



New South Wales

DISTRICT COURT ACT 1973—RULE

1. This rule is made by the Rule Committee on 8 October 1996, and has effect on and from 18 October 1996.
2. The District Rules 1973 are amended as follows:
 - (a) Part 1 rule 4 (1)
 - (i) Omit the definition of “document”, insert instead:

“document” means any record of information, and includes:

 - (a) anything on which there is writing;
 - (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
 - (d) a map, plan, drawing or photograph;
 - (ii) Insert in alphabetical order:

“claim for relief” means any claim which the Court has jurisdiction to determine in an action;

“defendant” includes any person against whom a claim for relief is made;

“plaintiff” includes any person making a claim for relief;
 - (b) Part 5 rule 1
Omit the definitions of “defendant” and “plaintiff”.
 - (c) Part 6 rule 6
Omit the rule.
 - (d) Part 6 rule 13
Omit the rule.
 - (e) Part 6 rule 60
Omit the rule.
 - (f) Part 11A
Before rule I insert “DIVISION I—*Summary Judgment*”

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(g) Part 11A rule 1

Omit the rule insert instead:

Application

1. This Division applies to all proceedings except proceedings in which there are issues of fact:

(a) on a charge of fraud against a party; or

(b) on a claim in respect of defamation, malicious prosecution or false imprisonment.

(h) Part 11A rule 2 (5)

Omit “rules 2 (1), (3), 4, 5 and 6”.

(i) Part 11A rule 2A

After Part 11A rule 2 insert:

Cross-claim

2A. (1) A party may apply under this Division notwithstanding that, by rule 1, this Division does not apply to the proceedings in relation to a claim made by some other party.

(2) Where the Court gives judgment against a party under this Division, and that party claims relief against the party obtaining the judgment, the Court may stay execution on, or other enforcement of, the judgment until determination of the claim by the party against whom the judgment is given.

(j) Part 11A Division 2

After Part 11A rule 2A insert: “DIVISION 2—*Summary stay or dismissal*”.

(k) Part 11A rule 3

Omit the headnote, insert instead “**Frivolity, etc**”

(l) Part 11A rule 3 (2)

Omit “rules 2 (1), (3), 3, 4, 5 and 6”.

(m) Part 11A rule 4

Omit the rule, insert instead:

DIVISION 3—*General*

Residue of proceedings

4. Where, in any proceedings:

(a) a party applies under this Part for:

(i) judgment pursuant to Division 1; or

- (ii) an order for stay or dismissal pursuant to Division 2; and
- (b) the proceedings are not wholly disposed of by judgment or dismissal or the proceedings are not wholly stayed,
 - the proceedings may be continued as regards any claim or part of a claim not disposed of by judgment or dismissal and not stayed.
- (n) Part 14 rule 4
 - Omit the rule.
- (o) Part 15 rule 2 (1)
 - Omit “which are contested either by the filing of a notice of grounds of defence, a notice of cross-claim, a third party notice, an answer, an affidavit in reply or by an appearance”.
- (p) Part 15 rule 2 (2)
 - Omit “to admit facts” where last occurring.
- (q) Part 15 rule 4
 - (i) Renumber the rule as rule 5;
 - (ii) Omit “which are contested either by the filing of a notice of grounds of defence, a notice of cross-claim, a third party notice, an answer, an affidavit in reply or by an appearance”.
- (r) Part 15 rule 5
 - (i) Renumber the rule as rule 4;
 - (ii) After “Part 22” insert “which relates to discovery and inspection of documents”.
- (s) Part 15 rule 7
 - Omit the rule.
- (t) Part 16 rule 1
 - Omit the rule, insert instead:
Application
 - 1. (1) An interlocutory or other application, in or for the purposes of or in relation to an action, shall be made by motion.
 - (2) In this Part, the person making the application is referred to as the applicant and any other party to the application is referred to as a respondent.
- (u) Part 16 rule 2 (I)
 - (i) After “he” insert “or she”;
 - (ii) Omit “interested party”, insert instead “respondent”.

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- (v) Part 16 rule 2 (2) (b)
Omit “party interested, other than the applicant,”, insert instead “respondent”.
- (w) Part 16 rule 2 (3) (e)
Omit the paragraph, insert instead:
 - (e) name (or, if a party to the action, identify) the applicant and each respondent; and
 - (f) where the applicant does not already have an address for service in the action, state an address for service.
- (x) Part 16 rule 2 (4)
After Part 16 rule 2 (3) insert:
 - (4) Costs need not be specifically claimed.
- (y) Part 16 rule 4
Omit the rule.
- (z) Part 16 rule 5
Omit the rule, insert instead:
Absence of party
 - 5. The Court may hear and dispose of a motion in the absence of any party to the motion where notice of the motion has been duly served on the absent party.
- (aa) Part 16 rule 6
Omit the rule, insert instead:
Further hearing
 - 6 (1) Where notice of a motion for any day has been filed or served, and the motion is not disposed of on that day:
 - (a) the Court may hear and dispose of the motion on any later day fixed by the Court; and
 - (b) subject to subrule (2), filing or service of further notice of motion shall not be required.
 - (2) Subrule (1) (b) shall not have effect:
 - (a) where the Court directs the filing or service of a further notice of motion; or
 - (b) where service is required on a person on whom notice of the motion has not previously been served.

(ab) Part 17 rule 1 (1)

- (i) Omit “on the application of any party or without any such application, order, on terms”, insert instead “on application by any party or of its own motion, order”;
- (ii) Omit “filed by him”.

(ac) Part 17 rule 1 (3A)

After “shall” insert “, subject to rule 4.”.

(ad) Part 17 rule 2 (1A)

- (i) Renumber the subrule as subrule (2);
- (ii) Omit “subrule (1B)”, insert instead “subrules (4) and (5)”.

(ae) Part 17 rule 2 (1B), (2), (3)

Omit the subrules, insert instead:

(3) Subject to subrules (4) and (5), this rule applies to an amendment which would have the effect that a person is added as, or ceases to be, a party, as it applies to other amendments.

(4) This rule does not apply to an amendment which would have the effect of adding a person as a plaintiff unless:

- (a) the plaintiff immediately before the amendment is made acts by a solicitor; and
- (b) that solicitor at the time the amendment is made certifies on the amended document:
 - (i) that he acts for the person added as a plaintiff; and
 - (ii) that the person consents to being added as a plaintiff.

(5) This rule does not apply to an amendment which would have the effect that a person ceases to be a party unless that person consents to ceasing to be a party.

(af) Part 17 rule 2A

After Part 17 rule 2 insert:

Pleading by opposite party

2A. (1) This rule applies, subject to any order of the Court, where a party amends pursuant to or without leave of the Court.

(2) Where a plaintiff amends his statement of claim:

- (a) if the defendant has filed his defence, he may amend his defence; and

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(b) the plaintiff shall not be entitled to have default judgment entered up, or an order for judgment made, in the action before the expiry of 28 days after service on the defendant of the statement of claim or 14 days after service on the defendant under rule 9, whichever expires later.

(3) The right to amend under subrule (2) (a) is in addition to the right to amend under rule 2.

(4) Where the following is the order of events:

- (a) a party (in this subrule called the first party) files a pleading (in this subrule called the first pleading);
- (b) an opposite party files a pleading (in this subrule called the second pleading) in answer to the first pleading;
- (c) the first party amends the first pleading;
- (d) the opposite party does not amend the second pleading within the time allowed by this rule,

then:

- (e) the second pleading shall have effect as a pleading in answer to the amended first pleading; and
- (f) Part 9 rule 15 (2) shall not apply, but, if no further pleading between those parties is filed, there shall be, at expiration of the time mentioned in paragraph (d), an implied joinder of issue on the second pleading.

(ag) Part 17 rule 3 (1)

- (i) After “2 (1),” insert “or rule 2A”;
- (ii) Omit “on terms, but”.

(ah) Part 17 rule 4 (1)

Omit “(2)”.

(ai) Part 17 rule 4 (2)

Omit the subrule.

(aj) Part 17 rule 4 (5)

After “a claim” where occurring insert “for relief”.

(ak) Part 17 rule 4 (5A)

After Part 17 rule 4 (5) insert:

(5A) An amendment made pursuant to an order made under this rule shall, unless the Court otherwise orders, relate back to the date of filing of the statement of claim.

- (al) Part 17 rule 5
Omit the headnote, insert instead “**Duration of leave or consent**”.
- (am) Part 17 rule 5
 - (i) After “rule 2” insert “(which relates to the extension and abridgment of time)”;
 - (ii) Omit “under this Part”.
- (an) Part 17 rule 5 (2)
After Part 17 rule 5 (1) insert:
 - (2) Subject to Part 3 rule 2, where, at the request of a party, each other party gives consent to amend a document, then, if the requesting party does not amend the document in accordance with the consent or consents before the expiration of 14 days after the date on which the consent or the first of the consents is given the consent or consents shall cease to have effect.
- (ao) Part 17 rule 6 (1)
 - (i) Omit “it” where first occurring, insert instead “the Court”;
 - (ii) Omit ‘0 and may make any such order or leave conditional on compliance with any such directions’.
- (ap) Part 17 rule 7 (1)
Omit “authorised under this Part”.
- (aq) Part 17 rule 7 (2) (a)
Omit “where”, insert instead “if”.
- (ar) Part 17 rule 7 (2) (b)
Omit “where the amendment is made by a party without leave”, insert instead “otherwise”.
- (as) Part 17 rule 8
Omit “authorised under this Part”.
- (at) Part 17 rule 9
Omit “who filed the document”, insert instead “making the amendment”.
- (au) Part 17 rule 10 (1)
Omit “without any such application”, insert instead “of its own motion”.

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(av) Part 17 rule 11

Omit the rule.

(aw) Part 18 rule 2 (l)

Omit “notice of grounds of”.

(ax) Part 18 rule 2A

Omit the rule.

(ay) Part 18 rule 3 (1)

Omit the subrule, insert instead:

(1) Where a plaintiff makes default in complying with any order or direction as to the conduct of the proceedings, or does not prosecute the proceedings with due dispatch, the Court may, on application by any party or of its own motion, dismiss the proceedings or make such other order as the Court thinks fit.

(az) Part 18 rule 3 (2)

Omit “6”.

(ba) Part 18 rule 4 (2)

Omit “the consent shall be endorsed by each consenting party on the notice before filing”, insert instead “, the notice under subrule (1) must bear the consent of each consenting party”.

(bb) Part 18 rule 4 (3)

Omit the subrule, insert instead:

(3) A notice under subrule (1) effecting a discontinuance under the rule 1 (a) may contain a statement that no order will be sought as to the costs occasioned by the discontinued claim and incurred before service of the notice.

(bc) Part 18 rule 5

Omit “on the day of filing or as soon as practicable thereafter”, insert instead “as soon as practicable”.

(bd) Part 18 rule 6

Omit the rule.

(be) Part 18 rule 7

Omit “be a defence to proceedings for the same, or substantially the same, cause of action”*, insert instead “prevent the plaintiff from bringing fresh proceedings or claiming the same relief in fresh proceedings”.

- (bf) Part 18 rule 8 (a)
Omit “thereof”, insert instead “of any claim for relief”.
- (bg) Part 19A rule I (2)
 - (i) In paragraph (b) omit “Part.”, insert instead “Part; and”;
 - (ii) After paragraph (b) insert:
 - (c) where the offeror has made or been ordered to make an interim payment referred to in Subdivision 4 of Division 3 of the Act to the offeree, state whether or not the offer is in addition to the payment so made or ordered.
- (bh) Part 19A rule 3 (l)
Omit “verdict or judgment”, insert instead “the time prescribed by subrule (8)”.
- (bi) Part 19A rule 3 (4) (b), (c)
Omit the paragraphs, insert instead:
 - (b) the time prescribed by subrule (8) in respect of the claim to which the offer relates,
- (bj) Part 19A rule 3 (8)
After Part 19A rule 3 (7) insert:
 - (8) The time prescribed for the purposes of subrules (l) and (4) and Part 39A rule 25 (3) is:
 - (a) where the trial is before a jury—after the Judge begins to sum up to the jury;
 - (b) where the action has been referred under section 63A of the Act for determination pursuant to the Arbitration (Civil Actions) Act 1983—after the conclusion of the arbitration hearing; or
 - (c) in any other case—after the Judge gives his decision or begins to give his reasons for his decision on a judgment (except an interlocutory judgment), whichever is the sooner.
- (bk) Part 19A rule 7 (2)
 - (i) Omit “except as provided by rule 9 (9)”, insert instead “subject to subrule (3)”;
 - (ii) Omit “, until after all questions of liability and the relief to be granted have been determined”.

(bl) Part 19A rule 7 (3)

Omit the subrule, insert instead:

(3) An offer made in accordance with this Part may be disclosed to the Court or, as the case may require, to the arbitrator:

- (a) for the purposes of Part 39A rule 25 (4) or (6)—after all questions of liability and the relief to be granted have been determined;
- (b) as provided by Part 39A rule 25 (9);
- (c) where a notice of offer provides that the offer is not made without prejudice; or
- (d) in so far as disclosure is necessary to enable the offer to be taken into account for the purposes of section 83A (3) of the Act or section 73 (4) of the Motor Accidents Act 1988 or section 151M of the Workers Compensation Act 1987.

(bm) Part 19A rule 8 (2)

- (i) Omit “pleaded a cross-claim, or filed a third party notice,” insert instead “made a cross-claim”;
- (ii) Omit “, cross-claim, or claim on the third party notice”, insert instead “on the cross-claim”

(bn) Part 19A rule 9

Omit the rule.

(bo) Part 19A rule 10

Omit “rule 9”, insert instead “Part 39A rule 25”.

(bp) Part 19A rule 11

Omit the rule.

(bq) Part 22A rule 6 (3) (c)

Omit the paragraph, insert instead:

- (c) that evidence in answer to a question in terms of the interrogatory could not be adduced in the action over the objection of any person, by virtue of the operation of Part 3.10 (other than sections 128 and 130) of the Evidence Act 1995;
- (d) where the party is a natural person, that an answer to the interrogatory may tend to prove that the party:
 - (i) has committed an offence against or arising under an Australian law or a law of a foreign country; or

(ii) is liable to a civil penalty, within the meaning of section 128 (I) of the Evidence Act 1995;

(e) that an answer to the interrogatory would contain information that relates to matters of state within the meaning of section 130 of the Evidence Act 1995, unless and until the Court directs that the information cease to be privileged.

(br) Part 22A rule 11
Omit the rule.

(bs) Part 26 rule 7 (7)
Omit the subrule.

(bt) Part 31 rule 6
Omit the rule.

(bu) Part 31 rule 13A (1)
(i) Omit “directs the entry of”, insert instead “gives”;
(ii) After “Act” insert “or section 73 of the Motor Accidents Act 1988 or section 151M of the Workers Compensation Act 1987”.

(bv) Part 32 rule 7
Omit the rule.

(bw) Part 33 rule 6
Omit the rule.

(bx) Part 34 rule 11
Omit the rule.

(by) Part 37 rule 7
Omit the rule.

(bz) Part 38 rule 5
Omit the rule.

(ca) Part 39A rule 7A
After Part 39A rule 7 insert:

Order for payment

7A. Subject to this Part, a party to proceedings in the Court shall not be entitled to recover any costs of or incidental to the proceedings from any other party to the proceedings except under an order of the court.

(cb) Part 39A rules 18–31

After Part 39A rule 17 insert:

Appeals under the Victims compensation Act 1987

18. (1) In this rule, “appeal” means an appeal to which Division 7 of Part 6 (Appeals under the Victims compensation Act 1987) applies.

(2) In exercising its discretion as to the costs of an appeal the Court may take into account the conduct by the parties of the proceedings before the Tribunal and, where fresh evidence is adduced on the appeal, whether the evidence could reasonably have been adduced in those proceedings.

(3) Where the Court orders the respondent to pay the appellant’s costs of an appeal, those costs shall be \$2,600.00 (including any amount claimed for fees paid to counsel) in addition to any necessary disbursements other than counsel’s fees, unless the Court in the special circumstances of the case otherwise orders.

(4) Unless the Court otherwise orders, necessary disbursements for the purposes of subrule (3) shall, in default of agreement between the parties to the appeal, be assessed.

(5) Where the Court orders under subrule (3) that the appellant’s costs of an appeal shall not be the amount prescribed by that subrule, the orders that the Court may make include orders that the costs shall be another amount (greater or less than the amount so prescribed) and orders that the costs shall be assessed, or otherwise ascertained, in accordance with any direction of the Court.

(6) Where the Court grants an application for further time to institute an appeal it shall not order the respondent to pay the appellant’s costs of the application unless it is of opinion that the respondent has unreasonably failed to consent to the extension sought.

(7) Where the appellant withdraws an appeal the Court may, on the application of the respondent and unless the Court is satisfied that the decision to institute the appeal was reasonable, order the appellant to pay the respondent’s costs of the appeal incurred before the withdrawal.

Judgment by confession or agreement

19. Where judgment in favour of the plaintiff is entered up under Part 14 rule 2 or 3:

- (a) before the expiration of a period of 28 days after service of the statement of claim in the action, there shall be added to the judgment debt the costs of issuing and serving the statement of claim; or
- (b) after the expiration of that period, there shall be added to the judgment debt the costs of issuing and serving the statement of claim, or the amount of costs incurred by the plaintiff before the judgment and allowed on an assessment, as the plaintiff shall require.

Non-admission of fact

20. (1) Where a party to any proceedings (in this rule called the “disputing party” serves a notice disputing a fact under Part 15 rule 2 (2) and afterwards that fact is:

- (a) proved in the proceedings; or
- (b) admitted for the purpose of the proceedings by the disputing Party,
unless the Court otherwise orders, the disputing party shall, after the conclusion of the proceedings, pay the costs of the party upon whom the notice is served, assessed on an indemnity basis, occasioned by:
- (c) proof of the fact; or
- (d) preparation for the purpose of proving the fact,
as the case may be

(2) An entitlement to costs under this rule shall not be affected by any order as to costs unless that order refers to the notice by the disputing party giving rise to the entitlement.

(3) This rule has effect notwithstanding rules 24 and 25.

Non-admission of document

21. (1) Where a party to any proceedings (in this rule called the “disputing party”) serves a notice disputing the authenticity of a document under Party 15 rule 4 (2), and afterwards the authenticity of the document is:

- (a) proved in the proceedings; or
- (b) admitted for the purpose of the proceedings by the disputing party,
unless the Court otherwise orders, the disputing party shall, after the conclusion of the proceedings, pay the costs of the party upon whom the notice is served, assessed on an indemnity basis, occasioned by:

- (a) proof of authenticity of the document; or
- (b) preparation for the purpose of proving the authenticity of the document,

as the case may be.

(2) An entitlement to costs under this rule shall not be affected by any order as to costs unless that order refers to the notice by the disputing party giving rise to the entitlement.

(3) This rule has effect notwithstanding rules 24 and 25.

Interlocutory application

22. Subject to this Part the costs of any application or other step in any proceedings shall, unless the Court otherwise orders, be paid and otherwise dealt with in accordance with the provisions of this Part or the provisions of any order relating to the general costs of the proceedings.

Amendment of pleading without leave

23. Where a party amends a pleading without leave, unless the Court otherwise orders, he or she shall, after the conclusion of the proceedings, pay the costs of and occasioned by the amendment.

Discontinuance

24. Where, pursuant to Part 18 rule 1, a party to any proceedings discontinues the proceedings without leave as to the whole or any part of the relief claimed by him against any other party, the discontinuing party shall, unless:

- (a) the Court otherwise orders; or
- (b) the notice of discontinuance contains a statement under Part 18 rule 4 (3),

pay the costs of the party against whom the discontinued claim is made, occasioned by the discontinued claim and incurred before service of notice of the discontinuance.

Offer of compromise

25. (I) Subject to subrule (2), upon the acceptance of an offer of compromise in accordance with part 19A rule 3 (4), the defendant shall, unless the Court otherwise orders, pay the costs in respect of the claim by the plaintiff against the defendant up to and including the day the offer was accepted.

(2) If a notice of offer contains a term which purports to negative or limit the operation of subrule (1), that offer shall be of no effect for any purpose under Part 19A or this rule.

(3) Subrules (4)–(6) apply to an offer which has not been accepted at the time prescribed by Part 19A rule 3 (8).

(4) Where an offer is made by a plaintiff and not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim to which the offer relates no less favourable to the plaintiff than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall, subject to rule 12, be entitled to an order against the defendant for the plaintiff's costs in respect of the claim from the day on which the offer was made, assessed on an indemnity basis, in addition to the plaintiff's costs incurred before that time, assessed on a party and party basis.

(5) For the purpose of subrule (4), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the Court otherwise orders, the plaintiff shall be entitled to the plaintiff's costs in respect of the claim from 11 am on the day following the day on which the offer was made, assessed on an indemnity basis, in addition to the plaintiff's costs incurred before that time, assessed on a party and party basis.

(6) Where an offer is made by a defendant and not accepted by the plaintiff, and the plaintiff obtains an order or judgment on the claim to which the offer relates not more favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall, subject to rule 12, be entitled to an order against the defendant for the plaintiff's costs in respect of the claim up to and including the day the offer was made, assessed on a party and party basis, and the defendant shall be entitled to an order against the plaintiff for the defendant's costs in respect of the claim thereafter assessed on a party and party basis.

(7) For the purpose of subrule (6), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the Court otherwise orders, the plaintiff shall be entitled to his costs in respect of the claim up to 11 am on the day following the day on which the offer was made, assessed on a party and party basis, and the defendant shall be entitled to his costs in respect of the claim thereafter, assessed on a party and party basis.

(8) Where a plaintiff obtains an order or judgment for the payment of a debt or damages and:

- (a) the amount payable under the order or for which judgment is given includes interest or damages in the nature of interest; or
- (b) by or under any Act the Court awards the plaintiff interest or damages in the nature of interest in respect of the amount,

then, for the purpose of determining the consequences as to costs referred to in subrules (4) and (6), the Court shall disregard so much of the interest or damages in the nature of interest as relates to the period after the day the offer was made.

(9) For the purpose only of subrule (g), the Court may be informed of the fact that the offer was made, and of the date on which it was made, but shall not be informed of its terms.

(10) If, a reasonable time before the Court makes an order under subrule (4) or subrule (6), the party to whom the offer is made requests the party making the offer to satisfy the Court that the party making the offer was at all material times willing and able to carry out the offer:

- (a) if the Court is so satisfied—the party making the request shall pay the costs of the party to whom the request is made occasioned by the request; or
- (b) otherwise:
 - (i) subrules (4) and (6) shall not apply; and
 - (ii) the party to whom the request is made shall pay the costs of the party making the request occasioned by the request,

unless the Court otherwise orders.

(11) Unless the Court otherwise orders, any application for an order for costs under subrule (4) or subrule (6) must be made immediately after the order or judgment giving rise to the entitlement to the order for costs is made or given.

Offer to contribute

26. The Court may take an offer to contribute into account in determining whether it should order that the offeree should pay the whole or part of:

- (a) the costs of the offeror; or
- (b) any costs which the offeror is liable to pay to the plaintiff.

Examination summons

27. Unless the Court or registrar otherwise orders, the costs of an examination summons in respect of which the judgment creditor or his solicitor attends for the purpose of examining a person, determined in accordance with the prescribed scale, shall be added to and form part of the judgment debt.

Attachment of debts

28. The Court may make such order as it thinks fit for the payment by any party to garnishee proceedings of the costs of any other party, and a party shall not be liable to pay any such costs except as required by such an order.

Writ of execution

29. (1) The costs of a writ of execution, whether executed or not, and whether productive or not, shall be taxed by the registrar for the home Court.

(2) Unless the Court or registrar otherwise orders, the costs of a writ of execution, whether executed or not, and whether productive or not, shall be added to and form part of the judgment debt.

Writ against the person

30. (1) The judgment creditor's costs of an order in an action authorising the issue of a writ against the person, and of the writ whether executed or not and whether productive or not, shall, unless the Court or the registrar for the proper place in relation to the action otherwise directs, be allowed according to the prescribed scale and be added to and form part of the judgment debt arising from the action.

(2) Where, upon the return of a summons issued under Part 37 rule 1 (l), the judgment debtor attends to answer the summons, but the judgment creditor fails to appear, the Court may if it thinks fit order the judgment creditor to pay the costs of the judgment debtor occasioned by the summons.

Arbitrator (Civil Actions) Act 1983

31. (1) Where proceedings are heard and determined under section 18 (3) (b) of the Arbitration (Civil Actions) Act 1983 (the "Arbitration Act") and the determination of the Court is substantially more favourable to the applicant for the order for rehearing (the "applicant") than is the determination of the arbitrator, the Court may order that the fee paid by the applicant for filing the application be refunded to the applicant wholly or to the extent specified by the court.

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(2) Where a party is required to pay the costs of another party in respect of a rehearing under section 18 (3) (b) of the Arbitration Act, those costs shall not include the fee paid for filing the application for the order for the rehearing unless the Court so directs.

(3) The Court shall not give a direction under subrule (2) unless it is of opinion that the party ordered to pay the costs unreasonably caused the making of the application for the order for the rehearing.

(4) Subject to subrule (5), where proceedings are heard and determined under section 18 (3) (b) of the Arbitration Act, and the determination of the Court is not substantially more favourable to the applicant than is the determination of the arbitrator, the Court:

- (a) shall not make any order for the payment by any other party of the applicant's costs incurred by reason of the rehearing; and
- (b) shall order the applicant to pay the costs of every other party incurred by reason of the rehearing.

(5) The Court may in respect of a rehearing certify that the special circumstances of the case require the Court:

- (a) to make an order referred to in subrule (4) (a), in which case the Court may make that order; or
- (b) to refrain from making an order referred to in subrule (4) (b), in which case the Court may refrain from making that order.

(6) Where, by operation of section 18 (5) of the Arbitration Act, an order for rehearing of proceedings ceases to have effect, the applicant shall pay the costs of every other party incurred by reason of the order for rehearing, unless the Court otherwise orders.

(7) Unless the Court otherwise orders, any application for an order or direction under this rule in respect of costs consequent on the rehearing of an action must be made immediately after judgment is given on the rehearing.

(cc) Part 42 rule 6

Omit the rule.

(cd) Part 51A rule 12

Omit the rule.

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EXPLANATORY NOTE

The purpose of the amendments is to establish, without substantially altering procedures, as much uniformity with the Supreme Court Rules 1970 in certain areas as can be achieved.

E. J. O'Grady
Secretary to the Rule Committee