

Rules of the District Court (Amendment) Rules 2008

The Rules of the District Court (Cap. 336H)

Remarks

Order 24 – DISCOVERY AND INSPECTION OF DOCUMENTS

1. Mutual discovery of documents (O. 24, r. 1)

Rule 161
Alignment with RHC

(1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

2. Discovery by parties without order (O. 24, r. 2)

(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed shall make discovery by exchanging lists of documents. Accordingly, each party shall, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action.

(2) Without prejudice to any directions given by the Court under Order 16, rule 4, paragraph (1) does not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(3) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under paragraph (1).

(4) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any written law to make discovery of any documents.

(5) Paragraphs (3) and (4) apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in

paragraph (3) to the plaintiff, of a reference to the party making the counterclaim.

(6) On the application of any party required by this rule to make discovery of documents, the Court may -

- (a) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order; or
- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage.

(7) The Court shall make an order under paragraph (6), if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(8) An application for an order under paragraph (6) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(9) Any party to whom discovery of documents is required to be made under this rule may, at any time before the case management summons in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under paragraph (1).

(10) The party on whom the notice is served shall, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

3. Order for discovery (O. 24, r. 3)

(1) ~~Subject to paragraph (3) and~~ Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ or originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

Rule 162

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be

made –

- (a) may make an order against the first-mentioned party under paragraph (1); or
- (b) as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

~~(4) A direction for discovery taking effect under Order 23A, rule 4 or 5, shall be deemed to be an order under this rule.~~

Rule 79
Rec 52-60, 62

4. Order for determination of issue, etc., before discovery (O. 24, r. 4)

(1) Where on an application for an order under ~~rule 3~~ rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

Rule 163

(2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, ~~Order 23A, rules 9 to 12 and 14, shall apply as if the Court were conducting a directions hearing under that Order.~~ Order 25, rules 5 to 10 –

Rule 80
Rec 52-60, 62

(a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and

(b) with any other necessary modifications,
apply as if the application on which the order was made were a case management summons.

5. Form of list and affidavit (O. 24, r. 5)

(1) A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 26 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

Rule 164

(2) If it is ~~claimed~~ desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 27 in Appendix A.

6. Defendant entitled to copy of co-defendant's list (O. 24, r. 6)

(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in proceedings begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule "list of documents" (文件清單) includes an affidavit verifying a list of documents.

7. Order for discovery of particular documents (O. 24, r. 7)

(1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and, if not then in his possession, custody or power, when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

7A. Application under section 47A or 47B(1) of the Ordinance
(O. 24, r. 7A)

(1) An application for an order under section 47A of the Ordinance for the disclosure of documents before the commencement of proceedings shall be made by originating summons (in Form No. 10 in Appendix A) and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 47B(1) of the Ordinance for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must –

- (a) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the Court ~~in which a claim for personal injuries is likely to be made;~~
- (b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise ~~out of a claim for personal injuries made or likely to be made~~ in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

Rule 101
Rec 76, 79

(3A) In the case of a summons under paragraph (1), paragraph (3)(b) shall be construed as if for the word “relevant”, there were substituted the words “directly relevant (within the meaning of section 47A of the Ordinance)”;

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under section 47A or 47B(1) of the Ordinance for the disclosure of documents may be made conditional on the applicant’s giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce-

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- (a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun; or
- (b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

~~(7) In this rule, “a claim for personal injuries” (就人身傷害提出申索) means a claim for personal injuries or arising out of the death of a person. (L.N. 217 of 2000)~~

Rule 101
Rec 76, 79

(8) For the purposes of rules 10 and 11 an application for an order under section 47A or 47B(1) of the Ordinance shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

8. Discovery to be ordered only if necessary (O. 24, r. 8)

(1) On the hearing of an application for an order under rule ~~3, 7 or 7A~~ 3 or 7, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Rule 102
Rec 76, 79

(2) No order for the disclosure of documents shall be made under section 47A or 47B of the Ordinance, unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

9. Inspection of documents referred to in list (O. 24, r. 9)

A party who has served a list of documents on any other party, whether in compliance with rule 2 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must, when he serves the list on the other party, also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

Rule 165

10. Inspection of documents referred to in pleadings and affidavits (O. 24, r. 10)

(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings, affidavits, or witness statements served under Order 38, rule 2A, or experts' reports, reference is made to any document requiring him to produce that document for the inspection of the

party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

11. Order for production for inspection (O. 24, r. 11)

(1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1) –

- (a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2); or
- (b) objects to produce any document for inspection; or
- (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to rule 13(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 13(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

11A. Provision of copies of documents (O. 24, r. 11A)

(1) Any party who is entitled to inspect any documents under any provision of this Order or any order made thereunder may, at or before the time when inspection takes place, serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable charges) requiring him to supply a true copy of any such document as is capable of being copied by photographic or similar process.

(2) The party on whom such a notice is served must, within 7 days after receipt thereof, supply the copy requested together with an account of the reasonable charges.

(3) Where a party fails to supply to another party a copy of any document under paragraph (2), the Court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

12. Order for production to Court (O. 24, r. 12)

At any stage of the proceedings in any cause or matter the Court may, subject to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

13. Production to be ordered only if necessary, etc. (O. 24, r. 13)

(1) No order for the production of any documents for inspection or to the Court or for the supply of a copy of any document shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where, on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of any document, privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

14. Production of business books (O. 24, r. 14)

(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy or any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

14A. Use of documents (O. 24, r. 14A)

Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court or referred to in open court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs.

15. Document disclosure of which would be injurious to public interest: saving (O. 24, r. 15)

The foregoing provisions of this Order shall be without prejudice to any rule of law which authorizes or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

15A. Order for limiting discovery (O. 24, r. 15A)

Rule 103
Rec 80

For the purpose of managing the case in question and furthering any of the objectives specified in Order 1A, the Court may make any one or more of the following orders –

- (a) an order limiting the discovery of documents which the parties to the case would otherwise be required to make to each other under rule 1(1);**
- (b) an order directing that the discovery of documents required to be made under this Order to any party to the case shall, notwithstanding anything in this Order, be made in the manner specified in the order; and**
- (c) an order directing that documents which may be inspected under this Order shall, notwithstanding anything in rule 9 or 10, be inspected at a time or times specified in the order.**

16. Failure to comply with requirement for discovery, etc. (O. 24, r. 16)

(1) If any party who is required by ~~any order or direction~~ **any of the foregoing rules, or by any order made thereunder,** to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with ~~that order or direction~~ **any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11(1),** the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

Rule 166

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

17. Transitional provision relating to rules 1 and 2 (O. 24, r. 17)

Rule 167
Transitional

(1) Where before the commencement of rule 2, the pleadings in an action are deemed to have been closed, rule 2(1) has effect as if for the words "within 14 days after the pleadings in the action are deemed to be closed as between him and any other party", there were substituted the words "within 14 days of the commencement of this rule".

(2) Rules 1 and 2 and paragraph (1) has effect subject to –
(a) any direction relating to discovery of documents given by the Court before the commencement of those rules; and
(b) any memorandum filed under Order 23A, rule 4 ("the repealed rule") repealed by rule 78 of the Amendment Rules 2008 which sets out the directions and orders agreed between the parties and taking effect under the repealed rule.