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THE CHILDREN LAW (SUMMARY COURT) RULES, 2013

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THE CHILDREN LAW (SUMMARY COURT) RULES, 2013

These Rules are made by the Rules Committee of the Grand Court pursuant to section 86 of the Children Law (2012 Revision).

PART I - INTRODUCTORY

1. Citation, commencement and interpretation

- (1) These Rules may be cited as the Children Law (Summary Court) Rules, 2013 and shall come into force on 29 April, 2013.
- (2) In these Rules a section or schedule referred to means the section or a schedule in the Children Law (2012 Revision).
- (3) Unless a contrary intention appears-

“application” means an application made under or by virtue of the Children Law (2012 Revision) or under these Rules, and “applicant” shall be construed accordingly;

“business day” means any day other than-

- (a) Saturday, Sunday, Christmas Day or Good Friday; or
- (b) public holiday as defined in the Public Holidays Law (2007 Revision);

“child” has the meaning assigned by section 2(1) of the Law;

“contribution order” has the meaning assigned by paragraph 19(2) of Schedule 2;

“court” means a summary court constituted in accordance with the provisions of the Summary Jurisdiction Law (2006 Revision);

“Department” means the Department of Government having responsibility for the welfare of children;

“directions appointment” means a hearing for directions under rule 14(2);

“emergency protection order” means an order under section 46;

“file” means deposit with the Civil Registry or as otherwise directed;

“form” means a form in the Children Law (Forms Rules) 2013 with such variation as the circumstances of the particular case may require;

“guardian ad litem” means a guardian ad litem, appointed under section 43, of the child with respect to whom the proceedings are brought;

“leave” includes approval;

“Law” means the Children Law (2012 Revision);

“note” includes a record made by mechanical means;

“parental responsibility” has the meaning assigned by section 5;

“parties” in relation to any relevant proceedings means the respondents specified for those proceedings in the Schedule to these Rules, and the applicant;

“proper officer” means the Clerk of Court or other officer of the Court acting on his behalf with directions given by the Chief Justice;

“recovery order” means an order under section 53;

“relevant proceedings” has the meaning assigned by section 93(3);

“section 10 order” has the meaning assigned by section 10(2);

“specified proceedings” has the meaning assigned by section 43(6) and rule 2(2); and

“welfare officer” means a person who has been asked to prepare a welfare report under section 9.

2. Matters prescribed for the purposes of the Law

- (1) The parties to proceedings in which directions are given under section 40(6), and any person named in such a direction, form the prescribed class for the purposes of section 40(8) (application to vary directions made with interim care or interim supervision order).
- (2) The following proceedings are specified for the purposes of section 43 in accordance with subsection (6) thereof –
 - (a) proceedings under section 27;
 - (b) applications under section 35(6); and
 - (c) applications under paragraph 6(2) of Schedule 3.
- (3) The applicant for an order that has been made under section 45(1) and the persons referred to in section 45(11) may, in any circumstances, apply under section 45(12) for a child assessment order to be varied or discharged.

- (4) The following persons form the prescribed class for the purposes of section 47(3)(b) (application to vary directions) –
- (a) the parties to the application for the order in respect of which it is sought to vary the directions;
 - (b) the guardian ad litem;
 - (c) the Department; and
 - (d) any person who is named in the directions.

PART II- GENERAL

3. Application for leave to commence proceedings

- (1) Where the leave of the court is required to bring any relevant proceedings, the person seeking leave shall file –
- (a) a written request for leave in Form C3 setting out the reasons for the application; and
 - (b) a draft of the application for the making of which leave is sought in the appropriate form together with sufficient copies for one to be served on each respondent.
- (2) On considering a request for leave filed under paragraph (1), the court shall –
- (a) grant the request, whereupon the proper officer shall inform the person making the request of the decision; or
 - (b) direct that a date be fixed for a hearing of the request, whereupon the proper officer shall fix such a date and give such notice as the court directs to the person making the request and to such other persons as the court requires to be notified, of the date so fixed.
- (3) Where leave is granted to bring any relevant proceedings, the application shall proceed in accordance with rule 4, but paragraph (1)(a) of that rule shall not apply.

4. Application

- (1) Subject to paragraph (5), an applicant shall –
- (a) file the documents referred to in paragraph (2) (which documents shall together be called the ‘application’) together with sufficient copies for one to be served on each respondent; and

- (b) serve a copy of the application, together with Form C4 and such (if any) of Forms C6 and C10 as are given to him by the proper officer under paragraph (2)(c) on each respondent such minimum number of days prior to the date fixed under paragraph 2(a) as is specified for that application in the Schedule to these Rules.
- (2) The documents to be filed under paragraph (1)(a) are -
 - (a) whichever is appropriate of Forms C1 to C5 and such of the supplemental Forms C9 or C11 to C21 as may be appropriate; or
 - (b) where there is no appropriate form a statement in writing of the order sought; and
 - (c) where the application is made in respect of more than one child, all the children shall be included in the one application.
- (3) On receipt of the documents filed under paragraph (1)(a), the proper officer shall-
 - (a) fix the date, time and place for a hearing or a directions appointment, allowing sufficient time for the applicant to comply with paragraph (1)(b);
 - (b) endorse the date, time and place so fixed upon Form C4 and where appropriate, Form C5; and
 - (c) return forthwith to the applicant the copies of the application and Form C10 if filed with it, together with Form C4 and such of Forms C5 and C6 as are appropriate.
- (4) The applicant shall, at the same time as complying with paragraph (1)(b), serve Form 5 on the persons set out in relation to the relevant class of proceedings specified in the Schedule to these Rules.
- (5) An application for –
 - (a) a section 10 order;
 - (b) an emergency protection order;
 - (c) a warrant under section 51(9);
 - (d) a recovery order; or
 - (e) a warrant under section 93(1),may, with leave of the court, be made ex parte in which case the applicant shall-
 - (i) file with the court the application in the appropriate form at the time when the application is made or as directed by the court; and

- (ii) in the case of an application for a prohibited steps order, or a specific issue order, under section 10 or an emergency protection order, and also in the case of an application for an order under section 76(1) where the application is ex parte, serve a copy of the application on each respondent within 48 hours after the making of the order.
- (6) Where the court refuses to make an order on an ex parte application it may direct that the application be made inter partes.
- (7) In the case of proceedings specified under the Children Law (Forms) Rules, 2013, the application under paragraph (1) shall be accompanied by a statement in Form C10 setting out the financial details which the applicant believes to be relevant to the application, together with sufficient copies for one to be served on each respondent.

5. Withdrawal of application

- (1) An application may be withdrawn only with leave of the court.
- (2) Subject to paragraph (3), a person seeking leave to withdraw an application shall file and serve on the parties a written request for leave setting out the reasons for the request.
- (3) The request under paragraph (2) may be made orally to the court if the parties and, if appointed, the guardian ad litem or the welfare officer are present.
- (4) Upon receipt of a written request under paragraph (2), the court shall -
 - (a) if –
 - (i) the parties consent in writing;
 - (ii) any guardian ad litem has had an opportunity to make representations; and
 - (iii) the court thinks fit,grant the request in which case the proper officer shall notify the parties, the guardian ad litem and the welfare officer of the granting of the request; or
 - (b) the proper officer shall fix a date for the hearing of the request and give at least 7 days' notice to the parties, the guardian ad litem and the welfare officer of the date fixed.

6. Transfer of proceedings

- (1) Where, in any relevant proceedings, the court receives a request in writing from a party that the proceedings be transferred to the Grand Court, the court shall issue a certificate in the appropriate form, granting or refusing the request.
- (2) Where a request is granted under paragraph (1), the proper officer shall send a copy of the certificate to-
 - (a) the parties;
 - (b) any guardian ad litem; and
 - (c) the Registry of the Family Division of the Grand Court.
- (3) Any consent given or refused by the court shall be recorded in writing by the court at the time it is given or refused or as soon as practicable thereafter.
- (4) Where a request to transfer proceedings to the Grand Court is refused under paragraph (1), the person who made the request may apply in accordance with rule 3.6 of the Children Law (Grand Court) Rules, 2013 for an order for transfer.

7. Parties

- (1) The respondents to proceedings to which this Part applies shall be those persons set out in the relevant part of the Schedule to these Rules.
- (2) In any relevant proceedings a person may file an application in Form C3 that-
 - (a) he or another party be joined as party;
 - (b) another person cease to be a party.
- (3) On considering an application under paragraph (2) the court shall, subject to paragraph (4) -
 - (a) grant it without a hearing or representations, save that this shall be done only in the case of an application under paragraph (2)(a), whereupon the proper officer shall inform the parties and the person making the application of that decision;
 - (b) order that a date be fixed for the consideration of the application, whereupon the proper officer shall give notice of the date so fixed, together with a copy of the application-

- (i) in the case of an application under paragraph (2)(a), to the applicant; and
 - (ii) in the case of an application under paragraph (2)(b), to the parties; or
 - (c) invite the parties or any of them to make written representations, within a specified period, as to whether the request should be granted; and upon the expiry of the period the court shall act in accordance with subparagraph (a) or (b).
- (4) Where a person with parental responsibility requests that he be joined under paragraph (2)(a), the court shall grant his request.
- (5) In any relevant proceedings the court may direct—
- (a) that a person who would not otherwise be a respondent under these Rules be joined as a party to the proceedings; or
 - (b) that a party to the proceedings cease to be a party.

8. Service

- (1) Where service of a document is required by these Rules (and not by a provision to which section 97(1) applies (service of notice or other document under the Law), it may be effected as set out in any relevant Practice Direction or -
- (a) if the person to be served is not known by the person serving to be acting by an attorney-at-law –
 - (i) by delivering it to him personally; or
 - (ii) by delivering it at, or by sending it by registered post to his residence or his last known residence; or
 - (b) if the person to be served is known by the person serving to be acting by an attorney-at-law -
 - (i) by delivering the document at, or sending it by registered post to the address of the attorney-at-law for service;
 - (ii) where the attorney-at-law's address for service includes a numbered P. O. Box, by posting the document to that P.O. Box; or
 - (iii) by sending a legible copy of the document by facsimile transmission to the attorney-at-law's office.
- (2) Where a child who is a party to any relevant proceedings is required by these Rules to serve a document, service shall be effected by -

- (a) the attorney-at-law acting for the child;
 - (b) where there is no such attorney-at-law, the guardian ad litem; or
 - (c) where there is neither such an attorney-at-law nor a guardian ad litem, the court.
- (3) Service of any document on a child shall, subject to any direction of the court, be effected by service on -
- (a) the attorney-at-law acting for the child;
 - (b) the guardian ad litem, where there is no such attorney-at-law; or
 - (c) where there is neither such an attorney-at-law nor a guardian ad litem, with leave of the court, the child.
- (4) Where the court refuses leave under paragraph (3)(c), a direction shall be given under paragraph (7).
- (5) A document shall, unless the contrary is proved, be deemed to have been served-
- (a) in the case of service by registered post, on the third business day after posting; and
 - (b) in the case of service in accordance with paragraph (1)(b)(ii), on the third business day after the day on which it is posted to the P.O. Box.
- (6) At or before the first directions appointment in, or hearing of, relevant proceedings, whichever occurs first, the applicant shall file a statement in the appropriate form that service of -
- (a) a copy of the application and other documents referred to in rule 4(1)(b) has been effected on each respondent; and
 - (b) notice of the proceedings has been effected under rule 4(4),
- and the statement shall indicate -
- (i) the manner, date, time and place of service; or
 - (ii) where service was effected by post, the date, time and place of posting.
- (7) In any relevant proceedings, where these Rules require a document to be served, the court or the proper officer may, without prejudice to any power under rule 14, direct that –
- (a) the requirement shall not apply;

- (b) the time specified by the rules for complying with the requirement shall be abridged to such extent as may be specified in the direction; or
- (c) service shall be effected in such matter as may be specified in the direction.

9. Acknowledgment of application

Within 14 days of service of an application for a section 10 order or an application specified under the Children Law (Forms) Rules, 2013 each respondent shall file and serve on the parties an acknowledgment of the application in Form C6.

10. Appointment of guardian ad litem

- (1) As soon as practicable after the commencement of specified proceedings or the transfer of such proceedings to the court, the court shall appoint a guardian ad litem unless -
 - (a) such an appointment has already been made by the court which made the transfer and is subsisting; or
 - (b) the court considers that such an appointment is not necessary to safeguard the interests of the child.
- (2) At any stage in specified proceedings a party may apply, without notice to the other parties unless the court otherwise directs, for the appointment of a guardian ad litem.
- (3) The court shall grant an application under paragraph (2) unless it is considered that such an appointment is not necessary to safeguard the interests of the child, in which case reasons shall be given.
- (4) At any stage in specified proceedings the court may appoint a guardian ad litem even though no application is made for such an appointment.
- (5) The proper officer shall, as soon as practicable, notify the parties and any welfare officer of an appointment under this rule or of a decision not to make such an appointment.
- (6) Upon the appointment of a guardian ad litem the proper officer shall, as soon as practicable, notify him of the appointment and serve on him copies of the application and of documents filed under rule 17(1).
- (7) When appointing a guardian ad litem, the court shall consider the appointment of anyone who has previously acted as guardian ad litem of the same child.
- (8) The appointment of a guardian ad litem under this rule shall continue for such time as is specified in the appointment or until terminated by the court.

- (9) When terminating an appointment in accordance with paragraph (8), the court shall give reasons in writing for so doing.
- (10) Where the court appoints a guardian ad litem in accordance with this rule or refuses to make such an appointment, the court shall record the appointment or refusal in the appropriate or refusal in the appropriate form.

11. Powers and duties of guardian ad litem

- (1) In carrying out his duty under section 43(2), the guardian ad litem shall have regard to the principle set out in section 3(1) and the matters set out in section 3(3)(a) to (f) as if for the word “court” in that section there were substituted the words “guardian ad litem”.
- (2) The guardian ad litem shall -
 - (a) appoint an attorney-at-law to represent the child, unless such an attorney-at-law has already been appointed; and
 - (b) give such advice to the child as is appropriate having regard to his understanding and, subject to rule 12(1)(a), instruct the attorney-at-law representing the child on all matters relevant to the interests of the child, including possibilities for appeal, arising in the course of the proceedings.
- (3) Where it appears to the guardian ad litem that the child -
 - (a) is instructing his attorney-at-law directly; or
 - (b) intends to, and is capable of, conducting the proceedings on his own behalf,he shall so inform the court and thereafter -
 - (i) shall perform all of his duties set out in this rule, other than duties under paragraph (2)(a) and such other duties as the court may direct;
 - (ii) shall take such part in the proceedings as the court may direct; and
 - (iii) may, with leave of the court, have legal representation in his conduct of those duties.
- (4) The guardian ad litem shall, unless excused by the court, attend all directions appointments in, and hearings of, the proceedings and shall advise the court on the following matters -

- (a) whether the child is of sufficient understanding for any purpose including the child's refusal to submit to a medical or psychiatric examination or other assessment that the court has power to require, direct or order;
 - (b) the wishes of the child in respect of any matter relevant to the proceedings, including his attendance at court;
 - (c) the appropriate forum for the proceedings;
 - (d) the appropriate timing of the proceedings or any part of them;
 - (e) the options available to the court in respect of the child and the suitability of each such option including what order should be made in determining the application; and
 - (f) any other matter on which the court seeks his advice or in relation to which he considers that the court should be informed.
- (5) The advice given under paragraph (4) may, subject to any order of the court, be given orally or in writing; and if the advice is given orally, a note of it shall be taken by the court.
- (6) The guardian ad litem shall, where practicable, notify any person whose joinder as a party to those proceedings would be likely, in the guardian ad litem's opinion, to safeguard the interests of the child, of that person's right to apply to be joined under rule 7(2) and shall inform the court -
- (a) of any such notification given;
 - (b) of anyone whom he attempted to notify under this paragraph but was unable to contact; and
 - (c) of anyone whom he believes may wish to be joined to the proceedings.
- (7) The guardian ad litem shall, unless the court otherwise directs, not less than 7 days before the date fixed for the final hearing of the proceedings, file a written report advising on the interests of the child; and the proper officer shall, as soon as practicable, serve a copy of the report on the parties.
- (8) The guardian ad litem shall serve and accept service of documents on behalf of the child in accordance with rule 8(2)(b) and (3)(b) and, where the child has not himself been served, and has sufficient understanding, advise the child of the contents of any documents so served.
- (9) The guardian ad litem shall make carry out investigations as may be necessary for him to carry out his duties and shall, in particular -
- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs;

- (b) if he inspects records of the kinds referred to in section 44, bring to the attention of the court and such other persons as the court may direct, all such records and documents which may, in his opinion, assist in the proper determination of the proceedings; and
 - (c) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.
- (10) In addition to his duties under other paragraphs of this rule, the guardian ad litem shall provide to the court such other assistance as may be required.
- (11) A party may question the guardian ad litem about oral or written advice tendered by him to the court under this rule.

12. Attorney-at-law for child

- (1) An attorney-at-law appointed under section 43(3) or in accordance with rule 11(2)(a) shall represent the child -
- (a) in accordance with instructions received from the guardian ad litem (unless the attorney-at-law considers, having taken into account the views of the guardian ad litem and any direction of the court under rule 11(3), that the child wishes to give instructions which conflict with those of the guardian ad litem and that he is able, having regard to his understanding, to give such instructions on his own behalf in which case he shall conduct the proceedings in accordance with instructions received from the child);
 - (b) where no guardian ad litem has been appointed for the child and the condition in section 43(4)(b) is satisfied, in accordance with instructions received from the child; or
 - (c) in default of instructions under (a) or (b), in furtherance of the best interests of the child.
- (2) An attorney-at-law appointed under section 43(3) or in accordance with rule 11(2)(a) shall serve and accept service of documents on behalf of the child in accordance with rule 8(2)(a) and (3)(a) and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.
- (3) Where the child wishes an appointment of an attorney-at-law under section 43(3) or in accordance with rule 11(2)(a) to be terminated, he may apply to the court for an order terminating the appointment; and the attorney-at-law and the guardian ad litem shall be given an opportunity to make representations.

- (4) Where the guardian ad litem wishes an appointment of an attorney-at-law under section 43(3) to be terminated, he may apply to the court for an order terminating the appointment; and the attorney-at-law and, if he is of sufficient understanding, the child, shall be given an opportunity to make representations.
- (5) When terminating an appointment in accordance with paragraph (3) or (4), the court shall give reasons for so doing.
- (6) Where the court appoints an attorney-at-law under section 43(3) or refuses to make such an appointment, the proper officer shall record the appointment or refusal in the appropriate form and serve a copy on the parties and, where he is appointed, on the attorney-at-law.

13. Welfare officer

- (1) Where the court or proper officer has directed that a written report be made by a welfare officer, the report shall be filed at or by such time as the court or the proper officer directs or, in the absence of such a direction, at least 14 days before a relevant hearing; and the proper officer shall, as soon as practicable, serve a copy of the report on the parties and any guardian ad litem.
- (2) In paragraph (1), a hearing is relevant if the proper officer or the court has given the welfare officer notice that his report is to be considered at it.
- (3) After the filing of the written report by the welfare officer, the court or proper officer may direct that the welfare officer attend any hearing at which the report is to be considered -
 - (a) except where such a direction is given at a hearing attended by the welfare officer, the proper officer shall inform the welfare officer of the direction; and
 - (b) at the hearing at which the report is considered any party may question the welfare officer about his report.

14. Directions

- (1) In this rule, "party" includes the guardian ad litem and, where a request or direction concerns a report under section 9, the welfare officer.
- (2) In any relevant proceedings the court may, subject to paragraph (3), give, vary or revoke directions for the conduct of the proceedings, including directions relating to -
 - (a) the timetable for the proceedings;
 - (b) varying the time within which or by which an act is required, by these Rules, to be done;

- (c) the attendance of the child;
 - (d) the appointment of a guardian ad litem whether under section 43 or otherwise, or of an attorney-at-law under section 43(3);
 - (e) the service of documents;
 - (f) the submission of evidence including experts' reports;
 - (g) the preparation of welfare reports under section 9;
 - (h) the transfer of the proceedings to the Grand Court; and
 - (i) consolidation with other proceedings.
- (3) Directions under paragraph (2) may be given, varied or revoked either -
- (a) of the court's own motion having given the parties notice of the intention to do so and an opportunity to attend and be heard or to make written representations;
 - (b) on the written application in Form C3 of a party specifying the direction which is sought, filed and served on the other parties; or
 - (c) on the written application in Form C3 of a party specifying the direction which is sought, to which the other parties consent and which they or their representatives have signed.
- (4) In an urgent case, the application under paragraph (3)(b) may, with the leave of the court, be made-
- (a) orally;
 - (b) without notice to the parties; or
 - (c) both as in sub-paragraph (a) and as in sub-paragraph (b).
- (5) On receipt of an application under paragraph (3)(b) the proper officer shall fix a date for the hearing of the application and give not less than 2 days' notice in Form C4 to the parties of the date so fixed.
- (6) On considering an application under paragraph (3)(c) the court shall either -
- (a) grant the application, whereupon the proper officer shall inform the parties of the decision; or
 - (b) direct that a date be fixed for the hearing of the application, whereupon the proper officer shall fix such a date and give not less than 2 days' notice to the parties of the date so fixed.

- (7) A party may request, in accordance with paragraph 3(b) or (c), that an order be made under section 13(3) or, if he is entitled to apply for such an order, under section 40(1), and paragraphs (4), (5) and (6) shall apply accordingly.
- (8) Where, in any relevant proceedings, the court has power to make an order of its own motion, the power to give directions under paragraph (2) shall apply.
- (9) Directions of the court which are still in force immediately prior to the transfer of relevant proceedings to the Grand Court shall continue to apply following the transfer, subject to any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred, unless varied or discharged by directions under paragraph (2).
- (10) The proper officer or the court shall record the giving, variation or revocation of a direction under this rule in the appropriate form and serve, as soon as practicable, a copy of the form on any party who was not present at the giving, variation or revocation.

15. Timing of proceedings

- (1) Any period of time fixed by these Rules, or by any order or direction, for doing any act shall be reckoned in accordance with this rule.
- (2) Where the period, being a period of 7 days or less, would include a day which is not a business day, that day shall be excluded.
- (3) Where the time fixed for filing a document with the court expires on a day on which the court's office is closed, and for that reason the document cannot be filed on that day, the document shall be filed in time if it is filed on the next day on which the court's office is open.
- (4) Where these Rules provide a period of time within which or by which a certain act is to be performed in the course of relevant proceedings, that period may not be extended otherwise than by a direction of the court under rule 14.
- (5) At the -
 - (a) transfer to the court of relevant proceedings;
 - (b) postponement or adjournment of any hearing or directions appointment in the course of relevant proceedings; or
 - (c) conclusion of any such hearing or directions appointment other than one at which the proceedings are determined, or so soon thereafter as is practicable,

the court shall -

- (i) fix a date upon which the proceedings shall come before the court again for such purposes as the court directs, which date shall, where paragraph (a) applies, be as soon as possible after the transfer; and
- (ii) give notice to the parties and to the guardian ad litem or the welfare officer of the date so fixed.

16. Attendance at directions appointment and hearing

- (1) Subject to paragraph (2), a party shall attend a directions appointment of which he has been given notice in accordance with rule 14(5) unless the court otherwise directs.
- (2) Relevant proceedings shall take place in the absence of any party including the child if -
 - (a) the court considers it in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given; and
 - (b) the party is represented by a guardian ad litem or attorney-at-law;and when considering the interests of the child under sub-paragraph (a) the court shall give the guardian ad litem, attorney-at-law for the child and, if he is of sufficient understanding, the child, an opportunity to make representations.
- (3) Subject to paragraph (4), where at the time and place appointed for a hearing or directions appointment the applicant appears but one or more of the respondents do not, the court may proceed with the hearing or appointment.
- (4) The court shall not begin to hear an application in the absence of a respondent unless -
 - (a) it is proved to the satisfaction of the court that he received reasonable notice of the date of the hearing; or
 - (b) the court is satisfied that the circumstances of the case justify proceeding with the hearing.
- (5) Where, at the time and place appointed for a hearing or directions appointment, one or more respondents appear but the applicant does not, the court may refuse the application or, if sufficient evidence has previously been received, proceed in the absence of the applicant.
- (6) Where at the time and place appointed for a hearing or directions appointment neither the applicant nor any respondent appears, the court may refuse the application.

- (7) If the court considers it expedient in the interests of the child, it shall hear any relevant proceedings in private and only the officers of the court, the parties, their legal representatives and such other persons as specified by the court may attend.

17. Documentary evidence

- (1) Subject to paragraphs (4) and (5), in any relevant proceedings a party shall file and serve on the parties, any welfare officer and any guardian ad litem of whose appointment he has been given notice under rule 10(5) -
- (a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing of, or a directions appointment in, those proceedings, which shall -
 - (i) be dated;
 - (ii) be signed by the person making the statement;
 - (iii) contain a declaration that the maker of the statement believes it to be true and understands that it may be placed before the court; and
 - (iv) show in the top right hand corner of the first page –
 - a. the initials and surname of the person making the statement;
 - b. the number of the statement in relation to the maker;
 - c. the date on which the statement was made; and
 - d. the party on whose behalf it is filed; and
 - (b) copies of any documents, including, subject to rule 18(3), experts' reports, upon which the party intends to rely, at a hearing of, or a directions appointment in, those proceedings, at or by such time as the court directs or, in the absence of a direction, before the hearing or appointment.
- (2) A party may, subject to any direction of the court about the timing of statements under this rule, file and serve on the parties a statement which is supplementary to a statement served under paragraph (1).
- (3) At a hearing or directions appointment a party may not, without the leave of the court -
- (a) adduce evidence; or

(b) seek to rely on a document,

in respect of which he has failed to comply with the requirements of paragraph (1).

(4) In proceedings for a section 10 order a party shall-

(a) neither file nor serve any document other than as required or authorised by these Rules; and

(b) in completing a form prescribed by these Rules, neither give information, nor make a statement, which is not required or authorised by that form,

without the leave of the court.

(5) In proceedings for a section 10 order, no statement or copy may be filed under paragraph (1) until such time as the court directs.

18. Expert evidence – examination of child

(1) No person may, without the leave of the court, cause a child to be medically or psychiatrically examined, or otherwise assessed, for the purpose of the preparation of expert evidence for use in proceedings.

(2) An application for leave under paragraph (1) shall, unless the court otherwise directs, be served on all the parties to the proceedings and on the guardian ad litem.

(3) Where the leave of the court has not been given under paragraph (1), no evidence arising out of an examination or assessment to which that paragraph applies may be adduced without the leave of the court.

19. Amendment

(1) Subject to rule 17(2), a document which has been filed or served in any relevant proceedings may not be amended without the leave of the court which shall, unless the court otherwise directs, be requested in writing.

(2) On considering a request for leave to amend a document the court shall either -

(a) grant the request, whereupon the proper officer shall inform the person making the request of that decision; or

(b) invite the parties or any of them to make representations, within a specified period, as to whether such an order should be made.

(3) A person amending a document shall file it with the proper officer and serve it on those persons on whom it was served prior to amendment; and the amendments shall be identified.

20. Oral evidence

The court shall keep a note of the substance of the oral evidence given at a hearing of, or directions appointment in, relevant proceedings.

21. Hearing

- (1) Before the hearing, the court which will be dealing with the case shall read any documents which have been filed under rule 17 in respect of the hearing.
- (2) The court at a hearing or directions appointment, may give directions as to the order of speeches and evidence.
- (3) Subject to directions under paragraph (2), at a hearing of, or directions appointment in, relevant proceedings, the parties and the guardian ad litem shall adduce their evidence in the following order -
 - (a) the applicant;
 - (b) any party with parental responsibility for the child;
 - (c) other respondents;
 - (d) the guardian ad litem; and
 - (e) the child if he is a party to the proceedings and there is no guardian ad litem.
- (4) After the final hearing of relevant proceedings, the court shall make its decision as soon as practicable.
- (5) When the court makes an order or refuses an application or request, the court shall record in writing the reasons for the court's decision and any findings of fact.
- (6) When making an order or when refusing an application, the court shall –
 - (a) where it makes findings of fact, state such finding and complete Form C23; and
 - (b) state the reasons for the court's decision.
- (7) After the court announces its decision, the proper officer shall as soon as practicable -
 - (a) make a record of any order made in the appropriate form or, where there is no such form, in writing; and
 - (b) subject to paragraph (8), serve a copy of any order made on the parties to the proceedings and on any person with whom the child is living.

- (8) Within 48 hours after the making of an order under section 51(4) or the making, ex parte, of -
- (a) an order under section 10; or
 - (b) an order under section 46, 51(9), 53, 76(1),
- the applicant shall serve a copy of the order in the appropriate form on -
- (i) each party;
 - (ii) any person who has actual care of the child, or who had such care immediately prior to the making of the order; and
 - (iii) in the case of an order referred to in sub-paragraph (b), the Department.

PART III-MISCELLANEOUS

22. Costs

- (1) In any relevant proceedings, the court may, at any time during the proceedings in that court, make an order that a party pay the whole or any part of the costs of any other party.
- (2) A party against whom the court is considering making a costs order shall have an opportunity to make representations as to why the order should not be made.

23. Confidentiality of documents

- (1) No document, other than a record of an order, held by the court and relating to relevant proceedings shall be disclosed, other than to -
 - (a) a party;
 - (b) the legal representative of a party;
 - (c) the guardian ad litem; or
 - (d) a welfare officer,without leave of the court.
- (2) Nothing in this rule shall prevent the notification by the court of a direction under section 39(1) to the Department.

24. Enforcement of residence order

Where a person in whose favour a residence order is in force wishes to enforce it he shall file a written statement describing the alleged breach of the arrangements settled

by the order, whereupon the proper officer shall fix a date, time and place for a hearing of the proceedings and give notice, as soon as practicable, to the person wishing to enforce the residence order and to any person whom it is alleged is in breach of the arrangements settled by that order, of the date fixed.

25. Notification of consent

Consent for the purposes of section 18(3) or section 35(6) shall be given either orally in court, or in writing to the court and signed by the person giving his consent.

26. Secure accommodation

In proceedings under section 27, the court shall, if practicable, arrange for copies of all written reports before it to be made available before the hearing to -

- (a) the applicant;
- (b) the parent or guardian of the child;
- (c) any legal representative of the child;
- (d) the guardian ad litem; and
- (e) the child, unless the court otherwise directs,

and copies of such reports may, if the court considers it desirable, be shown to any person who is entitled to notice of the proceedings in accordance with these Rules.

27. Investigation under section 39

- (1) This rule applies where a direction is given to the Department by the court under section 39(1).
- (2) On giving a direction the court shall adjourn the proceedings and the court shall record the direction in Form C39.
- (3) A copy of the direction recorded under paragraph (2) shall, as soon as practicable after the direction is given, be served by the proper officer on the parties to the proceedings in which the direction is given and, where the Department is not a party, on the Department.
- (4) When serving the copy of the direction on the Department the proper officer shall also serve copies of such of the documentary evidence which has been, or is to be, adduced in the proceedings as the court may direct.
- (5) Where the Department informs the court of any of the matters set out in section 39(3)(a) to (c) it shall do so in writing.

28. Appeals to the Court under section 78(6) and paragraph 7(1) of Schedule 8

- (1) An appeal under section 78(6) or paragraph 7(1) of Schedule 8 shall be by application in accordance with rule 4.
- (2) An appeal under section 78(6) shall be brought within 21 days from the date of the step to which the appeal relates.

29. Contribution orders

- (1) An application for a contribution order under paragraph 19(1) of Schedule 2 shall be accompanied by a copy of the contribution notice served in accordance with paragraph 18(1) of that Schedule and a copy of any notice served by the contributor under paragraph 18(8) of that Schedule.
- (2) Where the Department notifies the court of an agreement reached under paragraph 19(6) of Schedule 2, it shall do so in writing through the proper officer.
- (3) An application for the variation or revocation of a contribution order under paragraph 19(6) of Schedule 2 shall be accompanied by a copy of the contribution order which it is sought to vary or revoke.

30. Direction to Chief Education Officer to apply for education supervision order

- (1) For the purposes of section 17 of the Education Law (2010 Revision) a direction by the court to the Chief Education Officer to apply for an education supervision order shall be given in writing.
- (2) Where, following such a direction, the Chief Education Officer informs the court that he has decided not to apply for an education supervision order, he shall do so in writing.

31. Disclosure of addresses

- (1) Nothing in these Rules shall be construed as requiring any party to reveal the address of their private residence (or that of any child) except by order of the court.
- (2) Where a party has declined to reveal his address in reliance upon paragraph (1), he shall give notice of that address to the court in Form C7 and that address shall not be revealed to any person except by order of the court.

32. Setting aside on failure of service

Where an application has been sent to a respondent in accordance with rule 8(1) and, after an order has been made on the application, it appears to the court that the application did not come to the knowledge of the respondent in due time, the court may of its own motion set aside the order or may give such directions as it thinks fit for the rehearing of the application.

33. Transitional provisions

Nothing in these rules shall affect any proceedings which are pending (within the meaning of paragraph 5 of Schedule 10) immediately before these Rules come into force.

SCHEDULE

Respondents to applications, persons to whom notice shall be given and minimum number of days prior to hearing or directions appointment for service under rule 4(1)(b)

1. All applications

Respondents- Subject to exceptions below, the respondent to an application shall be as follows-

- (a) every person whom the applicant believes to have parental responsibility for the child;
- (b) where the child is the subject of a care order, every person whom the applicant believes to have had parental responsibility immediately prior to the making of the care order;
- (c) in the case of an application to extend, vary or discharge an order, the parties to the proceedings leading to the order which it is sought to have extended, varied or discharged; and
- (d) in the case of specified proceedings, the child.

Notice- The persons who should be notified, subject to exceptions below, in any application are the following -

- (a) the Department;
- (b) persons who are caring for the child at the time when the proceedings are commenced; and
- (c) in the case of proceedings brought in respect of a child who is alleged to be staying in a refuge which is certificated under section 54(1) or (2), the person who is providing the refuge.

2. Applications made under section 10 or Schedule 1

Minimum number of days prior to hearing or directions appointment for service under rule 4(1)(b)- 21 days

Respondents- the respondents should be the same as for all applications above and in the case of proceedings specified in the Children Law (Forms) Rules, 2013, those persons whom the applicant believe to be interested in or affected by the proceedings.

Notice- The persons who should be notified in any application under this paragraph are the following -

The same persons who are specified under for all applications above as well as, in the case of an application for a section 10 order, every person whom the applicant believes -

- (a) to be named in a court order with respect to the same child, which has not ceased to have effect;
- (b) to be a party to pending proceedings in respect of the same child; or
- (c) to be a person with whom the child has lived for at least 3 years prior to the application,

unless, in a case to which (i) or (ii) applies, the applicant believes that the court order or pending proceedings are not relevant to the application.

3. Applications made under the following sections-

6(1)(a), 6(3), 7(1), 8(7), 15(1), 18(6), 35(6), 78(6), paragraph 19(1), or 19(8) of Schedule 2, paragraph 7(1) of Schedule 8, paragraph 11(3) of Schedule 10.

Minimum number of days prior to hearing or directions appointment for service under rule 4(1)(b)- 14 days

Respondents- the respondents should be, except for proceedings under section 78(6), Schedule 2, or paragraph 7(1) of Schedule 8, the same as those specified under all applications above as well as the following-

- (a) in the case of an application under paragraph 11(3)(b) of Schedule 10, any person, other than the child, named in the order or directions which it is sought to discharge or vary;
- (b) in the case or proceedings under section 78(6), the Department against whose decision the appeal is made;
- (c) in the case of an application under paragraph 19(1) of Schedule 2, the contributor;
- (d) in the case of an application under paragraph 19(8) of Schedule 2-
 - (i) if the applicant is the Department, the contributor; and

- (ii) if the applicant is the contributor, the Department;
- (e) in the case of an application under paragraph 7(1) of Schedule 8, the Department.

Notice- The persons who should be notified in any application under this paragraph are the following -

The same persons as are specified under all applications above, and in the case of an application under section 6(1), the father of the child if he does not have parental responsibility.

4. Applications made under the following sections-

Section 38(1), 41(1), 41(2), 41(3), 41(4), 45(1), paragraph 6(2), 14(2) or 16(1) of Schedule 3.

Minimum number of days prior to hearing or directions appointment for service under rule 4(1)(b)- 7 days.

Respondents- the respondents should be, the same as for all applications above, as well as the following-

- (a) in the case of an application under section 41(2) or (3), the supervisor;
- (b) in the case of proceedings under paragraph 16(1) of Schedule 3, the Education Department; and
- (c) in the case of proceedings under section 38 or paragraph 14(2) or 16(1) of Schedule 3, the child.

Notice- The persons who should be notified in any application under this paragraph are the following -

The same persons as are specified under all applications above, and in the case of an application under section 45(1)-

- (a) every person whom the applicant believes to be a parent of the child;
- (b) every person whom the applicant believes to be caring for the child;
- (c) every person in whose favour a contact order is in force with respect to the child; and
- (d) every person who is allowed to have contact with the child by virtue of an order under section 36.

5. Applications made under the following sections-

Section 33, 36(2), 36(3), 36(4), 36(9) or 40(8)(b).

Minimum number of days prior to hearing or directions appointment for service under rule 4(1)(b)-3 days

Respondents- the respondents should be the same persons as are specified under all applications above, as well as in the case of an application under section 36, the person whose contact with the child is the subject of the application.

Notice- The persons who should be notified in any application under this paragraph are the following -

The same persons as are specified under all applications above, and in the case of an application under section 33-

- (a) every person whom the applicant believes to be a party to pending relevant proceedings in respect of the same child, and
- (b) every person whom the applicant believes to be a parent without parental responsibility for the child.

6. Applications made under the following sections-

Section 45 (12)

Minimum number of days prior to hearing or directions appointment for service under rule 4(1)(b)-2 days.

Respondents- the respondents should be the same persons as are specified under all applications above.

Notice- The persons who should be notified in any application under this paragraph are the following -

Those of the persons referred to in section 45(11)(a) to (e) who were not party to the application for the order which it is sought to have varied or discharged.

7. Applications made under the following sections-

Section 27, 46(1), 47 (3) (b), 48 (4), 48 (8), 49(7), 51 (9), 53 (1), 76(1), 93(1)

Minimum number of days prior to hearing or directions appointment for service under rule 4(1)(b)-1 day.

Respondents-

Except for applications under section 76(1) or 93(1), the respondents should be the same persons as are specified under all applications above as well as-

- (a) in the case of an application under section 47(3) (b)-
 - (i) the parties to the application for the order in respect of which it is sought to vary the directions;

- (ii) any person who was caring for the child prior to the making of the order;
and
- (iii) any person whose contact with the child is affected by the direction which it is sought to have varied;
- (b) in the case of an application under section 53, the person whom the applicant alleges to have effected or to have been or to be responsible for the taking or keeping of the child;
- (c) in the case of an application under section 76(1), the registered person; and
- (d) in the case of an application under section 93(1), the person referred to in section 93(1) and any person preventing or likely to prevent such a person from exercising powers under enactments mentioned in subsection (6) of that section.

Notice- The persons who should be notified in any application under this paragraph are the following -

The same persons as are specified under all applications above and-

- (a) in the case of an application under section 46(1), every person whom the applicant believes to be a parent of the child;
- (b) in the case of an application under section 47(3) (b)-
 - (i) the Department; and
 - (ii) any person whom the applicant believes to be affected by the direction which it is sought to have varied.

MADE by the Rules Committee of the Grand Court on the 15th day of April, 2013.

The Hon. Anthony Smellie, QC, Chief Justice

The Hon. Sam Bulgin, QC, Attorney General

Mr. Colin McKie, Legal Practitioner

Mr. Graham F. Ritchie, QC, Legal Practitioner