

# PART 33

## MISCELLANEOUS RULES ABOUT EVIDENCE

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### INTRODUCTORY

#### 33.1 | In this Part –

- (a) ‘hearsay’ means a statement made, otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated; and
- (b) references to hearsay include hearsay of whatever degree.

### NOTICE OF INTENTION TO RELY ON HEARSAY EVIDENCE

- #### 33.2 |
- (1) Where a party intends to rely on hearsay evidence at trial and either –
    - (a) that evidence is to be given by a witness giving oral evidence; or
    - (b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence;
 that party complies with section 2(1)(a) of the Civil Evidence Act 1995<sup>(48)</sup> by serving a witness statement on the other parties in accordance with the court’s order.
  - (2) Where paragraph (1)(b) applies, the party intending to rely on the hearsay evidence must, when he serves the witness statement –

(48) 1995 c.38. Section 2 provides that a party proposing to bring hearsay evidence must notify any other party of that fact and, on request, give particulars of or relating to the evidence.

- (a) inform the other parties that the witness is not being called to give oral evidence; and
  - (b) give the reason why the witness will not be called.
- (3) In all other cases where a party intends to rely on hearsay evidence at trial, that party complies with section 2(1)(a) of the Civil Evidence Act 1995 by serving a notice on the other parties which –
- (a) identifies the hearsay evidence;
  - (b) states that the party serving the notice proposes to rely on the hearsay evidence at trial; and
  - (c) gives the reason why the witness will not be called.
- (4) The party proposing to rely on the hearsay evidence must –
- (a) serve the notice no later than the latest date for serving witness statements; and
  - (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.

### CIRCUMSTANCES IN WHICH NOTICE OF INTENTION TO RELY ON HEARSAY EVIDENCE IS NOT REQUIRED

- 33.3 | Section 2(1) of the Civil Evidence Act 1995 (duty to give notice of intention to rely on hearsay evidence) does not apply –
- (a) to evidence at hearings other than trials;
  - (aa) to an affidavit or witness statement which is to be used at trial but which does not contain hearsay evidence;
  - (b) to a statement which a party to a probate action wishes to put in evidence and which is alleged to have been made by the person whose estate is the subject of the proceedings; or
  - (c) where the requirement is excluded by a practice direction.

### POWER TO CALL WITNESS FOR CROSS-EXAMINATION ON HEARSAY EVIDENCE

- 33.4 | (1) Where a party –
- (a) proposes to rely on hearsay evidence; and
  - (b) does not propose to call the person who made the original statement to give oral evidence,
- the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.
- (2) An application for permission to cross-examine under this rule must be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.

## CREDIBILITY

- 33.5 | (1) Where a party –
- (a) proposes to rely on hearsay evidence; but
  - (b) does not propose to call the person who made the original statement to give oral evidence; and
  - (c) another party wishes to call evidence to attack the credibility of the person who made the statement,
- the party who so wishes must give notice of his intention to the party who proposes to give the hearsay statement in evidence.
- (2) A party must give notice under paragraph (1) not more than 14 days after the day on which a hearsay notice relating to the hearsay evidence was served on him.

## USE OF PLANS, PHOTOGRAPHS AND MODELS AS EVIDENCE

- 33.6 | (1) This rule applies to evidence (such as a plan, photograph or model) which is not –
- (a) contained in a witness statement, affidavit<sup>(GL)</sup> or expert's report;
  - (b) to be given orally at trial; or
  - (c) evidence of which prior notice must be given under rule 33.2.
- (2) This rule includes documents which may be received in evidence without further proof under section 9 of the Civil Evidence Act 1995<sup>(49)</sup>.
- (3) Unless the court orders otherwise the evidence shall not be receivable at a trial unless the party intending to put it in evidence has given notice to the other parties in accordance with this rule.
- (4) Where the party intends to use the evidence as evidence of any fact then, except where paragraph (6) applies, he must give notice not later than the latest date for serving witness statements.
- (5) He must give notice at least 21 days before the hearing at which he proposes to put in the evidence, if –
- (a) there are not to be witness statements; or
  - (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.
- (6) Where the evidence forms part of expert evidence, he must give notice when the expert's report is served on the other party.
- (7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he must give notice

(49) Section 9 of the Civil Evidence Act 1995 provides that documents that form part of the records of a business or public authority, as defined in that section, may be received in evidence without further proof.

at least 21 days before the hearing at which he proposes to put in the evidence.

- (8) Where a party has given notice that he intends to put in the evidence, he must give every other party an opportunity to inspect it and to agree to its admission without further proof.

## EVIDENCE OF FINDING ON QUESTION OF FOREIGN LAW

- 33.7 | (1) This rule sets out the procedure which must be followed by a party who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972<sup>(50)</sup>.
- (2) He must give any other party notice of his intention.
- (3) He must give the notice –
- (a) if there are to be witness statements, not later than the latest date for serving them; or
  - (b) otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence.
- (4) The notice must –
- (a) specify the question on which the finding was made; and
  - (b) enclose a copy of a document where it is reported or recorded.

## EVIDENCE OF CONSENT OF TRUSTEE TO ACT

- 33.8 | A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person is evidence of such consent.

## HUMAN RIGHTS

- 33.9 | (1) This rule applies where a claim is-
- (a) for a remedy under section 7 of the Human Rights Act 1998 in respect of a judicial act which is alleged to have infringed the claimant's Article 5 Convention rights; and
  - (b) based on a finding by a court or tribunal that the claimant's Convention rights have been infringed.
- (2) The court hearing the claim-
- (a) may proceed on the basis of the finding of that other court or tribunal that there has been an infringement but it is not required to do so, and
  - (b) may reach its own conclusion in the light of that finding and of the evidence heard by that other court or tribunal.

(50) 1972 c.30.