



**THE SUPREME COURT OF BERMUDA
PRACTICE DIRECTION**

ISSUED BY THE CHIEF JUSTICE

Ref. A/50

CIRCULAR NO. 8 OF 2006

CIVIL PROCEDURE

Commercial Court

1. Practitioners are reminded that Ord. 72¹ is now in effect, and encouraged, in appropriate cases, to issue new proceedings in accordance with Ord. 72, r. 4, or apply for transfer in accordance with Ord. 72, r. 5.

Case Management²

2. (i) Ord. 1A ('the Overriding Objective') is now in effect and will be applied. Pursuant to Ord. 1A, r. 4, the court is obliged to further the overriding objective by actively managing cases.

(ii) The court will accordingly exercise its discretion to limit (a) discovery; (b) the length of oral submissions; (c) the time allowed for the examination and cross-examination of witnesses; (d) the issues on which it wishes to be addressed; (e) reading aloud from documents and authorities.

(iii) Unless otherwise ordered, every witness statement shall stand as the evidence in chief of the witness concerned.

(iv) R.S.C., Ord. 18, r. 7 (facts, not evidence, to be pleaded) will be strictly enforced. In advance of trial parties should use their best endeavours to agree which are the issues or the main issues, and it is their duty so far as possible to reduce or eliminate the expert issues.

(v) R.S.C., Ord. 34, r. 10(2)(a) to (c) (the court bundle) will be strictly enforced. Documents for use in court should be on letter size paper where possible, contained in suitably secured bundles, and lodged with the court at least two clear days before the hearing of an application or a trial. Each bundle should be paginated, indexed, wholly legible, and arranged chronologically and contained in a ring binder or a lever-arch file. Where documents are copied unnecessarily or bundled incompetently the cost will be disallowed.

(vi) In cases estimated to last for more than 5 days a pre-trial review must be applied for or in default will be directed by the court. In any other case the court may direct a pre-trial review, either of its own motion or on the application of any party, if considered appropriate. A pre-trial review should when practicable be conducted by the trial judge between eight and four weeks before the date of trial and should be attended by the advocates who are to represent the parties at trial.

(vii) At trial, the opening speech should be succinct. At its conclusion other parties may be invited briefly to amplify their skeleton arguments. In a heavy case the court may in conjunction with final speeches require written submissions, including the findings of fact for which each party contends.

¹ All references are to The Rules of the Supreme Court 1985, as amended by The Rules of the Supreme Court Amendment Rules 2005.

² Paragraphs 2(ii) – (vii) are modeled on the English Practice Direction (Civil Litigation: Case Management) reported at [1995] 1 WLR 262.

Summonses for Directions

3. (i) The court's primary opportunity for case management is the summons for directions. In order to permit the court to use that opportunity to comply with its obligations, in future *trial* directions will not be given by consent, and counsel having conduct of the case *must* attend on the hearing of the summons for directions. For the avoidance of doubt this does not apply to the giving of directions for the hearing of contested summonses, which can continue to be dealt with by consent.

(ii) Counsel are reminded of their duties under Ord. 25, r. 7 to make all interlocutory applications on or under the summons for directions, and respondents to the summons are reminded of their duty to consider what directions they want and give notice thereof not less than seven days before the hearing of the summons for directions.

(iii) Counsel's attention is also drawn to Ord. 25, r. 3 and the particular matters for consideration listed therein.

(iv) In heavy or complex cases counsel should always apply for an appropriate direction under Ord. 25, r. 3(2) that a summary of the issues involved; a summary of the propositions of law to be advanced together with a lists of authorities to be cited; and a chronology should be included in the court bundle to be prepared under Ord. 34, r. 10.

Skeleton Arguments

4. (i) Not less than three clear days before a hearing to which this direction applies each party should exchange and lodge with the court skeleton arguments or written submissions, summarizing that party's submissions in relation to each of the issues, and citing the main authorities relied upon (which may be attached).

(ii) The copy lodged with the court should be marked for the attention of the Judge to whom the hearing is assigned, or, if the Judge is not then known, for the attention of the Registrar.

(iii) This direction applies to the trial of any action and to any interlocutory application which has been given a special appointment by the Registrar for hearing.

Unnecessary Copying

5. This direction applies to the copying of authorities and other material for the use of the Court on any hearing, whether interlocutory or final. Counsel should do their best to minimize unnecessary copying, and in particular counsel should:

(a) only supply cases which it is intended to cite in argument;

(b) where the reference is to a short statement of principle, and not the facts or argument in the case, copy only the head-note and the relevant page;

(c) assume that the Judge has access to the Revised Laws of Bermuda, and never copy whole statutes.

Dated this 25th day of May 2006

Richard W. Ground OBE QC
Chief Justice

cc. Deputy Governor
Attorney General's Chambers
Department of Public Prosecutions
Hamilton Police Station
Commissioner of Police
Commissioner of Corrections
Magistrates' Court
Legal Aid Office