

Guiding principles:

- s 56 “overriding purpose”
- s 57 “objects of case management”
- s 58 “court to follow dictates of justice”
- s 59 “elimination of delay”
- s 60 “proportionality of costs”

S 56 CPA “OVERRIDING PURPOSE”

- “the overriding purpose of this Act and of rules of court, in their application to civil proceedings is to facilitate the **just, quick and cheap resolution** of the real issues in the proceedings” (s56(1) CPA)
- “The court must seek to give effect to the overriding purpose when it exercises any power given to it by this Act or by rules... and when it interprets any provision of this Act or of any rule” (s56(2) CPA)

S 57 CPA OBJECTS OF CASE MANAGEMENT

- To further overriding purpose proceedings are to be managed having regard to:
 - just determination of proceedings
 - efficient disposal of the business of the court
 - efficient use of available judicial and administrative resources
 - timely disposal of proceedings at a cost affordable by respective parties
- Act and rules to be construed and applied to achieve these objects

How are these objects achieved?

- Case management largely undertaken through series of directions hearings before judge or registrar
 - before a matter goes to court you will be before a registrar
 - first date of directions hearing will be given on the filing of the documents
 - dates subsequent which will be set out, eg when a defence must be filed
 - part 6 div 2 deals with the power of the court to give directions
 - the court may give any order it thinks necessary for the speedy determination of the real issues in dispute
 - may direct when documents are to be filed, can set dates of adjournments and timeliness for the amendments of pleadings in other arrangements
 - usually a fixed next step is put in place
- Directions are binding and sanctions can be applied if breached
- Costs Orders

S 58 “COURT TO FOLLOW DICTATES OF JUSTICE”

- s58(2) (b) indicated the matters to which the court may have regard to when determining the matter

S 59 “ELIMINATION OF DELAY”

S 60 “PROPORTIONALITY OF COSTS”

Pre-litigation issues:

- What if P cannot identify the person s/he wasn't to sue?
- What if P needs more information to decide whether to sue?
- How does P commence proceedings?

- Who can be Parties/Joinder
- Causes of Action/Joinder

WEEK 8

- What if P can't identify the person s/he wants to sue?
- What if P needs more information to decide whether to sue?
- How does P commence proceedings?

COMMENCING PROCEEDINGS IN THE SUPREME COURT

ORIGINATING PROCESS

WHICH ORIGINATING PROCESS TO USE?

1. **Rule 6.2(1)** – Proceedings in court may be commenced by the filing of a statement of claim or summons.
2. **Rule 6.1(1)** – Except by leave of the court, a party may not take any step in proceedings (including any appearance in court) unless the party has filed a statement of claim or summons in the proceedings or has entered an appearance in the proceedings.

Statement of claim is details pleading setting out all material facts

Summons sets out relief or orders sought

Rule 6.3 – Statement of claim rule

Proceedings of the following kinds must be commenced by statement of claim—

- (a) proceedings on a claim for relief in relation to a debt or other liquidated claim,
- (b) proceedings on a claim for relief in relation to **a tort**,
- (c) proceedings on a claim based on an allegation of fraud,
- (d) proceedings on a claim for damages for breach of duty (however arising) and the damages claimed consist of or include—
 - (i) damages in respect of the death of any person, or
 - (ii) damages in respect of personal injuries to any person, or
 - (iii) damages in respect of damage to any property,
- (e) proceedings on a claim for relief in relation to a trust, other than an express trust wholly in writing,
- (f) proceedings on a claim for possession of land,
- (g) proceedings on a claim for relief under the *Property (Relationships) Act 1984*,
- (h) proceedings on a claim for relief in relation to the publication of defamatory matter,
- (i) proceedings for an order under section 106 of the *Industrial Relations Act 1996* that a contract is unfair,
- (j) proceedings on a claim for a civil penalty under section 357 of the *Industrial Relations Act 1996*,
- (k) proceedings on a claim for remuneration or other amounts under Part 2 of Chapter 7 of the *Industrial Relations Act 1996*.

Rule 6.4 – Summons rule

Summons is generally only used where the issue is a question of law, rather than a substantial dispute of fact

Proceedings of the following kinds must be commenced by summons

- (a) proceedings in which there is **no defendant**,
- (b) **proceedings on an appeal or application** for leave to appeal, other than proceedings assigned to the Court of Appeal,
- (b1) **proceedings before the Supreme Court in the exercise of its jurisdiction** under section 69 of the *Supreme Court Act 1970*,
- (c) **proceedings for preliminary discovery or inspection** under Part 5,
- (d) proceedings on a stated case,
- (e) proceedings on an **application for approval** under section 75 of the *Civil Procedure Act 2005* of an agreement for the compromise or settlement of a claim,
- (f) proceedings on an **application for a transfer** order under Part 9 of the *Civil Procedure Act 2005*,
- (g) proceedings on an **application for the removal or transfer of proceedings** to the court under any Act, other than an application for a transfer order under Part 9 of the *Civil Procedure Act 2005*,
- (h) **proceedings (other than proceedings on a claim for damages) on any application made under any Act** (other than the *Civil Procedure Act 2005*),
- (h1) proceedings on an application under Chapter 5 of the *Industrial Relations Act 1996*,
- (i) proceedings on an application to the court under any Act, other than—
 - (i) proceedings on an application under the *Supreme Court Act 1970*, the *District Court Act 1973* or the *Local Court Act 2007*, and
 - (ii) proceedings on an application that may properly be made in existing proceedings,
- (j) any other proceedings that, pursuant to these rules or any other rules of court, are required to be commenced by summons.
- **(2) Proceedings of the following kinds may be commenced by summons, except where the application is made in proceedings that have been commenced in the court—**
 - (a) proceedings on an application for a writ of habeas corpus ad subjiciendum,
 - (b) proceedings on an application for an order for the custody of a minor,
 - (c) proceedings on an application for an order for the appointment of a tutor of a person under legal incapacity,
 - (d) proceedings on an application for a declaration of right,
 - (e) proceedings on an application for an injunction,
 - (f) proceedings on an application for the appointment of a receiver,
 - (g) proceedings on an application for an order for the detention, custody or preservation of property,
 - (h) proceedings on a claim for relief for trespass to land.
- (4) Proceedings—
 - (a) in which the **sole or principal question at issue is, or is likely to be, one of—**
 - (i) the construction of an Act or a Commonwealth Act, or
 - (ii) the construction of an instrument made under an Act or a Commonwealth Act, or
 - (iii) the construction of a deed, will, contract or other document, or
 - (iv) some other **question of law**, or
 - (b) in which there is unlikely to be a substantial dispute of fact, are amongst those which are appropriate to be commenced by summons unless the plaintiff considers the proceedings more appropriate to be commenced by statement of claim.

WHAT IF YOU HAVE WRONGLY COMMENCED THE PROCEEDINGS?

Rule 6.5 – Proceedings wrongly commenced by SOC

- (1) Proceedings that have been commenced by statement of claim when they should have been commenced by summons are nevertheless, and for all purposes, taken to have been duly commenced as from the date of the filing of the statement of claim, and may be continued accordingly.
- (2) Despite subrule (1), the court may order the proceedings to be continued, as if they had been commenced by summons and as if any pleadings filed in the proceedings had been filed as affidavits, and may also make such orders as it thinks fit for the future conduct of the proceedings.

Rule 6.6 – Proceedings wrongly commenced by Summons

- (1) Proceedings that have been commenced by summons when they should have been commenced by statement of claim are nevertheless, and for all purposes, taken to have been duly commenced as from the date of the filing of the summons.
- (2) Despite subrule (1), the court may order that the proceedings continue on pleadings.
- (3) On or after making such an order, the court—
- (a) may order that any affidavits stand as pleadings, or
 - (b) may make orders for the filing of a statement of claim or other pleadings.
- (4) After a statement of claim is filed pursuant to an order referred to in subrule (3)(b), the proceedings are to continue, subject to any other order of the court, as if commenced by statement of claim.

INFORMATION THAT MUST BE INCLUDED IN THE ORIGINATING PROCESS

Under **rule 4.2 (1)** originating process must contain

- Name of the court in which the proceedings are to be commenced
- If relevant, the division
- Venue in which the proceedings are intended to be heard
- Title of proceedings
- The nature of the process (summons or statement of claim)
- If the process is filed by a person who is neither the party nor the party's solicitor or solicitor's agent, the capacity in which the person acts when filing the document,
- Party's address and party's address for service
- The address, if known, of any defendant.

Must also specify:

- A statement of claim or summons must specifically state the relief claimed by the plaintiff r 6.12(1) eg. damages
- Whether exemplary damages to aggravated compensatory damages are claimed r 6.12(5)
- Notice to defendant in statement of claim specifying that unless a defence is filed the proceedings may result in a judgment or order against the defendant (r 6.13(a)), give address of the registry where SOC is filed (r 6.13(b)) and specify time limit (r 6.13(c)). The time limit to enter an appearance in SOC is 28 days r 6.10(1)(a).
- Notice to defendant in summons which specifies that the defendant is liable to suffer judgment or an order against the defendant, unless there is attendance before the court by the defendant (r 6.14(a)) and specify the time limit to do so (this is on or before the return day which is usually fixed by the Court or registry (r 6.10(1)(b)). Summons must also state that before any such attendance the defendant must file a notice of appearance in the registry (r 6.14(b)) and must provide the address of registry (r 6.14(c))

WHAT INFORMATION NEEDS TO BE INCLUDED IN A STATEMENT OF CLAIM AND SUMMONS

A statement of claim and summons must specify

- The relief claimed by P (r 6.12(1))
- Whether exemplary or aggravated damages are being claimed (r 6.12(5))
- Any questions for determination or direction by the Court (r 6.12(2))
- Whether an order for interests up to judgement is requested (r 6.12(6))
- Subscribe the name and address of P and their solicitor and an address for service (r 4.2)

SOC must

- State that unless the prescribed notice of appearance is filed in the relevant registry, the proceedings may result in a judgement or order against the defendant (r 6.13(a)).
- Must give address of registry where SOC is filed (r 6.13(b)); and
- Must specify time limited by these rules for filing a defence (r 6.13(c)). → 28 days after service on the defendant or such other time as the court directs for the filing a defence (r 6.10)

Summons must specify

- State that the proceeding may be heard and a judgement or order may be made against the defendant unless there is attendance before the Court at the time and place specified (r 6.14(a))
- Must state that before appearance, D must file notice of appearance
- Must give address of registry
- Must state a return day (fixed by court or registry)

WHAT DO YOU NEED TO DO WITH YOUR ORIGINATING PROCESS IN ORDER TO COMMENCE PROCEEDINGS?

Except by leave of the court, a party may not take any step in proceedings unless they have filed a statement of claim or summons or has entered an appearance r 6.1(1)

FILING

Under **rule 4.10(1)** A person may lodge a document for filing in relation to any proceedings (a) by **delivering it to an officer of the court in the registry**, or by **sending it by post to the registry's business address**.

Rule 3.4 – Electronic filing of documents is permitted

Rule 4.10 (3) Unless acceptance of the document is subsequently refused by the court or by an officer of the court, a document is taken to have been filed when it is lodged for filing.

Rule 4.10(5) – Officer of the court may refuse to accept document for filing in the following circumstances—

- (a) in the case of originating process—

- (i) if the location specified in the document as the venue at which the proceedings are to be heard is a location at which the court does not sit, or
- (ii) if the person on whose behalf the originating process is sought to be filed is the subject of an order of the Supreme Court declaring the person to be a vexatious litigant,
- (b) in the case of a document for which a filing fee is payable, if the fee has not been paid or arrangements satisfactory to the officer of the court have not been made for its payment.
- methods of filing **rule 4.10(1)**

Rule 4.11 – Case number or UI to be assigned to originating process

- (1) When originating process is accepted for filing, a case number or other unique identifier is to be assigned to the proceedings commenced by the process.
- (2) On accepting originating process for filing, an officer of the court must endorse on the process the case number or other unique identifier assigned to the proceedings commenced by the process

Rule 4.12 – Lodgement of additional copies

- (1) When filing originating process, a person may lodge additional copies for sealing.

Rule 4.13 – Place for filing

- (1) A document (other than originating process) that is filed in relation to any proceedings must be filed in the same registry as that in which the originating process was filed or the Court it is transferred to.

SERVICE

Originating process must then be served on each defendant **rule 6.2(3)** and unless the court orders otherwise, a party that files a document must as soon as practicable (r 10.1(1))

Except as otherwise provided by these rules, any originating process in proceedings in the Supreme Court must be served personally r 10.20(2)(a) and can be effected in two ways

Rule 10.2 – Service of affidavits

- (1) A party intending to use an affidavit that has not been filed must serve it on each other interested party not later than a reasonable time before the occasion for using it arises.
- **Rule 35.9** - An affidavit need not be filed except by leave of the court
 - Unless it is filed in accordance with other rules

Methods of service:

Rule 10.5 (1)

- (a) by means of **personal service**, or
- (b) by posting a copy of the document, addressed to the person to the person's address for service, or
- (c) by leaving a copy of the document, addressed to the persons at the person's address for service, or
- (2) In the case of a person having an address for service that is a solicitor's office address, service of a document on the person may also be effected—