

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980 COMMENCEMENT AND PROGRESS OF PROCEEDINGS

ORDER 24

DISCOVERY AND INSPECTION OF DOCUMENTS

Order for discovery

1.—(1) Subject to the provisions of this rule and of rules 2 and 7, the Court may order any party to a cause or matter (whether begun by writ, 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.

(2) 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.

[E.r. 3]

Order for determination of issue, etc., before discovery

2. Where on an application for an order under rule 1 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.

[E.r. 4]

Form of list and affidavit

3.—(1) A list of documents made in compliance with an order under rule 1 must be in Form No. 22 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.

(2) If it is 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. 23 in Appendix A.

[E.r. 5]

Defendant entitled to copy of co-defendant's list

4.—(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order 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.

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(3) Where in an action begun by originating summons the Court makes an order under rule 1 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” includes an affidavit verifying a list of documents.

[E.r. 6]

Order for discovery of particular documents

5.—(1) Subject to rule 7, 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 1.

(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.

[E.r. 7]

Application under section 31 or 32(1) of Administration of Justice Act 1970

6.—(1) An application for an order under section 31 of the Administration of Justice Act 1970⁽¹⁾ for the disclosure of documents before the commencement of proceedings shall be made by originating summons 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 32(1) of the said Act 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 High 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.

(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 the said section 31 or 32(1) 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

(1) 1970 c. 31

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—

- (a) in the case of a summons under paragraph (1), if the subsequent proceedings had already 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” means a claim in respect of personal injuries to a person or in respect of a person's death.

(8) For the purposes of rules 9 and 10 an application for an order under the said section 31 or 32(1) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

[E.r. 7A]

Discovery to be ordered only if necessary

7. On the hearing of an application for an order under rule 1, 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.

[E.r. 8]

Inspection of documents referred to in list

8. A party who has served a list of documents on any other party, in compliance with an order under rule 1, 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.

[E.r. 9]

Inspection of documents referred to in pleadings and affidavits

9.—(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 or affidavits 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.

[E.r. 10]

Order for production for inspection

10.—(1) If a party who is required by rule 8 to serve such a notice as is therein mentioned or who is served with a notice under rule 9(1)—

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- (a) fails to serve a notice under rule 8 or, as the case may be, rule 9(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 12(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 12(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.

[E.r. 11]

Order for production to Court

11. At any stage of the proceedings in any cause or matter the Court may, subject to rule 12(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.

[E.r. 12]

Production to be ordered only if necessary, etc.

12.—(1) No order for the production of any documents for inspection or to the Court 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 privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

[E.r. 13]

Production of business books

13.—(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 of 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.

[E.r. 14]

Document disclosure of which would be injurious to public interest: saving

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

[E.r 15]

Failure to comply with requirement for discovery, etc.

15.—(1) If any party who is required by 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 fails to comply with 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 rule 10(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.

(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.

[E.r. 16]

Revocation and variation of orders

16. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

[E.r. 17]