



THE HIGH COURT AMENDMENT RULES (NO. 3) 1995

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 4th day of December 1995

Present:

THE RIGHT HON. J. B. BOLGER PRESIDING IN COUNCIL

PURSUANT to section 51c of the Judicature Act 1908, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least two of the other members of the Rules Committee (of whom at least one was a Judge of the High Court), hereby makes the following rules.

ANALYSIS

- 1. Title and commencement
- 2. Written offers "without prejudice save as to costs"
- 3. New headings and rules inserted

Exchange of Witnesses' Statements

- 441A. Application of rules 441B to 441I
- 441B. Service by plaintiff of written statements of proposed evidence in chief

- 441C. Service by other parties of written statements of proposed evidence in chief
- 441D. Requirements in relation to written statements
- 441E. Supplementary written statements
- 441F. Evidence in chief at trial
- 441G. Oral evidence in chief
- 441H. References to written statements on opening of case
- 441I. Cross-examination in relation to written statements
- 441J. Privilege and admissibility

441k. Rule in *Browne v Dunn*

441L. Election as to evidence in relation to nonsuit

Negotiations for Settlement

4. Judge may assist in negotiations for settlement

RULES

1. Title and commencement—(1) These rules may be cited as the High Court Amendment Rules (No. 3) 1995, and shall be read together with and deemed part of the High Court Rules from time to time set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the High Court Rules).

(2) Except as provided in rules 2 (3) and 4 (2) of these rules, these rules shall come into force on the 1st day of March 1996.

2. Written offers “without prejudice save as to costs”—(1) The High Court Rules are hereby amended by inserting, after rule 46, the following rule:

“46A. (1) A party to a proceeding may at any time make to any other party to that proceeding a written offer that—

“(a) Is expressed to be ‘without prejudice save as to costs’; and

“(b) Relates to any issue in that proceeding.

“(2) Where an offer is made under subclause (1),—

“(a) The fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided; and

“(b) The effect (if any) that the making of such an offer has on the question of costs shall be in the discretion of the Court.”

(2) Rule 46 (3) of the High Court Rules is hereby consequentially amended by omitting the expression “47”, and substituting the expression “46A”.

(3) This rule shall come into force on the 1st day of February 1996.

3. New headings and rules inserted—The High Court Rules are hereby amended by inserting, after rule 441, the following headings and rules:

“Exchange of Witnesses’ Statements

“441A. **Application of rules 441B to 441I**—(1) Subject to subclauses (2) to (4), rules 441B to 441I shall apply to every proceeding other than—

“(a) A proceeding in which the Court has made an order directing—

“(i) The exchange of evidence before trial; or

“(ii) The mode in which the evidence is to be given; or

“(b) A proceeding in which the Court has made an order directing that rules 441B to 441I shall not apply to the evidence or any part of the evidence to be given at the trial; or

“(c) A proceeding in which an agreement signed by the parties that the evidence, or any part of the evidence, shall be given by affidavit has been filed under rule 500; or

“(d) A proceeding in which an agreed statement of facts has been filed under rule 502; or

“(e) A proceeding in which evidence is to be given by affidavit.

“(2) Where in any proceeding—

“(a) The Court has made an order of a kind described in subclause (1) (a); or

“(b) An agreement of the kind described in subclause (1)(c) has been filed under rule 500; or

“(c) An agreed statement of facts has been filed under rule 502,—
rules 441B to 441I shall apply to the extent that they are not negated by or inconsistent with that order or agreement or agreed statement of facts.

“(3) Nothing in this rule or in rules 441B to 441J prevents a party from applying for and obtaining an order directing the exchange of evidence before trial by a date earlier than that prescribed by rule 441B(1) or on terms that are more appropriate to the particular case.

“(4) The Court may in its discretion make an order directing that rules 441B to 441I shall not apply to the evidence or any part of the evidence to be given at the trial of a proceeding and shall make such an order where in its opinion such an order is necessary to secure the just, speedy, and inexpensive determination of a proceeding.

“441B. Service by plaintiff of written statements of proposed evidence in chief—Where a proceeding is set down for trial after the commencement of this rule—

“(a) By the filing of a praecipe under rule 430I; or

“(b) In accordance with a direction that the proceeding be set down for trial,—

the plaintiff shall, not later than 21 days after the day on which the praecipe is filed or the day on which the direction is given, whichever is the earlier, serve on every other party who has given an address for service a written statement of the proposed evidence in chief of each witness to be called by the plaintiff.

“441C. Service by other parties of written statements of proposed evidence in chief—Any party who has been served with a written statement under rule 441B and who wishes to adduce evidence shall, not later than 21 days after the date on which that party was served with that written statement, serve on every other party to the proceeding who has given an address for service a written statement of the proposed evidence in chief of each witness to be called by the party who has been served with a written statement under rule 441B and who wishes to adduce evidence.

“441D. Requirements in relation to written statements—Every written statement served under rule 441B or rule 441C shall—

“(a) Be signed by the witness by whom the statement is made; and

“(b) Shall not contain evidence that is inadmissible in the proceeding.

“441E. Supplementary written statements—(1) Any party to a proceeding who wishes to adduce any new or further evidence after a written statement has been served on that party under rule 441B or rule 441C (not being evidence in response to any matter contained in that written statement) may serve on every other party to the proceeding who has given an address for service a supplementary written statement of the new or further evidence.

“(2) Every supplementary written statement served under subclause (1) shall be served as soon as possible after the party wishing to adduce the new or further evidence becomes aware of the new or further evidence or of the relevance of the evidence.

“(3) A supplementary statement served under this rule may be adduced as evidence only with the leave of the Court.

“441F. Evidence in chief at trial—(1) Where a written statement signed by a witness has been served under rule 441B or rule 441C, that

written statement, together with any supplementary statement adduced as evidence with the leave of the Court under rule 441E,—

“(a) Shall, unless the trial Judge otherwise directs, be read by the witness at the trial as the witness’s evidence in chief; and

“(b) Shall, when read by the witness at the trial, be the evidence in chief adduced by the witness at the trial; and

“(c) Shall, after being read by the witness at the trial, be endorsed by or on behalf of the Registrar with the words ‘Given in evidence on [Date]’.

“(2) The endorsement made under subclause (1) (c) shall be signed and dated by or on behalf of the Registrar.

441G. Oral evidence in chief—(1) Oral evidence in chief of any person (whether a person who has given a written statement served under rule 441B or rule 441C or rule 441E or a person who has not given such a statement) may be adduced at the trial only if that oral evidence—

“(a) Is in response to evidence adduced by another party to the proceeding; or

“(b) Is adduced with the leave of the trial Judge.

“(2) Leave may be granted under subclause (1) (b) only where—

“(a) The evidence relates to matters contained in a written statement served under rule 441B or rule 441C and is required to explain, elaborate, or otherwise clarify those matters; or

“(b) The evidence relates to evidence in response to matters contained in—

“(i) A written statement served under rule 441B or rule 441C; or

“(ii) A supplementary statement adduced in evidence under rule 441E; or

“(c) The evidence relates to new or further matters that could not reasonably have been included in the witness’s written statement or a supplementary written statement; or

“(d) The admission of the evidence is required in the interests of justice; or

“(e) Every party to the proceeding who is represented at the hearing consents.

441H. References to written statements on opening of case—Where a written statement served under rule 441B or rule 441C has not been adduced in evidence at the time when a party opens his or her case, that party may, in opening his or her case, refer to that statement only if—

“(a) That statement was served by that party; or

“(b) The trial Judge grants that party leave to do so.

441I. Cross-examination in relation to written statements—(1) Where any part of the evidence contained in a written statement served under rule 441B or rule 441C is not adduced as evidence at the trial by the person who signed the statement, any other party to the proceeding may, unless the trial Judge otherwise directs, put that part of the statement to that person in cross-examination.

“(2) Where a written statement served under rule 441B or rule 441C, or any part of any such statement, has not been adduced in evidence, any party may with the leave of the trial Judge, put that written statement or that part of it to any witness in cross-examination.

441J. Privilege and admissibility—Nothing in rules 441A to 441I—

- “(a) Deprives any party of that party’s right to treat any communication as privileged; or
- “(b) Changes inadmissible evidence into admissible evidence; or
- “(c) Changes admissible evidence into inadmissible evidence; or
- “(d) Deprives any party of that party’s right to cross-examine any party to a proceeding on a statement served under rule 441B or rule 441C or rule 441E that is inconsistent with a statement previously made by that party; or
- “(e) Allows a statement served under rule 441B or rule 441C or rule 441E to be made available, before it is given in evidence, for use for any other purpose or any other proceeding.

“441K. **Rule in *Browne v Dunn***—Unless the parties to any proceeding to which rules 441B to 441I apply otherwise agree, the rule in *Browne v Dunn* (1893) 6 R 57, HL (which provides that if the Court is to be asked to disbelieve a witness, the witness should be cross-examined) shall apply to every such proceeding.

“441L. **Election as to evidence in relation to nonsuit**—Nothing in rules 441A to 441J affects rule 490 or the admissibility of the evidence that may be adduced in relation to an application under that rule.

“Negotiations for Settlement”

4. Judge may assist in negotiations for settlement—(1) Rule 442 of the High Court Rules (as substituted by rule 13 of the High Court Amendment Rules 1985) is hereby amended by omitting the words “At the request of all the parties to a proceeding,”.

(2) This rule comes into force on the 1st day of February 1996.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules amend the High Court Rules.

Rule 2, which comes into force on 1 February 1996, inserts a new rule 46A into the High Court Rules. The new rule, which relates to Calderbank letters, is along the lines of the corresponding English rule (Order 22, rule 14 of the Rules of the Supreme Court). The rule expressly provides that a party to a proceeding may at any time make to any other party to that proceeding a written offer that—

(a) Is expressed to be “without prejudice save as to costs”; and

(b) Relates to any issue in that proceeding.

Such an offer is not to be communicated to the Court until the question of costs falls to be decided. The effect (if any) that such an offer has on the question of costs will be in the discretion of the Court.

Rule 3, which comes into force on 1 March 1996, provides, subject to a number of exceptions, for the exchange, after a proceeding has been set down for trial, of witnesses’ statements.

Rule 4, which comes into force on 1 February 1996, amends rule 442 of the High Court Rules. Under that rule, as made in 1985, a Judge may, at the request of all the parties to a proceeding, convene a settlement conference at any time before the trial of the proceeding

commences. The amendment deletes the requirement that the convening of such a conference must be requested by all the parties to the proceeding.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 7 December 1995.
These rules are administered in the Ministry of Justice.