

Orders of the Royal Court

I
1998



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 17th day of February, 1998 before Sir Graham Dorey, Bailiff; present:- Stanley Walter John Jehan, Leonard Arthur Moss, Charles Anthony Spensley, Lawrence Oscar Ozanne, John Richard Rowe Henry, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin and David Michael Jory, Esquires, Jurats.

No. 1 Order, 1998

ENTITLED

**The Royal Court (Discovery of Documents) Rules,
1998**

The Royal Court (Discovery of Documents) Rules, 1998

THE ROYAL COURT, in exercise of the powers conferred upon it by Article 64 of the Reform (Guernsey) Law, 1948(a) and section 12 of the Royal Court (Miscellaneous Reform Provisions) Law, 1950(b), and of all other powers enabling it in that behalf, hereby orders:-

Power to order disclosure of documents, etc. before trial.

1. On the application in accordance with these Rules of a person who appears to the Royal Court to be likely to be a party to subsequent proceedings in the Royal Court in which a claim in respect of personal injuries to a person, or in respect of a person's death, is likely to be made, the Royal Court shall have power to order a person who appears to the Royal Court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim-

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order-
 - (i) to the applicant's legal advisers;

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- (a) Ordres en Conseil Vol. XIII, p. 288; there are amendments to the Law not relevant to these rules.
 - (b) Ordres en Conseil Vol. XIV, p. 388; there are amendments to the Law not relevant to these rules.

- (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
- (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.

Power to order disclosure of documents, etc, from non-parties.

2. (1) This Rule applies to any proceedings in the Royal Court in which a claim is made in respect of personal injuries to a person or in respect of a person's death.

(2) On the application in accordance with these Rules of a party to any proceedings to which this Rule applies the Royal Court shall have power to order a person who is not a party to the proceedings and who appears to the Royal Court to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising out of the said claim-

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order-
 - (i) to the applicant's legal advisers;
 - (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.

Applications for orders under Rule 1.

3. (1) An application for an order under Rule 1 for the disclosure and production of documents before the commencement of proceedings shall be instituted by summons served on the person against whom the order is sought.

(2) A summons under paragraph (1) shall be supported by an affidavit which shall-

- (a) 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 Royal Court in which a claim in respect of personal injuries to a person or in respect of a person's death is likely to be made;
- (b) specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading intended to be served in the proceedings-
 - (i) that the documents are relevant to an issue arising or likely to arise out of a claim in respect of personal injuries to a person or in respect of a person's death likely to be made in the proceedings; and
 - (ii) that the person against whom the order is sought is likely to have or to have had them in his possession, custody or power.

(3) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

Applications for orders under Rule 2.

4. (1) An application after the commencement of proceedings for an order under Rule 2 for the disclosure and production of documents by a person who is not a party to the proceedings shall be instituted by summons served on that person and on every party to the proceedings other than the applicant.

(2) A summons under paragraph (1) shall be supported by an affidavit which shall 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-

- (a) that the documents are relevant to an issue arising or likely to arise out of a claim in respect of personal injuries to a person or in respect of a person's death made or likely to be made in the proceedings; and
- (b) that the person against whom the order is sought is likely to have or to have had them in his possession, custody or power.

(3) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

Security for costs and other terms and conditions.

5. An order under Rule 1 or 2 for the disclosure and production of documents-

- (a) may be conditional on the applicant giving security for the costs of the person against whom the order is made;
- (b) may be made on such other terms and conditions as the Royal Court thinks just; and
- (c) shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order 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 from them and what has become of them.

Variation and rescission of orders.

6. An order under Rule 1 or 2 for the disclosure and production of documents may be varied or rescinded by the Royal Court on the application of any person who was a party to the application pursuant to which the order was made.

Privilege, etc.

7. No person shall be compelled by an order under Rule 1 or 2 for the disclosure and production of documents to produce any document which he could not be compelled to produce-

- (a) in the case of an order under Rule 1, if the subsequent proceedings had already begun; or
- (b) in the case of an order under Rule 2, if he had been served with a summons to produce the documents at the trial.

Discovery to be ordered only if necessary.

8. On the hearing of an application for an order under Rule 1 or 2 for the disclosure and production of documents, the Royal Court-

- (a) 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;
- (b) shall in any case refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Application of Civil Rules of 1989.

9. Where the Royal Court makes an order under Rule 1 or 2 for the disclosure and production of documents, the provisions of Rules 39 to 42 of the Royal Court Civil Rules, 1989(c) shall apply in all respects as if the party against whom the order is made were a party to proceedings.

Interpretation.

10. (1) In these Rules "the Royal Court" means the Royal Court sitting as an Ordinary Court.

(2) The provisions of the Interpretation (Guernsey) Law, 1948(d) shall apply to the interpretation of these Rules as they apply to the interpretation of an enactment.

(c) Orders of the Royal Court No. VII of 1989.

(d) Ordres en Conseil Vol. XIII, p. 355.

Savings.

11. The provisions of, and powers conferred by, these Rules are in addition to and not in derogation from any other powers exercisable by the Royal Court (whether arising under the Royal Court Civil Rules, 1989 or otherwise).

Citation.

12. These Rules may be cited as the Royal Court (Discovery of Documents) Rules, 1998.

Commencement.

13. These Rules shall come into force on the 1st day of March, 1998.

K. H. TOUGH,
Her Majesty's Greffier.

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