

Case Management

CPA s 56: overriding purpose

- (1): Overriding purpose is to facilitate the just, quick and cheap resolution of the real issues in the proceedings.
- (2): The court must seek to give effect to the overriding purpose when it exercises any power
- (3): A party to civil proceedings is under a duty to assist the court to further the overriding purpose
- (4): solicitor or barrister representing party must not cause the part to breach the duty in (3).
- (5): the court may take into account any failure to comply with (3) or (4) when making order on costs.

CPA s 57: court must have regard to:

- (a) the just determination of the proceedings
- (b) the efficient disposal of the business of the court
- (c) the efficient use of available judicial and administrative resources
- (d) the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties

CPA s 58:

- (1)(a): court must act in accordance with dictates of justice when making order/direction
- (2)(a): court must have regard to the provisions of ss 56 and 57
- (2)(b): court may have regard to:
 - o (i) complexity
 - o (ii) parties' behaviour
 - o (iii) circumstances beyond parties' control
 - o (iv) duty re s 56(3)
 - o (v) parties' use of opportunities in course of proceedings
 - o (vi) degree of injustice to parties as consequence of order/direction
 - o (v) any other matter court sees fit

CPA s 60: resolve issues between parties proportionate to importance and complexity of dispute

CPA s 61

- (1): Any other direction court sees fit, whether or not inconsistent with rules of court
- (2): Direct parties to take any steps
- (3) If party fails to comply, can dismiss proceedings; strike out defence/document/evidence; any other order court sees fit.

CPA s 98(1): costs at discretion of court

CPA s 99(1): lawyer can be liable for unnecessary costs

Settlement Negotiation Privilege

- Protects communications which are brought into existence to settle a dispute.
- Privilege does not protect disclosure which is not reasonably incidental to settlement negotiations, even those made during the negotiations: *Fields (1957)*.
 - o **Evidence Act 1995 s 131(1):** Evidence not to be adduced of:
 - (a) a communication made in attempt to negotiate a settlement of dispute; or
 - (b) a document prepared in attempt to negotiate a settlement of dispute
 - o **Evidence Act 1995 s 131(2):** Exceptions
 - o **CPA s 30 (4):** subject to s 29(2):
 - (a) evidence of anything said in mediation is not admissible in court;
 - (b) document prepared for mediation is not admissible in court

Preservation Orders

Interlocutory Injunctions

- Requirements: *ABC v O'Neill*
 - o **Prima facie case**
 - Whether the evidence as it is gives rise to a probability that the P will be held entitled to relief.
 - Depends upon the nature of the rights the P asserts and the practical consequences likely to flow from the order sought.
 - o **Balance of convenience**
 - Whether the inconvenience or injury that the P would be likely to suffer if an injunction were refused outweighs the injury the D would suffer if an injunction were granted.

Preservation Orders/Mareva Injunctions

- Prevents a party from disposing of assets to frustrate the enforcement of a judgment.
- Granted when: *Jack v Sterling (1987)*
 - o There is danger of D absconding; or
 - o There is danger of the assets being removed out of the jurisdiction or disposed of within the jurisdiction, or otherwise dealt with; so that
 - o There is danger that the plaintiff, if he gets judgment, will not be able to get it satisfied.
- Its purpose is not to create security for the plaintiff: *Jack v Sterling (1987)*.
- Orders against third parties may be appropriate where:

- o They have power of disposition over, or has possession of, the necessary assets; or
- o They may be obliged to disgorge property or otherwise contribute to the funds: *Cardille [1999]*; *Severstal (2013)*.

- SC's power to make a freezing order exists even where there is no substantive proceedings in the court and no foreign judgment has been made, as long as judgment of a foreign court which would be made registrable by order of the SC under the Foreign Judgments Act, is anticipated: *PT Bayan v BCBC Singapore [2015]*

Search Orders/Anton Piller Orders

- Preserves evidence required to prove the applicant's claim and which is in danger of being destroyed.
- Allows applicant's legal representatives and an independent supervising solicitor to enter the respondent's premises: UCPR 25.19
- Requirements: UCPR 25.20
 - o Strong prima facie case; and
 - o Potential or actual loss or damage to the applicant will be serious; and
 - o Sufficient evidence that respondent possesses important evidential material; and
 - o There is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.
- The application should comply with the requirements of PNSC Gen 13.

Costs

- Types:

- o **Uniform law costs (solicitor-client costs):** the professional fees the client has to pay the solicitor
- o **Ordered costs (party-party costs):** costs the court orders one party to pay to the other.
- **Apportionment:** The court will not seek to differentiate between issues, unless that issue is clearly separable: *Waters v PC Henderson*.
- **Proportionality:** cost to the parties should be proportionate to the importance and complexity of the dispute: CPA s 60
- **General rule:** "costs follow the event": UCPR 42.1.
 - o The presumption will be displaced where there has been some sort of disentiing conduct on the part of the successful party: *Oshlack*; *GR Vaughan*.