

PART 38

DISCONTINUANCE

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SCOPE OF THIS PART

- 38.1 | (1) The rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim.
- (2) A claimant who –
- (a) claims more than one remedy; and
 - (b) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies,
- is not treated as discontinuing all or part of a claim for the purposes of this Part.

(The procedure for amending a statement of case, set out in Part 17, applies where a claimant abandons a claim for a particular remedy but wishes to continue with his claim for other remedies)

RIGHT TO DISCONTINUE CLAIM

- 38.2 | (1) A claimant may discontinue all or part of a claim at any time.
- (2) However –
- (a) a claimant must obtain the permission of the court if he wishes to discontinue all or part of a claim in relation to which –
 - (i) the court has granted an interim injunction^(GL); or
 - (ii) any party has given an undertaking to the court;

- (b) where the claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 25), he may discontinue that claim only if –
 - (i) the defendant who made the interim payment consents in writing; or
 - (ii) the court gives permission;
- (c) where there is more than one claimant, a claimant may not discontinue unless –
 - (i) every other claimant consents in writing; or
 - (ii) the court gives permission.
- (3) Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

PROCEDURE FOR DISCONTINUING

- 38.3 |
- (1) To discontinue a claim or part of a claim, a claimant must –
 - (a) file a notice of discontinuance; and
 - (b) serve a copy of it on every other party to the proceedings.
 - (2) The claimant must state in the notice of discontinuance which he files that he has served notice of discontinuance on every other party to the proceedings.
 - (3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.
 - (4) Where there is more than one defendant, the notice of discontinuance must specify against which defendants the claim is discontinued.

RIGHT TO APPLY TO HAVE NOTICE OF DISCONTINUANCE SET ASIDE

- 38.4 |
- (1) Where the claimant discontinues under rule 38.2(1) the defendant may apply to have the notice of discontinuance set aside^(GL).
 - (2) The defendant may not make an application under this rule more than 28 days after the date when the notice of discontinuance was served on him.

WHEN DISCONTINUANCE TAKES EFFECT WHERE PERMISSION OF THE COURT IS NOT NEEDED

- 38.5 |
- (1) Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him under rule 38.3(1).
 - (2) Subject to rule 38.4, the proceedings are brought to an end as against him on that date.

- (3) However, this does not affect proceedings to deal with any question of costs.

LIABILITY FOR COSTS

- 38.6 | (1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom he discontinues incurred on or before the date on which notice of discontinuance was served on him.
- (2) If proceedings are only partly discontinued –
- (a) the claimant is liable under paragraph (1) for costs relating only to the part of the proceedings which he is discontinuing; and
 - (b) unless the court orders otherwise, the costs which the claimant is liable to pay must not be assessed until the conclusion of the rest of the proceedings.
- (3) This rule does not apply to claims allocated to the small claims track.
- (Rule 44.12 provides for the basis of assessment where right to costs arises on discontinuance)

DISCONTINUANCE AND SUBSEQUENT PROCEEDINGS

- 38.7 | A claimant who discontinues a claim needs the permission of the court to make another claim against the same defendant if –
- (a) he discontinued the claim after the defendant filed a defence; and
 - (b) the other claim arises out of facts which are the same or substantially the same as those relating to the discontinued claim.

STAY OF REMAINDER OF PARTLY DISCONTINUED PROCEEDINGS WHERE COSTS NOT PAID

- 38.8 | (1) This rule applies where –
- (a) proceedings are partly discontinued;
 - (b) a claimant is liable to pay costs under rule 38.6; and
 - (c) the claimant fails to pay those costs within 21 days of –
 - (i) the date on which the parties agreed the sum payable by the claimant; or
 - (ii) the date on which the court ordered the costs to be paid.
- (2) Where this rule applies, the court may stay^(GL) the remainder of the proceedings until the claimant pays the whole of the costs which he is liable to pay under rule 38.6.

