

# PART 15

## DEFENCE AND REPLY

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### PART NOT TO APPLY WHERE CLAIMANT USES PART 8 PROCEDURE

- 15.1 | This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

### FILING A DEFENCE

- 15.2 | A defendant who wishes to defend all or part of a claim must file a defence.
- (Part 14 contains further provisions which apply where the defendant admits a claim)

### CONSEQUENCE OF NOT FILING A DEFENCE

- 15.3 | If a defendant fails to file a defence, the claimant may obtain default judgment if Part 12 allows it.

### THE PERIOD FOR FILING A DEFENCE

- 15.4 | (1) The general rule is that the period for filing a defence is –
- (a) 14 days after service of the particulars of claim; or

- (b) if the defendant files an acknowledgment of service under Part 10, 28 days after service of the particulars of claim.

(Rule 7.4 provides for the particulars of claim to be contained in or served with the claim form or served within 14 days of service of the claim form)

(2) The general rule is subject to the following rules –

- (a) RSC Order 11 r.1B (which specifies how the period for filing a defence is calculated where the claim form is served out of the jurisdiction);
- (b) rule 11 (which provides that, where the defendant makes an application disputing the court's jurisdiction, he need not file a defence before the hearing);
- (c) rule 24.4(2) (which provides that, if the claimant applies for summary judgment before the defendant has filed a defence, the defendant need not file a defence before the summary judgment hearing); and
- (d) rule 6.16(4) (which requires the court to specify the period for responding to the particulars of claim when it makes an order under that rule).

## AGREEMENT EXTENDING THE PERIOD FOR FILING A DEFENCE

- 15.5 |
- (1) The defendant and the claimant may agree that the period for filing a defence specified in rule 15.4 shall be extended by up to 28 days.
  - (2) Where the defendant and the claimant agree to extend the period for filing a defence, the defendant must notify the court in writing.

## SERVICE OF COPY OF DEFENCE

- 15.6 |
- A copy of the defence must be served on every other party.
- (Part 16 sets out what a defence must contain)

## MAKING A COUNTERCLAIM

- 15.7 |
- Part 20 applies to a defendant who wishes to make a counterclaim.

## REPLY TO DEFENCE

- 15.8 |
- If a claimant files a reply to the defence, he must –
    - (a) file his reply when he files his allocation questionnaire; and
    - (b) serve his reply on the other parties at the same time as he files it.

(Rule 26.3(6) requires the parties to file allocation questionnaires and specifies the period for doing so)

(Part 22 requires a reply to be verified by a statement of truth)

## NO STATEMENT OF CASE AFTER A REPLY TO BE FILED WITHOUT COURT'S PERMISSION

- 15.9 | A party may not file or serve any statement of case after a reply without the permission of the court.

## CLAIMANT'S NOTICE WHERE DEFENCE IS THAT MONEY CLAIMED HAS BEEN PAID

- 15.10 | (1) Where –
- (a) the only claim (apart from a claim for costs and interest) is for a specified amount of money; and
  - (b) the defendant states in his defence that he has paid to the claimant the amount claimed,
- the court will send notice to the claimant requiring him to state in writing whether he wishes the proceedings to continue.
- (2) When the claimant responds, he must serve a copy of his response on the defendant.
- (3) If the claimant fails to respond under this rule within 28 days after service of the court's notice on him the claim shall be stayed<sup>(GL)</sup>.
- (4) Where a claim is stayed under this rule any party may apply for the stay<sup>(GL)</sup> to be lifted.

(If the claimant files notice under this rule that he wishes the proceedings to continue, the procedure which then follows is set out in Part 26)

## CLAIM STAYED IF IT IS NOT DEFENDED OR ADMITTED

- 15.11 | (1) Where –
- (a) at least 6 months have expired since the end of the period for filing a defence specified in rule 15.4;
  - (b) no defendant has served or filed an admission or filed a defence or counterclaim; and
  - (c) the claimant has not entered or applied for judgment under Part 12 (default judgment), or Part 24 (summary judgment),
- the claim shall be stayed<sup>(GL)</sup>.
- (2) Where a claim is stayed<sup>(GL)</sup> under this rule any party may apply for the stay to be lifted.

