

PART 23

GENERAL RULES ABOUT APPLICATIONS FOR COURT ORDERS

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MEANING OF ‘APPLICATION NOTICE’ AND ‘RESPONDENT’

- 23.1 In this Part –
- ‘application notice’ means a document in which the applicant states his intention to seek a court order; and
- ‘respondent’ means –
- (a) the person against whom the order is sought; and
 - (b) such other person as the court may direct.

WHERE TO MAKE AN APPLICATION

- 23.2 (1) The general rule is that an application must be made to the court where the claim was started.

- (2) If a claim has been transferred to another court since it was started, an application must be made to the court to which the claim has been transferred.
- (3) If the parties have been notified of a fixed date for the trial, an application must be made to the court where the trial is to take place.
- (4) If an application is made before a claim has been started, it must be made to the court where it is likely that the claim to which the application relates will be started unless there is good reason to make the application to a different court.
- (5) If an application is made after proceedings to enforce judgment have begun, it must be made to any court which is dealing with the enforcement of the judgment unless any rule or practice direction provides otherwise.

APPLICATION NOTICE TO BE FILED

- 23.3
- (1) The general rule is that an applicant must file an application notice.
 - (2) An applicant may make an application without filing an application notice if –
 - (a) this is permitted by a rule or practice direction; or
 - (b) the court dispenses with the requirement for an application notice.

NOTICE OF AN APPLICATION

- 23.4
- (1) The general rule is that a copy of the application notice must be served on each respondent.
 - (2) An application may be made without serving a copy of the application notice if this is permitted by –
 - (a) a rule;
 - (b) a practice direction; or
 - (c) a court order.
- (Rule 23.7 deals with service of a copy of the application notice)

TIME WHEN AN APPLICATION IS MADE

- 23.5
- Where an application must be made within a specified time, it is so made if the application notice is received by the court within that time.

WHAT AN APPLICATION NOTICE MUST INCLUDE

- 23.6
- An application notice must state –
- (a) what order the applicant is seeking; and
 - (b) briefly, why the applicant is seeking the order.

(Part 22 requires an application notice to be verified by a statement of truth if the applicant wishes to rely on matters set out in his application notice as evidence)

SERVICE OF A COPY OF AN APPLICATION NOTICE

- 23.7 |
- (1) A copy of the application notice –
 - (a) must be served as soon as practicable after it is filed; and
 - (b) except where another time limit is specified in these Rules or a practice direction, must in any event be served at least 3 days before the court is to deal with the application.
 - (2) If a copy of the application notice is to be served by the court, the applicant must, when he files the application notice, file a copy of any written evidence in support.
 - (3) When a copy of an application notice is served it must be accompanied by –
 - (a) a copy of any written evidence in support; and
 - (b) a copy of any draft order which the applicant has attached to his application.
 - (4) If –
 - (a) an application notice is served; but
 - (b) the period of notice is shorter than the period required by these Rules or a practice direction,

the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.
 - (5) This rule does not require written evidence –
 - (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.

(Part 6 contains the general rules about service of documents including who must serve a copy of the application notice)

APPLICATIONS WHICH MAY BE DEALT WITH WITHOUT A HEARING

- 23.8 |
- The court may deal with an application without a hearing if –
- (a) the parties agree as to the terms of the order sought;
 - (b) the parties agree that the court should dispose of the application without a hearing, or
 - (c) the court does not consider that a hearing would be appropriate.

SERVICE OF APPLICATION WHERE APPLICATION MADE WITHOUT NOTICE

- 23.9
- (1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.
 - (2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support must, unless the court orders otherwise, be served with the order on any party or other person –
 - (a) against whom the order was made; and
 - (b) against whom the order was sought.
 - (3) The order must contain a statement of the right to make an application to set aside^(GL) or vary the order under rule 23.10.

APPLICATION TO SET ASIDE OR VARY ORDER MADE WITHOUT NOTICE

- 23.10
- (1) A person who was not served with a copy of the application notice before an order was made under rule 23.9, may apply to have the order set aside^(GL) or varied.
 - (2) An application under this rule must be made within 7 days after the date on which the order was served on the person making the application.

POWER OF THE COURT TO PROCEED IN THE ABSENCE OF A PARTY

- 23.11
- (1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in his absence.
 - (2) Where –
 - (a) the applicant or any respondent fails to attend the hearing of an application; and
 - (b) the court makes an order at the hearing,
 the court may, on application or of its own initiative, re-list the application.
 (Part 40 deals with service of orders)

DISMISSAL OF TOTALLY WITHOUT MERIT APPLICATIONS

- 23.12
- If the court dismisses an application and it considers that the application is totally without merit –
- (a) the courts order must record that fact; and
 - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.