bringing appeal

(1) A person who wishes to appeal from a decision of the Commissioner in relation to which a right of appeal is given by the Act must file a notice of appeal in the court.

(2) The notice of appeal must be filed within 20 working days after the date of the Commissioner's decision.

(3) Other than with the leave of the court, an appeal must not be entertained unless notice of appeal has been given within the 20-working-day period.

Compare: 1908 No 89 Schedule 2 rr ~~725ZO~~, ~~725ZP~~ 22.27 (as substituted by 2008 No 90 s 8)

22.28 Contents of notice of appeal

A notice of appeal must state—

(a) the decision or part of the decision appealed against; and

(b) any error of law alleged; and

(c) any question of law to be resolved; and

(d) the grounds of the appeal (specified with reasonable particularity in order to give the court and the other parties full information about the issues involved); and

(e) the relief sought.

Compare: 1908 No 89 Schedule 2 r ~~725ZQ~~ 22.28 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 22—*continued*
Subpart 5—*continued*

22.29 Grounds of appeal

Only grounds stated in the notice of appeal may be allowed to be taken by the appellant at the hearing, unless the court grants leave to do otherwise on terms it considers appropriate.

Compare: 1908 No 89 Schedule 2 r ~~725ZR~~ 22.29 (as substituted by 2008 No 90 s 8)

22.30 Service of notice of appeal

An appellant must, within 5 working days of filing a notice of appeal, serve a copy of it on—

(a) the Commissioner; and

(b) any other party to the proceeding before the Commissioner.

Compare: 1908 No 89 Schedule 2 r ~~725ZS~~ 22.30 (as substituted by 2008 No 90 s 8)

22.31 Commissioner to transmit papers

On receiving notice of an appeal, the Commissioner must immediately transmit all papers relating to the subject matter of the appeal to the court.

Compare: 1908 No 89 Schedule 2 r ~~725ZT~~ 22.31 (as substituted by 2008 No 90 s 8)

22.32 Contentions raised by respondent

(1) A respondent who has not appealed a decision of the Commissioner, but who wishes to contend on appeal that the decision be varied (in any event or in the event of the appeal being allowed in whole or in part)—

(a) must give notice stating the grounds of the contention and the relief sought by the respondent; and

(b) need not file a further notice of appeal.

(2) A respondent who wishes to argue that a decision of the Commissioner be affirmed on grounds other than those set out in the decision must give notice of those grounds of contention.

Compare: 1908 No 89 Schedule 2 r ~~725ZU~~ 22.32 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 22—*continued*
Subpart 5—*continued*

22.33 Respondent's notice

(1) A respondent's notice must be sent to the Commissioner, the appellant, and every other party to the proceedings before the Commissioner—
  (a) within 20 working days after the date of the receipt of the notice of appeal by the respondent; or
  (b) within any longer period the court directs.

(2) A party sending a respondent's notice must, within 5 working days after the date of the service of the notice on the appellant, give 2 copies of the notice to the court.

(3) If more than 1 party files a notice of appeal, any party (whether or not that party has filed a notice of appeal) may file a respondent's notice in respect of a notice of appeal given by any other party.

Compare: 1908 No 89 Schedule 2 r ~~725ZV~~ 22.33 (as substituted by 2008 No 90 s 8)

22.34 Appeal by way of rehearing

(1) An appeal is by way of rehearing.

(2) The evidence used on appeal must be the same as that used before the Commissioner.

(3) No further evidence may be given, except with the leave of the court.

Compare: 1908 No 89 Schedule 2 r ~~725ZW~~ 22.34 (as substituted by 2008 No 90 s 8)

22.35 Proceeding heard and determined in public

(1) A proceeding under the Act or for infringement of a patent must be heard and determined in public unless the court directs that it must be heard in private.

(2) Despite subclause (1), a proceeding relating to a decision of the Commissioner in a case in which the complete specification of the patent application has not been published must be heard and determined in private unless the court directs that it must be heard in public.

High Court Rules—*continued*
Part 22—*continued*
Subpart 5—*continued*

(3) A direction given by the court (on its own initiative or on the application of a party to a proceeding) may relate to the whole proceeding or a specified part of it.

Compare: 1908 No 89 Schedule 2 r ~~725ZX~~ 22.35 (as substituted by 2008 No 90 s 8)

22.36 Documentary evidence

Rules about the filing of documentary evidence in proceedings before the Commissioner apply to documentary evidence filed on an appeal.

Compare: 1908 No 89 Schedule 2 r ~~725ZY~~ 22.36 (as substituted by 2008 No 90 s 8)

22.37 Cross-examination of witnesses

(1) At the request of a party, the court may order that a person who has made a statutory declaration or sworn an affidavit in the matter to which the appeal relates attend for cross-examination.

(2) A party that requires a witness to attend for cross-examination must pay the witness the appropriate fees, allowances, and travelling expenses under the appropriate scales specified in the Schedule of the Witnesses and Interpreters Fees Regulations 1974.

Compare: 1908 No 89 Schedule 2 r ~~725ZZ~~ 22.37 (as substituted by 2008 No 90 s 8)

Subpart 6—Costs

22.38 Costs

In a proceeding for infringement of a patent, no costs are allowed to the parties who deliver particulars of breaches or of objection in respect of any issues raised in those particulars and relating to that patent unless the issues or particulars are certified by the court as—

(a) proved; or

High Court Rules—*continued*
Part 22—*continued*
Subpart 6—*continued*

(b) reasonable and proper.

Compare: 1908 No 89 Schedule 2 r ~~725ZZB~~ 22.38 (as substituted by 2008 No 90 s 8)

Part 23
Enforcement between jurisdictions

Subpart 1—Enforcement under Reciprocal Enforcement of Judgments Act 1934

23.1 Scope and interpretation

(1) This subpart applies to the enforcement of judgments under the Act.

(2) With the exception of subclause (3), this subpart does not apply to, and does not affect—

(a) the enforcement of judgments at common law by a proceeding commenced under Part 5 or 12; or

(b) the filing of memorials, and subsequent enforcement, of judgments obtained out of New Zealand (**section 170 of the ~~Judicature Modernisation Act 2013~~ Act**).

(3) An application to the court or a Judge under **section 170(5) of the ~~Judicature Modernisation Act 2013~~ Act** for an order that the person against whom the judgment was obtained show cause why enforcement process should not issue must be made by originating application under Part 19.

(4) In this Part, unless the context otherwise requires,—

Act means the Reciprocal Enforcement of Judgments Act 1934

application for registration means an application made under section 4 of the Act

foreign judgment means any judgment to which, under section 3, 3A, or 3B of the Act, Part 1 of the Act for the time being applies

general rules means the rules comprised in the other Parts of these rules.

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

(5) Unless the context otherwise requires, expressions not defined in this subpart but defined in the Act have the meanings so defined.

Compare: 1908 No 89 Schedule 2 r ~~726~~ 23.1 (as substituted by 2008 No 90 s 8)

23.2 Application of other Parts

The general rules apply except so far as they are modified by or are inconsistent with this subpart.

Compare: 1908 No 89 Schedule 2 r ~~727~~ 23.2 (as substituted by 2008 No 90 s 8)

23.3 Subpart subject to Orders in Council

This subpart has effect subject to provisions in Orders in Council made under section 3, 3A, or 3B of the Act declared by those Orders in Council to be necessary for giving effect to any agreement made by or on behalf of the Government of New Zealand in relation to matters in respect of which there is power to make rules of court for the purposes of Part 1 of the Act.

Compare: 1908 No 89 Schedule 2 r ~~728~~ 23.3 (as substituted by 2008 No 90 s 8)

23.4 Method of application for registration

(1) An application for registration must be made by originating application in form G 30, and Part 19 applies except so far as it is modified by or inconsistent with this subpart.

(2) The application may be made without notice to the judgment debtor, and if so made the requirement of certification in rule 7.23 applies.

Compare: 1908 No 89 Schedule 2 r ~~729~~ 23.4 (as substituted by 2008 No 90 s 8)

23.5 Title and content of application

The heading to each document filed in an application for registration must—

(a) include both a reference to the Act and a reference to the judgment sought to be enforced; and

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

(b) specify, in relation to the judgment, both the court in which it was given and the parties to the judgment.

Compare: 1908 No 89 Schedule 2 r ~~730~~ 23.5 (as substituted by 2008 No 90 s 8)

23.6 Place of filing

An application for registration must be filed in the registry of the court in which the defendant would have been required to file that defendant's statement of defence had the proceeding been commenced by way of proceeding on the foreign judgment and not by way of application for registration.

Compare: 1908 No 89 Schedule 2 r ~~731~~ 23.6 (as substituted by 2008 No 90 s 8)

23.7 Supporting affidavits

Every application for registration must be supported by 1 or more affidavits.

Compare: 1908 No 89 Schedule 2 r ~~732~~ 23.7 (as substituted by 2008 No 90 s 8)

23.8 Copy judgment and translation

(1) The foreign judgment, or a verified or certified or otherwise duly authenticated copy of it, must be attached as an exhibit to an affidavit filed in support of the application for registration.

(2) If the judgment is expressed in a language other than English, a translation of the judgment in English must be filed.

(3) Any such translation must be verified by the affidavit of a person qualified as a translator from that language.

Compare: 1908 No 89 Schedule 2 r ~~733~~ 23.8 (as substituted by 2008 No 90 s 8)

23.9 Judicial notice of authentication of judgment

Judicial notice must be taken of any seal or signature by which a copy of a foreign judgment is verified and which purports to be—

(a) the seal of the court in which the judgment was given or of a Judge or a Registrar or similar officer of the court; or

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

(b) the signature of a Judge or Registrar or similar officer of that court.

Compare: 1908 No 89 Schedule 2 r ~~734~~ 23.9 (as substituted by 2008 No 90 s 8)

23.10 Evidence of exchange rates and interest

The affidavit or affidavits filed in support of the application for registration of a money judgment must include,—

(a) when the application does not state that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed,—

(i) the rate of exchange prevailing on the day of the application between New Zealand currency and the currency in which the sum payable under the judgment is expressed:

(ii) the amount that the sum payable under the judgment represents in New Zealand currency calculated at that rate:

(b) the rate of interest (if any) carried by the judgment by the law of the country under which it is given:

(c) the amount of interest that, by that law, will have become due under the judgment up to the time of the application, expressed,—

(i) when the application does not state that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed, in New Zealand currency calculated under paragraph (a):

(ii) when the application states that the judgment is to be registered in the currency in which it is expressed, in that currency.

Compare: 1908 No 89 Schedule 2 r ~~735~~ 23.10 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

23.11 Evidence of right to registration

(1) An affidavit filed in support of the application for registration must state, to the best of the information and belief of the person,—

(a) that the applicant is entitled to enforce the judgment; and

(b) either—

(i) that, at the date of the application, the judgment has not been satisfied; or

(ii) that, at the date of the application, the judgment has been partly satisfied; and

(c) if, at the date of the application, the judgment has been partly satisfied, the balance remaining payable or other action required to be taken to satisfy the judgment at that date; and

(d) that, at the date of the application, the judgment can be enforced in the country of the original court; and

(e) that, if the judgment were registered, the registration would not be, or be liable to be, set aside under section 6 of the Act; and

(f) the full name, title, trade, or business, and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively.

(2) The person making the affidavit must specify in that affidavit the source of the person's information and the grounds for his or her belief.

Compare: 1908 No 89 Schedule 2 r ~~736~~ 23.11 (as substituted by 2008 No 90 s 8)

23.12 Further evidence

The application for registration must be supported by whatever other evidence may be required, having regard,—

(a) in the case of a money judgment of a superior court, to the Order in Council under section 3 of the Act:

(b) in the case of a money judgment of an inferior court, to the Order in Council under section 3A of the Act:

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

(c) in the case of a non-money judgment of a superior court, to the Order in Council under section 3B(1) of the Act:
(d) in the case of a non-money judgment of an inferior court, to the Order in Council under section 3B(2) of the Act.

Compare: 1908 No 89 Schedule 2 r ~~737~~ 23.12 (as substituted by 2008 No 90 s 8)

23.13 Registration of part of judgment

When—

(a) a foreign judgment is in respect of different matters; and
(b) if some parts of the foreign judgment had been contained in separate judgments, those judgments could not properly have been registered,—

the application for registration must specify, and the order giving leave to register the foreign judgment must be limited to, the parts that are entitled to registration.

Compare: 1908 No 89 Schedule 2 r ~~738~~ 23.13 (as substituted by 2008 No 90 s 8)

23.14 Security for costs

The court may, on any application for registration, order the judgment creditor to give security for the costs of the judgment debtor in opposing the application or in applying to set aside the registration.

Compare: 1908 No 89 Schedule 2 r ~~739~~ 23.14 (as substituted by 2008 No 90 s 8)

23.15 Order for registration

(1) The order giving leave to register a judgment or part of a judgment—
(a) must state the period, being a period computed from the date of service of notice of registration, within which an application may be made to set aside the registration; and
(b) must prohibit enforcement of the judgment until after the expiration of the period stated in paragraph (a).

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

(2) Unless the court otherwise orders, the period stated under subclause (1)(a) must be the same as would apply under the general rules to the filing of a statement of defence in a proceeding.

(3) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

(4) It is not necessary to serve an order made under subclause (1) on the judgment debtor.

Compare: 1908 No 89 Schedule 2 r ~~740~~ 23.15 (as substituted by 2008 No 90 s 8)

23.16 Method of registration

(1) The registration of every judgment ordered to be registered under the Act must be effected by entry of particulars in an appropriate record book kept by the Registrar.

(2) The record book must state—

(a) the date of the order for registration:

(b) the name, title, trade, or business of the judgment creditor and the judgment debtor:

(c) the usual or last known place of abode or business of the judgment creditor and the judgment debtor:

(d) in the case of a money judgment, the sum payable under the judgment, expressed,—

(i) when the application states that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed, in that currency; or

(ii) in any other case, as if it were for an equivalent amount in New Zealand currency, based on the rate of exchange prevailing on the day of the application for registration:

(e) the interest (if any), up to the time of registration, for which the judgment is registered:

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

(f) where the judgment is a non-money judgment, particulars of the judgment:
(g) the costs allowed of and incidental to registration:
(h) any special directions contained in the order for registration:
(i) the particulars of any action taken to enforce the judgment.

Compare: 1908 No 89 Schedule 2 r ~~741~~ 23.16 (as substituted by 2008 No 90 s 8)

23.17 Date of registration

(1) The date of the order for registration and the date of the registration are to be treated as the date when the originating application was filed.

(2) Subclause (1) is subject to a court order.

Compare: 1908 No 89 Schedule 2 r ~~742~~ 23.17 (as substituted by 2008 No 90 s 8)

23.18 Notice of registration

(1) Notice in writing of the registration of a foreign judgment in New Zealand must be served on the judgment debtor.

(2) The notice must be served personally in accordance with the general rules unless some other mode of service is ordered by the court.

(3) Despite rule 6.28, if the judgment debtor is out of New Zealand, the notice may be served without the leave of the court.

Compare: 1908 No 89 Schedule 2 r ~~743~~ 23.18 (as substituted by 2008 No 90 s 8)

23.19 Contents of notice of registration

(1) The notice of registration must state—
  (a) full particulars of—
    (i) the judgment registered; and
    (ii) the order for registration; and
    (iii) any special direction contained in the order for registration; and

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

(b) whether the notice is issued by the judgment creditor or by a solicitor on behalf of the judgment creditor; and
(c) an address for service; and
(d) subject to subclause (2), the right of the judgment debtor to apply, on the grounds appearing in the Act, to have the registration set aside; and
(e) in accordance with the terms of the order giving leave to register, within what period from the date of service of the notice an application to set aside may be made.

(2) Subclause (1)(d) does not require the notice to set out the grounds on which the registration can be set aside.

Compare: 1908 No 89 Schedule 2 r ~~744~~ 23.19 (as substituted by 2008 No 90 s 8)

23.20 Application to set aside registration

(1) An application to set aside the registration of a foreign judgment must be made by interlocutory application.

(2) On any such application, the court may direct that an issue between the judgment creditor and the judgment debtor must be stated and tried and may give such directions in relation to the trial of the issue as may be necessary.

Compare: 1908 No 89 Schedule 2 r ~~745~~ 23.20 (as substituted by 2008 No 90 s 8)

23.21 Determination of certain questions

If, whether under the Act or under this subpart, any question arises about whether a judgment to which Part 1 of the Act applies can be enforced in the country of the original court, or what interest is payable under any judgment under the law of that country, that question must be determined in accordance with,—

(a) in the case of a money judgment of a superior court, the Order in Council under section 3 of the Act:
(b) in the case of a money judgment of an inferior court, the Order in Council under section 3A of the Act:
(c) in the case of a non-money judgment of a superior court, the Order in Council under section 3B(1) of the Act:

High Court Rules—*continued*
Part 23—*continued*
Subpart 1—*continued*

(d) in the case of a non-money judgment of an inferior court, the Order in Council under section 3B(2) of the Act.

Compare: 1908 No 89 Schedule 2 r ~~746~~ 23.21 (as substituted by 2008 No 90 s 8)

23.22 Enforcement of judgments

(1) A registered judgment must not be enforced at any time in—
- (a) the period specified in the order for registration; or
- (b) any extension of the period specified in the order for registration; or
- (c) the period between the filing and the disposal of any application to set aside the registration.

(2) In every case the fact and date of service of the notice of registration must be proved by an affidavit.

Compare: 1908 No 89 Schedule 2 r ~~747~~ 23.22 (as substituted by 2008 No 90 s 8)

23.23 Form of enforcement process

The form of an enforcement process within the meaning of rule 17.3 issued on a foreign judgment registered under the Act must—
- (a) specify the sum awarded, or the order or other relief granted; and
- (b) state the name and address of the judgment creditor; and
- (c) name the judgment debtor against whom the judgment was obtained; and
- (d) name the court in which the judgment was obtained and the date of that judgment; and
- (e) certify that the judgment has been duly registered in the High Court pursuant to Part 1 of the Reciprocal Enforcement of Judgments Act 1934.

Compare: 1908 No 89 Schedule 2 r ~~748~~ 23.23 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 23—*continued*

Subpart 2—Certified copy procedure

23.24 Method of application

(1) An application under section 11 of the Act for a certified copy of a judgment obtained in the court must be made by application without notice filed in the registry of the court in which the judgment was sealed.

(2) The application must be supported by the affidavit of the judgment creditor or the judgment creditor's solicitor, and that affidavit must—

- (a) give particulars of the proceeding in which the judgment was sealed; and
- (b) attach—
  - (i) a copy of the statement of claim by which the proceeding was instituted; and
  - (ii) evidence of the service of the statement of claim upon the judgment debtor or of appearance by the judgment debtor in the proceeding; and
  - (iii) copies of the pleadings, if any, in the proceeding; and
- (c) verify the copies of evidence attached to it in accordance with paragraph (b); and
- (d) state the grounds on which the judgment was based; and
- (e) state whether the judgment debtor did or did not object to the jurisdiction, and, if so, on what grounds; and
- (f) state—
  - (i) that the judgment is not subject to any stay of execution or of enforcement; and
  - (ii) that no notice of appeal against it has been given; and
  - (iii) whether the time for appealing has expired; and
- (g) state the rate at which the judgment carries interest.

Compare: 1908 No 89 Schedule 2 r ~~749~~ 23.24 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 23—*continued*
Subpart 2—*continued*

23.25 Issue of certified copy

(1) It is not necessary to seal any order made on an application under rule 23.24; instead, the Registrar must issue to the judgment creditor—

(a) a copy of the judgment sealed with the seal of the court, which copy must be certified by the Registrar—

(i) to be a true copy; and

(ii) to be issued in accordance with section 11 of the Act; and

(b) a separate certificate under the seal of the court in which the Registrar must certify—

(i) the matters stated in the affidavit filed in accordance with rule 23.24(2); and

(ii) any other particulars it is necessary to give to the court or tribunal in which enforcement of the judgment will be sought.

(2) In giving a certificate under subclause (1)(b) the Registrar is entitled to rely on the affidavit filed under rule 23.24(2) and the documents attached to it.

Compare: 1908 No 89 Schedule 2 r ~~750~~ 23.25 (as substituted by 2008 No 90 s 8)

Part 24
Insolvency
Subpart 1—Scope

24.1 Interpretation

(1) In this Part, unless the context otherwise requires, **Act** means the Insolvency Act 2006.

(2) In this Part, unless the context otherwise requires, expressions defined in the Act and used but not defined in this Part have the meanings given by the Act.

(3) Subclause (1) does not apply to subpart 15 (cross-border proceedings).

Compare: 1908 No 89 Schedule 2 r ~~819~~ 24.1 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 24—*continued*
Subpart 1—*continued*

24.2 Application of Part

This Part applies to matters arising under the Act or Part 4 of the Administration Act 1969, and to proceedings relating to them in the court, whenever commenced.

Compare: 1908 No 89 Schedule 2 r ~~820~~ 24.2 (as substituted by 2008 No 90 s 8)

24.3 Application of general rules and practice of court

The other Parts of these rules and the general practice of the court apply when this Part applies, unless they are modified by or inconsistent with the Act or this Part.

Compare: 1908 No 89 Schedule 2 r ~~821~~ 24.3 (as substituted by 2008 No 90 s 8)

Subpart 2—Proceedings generally

24.4 Forms

(1) The prescribed forms must be used whenever appropriate.

(2) If a form has not been prescribed for an application, it must be an interlocutory application, and an order made on that application must be in the form prescribed for an interlocutory order.

(3) If subclause (2) does not apply, the parties may frame a form for the special purpose of the particular case or the court may frame the form.

(4) If no form is prescribed, a notice must contain sufficient details to inform the recipient fairly of its substance.

(5) A warrant to search for and seize a bankrupt's property under section 150 or 151 of the Act must be in form B 7.

Compare: 1908 No 89 Schedule 2 r ~~822~~ 24.4 (as substituted by 2008 No 90 s 8)

24.5 General requirements of documents filed in court

Every document filed must—

(a) comply with the rules in subpart 3 of Part 5 so far as they are applicable and with any necessary modifications; and

High Court Rules—*continued*
Part 24—*continued*
Subpart 2—*continued*

(b) be headed by the words "In the matter of the Insolvency Act 2006, and in the matter of the bankruptcy (or proposal, as the case may be) of".

Compare: 1908 No 89 Schedule 2 r ~~823~~ 24.5 (as substituted by 2008 No 90 s 8)

24.6 Advertising of notices or proceedings

An advertisement of a notice or proceeding that is published in a newspaper circulating in the area in which the proceeding is pending must comply with the advertising requirements of the Act or this Part.

Compare: 1908 No 89 Schedule 2 r ~~824~~ 24.6 (as substituted by 2008 No 90 s 8)

24.7 Discretion of court as to method of taking evidence

Unless otherwise provided in this Part, the court may, in any proceeding, take all or any part of the evidence orally or by written interrogatories or on affidavit or by commission, as the court thinks just.

Compare: 1908 No 89 Schedule 2 r ~~825~~ 24.7 (as substituted by 2008 No 90 s 8)

Subpart 3—Bankruptcy notices

24.8 Issue of bankruptcy notice

(1) A request for the issue of a bankruptcy notice must be in form B 1.

(2) The Registrar may approve the issue of a bankruptcy notice if—

(a) the request is founded on a judgment or order of a court; and

(b) the Registrar has no knowledge that payment of the debt has occurred.

(3) A bankruptcy notice must be in form B 2 and a certified copy of the judgment or order on which the bankruptcy notice is based must be attached to it.

High Court Rules—*continued*
Part 24—*continued*
Subpart 3—*continued*

(4) The bankruptcy notice must state the amount of any costs claimed.

Compare: 1908 No 89 Schedule 2 r ~~826~~ 24.8 (as substituted by 2008 No 90 s 8)

24.9 Service of bankruptcy notice in New Zealand

(1) A bankruptcy notice that is to be served in New Zealand must be served within 6 months from the date of its issue.

(2) The creditor may before or after the expiry of the period referred to in subclause (1) apply to the court for an order extending the period of service.

(3) The court may extend the period for service for a further 3 months from the expiry of the period referred to in subclause (1) if the court is satisfied that—

(a) reasonable efforts have been made to effect service; or

(b) for any other good reason an extension of the period for service is desirable.

(4) A bankruptcy notice must be served in accordance with Part 6 (service).

Compare: 1908 No 89 Schedule 2 r ~~827~~ 24.9 (as substituted by 2008 No 90 s 8)

24.10 Setting aside bankruptcy notice

(1) If an application to set aside a bankruptcy notice cannot be heard until after the expiration of the time specified in the notice as the day on which the act of bankruptcy will be complete, the time is treated as extended until the application has been determined.

(2) An act of bankruptcy is not committed by reason only of noncompliance with the notice until the application has been determined.

Compare: 1908 No 89 Schedule 2 r ~~828~~ 24.10 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 24—*continued*

Subpart 4—Adjudication proceedings

24.11 Application for adjudication by creditor

(1) A creditor's application for adjudication must be commenced by filing an originating application in form B 3.

(2) Part 19 applies to adjudication proceedings but, in case of any conflict, is overridden by this Part.

(3) An affidavit in form B 4 and a summons to debtor in form B 5 must be filed (in duplicate) with a creditor's application.

(4) A summons must also state the amount of any costs claimed.

(5) An order of adjudication made on the application must be in form B 16.

Compare: 1908 No 89 Schedule 2 r ~~829~~ 24.11 (as substituted by 2008 No 90 s 8)

24.12 Verification of creditor's application

A creditor's application must be verified by affidavit of the creditor or some other person having knowledge of the facts.

Compare: 1908 No 89 Schedule 2 r ~~830~~ 24.12 (as substituted by 2008 No 90 s 8)

24.13 Where application for adjudication to be filed

An application for adjudication must be filed,—

(a) if the debtor is resident in New Zealand, in the registry of the High Court nearest by the most practicable route to the place in which the debtor has resided or carried on business for the longest period during the 6 months immediately before the time when the application is filed:

(b) if the debtor is in custody, in the registry of the High Court nearest by the most practicable route to the place in which the debtor is in custody:

(c) if the debtor is absent from New Zealand or the applying creditor cannot ascertain the debtor's place of residence, in the registry of the High Court nearest by the most practicable route to the place in which the applying creditor resides or carries on business:

(d) if a debtor has never been resident in New Zealand, in the registry of the High Court nearest by the most prac-

High Court Rules—*continued*
Part 24—*continued*
Subpart 4—*continued*

ticable route to the place in which the applying creditor resides or carries on business:

(e) if any act of bankruptcy relied on by the applying creditor is specified in sections 20 and 21 of the Act, in any registry of the court.

Compare: 1908 No 89 Schedule 2 r ~~831~~ 24.13 (as substituted by 2008 No 90 s 8)

24.14 Registrar to fix hearing date for creditor's application

(1) The Registrar must fix a hearing date for the application and insert the date in the summons to the debtor before releasing the summons to the creditor for service.

(2) If the application and summons have not been served, the Registrar may, from time to time, alter the hearing date.

Compare: 1908 No 89 Schedule 2 r ~~832~~ 24.14 (as substituted by 2008 No 90 s 8)

24.15 Court may alter hearing date for creditor's application

If it is proved to the court's satisfaction that the debtor has absconded or there is any other good reason, the court may, on any terms it thinks just, hear the creditor's application on any date the court considers expedient.

Compare: 1908 No 89 Schedule 2 r ~~833~~ 24.15 (as substituted by 2008 No 90 s 8)

24.16 Service of creditor's application on debtor

(1) A copy of the creditor's application and the summons to the debtor must be served on the debtor at least 10 working days before the hearing of the creditor's application.

(2) If the debtor dies before service of the creditor's application and summons, the court may order service to be effected on the debtor's administrator or any other person as it thinks just.

Compare: 1908 No 89 Schedule 2 r ~~834~~ 24.16 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 24—*continued*
Subpart 4—*continued*

24.17 Service of creditor's application on trustee or supervisor

(1) A copy of the creditor's application and the summons to the debtor must be served personally on the trustee or supervisor, as the case may be,—

(a) if the act of bankruptcy alleged is that the debtor has made a disposition of all or substantially all of the debtor's property to a trustee for the benefit of all or any of the debtor's creditors; or

(b) if, at the time of the filing of the application, a proposal under subpart 2 of Part 5 of the Act has been approved by the court or a summary instalment order has been made under subpart 3 of Part 5 of the Act.

(2) The documents set out in subclause (1) must be served at least 10 working days before the hearing of the creditor's application.

Compare: 1908 No 89 Schedule 2 r ~~835~~ 24.17 (as substituted by 2008 No 90 s 8)

24.18 Debtor's notice of intention to oppose adjudication

A debtor who intends to oppose the making of an order of adjudication must, by 1 pm on the last working day before the hearing of the creditor's application,—

(a) file a notice of opposition in form B 6, together with an affidavit in support of the opposition; and

(b) serve a copy of those documents on the applicant creditor.

Compare: 1908 No 89 Schedule 2 r ~~836~~ 24.18 (as substituted by 2008 No 90 s 8)

24.19 Affidavit evidence of applicant creditor

(1) Unless the court otherwise directs, an applicant creditor's evidence of a debt, an act of bankruptcy, or any other material statements may be given by affidavit.

(2) The affidavit must be sworn by or on behalf of the applicant creditor at least 3 working days before the date of the hearing of the application.

Compare: 1908 No 89 Schedule 2 r ~~837~~ 24.19 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 24—*continued*
Subpart 4—*continued*

24.20 Applicant creditor's solicitor's certificate as to unpaid debt

A certificate by the applicant creditor's solicitor to the effect that, after having made due inquiries, the solicitor is satisfied that the debt remains unpaid, may be accepted by the court as sufficient prima facie evidence that the debt remains unpaid.

Compare: 1908 No 89 Schedule 2 r ~~838~~ 24.20 (as substituted by 2008 No 90 s 8)

24.21 Death of debtor against whom application filed

If a debtor against whom a bankruptcy application is filed dies, the application must, unless the court otherwise orders, be continued as if the debtor were alive.

Compare: 1908 No 89 Schedule 2 r ~~839~~ 24.21 (as substituted by 2008 No 90 s 8)

Subpart 5—Appointment of Official Assignee

24.22 Applicant to deposit sum for Official Assignee's expenses

The person who has applied for an order appointing the Official Assignee to be a receiver and manager of all or any part of the debtor's estate must, before the order is made, deposit with the Official Assignee any sum that the court directs for the Official Assignee's expenses.

Compare: 1908 No 89 Schedule 2 r ~~840~~ 24.22 (as substituted by 2008 No 90 s 8)

24.23 Official Assignee may seek additional sum where original deposit insufficient

(1) If the sum deposited for the Official Assignee's expenses under rule 24.22 is insufficient, the person who paid the deposit must deposit with the Official Assignee any additional sum that the court may, on the application of the Official Assignee, from time to time direct.

(2) If the additional sum is not deposited within 24 hours after the making of the order, the Official Assignee may apply to

High Court Rules—*continued*
Part 24—*continued*
Subpart 5—*continued*

have the order appointing the Official Assignee as receiver and manager discharged by the court.

Compare: 1908 No 89 Schedule 2 r ~~841~~ 24.23 (as substituted by 2008 No 90 s 8)

24.24 Notification of order appointing Official Assignee as receiver and manager

(1) The Registrar must, immediately after the order appointing the Official Assignee as receiver and manager has been made, forward 2 copies of the order to the Official Assignee.

(2) If the debtor is in New Zealand, the Official Assignee must cause a copy of the order appointing the Official Assignee as receiver and manager to be served on the debtor.

(3) The Official Assignee must advertise the Official Assignee's appointment as receiver and manager within 5 working days after the making of the order.

(4) The order referred to in this rule must be in form B 17.

Compare: 1908 No 89 Schedule 2 r ~~842~~ 24.24 (as substituted by 2008 No 90 s 8)

24.25 Repayment of deposits after order of adjudication

(1) If an order of adjudication is made after the Official Assignee is appointed receiver and manager, the Official Assignee must repay to the creditor the deposits made under rules 24.22 and 24.23 out of the proceeds of the estate.

(2) If there are insufficient proceeds in the estate to pay the Official Assignee's fees and expenses as receiver and manager, the Official Assignee may keep all or any part of the deposits as payment of those fees and expenses.

Compare: 1908 No 89 Schedule 2 r ~~843~~ 24.25 (as substituted by 2008 No 90 s 8)

24.26 Dismissal of application after order appointing Official Assignee as manager and receiver

If, after an order has been made appointing the Official Assignee as receiver and manager, the application upon which the order was made is dismissed,—

High Court Rules—*continued*
Part 24—*continued*
Subpart 5—*continued*

(a) the court must, on an application made within 15 working days from the date of the dismissal, make an order relating to any damages or claim arising out of the Official Assignee's appointment; and

(b) the court may make any other order it thinks just.

Compare: 1908 No 89 Schedule 2 r ~~844~~ 24.26 (as substituted by 2008 No 90 s 8)

Subpart 6—Contributions from bankrupt

24.27 Application for order under section 147

A creditor who intends to make an application under section 147 of the Act must give at least 10 working days' notice of that intention to the Official Assignee and to the bankrupt.

Compare: 1908 No 89 Schedule 2 r ~~845~~ 24.27 (as substituted by 2008 No 90 s 8)

24.28 Official Assignee's report

(1) If the Official Assignee or a creditor applies for an order under section 147 of the Act, the Official Assignee must prepare a report as to the circumstances of the bankruptcy, the bankrupt's conduct, and the bankrupt's earning power, responsibilities, and prospects.

(2) At least 5 working days before the time fixed for the hearing, the Official Assignee must lodge the report in the court, and forward a copy to the bankrupt, and to the applicant, if the applicant is a creditor.

Compare: 1908 No 89 Schedule 2 r ~~846~~ 24.28 (as substituted by 2008 No 90 s 8)

24.29 Official Assignee to notify employer, etc, about proposed assignment or charge

If it is proposed that an order be made assigning to, or charging in favour of, the Official Assignee any money due or becoming due to the bankrupt by way of wages or salary or from any other source,—

High Court Rules—*continued*
Part 24—*continued*
Subpart 6—*continued*

(a) the Official Assignee must notify the employer or other person against whom the assignment or charge is proposed; and
(b) the person who is notified is entitled to appear and be heard.

Compare: 1908 No 89 Schedule 2 r ~~847~~ 24.29 (as substituted by 2008 No 90 s 8)

24.30 Official Assignee to serve order of assignment, etc

The Official Assignee must serve a duplicate of any order assigning or charging in favour of the Official Assignee any money due or becoming due to the bankrupt on the employer or other person against whom the assignment or charge was given.

Compare: 1908 No 89 Schedule 2 r ~~848~~ 24.30 (as substituted by 2008 No 90 s 8)

Subpart 7—Compositions during bankruptcy

24.31 Application for order approving composition

(1) The Official Assignee may apply to the court to approve a composition (whether or not the Official Assignee reports in favour of it) if—
(a) the creditors have passed a confirming resolution in relation to the composition; and
(b) the bankrupt does not, within 3 working days from the date of the confirmation, apply to the court for approval of the composition.

(2) The Official Assignee is not, by making the application, treated as approving the composition.

Compare: 1908 No 89 Schedule 2 r ~~849~~ 24.31 (as substituted by 2008 No 90 s 8)

24.32 Notice to Official Assignee of application to approve composition

Any person, other than the Official Assignee, who applies to the court to approve a composition must, at least 10 work-

High Court Rules—*continued*
Part 24—*continued*
Subpart 7—*continued*

ing days before the day appointed for hearing the application, serve notice of the application on the Official Assignee.
Compare: 1908 No 89 Schedule 2 r ~~850~~ 24.32 (as substituted by 2008 No 90 s 8)

24.33 Notice of application to approve composition
If an application is made to the court to approve a composition, the Official Assignee must, at least 5 working days before the day appointed for hearing the application, send notice of the application to every creditor whose debt has been proved.
Compare: 1908 No 89 Schedule 2 r ~~851~~ 24.33 (as substituted by 2008 No 90 s 8)

24.34 Official Assignee to account when composition approved
If a composition is approved by the court, the Official Assignee must account to the bankrupt, or, as the case may be, to the trustee.
Compare: 1908 No 89 Schedule 2 r ~~852~~ 24.34 (as substituted by 2008 No 90 s 8)

Subpart 8—Irregular transactions

24.35 Applications by Official Assignee for cancellation of irregular transactions or retransfer of property or payment of value

(1) An application to the court by the Official Assignee under section 206 of the Act (for the cancellation of an irregular transaction) or under section 207 of the Act (for the retransfer of property or payment of value) must be made by originating application under Part 19.

(2) An application under section 206 must be in form B 14.

(3) An application under section 207 must be in form B 15.

Compare: 1908 No 89 Schedule 2 r ~~853~~ 24.35 (as substituted by 2008 No 90 s 8)

Subpart 9—Discharge of bankrupt

24.36 Filing and service of objection to discharge

(1) An objection to a discharge under section 292 of the Act is entered by filing an objection in form B 8.

High Court Rules—*continued*
Part 24—*continued*
Subpart 9—*continued*

(2) A creditor who enters an objection to a discharge must serve the objection on the Official Assignee.

Compare: 1908 No 89 Schedule 2 r ~~854~~ 24.36 (as substituted by 2008 No 90 s 8)

24.37 Service, etc, of notice of application for discharge

At least 15 working days before the hearing date, the bankrupt must—

(a) serve on the Official Assignee, and every creditor whose debt has been proved, notice of application for discharge under section 294 of the Act; and

(b) cause notice of the application and the hearing date to be advertised.

Compare: 1908 No 89 Schedule 2 r ~~855~~ 24.37 (as substituted by 2008 No 90 s 8)

24.38 Report of Official Assignee

At least 5 working days before the hearing date, the Official Assignee must—

(a) lodge in the court a copy of the Official Assignee's report under section 296 of the Act; and

(b) serve a copy of the report on the bankrupt and all creditors known to the Official Assignee.

Compare: 1908 No 89 Schedule 2 r ~~856~~ 24.38 (as substituted by 2008 No 90 s 8)

24.39 Opposition by creditor to discharge

A creditor who intends to oppose the discharge of a bankrupt on grounds other than those specified in the Official Assignee's report must file and serve on the Official Assignee and the bankrupt a notice of the creditor's intended opposition and the grounds of opposition by 1 pm on the day before the hearing.

Compare: 1908 No 89 Schedule 2 r ~~857~~ 24.39 (as substituted by 2008 No 90 s 8)

24.40 Conditions affecting salary, etc, after order of discharge

(1) The Official Assignee must notify the bankrupt's employer of the Official Assignee's intention to ask the court to impose a

High Court Rules—*continued*
Part 24—*continued*
Subpart 9—*continued*

condition that affects any salary or wages that may, after the date of the order of discharge, become due to the bankrupt.

(2) The Official Assignee must notify the employer of an order made under section 298 of the Act before receiving payment of any salary or wages.

Compare: 1908 No 89 Schedule 2 r ~~858~~ 24.40 (as substituted by 2008 No 90 s 8)

24.41 Annulment of adjudication to be advertised

The Official Assignee must immediately cause a notice of an order annulling an adjudication to be advertised.

Compare: 1908 No 89 Schedule 2 r ~~859~~ 24.41 (as substituted by 2008 No 90 s 8)

Subpart 10—Proposals

24.42 Proposal and statement of affairs and affidavit

A proposal under subpart 2 of Part 5 of the Act must be in form B 9 and must be accompanied by a statement of affairs and affidavit in form B 10.

Compare: 1908 No 89 Schedule 2 r ~~860~~ 24.42 (as substituted by 2008 No 90 s 8)

24.43 Trustee's report on proposal

The trustee must file a report in form B 11 with the application for approval under section 333 of the Act.

Compare: 1908 No 89 Schedule 2 r ~~861~~ 24.43 (as substituted by 2008 No 90 s 8)

Subpart 11—Insolvent deceased estates

24.44 Application for order to administer under Part 6 of Act

An application for an order to administer under Part 6 of the Act must be by originating application.

Compare: 1908 No 89 Schedule 2 r ~~862~~ 24.44 (as substituted by 2008 No 90 s 8)

24.45 Application by creditor or beneficiary

(1) Notice of an application under section 381 of the Act must be given by serving on the administrator, or, if no administrator has been appointed, on those persons that the court directs, a

High Court Rules—*continued*
Part 24—*continued*
Subpart 11—*continued*

copy of the application together with a copy of any supporting affidavit.

(2) The court may, within such time as the court requires, direct the administrator to file the account in form B 12 if—

(a) an application is made by a creditor, or any person beneficially interested, after a request has been made to an administrator; and

(b) the administrator, having been requested in writing to apply, has failed to make an application within 15 working days after receiving the request.

Compare: 1908 No 89 Schedule 2 r ~~863~~ 24.45 (as substituted by 2008 No 90 s 8)

24.46 Duty of Registrar when order made

If an order is made under section 379 or 381 of the Act, the Registrar must send to the appointee and to the Commissioner of Inland Revenue a copy of the order and of the account specified in section 380(3) of the Act.

Compare: 1908 No 89 Schedule 2 r ~~864~~ 24.46 (as substituted by 2008 No 90 s 8)

24.47 Duty of administrator when order made

If an order has been made under section 379 or 381 of the Act,—

(a) the administrator must immediately send an account of the administrator's dealings and administration of the deceased estate to the appointee; and

(b) the administrator must, at the same time, provide whatever particulars of the affairs of the deceased are required by the appointee.

Compare: 1908 No 89 Schedule 2 r ~~865~~ 24.47 (as substituted by 2008 No 90 s 8)

24.48 Person who has intermeddled in estate may be ordered to give particulars

The court may, on an appointee's application, direct that an account be made, verified, and given by any person the court

High Court Rules—*continued*
Part 24—*continued*
Subpart 11—*continued*

considers has administered or otherwise intermeddled with all or any part of the deceased's property, if—

(a) an order has been made under section 379 or 381 of the Act; and

(b) it appears to the court that no administrator exists and the appointee is unable to find any person willing to give the particulars required by rule 24.47.

Compare: 1908 No 89 Schedule 2 r ~~866~~ 24.48 (as substituted by 2008 No 90 s 8)

24.49 Administration election

A certificate by Public Trust or the Māori Trustee recording an election to administer an insolvent estate under Part 6 of the Act must be in form B 13.

Compare: 1908 No 89 Schedule 2 r ~~867~~ 24.49 (as substituted by 2008 No 90 s 8)

Subpart 12—Appeals

24.50 Applications to vary or discharge order or decision of Registrar or District Court Judge

(1) An application to the court under section 414 of the Act to vary or discharge the order or decision of a Registrar or District Court Judge under section 413 of the Act must be filed,—

(a) if it is made by a party who was present or represented when the order was made or the decision given, within 5 working days after the making of the order or the giving of the decision; or

(b) if it is made by a party who was not then present or represented, within 5 working days after the receipt by the party of notice of the order or decision.

(2) The application does not stay proceedings unless a Judge, the Registrar, or the District Court Judge otherwise orders.

Compare: 1908 No 89 Schedule 2 r ~~868~~ 24.50 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 24—*continued*
Subpart 12—*continued*

24.51 Appeals to Court of Appeal

(1) The Court of Appeal (Civil) Rules 2005, so far as they are applicable and with any necessary modifications, apply to appeals to the Court of Appeal under section 414 of the Act.

(2) The Official Assignee of the bankrupt's property is a party to an appeal.

Compare: 1908 No 89 Schedule 2 r ~~869~~ 24.51 (as substituted by 2008 No 90 s 8)

Subpart 13—Official Assignee

24.52 Applications to court by Official Assignee

An application by the Official Assignee to the court may be made personally, by counsel, or by any agent duly appointed under paragraph (t) of Schedule 1 of the Act.

Compare: 1908 No 89 Schedule 2 r ~~870~~ 24.52 (as substituted by 2008 No 90 s 8)

24.53 Official Assignee's liability for costs

Unless the court otherwise directs, the Official Assignee is not personally liable for costs if—

(a) proceedings are brought against the Official Assignee representing the estate of the bankrupt; or

(b) the Official Assignee is made a party to a proceeding on the application of another party.

Compare: 1908 No 89 Schedule 2 r ~~871~~ 24.53 (as substituted by 2008 No 90 s 8)

Subpart 14—District Court filings

24.54 Filing decisions of District Court

(1) If, under the Act, an application relating to bankruptcy may be filed in the District Court, the Registrar of that court must forward to the nearest High Court a certified copy of the decision of that court.

(2) The certified copy of the decision of the District Court must be filed by the Registrar and forms part of the proceedings of the High Court.

Compare: 1908 No 89 Schedule 2 r ~~872~~ 24.54 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 24—*continued*

Subpart 15—Cross-border proceedings

24.55 Interpretation

(1) In this subpart, unless the context otherwise requires, **Act** means the Insolvency (Cross-border) Act 2006.

(2) Unless the context otherwise requires, expressions defined in Schedule 1 of the Act have, in this subpart, the meanings so defined.

(3) In this subpart, references to articles are references to articles in Schedule 1 of the Act.

Compare: 1908 No 89 Schedule 2 r ~~873~~ 24.55 (as substituted by 2008 No 90 s 8)

24.56 Applications for recognition of foreign proceedings

(1) An application by a foreign representative under article 15(1) must be made by originating application under Part 19.

(2) In addition to complying with the requirements of article 15, the application must—

(a) be supported by an affidavit verifying the statement referred to in article 15(3) (identifying all foreign proceedings in respect of the debtor that are known to the foreign representative) or by other sworn evidence acceptable to the court:

(b) be served, in accordance with Part 6 of these rules, on the debtor or a New Zealand agent or representative of the debtor unless a Judge directs that the application may in all the circumstances proceed without that service.

(3) A foreign representative who has filed an application under subclause (1) may apply without notice for relief of a provisional nature under article 19(1).

Compare: 1908 No 89 Schedule 2 r ~~874(1), (2), (6)~~ 24.56 (as substituted by 2008 No 90 s 8)

24.57 Other procedural requirements

(1) A New Zealand agent or representative of the debtor served under rule 24.56(2)(b), must, as a condition of being treated as

High Court Rules—*continued*
Part 24—*continued*
Subpart 15—*continued*

a respondent to the application under Part 19, provide evidence of that agency or representation to the court's satisfaction.

(2) The foreign representative must, when filing an application under rule 24.56(1) or within 25 working days after the date of filing, file an application for directions as to service under rule 18.7 and the Judge may give directions as to service and make any incidental orders considered just.

(3) An application for modification or termination of recognition under article 17(5) must be made by originating application served on the parties and any other persons who were directed to be served before the recognition order under article 17(1) was made.

Compare: 1908 No 89 Schedule 2 r ~~874(3)–(5)~~ 24.57 (as substituted by 2008 No 90 s 8)

24.58 Relief after recognition

(1) The foreign representative may apply by interlocutory application for appropriate relief under article 21(1).

(2) An application under subclause (1) must be served on—
- (a) any other parties to the application under rule 24.56:
- (b) persons directed to be served under rule 24.56:
- (c) any judgment creditor carrying on business, or resident, or having a registered office, in New Zealand.

Compare: 1908 No 89 Schedule 2 r ~~875~~ 24.58 (as substituted by 2008 No 90 s 8)

24.59 Modification or termination

(1) The foreign representative or a person affected by relief granted under article 19 and rule 24.56(3), or under article 21 and rule 24.58, may apply by interlocutory application for an order modifying or terminating the relief granted.

(2) The statutory manager may apply by interlocutory application under article 22(4) to terminate relief granted under article 19 and rule 24.56(3), or under article 21 and rule 24.58.

Compare: 1908 No 89 Schedule 2 r ~~876~~ 24.59 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 24—*continued*

Subpart 16—Voluntary administration

24.60 Appointment of administrator under section 239L of Companies Act 1993

An application by a creditor, the liquidator (if the company is in liquidation), or the Registrar of Companies for the appointment by the court of an administrator under section 239L of the Companies Act 1993 (inserted by section 6 of the Companies Amendment Act 2006) must be made by originating application under Part 19.

Compare: 1908 No 89 Schedule 2 r ~~700ZL~~ 24.60 (as substituted by 2008 No 90 s 8)

24.61 Applications in course of administration

(1) An application to the court by the administrator or other person entitled to apply to the court under Part 15A of the Companies Act 1993 must be made by originating application under Part 19.

(2) If an application in relation to a company has been made to the court under subclause (1), any further application in relation to the voluntary administration of that company may be made by interlocutory application under subpart 2 of Part 7.

(3) Subclause (1) is subject to subclause (2).

Compare: 1908 No 89 Schedule 2 r ~~700ZM~~ 24.61 (as substituted by 2008 No 90 s 8)

24.62 Proper registry of court

(1) The proper registry of the court for the purpose of filing an originating application under rule 24.61 is—

(a) the registry of the court in the town where, or the registry of the court in the town nearest to where, the company's registered office is situated; or

(b) if the company does not have a registered office, the registry of the court in the town where, or the registry of the court in the town nearest to where, the principal or last known place of business is or was situated.

High Court Rules—*continued*
Part 24—*continued*
Subpart 16—*continued*

(2) If it appears to the court on application to it that the originating application has been filed in the wrong registry of the court, or that any other registry of the court would be more convenient to all parties affected, it may direct that the originating application and any documents filed in relation to that application be filed in, or transferred to, the proper registry or the other registry of the court.

(3) This rule overrides rule 5.1.

Compare: 1908 No 89 Schedule 2 r ~~700ZN~~ 24.62 (as substituted by 2008 No 90 s 8)

Part 25
Admiralty

Subpart 1—Preliminary provisions

25.1 Interpretation

(1) In this Part, unless the context otherwise requires,—

Act means the Admiralty Act 1973

action means an action *in personam* or *in rem*, or both, in the admiralty jurisdiction of the court

foreign ship has the same meaning as it has in section 2(1) of the Maritime Transport Act 1994.

(2) In this Part, unless the context otherwise requires, terms and expressions used and not defined in this Part but defined in the Act have the same meaning as in the Act.

Compare: 1908 No 89 Schedule 2 r ~~764~~ 25.1 (as substituted by 2008 No 90 s 8)

25.2 Scope of this Part

(1) Subpart 1 contains preliminary provisions and applies generally to actions.

(2) Subpart 2 contains provisions about starting actions and applies generally to actions.

(3) Subpart 3 contains provisions in addition to subpart 2 that apply to actions arising out of collisions between ships.

High Court Rules—*continued*
Part 25—*continued*
Subpart 1—*continued*

(4) Subpart 4 contains provisions in addition to subpart 2 that apply to actions for the limitation of liability under Part 7 of the Maritime Transport Act 1994.

(5) Subpart 5 applies to applications for judgment by default in actions.

(6) Subpart 6 applies to the arrest, release, and sale of property in actions.

(7) Subpart 7 contains miscellaneous provisions that apply generally to actions.

Compare: 1908 No 89 Schedule 2 r 25.2 (as substituted by 2008 No 90 s 8)

25.3 Application of other rules and practice of court

The other Parts of these rules and the general practice of the court apply when this Part applies unless modified by or inconsistent with the Act or this Part.

Compare: 1908 No 89 Schedule 2 r ~~766~~ 25.3 (as substituted by 2008 No 90 s 8)

25.4 Parties can apply for directions if procedure not prescribed

(1) A party or intending party who wishes to take a step in a proceeding for which a procedure is not prescribed by this Part or any other Part or by the general practice of the court may apply to the court or a Judge for directions.

(2) The court or a Judge may give any directions concerning the steps to be taken by the party that the court or Judge thinks just.

(3) A step in a proceeding is treated as having been properly taken if taken in accordance with the directions given under subclause (2).

Compare: 1908 No 89 Schedule 2 r ~~767~~ 25.4 (as substituted by 2008 No 90 s 8)

25.5 Form of application

An interlocutory application under this Part must be in form G 31 and an order made on that application must be in form G 34.

Compare: 1908 No 89 Schedule 2 r ~~768~~ 25.5 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 25—*continued*

Subpart 2—Starting proceedings in admiralty

25.6 Action *in personam* or *in rem*, or both, started by notice of proceeding

(1) Actions may be *in personam* or *in rem*, or both.

(2) An action is started by a notice of proceeding—
- (a) issued from any registry of the court; and
- (b) endorsed, before being issued, with a concise statement of—
  - (i) the nature of the claim; and
  - (ii) the relief or remedy required; and
  - (iii) the amount claimed (if any).

(3) The concise statement referred to in subclause (2) is not a statement of claim within the meaning of these rules.

(4) An action is treated as having started when a notice of proceeding complying with subclause (2) is filed.

Compare: 1908 No 89 Schedule 2 r ~~769~~ 25.6 (as substituted by 2008 No 90 s 8)

25.7 Notice of proceeding for action *in personam*

(1) An action *in personam* is started by a notice of proceeding in form AD 2.

(2) The action must be headed as in form AD 1.

(3) Rules 6.27 to 6.35 apply in relation to service out of the jurisdiction in an action *in personam*.

Compare: 1908 No 89 Schedule 2 r ~~770~~ 25.7 (as substituted by 2008 No 90 s 8)

25.8 Notice of proceeding for action *in rem*

(1) An action *in rem* is started by a notice of proceeding in form AD 4.

(2) The action must be headed as in form AD 3.

(3) No proceedings *in rem* concerning any claim against the Crown may be brought.

(4) A notice of proceeding *in rem* may not be served out of the jurisdiction, but a notice of proceeding that is both *in rem* and

High Court Rules—*continued*
Part 25—*continued*
Subpart 2—*continued*

in personam may be served out of the jurisdiction in so far as it is *in personam*.

(5) Rules 6.27 to 6.35 apply to service out of the jurisdiction under subclause (4).

Compare: 1908 No 89 Schedule 2 r ~~771(1)–(5)~~ 25.8 (as substituted by 2008 No 90 s 8)

25.9 Notice of proceeding for action both *in rem* and *in personam*

(1) An action that is both *in rem* and *in personam* is started by a notice of proceeding in form AD 5.

(2) The action must be headed as in form AD 1.

Compare: 1908 No 89 Schedule 2 r ~~771(6)~~ 25.9 (as substituted by 2008 No 90 s 8)

25.10 How to serve notice of proceeding in action *in rem* on ship, cargo, or other property

(1) To serve a notice of proceeding in an action *in rem* on a ship or on cargo or on other property on board a ship,—

(a) attach a sealed copy of the notice to a place adjacent to the bridge or some conspicuous part of the ship, or adjacent to an entrance way to the superstructure or accommodation section of the ship; and

(b) leave a copy of the notice with the person apparently in charge of the ship, if that person is available at the time of service.

(2) To serve a notice of proceeding in an action *in rem* on cargo or on other property not on board a ship,—

(a) attach a sealed copy of the notice to that cargo or other property; and

(b) attach a copy of the notice to the place where the cargo or other property is located.

(3) To serve a notice of proceeding in an action *in rem* on freight in the hands of an individual,—

(a) show a sealed copy of the notice to that individual; and

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Part 25—*continued*
Subpart 2—*continued*

(b) leave a copy of the notice with that individual.

(4) To serve a notice of proceeding in an action *in rem* on proceeds in court,—
(a) show a sealed copy of the notice to the Registrar; and
(b) leave a sealed copy of the notice with the Registrar.

(5) To serve a notice of proceeding in an action *in rem* on inaccessible cargo or on other property,—
(a) show a sealed copy of the notice to any person appearing to be in charge of that cargo or other property; and
(b) leave a copy of the notice with that person.

(6) Instead of serving a notice of proceeding in the appropriate manner set out in subclauses (1) to (5), service in an action *in rem* may be carried out in some other manner ordered by the court.

Compare: 1908 No 89 Schedule 2 r ~~772(1)~~ 25.10 (as substituted by 2008 No 90 s 8)

25.11 Other provisions about service in action *in rem*

(1) A notice of proceeding in an action *in rem* may be served on a Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.

(2) The following provisions apply in an action *in rem* if a caveat against arrest is entered under rule 25.43:
(a) the notice of proceeding must be served by or on behalf of the plaintiff or the plaintiff's solicitor on any person at whose instance the caveat is entered:
(b) a sealed copy of the notice must be delivered to the address for service given in the request for the caveat as soon as the plaintiff or the plaintiff's solicitor becomes aware that the caveat is in force.

(3) Service of a notice of proceeding or of a warrant of arrest is not required in an action *in rem* if the solicitor for a person interested in the defendant undertakes in writing to—
(a) accept service; and
(b) enter an appearance; and

High Court Rules—*continued*
Part 25—*continued*
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(c) give security or pay money into court instead of giving security.

(4) An affidavit of service in an action *in rem* attaching as an exhibit a sealed copy of the notice of proceeding and stating the time, place, and method of service must be filed.

Compare: 1908 No 89 Schedule 2 r ~~772(2)–(5)~~ 25.11 (as substituted by 2008 No 90 s 8)

25.12 Defendant must enter appearance

(1) A defendant to an action must enter an appearance in person, or by a solicitor, by filing a memorandum in form AD 6 within the time and at the place directed in the notice of proceeding.

(2) If 2 or more defendants to an action enter an appearance by the same solicitor at the same time, only 1 memorandum need be completed and filed.

(3) A defendant to an action may enter a conditional appearance in the action, but a conditional appearance has effect as an unconditional appearance unless—

(a) a Judge otherwise orders; or

(b) the defendant applies to the court, within the period specified in rule 25.17, for an order under that rule and the court makes an order under that rule.

Compare: 1908 No 89 Schedule 2 r ~~773(1), (4), (6)~~ 25.12 (as substituted by 2008 No 90 s 8)

25.13 Content of memorandum

(1) Every memorandum of appearance must contain an endorsement stating—

(a) that the appearance is filed by the party appearing in person or by the party's solicitor (as the case may be); and

(b) if applicable, the solicitor's name and address, and the name of the solicitor's firm (if any); and

High Court Rules—*continued*
Part 25—*continued*
Subpart 2—*continued*

(c) if applicable, the name and address of the solicitor acting as agent in the proceeding of the solicitor filing the appearance or of the agent's firm (if any); and
(d) an address for service.

(2) A memorandum of appearance in an action *in rem* must also state—
(a) the name and correct address of the party appearing and the capacity in which that party appears, whether as owner, part-owner, or otherwise; and
(b) the port of registry or port to which the ship belongs.

(3) A statement made under subclause (2) is prima facie evidence of the matters stated in it.

Compare: 1908 No 89 Schedule 2 r ~~773(10), (11)~~ 25.13 (as substituted by 2008 No 90 s 8)

25.14 Time limits for entering appearance

(1) An appearance must be entered,—
(a) for a notice of proceeding to be served within the jurisdiction, within 10 working days after the day of service:
(b) for a notice of proceeding to be served outside the jurisdiction, within the period specified by an order granting leave to serve the notice outside the jurisdiction.

(2) A party not entering an appearance within the specified period may, by consent of the other parties or by leave of the Judge, enter an appearance at any time on any terms that the Judge may order.

(3) A party may not enter an appearance after judgment has been entered except with the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r ~~773(2), (5)~~ 25.14 (as substituted by 2008 No 90 s 8)

25.15 Provisions about filing

(1) A memorandum of appearance may be filed by post and—
(a) the appearance is treated as having been entered when the memorandum is actually received by the Registrar:

High Court Rules—*continued*
Part 25—*continued*
Subpart 2—*continued*

(b) the duplicate copy to be returned to the party filing the memorandum may be returned by post.

(2) When a memorandum of appearance is filed, the Registrar must—

(a) enter an appearance in the Register of Admiralty Proceedings; and

(b) return to the party filing the memorandum a duplicate copy showing the date of filing.

Compare: 1908 No 89 Schedule 2 r ~~773(8), (15)~~ 25.15 (as substituted by 2008 No 90 s 8)

25.16 Service of memorandum

The party filing the memorandum of appearance must—

(a) serve the duplicate copy on the plaintiff as soon as practicable; and

(b) immediately serve registry copies on those other parties who have entered appearances.

Compare: 1908 No 89 Schedule 2 r ~~773(9)~~ 25.16 (as substituted by 2008 No 90 s 8)

25.17 Defendant may apply for orders

(1) A defendant to an action may apply to the court for an order for 1 or more of the following:

(a) setting aside the notice of proceeding or service of the notice on the defendant:

(b) declaring that the notice has not been duly served on the defendant:

(c) discharging any order giving leave to serve the notice on the defendant out of the jurisdiction.

(2) The application may be made—

(a) at any time before entering an appearance in the action; or

(b) if the defendant has entered a conditional appearance, within 5 working days after the day on which that conditional appearance is entered.

High Court Rules—*continued*
Part 25—*continued*
Subpart 2—*continued*

(3) The court may make any order it thinks just.

Compare: 1908 No 89 Schedule 2 r ~~773(7)~~ 25.17 (as substituted by 2008 No 90 s 8)

25.18 Solicitor's undertaking

A solicitor who, on behalf of any person, undertakes in writing to give security or to pay money into court instead of bail in an action *in rem*, and fails to fulfil that undertaking, is liable to punishment for contempt of court.

Compare: 1908 No 89 Schedule 2 r ~~773(12)~~ 25.18 (as substituted by 2008 No 90 s 8)

25.19 Substituted defendants, third parties, and interveners

Rules 25.12 to 25.18 apply, with the necessary modifications, to—

(a) an added or substituted defendant:

(b) a third or further party who is served with a third party notice:

(c) an intervener who has obtained leave to intervene in an action.

Compare: 1908 No 89 Schedule 2 r ~~773(3)~~ 25.19 (as substituted by 2008 No 90 s 8)

25.20 Statement of claim

(1) Every action must be heard with pleadings, unless the court or a Judge otherwise orders under this rule or rule 25.23(5).

(2) The plaintiff must file in court and serve a full and explicit statement of claim on each defendant, unless the court or a Judge gives leave to the contrary.

(3) The steps required by subclause (2) must be taken either when the notice of proceeding is served on that defendant or at any time after service of the notice on that defendant, but in no case later than 10 working days after that defendant enters an appearance, unless the court or a Judge gives leave to the contrary or subclause (4) applies.

High Court Rules—*continued*
Part 25—*continued*
Subpart 2—*continued*

(4) If preliminary acts are required under rule 25.23, the plaintiff must file in court and serve a statement of claim on each defendant within 10 working days after the latest date on which the preliminary act of any party to the action is filed, unless the court or a Judge orders the action to be tried without pleadings.

Compare: 1908 No 89 Schedule 2 r ~~774~~ 25.20 (as substituted by 2008 No 90 s 8)

25.21 Statement of defence

A defendant who enters an appearance in, and intends to defend, an action must file in court and serve a statement of defence on the plaintiff within 20 working days after the day on which a statement of claim is served on the defendant, unless the court or a Judge gives leave to the contrary.

Compare: 1908 No 89 Schedule 2 r ~~775~~ 25.21 (as substituted by 2008 No 90 s 8)

Subpart 3—Procedure in collision cases

25.22 Meaning of preliminary act

A **preliminary act** is a document containing a statement of the following particulars:

(a) the names of the ships that came into collision and their ports of registry:

(b) particulars (referring to the period immediately before the collision) of the person in command, the persons on the bridge, and the persons keeping a lookout on the plaintiff's ship (if the plaintiff is filing a preliminary act) and on the defendant's ship (if the defendant is filing a preliminary act):

(c) the date and time of the collision:

(d) the place of the collision:

(e) the direction and force of the wind:

(f) the state of the weather including visibility:

(g) the state, direction, and force of the tidal or other current:

(h) the ship's course and speed through the water when the other ship was first seen or immediately before any

High Court Rules—*continued*
Part 25—*continued*
Subpart 3—*continued*

measures were taken in connection with its presence, whichever was the earlier:

(i) the lights (if any) carried by the ship:

(j) the distance and bearing of the other ship if and when its echo was first observed by radar:

(k) the distance, bearing, and approximate heading of the other ship when first seen:

(l) the other ship's light or combination of lights (if any) when first seen:

(m) the other lights or combination of lights (if any) of the other ship that were subsequently seen before the collision, and the time of the sighting:

(n) the alterations (if any) made to the ship's course and speed after the earlier of the 2 times referred to in paragraph (h) up to the time of the collision, and the times of those alterations, and the measures (if any), other than alterations of course or speed, taken to avoid the collision, and the times of those measures:

(o) the parts of each ship that first came into contact and the approximate angle between the 2 ships at the moment of contact:

(p) the sound signals or other signals (if any) given, and the times of those sound signals or other signals:

(q) the sound signals or other signals (if any) heard or seen from the other ship, and the times of hearing or seeing those sound signals or other signals.

Compare: 1908 No 89 Schedule 2 r ~~785(2)~~ 25.22 (as substituted by 2008 No 90 s 8)

25.23 Preliminary acts to be filed in collision cases

(1) In an action arising out of a collision between ships, unless the court otherwise orders,—

(a) the plaintiff must file a preliminary act within 20 working days after the issue of the notice of proceeding:

High Court Rules—*continued*
Part 25—*continued*
Subpart 3—*continued*

(b) the defendant must file a preliminary act within 20 working days after entering an appearance in the action and before any pleading is filed or served.

(2) The Registrar must seal every preliminary act and file it in a closed envelope, and the envelope must be sealed with the official stamp of the court and show the date of filing.

(3) The envelope must not be opened until the pleadings are closed and a consent signed by each of the parties to the opening of the preliminary acts is filed, unless the court or a Judge otherwise orders.

(4) A party filing a preliminary act concerning a collision must, within 3 working days after it is filed, serve notice of the filing on every other party who has filed a preliminary act concerning the same collision.

(5) If the court orders that the preliminary acts be opened, the court may also order that the action be tried without pleadings.

(6) If the court or a Judge orders the action to be tried without pleadings, the court or a Judge may also order each party, within the period stated in the order,—

(a) to file a statement of the grounds on which the party charges any other party with negligence in connection with the collision; and

(b) to serve a copy of the statement on that other party.

Compare: 1908 No 89 Schedule 2 r ~~785(1), (3)–(6)~~ 25.23 (as substituted by 2008 No 90 s 8)

25.24 Proceedings against party in default where other party fails to lodge preliminary act

(1) A defendant in an action arising out of a collision between ships who has lodged a preliminary act within the specified period may apply to the court for an order to dismiss the action if the plaintiff fails to lodge a preliminary act within the specified period, and the court may by order dismiss the action or make any other order on any terms it thinks just.

High Court Rules—*continued*
Part 25—*continued*
Subpart 3—*continued*

(2) The plaintiff to an action *in personam* arising out of a collision between ships who has lodged a preliminary act within the specified period may proceed to judgment under rule 25.29 if the defendant fails to lodge a preliminary act within the specified period, as if that failure were a failure to enter an appearance or to file a statement of defence within the periods specified by or under these rules for doing those things.

(3) The plaintiff to an action *in rem* arising out of a collision between ships who has lodged a preliminary act within the specified period may apply to the court by motion for judgment against the defendant if the defendant fails to lodge a preliminary act within the specified period, and the plaintiff need not file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of the motion under subclause (3),—

(a) the court may make any orders it thinks just; and

(b) if the defendant does not appear on the hearing and the court considers that judgment should be given for the plaintiff provided the plaintiff proves the plaintiff's case, the court must order that the plaintiff's preliminary act be opened and require the plaintiff to satisfy the court that the plaintiff's claim is well founded.

(5) The plaintiff's evidence may, unless the court otherwise orders, be given by affidavit.

(6) On being satisfied that the plaintiff's claim is well founded, the court may—

(a) give judgment for the claim; and

(b) at the same time,—

(i) order that the property against which the action is brought be appraised and sold and the proceeds paid into court; or

(ii) make any other orders it thinks just.

(7) The court may, on any terms it thinks just, set aside any judgment entered under this rule.

High Court Rules—*continued*
Part 25—*continued*
Subpart 3—*continued*

(8) In this rule, references to the **specified period** are to be construed as references to the period within which, by virtue of rule 25.23(1) or of any order of the court or a Judge, the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

Compare: 1908 No 89 Schedule 2 r ~~786~~ 25.24 (as substituted by 2008 No 90 s 8)

Subpart 4—Limitation of liability under Part 7 of Maritime Transport Act 1994

25.25 Actions for limitation of liability

(1) Proceedings for relief under Part 7 of the Maritime Transport Act 1994 must be in the form of an action *in personam*.

(2) In the action the person seeking relief is the plaintiff and must be described in the notice of proceeding by name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(3) For the purposes of the proceedings,—

(a) **name** includes a firm name or the name under which a person carries on business:

(b) if any person with a claim against the plaintiff concerning the casualty to which the action relates has been described for the purposes of that claim merely as the owner of, or as bearing some other relation to, a ship or other property, that person may be described in that way as defendant to the notice of proceeding and, if described in that way, is to be treated for the purposes of this rule as having been named in the notice of proceeding by that person's name.

(4) At least 1 of the persons with claims against the plaintiff concerning the casualty to which the action relates must be described by name in the notice of proceeding as a defendant.

(5) All persons with claims against the plaintiff concerning the casualty to which the action relates who are not named defend-

High Court Rules—*continued*
Part 25—*continued*
Subpart 4—*continued*

ants may be described generally in the notice of proceeding as defendants.

(6) The notice of proceeding must be served on 1 or more of the defendants who are named by their names, and need not be served on any other defendant.

Compare: 1908 No 89 Schedule 2 r ~~792(1)–(7)~~ 25.25 (as substituted by 2008 No 90 s 8)

25.26 Plaintiff must apply to court within 5 working days

(1) The plaintiff in an action *in personam* for relief under Part 7 of the Maritime Transport Act 1994, without filing a statement of claim, must apply to the court by notice of motion for an order limiting the plaintiff's liability or, in default of an order to that effect, for directions as to the further proceedings in the action, and the application must be made—

(a) within 5 working days after the entry of appearance by 1 of the defendants named by their names in the notice of proceeding; or

(b) if none of the defendants enters an appearance, within 5 working days after the period specified for appearing.

(2) The application must be supported by an affidavit or affidavits proving—

(a) the plaintiff's case in the action; and

(b) if none of the defendants named in the notice of proceeding by their names has entered an appearance, service of the notice of proceeding on at least 1 of the defendants so named; and

(c) the names of all the persons (other than defendants to the action who are named in the notice of proceeding by their names) who, to the knowledge of the plaintiff, have claims against the plaintiff concerning the casualty to which the action relates; and

(d) the address of each of those persons, if known to the plaintiff.

High Court Rules—*continued*
Part 25—*continued*
Subpart 4—*continued*

(3) The motion and every affidavit in support of the motion must be served, at least 5 working days before the hearing of the application, on any defendant who has entered an appearance.

(4) If, at the hearing of the application, it appears to the court that it is not disputed that the plaintiff has a right to limit the plaintiff's liability, the court must make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(5) If, at the hearing of the application, it appears to the court that any defendant does not have sufficient information to enable the defendant to decide whether or not to dispute that the plaintiff has a right to limit the plaintiff's liability, the court must—

(a) give such directions as appear to be appropriate for enabling the defendant to obtain such information; and

(b) adjourn the hearing.

(6) If, on the hearing or resumed hearing of the application, the court does not make a decree limiting the plaintiff's liability, the court must give such directions as to the further proceedings in the action as appear to be appropriate.

(7) A defendant who, after directions have been given under subclause (6), ceases to dispute the plaintiff's right to limit the plaintiff's liability must immediately file a notice to that effect in the registry of the court and serve a copy on the plaintiff and on every other defendant who has entered an appearance.

(8) If every defendant who disputes the plaintiff's right to limit the plaintiff's liability serves a notice on the plaintiff under subclause (7), the plaintiff may apply to the court for an order limiting the plaintiff's liability, and subclauses (3) and (4) apply to the application with the necessary modifications.

Compare: 1908 No 89 Schedule 2 r ~~792(8)~~ 25.26 (as substituted by 2008 No 90 s 8)

25.27 Protection against other parties

(1) This rule applies if the only defendants in an action *in personam* for relief under Part 7 of the Maritime Transport Act

High Court Rules—*continued*
Part 25—*continued*
Subpart 4—*continued*

1994 are those named in the summons by their names and all those defendants have been served.

(2) An order limiting the plaintiff's liability—

(a) need not be advertised; but

(b) if not advertised, operates only to protect the plaintiff against claims by the named defendants or persons claiming through or under those persons.

(3) To protect the plaintiff's liability against claims by other persons as well as the defendants and persons referred to in subclause (2)(b), an order limiting the plaintiff's liability must—

(a) be advertised by the plaintiff in the manner provided, and within the period specified, in the order; and

(b) specify a period within which persons with claims against the plaintiff concerning the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which subclause (5) applies, file a motion, if they think fit, to set the order aside.

(4) The period to be allowed under subclause (3)(b), unless the court otherwise orders, must be not less than 2 months from the latest date allowed for the appearance of the advertisement and, after the expiration of the period so allowed, leave of the court is required to enter an appearance, file a claim, or to make an application to set aside the order.

(5) If an order limiting the plaintiff's liability specifies a period in accordance with subclause (3),—

(a) a person with a claim against the plaintiff concerning the casualty to which the action relates who is not named in the notice of proceeding as a defendant to the action may, within the specified period after entering an appearance, apply on notice for the order to be set aside:

(b) a person with a claim against the plaintiff concerning the casualty to which the action relates who is named but was not served with the notice of proceeding and has not entered an appearance may, within the specified

High Court Rules—*continued*
Part 25—*continued*
Subpart 4—*continued*

period after entering an appearance, apply on notice for the order to be set aside.

(6) An application under subclause (4) must be supported by an affidavit or affidavits showing that the defendant in question makes a claim in good faith against the plaintiff concerning the casualty in question and that the defendant has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given to the plaintiff by the order.

(7) An application under subclause (4) and every affidavit in support of the application must be served, at least 5 working days before the hearing of the motion, on the plaintiff and on any defendant who has entered an appearance.

(8) If satisfied that the defendant concerned is making a claim in good faith against the plaintiff, and that it is reasonably arguable that the plaintiff is not entitled to the relief given to the plaintiff by the order, the court must set the order aside and give any directions as to the further proceedings in the action that appear appropriate.

Compare: 1908 No 89 Schedule 2 r ~~792(9), (10)~~ 25.27 (as substituted by 2008 No 90 s 8)

25.28 Order limiting plaintiff's liability

Any order limiting the plaintiff's liability in an action *in personam* for relief under Part 7 of the Maritime Transport Act 1994 may make any provision authorised by section 89 of the Maritime Transport Act 1994.

Compare: 1908 No 89 Schedule 2 r ~~792(11)~~ 25.28 (as substituted by 2008 No 90 s 8)

Subpart 5—Judgment by default

25.29 Who may seek judgment by default in action *in personam*

(1) Rules 15.4 to 15.14 apply to actions *in personam*.

(2) A plaintiff to an action *in personam* is entitled to proceed to judgment if the defendant fails, within the period specified by

High Court Rules—*continued*
Part 25—*continued*
Subpart 5—*continued*

or under this Part, either to enter an appearance or to file a statement of defence.

(3) Judgment under this rule must not exceed the amount endorsed on the notice of proceeding or claimed in the statement of claim concerning the demand for costs.

Compare: 1908 No 89 Schedule 2 r ~~787~~ 25.29 (as substituted by 2008 No 90 s 8)

25.30 Default in filing and service of statement of claim

(1) This rule applies if the plaintiff to an action *in personam* or *in rem* is required by these rules to file in court a statement of claim and to serve it on a defendant, but the plaintiff fails to do either of those things.

(2) The defendant may, after the expiration of the period specified by or under these rules for filing the statement of claim, apply to the court for an order to dismiss the action.

(3) The court may by order dismiss the action or make any other order on any terms it thinks just.

(4) The court may, on any terms it thinks just, set aside or vary any default judgment entered under this rule.

Compare: 1908 No 89 Schedule 2 r ~~788~~ 25.30 (as substituted by 2008 No 90 s 8)

25.31 Third parties

Rule 4.17 applies if a third party fails to enter an appearance, as if the failure to enter an appearance were a failure to file a statement of defence.

Compare: 1908 No 89 Schedule 2 r ~~789~~ 25.31 (as substituted by 2008 No 90 s 8)

25.32 Application for judgment by default in action *in rem*

(1) An application for judgment by default in an action *in rem* must be made by motion.

(2) In default actions *in rem*, evidence may, unless the court otherwise orders, be given by affidavit.

High Court Rules—*continued*
Part 25—*continued*
Subpart 5—*continued*

(3) The plaintiff may, on filing an affidavit verifying the facts on which the action is based, apply to the court for judgment by default if—

(a) a notice of proceeding is served under rule 25.11(2) on a party at whose instance a caveat against arrest has been issued; and

(b) the sum claimed in the action begun by the notice of proceeding does not exceed the amount specified in the undertaking given by that party or that party's solicitor to procure the entry of that caveat; and

(c) that party or that party's solicitor does not, within 10 working days after service of the notice of proceeding, fulfil that undertaking.

(4) A plaintiff to an action *in rem* may apply to the court for judgment by default if—

(a) the defendant to the action fails to enter an appearance within the period specified for appearing; and

(b) not less than 10 working days has passed since the notice of proceeding was served; and

(c) the plaintiff has filed an affidavit proving due service of the notice of proceeding, a statement of claim (where one has not already been filed), and an affidavit verifying the facts on which the action is based.

(5) A plaintiff to an action *in rem* may apply to the court for judgment by default if—

(a) the defendant to the action fails to file and serve a statement of defence on the plaintiff within the period specified by or under these rules for filing and service of the defence; and

(b) the plaintiff has filed—

(i) an affidavit stating that no defence was served on the plaintiff by that defendant during the period referred to in paragraph (a); and

(ii) an affidavit verifying the facts on which the action is based.

High Court Rules—*continued*
Part 25—*continued*
Subpart 5—*continued*

(6) A party making a counterclaim in an action *in rem* may apply to the court for judgment by default if—

(a) the defendant to the counterclaim fails to file and serve a defence to the counterclaim on the party making the counterclaim within the period specified by or under these rules for the filing and service of the defence to a counterclaim; and

(b) the party making the counterclaim has filed—

(i) an affidavit stating that no defence to the counterclaim has been served on that party by the defendant during that period; and

(ii) an affidavit verifying the facts on which the counterclaim is based.

Compare: 1908 No 89 Schedule 2 r ~~790(1), (3)–(5), (7)~~ 25.32 (as substituted by 2008 No 90 s 8)

25.33 Judgment by default in action *in rem*

(1) On being satisfied at the hearing that the applicant's claim in an action *in rem* is well founded, the court may—

(a) give judgment for the claim; and

(b) at the same time,—

(i) order the property against which the action, or, as the case may be, the counterclaim is brought to be appraised and sold and the proceeds to be paid into court; or

(ii) make any other orders it thinks just.

(2) Judgment given under subclause (1) may be enforced by—

(a) arrest of the property against which the action was brought:

(b) committal of the party at whose instance the caveat against that property was entered.

(3) The court may, on any terms it thinks just, set aside or vary any judgment by default entered in an action *in rem*.

Compare: 1908 No 89 Schedule 2 r ~~790(2), (6), (8)~~ 25.33 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 25—*continued*

Subpart 6—Arrest, release, and sale of property

Arrest of property

25.34 Application for warrant of arrest of property

(1) After the issue of a notice of proceeding or counterclaim *in rem*, the plaintiff or the defendant to the notice or counterclaim may, by an application in form AD 7, apply for the issue of a warrant of arrest of the property against which the action or counterclaim is brought.

(2) However, if 2 or more ships owned by the same person are named as defendant in an action arising from a cause of action concerning 1 ship only,—

(a) a warrant of arrest may be issued against 1 ship only; and

(b) the plaintiff must name that ship in the application for the warrant of arrest.

(3) The applicant for the issue of a warrant of arrest must cause a search to be made to determine whether any caveat against the issue of the warrant is in force.

(4) In support of the application for a warrant of arrest, the applicant must file—

(a) an affidavit stating—

(i) the name and description of the party at whose instance the warrant is to be issued; and

(ii) the nature of the claim; and

(iii) the name or nature of the property to be arrested; and

(iv) the extent to which the claim has been satisfied, the amount claimed paid into court, or security for payment of the claim given to the Registrar; and

(v) whether any caveat against the issue of a warrant of arrest has been filed and, if so, whether a copy of the notice of proceeding or a notice re-

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

quiring payment or security has been served on the caveator; and

(vi) any other relevant information known to the applicant at the time the application is made; and

(b) an indemnity to the Registrar in form AD 8 and security to the satisfaction of the Registrar for the fees, expenses, and harbour dues (if any) of the Registrar and of the Registrar's appointed officers and agents.

Compare: 1908 No 89 Schedule 2 r ~~776(1)–(4)~~ 25.34 (as substituted by 2008 No 90 s 8)

25.35 Issue of warrant of arrest

(1) The Registrar may require additional security to cover fees, expenses, and harbour dues (if any) referred to in rule 25.34(4)(b).

(2) The Registrar must, before issuing the warrant of arrest, ascertain whether a caveat against the issue of a warrant of arrest has been entered, but, under rule 25.43(2), the entry of a caveat against arrest does not prevent the issue of a warrant of arrest.

(3) On being satisfied that the relevant requirements of rule 25.34 and this rule have been complied with, the Registrar must—

(a) complete the certificate on the application for a warrant of arrest; and

(b) issue a warrant of arrest in form AD 9.

(4) Despite subclause (2), a Registrar may, in the case of any emergency or special circumstances, issue a warrant of arrest immediately if the Registrar—

(a) is satisfied that a notice of proceeding has been issued and that there is either an emergency or special circumstances which justify the immediate issue of a warrant of arrest; and

(b) is given an indemnity that the Registrar requires against any claim arising out of the issue of a warrant of arrest.

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

(5) The Registrar may, instead of completing the certificate on the application for warrant of arrest, endorse the application to the effect that the warrant is issued under subclause (4).

Compare: 1908 No 89 Schedule 2 r ~~776(5)–(7), (12), (13), (17)(b)~~ 25.35 (as substituted by 2008 No 90 s 8)

25.36 Service of warrant

(1) The warrant must be served by—
- (a) the Registrar; or
- (b) a person lawfully authorised (whether generally or specially for the purpose) to act as the Registrar.

(2) The Registrar or other authorised person must serve the warrant in the manner specified by these rules for the service of a notice of proceeding in an action *in rem*, and the property is to be treated as having been arrested when the warrant has been served by the Registrar or other authorised person in that manner.

(3) The warrant may be served on a Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.

(4) A Registrar may, by fax or other means of communication,—
- (a) send notice to the Registrar's appointed officer or agent, or to any other Registrar, of the issue of a warrant of arrest of any ship:
- (b) give instructions for the execution of the warrant.

Compare: 1908 No 89 Schedule 2 r ~~776(8)–(10)~~ 25.36 (as substituted by 2008 No 90 s 8)

25.37 Currency of warrant

A warrant of arrest is valid for 6 months beginning on the day of issue unless sooner withdrawn, and successive warrants may be issued.

Compare: 1908 No 89 Schedule 2 r ~~776(14)~~ 25.37 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

25.38 Notice of arrest of property

(1) The Registrar must give notice of the arrest of property by serving on any person or by affixing on a conspicuous part of the property a notice in form AD 10.

(2) Service may be made by the Registrar's duly appointed officer or agent.

Compare: 1908 No 89 Schedule 2 r ~~776(15)~~ 25.38 (as substituted by 2008 No 90 s 8)

25.39 No Crown indemnity required

Rules 25.34(4)(b) and 25.35(4)(b) do not require the Crown to give any indemnity or security.

Compare: 1908 No 89 Schedule 2 r ~~776(16)~~ 25.39 (as substituted by 2008 No 90 s 8)

25.40 Contempt to move ship under arrest

(1) This rule applies to—

(a) the master of a ship having notice of the issue of a warrant of arrest of the ship:

(b) any other person having notice of the arrest of the ship.

(2) It is contempt of court for the master or other person to move the ship from where it is lying without the consent of the Registrar.

Compare: 1908 No 89 Schedule 2 r ~~776(11)~~ 25.40 (as substituted by 2008 No 90 s 8)

25.41 Application for directions concerning property under arrest

(1) The Registrar or any party to an action *in rem* may apply to the court for directions concerning any property under arrest (including directions for the removal of the property).

(2) The person applying must give notice of the application to all parties to the action unless the court otherwise orders.

Compare: 1908 No 89 Schedule 2 r ~~776A~~ 25.41 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

25.42 Request for caveat against arrest of property

(1) A person may request a caveat against the arrest of any property by filing a request in form AD 11 signed by the person or the person's solicitor undertaking—

(a) to enter an appearance in any action that may be started against the property described in the request; and

(b) within 3 working days after receiving notice that such an action has been started, to give security to the satisfaction of the Registrar in the sum specified in the request or to pay that sum into court.

(2) If the amount claimed in the action does not exceed the amount specified in the undertaking, the caveator must pay into court or give security for the amount claimed within 3 working days after the day of service of the notice of proceeding or counterclaim.

(3) If the caveator fails to pay into court or give security in accordance with this rule, and the party seeking the issue of a warrant of arrest suffers any loss as a result, the court may order the caveator to pay to that party damages for that loss unless the caveator shows good and sufficient reason for that failure.

Compare: 1908 No 89 Schedule 2 r ~~777(1), (3), (4)~~ 25.42 (as substituted by 2008 No 90 s 8)

25.43 Entry of caveat

(1) Immediately on the filing of a request under rule 25.42, the Registrar must enter a caveat in the Register of Admiralty Proceedings.

(2) Neither this Part nor the entry of a caveat under this rule prevents a party from taking out a warrant for the arrest of property, but if a caveat is entered under this rule against the arrest of property and a party has that property arrested, that party is liable for costs and damages unless the party shows good and sufficient reason for the arrest.

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

(3) A caveat under this rule is valid for 6 months commencing on the day after the date on which it is entered unless sooner withdrawn, and successive caveats may be entered.

(4) A caveat under this rule may be withdrawn at any time by the filing of a notice of withdrawal signed by the caveator or the caveator's solicitor, but the withdrawal does not affect any rights or obligations that may have accrued at the date of the withdrawal.

(5) The court may, on its own initiative or on application, set aside a caveat entered under this rule.

Compare: 1908 No 89 Schedule 2 r ~~777(2)~~, ~~(5)–(8)~~ 25.43 (as substituted by 2008 No 90 s 8)

25.44 Request for instrument of release

(1) A party interested in any property arrested under a warrant of arrest may request a Registrar to issue an instrument of release (a **release**) in form AD 12 for the release of the property unless the property is sold under an order of the court.

(2) The release must be issued out of the registry where the action in which the warrant was issued is proceeding.

(3) The Registrar must, before issuing the release, cause a search to be made to ascertain whether a caveat against release of the property in question is in force.

(4) Before a release is issued, the party entitled to its issue must,—

(a) if a caveat against release of the property in question is in force, give notice to the party at whose instance it was entered or that party's solicitor requiring that the caveat be withdrawn; and

(b) file a request for the issue of a release.

(5) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the Registrar, either pay the costs, charges, and expenses due in connection with the care and custody of the property while under arrest

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

or give a written undertaking to pay those costs, charges, and expenses.

(6) The court, on the application of any party who objects to directions given to that party by the Registrar under subclause (5), may vary or revoke the directions.

Compare: 1908 No 89 Schedule 2 r ~~778(1),~~ ~~(6)–(9)~~ 25.44 (as substituted by 2008 No 90 s 8)

25.45 Issue of release

(1) A Registrar may issue a release either—

(a) on the order of the court at the request of a party interested in the property under arrest; or

(b) by consent of all the other parties to the action in which the warrant of arrest was issued, unless release on this basis is prevented by a court order.

(2) A Registrar may issue a release under subclause (1) either—

(a) on payment into court of the amount claimed in the notice of proceeding together with the costs of issue and execution of the warrant of arrest; or

(b) on security (including a bail bond in form AD 13) for those amounts having been given to the satisfaction of the Registrar.

(3) A release must not be issued for property under subclause (1) if a caveat against release of that property is in force, unless the court otherwise orders.

(4) A release must be issued for property if,—

(a) before an appearance is entered in the action concerned, a party at whose instance the property was arrested files a notice withdrawing the warrant of arrest; and

(b) rule 25.44(4) has been complied with (if applicable) and the release is not prevented by subclause (3).

Compare: 1908 No 89 Schedule 2 r ~~778(2)–(5),~~ ~~(10)~~ 25.45 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

25.46 Caveat against release and payment

(1) A person may prevent the release of property under arrest in an action *in rem* or the payment out of court of any money in court representing the proceeds of sale of that property, or both that release and that payment, by filing a request for a caveat in form AD 14.

(2) On the filing of the request, the Registrar must enter in the Register of Admiralty Proceedings a caveat against—
- (a) the issue of a release for the property; or
- (b) the payment out of court of the money in court; or
- (c) both.

(3) The caveator must serve a copy of the caveat on every party to the action.

(4) A party who delays the release of property by entry of a caveat is liable in damages to any person having an interest in the property, unless that party shows to the satisfaction of the court good and sufficient reason for having the caveat entered.

(5) A caveat under this rule is valid for 6 months commencing on the day after the date of entering, unless sooner withdrawn, but successive caveats may be entered.

(6) A caveat under this rule may be withdrawn by filing a notice of withdrawal signed by the caveator or the caveator's solicitor.

(7) The court may, on its own initiative or on application, set aside a caveat issued under this rule.

Compare: 1908 No 89 Schedule 2 r ~~779~~ 25.46 (as substituted by 2008 No 90 s 8)

25.47 Discharge of cargo under arrest from ships not under arrest and of cargo not under arrest

(1) If a ship is not under arrest but cargo on board the ship is, persons interested in the ship who wish to discharge the cargo under arrest may, without intervening in the action, request the Registrar to take the appropriate steps in accordance with this rule.

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

(2) The Registrar must apply to the court under rule 25.41 for the appropriate order if—
  (a) the Registrar considers the request reasonable; and
  (b) the applicant gives the Registrar a satisfactory undertaking in writing to pay on demand the fees and expenses incurred by the Registrar, and any of the Registrar's appointed officers or agents, in taking the desired steps.

(3) If the interested persons are unable or unwilling to arrange for an undertaking under subclause (2)(b) to be given, they may intervene in the action in which the cargo is under arrest and apply for an order for discharge of the cargo and for directions as to the fees and expenses incurred by the Registrar, and any of the Registrar's appointed officers or agents, in discharging and storing the cargo under the order.

(4) If a ship is under arrest but cargo on board the ship is not, persons interested in the cargo who wish to secure its discharge may follow one or other of the procedures specified in this rule.

Compare: 1908 No 89 Schedule 2 r ~~780~~ 25.47 (as substituted by 2008 No 90 s 8)

25.48 Security

(1) The amount and form of any security required under this Part may be determined by the court or a Judge on an application by any party.

(2) If security is being given by a person not ordinarily resident within the jurisdiction, that person must—
  (a) submit to the jurisdiction of the court for all purposes relating to the security and its enforcement, unless otherwise ordered by the court; and
  (b) give an address for service within the jurisdiction of the court.

Compare: 1908 No 89 Schedule 2 r ~~781~~ 25.48 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

25.49 Payment out of court

(1) No money paid into court in any action may be paid out of court except under subclause (2) or by order of the court or a Judge.

(2) With the written consent of all parties to the action and of any caveator and of any intervener under rule 25.50, the Registrar may authorise money to be paid out of court.

Compare: 1908 No 89 Schedule 2 r ~~782~~ 25.49 (as substituted by 2008 No 90 s 8)

25.50 Interveners

(1) If property against which an action *in rem* is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may intervene in the action.

(2) The intervener must file papers appropriate to the proceeding and serve those papers on every other party.

Compare: 1908 No 89 Schedule 2 r ~~783~~ 25.50 (as substituted by 2008 No 90 s 8)

25.51 Appraisement and sale of property

(1) A party may request a commission for the appraisement and sale of any property under arrest of the court by filing a request in form AD 15.

(2) The court may, either before or after final judgment, order that any property described in the request—

(a) be appraised; or

(b) be sold with or without appraisement, and either by public auction or by private contract.

(3) If the property is deteriorating in value, the court may order that it be sold immediately.

(4) If the property sold is of small value, the court may, if it thinks just, order that it be sold without a commission of sale being issued.

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

(5) The commission for the appraisement must be in form AD 16 and must, unless the court otherwise orders, be executed by the Registrar or the Registrar's duly appointed officer or agent.

(6) A commission for appraisement and sale may not be executed until an undertaking in writing, satisfactory to the Registrar, to pay the Registrar's fees and expenses on demand has been lodged in the Registrar's registry.

(7) The Registrar must pay into court the gross proceeds of the sale of any property sold by the Registrar under a commission for sale, and must bring into court the account relating to the sale (with vouchers in support).

Compare: 1908 No 89 Schedule 2 r ~~784~~ 25.51 (as substituted by 2008 No 90 s 8)

25.52 Determination of priority of claims where court orders sale of ship

(1) In making an order for the sale of a ship in an action *in rem*, the court may further order—

(a) that the order of priority of the claims against the proceeds of sale of the ship not be determined until after the expiration of 65 working days, or of any other period specified by the court, beginning with the day on which the proceeds of sale are paid into court:

(b) that any party to the action or to any other action *in rem* against the ship or the proceeds of sale of the ship may apply to the court in the action to which that party is a party to extend the period specified in the order:

(c) that, within 5 working days after the date of payment into court of the proceeds of sale, the Registrar must send a notice in form AD 17 for publication in the *Gazette* and such newspaper (if any) as the court may direct.

(2) A party who obtains judgment against the ship or the proceeds of sale of the ship may, on obtaining judgment, apply to the court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

High Court Rules—*continued*
Part 25—*continued*
Subpart 6—*continued*

(3) However, if the order for sale contains a further order referred to in subclause (1), an application for an order determining priorities may be made only after the expiration of the period that applies under paragraph (a) or (b) of that subclause.

(4) An application to the court to extend the period referred to in subclause (1)(a) must be served on each party who has begun an action *in rem* against the ship or the proceeds of sale of the ship.

(5) The Registrar must lodge in the registry a copy of each newspaper in which the notice referred to in subclause (1)(c) appeared.

(6) The expenses incurred by the Registrar in complying with an order of the court under this rule must be included in the Registrar's expenses relating to the sale of the ship.

Compare: 1908 No 89 Schedule 2 r ~~791~~ 25.52 (as substituted by 2008 No 90 s 8)

Subpart 7—Miscellaneous provisions

25.53 Inspection of ship, etc

(1) The court may, on the application of any party, make an order for the inspection by a court expert, or by any party or witness, of any ship or other property, whether real or personal, if the inspection is necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

(2) Subclause (1) does not limit the court's powers under any other provision of these rules.

Compare: 1908 No 89 Schedule 2 r ~~793~~ 25.53 (as substituted by 2008 No 90 s 8)

25.54 Consent orders

(1) Any agreement in writing between the parties to a cause or matter that is dated and signed by the parties or their solicitors may be filed if the Registrar thinks it is reasonable to file the agreement.

High Court Rules—*continued*
Part 25—*continued*
Subpart 7—*continued*

(2) The agreement becomes an order of the court when it is filed.
Compare: 1908 No 89 Schedule 2 r ~~794~~ 25.54 (as substituted by 2008 No 90 s 8)

25.55 Registrar may seek court's assistance

(1) The Registrar may apply to the court for orders to assist the Registrar in the performance or exercise of any function, duty, right, or power conferred or imposed on the Registrar by this Part.

(2) The court may make any orders it thinks just concerning the performance or exercise of that function, duty, right, or power.
Compare: 1908 No 89 Schedule 2 r ~~795(1)~~ 25.55 (as substituted by 2008 No 90 s 8)

25.56 Parties may seek review of Registrar's decision

(1) Any party to a proceeding who is affected by a decision of the Registrar under this Part may apply, by interlocutory application, to review that decision.

(2) The court may make any orders it thinks just.
Compare: 1908 No 89 Schedule 2 r ~~795(2)~~ 25.56 (as substituted by 2008 No 90 s 8)

Part 26
Arbitration Act 1996

Subpart 1—Preliminary provisions

26.1 Interpretation

In this Part,—

Act means the Arbitration Act 1996

arbitral tribunal has the same meaning as in section 2(1) of the Act

Judge includes Associate Judge

Schedule 1 means Schedule 1 of the Act

Schedule 2 means Schedule 2 of the Act.

Compare: 1908 No 89 Schedule 2 r ~~877~~ 26.1 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 26—*continued*
Subpart 1—*continued*

26.2 Application

This Part applies to—

(a) an appeal under clause 5(1)(a) or (b) of Schedule 2:

(b) an application for leave to appeal under clause 5(1)(c) of Schedule 2:

(c) an application for entry of an award as a judgment under article 35 of Schedule 1.

Compare: 1908 No 89 Schedule 2 r ~~878~~ 26.2 (as substituted by 2008 No 90 s 8)

Subpart 2—Appeals under clause 5(1)(a) or (b) of Schedule 2

26.3 Originating application to commence appeal

(1) The plaintiff must commence an appeal to which clause 5(1)(a) or (b) of Schedule 2 applies by filing an originating application in the proper registry determined under rule 5.1.

(2) The originating application—

(a) must be in form Arb 1; and

(b) must not name the arbitral tribunal as a defendant.

(3) Rule 5.44 applies to the originating application.

(4) The application must attach the award or arbitral tribunal's decision to which the appeal relates, but if it is not available at the date of the application it must be filed by the applicant immediately it becomes available.

(5) This rule has effect despite rule 5.25 or Part 18.

Compare: 1908 No 89 Schedule 2 r ~~879~~ 26.3 (as substituted by 2008 No 90 s 8)

26.4 Affidavit to be filed in support

At the same time as the originating application is filed, the plaintiff must file an affidavit proving that the appeal falls within clause 5(1)(a) or (b) of Schedule 2, as the case may be.

Compare: 1908 No 89 Schedule 2 r ~~880~~ 26.4 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 26—*continued*
Subpart 2—*continued*

26.5 Service

The plaintiff must serve copies of the originating application and the affidavit on the defendant either before or immediately after filing.

Compare: 1908 No 89 Schedule 2 r ~~882~~ 26.5 (as substituted by 2008 No 90 s 8)

26.6 Amending appeal grounds

The grounds of the appeal may be subsequently amended by leave of the court.

Compare: 1908 No 89 Schedule 2 r ~~881~~ 26.6 (as substituted by 2008 No 90 s 8)

26.7 Notice of opposition to application

(1) A defendant intending to oppose the originating application must—

(a) file a notice of opposition; and

(b) serve it on the plaintiff and all other parties.

(2) The notice of opposition—

(a) must be filed within 10 working days after service of the originating application; and

(b) must state the defendant's intention to oppose the application and the grounds of opposition, including—

(i) a denial of any fact stated in the originating application that is not admitted; and

(ii) a statement of any fact or matter, not mentioned in the originating application, on which the defendant relies; and

(c) must contain a reference to any enactment, or rule, or principle of law on which the defendant relies; and

(d) must be in form G 33, with any necessary modifications.

Compare: 1908 No 89 Schedule 2 r ~~883~~ 26.7 (as substituted by 2008 No 90 s 8)

26.8 Cross-appeal

(1) A defendant wishing to cross-appeal at the hearing of the originating application in the circumstances set out in subclause (2) must—

High Court Rules—*continued*
Part 26—*continued*
Subpart 2—*continued*

(a) file a notice of cross-appeal; and
(b) serve it on the plaintiff and all other parties.

(2) The circumstances are that—
(a) the defendant intends to contend at the hearing that another question of law arises out of the award; and
(b) the other question is the reason for the cross-appeal; and
(c) clause 5(1)(a) or (b) of Schedule 2 applies with respect to the other question.

(3) The notice of cross-appeal—
(a) must be filed within 10 working days after service of the plaintiff's originating application; and
(b) must be in form Arb 1, with any necessary modifications.

(4) This Part applies to cross-appeals with all necessary modifications.

Compare: 1908 No 89 Schedule 2 r ~~884~~ 26.8 (as substituted by 2008 No 90 s 8)

26.9 Record of arbitration

(1) This rule and rule 26.10 apply if the court gives a direction under rule 7.5(7)(d)(i) at a case management conference or at any other time.

(2) The record of the arbitration comprises any—
(a) application, documents, written submissions, statements, reports, and other papers lodged with the arbitral tribunal; and
(b) transcript of evidence; and
(c) exhibits.

(3) Despite subclause (2), a part of the record must be omitted from the record filed if the parties agree that it is unnecessary for the hearing of the appeal.

(4) The cost of preparing the record—
(a) must be met by the plaintiff; and

High Court Rules—*continued*
Part 26—*continued*
Subpart 2—*continued*

(b) is a disbursement in the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~886(1), (3), (6), (7)~~ 26.9 (as substituted by 2008 No 90 s 8)

26.10 Service and filing of record

(1) The plaintiff must serve a properly indexed copy of the record of the arbitration on the defendant within 20 working days of the direction.

(2) Within 5 working days after service of the proposed record and index, the defendant must,—

(a) if agreeing to the record and index, signify agreement by signing the index; or

(b) advise the plaintiff of changes sought to the proposed record or index.

(3) After the defendant has taken the steps in subclause (2), the plaintiff must file, without delay,—

(a) a properly indexed copy of the record; and

(b) a memorandum setting out changes sought by the defendant and the plaintiff's reasons for not agreeing to them, if applicable; and

(c) any further documents that the defendant contends form part of the record.

(4) The court may direct the plaintiff to file a further copy of the record if an appeal is to be heard by more than 1 Judge.

Compare: 1908 No 89 Schedule 2 r ~~886(2), (4), (5), (8)~~ 26.10 (as substituted by 2008 No 90 s 8)

26.11 Transcript of evidence

(1) This rule and rule 26.12 apply if the court gives a direction under rule 7.5(7)(d)(ii) at a case management conference or at any other time.

(2) The court may order that a transcript be made of any recorded evidence given in the arbitration—

(a) if it is satisfied that the transcript is required to properly determine the appeal; and

High Court Rules—*continued*
Part 26—*continued*
Subpart 2—*continued*

(b) subject to any conditions that the court thinks just.

(3) The cost of preparing a transcript is a disbursement in the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~887(1), (2), (7)~~ 26.11 (as substituted by 2008 No 90 s 8)

26.12 Service and filing of transcript

(1) The plaintiff must serve the proposed transcript on the defendant within 20 working days of the direction.

(2) Within 5 working days after service of the proposed transcript, the defendant must—

(a) agree to the transcript, and signify agreement by appropriately certifying the transcript; or

(b) advise the plaintiff of—

(i) changes sought; and

(ii) additional evidence to be transcribed.

(3) After the defendant has taken the steps in subclause (2), the plaintiff must file, without delay,—

(a) the transcript; and

(b) a memorandum setting out changes sought by the defendant and the plaintiff's reasons for not agreeing to them, if applicable.

(4) The defendant may file a transcript of evidence if—

(a) the defendant sought to have additional evidence transcribed; and

(b) the plaintiff disputed—

(i) the relevance of the evidence; or

(ii) the necessity of transcribing it for the hearing.

(5) The court may direct a party submitting a transcript to file a further copy of it if an appeal is to be heard by more than 1 Judge.

Compare: 1908 No 89 Schedule 2 r ~~887(3)–(6), (8)~~ 26.12 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 26—*continued*
Subpart 2—*continued*

26.13 Hearing of appeal

(1) Appeals are by way of rehearing.

(2) In an appeal, the court has all the powers and discretions of an arbitral tribunal—

(a) to hold the hearing or any part of it in private; and

(b) to make orders prohibiting the publication of any report or description of the proceedings or any part of them.

Compare: 1908 No 89 Schedule 2 r ~~889~~ 26.13 (as substituted by 2008 No 90 s 8)

26.14 Leave to appeal to Court of Appeal

An application to the High Court under clause 5(5) of Schedule 2 for leave to appeal to the Court of Appeal must be filed within 20 working days of the High Court's determining the appeal under clause 5(4) of Schedule 2.

Compare: 1908 No 89 Schedule 2 r ~~890~~ 26.14 (as substituted by 2008 No 90 s 8)

Subpart 3—Leave to appeal under clause 5(1)(c) of Schedule 2

26.15 Applications for leave to appeal

(1) The plaintiff must commence a proceeding to which clause 5(1)(c) of Schedule 2 applies by filing an originating application in the proper registry determined under rule 5.1.

(2) The originating application—

(a) must be in form Arb 2; and

(b) must not name the arbitral tribunal as a defendant.

(3) In relation to the originating application, the following apply:

(a) rule 5.44; and

(b) rules 26.4 to 26.7, with all necessary modifications.

(4) This rule has effect despite rule 5.25 or Part 18.

Compare: 1908 No 89 Schedule 2 r ~~891~~ 26.15 (as substituted by 2008 No 90 s 8)

26.16 Submissions

(1) The plaintiff must file the following within 10 working days of the time specified in subclause (2):

High Court Rules—*continued*
Part 26—*continued*
Subpart 3—*continued*

(a) submissions as to why leave should be granted:
(b) copies of any authorities relied on.

(2) The time is whichever of the following applies:
(a) the date on which the plaintiff is served with a notice of opposition:
(b) the date by which the defendant must file a notice of opposition if the defendant wishes to oppose the application.

(3) Copies of material filed must be served immediately on any defendant who has filed and served a notice of opposition.

(4) At the hearing, unless otherwise directed by the Judge,—
(a) the plaintiff or his or her counsel is restricted to 30 minutes; and
(b) the defendant or his or her counsel is restricted to 30 minutes; and
(c) the plaintiff or his or her counsel is restricted to 10 minutes by way of reply.

Compare: 1908 No 89 Schedule 2 r ~~892~~ 26.16 (as substituted by 2008 No 90 s 8)

26.17 Granting leave

The court need not give reasons for granting leave unless it thinks reasons are required in the circumstances.

Compare: 1908 No 89 Schedule 2 r ~~893~~ 26.17 (as substituted by 2008 No 90 s 8)

26.18 Refusing leave

The court must give reasons if it refuses to grant leave.

Compare: 1908 No 89 Schedule 2 r ~~894(1)~~ 26.18 (as substituted by 2008 No 90 s 8)

26.19 Applying to Court of Appeal for leave to appeal

An application to the court under clause 5(5) of Schedule 2 for leave to appeal to the Court of Appeal from a refusal to grant leave to appeal must be filed within 20 working days of the refusal.

Compare: 1908 No 89 Schedule 2 r ~~894(2)~~ 26.19 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 26—*continued*

Subpart 4—Entry of award as judgment under article 35 of Schedule 1

26.20 Entry of judgment if all parties agree

(1) All parties to an award who agree that it may be entered as a judgment may apply to a Registrar by letter signed by all parties or their solicitor or counsel requesting the entry of the award as a judgment.

(2) The Registrar must enter the award as a judgment as soon as practicable—

(a) if he or she is satisfied that all parties have agreed; and

(b) if he or she is satisfied with respect to the matters set out in article 35(2) of Schedule 1.

Compare: 1908 No 89 Schedule 2 r ~~895~~ 26.20 (as substituted by 2008 No 90 s 8)

26.21 Entry of judgment in other cases

(1) If rule 26.20 does not apply, a party to an award who wishes to enforce it may—

(a) enforce it by action; or

(b) apply to the court for entry of the award as a judgment.

(2) A party electing the method set out in subclause (1)(a) must commence a proceeding under Part 5.

(3) A party electing the method set out in subclause (1)(b) must follow the procedure set out in rules 26.22 to 26.27.

Compare: 1908 No 89 Schedule 2 r ~~896~~ 26.21 (as substituted by 2008 No 90 s 8)

26.22 Application for entry of award as judgment

(1) The party to the award must file an originating application in the proper registry, determined under rule 5.1.

(2) The originating application—

(a) must be in form Arb 3; and

(b) must not name the arbitral tribunal as a defendant.

(3) Rule 5.44 applies to the originating application.

(4) This rule has effect despite anything in rule 5.25 or Part 18.

Compare: 1908 No 89 Schedule 2 r ~~897~~ 26.22 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 26—*continued*
Subpart 4—*continued*

26.23 Affidavit to be filed in support

At the same time as the originating application is filed, the plaintiff must file an affidavit proving the matters set out in article 35(2) of Schedule 1.

Compare: 1908 No 89 Schedule 2 r ~~898~~ 26.23 (as substituted by 2008 No 90 s 8)

26.24 Service

(1) The plaintiff must serve copies of both the originating application and the affidavit on the defendant either before or immediately after filing.

(2) Subclause (1) does not apply if the plaintiff obtains an order under rule 26.25.

Compare: 1908 No 89 Schedule 2 r ~~899~~ 26.24 (as substituted by 2008 No 90 s 8)

26.25 Entry as judgment without notice in exceptional circumstances

(1) In exceptional circumstances, the plaintiff may, on or after the filing of the originating application, file an application without notice for an order that the award be entered as a judgment.

(2) The application must be supported by an affidavit that sets out the exceptional circumstances that justify the order sought.

(3) The court may determine the application without notice and make the order sought if satisfied that the order is required in the interests of justice.

(4) If the court makes the order sought, the court may also direct that the award not be enforced before it has been served on the defendant and a period specified by the court has expired after service.

Compare: 1908 No 89 Schedule 2 r ~~899A~~ 26.25 (as substituted by 2008 No 90 s 8)

26.26 Entry as judgment if defendant takes no steps

(1) The Registrar must enter the award as a judgment as soon as practicable if—

High Court Rules—*continued*
Part 26—*continued*
Subpart 4—*continued*

(a) the defendant takes no steps within the time specified in subclause (2); and
(b) the plaintiff makes an application for the entry.

(2) The time is whichever of the following applies:
(a) 10 working days after the plaintiff's application is served on the defendant; or
(b) a period fixed by the court of less than 10 working days after the order fixing that period is served on the defendant.

(3) An application to the Registrar under subclause (1)(b)—
(a) is made by letter signed by the plaintiff or his or her solicitor or counsel requesting the entry of the award as a judgment; and
(b) need not be served on the defendant.

(4) An application for an order under subclause (2)(b) may be made without notice.

(5) An order under subclause (2)(b) does not take effect unless it is served on the defendant together with the documents referred to in rule 26.24(1).

(6) Subclause (5) applies even if the originating application to which the order relates has already been served on the defendant, and in that case the previous service of the application ceases to have effect when the order is made.

Compare: 1908 No 89 Schedule 2 r ~~900~~ 26.26 (as substituted by 2008 No 90 s 8)

26.27 Opposition to entry as judgment

(1) This rule applies if a defendant wishes to oppose the originating application.

(2) The plaintiff's application is stayed pending the determination of an application under this rule.

(3) The defendant must file and serve an application seeking an order for refusal of recognition and enforcement in terms of article 36 of Schedule 1.

(4) The application referred to in subclause (3) must be—

High Court Rules—*continued*
Part 26—*continued*
Subpart 4—*continued*

(a) filed and served within the applicable period specified in rule 26.26(2); and
(b) treated as if it were an originating application under Part 19; and
(c) disposed of in accordance with Part 19; and
(d) determined at the same time as the plaintiff's application to enforce the award by entry as a judgment.

(5) To avoid doubt, an application under this rule is concerned with the recognition or enforcement of an award and not with any question of law arising out of the award that may be determined by the court or the Court of Appeal under clause 5 of Schedule 2 of the Act.

Compare: 1908 No 89 Schedule 2 r ~~901~~ 26.27 (as substituted by 2008 No 90 s 8)

Part 27
Administration (including probate)

Subpart 1—General

27.1 Wills and intestacies to which this Part applies

(1) The rules in this Part apply to—
(a) the wills (whenever made) of persons who die on or after 1 November 2007; and
(b) grants of administration in respect of persons who die intestate on or after the date when these rules come into force.

(2) The rules in this Part, except rule 27.14, do not apply to the wills of persons who died before 1 November 2007.

(3) The High Court Rules set out in Schedule 2 of the Judicature Act 1908 before their amendment by the High Court Amendment (Wills Act 2007) Rules 2007, except for the amendment in rule 27.14, apply to the wills of persons who died before 1 November 2007.

Compare: 1908 No 89 Schedule 2 r 27.1 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 27—*continued*
Subpart 1—*continued*

27.2 Interpretation

For the purposes of this Part,—

administration—

(a) means probate of a deceased's will; and

(b) includes letters of administration of a deceased's estate, granted with or without a will annexed, for general, special, or limited purposes; and

(c) for Public Trust or the Māori Trustee or a trustee company as defined in the Trustee Companies Act 1967, includes—

(i) an order to administer; and

(ii) an election to administer

administrator—

(a) means a person to whom administration is granted; and

(b) includes Public Trust or the Māori Trustee or a trustee company as defined in the Trustee Companies Act 1967 treated as an executor or administrator because it has filed an election to administer

executed, for a will, means signed and witnessed in accordance with the requirements of section 11(3) and (4) of the Wills Act 2007

grant means a grant of administration

will has the same meaning as in section 8 of the Wills Act 2007.

Compare: 1908 No 89 Schedule 2 r 27.2 (as substituted by 2008 No 90 s 8)

Subpart 2—Applications for administration

27.3 Kinds of applications for grants

An application for a grant is made by—

(a) an application without notice under rule 27.4; or

(b) an application in solemn form under rule 27.6.

Compare: 1908 No 89 Schedule 2 r 27.3 (as substituted by 2008 No 90 s 8)

27.4 Applications without notice

(1) This rule applies to an application without notice.

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

(2) Rule 5.36 does not apply to the application.

(3) The application is headed in the same way as form PR 1.

(4) A lawyer may give the certificate required by rule 7.23(2), even though he or she—

(a) is one of the witnesses to the will that the application is about; or

(b) is named as an executor in the will; or

(c) is an executor of the will according to its tenor.

(5) If the applicant knew the deceased or knows about the deceased's death personally, the applicant must file an affidavit in whichever is appropriate of forms PR 1 to PR 6 to prove the deceased's death.

(6) If the applicant did not know the deceased and does not know about the deceased's death personally,—

(a) paragraphs 1 and 2 of forms PR 1 to PR 6 must be omitted; and

(b) another person must swear an affidavit proving the deceased's death, in the form of paragraphs 1 and 2 of form PR 1.

(7) If the application is for a grant of probate or a grant of letters of administration with the will annexed, the applicant must file an affidavit in form PR 1 or PR 2 to prove the validity of the will that the application is about.

(8) The procedure for dealing with the application is the same as for an application without notice under rules 7.19 and 7.23, subject to this Part.

(9) A form presented for filing under this rule is not invalid just because it contains minor differences from a prescribed form as long as the form still has the same effect and is not misleading.

Compare: 1908 No 89 Schedule 2 r ~~634~~ 27.4 (as substituted by 2008 No 90 s 8)

27.5 Restrictions if possibly invalid will exists

(1) This rule applies if the applicant—

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

(a) knows of a will later than the will that the application is about; and
(b) has reason to believe that the later will is invalid.

(2) This rule also applies if the applicant—
(a) seeks a grant because the deceased was intestate; and
(b) knows of a will; and
(c) has reason to believe that the will is invalid.

(3) The applicant may make an application under rule 27.4 containing proof that—
(a) the applicant has given the executor named in the will written or electronic notice of the applicant's intention to apply; and
(b) the executor has not applied for a grant within 1 month after service of the notice; and
(c) a caveat has not been lodged against a grant within 1 month after service of the notice.

(4) The court—
(a) may direct the applicant to apply for an order under section 53 of the Administration Act 1969; and
(b) must defer dealing with the application under rule 27.4 until the application under section 53 has been determined.

Compare: 1908 No 89 Schedule 2 r ~~635~~ 27.5 (as substituted by 2008 No 90 s 8)

Applications in solemn form

27.6 Applications in solemn form

(1) This rule applies to an application in solemn form.

(2) An application is made in solemn form if—
(a) the applicant chooses to apply in that way; or
(b) the applicant is ordered to apply in that way.

(3) Part 5 applies to the application.

(4) The procedure for dealing with the application is the same as for an ordinary proceeding, subject to the rules in this Part.

Compare: 1908 No 89 Schedule 2 r ~~636~~ 27.6 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

27.7 Respondents and additional parties

(1) The applicant may apply to the court for directions as to the persons to be named as respondents to an application under rule 27.6.

(2) If the applicant does not apply, or if the court does not give directions, the applicant must name as respondents—
  (a) the person who may be entitled to a grant if the applicant does not obtain the grant; and
  (b) all persons who have lodged caveats under rule 27.11.

(3) A person interested in the result of an application under rule 27.6 may apply to the court to be added as a party.

(4) If the court is satisfied that the interests of the person are not already adequately represented, it may—
  (a) order that the person be added; and
  (b) impose conditions on the order, if necessary; and
  (c) give directions as to the part that the person is to take in the hearing of the application.

Compare: 1908 No 89 Schedule 2 r ~~637~~ 27.7 (as substituted by 2008 No 90 s 8)

27.8 Compromises

(1) This rule applies if an application under rule 27.6 is the subject of a compromise, whether or not a statement of defence has been filed.

(2) The court may direct—
  (a) that the application is to be treated as an application under rule 27.4; and
  (b) that evidence on the application may be given by affidavit.

Compare: 1908 No 89 Schedule 2 r ~~638~~ 27.8 (as substituted by 2008 No 90 s 8)

27.9 Pleadings

(1) This rule applies to an application under rule 27.6 in which a pleading states that the will that the application relates to is invalid.

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

(2) This rule also applies to an application under rule 27.6 in which a pleading states that a will that is the subject of a grant obtained by way of an application without notice is invalid.

(3) The pleading must state the substance of the case against validity.

(4) If the allegation is that the will's execution was not valid, the pleading must state the facts on which the allegation is based.

(5) If the allegation is that the will-maker did not have testamentary capacity when the will was executed, the pleading must state whether the incapacity lay in any or all of the following:

(a) the will-maker's lack of ability to comprehend or recollect the extent of his or her estate; or

(b) the will-maker's lack of ability to comprehend or recollect the claims of persons excluded from participating in his or her estate; or

(c) the will-maker's insane delusions about the persons who have claims on his or her estate; or

(d) some other specified incapacity.

Compare: 1908 No 89 Schedule 2 r ~~639~~ 27.9 (as substituted by 2008 No 90 s 8)

27.10 Where application is filed

(1) This rule applies to an application, and all other documents, filed under this Part.

(2) Irrespective of the place where the deceased died, the application and documents must be filed in the registry of the court at Wellington.

(3) If an application or a document is filed in the wrong registry of the court, the court may order the transfer of the application or document to the proper registry.

Compare: 1908 No 89 Schedule 2 r ~~643~~ 27.10 (as substituted by 2008 No 90 s 8)

27.11 Where caveat is lodged

(1) This rule applies to a caveat under section 60 of the Administration Act 1969.

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

(2) The caveat must be in form PR 10.

(3) The caveat must be lodged with the Registrar of the court at Wellington.

Compare: 1908 No 89 Schedule 2 r ~~641~~ 27.11 (as substituted by 2008 No 90 s 8)

27.12 Evidence of death

(1) The court may accept any evidence that satisfies it of the death of a person whose estate is the subject of an application for a grant, unless no dead body has been identified as that of the person.

(2) If no dead body has been identified as that of the person, the applicant must apply for leave to swear death.

(3) The applicant applies by—

(a) making an interlocutory application before filing an application for a grant; or

(b) incorporating the application for leave to swear death in an application without notice under rule 27.4.

(4) The applicant must file affidavits stating—

(a) the circumstances under which the application is made; and

(b) the facts from which the court is invited to infer death; and

(c) whether or not the person's life was insured and, if it was, the name and address of the insurer.

(5) If the person's life was insured,—

(a) the applicant must serve notice of the application and copies of the affidavits on the insurer; and

(b) the insurer is treated as a party to the application for the purposes of rules 2.5 to 2.11 and 7.19 to 7.52.

(6) The court may make an order that the person is presumed to be dead for the purposes of the grant.

(7) The court may accept any evidence that satisfies it of the death of a person who, if alive, would have been entitled to a grant.

Compare: 1908 No 89 Schedule 2 r ~~642~~ 27.12 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

27.13 Sale of perishable property

(1) This rule applies if—
  (a) a deceased leaves perishable property; and
  (b) the property's value may be greatly diminished before the court can make a grant.

(2) A person interested in the deceased's estate may apply to the court for an order—
  (a) authorising a named person to sell the property; and
  (b) directing the payment of the proceeds to the Registrar for the deceased's estate.

(3) The court may make the order.

Compare: 1908 No 89 Schedule 2 r ~~643~~ 27.13 (as substituted by 2008 No 90 s 8)

27.14 Registrars may make some orders

(1) This rule applies to the following registrars:
  (a) all Registrars; and
  (b) all Senior Deputy Registrars in the Auckland registry; and
  (c) no other deputy registrars.

(2) The registrars have the powers of the court under—
  (a) sections 5 to 9A and sections 12, 19, 21, 44, and 61(a)(ii) of the Administration Act 1969; and
  (b) section 380(4)(c)(iii) of the Insolvency Act 2006; and
  (c) section 154(3) of the Insolvency Act 1967; and
  (d) section 76 of the Public Trust Act 2001; and
  (e) section 35(4) of the Trustee Act 1956; and
  (f) section 8(1) of the Trustee Companies Act 1967; and
  (g) rules 27.10(6)(b) and 27.10(7); and
  (h) rule 27.12(6), if an unopposed application has been made under rule 27.12(3); and
  (i) rule 27.13(3); and
  (j) rule 27.29(2); and
  (k) rule 27.30(1) to (4); and
  (l) rule 27.34(2); and
  (m) rule 7.23(5).

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

(3) Rules 2.7 to 2.11 apply to a registrar acting under subclause (2) and, for this purpose, references in them to rule 2.5 or 2.6 must be read as references to rule 27.14(2).

Compare: 1908 No 89 Schedule 2 r ~~644~~ 27.14 (as substituted by 2008 No 90 s 8)

27.15 Application of rules 27.16 to 27.28

Rules 27.16 to 27.28 apply to every case in which a will is advanced and relied on—

(a) for a grant of probate; or

(b) for a grant of letters of administration with the will annexed.

Compare: 1908 No 89 Schedule 2 r ~~645~~ 27.15 (as substituted by 2008 No 90 s 8)

27.16 Evidence as to execution

(1) A person who knows the relevant facts personally may provide the evidence required by rules 27.17 to 27.28.

(2) If the evidence relates to the fact, date, manner, or circumstances of the execution of a will, the person providing the evidence must be—

(a) an attesting witness; or

(b) a person present when the will was executed.

(3) If the authenticity of the signature of the will-maker or an attesting witness is in doubt, the court may accept evidence from any appropriate person to prove that the signature is in the handwriting of the will-maker or the attesting witness.

(4) If the application is unopposed, evidence given under this rule must be given by affidavit, and form PR 12 may be used.

Compare: 1908 No 89 Schedule 2 r ~~646~~ 27.16 (as substituted by 2008 No 90 s 8)

27.17 Evidence of validity

Each of the following is evidence that a will is valid:

(a) a statement by each of the witnesses on the will as provided in section 11(5) of the Wills Act 2007:

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

(b) evidence given under rule 27.16 satisfying the court that the will complies with section 11(3) and (4) of the Wills Act 2007:

(c) a copy of an order of the court made under section 14 of the Wills Act 2007.

Compare: 1908 No 89 Schedule 2 r 27.17 (as substituted by 2008 No 90 s 8)

27.18 Doubt as to will-maker's understanding

(1) This rule applies if—

(a) a person directed by the will-maker signed the will-maker's will in the will-maker's presence; and

(b) the will does not state that the will-maker read over the will and thoroughly understood it before the will-maker directed the person to sign it.

(2) This rule also applies if—

(a) the will-maker—

(i) was blind; or

(ii) was illiterate; or

(iii) signed the will by mark; and

(b) the will does not state that the will was read over to, and thoroughly understood by, the will-maker before the will-maker signed it.

(3) This rule also applies if the court is doubtful for any other reason whether or not the will-maker, at the time the will was signed,—

(a) thoroughly understood the will; or

(b) had full knowledge of its contents.

(4) Evidence must be given under rule 27.16 satisfying the court that the will-maker, at the time the will was signed,—

(a) thoroughly understood the will; or

(b) had full knowledge of its contents.

Compare: 1908 No 89 Schedule 2 r ~~648~~ 27.18 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

27.19 Doubt as to originality of signature

(1) This rule applies if it appears to the court, when it inspects a will, that a signature on it—
  (a) may not be an original signature; or
  (b) may be a reproduction of the original signature.

(2) The court may require evidence to prove whether or not the signature is an original signature.

Compare: 1908 No 89 Schedule 2 r ~~649~~ 27.19 (as substituted by 2008 No 90 s 8)

27.20 Doubt as to date

If there is doubt as to the date on which a will was executed, the court may require evidence to prove the date.

Compare: 1908 No 89 Schedule 2 r ~~650~~ 27.20 (as substituted by 2008 No 90 s 8)

27.21 Changes

(1) This rule applies if—
  (a) a change appears on a will; and
  (b) the change is of practical importance; and
  (c) the change was not made by a means described in section 15 of the Wills Act 2007.

(2) The court may require evidence to prove whether or not the change was present when the will was executed.

(3) The court may give directions as to the form in which the will is to be proved.

(4) Words that have been changed form part of a will as proved if the change does not obliterate the words in such a way as to prevent their effect being apparent.

(5) Subclause (4) applies even though there is no satisfactory evidence that the words were changed before the will was executed.

Compare: 1908 No 89 Schedule 2 r ~~651~~ 27.21 (as substituted by 2008 No 90 s 8)

27.22 Revocations or revivals by other document

(1) This rule applies if—

High Court Rules—*continued*
Part 27—*continued*
Subpart 2—*continued*

(a) it appears to the court, when it inspects a will, that some other document has been attached to it; or
(b) a will contains a reference to another document in terms suggesting that it ought to be incorporated in the will.

(2) The court may require the other document to be produced or its non-production to be explained.

(3) The court may require evidence as to—
(a) the attaching or incorporation of the document; and
(b) when it came into existence.

Compare: 1908 No 89 Schedule 2 r ~~652~~ 27.22 (as substituted by 2008 No 90 s 8)

27.23 Revocation

(1) This rule applies if it appears to the court that,—
(a) for a will made on or after 1 November 2007, one of the means of revocation described in section 16 of the Wills Act 2007 may have been used; or
(b) for a will made before 1 November 2007, one of the means of revocation described in section 16, as modified by section 40(2)(m) and (n) of the Wills Act 2007, may have been used.

(2) The applicant must satisfy the court that the will has not been revoked.

Compare: 1908 No 89 Schedule 2 r ~~653~~ 27.23 (as substituted by 2008 No 90 s 8)

27.24 Duplicate wills

(1) This rule applies if more than 1 copy of a will has been executed.

(2) All executed copies must be produced to the court, or accounted for to its satisfaction, to exclude an inference of revocation.

(3) If the court doubts whether subclause (2) has been complied with, it may require evidence to prove that it was.

Compare: 1908 No 89 Schedule 2 r ~~654~~ 27.24 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 27—*continued*

Subpart 3—Administration with will annexed

27.25 Circumstances in which grant may be made

(1) This rule applies if a will exists but does not appoint an executor.

(2) This rule also applies if the executor or each of the executors appointed—

- (a) has died during the will-maker's life; or
- (b) has survived the will-maker but has died without obtaining a grant; or
- (c) has renounced probate of the will; or
- (d) is a former spouse or former civil union partner of the will-maker whose appointment is void under section 19 of the Wills Act 2007, for a will made on or after 1 November 2007; or
- (e) is a former spouse of the will-maker whose appointment is void under section 19, as modified by section 40(2)(q), of the Wills Act 2007, for a will made before 1 November 2007; or
- (f) is incapable of acting as an executor but does not have an attorney for the purposes of section 9A of the Administration Act 1969.

(3) This rule also applies if—

- (a) section 19 of the Administration Act 1969 applies to an executor; and
- (b) no one entitled to apply for an order nisi under that section has done so within 4 months after the will-maker's death.

(4) The court may grant letters of administration with the will annexed to the person entitled to them according to the priority in rule 27.26.

Compare: 1908 No 89 Schedule 2 r ~~655(1), (3), (4)~~ 27.25 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 27—*continued*
Subpart 3—*continued*

27.26 Priority of potential administrators for purposes of rule 27.25

(1) The first in priority is a residuary beneficiary holding in trust for any other person.

(2) The second in priority is a residuary beneficiary for life.

(3) The third in priority is,—

(a) if the will disposes of the whole residue, the ultimate residuary beneficiary; or

(b) if the will does not dispose of the whole residue but the court is satisfied that it disposes of the whole or substantially the whole of the estate as ascertained by the time the application for the grant is made,—

(i) a beneficiary entitled to the estate; or

(ii) a beneficiary entitled to a share in the estate; or

(c) if the will does not dispose of the whole residue and the court is not satisfied that it disposes of the whole or substantially the whole of the estate as ascertained by the time the application for the grant is made,—

(i) a person entitled to a share in the residue not disposed of or the person's personal representative; or

(ii) the Attorney-General, if entitled to claim the residue as *bona vacantia* on behalf of the Crown.

(4) The fourth in priority is—

(a) a specific beneficiary or the beneficiary's personal representative; or

(b) a creditor or the creditor's personal representative; or

(c) if the will does not dispose of the whole estate, a person who has no immediate beneficial interest in the estate because of its small amount but may have a beneficial interest if the estate increases.

(5) The fifth in priority is a specific or residuary beneficiary who is entitled on the happening of a contingency.

(6) The sixth in priority is a person who—

(a) has no interest under the will; and

High Court Rules—*continued*
Part 27—*continued*
Subpart 3—*continued*

(b) would be entitled to a grant if the deceased had died wholly intestate.

(7) Persons who are third, fourth, or fifth in priority, and are entitled to the grant, are entitled to the grant in order of priority in their class according to the value of their interests or the amounts of their debts.

Compare: 1908 No 89 Schedule 2 r ~~656~~ 27.26 (as substituted by 2008 No 90 s 8)

27.27 Proving entitlement to grant

(1) This rule applies if—

(a) an applicant applies for a grant of letters of administration with the will annexed; and

(b) rule 27.26 would give persons other than the applicant a priority that is higher than, or equal to, that of the applicant.

(2) The applicant must—

(a) satisfy the court that all the persons are dead, incompetent, or disqualified; or

(b) satisfy the court that the applicant has given all the persons notice of the intended application; or

(c) attach the written consents of all the persons to an affidavit in form PR 2.

(3) The court may excuse the applicant from giving notice to, or obtaining the consent of, a person who, at the time of the application,—

(a) is beyond the jurisdiction of the court; or

(b) cannot be found.

(4) The court may impose conditions under subclause (3).

Compare: 1908 No 89 Schedule 2 r ~~657~~ 27.27 (as substituted by 2008 No 90 s 8)

27.28 Grant while executor is minor

(1) This rule applies if a person is, when the court grants letters of administration with the will annexed,—

(a) the sole executor of the will; and

(b) a minor; and

High Court Rules—*continued*
Part 27—*continued*
Subpart 3—*continued*

(c) not entitled to a grant under section 9(3) of the Administration Act 1969.

(2) The court may grant letters of administration with the will annexed to any appropriate person.

(3) The person is entitled to the grant until the minor becomes entitled to and obtains a grant.

Compare: 1908 No 89 Schedule 2 r ~~658~~ 27.28 (as substituted by 2008 No 90 s 8)

Subpart 4—Grants

27.29 Time for making grant

(1) The following time limits apply to the making of a grant:

(a) for probate or letters of administration with the will annexed, no earlier than 5 working days from the date of the will-maker's death; and

(b) for other letters of administration, no earlier than 10 working days from the date of the deceased's death.

(2) If the applicant for the grant applies for the shortening of a time limit, the court may shorten it.

Compare: 1908 No 89 Schedule 2 r ~~659~~ 27.29 (as substituted by 2008 No 90 s 8)

27.30 Grants to attorneys

(1) The court may make a grant to the lawfully constituted attorney of a person who—

(a) is entitled to the grant; and

(b) does not reside in New Zealand.

(2) The court may make a grant to the holder of an enduring power of attorney for a donor to whom section 9A of the Administration Act 1969 applies.

(3) If the person or the donor is one of 2 or more executors, the court may make the grant to the attorney or the holder only after—

(a) the attorney or the holder has given notice to the other executors; or

(b) the court has dispensed with notice.

High Court Rules—*continued*
Part 27—*continued*
Subpart 4—*continued*

(4) The court may limit the grant in any way.

(5) A grant under section 9A of the Administration Act 1969 must convey the effect of sections 9A(6) and 9B(2) of that Act.

(6) The grant is for the use and benefit of the person or donor.

Compare: 1908 No 89 Schedule 2 r ~~660~~ 27.30 (as substituted by 2008 No 90 s 8)

27.31 Common or solemn form

(1) A grant on an application under rule 27.4 must be in common form in whichever is appropriate of forms PR 7, PR 8, and PR 9.

(2) A grant on an application under rule 27.6 must be in solemn form.

Compare: 1908 No 89 Schedule 2 r ~~661~~ 27.31 (as substituted by 2008 No 90 s 8)

Subpart 5—Inventories and accounts

27.32 Inventory and account filed by administrator

(1) A person interested in a deceased's estate may apply for an order that the administrator of the estate file the following documents:
- (a) an accurate inventory of the estate; and
- (b) an account of the estate that—
  - (i) is accurate; and
  - (ii) states the dates and details of all receipts and disbursements; and
  - (iii) states which of the receipts and disbursements were on capital account and which were on revenue account.

(2) The applicant must—
- (a) make the application within 3 years after the date of the grant appointing the administrator; and
- (b) serve the administrator with notice of the application.

(3) If the court makes an order,—

High Court Rules—*continued*
Part 27—*continued*
Subpart 5—*continued*

(a) the administrator must file the documents within the period after the service of the order that the court specifies; and
(b) the account must be current to—
(i) the date of service of the order; or
(ii) another date specified in the order.

(4) If no one makes an application, or if the court does not make an order,—
(a) the administrator may file the documents if he or she wishes to do so and at any time he or she wishes; and
(b) the account must state the date to which it is current.

(5) The administrator must file an affidavit verifying the documents.

(6) The administrator must file the documents in the registry in which the grant was made.

Compare: 1908 No 89 Schedule 2 r ~~662~~ 27.32 (as substituted by 2008 No 90 s 8)

Subpart 6—Overseas assets

27.33 Administration of overseas assets

(1) An administrator administering overseas assets may request the court to seal an exemplification of administration in form PR 11.

(2) Alternatively, an administrator administering overseas assets may request the court to—
(a) seal a duplicate of the grant; or
(b) seal and certify a copy or photocopy of the grant.

(3) The administrator must file an affidavit as to the purpose for which the duplicate, copy, or photocopy is required.

Compare: 1908 No 89 Schedule 2 r ~~663~~ 27.33 (as substituted by 2008 No 90 s 8)

Subpart 7—Recall of grant

27.34 Recall of grant

(1) If a grant is made in common form, a person may make an interlocutory application for an order for the recall of the grant.

High Court Rules—*continued*
Part 27—*continued*
Subpart 7—*continued*

(2) The court may make an order recalling the grant only if—
  (a) the application is unopposed; and
  (b) one of the following circumstances exists:
    (i) the grant was made on the basis that the deceased died intestate and a will has been found; or
    (ii) a will has been found with a date later than that of the will of which probate was granted; or
    (iii) the person to whom the grant was made applies for the recall; or
    (iv) the person to whom the grant was made consents to the recall.

(3) If subclause (2) is not satisfied, a person wishing to apply for an order for the recall of the grant must bring proceedings.

(4) Rule 27.9 applies to an application under subclause (1) and the proceedings referred to in subclause (3).

Compare: 1908 No 89 Schedule 2 r ~~664~~ 27.34 (as substituted by 2008 No 90 s 8)

Subpart 8—Priorities on intestacy

27.35 Order of priority for grant in case of intestacy

(1) If a person has died wholly intestate, the right to apply for letters of administration of that person's estate is determined in accordance with the order of priority set out in subclause (3).

(2) Subclause (1) is subject to section 6 of the Administration Act 1969.

(3) The order referred to in subclause (1) is as follows:
  (a) the first in priority is persons having a beneficial interest in the estate, according to the order of priority set out in subclause (4):
  (b) the second in priority is the Attorney-General, if he or she claims *bona vacantia* on behalf of the Crown:
  (c) the third in priority is a creditor of the deceased, or any person who, even though having no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion to it.

High Court Rules—*continued*
Part 27—*continued*
Subpart 8—*continued*

(4) Persons having a beneficial interest in the estate are entitled to a grant of administration in the following order of priority:

(a) the surviving spouse or civil union partner or de facto partner entitled to succeed on the intestacy, if paragraph (b) does not apply and his or her beneficial interest in the estate is not affected,—

(i) in the case of a surviving spouse, by section 12(2) of the Matrimonial Proceedings Act 1963 (as applied by section 191(3) of the Family Proceedings Act 1980); or

(ii) in the case of a surviving spouse or a surviving civil union partner, by section 26(1) of the Family Proceedings Act 1980; or

(iii) in the case of a surviving de facto partner, by section 77B of the Administration Act 1969; or

(iv) in every case, by the choice of option A under section 61 of the Property (Relationships) Act 1976:

(b) in a case of the kind referred to in section 77C of the Administration Act 1969 (succession on intestacy if intestate dies leaving a spouse or a civil union partner and 1 or more de facto partners, or 2 or more de facto partners), a surviving spouse, surviving civil union partner, or surviving de facto partner entitled to succeed on the intestacy, if his or her beneficial interest in the estate is not affected in any of the ways stated in paragraph (a)(i) to (iv):

(c) the children of the deceased (including any persons entitled by virtue of the Legitimation Act 1939 or the Status of Children Act 1969) or, failing them, the issue of a child who has died during the lifetime of the deceased:

(d) the parent or parents of the deceased:

(e) brothers and sisters of full or half blood, or, failing them, the issue of any such brother or sister who has died during the lifetime of the deceased:

(f) grandparents:

High Court Rules—*continued*
Part 27—*continued*
Subpart 8—*continued*

(g) uncles and aunts of full or half blood, or failing them, the issue of an uncle or aunt who has died during the lifetime of the deceased.

(5) The personal representative of a person in any of the classes referred to in subclause (4) or the personal representative of a creditor has the same right to a grant as the person represented.

(6) The Adoption Act 1955 applies in determining entitlement to a grant in the same way that it applies to devolution of property on intestacy.

(7) If a person has died partially intestate, that is, his or her will has disposed of some but not all of that person's assets, the court must make a single grant of administration for the whole of the estate. The executor, or executors, named in the will has priority in applying for that grant, but otherwise rule 27.26 applies.

Compare: 1908 No 89 Schedule 2 r ~~665~~ 27.35 (as substituted by 2008 No 90 s 8)

27.36 Justification of entitlement to grant

(1) When application is made for a grant of letters of administration of the estate of a person who has died wholly intestate and persons other than the applicant would have (if living and competent), under rule 27.35, a priority higher than or equal to that of the applicant, the applicant—

(a) must prove to the satisfaction of the court—

(i) that those persons are dead or incompetent; or

(ii) that notice of the intended application has been given to them; or

(b) must file their consents in writing, duly verified by affidavit.

(2) Despite subclause (1), the court may, on any conditions that it thinks just, dispense with the giving of notice to, or the obtaining of the consent of, any person who, at the time of the application,—

(a) is beyond the jurisdiction of the court; or

(b) cannot be found.

High Court Rules—*continued*
Part 27—*continued*
Subpart 8—*continued*

(3) The applicant must prove the identity and relationship with the deceased of any person who, under rule 27.35, has a priority higher than or equal to that of the applicant.

(4) If the applicant is the surviving spouse or the surviving civil union partner, the applicant must prove that at the time of the death of the deceased neither a decree of separation made under section 11 of the Matrimonial Proceedings Act 1963 nor a separation order made under Part 3 of the Family Proceedings Act 1980 was in force between the applicant and the deceased.

(5) If the applicant is the surviving de facto partner, the applicant must prove that the restrictions on succession imposed by section 77B of the Administration Act 1969 do not apply.

(6) Nothing in this rule limits the power of the court to require evidence of other facts necessary to enable the court to decide whether to make a grant to the applicant.

(7) In particular, evidence may be required when it appears that the Crown is or may be entitled to a grant under the law relating to *bona vacantia*.

Compare: 1908 No 89 Schedule 2 r ~~666~~ 27.36 (as substituted by 2008 No 90 s 8)

Subpart 9—Commission

27.37 Form of application for commission

(1) This rule applies to an application to the court under section 72 of the Trustee Act 1956 for the allowance to any person who is or has been a trustee of the property subject to any trust, or to that person's personal representative, of a commission or percentage out of that property.

(2) An application under this rule must be made by statement of claim in accordance with Part 5.

(3) Despite subclause (2), the application must be made by interlocutory application in the proceeding for probate or letters of administration, or in the earlier proceeding for commission, if either—

High Court Rules—*continued*
Part 27—*continued*
Subpart 9—*continued*

(a) the trust was created by will or arises upon an intestacy; or
(b) there has been a previous application for commission (whether or not by the same applicant).

Compare: 1908 No 89 Schedule 2 r ~~667~~ 27.37 (as substituted by 2008 No 90 s 8)

27.38 Affidavit in support

An application under rule 27.37 must be supported by an affidavit or affidavits showing—

(a) how and when the trust was constituted, the names of all present and previous trustees of it, and the period during which each held registry:
(b) the information that is necessary in accordance with rule 18.7 to enable an order giving directions as to service to be made:
(c) particulars of any commission or percentage out of the trust property previously allowed by the court to, or taken in accordance with the instrument (if any) creating the trust or with the consent of the beneficiaries or otherwise by, each person who is or has been a trustee or the personal representative of a trustee:
(d) whether any profit, benefit, or advantage has been derived directly or indirectly by any trustee of the trust property or by any partner, relative, servant, or personal representative of any trustee, from or in connection with the administration of it:
(e) particulars of every such profit, benefit, and advantage:
(f) the amount of the allowance sought by each applicant, and the basis or principle by which the same is arrived at:
(g) if an order is sought under section 72(3) of the Trustee Act 1956 apportioning the total amount allowed, the basis of the proposed apportionment:
(h) if the trustees who, or whose personal representatives, are making the application have not been the only

High Court Rules—*continued*
Part 27—*continued*
Subpart 9—*continued*

trustees since the inception of the trust, information as to the extent to which, up to the date to which a commission or percentage is applied for,—

(i) the trust property has been realised and income got in:

(ii) the administration of the trust has been carried on and its responsibilities discharged by each person who is or has been a trustee:

(i) if the application is not made at or about the time of the final distribution of the trust property, sufficient information to enable the court to determine what commission or percentage (if any) should be ordered, having regard to—

(i) the extent to which the duties of the trusteeship have already been discharged:

(ii) the period likely to elapse before that final distribution:

(iii) the changes in trusteeship that may occur during that period:

(iv) other relevant facts.

Compare: 1908 No 89 Schedule 2 r ~~668~~ 27.38 (as substituted by 2008 No 90 s 8)

27.39 Documents to be filed and verified

(1) This rule is subject to rules 27.40 and 27.45.

(2) The following documents, verified by an affidavit or affidavits of a solicitor or chartered accountant, must be filed in respect of an application under rule 27.37:

(a) a copy of the will or other instrument (if any) creating the trust:

(b) capital and income accounts of the trust or summarised statements of those accounts showing—

(i) the trust property and liabilities at the inception of the trust and at the date to which a commission or percentage is sought:

High Court Rules—*continued*
Part 27—*continued*
Subpart 9—*continued*

(ii) the gross capital realisations and other capital receipts, and the capital liabilities discharged and investments of capital made, and distributions of capital to beneficiaries and other capital payments made, during the period from the inception of the trust to the date to which a commission or percentage is sought, distinguishing those received and made by the trustees who, or whose personal representatives, are making the application from those received and made by other trustees (if any):

(iii) the gross income received and liabilities and outgoings discharged from income, and the distributions of income to beneficiaries, and other disbursements from income, during the last-mentioned period, distinguishing those received and made by the trustees who, or whose personal representatives, are making the application from those received and made by other trustees (if any):

(iv) the sums retained by or paid to solicitors, accountants, auctioneers, real estate agents, commission agents, brokers, and other agents during that period in respect of capital and income respectively.

Compare: 1908 No 89 Schedule 2 r ~~669~~ 27.39 (as substituted by 2008 No 90 s 8)

27.40 Power to adopt previous accounts

(1) Unless the court otherwise orders, the accounts of the trustees or summarised statements previously kept or made for the purposes of the trust may, subject to subclause (2), be adopted for the purposes of the application.

(2) Any information required by rules 27.38 and 27.39 and not contained in the accounts or summarised statements previously kept or made (including any information required in re-

High Court Rules—*continued*
Part 27—*continued*
Subpart 9—*continued*

spect of administration by other trustees) must be supplied by supplementary accounts or summarised statements verified in each case by an affidavit of a chartered accountant or solicitor.

(3) If any information and accounts or summarised statements required in support of the application have been supplied in support of any previous application to the court for a commission or percentage, rules 27.38 and 27.39 are to be treated to that extent as having been complied with.

Compare: 1908 No 89 Schedule 2 r ~~670~~ 27.40 (as substituted by 2008 No 90 s 8)

27.41 Power to refer matter to Registrar for inquiry

The court may at any time refer the application or anything that is part of it or connected with it to the Registrar for inquiry and report.

Compare: 1908 No 89 Schedule 2 r ~~671~~ 27.41 (as substituted by 2008 No 90 s 8)

27.42 Notice of inquiry by Registrar

(1) Unless the court otherwise orders, reasonable notice to the satisfaction of the Registrar of any appointment made by the Registrar to proceed with the Registrar's inquiry must be given to every person who was entitled to be served with the application.

(2) Subclause (1) does not apply if the person has given notice in writing to the Registrar that the person does not intend to appear or be represented at the inquiry.

Compare: 1908 No 89 Schedule 2 r ~~672~~ 27.42 (as substituted by 2008 No 90 s 8)

27.43 Evidence before Registrar

The evidence of every witness called on the inquiry before the Registrar must be taken down in writing and signed by the witness, and accompany the Registrar's report to the court.

Compare: 1908 No 89 Schedule 2 r ~~673~~ 27.43 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 27—*continued*
Subpart 9—*continued*

27.44 Costs

(1) The court may, in its discretion, award costs to any applicant or other person affected by the application, whether any commission or percentage is allowed or not.

(2) The court may direct that any costs be paid out of the trust property or any part of it.

Compare: 1908 No 89 Schedule 2 r ~~674~~ 27.44 (as substituted by 2008 No 90 s 8)

27.45 Power to dispense with rules

(1) On an interlocutory application made before or after the filing of an application for a commission or percentage, and upon sufficient grounds, the court may dispense with the observance of all or any of the rules in this subpart.

(2) An application under subclause (1) may be made without notice, but the court may require notice of it to be given to any other person or persons and prescribe the method.

Compare: 1908 No 89 Schedule 2 r ~~675~~ 27.45 (as substituted by 2008 No 90 s 8)

Part 28
Trans-Tasman competition proceedings

28.1 Interpretation

In this Part, unless the context otherwise requires—

Australian proceeding means a proceeding in which a matter for determination arises under—

(a) any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or

(b) a provision of Part 6 or 12 of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46A, 155A, or 155B of that Act,—

and includes an interlocutory application related to such a proceeding and an application for the issue of execution or en-

High Court Rules—*continued*
Part 28—*continued*

forcement of a judgment, order, or injunction given, made, or granted in a proceeding

Federal Court means the Federal Court of Australia

New Zealand proceeding means a proceeding in which a matter for determination arises under—

(a) any of sections 36A, 98H, or 99A of the Commerce Act 1986; or

(b) a provision of Part 6 or 7 of the Commerce Act 1986 in so far as it relates to any of sections 36A, 98H, or 99A of that Act,—

and includes a related interlocutory proceeding and an application for the issue of execution or enforcement of a judgment, order, or injunction given, made, or granted in a proceeding.

Compare: 1908 No 89 Schedule 2 r ~~446R~~ 28.1 (as substituted by 2008 No 90 s 8)

28.2 Commencement of New Zealand proceedings

(1) A New Zealand proceeding must be commenced by filing a statement of claim in the registry of the court at Auckland, Wellington, or Christchurch in accordance with rule 28.3.

(2) Despite subclause (1), the statement of claim may be filed in any of those registries of the court if the parties agree, by endorsement on the statement of claim, to the filing of the statement of claim in that registry.

Compare: 1908 No 89 Schedule 2 r ~~446S~~ 28.2 (as substituted by 2008 No 90 s 8)

28.3 Registry of court in which proceedings to be commenced

(1) Despite rule 5.1, the registry of the court for the purposes of rule 28.2 is determined as follows:

(a) if any defendant is resident or the defendant's principal place of business is in New Zealand, that registry is whichever of the registries of the court at Auckland, Wellington, or Christchurch is nearest to the residence or principal place of business of the defendant and if there are 2 or more defendants, that registry is determined by reference to the first named defendant who is

High Court Rules—*continued*
Part 28—*continued*

resident or whose principal place of business is in New Zealand:

(b) if no defendant is resident or no defendant's principal place of business is in New Zealand, that registry is whichever of those registries the plaintiff selects:

(c) despite paragraphs (a) and (b), if the Crown is a defendant, that registry is whichever of those registries the plaintiff selects.

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) If it appears to the court on application made to it that the statement of claim has been filed in the wrong registry of the court, or that any other registry of the court in which the statement of claim may be filed would be more convenient to the parties, it may direct that the statement of claim be filed in that other registry, or that all documents filed in the proceeding be transferred to the proper registry or to that other registry which is then treated as the proper registry.

(4) If an order is made under subclause (3), each party must change the party's address for service accordingly.

Compare: 1908 No 89 Schedule 2 r ~~446T~~ 28.3 (as substituted by 2008 No 90 s 8)

28.4 Issue of subpoenas for service in Australia

(1) Despite rule 9.52, an order of subpoena in a New Zealand proceeding for service in Australia must not be issued without the leave of a Judge, and must,—

(a) in the case of an order of subpoena that requires a person to testify, whether or not it also requires a person to produce documents, be in form G 20:

(b) in the case of an order that requires a person to produce documents, but does not require a person to testify, be in form G 21.

(2) An application for the issue of an order of subpoena under subclause (1) must be made without notice by originating application and the provisions of Part 19 (other than rule 19.11) apply, subject to all necessary modifications, to the application.

High Court Rules—*continued*
Part 28—*continued*

(3) An application must be accompanied by an affidavit containing the following matters:
- (a) the name, designation, occupation, and address of the witness:
- (b) the nature of the evidence required from the witness and the relevance of that evidence:
- (c) the date on which it is intended to serve the order of subpoena:
- (d) the availability of suitable means of transport to enable the witness to comply with the order of subpoena:
- (e) the amounts proposed to be paid or tendered to the witness in respect of expenses in complying with the order of subpoena:
- (f) in any case where the subpoena requires the witness to testify, an estimate of the date on which and the length of time that person will be required to attend at the court:
- (g) if the applicant is aware of any fact or circumstance that may constitute a ground for setting the subpoena aside under section 84 of the Trans-Tasman Proceedings Act 2010, the fact or circumstance.

(4) In determining whether to grant leave the Judge must, in addition to any other matter that the Judge considers to be relevant, have regard to—
- (a) the adequacy of the amount proposed to be paid or tendered to the witness in respect of expenses; and
- (b) whether the time between the date of service and the date on which the witness is required to comply with the order of subpoena is reasonable in the circumstances.

(5) Leave may be granted under subclause (1) subject to such conditions as the Judge thinks just.

(6) Without limiting subclause (5), leave may be granted under subclause (1) subject to conditions relating to—
- (a) the amount to be paid or tendered to the witness in respect of expenses:
- (b) the date or dates on which the witness is required to comply with the order of subpoena:

High Court Rules—*continued*
Part 28—*continued*

(c) the documents or class or classes of documents to be produced.

(7) A Judge may direct that service on a body corporate will be effected by serving the order of subpoena on a member, officer, or servant of the body corporate in such manner as the Judge directs.

(8) The file relating to every such application must be kept separate from the file relating to the New Zealand proceeding.

(9) As provided in rule 3.11, no document relating to an application under this rule may be searched, inspected, or copied without the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r ~~446U~~ 28.4 (as substituted by 2008 No 90 s 8)

28.5 Service of subpoena

(1) An order of subpoena issued in a New Zealand proceeding with the leave of a Judge may be served on a person in Australia personally by leaving with that person a sealed copy of the order together with a statement in form G 22 setting out the person's rights and obligations.

(2) Service of the order of subpoena on a corporation must be in accordance with any directions given by the Judge under rule 28.4(7).

(3) A person who has been served with an order of subpoena under subclause (1) is not compellable to comply with the order unless, at the time of service or at some other reasonable time before the date on which the person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to meet the person's reasonable expenses of complying with the order are tendered or paid to that person.

Compare: 1908 No 89 Schedule 2 r ~~446V~~ 28.5 (as substituted by 2008 No 90 s 8)

28.6 Subpoenas for production

(1) An order of subpoena issued in a New Zealand proceeding that requires a person in Australia to produce documents or things,

High Court Rules—*continued*
Part 28—*continued*

but does not require the person to testify, must permit the person to comply with the order by producing the documents or things at a specified registry of the Federal Court.

(2) Unless the court otherwise orders, the registry of the Federal Court specified under subclause (1) is the registry nearest to the place where the order of subpoena is served.

(3) A person served with an order of subpoena of the kind described in subclause (1) may comply with the subpoena by—

(a) producing the subpoena and the required documents or things to the specified registry of the Federal Court not later than 10 working days before the date specified in the order as the date on which the documents or things are required for production in the High Court; and

(b) obtaining a receipt from a Registrar, Deputy Registrar, District Registrar, or Deputy District Registrar of the Federal Court for the documents or things produced and sending, as soon as practicable, a copy of the receipt with a copy of the subpoena by fax to the registry of the High Court where the order was made; and

(c) providing an officer of the Federal Court with a sum sufficient to send the documents or things to New Zealand.

(4) The receipt is sufficient evidence of compliance with the order of subpoena.

Compare: 1908 No 89 Schedule 2 r ~~446W~~ 28.6 (as substituted by 2008 No 90 s 8)

28.7 Setting aside subpoena issued in New Zealand proceeding

(1) An application to set aside an order of subpoena issued in a New Zealand proceeding and served on a person in Australia under **section 84** of the Trans-Tasman Proceedings Act 2010 may be filed by fax.

(2) The Registrar must send to the applicant by fax an acknowledgment of an application that has been filed by fax.

(3) The court must give such directions for the conduct of the hearing of the application as it thinks just.

High Court Rules—*continued*
Part 28—*continued*

(4) Without limiting subclause (3), the court may give directions requiring—

(a) the applicant to give evidence or make submissions by video link or telephone conference; or

(b) further evidence by the applicant to be taken in Australia; or

(c) the application to be heard in Australia.

Compare: 1908 No 89 Schedule 2 r ~~446X~~ 28.7 (as substituted by 2008 No 90 s 8)

28.8 Failure to comply with subpoena in New Zealand proceeding

The court may, on the application of a party to a New Zealand proceeding or on its own initiative, issue a certificate in form G 23 stating that a person in Australia who has been served with an order of subpoena in a New Zealand proceeding has failed to comply with the order and may direct the Registrar of the court to transmit the certificate to the Federal Court.

Compare: 1908 No 89 Schedule 2 r ~~446Y~~ 28.8 (as substituted by 2008 No 90 s 8)

28.9 Payment of additional amounts to persons complying with subpoena in New Zealand proceeding

The court may, on the application of a person resident in Australia who has complied with an order of subpoena in a New Zealand proceeding or on its own initiative, order the person on whose application the order was obtained to pay to that person—

(a) an amount for expenses reasonably incurred by that person in complying with the order in addition to any expenses tendered or paid to that person under rule 28.5(3); or

(b) an amount for any loss of income occasioned by that person in complying with the order—

High Court Rules—*continued*
Part 28—*continued*

and may direct that the amount or amounts be fixed by the Registrar.

Compare: 1908 No 89 Schedule 2 r ~~446Z~~ 28.9 (as substituted by 2008 No 90 s 8)

28.10 Transmission of documents to Federal Court

The Registrar at the registry at which a document or thing is produced in compliance with a subpoena for production issued by the Federal Court for service in New Zealand in an Australian proceeding must—

(a) issue a receipt for the document or thing produced; and

(b) mark the document or thing so as to indicate the date and time of its production; and

(c) advise by fax the officer of the Federal Court who issued the subpoena; and

(d) send the document or thing to the Federal Court with a copy of the subpoena so as to ensure that it will be received by the Federal Court before the date on which it is required to be produced to that court.

Compare: 1908 No 89 Schedule 2 r ~~446ZA~~ 28.10 (as substituted by 2008 No 90 s 8)

28.11 Certification of judgments, orders, and injunctions in New Zealand proceedings

(1) The court may, on the application of a party to a New Zealand proceeding, issue to that party a copy of a judgment, order, or injunction given, made, or issued in that proceeding.

(2) An application under this rule may be made without notice.

(3) A copy of the judgment, order, or injunction must be—

(a) sealed with the seal of the court; and

(b) certified to be a true copy of a judgment, order, or injunction given, made, or issued in a New Zealand proceeding within the meaning of **section 81** of the Trans-Tasman Proceedings Act 2010 or an NZ market pro-

High Court Rules—*continued*
Part 28—*continued*

ceeding within the meaning of section 4 of the Trans-Tasman Proceedings Act 2010 (Aust).

Compare: 1908 No 89 Schedule 2 r ~~446ZB~~ 28.11 (as substituted by 2008 No 90 s 8)

28.12 Evidence and submissions by video link and telephone conference

(1) On an application by a party to a New Zealand proceeding a Judge may, if satisfied that the necessary equipment and facilities are available, direct that a witness may give evidence from Australia or a person appearing as a barrister or solicitor, or both, may make submissions from Australia by video link or telephone conference.

(2) An application under subclause (1) may be made without notice and must be accompanied by an affidavit stating—

(a) the reasons for the proposed course of action:

(b) the nature of the evidence:

(c) the witnesses to be examined:

(d) in a case where evidence is proposed to be given, an estimate of the time the examination of the witnesses will take:

(e) whether issues of character or credibility are likely to be raised:

(f) in a case where submissions are proposed to be made, an estimate of the time that will be required to make the submissions.

(3) In giving a direction under subclause (1), the Judge must instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions the Judge makes.

(4) Without limiting subclause (3), the Judge may direct that—

(a) the evidence be given or the submissions be made at the Federal Court or at a place approved by the Federal Court:

High Court Rules—*continued*
Part 28—*continued*

(b) an officer of the Federal Court or other person approved by the Judge be present to assist in the transmission of the evidence or submissions and, in particular, to—
  (i) introduce witnesses giving evidence or a barrister or solicitor, or both, making submissions:
  (ii) assist with the administration of oaths:
  (iii) assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions:
(c) the evidence or the submissions be heard at a location other than the precincts of the High Court.

(5) Unless the court otherwise orders, the costs incurred in giving the evidence or making the submissions by video link or telephone conference and transmitting the evidence or submissions in accordance with a direction given under this rule must be paid by the applicant.

Compare: 1908 No 89 Schedule 2 r ~~446ZC~~ 28.12 (as substituted by 2008 No 90 s 8)

Part 29
Deleted

Part 30
Judicial review

30.1 Crown Proceedings Act 1950 not affected

This Part does not limit or affect the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 r ~~622~~ 30.1 (as substituted by 2008 No 90 s 8)

30.2 Interpretation

In this Part, **extraordinary remedy** means—
(a) an order of mandamus, prohibition, or certiorari:
(b) a declaration or injunction in relation to the breach, threatened breach, continuation of a breach, or further

High Court Rules—*continued*
Part 30—*continued*

breach of a duty of a court, tribunal, or person exercising public functions; or

(c) an order removing a person from public office or a declaration as to the right of a person to hold a public office.

Compare: 1908 No 89 Schedule 2 r ~~r 623–627A~~ 30.2 (as substituted by 2008 No 90 s 8)

30.3 Procedure

(1) An application for judicial review under **Part 3 of the Judicature Modernisation Act 2013** and an application for an extraordinary remedy must be commenced by statement of claim and notice of proceeding in accordance with Part 5 of the rules.

(2) The heading of an application for review under **Part 3 of the Judicature Modernisation Act 2013** must state that it is an application for review.

(3) A statement of claim seeking an extraordinary remedy may claim more than 1 of those remedies and may claim any other relief (including damages) to which the plaintiff may be entitled.

Compare: 1908 No 89 Schedule 2 r ~~628~~ 30.3 (as substituted by 2008 No 90 s 8)

30.4 Interim orders

(1) When an application is made for an extraordinary remedy under this Part, the court may make an interim order on whatever terms and conditions the court thinks just.

(2) An applicant who applies for an interim order must, if ordered by the court, file a signed undertaking to the effect that the applicant will abide by any order that the court may make in respect of damages—

(a) that are sustained by any other party through the making of the interim order; and

(b) that the court decides the applicant ought to pay.

(3) The undertaking must be referred to in the order and is part of it.

Compare: 1908 No 89 Schedule 2 r ~~627B~~ 30.4 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*

Part 31
Companies: liquidation

31.1 Application

(1) This rule applies to an application to the High Court to put a company into liquidation.

(2) Rules 31.37 and 31.38 apply in respect of a notice under section 294(1) of the Companies Act 1993.

(3) These rules and the general practice of the High Court apply to applications to which subclause (1) applies and notices to which subclause (2) applies unless they are modified by or inconsistent with this Part or the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r ~~700A~~ 31.1 (as substituted by 2008 No 90 s 8)

31.2 Hearing of applications

Unless the court otherwise directs, every application to which this Part applies must be heard in open court.

Compare: 1908 No 89 Schedule 2 r ~~700B~~ 31.2 (as substituted by 2008 No 90 s 8)

31.3 Applications to be made by statement of claim

An application to the High Court to put a company into liquidation under section 241(2)(c) of the Companies Act 1993 must be made by statement of claim in form C 1.

Compare: 1908 No 89 Schedule 2 r ~~700C~~ 31.3 (as substituted by 2008 No 90 s 8)

31.4 Proper registry of court

(1) Despite rules 5.1(1) to (3) and 5.25, the proper registry of the court for the purposes of the filing of a statement of claim under rule 31.3 is—

(a) the registry of the court in the town where, or the registry of the court in the town nearest to which, the defendant company's registered office is situated; or

(b) if the defendant company does not have a registered office, the registry of the court in the town where, or the registry of the court in the town nearest to which,

High Court Rules—*continued*
Part 31—*continued*

the defendant company's principal or last known place of business is or was situated.

(2) This rule does not limit rule 5.1(4) and (5).

Compare: 1908 No 89 Schedule 2 r ~~700D~~ 31.4 (as substituted by 2008 No 90 s 8)

31.5 Notice of proceeding and verifying affidavit

(1) Rules 5.22 and 5.23 do not apply to a proceeding commenced by the filing of a statement of claim under rule 31.3.

(2) A notice of proceeding in form C 3 and an affidavit in form C 4 or C 5 verifying the allegations in the statement of claim must be filed and served with a statement of claim filed under rule 31.3.

(3) Subclause (2) is subject to rule 5.24.

(4) The affidavit must be made by the plaintiff, or by one of the plaintiffs if more than 1, or, if the proceeding is brought by a corporation, by a person who meets the requirements of rule 9.82.

(5) The affidavit is sufficient prima facie evidence of the statements in the statement of claim.

Compare: 1908 No 89 Schedule 2 r ~~700E~~ 31.5 (as substituted by 2008 No 90 s 8)

31.6 Date of hearing

(1) On the filing of a statement of claim under rule 31.3, the Registrar must as soon as practicable appoint the time and place of the hearing.

(2) Unless the court otherwise orders, the place for the hearing of the proceeding is—

(a) the High Court in the town in which the statement of claim is filed; or

(b) if no Judge will be available in that town at the appointed time, the High Court in another town; or

(c) if the statement of claim is filed in Masterton, the High Court at Wellington.

(3) Notice of the time and place of the hearing must be included in the notice of proceeding in form C 3.

High Court Rules—*continued*
Part 31—*continued*

(4) The Registrar may change the time before the proceeding has been advertised.

Compare: 1908 No 89 Schedule 2 r ~~700F~~ 31.6 (as substituted by 2008 No 90 s 8)

31.7 Exclusion of rules relating to setting down

[revoked]

31.8 Directions

[revoked]

31.9 Advertisement of application

(1) A proceeding commenced by a statement of claim under rule 31.3 must be advertised at least 5 working days before the hearing.

(2) In this Part, **working day** means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

(3) This rule is subject to rule 31.10 and to any order made on an application under rule 31.11.

(4) If the registered office of the defendant company, or, if there is no such office, the principal or last known principal place of business of that company, is or was situated within a town in which there is a registry of the court, the advertisement must be published—

(a) once in the *Gazette*; and

(b) at least once—

(i) in a daily newspaper published in that town; or

(ii) in another newspaper as the Registrar directs.

(5) In the case of a defendant company to which subclause (4) does not apply, the advertisement must be published—

(a) once in the *Gazette*; and

High Court Rules—*continued*
Part 31—*continued*

(b) at least once—
(i) in a local newspaper circulating in the locality where the registered office, or principal or last known principal place of business, as the case may be, of the defendant company is or was situated; or
(ii) in another newspaper as the Registrar directs.

(6) The advertisement, which must be in form C 6, must state—
(a) the day on which the application to put the defendant company into liquidation was filed; and
(b) the name and address of the plaintiff and of the plaintiff's solicitor (if any); and
(c) the plaintiff's address for service; and
(d) the place, date, and time of the hearing of the application; and
(e) that the statement of claim and the verifying affidavit may be inspected at the registry of the court or at the plaintiff's address for service; and
(f) that any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than 2 working days before the day appointed for the hearing of the application.

(7) If the plaintiff or the plaintiff's solicitor does not within the prescribed time, or within any extended time allowed by the Registrar, duly advertise the proceeding in the manner prescribed by this rule, the appointment of the time and place of hearing must be cancelled by the Registrar, and the proceeding must then be removed from the list, unless the defendant company has been served or the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r ~~700~~ 31.9 (as substituted by 2008 No 90 s 8)

31.10 Restriction on advertising of proceeding

(1) No person may, unless the court otherwise directs, publish any advertisement required by rule 31.9 or any other information relating to the statement of claim until at least 5 working days

High Court Rules—*continued*
Part 31—*continued*

after the date on which the statement of claim is served on the defendant company.

(2) Subclause (1) does not apply when a statement of claim has been filed by the defendant company.

Compare: 1908 No 89 Schedule 2 r ~~700J~~ 31.10 (as substituted by 2008 No 90 s 8)

31.11 Power to stay liquidation proceedings

(1) If an application for putting a company into liquidation is made under rule 31.3, the defendant company, or, with the leave of the court, any creditor or shareholder of that company or the Registrar of Companies, may, within 5 working days after the date of the service of the statement of claim on the defendant company, apply to the court—

(a) for an order restraining publication of an advertisement required by rule 31.9 or any other information relating to that statement of claim; and

(b) for an order staying any further proceedings in relation to the liquidation.

(2) The court must treat an application under subclause (1) as if it were an application for an interim injunction and, if it makes the order sought, it may do so on whatever terms the court thinks just.

(3) The inherent jurisdiction of the court is not limited by this rule.

Compare: 1908 No 89 Schedule 2 r ~~700K~~ 31.11 (as substituted by 2008 No 90 s 8)

31.12 Service of proceeding

(1) Every statement of claim filed under rule 31.3 must, unless the defendant company has brought the proceeding, be served, together with the verifying affidavit and notice of proceeding, upon the defendant company.

High Court Rules—*continued*
Part 31—*continued*

(2) Service under this rule must be effected not less than 15 working days before the date of hearing appointed or fixed under rule 31.6.

Compare: 1908 No 89 Schedule 2 r ~~700L~~ 31.12 (as substituted by 2008 No 90 s 8)

31.13 Affidavit of service

(1) The plaintiff must, before the hearing, file an affidavit of service in form C 8 proving the service of the statement of claim, verifying affidavit, and notice of proceeding on the defendant company.

(2) Subclause (1) does not apply—

(a) if the defendant company has brought the proceeding; or

(b) in relation to service on a person who, before the hearing, files a statement of defence.

Compare: 1908 No 89 Schedule 2 r ~~700M~~ 31.13 (as substituted by 2008 No 90 s 8)

31.14 Evidence of advertising

The plaintiff must, before the hearing, file in the registry of the court—

(a) copies of the advertisements published in accordance with rule 31.9; and

(b) a statement of the newspapers in which, and the dates on which, the advertisements appeared.

Compare: 1908 No 89 Schedule 2 r ~~700N~~ 31.14 (as substituted by 2008 No 90 s 8)

31.15 Entitlement to copy of statement of claim, etc

(1) Shareholders and creditors of the defendant company, and the Registrar of Companies, are entitled to be supplied by the plaintiff's solicitor with a copy of the statement of claim, verifying affidavit, and notice of proceeding, within 24 hours after requiring it.

High Court Rules—*continued*
Part 31—*continued*

(2) The price must not be more than 50 cents per page (inclusive of goods and services tax).

Compare: 1908 No 89 Schedule 2 r ~~700O~~ 31.15 (as substituted by 2008 No 90 s 8)

31.16 Statement of defence

(1) Rule 5.47 does not apply to a proceeding commenced by the filing of a statement of claim under rule 31.3.

(2) A person, being the defendant company or a creditor or shareholder of that company, who intends to defend a proceeding commenced by a statement of claim under rule 31.3 must file a statement of defence in the registry of the court named in the notice of proceeding.

(3) A person who files a statement of defence must serve a copy of that statement of defence on—

(a) the plaintiff; and

(b) any other person who, when the statement of defence is filed, has filed a statement of defence in the proceeding.

(4) If the defendant company has filed a statement of defence, a statement of defence filed by a creditor or shareholder of that company must state specifically any grounds of opposition that are additional to those appearing in the company's statement of defence.

Compare: 1908 No 89 Schedule 2 r ~~700P~~ 31.16 (as substituted by 2008 No 90 s 8)

31.17 Time for filing statement of defence

A statement of defence must be filed within 10 working days after the date on which the statement of claim is served on the person filing the statement of defence.

Compare: 1908 No 89 Schedule 2 r ~~700Q~~ 31.17 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 31—*continued*

31.18 Appearance

A person (other than the defendant company) who intends to appear on the hearing of the proceeding may, without filing a statement of defence, file an appearance in form C 9—

(a) stating that the person intends to appear; and

(b) indicating whether that person supports or opposes the application to put the company into liquidation.

Compare: 1908 No 89 Schedule 2 r ~~700R~~ 31.18 (as substituted by 2008 No 90 s 8)

31.19 Time for filing appearance

An appearance must be filed not later than 2 working days before the date of hearing.

Compare: 1908 No 89 Schedule 2 r ~~700S~~ 31.19 (as substituted by 2008 No 90 s 8)

31.20 Effect of failure to file statement of defence or appearance

If a person who is entitled to file a statement of defence or an appearance in a proceeding commenced by the filing of a statement of claim under rule 31.3 fails to file a statement of defence or an appearance within the time prescribed, that person must not, without an order for extension of time granted on application made under rule 31.22 or the special leave of the court, be allowed to appear at the hearing of the proceeding.

Compare: 1908 No 89 Schedule 2 r ~~700T~~ 31.20 (as substituted by 2008 No 90 s 8)

31.21 Evidence as to unpaid debts

(1) A certificate by the solicitor for the plaintiff that, after having made due inquiries, the solicitor is satisfied that a debt remains unpaid may be accepted by the court as sufficient prima facie evidence that that debt remains unpaid.

(2) Subject to any direction of the court, evidence that a debt remains unpaid may be given by an affidavit sworn by or on be-

High Court Rules—*continued*
Part 31—*continued*

half of the plaintiff not earlier than 2 working days before the date of hearing.

Compare: 1908 No 89 Schedule 2 r ~~700U~~ 31.21 (as substituted by 2008 No 90 s 8)

31.22 Interlocutory applications

(1) When a proceeding is commenced under rule 31.3, an interlocutory application (unless made with the leave of the court) may not be made to the court before the date of hearing specified in the notice of proceeding served with that statement of claim unless it is—

(a) an application for an extension or abridgement of time; or

(b) an application under rule 1.9, ~~or rule~~ 31.6(2), or 31.11; or

(c) an application for the appointment of an interim liquidator; or

(d) an application for directions; or

(e) an application to excuse non-compliance with any rule in this Part.

(2) When a statement of defence is filed in a proceeding commenced under rule 31.3 and the hearing of that proceeding is adjourned for the allocation of a hearing date on a defended basis, these rules apply as if the proceeding had been commenced by a statement of claim filed under Part 5 and not under rule 31.3.

(3) The inherent jurisdiction of the court is not limited by this rule.

Compare: 1908 No 89 Schedule 2 r ~~700V~~ 31.22 (as substituted by 2008 No 90 s 8)

31.23 Power to appoint interim liquidator

(1) When a proceeding for putting a company into liquidation has been commenced under rule 31.3, the plaintiff and any person entitled to apply to the court for the appointment of a liquidator under section 241(2)(c) of the Companies Act 1993 may apply to the court for the appointment of an interim liquidator.

High Court Rules—*continued*
Part 31—*continued*

(2) If the court is satisfied, upon proof by affidavit, that there is sufficient ground for the appointment of an interim liquidator, it may make the appointment, and may limit the rights and powers of the interim liquidator in any manner it thinks just.

Compare: 1908 No 89 Schedule 2 r ~~700W~~ 31.23 (as substituted by 2008 No 90 s 8)

31.24 Additional and substituted plaintiffs in liquidation proceeding

(1) This rule applies to any person who is entitled to make an application to the court for putting a company into liquidation under section 241(2)(c) of the Companies Act 1993.

(2) The person may become a plaintiff in that proceeding by filing in the registry of the court and serving on all the parties to the proceeding—

(a) a statement of claim in form C 1; and

(b) a notice of proceeding in form C 3; and

(c) an affidavit in form C 4.

(3) Those documents must be filed and served not later than 2 working days before the date of hearing of the proceeding.

(4) If a person has filed an appearance under rule 31.18 in a proceeding to put a company into liquidation and, on the day appointed for the hearing, or on any day to which the hearing has been adjourned, no plaintiff wishes then to proceed with the hearing of the application to put the company into liquidation, the court may, on the oral application of that person,—

(a) add that person as a plaintiff in the proceeding; or

(b) substitute that person for the plaintiff or plaintiffs or any of the plaintiffs in the proceeding.

(5) The addition or substitution of a person as a plaintiff under subclause (4) must be subject to the condition that that person file in the registry of the court and serve on all the other parties to the proceeding, within 5 working days after the day on which the addition or substitution is made,—

(a) a statement of claim in form C 1; and

(b) a notice of proceeding in form C 3; and

High Court Rules—*continued*
Part 31—*continued*

(c) an affidavit in form C 4.

(6) If a person to whom rule 31.16(2) applies is a person on whom the statement of claim is served under this rule, that person must file a statement of defence within 10 working days after the date on which the statement of claim is served upon that person.

Compare: 1908 No 89 Schedule 2 r ~~700X~~ 31.24 (as substituted by 2008 No 90 s 8)

31.25 Consolidation of proceedings

(1) If 2 or more proceedings have been commenced in respect of the same company under rule 31.3, the court may order those proceedings to be consolidated on such terms as it thinks just.

(2) Nothing in this rule limits the provisions of rules 10.12 and 10.13.

Compare: 1908 No 89 Schedule 2 r ~~700Y~~ 31.25 (as substituted by 2008 No 90 s 8)

31.26 Discontinuance of proceeding

A proceeding commenced under rule 31.3 may be discontinued only with the leave of the court.

Compare: 1908 No 89 Schedule 2 r ~~700YA~~ 31.26 (as substituted by 2008 No 90 s 8)

31.27 Requirements in relation to order appointing interim liquidator

The order appointing the interim liquidator must—

(a) show the number of the proceeding; and

(b) state the nature and a short description of the property of which the interim liquidator is ordered to take possession; and

(c) state the duties to be performed by the interim liquidator.

Compare: 1908 No 89 Schedule 2 r ~~700Z~~ 31.27 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 31—*continued*

31.28 Costs, charges, and expenses of interim liquidator and Official Assignee

(1) Subject to an order of the court, subclause (2) applies if—
- (a) no order for putting the defendant company into liquidation is made in the proceeding; or
- (b) an order for putting the defendant company into liquidation is rescinded; or
- (c) all proceedings for putting the defendant company into liquidation are stayed.

(2) The person holding registry as interim liquidator is entitled to be paid, out of the property of the defendant company, all costs, charges, and expenses properly incurred by that person as interim liquidator or, if that person is the Official Assignee, whatever sum the court directs.

(3) If a person other than the Official Assignee has been appointed interim liquidator and the Official Assignee has taken steps for the purpose of obtaining a statement of affairs or has performed another duty prescribed by this Part, the interim liquidator must pay the Official Assignee whatever sum, if any, the court directs.

Compare: 1908 No 89 Schedule 2 r ~~700ZA~~ 31.28 (as substituted by 2008 No 90 s 8)

Order to put company into liquidation

31.29 Obligation to send notice of order appointing liquidator or interim liquidator of company

(1) When the court has made an order appointing a person to be liquidator of a company, or has made an order appointing an interim liquidator before an order putting the company into liquidation is made, the Registrar of the court must, on the same day, send to the liquidator or interim liquidator a notice informing him or her of his or her appointment.

(2) The notice must be in form C 10 or C 11, as the case requires, with any variations the circumstances require.

Compare: 1908 No 89 Schedule 2 r ~~700ZB~~ 31.29 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 31—*continued*

31.30 Order and copies to be sealed

The plaintiff or the plaintiff's solicitor must, no later than 2 working days after the day on which an order putting a company into liquidation is made, leave the order and 2 copies of it at the registry of the court for sealing.

Compare: 1908 No 89 Schedule 2 r ~~700ZC~~ 31.30 (as substituted by 2008 No 90 s 8)

31.31 Contents of order putting company into liquidation

(1) An order putting a company into liquidation must be in form C 12.

(2) An order for the appointment of an interim liquidator must be in form C 13.

Compare: 1908 No 89 Schedule 2 r ~~700ZD~~ 31.31 (as substituted by 2008 No 90 s 8)

31.32 Transmission of order putting company into liquidation

When an order that a company be put into liquidation or an order for the appointment of an interim liquidator has been made,—

(a) 1 copy of the order sealed with the seal of the court must immediately be sent by post or otherwise by the Registrar to the liquidator or interim liquidator, as the case may be:

(b) 1 copy of the order sealed with the seal of the court must be served by the plaintiff on the company in accordance with the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r ~~700ZE~~ 31.32 (as substituted by 2008 No 90 s 8)

31.33 Service of order made under section 173 of Companies Act 1993

[revoked]

High Court Rules—*continued*
Part 31—*continued*

31.34 Service of notice to officer executing process that company being put into liquidation

(1) This rule applies to a notice given for the purposes of section 252 of the Companies Act 1993, which is a notice—
- (a) that an application has been made to the court to appoint a liquidator; or
- (b) that the court has made an order appointing a liquidator; or
- (c) that the court has appointed an interim liquidator; or
- (d) of the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or
- (e) that a special resolution has been passed appointing a liquidator; or
- (f) of the calling of a meeting of the board at which a resolution is proposed to appoint a liquidator; or
- (g) that a resolution has been passed appointing a liquidator.

(2) The notice must be in writing and addressed to the officer required to act on it, and may be served by being delivered by hand or by registered post at the office of that officer.

Compare: 1908 No 89 Schedule 2 r ~~700ZG~~ 31.34 (as substituted by 2008 No 90 s 8)

31.35 Procedure in respect of miscellaneous applications

(1) Subpart 2 of Part 7, relating to interlocutory applications, applies to applications to the court in respect of—
- (a) a defendant company sought to be put into liquidation under section 241(2)(c) of the Companies Act 1993; or
- (b) a company in respect of which a liquidator has been appointed under section 241(2)(c) of the Companies Act 1993.

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) An application specified in subclause (1) must have the same heading as the heading on the application for putting the company into liquidation.

(4) Subclause (1) does not apply to—
- (a) an application under rule 31.36; or

High Court Rules—*continued*
Part 31—*continued*

(b) an application to which Part 18 or 19 applies.

Compare: 1908 No 89 Schedule 2 r ~~700ZH~~ 31.35 (as substituted by 2008 No 90 s 8)

31.36 Applications involving allegations of fraud, negligence, misfeasance, or similar behaviour

(1) An application must be made by filing a statement of claim under these rules if it relates to a company described in subclause (2) and involves an allegation of fraud, negligence, misfeasance, or similar behaviour.

(2) The companies are—

(a) a defendant company in relation to an application made to put that company into liquidation under section 241(2)(c) of the Companies Act 1993; or

(b) a company in respect of which a liquidator has been appointed under section 241(2)(c) of the Companies Act 1993; or

(c) a company in respect of which an application under section 174 of the Companies Act 1993 is pending.

(3) The applicant must, as soon as practicable after the statement of defence has been filed or the time for filing a statement of defence has expired, file an application for directions as to the conduct of proceedings under rule 7.43A.

(4) The statement of claim must have the same heading as the heading on the application for putting the company into liquidation or for the order under section 174 of the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r ~~700ZI~~ 31.36 (as substituted by 2008 No 90 s 8)

31.37 Liquidator's notice to set aside voidable transaction or voidable charge

A notice under section 294(1) of the Companies Act 1993 must—

(a) contain the heading in form C 14; and

(b) be in form C 15 or C 16 as appropriate; and

High Court Rules—*continued*
Part 31—*continued*

(c) comply with rules 5.11 and 5.44 (with any necessary modifications).

Compare: 1908 No 89 Schedule 2 r ~~700ZJ~~ 31.37 (as substituted by 2008 No 90 s 8)

31.38 Proper registry of court

(1) A notice under section 294(1) of the Companies Act 1993 must,—

(a) if the company has been put into liquidation by the court, be filed in the registry of the court in which the order putting the company into liquidation was made under the liquidation file number (even though the heading of the notice is different); and

(b) in any other case, be filed in the registry of the court in the town where, or the registry of the court in the town nearest to which, the registered office of the company in liquidation was situated at the date of liquidation.

(2) If more than 1 notice under section 294(1) of the Companies Act 1993 relating to the same company in liquidation has been filed under subclause (1)(b), those notices must be filed under the same file number (even though the heading of each notice is different).

Compare: 1908 No 89 Schedule 2 r ~~700ZK~~ 31.38 (as substituted by 2008 No 90 s 8)

31.39 Transitional provision for companies registered under the Companies Act 1955

Part 9A of the High Court Rules as in force immediately before the ~~coming into force of these rules applies~~ commencement of the Schedule of the Judicature (High Court Rules) Amendment Act 2008 applies, even though it has been repealed, to companies remaining registered under the Companies Act 1955.

Compare: 1908 No 89 Schedule 2 r 31.39 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*

Part 32
Freezing orders

32.1 Interpretation

In this Part, unless the context otherwise requires,—

ancillary order means an order made under rule 32.3

another court means a court outside New Zealand or a court in New Zealand other than the High Court

applicant means a person who applies for a freezing order or an ancillary order

freezing order means an order made under rule 32.2

judgment includes an order

respondent means a person against whom a freezing order or an ancillary order is sought or made.

Compare: 1908 No 89 Schedule 2 r 32.1 (as substituted by 2008 No 90 s 8)

32.2 Freezing order

(1) The court may make an order (a **freezing order**), on or without notice to a respondent in accordance with this Part.

(2) A freezing order may restrain a respondent from removing any assets located in or outside New Zealand or from disposing of, dealing with, or diminishing the value of, those assets.

(3) An applicant for a freezing order without notice to a respondent must fully and frankly disclose to the court all material facts, including—

(a) any possible defences known to the applicant; and

(b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.

(4) An application for a freezing order must be made by interlocutory application under Part 7 or originating application under Part 19, which Parts apply subject to this Part.

(5) An applicant for a freezing order must file a signed undertaking that the applicant will comply with any order for the pay-

High Court Rules—*continued*
Part 32—*continued*

ment of damages to compensate the respondent for any damage sustained in consequence of the freezing order.
Compare: 1908 No 89 Schedule 2 r 32.2 (as substituted by 2008 No 90 s 8)

32.3 Ancillary order

(1) The court may make an order (an **ancillary order**) ancillary to a freezing order or prospective freezing order if the court considers it just.

(2) Without limiting the generality of subclause (1), an ancillary order may be made for any of the following purposes:
- (a) eliciting information relating to assets relevant to the freezing order or prospective freezing order:
- (b) determining whether the freezing order should be made:
- (c) appointing a receiver of the assets that are the subject of the freezing order.

(3) An ancillary order is subject to the court's jurisdiction to decide an objection raised on the ground of the privilege against self-incrimination conferred by section 60 of the Evidence Act 2006.
Compare: 1908 No 89 Schedule 2 r 32.3 (as substituted by 2008 No 90 s 8)

32.4 Respondent need not be party to proceeding

The court may make a freezing order or an ancillary order against a respondent even if the respondent is not a party to a proceeding in which substantive relief is sought against the respondent.
Compare: 1908 No 89 Schedule 2 r 32.4 (as substituted by 2008 No 90 s 8)

32.5 Order against judgment debtor or prospective judgment debtor or third party

(1) This rule applies if—
- (a) judgment has been given in favour of an applicant by—
  - (i) the court; or
  - (ii) in the case of a judgment to which subclause (2) applies, another court; or

High Court Rules—*continued*
Part 32—*continued*

(b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—
  (i) the court; or
  (ii) in the case of a cause of action to which subclause (3) applies, another court.

(2) This subclause applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the court.

(3) This subclause applies to a cause of action if—
(a) there is sufficient prospect that the other court will give judgment in favour of the applicant; and
(b) there is a sufficient prospect that the judgment will be registered in or enforced by the court; and
(c) there is a real connecting link between the subject matter of the order sought and the territorial jurisdiction of the New Zealand court; and
(d) the order sought would not be inconsistent with interim relief granted by the other court.

(4) The court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because—
(a) the judgment debtor, prospective judgment debtor, or another person might abscond; or
(b) the assets of the judgment debtor, prospective judgment debtor, or another person might be—
  (i) removed from New Zealand or from a place inside or outside New Zealand; or
  (ii) disposed of, dealt with, or diminished in value (whether the assets are in or outside New Zealand).

(5) The court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a **third party**) if the court is satisfied, having regard to all the circumstances, that—

High Court Rules—*continued*
Part 32—*continued*

(a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because—
  (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
  (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
(b) a process in the court is or may ultimately be available to the applicant, as a result of a judgment or prospective judgment, under which the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.

Compare: 1908 No 89 Schedule 2 r 32.5 (as substituted by 2008 No 90 s 8)

32.6 Form and further terms of freezing order

(1) A freezing order must be issued in form G 38.

(2) If the likely maximum amount of the applicant's claim is known, the value of the assets covered by the freezing order must not exceed that amount together with interest on that amount and costs.

(3) The freezing order must not prohibit the respondent from dealing with the assets covered by the order for the purpose of—
  (a) paying ordinary living expenses; or
  (b) paying legal expenses related to the freezing order; or
  (c) disposing of assets, or making payments, in the ordinary course of the respondent's business, including business expenses incurred in good faith.

(4) Unless there are special circumstances, the court must require the applicant for a freezing order to give appropriate undertakings, including an undertaking as to damages.

(5) If the applicant has, or may later have, insufficient assets within New Zealand to discharge the obligation created by

High Court Rules—*continued*
Part 32—*continued*

an undertaking as to damages, the court may require the applicant to provide security for that obligation in a form and in an amount fixed by a Judge or, if the Judge so directs, the Registrar.

Compare: 1908 No 89 Schedule 2 r 32.6 (as substituted by 2008 No 90 s 8)

32.7 Duration of freezing order

(1) A freezing order made without notice to the respondent must state that it is limited to a particular date, which should be as early as practicable after the freezing order is made.

(2) The respondent must be informed that on that date the respondent will have an opportunity to be heard by the court.

(3) On the date referred to in subclause (1) the applicant has the onus of satisfying the court that the freezing order should be continued or renewed.

Compare: 1908 No 89 Schedule 2 r 32.7 (as substituted by 2008 No 90 s 8)

32.8 Discharge or variation of freezing order

(1) A freezing order must reserve leave to the respondent to apply to the court to discharge or vary the freezing order on whatever period of notice to the applicant the court considers just.

(2) An application by the respondent to discharge or vary the freezing order must be treated as an urgent application by the court.

Compare: 1908 No 89 Schedule 2 r 32.8 (as substituted by 2008 No 90 s 8)

32.9 Jurisdiction

This Part does not affect the jurisdiction of the court under any enactment to make an order freezing assets.

Compare: 1908 No 89 Schedule 2 r 32.9 (as substituted by 2008 No 90 s 8)

32.10 Costs

(1) The court may make any order as to costs it considers just in relation to an order made under this Part.

High Court Rules—*continued*
Part 32—*continued*

(2) Without limiting the generality of subclause (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.
Compare: 1908 No 89 Schedule 2 r 32.10 (as substituted by 2008 No 90 s 8)

Part 33
Search orders

33.1 Interpretation

In this Part, unless the context otherwise requires,—

applicant means an applicant for a search order

described includes described generally, whether by reference to a class or otherwise

premises includes a vehicle or vessel of any kind

record includes a copy, photograph, film, or sample

respondent means a person against whom a search order is sought or made

search order means an order made under rule 33.2.

Compare: 1908 No 89 Schedule 2 r 33.1 (as substituted by 2008 No 90 s 8)

33.2 Search order

(1) This rule applies only if the evidence is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

(2) The court may make an order (a **search order**), in a proceeding or before a proceeding commences, with or without notice to the respondent, to—

(a) secure or preserve evidence; and

(b) require a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence.

(3) Form G 39 must be used but may be varied as the circumstances require.

(4) A search order must be served on the respondent.

Compare: 1908 No 89 Schedule 2 r 33.2 (as substituted by 2008 No 90 s 8)

High Court Rules—*continued*
Part 33—*continued*

33.3 Requirements for grant of search order

The court may make a search order under rule 33.2 only if the court is satisfied that—

(a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

(c) there is sufficient evidence in relation to a respondent that—

(i) the respondent possesses relevant evidentiary material; and

(ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

Compare: 1908 No 89 Schedule 2 r 33.3 (as substituted by 2008 No 90 s 8)

33.4 Restriction on entrants

(1) The permitted persons identified under rule 33.2(2)(b) must not include the applicant in person, or, if the applicant is not a natural person, any director, officer, employee, partner, or other person associated with the applicant, other than the applicant's solicitor.

(2) The number of those permitted persons must be as small as is reasonably practicable in the circumstances.

Compare: 1908 No 89 Schedule 2 r 33.4 (as substituted by 2008 No 90 s 8)

33.5 Applicant's undertaking and duty

(1) As a condition of the making of the order, the applicant must undertake to the court to pay the reasonable costs and disbursements of any independent solicitor appointed under rule 33.7.

(2) The court must require the applicant for a search order to give appropriate undertakings, including an undertaking as to damages.

(3) If the applicant has, or may later have, insufficient assets within New Zealand to discharge the obligation created by

High Court Rules—*continued*
Part 33—*continued*

an undertaking as to damages, the court may require the applicant to provide security for that obligation in a form and in an amount fixed by a Judge or, if the Judge so directs, the Registrar.

(4) An applicant for a search order without notice to a respondent must fully and frankly disclose to the court all material facts, including—

(a) any possible defences known to the applicant; and

(b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.

Compare: 1908 No 89 Schedule 2 r 33.5 (as substituted by 2008 No 90 s 8)

33.6 Terms of search order

(1) A search order may direct a named or described person—

(a) to permit, or arrange to permit, another or other named or described person or persons specified—

(i) to enter specified premises; and

(ii) to take other steps including searching for, inspecting, or removing a listed or described thing and making or obtaining a record of it or information contained in it; and

(b) to provide, or arrange to provide, named or described persons with any described information, thing, or service; and

(c) to allow other named or described persons, including computer specialists not associated with either the applicant or the respondent, to take and retain in their custody, or copy, any described thing; and

(d) not to disclose any information about the order, for up to 3 working days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and

(e) to do or refrain from doing any specified act.

(2) A search order may contain whatever other incidental provisions the court considers just.

High Court Rules—*continued*
Part 33—*continued*

(3) A search order must fix a date on which the court will consider a report on the search from the independent solicitors, and any applications related to the matters listed in rule 33.8.
Compare: 1908 No 89 Schedule 2 r 33.6 (as substituted by 2008 No 90 s 8)

33.7 Independent solicitors

(1) If the court makes a search order, the court must appoint 1 or more solicitors, each of whom is independent of the applicant's solicitors (the **independent solicitors**), to supervise the execution of the order, and to do whatever things in relation to the order the court considers appropriate.

(2) The court may appoint an independent solicitor to supervise the carrying out of the order at any 1 or more premises, and a different independent solicitor or solicitors to supervise execution of the order at other premises, with each independent solicitor having power to do whatever things in relation to the order the court considers appropriate.

(3) Service of a search order, or of any other document ordered to be served on a respondent, on a person appearing to an independent solicitor to be responsible and in charge of premises, is to be treated as service on the respondent.

(4) A search order must fix a date on which the court will consider a report on the search from the independent solicitors, and any applications related to the matters in rule 33.8.
Compare: 1908 No 89 Schedule 2 r 33.7 (as substituted by 2008 No 90 s 8)

33.8 Review of search

(1) On the date fixed under rule 33.7(4) the applicant and the respondent and the independent solicitors are entitled to appear, and the court may make any order it considers just.

(2) In making an order under subclause (1), the court must consider the following:

(a) what is to happen to any goods removed from the premises or to any copies that have been made:

(b) how the confidentiality to which the respondent is entitled is to be maintained:

High Court Rules—*continued*
Part 33—*continued*

(c) any privilege claim:
(d) any application by a party:
(e) any issue raised by an independent solicitor.

Compare: 1908 No 89 Schedule 2 r 33.8 (as substituted by 2008 No 90 s 8)

33.9 Costs

(1) The court may make any order as to costs that it considers just in relation to an order made under this Part.

(2) Without limiting the generality of subclause (1), an order as to costs includes an order as to the costs of any person affected by a search order.

Compare: 1908 No 89 Schedule 2 r 33.9 (as substituted by 2008 No 90 s 8)

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Using High Court Rules forms

Purpose of forms

The High Court Rules forms are templates you can use to prepare a document for a proceeding in the High Court.

The forms are grouped as follows:

- general forms (G 1, G 2, etc) are those that the High Court Rules require, or authorise to be used, in a standard High Court proceeding:
- judgment forms (J 1, J 2, etc) are those used when entering a formal judgment on the court record:
- enforcement forms (E 1, E 2, etc) are those used when a judgment is being enforced:

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- probate forms (PR 1, PR 2, etc) are those used in connection with applications for probate or administration:
- admiralty forms (AD 1, AD 2, etc) are those used in the High Court's admiralty jurisdiction over ships and cargo:
- arbitration forms (Arb 1, Arb 2, etc) are those used when the High Court's jurisdiction is invoked in relation to an arbitration:
- company forms (C 1, C 2, etc) are those used in relation to a company's liquidation:
- bankruptcy forms (B 1, B 2, etc) are those used when a person is being adjudicated bankrupt, and in the administration of the bankrupt estate.

Preparing forms

Before preparing a form, check whether a High Court Rule applies. The relevant rule number appears at the top of each form. If a rule applies, comply with it.

To prepare a document using the forms

- use the general heading as set out in form G 1 at the beginning of each document or any modified heading indicated:
- replace text in [*square brackets*] with the relevant text:
- when alternative statements are provided (statement A, statement B, etc), select the relevant statement or statements that apply and omit the others:
- if required, renumber the numbered paragraphs so that the final document is numbered sequentially:
- remove all instructions (in italics) in the documents filed in the High Court or served on other parties—this includes instructions within square brackets, footnotes, and statement labels (statement A, statement B, etc).

High Court Rules—*continued*

Format and content of forms

The High Court Rules specify requirements for the presentation of forms. In particular, you should refer to the following rules:

- Rule 1.21: this rule states that you may vary a prescribed form as the circumstances of the particular case require:
- Rules 5.2 to 5.16: these rules indicate how the completed forms should be formatted and how the content should be presented. This includes specifications for page size, margins, numbering of pages, and division of content into numbered paragraphs:
- Rule 5.10: this rule prescribes the content and format of the cover sheet of a document. When filing your first document as a party in a proceeding, at the end of it you must set out a memorandum containing prescribed information (*see* rule 5.44 and form G 10).

Swearing and affirming

Some documents, eg, affidavits, need to be solemnly verified. A form will indicate this by using the word "sworn" at the end of the document. This kind of document must be verified before a person who is authorised to take oaths, such as a solicitor or a Justice of the Peace.

However, under the Oaths and Declarations Act 1957 you may affirm instead of swearing an oath. "Affirming" means "solemnly, sincerely, and truly declaring and affirming" the contents of a document.

If you choose to affirm, change "sworn" to "affirmed" where it occurs in the form.

High Court Rules—*continued*

Form G 1 rr 5.11(2), 19.9(1)

General heading for documents filed in proceeding

In the High Court of New Zealand
[*Name of registry*] Registry
No: [*number of proceeding*]
Under the [*name of Act under which the proceeding is authorised*]
In the matter of [*specify matter to which proceeding relates*]
Between [*full name, place of residence, occupation*]
(plaintiff)
And [*full name, place of residence, occupation*]
(defendant)

Include the following if there is a counterclaim against both the plaintiff and another person.
Between [*full name, place of residence, occupation*]
(defendant)
And [*full name, place of residence, occupation*]
(plaintiff)
And [*full name, place of residence, occupation*]
(counterclaim defendant)

High Court Rules—*continued*

Form G 2 rr 5.23(2), 5.57(4)

Notice of proceeding

To complete this notice,—

- *complete and insert the heading as set out in form G 1*:
- *complete and attach the memorandum as set out in form G 3*.

To the defendant/defendants* and any other person directed to be served.

*Select one.

This document notifies you that you must file in this registry of the court a statement of defence to the plaintiff's claim (a copy of which is served with this notice). You must do this within 25* working days after the date on which you have been served with this notice. If you do not, the plaintiff may at once proceed to judgment on the plaintiff's claim, and judgment may be given in your absence.

If a trial of the proceeding is necessary, it will be held in this court at [*place*] at a time to be fixed by the court.

*Substitute "30", in accordance with rules 5.47(3) and 6.35, if this notice is served out of New Zealand.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Notes

If you file a statement of defence in the court, you must also provide the plaintiff with initial disclosure of documents in accordance with rule 8.4.

If you file a statement of defence in the court, you will be notified of the date and time of the first case management conference.

The purpose of the conference is to assist the parties in the just, speedy, and inexpensive determination of the proceeding, to make

High Court Rules—*continued*
Form G 2—*continued*

directions as to the conduct of the proceeding, and, where practicable, to make interlocutory orders. The parties will also be assisted to identify, define, and refine the issues in dispute.

You must prepare for and attend the first case management conference. You will be expected to have discussed with the plaintiff the matters set out in Schedule 5 of the High Court Rules. You or your solicitor must file a memorandum relating to the procedural matters set out in rule 7.3 of the High Court Rules.

Include the following paragraph if it applies, otherwise omit.

The court has directed that this notice and the statement of claim be served not only on the defendant/defendants* but also on the following persons: [*full name, place of residence, and occupation of each person or entity directed to be served*].

*Select one.

Date:

(Registrar/Deputy Registrar*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

High Court Rules—*continued*

Form G 3 r 5.23(4)
Memorandum (general form)

Advice

1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—

(a) it can only carry on a proceeding in the court by a solicitor; and

(b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 *For this paragraph select the statement that applies.*

Statement A
The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B
The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C
The plaintiff has applied for legal aid for the purpose of this proceeding.

Statement of defence

4 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

High Court Rules—*continued*
Form G 3—*continued*

5 *Omit this paragraph if it conflicts with a direction by the court.* In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.

6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

Counterclaim

7 If you have a counterclaim against the plaintiff, you must file a statement of that counterclaim in the registry of the court, and serve it on the plaintiff and on any other person against whom the same claim is made. This must be done within the same period of time you have for filing a statement of defence.

Witnesses

8 Summonses for the attendance of witnesses will be issued on application at the registry of the court.

Registry hours

9 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:
Signature:
(Registrar/Deputy Registrar*)
*Select one.

High Court Rules—*continued*

Form G 4

r 5.23(4)

Memorandum to be endorsed on form G 2 in proceeding under Declaratory Judgments Act 1908

Advice

1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—

(a) it can only carry on a proceeding in the court by a solicitor; and

(b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 *For this paragraph select the statement that applies.*

Statement A
The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B
The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C
The plaintiff has applied for legal aid for the purpose of this proceeding.

Statement of defence

4 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

High Court Rules—*continued*
Form G 4—*continued*

5 *Omit this paragraph if it conflicts with a direction by the court.* In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.

6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

Appearance objecting to jurisdiction of court

7 If you object to the jurisdiction of the court to hear and determine this proceeding, you may file in the registry of the court an appearance stating your objection and the grounds for it instead of a statement of defence, and serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing a statement of defence.

8 An appearance is not treated as a submission to the jurisdiction of the court.

Appearance for ancillary purposes

9 If you do not oppose the plaintiff's claim but want to be heard on an ancillary matter (including costs), you may, without filing a statement of defence,—

(a) file an appearance stating the matters on which you want to be heard; and

(b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

10 Those matters will not subsequently be determined except on notice to you.

Appearance reserving rights

11 If you do not oppose the plaintiff's claim but want to reserve your rights in the event that another person becomes a party to the proceeding or that a party takes a step in the proceeding that

High Court Rules—*continued*
Form G 4—*continued*

is against your interests, you may, without filing a statement of defence,—

(a) file an appearance reserving those rights in the registry of the court; and

(b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

12 Subsequently,—

(a) you will be entitled to be served with all documents relevant to the reserved rights that may be filed in the proceeding by a person who is, or may become, a party; and

(b) with the leave of the court, you may file and serve a statement of defence and any other document within the time and on the terms and conditions prescribed by the court.

Registry hours

13 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form G 5 r 5.23(4)

Memorandum to be endorsed on form G 2 in proceeding under Family Protection Act 1955

Advice

1 Although you do not have to employ a solicitor for the purpose of this proceeding it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—

(a) it can only carry on a proceeding in the court by a solicitor; and

(b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 *For this paragraph select the statement that applies.*

Statement A
The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B
The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C
The plaintiff has applied for legal aid for the purpose of this proceeding.

Statement of defence

4 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

High Court Rules—*continued*
Form G 5—*continued*

5 *Omit this paragraph if it conflicts with a direction by the court.* In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.

6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

Appearance objecting to jurisdiction of court

7 If you object to the jurisdiction of the court to hear and determine this proceeding, you may file in the registry of the court an appearance stating your objection and the grounds for it instead of a statement of defence, and serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing a statement of defence.

8 An appearance is not treated as a submission to the jurisdiction of the court.

Appearance for ancillary purposes

9 If you do not oppose the plaintiff's claim but want to be heard on an ancillary matter (including costs), you may, without filing a statement of defence,—

(a) file an appearance stating the matters on which you want to be heard; and

(b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

10 Those matters will not subsequently be determined except on notice to you.

Appearance reserving rights

11 If you do not oppose the plaintiff's claim but want to reserve your rights in the event that another person becomes a party to the proceeding or that a party takes a step in the proceeding that

High Court Rules—*continued*
Form G 5—*continued*

is against your interests, you may, without filing a statement of defence,—

(a) file an appearance reserving those rights in the registry of the court; and

(b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

12 Subsequently,—

(a) you will be entitled to be served with all documents relevant to the reserved rights that may be filed in the proceeding by a person who is, or may become, a party; and

(b) with the leave of the court, you may file and serve a statement of defence and any other document within the time and on the terms and conditions prescribed by the court.

Claim by defendant

13 If you want to make a claim under the Family Protection Act 1955 to provide for yourself out of the estate of the deceased, you must file a statement of claim setting out your claim and supporting facts, and serve a copy of it on—

(a) the plaintiff; and

(b) the defendant; and

(c) any other person (other than yourself) directed to be served with the plaintiff's proceeding.

This must be done within the same period of time you have for filing a statement of defence.

Registry hours

14 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

High Court Rules—*continued*
Form G 5—*continued*

Date:
Signature:
(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form G 6

r 6.31

Notice to defendant served overseas

Add this notice to form G 3, G 4, or G 5 as appropriate.

Since you are resident outside New Zealand you are further notified that—

1 The plaintiff has commenced a proceeding against you in the High Court of New Zealand, claiming the relief specified in the attached statement of claim.

2 Although you are resident outside New Zealand, the plaintiff claims that this proceeding can be brought against you in the High Court of New Zealand.

3 By New Zealand law, the High Court may exercise jurisdiction in certain classes of case even though the defendant is resident outside New Zealand.

4 [*Specify particular provision(s) of rule 6.27 on which the plaintiff relies to serve the proceeding overseas.*]

5 In this case the plaintiff claims: [*specify facts alleged by the plaintiff to confer jurisdiction*].

6 Even though the court has jurisdiction to hear and determine this proceeding, it may decline to do so if it is satisfied—

(a) that in all the circumstances a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be determined; and

(b) that the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.

7 If you want to dispute the jurisdiction of the court, you must, within the time specified for filing a statement of defence, and instead of filing and serving a statement of defence,—

(a) file an appearance in this court, in the form required by the rules of this court, stating your objection to the court's jurisdiction and the grounds for it; and

(b) serve a copy of it on the plaintiff.

The appearance is not treated as a submission to the jurisdiction of the court.

High Court Rules—*continued*
Form G 6—*continued*

8 If you want to dispute the jurisdiction of the High Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send written authority (by fax or email) to a solicitor in New Zealand to act for you.

Note: This form should not be used if the defendant is to be served in Australia under section 13 of the Trans-Tasman Proceedings Act 2010. Use instead the information that section 15 of that Act requires to be served on the defendant (*see* form 1 of the Schedule of the Trans-Tasman Proceedings Regulations and Rules 2013).

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form G 7

rr 5.52, 29.7

Appearance under protest to jurisdiction

Complete and attach the memorandum as set out in form G 10.

1 The defendant, [*name*], appears under protest to object to the jurisdiction of the court to hear and determine this proceeding.

2 The defendant's objection is based on the following grounds: [*specify grounds*].

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

High Court Rules—*continued*

Form G 8

rr 5.52, 29.7

Appearance for ancillary purpose

Complete and attach the memorandum as set out in form G 10.

The defendant, [*name*], does not oppose the plaintiff's claim but appears in order to be heard on the following matters: [*specify matters*].

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

High Court Rules—*continued*

Form G 9

rr 5.52, 29.7

Appearance reserving rights

Complete and attach the memorandum as set out in form G 10.

The defendant, [*name*], does not oppose the plaintiff's claim but appears in order to reserve the defendant's rights in the event that another person becomes a party to this proceeding, or that a party takes a step in the proceeding that is against the defendant's interests.

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

High Court Rules—*continued*

Form G 10

rr 5.44, 19.8(2)

Memorandum to be attached to first document filed by party

Select the statement that applies.

Statement A

This document is filed by the plaintiff/defendant/third party* in person. The address for service of the plaintiff/defendant/third party* is [*address*].

*Select one.

Documents for service on the filing party may be left at that address for service or may be—

(a) posted to the party at [*post office box address*]; or

(b) left for the party at a document exchange for direction to [*document exchange box number*]; or

(c) transmitted to the party by fax to [*fax number*]; or

Omit this paragraph if email service will not be accepted.

(d) emailed to the party at [*email address*].

Statement B

This document is filed by [*full name*], solicitor for the plaintiff/defendant/third party*, of the firm [*full name*]. The address for service of the plaintiff/defendant/third party* is [*address*].

*Select one.

Documents for service on the filing party may be left at that address for service or may be—

(a) posted to the solicitor at [*post office box address*]; or

(b) left for the solicitor at a document exchange for direction to [*document exchange box number*]; or

(c) transmitted to the solicitor by fax to [*fax number*]; or

(d) *Omit this paragraph if email service will not be accepted.*
emailed to the solicitor at [*email address*].

High Court Rules—*continued*
Form G 10—*continued*

Statement C

This document is filed by [*full name*], solicitor for the plaintiff/defendant/third party*, of the firm [*full name*], whose postal address is [*address*]. The address for service of the plaintiff/defendant/third party* is [*address*].

*Select one.

The solicitor's agent in the proceeding is [*full name*].

Documents for service on the party may be left at that address for service or may be—

(a) posted to the solicitor at [*post office box address*]; or

(b) left for the solicitor at a document exchange for direction to [*document exchange box number*]; or

(c) transmitted to the solicitor by fax to [*fax number*]; or

(d) *Omit this paragraph if email service will not be accepted.*
emailed to the solicitor at [*email address*].

High Court Rules—*continued*

Form G 11 r 5.40(8)

Memorandum as to change of representation and/or address for service

To the Registrar of the High Court at [*place*]

and

To [*name of other party or parties to proceeding*]

This document notifies you that—

1 *For this paragraph select the statement that applies.*

Statement A

The solicitor for the plaintiff/defendant/third party* is now [*name and address of solicitor and solicitor's firm, if any*].

*Select one.

Statement B

The plaintiff/defendant/third party* now acts in person in place of [*name and address of previous solicitor and solicitor's firm, if any*].

*Select one.

2 The address for service of the plaintiff/defendant/third party* is now [*address complying with definition of address for service in rule 1.3*]. Service may also now be effected by—

(a) posting it to the party/party's solicitor* at [*post office box address*]; or

(b) leaving it for the party/party's solicitor* at a document exchange for direction to [*document exchange box number*]; or

(c) transmitting it to the party/party's solicitor* by fax to [*fax number*]; or

Omit this paragraph if email service will not be accepted.

(d) emailing it to the party/party's solicitor* at [*email address*].

*Select one.

High Court Rules—*continued*
Form G 11—*continued*

Date:

Signature*:

(plaintiff/defendant/third party†)

*If this document notifies a change of solicitor, it must be signed by the party personally or by the party's solicitor.

†Select one.

High Court Rules—*continued*

Form G 12 r 1.11(4)

Notice of intention to speak Māori

To the Registrar of the High Court at [*place*]

and

To [*names of parties to be served*]

This document notifies you that [*full name and address of party, counsel, or witness*] intends to speak Māori at—

Select the statement that applies.

Statement A

all case management conferences and hearings relating to the above proceeding.

Statement B

all case management conferences and hearings relating to the above proceeding held after [*specify particular case management conference or hearing after which the person wishes to speak Māori*].

Statement C

the case management conference/the hearing relating to the above proceeding* to be held at [*specify details of particular case management conference or hearing at which the person wishes to speak Māori*].

*Select one.

Date:

Signature:

(signature of party/solicitor/person intending to speak Māori*)

*Select one.

High Court Rules—*continued*
Form G 12—*continued*

Notes

1 The Maori Language Act 1987 entitles the following persons to speak Māori in legal proceedings: the parties to the proceedings, witnesses, counsel, and, with the leave of the court, other persons.

2 If a person intends to speak Māori at all case management conferences and hearings relating to a proceeding or application, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the first case management conference or hearing, file this notice in the registry of the court and serve a copy of the notice on every other party to the proceeding or application.

3 If a person intends to speak Māori at all case management conferences and hearings after a particular case management conference or hearing, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the first case management conference or hearing at which the person intends to speak Māori, file this notice in the registry of the court and serve a copy of the notice on every other party to the proceeding or application.

4 If a person intends to speak Māori at a particular case management conference or hearing, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the case management conference or hearing, file this notice in the registry of the court and serve a copy of the notice on every other party to the proceeding or application.

5 Failure to give notice of intention to speak Māori does not prevent a person speaking Māori at a case management conference or hearing, but the court may—

(a) adjourn the conference or hearing to enable the Registrar to arrange for an interpreter to be available at the adjourned case management conference or hearing; and

(b) treat the failure to give notice as a relevant consideration in an award of costs.

High Court Rules—*continued*

Form G 13
r 12.4(4)

Notice of proceeding when summary judgment sought by plaintiff

To the defendant/defendants*

*Select one.

This document notifies you that—

(a) a claim, a copy of which is served with this document, has been filed by the plaintiff; and

(b) the plaintiff has also applied to this court for immediate judgment against you (on that claim or, if judgment is not sought on the full claim, to the extent stated in the notice of application for summary judgment also served with this document) on the ground that you have no defence (to the plaintiff's claim or to the plaintiff's claim to the extent stated in the application).

Notice of opposition and affidavit setting out defence

1 If you have a defence to the plaintiff's claim, you should, not less than 3 working days before the date of hearing shown in the notice of application for summary judgment (also served with this document),—

(a) file in the court registry at [*place*]—

(i) a notice of opposition; and

(ii) an affidavit sworn by you or on your behalf setting out your defence; and

(b) serve a copy of that notice of opposition and a copy of that affidavit on the plaintiff.

2 The court may give whatever judgment on the plaintiff's claim against you is thought just if you fail—

(a) to file both a notice of opposition and an affidavit, and to serve copies of them on the plaintiff; and

(b) to appear on the date of hearing in opposition to the plaintiff's application.

3 If you are a natural person, you may appear personally at the hearing or by counsel.

High Court Rules—*continued*
Form G 13—*continued*

4 If you are a company or other corporation, you may appear only by counsel at the hearing.

Statement of defence

5 You may, in addition to filing a notice of opposition and an affidavit, file a statement of defence.

6 If you want to file a statement of defence,—

(a) you must file it in the registry of the court in which your notice of opposition and your affidavit were filed; and

(b) you must serve a copy of it on the plaintiff; and

(c) you must both file and serve it not less than 3 working days before the date of hearing.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Memorandum

Advice

1 Although you do not have to employ a solicitor for the purpose of this application, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to oppose this application or appear at any hearing must consult a solicitor immediately because—

(a) it can only carry on proceedings in the court by a solicitor; and

(b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

High Court Rules—*continued*
Form G 13—*continued*

Legal aid

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 *For this paragraph select the statement that applies.*

Statement A
The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B
The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C
The plaintiff has applied for legal aid for the purpose of this proceeding.

Appearance objecting to jurisdiction of court

4 If you object to the jurisdiction of the court to hear and determine this proceeding, you may, within the time allowed for filing your notice of opposition and your affidavit,—

(a) file in the registry of the court, instead of a notice of opposition and an affidavit, an appearance stating your objection and the grounds for it; and

(b) serve a copy of the appearance on the plaintiff.

5 Such an appearance will not be treated as a submission to the jurisdiction of the court.

Registry hours

6 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Working days

7 **Working day** means any day of the week other than—

High Court Rules—*continued*
Form G 13—*continued*

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Add the following notice if the defendant is to be served overseas (other than in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010). If the defendant is to be served in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010, do not use the following notice, but use instead the information that section 15 of that Act requires to be served on the defendant (see form 1 of the Schedule of the Trans-Tasman Regulations and Rules 2013).

Notice to defendant served overseas

Since you are resident outside New Zealand you are further notified that—

1 The plaintiff has commenced a proceeding against you in the High Court of New Zealand, claiming the relief specified in the attached statement of claim.

2 Although you are resident outside New Zealand, the plaintiff claims that the plaintiff can bring this proceeding against you in the High Court of New Zealand.

3 By New Zealand law, the High Court may exercise jurisdiction in certain classes of case even though the defendant is resident outside New Zealand.

4 [*Specify particular provision(s) of rule 6.27 on which the plaintiff relies to serve the proceeding overseas.*]

High Court Rules—*continued*
Form G 13—*continued*

5 In this case the plaintiff claims: [*specify facts alleged by the plaintiff to confer jurisdiction*].

6 Even though the court has jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied that—

(a) in all the circumstances a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and

(b) the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.

7 If you want to dispute the jurisdiction of the High Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send authority to a solicitor in New Zealand by airmail instructing that solicitor to act for you.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form G 14 r 4.10(2)

Third party notice

To [*full name, address, occupation*]

This document notifies you that—

Claim by plaintiff against defendant

1 This proceeding has been brought by the plaintiff against the defendant, in which the plaintiff claims the relief set out in the plaintiff's statement of claim (copy attached). The defendant has/has not* filed a statement of defence to the claim.

*Select one.

Omit the following sentence if it does not apply.
A copy of that statement of defence is served with this document.

Claim by defendant against you

2 The defendant claims relief or a remedy against you in respect of, or arising out of, the plaintiff's claim. That relief or remedy and the grounds on which it is claimed are set out in the defendant's statement of claim (copy attached).

Can I dispute the claims made against the defendant and me?

3 Yes. If you want to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must, within 25* working days after the day on which you are served with this notice,—

(a) file in the registry of this court at [*place*] a statement of your defence to the plaintiff's claim or the defendant's claim, or both, as the case may be; and

(b) serve a copy of that statement of defence on the plaintiff and the defendant and on the other parties to the proceeding.

*Substitute "30", in accordance with rules 4.14(1A) and 6.35, if this notice is served out of New Zealand.

High Court Rules—*continued*
Form G 14—*continued*

What if I fail to dispute the claims?

4 If you do not dispute the claims,—

(a) you will be treated as having admitted—

(i) the plaintiff's claim against the defendant; and

(ii) the defendant's right to the relief or remedy that the defendant claims against you; and

(iii) the validity of any judgment that may be given in the proceeding, whether by consent, default, or otherwise; and

(b) you will be bound by any judgment given, which may be enforced against you under the rules of court.

Trial of proceeding

5 The trial of the proceeding, if a trial is necessary, will take place at [*place*] at a time to be fixed by the court.

Include the following sentence if there is a court order, otherwise omit.

This notice is issued under an order of the court made on [*date*].

Date:

Signature:

(defendant/solicitor for the defendant*)

*Select one.

High Court Rules—*continued*

Form G 15 r 4.21(1)

Notice to other defendant

To the [*specify which defendant, eg, second, third, etc*] defendant, [*full name*]

This document notifies you that—

Claim against you

1 The [*specify which defendant*] defendant, [*name*], claims the relief or remedy against you set out in the attached statement of claim. The grounds for claiming the relief or remedy are also set out in the statement of claim.

Your right to dispute claim

2 If you dispute the claim, you must, within 10 working days after the day on which you are served with this notice,—

(a) file in this registry of the court a statement of your defence to the claim; and

(b) serve a copy of that statement of defence on—

(i) the claiming defendant, [*full name*]; and

(ii) the plaintiff; and

(iii) any other party who has filed an address for service.

Date:

Signature:

(defendant/solicitor for defendant*)

*Select one.

High Court Rules—*continued*

Form G 16 r 6.10
Affidavit of service

I, [*full name, place of residence, occupation*], swear—

1 On [*day, date*], I served the [*party as described in the heading*], [*full name*], with the following documents:
[*List each document served, eg, statement of claim and notice of proceeding. If, under rule 6.10, a copy of a served document is not attached to the affidavit, the description of the document—*
(a) must be sufficient to enable the document to be identified; and
(b) must include the date of the document (if the document bears a date)].

2 I served the documents on the [*party as described in the heading*] at [*place*] in New Zealand by [*specify how documents were delivered, eg, personally*].

3 I believe it was the [*defendant or other party as described in the heading*] that I served because—

Select the statement(s) that apply.

Statement A
the defendant/[*party*]* acknowledged that he/she* is the defendant.

*Select one.

Statement B
I know the defendant/[*party*]*.

*Select one.

Statement C
[*Specify any other reason.*]

4 *Omit this paragraph if it does not apply.*

True copies of the documents served are attached to this affidavit and marked "A" and "B".

High Court Rules—*continued*
Form G 16—*continued*

Signature of deponent:
Sworn at: [*place, date*]
Before me: [*name, signature*]
(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form G 17
r 6.25

Service of foreign process in New Zealand—Registrar's certificate

1 I, [*full name*], Registrar of the High Court of New Zealand, at [*place*], certify that the documents attached to this certificate are—

(a) the original letter of request for service of process received from [*name of foreign court or tribunal*] at [*place where foreign court or tribunal sits*] in [*name of foreign country*], in the matter of [*specify matter pending before foreign court or tribunal*]; and

(b) the copy of the process/citation* received with the letter of request; and

(c) the evidence of service on [*full name of entity or person named in letter of request*].

*Select one.

2 *For this paragraph select the statement that applies.*

Statement A

I certify that the service that has been proved and its proof comply with the law and practice of the High Court of New Zealand regulating the service and proof of service of New Zealand legal process in New Zealand.

Statement B

Service of the process could not be effected for the following reasons: [*specify reasons*].

3 I certify that the cost of effecting the service/attempting to effect the service* is $[*amount*].

*Select one.

Date:

Signature:

(Registrar)

High Court Rules—*continued*

Form G 18

r 6.34(2)

Request for service abroad

To the Registrar of the High Court at [*place*]

1 This request is made under [*name of convention*].

2 I request that the statement of claim and notice of proceeding in this proceeding be transmitted through the proper channel to [*name of country*] for service/substituted service* on the [*describe defendant as in the heading*] defendant, [*name*], at [*place*] or elsewhere in [*name of country*], and that the service be effected directly through a New Zealand or British consular officer (or by the competent authority of that country).

*Select one.

3 I undertake—

(a) to be responsible for all expenses of effecting or endeavouring to effect service incurred by the New Zealand Government and by any competent authority acting in the matter or by any governmental officer; and

(b) on being advised of the amount of those expenses,—

(i) to pay that amount immediately to a Crown Bank Account; and

(ii) to produce evidence of the payment to the Registrar.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

High Court Rules—*continued*

Form G 19

r 9.23

Report of examiner

To the Registrar of the High Court at [*place*]

1 Under the order of this court made on [*date*] and rule 9.20 of the High Court Rules, I, [*full name and address of examiner*], the examiner appointed by that order,—

(a) duly appointed [*time, date*] as the time and [*address of place where examination to be held*] as the place where the persons named in the order were to be examined; and

(b) notified the parties.

2 At the appointed time and place, the parties appeared by counsel, namely, [*name*] for the plaintiff and [*name*] for the defendant. The proceeding was adjourned until [*particulars of any adjournments*]*.

*Omit this sentence if proceeding not adjourned.

3 The examination of the witnesses named in the order was conducted before me in accordance with rule 9.20 of the High Court Rules on [*dates on which witnesses were examined*].

4 With the written consent of each party and in accordance with rule 9.21 of the High Court Rules, the following witnesses were also examined before me on [*dates on which additional witnesses were examined*].

5 Before each witness was examined, the witness took an oath or affirmation to tell the truth, the whole truth, and nothing but the truth in the evidence that the witness was about to give.

6 The evidence of each witness was recorded. Under rule 9.22 of the High Court Rules, I also recorded—

(a) a note of each objection to any evidence; and

(b) the ground of each objection; and

(c) my opinion on each objection; and

(d) the answer (if any) of the witness to the question.

7 The entire record is attached.

High Court Rules—*continued*
Form G 19—*continued*

8 I certify that I incurred the following out-of-pocket expenses in relation to this examination: [*specify items, eg, rent, transport, stenographer, and attach vouchers*].

Date:
Signature:
(examiner)

If the evidence of any witness is not taken for any of the reasons set out in rule 9.20(7), complete and insert the following certificate either:

- *in place of paragraphs 2 to 7; or*
- *after paragraph 7.*

In all other circumstances, omit.

I certify that at the time and place appointed set out in paragraph 1/at [*time, date, place*], the time and place to which I had adjourned the examination*,—

*Select one.

Select the statement that applies.

Statement A

there was no appearance by or on behalf of the plaintiff/defendant*.

*Select one.

Statement B

the witness [*name*] did not attend.

Statement C

the plaintiff/defendant* stated that there was no intention to proceed with the taking of evidence.

*Select one.

High Court Rules—*continued*

Form G 20 r 28.4(1)

Subpoena to give evidence in New Zealand proceeding for service in Australia

To [*name, place of residence, occupation*]

1 You are ordered to attend the High Court of New Zealand at [*place, date, time*] and, on each subsequent day until you are discharged from attendance, to give evidence on behalf of the [*party*] in this proceeding.

2 *Omit this paragraph if it does not apply.*

You are ordered to bring with you and produce at the same time and place [*details of documents to be produced*].

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*, with the leave of the Honourable Justice [*name*].

*Select one.

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

High Court Rules—*continued*

Form G 21 r 28.4(1)

Subpoena for production only issued in New Zealand proceeding for service in Australia

To [*name, place of residence, occupation*]

1 *For this paragraph select the statement that applies.*

Statement A

You are ordered to produce this subpoena and the documents or things set out in the list below at the High Court of New Zealand at [*place, date, time*].

Statement B

You are ordered to produce this subpoena and the documents or things set out in the list below at the Federal Court of Australia at [*place*] not later than [*date*].

2 If you produce the documents or things at the Federal Court you must obtain a receipt for the documents or things produced from a Registrar, Deputy Registrar, District Registrar, or Deputy District Registrar of that court and send a copy of that receipt and a copy of this subpoena by fax to the Registry of the High Court of New Zealand shown below and provide an officer of the Federal Court with a sum that is sufficient to send the documents or things to New Zealand.

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*, with the leave of the Honourable Justice [*name*].

*Select one.

List of documents and things

[*List documents and things.*]

High Court Rules—*continued*
Form G 21—*continued*

Date:
Signature:
Full name of Registrar/Deputy Registrar*:
Postal address of registry:
Telephone:
Fax:

*Select one.

High Court Rules—*continued*

Form G 22

r 28.5(1)

Statement of rights and obligations of person served in Australia with subpoena in Trans-Tasman Competition Proceedings

Allowances and travelling expenses

1 At the time you are served with this subpoena, or at some other reasonable time before the hearing, you are entitled to be paid allowances and travelling expenses, or given vouchers in respect of those allowances and expenses, that cover your reasonable expenses in complying with this subpoena.

2 You are not required to comply with this subpoena unless those allowances and travelling expenses or vouchers are tendered to you.

3 You are also entitled to be paid for your reasonable expenses in complying with the subpoena in addition to any payment or vouchers tendered to you. You may apply to the High Court of New Zealand for an order specifying that amount.

Failure to comply

4 Failure to comply with this subpoena constitutes contempt of the Federal Court of Australia, and is punishable unless you establish that the failure to comply should be excused.

Setting subpoena aside

5 You may apply to the High Court of New Zealand to have the subpoena set aside under **section 84** of the Trans-Tasman Proceedings Act 2010 of New Zealand. **Section 84** of the Trans-Tasman Proceedings Act 2010 provides that, without limiting the grounds on which the order may be set aside, the High Court may set the order aside on any of the following grounds:

(a) that the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents:

(b) that the witness is liable to be detained for the purpose of serving a sentence:

(c) that the witness is liable to prosecution for an offence:

High Court Rules—*continued*
Form G 22—*continued*

(d) that the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or 83 of the Commerce Act 1986 of New Zealand:

(e) that the evidence of the witness could be obtained without significantly greater expense by other means:

(f) that compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:

(g) in the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to testify, that the court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means.

6 The application must be made by affidavit and must be filed in the registry of the High Court of New Zealand that issued the order of subpoena.

7 The affidavit must be sworn by the applicant and must set out the facts relied on to set the subpoena aside.

8 You can send the affidavit by fax. If you do this,—

(a) mark the document for the attention of the officer whose name appears on the subpoena; and

(b) give a fax number so that a receipt can be sent to you; and

(c) post the original affidavit to the court.

9 Your affidavit will be served on the party who obtained the subpoena.

10 The High Court of New Zealand will decide whether a hearing is necessary. If it is, you will be notified by an officer of the court.

Note

If you are in doubt about any matter relating to this subpoena you should obtain legal advice.

High Court Rules—*continued*

Form G 23

r 28.8

Certificate of non-compliance with subpoena issued in New Zealand proceeding for service in Australia

To the Federal Court of Australia at [*place*]

1 The High Court of New Zealand certifies that [*name of person subpoenaed*], having been served with a subpoena in a New Zealand proceeding within the meaning of section 32B of the Federal Court of Australia Act 1976 (a copy of which is attached to this certificate), has contravened that subpoena in that [*particulars of contravention*].

2 *For this paragraph select the statement that applies.*

Statement A

No application to set aside the subpoena under **section 84** of the Trans-Tasman Proceedings Act 2010 of New Zealand has been made to the High Court.

Statement B

An application to set aside the subpoena under **section 84** of the Trans-Tasman Proceedings Act 2010 of New Zealand has been dismissed. A copy of the reasons for dismissing the application is attached to this certificate.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form G 24 r 15.19(2)

Notice of discontinuance

To the Registrar of the High Court at [*place*]

and

To [*name of other party or parties to proceeding*]

This document notifies you that—

1 [*Name of plaintiff discontinuing proceeding*] discontinues this proceeding against [*name of defendant or, if more than 1 defendant, names of defendants or names of defendants against whom the plaintiff discontinues the proceeding*].

2 *For this paragraph select the statement that applies.*

Statement A

A copy of the written consent of a plaintiff who is required under rule 15.20 of the High Court Rules to consent to this discontinuance is attached.

Statement B

A copy of the written consent of a defendant who is required under rule 15.20 of the High Court Rules to consent to this discontinuance is attached.

Statement C

The High Court has granted leave to the plaintiff to discontinue this proceeding.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

High Court Rules—*continued*

Form G 25
r 9.52(1)

Subpoena

To [*name, place of residence, occupation*]

1 You are ordered to attend the High Court at [*place, date, time*] and, on each subsequent day until you are discharged from attendance, to give evidence on behalf of the [*party*] in this proceeding.

2 *Omit this paragraph if it does not apply.*
You are ordered to bring with you and produce at the same time and place [*details of documents and things to be produced*].

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party.*

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

Allowances and travelling expenses

1 You are entitled to have paid to you, at the time of the service of this order on you, or at some other reasonable time before the hearing, an amount in respect of your allowances and travelling expenses.

2 The scale of allowances and travelling expenses that applies is prescribed for the time being by the Witnesses and Interpreters Fees Regulations 1974.

High Court Rules—*continued*
Form G 25—*continued*

Failure to attend

3 If, having been tendered or paid allowances and travelling expenses at the appropriate rate, you fail to attend, the court may issue a warrant to arrest you and bring you before the court.

4 The penalty for failing to attend without just excuse is a fine not exceeding $500.

High Court Rules—*continued*

Form G 26

r 9.59(1)

Subpoena to give evidence for service in Australia

To [*name, place of residence, occupation*]

1 You are ordered to attend [*place of court or, if witness is required to attend at a place other than the High Court, that other place*] on [*date, time*] and on each subsequent day until you are discharged from attendance to give evidence on behalf of the [*party*] in this proceeding.

2 *Omit this paragraph if it does not apply.*
You are ordered to bring with you and produce at the same time and place [*details of documents and things to be produced*].

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*.

*Select one.

Note: Section 156(2) of the Evidence Act 2006 of New Zealand allows this order of subpoena to be served in Australia only if it is accompanied by a copy of the order granting leave to serve it, and a statement in the prescribed form of the rights and obligations of the person served.

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

High Court Rules—*continued*

Form G 27
r 9.59(2)

Subpoena for production only for service in Australia

To [*name, place of residence, occupation*]

1 You are ordered to produce this subpoena and the documents or things set out in the list below at the High Court of New Zealand at [*place, date, time*].

2 You will comply with this subpoena if you produce the documents or things at a registry of an Australian court that is authorised by the law of the Commonwealth of Australia to receive those documents or things, no later than 7 working days before that date.

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*.

*Select one.

Note: Section 156(2) of the Evidence Act 2006 of New Zealand allows this order of subpoena to be served in Australia only if it is accompanied by a copy of the order granting leave to serve it, and a statement in the prescribed form of the rights and obligations of the person served.

List of documents or things

[*List documents or things.*]

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

High Court Rules—*continued*

Form G 28

r 9.61

Statement of rights and obligations of person served in Australia with subpoena under Evidence Act 2006

Important: This statement is important. Please read the statement and the attached document carefully. If you are in any doubt about this statement or the attached documents, you should get legal advice immediately.

Attached to this statement is a subpoena issued by the High Court of New Zealand. A subpoena is a summons to a witness to give evidence or produce documents. The subpoena attached to this statement requires you to [*specify whether witness is required to attend the High Court or some other place to give evidence, give evidence and produce documents or things, or only produce documents or things*].

The subpoena may be served in Australia under section 156 of the Evidence Act 2006 of New Zealand.

This statement sets out your rights and obligations relating to the subpoena.

Your rights

1 At the time you are served with this subpoena, or at some other reasonable time before the hearing, you are entitled to be paid allowances and travelling expenses, or given vouchers in respect of those allowances and expenses, that cover your reasonable expenses in complying with this subpoena.

2 You are not required to comply with this subpoena unless those allowances and travelling expenses or vouchers are tendered to you.

3 You are also entitled to be paid for your reasonable expenses in complying with the subpoena in addition to any payment or vouchers tendered to you. You may apply to the High Court of New Zealand for an order specifying that amount.

4 You may apply to the High Court of New Zealand to have the subpoena set aside. If you want to have the subpoena set aside, you should get legal advice as soon as possible.

High Court Rules—*continued*
Form G 28—*continued*

5 An application to set the subpoena aside can be made and determined without having to go to New Zealand. You are entitled to have Australian solicitors act for you.

6 The High Court of New Zealand may determine the application without a hearing if neither you nor the party who requested the issue of the subpoena requires a hearing. The court may hold a hearing by audio link or audiovisual link if the court thinks fit. If a party applies to the court for a direction to hear the application by audio link or audiovisual link, the court is required to hear it by audio link or audiovisual link.

Note: *See* "setting subpoena aside" for details of the grounds on which a subpoena may be set aside and the procedure that must be followed.

Your obligations

7 If the subpoena is not set aside, you must comply with it if—

(a) when you were served with the subpoena, or at some reasonable time before the time specified for you to comply, you have been paid or tendered allowances and travelling expenses, or offered vouchers in respect of those allowances and expenses, that are sufficient to cover reasonable expenses incurred in complying with this subpoena; and

(b) a copy of the order of the Judge of the High Court of New Zealand granting leave to serve the subpoena was served on you with the subpoena; and

(c) you were served with the subpoena not later than the date specified by the Judge of the High Court who granted leave to serve the subpoena; and

(d) any other conditions relating to the service of the subpoena have been complied with; and

(e) you have attained the age of 18 years.

8 If the subpoena only requires you to produce documents or things, you may comply with the subpoena by producing the documents or things at any registry of an Australian court that is authorised by the law of the Commonwealth of Australia to

High Court Rules—*continued*
Form G 28—*continued*

receive them, not later than 10 days before the date specified in the subpoena for producing them in the High Court of New Zealand. If you produce the documents or things at a registry of an Australian court, you will be required to produce the subpoena and to pay the cost of sending the documents or things to the High Court. You are entitled to have the costs of producing the documents or things, and of sending them to the High Court, paid or tendered to you before you are required to comply with the subpoena.

Failure to comply with subpoena

9 Failure to comply with the subpoena constitutes contempt of the Federal Court of Australia and is punishable unless you establish that the failure to comply should be excused.

Setting subpoena aside

10 You may apply to the High Court of New Zealand to have this subpoena set aside under section 160 of the Evidence Act 2006 of New Zealand. Section 160 provides that the High Court must set the subpoena aside if—

(a) the subpoena requires the witness to attend at a sitting of a court and the High Court is satisfied that—

(i) the witness does not have, and cannot by the exercise of reasonable diligence within the time required for compliance obtain, the necessary travel documents; or

(ii) the witness is liable to be detained in New Zealand for the purpose of serving a sentence; or

(iii) the witness is liable to prosecution for an offence, or is being prosecuted for an offence, in New Zealand; or

(iv) the witness is liable to the imposition of a civil penalty in civil proceedings in New Zealand, not being proceedings for a pecuniary penalty under the Commerce Act 1986; or

High Court Rules—*continued*
Form G 28—*continued*

(b) the witness is subject to a restriction on his or her movements, imposed by law or by order of a court, that would prevent the witness complying with the subpoena.

11 Section 160 further provides that the High Court may set a subpoena aside if it is satisfied that—

(a) the evidence of the witness could be obtained satisfactorily without significantly greater expense by other means; or

(b) compliance with the subpoena would cause hardship or serious inconvenience to the witness; or

(c) in the case of a subpoena that requires a witness to produce documents or things, whether or not it also requires the witness to give oral evidence,—

(i) the documents or things should not be taken out of Australia; and

(ii) satisfactory evidence of the contents of the documents or evidence of the things can be given by other means.

12 An application to set the subpoena aside must be filed in the registry of the High Court of New Zealand in which leave to serve the subpoena was given, together with any affidavit setting out the facts on which you rely.

13 The application and the affidavit may be sent by fax or email. The fax number and email address of the registry of the court are [*fax number or email address*].

14 The application must contain an address for service in New Zealand or Australia and may also state a fax number in New Zealand or Australia or email address to which documents relating to the application may be sent.

15 The Registrar of the High Court of New Zealand will arrange for service of the application and any affidavit.

16 The High Court of New Zealand can decide the application without a hearing if neither you (for example, in the application) nor the party who requested the issue of the subpoena (for example, in a document filed in response to the application) states that a hearing is required. If there is to be a hearing, the

High Court Rules—*continued*
Form G 28—*continued*

hearing may, if the court thinks fit, be by audio link or audiovisual link. You may, however, either in your application to set the subpoena aside or within a reasonable time after filing the application, request that the court direct that the hearing be by audio link or audiovisual link. If you make such a request, the court will direct that the hearing be by audio link or audiovisual link.

High Court Rules—*continued*

Form G 29

r 9.65

Certificate of non-compliance with subpoena for service in Australia

To the Federal Court of Australia at [*place*]

The High Court of New Zealand certifies that on [*date*] the Honourable Justice [*name*] gave leave to serve a subpoena, being a subpoena to which Part 4 of the Evidence Act 2006 of New Zealand applies, on [*name of person subpoenaed*], and that [*name of person subpoenaed*] has failed to comply with the subpoena in that [*particulars of failure to comply*].

Date:

Signature:

(Registrar/Deputy Registrar*)

Postal address of registry:

Telephone:

Fax:

*Select one.

Sealed: [*date*]:

High Court Rules—*continued*

Form G 30 r 23.4(1)

Application for registration of foreign judgment under Reciprocal Enforcement of Judgments Act 1934

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the matter of the Reciprocal Enforcement of Judgments Act 1934

And

In the matter of a judgment of the [*name of foreign court*]

Between [*full name*] (judgment creditor)

And [*full name*] (judgment debtor)

To the Registrar

This document notifies you that—

1 On [*date*] at 10 am, the judgment creditor will apply to the court for an order that the judgment be registered under the Reciprocal Enforcement of Judgments Act 1934.

2 The judgment is attached to the affidavit of [*name of person making affidavit, and its date*].

3 *Omit this paragraph if the foreign judgment or an authenticated copy of it is being filed and is in English.*
A translation of the judgment into English is attached to the affidavit of [*name of person making affidavit, and its date*].

4 *Select the statement that applies.*

Statement A
The relevant rate of exchange, and the New Zealand currency equivalent of the amount of the judgment calculated at that rate, are set out in the affidavit of [*name of person making affidavit, and its date*].

Statement B
The judgment creditor wants the judgment to be registered in the currency in which it is expressed.

High Court Rules—*continued*
Form G 30—*continued*

5 The rate of interest carried by the judgment by the law of [*specify country under whose law it was given*] is [*specify rate*] per cent. The amount of interest which, by that law, has become due up to the time of this application is [*specify amount in New Zealand currency if statement A was chosen for paragraph 4, or in the currency of the country of the judgment if statement B was chosen for that paragraph*].

6 Evidence of the right to register the judgment is contained in the affidavit of [*name of person making affidavit, and its date*].

7 *Omit this paragraph if there is no relevant Order in Council imposing further evidentiary requirements.*
Further evidence required by an Order in Council under section 3 of the Reciprocal Enforcement of Judgments Act 1934 is contained in the affidavit of [*name of person making affidavit, and its date*].

Date:

Signature:

(judgment creditor/solicitor for judgment creditor*)

*Select one.

Notes

1 This form should be used if the application is being made without notice to the judgment debtor. Modify it appropriately if it is being made on notice.

2 The foreign judgment must be verified or certified or otherwise duly authenticated (*see* rule 23.8 of the High Court Rules).

3 The affidavit referred to in paragraph 7 must comply with rule 23.11 of the High Court Rules.

4 If only part of the foreign judgment is entitled to registration (*see* rule 23.13 of the High Court Rules), identify that part. An affidavit should explain why the remainder is not being registered.

High Court Rules—*continued*

Form G 31 rr 7.19(4), 12.4(4), 25.5

Interlocutory application on notice

To the Registrar of the High Court at [*place*]

and

To [*name of party/parties to be served with this application*]

This document notifies you that—

1 The applicant, [*name*], will on [*date*] apply to the court for an order/orders* [*specify orders sought, numbering them if more than 1*].

*Select one.

2 The grounds on which each order is sought are as follows: [*specify concisely the grounds on which each order is sought*].

3 The application is made in reliance on [*specify any particular provision of an enactment, principle of law, or judicial decision relied on*].

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

*Select one.

High Court Rules—*continued*

Form G 32 rr 7.19(4), 7.23(1)

Interlocutory application without notice

To the Registrar of the High Court at [*place*]

This document notifies you that—

1 The applicant, [*name, place of residence, occupation*], applies for an order/orders* [*specify orders sought, numbering them if more than 1*].

2 The grounds on which each order is sought are as follows: [*specify concisely the grounds on which each order is sought*].

3 The application is made in reliance on [*specify any particular provision of an enactment, principle of law, or judicial decision relied on*].

I certify that this application complies with the rules.*

*This certificate may be dispensed with if a Judge so orders under rule 7.23(5). If dispensation is sought, the reasons for the absence of a lawyer's certificate must be stated.

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

*Select one.

[*Telephone number*]

High Court Rules—*continued*

Form G 33 rr 7.24(3), 12.9(1), 29.11(3)

Notice of opposition

To the Registrar of the High Court at [*place*]

and

To [*name of applicant and any other party to be served with this notice*]

This document notifies you that—

1 The respondent, [*name*], intends to oppose the interlocutory application by the plaintiff/defendant* dated [*date*].

*Select one.

2 The respondent is opposed to the making of the order/the orders numbered [*specify numbers*] in the application*.

*Select one.

3 The grounds on which the respondent opposes the making of the order(s) are as follows: [*specify grounds concisely*].

4 The respondent relies on [*specify any particular provision of an enactment, principle of law, or judicial decision relied on*].

Date:

Signature:

(solicitor for respondent/counsel for respondent/respondent*)

*Select one.

High Court Rules—*continued*

Form G 34 rr 7.47(3), 25.5
Interlocutory order

To [*every party who has given an address for service and any other person affected by the order*]

1 The interlocutory application made by [*name*] on [*date*] was determined by the Honourable Justice [*name*] on [*date*].

2 *For this paragraph select the statements that apply.*

Statement A
The determination was made following a hearing held on [*date(s)*]. [*List names of counsel or solicitors who represented the respective parties at the hearing and state whether any party appeared in person at the hearing.*]

Statement B
The determination was made without a hearing.

Statement C
The determination was made with the consent of the parties.

3 The following order was/orders were* made: [*specify orders made, numbering them if more than 1*].

*Select one.

Date:
Signature:
(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form G 35 r 8.1(3)

Notice to answer interrogatories

To [*name of party required to answer interrogatories*]

This document notifies you that—

1 The party giving notice, [*name of party giving notice*], requires you to answer the interrogatories set out in paragraph 5 of this notice.

2 The requirement to answer interrogatories is made under rule 8.1 of the High Court Rules. The interrogatories relate to matters in question in this proceeding between you and the party giving notice.

3 You must answer the interrogatories within a period of [*specify number*] working days. (The period starts on the first working day after you are served with the notice.)

4 *Include this paragraph if verification is required, otherwise omit.*

You are also required to verify your answers by affidavit.

5 The interrogatories that you are required to answer are as follows: [*specify interrogatories required to be answered, numbering them if more than 1*].

Date:

Signature:

(solicitor/counsel* for party giving notice)

*Select one.

High Court Rules—*continued*

Form G 36 r 8.14(2)

Notice to admit facts

To [*name of party required to admit facts*]

This document notifies you that—

1 The party giving notice, [*name of party giving notice*], requires you to admit the facts set out in paragraph 4 of this notice. The admissions are for the purpose of this proceeding only.

2 The requirement is made under rule 8.14 of the High Court Rules.

3 If you refuse or neglect to admit the facts within 5 working days after the day on which you are served with this notice, you will have to pay the costs of proving the facts, unless a Judge orders otherwise.

4 The facts that you are required to admit are as follows: [*specify facts party is required to admit, numbering them if more than 1.*]

Date:

Signature:

(solicitor/counsel* for party giving notice)

*Select one.

High Court Rules—*continued*

Form G 37 rr 8.15, 8.16
Affidavit of documents

I, [*full name, place of residence, occupation*], swear—

1 I am [*state which party you are (or the capacity in which you make the affidavit) and your authority to make the affidavit*].

2 I make this affidavit under an order for standard discovery under rule 8.7/under an order for tailored discovery under rule 8.10* on [*date*] (the discovery order).

*Select one.

3 [*Specify the content of the discovery order in terms of paragraph (a), (b), or (c) of rule 8.12(2) and, if paragraph (c) applies, state the obligations imposed by the order.*]

4 I understand the obligations imposed by the discovery order.

5 In order to fulfil those obligations, I have diligently searched for all documents required to be discovered under the discovery order, and I have also taken the following particular steps: [*specify steps taken, for example, inquiries made of named persons*].

6 In the Schedule of this affidavit, I list the documents that I am required to discover.

7 In Part 1 of the Schedule, I list the documents that are in my control and for which I claim neither privilege nor confidentiality.

8 *Include this paragraph if it applies, otherwise omit.*
In Part 2 of the Schedule, I list the documents that are in my control and for which I claim privilege and state in relation to each document the nature of the privilege that applies.

9 *Include this paragraph if it applies, otherwise omit.*
In Part 3 of the Schedule, I list the documents that are in my control and for which I claim confidentiality. I propose that inspection of these documents be restricted to [*name persons*] and that the following restrictions apply: [*specify proposed restrictions on inspection*].

10 *Include this paragraph if it applies, otherwise omit.*
In Part 4 of the Schedule, I list documents that are no longer in my control and state when, to the best of my knowledge and belief, each document ceased to be in my control and the

High Court Rules—*continued*
Form G 37—*continued*

persons who, to the best of my knowledge and belief, now have control of each document.

11 *Include this paragraph if it applies, otherwise omit*.
In Part 5 of the Schedule, I list other documents known to me that have never been in my control but that I know would be discoverable if I had control of them.

12 To the best of my knowledge and belief, this affidavit is correct in all respects and carries out my obligations under the discovery order.

Sworn at: [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

Schedule

Part 1
Documents that are in my control and for which I claim neither privilege nor confidentiality

[*List and number the documents concerned*.]

Part 2
Documents that are in my control and for which I claim privilege

[*List and number the documents concerned. State the nature of the privilege claimed for each document or category of document, eg, legal professional privilege*.]

Part 3
Documents that are in my control and for which I claim confidentiality

[*List and number of the documents concerned. State why each document or category of document is confidential*.]

High Court Rules—*continued*
Form G 37—*continued*

Part 4
Documents that are no longer in my control

[*List the documents concerned. State, to the best of your knowledge and belief,—*

(*a*) *when each document or category of document ceased to be in your control; and*

(*b*) *the persons who now have control of each document.*]

Part 5
Documents that have never been in my control

[*List any documents that you know relate to a matter in question in the proceeding but that are not, and have never been, in your control. State, to the best of your knowledge and belief, where the documents are.*]

High Court Rules—*continued*

Form G 38
r 32.6(1)

Freezing order

To the respondent [*name*]

1 *For this paragraph select the statement that applies.*

Statement A

Judgment has been given in favour of the applicant by the court [*specify different named court if rule 32.5(3) applies*].

Statement B

The applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in the court [*specify different named court if rule 32.5(3) applies*].

2 The court has considered the applicant's application for a freezing order, and has heard [*name of applicant or applicant's counsel*] in support.

3 The court is satisfied, having regard to all the circumstances disclosed by affidavit evidence filed in support of the application, that there is a danger that judgment in favour of the applicant will be wholly or partly unsatisfied, because [*state reason or reasons as set out in rule 32.5(4)*].

4 This freezing order is made in respect of the following assets: [*set out a comprehensive list, with description adequate to identify each asset*].

5 Subject to paragraph 6, this order restrains you from removing any of the assets listed in paragraph 4 from New Zealand, or from disposing of, dealing with, or diminishing the value of, those assets, whether they are in or outside New Zealand.

6 This freezing order does not prohibit you from dealing with the assets covered by the order for the purpose of—

(a) paying ordinary living expenses; or

(b) paying legal expenses related to the freezing order; or

(c) disposing of assets, or making payments, in the ordinary course of your business, including business expenses incurred in good faith.

High Court Rules—*continued*
Form G 38—*continued*

7 *Include this paragraph only if the freezing order was made without notice to the respondent.*
As the freezing order has been made without notice to you, it will have no effect after [*state the particular date inserted by the court under rule 32.7*], unless on that date it is continued or renewed. On that date you or your counsel are entitled to be heard by the court in opposition to the continuation or renewal of the order.

8 You may apply to the court by interlocutory application to discharge or vary the order. If you apply, you must give the applicant notice of not less than [*specify period fixed under rule 32.8*].

9 *Omit this paragraph if no undertaking has been required by the court.*
An undertaking as to damages given by the applicant is attached.

10 [*State any other special terms that the court has ordered*.]

11 This order does not affect anyone outside New Zealand until it is declared enforceable by a court in the relevant country, (in which case it affects a person only to the extent that it has been declared enforceable) unless the person is—

(a) a person to whom this order is addressed, or an officer of that person, or an agent appointed by power of attorney of that person; or

(b) a person who—

(i) has been given written notice of this order at that person's residence or place of business within New Zealand; and

(ii) is able to prevent acts or omissions outside the jurisdiction of this court that constitute, or assist, a breach of this order.

12 This order does not prevent, in respect of assets located outside New Zealand, any third party from complying with—

(a) what it reasonably believes to be the third party's obligations, contractual or otherwise, under the laws of the country in which those assets are situated or under the

High Court Rules—*continued*
Form G 38—*continued*

proper law of any contract between the third party and the respondent; and

(b) any orders of the courts of that country, provided that reasonable notice of any application for such an order is given to the applicant's solicitors.

Date:
Signature:
(Registrar/Deputy Registrar*)
*Select one.

High Court Rules—*continued*

Form G 39
r 33.2(3)

Search order

To the Respondent [*name*]

1 This order notifies you that the court is satisfied—

(a) the applicant has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if this search order is not made; and

(c) there is sufficient evidence in relation to you that—

(i) you possess important evidentiary material; and

(ii) there is a real possibility that you might destroy that material, or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

2 You are required to permit the persons named or described above paragraph 4 to enter the premises described in paragraph 5 for the purpose of securing or preserving the evidentiary material listed or described in paragraph 6.

3 The applicant's undertaking as to damages is attached.

To the following persons [*names or description of persons authorised to enter and search*]

4 This order authorises you to search for, inspect, and remove the things listed or described in paragraph 6 and to take any further steps set out in paragraph 7*.

*Omit reference to further steps if none is authorised.

5 The specified premises are: [*full address of premises*].

6 The things that may be searched for and inspected or removed are: [*set out comprehensive list or description of these things*].

7 *Omit this paragraph if the search order does not authorise further steps.*

The persons named or described above paragraph 4 may take the following further steps: [*list steps*].

High Court Rules—*continued*
Form G 39—*continued*

8 The following independent solicitors are appointed to supervise the carrying out of this order and to report to the court: [*full names and addresses of independent solicitors*].

9 *Omit this paragraph if the court has not included this additional power.*
The independent solicitors are also authorised to do the following things: [*specify things*].

To the Respondent and the persons named or described above paragraph 4

10 On [*date fixed under rule 33.6(3)*] the court will consider a report on the search from the independent solicitors. The applicant and the respondent and the independent solicitors are entitled to be heard on that date. The court will also consider the following:

(a) what is to happen to any goods removed from the premises or to any copies that have been made:
(b) how the confidentiality to which the respondent is entitled is to be maintained:
(c) any privilege claim:
(d) any application by a party:
(e) any issue raised by an independent solicitor.

Date:
Signature:
(Registrar/Deputy Registrar*)
*Select one.

High Court Rules—*continued*

Form G 40 r 11.6A

General court order

Complete and insert the heading as set out in form G 1.

Before the Honourable Justice [*name, date*]

After reading [*identify relevant court documents*] and the affidavit(s) of [*full name(s)*] and after hearing/on the application of* [*name*], counsel/solicitor/ on behalf of [†*specify party applying for the order*], and [*name(s)*], counsel/solicitor† on behalf of [*specify the other party or parties*], this court orders (by consent, *if appropriate*): [*specify the order or orders made. When more than 1 order is made, they must be numbered*.]

*Select "on the application of" if no appearance.

†Select one.

Date:

Deputy Registrar

High Court Rules—*continued*

Form J 1 r 11.6(2)

Judgment by default in case of liquidated demand

Complete and insert the heading as set out in form G 1.

Because the defendant has not filed a statement of defence in the court, judgment is given that the plaintiff recover $[*amount*], and $[*amount*] for costs.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form J 2

r 11.6(2)

Judgment by default in proceeding for recovery of land

Complete and insert the heading as set out in form G 1.

Because the defendant has not filed a statement of defence in the court, judgment is given that the plaintiff recover possession of the land described in the plaintiff's statement of claim, and $[*amount*] for costs.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form J 3

r 11.6(2)

Judgment on trial by Judge

Complete and insert the heading as set out in form G 1.

This proceeding was heard on [*date(s)*] at [*place*] before the Honourable Justice [*name*], who, having heard from [*name*], counsel for the plaintiff, and [*name*], counsel for the defendant, and having heard the evidence adduced, gives judgment that [*terms of judgment*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form J 4

r 11.6(2)

Judgment on trial by jury

Complete and insert the heading as set out in form G 1.

This proceeding was heard on [*date(s)*] at [*place*] before the Honourable Justice [*name*] and a jury. Having heard from [*name*], counsel for the plaintiff, and [*name*], counsel for the defendant, and having heard the evidence adduced, the jury found that [*verdict or finding*] and judgment is given that [*terms of judgment*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form E 1 r 17.10

Notice to liable party

To [*name of liable party*]

This document notifies you that—

1 Judgment has been given against you in the High Court at [*place*] for $[*amount*], and for [*specify amount for whichever of the following apply:*
- *costs*
- *disbursements*
- *witnesses' expenses*].

2 The entitled party, [*name*], is entitled to enforce payment of these amounts against you.

3 The entitled party requires you to serve the statement in the attached form E 2 on the entitled party within 10 working days after the date on which you are served with this notice.

4 You may be required to attend court to be orally examined about any of the following and other necessary issues:
(a) your receipts and payments for the preceding 52 weeks:
(b) your assets and liabilities:
(c) your income and expenditure:
(d) your means of satisfying the judgment.

5 If you pay the amount(s) stated in paragraph 1 within 10 working days after the date on which you are served with this notice,—
(a) you do not need to complete the attached form E 2; and
(b) you do not need to attend court to be orally examined.

Date:

Signature:

(entitled party/solicitor for entitled party*)

*Select one.

High Court Rules—*continued*
Form E 1—*continued*

Notes

Advice

1 If you require help in completing the attached statement, consult your lawyer or seek help from a Citizens' Advice Bureau, Community Law Centre, or other community service.

Registry hours

2 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

High Court Rules—*continued*

Form E 2 r 17.10

Statement of means of liable party

I, [*full name, place of residence, occupation*], the liable party, state—

1 The 52 weeks immediately preceding the date of this statement started on [*date*] and end on [*date, which must be not later than date of statement*] (the 52 weeks).

2 My income for the 52 weeks was as follows:
Specify income for each item in the following table—if no income, specify "*Nil*".

Item	Particulars	Amount ($)
(a)	salary, wages, or other personal earnings	
(b)	gross income from business, shop, farm, or sale of produce*	
(c)	amount received from boarders (including children over 16 years of age)	
	boarders at $[*rate*] per week	
	boarders at $[*rate*] per week	
(d)	allowances from relatives and other persons (including board and lodging received in return for services rendered)	
(e)	gross rents from property (including rooms let)	
(f)	compensation or damages received (including payments from the Accident Compensation Corporation)	
(g)	superannuation, pension, or benefit (including overseas income)	
(h)	dividends and interest	
(i)	all other sources of income [*specify*]	
	Total income in the 52 weeks:	

*Attach the latest statement of financial position and statement of financial performance.

3 The employers and other persons from whom I received the income specified in paragraph 2 (other than that specified under item (b)) are as follows:

High Court Rules—*continued*
Form E 2—*continued*

Item in paragraph 2	**Name and address**	**Amount ($)**
(a)	[*employers*]	
(b)	[*boarders*]	
(c)	[*relatives and other persons*]	
(d)	[*tenants*]	
(e)	[*persons who paid compensation or damages*]	
(f)	[*persons who paid superannuation, pension, or benefit*]	
(g)	[*persons who paid dividends and interest*]	
(h)	[*persons who paid other income*]	

4 My expenses for the 52 weeks were as follows:
Specify expenses for each item in the following table—if no expenses, specify "*Nil*".

Item	**Particulars**	**Amount ($)**
(a)	income tax	
(b)	insurance and superannuation	
(c)	medical and hospital benefits	
(d)	rent	
(e)	rates	
(f)	mortgage payments	
(g)	repairs on home	
(h)	food and household supplies	
(i)	electricity, gas, and fuel	
(j)	telephone	
(k)	laundry and cleaning	
(l)	clothing	
(m)	child maintenance, care, and education	
(n)	maintenance for previous partner	
(o)	entertainment	
(p)	fares	
(q)	car maintenance, running, and registration	
(r)	hire purchase payments	

High Court Rules—*continued*
Form E 2—*continued*

Item	Particulars	Amount ($)
(s)	other expenses [*specify*]	
	Total expenses in the 52 weeks:	

5 Separate income, for the 52 weeks, of members of your household whose expenses are included was as follows:

Full name	Age	Relationship	Details of separate income ($)

6 The persons to whom I paid rent (the amount set out in item (d) of paragraph 4) were as follows:

Full name	Address	Amount ($)

7 The persons to whom I paid mortgage payments (the amount set out in item (f) of paragraph 4) were as follows:

Full name	Address	Amount ($)

8 The persons to whom I paid hire purchase instalments (the amount set out in item (r) of paragraph 4) were as follows:

Full name	Address	Amount ($)

9 My assets (both in New Zealand and elsewhere) are as follows:

Item	Particulars	Amount ($)
(a)	land and buildings: [*address and capital value*]	
(b)	money in bank accounts: [*specify banks and account numbers*]	
(c)	money not in bank or invested:	
(d)	money lent or in the hands of any person: [*name and address*]	
(e)	government stock, shares, debentures, or bonds: [*specify details*]	
(f)	plant and machinery: [*specify details*]	
(g)	livestock: [*specify details*]	
(h)	interest in business, stock in trade, or venture of any kind: [*specify details*]	
(i)	motor vehicles: [*specify details*]	

High Court Rules—*continued*
Form E 2—*continued*

Item	Particulars	Amount ($)
(j)	any other property or assets not specified above, including interest in any estate: [*specify details*]	
	Total assets:	

10 The property specified in items [*specify*] of paragraph 9 of this statement is mortgaged, or otherwise secured to [*full name, address*], for the sum of $[*amount*].

11 Assets sold or otherwise disposed of by me at any time in the 52 weeks are as follows:

Description of asset	Names and addresses of persons to whom properties given, sold, or otherwise disposed of	Dates of disposal	Amounts received ($)

12 Debts owed by me that are secured by mortgage or charge are as follows: $[*amount*].

13 The persons to whom the debts specified in paragraph 12 are owed, and the items specified in paragraph 9 on which the debts are secured, are as follows:

Name	Address	Item	Amount ($)

14 My unsecured debts are as follows: $[*amount*].

15 The persons to whom the debts specified in paragraph 14 are owed are as follows:

Name	Address	Amount of debt ($)

16 The liabilities that I expect I will be obliged to meet within the 6-month period beginning on the date of this statement are as follows: $[*amount*].

17 The persons to whom I expect to be obliged to pay money during the 6-month period beginning on the date of this statement in discharge of liabilities specified in paragraph 16 are as follows:

Name	Address	Nature of liability	Amount ($)

High Court Rules—*continued*
Form E 2—*continued*

I certify that the particulars given in this statement are correct.
I am aware that I may be called on to verify those particulars in court.

Date:
Signature:
(liable party)

High Court Rules—*continued*

Form E 3 r 17.33(3)

Attachment order

Before the Honourable Justice [*name, date*]

To [*employer's name, address*]

1 This court is satisfied that you are the employer of [*liable party's name, address*] (the liable party).

2 On [*date*] in the High Court at [*place*], judgment was given against the liable party for $[*amount*] (including costs).

3 The liable party has not paid this amount and, after examining the liable party's means, the court makes this attachment order.

4 The court orders that while this order is in force, whenever any salary or wages become payable to the liable party, you must deduct from it the amount of $[*amount*] for each week.

5 However, if in any week the deduction would reduce the net earnings paid to the liable party below the protected earnings rate of $[*amount*] per week, you must adjust the amount of the deduction so that the liable party receives the protected earnings rate.

6 The first deduction is to be made on the payday following the date on which you receive this order. A deduction is to be made on every subsequent payday until [*date*] or until the total amount payable shown in paragraph 8 has been paid.

7 The money deducted is to be paid to [*name, address*] by the 20th day of the month after the month in which the deduction was made.

8 You are not required to make deductions for more than the total amount payable shown below—

Particulars	**Amount ($)**
Whole/portion* of judgment debt sought by this order	
Court fees and solicitor's costs	
Costs and expenses of this order	
Total amount payable	

High Court Rules—*continued*
Form E 3—*continued*

*Select depending on whether enforcement is sought for less than the full amount for which judgment was sealed. If less than the full amount, add the following words: "(less than the full amount of the judgment debt)".

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

1 Please see High Court Rules 17.31 to 17.39 for the rules about this order. Those rules define the terms "employer" and "salary or wages".

2 If you do not make payments as required, you can be sued for the amount owing. You may also be convicted of an offence under the Summary Offences Act 1981 and fined up to $1,000.

3 You must notify the Registrar of the High Court within 7 days if the debtor leaves or is dismissed from your employment.

4 If you need to reduce the amount of any deduction from the liable party's salary or wages in order to leave the liable party with the protected earnings rate, you should notify the Registrar of the High Court immediately.

5 If in doubt about your obligations under this order, you should consult a solicitor or the Registrar at the High Court immediately.

6 The registry hours of the High Court are from 9 am to 5 pm, except on court holidays.

High Court Rules—*continued*

Form E 4

r 17.40(2)

Charging order on land

*Before the Honourable Justice [*name, date*]

*Omit if order is issued as of right.

To [*name of liable party*]

This court orders that your estate, right, title, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent) in [*land description*] is charged with payment of the amount for which the entitled party, [*name*], may obtain/has obtained* judgment. The amount charged is $[*amount*]†.

*Select one.

†If this order seeks less than the full amount for which judgment was sealed, add the following words: "(less than the full amount of the judgment debt)".

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form E 5 r 17.40(2)

Interim charging order

Omit the following words if the order is issued as of right without judicial order.

Before the Honourable Justice [*name, date*]

To [*name of liable party*]

This court orders that until it discharges or finalises this order, your estate, right, title, or interest in [*property description*] is charged with payment of the amount for which the entitled party, [*name*], may obtain/has obtained* judgment. The amount charged is $[*amount*]†.

*Select one.

†If this order seeks less than the full amount for which judgment was sealed, add the following words: "(less than the full amount of the judgment debt)".

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form E 6 r 17.40(2)

Final charging order

Before the Honourable Justice [*name, date*]

To [*name of liable party*]

This court orders that your estate, right, title, or interest in [*property description*] be charged with payment of the amount for which the entitled party, [*name*], has obtained judgment and $[*amount*], being the costs and disbursements incurred in obtaining this order. The total amount charged is $[*amount*]*.

*If this order seeks less than the full amount for which judgment was sealed, add the following words: "(less than the full amount of the judgment debt is being charged by this order)".

Date:

Signature:

(Deputy Registrar)

High Court Rules—*continued*

Form E 7 r 17.62(4)
Sale order

To the Sheriff at [*place*]

1 This court authorises and requires you or your authorised agent to seize all the land and chattels (which include money, cheques, bills of exchange, promissory notes, bonds, and other securities for money) of [*name*] (the liable party) except—

(a) necessary tools of trade to a value not exceeding $5,000; and

(b) necessary household furniture and effects to a value not exceeding $10,000 (including the clothes belonging to the liable party (and his or her family)).

2 If money seized is not enough, you are authorised and required to obtain more money and deal with it in accordance with rules 17.62 to 17.79 of the High Court Rules. You are authorised and required to obtain more money by—

(a) receiving and recovering—

(i) the money payable to you under any cheques, bills of exchange, and promissory notes; or

(ii) money secured by bonds or other securities for money; and

(b) selling the liable party's seized chattels; and

(c) selling the liable party's estate, right, title, or interest in any land (whether it is in possession, remainder, reversion, or expectancy).

Note

The money seized will not be enough if it—

(a) cannot discharge any claims that by law are entitled to be paid in priority to the entitled party's claim; and

(b) cannot pay the costs and expenses of executing this order; and

(c) is not—

(i) the whole/portion* of the judgment debt sought by this order of $[*amount*]; and

(ii) interest at the rate for the time being defined in **section 452(2) of the Judicature Modernisation Act 2013** or at a different rate fixed by the court; and

High Court Rules—*continued*
Form E 7—*continued*

(iii) subsequent costs/disbursements† of $[*amount*].

*Select depending on whether enforcement is sought for less than the full amount for which judgment was sealed. If less than the full amount, add the following words: "(, which is less than the full amount of the judgment debt)".

†Select one.

Date:
Deputy Registrar

High Court Rules—*continued*

Form E 8
r 17.80(3)

Possession order

To the Sheriff at [*place*]

Note: In this possession order, liable party means [*name of liable party*].

1 This court orders that you are authorised and required to take possession for [*name of entitled party*] (the entitled party) of—

Select the statement(s) that apply.

Statement A
the liable party's land [*land description(s)*], ejecting others from the land as necessary.

Statement B
the liable party's chattels [*list chattels*], seizing the chattels as necessary.

2 This court further orders that you are authorised to deliver possession of any land or chattels received under this possession order to the entitled party.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form E 9

r 17.83(2)

Arrest order

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*]

This court orders that you are authorised and required to—

(a) arrest [*name of liable party*] (the liable party); and

(b) bring the liable party before this court at [*place, date, time*]; and

(c) keep the liable party in prison until that time.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form E 10 r 17.86(3)

Sequestration order

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*]

This court orders that you are appointed sequestrator and authorised and required to enter and take possession of all the land and chattels of [*name of liable party*] (the liable party). The sequestrator must obtain the rents and profits from the property until—

(a) the liable party clears that party's contempt of court in the way specified in the original court order made at [*place, date*]; or

(b) the court orders otherwise.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form E 11 r 17.89(1)

Order to arrest and imprison absconding debtor

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*]

1 This court orders that you are authorised and required to arrest [*name of liable party*] (the liable party) within 1 month of the date of this order and imprison the liable party at [*place*] for [*period of time*] unless and until—

(a) the liable party deposits in the court $[*amount*] by way of security; or

(b) the liable party gives [*name of plaintiff*] (the plaintiff) a bond executed by that party and 2 sufficient sureties of $[*amount*] or some other security satisfactory to the plaintiff.

2 The security is to be held on the basis that it is forfeit to the plaintiff if the liable party leaves New Zealand without the leave of the court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form E 12

r 17.89(1)

Order to arrest and imprison absconding debtor (in civil proceedings for penalty) when necessary to prove material prejudice

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*]

1 This court orders that you are authorised and required to arrest [*name of liable party*] (the liable party) within 1 month of the date of this order and imprison the liable party at [*place*] for [*period of time*] unless and until—

(a) the liable party deposits in the court $[*amount*] by way of security; or

(b) the liable party gives [*name of plaintiff*] (the plaintiff) a bond executed by the liable party and 2 sufficient sureties of $[*amount*] or some other security satisfactory to the plaintiff.

2 The security is to be held on the basis that if the liable party does not pay the plaintiff the amount that the plaintiff becomes entitled to claim from the liable party in these proceedings,—

(a) the security is forfeit to the plaintiff; and

(b) the liable party must go to prison (unless the court orders otherwise).

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form PR 1 r 27.4

Affidavit for obtaining grant of probate

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I/We*, [*full name, place of residence, occupation*], swear/severally swear/solemnly and sincerely affirm/severally solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I/we* knew, died at [*place, country*] on or about [*date*].

*Select one.

2 *For this paragraph select the first of the following statements that applies.*

Statement A

I was/We were* present when the deceased died.

*Select one.

Statement B

I/We* attended the deceased's funeral.

*Select one.

Statement C

I/We* saw the deceased's dead body.

*Select one.

Statement D

The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* that is attached and marked "A".

*Select one.

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in

High Court Rules—*continued*
Form PR 1—*continued*

the form of those paragraphs made by a person or persons who knew the deceased or knows or know about the deceased's death personally.

3 When the deceased died, he/she* resided at [*place, country*].

*Select one.

4 Deleted

5 I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is the deceased's last will.

*Select one.

6 *Include this paragraph only if the deceased made a document (including a codicil) changing the will. If more than 1 codicil was made, amend this paragraph by referring to each of them as the "first codicil" or the "second codicil", etc.*
The deceased made a document/codicil* changing the will referred to in paragraph 5. I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is that document/codicil*.

*Select one.

7 *For this paragraph select the statement that applies.*

Statement A
I am the executor/We are the executors* named in the will.

*Select one.

Statement B
I am/We are* the surviving/substituted* executor/executors* named in the will.

*Select one.

Statement C
I am the/I am an/We are the/We are some of the* executor/executors* of the will according to its tenor.

*Select one.

High Court Rules—*continued*
Form PR 1—*continued*

8 *Include this paragraph only if it applies. Select the statement that applies.*

Statement A
The deceased's will was made on or after 1 November 2007. I am the deceased's surviving spouse/surviving civil union partner*. When the deceased died, no order, decree, or enactment was in force between the deceased and myself providing for our separation or the dissolution of our marriage/civil union*.

*Select one.

Statement B
The deceased's will was made before 1 November 2007. I am the deceased's surviving spouse. When the deceased died, no order, decree, or enactment was in force between the deceased and myself providing for the dissolution of our marriage.

Statement C
The deceased's will was made on or after 1 November 2007. I am the deceased's former spouse/former civil union partner*. When the deceased died, a [*state details of order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*] was in force. However, my appointment as executor is not void under section 19 of the Wills Act 2007 because [*state why*].

*Select one.

Statement D
The deceased's will was made before 1 November 2007. I am the deceased's former spouse. When the deceased died, a [*state details of order, decree, or enactment in force between the parties providing for the dissolution of their marriage*] was in force. However, my appointment as executor is not void under section 19, as modified by section 40(2)(q), of the Wills Act 2007 because [*state why*].

9 *Include this paragraph only if it applies. Select the statement that applies.*

High Court Rules—*continued*
Form PR 1—*continued*

Statement A
[*Full name*], the other executor named in the will, died at [*place, country*] on or about [*date*].

Statement B
[*Full name*], the other executor named in the will, renounced probate of the will by the renunciation document dated [*date*] that is attached and marked "[*specify*]".

Statement C
The deceased's will was made on or after 1 November 2007. [*Full name*], the other executor named in the will, is the deceased's former spouse/former civil union partner*. Section 19 of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state details of order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

*Select one.

Statement D
The deceased's will was made before 1 November 2007. [*Full name*], the other executor named in the will, is the deceased's former spouse. Section 19, as modified by section 40(2)(q), of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state details of order, decree, or enactment in force between the parties providing for the dissolution of their marriage*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

*Select one.

High Court Rules—*continued*
Form PR 1—*continued*

Statement E
[*Full name*], the other executor named in the will, does not join in the application because he/she* is incapable of acting as an executor because [*state why*].

*Select one.

Statement F
[*Full name*], the other executor named in the will, does not join in the application because he/she* is overseas at present. His/her* current address is [*address*]. I/We* gave notice to him/her* of his/her* appointment as executor under the will and of my/our* intention to make the application. A copy of the notice/An acknowledgment of the notice* is attached and marked "[*specify*]".

*Select one.

Statement G
[*Full name*], the other executor named in the will, does not join in the application because he/she* is 19 years old and is not, and never has been, married and is not, and never has been, in a civil union/is 18 years old and is not, and never has been, married and is not, and never has been, in a civil union/is not yet 18 years old*. He/she* was born on [*date*].

*Select one.

Statement H
[*If the applicant(s) are the executor(s) according to the tenor of the will, state the facts proving this.*]

If you selected statement A for paragraph 9, for this paragraph select the first of the following statements that applies, otherwise omit this paragraph.

Statement A
I was/We were* present when the other executor died.

*Select one.

High Court Rules—*continued*
Form PR 1—*continued*

Statement B
I/We* attended the other executor's funeral.

*Select one.

Statement C
I/We* saw the other executor's dead body.

*Select one.

Statement D
The other executor is the person named [*full name*] in the death certificate that is attached and marked "[*specify*]".

11 I/We* will faithfully execute the will (including any document/codicil* changing the will) of which probate is granted in accordance with the law. If the court requires me/us* to, I/we* will file in the court and verify by affidavit—

(a) an accurate inventory of the deceased's estate; and

(b) an account of the deceased's estate that—

(i) is accurate; and

(ii) states the dates and details of all receipts and disbursements; and

(iii) states which of the receipts and disbursements were on capital account and which were on revenue account.

*Select one.

†Include words in the brackets only where such a document or codicil exists.

Severally sworn/affirmed* by both persons/by all of the persons* named above at [*place, date*]

or

Sworn/Affirmed* at [*place, date*]

before me:

*Select one.

[*print name*]

High Court Rules—*continued*
Form PR 1—*continued*

(A solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

High Court Rules—*continued*

Form PR 2 r 27.4

Affidavit for obtaining grant of letters of administration with will annexed

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I/We*, [*full name, place of residence, occupation*], swear/severally swear/solemnly and sincerely affirm/severally solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I/we* knew, died at [*place, country*] on or about [*date*].

Select one.

2 *For this paragraph select the first of the following statements that applies.*

Statement A
I was/We were* present when the deceased died.

*Select one.

Statement B
I/We* attended the deceased's funeral.

*Select one.

Statement C
I/We* saw the deceased's dead body.

*Select one.

Statement D
The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* that is attached and marked "A".

*Select one.

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death

High Court Rules—*continued*
Form PR 2—*continued*

personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and know(s) about the deceased's death personally.

3 When the deceased died, he/she* resided at [*place, country*].

*Select one.

4 Deleted

5 I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is the deceased's last will.

*Select one.

6 *Include this paragraph only if the deceased made a document (including a codicil) changing the will. If more than 1 codicil was made, amend this paragraph by referring to each of them, as the "first codicil" or "second codicil", etc.*
The deceased made a document/codicil* changing the will referred to in paragraph 5. I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is that document/codicil*.

*Select one.

7 *For this paragraph select the statement that applies.*

Statement A
No executor is named in the will.

Statement B
[*Full name*], the sole executor named in the will, died at [*place, country*] on or about [*date*].

Statement C
[*Full name*], the sole executor named in the will, renounced probate of the will by the renunciation document dated [*date*] that is attached and marked "[*specify*]".

Statement D
The deceased's will was made on or after 1 November 2007. [*Full name*], the sole executor named in the will, is the de-

High Court Rules—*continued*
Form PR 2—*continued*

ceased's former spouse/former civil union partner*. Section 19 of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state details of order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

*Select one.

Statement E

The deceased's will was made before 1 November 2007. [*Full name*], the sole executor named in the will, is the deceased's former spouse. Section 19, as modified by section 40(2)(q), of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state details of order, decree, or enactment in force between the parties providing for the dissolution of their marriage*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

*Select one.

Statement F

[*Full name*], the sole executor named in the will, is incapable of acting as an executor because [*state why*].

Statement G

[*Full name*], the sole executor named in the will, is 19 years old and is not, and never has been, married and is not, and never has been, in a civil union/is 18 years old and is not, and never has been, married and is not, and never has been, in a civil union/is not yet 18 years old*. He/she* was born on [*date*].

*Select one.

Statement H

[*Full name*], an executor named in the will, is an executor to whom section 19 of the Administration Act 1969 applies. No one entitled to apply for an order nisi under that section has done so within 4 months after the will-maker's death.

High Court Rules—*continued*
Form PR 2—*continued*

8 *If you selected statement B for paragraph 7, for this paragraph select the first of the following statements that applies, otherwise omit this paragraph.*

Statement A
I was/We were* present when the sole executor died.

*Select one.

Statement B
I/We* attended the sole executor's funeral.

*Select one.

Statement C
I/We* saw the sole executor's dead body.

*Select one.

Statement D
The sole executor is the person named [*full name*] in the death certificate attached and marked "[*specify*]".

9 I am/We are* [*state facts showing applicant's or applicants' right to the grant in terms of rules 27.26 and 27.27 or 27.28. Attach any consent given by any other person whose priority is higher than, or equal to, that of the applicant or applicants*].

*Select one.

10 *Omit this paragraph if it does not apply.*
No child of the deceased died before the deceased leaving issue entitled to share under the will.

11 *Include this paragraph if there are other children of the deceased who are beneficiaries in the will but not applicants. Otherwise, state* "*The deceased was not survived by any other children.*"

In addition to myself, the deceased was survived by the following children, all of whom (except when otherwise stated) are adult:

[*state full names and places of residence*]

High Court Rules—*continued*
Form PR 2—*continued*

The consent of [*name*] and [*name*], the other children of the deceased and beneficiaries referred to in clause(s) [*clause number(s)*] of the will to my/our* application, are attached and marked "[*specify*]" and "[*specify*]".

*Select one.

12 *Omit this paragraph if it does not apply.*

I am the deceased's surviving spouse/surviving civil union partner/surviving de facto partner/former spouse/former civil union partner/former de facto partner*.

I am still a beneficiary under the will.

I have not ceased to be a beneficiary under the will under section 19 of the Wills Act 2007 [*if the will was made on or after 1 November 2007*]/section 19, as modified by section 40(2)(q), of the Wills Act 2007 [*if the will was made before 1 November 2007*]*.

I have not ceased to be a beneficiary under the will under section 61 of the Property (Relationships) Act 1976. I chose option B under section 61. I lodged a notice of choice of option under section 65(2)(c) in this court on [*date*]. A copy is attached and marked "[*specify*]".

*Select one.

Omit paragraphs 13 and 14 when a trustee corporation within the meaning of section 2 of the Administration Act 1969 applies for the grant, either alone or jointly with another person.

13 *For this paragraph select the statement that applies.*

Statement A

I/We* have made reasonable inquiries for the purposes of section 5A(1)(a) of the Status of Children Act 1969 as to the existence of a parent or child of the deceased, in addition to those already known to me/us* who could claim an interest in the deceased's estate/part of the deceased's estate* only because of the Status of Children Act 1969 and the deceased's will. The inquiries included those required by section 5A(2) of the

High Court Rules—*continued*
Form PR 2—*continued*

Status of Children Act 1969. The nature of the inquiries was [*specify*].

*Select one.

Statement B
Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay a grant of administration because [*state why*].

Statement C
Getting in or preserving the assets of the deceased's estate requires the making of an immediate grant of administration because [*state why*].

Statement D
No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

14 *If you selected statement A for paragraph 13, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A
The result of my/our* inquiries was that I/we* did not discover any such parent or child.

*Select one.

Statement B
The result of my/our* inquiries was that I/we* discovered [*full name(s) and the relationship of those discovered*].

*Select one.

15 *Include the following paragraph where those discovered are children.*

The person/Those* discovered is/are* aged [*specify ages*], being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

High Court Rules—*continued*
Form PR 2—*continued*

16 To the best of my/our* knowledge, information, and belief, the gross value of the deceased's estate does not exceed $[*amount*].

*Select one.

17 I/We* will faithfully execute the will (including any document/codicil* changing the will) annexed to the letters of administration in accordance with the law. If the court requires me/us* to, I/we* will file in the court and verify by affidavit—

(a) an accurate inventory of the deceased's estate; and

(b) an account of the deceased's estate that—

(i) is accurate; and

(ii) states the dates and details of all receipts and disbursements; and

(iii) states which of the receipts and disbursements were on capital account and which were on revenue account.

*Select one.

The words in the brackets should be included only where such a document or codicil exists.

Severally sworn/affirmed* by both persons/by all of the persons* named above at [*place, date*]

or

Sworn/Affirmed* at [*place, date*]

Before me:

*Select one.

[*print name*]

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

High Court Rules—*continued*

Form PR 3

r 27.4

Affidavit for obtaining grant of administration on intestacy to surviving spouse, civil union partner, or de facto partner

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I/we* knew, died at [*place, country*] on or about [*date*].

*Select one.

2 *For this paragraph select the first of the following statements that applies.*

Statement A
I was present when the deceased died.

Statement B
I attended the deceased's funeral.

Statement C
I saw the deceased's dead body.

Statement D
The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* that is attached and marked "A".

*Select one.

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and knows or know about the deceased's death personally.

3 At the time of death the deceased resided at [*place, country*].

High Court Rules—*continued*
Form PR 3—*continued*

4 Deleted

5 I have made full inquiries and searches for a will made by the deceased. I am satisfied that the deceased died without leaving a will and was wholly intestate.

6 *For this paragraph select the statement that applies.*

Statement A

I am the surviving spouse/civil union partner* of the deceased. I am entitled to succeed on the intestacy. My beneficial interest in the estate is not affected—

(a) [*in the case of a surviving spouse*] by section 12(2) of the Matrimonial Proceedings Act 1963 (as applied by section 191(3) of the Family Proceedings Act 1980); or

(b) [*in the case of a surviving spouse or surviving civil union partner*] by section 26(1) of the Family Proceedings Act 1980; or

(c) [*in every case*] by the choice I have made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because I have chosen option B and I lodged a notice of choice of option in accordance with section 65(2)(c) of that Act in this court on [*date*]. A copy is attached and marked "[*specify*]".

*Select one.

High Court Rules—*continued*
Form PR 3—*continued*

Statement B

(a) I am the surviving de facto partner of the deceased. I am entitled to succeed on the intestacy. My beneficial interest in the estate is not affected by the choice I have made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because I have chosen option B and I lodged a notice of choice of option in accordance with section 65(2)(c) of that Act in this court on [*date*]. A copy is attached and marked "[*specify*]".

(b) My interest is not affected by section 77B of the Administration Act 1969 (which negates the beneficial interest of a surviving de facto partner to a relationship of short duration in some circumstances [*if you claim that section 77B(2) applies, state the facts supporting your claim*].

7 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a de facto partner entitled to succeed on the intestacy.

Statement B

The deceased was not survived by a husband/wife*, or by a civil union partner or by another de facto partner, entitled to succeed on the intestacy.

*Select one.

Statement C

The deceased was also survived by a husband/wife/civil union partner/1 or more other de facto partners* entitled to succeed on the intestacy, namely: [*list full name(s) and places of residence*].

*Select one.

High Court Rules—*continued*
Form PR 3—*continued*

8 *If you selected statement C for paragraph 7, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*

Statement A
On [*date*], I gave written notice to [*full names*], the survivors of the deceased who are named in the preceding paragraph, that I intended to apply to this court for letters of administration of the estate.

Statement B
Of the survivors of the deceased who are named in the preceding paragraph, [*number of survivors*], namely, [*full names and country of residence for each*], reside beyond the jurisdiction of the court.

Statement C
I attach to this affidavit the consents, marked "*specify*", of [*full names*], survivors of the deceased who are named in paragraph 7, to letters of administration of the deceased's estate being granted to me.

9 *For this paragraph select the statement that applies.*

Statement A
The deceased was not survived by a child—
(a) who was born to the deceased; or
(b) who was adopted by the deceased; or
Omit paragraphs (c) and (d) if the deceased was female.
(c) in respect of whom the deceased had admitted paternity; or
(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

Statement B
The deceased was survived by the following children, all of whom, except where otherwise shown, are adult: [*list full names, places of residence, and occupations of the children of the deceased and, in the case of any child who is a minor, the child's age*].

High Court Rules—*continued*
Form PR 3—*continued*

10 *Include this paragraph if you selected statement B for paragraph 9, otherwise omit.*
The children named in paragraph [*number*] are children to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

11 *Include this paragraph if you selected statement B for paragraph 9, otherwise omit.*
The deceased was not survived by any other child—
(a) who was born to the deceased; or
(b) who was adopted by the deceased; or
Omit paragraphs (c) and (d) if the deceased was female.
(c) in respect of whom the deceased had admitted paternity; or
(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

12 *For this paragraph select the statement that applies.*

Statement A
I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

Statement B
Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay a grant of administration because [*state why*].

Statement C
The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

High Court Rules—*continued*
Form PR 3—*continued*

Statement D
No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

13 *If you selected statement A for paragraph 12, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A
The result of my inquiries was that I did not discover any such parent or child. Attached and marked "[*specify*]" is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B
The result of my inquiries was that I discovered [*full names and relationship of those discovered*].

14 *Include the following paragraph where those discovered are children.*
The person/Those* discovered is/are* aged [*specify ages*] being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

15 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed $[*amount*].

16 I will faithfully administer the estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—

(a) a true and complete inventory of the deceased's estate; and

(b) a true and complete account of the deceased's estate—

(i) setting out the dates and particulars of all receipts and disbursements; and

High Court Rules—*continued*
Form PR 3—*continued*

(ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]
Before me:

*Select one.

[*print name*]
(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

High Court Rules—*continued*

Form PR 4

r 27.4

Affidavit for obtaining grant of administration on intestacy to daughter or son of deceased

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

Note: This form must be appropriately modified if more than 1 daughter or son is applying.

1 The deceased, [*name as on cover sheet*], whom I/we* knew, died at [*place, country*] on or about [*date*].

*Select one.

2 *For this paragraph select the first of the following statements that applies.*

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

Statement D

The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* that is attached and marked "A".

*Select one.

If the applicant or applicants for the grant do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and know(s) about the deceased's death personally.

3 At the time of death the deceased resided at [*place, country*].

High Court Rules—*continued*
Form PR 4—*continued*

4 Deleted

5 I have made full inquiries and searches for a will made by the deceased. I am satisfied that the deceased died without leaving a will and was wholly intestate.

6 I am a daughter/son* of the deceased.

*Select one.

7 *For this paragraph select the statement that applies. Note: Statements B and C should be appropriately altered if the deceased entered a civil union that was dissolved or affected by court order.*

Statement A

At the time of his death, my father was a widower/At the time of her death, my mother was a widow* and was not living in a de facto relationship.

*Select one.

Statement B

I attach to this affidavit a copy of the order/decree absolute* marked "[*specify*]", dissolving my father's/mother's* marriage. He/She* did not subsequently marry or enter into a civil union, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

Statement C

I attach to this affidavit a copy of the separation order/decree of judicial separation* marked "[*specify*]", made between my father and his wife or husband/my mother and her husband or wife*. The order/decree* was in force at the time of his/her* death, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

High Court Rules—*continued*
Form PR 4—*continued*

Statement D
The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he/she* chose option A. Attached and marked "[*specify*]" is a copy of the choice of option.

*Select one.

Statement E
The deceased never married or entered into a civil union and at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

8 *For this paragraph select the statement that applies.*

Statement A
The deceased was not survived by any other child—
(a) who was born to the deceased; or
(b) who was adopted by the deceased; or
Omit paragraphs (c) and (d) if the deceased was female.
(c) in respect of whom the deceased had admitted paternity; or
(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

Statement B
In addition to myself, the deceased was survived by the following children, all of whom, except where otherwise shown, are adult: [*list full names, places of residence, and occupations of the other children of the deceased and, in the case of a child who is a minor, the age of that child*].

9 *If you selected statement B for paragraph 8, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*

High Court Rules—*continued*
Form PR 4—*continued*

Statement A
On [*date*], I gave written notice to [*full names*], adult children of the deceased who are named in paragraph 8, that I intended to apply to this court for letters of administration of the estate of the deceased. Attached and marked "[*specify*]" is a copy/copies* of that notice/those notices*).

*Select one.

Statement B
I attach to this affidavit the consents, marked "[*specify*]" of [*full names*], adult children of the deceased who are named in paragraph [*specify*], to letters of administration of the deceased's estate being granted to me.

10 *For this paragraph select the statement that applies.*

Statement A
Neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies to me.

Statement B
Both in the case of the children of the deceased who are named in paragraph [*number*] of this affidavit and in my case, neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

11 *For this paragraph select the statement that applies.*

Statement A
I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

High Court Rules—*continued*
Form PR 4—*continued*

Statement B
Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*state why*].

Statement C
The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Statement D
No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

12 *If you selected statement A for paragraph 11, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A
The result of my inquiries was that I did not discover any such parent or child. Attached and marked "[*specify*]" is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B
The result of my inquiries was that I discovered [*full names and relationship of those discovered*].

13 *Include the following paragraph where those discovered are children.*
The person/Those* discovered is/are* aged [*specify ages*] being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

14 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed $[*amount*].

High Court Rules—*continued*
Form PR 4—*continued*

I will faithfully administer the deceased's estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—

(a) a true and complete inventory of the deceased's estate; and

(b) a true and complete account of the deceased's estate—

(i) setting out the dates and particulars of all receipts and disbursements; and

(ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]

Before me:

*Select one.

[*print name*]

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

High Court Rules—*continued*

Form PR 5 r 27.4

Affidavit for obtaining grant of administration on intestacy to parent of deceased

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

This form must be appropriately modified if more than 1 parent is applying.

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I knew, died at [*place, country*] on or about [*date*].

2 *For this paragraph select the first of the following statements that applies.*

Statement A
I was present when the deceased died.

Statement B
I attended the deceased's funeral.

Statement C
I saw the deceased's dead body.

Statement D
The deceased is the person named [*full name*] in the attached certified copy of the death certificate at [*place*] marked "A".

If the applicant or applicants for the grant do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and know(s) about the deceased's death personally.

3 At the time of death the deceased resided at [*place, country*].

4 Deleted

High Court Rules—*continued*
Form PR 5—*continued*

5 I have made full inquiries and searches for a will made by the deceased. I am satisfied that the deceased died without leaving a will and was wholly intestate.

6 I am the deceased's father/mother*.

*Select one.

7 *For this paragraph select the statement that applies.*

Statement A
The deceased was not survived by a spouse or civil union partner, or by any de facto partners, entitled to succeed on the intestacy.

Statement B
I attach to this affidavit a copy of the order/decree absolute* marked "[*specify*]", dissolving the marriage/civil union*of my son/daughter*, the deceased. He/She* did not subsequently marry or enter into a civil union, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

Statement C
I attach to this affidavit a copy of the separation order/decree of judicial separation* marked "[*specify*]", made between my son/daughter*, the deceased, and his wife or husband/her husband or wife/civil union partner*. The order/decree* was in force at the time of his/her* death, and at the time of his/her* death he/she* was not living in a de facto relationship.

*Select one.

High Court Rules—*continued*
Form PR 5—*continued*

Statement D
The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he/she* chose option A. Attached and marked "[*specify*]" is a copy of the choice of option.

*Select one.

8 *For this paragraph select the statement that applies.*

Statement A
I attach to this affidavit the consent marked "[*specify*]" of [*full name*], the father/mother* of the deceased, to letters of administration of the deceased's estate being granted to me.

*Select one.

Statement B
[*Full name*], the father/mother* of the deceased, died at [*place, country*] on or about [*date*] and therefore predeceased his/her* son/daughter*.

*Select one.

Statement C
[*Full name*], the father/mother* of the deceased, does not join in the application as he/she* is incapable of acting as administrator because [*state why*].

*Select one.

9 The deceased was not survived by a child—

(a) who was born to the deceased; or

(b) who was adopted by the deceased; or

Omit paragraphs (c) and (d) if the deceased was female.

(c) in respect of whom the deceased had admitted paternity; or

(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

High Court Rules—*continued*
Form PR 5—*continued*

10 The deceased was not survived by any grandchild—
(a) who was born to a child of the deceased; or
(b) who was adopted by a child of the deceased; or
(c) in respect of whom a son of the deceased had admitted paternity; or
(d) in respect of whom a son of the deceased was adjudged, before or after the death of the child of the deceased, to be the father.

11 *For this paragraph select the statement that applies.*

Statement A
I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

Statement B
Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*state why*].

Statement C
The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Statement D
No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

12 *If you selected statement A for paragraph 11, for this paragraph select the statement that applies, otherwise omit this paragraph.*

High Court Rules—*continued*
Form PR 5—*continued*

Statement A
The result of my inquiries was that I did not discover any such parent or child. Attached and marked "[*specify*]" is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B
The result of my inquiries was that I discovered [*full names and relationship of those discovered.*].

13 *Include the following paragraph where those discovered are children.*
The person/Those* discovered is/are* aged [*specify ages*], being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

14 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed $[*amount*].

15 I will faithfully administer the deceased's estate in accordance with the law, and will, when required by the court, file in the court and verify by affidavit—

(a) a true and complete inventory of the deceased's estate; and

(b) a true and complete account of the deceased's estate—

(i) setting out the dates and particulars of all receipts and disbursements; and

(ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]
Before me:

*Select one.

High Court Rules—*continued*
Form PR 5—*continued*

[*print name*]
(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

High Court Rules—*continued*

Form PR 6

r 27.4

Affidavit for obtaining grant of administration on intestacy to brother or sister of deceased

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

This form must be appropriately altered if more than 1 brother or sister is applying.

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I knew, died at [*place, country*] on or about [*date*].

2 *For this paragraph select the first of the following statements that applies.*

Statement A
I was present when the deceased died.

Statement B
I attended the deceased's funeral.

Statement C
I saw the deceased's dead body.

Statement D
The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* attached and marked "A".

*Select one.

If the applicant or applicants for the grant do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and know(s) about the deceased's death personally.

3 At the time of death the deceased resided at [*place, country*].

4 Deleted

High Court Rules—*continued*
Form PR 6—*continued*

5 I have made full inquiries and searches for a will made by the deceased. I am satisfied that the deceased died without leaving a will and was wholly intestate.

6 I am a brother/sister* of the deceased.

*Select one.

7 *For this paragraph select the statement that applies.*

Statement A
The deceased was not survived by a spouse or civil union partner, or by any de facto partner, entitled to succeed on the intestacy.

Statement B
I attach to this affidavit a copy of the order/decree absolute* marked "[*specify*]", dissolving the marriage/civil union* of my brother/sister*, the deceased. He/She* did not subsequently marry or enter into a civil union, and at the time of his/her* death he/she* was not living in a de facto relationship.

Statement C
I attach to this affidavit a copy of the separation order/decree of judicial separation* marked "[*specify*]", made between my brother/sister*, the deceased, and his/her* wife/husband/civil union partner*. The order/decree* was in force at the time of his/her* death, and at the time of his/her* death he/she* was not living in a de facto relationship.

Statement D
The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he/she* chose option A. Attached and marked "[*specify*]" is a copy of the choice of option.

*Select one.

8 The deceased was not survived by a parent.

9 The deceased was not survived by any child—

High Court Rules—*continued*
Form PR 6—*continued*

(a) who was born to the deceased; or
(b) who was adopted by the deceased; or

Omit paragraphs (c) and (d) if the deceased was female.

(c) in respect of whom the deceased had admitted paternity; or
(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

10 The deceased was not survived by any grandchild—
(a) who was born to a child of the deceased; or
(b) who was adopted by a child of the deceased; or
(c) in respect of whom a son of the deceased had admitted paternity; or
(d) in respect of whom a son of the deceased was adjudged, before or after the death of the child of the deceased, to be the father.

11 *For this paragraph select the statement that applies.*

Statement A
The deceased was not survived by any other brother or sister.

Statement B
In addition to myself, the deceased was survived by the following brothers and sisters, all of whom, except where otherwise shown, are adult: [*list full names, places of residence, and occupations of the other brothers and sisters of the deceased and, in the case of any brother or sister who is a minor, the age of that brother or sister*].

12 *If you selected statement B for paragraph 11, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*

Statement A
On [*date*], I gave written notice to [*full names*], adult brothers and sisters of the deceased who are named in paragraph 11, that I intended to apply to this court for letters of administration of the deceased's estate. Attached and marked "[*specify*]" is a copy of that notice.

High Court Rules—*continued*
Form PR 6—*continued*

Statement B
I attach to this affidavit the consents, marked "[*specify*]", of [*full names*], adult brothers and sisters of the deceased who are named in paragraph 11, granting me letters of administration of the deceased's estate.

13 *For this paragraph select the statement that applies.*

Statement A
Neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies to me.

Statement B
Both in the case of the brothers and sisters of the deceased who are named in paragraph 11 of this affidavit and in my case, neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

14 *For this paragraph select the statement that applies.*

Statement A
I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

Statement B
Making the inquiries specified in section 5A(1) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*state why*].

Statement C
The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

High Court Rules—*continued*
Form PR 6—*continued*

Statement D
No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

15 *If you selected statement A for paragraph 14, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A
The result of my inquiries was that I did not discover any such parent or child. Attached and marked "[*specify*]" is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B
The result of my inquiries was that I discovered [*full names and relationship of those discovered.*].

16 *Include the following paragraph where those discovered are children.*
The person/Those* discovered are* [*specify ages*], being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

17 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed $[*amount*].

18 I will faithfully administer the deceased's estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—

(a) a true and complete inventory of the deceased's estate; and

(b) a true and complete account of the deceased's estate—

(i) setting out the dates and particulars of all receipts and disbursements; and

High Court Rules—*continued*
Form PR 6—*continued*

(ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]

Before me:

*Select one.

[*print name*]

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

High Court Rules—*continued*

Form PR 7 r 27.31(1)

Probate in common form

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*name, place of residence, occupation*] (deceased)

1 *For this paragraph select the statement that applies*.

Statement A

The deceased, [*full name*], died at [*place, country*] on or about [*date*] leaving a will. A copy is attached.

Statement B

The deceased, [*full name*], died at [*place, country*] on or about [*date*] leaving a will and [*specify number*] document(s)/codicil(s)* changing the will. Copies are attached.

*Select one.

2 *For this paragraph select the statement that applies.*

Statement A

The will was proved before the Registrar/Senior Deputy Registrar* in chambers acting under rule 27.14 of the High Court Rules and probate of the will was granted today.

*Select one.

Statement B

The will and [*specify number*] document(s)/codicil(s)* changing the will were proved before the Registrar/Senior Deputy Registrar* in chambers acting under rule 27.14 of the High Court Rules and probate of the will and [*specify number*] document(s)/codicils* changing the will was granted today.

*Select one.

3 This probate document appoints [*full name(s), place(s) of residence, occupation(s)*], the executor/executors* [*or state basis for the grant as stated in paragraph 2 of the application*] named in the will/document/codicil that changed the will as the administrator/administrators* of the deceased's estate.

High Court Rules—*continued*
Form PR 7—*continued*

*Select one.

4 [*Specify any other order made as part of the grant*.]

Date:
Deputy Registrar

High Court Rules—*continued*

Form PR 8 r 27.31(1)

Letters of administration with will annexed

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*name, place of residence, occupation*] (deceased)

To [*full name, place of residence, occupation*] the [*state basis for entitlement to grant as specified in rule 27.26 that allowed grant of administration*]

1 *For this paragraph select the statement that applies.*

Statement A

The deceased, [*full name*], died at [*place, country*] on or about [*date*] leaving a will. A copy is attached.

*Select one.

Statement B

The deceased, [*full name*], died at [*place, country*] on or about [*date*] leaving a will and [*specify number if more than 1*] document(s)/codicil(s)* changing the will. Copies are attached.

*Select one.

2 *For this paragraph select the statement that applies.*

Statement A

The will was proved before the Registrar/Senior Deputy Registrar in chambers acting under rule 27.14 of the High Court Rules and letters of administration with the will annexed was granted today.

*Select one.

Statement B

The will and [*specify number*] document(s)/codicil(s) changing the will were proved before the Registrar/Senior Deputy Registrar in chambers acting under rule 27.14 of the High Court Rules, and letters of administration with the will and [*specify number*] document(s)/codicils* changing the will annexed was granted today.

High Court Rules—*continued*
Form PR 8—*continued*

*Select one.

3 The circumstance in rule 27.25(1) to (3) of the High Court Rules allowing the grant of administration was [*specify*].

4 These letters of administration authorise you—

(a) to administer the deceased's estate; and

(b) to demand and recover whatever debts may belong to the deceased's estate; and

(c) to pay whatever debts the deceased owed; and

(d) to pay the legacies contained in the will and [*specify number*] document(s)/codicil(s)* changing the will to the extent the estate allows.

*Select one.

5 *For this paragraph select the statement that applies.*

Statement A
You are appointed as the administrator with the will annexed of all of the deceased's estate.

Statement B
You are appointed as the administrator with the will and [*specify number*] document(s)/codicil(s)* changing the will annexed of all of the deceased's estate.

*Select one.

[*Specify any other order made as part of the grant*.]

Date:

Deputy Registrar

High Court Rules—*continued*

Form PR 9

r 27.31(1)

Letters of administration on intestacy

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place of residence, occupation*] (deceased)

To [*full name, place of residence, occupation*] [*state basis for entitlement to grant as specified in rule 27.35(4) that gives right to apply for administration, that is, the relationship to the deceased*] .

1 The deceased, [*full name*], died at [*place, country*] on or about [*date*] without leaving a will.

2 These letters of administration authorise you—

(a) to administer the deceased's estate; and

(b) to demand and recover whatever debts may belong to the deceased's estate; and

(c) to pay whatever debts the deceased owed, so far as the estate extends.

3 You are appointed as the administrator of all of the deceased's estate.

4 This grant was made today by the Registrar/Senior Deputy Registrar* in chambers acting under rule 27.14 of the High Court Rules.

*Select one.

Date:

Deputy Registrar

High Court Rules—*continued*

Form PR 10 r 27.11(2)

Caveat

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

Under section 60 of the Administration Act 1969

And

In the matter of the will/estate* of [*full name, place, occupation*] (deceased)

*Select one.

Probate of the will/letters of administration of the estate* of the deceased, [*name*], must not be granted without notice to [*full name*], solicitor for [*full name, place, occupation*], who has an interest in the estate.

*Select one.

Date:

Signature:

(caveator/solicitor for caveator*)

*Select one.

Complete and attach the memorandum as set out in form G 10.

High Court Rules—*continued*

Form PR 11
r 27.33(1)

Exemplification of probate or letters of administration

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

1 This document certifies a record in the [*name of Registry*] Registry of the High Court of New Zealand, which is a court of record. The record is that on [*date*]—

Select the statement that applies.

Statement A

the last will of [*full name, place, occupation*], who died at [*place*] on or about [*date*], was proved by, and probate was granted to, [*full name, place of residence*], the named executor.

Statement B

letters of administration with will annexed of the estate of [*full name, place, occupation*], who died at [*place*] on or about [*date*], were granted to [*full name, place of residence*] as [*specify the person's status as described in rule 27.26*].

Statement C

letters of administration of the estate of [*full name, place, occupation*], who died at [*place*] on or about [*date*], were granted to [*full name, place*].

2 *For this paragraph select the statement that applies.*

Statement A

The probate is on record in the office of that Registry.

Statement B

The letters of administration with will annexed/letters of administration* are on record in the office of that Registry.

*Select one.

High Court Rules—*continued*
Form PR 11—*continued*

3 *Omit this paragraph if the exemplification relates only to letters of administration on intestacy.*
The text of the will is shown by the copy/copies* of it attached and endorsed on each page with the seal of the High Court of New Zealand.

*Select one.

4 *Omit this paragraph if the exemplification relates only to letters of administration on intestacy.*
The sealing of this document is evidence of the acceptance by this court of the authenticity of the wording of the will.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form PR 12 r 27.16(4)

Affidavit of valid execution

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

1 I am one of the witnesses to/I was present at the signing of* the last will of the deceased, [*full name, place*]. The last will is the document marked "A" now produced and shown to me.

*Select one.

2 *For this paragraph, select the statement that applies*.

Statement A

On [*date*], the deceased signed the will by signing his/her* name as it now appears on the will, intending the signing to be a valid signing of the will.

*Select one.

Statement B

On [*date*], the deceased directed another person to sign the will on his/her* behalf in his/her* presence, intending the signing of that person's name as it now appears on the will to be a valid signing of the will.

*Select one.

Statement C

On [*date*], the deceased acknowledged that he/she* had earlier signed the will by signing his/her* name as it now appears on the will, intending the signing to be a valid signing of the will.

*Select one.

High Court Rules—*continued*
Form PR 12—*continued*

Statement D

On [*date*], the deceased acknowledged that he/she* had earlier directed another person to sign the will on his/her* behalf in his/her* presence, intending the signing of that person's name as it now appears on the will to be a valid signing of the will.

*Select one.

3 *For this paragraph, select—*

Statement A, if you selected Statement A in paragraph 2; or

Statement B, if you selected Statement B in paragraph 2; or

Statement C, if you selected Statement C or D in paragraph 2.

Statement A

The signing referred to in paragraph 2 was completed in my presence and in the presence of [*full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness*] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

Statement B

The directing referred to in paragraph 2 was completed in my presence and in the presence of [*full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness*] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

Statement C

The acknowledging referred to in paragraph 2 was completed in my presence and in the presence of [*full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness*] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

4 *Include this paragraph only if there is a change on the will. Select the statement that applies.*

High Court Rules—*continued*
Form PR 12—*continued*

Statement A
The change on the will was executed by [*specify the actions complying with section 15(a) or (b) of the Wills Act 2007*].

Statement B
The change on the will was made by the obliteration of words in the will in such a way as to prevent their effect being apparent. The deceased indicated his/her* consent to the obliteration by [*specify the actions by which the deceased indicated consent to the obliteration*].

*Select one.

5 *Include this paragraph only if it must be proved that the deceased knew the contents of the will or a separate document.*
Before the deceased signed the will/separate document*, I read/[*full name*] in my presence read* the will/separate document* to the deceased and the deceased seemed to understand it thoroughly/seemed to have full knowledge of its contents*.

*Select one.

Sworn/Affirmed* at: [*place, date*]
Before me: [*name, signature*]
*Select one.

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)
*Select one.

High Court Rules—*continued*

Form AD 1 rr 25.7(2), 25.9(2)

General heading for action *in personam*

In the High Court of New Zealand
In Admiralty
[*Name of registry*] Registry
No: [*number of proceeding*]
Between [*name of plaintiff*]
(plaintiff)
And [*name of defendant*]
(defendant)

High Court Rules—*continued*

Form AD 2

r 25.7(1)

Notice of proceeding *in personam*

To [*name of defendant(s)*]

1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you cause an appearance to be entered for you in the registry of this court at [*place*], the plaintiff may proceed in the plaintiff's action without having it heard in court, and judgment may be given in your absence.

2 The trial of the action, if a trial is necessary, will take place at the court at [*place*] at a time to be fixed by the court.

3 *For this paragraph select the statement that applies.*

Statement A

I, [*full name*], appearing in person, issued this notice of proceeding. My address for service is [*address*].

Statement B

I, [*full name of solicitor*], issued this notice of proceeding for the plaintiff/plaintiffs*. My firm is [*name, address*]. My address for service is [*address*]†.

*Select one.

†If the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*
Form AD 2—*continued*

Service of this notice

This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.

Directions for entering appearance

1 You may enter an appearance either personally (if acting without a solicitor) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at that registry.

2 If the last day for entering your appearance falls on a Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.

3 *Omit this paragraph if it conflicts with a direction by the court.*
In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

You must endorse the notice of proceeding before it is issued. The endorsement must contain a concise statement of the nature of the claim, the relief or remedy required, and the amount claimed (if any). In the case of a proceeding in rem add: The plaintiff claims against the [*name of ship or describe property*] under sections [*specify*] of the Admiralty Act 1973.

Statement of defence

A defendant who intends to defend an action must file or serve a statement of defence within 20 working days after the day on which the statement of claim was served on that defendant, unless the court or a Judge gives leave to the contrary.

High Court Rules—*continued*

Form AD 3 r 25.8(2)

General heading for action *in rem*

In the High Court of New Zealand

In Admiralty

[*Name of registry*] Registry

No: [*number of proceeding*]

Admiralty action *in rem*

Between [*name of plaintiff(s), eg, the owners of the ship* "*X*"]

(plaintiff/plaintiffs*)

*Select one.

And [*name of defendant(s), eg, the ship* "*Y*"*, the ship* "*Y*" *and its freight, the ship* "*Y*" *and its cargo and freight, the cargo from the ship* "*Y*"*, the proceeds of the ship* "*Y*"*, or the proceeds of the cargo from the ship* "*Y*"]

(defendant/defendants*)

*Select one.

High Court Rules—*continued*

Form AD 4

r 25.8(1)

Notice of proceeding *in rem*

To the owners and all others who have an interest in the [*name of ship or describe property*]

1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you cause an appearance to be entered for you in the registry of this court at [*place*], the plaintiff may proceed in the plaintiff's action without having it heard in court, and judgment may be given in your absence. If the thing described in this notice of proceeding is then held under an order of the court authorising its arrest, it may be sold by order of the court.

2 The trial of the action, if a trial is necessary, will take place at the court at [*place*] at a time to be fixed by the court.

3 *For this paragraph select the statement that applies.*

Statement A

I, [*full name*], appearing in person, issued this notice of proceeding. My address for service is [*address*].

Statement B

I, [*full name of solicitor*], solicitor for the plaintiff/plaintiffs*, issued this notice of proceeding. My firm is [*name, address*]. My address for service is [*address*].†

*Select one.

†If the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*
Form AD 4—*continued*

Service of this notice

This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.

Directions for entering appearance

1 You may enter an appearance either personally (if suing in person) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at the registry.

2 The appearance must state the name and correct address of the party appearing and the capacity in which that party appears, whether as owner or part-owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them.

3 If the last day for entering your appearance falls on a Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.

4 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

You must endorse the notice of proceeding before it is issued. The endorsement must contain a concise statement of the nature of the claim, the relief or remedy required, and the amount claimed (if any). In the case of a proceeding in rem add: The plaintiff claims against the [*name of ship or describe property*] under sections [*specify*] of the Admiralty Act 1973.

High Court Rules—*continued*

Form AD 5

r 25.9(1)

Notice of proceeding both *in rem* and *in personam*

To the owners and all others interested in the [*name of ship or describe property*]

and

To the defendant [*name*]

1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you have caused an appearance to be entered for you in the registry of this court at [*place*], the plaintiff may proceed in the plaintiff's action without having it heard in court, and judgment may be given in your absence. If the thing described in this notice of proceeding is then held under an order of the court authorising its arrest, it may be sold by order of the court.

2 The trial of the action, if a trial is necessary, will take place at the court at [*place*] at a time to be fixed by the court.

3 *For this paragraph select the statement that applies.*

Statement A

This notice of proceeding was issued by [*full name*] appearing in person. My address for service is [*address*].

Statement B

This notice of proceeding was issued by [*full name*], solicitor for the plaintiff/plaintiffs*. My firm is [*name, address*]. My address for service is [*address*].†

*Select one.

†If the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Date:

Signature:

(Registrar/Deputy Registrar*)

High Court Rules—*continued*
Form AD 5—*continued*

*Select one.

Service of this notice

This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.

Directions for entering appearance

1 You may enter an appearance either personally (if suing in person) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at the registry.

2 The appearance must state the name and correct address of the party appearing and the capacity in which that party appears, whether as owner or part-owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them.

3 If the last day for entering your appearance falls on a Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.

4 *Omit this paragraph if it conflicts with a direction by the court.*
In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

You must endorse the notice of proceeding before it is issued. The endorsement must contain a concise statement of the nature of the claim, the relief or remedy required, and the amount claimed (if any). In the case of a proceeding in rem add:

The plaintiff claims against the [*name of ship or describe property*] under sections [*specify*] of the Admiralty Act 1973 [*summary of claim and amount*].

High Court Rules—*continued*
Form AD 5—*continued*

Include the following sentence if the plaintiff claims against a second defendant, otherwise omit.

The plaintiff claims against the second defendant [*summary of claim and amount*].

Statement of defence

A defendant who intends to defend an action must file or serve a statement of defence within 20 working days after the day on which the statement of claim was served on that defendant, unless the court or a Judge gives leave to the contrary.

High Court Rules—*continued*

Form AD 6 r 25.12(1)
Memorandum of appearance

Defendant: [*name, place of residence or business, occupation*]

Include details for party and port of registry if appearance is in an action in rem.

Party: [*name and correct address of party appearing and capacity in which that party appears (ie, owner, part-owner, or otherwise). This statement is prima facie evidence of matters stated in it (see rule 25.13)*.]

Port of registry: [*name of port of registry or port to which ship belongs. This statement is prima facie evidence of matters stated in it (see rule 25.13)*.]

1 *Include this paragraph if the appearance is to a counterclaim, otherwise omit.*

This is an appearance to a counterclaim.

2 *Include this paragraph if the appearance is by an added defendant, third party, or intervener, otherwise omit.*

[*Specify briefly the particulars of the order or notice served on the party entering the appearance.*]

3 *Include this paragraph if the appearance is conditional, otherwise omit.*

This appearance has effect as an unconditional appearance unless, within 8 working days after the appearance is filed, an application is made to set aside the notice of proceeding or service of the notice of proceeding and an order is made accordingly (*see* rule 25.12 of the High Court Rules).

I, [*full name*], filed this appearance, appearing in person. My address for service is [*address*].

Date:

Signature:

(party/solicitor*)

High Court Rules—*continued*
Form AD 6—*continued*

*Select one.

Note

If the appearance is filed by a solicitor who has another solicitor acting as that solicitor's agent at the place of filing, add the name and address of the agent or the agent's firm to the name and address of the principal or the principal's firm.

Directions for entering an appearance

1 If the last day for entering an appearance falls on Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.

2 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

High Court Rules—*continued*

Form AD 7 r 25.34(1)

Application for warrant of arrest

To the Registrar of the High Court at [*place*]

1 The plaintiff applies for a warrant for the arrest of [*name of ship or describe property*].

2 The present location of the property to be arrested is [*location*].

3 This application is accompanied by the affidavit/affidavits* of [*names of deponents*] deposing to the matters referred to in Rule 25.34(4) of the High Court Rules, and an indemnity to the Registrar.

*Select one.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Certificate of Registrar

I certify that according to the records of the court—

(a) a notice of proceeding in an action *in rem* has been issued against [*name of ship or describe property to be arrested*]:

(b) this application was filed at [*time, date*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form AD 8

r 25.34(4)

Indemnity to Registrar

To the Registrar of the High Court at [*place*]

The applicant indemnifies you—

(a) for any fees and expenses (including harbour dues) that may be incurred by you in executing the warrant of arrest issued against [*name of ship or describe property*]; and

(b) against any liability arising out of or incidental to any act lawfully done by you in executing that warrant.

Date:

Signature:

(applicant/solicitor for applicant*)

*Select one.

High Court Rules—*continued*

Form AD 9 r 25.35(3)

Warrant of arrest

To the Registrar of the High Court at [*place*]

and

To the Registrar's appointed officers or agents

You are directed to arrest the [*name of ship or describe property*] and keep it under safe arrest until you receive further orders from the court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

This warrant of arrest is taken out by [*name of solicitor*], solicitor for [*name of party*].

Registrar's endorsement as to execution

This warrant was executed by [*name of person executing warrant*] at [*time, date*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form AD 10 r 25.38(1)

Notice by Registrar of arrest of property

[*Name of ship or property*]

1 The ship named/property described* above is in custody or possession of the Registrar of the High Court of New Zealand by virtue of a warrant of arrest from this court.

*Select one.

2 A person who attempts to remove the property or interfere with it without the written authority of the Registrar, or of the Registrar's officers or agents, will be in contempt of court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form AD 11 r 25.42(1)
Request for caveat against arrest

[*Name of ship or describe property*]

1 I request a caveat be entered against the arrest of the ship/property* described above.

*Select one.

2 I undertake to enter an appearance in any action that may be begun against it in the court.

3 I undertake, within 3 working days after receiving notice of an action in the court concerning the arrested ship/property*, to give security to the satisfaction of the Registrar in an amount not exceeding $[*amount*] or to pay that amount into court.

*Select one.

4 My address for service is [*address*].

Date:

Signature:

(applicant/solicitor for applicant*)

*Select one.

High Court Rules—*continued*

Form AD 12 r 25.44(1)

Release from arrest

To the Registrar of the High Court of New Zealand at [*place*]

and

To the Registrar's appointed officers and agents

1 The [*name of ship or describe property*] has been held under arrest in accordance with a warrant of arrest issued at [*place, date*].

2 You are now directed to release the arrested property.

3 The ground for release is [*specify ground, eg, court order, payment into court, etc*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

*Omit if this release is not under an order of the court.

High Court Rules—*continued*

Form AD 13 r 25.45(2)

Bail bond

1 An action *in rem* against the [*name of ship or describe property*] is pending in this court. The parties to the action are [*names*].

2 I/We* submit to the jurisdiction of the court.

*Select one.

3 If the defendant does not satisfy a judgment in this proceeding or does not pay an amount due to be paid by the defendant under an admission of liability in this action or under a settlement agreement that is filed in this court, the enforcement process may issue against me/us*, my/our* executors or administrators or assigns, and my/our* goods and chattels, and the goods and chattels of my/our* executors, administrators, or assigns, for an amount not exceeding $[*amount*].

*Select one.

Date:

The common seal [*complete as usual*]:

This bond was signed by:

(sureties)

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

High Court Rules—*continued*

Form AD 14 r 25.46(1)

Request for caveat against release and payment

[*Name of ship or describe property*]

Omit paragraph (a) or (b) if not requested.

I request a caveat be entered against—

(a) the issue of a release for the arrested property:

(b) payment out of court of the proceeds of sale (if the court should order that the arrested property be sold).

Date:

Signature:

[*(name of signatory)*]

High Court Rules—*continued*

Form AD 15

r 25.51(1)

Request for commission for appraisement and sale

I/We* request a commission for the appraisement and sale of [*name of ship or describe property*], which was arrested by order of the court on [*date*].

*Select one.

Date:

Signature:

[*(name of signatory)*]

High Court Rules—*continued*

Form AD 16

r 25.51(5)

Commission for appraisement and sale

To the Registrar of the High Court at [*place*]

and

To the Registrar's appointed officers and agents

1 The court has ordered that the [*name of ship or describe property*] be appraised and sold.

2 You are directed to choose 1 or more experienced persons and to swear them to appraise the property according to its correct value.

3 You are also directed that, once that value has been certified in writing by the appraiser or appraisers, you are to arrange for the property to be sold by [*specify whether sale to be by way of private treaty, tender, or public auction*] for the highest price that can be obtained for it, but not for less than the appraised value unless the court, on your application, allows it to be sold for less.

4 You are further directed that, immediately on the sale being completed, you are to pay the proceeds of the sale into court and to file in the court the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

This commission is taken out by [*name*], solicitor for the [*name of party*].

High Court Rules—*continued*

Form AD 17 r 25.52(1)

Notice for priority of claims on sale

1 The [*name of ship or describe property*] has been sold and the gross proceeds of that sale, amounting to $[*amount*] have been paid into court at [*place*].

2 The priority of the claims against the proceeds of sale will not be determined until after [*expiry date of period specified in order for sale*].

3 A person having a claim against the ship or described property, or the proceeds of sale of that ship or property, on which the person intends to proceed to judgment should commence an action to enforce that claim before the date specified in paragraph 2 and, if necessary, apply to the court to extend the period within which the order of priority of claims will not be determined.

4 If the steps referred to in paragraph 3 are not taken, an order determining the priority of claims against the ship or described property, or the proceeds of sale of that ship or property, may be made without notice to the person claiming against the ship or described property, or the proceeds of sale of that ship or property.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form Arb 1 rr 26.3(2), 26.8(3)

Appeal under Arbitration Act 1996

Complete and insert the heading as set out in form G 1.

To the Registrar of the High Court at [*place*]
and
To [*name(s) of party/parties to be served with this notice*]

This document notifies you that—

1 On [*date*] at [*time*], or as soon after that as counsel/parties* may be heard, [*name of plaintiff appealing against arbitral award*] will appeal to the court at [*place*] from an award dated [*date*] made by [*arbitral tribunal name(s)*].
*Select one.

2 The question/questions* of law arising out of the award is/are* as follows: [*specify precise form of question(s) of law alleged to arise, numbered if more than 1*].
*Select one.

3 The plaintiff contends that the question/questions* should be answered as follows: [*specify answer(s) contended for*].
*Select one.

4 The plaintiff seeks the following relief: [*specify relief sought*].

5 The grounds on which this application is made are—
(a) the plaintiff was a party to the arbitration; and
(b) *For this paragraph select the statement that applies.*

Statement A
the parties to the arbitration agreed before the award was made that any party might appeal to the court on any question of law arising out of the award; and

Statement B
after the award was made, every other party to the arbitration consented to an appeal to the court on the question/questions* of law arising out of the award stated above; and

High Court Rules—*continued*
Form Arb 1—*continued*

*Select one.

(c) [*specify any grounds for the appeal other than those set out above, giving enough detail to inform the court and the other parties of the issues*].

6 This application is made in reliance on clause 5(1)(a)/5(1)(b)* of Schedule 2 of the Arbitration Act 1996.

*Select one.

[*Specify any other enactment or principle of law relied on.*]

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application within 10 working days after the day on which you are served with this document. You can do this by—

(a) filing a notice of opposition in the court; and

(b) serving a copy of that notice on the plaintiff and on all other parties.

What can happen if I do not file and serve notice of opposition?

If you do not file and serve a notice of opposition, the court may proceed to determine this application in your absence.

High Court Rules—*continued*

Form Arb 2 r 26.15(2)
Notice for leave to appeal under Arbitration Act 1996

Complete and insert the heading as set out in form G 1.

To the Registrar of the High Court at [*place*]

and

To [*name(s) of party or parties to be served with this notice*]

This document notifies you that—

1 On [*date*] at [*time*], or as soon after that as the applicant may be heard, [*name of party seeking leave*] will seek leave to appeal from an award dated [*date*] made by [*arbitral tribunal name(s)*].

2 The question/questions* of law arising out of the award is/are* as follows: [*specify precise form of question(s) of law alleged to arise, numbered if more than 1*].

*Select one.

3 The plaintiff contends that the question/questions* should be answered as follows: [*specify answer(s) contended for*].

*Select one.

4 If granted leave to appeal, the plaintiff will seek the following relief: [*specify relief sought*].

5 The grounds on which this application is made are—

(a) the plaintiff was a party to the arbitration; and

(b) [*specify any grounds for the appeal other than those set out above, giving enough detail to inform the court and the other parties of the issues*].

6 This application is made in reliance on clause 5(1)(c) of Schedule 2 of the Arbitration Act 1996.

[*Specify any other enactment or principle of law relied on.*]

High Court Rules—*continued*
Form Arb 2—*continued*

Date:
Signature:
(solicitor/counsel* for plaintiff)
*Select one.

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application within 10 working days after the day on which you are served with this notice. You can do this by—

(a) filing a notice of opposition in the court; and

(b) serving a copy of that notice on the plaintiff and on all other parties.

What can happen if I do not file and serve notice of opposition?

If you do not file and serve a notice of opposition, the court may proceed to determine this application in your absence.

High Court Rules—*continued*

Form Arb 3 r 26.22(2)

Application to enter award as judgment

Complete and insert the heading as set out in form G 1.

To the Registrar of the High Court at [*place*]

and

To [*name(s) of party or parties to be served with this notice*]

This document notifies you that—

1 The plaintiff seeks to enforce the award dated [*date*] made by [*arbitral tribunal name(s)*] by entry as a judgment.

2 This application is made in reliance on article 35 of Schedule 1 of the Arbitration Act 1996.

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application by—

(a) filing an application in the court seeking an order that recognition and enforcement be refused in terms of article 36 of Schedule 1 of the Arbitration Act 1996; and

(b) serving a copy of that notice on the plaintiff and on all other parties.

You must do this within whichever of the following periods is shorter:

High Court Rules—*continued*
Form Arb 3—*continued*

(a) 10 working days after the day on which you are served with this application:
(b) any period fixed by the court of less than 10 working days after you have been served with the order fixing that period.

What will happen if I do not file and serve an application seeking an order that recognition and enforcement be refused?

If you do not file and serve such an application, the Registrar will proceed to enter the award as a judgment.

High Court Rules—*continued*

Form C 1 r 31.3(1)

Statement of claim in proceeding for putting company into liquidation

Complete and attach the memorandum as set out in form G 10.

The plaintiff says—

1 The [*full name of company*] (the defendant company) was in [*month, year*] incorporated/reregistered* under the Companies Act 1993.

*Select one.

2 The registered office of the defendant company is at [*full address of registered office*].

3 [*Set out in paragraphs the facts on which the plaintiff relies.*]

4 The plaintiff therefore requests that the defendant company be put into liquidation by the court under the Companies Act 1993.

Date:

Signature:

(plaintiff/solicitor*)

*Select one.

High Court Rules—*continued*

Form C 2 r 31.3(2)

Statement of claim in proceeding for order under section 174 of Companies Act 1993

The plaintiff says—

1 The [*name of company*] (the defendant company) was in [*month, year*] incorporated/reregistered* under the Companies Act 1993.

*Select one.

2 The registered office of the defendant company is at [*full address of registered office*].

3 *For this paragraph select the statement that applies.*

Statement A

The affairs of the defendant company have been/are being/are likely to be* conducted in a manner that is [*state whether oppressive, unfairly discriminatory, or unfairly prejudicial*] to the plaintiff in the plaintiff's capacity as a member/shareholder† of the defendant company.

*Select one.

†Select one or specify other capacity.

Statement B

An act/The acts* of the defendant company have been/are being/are likely to be* [*state whether oppressive, unfairly discriminatory, or unfairly prejudicial*] to the plaintiff in the plaintiff's capacity as a member/shareholder† of the defendant company.

*Select one.

†Select one or specify other capacity.

4 *Omit this paragraph if the plaintiff is filing this document without employing a solicitor.*

The plaintiff's solicitor is [*name and address of solicitor*].

High Court Rules—*continued*
Form C 2—*continued*

Date:

Signature*:

(plaintiff/defendant/third party†)

*If this document notifies a change of solicitor, it must be signed by the party personally or by the party's attorney.

†Select one.

High Court Rules—*continued*

Form C 3 rr 31.5(2), 31.6(3)

Notice of proceeding for putting company into liquidation or for order under section 174 of Companies Act 1993

To [*name of company*] (the defendant company)

and

Include the following address line if a liquidator or interim liquidator has been appointed, otherwise omit.

To [*full name, address, description*], the liquidator/interim liquidator* of the defendant company.

*Select one.

This document notifies you that—

1 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is, by a statement of claim (copy attached), applying for an order that the defendant company be put into liquidation under the Companies Act 1993.

Statement B

The plaintiff is, by a statement of claim (copy attached), applying for an order in respect of the defendant company under section 174 of the Companies Act 1993.

2 The application will be heard in this court at [*place, time, date*].

3 Unless, within 10 working days after the date on which you are served with this notice, you file in this registry of the court a statement of your defence to the plaintiff's claim (copy attached), the plaintiff may proceed to a hearing and—

Select the statement that applies.

Statement A

an order may be made for the liquidation of the defendant company by the court under the Companies Act 1993.

Statement B

an order may be made in respect of the defendant company under section 174 of the Companies Act 1993.

High Court Rules—*continued*
Form C 3—*continued*

Date:
Signature:
(plaintiff/solicitor for plaintiff*)
*Select one.

Note: Please carefully read the memorandum attached to this notice.

Important information for recipient of notice

Legal advice

1 If you want to oppose this application or to appear at the hearing, it is essential that you consult a solicitor immediately because a company—

(a) can carry on proceedings in the court only by a solicitor; and

(b) cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Advertising

2 The application to put the defendant company into liquidation under the Companies Act 1993 (or for the making of an order under section 174 of the Companies Act 1993 in respect of the defendant company) is to be advertised in the *New Zealand Gazette* and in a newspaper.

3 The advertisements will not be published until at least 5 working days after the date on which the defendant company is served with the statement of claim.

Omit the following heading and paragraphs 4 and 5 if the application is not an application to put the defendant company into liquidation.

Power of court to restrain advertising and stay proceedings

4 The court has power to make an order restraining the publication of the advertisement and staying any further proceedings in relation to the liquidation.

High Court Rules—*continued*
Form C 3—*continued*

5 The defendant company or, with the leave of the court, any creditor, shareholder of the defendant company, or the Registrar of Companies may apply for that order within 5 working days after the date of the service of the statement of claim on the defendant company.

Statement of defence

6 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which the registry is open.

7 *Omit this paragraph if it conflicts with a direction by the court.*
In calculating the time for filing your statement of defence, you must disregard the period that commences with 25 December and ends with 15 January.

8 If you file a statement of defence, you must also, within the time permitted for filing it in the registry of the court, serve a copy of the statement on the plaintiff and on any other person who, when the statement of defence is filed, has filed a statement of defence in the proceeding.

9 If a statement of defence is not filed on behalf of the defendant company within the time prescribed, counsel for the defendant company will not, without an order for extension of time or the special leave of the court, be allowed to appear at the hearing. If a company wants to appear at a hearing it must do so by counsel—a company cannot appear in person.

Appearance by persons other than defendant company

10 A person (other than the defendant company) who intends to appear at the hearing of the application must file an appearance—

(a) stating that the person intends to appear; and

(b) *For this paragraph select the statement that applies.*

High Court Rules—*continued*
Form C 3—*continued*

Statement A
indicating whether the person supports or opposes the appointment of a liquidator by the court.

Statement B
indicating whether the person supports or opposes the making of an order under section 174 of the Companies Act 1993.

11 If you file an appearance, you do not need to file a statement of defence.

12 You must file an appearance not later than the second working day before the day appointed for the hearing.

13 If you fail to file an appearance within the time prescribed, neither you nor counsel on your behalf will, without an order for extension of time or the special leave of the court, be allowed to appear at the hearing.

Registry hours

14 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:
Signature:
(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form C 4 r 31.5(2)

Verifying affidavit

I, [*full name, place of residence, occupation*], swear that those allegations in the statement of claim (a copy of which is attached to this affidavit and marked "A") that relate to my own/my firm's* acts and deeds are true, and I believe to be true those allegations that relate to the acts and deeds of another person/other persons*.

*Select one.

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

High Court Rules—*continued*

Form C 5 r 31.5(2)

Affidavit verifying statement of claim of limited company

I, [*full name, place of residence, occupation*], swear—

1 I have knowledge of the facts stated in this affidavit and am duly authorised by the plaintiff to make this affidavit on its behalf.

2 Those statements in the statement of claim (a copy of which is attached to this document and marked "A") that relate to the acts and deeds of the plaintiff are true, and I believe to be true those statements that relate to the acts and deeds of another person/other persons*.

*Select one.

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

High Court Rules—*continued*

Form C 6

r 31.9(6)

Advertisement of application for putting company into liquidation

This document notifies you that—

1 On [*date*], an application for putting [*full name of company*] into liquidation was filed in the High Court at [*place*]. Its reference number is [*court file number*]. The application is to be heard by the High Court at [*place, date, time*].

2 A person, other than the defendant company, who wants to appear at the hearing of the application must file an appearance not later than the second working day before that day.

3 The statement of claim and the verifying affidavit may be inspected at the registry of the court or at the plaintiff's address for service.

4 The plaintiff is [*full name*], whose address for service is [*address*]. The plaintiff's solicitor is [*name*], whose address is [*address*].

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

High Court Rules—*continued*

Form C 7

r 31.9(6)

Advertisement of application for order under section 174 of Companies Act 1993

1 Members of the public are notified that on [*date*] an application for an order under section 174 of the Companies Act 1993 in respect of [*full name of company*] was filed in the High Court at [*place*].

2 The order sought is an order [*specify nature of order sought*].

3 The application is to be heard by the High Court at [*place, date, time*].

4 A person, other than the defendant company, who wants to appear at the hearing of the application must file an appearance not later than the second working day before that day.

5 The plaintiff is [*full name*], whose address for service is [*address for service*].

Note: You may obtain further information from the registry of the court or from the plaintiff or the plaintiff's solicitor.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

High Court Rules—*continued*

Form C 8

r 31.13(1)

Affidavit of service

I, [*full name, place of residence, occupation*], swear—

1 *For this paragraph select the statement that applies.*

Statement A

On [*date*] I served the defendant company with—

(a) the statement of claim in this proceeding; and

(b) the verifying affidavit made by [*full name, date*]; and

(c) the notice of proceeding dated [*date*].

Statement B

On [*date*] I served the defendant company with a statement of claim, verifying affidavit, and notice of proceeding (copies of which are attached to this document and marked "A", "B", and "C" respectively).

2 I served the documents on the defendant company at [*place*] in New Zealand by [*specify method by which service was effected*].

Signature of deponent:

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

High Court Rules—*continued*

Form C 9

r 31.18

Appearance in support of (or in opposition to) application for putting company into liquidation (or for making of order under section 174 of Companies Act 1993)

Complete and attach the memorandum as set out in form G 10.

1 I, [*full name, address, description*], intend to appear at the hearing of this proceeding.

2 *For this paragraph select the statement that applies.*

Statement A

I support/oppose* the application for putting the defendant company into liquidation by the High Court.

*Select one.

Statement B

I support/oppose* the application for putting the defendant into liquidation by the making of an order under section 174 of the Companies Act 1993.

*Select one.

3 *For this paragraph select the statement that applies.*

Statement A

I am a creditor for $[*amount*] in the defendant company.

Statement B

I am a contributory/shareholder* holding [*number and class of shares held*] shares in the defendant company.

*Select one.

Date:

Signature:

(solicitor/counsel* for person filing appearance)

*Select one.

High Court Rules—*continued*

Form C 10 r 31.29(2)

Notification to liquidator of order putting company into liquidation

To [*full name, full address*] (the liquidator).

This document notifies you that the Honourable Justice/Associate Judge* [*name*] today ordered that the defendant company be put into liquidation by the court under the Companies Act 1993.

*Select one.

Complete the following table.

Name of company	**Registered office**	**Plaintiff's solicitor**	**Date of filing of statement of claim**

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form C 11 r 31.29(2)

Notification to interim liquidator of appointment

To [*full name, full address*] (the interim liquidator).

The Honourable Justice/Associate Judge* [*name*] today appointed [*name of the Official Assignee or, if some other person has been appointed, the name, address, and description of that person*] as interim liquidator for the period before an order putting the company into liquidation is made.

*Select one.

Complete the following table.

Name of company	**Registered office**	**Plaintiff's solicitor**	**Date of filing of statement of claim**

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form C 12 r 31.31(1)

Order putting company into liquidation

This document notifies you that—

1 The application made by the plaintiff [*name*] was determined by the Honourable Justice/Associate Judge* [*name*] on [*date, time*].

*Select one.

2 This court orders that the defendant company be put into liquidation by the court under the Companies Act 1993, and appoints [*full name of liquidator*] as liquidator.

3 It also orders that the cost of $[*amount*] of the application be paid out of the assets of the defendant company.

4 Before making this order, the court—

(a) heard [*name of counsel*] for the plaintiff, and [*name of counsel*] for [*description of other party or person*]; and

(b) read the statement of claim and the affidavit of [*full name*] verifying the allegations in the statement of claim; and

(c) sighted the advertisements for the statement of claim published in [*specify date on which the advertisement appeared in the New Zealand Gazette, and name and date of issue of any other newspapers containing an advertisement for the statement of claim*]; and

(d) *Omit this paragraph if it does not apply.*
[*Specify any other evidence*.]

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form C 13 r 31.31(2)

Order appointing interim liquidator

This document notifies you that—

1 The application made by the plaintiff [*name*] was determined by the Honourable Justice/Associate Judge* [*name*] on [*date*].

*Select one.

2 The court appoints [*full name of interim liquidator*] as interim liquidator of the defendant company.

3 The court also limits and restrictions the powers of the interim liquidator to the following acts: [*specify acts that the interim liquidator is to be authorised to do and the property of which the interim liquidator is to take possession*].

4 In making this order, the court read the following documents: [*specify documents relied on by the court*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form C 14

r 31.37

General heading for notices in forms C 15 and C 16

In the High Court of New Zealand
[*Name of registry*] Registry
No: [*number of proceeding*]

Under the Companies Act 1993
In the matter of the liquidation of [*full name of company in liquidation*]
Between [*full name of liquidator*]
(liquidator)
And [*full name, place of residence, occupation*]
(intended recipient of notice)

High Court Rules—*continued*

Form C 15

r 31.37

Notice to set aside voidable transaction under Companies Act 1993

Complete and attach the memorandum as set out in form G 10.

To the Registrar of the High Court at [*place*]

and

To [*full names of parties to be served*]

This document notifies you that—

1 The liquidator [*full name*] of [*full name of company in liquidation*] (the company) wants to have set aside the following transaction by the company that is voidable under section 292 of the Companies Act 1993: [*details of transaction to be set aside, including dates, amounts, and nature*].

2 The liquidator's postal, email, and street addresses are [*state addresses*].

3 The company was put into liquidation when a liquidator was appointed on [*date, time*] by—

Select the statement that applies.

Statement A
special resolution of those shareholders entitled to vote and voting on the question.

Statement B
the board of the company on the occurrence of an event specified in the constitution.

Statement C
the High Court at [*place*] under proceeding No [*number*], as a result of an application for the appointment of a liquidator that was filed on [*date*].

Statement D
a resolution of the creditors passed at the watershed meeting held under section 239AT of the Companies Act 1993.

4 The property or value that the liquidator wants to recover is [*details of property or value*].

High Court Rules—*continued*
Form C 15—*continued*

5 In giving this notice, the liquidator relies on the following grounds: [*specify grounds*].

6 You may object to the transaction being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after this notice has been served on you.

7 If you do object, your written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.

8 If you do not object, within 20 working days after the liquidator's notice has been served on you, the transaction will be set aside as against you.

9 If you do object, the liquidator may apply to the court for the transaction to be set aside.

Date:

Signature:

(solicitor/counsel* for liquidator)

*Select one.

Note

Definition of working day (Companies Act 1993)

working day means a day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, and Waitangi Day; and

(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and

(c) if 1 January in any year falls on a Friday, the following Monday; and

(d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

High Court Rules—*continued*

Form C 16 r 31.37
Notice to set aside voidable charge under Companies Act 1993

To the Registrar of the High Court at [*place*]
and
To [*full names of parties to be served*]

This document notifies you that—

1 The liquidator [*full name*] of [*full name of company in liquidation*] (the company) wants to have set aside the following charge by the company that is voidable under section 293 of the Companies Act 1993: [*details of charge to be set aside, including dates, amounts, and nature*].

2 The liquidator's postal, email, and street addresses are [*state addresses*].

3 The company was put into liquidation when a liquidator was appointed on [*date, time*] by—

Select the statement that applies.

Statement A
special resolution of those shareholders entitled to vote and voting on the question.

Statement B
the board of the company on the occurrence of an event specified in the constitution.

Statement C
the High Court at [*place*] under proceeding No [*number*], as a result of an application for the appointment of a liquidator that was filed on [*date*].

Statement D
a resolution of the creditors passed at the watershed meeting held under section 239AT of the Companies Act 1993.

4 In giving this notice, the liquidator relies on the following grounds: [*specify grounds*].

5 You may object to the charge being set aside by sending to the liquidator a written notice of objection that is received by the

High Court Rules—*continued*
Form C 16—*continued*

liquidator at his or her postal, email, or street address within 20 working days after this notice has been served on you.

6 If you do object, your written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.

7 If you do not object, within 20 working days after the liquidator's notice has been served on you, the transaction will be set aside as against you.

8 If you do object, the liquidator may apply to the court for the charge to be set aside.

Date:

Signature:

(solicitor/counsel* for liquidator)

*Select one.

Note

Definition of working day (Companies Act 1993)

working day means a day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, and Waitangi Day; and

(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and

(c) if 1 January in any year falls on a Friday, the following Monday; and

(d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

High Court Rules—*continued*

Form B 1 r 24.8(1)

Request for issue of bankruptcy notice

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To the Registrar of the High Court at [*place*]

1 I, [*full name, address, description of judgment creditor*], request that the court issue a bankruptcy notice against [*full name, address, and description of judgment debtor*].

2 *If rule 24.13 requires a different statement, substitute that for this paragraph.*

The judgment debtor, [*name*], has for the greater part of the past 6 months resided at [*full address*] or carried on business at [*full address*] within the district of this court.

3 I produce a certified copy of a final judgment or final order against [*name of judgment debtor*], obtained by me in the [*name*] court on [*date*].

4 Execution on the judgment has not been stayed.

Date:

Signature:

(judgment creditor/solicitor for judgment creditor*)

*Select one.

High Court Rules—*continued*

Form B 2

r 24.8(3)

Bankruptcy notice

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To [*full name and address of judgment debtor*]

1 Within [*10 working days, or, if the notice is served outside New Zealand, the period specified in the order for service*] after you are served with this notice (excluding the day of service)—

(a) you must pay to the judgment creditor, [*full name, address*], $[*amount*], either in person or at the address for service of the judgment creditor (or the solicitor for the judgment creditor). This amount is the amount the judgment creditor claims is due (or remains unpaid) on a final judgment or final order, on which execution has not been stayed, that the judgment creditor obtained against you in the [*name of court*] on [*date*]; or

(b) you must secure or enter into a new formal agreement with the judgment creditor or, alternatively, obtain the High Court's approval of terms of payment; or

(c) you must satisfy the High Court that you have a counterclaim, set-off, or cross-demand against the judgment creditor—

(i) that equals or exceeds the amount claimed by the judgment creditor; and

(ii) that you could not put forward in the action or proceeding in which the judgment or order was obtained.

2 The judgment creditor also claims costs against you of $[*amount*], which includes—

(a) a fee of $[*amount*] for filing this notice; and

(b) a fee of $150 for serving this notice.

3 A certified copy of the judgment or order on which this bankruptcy notice is based is attached.

Date:

High Court Rules—*continued*
Form B 2—*continued*

(Deputy Registrar)

Notes

Please carefully read the following information.

Consequences of not complying with notice

If you do not comply with paragraph 1, you will have committed an act of bankruptcy on which bankruptcy proceedings may be taken against you.

Procedure for counterclaiming, etc

If you consider you have a counterclaim, set-off, or cross-demand against the judgment creditor that comes within paragraph 1(c), or you wish to seek the court's approval of terms of payment, you must, within 10 working days from the date of receiving this notice, apply to the High Court. Your application must be supported by affidavit.

You must, within the same time, also serve a copy of the application and supporting affidavit on the judgment creditor.

Costs

If you do not dispute the claim for costs, you must, within 10 working days, pay the costs claimed to the judgment creditor, either in person or at the address for service of the judgment creditor (or the solicitor for the judgment creditor), unless—

(a) the amount claimed has been secured or has become the subject of a new formal agreement to the judgment creditor's satisfaction or to the satisfaction of the High Court; or

(b) the amount of any counterclaim, set-off, or cross-demand that you advance is sufficient to cover the costs claimed as well as the amount specified in paragraph 1(a).

If you dispute the claim for costs, you must, within 10 working days, apply to the High Court to fix costs.

High Court Rules—*continued*
Form B 2—*continued*

If you do not pay the costs claimed or dispute the claim for costs, you will commit an act of bankruptcy for which you may be adjudicated bankrupt.

This notice is issued by [*name and address of judgment creditor*] in person by [*full name and address for service of solicitor for judgment creditor*]*.

*Select one.

Note: The amount claimed for costs in paragraph 2 must be determined as if the proceeding were a category 2 proceeding specified in Schedule 2 of the High Court Rules and the time allocation were the time allocation for item 17 and band B specified in Schedule 3 of the High Court Rules.

High Court Rules—*continued*

Form B 3 r 24.11(1)

Creditor's application for adjudication order

Complete this application in accordance with the requirements of rule 24.5.

To the Registrar of the High Court at [*place*]

and

To [*full name of debtor*]

This document notifies you that—

1 The creditor of [*full name, address of debtor*] will on [*date*] at [*time*] ask the court to make orders—
   (a) adjudicating [*full name of debtor*] bankrupt; and
   (b) as to costs.

2 The creditor claims that—
   (a) the debtor has, for the greater part of the past 6 months, resided at/carried on business at [*full address*]* [*or state other relevant facts under rule 24.13*]; and
   *Select one.
   (b) the debtor owes the creditor [*amount and particulars of debt, including when it is payable*]; and
   (c) the debtor has committed an available act of bankruptcy, as follows: [*state particulars, including date, of the act of bankruptcy*]; and
   (d) the creditor has no security for the debt/is a secured creditor as follows: [*state particulars of the security*]*.
   *Select one.

3 The creditor's name and address is [*creditor's full name and address*].

Dated at [*place, date*]

Applicant creditor:

Witness:

Signature:

High Court Rules—*continued*
Form B 3—*continued*

(Deputy Registrar/Registrar/solicitor/Justice of the Peace*)

*Select one.

High Court Rules—*continued*

Form B 4

r 24.11(3)

Affidavit supporting creditor's application for adjudication

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

I, [*full name, address, description of applying creditor*], the applicant, swear—

Select the statement that applies.

Statement A

The statements I make in the accompanying application are, to the best of my knowledge, information, and belief, true.

Statement B

I am a person having knowledge of the facts to which the accompanying application relates. The statements in the application are, to the best of my knowledge, information, and belief, true.

Signature:

(applicant creditor/deponent*)

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

Note

If the applicant cannot state on oath that the statements in the application are, to the best of the applicant's knowledge and belief, true, the applicant must set out the statements that the applicant can swear to the truth of, and file a further affidavit by some person or persons who can swear to the truth of the remaining statement(s).

High Court Rules—*continued*

Form B 5 r 24.11(3)

Summons to debtor

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To [*full name, address, description of debtor*]

1 You are summoned to attend before the High Court at [*place, time, date*] (the hearing date).

2 [*Full name, address, description of applicant*] has filed an application in this court to adjudicate you bankrupt.

3 The court will consider whether you should be adjudicated bankrupt on the following grounds: [*specify grounds*].

4 If, by the hearing date, you have not paid the amount of $[*amount specified in the creditor's application*] to the applicant, either in person or at the address for service of the applicant (or solicitor for the applicant), or you have not paid or disputed the amount of the costs claimed by the applicant in the bankruptcy notice served on you, the applicant is entitled to ask the court to adjudicate you bankrupt.

5 The applicant also claims costs against you of $[*amount*], which includes a fee for filing this summons of $[*amount*] and a fee of $[*amount*] for serving this summons.

6 If you do not dispute the claim for costs in paragraph 5, you must, by the hearing date, pay those costs, either in person or at the address for service of the applicant (or the solicitor for the applicant).

7 If you dispute the claim for costs, you may,—

(a) before the hearing date, apply to the court to fix costs; or

(b) at the hearing, apply orally to the court to fix costs.

8 You are not required to attend the hearing and no warrant will be issued if you do not attend, but if you do not attend the hearing the court will proceed in your absence.

9 If you intend to oppose the making of an order of adjudication you must, by 1 pm on the last working day before the hearing date, file a notice of opposition in form B 6, together with an affidavit in support of the opposition, and serve a copy of those documents on the applicant creditor.

High Court Rules—*continued*
Form B 5—*continued*

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

This summons is issued by [*full name and address for service of applicant*] in person/by [*full name and address for service of solicitor for applicant*]*.

*Select one.

Note

The amount claimed for costs in paragraph 5 must be determined as if the proceeding were a category 2 proceeding specified in Schedule 2 of the High Court Rules, and the time allocation were the time allocation for item 19 and band B specified in Schedule 3 of the High Court Rules.

High Court Rules—*continued*

Form B 6

r 24.18

Notice by debtor of intention to oppose application

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To [*full name and address for service of (solicitor for) applicant creditor*]

and

To the Registrar of the court at [*place*]

This document notifies you that—

1 I, [*full name, address, description of debtor*], intend to oppose the making of an order of adjudication as sought in the application.

2 I intend to dispute the applicant creditor's debt/the act of bankruptcy*—

(a) on the following grounds: [*specify grounds*]; and

(b) on the evidence contained in the affidavit filed in support of this notice.

*Select one.

Date:

Signature:

(debtor)

High Court Rules—*continued*

Form B 7

r 24.4(5)

Warrant to search for and seize bankrupt's property under section 150 or 151 of Insolvency Act 2006

Insert a heading that conforms with rule 24.5.

To [*the Official Assignee or other authorised person*]

1 [*Full name, address, description of bankrupt*] was adjudicated a bankrupt on [*date*].

2 You and your assistants are authorised to—

(a) enter and search [*specify locality*]; and

(b) seize all or any part of the property of the bankrupt in the custody or possession of the bankrupt or any other person; and

(c) if necessary to effect that seizure,—

(i) to break open any building or room of the bankrupt where the bankrupt is believed to be; and

(ii) to break open any building, room, or receptacle of the bankrupt where any of the bankrupt's property is believed to be; and

(iii) to seize and take possession of that property; and

(d) *Include this paragraph only in a warrant under section 150 of the Insolvency Act 2006, otherwise omit.*
seize any document relating to the bankrupt's property, conduct, or dealings.

3 You must safely detain and keep in your possession anything that you have seized until it is disposed of or dealt with by the Official Assignee in accordance with the Insolvency Act 2006.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

High Court Rules—*continued*

Form B 8 r 24.36(1)

Notice of objection to discharge

Insert a heading that conforms with rule 24.5.

To the Registrar of the High Court at [*place*]

This document notifies you that I, the Official Assignee/[*full name, address, description of creditor*]*, object to the automatic discharge of the bankrupt.

*Select one.

Omit the following statement if the Official Assignee is objecting.

A copy of the order of the court permitting the objection is attached.

Date:

Signature:

(Official Assignee/Deputy Official Assignee/creditor*)

*Select one.

High Court Rules—*continued*

Form B 9

r 24.42

Proposal by insolvent to creditors under subpart 2 of Part 5 of Insolvency Act 2006

Insert a heading that conforms with rule 24.5.

To the Registrar of the court at [*place*]

I, [*full name, address, description of insolvent person*] (the insolvent), submit the following proposal under the Insolvency Act 2006:

1 That payment/satisfaction* of my debts to the secured creditors will be made in the following manner: [*specify terms of proposal in respect of secured claims*].

*Select one.

2 That payment/satisfaction* of debts directed by the Insolvency Act 2006 to be paid in priority to all other debts in the distribution of the property of a bankrupt will be made as follows: [*specify terms of proposal in respect of preferred claims*].

*Select one.

3 That provision for payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal will be made in the following manner: [*specify terms of proposal in respect of fees and expenses of trustee*].

4 *For this paragraph select the statement that applies.*

Statement A

That a dividend of $[*amount*] will be paid on all unsecured debts.

Statement B

[*Specify terms of proposal in respect of unsecured claims.*]

5 [*Specify terms of any other offer.*]

6 That the money payable under this proposal will be paid over to the trustee, [*full name, address*], and the payment of the money will be secured in the following manner: [*list full names and addresses of sureties, if any, and specify terms of any proposed security or charge or guarantee*].

7 That [*full name, address*] is willing to act as trustee in terms of this proposal.

High Court Rules—*continued*
Form B 9—*continued*

Date:
Signature:
(insolvent)
I am willing to act as trustee in terms of this proposal.

Date:
Signature:
(trustee)

High Court Rules—*continued*

Form B 10 r 24.42
Statement of affairs and affidavit

Insert a heading that conforms with rule 24.5.

Statement showing the assets, debts, and liabilities of [*full name, address, description of insolvent person*] (the insolvent).

Assets	**$**
Stock-in-trade at [*place*], estimated at	
Book debts, estimated to produce	
Cash in hand	
Cash in [*name of bank*]	
Furniture and other personal property according to list attached and marked "A"	
Real property according to list attached and marked "B"	
Surplus from securities in hands of secured creditors	
Other assets	
Total assets	

Debts and liabilities	
Unsecured creditors according to list attached and marked "C"	
Secured creditors according to list attached and marked "D"	
Less estimated value of securities	
Surplus	
Other liabilities according to list attached and marked "E"	
Total debts	

I, [*full name, address, description of insolvent person*], swear that the above statement and the lists marked "A", "B", "C", "D", and "E" are a correct statement of my assets, debts, and liabilities, the names and addresses of my creditors, and the securities held by them.

Sworn at [*place, date*]

(insolvent person)

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

High Court Rules—*continued*

Form B 11

r 24.43

Report of trustee on proposal

Insert a heading that conforms with rule 24.5.

I, [*full name, address, description of trustee*], the trustee named in the proposal of [*full name, address, description of insolvent*] (the insolvent), report to the court as follows:

1 The insolvent on [*date*] lodged a proposal in the court. A correct copy (marked "A") is attached.

2 On [*date*], I gave notice to every known creditor affected by the proposal (the names and addresses of whom are listed in the document marked "B" attached) that a meeting of creditors would be held on [*date*] to consider the proposal.

3 The notice was accompanied by the following:

(a) a statement of the assets, debts, and liabilities of the insolvent:

(b) a list of the insolvent's creditors affected by the proposal and showing the amounts of their claims:

(c) a copy of the insolvent's proposal, a form of proof of debt, and a voting letter.

4 I attach correct copies of the notice (marked "C"), the statement of affairs (marked "D"), and the list of creditors (marked "E").

5 The meeting of creditors was held on [*date*] and was presided over by [*full name*].

6 *For this paragraph select the statement that applies.*

Statement A

The proposal was accepted by the required majority of creditors.

Statement B

The proposal was amended at the meeting and was accepted by the required majority of creditors (as amended).

7 A correct copy of the resolution of the meeting (marked "F") is attached.

8 In my opinion—

(a) the assets of the insolvent and their fair realisable value are as follows: [*details of assets, giving the value as*

High Court Rules—*continued*
Form B 11—*continued*

carried on the books of the insolvent and the trustee's estimate in each case of their realisable value]:

(b) the debts and liabilities of the insolvent are as follows: [*details of debts and liabilities, including whether secured, preferred, or unsecured, and pointing out discrepancies (if any) between debts and liabilities as declared by the insolvent and as subsequently proved and admitted by the trustee*]:

(c) *For this paragraph select the statement that applies.*

Statement A

the debtor's proposal is an advantageous one for the creditors for the following reasons: [*specify fully the reasons of the trustee*].

Statement B

the debtor's proposal is not advantageous for the creditors for the following reasons: [*specify fully the reasons of the trustee*].

Date:
Signature:
(trustee)

High Court Rules—*continued*

Form B 12

r 24.45(2)

Account of assets, debts, etc, of deceased person verified by affidavit

Insert a heading that conforms with rule 24.5.

Statement showing the assets, debts, and liabilities of the estate of [*full name, former address of deceased*] (the deceased).

Assets	**$**
Stock-in-trade at [*place*], estimated at	
Book debts, according to list attached and marked "A"	
Cash in hand	
Cash in [*name of bank*]	
Household furniture and effects	
Real property according to list attached and marked "B"	
Surplus from securities in hands of secured creditors	
Other assets according to list attached and marked "C"	
Total assets	

Debts and liabilities	
Unsecured creditors, according to list attached and marked "D"	
Secured creditors according to list attached and marked "E"	
Less estimated value of securities	
Surplus	
Other liabilities, according to list attached and marked "F"	
Total debts	

According to the above statement there appears to be a deficiency in the estate amounting to $[*amount*].

I, [*full name, address, description of administrator*], swear—

1 That I am the administrator of the estate.

2 That the above statement and the lists marked "A", "B", "C", "D", "E", and "F" show the assets, debts, and liabilities of the deceased so far as they are known to me.

Signature:

High Court Rules—*continued*
Form B 12—*continued*

(administrator)
Sworn at [*place, date*]
Before me: [*name, signature*]
(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

High Court Rules—*continued*

Form B 13

r 24.49

Certificate by Public Trust or Māori Trustee of election to administer under Part 6 of Insolvency Act 2006

Insert a heading that conforms with rule 24.5.

The Public Trust/Māori Trustee*, certifies as follows:

*Select one.

1 *For this paragraph select the statement that applies.*

Statement A

The [*Public Trust or Māori Trustee*] is the executor under the will of the deceased, which was proved in this court on [*date*].

Statement B

The [*Public Trust or Māori Trustee*] is the administrator of the estate of the deceased under an order to administer the estate granted to the [*Public Trust or Māori Trustee*] on [*date*].

2 The [*Public Trust or Māori Trustee*] has control of the estate, and is satisfied that the assets of the deceased that are available, or reasonably likely to be available, are not sufficient to meet the various claims on the estate, and that the estate appears to be insolvent.

3 Under the circumstances, the [*Public Trust or Māori Trustee*] elects to administer the estate under Part 6 of the Insolvency Act 2006, and makes this certificate accordingly.

Date:

Signature:

(signed for the Public Trust/by the Māori Trustee*)

*Select one.

Sealed: [*name, date*]

Witness: [*name, address, description*]

High Court Rules—*continued*
Form B 13—*continued*

Note

When this certificate is filed it has the effect of both an application for the estate to be administered, and an order that the estate be administered, under Part 6 of the Insolvency Act 2006. *See* section 386(2) of the Insolvency Act 2006.

High Court Rules—*continued*

Form B 14

r 24.35(2)

Originating application to cancel irregular transaction under section 206 of Insolvency Act 2006

Insert a heading that conforms with rule 24.5.

To the Registrar of the court at [*place*]

and

To [*full names of parties to be served*]

This document notifies you that—

1 The Assignee of [*full name, address of bankrupt person*] will on [*date*] at [*time*] ask the court to—
   (a) order the cancellation of the irregular transaction identified in paragraph 4 of this application:
   (b) make the following additional orders: [*specify*].

2 [*Full name of bankrupt person*] was adjudicated bankrupt on [*date*].

3 The property or value that the Assignee wants to recover is [*details of property or value*].

4 The transaction claimed to be irregular is described in the attached notice, which was filed and served under section 206(2) of the Insolvency Act 2006.

5 The transaction is claimed to be irregular because it was an insolvent transaction/insolvent charge/insolvent gift*.

*Select one.

6 The Assignee relies on the following matters in support of the claim in paragraph 5: [*specify matters with particularity*].

7 The Assignee relies on the following evidence: [*list any affidavits filed or to be filed*].

8 A person who, having been served with this application, wants to oppose the making of an order referred to in paragraph 1—
   (a) is advised to consult a solicitor for that purpose without delay:
   (b) must comply with the procedural rules set out in Part 18 of the High Court Rules:

High Court Rules—*continued*
Form B 14—*continued*

(c) must file and serve a notice of opposition (in form G 33 of the High Court Rules) to the application within the earlier of—

(i) 10 working days after being served with this application:

(ii) 3 working days before the hearing date for this application.

Date:

Signature:

(Assignee/counsel for the Assignee*)

*Select one.

Note

The notice filed and served under section 206(2) of the Insolvency Act 2006 and the written notice of objection received by the Assignee under section 206(4) must both be attached to this application.

High Court Rules—*continued*

Form B 15

r 24.35(3)

Originating application to order retransfer of property or payment of value under section 207 of Insolvency Act 2006

Insert a heading that conforms with rule 24.5.

To the Registrar of the High Court at [*place*]

and

To [*full names of parties to be served*]

This document notifies you that—

1 The Assignee of [*full name, address of bankrupt person*] will on [*date*] at [*time*] ask the court to—

(a) *For this paragraph select the statement that applies.*

Statement A

order the retransfer to the Assignee of the property/an interest in the property* described in paragraph 2 of this application:

*Select one.

Statement B

order the payment to the Assignee of a sum of money:

(b) make the following additional order: [*specify any additional order sought under section 207(2), otherwise omit this paragraph*].

2 [*Specify property or interest in property or sum of money to which the application refers.*]

3 The Assignee relies on the following matters as justifying the orders asked for in this application: [*specify matters with particularity*].

4 The Assignee relies on the following evidence: [*list any affidavits filed or to be filed*].

5 A person who, having been served with this application, wants to oppose the making of an order referred to in paragraph 1—

(a) is advised to consult a solicitor for that purpose without delay:

High Court Rules—*continued*
Form B 15—*continued*

(b) must comply with the procedural rules set out in Part 18 of the High Court Rules:

(c) must file and serve a notice of opposition (in form G 33 of the High Court Rules) to the application within the earlier of—

(i) 10 working days after being served with this application:

(ii) 3 working days before the hearing date for this application.

Date:

Signature:

(Assignee/counsel for the Assignee*)

*Select one.

High Court Rules—*continued*

Form B 16 r 24.11

Order adjudicating debtor bankrupt

Before the Honourable Justice/Associate Judge* [*name, date, time*]

~~Date~~

~~Time~~

*Select one.

On the application of [*name, place of residence, occupation*], a creditor of the debtor, the court orders that [*full name, residential address, occupation*] be adjudicated bankrupt and that the creditor be allowed costs and disbursements of $[*amount*].

Date:

Deputy Registrar

High Court Rules—*continued*

Form B 17

r 24.24

Appointment of Official Assignee as receiver and manager

Before the Honourable Justice/Associate Judge* [*name*]

*Select one.

On the application of [*name, place of residence, occupation*], a creditor of the debtor, the court orders that the Official Assignee be appointed as receiver and manager of all/the following part* of the debtor's property†.

*Select one.

†If part only, specify that part precisely.

Date:

Deputy Registrar

Note

Three copies of this order must be filed in the court immediately after the making of the order.

High Court Rules—*continued*

Schedule 2

r 14.4

Appropriate daily recovery rates

Note: The following are the appropriate daily recovery rates for the categories of proceedings referred to in rule 14.3.

Category of proceedings (rule 14.3)	Appropriate daily recovery rate ($)
1	1,320
2	1,990
3	2,940

High Court Rules—*continued*

Schedule 3

r 14.5

Time allocations

	General civil proceedings	**Allocated days or part days**		
		A	**B**	**C**
	Commencement			
1	Commencement of proceeding by plaintiff	1.6	3	10
2	Commencement of defence by defendant	1	2	6
	Other pleadings and notices			
3	Reply	0.4	0.8	2.4
4	Counterclaim	0.8	1.6	4.8
5	Cross-notice between defendants	0.6	1.2	4
6	Third party notice and statement of claim	1.2	2.4	7
7	Notice of appearance	0.2	0.2	0.2
8	Notice of appearance with protest to jurisdiction	0.3	0.6	2
9	Pleading in response to amended pleading (payable regardless of outcome except when formal or consented to)	0.3	0.6	2
	Case management			
10	Preparation for first case management conference (including discussion about discovery)	0.2	0.4	1
11	Filing memorandum for first or subsequent case management conference or mentions hearing	0.2	0.4	1
12	Appearance at mentions hearing or callover	0.2	0.2	0.2
13	Appearance at first or subsequent case management conference	0.3	0.3	0.7
14	Preparation for and appearance at issues conference	−	0.5	1
15	Preparation for and appearance at pretrial conference	−	0.5	1

High Court Rules—*continued*

	General civil proceedings	Allocated days or part days		
	Interrogatories, discovery and inspection			
16	Notice to answer interrogatories	0.4	1	4
17	Answer to interrogatories	0.4	1	4
18	Notice to admit facts	0.4	0.8	2.4
19	Admissions of facts	0.4	0.8	2.4
20	List of documents on discovery	0.7	2.5	7
21	Inspection of documents	0.5	1.5	6
	Interlocutory applications (including applications for summary judgment and for review of interlocutory decisions)			
22	Filing interlocutory application	0.3	0.6	2
23	Filing opposition to interlocutory application	0.3	0.6	2
24	Preparation of written submissions	0.5	1.5	3
25	Preparation by applicant of bundle for hearing	0.4	0.6	1
26	Appearance at hearing of defended application for sole or principal counsel	The time occupied by the hearing measured in quarter days		
27	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
28	Obtaining judgment without appearance	0.3	0.3	0.5
29	Sealing order or judgment	0.2	0.2	0.2
	Trial preparation and appearance			
30	Plaintiff's or defendant's preparation of briefs or affidavits	1.5	2.5	5
31	Plaintiff's preparation of list of issues, authorities, and common bundle	1.5	2.5	5
32	Defendant's preparation of list of issues, authorities, and common bundle	1	2	4
33	Preparation for hearing	2	3	5
34	Appearance at hearing for sole or principal counsel	The time occupied by the hearing measured in quarter days		
35	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		

High Court Rules—*continued*

	General civil proceedings	**Allocated days or part days**		
36	Other steps in proceeding not specifically mentioned	As allowed by the court		
	Originating applications			
37	Filing application and supporting affidavits	1	2	6
38	Filing note of opposition and supporting affidavits	1	2	6
39	Case management (as for ordinary proceeding)			
40	Preparation of written submissions	0.5	1.5	3
41	Preparation by applicant of bundle for hearing	0.4	0.6	1
42	Appearance at hearing for sole or principal counsel	The time occupied by the hearing measured in quarter days		
43	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
	Bankruptcy proceedings			
44	Filing and serving bankruptcy notice	0.1	0.2	0.6
45	Filing application for adjudication by creditor	0.3	0.6	1.8
46	Appearance at hearing	0.2	0.4	1.2
47	Supporting party on bankruptcy	0.2	0.4	1.2
	Company liquidation proceedings			
48	Issuing statutory demand	0.1	0.2	0.6
49	Filing statement of claim and other documents	0.3	0.6	1.8
50	Appearance at hearing	0.2	0.4	1.2
51	Supporting party on liquidation	0.2	0.4	1.2
	Appeals			
52	Commencement of appeal or cross-appeal	0.5	1	3
53	Commencement of response to appeal or cross-appeal	0.3	0.5	1
54	Case management (as for ordinary proceeding)			
55	Preparation of Case on Appeal	0.5	1	2
56	Preparation of written submissions	1	3	6

High Court Rules—*continued*

General civil proceedings		**Allocated days or part days**		
57	Appearance at hearing for sole or principal counsel	The time occupied by the hearing measured in quarter days		
58	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
	Australian judgment proceedings			
58A	Preparing and filing an application under section 56 of the Trans-Tasman Proceedings Act 2010 to register in the court an Australian judgment	0.3	0.3	0.3
	Enforcement of judgment or order			
59	Charging order without application	0.3	0.3	1
60	Charging order with application, including any unopposed order	0.5	0.5	1.4
61	Sale order, including sale of seized property	0.5	0.5	0.7
62	Other enforcement process	0.5	0.5	0.7

High Court Rules—*continued*

Schedule 4

r 9.43

Code of conduct for expert witnesses

Duty to the court

1 An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.

2 An expert witness is not an advocate for the party who engages the witness.

Evidence of expert witness

3 In any evidence given by an expert witness, the expert witness must—

(a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it:

(b) state the expert witness' qualifications as an expert:

(c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise:

(d) state the facts and assumptions on which the opinions of the expert witness are based:

(e) state the reasons for the opinions given by the expert witness:

(f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:

(g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.

4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.

5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

High Court Rules—*continued*

Duty to confer

6 An expert witness must comply with any direction of the court to—

(a) confer with another expert witness:

(b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:

(c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.

7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.

High Court Rules—*continued*

Schedule 5

rr 7.3, 7.4

Matters for consideration at case management conference

Note: The presiding Judge will expect the parties at the first case management conference to have—

(a) provided initial disclosure in accordance with rule 8.4:

(b) carefully considered the pleadings and the principal documents disclosed with them:

(c) discussed and endeavoured to agree on an appropriate discovery order and the manner in which inspection will take place, in accordance with rule 8.11:

(d) discussed and endeavoured to agree on the matters for consideration listed in this schedule:

(e) filed and served a joint memorandum or separate memoranda in accordance with rules 7.3 and 8.11.

Issues

1 Resolution and refinement of the issues, and as a consequence whether the pleadings require amendment.

2 Whether additional parties should be joined.

3 Whether this proceeding has been appropriately categorised and is either an ordinary defended proceeding or a complex defended proceeding.

Discovery and other interlocutory applications

4 The scope, terms, and timetable for any discovery.

5 If any interlocutory applications have been filed or will be filed, whether they can be heard and disposed of at the case management conference.

Readiness for trial

6 Is the case sufficiently ready for a fixture date to be allocated in the near future?

High Court Rules—*continued*

7 If there are still outstanding issues, whether a further case management conference or an issues conference should be timetabled.

Fixture or hearing

8 If the proceeding is ready to go for a hearing or a trial,—

(a) when should the close of pleadings date be?

(b) should there be a pre-trial conference?

(c) what is the estimated length of trial? (The Judge will estimate this by the number of witnesses and the estimate of duration of their testimony.)

(d) what timetable is required for written briefs?

(e) is expert evidence required and, if so, what are the proposals for that evidence (including prior exchange and how the witnesses are to be heard)?

(f) are any special resources or requirements needed for the hearing?

(g) can the proceeding be placed on a short-notice list or put down as a back-up fixture?

(h) is alternative dispute resolution suitable to try to facilitate settlement prior to trial?

(i) what is the categorisation of the proceeding in relation to costs?

Other

9 Any other matters, provided that those matters have been discussed between the parties at least 5 working days before the conference.

High Court Rules—*continued*

Schedule 6

r 7.14

Standard directions for appeals

1 The appeal will be heard at [*time, date*]/at a time and date to be allocated by the Registrar*.

*Select one.

2 The time for the hearing is estimated to be [*half-days or days*].

3 The appeal is categorised as a category [*type*] proceeding for the purposes of rule 14.3.

4 The appeal is to proceed as determined by rule 20.8(1) or by any direction given under rule 20.8(3) in the [*specify*] registry.

5 The appellant must pay security in the sum of $[*amount*] not later than 10 working days after the conference.

6 Unless detailed and specific points on appeal have been included in the notice of appeal, the appellant must file and serve, not later than 10 working days after the conference, points on appeal that clearly state the issues on appeal.

7 If the appeal involves a significant issue under the New Zealand Bill of Rights Act 1990, or an issue affecting New Zealand's international obligations or the Crown's obligations under the Treaty of Waitangi, or an issue arising in the appeal is otherwise of significant public interest, the Judge may direct that the Solicitor-General be served with the notice of appeal and with documents subsequently filed in the appeal. In other cases, the parties must advise the Judge whether they consider that an amicus curiae should be appointed.

8 The appellant must file and serve, not later than 20 working days after the conference, a common bundle of paginated and indexed copies of all relevant documents, including, if applicable,—

(a) the reasons for the decision; and

(b) the sealed order or judgment appealed from; and

(c) the pleadings; and

(d) the statements of evidence or affidavits; and

(e) the exhibits; and

(f) the notes of evidence, to the extent that they are relevant to the issues on appeal; and

(g) any other documents, if possible in date sequence.

High Court Rules—*continued*

9 If a party insists on including a document in the common bundle even though another party objects to its inclusion on the ground that it is unnecessary or irrelevant, the objection must be recorded for the purpose of any award of costs relating to the inclusion of the document.

10 The appellant must file and serve, not later than 25 working days after the conference,—

(a) the appellant's submissions; and

(b) a chronology (if relevant).

11 The appellant's submissions must be not more than 30 pages in length, unless a Judge permits an extension, and use 1.5 line spacing, and must contain—

(a) references to any specific passages in the evidence that the appellant will refer to at the hearing; and

(b) a list of the names and correct citations of any authorities mentioned.

12 The respondent must file and serve, not later than 30 working days after the conference,—

(a) submissions that meet the requirements set out in clause 11; and

(b) if the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.

13 The appellant must prepare a bundle of any authorities referred to in the submissions provided in accordance with clauses 10 and 11 that the appellant or the respondent considers ought to be produced to the court. The bundle may be produced at the hearing of the appeal or filed before the appeal is heard.

14 If the appeal is to be heard by a single Judge, 1 copy of each document must be filed.

15 If the appeal is to be heard by a full court, 2 copies of each document must be filed.

High Court Rules—*continued*

Schedule 7

r 7.25(2)

Standard directions for appeals by way of case stated and references under Part 21

1 The appeal will be heard (at [*time*] on [*date*]) [**or**] (at a time and date to be allocated by the Registrar).

2 The time for the hearing is estimated to be [*half days or days*].

3 The appeal is categorised as a category [*type*] proceeding for the purposes of rule 14.3.

4 The appellant must pay security in the sum of $[*amount*] not later than 10 working days after the conference [*if ordered under rule 21.13*].

5 The appellant must file and serve no later than 25 working days after the conference—

(a) the appellant's submissions; and

(b) a chronology (if relevant).

6 The appellant's submissions must contain—

(a) references to any specific passages in the evidence that the appellant will refer to at the hearing; and

(b) a list of the names and correct citations of any authorities mentioned.

7 The respondent must file and serve, not later than 30 working days after the conference,—

(a) submissions that meet the requirements set out in clause 6; and

(b) if the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.

8 The appellant must prepare a bundle of any authorities referred to in the submissions provided in accordance with clauses 6 and 7 that the appellant or the respondent considers ought to be produced to the court. The bundle may be produced at the hearing of the appeal or filed before the appeal is heard.

9 If the appeal is to be heard by a single Judge, 1 copy of each document must be filed.

High Court Rules—*continued*

10 If the appeal is to be heard by a full court, 2 copies of each document must be filed.

High Court Rules—*continued*

Schedule 8
Deleted

High Court Rules—*continued*

Schedule 9

rr 8.10, 8.11, 8.12, 8.15, 8.16, 8.27

Discovery checklist and the listing and exchange protocol

The purpose of this schedule is to assist the parties in carrying out discovery in accordance with subpart 1 of Part 8, and to specify detailed requirements for listing and exchanging documents when giving discovery.

Part 1
Discovery checklist

1 Assessing proportionality

The parties must—

(a) review the pleadings to identify the categories of documents that would be required if a standard discovery order were made in the terms set out in rule 8.7; and

(b) identify where those documents are likely to be located, including the following:

(i) the individuals likely to have those documents or know where they might be located; and

(ii) the location and likely volume of any documents held as hard copies or electronically; and

(iii) whether other people have discoverable documents within the client's control (for example, lawyers, accountants); and

(c) estimate the likely volume and cost of discovering the above material, including the following matters:

(i) the approximate number of hard copy and electronic documents; and

(ii) the estimated cost of assembling and discovering those documents (including reviewing for relevance, privilege and confidentiality, and listing the documents); and

(iii) whether specialist expertise is required to help the making of informed decisions (including an

High Court Rules—*continued*
Part 1—*continued*

accurate assessment of the likely costs involved); and

(d) assess and discuss with the other parties whether that estimated cost is proportionate to the sums in issue or the value of the rights in issue in the proceeding. If the cost is disproportionate, or if, having regard to rules 8.8 and 8.9, the interests of justice require the making of a tailored discovery order, parties should seek such an order.

2 Extent of search

The parties must—

(a) assess whether any of the methods identified in clause 3(2)(a)(ii) may assist in locating electronic material efficiently; and

(b) consider whether it would be appropriate to seek a tailored discovery order about the extent to which a party must search for documents to reflect the circumstances of the case, including (but not limited to) the following:

(i) the number of documents involved; and

(ii) the nature and complexity of the proceeding; and

(iii) the ease and expense of retrieval of any particular document; and

(iv) the significance of any document that is likely to be located during the search.

3 Tailored discovery

(1) This clause applies when tailored discovery is appropriate having regard to rules 8.8 and 8.9, or when any party intends to apply for an order for tailored discovery.

(2) The parties must—

(a) endeavour to agree a proposal in relation to the discovery order that should be made, with respect to the following:

(i) *categories*: identify the categories of documents required to be discovered by the parties, and for

High Court Rules—*continued*
Part 1—*continued*

each category seek to limit discovery to what is reasonable and proportionate. This may be done by, for example, specifying—

(A) subject matter:

(B) date range:

(C) types of documents:

(D) key individuals (for example, those who are company directors or are at a specified management level); and

(ii) *methods and strategies for locating documents*: seek agreement on what methods and strategies are appropriate to conduct a reasonable and proportionate search for the documents as identified in paragraph (a), including (but not limited to) the following:

(A) appropriate keyword searches; and

(B) other automated searches and techniques for culling documents (including concept searching, clustering technology, document prioritisation technology, email threading, and any other new tool or technique); and

(C) a method to be used to identify duplicate documents; and

(D) whether specialist assistance is required to locate documents efficiently and accurately; and

(b) discuss whether a staged approach may be appropriate in conjunction with identifying the categories and methods to be adopted by the parties. Parties may agree on—

(i) whether any different deadlines are appropriate; and

(ii) whether to look initially at select categories (for example, date ranges or key individuals).

High Court Rules—*continued*
Part 1—*continued*

4 Listing and exchange

(1) Parties are required by rules 8.12(2) and 8.27(2) to use the listing and exchange protocol in Part 2 of this schedule unless a discovery order otherwise requires. Parties must—

(a) consider whether the listing and exchange protocol is appropriate and seek to agree any modifications; and

(b) if any electronic material contains relevant information that cannot be seen if provided to other parties in paper or image form, consider what special arrangements will be necessary for inspection (for example, unusual software licences are required).

(2) If the parties agree to modify the listing and exchange protocol, the agreement between them must be recorded in writing. The discovery order must record that the parties have agreed to modify the listing and exchange protocol, but it is not necessary for the specific modifications to be contained in the discovery order or be considered by the Judge.

(3) To reduce unnecessary costs of listing documents, parties are encouraged to—

(a) use native electronic versions of documents as much as possible; and

(b) use the extracted metadata from native electronic documents, instead of manually listing documents; and

(c) convert documents to image format only when it is decided they are to be produced for discovery; and

(d) if document images are to be numbered, only number those images if they are to be produced for discovery.

5 Presenting documents at trial

The parties must—

(a) consider with the other parties how documents will be used efficiently and effectively in preparation for and in the conduct of the trial (for example, whether an electronic bundle of documents will be used); and

(b) ensure the format adopted for listing and exchange of documents is compatible with any such uses.

High Court Rules—*continued*

Part 2
Listing and exchange protocol

6 Protocol requirements

(1) Parties are required to—

(a) list documents, providing the following detail for each document:

(i) document ID:

(ii) date:

(iii) document type:

(iv) author:

(v) recipient:

(vi) parent document ID:

(vii) privilege category; and

(b) exchange documents electronically by way of—

(i) a single, continuous table or spreadsheet, with each column exclusively containing the detail from paragraph (a); and

(ii) multi-page images in PDF format (or another format if agreed).

(2) Parties should endeavour to apply the specific details in clauses 7 to 11 to ensure consistency for listing and exchange.

(3) Any technical terms have the meanings set out in the glossary in Part 3.

7 List of documents format

(1) The format of the document descriptions should be as follows:

Field No	Field name	Description
1	Document ID	The document ID must be a unique reference The format must be alphanumeric, for example, AAA.000001, AAA.01.0001, etc Parties must agree on Party Codes, for example,— *AAA—Party A* *BBB—Party B* *CCC—Party C*

High Court Rules—*continued*
Part 2—*continued*

Field No	Field name	Description
2	Date	The date appearing on the face of the document Dates must appear as DD/MMM/YYYY, for example, 01 Jan 2010 If a document is partially dated or only partially legible, this field must contain such date information as can be determined from the document If the date is estimated, state that in an additional field titled "Estimated"
3	Document type	The type of document being listed, for example, email, letter Parties may agree to construct a predefined list for all document types
4	Author	The name of the author of the document If only part of either the individual or organisation can be determined, provide the information available
5	Recipient	The name of the recipient(s) of a document If only part of either the individual or organisation can be determined, provide the information available
6	Parent document ID	This field will be populated with the document ID of the parent document This field will be populated only if a document is attached to, or embedded within, another document
7	Privilege category	This field is to be populated if the document is subject to a privilege claim

(2) Documents may be listed otherwise than chronologically if a different order would be more convenient.

(3) Other than document ID, if information cannot be determined for a description it must be left blank.

(4) The parties may agree not to list face value descriptions for electronic documents, and instead use agreed metadata material that is extracted from the electronic files. In all cases, however, the method must be agreed. This is to ensure parties' descriptions are consistent with each other.

High Court Rules—*continued*
Part 2—*continued*

(5) Any document ID used in any supplementary discovery must be unique and run sequentially from the last number used in the previous list.

(6) The list must include all documents previously disclosed by that party in accordance with rule 8.4.

8 Specific document decisions

Duplicate documents

(1) The following applies in relation to duplicate documents:

(a) parties must take reasonable steps to ensure exact duplicate documents are removed from the discovered documents:

(b) a copy or version of a document containing a material modification or an obliteration or other marking must be treated as a separate document:

(c) an email and attachment are to be considered a duplicate only if the entire email and attachment document group is contained elsewhere:

(d) a document attached to a document group is not to be classed as a duplicate if it is contained as a stand-alone document elsewhere:

(e) parties should discuss the method of de-duplication at an early stage.

Emails

(2) The following applies in relation to emails:

(a) all individually discoverable emails must be listed separately:

(b) if an email is part of a chain, parties should make reasonable efforts (subject to issues of time, cost, and proportionality) to—

(i) discover the top-level version of each relevant email contained within the chain; and

(ii) investigate whether email chain technology may assist in directing parties to the end point of an email chain.

High Court Rules—*continued*
Part 2—*continued*

Attachments

(3) The following applies in relation to attachments:

(a) any document that is attached to or embedded within another document is to be classed as an attachment:

(b) attachments must be listed as separate documents:

(c) in general, attachments must appear immediately after the parent document in the list, and will take the next document ID.

Consistency of names

(4) The following applies in relation to consistency of names:

(a) the parties must consult and co-operate with each other to agree on a set list of common names to ensure consistency across the document descriptions:

(b) consistent naming conventions may be established for fields like document type, author, and recipient.

Native electronic documents

(5) The following applies in relation to native electronic documents:

(a) electronic documents that do not lend themselves to conversion to PDF (for example, complex spreadsheets, databases, etc) may be exchanged in their native electronic format:

(b) parties may agree on a list of electronic file types that do not lend themselves to conversion to PDF.

Colour documents

(6) The following applies in relation to colour documents:

(a) colour versions of documents need to be created only if it will be evidentially significant to see colour in a document:

(b) if it is technically impracticable to reproduce a document in colour, the party giving discovery must make the original document available for inspection in its native file format.

High Court Rules—*continued*
Part 2—*continued*

9 Privilege

(1) Parties must agree on any specific privilege requirements for listing and exchange.

(2) Documents for which privilege is claimed may be group listed in accordance with rule 8.16(2).

(3) Documents must be given a description in accordance with clause 7(1), unless the description discloses information contained in a communication for which privilege is claimed.

(4) The parent document ID information must be noted in the list if the privilege claim relates to part of a document group.

10 Redactions

(1) The redacted sections of a document must be blacked out on the image. Parties may agree that a label or note must be provided explaining the grounds for the redaction.

(2) The party redacting or altering a document must ensure that the original un-redacted and unaltered version is preserved so that it remains available to be inspected if required.

11 Exchange format

(1) The format of the table or spreadsheet must be as follows:

(a) each document must be contained within a separate row and all field entries must be contained within single cells; and

(b) a delimiter, for example, ";", must be used for any multi-entry fields, for example, "; recipient".

(2) Documents must be provided as multi-page PDF images (or in another format if agreed).

(3) The file name for each individual document must be "document ID.pdf".

(4) If a document has relevant metadata, parties may request its provision in native file format. Either—

(a) the document ID must be contained within the name of the native file format, for example, "document ID.xls"; or

High Court Rules—*continued*
Part 2—*continued*

(b) the file name of the native file must be specified in an additional field in the spreadsheet.

(5) The parties may agree to provide documents as searchable images.

(6) If the software technology available to the party giving discovery makes it reasonably possible, all image documents must have the document ID clearly marked on at least the first page of the document.

(7) The spreadsheet and the folder with the documents should be provided on a media disk.

(8) Parties should not place any restrictions on the spreadsheet or documents that prevent opposing parties from accessing them.

Part 3
Glossary

In this schedule, unless the context otherwise requires,—

attachment means any document that is attached to or embedded within another document

clustering means grouping documents by identifying conceptually alike documents

concept searching means a search that attempts to match results with the query conceptually (rather than just by identity or similarity of words)

de-duplication means the process of identifying and removing duplicate documents from a collection of documents so that only 1 unique copy of each document remains. A cryptographic hash function such as the Message Digest algorithm 5 may be used to generate a digital fingerprint for an electronic document. The digital fingerprint of a document can then be electronically compared against the digital fingerprint of any other document to determine whether the documents are exact duplicates. De-duplication may also be implemented by using a cryptographic hash function applied to a group of documents

document has the meaning set out in rule 1.3 of the High Court Rules and includes all ESI

High Court Rules—*continued*
Part 3—*continued*

document description means the set of data fields used to describe a document under clause 7(1)

document ID has the meaning set out in clause 7(1)

document prioritisation technology (**predictive coding**) means technology that analyses the decisions of a human review of a sample set of documents. The software then prioritises/ranks the remainder of documents based on the decisions made on the sample documents, which allows the most relevant documents to be identified first

electronic image or **image** means an electronic representation of a paper document or electronically stored information. An electronic image may be a searchable image or an unsearchable image

electronically stored information (ESI) means any information stored electronically. It includes, for example, email and other electronic communications such as SMS and voicemail, word processed documents and databases, and documents stored on portable devices such as memory sticks and mobile phones. In addition to documents that are readily accessible from computer systems and other electronic devices and media disks, it includes documents that are stored on servers and back-up systems and electronic documents that have been deleted. It also includes metadata and embedded data

email threading (email chain) means technology that allows the identification of related emails in a thread. This technology can identify the email end point and identify the unique emails in a thread

keyword search means a software-aided search for words across the text of an electronic document

media disk means a CD, DVD, USB flash drive, or any other portable media device

metadata means data about data. In the case of an electronic document, metadata is typically embedded information about the document that is not readily accessible once the native electronic document has been converted into an electronic image or paper document, for example, the date on which the document was last printed or amended. Metadata may be created automatically by a computer system (system metadata) or may be created manually by a user (ap-

High Court Rules—*continued*
Part 3—*continued*

plication metadata). Depending on the circumstances of the case, metadata may be discoverable

native electronic document or **native file format** means an electronic document stored in the original form in which it was created by a computer software program

parent document means a document with 1 or more attachments. For example, an email is a parent document and any documents attached to the email are its attachments

party code means a sequence of alphanumeric characters in a document ID that uniquely identifies a party in the proceeding

PDF (portable document format) is a file format that enables documents to be displayed or printed in a manner that preserves the formatting originally used by the author. A PDF file may be either a searchable image file or an unsearchable image file

redaction means the process of rendering part of a document unreadable. It is sometimes referred to as masking. Redaction is typically used to render confidential or privileged portions of an otherwise discoverable document unreadable

searchable image means an electronic image in which text-based contents can be searched electronically.

Schedule 2

s 171

Categories of information for purposes of section 171

Court records

Item	Category	Description
1	Criminal records	The particulars of the permanent court record, as prescribed by rule 7.2 of the Criminal Procedure Rules 2012 (as from time to time amended or replaced)
2	Court file	(1) Formal written statements admitted as evidence
		(2) Oral evidence
		(3) Briefs of evidence
		(4) Middle-band offence information from the Crown, including protocol offence information available on or after 1 July 2013
		(5) Middle-band offence information from defence, including protocol offence information available on or after 1 July 2013
		(6) Transcript of evidence given orally at trial (notes of evidence)
		(7) Videotaped records or any electronic form of recording of interviews
		(8) Documents admitted into evidence for the purposes of trial (exhibits)
		(9) Exhibits referred to in statements
		(10) Summonses to defendants
		(11) Bail notices
		(12) Notices of disclosure
		(13) Case management memoranda
		(14) Summaries of facts
		(15) Interlocutory applications (pre-trial applications)
		(16) Supporting affidavits
		(17) Submissions by counsel
		(18) Trial callover memoranda
		(19) Crown notices
		(20) Probation reports
		(21) Medical reports
		(22) Victim impact statements
		(23) Alcohol and drug reports

~~Item~~	~~Category~~	~~Description~~
		~~(24) Letters to jurors advising outcome of trial~~
~~3~~	~~Court case lists~~	~~Daily lists and published lists that provide a notice of hearing~~
~~4~~	~~Registers and indexes~~	~~The persons committed for trial or sentence register, the return of prisoners tried and sentenced register, and the Crown book~~
~~5~~	~~Court calendars~~	
~~6~~	~~Information relating to particular cases~~	~~Information held by the ministry in hard copy form, or on the ministry's data sets or databases, for the purpose of assisting with the management of court proceedings~~
~~7~~	~~Electronic records of hearings~~	

Court record

Part A Description of court record

Item	Category	Description
1	Formal court record	Any of the following kept in the registry of the court that relate to a criminal, civil, or family proceeding: (a) a register or index: (b) any published list that gives notice of a hearing: (c) a document that— (i) may be accessed under an enactment other than this Act; or (ii) constitutes notice of its content to the public: (d) a judgment, order, or minute of the court, including any record of the reasons given by a Judge or other judicial officer: (e) the rolls of barristers and solicitors kept under section 56 of the Lawyers and Conveyancers Act 2006 or any former corresponding enactment The permanent court record, as prescribed by rule 7.2 of the Criminal Procedure Rules 2012 (as from time to time amended or replaced)
2	Court file	A collection of documents in the custody and control of the court that relate to a criminal, civil, or family proceeding, for example, applications, submissions, and supporting affidavits, but excluding notes made by or for a judicial officer for his or her personal use

Item	Category	Description
3	Information relating to particular cases	Information held by the ministry in hard copy form, or on the ministry's data sets or databases, for the purpose of assisting with the management of court proceedings
4	Electronic records of hearings	

Part B Permitted information

Item	Category	Description
	Permitted information	(1) The permanent court record, as prescribed by rule 7.2 of the Criminal Procedure Rules 2012 (as from time to time amended or replaced) (2) Information that any of the following orders have been made in respect of a person: (a) any protection order under the Domestic Violence Act 1995: (b) any restraining order under the Harassment Act 1995: (c) any extended supervision order under the Parole Act 2002 (3) Information that any probation report exists in respect of a person

Ministry information

Item	Category	Description
1	Separate or collated administrative information and statistics taken primarily from case management systems to enable the ministry to efficiently budget, plan, and administer the court system	Includes information on the relative costs of proceedings, use of courtrooms, and deployment of court staff
2	Case-level information held in ISIS (the justice sector data warehouse) that is combined with Police, Corrections, and other government agency data to support policy formation, statistics, and research for the justice sector	

Item	Category	Description
3	Information relating to court staff personnel matters	
4	Aggregate information about judicial expenditure	Includes information relating to judicial travel
5	Information on operational matters	Includes information about court buildings, resources, support systems, and other operational matters
6	Information held by or on behalf of the Rules Committee	
7	Statistics (counts, averages, trends, etc) and performance measures (to assess achievement against operating targets, etc) about court processes and case outcomes	Data that is extracted from case-level transactions, where all personal identification details are removed and outputs are checked to ensure that the identity of any individual cannot be derived from the published data
8	Correspondence and other information relating to liaison between the judiciary and the ministry about the management and administration of judicial matters	
9	Minutes of joint committee meetings of the judiciary ~~that include~~ at which representatives of the ministry are present	

Judicial information

Item	Category
1	~~Individual information~~ Information about individual judicial expenditure
2	Judicial communications not relating to particular cases
3	Information about a Judge ~~in relation~~ that relates to the Judge's performance of his or her role and function as a Judge
4	Internal communications, via email or in hard copy, between Judges~~,~~ and between Judges and administrative personnel~~,~~ about judicial administrative and management matters~~, via email or in hard copy~~
5	Minutes of committee meetings of the judiciary ~~relating~~ that relate to the management and administration of judicial affairs (but not including the Rules Committee)

Item	Category
6	Judicial personnel matters, such as salary, leave, and sabbatical records, that have not been anonymised, including allocations of technology, personal expenses records, judicial training programmes, and attendance at overseas conferences
7	Separate or collated information relating to the rostering of Judges, judicial activity information, and judicial activity statistics that identify particular Judges
8	Judicial communications, including Judges' papers or notes relating to particular cases

Schedule 3

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Consequential amendments relating to Senior Courts

Part 1
Amendments to Acts

Administration Act 1969 (1969 No 52)

In section 59, replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Admiralty Act 1973 (1973 No 119)

In section 11(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 13(2), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Adoption Act 1955 (1955 No 93)

In section 28A(a), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Animal Products Act 1999 (1999 No 93)

In section 155(3), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

Arbitration Act 1996 (1996 No 99)

In section 16(a), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Biosecurity Act 1993 (1993 No 95)

In section 154F(3), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

Canterbury Earthquake Recovery Act 2011 (2011 No 12)

In section 70(4), replace "Supreme Court Act 2003" with "**Part 1 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

Care of Children Act 2004 (2004 No 90)

In section 141(3), replace "section 88B of the Judicature Act 1908" with "**sections 162 to 165 of the Judicature Modernisation Act 2013**".

In section 146(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 147(1), replace "section 100A of the Judicature Act 1908" with "**section 153 of the Judicature Modernisation Act 2013**".

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

In section 448(2)(a), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Citizens Initiated Referenda Act 1993 (1993 No 101)

In section 58A, replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Civil List Act 1979 (1979 No 33)

In section 27(7), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Commerce Act 1986 (1986 No 5)

In section 97(1), replace "section 66 of the Judicature Act 1908" with "**section 57 of the Judicature Modernisation Act 2013**".

Commissions of Inquiry Act 1908 (1908 No 25)

In section 13(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 13(3), replace "section 56A(1) of the Judicature Act 1908" with "**section 40 of the Judicature Modernisation Act 2013**".

In section 13(3), replace "section 56B of the Judicature Act 1908" with "**section 41 of the Judicature Modernisation Act 2013**".

In section 13(4), replace "section 56A(1) of the Judicature Act 1908" with "**section 40 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

Commissions of Inquiry Act 1908 (1908 No 25)—*continued*

In section 13(4), replace "section 56B of the Judicature Act 1908" with "**section 41 of the Judicature Modernisation Act 2013**".

In section 13A(1)(a), replace "section 56A(1) of the Judicature Act 1908" with "**section 40 of the Judicature Modernisation Act 2013**".

In section 13A(1)(b), replace "section 56B of the Judicature Act 1908" with "**section 41 of the Judicature Modernisation Act 2013**".

In section 13A(2)(a), replace "section 56A(1) of the Judicature Act 1908" with "**section 40 of the Judicature Modernisation Act 2013**".

In section 13A(2)(b), replace "section 56B of the Judicature Act 1908" with "**section 41 of the Judicature Modernisation Act 2013**".

In section 13B, replace "section 56C of the Judicature Act 1908" with "**section 161 of the Judicature Modernisation Act 2013**" in each place.

In section 13C, replace "section 56A(1) of the Judicature Act 1908" with "**section 40 of the Judicature Modernisation Act 2013**".

In section 13C, replace "section 56B of the Judicature Act 1908" with "**section 41 of the Judicature Modernisation Act 2013**".

In section 13D, replace "section 56A(1) of the Judicature Act 1908" with "**section 40 of the Judicature Modernisation Act 2013**".

In section 13D, replace "section 56B of the Judicature Act 1908" with "**section 41 of the Judicature Modernisation Act 2013**".

In section 14, replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Construction Contracts Act 2002 (2002 No 46)

In section 81(2)(b), replace "section 51B of the Judicature Act 1908" with "**section 152 of the Judicature Modernisation Act 2013**".

Coroners Act 2006 (2006 No 38)

In section 34(5), replace "section 2 of the Judicature Act 1908" with "**section 4(1) of the Judicature Modernisation Act 2013**".

Part 1—*continued*

Court Martial Appeals Act 1953 (1953 No 100)

In section 2(1), definition of **Court of Appeal**, replace "Part 2 of the Judicature Act 1908" with "**subpart 3 of Part 1 of the Judicature Modernisation Act 2013**".

In section 4(6), replace "superior" with "senior".

In section 10(2), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

In section 26(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Courts (Remote Participation) Act 2010 (2010 No 94)

In section 3, definition of **Court of Appeal**, replace "Part 2 of the Judicature Act 1908" with "**subpart 3 of Part 1 of the Judicature Modernisation Act 2013**".

In section 3, definition of **Supreme Court**, replace "section 4 of the Supreme Court Act 2003" with "**section 65 of the Judicature Modernisation Act 2013**".

Crimes Act 1961 (1961 No 43)

In section 2(1), definition of **Supreme Court**, replace "section 6 of the Supreme Court Act 2003" with "**section 66 of the Judicature Modernisation Act 2013**".

In section 406A(4), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

Criminal Procedure Act 2011 (2011 No 81)

In section 5, definition of **rules of court**, replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Replace section 213(1) with:

"(1) All rights of appeal to the Supreme Court under this Part are subject to **subpart 4 of Part 1 of the Judicature Modernisation Act 2013**. *See*, especially, **sections 73 to 75** of that Act."

Part 1—*continued*

Criminal Procedure Act 2011 (2011 No 81)—*continued*

In section 314(5), replace "section 99A of the Judicature Act 1908" with "**section 174 of the Judicature Modernisation Act 2013**".

In section 316(6), replace "section 99A of the Judicature Act 1908" with "**section 174 of the Judicature Modernisation Act 2013**".

In section 318(4), replace "section 99A of the Judicature Act 1908" with "**section 174 of the Judicature Modernisation Act 2013**".

In section 325(3), replace "section 15(2) of the Supreme Court Act 2003" with "**section 76 of the Judicature Modernisation Act 2013**".

In section 333(1), after "Court of Appeal", insert "(of whom at least 1 must hold office under **section 43 of the Judicature Modernisation Act 2013**)".

In section 333(2) and (4), after "Court of Appeal", insert "(whether holding office under **section 43 or 46 of the Judicature Modernisation Act 2013**)" in each place.

In section 386(1), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Criminal Proceeds (Recovery) Act 2009 (2009 No 8)

Repeal sections 206 and 207 and the cross-heading above section 206.

Criminal Records (Clean Slate) Act 2004 (2004 No 36)

In section 22(1) and (2), replace "section 51B of the Judicature Act 1908" with "**section 152 of the Judicature Modernisation Act 2013**".

In section 22(2), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 22(3), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Crown Proceedings Act 1950 (1950 No 54)

In section 22(1), replace "each district constituted under the Judicature Act 1908" with "a district".

Part 1—*continued*

Crown Proceedings Act 1950 (1950 No 54)—*continued*

In section 29(2), replace "Section 55 of the Judicature Act 1908" with "**Section 38 of the Judicature Modernisation Act 2013**".

In Schedule 1, replace the item relating to the Judicature Act 1908 with: **Part 1 of the Judicature Modernisation Act 2013 (2013 No 00)**.

Customs and Excise Act 1996 (1996 No 27)

In section 110(4), replace "section 55 of the Judicature Act 1908" with "**section 38 of the Judicature Modernisation Act 2013**".

Declaratory Judgments Act 1908 (1908 No 220)

In section 6, replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Replace section 7 with:

"**7 Removal of summons into Court of Appeal**

An originating summons under section 3 may be removed into the Court of Appeal in the same manner as the matters specified in **section 60 of the Judicature Modernisation Act 2013** are removable, and **section 60** of that Act applies to any originating summons removed into the court."

Domestic Actions Act 1975 (1975 No 53)

In section 9A(a), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Electoral Act 1993 (1993 No 87)

In section 234(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Electricity Industry Act 2010 (2010 No 116)

In section 71(2), replace "Section 66 of the Judicature Act 1908" with "**Section 57 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

Electronic Transactions Act 2002 (2002 No 35)

In the Schedule, Part 4, paragraph (1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Employment Relations Act 2000 (2000 No 24)

In section 214(1), replace "section 66 of the Judicature Act 1908" with "**section 57 of the Judicature Modernisation Act 2013**".

In section 214A(4), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

In section 218, replace "section 66 of the Judicature Act 1908" with "**section 57 of the Judicature Modernisation Act 2013**".

Evidence Act 2006 (2006 No 69)

In section 199(1), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

In section 200(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Extradition Act 1999 (1999 No 55)

In section 103, replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Family Protection Act 1955 (1955 No 88)

In section 15(3), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Gas Act 1992 (1992 No 124)

In section 43ZJ(2), replace "Section 66 of the Judicature Act 1908" with "**Section 57 of the Judicature Modernisation Act 2013**".

Government Superannuation Fund Act 1956 (1956 No 47)

In section 72, definition of **Judge**, paragraph (a), replace "section 4 of the Judicature Act 1908" with "**section 100 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

Government Superannuation Fund Act 1956 (1956 No 47)—*continued*

In section 72, definition of **temporary Judge**, paragraph (a), replace "section 11 of the Judicature Act 1908" with "**section 112 of the Judicature Modernisation Act 2013**".

In section 81A, definition of **Judge**, paragraph (a), replace "section 4 of the Judicature Act 1908" with "**section 100 of the Judicature Modernisation Act 2013**".

In section 81A, definition of **temporary Judge**, paragraph (a), replace "section 11 of the Judicature Act 1908" with "**section 112 of the Judicature Modernisation Act 2013**".

In section 81X, definition of **Associate Judge**, replace "section 26C of the Judicature Act 1908" with "**section 100 of the Judicature Modernisation Act 2013**".

Governor-General Act 2010 (2010 No 122)

In section 17(3), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Habeas Corpus Act 2001 (2001 No 31)

In section 3, definition of **High Court Rules**, replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 7(7), replace "Section 51E of the Judicature Act 1908" with "**Section 150 of the Judicature Modernisation Act 2013**".

In section 15(1), replace "sections 7 to 10 of the Supreme Court Act 2003" with "**sections 68 to 71 of the Judicature Modernisation Act 2013**".

In section 16(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 20(1) and (2), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Immigration Act 2009 (2009 No 51)

In section 246(1), replace "Section 66 of the Judicature Act 1908" with "**Section 57 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

Immigration Act 2009 (2009 No 51)—*continued*

Replace section 251 with:

"**251 Relationship with Part 1 of Judicature Modernisation Act 2013**

Part 1 of the Judicature Modernisation Act 2013 is subject to sections 247, 248, 249, 250, and 262."

Insolvency Act 2006 (2006 No 55)

In section 442(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

In section 43(1), replace "section 66 of the Judicature Act 1908" with "**section 57 of the Judicature Modernisation Act 2013**".

In section 225(1), replace "section 66 of the Judicature Act 1908" with "**section 57 of the Judicature Modernisation Act 2013**".

Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (2004 No 38)

In section 31(3)(b), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Juries Act 1981 (1981 No 23)

Repeal section 34.

Land Valuation Proceedings Act 1948 (1948 No 50)

In section 18A(1), replace "section 66 of the Judicature Act 1908" with "**section 57 of the Judicature Modernisation Act 2013**".

Lawyers and Conveyancers Act 2006 (2006 No 1)

In section 49(3)(a), replace "the superior" with "a senior".

In section 53(1)(a), replace "the superior" with "a senior".

In section 53(1), replace "that superior" with "that senior" in each place.

In section 54(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

Lawyers and Conveyancers Act 2006 (2006 No 1)—*continued*

In section 254(1), replace "section 66 of the Judicature Act 1908" with "**section 57 of the Judicature Modernisation Act 2013**".

In section 276(a), replace "the superior" with "a senior".

Legislation Act 2012 (2012 No 119)

In the Schedule, repeal the item relating to the Judicature Act 1908.

Limitation Act 2010 (2010 No 110)

In section 13, replace "section 16A of the Judicature Act 1908" with "**section 12 of the Judicature Modernisation Act 2013**".

Local Government Official Information and Meetings Act 1987 (1987 No 174)

In section 35, replace "section 66 of the Judicature Act 1908" with "**section 57 of the Judicature Modernisation Act 2013**".

Local Government (Rating) Act 2002 (2002 No 6)

In section 67(2)(b), replace "section 100A of the Judicature Act 1908" with "**section 153 of the Judicature Modernisation Act 2013**".

Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3)

In section 9(1), definition of **High Court Rules**, replace "the Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 108, replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Patents Act 2013 (2013 No 68)

In section 215(3), replace "sections 7 and 8 of the Supreme Court Act 2003" with "**sections 68 and 69 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

PGG Trust Limited Act 1989 (1989 No 1 (P))

In section 17, replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Property (Relationships) Act 1976 (1976 No 166)

In section 39B(1), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 53(1) and (4), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In section 53(2), replace "section 100A of the Judicature Act 1908" with "**section 153 of the Judicature Modernisation Act 2013**".

Protection of Personal and Property Rights Act 1988 (1988 No 4)

In section 111(a), replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

In section 114, replace "section 17 of the Judicature Act 1908" with "**section 13 of the Judicature Modernisation Act 2013**".

Reciprocal Enforcement of Judgments Act 1934 (1934 No 11)

In section 2(1), definition of **judgments given in the superior courts of New Zealand**, replace "**superior**" with "**senior**".

In section 3(1A), (1B), (1C), (2), (2A), and (3), replace "superior" with "senior" in each place.

In section 3B(1), replace "superior" with "senior" in each place.

In section 10(1), replace "superior" with "senior" in each place.

Replace section 13 with:

"**13 Section 170 of Judicature Modernisation Act 2013 modified**

Section 170 of the Judicature Modernisation Act 2013 applies only in respect of any judgments, decrees, rules, and orders that, being enforceable under that section, are not enforceable in New Zealand in accordance with this Act."

Referenda (Postal Voting) Act 2000 (2000 No 48)

In section 80(2), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

Resource Management Act 1991 (1991 No 69)

In section 149V(6), replace "sections 12 to 15 of the Supreme Court Act 2003" with "**sections 73 to 76 of the Judicature Modernisation Act 2013**".

In section 149V(7), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

Road User Charges Act 2012 (2012 No 1)

In section 71(3), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

Rugby World Cup 2011 (Empowering) Act 2010 (2010 No 123)

In Schedule 2, clause 9(2), replace "sections 12 to 14 of the Supreme Court Act 2003" with "**sections 73 to 75 of the Judicature Modernisation Act 2013**".

In Schedule 2, clause 9(3), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

Social Security Act 1964 (1964 No 136)

In section 12S(1), replace "Supreme Court Act 2003" with "**Part 1 of the Judicature Modernisation Act 2013**".

Te Ture Whenua Maori Act 1993 (1993 No 4)

In section 58B(3), replace "section 14 of the Supreme Court Act 2003" with "**section 75 of the Judicature Modernisation Act 2013**".

Terrorism Suppression Act 2002 (2002 No 34)

In section 58(3), replace "Supreme Court Act 2003" with "**Part 1 of the Judicature Modernisation Act 2013**".

Trustee Act 1956 (1956 No 61)

In section 72(4), replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

Part 1—*continued*

United Nations Convention on the Law of the Sea Act 1996 (1996 No 69)

In section 16, replace "section 51C of the Judicature Act 1908" with "**section 145 of the Judicature Modernisation Act 2013**".

Weathertight Homes Resolution Services Act 2006 (2006 No 84)

In section 125(2)(b), replace "section 51B of the Judicature Act 1908" with "**section 152 of the Judicature Modernisation Act 2013**".

Part 2
Amendments to other enactments

Companies Act 1955 Liquidation Regulations 1994 (SR 1994/129)

In regulation 2, definition of **High Court Rules**, replace "Schedule 2 of the Judicature Act 1908" with "**Schedule 1 of the Judicature Modernisation Act 2013**".

Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)

In regulation 2, definition of **High Court Rules**, replace "Schedule 2 of the Judicature Act 1908" with "**Schedule 1 of the Judicature Modernisation Act 2013**".

Constituency Election Petition Rules 2008 (SR 2008/383)

In rule 3, replace the definition of **High Court Rules** with:

> "**High Court Rules** means the High Court Rules in **Schedule 1 of the Judicature Modernisation Act 2013**".

Criminal Proceedings (Enforcement of Fines) Rules 2011 (SR 2011/397)

In regulation 3, definition of **High Court Rules**, replace "Schedule 2 of the Judicature Act 1908" with "**Schedule 1 of the Judicature Modernisation Act 2013**".

Part 2—*continued*

Family Courts Rules 2002 (SR 2002/261)

In regulation 8, definition of **HCRs** or **High Court Rules**, replace "Schedule 2 of the Judicature Act 1908" with "**Schedule 1 of the Judicature Modernisation Act 2013**".

High Court Fees Regulations 2013 (SR 2013/226)

In regulation 4, definition of **Act**, replace "Judicature Act 1908" with "**Part 1 of the Judicature Modernisation Act 2013**".

In regulation 4, definition of **High Court Rules**, replace "Schedule 2" with "**Schedule 1**".

Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008 (SR 2008/195)

In regulation 4(1), definition of **High Court Rules**, replace "Schedule 2 of the Judicature Act 1908" with "**Schedule 1 of the Judicature Modernisation Act 2013**".

Schedule 4

s 183

Transitional provisions relating to Senior Courts

Part 1
Continuation of certain provisions of Supreme Court Act 2003

1 Application

Clauses 2 to 6 continue the application of certain provisions of the Supreme Court Act 2003 so far as they are applicable.

2 Imperial enactments ceasing to have effect in New Zealand

On 1 January 2004, the following Imperial enactments ceased to have effect as part of the law of New Zealand:

(a) the Imperial enactments listed in Part 1 of Schedule 4 of the Supreme Court Act 2003:

(b) the Imperial subordinate legislation listed in Part 2 of Schedule 4 of that Act.

Compare: 2003 No 53 s 49

3 Privy Council may still determine appeals in certain existing proceedings

(1) The Privy Council may hear and determine, or continue to hear and determine,—

(a) an appeal against a final judgment of the Court of Appeal made before 1 January 2004, or made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004, where—

(i) the matter in dispute on the appeal amounts to or is of the value of $5,000 or upwards; or

(ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of $5,000 or upwards; or

(b) an appeal arising out of a successful application to a New Zealand court (whether made before, on, or after 1 January 2004) for leave to appeal to the Privy Council against a decision of the Court of Appeal—

(i) made before 1 January 2004; or

Part 1—*continued*

(ii) made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004; or

(c) an appeal arising out of a successful application to the Privy Council (whether made before, on, or after 1 January 2004) for special leave to appeal to it against a decision of the Court of Appeal—

(i) made before 1 January 2004; or

(ii) made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.

(2) **Subclause (1)** does not apply to an appeal if—

(a) the Privy Council has not begun hearing the appeal; and

(b) all parties agree in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against the decision concerned.

Compare: 2003 No 53 s 50

4 Limitation on right to appeal to Supreme Court in certain existing proceedings

(1) This subclause applies to a decision if—

(a) it was made by any New Zealand court before 1 January 2004; or

(b) it was made by the Court of Appeal after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.

(2) There is no right to appeal to the Supreme Court against a decision to which **subclause (1)** applies if—

(a) the Privy Council has already heard or begun hearing an appeal against it; or

(b) a New Zealand court has declined to give leave to appeal to the Privy Council against it and the Privy Council has not later given special leave to appeal against it; or

(c) the Privy Council has declined to give special leave to appeal against it; or

Part 1—*continued*

(d) all the parties to the proceeding in which it was made have not agreed in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against it.

(3) **Subclause (2)** overrides **sections 68 to 71**.

Compare: 2003 No 53 s 51

5 Transitional effect of sections 42 and 49 of Supreme Court Act 2003

(1) The following applications must be determined as if sections 42 and 49 of the Supreme Court Act 2003 had not been enacted:

(a) all applications to a New Zealand court (whether made before, on, or after 1 January 2004) for leave to appeal to the Privy Council against—

(i) a decision of a New Zealand court made before 1 January 2004; or

(ii) a decision of the Court of Appeal delivered after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004:

(b) all applications to the Privy Council (whether made before, on, or after 1 January 2004) for special leave to appeal to it against—

(i) a decision of a New Zealand court made before 1 January 2004; or

(ii) a decision of the Court of Appeal delivered after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.

(2) All appeals that, by virtue of **clause 3(1)**, the Privy Council may hear and determine, or continue to hear and determine, must be heard and determined as if—

(a) sections 42 and 49 of the Supreme Court Act 2003 had not been enacted; and

(b) the reference in section 112(1) of the Credit Contracts and Consumer Finance Act 2003 to the Supreme Court included a reference to the Privy Council.

Compare: 2003 No 53 s 52

Part 1—*continued*

6 No new rights of appeal against decisions made before 1 January 2004

(1) A person does not have a right to appeal to a particular New Zealand court or the Privy Council on any grounds against a decision made before 1 January 2004 unless, when the decision was made, the person had the right to appeal against the decision to that court on those grounds.

(2) **Subclause (1)** does not limit or affect the right of any person to appeal to a New Zealand court on any grounds against a decision made—

(a) on or after 1 January 2004; but

(b) on appeal against a decision—

(i) made before 1 January 2004; or

(ii) made at any time on appeal against a decision made before 1 January 2004.

Compare: 2003 No 53 s 54

Part 2
Other provisions relating to senior courts

7 Interpretation

In this Part, unless the context otherwise requires,—

judicial officer means a Judge, Registrar, or Deputy Registrar of a senior court

proceedings includes actions and matters

relevant Act means the Judicature Act 1908 or the Supreme Court Act 2003.

Judicial officers of senior courts

8 Judicial officers to continue in office

(1) This ~~section~~ clause applies to every person who is a judicial officer under the relevant Act immediately before the commencement of this clause.

(2) A judicial officer to whom this ~~section~~ clause applies continues to hold his or her judicial office ~~subject to this Act~~ under the conditions of his or her appointment.

Part 2—*continued*

Other officers of senior courts

9 Other officers of court to continue in office

(1) This ~~section~~ clause applies to every person who is an officer of a court (other than a judicial officer as defined in **clause 7**) under the relevant Act immediately before the commencement of this clause.

(2) An officer to whom this ~~section~~ clause applies continues to hold his or her office subject to this Act.

Proceedings and other matters

10 Proceedings, etc, continue under relevant Act

(1) All proceedings pending or in progress in a court operating under the relevant Act immediately before the commencement of this ~~section~~ clause may be continued, completed, and enforced only under the relevant Act (including the relevant rules of court) as if that Act had not been repealed by this Act.

(2) All jurisdictions, offices, appointments, Orders in Council, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority that originated under the relevant Act or another enactment continued or repealed by this Act, and that are subsisting or in force on the commencement of this ~~section~~ clause, have full effect as if they had originated under the corresponding provisions of this Act and, where necessary, must be treated as having originated under this Act.

(3) This clause is subject to **clause 11**.

11 Proceedings subject to former High Court Rules

(1) In this clause, **former High Court Rules** means the High Court Rules as in force immediately before the commencement of this clause.

(2) A proceeding that is pending on the commencement of this clause must be continued, completed, and enforced under the High Court Rules set out in **Schedule 1**, except as provided in **subclause (3)**.

Part 2—*continued*

(3) A proceeding that is pending on the commencement of this clause must be dealt with as if—

(a) Part 29 of the former High Court Rules (if applicable) were in force:

(b) the provisions of the former High Court Rules relating to interest on money claims (if applicable) were in force in place of the corresponding provisions of the High Court Rules set out in **Schedule 1**:

(c) the provisions of the former High Court Rules referring to section 26P of the Judicature Act 1908 were in force.

12 Continued effect of transitional provisions in former High Court Rules

(1) The repeal of the Judicature Act 1908 does not affect the operation of the transitional provisions in—

(a) rule 9 of the High Court Amendment Rules 2009; or

(b) rule 7 of the High Court (Access to Court Documents) Amendment Rules 2009; or

(c) rule 5 of the High Court Amendment Rules 2010.

(2) So far as the enactments referred to in **subclause (1)(a) to (c)** may be applicable, they continue to have effect as if the Judicature Act 1908 had not been repealed.

Schedule 5

s 419

Categories of information for purposes of section 419 (District Court)

Court records

Item	Category	Description	
1	Criminal records	The particulars of the permanent court record, as prescribed by rule 7.2 of the Criminal Procedure Rules 2012 (as from time to time amended or replaced)	
2	Court file	(1)	Formal written statements admitted as evidence
		(2)	Oral evidence
		(3)	Briefs of evidence
		(4)	Middle-band offence information from the Crown, including protocol offence information available on or after 1 July 2013
		(5)	Middle-band offence information from defence, including protocol offence information available on or after 1 July 2013
		(6)	Transcript of evidence given orally at trial (notes of evidence)
		(7)	Videotaped records or any electronic form of recording of interviews
		(8)	Documents admitted into evidence for the purposes of trial (exhibits)
		(9)	Exhibits referred to in statements
		(10)	Summonses to defendants
		(11)	Bail notices
		(12)	Notices of disclosure
		(13)	Case management memoranda
		(14)	Summaries of facts
		(15)	Interlocutory applications (pre-trial applications)
		(16)	Supporting affidavits
		(17)	Submissions by counsel
		(18)	Trial callover memoranda
		(19)	Crown notices
		(20)	Probation reports
		(21)	Medical reports
		(22)	Victim impact statements
		(23)	Alcohol and drug reports

Item	Category	Description
		(24) Letters to jurors advising outcome of trial
3	Court case lists	Daily lists and published lists that provide a notice of hearing
4	Registers and indexes	The persons committed for trial or sentence register, the return of prisoners tried and sentenced register, and the Crown book
5	Court calendars	
6	Information relating to particular cases	Information held by the ministry in hard copy form, or on the ministry's data sets or databases, for the purpose of assisting with the management of court proceedings
7	Electronic records of hearings	

Court record

Part A Description of court record

Item	Category	Description
1	Formal court record	Any of the following kept in the registry of the court that relate to a criminal, civil, or family proceeding: (a) a register or index: (b) any published list that gives notice of a hearing: (c) a document that— (i) may be accessed under an enactment other than this Act; or (ii) constitutes notice of its content to the public: (d) a judgment, order, or minute of the court, including any record of the reasons given by a Judge or other judicial officer The permanent court record, as prescribed by rule 7.2 of the Criminal Procedure Rules 2012 (as from time to time amended or replaced)
2	Court file	A collection of documents in the custody and control of the court that relate to a criminal, civil, or family proceeding, for example, applications, submissions, and supporting affidavits, but excluding notes made by or for a judicial officer for his or her personal use
3	Information relating to particular cases	Information held by the ministry in hard copy form, or on the ministry's data sets or databases, for the purpose of assisting with the management of court proceedings
4	Electronic records of hearings	

Part B Permitted information

Item	Category	Description
	Permitted information	(1) The permanent court record, as prescribed by rule 7.2 of the Criminal Procedure Rules 2012 (as from time to time amended or replaced) (2) Information that any of the following orders have been made in respect of a person: (a) any protection order under the Domestic Violence Act 1995: (b) any restraining order under the Harassment Act 1995: (c) any extended supervision order under the Parole Act 2002 (3) Information that any probation report exists in respect of a person

Ministry information

Item	Category	Description
1	Separate or collated administrative information and statistics taken primarily from case management systems to enable the ministry to efficiently budget, plan, and administer the court system	Includes information on the relative costs of proceedings, use of courtrooms, and deployment of court staff.
2	Case- level information held in ISIS (the Justice Sector Data Warehouse) which is combined with Police, Corrections, and other government agency data to support policy formation, statistics, and research for the Justice Sector.	
3	Information relating to court staff personnel matters	

Item	Category	Description
4	Aggregate information about judicial expenditure	Includes information relating to judicial travel.
5	Information on operational matters	Includes information about court buildings, resources, support systems, and other operational matters.
6	Information held by or on behalf of the Rules Committee	
7	Statistics (counts, averages, trends, etc.) and performance measures (to assess achievement against operating targets, etc) about court processes and case outcomes	Data that is extracted from case-level transactions, where all personal identification details are removed and outputs are checked to ensure that the identity of any individual cannot be derived from the published data.
8	Correspondence and other information relating to liaison between the judiciary and the ministry about the management and administration of judicial matters	
9	Minutes of joint committee meetings of the judiciary ~~that include~~ at which representatives of the ministry are present	

Judicial information

Item	Category
1	~~Individual information~~ Information about individual judicial expenditure.
2	Judicial communications not relating to particular cases.
3	Information about a Judge ~~in relation~~ that relates to the Judge's performance of his or her role and function as a Judge.

Item	Category
4	Internal communications, via email or in hard copy, between Judges~~,~~ and between Judges and administrative personnel~~,~~ about judicial administrative and management matters~~,~~ ~~via email or hard copy~~.
5	Minutes of committee meetings of the judiciary ~~relating~~ that relate to the management and administration of judicial affairs (but not including the Rules Committee).
6	Judicial personnel matters, such as salary, leave, and sabbatical records, that have not been anonymised, including allocations of technology, personal expenses records, judicial training programmes, and attendance at overseas conferences.
7	Separate or collated information relating to the rostering of Judges, judicial activity information, and judicial activity statistics that identify particular Judges.
8	Judicial communications, including Judges' papers or notes relating to particular cases.

Schedule 6

s 421

Consequential amendments relating to District Court

Accident Compensation Act 2001 (2001 No 49)

Replace section 123(2)(d) with:

"(d) **sections 336 to 344 of the Judicature Modernisation Act 2013**; or".

Replace section 150 with:

"**150 District Court Rules and this Act apply to appeal**

An appeal under section 149 is dealt with in accordance with the District Court Rules made under **section 411 of the Judicature Modernisation Act 2013**, as modified by this Act and any regulations made under it."

Replace section 162(5) with:

"(5) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under this section as if it were an appeal under **section 306** of that Act."

Admiralty Act 1973 (1973 No 119)

Replace section 3(1)(b) with:

"(b) may be exercised by the District Court *in personam* where the debt, demand, or damage or the value of the chattels claimed does not exceed the amount specified in **section 256 of the Judicature Modernisation Act 2013**, but the District Court does not, for the purposes of this Act, have jurisdiction *in rem*."

Replace section 3(3) with:

"(3) Nothing in this Act derogates from any common law or equitable jurisdiction of the High Court or the District Court."

Replace section 11(2) with:

"(2) Rules for the practice and procedure of the District Court in its admiralty jurisdiction may be made by the Governor-General from time to time, by Order in Council, under **section 411 of the Judicature Modernisation Act 2013**."

Admiralty Act 1973 (1973 No 119)—*continued*

Replace section 13(1A) with:

"(1A) The High Court Rules and **sections 307 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under this section as if it were an appeal under **section 306** of that Act."

Adoption Act 1955 (1955 No 93)

Replace section 28A(b) and (c) with:

"(b) in the case of the District Court, under **section 411 of the Judicature Modernisation Act 2013**:

"(c) in the case of the Family Court, under section 16A of the Family Court Act 1980."

Animal Products Act 1999 (1999 No 93)

In section 147(1), replace "a District Court" with "the District Court".

In section 147(2), replace "a District Court" with "the District Court".

Replace section 147(3) with:

"(3) Subject to modification by sections 148 to 156 and by any rules made under section 157, the District Court Rules made under **section 411 of the Judicature Modernisation Act 2013** apply to every application to the court under this section."

In section 154(1AA), replace "a District Court" with "the District Court".

Replace section 154(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under this section as if it were an appeal under **section 306** of that Act."

In section 157, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 157(a), replace "District Courts" with "the District Court".

Animal Welfare Act 1999 (1999 No 142)

In section 143(1), replace "a District Court" with "the District Court".

In section 143(2), replace "a District Court" with "the District Court".

Animal Welfare Act 1999 (1999 No 142)—*continued*

Replace section 143(3) with:

"(3) Subject to modification by sections 145 to 155 and by any rules made under section 156, the District Court Rules made under **section 411 of the Judicature Modernisation Act 2013** apply to every application to the court under this section."

Replace section 153(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under this section as if it were an appeal under **section 306** of that Act."

In section 156, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 156(a), replace "District Courts" with "the District Court".

Arbitration Act 1996 (1996 No 99)

Replace section 16(b) with:

"(b) in the case of the District Court, under **section 411 of the Judicature Modernisation Act 2013**."

Bail Act 2000 (2000 No 38)

In section 53(1)(b), replace "a District Court" with "the District Court".

In section 56, replace "a District Court" with "the District Court".

Biosecurity Act 1993 (1993 No 95)

In section 154E(1), replace "a District Court" with "the District Court".

In section 154E(9), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 154F(2), replace "sections 74 to 78 of the District Courts Act 1947" with "**sections 308 to 312 of the Judicature Modernisation Act 2013**".

In section 154F(2)(a), replace "section 72 of the District Courts Act 1947" with "**section 306 of the Judicature Modernisation Act 2013**".

Building Societies Act 1965 (1965 No 22)

In section 2(1), replace the definition of **court** with:

> "**court** means the District Court in any case where the District Court has jurisdiction under **Part 2 of the Judicature Modernisation Act 2013** in relation to this Act or to building societies, and in any other case means the High Court or a Judge of the High Court".

Care of Children Act 2004 (2004 No 90)

In section 143(1), replace "a Family Court" with "the Family Court".

In section 143(3), replace "a Family Court" with "the Family Court".

Replace section 143(4) with:

"(4) The High Court Rules and **sections 307 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under this section as if it were an appeal under **section 306** of that Act."

In section 143(5), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

In section 146(2), replace "the Family Courts Act 1980" with "the Family Court Act 1980".

In section 146(2), replace "Family Courts" with "the Family Court".

~~In section 146(3), replace "a Family Court" with "the Family Court".~~

~~In section 146(3), replace "the Family Courts Act 1980" with "the Family Court Act 1980".~~

In section 146(4), replace "section 122 of the District Courts Act 1947" with "**section 411 of the Judicature Modernisation Act 2013**".

In section 146(4)(a), replace "District Courts" with "the District Court".

Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17)

In section 35(2), replace "a District Court" with "the District Court".

Replace section 37(4) with:

"(4) An appeal to the District Court is a rehearing and must be conducted in accordance with the District Court Rules made

Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17)—*continued*

under **section 411 of the Judicature Modernisation Act 2013**."

Child Support Act 1991 (1991 No 142)

In section 120(1), replace "a Family Court" with "the Family Court".

Replace section 120(1A) with:

"(1A) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 120(2), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

In section 120(3), replace "a Family Court" with "the Family Court".

Replace section 120(3A) with:

"(3A) The High Court Rules and **sections 309 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (3) as if it were an appeal under **section 306** of that Act."

In the heading to section 183, replace "**of distress**" with "**to seize property**".

In section 183(1), replace "warrant of distress" with "warrant to seize property".

In section 183(2), replace "warrant of distress" with "warrant to seize property".

In section 183(3), replace "of distress" with "to seize property" in each place.

In section 183(3), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 183(4), replace "warrant of distress" with "warrant to seize property".

In section 183(5), replace "warrant of distress" with "warrant to seize property".

Child Support Act 1991 (1991 No 142)—*continued*

In section 183(6), replace "warrant of distress" with "warrant to seize property".

In section 183(7), replace "warrant of distress" with "warrant to seize property".

In section 183(9), replace "No distress" with "No seizure of property".

In section 183(9), replace "warrant of distress" with "warrant to seize property".

Replace section 183(10) with:

"(10) **Section 357 of the Judicature Modernisation Act 2013** does not apply in relation to a warrant to seize property issued under this section."

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

In the heading to section 321, replace "**Courts**" with "**Court**".

In section 321(1), replace "Youth Courts and to proceedings in such courts" with "the Youth Court and to proceedings in that court".

In section 321(2), replace "every Youth Court and its officers shall have all the powers and duties of a District Court" with ", the Youth Court and its officers have all the powers and duties of the District Court".

In section 321(3), replace "in a Youth Court" with "in the Youth Court".

Replace section 321(4) with:

"(4) Any officer of the District Court may act as an officer of the Youth Court."

In section 321(5), replace "a Youth Court" with "the Youth Court".

Replace section 346(1) with:

"(1) The High Court Rules and **sections 308 to 311 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under section 341 as if it were an appeal under **section 306** of that Act."

Children, Young Persons, and Their Families Act 1989 (1989 No 24)—*continued*

In section 346(2), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

Replace section 435A(6) with:

"(6) This section is subject to **section 207 of the Judicature Modernisation Act 2013**."

In section 448(1), replace "Youth Courts" with "the Youth Court".

In section 448(2), replace "Youth Courts" with "the Youth Court".

Replace section 448(2)(b) with:

"(b) in the case of the District Court, under **section 411 of the Judicature Modernisation Act 2013**:".

In the Schedule 1 heading, replace "**Courts and to proceedings in such courts**" with "**Court and to proceedings in Youth Court**".

In Schedule 1, replace clause 1 with:

"1

Part 2 of the Judicature Modernisation Act 2013, except that—

"(a) where any provisions of this Act conflict with any of the provisions of **Part 2 of the Judicature Modernisation Act 2013**, the provisions of this Act prevail:

"(b) nothing in **section 254 of the Judicature Modernisation Act 2013** applies in respect of Youth Court Judges or the business of the Youth Court."

Civil Aviation Act 1990 (1990 No 98)

In section 66(1), replace "a District Court" with "the District Court".

Replace section 69(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

~~**Civil List Act 1979 (1979 No 33)**~~

~~Replace section 27(6) with:~~

~~"(6) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (5) as if it were an appeal under **section 306** of that Act".~~

Companies Act 1993 (1993 No 105)

Replace section 185A with:

"**185A Jurisdiction of District Court**

"(1) The District Court has jurisdiction to exercise any power conferred by sections 182 to 185 in any case where—

"(a) the occasion for the exercise of the power arises in the course of civil proceedings properly before the court; or

"(b) the amount of the claim or the value of the property or relief claimed or in issue is not more than $350,000; or

"(c) the parties agree, in accordance with **section 263 of the Judicature Modernisation Act 2013**, that the District Court has jurisdiction to determine the proceedings.

"(2) For the purposes of **sections 268 to 270 of the Judicature Modernisation Act 2013**, an application made to the District Court under any of sections 182 to 185 is deemed to be a proceeding."

Construction Contracts Act 2002 (2002 No 46)

In section 52(1), replace "a District Court" with "the District Court".

Replace section 52(2) with:

"(2) The District Court has the jurisdiction to hear and determine an application for review under this section despite any limits imposed on the District Court in its ordinary civil jurisdiction by **sections 256 to 261 of the Judicature Modernisation Act 2013**."

Replace section 81(1) with:

"(1) In addition to all other powers conferred by **Part 2 of the Judicature Modernisation Act 2013**, the Governor-General may, by Order in Council, make rules regulating the practice

Construction Contracts Act 2002 (2002 No 46)—*continued*

and procedure of the District Court in proceedings under this Act."

In section 81(3), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Consumer Guarantees Act 1993 (1993 No 91)

In section 47(2)(b)(i), replace "200,000" with "350,000".

In section 47(3)(a), replace "200,000" with "350,000".

In section 47(3)(b), replace "200,000" with "350,000".

In section 47(3)(c), replace "200,000" with "350,000".

In section 47(3)(d), replace "200,000" with "350,000".

Coroners Act 2006 (2006 No 38)

In section 10(1)(b), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

In section 10(3), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

In section 108(8), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

In section 109(2)(a), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

In section 110(6), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

In section 114(3), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

In Schedule 3, clause 1(b)(ii), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

Coroners Act 2006 (2006 No 38)—*continued*

In Schedule 3, clause 13, replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

Courts (Remote Participation) Act 2010 (2010 No 94)

In section 3, replace the definition of **District Court** with:

"**District Court** includes—

"(a) the Family Court and the Youth Court; and

"(b) the District Court sitting in its admiralty jurisdiction".

Courts Security Act 1999 (1999 No 115)

In section 33(1), replace "section 112 of the District Courts Act 1947" with "**section 161 of the Judicature Modernisation Act 2013**".

Credit Contracts and Consumer Finance Act 2003 (2003 No 52)

Replace section 86 with:

"**86 Jurisdiction of District Court**

"(1) The District Court may hear and determine proceedings for offences against any of the provisions of this Act.

"(2) The District Court may hear and determine applications for orders under any of the provisions of this Act if—

"(a) the occasion for the exercise of the power arises in the course of civil proceedings properly before the court; or

"(b) in the case of—

"(i) a revolving credit contract that has a credit limit, the credit limit does not exceed $350,000; or

"(ii) any other credit contract, the total of all advances made and agreed to be made under the credit contract does not exceed $350,000; or

"(iii) a consumer lease, the cash price of the goods hired does not exceed $350,000; or

"(iv) a buy-back transaction, the amount of the consideration paid by the transferee under the transaction does not exceed $350,000; or

"(c) the parties agree, in accordance with **section 263 of the Judicature Modernisation Act 2013**, that the

Credit Contracts and Consumer Finance Act 2003 (2003 No 52)—*continued*

District Court has jurisdiction to hear and determine the application.

"(3) The District Court does not have jurisdiction to hear and determine applications for injunctions under section 96.

"(4) For the purposes of **sections 268 to 270 of the Judicature Modernisation Act 2013**, an application made to the District Court for an order under this Act is to be treated as a proceeding."

Credit (Repossession) Act 1997 (1997 No 85)

Replace section 39 with:

"**39 Jurisdiction of District Court**

The District Court has jurisdiction to exercise any power conferred by any of the provisions of this Act in any case where—

"(a) the occasion for the exercise of the power arises in the course of civil proceedings properly before the court; or

"(b) the total amount in respect of which an order of the court is sought is not more than $350,000; or

"(c) the parties agree, in accordance with **section 263 of the Judicature Modernisation Act 2013**, that the District Court has jurisdiction to hear and determine the application."

Crimes Act 1961 (1961 No 43)

In section 2(1), replace the definition of **Judge** with:

"**Judge**, in relation to the District Court, or **District Court Judge** means a Judge who holds a warrant under **section 195 of the Judicature Modernisation Act 2013** to conduct jury trials".

In section 2(1), definition of **Registrar**, paragraph (b), replace "a District Court" with "the District Court".

In section 406(1)(a), replace "a District Court" with "the District Court".

Criminal Procedure Act 2011 (2011 No 81)

Replace section 4(1)(y) and the heading above that paragraph with:

"*Jurisdiction of District Court*

"(y) Part 7 contains provisions about the jurisdiction of the District Court. These set out the jurisdiction of Community Magistrates and Justices to conduct various proceedings and to sentence offenders. They also require a District Court Judge conducting jury trials to hold a jury trial warrant under **Part 2 of the Judicature Modernisation Act 2013**:".

In section 5, definition of **level of trial court**, replace "a District Court" with "the District Court".

In section 5, definition of **rules of court**, replace "section 122 of the District Courts Act 1947" with "**section 411 of the Judicature Modernisation Act 2013**".

In section 34(2), replace "before a District Court" with "before the District Court".

In section 34(3), replace "a District Court" with "the District Court".

In section 35(3)(b), replace "section 4A of the District Courts Act 1947" with "**section 254 of the Judicature Modernisation Act 2013**".

In section 36(3)(b), replace "section 4A of the District Courts Act 1947" with "**section 254 of the Judicature Modernisation Act 2013**".

In section 71(4)(a), replace "section 4A of the District Courts Act 1947" with "**section 254 of the Judicature Modernisation Act 2013**".

In section 72(3), replace "a District Court" with "the District Court".

In section 72(4)(b), replace "a District Court" with "the District Court".

In section 72(5)(a), replace "section 4A of the District Courts Act 1947" with "**section 254 of the Judicature Modernisation Act 2013**".

In section 73(3), replace "a District Court" with "the District Court".

In section 73(4)(b), replace "a District Court" with "the District Court".

Criminal Procedure Act 2011 (2011 No 81)—*continued*

In section 73(5), replace "a District Court" with "the District Court" in each place.

In section 73(6)(a), replace "section 4A of the District Courts Act 1947" with "**section 254 of the Judicature Modernisation Act 2013**".

In the Part 7 heading, replace "**Courts**" with "**Court**".

In section 353(1), replace "a District Court" with "the District Court".

Replace section 354 and the cross-heading above section 354 with:

"*Jurisdiction of District Court in relation to jury trials*

"**354 Jurisdiction of District Court in relation to jury trials**

"(1) This section applies if the trial of a proceeding is to be a jury trial and the level of trial court is the District Court.

"(2) Only the District Court at a place appointed under **section 191(5) of the Judicature Modernisation Act 2013** has jurisdiction to conduct a jury trial.

"(3) Only the District Court presided over by a District Court Judge who holds a warrant under **section 195 of the Judicature Modernisation Act 2013** to conduct jury trials has jurisdiction to conduct the jury trial or exercise any of the powers of the court under subpart 8 of Part 3 in relation to the proceeding.".

In section 355(1), replace "A District Court" with "The District Court".

In section 355(2), replace "A District Court" with "The District Court".

In section 355(3), replace "A District Court" with "The District Court".

In section 356(1), replace "A District Court" with "The District Court".

In section 356(1)(a), replace "a District Court" with "the District Court".

In section 356(2), replace "A District Court" with "The District Court".

Criminal Procedure Act 2011 (2011 No 81)—*continued*

In section 357(2), replace "a District Court" with "The District Court".

Replace section 357(3) with:

"(3) The District Court presided over by 1 or more Community Magistrates may not impose on any person for any offence a sentence of imprisonment (within the meaning of section 4(1) of the Sentencing Act 2002)."

In section 357(4), replace "A District Court" with "The District Court".

In section 358(1), replace "a District Court" with "the District Court".

In section 358(2), replace "a District Court" with "the District Court".

In section 359, replace "A District Court" with "The District Court".

In section 360(1), replace "A District Court" with "The District Court" and replace "a District Court presided" with "the District Court presided".

In section 360(2), replace "a District Court" with "the District Court".

In section 360(3), replace "A District Court" with "The District Court".

In section 361(1), replace "A District Court" with "The District Court".

In section 361(4), replace "a District Court" with "the District Court".

In section 362(1), replace "a District Court" with "the District Court".

In section 362(2), replace "a District Court" with "the District Court".

In section 362(3), replace "a District Court" with "the District Court".

In section 362(4), replace "a District Court" with "the District Court".

In section 363(1), replace "a District Court presided" with "the District Court presided" in each place.

In section 363(2), replace "A District Court" with "The District Court".

In section 366, replace "a District Court presided" with "the District Court presided".

In section 368(1), replace "of a District Court" with "of the District Court".

In section 369(1)(a), replace "a District Court presided" with "the District Court presided".

Criminal Procedure Act 2011 (2011 No 81)—*continued*

In section 370(3), replace "a District Court presided" with "the District Court presided".

In section 371(1)(a), replace "a District Court" with "the District Court".

In section 371(2), replace "A District Court" with "The District Court".

In section 372(1), replace "a District Court presided" with "the District Court presided".

In section 380(2), replace "a Youth Court" with "the Youth Court".

In section 380(4), replace "a Youth Court" with "the Youth Court".

In section 383(1), replace "a District Court" with "the District Court".

In section 386(1), replace "section 122(1) of the District Courts Act 1947" with "**section 411(1) of the Judicature Modernisation Act 2013**".

In section 386(5), replace "District Courts" with "the District Court".

Criminal Records (Clean Slate) Act 2004 (2004 No 36)

In section 4~~(1)~~, definition of **registrar**, replace "a District Court" with "the District Court" in each place.

In section 9(1), replace "a District Court" with "the District Court".

In section 9(2), replace "a District Court" with "the District Court".

In section 10(1), replace "a District Court" with "the District Court".

In section 10(3), replace "a District Court" with "the District Court".

In section 10(8), replace "A District Court" with "The District Court".

In section 12(1), replace "a District Court" with "the District Court".

In section 22(1), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 22(1)(a), replace "District Courts" with "the District Court".

In section 22(1)(b), replace "District Courts" with "the District Court".

In section 22(3), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Crown Proceedings Act 1950 (1950 No 54)

In section 2(1), definition of **court**, replace "a District Court constituted under the District Courts Act 1947, a Disputes Tribunal constituted under the Disputes Tribunals Act 1988" with "the District Court constituted under **Part 2 of the Judicature Modernisation Act 2013**, the Disputes Tribunal constituted under the Disputes Tribunal Act 1988".

In section 15(1), replace "a District Court" with "the District Court".

In section 29(2),—

(a) replace "section 109 of the District Courts Act 1947" with "**section 392 of the Judicature Modernisation Act 2013**"; and

(b) replace "in a District Court" with "in the District Court".

In Schedule 1, replace the item relating to the District Courts Act 1947 with:

"**Part 2 of the Judicature Modernisation Act 2013** (**2013 No 00**)".

Customs and Excise Act 1996 (1996 No 27)

In section 110(4), replace "Section 109 of the District Courts Act 1947" with "**Section 392 of the Judicature Modernisation Act 2013**".

Disputes Tribunals Act 1988 (1988 No 110)

In section 1(1), replace "Tribunals" with "Tribunal".

In section 2, replace "a Tribunal" with "the Tribunal" in each place.

In section 2, definition of **Registrar**, ~~delete~~ replace "the Registrar of the District Court of which the Tribunal is a division pursuant to section 4(4)" with "a Registrar of the District Court".

In section 2, definition of **Tribunal**, replace "a Disputes Tribunal established" with "the Disputes Tribunal established as a division of the District Court" .

In the Part 1 heading, replace "**Tribunals**" with "**Tribunal**".

Replace section 4 with:

"**4 Disputes Tribunal is division of District Court**

"(1) The District Court has a division known as the Disputes Tribunal.

Disputes Tribunals Act 1988 (1988 No 110)—*continued*

"(2) Each Disputes Tribunal that is in existence immediately before this section comes into force ceases to be a division of the District Court and is constituted an office of the Tribunal.

"**4A Offices of Tribunal**

The Minister of the Crown who is responsible for the Ministry of Justice may from time to time, by notice in the *Gazette*,—

"(a) establish such offices of the Tribunal as that Minister thinks fit; and

"(b) disestablish an office of the Tribunal and direct how the records of that office must be dealt with."

Replace section 6(1) with:

"(1) Subject to any directions given under subsection (2), a Registrar must determine the days, times, and places of the regular sessions of the Tribunal."

In section 8(2)(a), delete "of a District Court".

In the heading to Part 2, replace "**Tribunals**" with "**Tribunal**".

In the heading to section 10, replace "**Tribunals**" with "**Tribunal**".

In section 10(1), replace "a Tribunal" with "the Tribunal".

In section 10(1A), replace "A Tribunal" with "The Tribunal".

In section 10(2), replace "A Tribunal" with "The Tribunal".

In section 10(3), replace "a Tribunal" with "the Tribunal".

In section 11(1)(b)(i), replace "a Tribunal" with "the Tribunal".

In section 11(2), replace "a Tribunal" with "the Tribunal".

In section 11(7), replace "a Tribunal" with "the Tribunal".

In section 11(9), replace "A Tribunal" with "The Tribunal".

In section 12(1), replace "a Tribunal" with "the Tribunal" in each place.

In section 12(3), replace "a Tribunal" with "the Tribunal" in each place.

In section 13(1), replace "a Tribunal" with "the Tribunal" in each place.

In section 13(2), replace "a Tribunal" with "the Tribunal".

In section 14, replace "a Tribunal" with "the Tribunal".

In section 15, replace "a Tribunal" with "the Tribunal".

Disputes Tribunals Act 1988 (1988 No 110)—*continued*

In section 16(1)(a), replace "a Tribunal" with "the Tribunal".
In section 16(2), replace "a Tribunal" with "the Tribunal".
In section 16(4), replace "a Tribunal" with "the Tribunal".
In section 17(1), replace "a Tribunal" with "the Tribunal" in each place.
In section 17(2), replace "a Tribunal" with "the Tribunal" in each place.
In section 18(4), replace "a Tribunal" with "the Tribunal".
In section 18(7), replace "a Tribunal" with "the Tribunal".
In section 19(1), replace "A Tribunal" with "The Tribunal".
In section 19(2), replace "a Tribunal" with "the Tribunal".
In section 19(3), replace "a Tribunal" with "the Tribunal".
In section 19(4), replace "a Tribunal" with "the Tribunal".
In section 19(6), replace "a Tribunal" with "the Tribunal".
In section 19(7), replace "a Tribunal" with "the Tribunal".
In section 19(8), replace "a Tribunal" with "the Tribunal".
In section 20(1), replace "a Tribunal" with "the Tribunal".
In section 20(3), replace "a Tribunal" with "the Tribunal".
In section 21(1), replace "A Tribunal" with "The Tribunal".
In section 21(2), replace "A Tribunal" with "The Tribunal".
In section 21(3), replace "a Tribunal" with "the Tribunal".
In section 21(5), replace "a Tribunal" with "the Tribunal".
In section 22(1), replace "A Tribunal" with "The Tribunal".
In section 23, replace "a Tribunal" with "the Tribunal" in each place.
In the Part 3 heading, replace "**Tribunals**" with "**Tribunal**".
In section 24(1), after "appropriate", insert "office of the".
In section 24(2), after "appropriate", insert "office of the".
Replace section 24(3) and (4) with:

"(3) Where a claim is lodged with an office of the Tribunal, or transferred to that office under section 37, and the Tribunal is satisfied that the claim can be more conveniently or fairly heard in some other office of the Tribunal, the Tribunal may order that the proceedings be transferred to that other office.

Disputes Tribunals Act 1988 (1988 No 110)—*continued*

"(4) Where a claim is lodged with an office of the Tribunal, or transferred to that office under section 37, the Registrar may, on the application of any party, if all the parties to the claim consent, order that the proceedings be transferred to another office of the Tribunal."

In section 25(2), replace "a Tribunal" with "the Tribunal".

In section 26(2), replace "A Tribunal" with "The Tribunal".

In section 27(1), replace "a Tribunal" with "the Tribunal".

In section 27(2), replace "a Tribunal" with "the Tribunal".

In section 27(4), replace "a Tribunal" with "the Tribunal".

In section 27(5), definition of **proceedings in a Tribunal**, replace "**a Tribunal**" with "**the Tribunal**".

In section 27(5)(a), replace "a Tribunal" with "the Tribunal" in each place.

In section 28(2), replace "a Tribunal" with "the Tribunal" in each place.

In section 28(3), replace "a Tribunal" with "the Tribunal".

In section 28(4), replace "a Tribunal" with "the Tribunal".

In section 28(5)(a), replace "a Tribunal" with "the Tribunal".

In section 29(1), replace "a Tribunal" with "the Tribunal" in each place.

In section 29(3), replace "a Tribunal" with "the Tribunal".

In section 30(1), replace "a Tribunal" with "the Tribunal".

In section 31, replace "a Tribunal" with "the Tribunal".

In section 32, replace "a Tribunal" with "the Tribunal".

In section 33(1), replace "a Tribunal" with "the Tribunal".

In section 33(2), replace "a Tribunal" with "the Tribunal".

In section 34(1), replace "a Tribunal" with "the Tribunal".

In section 34(1)(e), replace "a District Court" with "the District Court".

In section 35(1), replace "a Tribunal" with "the Tribunal" in each place.

In section 35(5), replace "a Tribunal" with "the Tribunal".

In section 35(6), replace "a Tribunal" with "the Tribunal".

Disputes Tribunals Act 1988 (1988 No 110)—*continued*

In section 36(1), replace "a Tribunal" with "the Tribunal".

In section 36(1), replace "a District Court" with "the District Court".

In section 36(2), "~~after section 37 to,~~" replace "a Tribunal" with "an office of the Tribunal".

In section 36(2), replace "a District Court" with "the District Court" in each place.

Replace section 36(3) with:

"(3) The Tribunal may order that proceedings commenced in or transferred to the Tribunal may be transferred to a Motor Vehicle Disputes Tribunal specified by it if the proceedings—

"(a) are within the jurisdiction of a Motor Vehicle Disputes Tribunal constituted under section 82 of the Motor Vehicles Sales Act 2003; and

"(b) would, in the opinion of the Tribunal, more properly be determined by a Motor Vehicle Disputes Tribunal."

In section 36(4), replace "a Tribunal" with "the Tribunal".

In section 37(1), replace "a Tribunal" with "the Tribunal" in each place.

In section 37(1), replace "in a District Court" with "in the District Court".

In section 37(2), replace "a Tribunal" with "the Tribunal" in each place.

In section 37(3), replace "A Tribunal" with "The Tribunal".

In section 38(4), replace "a Tribunal's" with "the Tribunal's".

In section 38(5), replace "A Tribunal" with "The Tribunal".

In section 38(6), replace "a Tribunal" with "the Tribunal".

In section 38(7), replace "A Tribunal" with "The Tribunal".

In section 38(8), replace "a Tribunal" with "the Tribunal".

In section 39(1), replace "a Tribunal" with "the Tribunal".

In section 39(2), replace "a Tribunal" with "the Tribunal".

In section 39(3), replace "a Tribunal" with "the Tribunal".

In section 39(3), replace "Tribunals" with "the Tribunal".

In section 40(1), replace "a Tribunal" with "the Tribunal".

In section 40(2), replace "A Tribunal" with "The Tribunal".

Disputes Tribunals Act 1988 (1988 No 110)—*continued*

In section 40(4), replace "A Tribunal" with "The Tribunal".

In section 41(1), replace "A Tribunal" with "The Tribunal".

In section 41(2), replace "a Tribunal" with "the Tribunal".

In section 43(1), replace "a Tribunal" with "the Tribunal".

In section 43(3)(a), replace "a Tribunal" with "the Tribunal".

Replace section 43(4)(a) with:

"(a) any proceedings within the jurisdiction of the Tribunal have been commenced in the District Court; and".

In section 43(4)(b), replace "a Tribunal" with "the Tribunal".

In section 43(4)(c), replace "a Tribunal" with "the Tribunal" in each place.

In section 43(4)(e), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 44, replace "a Tribunal" with "the Tribunal".

Replace section 45(1) with:

"(1) Every order made by the Tribunal requiring a party to pay money or deliver specific property to another party is taken to be an order of the District Court and, subject to this section, may be enforced accordingly."

In section 45(2), replace "a District Court" with "the District Court".

Replace section 47(1) with:

"(1) Where a term of an agreed settlement approved by the Tribunal under section 18(3) provides for a party to pay money or deliver specific property to another party, that term is taken to be an order of the District Court and, subject to this section, may be enforced accordingly."

In section 47(2)(a), replace "a Tribunal" with "the Tribunal".

In section 48, replace "section 113 of the District Courts Act 1947" with "**section 402 of the Judicature Modernisation Act 2013**".

In section 49(1), replace "a Tribunal" with "the Tribunal".

In section 49(2)(c), replace "a Tribunal" with "the Tribunal".

In section 50(1), replace "a Tribunal may appeal to a District Court" with "the Tribunal may appeal to the District Court".

In section 50(3), delete "of which the Tribunal is a division,".

Disputes Tribunals Act 1988 (1988 No 110)—*continued*

In section 51(2), replace "a Tribunal" with "the Tribunal".

In section 52, replace "section 57 of the District Courts Act 1947" with "**section 289 of the Judicature Modernisation Act 2013**".

In section 53(1)(b), replace "a District Court" with "the District Court".

In section 54, replace "a Tribunal" with "the Tribunal" in each place.

In section 55, replace "a Tribunal" with "the Tribunal" in each place.

In section 55, replace "a District Court" with "the District Court".

In section 56(1)(a), replace "a Tribunal" with "the Tribunal" in each place.

In section 56(1)(b), replace "a Tribunal" with "the Tribunal".

In section 56(1)(c), replace "a Tribunal" with "the Tribunal".

In section 56(1)(d), replace "a Tribunal" with "the Tribunal".

In section 56(2), replace "a Tribunal" with "the Tribunal".

In section 57, replace "Tribunals" with "the Tribunal".

In section 58(2), replace "a Tribunal" with "the Tribunal".

In section 58(3)(a), replace "a Tribunal" with "the Tribunal".

In section 60(1)(a), replace "Tribunals" with "the Tribunal".

In section 60(2)(b), replace "Tribunals" with "the Tribunal".

In section 60(2)(c), replace "Tribunals" with "the Tribunal".

In section 60(2)(e), replace "Tribunals" with "the Tribunal".

In section 60(2)(ga), replace "Tribunals" with "the Tribunal".

Replace section 60(2)(k) with:

> "(k) the transfer of proceedings—
>
> > "(i) from the District Court or the High Court to the Tribunal:
> >
> > "(ii) from the Tribunal to the District Court or a Motor Vehicle Disputes Tribunal referred to in section 36(3):
> >
> > "(iii) from one office of the Tribunal to another:".

Replace section 60(2)(l) with:

> "(l) the removal of orders of, or agreed settlements approved by, the Tribunal into the District Court for enforcement:".

Disputes Tribunals Act 1988 (1988 No 110)—*continued*

In section 60(2)(m), replace "Tribunals" with "the Tribunal".

In the section 83 heading, replace "**Disputes Tribunals**" with "**Disputes Tribunal**".

In section 83, replace "a Disputes Tribunal" with "the Disputes Tribunal" in each place.

In the Schedule 1 heading, replace "**Tribunals**" with "**Tribunal**".

In Schedule 1, in the Part 1 heading, replace "Tribunals" with "Tribunal".

In Schedule 1, in the Part 2 heading, replace "Tribunals" with "Tribunal".

Disputes Tribunals Amendment Act 2011 (2011 No 37)

In section 4, new section 18(4A) of the principal Act, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 5, new section 19(1A) of the principal Act, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 5, new section 19(1C) of the principal Act, replace "section 84I(3) of the District Courts Act 1947" with "**section 339(3) of the Judicature Modernisation Act 2013**".

In section 5, new section 19(1D) of the principal Act, replace "any District Court and, if so filed, sections 79(5C) and 84F to 84N of the District Courts Act 1947" with "the District Court and, if so filed, **sections 321(2) and 336 to 344 of the Judicature Modernisation Act 2013**".

In section 5, new section 19(1E) of the principal Act, replace "section 84F of the District Courts Act 1947" with "**section 336 of the Judicature Modernisation Act 2013**".

Domestic Violence Act 1995 (1995 No 86)

In section 2, definition of **court**, replace "a Family Court or a" with "the Family Court or the".

Domestic Violence Act 1995 (1995 No 86)—*continued*

In section 54(2), replace "section 31(1)(d) of the District Courts Act 1947" with "**section 261(2)(c) of the Judicature Modernisation Act 2013**".

Replace section 91(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 91(3), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

In section 126(1), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 126(1)(a), replace "District Courts" with "the District Court".

In section 126(2)(i), replace "District Courts" with "the District Court".

In section 126(2)(j), replace "District Courts Rules 2009" with "District Court Rules **2014**".

Electricity Act 1992 (1992 No 122)

In section 14(1), replace "a District Court " with "the District Court".

Replace section 14(1A) with:

"(1A) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 14(2), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

Electronic Transactions Act 2002 (2002 No 35)

In the Schedule, Part 4, replace items (2) to (5) with:

"(2) the District Court reconstituted under **section 188 of the Judicature Modernisation Act 2013**:

Electronic Transactions Act 2002 (2002 No 35)—*continued*

"(3) the Family Court established under the Family Court Act 1980:

"(4) the Youth Court established under the Children, Young Persons, and Their Families Act 1989:

"(5) the Disputes Tribunal established under the Dispute Tribunal Act 1988:".

Employment Relations Act 2000 (2000 No 24)

In Schedule 2, clause 7(1), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In Schedule 2, clause 7(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**" ~~and replace "a District Court" with "the District Court~~".

In Schedule 2, clause 7(2), replace "a District Court" with "the District Court".

In Schedule 2, clause 7(3), replace "a District Court" with "the District Court".

In Schedule 3, clause 8(1), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In Schedule 3, clause 8(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**" ~~and replace "a District Court" with "the District Court~~".

In Schedule 3, clause 8(2), replace "a District Court" with "the District Court".

In Schedule 3, clause 8(3), replace "a District Court" with "the District Court".

In Schedule 3, clause 13(1), replace "a District Court may make under section 56A or 56B of the District Courts Act 1947" with "the District Court may make under **section 287 or 288** of the **Judicature Modernisation Act 2013**".

In Schedule 3, clause 13(2), replace "section 56A or section 56B of the District Courts Act 1947" with "**section 287 or 288** of the **Judicature Modernisation Act 2013**".

Evidence Act 2006 (2006 No 69)

In section 4(1), definition of **court**, replace "any" with "the".

Evidence Act 2006 (2006 No 69)—*continued*

In section 4(1), replace the definition of **District Court** with:

"**District Court** includes—

"(a) the Family Court; and

"(b) the Youth Court".

In section 110(6)(a), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 110(6)(b), replace "a Youth Court" with "the Youth Court".

In section 200(1), replace "District Courts Act 1947, and the Family Courts Act 1980," with "**Part 2 of the Judicature Modernisation Act 2013**, and the Family Court Act 1980,".

Fair Trading Act 1986 (~~1989~~ 1986 No 121)

In section 43(1), replace "a Disputes Tribunal" with "the Disputes Tribunal".

~~In section 43(3), replace "200,000" with "350,000" in each place.~~

In section 43A, replace "a Disputes Tribunal" with "the Disputes Tribunal".

Replace section 43B(1) with:

"(1) The District Court must not make an order under section 43 if a value or amount described in subsection (3) exceeds $350,000 or, if greater, the amount specified in **section 256 of the Judicature Modernisation Act 2013**."

In section 43B(2), replace "A Disputes Tribunal" with "The Disputes Tribunal".

Family Courts Act 1980 (1980 No 161)

Repeal the Long Title.

In the section 1 heading, delete "**Short**".

In section 1(1), replace "Courts" with "Court".

In section 2, replace the definition of **District Courts Rules** with:

"**District Court Rules** means the rules made under **section 411 of the Judicature Modernisation Act 2013**".

In section 2, definition of **Family Courts Rules**, replace "**Courts**" with "**Court**".

Family Courts Act 1980 (1980 No 161)—*continued*

Replace section 4 with:

"**4 Establishment of Family Court**

The District Court has a division known as the Family Court."

In section 5(1), replace "Family Courts" with "the Family Court".

In section 7(2), replace "pursuant to section 10 of the District Courts Act 1947 and also including any acting District Court Judge appointed pursuant to section 10A of that Act" with "under **section 214 of the Judicature Modernisation Act 2013**".

In section 8(1), replace "Courts" with "Court".

In section 8(2), replace "Family Courts to perform any function conferred on them" with "the Family Court to perform any function conferred on it".

In section 8(3), replace "a Family Court, shall for the purposes of the District Courts Act 1947 be" with "the Family Court, is for the purposes of the ~~**District Court**~~ **Part 2 of the Judicature Modernisation Act 2013**".

In section 9(3), replace "sittings of a Family Court" with "sessions of the Family Court".

In section 9(4), replace "sittings of a Family Court shall be" with "sessions of the Family Court are".

Replace section 9(6) with:

"(6) This section is subject to **section 207 of the Judicature Modernisation Act 2013**."

In section 10(2), replace "a Family Court" with "the Family Court".

In section 10(3), replace "a Family Court" with "the Family Court".

In the heading to section 11, replace "**Courts**" with "**Court**".

In section 11(1), replace "A Family Court shall hear and determine all such proceedings as are to be heard and determined by such a court" with "The Family Court must hear and determine all the proceedings that are to be heard and determined by the court".

In section 11(2), replace "a Family Court" with "the Family Court".

In section 11(3), replace "prevent a District Court" with "prevent the District Court".

In section 11A(1), replace "a Family Court" with "the Family Court".

In section 11B(1), replace "a Family Court" with "the Family Court".

Family Courts Act 1980 (1980 No 161)—*continued*

In section 11B(3), replace "a Family Court" with "the Family Court".

In section 11D(a), replace "a Family Court" with "the Family Court".

In section 11D(f), replace "a Family Court" with "the Family Court".

In the heading to section 12, replace "**Courts**" with "**Court**".

In section 12, replace "Family Courts Rules are in force, all proceedings in a Family Court (and all proceedings in a District Court" with "Family Court Rules are in force, all proceedings in the Family Court (and all proceedings in the District Court".

In section 13, replace "A Family Court" with "The Family Court".

In section 14, replace "a Family Court" with "the Family Court".

In the heading to section 15, replace "**Courts**" with "**Court**".

In section 15, replace "a District Court" with "the District Court".

In section 15(a), replace "a Family Court" with "the Family Court".

In section 15(c)(ii), replace "a Family Court" with "the Family Court".

Replace section 16 with:

"**16 Application of Part 2 of Judicature Modernisation Act 2013**

"(1) Subject to **subsections (2) to (4)**, **Part 2 of the Judicature Modernisation Act 2013** applies, with any necessary modifications, to the Family Court and Family Court Judges in the same manner and to the same extent as it applies to the District Court and District Court Judges.

"(2) Where any of the provisions of this Act conflict with any of the provisions of **Part 2 of the Judicature Modernisation Act 2013**, the provisions of this Act prevail.

"(3) Nothing in **sections 207 and 254 of the Judicature Modernisation Act 2013** applies in respect of Family Court Judges or the business of the Family Court.

"(4) Nothing in **sections 307 to 312 of the Judicature Modernisation Act 2013** applies to the Family Court, Family Court Judges, or the business of the Family Court, except to the extent that an enactment other than that Act provides."

In the heading to section 16A, replace "**Courts**" with "**Court**".

In section 16A(1), replace "Family Courts" with "the Family Court".

Family Courts Act 1980 (1980 No 161)—*continued*

In section 16A(2)(a), replace "District Courts" with "District Court".

In section 16A(2)(a), replace "a Family Court" with "the Family Court" in each place.

In section 16A(2)(g), replace "Family Courts, or between a Family Court" with "the Family Court".

In section 16A(2)(i), replace "Family Courts" with "the Family Court".

In section 16B(1)(a), replace "a Family Court" with "the Family Court".

In section 16B(1)(b), replace "Family Courts" with "the Family Court".

In section 16B(1)(d), replace "Family Courts" with "the Family Court".

Family Proceedings Act 1980 (1980 No 94)

In section 2, replace the definition of **Family Court** with:

> "**Family Court** means the division of the District Court known, in accordance with section 4 of the Family Court Act 1980, as the Family Court".

In section 4, replace "District Courts, and Family Courts" with "the District Court, and the Family Court".

~~In section 9(1), replace "a Family Court" with "the Family Court".~~

~~In section 9(2), replace "a Family Court" with "the Family Court".~~

~~In section 13(1), replace "in a Family Court" with "in the Family Court".~~

~~In section 15(1), replace "a Family Court" with "the Family Court".~~

~~In section 15(3), replace "a Family Court" with "the Family Court".~~

In section 21, replace "a Family Court" with "the Family Court".

In section 22, replace "a Family Court" with "the Family Court".

~~In section 23, replace "a Family Court" with "the Family Court".~~

In section 24(2), replace "a Family Court" with "the Family Court".

In section 25(1), replace "a Family Court" with "the Family Court".

In section 28(1), replace "a Family Court" with "the Family Court".

In section 28(2), replace "a Family Court" with "the Family Court".

Family Proceedings Act 1980 (1980 No 94)—*continued*

In section 30, replace "a Family Court" with "the Family Court".
In section 31(2), replace "a Family Court" with "the Family Court".
In section 33, replace "a Family Court" with "the Family Court".
In section 34, replace "a Family Court" with "the Family Court".
In section 38(1), replace "a Family Court" with "the Family Court".
In section 45(1), replace "A Family Court" with "The Family Court".
In section 45(2), replace "A Family Court" with "The Family Court".
In section 50, replace "a Family Court" with "the Family Court".
In section 68, replace "a Family Court" with "the Family Court".
In section 69(1), replace "a Family Court" with "the Family Court".
In section 70(1), replace "A Family Court" with "The Family Court".
In section 71(2), replace "a Family Court" with "the Family Court".
In section 71(4), replace "a Family Court" with "the Family Court".
In section 78(1), replace "a Family Court" with "the Family Court".
In section 78(2), replace "a Family Court" with "the Family Court".
In section 78(5), replace "a Family Court" with "the Family Court".
In section 78(6), replace "a Family Court" with "the Family Court".
In section 80, replace "a Family Court" with "the Family Court".
In section 82(5), replace "a Family Court" with "the Family Court".
In section 99(1), replace "a Family Court or a District Court" with "the Family Court or the District Court".
In section 136, replace "the office of a District Court" with "the District Court".
In section 137, replace "a District Court" with "the District Court".
In section 138(2), replace "a District Court" with "the District Court".
In section 139(2), replace "a District Court" with "the District Court".
In section 142(1), replace "a District Court" with "the District Court".
In section 142(5), replace "a District Court" with "the District Court".
In section 142B(1), replace "A District Court" with "The District Court".
In section 145A, replace "a District Court" with "the District Court".
In section 145F, replace "a Family Court" with "the Family Court".

Family Proceedings Act 1980 (1980 No 94)—*continued*

In section 145G(1), replace "a Family Court" with "the Family Court".

In section 145I(3), replace "a Family Court" with "the Family Court".

In section 146(1), replace "a District Court" with "the District Court".

In section 146(1)(a), replace "of any other District Court which" with "at the office of the court that".

In section 147(1), replace "a District Court" with "the District Court".

In section 147(2), replace "a District Court" with "the District Court".

In section 149(2), replace "a District Court" with "the District Court".

In section 149(4), replace "a District Court" with "the District Court".

In section 149(5), replace "a District Court" with "the District Court".

In section 160(1), replace "Family Courts Act 1980" with "Family Court Act 1980".

~~In section 162(6), replace "a District Court" with "the District Court".~~

In section 163(1), replace "A District Court or Family Court" with "The District Court or the Family Court".

In section 163(2), replace "A District Court or Family Court" with "The District Court or the Family Court".

In section 165(1), replace "a District Court or Family Court" with "the District Court or the Family Court".

In section 169, replace "Family Courts Act 1980" with "Family Court Act 1980".

In section 169(a), replace "a Family Court" with "the Family Court".

In section 170, replace "a District Court or a Family Court" with "the District Court or the Family Court".

In section 171(2), replace "a District Court or Family Court" with "the District Court or the Family Court".

In section 172, replace "a District Court or a Family Court" with "the District Court or the Family Court" in each place.

In the section 174~~A~~ heading, replace "**District Courts and Family Courts**" with "**District Court and Family Court**".

In section 174(1AA), replace "a Family Court or District Court" with "the Family Court or the District Court".

Family Proceedings Act 1980 (1980 No 94)—*continued*

Replace section 174(~~1A~~1B) with:

"(1B) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 174(2), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

In section 174(3), replace "a Family Court" with "the Family Court".

In section 182(1), replace "a Family Court" with "the Family Court".

In section 182(2), replace "a Family Court" with "the Family Court".

In section 188(1), replace "District Courts " with "the District Court".

In section 188(1A), replace "Family Courts Act 1980" with "Family Court Act 1980".

In section 188(1A), replace "of Family Courts" with "of the Family Court".

In section 188(2), replace "Family Courts Act 1980" with "Family Court Act 1980".

Fencing Act 1978 (1978 No 50)

In section 2, replace the definition of **court** with:

"**court** means—

"(a) the District Court under **Part 2 of the Judicature Modernisation Act 2013**:

"(b) the Disputes Tribunal with jurisdiction under section 24A".

In the heading to section 23, replace "**District Courts Act 1947**" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 23(1), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In the heading to section 24A, replace "**Tribunals**" with "**Tribunal**".

In section 24A(1), replace "a Disputes Tribunal" with "the Disputes Tribunal".

In section 24A(1), replace "Tribunals" with "Tribunal"

Fencing Act 1978 (1978 No 50)—*continued*

In section 24A(2), replace "a Disputes Tribunal" with "the Disputes Tribunal".

In section 24A(2), replace "a Tribunal" with "the Tribunal".

In section 24A(3), replace "a Disputes Tribunal" with "the Disputes Tribunal"

In section 24A(3), replace "Tribunals" with "Tribunal"

In Schedule 1, form 2, replace "a District Court" with "the District Court".

Food Act 1981 (1981 No 45)

In section 16(1), replace "a District Court" with "the District Court".

In section 16(8), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Gambling Act 2003 (2003 No 51)

In section 112(2)(a), replace "200,000" with "350,000".

In section 112(2)(b), replace "200,000" with "350,000".

Gas Act 1992 (1992 No 124)

Replace section 15(1A) with:

"(1A) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 15(2), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

Government Superannuation Fund Act 1956 (1956 No 47)

In section 72, definition of **Judge**, paragraph (e), replace "section 5A of the District Courts Act 1947" with "**section 207 of the Judicature Modernisation Act 2013**".

In section 72, definition of **Judge**, paragraph (f), replace "section 5 of the District Courts Act 1947" with "**section 192 of the Judicature Modernisation Act 2013**".

Government Superannuation Fund Act 1956 (1956 No 47)—*continued*

In section 72, definition of **temporary Judge**, paragraph (e), replace "section 10 or section 10A of the District Courts Act 1947" with "**section 214 of the Judicature Modernisation Act 2013**".

In section 81A, definition of **Judge**, paragraph (e), replace "section 5 or section 5A of the District Courts Act 1947" with "**section 192 ~~and~~ or 207 of the Judicature Modernisation Act 2013**".

In section 81A, definition of **temporary Judge**, paragraph (e), replace "section 10 of the District Courts Act 1947" with "**section 214 of the Judicature Modernisation Act 2013**".

Governor-General Act 2010 (2010 No 122)

Replace section 17(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

Harassment Act 1997 (1997 No 92)

In section 2(1), definition of **court**, replace "a District Court;" with "the District Court".

In section 34(1AA), replace "a Family Court or" with "the Family Court or the".

Replace section 34(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 34(3), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

In section 42(1), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 42(1)(a), replace "District Courts" with "the District Court".

Harassment Act 1997 (1997 No 92)—*continued*

In section 42~~(1)~~(2)(g), replace "District Courts, Family Courts" with "the District Court, the Family Court".

In section 42(2)(h), replace "District Courts Rules 2009" with "District Court Rules **2014**".

In section 42(3), replace "District Courts Rules 2009" with "District Court Rules **2014**".

Health Act 1956 (1956 No 65)

In section 33(1), replace "a District Court presided" with "the District Court presided".

In section 43(1), replace "a District Court" with "the District Court".

In section 43(4), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 45(2), replace "a District Court" with "the District Court".

In section 71(2), replace "a District Court" with "the District Court".

In section 87(6), replace "a District Court" with "the District Court".

In section 126(1), replace "a District Court" with "the District Court".

In section 132(a), replace "a District Court" with "the District Court".

Housing Restructuring and Tenancy Matters Act 1992 (1992 No 76)

~~In section 62(5), replace "a District Court" with "the District Court".~~

~~In section 62(5)(c), replace "District Courts Rules 2009" with "District Court Rules **2014**".~~

In section 63(1)(a)(iii), replace "a District Court, and providing that the District Courts Act 1947" with "the District Court, and providing that **Part 2 of the Judicature Modernisation Act 2013**".

Human Rights Act 1993 (1993 No 82)

In section 92G(1)(b)(i), replace "a District Court" with "the District Court".

In section 92H(1)(b)(i), replace "a District Court" with "the District Court".

In section 92Q(2), replace "sections 29 to 34 of the District Courts Act 1947, be beyond the jurisdiction of a" with "**sections 256 to**

Human Rights Act 1993 (1993 No 82)—*continued*

261 of the Judicature Modernisation Act 2013, be beyond the jurisdiction of the".

In section 92V(1), replace "section 29(1) of the District Courts Act 1947" with "**section 256(1) of the Judicature Modernisation Act 2013**".

In section 112, replace "a District Court" with "the District Court".

In section 114(2), replace "any District Court" with "the District Court".

Hutt Valley Drainage Act 1967 (1967 No 3)

In section 45(3), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Imprisonment for Debt Limitation Act 1908 (1908 No 80)

In section 3(2)(b), replace "a District Court under the Summary Proceedings Act 1957, or otherwise than under the District Courts Act 1947" with "the District Court under the Summary Proceedings Act 1957, or otherwise than under **Part 2 of the Judicature Modernisation Act 2013**".

Insolvency Act 2006 (2006 No 55)

In section 152(2), replace "a District Court" with "the District Court".

In section 241(1), replace "200,000" with "350,000".

In section 241(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 241(3), replace "200,000" with "350,000".

In section 352(3), replace "a District Court" with "the District Court".

In section 359(2), replace "a District Court" with "the District Court".

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (2003 No 116)

In section 116(1), replace "a Family Court" with "the Family Court".

In section 119(1), replace "a Family Court" with "the Family Court".

In section 130, replace "Courts" with "Court".

In section 130(a), replace "a Family Court" with "the Family Court".

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (2003 No 116)—*continued*

In the heading to section 133, replace "**Courts**" with "**Court**".

In section 133(1), replace "a Family Court" with "the Family Court".

Replace section 133(2) with:

"(2) The High Court Rules and **sections 308 to 310 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 133(3), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

In section 149, replace "Family Courts Act 1980 regulating the practice and procedure of Family Courts" with "Family Court Act 1980 regulating the practice and procedure of the Family Court".

Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (2004 No 38)

In section 5, definition of **District Court Judge**, paragraph (a), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

In section 5, definition of **Head of Bench**, paragraph (f), replace "a District" with "the District".

Justices of the Peace Act 1957 (1957 No 89)

In section 4C, replace "a District Court" with "the District Court".

In section 5F(a), replace "a District Court" with "the District Court".

In section 6(1), replace "every" with "the".

In section 7(1), replace "a District Court" with "the District Court".

In section 8(1), replace "a District Court" with "the District Court".

Land Act 1948 (1948 No 64)

In section 25(1), replace "any District" with "the District".

Replace section 25(4) with:

"(4) **Sections 376 to 379 and 381 of the Judicature Modernisation Act 2013** apply to any proceedings under this section."

Land Transport Act 1998 (1998 No 110)

In section 2(1), definition of **court**, replace "a" with "the".

In section 95A(4), replace "A District Court" with "The District Court".

In section 97(8), replace "a District Court" with "the District Court".

In section 99(5), replace "by a District Court" with "by the District Court".

In section 105(4), replace "by a District Court" with "by the District Court".

In section 106(1), replace "a District Court" with "the District Court".

In section 106(5), replace "a District Court" with "the District Court".

In section 107(1), replace "a District Court" with "the District Court" in each place.

In section 107(2), replace "a District Court" with "the District Court".

In section 107(4), replace "a District Court" with "the District Court".

In section 108(1), replace "a District Court" with "the District Court".

In section 109(1), replace "a District Court" with "the District Court".

In section 110(1), replace "a District Court" with "the District Court".

In section 110(1A), replace "a District Court" with "the District Court".

In section 111(1), replace "a District Court" with "the District Court".

In section 111(2), replace "a District Court" with "the District Court".

In section 111(3), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 135(2), replace "A District Court" with "The District Court".

In section 158(d), replace "a District Court" with "the District Court" in each place.

In section 267(1), replace "a District Court" with "the District Court".

Land Transport Management Act 2003 (2003 No 118)

In section 141(1), replace "a District Court" with "the District Court".

In section 142(1), replace "Part 14 of the District Courts Rules 2009" with "**Part 00** of the District Court Rules **2014**".

Land Transport Management Act 2003 (2003 No 118)—*continued*

In section 142(2), replace "Part 5 of the District Courts Act 1947" with "**subpart 9 of Part 2 of the Judicature Modernisation Act 2013**".

In section 143(2), replace "a District Court" with "the District Court".

Replace section 144(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

Law Reform Act 1936 (1936 No 31)

In section 94(5), replace "Section 94 of the Judicature Act 1908" with "**Section 281 of the Judicature Modernisation Act 2013**".

Law Reform (Testamentary Promises) Act 1949 (1949 No 33)

In section 5A(1AA), replace "a Family Court or" with "the Family Court or the".

Replace section 5A(1A) with:

"(1A) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 5A(1B), replace "section 74(1) of the District Courts Act 1947 " with "**section 308(1) of the Judicature Modernisation Act 2013**".

Legal Services Act 2011 (2011 No 4)

In section 4(1), definition of **criminal proceedings**, paragraph (c), replace "section 84O of the District Courts Act 1947" with "**section 345 of the Judicature Modernisation Act 2013**".

In section 6(a), replace "a District Court, a Youth Court" with "the District Court, the Youth Court".

In section 7(1)(a), replace "a District Court or a Family Court" with "the District Court or the Family Court".

In section 7(1)(d), replace "a Youth Court" with "the Youth Court" in each place.

Local Electoral Act 2001 (2001 No 35)

In section 93(3), replace "a District Court" with "the District Court".

In section 100(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Local Government Act 2002 (2002 No 84)

In section 162(1), replace "A District Court" with "The District Court".

In section 167(3), replace "a District Court" with "the District Court".

In section 183(3), replace "a District Court" with "the District Court".

In section 184(2), replace "a District Court" with "the District Court".

In section 184(4)(b), replace "a District Court" with "the District Court".

In section 212, definition of **court**, replace "means a District Court" with "means the District Court".

In the section 213 heading, replace "**District Courts**" with "**District Court**".

In section 213(1), replace "Part 8 of the District Courts Rules 2009" with "Subpart 4 of Part 20 of the District Court Rules **2014**".

In section 213(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 213(3), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 213(3), replace "District Courts Rules 2009" with "District Court Rules **2014**".

In section 213(4), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 213(4), replace "District Courts Rules 2009" with "District Court Rules **2014**".

In section 214, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 214(g), replace "District Courts Rules 2009" with "District Court Rules **2014**".

In section 215(1), replace "a District Court" with "the District Court".

In section 215(1), replace "Part 8 of the District Courts Rules 2009" with "Subpart 4 of Part 20 of the District Court Rules **2014**".

Local Government Act 2002 (2002 No 84)—*continued*

In section 219, replace "Part 5 of the District Courts Act 1947" with "**subpart 9 of Part 2 of the Judicature Modernisation Act 2013**".

~~In section 239(2), replace "A District Court" with "The District Court".~~

In section 249(1)(c)(i), replace "a District Court" with "the District Court".

Local Government (Rating) Act 2002 (2002 No 6)

In section 63(3), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

~~**Maori Land Act 1993 (1993 No 4)**~~

~~In section 20, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".~~

~~In section 81(1), replace "a District Court" with "the District Court".~~

Maritime Transport Act 1994 (1994 No 104)

In section 33F(7), replace "a District Court" with "the District Court".

In section 34(4), replace "a District Court" with "the District Court".

In section 40A, definition of **court**, replace "a District Court" with "the District Court".

In section 41(6), replace "a District Court" with "the District Court".

In section 43(7), replace "a District Court" with "the District Court".

In section 44(4), replace "a District Court" with "the District Court".

In section 46(6), replace "a District Court" with "the District Court".

In section 55(7), replace "a District Court" with "the District Court".

In section 77(3), replace "by a District Court" with "by the District Court".

In section 79(1), replace "a District Court" with "the District Court".

In section 215, definition of **court**, replace "every" with "the".

In section 233(2), replace "a District Court" with "the District Court".

In section 233A(2), replace "a District Court" with "the District Court".

Maritime Transport Act 1994 (1994 No 104)—*continued*

In section 234(2), replace "a District Court" with "the District Court".

In section 246(3), replace "District Courts Act 1947, any" with "**Part 2 of the Judicature Modernisation Act 2013**, the".

In section 270(5), replace "a District Court" with "the District Court".

In section 272(6), replace "a District Court" with "the District Court".

In section 273(4), replace "a District Court" with "the District Court".

In section 274(6), replace "a District Court" with "the District Court".

In section 338(4), replace "a District Court" with "the District Court".

In section 387(6), replace "a District Court" with "the District Court".

In section 397(11), replace "a District Court" with "the District Court".

In section 424(1), replace "a District Court" with "the District Court".

In section 425(4), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Medicines Act 1981 (1981 No 118)

In section 65(1), replace "a District Court" with "the District Court".

In section 65(8), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In the heading to section 77, replace "**Courts**" with "**Court**".

Minors' Contracts Act 1969 (1969 No 41)

In section 2(1), replace the definition of **court** with:

> "**court** means the High Court, or the District Court if it has jurisdiction under section 14, or the Disputes Tribunal if it has jurisdiction under section 14A".

In section 5(5)(a), replace "a District Court" with "the District Court".

In section 6(4)(a), replace "a District Court" with "the District Court".

In section 9(1), replace "a District Court" with "the District Court".

In section 9(2), replace "a District Court" with "the District Court".

In section 9(5), replace "A District Court" with "The District Court".

Minors' Contracts Act 1969 (1969 No 41)—*continued*

Replace section 12(8)(b) with:

"(b) **section 280 of the Judicature Modernisation Act 2013**; or".

In section 14(1), replace "A District Court shall have" with "The District Court has".

In section 14(1)(b), replace "200,000" with "350,000".

In section 14(1)(c), replace "section 37 of the District Courts Act 1947, that a District Court shall have" with "**section 263 of the Judicature Modernisation Act 2013**, that the District Court has".

In section 14(2), replace "section 43 of the District Courts Act 1947, an application made to a District Court" with "**section 268 of the Judicature Modernisation Act 2013**, an application made to the District Court".

In section 16(2), replace "a District Court" with "the District Court".

In section 16(3), replace "a District Court" with "the District Court".

Personal Property Securities Act 1999 (1999 No 126)

Replace section 167A(1)(b)(i) with:

"(i) **section 354, 357, or 360 of the Judicature Modernisation Act 2013**; or".

In section 167A(8)(a), replace "a District Court" with "the District Court".

In section 167A(8)(b), replace "a District Court" with "the District Court".

Prisoners' and Victims' Claims Act 2005 (2005 No 74)

In section 28(1)(c)(ii), replace "a District Court" with "the District Court".

In section 35(2)(a)(ii), replace "a District Court" with "the District Court".

In section 40, replace "a District Court" with "the District Court".

In section 44(1), replace "District Courts" with "the District Court".

In section 48(6), replace "a District Court" with "the District Court".

Privacy Act 1993 (1993 No 28)

In section 86(1)(b), replace "a District Court" with "the District Court".

Property Law Act 2007 (2007 No 91)

In the cross-heading above section 362, replace "*Courts*'" with "*Court's*".

In the heading to section 362, replace "**Courts**" with "**Court**".

In section 362(1)(d), replace "District Courts is limited by section 31 of the District Courts Act 1947" with "the District Court is limited by **section 261 of the Judicature Modernisation Act 2013**".

In section 362(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 362(3), replace "District Courts Act 1947 applies to the jurisdiction of District Courts" with "**Part 2 of the Judicature Modernisation Act 2013** applies to the jurisdiction of the District Court".

In section 362(4), replace "a District Court" with "the District Court".

Property (Relationships) Act 1976 (1976 No 166)

Replace section 27(4) with:

"(4) An order made under subsection (1) by the District Court or the Family Court is enforceable as if it were an order for recovery of land made pursuant to **section 261(2)(c) of the Judicature Modernisation Act 2013**."

In section 38(4), replace "a District Court" with "the District Court".

In section 39(1), replace "a Family Court or" with "the Family Court or the".

Replace section 39(3) with:

"(3) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (2) as if it were an appeal under **section 306** of that Act."

In section 39(4), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

Property (Relationships) Act 1976 (1976 No 166)—*continued*

In section 42(3)(a), replace "a Family Court or a District Court" with "the Family Court or the District Court".

In section 42(3)(b), replace "a Family Court or a District Court" with "the Family Court or the District Court".

In section 43(1), replace "a District Court or a Family Court" with "the District Court or the Family Court".

In section 44(1), replace "a District Court or a Family Court" with "the District Court or the Family Court".

In section 51(5), replace "a District Court, or a Family Court; but a District Court shall" with "the District Court, or the Family Court, but the District Court must".

In section 53(1A), replace "the Family Courts" with "the Family Court".

In section 53(1A), replace "of Family Courts" with "of the Family Court".

In section 53(3), replace "District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules regulating the procedure of District Courts" with "**Part 2 of the Judicature Modernisation Act 2013**, the Governor-General may from time to time, by Order in Council, make rules regulating the procedure of the District Court".

Protection of Personal and Property Rights Act 1988 (1988 No 4)

In section 10(1)(i), replace "a District Court" with "the District Court".

In section 76(5A), replace "a District Court" with "the District Court".

Replace section 83(3) with:

"(3) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) or (2) as if it were an appeal under **section 306** of that Act."

In section 83(4), replace "section 74(1) of the District Courts Act 1947" with "**section 308(1) of the Judicature Modernisation Act 2013**".

Protection of Personal and Property Rights Act 1988 (1988 No 4)—*continued*

In section 83A, replace "sections 75 to 78 of the District Courts Act 1947" with "**sections 309 to 312 of the Judicature Modernisation Act 2013**".

Replace section 111(b) and (c) with:

"(b) in the case of the District Court, under **section 411 of the Judicature Modernisation Act 2013**:

"(c) in the case of the Family Court, under section 16A of the Family Court Act 1980."

In section 111A(3), replace "District Courts" with "District Court" in each place.

Public Works Act 1981 (1981 No 35)

In section 81(1), replace "a District Court" with "the District Court".

In section 240(4), replace "sections 99, 100, and 101 of the District Courts Act 1947" with "**sections 376 to 381 of the Judicature Modernisation Act 2013**".

Railways Act 2005 (2005 No 37)

In section 68(1), replace "a District Court" with "the District Court".

In section 69(2)(a), replace "a District Court" with "the District Court".

In section 69(2)(c), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Replace section 71(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

In section 78(1)(a), replace "a District Court" with "the District Court".

In section 78(2), replace "a District Court" with "the District Court".

In section 78(4), replace "a District Court" with "the District Court".

In section 89(1), replace "a District Court" with "the District Court".

In section 89(3), replace "a District Court" with "the District Court".

Railways Act 2005 (2005 No 37)—*continued*

In section 89(4), replace "a District Court" with "the District Court".

Replace section 90(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

Remuneration Authority Act 1977 (1977 No 110)

In section 12B(1)(f), replace "section 8(d) of the District Courts Act 1947" with "**section 205(a) of the Judicature Modernisation Act 2013**".

Residential Tenancies Act 1986 (1986 No 120)

In section 5A(6), replace "a District Court" with "the District Court".

In section 14(4), replace "a District Court by the Minors Contracts Act 1969" with "the District Court by the Minors' Contracts Act 1969".

In section 14(5), replace "a District Court" with "the District Court".

In section 14(5), replace "Minors" with "Minors'".

In section 72(1), replace "a District Court" with "the District Court".

In section 72(2), replace "District Courts" with "the District Court".

In section 78(1)(h), replace "a District Court" with "the District Court".

In section 83(1), replace "a District Court" with "the District Court".

In section 83(2), replace "a District Court" with "the District Court".

In section 83(4), replace "a District Court" with "the District Court".

In section 106(1), after "appropriate", insert "office of the".

In section 106(1), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 106(2), replace "a District Court, section 79(5) of the District Courts Act 1947 shall apply" with "the District Court, **section 320 of the Judicature Modernisation Act 2013** applies".

In section 107(2), replace "a District Court" with "the District Court".

Residential Tenancies Act 1986 (1986 No 120)—*continued*

Replace section 112E with:

"**112E Specified information sent to District Court**

When the Secretary for Justice receives contact information from the chief executive, he or she must—

"(a) determine in which office of the District Court enforcement proceedings should be commenced; and

"(b) send the contact information to the Registrar for that office of the District Court; and

"(c) advise the applicant—

"(i) that the information has been sent to the Registrar for that office of District Court; and

"(ii) that enforcement proceedings may be commenced in that office of the District Court or, if they have already been commenced in that or any other office of the District Court, that enforcement proceedings may now continue in, or be transferred to, that office of the District Court."

In section 112F(1), replace "a District Court" with "the District Court".

In section 116(2)(h), replace "a District Court" with "the District Court".

In section 116(2)(i), replace "a District Court" with "the District Court".

In section 117(1), replace "a District Court" with "the District Court".

In section 117(3), replace "A District Court shall have" with "The District Court has".

In section 117(3), replace "sections 29 to 34 of the District Courts Act 1947" with "**sections 256 to 261 of the Judicature Modernisation Act 2013**".

In section 117(4), replace "a District Court" with "the District Court".

Residential Tenancies Amendment Act 2011 (2011 No 46)

In section 4(1), new section 77(2)(pa), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 5, new section 78(2AB), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Residential Tenancies Amendment Act 2011 (2011 No 46)—*continued*

In section 5, new section 78(2AD), replace "section 84I(3) of the District Courts Act 1947" with "**section 339(3) of the Judicature Modernisation Act 2013**".

In section 5, new section 78(2AE), replace "sections 79(5C) and 84F to 84N of the District Courts Act 1947" with "**sections 321(2) and 336 to 344 of the Judicature Modernisation Act 2013**".

In section 5, new section 78(2AG), replace "section 84F of the District Courts Act 1947" with "**section 336 of the Judicature Modernisation Act 2013**".

Resource Management Act 1991 (1991 No 69)

In section 261(2), replace "section 119 of the District Courts Act 1947" with "**section 206 of the Judicature Modernisation Act 2013**".

In the heading to section 278, delete "**a**".

In section 278(1), replace "a District Court" with "the District Court".

In section 278(1), replace "rules 342 to 348 of the District Courts Rules 1992" with "**rules 00 to 00** of the District Court Rules **2014**".

In section 278(1A), replace "rule 346 of the District Courts Rules 1992" with "**rule 00** of the District Court Rules **2014**".

In section 282(2), replace "any District Court" with "the District Court".

In section 283(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 284(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 286, delete "of the district named in the order".

In section 288, replace "a District Court" with "the District Court".

In section 339C(4), replace "Any District Court shall have" with "The District Court has".

In section 352A(4), definition of **District Court Judge**, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Retirement Villages Act 2003 (2003 No 112)

In section 66(3), after "nearest", insert "office of the".

In section 66(4), replace "A District Court" with "The District Court".

In section 66(4)(b), replace "District Courts Act 1948 and the District Courts Rules 1992" with "**Part 2 of the Judicature Modernisation Act 2013** and the District Court Rules **2014**".

In section 72(4)(a)(i), replace "a District Court" with "the District Court".

In section 75(2)(a), replace "nearest District Court if a District Court" with "District Court if the District Court".

In section 75(2)(b), replace "a District Court" with "the District Court".

In section 76(a), replace "a District Court" with "the District Court".

In section 83(1), replace "a District Court" with "the District Court".

In section 83(1)(a), replace "200,000" with "350,000".

In section 83(1)(b), replace "200,000" with "350,000".

In section 83(1)(c), replace "200,000" with "350,000".

In section 83(1)(d), replace "200,000" with "350,000.".

In section 83(1)(e), replace "200,000" with "350,000".

In section 84(4), replace "a District Court and also, for the purposes of section 82, a Disputes Tribunal" with "the District Court and also, for the purposes of section 82, the Disputes Tribunal".

In section 86, replace "a District Court" with "the District Court".

Road User Charges Act 2012 (2012 No 1)

In section 68(1), replace "a District Court" with "the District Court".

In section 69(2)(a), replace "a District Court" with "the District Court".

In section 69(3), replace "District Courts Act 1947 and the District Courts Rules 2009" with "**Part 2 of the Judicature Modernisation Act 2014** and the District Court Rules **2014**".

Replace section 70(2) with:

"(2) The High Court Rules and **sections 308 to 312 of the Judicature Modernisation Act 2013**, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under **section 306** of that Act."

Search and Surveillance Act 2012 (2012 No 24)

In section 3(1), definition of **District Court Judge**, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 37(1)(c), replace "a District Court were a reference to a District Court" with "the District Court were a reference to a District Court".

In section 52(1)(c), replace "a District Court were a reference to a District Court" with "the District Court were a reference to a District Court".

In section 101(1)(b), replace "a District Court" with "the District Court".

In section 163(1), replace "a District Court" with "the District Court".

Sentencing Act 2002 (2002 No 9)

In section 4(1), definition of **District Court**, replace "a Youth Court" with "the Youth Court".

In section 4(1), definition of **trial Judge**, replace "a District Court, means a Judge who holds a warrant under section 5B of the District Courts Act 1947" with "the District Court, means a Judge who holds a warrant under **section 195 of the Judicature Modernisation Act 2013**".

In section 72(1)(a)(ii), replace "a District Court" with "the District Court".

In section 72(1)(b), replace "a District Court presided" with "the District Court presided" in each place.

In section 72(1)(c), replace "a District Court" with "the District Court".

In section 72(1)(d), replace "a District Court" with "the District Court".

In section 81B(1), replace "a District Court" with "the District Court".

In section 90(1), replace "a District Court" with "the District Court".

In section 91(6), replace "a District Court" with "the District Court".

In section 123A, definition of **domestic violence proceedings**, replace "a Family Court or a District Court" with "the Family Court or the District Court".

Sentencing Act 2002 (2002 No 9)—*continued*

In section 129E(6)(a), replace "a District Court" with "the District Court".

In section 129EA(6)(a), replace "a District Court" with "the District Court".

In the heading to section 135, after "**another**", insert "**office of**".

Replace section 135(1) with:

"(1) Despite anything in section 132, if a Registrar considers that an order for the confiscation of a motor vehicle made in ~~1~~ one office of the District Court may be more effectively enforced in another office of the District Court, the Registrar may direct that the order be enforced in that other office."

In section 139(2)(b), replace "section 94 of the District Courts Act 1947" with "**section 361 of the Judicature Modernisation Act 2013**".

In section 143(3)(a)(ii), replace "a District Court" with "the District Court".

In section 143(3)(b), replace "a District Court presided" with "the District Court presided" in each place.

In section 143(3)(c), replace "a District Court" with "the District Court".

Student Loan Scheme Act 2011 (2011 No 62)

In section 171(2)(a), replace "a Disputes Tribunal" with "the Disputes Tribunal".

In section 171(2)(b), replace "a District Court" with "the District Court".

In section 171(3), replace "a Disputes Tribunal" with "the Disputes Tribunal" in each place.

In section 171(4), replace "a Disputes Tribunal or a District Court" with "the Disputes Tribunal or the District Court".

In section 171(5)(a), replace "Disputes Tribunals Act 1988 or the District Courts Act 1947" with "Disputes Tribunal Act 1988 or **Part 2 of the Judicature Modernisation Act 2013**".

In section 172), replace "a Disputes Tribunal's or" with "the Disputes Tribunal's or the".

Student Loan Scheme Act 2011 (2011 No 62)—*continued*

In section 201(a)(iii), replace "a Disputes Tribunal" with "the Disputes Tribunal".

Submarine Cables and Pipelines Protection Act 1996 (1996 No 22)

In section 10(1), replace "a District Court" with "the District Court".

In section 25(2)(b), replace "a District Court" with "the District Court".

In section 26(1), replace "a District Court" with "the District Court".

Replace section 26(2) and (3) with:

"(2) Where the property does not exceed $350,000 in value, the application must be by way of originating application made to the District Court, and the rules relating to the practice and procedure of the District Court for the time being in force under **Part 2 of the Judicature Modernisation Act 2013** apply to the application.

"(3) Where the property exceeds $350,000 in value, the application must be by way of originating application made to the High Court, and the High Court Rules apply with respect to the application."

In section 32(3), replace "200,000" with "350,000".

In section 32(4), replace "District Courts for the time being in force under the District Courts Act 1947" with "the District Court for the time being in force under ~~the~~ **Part 2 of the Judicature Modernisation Act 2013**".

In section 32(5), replace "200,000" with "350,000".

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), replace the definition of **court** with:

"**court** means the District Court constituted under **Part 2 of the Judicature Modernisation Act 2013**".

In section 88A(3), replace "section 66 of the District Courts Act 1947" with "**section 302 of the Judicature Modernisation Act 2013**".

Summary Proceedings Act 1957 (1957 No 87)—*continued*

In section 88A(4)(a), replace "District Courts Act 1947 and the District Courts Rules 2009" with "**Part 2 of the Judicature Modernisation Act 2013** and the District Court Rules **2014**".

In section 204, replace "any District Court" with "the District Court".

Tax Administration Act 1994 (1994 No 166)

In section 143G(2), replace "section 112 of the District Courts Act 1947" with "**section 394 of the Judicature Modernisation Act 2013**".

In section 156(2), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 159, replace "in a District Court" with "in the District Court".

Te Ture Whenua Maori Act 1993 (1993 No 4)

In section 20, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 81(1), replace "a District Court" with "the District Court".

Transport Accident Investigation Commission Act 1990 (1990 No 99)

In section 14E(1), replace "District Courts under the District Courts Act 1947" with "the District Court under **Part 2 of the Judicature Modernisation Act 2013**".

In section 14F(1), replace "District Courts under the District Courts Act 1947" with "the District Court under **Part 2 of the Judicature Modernisation Act 2013**".

Unit Titles Act 2010 (2010 No 22)

In the section 172 heading, replace "**Courts**" with "**Court**".

In section 172(1), replace "A District Court" with "The District Court".

In section 172(1), replace "200,000" with "350,000".

In section 172(2), replace "a District Court" with "the District Court".

In section 172(3), replace "A District Court" with "The District Court".

Unsolicited Electronic Messages Act 2007 (2007 No 7)

In the section 37 heading, replace "**Courts**" with "**Court**".

In section 37(1), replace "District Courts" with "the District Court".

In section 37(2), replace "a District Court" with "the District Court".

In section 37(2)(a), replace "200,000" with "350,000".

In section 37(2)(b), replace "200,000" with "350,000".

In section 37(2)(c), replace "200,000" with "350,000".

Weathertight Homes Resolution Services Act 2006 (2006 No 84)

In section 8, definition of **court of competent jurisdiction**, paragraph (b), replace "a District Court" with "the District Court".

Replace section 87(4) with:

"(4) This section applies, despite **section 256 of the Judicature Modernisation Act 2013**, even if the amount at issue (whether on balance of account or otherwise) is more than $350,000."

In section 93(2)(a), replace "200,000" with "350,000".

In section 93(2)(b), replace "200,000" with "350,000".

In section 93(4), replace "200,000" with "350,000".

In section 93(5), replace "200,000" with "350,000".

In section 98(2), replace "a District Court" with "the District Court".

Replace section 98(6) with:

"(6) This section applies, despite **section 256 of the Judicature Modernisation Act 2013**, even if the amount at issue (whether on balance of account or otherwise) is more than $350,000."

In section 99(5), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In section 119, replace "a District Court" with "the District Court".

In section 120(1), replace "in a District Court" with "in the District Court".

In the heading to section 125, replace "**Courts**" with "**Court**".

In section 125(1), replace "District Courts Act 1947, the Governor-General may, by Order in Council, make rules regulating the practice and procedure of District Courts" with "**Part 2 of the Judicature Modernisation Act 2013**, the Governor-General may, by Order in

Weathertight Homes Resolution Services Act 2006 (2006 No 84)—*continued*

Council, make rules regulating the practice and procedure of the District Court".

In section 125(3), replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

In Schedule 3, clause 15(1), replace "a District Court may make under section 56A or 56B of the District Courts Act 1947" with "the District Court may make under **section 287 or 288 of the Judicature Modernisation Act 2013**".

In Schedule 3, clause 15(2), replace "under section 56A or 56B of the District Courts Act 1947" with "under **section 287 or 288 of the Judicature Modernisation Act 2013**".

Wellington Waterworks Act 1871 (1871 No 3)

In section 61, replace "District Courts Act 1947" with "**Part 2 of the Judicature Modernisation Act 2013**".

Schedule 7

ss 187, 422

Transitional provisions relating to District Court

1 Interpretation

In this Schedule, unless the context otherwise requires,—

former Act means the District Courts Act 1947

judicial officer means a Judge, Registrar, or Deputy Registrar of a District Court

proceedings includes actions and matters.

Judicial officers

2 Judicial officers to continue in office

(1) This clause applies to every person who is a judicial officer under the former Act immediately before the commencement of this clause.

(2) A judicial officer to whom this ~~section~~ clause applies continues to hold his or her judicial office ~~subject to this Act~~ under the conditions of his or her appointment.

Other officers

3 Other officers of court to continue in office

(1) This clause applies to every person who is an officer of a District Court (other than a judicial officer as defined in **clause 1**) under the former Act immediately before the commencement of this clause.

(2) An officer to whom this clause applies continues to hold his or her office subject to this Act.

Proceedings and other matters

4 Proceedings, etc, continue under former Act

(1) All proceedings pending or in progress in a court operating under the former Act immediately before the commencement of this clause may be continued, completed, and enforced only under the former Act (including the relevant rules of court) as if that Act had not been repealed by this Act.

(2) All jurisdictions, offices, appointments, Orders in Council, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority that originated under the former Act or another enactment continued or repealed by this Act, and are subsisting or in force on the commencement of this clause, have full effect as if they had originated under the corresponding provisions of this Act and, where necessary, must be treated as having originated under this Act.

Schedule 8

s 444

Consequential amendments to other enactments: judicial review procedure

Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (2004 No 109)

In section 25A(12), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 26A(12), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 43, replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 50A(12), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Canterbury Earthquake Recovery Act 2011 (2011 No 12)

In section 71(6)(c), replace "Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Children, Young persons, and Their Families Act 1989 (1989 No 24)

In section 207B, definition of **review proceedings**, paragraph (a), replace "Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Court Martial Act 2007 (2007 No 101)

In section 69(c), replace "Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Criminal Proceeds (Recovery) Act 2009 (2009 No 8)

In section 93(4), replace "section 8 of the Judicature Amendment Act 1972" with "**section 435 of the Judicature Modernisation Act 2013**".

Crown Proceedings Act 1950 (1950 No 54)

In section 2(1), definition of **civil proceedings**, replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Employment Relations Act 2000 (2000 No 24)

In section 194(1), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 194(1), replace "section 3 of the Judicature Amendment Act 1972" with "**section 424 of the Judicature Modernisation Act 2013**".

In section 213(1), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Epidemic Preparedness Act 2006 (2006 No 85)

In section 12(3)(c), replace "Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 15(3)(c), replace "Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Fisheries Act 1996 (1996 No 88)

In section 186J(1), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 186ZJ(2), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 293(4), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Housing Accords and Special Housing Areas Act 2013 (2013 No 72)

In section 80(2)(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Immigration Act 2009 (2009 No 51)

In section 4, definition of **review proceedings**, paragraph (a), replace "Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 247(3), replace "section 3 of the Judicature Amendment Act 1972" with "**section 424 of the Judicature Modernisation Act 2013**".

International Crimes and International Criminal Court Act 2000 (2000 No 26)

In section 170, replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

International War Crimes Tribunals Act 1995 (1995 No 27)

In section 39, replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Local Government Official Information and Meetings Act 1987 (1987 No 174)

In section 9(1)(b), replace "section 4(1) of the Judicature Amendment Act 1972" with "**section 428 of the Judicature Modernisation Act 2013**".

In section 32(4)(a), replace "section 8 of the Judicature Amendment Act 1972" with "**section 435 of the Judicature Modernisation Act 2013**".

In section 32(4)(b), replace "section 8 of the Judicature Amendment Act 1972" with "**section 435 of the Judicature Modernisation Act 2013**".

Major Events Management Act 2007 (2007 No 35)

In section 29(2), replace "Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Maori Commercial Aquaculture Claims Settlement Act 2004 (2004 No 107)

In section 55(2)(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Maori Fisheries Act 2004 (2004 No 78)

In section 183(2)(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 183(3)(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

New Zealand Security Intelligence Service Act 1969 (1969 No 24)

In section 4A(6)(b), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Official Information Act 1982 (1982 No 156)

In section 11(1)(b), replace "section 4(1) of the Judicature Amendment Act 1972" with "**section 428 of the Judicature Modernisation Act 2013**".

In section 32(5)(a), replace "section 8 of the Judicature Amendment Act 1972" with "**section 435 of the Judicature Modernisation Act 2013**".

In section 32(5)(b), replace "section 8 of the Judicature Amendment Act 1972" with "**section 435 of the Judicature Modernisation Act 2013**".

In section 34(a), replace "section 4(1) of the Judicature Amendment Act 1972" with "**section 428 of the Judicature Modernisation Act 2013**".

Pitcairn Trials Act 2002 (2002 No 83)

In section 18(2)(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Privacy Act 1993 (1993 No 28)

In section 119(1)(b), replace "section 4(1) of the Judicature Amendment Act 1972" with "**section 428 of the Judicature Modernisation Act 2013**".

Resource Management Act 1991 (1991 No 69)

In section 296(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 384A(8), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Resource Management Amendment Act 2005 (2005 No 87)

In section 108(2), new section 296(2)(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Sale and Supply of Alcohol Act 2012 (2012 No 120)

In section 83(5), replace "Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 167(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

~~**Sale of Liquor Act 1989 (1989 No 63)**~~

~~In section 148(a), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".~~

Serious Fraud Office Act 1990 (1990 No 51)

In section 21(3), replace "section 8 of the Judicature Amendment Act 1972" with "**section 435 of the Judicature Modernisation Act 2013**".

Terrorism Suppression Act 2002 (2002 No 34)

In section 21(f), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 23(h), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 33, replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

In section 42(1), replace "Part 1 of the Judicature Amendment Act 1972" with "**Part 3 of the Judicature Modernisation Act 2013**".

Schedule 9

s 470

Consequential amendments to other enactments: interest on money claims

Accident Compensation Act 2001 (2001 No 49)

Replace section 114(2)(a) with:

"(a) at the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of payment); and".

Administration Act 1969 (1969 No 52)

Replace section 39(2) with:

"(2) While interest is payable on a legacy or on arrears of an annuity, in accordance with the will or instrument pursuant to which the legacy or annuity is payable or any enactment or rule of law, unless the will or instrument otherwise provides or the court otherwise orders, the interest on the legacy or arrears of the annuity is payable at the same rate and on the same terms as are provided for the award of interest under **subpart 2 1 of Part 4 of the Judicature Modernisation Act 2013**."

Repeal section 39(2B).

Arbitration Act 1996 (1996 No 99)

In section 12(1)(b)(i), replace "up to the date of the award" with "up to the day on which the sum awarded (including all interest) is paid in full".

Bills of Exchange Act 1908 (1908 No 15)

Replace section 57(c) with:

"(c) where interest may be recovered under this Act, that interest must be awarded under **subpart 2 1 of Part 4 of the Judicature Modernisation Act 2013** and, where a bill is expressed to be payable with interest at a given rate, that rate must not be taken to be inconsistent with the rate provided for under **subpart 2 1 of Part 4** of that Act."

Companies Act 1993 (1993 No 105)

In section 309(2), replace "at the prescribed rate (within the meaning of section 87(3) of the Judicature Act 1908)" with "at the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of commencement of the liquidation)".

In section 311(4), replace "**prescribed rate** means the prescribed rate within the meaning of section 87(3) of the Judicature Act 1908" with "**prescribed rate** means the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date when the claim is paid)".

Repeal section 311(4).

Disputes Tribunals Act 1988 (1988 No 110)

Repeal section 20(2)(a).

Replace section 20(5) with:

"(5) In this section, **prescribed rate** means the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the making of the order)."

Employment Relations Act 2000 (2000 No 24)

In Schedule 2, replace clause 11 with:

"**11 Power to award interest**

In any matter involving the recovery of any money, the Authority may, if it thinks fit, order the inclusion, in the sum for which judgment is given, of interest, at such rate not exceeding the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the order), as the Authority thinks fit, on the whole or part of the money for the whole or part of the period between the date when the cause of action arose and the date of payment in accordance with the determination of the Authority."

In Schedule 3, replace clause 14 with:

"**14 Power to award interest**

In any proceedings for the recovery of any money, the court may, if it thinks fit, order that the amount awarded include interest, at ~~a rate that is not more than~~ such rate not exceeding the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the order),

Employment Relations Act 2000 (2000 No 24)—*continued*

as the court thinks fit, on the whole or part of the money for the whole or part of the period between the date when the cause of action arose and the date of payment in accordance with the judgment."

Holidays Act 2003 (2003 No 129)

Replace section 84(3) and (4) with:

"(3) Interest included in a judgment or determination must not exceed interest at the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the judgment or determination)."

Insolvency Act 2006 (2006 No 55)

In section 253(2), replace "rate prescribed under section 87(3) of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of adjudication)".

In section 267, replace "rate of interest prescribed from time to time under section 87(3) of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date when the claim is paid)".

Land Transfer Act 1952 (1952 No 52)

In section 235(3)(a), replace "rate prescribed for the time being under section 87 of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date on which the fee is paid)".

Life Insurance Act 1908 (1908 No 105)

In section 41A(3), replace "rate from time to time prescribed for the purposes of section 87 of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of payment)".

In section 67B(1)(a), replace "rate prescribed for the purposes of section 87 of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013**".

Maori Reserved Land Amendment Act 1997 (1997 No 101)

In section 23(2), replace "rate prescribed by or under section 87 of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of payment)".

In Schedule 1, clause 8, replace "rate prescribed by or under section 87 of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the refund or payment)".

In Schedule 1, clause 25(3), replace "rate prescribed by or under section 87 of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of payment of the market value".

Partnership Act 1908 (1908 No 139)

In section 27(c), replace "at the rate of 5 percent per annum from the date of the payment or advance" with "at the same rate and on the same terms as are provided for the award of interest under **subpart ~~2~~ 1 of Part 4 of the Judicature Modernisation Act 2013**".

In section 45(1), replace "at the rate of 5 percent per annum on the amount of his share of the partnership assets" with "on the amount of his or her share of the partnership assets at the same rate and on the same terms as are provided for the award of interest under **subpart ~~2~~ 1 of Part 4 of the Judicature Modernisation Act 2013**".

Prisoners' and Victims' Claims Act 2005 (2005 No 74)

Replace section 47(3) to (5) with:

"(3) The Tribunal may, if it thinks fit, include in the amount ordered to be paid to a victim under section 46(3) or (4) interest at a rate, not exceeding the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the order), it thinks fit on some or all of the damages for all or a part of the period between the date on which the cause of action arose and the date of the order."

Public Works Act 1981 (1981 No 35)

In section 94, replace "at such rate as it thinks fit" with "at the same rate and on the same terms as are provided for the award of interest

Public Works Act 1981 (1981 No 35)—*continued*

under **subpart 1~~2~~ of Part 4 of the Judicature Modernisation Act 2013**".

Retirement Villages Act 2003 (2003 No 112)

In section 70(1)(c), replace "rate of interest prescribed under section 87 of the Judicature Act 1908" with "interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the order)".

Te Ture Whenua Maori Act 1993 (1993 No 4)

In section 24B, replace "section 62B of the District Courts Act 1947" with "**subpart ~~2~~ 1 of Part 4 of the Judicature Modernisation Act 2013**".

Trustee Act 1956 (1956 No 61)

In section 34A, replace "at the rate of 6% or such other rate as the Governor-General may for the time being by Order in Council prescribe" with "at the same rate and on the same terms as are provided for the award of interest under **subpart ~~2~~ 1 of Part 4 of the Judicature Modernisation Act 2013**".

Waste Minimisation Act 2008 (2008 No 89)

In section 35(1), replace "has the same meaning as in section 87(3) of the Judicature Act 1908" with "is the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** on the day of calculation (but converted into an equivalent daily rate)".

Weathertight Homes Resolution Services Act 2006 (2006 No 84)

In Schedule 3, replace clause 16 with:

"**16 Power to award interest**

In any adjudication for the recovery of any money, the tribunal may, if it thinks fit, order the inclusion, in the sum for which a determination is given, of interest, at such rate~~,~~ not exceeding the interest rate as defined in **section 452(2) of the Judicature Modernisation Act 2013** (as at the date of the order)~~,~~ as the tribunal thinks fit, on the whole or part of the money

Weathertight Homes Resolution Services Act 2006 (2006 No 84)—*continued*

for the whole or part of the period between the date when the cause of action arose and the date of payment in accordance with the judgment."

Schedule 10 s 521
New Schedule 10 inserted

Schedule 10 s 240B
Liquidation of associations

1 Modified application of Part 16 to associations

(1) Part 16 applies to the liquidation of an association with the following modifications and exclusions:

(a) section 241(2)(a), (b), (c)(v), (va), (vii), and (viii), and (d) does not apply:

(b) **clause 2** applies instead of section 241(4):

(c) **clauses 3 and 4** apply instead of sections 287 and 288(1) and (2):

(d) **clause 5** applies instead of section 268:

(e) references in that Part to section 241(4), 268, 287, or 288(1) or (2) (or to a provision of any of those sections) must be taken as references to the relevant replacement clause or clauses under **paragraphs (b) to (d)** (or to the relevant replacement provision):

(f) section 257(1)(a)(ii)(C) and (1)(a)(iii) does not apply:

(g) all other necessary modifications must be made.

(2) A document may be served on an association for the purposes of this schedule and Part 16 as follows:

(a) by delivery to a director, a principal officer, or the secretary of the association; or

(b) by leaving it at the association's principal place of business in New Zealand; or

(c) in the case of a document in any legal proceedings, by a method set out in **paragraph (a) or (b)** or by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings.

Compare: 1908 No 89 s 17B

2 Grounds for appointment of liquidator

The court may appoint a liquidator of an association under section 241 if the court is satisfied that—

(a) the association is dissolved, has ceased to carry on business, or is carrying on business solely for the purpose of terminating its affairs; or

(b) the association is unable to pay its debts; or
(c) it is just and equitable that the association be put into liquidation.

Compare: 1908 No 89 s 17A(4)

3 Meaning of inability to pay debts

(1) Unless the contrary is proved, and subject to **clause 4** and section 288(3) to (5), an association is presumed to be unable to pay its debts if—
  (a) the association has failed to comply with a demand in respect of a debt owed by the association that is made in accordance with **subclause (2)**; or
  (b) all of the following apply:
    (i) a proceeding has been commenced against a member of the association for the payment of a debt owed by the association or the member in that capacity; and
    (ii) notice of the proceeding has been served on the association; and
    (iii) within 10 days after the notice was served on it, the association has not paid or secured the debt, or otherwise compounded with the creditor, had the proceeding stayed, or indemnified the member for the amount of any judgment debt plus costs; or
  (c) execution issued against the association, a member of the association in that capacity, or a person authorised to be sued on behalf of the association in respect of a judgment debt has been returned unsatisfied in whole or in part.

(2) A demand under **subclause (1)(a)** must—
  (a) be in respect of a debt that is due that is not less than the prescribed amount; and
  (b) be in writing; and
  (c) be served on the association; and
  (d) require the association to pay or secure the debt, or otherwise compound with the creditor to the reasonable satisfaction of the creditor within 15 working days after

the date of service of the demand or any longer period that the court orders.

Compare: 1908 No 89 s 17C

4 Evidence of inability to pay debts

(1) On an application to the court for an order that an association be put into liquidation, evidence of failure to comply with a demand under **clause 3** is not admissible as evidence that an association is unable to pay the debts unless the application is made within 30 working days after the last date for compliance with the demand.

(2) **Clause 3(2)** does not limit proof by other means that an association is unable to pay its debts.

5 Power of liquidator to enforce liability of contributors

(1) The liquidator may enforce a liability of a person to pay or contribute to—

(a) any debt or liability of an association; or

(b) any amount for the adjustment of the rights of members of the association among themselves; or.

Schedule 11

s 580

Consequential amendments relating to Part 6

Contractual Mistakes Act 1977 (1977 No 54)

In section 5(2)(d), replace "~~section~~ sections 94A and 94B of the Judicature Act 1908" with "**sections 74A and 74B** of the Property Law Act 2007".

Crown Entities Act 2004 (2004 No 115)

In section 177, replace "sections 17A to 17E of the Judicature Act 1908 apply" with "**section 240B** of the Companies Act 1993 applies".

Customs and Excise Act 1996 (1996 No 27)

In section 101(5), replace "section 17B of the Judicature Act 1908" with "section 312 ~~of,~~ and Schedule 7 ~~of,~~ of the Companies Act 1993 (as applied by **section 240B** of that Act)".

Energy Resources Levy Act 1976 (1976 No 71)

Replace section 31(5) with:

"(5) **Section 74A(1)** of the Property Law Act 2007 applies to any money paid by a purchaser to a seller in excess of the amount payable under this section (despite **section 74A(2)** of that Act)."

Social Security Act 1964 (1964 No 136)

In section 86(1B), replace "section 94B of the Judicature Act 1908" with "**section 74B** of the Property Law Act 2007".

Schedule 12

s 581

Transitional provisions in respect of miscellaneous commercial law matters in Part 6

1 **Application**

Clause 2 applies to any proceedings commenced under sections 17A to 17E, 84 to 86, 88, 90, 92, 94A, and 94B of the Judicature Act 1908 that are pending or in progress immediately before the commencement of this Act.

2 **Transitional provisions for proceedings**

(1) Despite the repeal of the Judicature Act 1908, any proceedings to which this clause applies are to be continued and completed under that Act as if that Act had not been repealed.

(2) If any question arises as to the continuation or completion of a proceeding under **subclause (1)**, the court may, either on the application of a party to the proceeding or on its own initiative, determine the question and give any directions that it thinks fit in the interests of justice.

Legislative history

27 November 2013	Introduction (Bill 178–1)
5 December 2013	First reading and referral to Justice and Electoral Committee

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