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Seminar on Civil Justice Reform



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Date: 19 August 2008

PLEADINGS & AMENDMENTS

(O.18 & 20)

- i. Time for Defence is extended to 28 days
- ii. No blank denial of the Defence
 - State the reason for the allegation made
 - A different version has to be pleaded
- iii. Inconsistent Alternative Scenario is recognized
 - If reasonable grounds for doing so is shown

PLEADINGS & AMENDMENTS

(O.18 & 20)

- iv. Pleading and particulars of pleading must be verified by Statement of Truth

- v. Amendment must also be verified by Statement of Truth

STATEMENT OF TRUTH (O.41A)

- i. Statement of Truth is required in the following cases:
- Pleading.
 - Witness Statement
 - Expert report
 - Any other document verification required by other provisions under RHC & Practice Direction

STATEMENT OF TRUTH

(O.41A)

ii. Exclusion

- If the Court considers that it is just to do so in a particular case
- Expressly provided by Practice Direction

STATEMENT OF TRUTH

(O.41A)

iii. Signed by:

- Maker of witness statement of report
 - The party putting forward the verified document
 - Legal Representative of the party
 - Insurer or the MIB
- >in relation to a pleading on behalf of a party
where they have financial interest in the result
of the proceedings

STATEMENT OF TRUTH

(O.41A)

- iv. If more than one insurer is conducting proceedings on behalf of a party, the statement may be signed by the lead insurer's officer
- The person signing shall specify the capacity
 - Must be a Statement that the lead insurer believes that the facts are true
 - The Court may order the statement be signed by one or more of the parties

STATEMENT OF TRUTH

(O.41A)

v. Effect of Insurer signing the Statement of Truth

- The Court shall treat his signature that:
 - > The party on whose behalf he has signed had authorized him
 - > Before signing, he had explained to the party that he would be confirming the party's belief that the facts were true
 - > Before signing, he had informed the party of the possible consequences to the party if it should subsequently appear that the party did not have an honest belief in the truth of those facts

STATEMENT OF TRUTH

(O.41A)

vi. Failure

- Pleadings: Upon application by any party, the Court may order to strike out a pleading
- Witness Statement or Expert report:
Not admissible in evidence unless otherwise ordered by Court

STATEMENT OF TRUTH

(O.41A)

vii. False Statement

- Contempt of Court proceedings may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth

NON-COMPLIANCE OF RULES & ORDERS (O.2)

- i. An order of paying a sum of money into Court if the party has, without good reason, failed to comply with a rule or order
- ii. Test: Court shall regard to:
 - Amount in dispute
 - Costs of which the parties have incurred or may incur

NON-COMPLIANCE OF RULES & ORDERS (O.2)

- iii. Money paid into Court is security for any sum payable by that party to any other party in the proceedings

- iv. Any sanction for failure has effect
 - Unless the defaulting party applies for and obtains relief from the sanction

NON-COMPLIANCE OF RULES & ORDERS (O.2)

- v. Factors to be taken in account for granting relief:
 1. Interests of administration of justice
 2. Prompt application
 3. Intentional failure to comply
 4. Good explanation for the failure
 5. Extent of compliance with other rules and order

NON-COMPLIANCE OF RULES & ORDERS (O.2)

- v. Factors to be taken in account for granting relief :
 - 6. Failure caused by the defaulting party or his lawyer
 - 7. Trial date or likely trial date can still be met if relief granted
 - 8. Effect of the failure on each party
 - 9. Effect of granting relief on each party

EXPERT EVIDENCE

- i. duty of expert witnesses (order 38. R.35A)
 - to help the Court on the matters with their expertise
 - overrides any obligation to client or by

- ii. Expert report to be verified by statement of truth (O.38. R. 37A)

EXPERT EVIDENCE

- iii. Duty to provide expert witness with copy of code of conduct (Order 38. R.37B)

- iv. Expert witness's declaration of duty to Court (order 38 r.37C)

COSTS OFFER AND PAYMENTS INTO COURT

Sanctioned payment (O.62A r.3)

Sanctioned offer (O.62A r.4)

Withdrawal or diminution of sanctioned offer
(O.62A r.7)

COSTS OFFER AND PAYMENTS INTO COURT

Sanctioned payment (O.62A r.10)

Clarification of sanctioned offer or sanctioned
payment notice (O.62A r.12)

COSTS OFFER AND PAYMENTS INTO COURT

Acceptance of sanctioned payment made by one or more, but not all, paying parties (O.62A r.16)

Consequences of sanctioned offer or sanctioned payment (O.62A r.18)



APPEALS TO THE COURT OF APPEAL

Application to Court of Appeal for leave to
appeal (O.59 r.2A)

Time for appeal (O.59 r.4)



NEW ORDER 22 OF THE
RULES OF HIGH COURT,
CAP.4A (“RHC”)

OFFERS TO SETTLE

1. Background:

- (a) The existing Order 22 RHC shall be “completely” repealed and replaced with the new Order 22 RHC.

- (b) The new law will purportedly take effect on 1st April 2009.

2. What are the Offers To Settle?

- (a) Defendant's weapons:
 - (i) Sanctioned Offer
 - (ii) Sanctioned Payment

- (b) Plaintiff's weapons:
 - (i) Sanctioned Offer

- (c) Sanctions be imposed on a rejecting party who fails to beat the sanctioned offer/payment at the trial.

3. What are the form/content of Sanctioned Offer? (O.22 r.5)

- (a) Must be in writing;
- (b) Must state whether it relates to the whole claim or part of it or to any issue arising from it;
- (c) Must state whether it takes into account any counter-claim or set-off;

3. **What are the form/content of Sanctioned Offer? (O.22 r.5)**

- (d) Must state whether it is inclusive of interest or provide details and particulars of interests; and
- (e) Must provide a condition that the offeree can accept the offer **after** the expiry only if the offeree can resolve the costs issue by parties' agreement or seek leave from Court.

4. **What is the significance in making a Sanctioned Offer?**

- (a) A Defendant may make a sanctioned offer limited to accepting liability up to a specified proportion.

- (b) A sanctioned offer may be at any time after the commencement of the proceedings but may not be made before such commencement.

4. **What is the significance in making a Sanctioned Offer?**

- (c) An offeree may accept a Sanctioned Offer before the expiry of 28 days without a need to seek leave/approval from Court;

- (d) If an offeree accept a Sanction Offer after the expiry of 28 days, the offeree is “unable” to accept the offer unless the parties can reach an agreement as to the costs issue, otherwise the offeree must seek leave from the Court.

5. What is the form/content of Sanctioned Payment? (O.22 r.8)

A defendant who makes a sanctioned payment must file with the Court a prescribed notice that-

- (a) state the amount of the payment;
- (b) state whether the payment relates to the whole claim or a part thereof or an issue arising therefrom;

5. **What is the form/content of Sanctioned Payment? (O.22 r.8)**

- (c) states whether it takes into account of counter-claim, set-off, interim payment(s) and previous payment(s) into court;
- (d) states whether it is made inclusive of interest or provides details and particulars of the interest.

6. What is the Offer to settle claim for “provisional damages”? (O.22 r.11)

- (a) “Provisional damages” means damages for personal injuries that are to be assessed on the assumption that the injured person will not develop the disease or suffer the deterioration.

- (b) When a defendant is making “a sanctioned payment”, the defendant may include an offer to allow the making of an award of provisional damages, subject to the condition that the Plaintiff shall make any claim for further damages within “a limited period” (i.e. subject to expert evidence).

6. What is the Offer to settle claim for “provisional damages”? (O.22 r.11)

- (c) If the Plaintiff accepts the sanctioned payment (in the context aforesaid), the Plaintiff shall within 7 days apply to the Court for an order for an award of provisional damages.

7. What are the Consequences after acceptance to the Offers?

- (a) Where a defendant's sanctioned offer/ payment to settle the **WHOLE** claim is accepted without leave, the Plaintiff is entitled to his costs.

- (b) Where a defendant's sanctioned offer/ payment to settle a **PART** of the claims is accepted without leave and all remaining claims are abandoned, the Plaintiff is entitled to his costs.

7. What are the Consequences after acceptance to the Offers?

- (c) Where a sanctioned offer/ payment which only relates to a PART of the claims is accepted without leave, the accepted part is stayed, the costs issue shall be determined by the Court unless the parties can agree.

8. What are the sanctions?

- (a) Where a plaintiff fails to get better judgment than a sanctioned offer/ payment made by a defendant, Court may:
- (i) disallow Plaintiff's entitlement to any interest accrued on compensation;
 - (ii) order Plaintiff to pay costs incurred after the date of the offer payment on indemnity basis;

8. What are the sanctions?

(iii) order Plaintiff to pay interest accrued on costs capped at 10% plus the judgment rate (i.e. 10.75%).

(b) Where a defendant fails to get better judgment than a plaintiff's sanctioned offer, Court may:

(i) order the Defendant to pay interest on compensation capped at 10% plus judgment rate;

8. What are the sanctions?

- (ii) order the Defendant to pay costs incurred after the date of the offer on indemnity basis;
 - (iii) order the Defendant to pay interest on costs capped at 10% plus judgment rate;
- (c) When exercising the discretion in making sanctions, the Court shall take into account of:

8. What are the sanctions?

- (i) The content of the offer(s);
- (ii) The stage at which the offer(s) was made;
- (iii) The information available to the parties when the offer(s) was made; and/or
- (iv) The conduct of the parties as to disclosure of information to the other side for considering the offer(s).



Speaker : Ms Sarah Wong
Mr Albert Tang
Mr Nick Wong

Date : 29 August 2008

Time : 5:00pm – 6:00pm



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Q & A



PLEASE NOTE

The law and procedure on this subject are very specialised. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

請注意

本題目之法律及程序十分專門。此文章只屬一般性之解釋，供你參考，而不應被依賴為關於任何特定事件之法律意見。如需法律意見，請與我所律師聯絡。

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