RECENT DEVELOPMENTS IN THE CIVIL PROCEDURE RULES AND THEIR IMPACT ON THE COURT AND PRACTITIONERS

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Introduction

The Civil Procedure Rules (CPR) is still in its infancy. It was passed on the 16th September 2002. There was a transitional period[1] during which parties were required to comply with the rule that all matters in which trial dates were not fixed or that did not come on for trial by a certain date were to apply for a case management conference. The commencement date was the 1st January 2003.[2] In 2002, leading up to the commencement date, everyone was excited about the Rules and looked forward to the 2nd January 2003 when they would start to work under the new regime. The excitement gained force because of the overriding objectives and the idea that cases would be judge-managed. Judge-managed cases followed from the underlying philosophy of the rules, the active management of cases. The idea was that the active management of cases could only be realised if the responsibility for advancing cases to trial was in the hands of judges. The judges were expected to apply a flexible, if not robust approach to the resolution of matters taking into account the nature and substance of the case, the circumstances of the parties and the overall administration of justice.

1 Part 73
2 Rule 73.1(3)

Everywhere there was talk of no more adjournments, earlier trial dates and efficient and speedy disposal of matters. In some cases, forward thinking lawyers had seminars for their clients and highlighted the positives of the new rules but in many cases, these were really their expectations. Clients were told that trials would come on within a year of the filing of their matters. The public was also interested in hearing about the new rules and what it meant for them. They had lost confidence in the justice system for different reasons probably having nothing to do with the rules in particular. Lawyers came on board as well and one lawyer reported that he fired his entire staff and hired a new staff complement as he did not want any dinosaurs to slow down his firm's adaptation to the new dispensation.

The new rules were also good news for commercial clients. These clients were discontented with the slow pace of litigation. While it can be said with a degree of certainty that the concept of *lex mercatoria*[3] was not at the forefront of their mind, it was clear that they wanted a system that catered to the exigencies of business and commerce. Their hopes were realised by the inclusion of new commercial rules in the CPR[4] which provided for a judge to be specifically assigned to a commercial division.[5] There were higher filing fees. The expectation is that the higher fees meant greater efficiencies. In other words, they got their own "court," their own judge and their own list.

There were also amendments to the form and substance of the rules of procedure. In terms of form, the rules were simplified and litigants were able, if they chose, to respond in person to all matters by filing an acknowledgment of service. This was made possible

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3 The law merchant, it evolved as a system of custom and best practice, which was enforced through a system of merchant courts along the main trade routes. It functioned as the international law of commerce.[1] It emphasised contractual freedom, alienability of property, while shunning legal technicalities and deciding cases *ex aequo et bono*. **A distinct feature was the reliance by merchants on a legal system developed and administered by them**. States or local authorities seldom interfered, and surrendered some of the control over trade within their territory to the merchants. In return, trade flourished under the *lex mercatoria*, increasing tax revenues. [extracted from wikipedia on the 24th October 2009

4 Part 71 – Commercial Court Rules

5 Rule 71.4

because detailed instructions are included on the back the forms.[6] Applications were also simplified with a single step procedure, known as the case management conference. Outside of there is provision for without hearing (paper) applications. There were some initial humps in relation to the substance of some rules but the more troublesome ones were amended in 2006. The amendments to the substance of the rules meant, for some, that there is a new "code" of civil procedure. On that view, the rules were seen as a statute and self-contained.

A fair assessment of the rules in the period immediately prior to its passage or coming into effect is to say that Charles Dickens' classic title *Great Expectations* was given new life in 2002. It is clear that a great number of persons, be they civil litigators, litigants, the judiciary and court administrators shared in the expectation of great things to come; there was a feeling that things would be *new and different*. The idea that cases would be judge managed played no small part as this is what translated into minimal delays and early trial dates.

In so far as the idea of managing cases was at that time new to Jamaica being an integral part of the new thrust to improve access to justice, the initiative by the Cornwall Bar to take a close look at the progress and success of the rules is a timely one. The topic is expansive. In order to make it more manageable the paper is structured into three broad categories, which are not necessarily considered separately as each one may contain an element of the other. These are the institutional framework for the implementation and administration of the rules,[7] the role of or interaction with parties and the substance and form of the rules. The idea is to stimulate discussion around and about the rules so that they can be improved and clarified as necessary.

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6 Prescribed Notes

7 Meaning "cultural" – in terms of organisational culture

This is best understood by examining the purpose and objectives of the rules. These are set out in Part 1 of the CPR.

Purpose of the rules – The Overriding Objectives

Any question relating to the application, effectiveness or impact of the rules is best considered against this background as it contextualises and sets the tone of the rules in substance and application. It is in the following terms:

> 1.1 (1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.
>
> (2) Dealing with cases justly includes –
>
> (a) Ensuring, so far as practicable, that the parties are on an equal footing and are not prejudiced by their financial position;
> (b) Saving expense
> (c) Dealing with it in ways which take into consideration –
> i. The amount of money involved;
> ii. The importance of the case;
> iii. The complexity of the issues; and
> iv. The financial position of each party;
> (d) Ensuring that it is dealt with expeditiously and fairly; and
> (e) Allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

The rules impose on the parties[8] a duty to further the overriding objectives and an obligation on the court[9] to enforce or give effect to them.

It is this part of the rules therefore that directly engages the public or parties by defining their role in the administration of justice. It is a clear signal that parties can no longer sit by and criticise because this rule ensures that they are a part of the process. The rules have at their core the overriding objectives. The idea was that they created a framework within which the rules could survive as a living document, fulfilling the intention of its

[8] r. 1.3
[9] r. 1.2

drafters. To this end the rules themselves accept that there are flaws but makes it clear that there is scope for improvement once they are identified.[10]

The Administration of the Rules

Part Two of the CPR is very important because it sets the context of the rules by defining how they are to be implemented and interpreted. It sets out who is responsible for what and it provides an indication as to how its objectives are to be achieved. As a start, so far as relevant, the rule provides that the court through the Chief Justice, judges, masters, registrars, administrators and general staff are charged with the responsibility of implementing the rules, giving life to it as it were. The rules make this clear – that rule is entitled *"who may exercise the powers of the court"* and is in the following terms:

> 2.5 (1) Except where any enactment, rule, or practice direction provides otherwise the functions of the court may be exercised in accordance with these Rules and any direction made by the Chief Justice by –
>
> (a) a single judge of the court;
>
> (b) a master; or
>
> (c) a registrar
>
> (2) The Chief Justice may by direction allocate the work of the court between judges, masters and registrars....

This rule is followed by a rule that deals with "Court Staff." So far as relevant that rule provides as follows:

> 2.6(1) Where these Rules refer to an act being done by the registry or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised generally or individually in writing by the Chief Justice.
>
> (2) Where these rules expressly so provide, any other functions (sic) of the court may be carried out by a member of the court staff authorised in writing by the Chief Justice.
>
> (3) Where a step may be taken by a member of the court staff –

[10] The Honourable Mr. Justice Lensley Wolfe CJ (retired) - Preface to Rules – p. xxxix

(a) that person may consult a judge, master, or registrar before taking the step; and

(b) that step may be taken by a judge, master, or registrar instead of a member of the court staff.

Finally, it provides the blueprint for implementation, reminiscent of the direction given by senior counsel to young counsel, "e*very case must be prepared with a consideration of who, why, what, where, when.*" It is interesting to observe as well that this is also the recommended structure for any well organised essay or composition piece. What these analogies tell us though, is that the CPR was intended to be a structurally sound piece of *legislation* providing a complete code for its administration, implementation and interpretation. With that said, the Part concludes with r. 2.7 entitled, "Court's discretion as to where, when, and how, it deals with cases." This is in the following terms:

2.7(1) The court may deal with a case at any place and time it considers appropriate.

(2) In considering what place or time may be appropriate the court must consider the convenience of such place or time to the parties and their Attorneys-at-law and to any witnesses.

(3) The court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video conference or any other form of electronic communication.

(4) The court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage and retrieval of information or any other technology it considers appropriate.

In terms of implementation, however in practical terms the public's interface is with the court staff. The paper will therefore look at three areas of the rules to see how the different actors stymie or facilitate their implementation or to see whether there are areas that require clarification. It will start by looking at applications. This is chosen because it gives life to the interaction between practitioners, the court and the rules. It is an area in which there is the most or constant contact among these parties. For this reason it is likely to be a good indicator of the practical application of the rules in terms of effectiveness and how parties or the court could enhance the implementation of the rules. This can be tested by the fact that no

claim, except a fixed date claim is advanced or gets before a before a court or judge unless an application is filed at the registry. This is irrespective of whether the matter is commenced by Claim Form or Fixed Date Claim Form. Once the application is filed the registry it is the duty of the court staff to either deal with it and/or refer it to a judge. In other words, applications must be filed for CMC or interim orders whether before or after proceedings have commenced.

A Practical Review – Rules, Parties and Administrators

Applications – Time Saving Measure

Applications are deal with under Part 11 of the rules. Applications replace the summons and motions under the previous rules.[11] The general rule is that all applications are to be made in writing and the court has discretion in appropriate cases to dispense with the writing requirement.[12] The use of applications is one mechanism by which the rules introduced time saving measures. Instead of an application being made for every single interim relief being sought by a party the rule mandates that "*so far as practicable all applications relating to pending proceedings must be listed for hearing at the case management conference.*"[13] There are sanctions for non-compliance with this rule so that if an application is made other than at the case management conference or the pre-trial review and which could have been made at these hearings, "*the court **must** order the applicant to pay the costs of the application unless there are special circumstances.*"[14] This rule means that applications and cross-applications are heard together either at the case management conference or the pre-trial review or any adjournment thereof. It also means that adjournments and part-heard matters would be minimised because last minute applications at

[11] The Civil Procedure Code
[12] Rule 11.6
[13] Rule 11.3(1)
[14] Rule 11.3(2)

the trial should be a thing of the past. It is true to say that for the most part the rules have been successful in this respect. The days of trials being adjourned because of last minute applications are disappearing if they have not completely disappeared.

Costs Saving Measure

A significant costs saving measure is the introduction of the rule that the applicant *"need not give evidence in support of an application unless it is required by – (a) rule; (b) practice direction; or court order."*[15] It means that parties are able to save on the costs associated with the preparing of affidavits including the costs of paper. The application is required to state grounds and so this balances the requirement for setting out evidence and removes the element of surprise that may be caused by the lack of evidence. The surprise element is also removed, again with the effect of minimising adjournments to prepare responses, by restricting parties to the reliefs requested in the application unless the court gives permission.[16]

The rules also provide that where evidence is required, it must be by way of affidavit unless a rule, practice direction or court order provides otherwise.[17] *This is an area where the rules committee could consider whether witness statements should be included as a form of evidence in interim applications.* This is because witness statements are required to have statements of truth. Statements of truth are a serious matter because a witness can be found liable for contempt if the statements are found to be untrue or that he had no belief in their truth.[18] There is precedent for this in the UK rules. The benefit or advantage of this approach is that witness statements are more flexible since they can more easily be adapted for use at the trial. This is because unlike an affidavit the witness statement does not contain statements

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15 Rule 11.9(1)
16 Rule 11.13
17 Rule 11.9(2)
18 Caribbean Civil Court Practice and Court of Appeal Decision

of information or belief or hearsay although the parties can make use of affidavits already filed in court.

Saving Costs: Types of Applications

There are several types of applications, all of which are filed on Form 11 save and except proceedings in default under rule 76.12(1) where form MP 7 is used. There are three main categories:

1. Applications made on notice such as those that are made at the Case Management Conferences;
2. Applications made without notice but with hearing such as those under Part 17 of the rules;
3. Applications made without notice and without hearing.

Lawyers do not necessarily file applications falling within category one (1) unless they have a specific application to strike out or for summary judgment. Those in category two (2) are frequent enough and require some attention as well having regard to the recent decision in **National Commercial Bank v. Olint PC 61 of 2007**. Although the rules are clear in relation to category three (3), the registry has either been slow to or does not give effect to category three (3). It is easily at once most significant time-saving measures in the rules and *the most disappointing areas of the implementation of the rules.* The rule itself is in keeping with the objectives of the rules as well as Part Two. However, the implementation in this area has been examined, tried, tested and found wanting.

Without Notice and Without Hearing Applications and Proceedings

While the general rule is that all applications must be on notice to each respondent,[19] an application may also be made without notice if a rule or practice direction allows.[20] To

[19] Rule 11.8(1)
[20] Rule 11.8(2)

achieve this object, the rule provides a complement to this rule. The complementary rule[21] provides that:

> The court may deal with an application without a hearing if –
>
> (a) No notice of the application is required;
>
> (b) The parties agree;
>
> (c) The court considers that the application can be dealt with over the telephone or other means of communication;
>
> (d) The parties have agreed to the terms of an order –
>
> i. Which does not come within rule 27.11(1); and
>
> ii. The application (or a copy of the application) is signed by the attorneys-at-law for all the parties to the application; or
>
> (e) The court does not consider that a hearing would be appropriate.
>
> (Rules 2.7(3) and (4) contain powers to enable the court to deal with applications by electronic means. Rule 42.7 deals with consent orders.)

The combined effect of provides the basis for the hearing of applications without notice and without attendance of the parties.

Without Notice and Without Hearing Application and Proceedings: Breakdown at the Institutional or Administrative Level

It should be recalled that under Part Two the court[22] is charged with the responsibility of giving life to the rules by applying and interpreting them. The role of parties while important is incidental to this, their duty is to *further* the objectives of the rules. The starting point therefore is that the claim or application must be accepted for filing at the registry.[23] In addition to that the registry or court staff is required to take the appropriate steps including those requested by the parties to accordance with the rules. In other words, the input and co-operation of the registry is extremely important in advancing the purpose and objectives of

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21 Rule 11.14

22 Through the Court Staff at the Registry

23 r. 8.1(1) and r. 11.5(1)

the rules. This is one of the clearest cases of a breakdown in the implementation the rules at the institutional or administrative level. This remains the case where parties have modified Form 11 to make it clear that the rules support the application being made either without notice or without a hearing.[24]

In practice parties comply with rule 11.14(a) by reference to rules which specifically provide that no notice is required such as:

a. An application for permission to serve the Claim Form out of the jurisdiction.[25]
b. An application for approval of alternative methods of service.[26]
c. An application for default judgment *"where the claim is for some other remedy"*[27] that is other than for money or goods.
d. An application to strike out where no sanction for non-compliance has been imposed.[28]
e. An application to enforce an "*order for specific disclosure."*[29]

The manifestation of the breakdown is evidenced by the fact that the registry consistently fixes these applications for hearing. On the 15th October 2009, for example, an attorney was before two different Masters with two applications for permission to serve the claim form out of the jurisdiction for half an hour each and the times were not consecutive.[30] In order to give effect to the rules where no notice or hearing is required the registry is required to refer the application to a judge or master and with the exception of rules 12.10(5) and 7.5(1), the judge or master may require a hearing.

To the extent that the preferred approach of the registry is to fix these matters for hearing the purpose of the rules is defeated. A party is not given the benefit of a judge or

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24 Appendix 1
25 Rule 7.5(1)
26 Rule 5.13(4) and Rule 5.13(5)
27 Rule 12.10(5)
28 Rule 26.4(2), 26.4(3)
29 Rule 28.14(2) and 28.14(3)
30 2:00 p. m. and 3:00 p. m.

master reviewing an application under these or similar rules as anticipated in Part Two or within the CPR. The judge or master is not given the opportunity to exercise their discretion to manage and streamline their case load or the case load of the courts by filtering the matters that come on for hearing or not and thereby give effect to the overriding objectives. The net result is that although there is no empirical data, not that none exists, to support this claim, it is a fact that parties have more or less given up on making these applications so that it is likely that they have become a thing of the past unless urgent measures are taken to sensitise the registry to the effect of these rules.

It would be remiss to suggest that only the registry is at fault. Their response in most cases is that they are unable to find a judge, all of whom already have scheduled listings, to 'hear' the matter. If this is a part of the problem, and it is likely, then some attention could be given to capacity building in terms of the institutions and personnel[31] needed to achieve the desired and intended outcome under the rules.

Matrimonial Proceedings: Without Notice and Without Hearing Applications

The Matrimonial Causes Rules 1989 were repealed in 2002 and new matrimonial rules were incorporated in the CPR. The idea as with everything else in the rules was to simplify matrimonial proceedings. One method of achieving this result was to eliminate hearings for uncontested divorce proceedings. This is done "*by filing an application to dispense with a hearing in form No. MP 7accompanied by affidavit evidence...*"[32] as set in rule 76.12. The application must be referred to a judge who has discretion to consider the application on paper and may:

a. dispense with the hearing of the petition;

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31 Including additional judges and/or masters

32 r. 76.12(1)

b. grant, defer or refuse the decree nisi;

c. determine that a hearing, whether of the petition or any claim being pursued, is required and, if so, schedule such hearing; or

d. issue such directions for future conduct of the proceedings as may seem fit.[33]

Seems simple doesn't it. Well by all indications, it has not been. The problem with this 'simplified' procedure was aptly captured in a Sunday Gleaner article on the 23rd November 2008:

> AMENDMENTS TO the Matrimonial Causes Act in September 2006 and the resulting procedural changes have caused a backlog in divorce cases filed in the Supreme Court.
>
> The clogged chamber, **The Sunday Gleaner** understands, is causing great hardships for divorcing Jamaicans, many of whom wish to remarry and sort out their financial affairs, but are unable to do so.
>
> A 42-year-old administrative assistant in Kingston says she filed for divorce 13 months ago and is still waiting for the annulment(sic) to be finalised.
>
> "All I keep hearing is that there is no judge to sign. It's affecting me because I want to move on with my life and my ex-husband wants to move on with his life," the woman says. "My lawyer tells me there is nothing she can do. I was told that after I got the decree *nisi*, I would have to wait another six weeks to get the decree absolute, but it's long overdue. This is also affecting me financially," she adds.
>
> In September 2006, the amendment of the Matrimonial Causes Act, following on the Privy Council ruling in the *Eldemire and Eldemire* case, meant that divorce cases were no longer held in chambers (sic), but were to be granted on the basis of documents presented in the case file.
>
> Opposite happening
>
> The change was intended to make divorce an easier process, but instead, the very opposite has happened, with increasing com-plaints by those affected.
>
> "I have been having some delays and my clients are not pleased at all. They have been calling on a regular basis," attorney-at-law Keith Bishop confirms.
>
> Margarette Macaulay, another Kingston-based attorney-at-law says, "Every single lawyer that I know has had problems."
>
> Macaulay believes the cause of the backlog is rooted in the lack of preparation and training in response to the legal change in 2006.

[33] r. 76.12(3)

"Basically," says Macaulay, "we have new rules being applied by old minds. People have been, for years, operating under the old rules and all of a sudden, the new rules were just put in place without any notice."

Data from the Statistical Institute of Jamaica (STATIN) indicate that in 2007, divorces plunged in number to 1,140, coming from 1,768 in 2006 and 1,806 in 2005. However, the STATIN researchers note that the smaller number of divorces absolute (sic)does not represent an actual decline, but is due to changes in the Matrimonial Causes rules, which have caused a considerable backlog in divorce petitions.

Some lawyers have suggested to **The Sunday Gleaner** that judges be assigned solely to divorce duties on particular days of the week, otherwise the backlog will not be cleared.

The problem was first reported in December 2007 when Chief Justice Zaila McCalla admitted that something needed to be done. But, one year later, the complaints are only getting louder.

A 32-year-old computer programmer filed for his divorce in November 2006 through the Kingston Legal Aid Clinic.

"I don't get it yet. I went to Legal Aid because I didn't have a lot of money. The lawyers drafted documents and sent them to court," he relates. "Apparently, the documents were misplaced. Most of the times I call, the documents are not in place. This went on months, until a year has passed. Then I had to refile in November 2007. This time, they sent over the documents and I served the papers on my wife. I am now awaiting the signature from the judge. They say there are no judges. It's ridiculous!," he exclaims.

Attorney-at-law Keith Bishop says he can't always say the delays are as a result of the judge not signing, as other problems might lie in the improper preparation of documents.

Another problem notes Mccaulay is that the amended rules are being enforced "to the letter rather than being enforced as the law requires, as was decided by the Privy Council in *Eldemire and Eldemire*. One should not impose and apply rules in every case. You look at the needs of a particular case," she says.

Old rules, new rules

Under the old rules, in order to get a decree *nisi*, the petitioner gives evidence in open court and the judge could decide to grant the decree *nisi* or not. Under the new rules, petitioners apply for appearance to be done away with and for a decree *nisi* to be granted on the basis of the file presented.

Today, documents are filed and petitioners wait to get a response. The requirement for supplemental affidavits also slows down the process.

"You have a requirement that further documents are to be filed to state that the couple has had counselling. This is because the rule states that

> it should be shown whether they have had counselling. In some cases this is not necessary," says Mccaulay. [34]

Since this article and one year later, not much has changed even though there is evidence that some effort has been made to allocate time to judges to deal with these applications. The fact that the matters were not being placed before judges is only one of the factors highlighted. Another factor which mirrors the thought of the lawyer who took the extreme measure of dismissing is entire staff is that the new rules were imposed on existing staff without the requisite preparedness that could have been achieved through special training to deal with the rules. Attorneys also complain of lack of consistency and uniformity in the application of the rules to the their matters or of practices which cause the matter to be more prolonged than if the matter were heard in court. In some cases parties complain that the requirement based on the registry's interpretation of the rules changes after an application is properly filed. In all such cases the registry requires that the applicant re-file every single document that does not conform to the new procedure. Those attorneys are of the view that this contributes to the backlog both in the registry and their offices because time is spent 'bouncing' and correcting the bounced applications. Another attorney expressed concern about the problem of the fact that there is no hearing. This problem is two-fold. In the first instance the applicant is not given an opportunity to explain or make submissions, for example, that even though he lives in the same house with his wife, they are separated. In the second instance the court has been declining to grant the decree nisi where matters in relation to the children remain unresolved instead of the usual reservation for hearing in chambers taking into account the fact that those are *the best arrangements that can be made in the circumstances.*

The registry is not all to be blamed for the existing state of affairs. The available evidence suggests that attorneys have departed from 'core principles' in divorce matters. It

[34] Avia Collinder "Divorce Cases Clog the Judicial System

appears that the view is taken that *oh it is just family law or a family matter*. The result is that there insufficient attention is paid to details. Attorneys it is alleged would file a marriage certificate in German with no translation. There is also inadequate or incomplete affidavits, for example, that do not conform to Part 30 of the rules. Above all, there is in an increase in the number of applications for dissolution of marriages in some cases barely three years of marriage. It is simply too much.

It is also the case that some aspects of the rules are unclear. Under the old matrimonial rules, it was clear that an Affidavit of Search is required. The new rules do not identify or clearly state that it requires such a document. Nevertheless it is a requirement and parties only know because their application is bounced. It is suggested that this requirement is based on the rule that an application to dispense with a hearing in form MP 7 accompanied by affidavit evidence of "*the failure to acknowledge service or file and answer...*"[35] If these are rules are a new code of civil procedure, it is difficult to see why this interpretation is being given to the rule. It is suggested that the affidavit accompanying the application could set out the statement of facts in similar terms to the requirement for an Affidavit of Search. The argument against this is that, the statement of the applicant to that effect would be based on information and belief in the face of what is technically an application for a final order. This uncertainty certainly needs to be resolved whether by way of practice direction or some other communication parties.

Whether one accepts the parties' views or the registry's view, the fact is that there are serious delays in the processing of divorces under a system that was intended to simply the proceedings. One cannot ignore the arguments that the sheer load is overwhelming. Is there need for additional personnel to be assigned to divorces, should there be separate registries and separate personnel. On the other hand, the call for consistency, uniformity and

[35] r. 76.12(1)

communication should not go unheeded. This is one area in which practice directions may assist.

Consent Orders or Hearing Not Appropriate: Breakdown at the Institutional or Administrative Level

This is another provision that the registry does not give effect to. They insist that the consent judgment or order must be signed by a judge or registrar and refuse to accept it for sealing notwithstanding the clear terms of the rules which provides:

> Where this rule applies the order must be –
>
> (a) Drawn in the terms agreed;
>
> (b) Expressed to be "By Consent";
>
> (c) Signed by the attorney-at-law acting for each party to whom the order relates; and
>
> (d) Filed at the registry for sealing.

By way of example a Tomlin Order, that is *"an order for the stay of proceedings on terms which are attached as a schedule to the order but which are otherwise a part of it..."* is also a form of consent order, nevertheless judges have been bothered to give effect to it by signing. Invariably, and this is also the case where a hearing is not appropriate, neither the litigant nor a judge gets an opportunity to consider whether the matter is appropriate for a hearing. The matters are just given a date by the registry and they insist on doing so.

The Parties' Role in Saving Costs: The Parties Agree or Electronic Means

It has just been seen how three different but related sections of the rules breaks down at the administrative or institutional level how the parties contribute in one respect to that breakdown by failing to take care. This section will review another area in which the parties and their attorneys could do more to further the overriding objectives.

This section challenges the parties and their attorneys to do the unfamiliar. It allows for paper hearings or hearings by electronic means. This is tantamount to heresy and understandably so. There is a fear of paper hearings in substantial matters. Parties and their legal representatives tend to shy away from them. The result is that even in cases where lengthy submissions have been ordered the parties request anywhere from a day to three days hearing at which they appear and read the submissions. This takes up a lot of time and defeat the purpose of these rules. In some cases this produces unjust results. A party with the benefit of ex parte injunctions gets up to six (6) months in some cases before the matter is heard on the basis that the attorneys are unavailable, the desired three hours, one day or three days are unavailable. This is even where full submission have been ordered and filed. While the fear is appreciated, it files in the face of the rules in terms of doing justice between the parties.

The recommended solution is two-fold. The fear of paper hearings may be one of confidence as to whether the court or judge will be fully seised of the matter or how the judge will clarify any issue arising on the submissions. Parties assume that the judge will not understand unless they are in a position to read what they had already written. This fear is encouraged by the adversarial system of our jurisprudence which enables the parties to present arguments and counter arguments and seeing in many cases a judge gaining greater clarity because counsel was present to defend an argument or respond to a judge's inquiry. It is a system built on oral advocacy. The fear is therefore neither unreasonable nor ill-founded. The question is how to move forward in order to ensure that justice is done as between the parties. One way forward is to use a combined approach depending on the nature of the application. The judge can fix, as they do now, a time table for written submissions and authorities which is now the norm. The judge should also fix a time for the parties to attend, not to read their submissions but, to give a summary of the application and respond to

questions that the judge may have, having read the file and submissions in preparation for the hearing. This places a burden on both judge and counsel – both must be prepared and this is an absolute necessity in order to pass on that confidence to clients who have grown accustomed to hearing lawyers talk or the perception that only a person who talks a lot can be a good lawyer. It is a classic application of the principle of *justice must not only be done but must be manifestly seen to be done.*

Judges have been prepared to deal with hearings on paper only, however substantial the matter. In one instance where this occurred,[36] the judge at the invitation of counsel and the agreement by opposing counsel, gave directions and heard an entire application for freezing orders on paper. In so far as the rules provide that a further hearing must be fixed in before it makes a final order[37] the applicant is entitled to a hearing. However, this approach is useful where as in that particular case, the convenience of counsel and the availability of the judge and a trial date were simply not coinciding. This type of case required urgent intervention in so far as the other parties' assets were frozen. The result was an economical use of judicial time and an example of a judge giving *"effect to the overriding objective when ...exercising any powers under,"*[38] of counsel acting in accordance with their "*duty to help the court to further the overriding objectives"*[39] and of justice being done between the parties.

Judges have also shown a willingness to hear applications, or applicants or parties by electronic means. There have been cases where counsel is running late for court and instead of delaying the matter the court has allowed counsel to participate in the matter by telephone. In other instances, where a witness either forgets the date or is unable to attend court, judges have facilitated the hearing by telephone. These rules were not in the previous procedural

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36 Quick Signs v. E Z Cash Loans & Ors 2009 HCV 01134
37 Rule 17.4(5)(a)
38 Rule 1.2
39 Rule 1.3

code. There is no evidence to suggest that these rules are being abused by the parties and judges have been taking advantage of the flexibility provided by the rules. These measures mean that an adjournment was averted. There is at least one case, a trial,[40] in which the evidence was taken by video link where the witness alleged that he feared for his safety if he were to attend the hearing in Jamaica.

The above instances of non or under implementation of the rules are significant because they demonstrate the need for a change in attitude on the part of court administrators, counsel and the court if the rules are to work effectively. The chilling effect on the operation of the rules cannot be overstated. Consideration must also be given to the time it takes for applications under these rules to lie in the registry for a date to be fixed or where counsel or their clerks sit in the registry so that a date can be fixed. The time spent by counsel and judge to facilitate and attend a hearing for a procedural application to be heard or an application that could be dealt with by consent to be fixed for hearing and heard. There are also the costs to the client or the parties for the attorneys to prepare for and attend the hearing.

Once it is accepted and recognised that applications are the primary method of interfacing with the courts, these institutional obstacles need to be addressed.

Enforcement of Judgments: Justice for whom – the creditor or the debtor?

This section of the paper is confined to the enforcement of money judgments by committal. The application is made using a Judgment Summons under Part 52. Part 52 deals with "*applications to commit a judgment debtor for non payment of a debt where this is not*

[40] Paul Chen Young; Rule 29.3

prohibited by the Debtors Act."[41] The application is made in form 22 that is, by way of a judgment summons. If the judge at the hearing of the judgment summons is satisfied that "*that the judgment debtor has had, since the making of the judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected or refuses or neglects to pay same (i) commit the judgment debtor to prison for a term not exceeding six weeks or until the judgment debt or order is sooner satisfied..."*[42] This is where things get hazy. How is the committal order executed? Should the committal order be served on the defaulting party?

Service of Committal Order – A Condition precedent to Warrant of Commitment? No Procedure for Issuing Warrant of Commitment – Similar to Old Rules – Maybe English Procedure – s. 676.

There is no procedure in the CPR for this. Interestingly there were no provisions written into the old rules either. Although there were no provisions in the old rules, the procedure was incorporated by reference. Section 686 of the Civil Procedure Code provides that *"[w]here no other provision is expressly made by Law or by Rules of Court the procedure and practice for the time being of the Supreme Court of Judicature of England shall, so far as applicable, be followed, and the forms prescribed shall, with such variations as circumstances may require, be used."* The relevant English provision was Order 45 Rule 5[43] where subject to the provisions of the Debtors Act 1869 and 1878[44] a person can be committed to prison for failing to pay a money judgment. In additional to the powers of enforcement under the Debtors Act, enforcement can be by way of committal for contempt of court under Order 52.[45] There is a distinction between the Debtors Act procedure and

41 r. 52.1
42 r. 52.4(c)(i)
43 Supreme Court Practice 1995
44 1872 Jamaica
45 Part 53 of the CPR.

committal under Order 52.[46] Under the Debtors Act procedure the order for committal may be made on a judgment debtor summons in chambers and becomes effective depending on the terms of the order as soon as the judgment debtor fails to pay. In other words, there is no further requirement to apply for a committal order. Committal proceedings under the Order 52 are made on motion[47] in open court.

The order requiring the person to do the act must be served on the judgment debtor and must have a penal notice. The documents which must be served as a condition of committal are:

> a. In the case of a judgment or order to do an act
>
> > i. a copy of that judgment whether or not it specifies the time within which the required act is to be done; and
> >
> > ii. if an order is made extending or abridging time for the required act to be done ...
> >
> > iii. if an order was subsequently made, whether or not the original judgment or order specified the time within which such act is to be done under r. 6 or r. 5(3) a copy of that order also...[48]

The court has jurisdiction to dispense with service of these documents. It is the disobedience of this original order whether it is an order made because of the Debtors Act or the order to pay money by a specified time that gives rise to the committal proceedings.

What happens after the committal order is granted?

The *"order for committal...is a* ***process*** *under which the offender's person is seized, under order of the Court, by a court official (normally the tipstaff or his deputy, or, if a tipstaff is not available, an usher) or by a police officer acting as his assistant, and taken to prison."*[49] The general form of the warrant was set out in the English rules. The warrant is to

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46 Part 53

47 On application in new rules

48 Order 45

49 Order 52/1/3

be signed by the judge. This form was never in the CPC but it was adapted to be signed by the Registrar.

In short the committal order grounds the warrant. There was no requirement to serve the order. It is part of the process for issuing the warrant. The warrant cannot issue without the order. (insert new process)

The history of enforcement of orders by committal is necessary because both under the CPC and the CPR the registry adopted a practice which is not authorised by the rules either by incorporation or at all. The result has been that there are several orders that are currently not enforced because the registry and the registrar refuse to either process or sign them unless the committal order is served. In one case in which the writer is involved, judgment was granted on ...to date the judgment remains unsettled. In fact in an unusual twist the debtor was actually arrested on the order and was released because there was no warrant. The debtor has still refused to pay and has been evading the bailiff since that time. This is an area which is causing much injustice and needs urgent attention. There needs to be rules that conform to the proper procedure for enforcing committal orders. This is one of the most effective ways of enforcing money judgments.

THE COMMERCIAL DIVISION

This division was introduced under the CPR to deal with **"commercial claims"** which *"includes any case arising out of trade and commerce in general"* as well as some specifically identified areas that are enumerated in the rules.[50] It was intended as aforesaid to facilitate the speedy resolution of commercial claims. This division has higher fees and it is

[50] Rule 71.3

presumed that this was intended to achieve the objects of the division and the rules for speedier resolution. The fees were graduated as follows:[51]

The fees set out in the Schedule hereto shall be payable in the Supreme Court in respect of matters filed in the commercial division:

SCHEDULE

Column I Item	Column II Fees	Column III Documents to be Stamped
1. On filing a Claim Form or Ancillary Claim Form		
(a) Claim for 2 Million Dollars or less or Claims for non-monetary relief non monetary	$2,000	
(b) claims for more than 2 Million Dollars but less than 10 Million Dollars	$10,000	
(c) claims for more than 10 Million Dollars but less than 50 Million Dollars	$20,000	
(d) Claims for more than 50 Million Dollars	$30,000	

Dated this 23rd day of August, 2002.

These rules came into effect on the 21st January 2003. In accordance with the rules the Chief Justice has assigned one judge to that division. Regrettably, the division is underutilised. The reason for this is unclear or otherwise unsaid. However, it appears that

[51] The Judicature (Rules of Court) Act. The Supreme Court (Commercial Division) Fees Rules 2002: Proclamations, Rules and Regulations – January 7, 2003

there is a feeling that the division does not have sufficient capacity[52] to handle the number of matters with the speed that is required or desirable. One result of this is that in the circumstances it is felt that the fees are not justified. Another result is that persons prefer to take their chances in the well established civil division. Is it natural fear of the unknown or of new things?

The statistics are therefore disappointing in terms of the opportunities offered by the rules to utilise this division. The fact is that it is not mandatory for matters to be filed in the commercial division. It is optional. The statistics as at June 2009 show that between 2003 and 2009 only thirty (30) out of a possible Four Hundred and Eighty Three (483) cases were filed in the Commercial Division. The other Four Hundred and Fifty Three (453) commercial cases were filed in the civil division between January and June 2009.

This is not encouraging. It appears that in order to resolve this issue the court needs to be given its own structural including institutional support. It is reported that a recent attempt to file an action in the commercial registry was frustrated because the commercial court registrar was at a seminar. On inquiries being made in the general registry, no one knew what the fees were or how to handle the filing of the commercial claim. The matter simply could not wait until the registrar returned the following week. As indicated, it is not mandatory requirement that claims be filed in the commercial court. Is this an area in which the court or judge could be more robust by transferring matters to the commercial list utilising its powers to make orders of its own initiative instead of mandating by legislation that parties must file claims in the commercial division. Is it that Attorneys are not aware of the division and the benefits or opportunities that it offers in terms of the speedy resolution of matters? The jury is now in and it appears that efforts needs to be made by court and counsel to utilise this division and give effect to the overriding objectives. The Chief Justice in the

[52] Administrative and Institutional

exercise of her powers to give effect to the rules should really not be asked to increase the capacity of the court if parties and counsel are not willing to make use of the facility. This is therefore a good forum to disaggregate the various causes and effects that impact the effectiveness or not of the division. One thing is clear; it cannot be achieved by the administrators of the rules alone. The parties must buy-in to the concept of the commercial division its advantages and opportunities.

Default Judgments

These are judgments that are entered at the request of a claimant or counterclaiming defendant when the defendant or the claimant where there is a counterclaim has failed to comply with the rules for filing an acknowledgment of service or a defence. This procedure has been transferred with some minor modifications from the old rules. The change has caused some difference of opinion as to whether the judgment relates back to the date of the first request as under the old rules. This has been dealt with in the cases of

There is also some difference of opinion as to whether the fact that a default judgment has been filed but not entered gives the claimant a right for which relief from sanctions must be sought from the court or that gives the court the discretion to consider the strength of the parties case before granting an extension of time under rule 10.3(9). This rule provides that a Defendant may apply to the court for an order extending the time for filing the defence without more. In other words, there are no guidelines as to how the court should exercise its discretion. Is it pursuant to the considerations under rule 13.3 or rule 26.7? There is no definitive position on the approach to be taken. One approach is that there is a sanction for failure to file a defence within the time specified. The sanction is that the claimant is entitled to apply for judgment in default of defence. The court should exercise its discretion by reference to rule 26.7(2). Should this approach be different where the claimant files its

application for judgment before the defendant has applied to extend time? This came up for consideration in the case of ***Lambert Carr & Colleen Carr v Dudley Burgess***[53]:

> Under the CPR the general rule is that the defendant has 42 days to file his defence. Should the defendant fail to file his defence within the time, under rule 10.3 he has two options. Option one is to secure the agreement of his opponent…Option two is found in rule 10.3(9). This rule permits the defendant to apply for an order extending time for filing a defence.
>
> It necessarily follows from this that where the parties do not agree, and the time within which to file the defence has passed, then the defendant must apply to the court. The reason why he must apply is that the failure to agree means that **he does not have the right to file a defence without court approval**. The practical effect is that the defendant **cannot move forward in his defence**…it is appropriate to treat this as an automatic sanction imposed by the rules barring the defendant from filing his defence once the time has passed and he cannot secure the agreement of his opponent for an extension of time.
>
> The rule-imposed necessity to seek curial relief means that he is seeking relief from what in effect is an automatic sanction imposed by the rules. **The sanction is automatic because it operates by operation of the rule, without an application by anyone**. Thus the application to file a defence out of time where the agreement of the opponent has not been secured is not just an application under rules 10.3(9) and 26.1(2)(c), **it is in reality an application for relief from automatic stay imposed by the rules**.[54]

In ***Lambert Carr*** Sykes J maintains that an Application for Court Orders to extend the time for filing a defence is an application for relief from sanction. Thus, the court may hear it to determine whether default judgment should indeed be entered against the Defendant, or whether the Defendant should be allowed to proceed with his defence.

What happens when a Notice of Application for Court Orders to extend the time for filing a defence is filed after the expiration of 42 days but is pre-dated by an Application for Default Judgment? Can both applications be heard together? If no which should be heard first?

Sykes J's judgment applies "only to the situation where the application to extend time within which to file the defence is made **after** the time to file the defence has passed," it does not address circumstances in which the Claimant has filed **an Application for Default Judgment**.

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53 Claim No. CL 1997 C130, decision April 19, 2006 - p. 7, paragraph 18

54 Per Sykes J.

The judgment in ***Coll v Tatum*** however addresses a circumstance, in which a Defendant filed an Acknowledgement for Service as well a Defence **after** the Claimant had filed an Application for Default Judgment. In that case Neuberger J held that he would consider it unjust to allow the Claimant to enter judgment.

Sykes J critiqued this judgment on the basis that, "it is a little difficult to see the point of the time limits for acknowledging service and filing a defence if they can be disregarded by a defendant with impunity, or at least without any sanction." Sykes J also went on note that there was a "distinction between making an application for extension of time within the time required to act and making an application for extension of time after the expiration of the time limit."

The court in the instant case has before it two applications: an Application for Default Judgment and a Notice of Application for Court Orders to extend the time for filing defence, the former pre-dating the latter.

Given the CPR's overriding objective, dealing with cases justly, expeditiously and fairly and saving expenses, it is likely that the applications will be heard together at case management. However, it is a well established legal principle that where two competing applications are to be heard, the first in time is to be heard first. This forms the basis for a compelling argument that whether the applications are to be heard together or not, the Application for Default Judgment should be heard first.

What is the prospect of success for the Notice of Application for Court Orders to extend time for filing the defence?

The Application for Default Judgment should properly be **heard first**. On the face of it, there is nothing to disqualify the Claimant from having Default Judgment entered in his favour. This has negative implications for the prospect of success of any

competing applications heard afterwards. If however the court rules against the Application for Default Judgment, what is the prospect of success for the other pending applications?

Part 26.8(1) provides that an **application for relief from any sanction** imposed for a failure to comply with any rule, order or direction must be-

made **promptly**; and

supported by evidence on **affidavit**.

The Notice of Application for Court Orders was supported by **affidavit** evidence. However, it may be argued strenuously that it was not made promptly. The application in question was filed after both the required time for filing the defence as well as a fourteen-day extension had run out. Additionally, after the expiration of the period of extension, a period of approximately five (5) weeks further elapsed before the Claimant filed the Application for Default Judgment. This delay is prima facie evidence that the Defendant's application was **not made promptly**.

The court has the **discretion to grant the relief** if it is satisfied that;

the failure to comply was not intentional;

there is a good explanation for the failure; and

the party in default has generally complied with other relevant rules, practice directions and directions.[55]

16. The Defendant has filed and Acknowledgement of Service. This constitutes compliance with other relevant rules. The Defendant's Notice of Application and supporting Affidavit deny that the delay is intentional, then go on to supply several detailed explanations for the delay:

the Defendant resides outside of the jurisdiction;

[55] Rule 26.8(2)

the Defendant's Defence involves the preparation of detailed and complex instructions and she is in the process of doing so; and

that important documents in support of the Defence have been mislaid and she is attempting to locate same;

17. In considering whether to grant relief, the court must have **regard to**:

the interest of administration of justice;

whether the failure to comply was due to the party or that party's attorney-at-law;

whether the failure to comply has been or can be remedied within a reasonable time;

whether the trial date or any likely trial date can still be met if relief is granted; and

the effect which the granting of relief or not would have on each party.[56]

The Defendant's Notice of Application merely asserts that the granting of the Orders would serve the purpose of justice for both parties, and maintains that the Claimant will not be prejudiced. It does not explain the bases on which these assertions are made.

Fixed Date Claim Form[57]

The Fixed Date Claim Form replaced the originating summons as the method for starting proceedings in matters that can be heard summarily. Where the respondent or defendant failed to *appear* to the originating summons, within the time prescribed the plaintiff/applicant "*may apply to the Court or Judge for an appointment for the hearing of such summons and upon a certificate that no appearance has been entered the Court or*

[56] Rule 26.8(3)
[57] Rule 12.10(5)

Judge shall appoint a time for the hearing of such summons upon such conditions (if any) as they or he shall think fit."[58]

This provision was not adapted into the new rules. In fact the rules make it very clear that *"[a] claimant may not obtain default judgment where the claim is a fixed date claim."*[59] There is no clear explanation as to why this is so. However, it could be because the judge has an option under Rule 27.2(8) of treating the first hearing of the trial of the claim *"if it is not defended or if the court considers that the claim can be dealt with summarily."*[60] It is suggested that this is a better approach since it removes a step which was often fraught with delays that existed under the old rules. The originating summons did not have a date. The date was fixed by notice which was sealed by the court only after an appearance was entered.[61] The notice had to be filed and the claimant waits on the registry to fix a date. The new rules introduced a single step. The date is fixed and served on the defendant and if the defendant fails to attend, the court treats the hearing as a trial. In this case matters can be disposed of within approximately six (6) weeks of filing the claim assuming that it was served shortly after it was filed.

Is there a concept of an Irregularly Obtained Default Judgment

Default judgments can be set aside. The old rules did not set out the factors that the court could take into account in granting an order to set aside judgments. Section 258 provides that *"[a]ny judgment by default, whether under this title or any other provisions of this Law, may be set aside by the Court or Judge upon such terms as to costs or otherwise as such Court or Judge may think fit."*[62] The result of this rule is that it gave the court wide

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58 Section 533C of the Civil Procedure Code
59 Rule 12.2(a)
60 Rule 27.2(8)
61 Section 533B
62 Section 258

discretion to set aside default judgments. The law as if developed therefore distinguished between two forms of judgments, irregular and regular judgments.

Irregular judgments were set aside as a matter of justice. The circumstances include where is has been proven to the satisfaction of the court that the writ of summons was not served. The applicant in such a circumstance was not required to get into the merits of the case.

n relation to regular judgments the Claimant was required to demonstrate that it had a real prospect of successfully defending the claim. This has not changed significantly under the new rules. In relation to irregular judgments, the defendant was entitled to have it set aside *ex debititio justicia,* which is as a matter of justice. This concept does not appear anywhere in the new rules or at least not in such clear terms.

Reply to Amended Defence

Amendments to the Statement of Case after end of the relevant limitation period[63]

> ***20.6 (1)*** *- This rule applies to an amendment in a statement of case after the end of the relevant limitation period.*
>
> ***(2)*** *- The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was –*
>
> ***(a)*** *Genuine; and*
> ***(b)*** *Not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.*

[63] Rule 20.6

To the extent that rule 20.6(1) states without more that the "*rule applies to an amendment of the statement of case after the end of the relevant limitation period...*" there is a reasonable degree of confusion. First of all, it appears that this rule serves the sole purpose of identifying the purpose of the rule. On that interpretation the only case in which an amendment is permitted after the expiration of the limitation period is what is set out in rule *20.6(2).*

In the second case, it suggests that apart from the circumstances in rule *20.6(2),* a party can amend without constraints after the limitation period. This paper takes the view that this has gone too far but it is exists, it is plausible and must be considered. This second interpretation came about because the rule does not go on to specify the circumstances in which amendments after the expiry of the limitation period can or will be allowed. The better view is that there is a gap in the rules. This is because the practitioner can resort to the common law rules as to the procedure to be adopted in order to support an application for an amendment after the expiration of the limitation period. These rules are that

To the extent that the rules are promoted as a *new code* of civil procedure[64] it would be more expedient to include the procedural considerations so as to make the code a more complete code and confine case law to the interpretation of the rules. In any event, it would create greater certainty and parties would likely not waste the court's time if their case did not fall within the rules. On the other hand matters on this area could be considered more expeditiously because the rules would set out a clear and concise procedure to achieve the desired result.

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64 Rule 1.1 (1)

Depositions

Depositions are common in criminal cases and absent from civil cases. The rules were amended to provide

Balancing Justice – Ex Parte Injunctions and Emergency Hearings

Marcus Lynch v. AGI 2008 HCV

Fixed Time Table for Trial

When is a Defence to a Fixed Date Claim Form Appropriate

Mediation – Referral

Summary Judgment and Mediation

Settlement Week

Appendix

Modified Form 11

Without Notice and Without Hearing Application

APPLICATION FOR COURT ORDERS WITHOUT NOTICE AND WITHOUT A HEARING TO SERVE CLAIM FORM OUT OF THE JURISDICTION

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2007/H.C.V. 00000

BETWEEN **DONNA CAMERON** **CLAIMANT/APPLICANT**

A N D **HORACE CAMPBELL** **DEFENDANT/RESPONDENT**

The Claimant/Applicant, **DONNA CAMERON** of Lot 335 Cowper Drive, Pepper Bello Heights, Montego Bay P.O., in the parish of St. James, seeks the following Orders:

1. That leave be granted to the Claimant to serve the Claim Form and all subsequent processes out of the Jurisdiction on the Defendant **HORACE CAMPBELL** by registered mail at 5471 Niagra Falls, San Antonio, Texas 78240-1589, United States of America.

2. That costs of the Application be costs in the claim.

3. Such further and/or other relief as this Honourable Court Deems just.

The grounds on which the Applicant is seeking the orders are as follows:

(1) Pursuant to Parts 7.5 (1) and 11.14(a) of the Civil Procedure Rules, 2002 the Court may determine this application without a hearing.

(2) Pursuant to Part 7.3 (1) of the Civil Procedure Rules 2002, the court may permit a Claim Form to be served out of the jurisdiction.

(3) Pursuant to Part 7.3 (6) (c) (ii) of the Civil Procedure Rules 2002 such permission may be granted where the Claim is made to assert, declare or determine rights in or over land located within the jurisdiction.

This application will be heard by a judge in Chambers as a paper application.

NOTICE

This Application will be heard by the Master or a Judge in Chambers on the **day of** **, 2007** at the Supreme Court, King Street, Kingston at

o'clock in the fore/after noon. If you do not attend this hearing personally or by an Attorney-at-Law, an Order may be made in your absence.

IT IS NOT INTENDED TO GIVE NOTICE OF THIS APPLICATION PURSUANT TO PARTS 7.5 (1) AND 11.8 (2) (a).

Dated the day of 2007

CAMERON CAMERON CAMERON

PER: _____

ATTORNEYS-AT-LAW FOR APPLICANT

The Registry of the Court is situate at King Street, Kingston telephone numbers (876) 922-8300 - 9, fax (876) 967-0669. The office is open between 9:00 a.m. and 4:00 p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays except on Public Holidays. When corresponding with the Court, please address forms or letters to the Registrar and quote the claim number.

Filed by Cameron Cameron Cameron, Attorneys-at-Law of 24 Irwin Road, Kingston 10 in the parish of Saint Catherine and on behalf of the Claimant/Applicant herein.