

New Zealand

Judicature Act 1908

Public Act 1908 No 89

Date of assent: 4 August 1908

Part 1 The High Court

[...]

Schedule 2 High Court Rules

Part 1 Rules of general application

[...]

Subpart 7—International co-operation

1.22 Communication with foreign court

(1) This rule applies if, and to the extent that, the court is required, or wishes, to seek the co-operation of a court in another country when dealing with an application under these rules.

(2) The court is entitled to communicate with the foreign court if—

(a) the parties consent; and

(b) the communication is not prohibited by the law of the other country.

(3) When the court acts under subclause (2) it must give the parties to the proceeding an opportunity to be heard on the form of the communication.

(4) The communication and any reply must be treated as part of the record of the proceeding or interlocutory application.

[...]

Part 5 Commencement of proceedings and filing of documents

[...]

Subpart 10—Statement of defence and appearance

[...]

5.49 Appearance and objection to jurisdiction

(1) A defendant who objects to the jurisdiction of the court to hear and determine the proceeding may, within the time allowed for filing a statement of defence and instead of so doing, file and serve an appearance stating the defendant's objection and the grounds for it.

(2) The filing and serving of an appearance does not operate as a submission to the jurisdiction of the court.

(3) A defendant who has filed an appearance may apply to the court to dismiss the proceeding on the ground that the court has no jurisdiction to hear and determine it.

(4) The court hearing an application under subclause (3) must,—

(a) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss the proceeding; but

(b) if it is satisfied that it has jurisdiction to hear and determine the proceeding, dismiss the application and set aside the appearance.

(5) At any time after an appearance has been filed, the plaintiff may apply to the court by interlocutory application to set aside the appearance.

(6) The court hearing that application must,—

(a) if it is satisfied that it has jurisdiction to hear and determine the proceeding, set aside the appearance; but

(b) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss both the application and the proceeding.

(7) To the extent that an application under this rule relates to service of process effected outside New Zealand under rule 6.27 or 6.28, it must be determined under rule 6.29.

(7A) But both this rule and rule 6.29 are subject to section 27(1) of the Trans-Tasman Proceedings Act 2010, which provides that a New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia otherwise than in accordance with subpart 2 of Part 2 of that Act.

(8) The court, in exercising its powers under this rule, may do so on any terms and conditions the court thinks just and, in particular, on setting aside the appearance it may extend the time within which the defendant may file and serve a statement of defence and may give any directions that appear necessary regarding any further steps in the proceeding.

(9) If the appearance set aside has been filed in relation to a proceeding in which the plaintiff has applied for judgment under rule 12.2 or 12.3, the court—

(a) must fix the time within which the defendant may file and serve—

(i) a notice of opposition; and

(ii) an affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff; and

(b) may, under subclause (8), give any other directions that appear necessary regarding any further steps in the proceeding.

[...]

Part 6 Service

[...]

Subpart 4—Service out of New Zealand

6.29 Court's discretion whether to assume jurisdiction

(1) If service of process has been effected out of New Zealand without leave, and the court's jurisdiction is protested under rule 5.49, the court must dismiss the proceeding unless the party effecting service establishes—

(a) that there is—

(i) a good arguable case that the claim falls wholly within 1 or more of the paragraphs of rule 6.27; and

(ii) the court should assume jurisdiction by reason of the matters set out in rule 6.28(5)(b) to (d); or

(b) that, had the party applied for leave under rule 6.28,—

(i) leave would have been granted; and

(ii) it is in the interests of justice that the failure to apply for leave should be excused.

(2) If service of process has been effected out of New Zealand under rule 6.28, and the court's jurisdiction is protested under rule 5.49, and it is claimed that leave was wrongly granted under rule 6.28, the court must dismiss the proceeding unless the party effecting service establishes that in the light of the evidence now before the court leave was correctly granted.

(3) When service of process has been validly effected within New Zealand, but New Zealand is not the appropriate forum for trial of the action, the defendant may apply for a stay, or for a dismissal of the proceeding under rule 15.1.

[...]

6.32 Service outside New Zealand

(1) An originating document permitted under these rules to be served outside New Zealand may be served by a method—

- (a) specified in rule 6.1; or
- (b) permitted by the law of the country in which it is to be served; or
- (c) provided for in rules 6.33 and 6.34.

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) When a convention relating to service of process is in force between New Zealand and the country where service is to be effected, service must be effected in accordance with a method provided for, or permitted by, that convention.

(4) No service outside New Zealand is valid if effected contrary to the law of the country where service is effected.

[...]

Part 7 Case management, interlocutory applications, and interim relief

[...]

Subpart 9—Interim relief in respect of overseas proceedings

7.81 Interim relief in support of overseas proceedings

(1) On the application of a party or an intended party to judicial proceedings commenced or to be commenced outside New Zealand (overseas proceedings), the court may, if the court thinks it just to do so, give interim relief in support of the overseas proceedings.

(2) These rules apply to an application under subclause (1) as if the overseas proceedings for which support is sought had been commenced under these rules.

(3) Subclause (1) does not apply to—

- (a) an application for an interim payment under subpart 5:
- (b) an application for discovery under subpart 3 of Part 8:
- (c) an application in relation to evidence under Part 9:
- (d) an application for a freezing order under Part 32.

(4) Before making an order under this rule, the court must be satisfied that there is a real connecting link between the subject matter of the interim relief and the territorial jurisdiction of the court.

(5) An order under subclause (1) must not be inconsistent with interim relief granted in the overseas proceedings by the court outside New Zealand.

(6) This rule does not apply to a civil proceeding commenced or to be commenced in an Australian court.

[...]

Part 15 Disposal other than by trial

Subpart 1—Dismissal or stay without trial

15.1 Dismissing or staying all or part of proceeding

(1) The court may strike out all or part of a pleading if it—

- (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
- (b) is likely to cause prejudice or delay; or
- (c) is frivolous or vexatious; or
- (d) is otherwise an abuse of the process of the court.

(2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.

(3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.

(4) This rule does not affect the court's inherent jurisdiction.

[...]

Part 32 Freezing orders

[...]

32.2 Freezing order

(1) The court may make an order (a freezing order), on or without notice to a respondent in accordance with this Part.

(2) A freezing order may restrain a respondent from removing any assets located in or outside New Zealand or from disposing of, dealing with, or diminishing the value of, those assets.

(3) An applicant for a freezing order without notice to a respondent must fully and frankly disclose to the court all material facts, including—

- (a) any possible defences known to the applicant; and
- (b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.

(4) An application for a freezing order must be made by interlocutory application under Part 7 or originating application under Part 19, which Parts apply subject to this Part.

(5) An applicant for a freezing order must file a signed undertaking that the applicant will comply with any order for the payment of damages to compensate the respondent for any damage sustained in consequence of the freezing order.

[...]