High Court Amendment Rules 2003

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

Contents

1 Title

(1) These rules are the High Court Amendment Rules 2003.

(2) In these rules, the High Court Rules from time to time set out in the Schedule 2 of the Judicature Act 1908 are called "the High Court Rules".

2 Commencement

These rules come into force on 24 November 2003.

3 Interpretation

(1) Rule 3(1) of the High Court Rules is amended by inserting, in their appropriate alphabetical order, the following definitions:

"**case management conference** means a conference conducted in accordance with rule 427

"**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** includes a case management conference

"**interlocutory order**—

"(a) means an order or direction of the Court that—

"(i) is made or given for the purposes of a proceeding or an intended proceeding; and

"(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

"**respondent**, in relation to an interlocutory application, means a party on whom the application has been served.".

(2) Rule 3(1) of the High Court Rules is amended by revoking the definition of interlocutory application, and substituting the following definition:

"**interlocutory application** means an application made in accordance with rule 237 or rule 254.".

4 New rule 43A inserted

The High Court Rules are amended by inserting, after rule 43, the following rule:

"**43A Solicitors to inform clients of orders or directions**
When an order or a direction that affects a party is made, it is the responsibility of that party's solicitor on the record promptly to notify the party of the order or direction."

5 New rules 234 to 262 and headings substituted
The High Court Rules are amended by revoking rules 234 to 269 and the headings above rules 234 and 246, and substituting the following headings and rules:

"*Interlocutory orders*

"**234 Making of interlocutory orders**
"(1) The Court may make any interlocutory order that—
"(a) is provided for in these rules; or
"(b) may be made under rule 9.
"(2) An interlocutory order may be made—
"(a) on the interlocutory application of a party; or
"(b) on the Court's own initiative.
"(3) Before making an order under subclause (2)(b), the Court must give the parties an opportunity to be heard.

"**235 Power to grant interlocutory order or interlocutory relief**
The Court may make any interlocutory order or grant any interlocutory relief it thinks just, even though the order or relief has not been specifically claimed and there is no claim for general or other relief.

"**236 Interlocutory orders may be made subject to conditions**
The Court may make an interlocutory order subject to any terms or conditions that the Court thinks just, including, with out limitation, any condition that—
"(a) a party give an undertaking:
"(b) the order operate only for a specified period.

"*Interlocutory applications*

"**237 Form, contents, and filing of interlocutory application**
"(1) An interlocutory application is made by filing a notice of the application in form 19 or form 20.

"(2) The application must—

"(a) state—

"(i) the relief sought; and

"(ii) the grounds justifying that relief; and

"(b) contain a reference to any particular provision of an enactment or principle of law or judicial decision on which the applicant relies.

"(3) It is not necessary in an application to ask for general or other relief.

"(4) The application or a document that relates to it—

"(a) maybe posted to the Registrar at the proper office of the Court; and

"(b) is filed when that Registrar receives it with any applicable fee.

"(5) The Registrar—

"(a) must acknowledge the receipt of all documents sent by post; and

"(b) must—

"(i) notify the applicant of the hearing date allocated for the application; or

"(ii) in the case of an ex parte application for which no appearance is required, notify the applicant of the result of the application.

"**238 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 a claim for an injunction is included in that party's statement of claim, counterclaim, or third party notice, as the case may be.

"(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 Court thinks just.

"(3) An applicant for an interlocutory injunction must file a signed undertaking that the applicant will comply with any order that the Court may make for the payment of damages to the other party for any damage that party may sustain through the granting of the interlocutory injunction.

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

"**239 Interlocutory injunction in relation to party's assets**

"(1) It is declared that the Court may grant an interlocutory injunction restraining a party from removing, or otherwise dealing with, assets in New Zealand whether or not the party is domiciled, resident, or present in New Zealand.

"(2) The power to grant an interlocutory injunction of the kind described in subclause (1) does not limit the generality of the Court's power to grant interlocutory injunctions.

"(3) A party who makes an application for an interlocutory injunction of the kind described in subclause (1) must, in making the application, identify any person who is not a party to the proceeding but who would be adversely affected by the granting of the injunction.

"**240 Ex parte application**

"(1) If the applicant wishes the application to be heard without any other party being served (in these rules referred to as an **ex parte application**), the applicant must use form 20.

"(2) An *ex parte* application must contain a certificate that—

"(a) is personally signed by the applicant's solicitor or counsel in his or her own name; and

"(b) uses the words 'Certified pursuant to the rules of Court to be correct'.

"(3) The solicitor or counsel who signs the certificate—

"(a) must, before signing it, be personally satisfied—

"(i) that the notice of application and every affidavit filed in support of it complies with these rules; and

"(ii) that the order sought is one that ought to be made; and

"(iii) that there is a proper basis for seeking the order in an *ex parte* application; and

"(b) is responsible to the Court for the matters specified in paragraph (a).

"**241 Affidavit to be filed with application**

Evidence given in support of an application must be in an affidavit, which must be filed and served at the same time as the application.

"**242 Allocation of hearing date**

"(1) On or following the filing of an application (other than an *ex parte* application), the Registrar must allocate a hearing date for the application.

"(2) The Registrar must refer an *ex parte* application to a Judge for direction or decision.

"**243 Service of application**

"(1) The applicant must serve a copy of the application (other than an *ex parte* application) and any affidavit in support of it on every party as soon as practicable after filing it.

"(2) As soon as practicable after the applicant is notified of the hearing date for the application, the applicant must give notice of the hearing date to every respondent.

"**244 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 the earlier of—

"(a) 10 working days after being served with the application; or

"(b) 3 working days before the hearing date for the application.

"(2) The notice of opposition must be in form 21.

"(3) The notice of opposition must—

"(a) state the respondent's intention to oppose the application and the grounds of opposition; and

"(b) contain a reference to any particular provision of an enactment or principle of law or judicial decision on which the respondent relies.

"**245 Affidavit to be filed with notice of opposition**

If the respondent intends to support the notice of opposition with evidence, the evidence must be in an affidavit, which must be filed and served at the same time as the notice of opposition.

"**246 Affidavit in reply**

"(1) If the applicant wishes to reply to the notice of opposition or to an affidavit filed by the respondent, the applicant must reply by affidavit, which must be filed and served within the earlier of—

"(a) 5 working days after being served with the notice of opposition; or

"(b) 1 pm on the working day before the hearing date for the application.

"(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.

"**247 When admissions binding**

An admission of a fact expressly made only for the purpose of an application binds the party only for the application.

"**248 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 the Court, in any other proceeding between the same parties, may be used on the disposal of any application, if—

"(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 *ex parte* application, if 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 247.

"**249 Provisions as to affidavits**

"(1) The provisions of rules 510 to 524 apply, with all necessary modifications, to affidavits filed in respect of interlocutory applications.

"(2) Despite subclause (1), the Court 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.

"*Hearing of interlocutory applications*

"**250 Where respondents consent or do not oppose**

"(1) If every respondent to an interlocutory application indicates, by endorsement on the application or in a memorandum filed in the Court, that the respondent consents or does not oppose the orders sought in the application, the Registrar may refer the interlocutory application to a Judge, who may—

"(a) make the orders sought without a hearing being held; or

"(b) direct that a hearing be held on the hearing date allocated under rule 242.

"(2) If the Judge makes the orders sought under subclause (1)(a), the Registrar must immediately advise the parties that the hearing date is vacated.

"(3) If a respondent (**respondent A**) to an interlocutory application consents or does not oppose, but another respondent (**respondent B**) does oppose, respondent A does not need to attend the hearing of the interlocutory application.

"(4) Subclause (3) does not apply if, on the hearing date allocated for the interlocutory application, a case management conference is also due to be held.

"**251 Mode of hearing**

"(1) Every application for judgment under rule 138 must be heard in open court.

"(2) Every other interlocutory application must be heard in Chambers unless the Court otherwise directs.

"(3) A hearing in Chambers may be held in the chambers of a Judge or Master, or in court.

"(4) Unless the Court otherwise directs, no hearing is required for an application to which there is no opposition.

"(5) On its own initiative or on the application of 1 or more of the parties, the Court may conduct a hearing in Chambers by telephone or video link.

"**252 Failure to appear**

"(1) If an applicant does not appear for an application for which an appearance is required, the Court may strike out the application or adjourn it or otherwise deal with it in any manner that appears just.

"(2) An application that has been struck out for non-appearance may be reinstated by the Court in any manner that appears just.

"(3) If a respondent does not appear for an application for which an appearance is required, the Court may dispose of the application in his or her absence or adjourn it in any manner that appears just.

"**253 Oral evidence in special circumstances**

"(1) Despite rules 241, 245, and 246, the Court may, on the hearing of an application, accept oral evidence in special circumstances.

"(2) The Court 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.

"**254 Oral application**

"(1) At a hearing, the Court may entertain an oral application for an interlocutory order if—

"(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 Court entertains an oral application, it may make any interlocutory order or grant any interlocutory relief it could have made or granted on a formal notice of the application.

"(3) This rule overrides rule 237.

"**255 Adjournment**

The hearing of an application may, from time to time, be adjourned on any terms that the Court thinks just.

"**256 Determination of *ex parte* application**

"(1) The Court, on receiving an *ex parte* application, must determine whether the application can properly be dealt with on an *ex parte* basis.

"(2) The Court may determine that an application can properly be dealt with on an *ex parte* basis only if the Court 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.

"(3) If the Court determines that the application can properly be dealt with on an *ex parte* basis, it may—

"(a) make the order sought in the application; or

"(b) make any other order that the Court thinks just in the circumstances; or

"(c) dismiss the application.

"(4) If the Court determines that the application cannot properly be dealt with on an *ex parte* basis, the Court may adjourn the determination of the application until the application has been served on persons who are affected by the application, but if the Court considers that the application has no chance of success, the Court may dismiss the application.

"*Post-hearing matters*

"**257 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 affects a person who—

"(a) is not a party; or

"(b) is, by the order, joined as a party or directed to be served.

"(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 he or she 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 22:

"(c) the order must specify both the date on which it was made and the date on which it was sealed:

"(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.

"**258 Enforcement of interlocutory order**

"(1) If a party fails to comply (the **party in default**) with an interlocutory order, the Court may, subject to any express provision of these rules, make any order that it thinks just.

"(2) The Court may, for example,—

"(a) if the party in default is a plaintiff, order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceeding:

"(b) if the party in default is a defendant, order that the defence be struck out and that judgment be sealed accordingly:

"(c) order that the party in default be committed:

"(d) if any property in dispute is in the possession or control of the party in default, order that the property be sequestered:

"(e) order that any fund in dispute be paid into Court:

"(f) appoint 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 person in default or that person had notice or knowledge of the order within sufficient time for compliance with the order.

"(4) For the purposes of this rule,—

"**defendant** includes a party defending or opposing any proceeding

"**plaintiff** includes—

"(a) a defendant who has counterclaimed; and

"(b) a party claiming under rules 154 to 168; and

"(c) an applicant or claimant in a proceeding under rules 172 to 179

"**proceeding** includes—

"(a) a counterclaim; and

"(b) a claim under rules 154 to 168; and

"(c) an application or claim in a proceeding under rules 172 to 179.

"**259 Order may be varied or rescinded if shown to be wrong**

"(1) A party affected by an interlocutory order (whether made on the Court'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 this rule if the order or decision was made or given—

"(a) with the consent of the parties; or

"(b) on an interlocutory application for judgment under rule 138; or

"(c) by a Master 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 effect.

"(4) The application does not operate as a stay unless the Court so orders.

"(5) Unless the Court otherwise directs, the application must be heard by the Judge who made the order or gave the decision.

"(6) The Court may,—

"(a) if satisfied that the order or decision is wrong, vary or rescind the order or decision; or

"(b) on its own initiative or on the application of a party, transfer the application to the Court of Appeal.

"**260 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 or by a Master 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 or a Master may, on application, vary the determination.

"(3) Despite subclause (2), a Judge may, on application or on the Judge's own initiative, direct that—

"(a) an application under subclause (2) to vary a determination made by a Master in Chambers be heard as a review of an order made by a Master in Chambers under section 26P of the Act and these rules:

"(b) an application under subclause (2) to vary a determination made by a Judge in Chambers be heard as an application under rule 259 or be transferred to the Court of Appeal.

"**261 Order may be rescinded if fraudulently or improperly obtained**

"(1) The Court may rescind any order that has been fraudulently or improperly obtained.

"(2) The Court 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.

"**262 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 the Court.

"(2) The Court may grant leave only in special circumstances."

6 Rule 277 revoked

The High Court Rules are amended by revoking rule 277.

7 New rules 425 to 438AA and headings substituted

The High Court Rules are amended by revoking rules 425 to 438 and the headings above rules 425 and 437, and substituting the following headings and rules:

"*Directions as to conduct of proceeding*

"**425 Directions as to conduct of proceeding**

The Court may, by interlocutory order,—

"(a) give directions to secure the just, speedy, and inexpensive determination of a proceeding:

"(b) fix the time by which a step in a proceeding must be taken:

"(c) fix the time by which all interlocutory steps must be completed:

"(d) direct the steps that must be taken to prepare a proceeding for substantive hearing:

"(e) direct how the hearing of a proceeding is to be conducted.

"*Tracks for proceedings and case management conferences*

"**426 Tracks for proceedings**

"(1) All proceedings (other than proceedings entered on the commercial list) are on either of the following 2 tracks:

"(a) the swift track; or

"(b) the standard track.

"(2) Subject to subclause (3),—

"(a) the following proceedings are on the swift track:

"(i) applications by plaintiffs under rule 138 (which relates to applications for summary judgment):

"(ii) applications under Part 4A (which relates to originating applications):

"(iii) applications under Part 9A (which relates to applications for putting companies into liquidation):

"(iv) applications for leave to appeal, and appeals, under Part 10:

"(v) applications under rule 831 (which relates to applications for adjudication in bankruptcy):

"(vi) applications for leave to appeal, and appeals, under Part 17; and

"(b) all other proceedings are on the standard track.

"(3) The Court may, at any time, on its own initiative or on an application by a party, move a proceeding

"(a) from the swift track to the standard track; or

"(b) from the standard track to the swift track.

"**427 Convening of case management conferences**

"(1) The Court may, at any time, hold a case management conference.

"(2) Case management conferences are held so that the Court may—

"(a) assist the parties in the just, speedy, and inexpensive determination of the proceeding:

"(b) make orders under rule 425:

"(c) if practicable, make other interlocutory orders.

"(3) A case management conference may be convened by the Court on its own initiative or on the application of 1 or more of the parties.

"**428 Case management conferences for proceedings on standard track**

"(1) Unless the Court otherwise directs, the following provisions apply to the convening of case management conferences for a proceeding on the standard track:

"(a) a case management conference must be held within 35 working days after the commencement of the proceeding:

"(b) if a second case management conference is required, it must be held within 75 working days after the commencement of the proceeding.

"(2) Following the commencement of a proceeding on the standard track,—

"(a) the Registrar must make arrangements for a case management conference to be held in accordance with subclause (1)(a); and

"(b) the plaintiff must, as soon as practicable after being notified of the date of the case management conference, give notice of that date to every other party.

"(3) The Registrar must make arrangements to ensure that, within 25 working days after a proceeding is moved to the standard track from the swift track, a case management conference is held for the proceeding.

"(4) Unless the Court otherwise directs, the first case management conference that is held for a proceeding must be conducted by telephone or video link.

"**429 Matters to be considered at case management conferences for proceedings other than appeals**

"(1) This rule applies to a case management conference that is convened for a proceeding other than an appeal under Part 10 or Part 17.

"(2) The matters to be considered at the case management conference are—

"(a) the matters set out in Schedule 5 that are relevant to the proceeding and its current stage; and

"(b) any interlocutory applications allocated for hearing at that conference under rule 242; and

"(c) any application for an interlocutory order outlined in a memorandum filed under subclause (3).

"(3) Unless excused by the Court, 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.

"(4) Any memorandum filed must—

"(a) address the matters set out in Schedule 5 that are relevant to the proceeding and its current stage; and

"(b) outline any application for an interlocutory order intended to be made at the case management conference.

"(5) Any memorandum may be filed by facsimile.

"**430 Case management conferences for appeals**

"(1) In the case of an appeal under Part 10 or Part 17 (but not under Part 11), the Registrar must make arrangements for a case

management conference to be held within 15 working days after any of the following dates:

"(a) the date on which a notice of appeal under rule 706(1) or an originating application under rule 879(1) is filed:

"(b) the date on which leave to appeal is granted on an application under rule 703(6) or rule 891(1).

"(2) The person who brings the appeal 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.

"(3) 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.

"(4) Any memorandum filed must—

"(a) estimate the time required for the hearing; and

"(b) suggest the costs category for the appeal for the purpose of rule 48(2) and, where applicable, for the purpose of rule 713; and

"(c) advise if any party has been granted legal aid under the Legal Services Act 2000 or has applied for legal aid and is awaiting a decision; and

"(d) if a full Court is sought, set out the reasons for that; and

"(e) in the case of an appeal under Part 10, specify any directions in Schedule 6 that should be deleted or modified, and why; and

"(f) in the case of an appeal under Part 17, specify any directions in Schedule 6 that would be appropriate for the appeal; and

"(g) set out any additional directions sought, and why.

"(5) Any memorandum may be filed by facsimile.

"(6) The directions set out in Schedule 6 apply,—

"(a) in the case of an appeal under Part 10, to the extent that those directions are not modified by any directions given by the Judge:

"(b) in the case of an appeal under Part 17, to the extent that those directions are applied by a direction given by the Judge.

"(7) At the conference, the Judge must give directions for the conduct of the appeal; those directions 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 10, 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 17,—

"(i) as to the preparation of the record in accordance with rule 886 or in any other manner the Court thinks fit:

"(ii) as to the transcription of the evidence in accordance with rule 887:

"(e) on any other matter for the purposes of best securing the just, speedy, and inexpensive determination of the appeal.

"**431 Cancellation of conference**

The Court may cancel a case management conference if, after reading the memoranda prepared under rule 429(3) or rule 430(3) for the conference, the Court is satisfied that—

"(a) all orders sought can be made by consent; and

"(b) the attendance of counsel is not required.

"*Allocation of hearing dates and setting down dates*

"**432 Hearing dates for proceedings on swift track**

"(1) In the case of appeals under Part 10 or Part 17, the Court must, at a case management conference or, if the case management conference is cancelled under rule 431, by minute, give a direction that—

"(a) allocates a hearing date for the appeal; or

"(b) requires the Registrar to allocate a hearing date for the appeal.

"(2) In the case of all other proceedings on the swift track (including applications for leave to appeal under Part 10 or Part 17), the Registrar must, as soon as practicable after the first document in the proceeding is filed or the proceeding is moved from the standard track to the swift track, allocate a hearing date for the proceeding.

"**433 Application of rules 434 to 438AA**

Rules 434 to 438AA apply to all proceedings other than proceedings that are on the swift track.

"**434 Allocation of hearing dates and setting down dates**

"(1) The Court may give a direction that—

"(a) allocates a hearing date for a proceeding; or

"(b) requires the Registrar to allocate a hearing date for the proceeding.

"(2) Unless the Court otherwise directs, if no hearing date has been allocated for the proceeding by the time that a second case management conference is, under rule 428, held for the proceeding, the hearing date must be allocated at that conference whether or not any interlocutory application is outstanding.

"(3) When the Court gives a direction under subclause (1), the Court may also give a direction that fixes the setting down date for the proceeding.

"(4) A direction under subclause (1), or directions under subclauses (1) and (3), may be given at any time on the Court's own initiative or on the application of 1 or more parties to the proceeding.

"(5) If the Court gives a direction under subclause (1) without giving a direction under subclause (3), then the setting down date for the proceeding is the later of—

"(a) the date that is 40 working days before the hearing date for the proceeding; or

"(b) the date on which the hearing date for the proceeding is allocated.

"**435 Jury notice**

If either party to a proceeding to which section 19A 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 setting down date for the proceeding; or

"(b) a date fixed by the Court for the purpose.

"**436 Lists of proceedings**

The Registrar must cause the following lists to be kept:

"(a) a list of proceedings that have been allocated a hearing date under rule 434(1)(a); and

"(b) a list of proceedings for which the Registrar is, under rule 434(1)(b), required to allocate a hearing date.

"**437 Registrar's functions in relation to hearing dates**

"(1) After the Court has allocated a hearing date for a proceeding under rule 434(1)(a), the Registrar must promptly—

"(a) record the hearing date and the setting down date for the proceeding in the appropriate list; and

"(b) give written confirmation of both dates to all parties to the proceeding.

"(2) After the Court gives a direction under rule 434(1)(b) for a proceeding, the Registrar must—

"(a) promptly record the proceeding in the appropriate list; and

"(b) allocate a hearing date for the proceeding

"(i) as soon as practicable; and

"(ii) so far as practicable, in the order in which the directions for the proceedings recorded in the appropriate list have been given; and

"(c) then promptly—

"(i) record the hearing date and the setting down date in the appropriate list; and

"(ii) give written confirmation of both dates to all parties to the proceeding.

"(3) The performance of the Registrar's functions under subclause (2)(b) is subject to any direction by a Judge or Master.

"**438 Parties to keep Registrar informed**

It is the duty of all parties to a proceeding that has been allocated a hearing date to notify the Registrar, without delay, if the proceeding is settled.

"**438AA No steps after setting down date without leave**

"(1) No statement of defence or amended pleading or affidavit may be filed, and no interlocutory application may be made or step taken, in the proceeding after the setting down date without the leave of the Court.

"(2) Subclause (1) does not apply to—

"(a) an application for leave under that subclause; or

"(b) an application for directions under rule 425; or

"(c) a pleading or an affidavit that merely brings up to date the information before the Court."

8 Rule 441 revoked

The High Court Rules are amended by revoking rule 441.

9 New heading and rules 441A and 441B substituted

The High Court Rules are amended by revoking rules 441A and 441B and the heading above rule 441A, and substituting the following heading and rules:

"*Exchange of witnesses statements and preparation of common bundle of documents*

"**441A Application of rules 441B to 441I and 441M to 441Q**

"(1) In this rule, specified proceeding means a proceeding—

"(a) that is on the swift track; or

"(b) in which evidence is to be given by affidavit; or

"(c) in which an agreed statement of facts has been filed under rule 502.

"(2) In the case of a proceeding that is not a specified proceeding, rules 441B to 441I and 441M to 441Q apply to the extent that they are not modified or excluded by a direction of the Court.

"(3) In the case of a specified proceeding, the provisions of rules 441B to 441I and 441M to 441Q do not apply unless they are applied, with or without modifications, by a direction of the Court.

"**441B Service by plaintiff of written statements of proposed evidence in chief**

"(1) The plaintiff in a proceeding must, not later than the specified date, serve on every other party who has given an address for service a written statement of the proposed evidence in chief of each witness to be called by the plaintiff.

"(2) For the purposes of subclause (1), the specified date is—

"(a) the date fixed by the Court for the purpose; or

"(b) if no date is fixed, 15 working days after the setting down date."

10 Service by other parties of written statements of proposed evidence in chief

Rule 441C of the High Court Rules is amended by omitting the words "21 days", and substituting the words "15 working days".

11 New rules 441M to 441Q inserted

The High Court Rules are amended by inserting, before the heading above rule 442, the following rules:

"**441M Exchange of indexes of documents intended for hearing**

"(1) A party who wishes to rely on documents at a hearing must refer to those documents in an index and serve that index on every other party to the proceeding at the same time that the party serves, whether under rule 441B or rule 441C or under a direction of the Court, written statements of the evidence in chief to be adduced.

"(2) An index served by a party under subclause (1) must include only documents that—

"(a) will be referred to in evidence to be given, or submissions to be made, at the hearing; and

"(b) are not already included in any index previously served under this rule on the party by another party.

"**441N Bundle of documents for hearing**

"(1) Following the expiry of the period of 15 working days specified in rule 441C, the plaintiff must, in accordance with subclause (2), prepare a bundle of documents (in this rule and in

rules 441O and 441P referred to as the **common bundle**) that contains every document referred to in—

"(a) the index served by the plaintiff under rule 441M: and

"(b) each index (if any) served by another party under that rule.

"(2) In preparing the common bundle, the plaintiff must—

"(a) set out the documents in chronological order or any other appropriate order agreed on by counsel; and

"(b) number each page of the common bundle in consecutive order; and

"(c) set out before the first document an index that shows

"(i) the date and nature of each document; and

"(ii) the party from whose custody each document has been produced; and

"(iii) the page number of each document as it appears in the common bundle.

"(3) The plaintiff must, not later than 5 working days before the hearing,—

"(a) file 2 copies of the common bundle in the Court; and

"(b) serve 1 copy of the common bundle on every party to the proceeding.

"**441O 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 index to the bundle; 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 index to the common bundle.

"(2) If a party objects to the admissibility of a document included in the common bundle or to the application of any of paragraphs (b) to (f) of subclause (1) to a document, the objection must be—

"(a) recorded in the common bundle; and

"(b) 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 received into evidence 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 any provision of this rule is not to apply to a particular document.

"**441P Consequence of not incorporating document in common bundle**

A document that is not incorporated in the common bundle may be produced at the hearing only with the leave of the Court.

"**441Q Plaintiff's synopsis of opening and chronology**

The plaintiff must, not later than 2 working days before the hearing, file in the Court and serve on every other party to the proceeding—

"(a) a copy of the plaintiff's opening; and

"(b) a chronology of the material events that form part of the plaintiff's evidence."

12 New rule 442 substituted

The High Court Rules are amended by revoking rule 442, and substituting the following rule:

"**442 Court may assist in negotiating for settlement**

"(1) The Court may, at any time before the hearing of a proceeding, convene a conference in Chambers of the parties 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 that 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 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 a Master 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 that there are no circumstances that would make it inappropriate for the Judge to do so.

"(5) The Court 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."

13 Evidence of person in custody

Rule 499 of the High Court Rules is amended by revoking subclause (2).

14 New Part 10 substituted

The High Court Rules are amended by revoking Part 10, and substituting the following Part:

"**Part10**

"**Appeals**

"*Preliminary provisions*

"**701 Application of this Part**

"(1) This Part applies to appeals to the Court under any enactment other than—

"(a) appeals under the Summary Proceedings Act 1957:

"(b) appeals under the Arbitration Act 1996:

"(c) appeals under the Bail Act 2000:

"(d) appeals or references to the Court by way of case stated to which Part 11 applies.

"(2) For the purposes of subclause (1)(a), appeals under an enactment that incorporates provisions of the Summary Proceedings Act 1957, whether modified or not, are not appeals under the Summary Proceedings Act 1957.

"(3) This Part applies subject to any express provision in the enactment under which the appeal is brought or sought to be brought.

"**702 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

"**Court office** means the office of the Court—

"(a) at which an appeal is required to be filed under rule 708(1); or

"(b) to which documents relating to an appeal are transferred under rule 708(3)(b)

"**decision** includes a finding, order, or judgment made by a decision-maker

"**decision-maker** means a court, tribunal, or 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.

"*Applications for leave to appeal*

"**703 Applications for leave to appeal to Court**

"(1) In any case where an enactment provides that an appeal to the Court against a decision may not be brought without leave, an application for that leave must be made to the decision-maker or, as the case requires, the Court within 20 working days after the decision is given.

"(2) In any case where an enactment provides that the Court may grant leave to appeal to the Court against a decision after the

decision-maker refuses leave, an application for the Court's leave must be made within 20 working days after the refusal.

"(3) The appeal must be brought—

"(a) by the date fixed when the decision-maker or the Court grants leave; or

"(b) if the decision-maker or the Court fails to fix a date, within 20 working days after the grant of leave.

"(4) Any date fixed by the decision-maker is, for the purposes of rule 260, to be treated as a determination.

"(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) Every 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.

"*Commencement of appeal*

"**704 Time for appeal where there is right of appeal**

"(1) This rule applies when a party has a right of appeal to the Court.

"(2) An appeal must be brought,—

"(a) if the enactment that confers the right of appeal specifies a period within which the appeal must be brought, within that period; 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

"(b) may be made before or after the expiry of the time for appealing.

"**705 Commencement of periods in rules 703 and 704**

For the purposes of rules 703 and 704, a period begins when the decision to which it relates is given, whether or not—

"(a) reasons for the decision are then given or are given later; or

"(b) formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.

"**706 When appeal brought**

"(1) An appeal is brought when the appellant—

"(a) files a notice of appeal in the High 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 this rule.

"**707 Power to dispense with service**

Despite rule 706(1)(c), the Court may, on any terms the Court thinks fit, dispense with service of a notice of appeal on a party.

"**708 Filing of notice of appeal**

"(1) A notice of appeal must be filed in—

"(a) the office of the Court nearest to the place where the decision appealed against was given; or

"(b) any other office of the Court in which the parties agree that the notice of appeal may be filed.

"(2) If subclause (1)(b) 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 office of the Court in which it is filed.

"(3) If it appears to the Court, on application, that a notice of appeal has been filed in the wrong office of the Court or that another office of the Court would be more convenient to the parties, the Court may direct that—

"(a) the notice of appeal be filed in another office of the Court; or

"(b) the documents relating to the appeal be transferred to another office of the Court.

"(4) The filing of a notice of appeal in the wrong office of the Court does not invalidate an appeal.

"**709 Contents of notice of appeal**

"(1) Unless the Court otherwise directs, a notice of appeal must—

"(a) have a heading in form 1 that also refers 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.

"(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 717 (which entitles a decision-maker, other than a District Court, to be represented and heard on an appeal).

"(4) An appellant may, at any time with the leave of the Court, amend a notice of appeal.

"**710 Stay of proceedings**

"(1) An appeal does not operate as a stay of the proceedings appealed against or as a stay of execution of any judgment or order appealed against.

"(2) However, pending the determination of an appeal, the decision-maker or the Court may, on application,—

"(a) order a stay of proceedings in relation to the decision appealed against or a stay of execution of any judgment or order appealed against; or

"(b) grant any interim relief.

"(3) An order made or relief granted under subclause (2) may—

"(a) relate to execution of the whole of a judgment or order or to a particular form of execution:

"(b) be subject to any conditions for the giving of security the decision-maker or the Court thinks fit.

"**711 Cross-appeal**

"(1) A respondent who wishes 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 Court office; and

"(b) file a copy of the notice of cross-appeal in the administrative office; and

"(c) serve a copy of the notice of cross-appeal on every other party directly affected by the cross-appeal.

"(2) Except with the leave of the Court, a notice of cross-appeal must be filed not later than 2 working days before the holding of the case management conference relating to the appeal.

"(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 failure by a respondent to file and serve a notice of cross-appeal,—

"(a) allow the respondent to contend at the hearing of an appeal that the decision appealed against should be varied; or

"(b) adjourn the hearing of an appeal to allow the respondent time to file and serve a notice of cross-appeal; or

"(c) make any other order, including an order for the payment of costs, as the Court thinks fit.

"(5) A respondent may at any time, with the leave of the Court, amend a notice of cross-appeal.

"**712 Dismissal or abandonment of appeal or cross-appeal for failure to proceed**

"(1) The Court may, on application, dismiss an appeal or a cross-appeal if the Court is satisfied that the appellant or the respondent has failed to proceed with the appeal or cross-appeal.

"(2) If the appellant files and serves on every other party a statement signed by the appellant to the effect that the appellant abandons the appeal, the appeal is, subject to the right of the respondent to apply for an order as to costs, taken to have been dismissed.

"(3) If the respondent files and serves on every other party a statement signed by the respondent to the effect that the respondent abandons the cross-appeal, the cross-appeal is, subject to the right of the appellant to apply for an order as to costs, taken to have been dismissed.

"**713 Security for appeal**

"(1) This rule applies to an appeal other than an appeal in which the appellant has been granted legal aid under the Legal Services Act 2000.

"(2) At the case management conference relating to the appeal, the Judge must fix security for costs unless the Judge considers that in the interests of justice no security is required.

"(3) Unless the Judge otherwise directs, the amount of security must be fixed in accordance with the following formula:

$$\frac{a}{2} \times b$$

where—

a is the daily recovery rate for the proceeding as classified by the Judge under rule 48; and

b is the number of half days estimated by the Judge as the time required for the hearing.

"(4) Unless the Judge otherwise directs, security must be paid to the Registrar at the Court office not later than 10 working days after the case management conference relating to the appeal.

"(5) If an appellant has applied for legal aid under the Legal Services Act 2000 and, at the time of the case management conference, the application has not been determined, the Judge must defer the fixing of security until the application for legal aid has been determined.

"*Matters leading up to hearing*

"**714 Order for transcription of evidence**

"(1) The Court may, on application, order that—

"(a) a transcript be made of the whole or part of the evidence given at the hearing before the decision-maker; and

"(b) the transcript be sent to the Registrar at the Court office.

"(2) An application under subclause (1) must be filed not 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 High Court:

"(b) the working day before the date of the case management conference relating to the appeal.

"(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

"(b) certify that the transcript is correct; and

"(c) send the certified copy of the transcript to the Registrar at the Court office.

"(5) The Court may, on application by the administrative officer, order that a party to the appeal pay some or all of the costs of making a transcript.

"(6) An order made under subclause (1) or subclause (5) may be made on any conditions the Court thinks fit.

"**715 Report by decision-maker**

"(1) The decision-maker must, if the Court directs, provide to the Registrar at the Court office a report setting out—

"(a) any considerations, other than findings of fact, to which the decision-maker had regard in making the decision appealed against, but that are not set out in the decision:

"(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.

"**716 Further evidence**

"(1) A party to an appeal may, without leave, 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.

"(3) The Court may grant leave only if there are special reasons for hearing the evidence, for example, if 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) Unless the Court otherwise directs, further evidence under this rule must be given by affidavit.

"*Conduct of the appeal*

"**717 Decision-maker entitled to be heard on appeal**

Unless the Court otherwise directs, at the hearing of an appeal the decision-maker, other than a District Court, is entitled to be represented and heard on all matters arising in the appeal.

"**718 Appeal to be a rehearing**

All appeals must be by way of rehearing.

"**718A Powers of Court on appeal**

"(1) Having heard an appeal, the Court may—

"(a) make any decision or decisions 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 further or other order the Court thinks fit (including any order as to costs).

"(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 or decisions 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.

"**718B Repayment of judgment sum and interest**

"(1) This rule applies if—

"(a) a party to proceedings before a decision-maker (**party A**) has, in accordance with any 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) If subclause (1) applies, the Court—

"(a) may order party B to repay to party A some or all of the amount paid by party A; and

"(b) may also order party B to pay to party A interest at a rate not greater than the prescribed rate (within the meaning of section 87(3) of the Judicature Act 1908) on the sum ordered to be repaid.

"**718C 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."

15 Transcription of evidence

Rule 887 of the High Court Rules is amended by revoking subclauses (1) and (2), and substituting the following subclauses:

"(1) This rule applies if the Court gives a direction under rule 430(7)(d)(ii) (whether at a case management conference or otherwise).

"(2) The Court may order, subject to any conditions that the Court thinks just, that a transcript be made of any recorded evidence given in the arbitration if it is satisfied that the transcript is required for the proper determination of the appeal."

16 Schedule 1 amended

Schedule 1 of the High Court Rules is amended by revoking forms 33 and 34.

17 New Schedules 5 and 6 added

The High Court Rules are amended by adding the Schedules set out in Schedule 1.

18 Consequential amendments

The High Court Rules are amended in the manner indicated in Schedule 2.

19 Transitional provisions

(1) Rules 234 to 269 of the High Court Rules (as in force immediately before the commencement of these rules) continue to apply, so far as they are applicable, to every interlocutory application filed before that commencement.

(2) Subclauses (3) and (4) each applies to a proceeding (the proceeding) in respect of which,—

- (a) before the commencement of these rules, a praecipe has been filed under rule 430 of the High Court Rules (as in force immediately before the commencement of these rules); or
- (b) the Court has ordered, under rule 436 of the High Court Rules (as in force immediately before the commencement of these rules), that the proceeding be tried; or
- (c) at the commencement of these rules, an application under rule 436 of the High Court Rules (as in force immediately before the commencement of these rules) is pending.

(3) Rules 425 to 438 and rules 441A and 441B of the High Court Rules (as in force immediately before the commencement of these rules) continue to apply, so far as they are applicable, to the proceeding as if these rules had not been made.

(4) Rules 441M to 441Q (as inserted by these rules) do not apply to the proceeding.

(5) Rule 458E (as in force immediately before the commencement of these rules) continues to apply to every application under Part 4A filed before that commencement.

(6) These rules do not affect any order or direction made or given, before the commencement of these rules, under rule 437 or rule 438 of the High Court Rules (as in force before that com-

mencement), and the provisions of the High Court Rules have effect in respect of any such order or direction as if these rules had not been made.

(7) Part 10 of the High Court Rules, as in force immediately before the commencement of these rules, continues to apply to every appeal commenced under that Part before the coming into force of these rules.

Schedule 1

r 17

New Schedules 5 and 6 added to High Court Rules

Schedule 5

r 429

Matters for consideration at case management conference for proceeding other than appeal

1 Whether the proceeding should be moved to another track.

2 A list of the essential issues of fact and law.

3 The categorisation of the proceeding for the purposes of rule 48(2).

4 Whether the pleadings are in final form or require amendment.

5 Whether further particulars of the claim or defence are required.

6 The scope and timetable for any discovery and inspection.

7 Whether additional parties should be joined.

8 The timetable for future events, including—

(a) the filing of any interlocutory applications and how and when they will be dealt with:

(b) any further case management conference (if required).

9 Whether any further conference is to be conducted by telephone or video link.

10 Whether it is appropriate to schedule a conference under rule 442 or to allow time for negotiation or a form of alternative dispute resolution.

11 The duration of the hearing of the proceeding.

12 Whether the hearing is to be heard before a jury.

Schedule 5—*continued*

13 The allocation of a hearing date for the proceeding, and whether a setting down date for the proceeding should be fixed under rule 434(3).

14 Trial directions for evidence and exhibits (to be addressed only if a party to a proceeding that is not a specified proceeding (within the meaning of rule 441A(1)) seeks directions that are not set out in, or that differ from, rules 441B to 441I or rules 441M to 441Q).

15 Any proposals for expert evidence (including prior exchange and the order in which witnesses will be heard).

16 Whether the proceeding should be placed on a short notice list as suitable to be brought on for hearing on not less than 3 working days' notice, subject to the availability of counsel and (where appropriate) the parties and witnesses.

17 Whether the proceeding is suitable as a back-up fixture to be brought on at 5 working days' notice.

18 Any special resources required at the hearing of the proceeding.

19 Whether the proceeding is suitable for assignment to a specific Judge who will, after the assignment, be responsible for all pre-hearing matters and the conduct of the hearing of the proceeding.

Schedule 6

r 430

Standard directions for appeals

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 48(2).

4 The appellant must pay security in the sum of [*$*] not later than 10 working days after the conference.

5 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.

Schedule 6—*continued*

6 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.

7 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.

8 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).

9 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.

10 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 9; and
(b) if the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.

11 The appellant must prepare a bundle of any authorities referred to in the submissions provided in accordance with clauses 8 and 10 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.

Schedule 6—*continued*

12 If the appeal is to be heard by a single Judge, 1 copy of each document must be filed.

13 If the appeal is to be heard by a full Court, 2 copies of each document must be filed.

Schedule 2

r 18

Consequential amendments to High Court Rules

Rule 131(7)

Omit the words "rule 437 or rule 438" and substitute the expression "rule 425".

Rule 141(2)

Omit the expression "Rule 244" and substitute the expression "Rule 244(3)".

Rule 157(2)

Revoke paragraphs (b) and (c) and substitute:

"(b) apply for the allocation of a hearing date for the proceeding—.".

Rule 163

Omit the words "at any time before the proceeding has been set down for trial" and substitute the word ", at any time before the setting down date for the proceeding,".

Rule 187(2)

Omit the words "a proceeding has been set down for trial" and substitute the words "the setting down date for a proceeding".

Rule 270

Revoke paragraph (c).

Rule 335

Omit the expression "rule 437" and substitute the expression "rule 425".

Rule 348(2)

Omit the words "the proceeding is set down for trial" and substitute the words "the setting down date for the proceeding".

Rule 350

Revoke and substitute:

"**350 Place of payment where hearing held at different Court**
If a proceeding for which the setting down date has been determined is to be heard in a different court from that where the pleadings are filed, the payment into Court may be made either in the office of the Court at the place where the proceeding is to be heard or in the office where the pleadings are filed."

Rule 357(1)

Omit the words "the proceeding is set down for trial" and substitute the words "the setting down date for the proceeding".

Rule 439(1)

Omit the words "At the hearing of an application made under rule 438" and substitute the words "At a case management conference".

Rule 440

Omit the expression "rule 438" and substitute the expression "rule 425".

Rule 445

Omit the word "trial" and substitute the word "hearing".

Rule 446G

Omit from subclause (1) the words "Notwithstanding anything in rule 234, where" and substitute the word "If".

Omit from subclause (4) the expression "rule 264" and substitute the expression "rule 259".

Rule 446H

Omit from subclause (1) the expression "rule 437" and substitute the expression "rule 425".

Omit from subclause (2) the words ", in addition to the matters required by rule 437(2),".

Omit from subclause (6) the expression "rule 239" and substitute the expression "rule 240".

Rule 446J

Omit from subclause (1) the words "the rule 438" and substitute the expression "rule 425".

Omit from subclause (4) the words "rules 437, 438, 439, and 441" and substitute the words "rules 425 and 439".

Rule 446M

Revoke this rule.

Rule 458D(1)(a)(viii)

Revoke and substitute:
"(viii) section 43(6) of the District Courts Act 1947:".

Rule 458F

Revoke and substitute:

"**458F Application of provisions relating to interlocutory applications**

"(1) In relation to originating applications, rules 236, 237, 240, 241, 243, 244, 245, 246, 249, 252, 255, 256, and 257 apply,

subject to this Part and to all necessary modifications, as they apply in relation to interlocutory applications.

"(2) Despite subclause (1), rule 236, in its application to an originating application, is subject to the Act under which the originating application is made."

Rule 458I(2)

Revoke and substitute:

"(2) In relation to an interlocutory application made under subclause (1), rule 425 applies, subject to this Part and to all necessary modifications."

Rule 458J(2)

Revoke and substitute:

"(2) In relation to a proceeding commenced by the filing of an originating application, rule 425 applies, subject to this Part and to all necessary modifications."

Rule 458L

Omit the words "rules 247 and 248" and substitute the words "rules 241 and 245".

Rule 465(3)

Omit the words "set the case down for hearing" and substitute the words "apply for the allocation of a hearing date for the proceeding".

Rule 487(4)(a)

Omit the words "rule 437 or rule 438" and substitute the expression "rule 425".

Rule 493

Revoke and substitute:

"**493 Subsequent conduct of proceeding**

"(1) If a jury is discharged under rule 492, the hearing must, if the parties so agree, proceed before the Judge presiding at the hearing and judgment may be given by that Judge.

"(2) If a jury is discharged under rule 492 and the parties do not agree to the hearing proceeding before the Judge presiding at the hearing, each party must pay his or her own costs of the hearing and either party may apply for the allocation of a new hearing date for the proceeding."

Rule 501(2)

Omit the expression "rule 438" and substitute the expression "rule 425".

Rule 570(3)

Omit the expression "rule 264" and substitute the expression "rule 259".

Rule 632

Omit from subclause (1) the words "rules 234 to 237" and substitute the words "rules 237 and 240".

Revoke subclause (2).

Rule 634(1)

Omit from paragraph (b) the expression "rule 237(1)" and substitute the expression "rule 240(2)".

Revoke paragraph (c).

Rule 700H

Omit the words "Rules 436 to 442" and substitute the words "Rules 425, 439, 440, and 442".

Rule 700ZI(2)

Omit the expression "rule 437" and substitute the expression "rule 425".

Rule 722

Revoke and substitute:

"**722 Application of Part 10**

The following rules apply, with all necessary modifications, to every appeal to which this Part applies:

"(a) rule 704(3) and (4) (as to extension of time for appeal):

"(b) rule 707 (as to power to dispense with service):

"(c) rule 710 (as to stay of proceedings)."

Rule 724E(2)

Revoke and substitute:

"(2) Rule 714(2) to (6) applies, with all necessary modifications, in relation to an application for an order under subclause (1) as if the application were an application for an order under rule 714(1)."

Rule 724H

Revoke.

Rule 729(2)

Omit the expression "rule 237" and substitute the expression "rule 240(2)".

Rule 798(2)(m)

Revoke and substitute:

"(m) rules 433 to 438AA (allocation of hearing dates and setting down date):".

Rule 830(1)

Omit the expression "269" and substitute the expression "262".

Rule 885

Revoke.

Rule 886(1)

Revoke and substitute:

"(1) This rule applies if the Court gives a direction under rule 430(7)(d)(i) (whether at a case management conference or otherwise)."

Rule 888

Revoke.

Rule 893(2) to (6)

Revoke.

Schedule 1: Form 6: clause 11

Omit the words "proceeding is set down for trial" and substitute the words "setting down date".

Schedule 1: Form 19

Omit the expression "Rule 236(1)" and substitute the expression "r 237(1)".

Omit the words "[*State any statutory provision, regulation, rule, or principle of law relied upon*]" and substitute the words "[*refer to any particular provision of an enactment or principle of law or judicial decision relied on*]".

Schedule 1: Form 20

Omit the expression "Rule 236(1)" and substitute the expression "r 237(1)".

Omit the words "[*State any statutory provision, regulation, rule, or principle of law relied upon*]" and substitute the words "[*refer to any particular provision of an enactment or principle of law or judicial decision relied on*]".

Schedule 1: Form 21

Omit the words "[*Party opposing*]" wherever they occur and substitute in each case the word "[*respondent*]".

Omit the words "[*State statutory provision, regulation, rule, or principle of law relied upon*]" and substitute the words "[*refer to any particular provision of an enactment or principle of law or judicial decision relied on*]".

Schedule 1: Form 22

Omit the expression "Rule 267(2)" and substitute the expression "r 257(3)".

Diane Morcom,

Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules amend the High Court Rules. The rules come into force on 24 November 2003.

Rule 3 sets out new definitions that relate to interlocutory applications and case management conferences.

Rule 4 inserts a *new rule 43A*, which requires a party's solicitor promptly to notify the party of any order or direction that affects the party.

Rule 5 replaces existing rules 234 to 269 with *new rules 234 to 262*, which relate to interlocutory applications. The changes made by the new rules include—

- •• postal filing for all interlocutory applications:
- •• the removal of existing restrictions on the counsel or solicitors who may certify applications for *ex parte* applications:
- •• the conduct of hearings of interlocutory applications by telephone or video link:
- •• a process for the Court's consideration of *ex parte* applications. This includes a power to adjourn the determination of an application until it has been served on persons affected by it:

- the relaxation of the requirement in existing rule 267 to draw up interlocutory orders:
- the replacement of existing rule 264, which relates to reviews of orders, by 2 new rules. *New rule 259* provides for the variation or rescission of an interlocutory order made by a Judge, if the order is shown to be wrong. New rule 260 provides for the variation of orders relating to the management of a proceeding. Such orders may be varied if there has been a change in circumstances. The power to vary under *new rule 260* also applies to orders made by a Master in Chambers.

Rule 6 revokes existing rule 277, which relates to the enforcement of interlocutory orders. The substance of this rule is now contained in new rule 258.

Rule 7 substitutes *new rules 425 to 438AA*. The new rules provide for a case management system that includes the allocation of hearing dates and setting down dates. The provisions incorporate into the High Court Rules components of a case management system currently set out in a practice direction. They make, however, some important changes to existing practices. The aim has been to streamline pre-trial procedures so as to reduce legal expense and court time required for conferences. The principal features of the new system include—

- the division of proceedings, for the purpose of the case management system, into 2 tracks: the swift track and the standard track. Subject to the Court's power to move proceedings between tracks, all types of proceedings are on the standard track other than the following types of proceeding, which are on the swift track:
  - appeals under Parts 10 and 17:
  - applications by plaintiffs for summary judgments:
  - originating applications:
  - company liquidation applications:
  - bankruptcy applications:
- case management conferences are held so that the Court may assist the parties in the just, speedy, and inexpensive determination of the proceeding. This includes the determination of procedural matters and, if practicable, the determination of outstanding interlocutory applications:

- a requirement that a case management conference for a proceeding on the standard track be held within 35 working days after the commencement of the proceeding. If a second case management conference is held, it must be held within 75 working days after the commencement of the proceeding:
- case management conferences for appeals must be held within 15 working days after the date on which the notice of appeal is filed.

New rules 432 to 438AA relate to the allocation of hearing dates and setting down dates. The new rules discontinue the use of praecipes, which, under the existing rules, are filed by parties to set a proceeding down for trial and to obtain a hearing date. Under the new rules, the hearing date for a proceeding on the standard track is allocated by the Court or by the Registrar at the direction of the Court. The Court may also fix the setting down date when it allocates the hearing date. But if it does not do so, the setting down date is 40 working days before the hearing date or, if the hearing date is sooner than 40 working days, the date on which the hearing date is allocated.

Rule 8 revokes existing rule 441, which relates to the power of the Court to convene a conference of the parties. The rule has been superseded by the case management system enacted by rule 7.

Rule 9 restates existing rule 441A, which governs the application of rules relating to the statements of witnesses. New rule 441A extends the application to the new rules inserted by rule 11, which relate to common bundles of documents intended to be used in evidence at the hearing. Rule 9 also restates existing rule 441B, which relates to the obligation of the plaintiff to give written statements of witnesses to the other parties before trial. The change made to the rule is partly consequential on the abolition of praecipes, as the plaintiff's obligation arises, under the existing rule, 21 days after the filing of the praecipe. Under *new rule 441B*, the plaintiff's obligation arises 15 working days after the setting down date or on a date fixed by the Court for the purpose.

Rule 10 amends rule 441C, which relates to the service of the statements of witnesses by parties other than the plaintiff. The existing deadline of 21 days after service of the plaintiff's statements is changed to 15 working days.

Rule 11 inserts *new rules 441M to 441Q*, which relate to the preparation of a common bundle of documents intended to be used in evidence in the proceeding. Unless the Court otherwise directs, the new rules will apply to all proceedings other than specified proceedings, that is proceedings on the swift track, proceedings in which evidence is to be given by affidavit, or proceedings in which an agreed statement of facts has been filed. In the absence of a contrary direction by the Court, the new rules will not apply to specified proceedings. *New rule 441M* requires a party who wishes to rely on documents at a hearing to include those documents in an index and to serve the index on the other parties. *New rule 441N* requires the plaintiff to include all documents referred to in the indexes of documents in a common bundle of documents. The plaintiff must, not later than 5 working days before the hearing, file 2 copies of the common bundle in the Court and serve 1 copy of the common bundle on every other party. *New rule 441O* raises a number of presumptions relating to the authenticity and description of documents that have been included in the common bundle. It also provides that a document in the common bundle is received into evidence when a witness refers to it in evidence or when counsel refers to it in submissions. *New rule 441P* provides that a document that is not included in the common bundle may be produced at the hearing only with the leave of the Court. *New rule 441 Q* requires the plaintiff to file and serve, 2 working days before the hearing, a copy of the plaintiff's opening and a chronology of events.

Rule 12 substitutes rule 442, which relates to settlement conferences convened by Judges. The rules make 2 substantive changes. First, pre-hearing conferences may be convened by Masters as well as by Judges. Second, a Judge can preside at both the conference and the substantive hearing only if all parties taking part in the conference consent and the Judge is satisfied that there are no circumstances that would make it inappropriate for the Judge to do so.

Rule 13 revokes rule 499(2), which relates to deposits for expenses involved in bringing inmates to Court.

Rule 14 replaces Part 10 of the High Court Rules with a new Part.

The District Courts Amendment Act 2002, which also comes into force on 24 November 2003, replaces Part 5 of the District Courts Act 1947 with a new Part 5. The procedure for appeals from decisions of District Courts to the High Court was governed by the former Part

5. The effect of the new Part 5 is to require the procedural rules for appeals from District Courts to the High Court to be prescribed by the High Court Rules.

The *new Part 10* sets out, with certain exceptions, in a single set of rules the procedure for appeals to the High Court from decisions of all courts, including District Courts, tribunals, and other decision-makers. The exceptions are—

- appeals under the Summary Proceedings Act 1957, other than appeals under Acts that apply the appeal provisions of the Summary Proceedings Act 1957:
- appeals under the Arbitration Act 1996:
- appeals under the Bail Act 2000:
- appeals and references to the High Court under Part 11 of the High Court Rules.

Part 10 of the High Court Rules, as in force before the commencement of the new rules, continues to apply to appeals commenced under that Part before the new rules come into force.

Rule 15 amends rule 887, which relates to transcripts of evidence in appeals against arbitral awards. *New subclause (1)* is consequential on *new rule 430*. *New subclause (2)* removes the existing distinction between appeals based on the ground of no evidence and appeals on other grounds, and instead empowers the Court to order the transcription of any evidence that is required for a proper determination of the appeal.

Rule 16 consequentially revokes 2 forms.

Rule 17 adds new Schedules 5 and 6 to the High Court Rules. Schedule 5 deals with matters to be considered at a case management conference for proceedings other than appeals. Schedule 6, sets out standard directions for appeals.

Rule 18 consequentially amends the High Court Rules in the manner set out in *Schedule 2*.

Rule 19 sets out transitional provisions.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 23 October 2003.
