

## High Court Amendment Rules 1998

PURSUANT to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council and with the concurrence of the Right Honourable the Chief Justice and at least 2 of the other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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**1 Title and commencement**

- (1) These rules may be cited as the High Court Amendment Rules 1998, and are part of the High Court Rules from time to time set out in Schedule 2 of the Judicature Act 1908 (“the High Court Rules”).
- (2) These rules come into force on 9 November 1998.

**2 Search of Court records generally**

Rule 66 of the High Court Rules is amended by inserting, after subclause (3), the following subclause:

- “(3A) Subject to subclauses (5) to (8), a person has a right to search, inspect, and copy a document on a file relating to an interlocutory application—
- “(a) If the interlocutory application relates to a proceeding that has been determined; or
  - “(b) If the interlocutory application relates to an intended proceeding and leave to bring the proceeding is refused; or
  - “(c) With the leave of a Judge in any case where the interlocutory proceeding relates to an intended proceeding and the Judge is satisfied that the proceeding has not been commenced within a reasonable time.”

**3 New rules relating to summary judgment procedure substituted**

The High Court Rules are amended by revoking rules 135 to 144, and substituting the following rules:

**“135 Application of summary judgment procedure**

Rules 136 to 144 apply to every proceeding other than—

- “(a) A proceeding under Part VIII, Part IXA, Part X, Part XI, or Part 14; or
- “(b) An application for a writ of habeas corpus.

**“136 Judgment where there is no defence or where 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 claim in the statement of claim or to a particular part of any such claim.
- “(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.

**“137 Summary judgment on liability**

The Court may give judgment on the issue of liability, and direct a trial of the issue of amount (at such time and place as it thinks fit), if the party applying for summary judgment satisfies the Court that the only issue to be tried is one as to the amount claimed.

**“138 Interlocutory application for summary judgment**

- “(1) Application for judgment under rule 136 or rule 137 must be made by interlocutory application.
- “(2) An application by a plaintiff must be made at the time the statement of claim is served on the defendant, or later with the leave of the Court.
- “(3) An application by a defendant must be made 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) A notice of proceeding in form 13 or form 13A;
  - “(b) A notice of interlocutory application in form 19;
  - “(c) A statement of claim (if the application is made by the plaintiff):

- “(d) A statement of defence (if the application is made by the defendant):
- “(e) A supporting affidavit.
- “(5) That 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 deponent’s belief 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.
- “(6) Rule 517 does not limit the persons who may make an affidavit on behalf of a corporation under subclause (5).

**“133A Service out of New Zealand**

- “(1) Where an application under rule 136 or rule 137 is to be served out of New Zealand, the Court must, on the application of the party making the application,—
  - “(a) Fix the date for hearing of the application under rule 136 or rule 137; and
  - “(b) Fix the time within which a party who wishes to oppose the application must file and serve—
    - “(i) The party’s notice of opposition; and
    - “(ii) The affidavit by or on behalf of the party opposing the application in answer to the affidavit by or on behalf of the party making the application; and
    - “(iii) Any statement of defence filed in addition to the notice of opposition and the affidavit; and
  - “(c) Direct that the necessary modifications be made to the notice of proceeding.
- “(2) Nothing in subclause (1) prevents the date of hearing fixed by the Court being enlarged under rule 140A.

**“139 Requirements as to notice of proceeding**

Rule 121 does not apply to a proceeding to which rules 136 to 144 apply.

**“140 Time for service**

- “(1) The documents specified in rule 138(4) must be served on the other party to the proceeding not less than 21 days before the date for hearing the application.
- “(2) Unless the Court otherwise directs, no part of the period beginning on 20 December and ending with the close of 10 January (being part of the Long Vacation) is reckoned in computing the time that is required to elapse between the date of service and the date for hearing; but nothing in this rule or rule 129 prevents any other part of the Long Vacation being reckoned in computing that time.
- “(3) Subclause (2) applies notwithstanding subclause (1).

**“140A Enlargement of hearing**

The Registrar, on request, may enlarge the hearing whenever the documents specified in rule 138(4) have not been served within the time prescribed by rule 140(1) by—

- “(a) Striking out 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.

**“141 Notice of opposition and affidavit in answer**

- “(1) A party who intends to oppose an application for judgment under rule 136 or rule 137 must, at least 3 working days before the date for hearing the application, file in the Court and serve on the party making the application—
- “(a) A notice of opposition in form 21; and
- “(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 party making the application,— otherwise the party will not be heard in opposition to the application without the leave of the Court.

- “(2) Rule 244 applies, with all necessary modifications, in relation to a notice of opposition filed under subclause (1)(a).

**“141A Statement of defence**

A defendant who has filed both a notice of opposition and an affidavit under rule 141 may, in addition, file a statement of defence in the office of the Court in which the notice of opposition and the affidavit were filed.

**“141B 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
  - “(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.

**“142 Disposal of application**

- “(1) If the Court dismisses an application for judgment under rule 136 or rule 137, 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 136 or rule 137 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 fit; or
  - “(b) May dismiss the application and give directions under subclause (1).

**“142A 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 14 days after the date on which any application by a plaintiff for judgment under rule 136 or rule 137 is dismissed.

“(2) This rule is subject to any directions given under rule 142(1).

“**143 Setting aside judgment**

Any judgment given against a party who does not appear at the hearing of an application for judgment under rule 136 or rule 137 may be set aside or varied by the Court on such terms as it thinks fit if it appears to the Court that there has been or may have been a miscarriage of justice.

“**143A Discontinuance**

“(1) The party making the application may, at any time before an application for judgment under rule 136 or rule 137 is heard, discontinue the application—

“(a) By filing in the office of the Court in which the application is filed a memorandum to that effect; and

“(b) By serving a copy of the memorandum on the other party to the application.

“(2) Where an application for judgment under rule 136 or rule 137 is discontinued, the Court may give directions as to the future conduct of the proceeding.

“**144 Application to counterclaims**

Rules 135 to 143A apply, with all necessary modifications, to counterclaims.”

**4 Application for injunction**

Rule 236A is amended by revoking subclause (3), and substituting the following subclauses:

“(3) An applicant for an interlocutory injunction must file a signed undertaking that the applicant will abide by any order that the Court may make in respect of damages—

“(a) That are sustained by the other party through the granting of the interim injunction; and

“(b) That the Court decides that the applicant ought to pay.

“(4) The undertaking must be referred to in the order granting the interlocutory injunction and is part of it.”

**5 Entry on commercial list by endorsement**

Rule 446C(4) of the High Court Rules is amended by revoking paragraph (b), and substituting the following paragraph:

- “(b) On a statement of defence filed by a defendant who has been served with, or who is serving, an application for judgment under rule 136 or rule 137; or.”

**6 Notice of proceeding where summary judgment sought**

- (1) Form 13 in Schedule 1 of the High Court Rules is amended by omitting the heading, and substituting the heading “NOTICE OF PROCEEDING WHEN SUMMARY JUDGMENT SOUGHT BY PLAINTIFF”.
- (2) Form 13 in Schedule 1 of the High Court Rules is amended by omitting the expression “3 days” from the section headed “*Notice of Opposition and Affidavit Setting Out Defence*”, and substituting the expression “3 working days”.
- (3) Form 13 in Schedule 1 of the High Court Rules is amended by inserting, after the section of the memorandum headed “Office hours”, the following section:

*Working days*

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**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.”
- (4) Schedule 1 of the High Court Rules is amended by inserting, after form 13, the form 13A set out in the Schedule.

**7 Consequential revocations arising from new rules 135 to 144**

The following rules are consequentially revoked:

- (a) Rule 6 of the High Court Amendment Rules 1986 (SR 1986/228);
- (b) Rules 6 to 11 of the High Court Amendment Rules (No 2) 1988 (SR 1988/269);

- (c) Rule 6 of the High Court Amendment Rules 1990 (SR 1990/66):
  - (d) Rule 10 of the High Court Amendment Rules 1991 (SR 1991/132):
  - (e) Rule 6 of the High Court Amendment Rules (No 2) 1992 (SR 1992/318):
  - (f) Rule 12 of the High Court Amendment Rules 1993 (SR 1993/420).
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**Schedule**

Rule 6(4)

**New form 13a inserted in Schedule 1 of  
High Court Rules**

Form 13A

Ref 138(4)

Notice of proceeding when summary judgement  
sought by defendant





satisfied that the proceeding has not been commenced within a reasonable time.

Second, these rules substitute new rules relating to summary judgment procedure. The main differences between the existing rules and the new rules on summary judgment are as follows:

- The categories of actions in which the summary judgment procedure is available are extended by the new rules to include proceedings that include a claim by the plaintiff alleging defamation, malicious prosecution, or false imprisonment, proceedings under Part 4 (special cases), and proceedings under Part 7 (extraordinary remedies). The existing rules provide that the summary judgment procedure does not apply to these proceedings. The new rules provide that the summary judgment procedure applies in all proceedings other than proceedings under Part 8 (probate and administration), Part 9A (companies winding-up), Part 10 (appeals), Part 11 (cases stated for the opinion of the Court), or Part 14 (admiralty), or applications for a writ of habeas corpus:
- The new rules extend the availability of the summary judgment procedure to defendants. The summary judgment procedure is currently available only to plaintiffs:
- The new rules provide that 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. The existing rules provide that the Court may give judgment against a defendant if the plaintiff satisfies the Court that the defendant has no defence. That provision continues in the new rules unchanged:
- The new rules provide that an application for summary judgment by a plaintiff must be made at the time the statement of claim is served on the defendant, or later with the leave of the Court, and that an application by a defendant must be made at the time the statement of defence is served on the plaintiff, or later with the leave of the Court. The existing rules provide that an application for summary judgment must be served on the defendant with the statement of claim:
- Existing rule 136(2) and (3) (relating to specific performance) has not been carried forward into the new rules:

- Existing rule 138(3) has not been carried forward into the new rules. That provision provided that no application for summary judgment can be based on an allegation of fraud made in the statement of claim but the inclusion of such an allegation in the statement of claim does not prevent the Court from giving judgment against the defendant if the Court is satisfied that a defendant has no defence to any other claim in the statement of claim or to a particular part of any such other claim:
- Existing rule 141 requires a notice of opposition to an application for summary judgment to be filed at least 3 days before the date for hearing the application. The new rule 141 requires that notice to be filed at least 3 working days before the date for hearing. **Working day** is defined in rule 3:
- Existing rule 142A sets the time limit for filing a statement of defence as 30 days after dismissal of a summary judgment application. The new rule 142A shortens that time limit to 14 days, rather than 30 days.

Third, rule 236A is amended so as to state expressly the form of understanding required by an applicant for an interlocutory injunction.

Rule 236A currently requires an applicant for an interlocutory injunction to give an undertaking of the kind referred to in rule 630. Rule 630 was revoked by the High Court Amendment Rules 1997, although the requirements for an undertaking when an interim order is sought in proceedings under Part 7 are now included in modified form in rule 627B. Rule 236A is amended to state expressly the form of the undertaking required. The requirements are the same as those in rule 627B.

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