

# Rules of the High Court (Amendment) Rules 2008

## The Rules of the High Court (Cap. 4A)

### Order 35 – PROCEDURE AT TRIAL

Remarks:

Adaptation amendments retroactively made – see 25 of 1998 s. 2

#### Remarks

#### **1. Failure to appear by both parties or one of them (O. 35, r. 1)**

(1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counterclaim in the absence of that party.

#### **2. Judgment, etc., given in absence of party may be set aside (O. 35, r. 2)**

(1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after the trial.

#### **3. Adjournment of trial (O. 35, r. 3)**

The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

#### **3A. Time, etc. limits at trial (O. 35, r. 3A)**

Rule 200  
Rec 108

- (1) At any time before or during a trial, the Court may by direction –**
- (a) limit the time to be taken in examining, cross-examining or re-examining a witness;**
  - (b) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;**
  - (c) limit the time to be taken in making any oral submission;**
  - (d) limit the time to be taken by a party in presenting its case;**
  - (e) limit the time to be taken by the trial; and**
  - (f) vary a direction made under this rule.**

**(2) In deciding whether to make any such direction, the Court shall have**

regard to the following matters in addition to any other matters that may be relevant –

- (a) the time limited for a trial must be reasonable;
- (b) any such direction must not detract from the principle that each party is entitled to a fair trial;
- (c) any such direction must not detract from the principle that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;
- (d) the complexity or simplicity of the case;
- (e) the number of witnesses to be called by the parties;
- (f) the volume and character of the evidence to be led;
- (g) the state of the Court lists;
- (h) the time expected to be taken for the trial; and
- (i) the importance of the issues and the case as a whole.

**7. Order of speeches (O. 35, r. 7)**

(1) The judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6), the plaintiff shall begin by opening his case.

(3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are 2 or more defendants who appear separately or are separately represented, then-

- (a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;
- (b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;
- (c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between, him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

**8. Inspection by judge or jury (O. 35, r. 8)**

(1) The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter.

(2) Where a cause or matter is tried with a jury and the judge inspects any place or thing under paragraph (1), he may authorize the jury to inspect it also.

**9. Death of party before giving of judgment (O. 35, r. 9)**

Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the judge to make an order under Order 15, rule 7(2), before giving judgment.

**10. Certificate of judicial clerk (O. 35, r. 10)**

At the conclusion of the trial of any action, the judicial clerk or other officer in attendance at the trial shall make a certificate in which he shall certify-

- (a) the time actually occupied by the trial,
- (b) any order made by the judge under Order 38, rule 5 or 6,
- (c) every finding of fact by the jury, where the trial was with a jury,
- (d) the judgment given by the judge, and
- (e) any order made by the judge as to costs.

**11. List of exhibits (O. 35, r. 11)**

(1) The judicial clerk or other officer in attendance at the trial shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number,

so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series.

In this paragraph a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(2) The judicial clerk or other officer in attendance at the trial shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall form part of the record of the action. (L.N. 103 of 1994)

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

## **12. Exhibits retained by Registrar pending appeal (O. 35, r. 12)**

(HK)(1) Unless the Court otherwise directs, the Registrar shall retain in his custody all exhibits duly marked and labelled until-

- (a) the expiration of the time limited by these rules for appealing to the Court of Appeal, or such extended period therefor as may be allowed; and thereafter
- (b) in the event of an appeal to the Court of Appeal, the final disposal of such appeal; and thereafter
- (c) the expiration of the time limited by Order in Council for applying to the Court of Appeal for leave to appeal to the Court of Final Appeal, or such extended period therefor as may be allowed; and thereafter
- (d) in the event of the Court of Appeal or the Court of Final Appeal giving leave to appeal to the Court of Final Appeal, the non-fulfilment of any condition for such leave to appeal or the final disposal of such appeal.

(2) Unless the Court otherwise directs, upon the expiration of the time limited for retention of exhibits fixed under paragraph (1) it shall be the duty of every party to an action who has put in any exhibits, and where represented, of his solicitor on the record, to apply to the Registrar for the return of the exhibits and to collect the same.

(25 of 1998 s. 2)

## **13. Impounded documents (O. 35, r. 13)**

(1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge on an application made by ~~motion~~ **summons**: Provided that where the Secretary for Justice makes a written request in that behalf, documents so impounded shall be delivered into his custody. (L.N. 362 of 1997)

(2) Documents impounded by order of the Court, while in the custody of the

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Court, shall not be inspected except by a person authorized to do so by an order signed by a judge.

(Enacted 1988)