



High Court Amendment Rules 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 6th day of April 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, His 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

		Page
1	Title	2
2	Commencement	2
3	Principal rules amended	2
4	Methods of service	2
5	Judgment when there is no defence or when no cause of action can succeed	2
6	New rule 20.8 substituted	2
	20.8 Filing notice of appeal	2

7	Schedule 1 amended	3
8	Schedule 6 amended	3
9	Transitional provision	3
	Schedule	4
	New form G 39	

Rules

1 Title

These rules are the High Court Amendment Rules 2009.

2 Commencement

These rules come into force on 15 May 2009.

3 Principal rules amended

These rules amend the High Court Rules set out in Schedule 2 of the Judicature Act 1908.

4 Methods of service

Rule 6.1(1)(d) is amended by omitting “rule 5.16” and substituting “rule 5.44(1)(e)”.

5 Judgment when there is no defence or when no cause of action can succeed

Rule 12.2(1) is amended by omitting “any cause of action in the statement of claim or to a particular cause of action” and substituting “a cause of action in the statement of claim or to a particular part of any such cause of action”.

6 New rule 20.8 substituted

Rule 20.8 is revoked and the following rule substituted:

“20.8 Filing notice of appeal

“(1) Subject to any contrary enactment, a notice of appeal must be filed in—

“(a) the registry of the court nearest to the place where the hearing took place of the matter under appeal; or

- “(b) if no hearing took place, in the registry of the court nearest to the place where the decision appealed against was given; or
 - “(c) any other registry of the court in which the parties agree that the notice of appeal may be filed.
- “(2) If subclause (1)(c) applies, the parties must endorse on, or file with, the notice of appeal a memorandum recording their agreement to the filing of the notice of appeal in the registry of the court in which it is filed.
- “(3) The court may on application or on its own initiative in the circumstances set out in subclause (4) direct as follows:
- “(a) the notice of appeal must be filed in another registry of the court; or
 - “(b) the documents relating to the appeal must be transferred to another registry of the court.
- “(4) The circumstances are that it appears to the court that—
- “(a) a notice of appeal has been filed in the wrong registry of the court; or
 - “(b) another registry of the court would be more appropriate.
- “(5) Filing a notice of appeal in the wrong registry of the court does not invalidate an appeal.”

7 Schedule 1 amended

Schedule 1 is amended by revoking form G 39 and substituting the form set out in the Schedule of these rules.

8 Schedule 6 amended

Schedule 6 is amended by inserting the following paragraph after paragraph 3:

- “3A The registry in which the appeal is to proceed as determined by rule 20.8(1) or by any direction given under rule 20.8(3).”

9 Transitional provision

Rule 20.8, as in force immediately before the commencement of these rules, continues to apply to appeals filed before the commencement of these rules.

Schedule
New form G 39
Form G 39
Search order

r 7

r 33.2(3)

To the Respondent [*name*]

- 1 This order notifies you that the court is satisfied—
 - (a) the applicant has a strong prima facie case on an accrued cause of action; and
 - (b) the potential or actual loss or damage to the applicant will be serious if this search order is not made; and
 - (c) there is sufficient evidence in relation to you that—
 - (i) you possess important evidentiary material; and
 - (ii) there is a real possibility that you might destroy that material, or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.
- 2 You are required to permit the persons named or described above paragraph 4 to enter the premises described in paragraph 5 for the purpose of securing or preserving the evidentiary material listed or described in paragraph 6.
- 3 The applicant's undertaking as to damages is attached.

To the following persons [*names or description of persons authorised to enter and search*]

- 4 This order authorises you to search for, inspect, and remove the things listed or described in paragraph 6 and to take any further steps set out in paragraph 7*.
*Omit reference to further steps if none is authorised.
- 5 The specified premises are: [*full address of premises*].
- 6 The things that may be searched for and inspected or removed are: [*set out comprehensive list or description of these things*].
- 7 *Omit this paragraph if the search order does not authorise further steps*
The persons named or described above paragraph 4 may take the following further steps: [*list steps*].

Form G 39—*continued*

- 8 The following independent solicitors are appointed to supervise the carrying out of this order and to report to the court: *[full names and addresses of independent solicitors]*.
- 9 *Omit this paragraph if the court has not included this additional power.*
The independent solicitors are also authorised to do the following things: *[specify things]*.

To the Respondent and the persons named or described above paragraph 4

- 10 On *[date fixed under rule 33.6(3)]* the court will consider a report on the search from the independent solicitors. The applicant and the respondent and the independent solicitors are entitled to be heard on that date. The court will also consider the following:
- (a) what is to happen to any goods removed from the premises or to any copies that have been made:
 - (b) how the confidentiality to which the respondent is entitled is to be maintained:
 - (c) any privilege claim:
 - (d) any application by a party:
 - (e) any issue raised by an independent solicitor.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: *[date]*

Michael Webster,
for 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, which come into force on 15 May 2009, amend the High Court Rules.

Rule 4 amends rule 6.1, which relates to methods of service, to correct a cross-reference.

Rule 5 amends rule 12.2(1), which relates to cases where summary judgment may be given for the plaintiff. Under the predecessor of rule 12.2, summary judgments could be given for a part of a cause of action. The amendment clarifies that the High Court continues to have that jurisdiction.

Rule 6 substitutes a *new rule 20.8* of the High Court Rules, which relates to the filing of notices of appeal. Under the new rule, a notice of appeal will have to be filed in the registry nearest the place where the matter under appeal was heard, rather than the place where the decision was given. However, in cases where the decision appealed against was given without a hearing, the proper registry will continue to be the registry nearest the place where the decision was given.

Rule 7 substitutes a *new form G 39*, which sets out the form for search orders, also known as *Anton Piller* orders. The substituted form aligns the wording of the order more closely with rule 33.2 to make it clear that the order requires the respondent to permit the persons identified by the order to enter the respondent's premises, but does not authorise those persons to enter those premises without that permission.

Rule 8 amends Schedule 6, which sets out the standard directions to be given for appeals. The amendment adds a direction concerning the registry in which the appeal is to proceed.

Rule 9 clarifies that existing appeals are not affected by the changed provisions concerning the location for the filing of notices of appeal.

2009/75

High Court Amendment Rules 2009

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 9 April 2009.

These rules are administered by the Rules Committee.
