

# PART 39

## MISCELLANEOUS PROVISIONS RELATING TO HEARINGS

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### INTERPRETATION

- 39.1 | In this Part, reference to a hearing includes a reference to the trial.

### GENERAL RULE – HEARING TO BE IN PUBLIC

- 39.2 |
- (1) The general rule is that a hearing is to be in public.
  - (2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.
  - (3) A hearing, or any part of it, may be in private if –
    - (a) publicity would defeat the object of the hearing;
    - (b) it involves matters relating to national security;
    - (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
    - (d) a private hearing is necessary to protect the interests of any child or patient;
    - (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;

- (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
  - (g) the court considers this to be necessary, in the interests of justice.
- (4) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

(RSC Order 52, in Schedule 1, provides that a committal hearing may be in private)

## FAILURE TO ATTEND THE TRIAL

- 39.3 | (1) The court may proceed with a trial in the absence of a party but –
- (a) if no party attends the trial, it may strike out<sup>(GL)</sup> the whole of the proceedings;
  - (b) if the claimant does not attend, it may strike out his claim and any defence to counterclaim; and
  - (c) if a defendant does not attend, it may strike out his defence or counterclaim (or both).
- (2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.
- (3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside<sup>(GL)</sup>.
- (4) An application under paragraph (2) or paragraph (3) for an order to restore proceedings must be supported by evidence.
- (5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant –
- (a) acted promptly when he found out that the court had exercised its power to strike out<sup>(GL)</sup> or to enter judgment or make an order against him;
  - (b) had a good reason for not attending the trial; and
  - (c) has a reasonable prospect of success at the trial.

## TIMETABLE FOR TRIAL

- 39.4 | When the court sets a timetable for a trial in accordance with rule 28.6 (fixing or confirming the trial date and giving directions – fast track) or rule 29.8 (setting a trial timetable and fixing or confirming the trial date or week – multi-track) it will do so in consultation with the parties.

## TRIAL BUNDLES

- 39.5 |
- (1) Unless the court orders otherwise, the claimant must file a trial bundle containing documents required by –
    - (a) a relevant practice direction; and
    - (b) any court order.
  - (2) The claimant must file the trial bundle not more than 7 days and not less than 3 days before the start of the trial.

## REPRESENTATION AT TRIAL OF COMPANIES OR OTHER CORPORATIONS

- 39.6 |
- A company or other corporation may be represented at trial by an employee if –
- (a) the employee has been authorised by the company or corporation to appear at trial on its behalf; and
  - (b) the court gives permission.

## IMPOUNDED DOCUMENTS

- 39.7 |
- (1) Documents impounded by order of the court must not be released from the custody of the court except in compliance –
    - (a) with a court order; or
    - (b) with a written request made by a Law Officer or the Director of Public Prosecutions.
  - (2) A document released from the custody of the court under paragraph(1)(b) must be released into the custody of the person who requested it.
  - (3) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

