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THE RULES OF COURT, 1996

The Rules of Court, which came into effect in May 1996, combine the rules of the Supreme Court and the subordinate courts for the very first time. This article considers how this re-constitution was achieved, the consequences of this development, and the substantive changes which have been introduced in the context of the ongoing process of reform.

I. Merger and Consolidation

THE merger of the Rules of the Supreme Court (1970)[1] and Rules of the Subordinate Courts (1986)[2] as the Rules of Court in 1996[3] marked a fundamental development in the continuing process of reform of practice and procedure in the courts. A major criticism of the civil rules of court operating in many common law systems has been their complexity, a condition primarily contributed to by separate regimes of rules pertaining to the different levels of the court heirarchy.[4] The consequence has been a lack of uniformity between the processes of the various courts and the convolution of procedure.

Singapore is one of the first countries to have introduced this reform, a timely move to consolidate the 'barrage' of amendments which have taken effect in both the High Court and subordinate court processes since 1991.[5]

1 GN S 274/70. Hereinafter, referred to as RSC.

2 GN S 59/86. Hereinafter, referred to as SCR.

3 GN S 71/96. Hereinafter, referred to as RC.

4 See the English publication, 'Civil Justice on Trial – The case for change', a report by the Independent Working Party set up jointly by the General Council of the Bar and Law Society (June 1993), para 3.30.

5 See RSC (Amendment) Rules 1991 (GN S 260/91); RSC (Amendment No 2) Rules 1991 (GN S 281/91); RSC (Amendment No 3) Rules 1991 (GN S 532/91); RSC (Amendment) Rules 1992 (GN S 515/92); RSC (Amendment) Rules 1993 (GN S 211/93); RSC (Amendment No 2) Rules 1993 (GN S 278/93); RSC (Amendment) Rules 1994 (GN S 194/94); RSC (Amendment) Rules 1995 (GN S 39/95); SC (Amendment) Rules 1991 (GN S 349/91); SC (Amendment) Rules 1992 (GN S 59/92); SC (Amendment No 2) Rules 1992 (GN S 113/92); SC (Amendment No 3) Rules 1992 (GN S 283/92); SC (Amendment No 4) Rules 1992 (GN S 424/92); SC (Amendment No 5) Rules 1992 (GN S 455/92); SC (Amendment) Rules 1993 (GN S 51/93); SC (Amendment No 2) Rules 1993 (GN S 279/93); and SC (Amendment) Rules 1994 (GN S 260/94).

The RC heralds the first re-constitution of the rules governing Supreme Court procedure since 1970.[6] The history of the subordinate court rules since 1970 has been quite different. These rules went through three stages of reformulation since that year – in 1970,[7] 1986,[8] and as incorporated in the RC.[9] Although the SCR (1970) were primarily modelled on the RSC, they retained various procedures (hitherto operational under the District Court Rules of 1941),[10] which were largely alien to the High Court process. To take just a few examples, the method of originating process and the process for the defendant's initial response to the plaintiff's claim were entirely dissimilar to the procedure which prevailed in a High Court suit. Certain procedures such as the vital process of summary judgment were not available, while others, including the mechanism for court directions, were markedly different. The non-correspondence of the rule numbers accentuated the contrast between the two sets of rules. In 1986, the SCR were revamped to establish greater correlation with the rules governing the process of the Supreme Court.[11] Many of the subordinate court's distinctive procedures were repealed,[12] and the rules were re-numbered to match the RSC as nearly as possible.[13] However, the true significance of the 1986 reforms was that the measure of assimilation which they had achieved paved the way for the ultimate merger of the RSC and SCR in 1996. Had the developments a decade ago not occurred, the fundamental differences between the litigation systems of the two courts would have precluded this eventuality.

The introduction of the RC is a development which was catalysed not only by the general movement towards simplification and the need to consolidate the myriad reforms which had been instituted in the preceding five years, but also by the manner in which the amendments during this period were first introduced to one court and then the other. To illustrate, almost all the amending rules concerning the writ and originating summons, service and appearance, directions by the court, discovery and interrogatories, affidavits of the evidence in chief, summary judgment, parties, trial proceedings, interim and post judgment reliefs, settlement, judgments

6 Although there were amendments to the RSC in the foregoing period. See GN S 34/71, GN S 17/73 and GN S 304/82.

7 GN No 4/70.

8 *Supra*, note 2.

9 *Supra*, note 3.

10 No S 315/1941

11 *Supra*, note 2.

12 For example, the High Court's originating processes and mode of appearance were introduced.

13 Exact similitude could not be achieved because of the differences in jurisdiction between the two courts. *Infra*, notes 23-26 and the accompanying main text.

and their enforcement, and legal costs were first introduced to the High Court, and to the subordinate courts shortly thereafter.[14] Conversely, certain amendments to the subordinate court process, such as the power of the court to intervene in proceedings on the basis of justice, expedition and economy, the restrictions on mutual agreements to extend time, and the reduction of the period of validity of the writ[15] preceded their introduction (subject to modifications) to High Court actions. Furthermore, the process of consolidation enabled the reformers to extend processes from one court to another where this had not yet been done. For example, a new rule had been incorporated in the RSC in 1992 to broaden the court's discretion with regard to joinder of parties.[16] This provision now extends to the subordinate process. Again, the procedure for the verbatim transcription of evidence by court reporters, which was introduced in the form of a new Order 38A (entitled 'official shorthand note') by the RSC in 1992,[17] was applied to the subordinate courts by the RC. In the same vein, brand new rules introduced by the RC could be automatically applied to both court systems as, for example, is the new notice of action to non-parties in estate and trust matters,[18] the new procedure for 'stop orders' in relation to funds in court,[19] and the new requirements relating to the process of setting down an action for trial.[20] The process of assimilating the two bodies of rules also enabled the reformers to abandon those subordinate court rules whose inconsistency with the RSC could not be justified, as evinced by the removal of the procedure for the arrangement of interpreters.[21] The motion process, already used only in limited situations in the High Court, has been made even more marginal by the expanded use of the summons procedure. This brings High Court interlocutory procedure closer to that operating in the subordinate courts where the motion process does not apply. For example, whereas in the past an application in the High Court for an interlocutory injunction would be made by motion in open court (if it was not essential to apply immediately in chambers), now, as in the case of the subordinate court action, it may be effected by summons in chambers.[22]

14 *Supra*, note 5.

15 These were introduced by the SC (Amendment) Rules, 1994 (GN S 260/94).

16 Ord 15, r 6(2)(b)(ii) was brought in by the RSC (Amendment) Rules 1992 (GN S 515/92).

17 See the RSC (Amendment) Rules 1992 (S 515/92).

18 See Ord 15A, r 13A (RC)

19 See Ord 50, r 6 (RC).

20 See Ord 34, r 3 (RC).

21 Ord 34, r 7 (SCR) was not included in the RC. The outcome is that there is no rule governing interpreters in the RC. The process in the Supreme Court is governed by Supreme Court PD (1994), Pt XI, para 58(1) (formerly PD No 8 of 1971). The former subordinate court practice direction concerned the abrogated rule and has been removed as well.

22 *Infra*, 'Originating applications'.

While these developments brought about an unprecedented commonality of procedure in the two courts, certain processes continue to be distinct pursuant to their respective jurisdictions. Thus, the Orders governing appeals remain separate,[23] the remedy of *habeas corpus* is only available in the High Court process,[24] the procedure pertaining to applications for the interpretation of Constitutional provisions depends on whether they are made in the High Court or subordinate court,[25] and rules made to supplement statutory provisions which only confer jurisdiction on the High Court or specifically concern the subordinate courts are correspondingly limited in their scope of application.[26] The form in which the two sets of rules have been combined reflects this diversity when appropriate. Fortunately, the basic structure of the RSC is retained, a measure which takes into account the practitioner's familiarity with the rules. This was achieved by introducing alphabetically-arranged Orders, as illustrated by the various appeal routes to the High Court in Orders 55, 55A, 55B and 55C (RC). Order 55 (RC) preserves the existing procedure for appeals from a court,[27] tribunal or person. Order 55A (RC) incorporates the new 'Application to the High Court by case stated', whereas Orders 55B and 55C (RC) are substantially the former procedures for appeals from the registrar to a district judge, and from the subordinate court to the High Court respectively.[28] The re-organisation also involved re-structuring various provisions. For example, the former rules governing pre-trial conferences in Order 34, rule 5(3) and (4) (RSC) and (SCR) were joined with the former Order 3A (SCR) to create Order 34A (RC) (albeit, subject to significant amendments) – a new Order governing court intervention.[29] Similarly, the diminutive Order 14A (RSC), which concerned the operation of the summary judgment process in specific circumstances, was re-constituted (again, subject to amendments) as rules 12 and 13 of Order 14 (RC), which is the governing Order for such proceedings.[30]

[23] *Infra*.

[24] See Ord 54 (RC).

[25] See Ord 58 and 58A (RC). The former Ord 58 (RSC) concerned appeals to the Privy Council, a process which had been abrogated.

[26] There are several Orders which concern the statutory jurisdiction of the High Court. See, *eg*, Ord 70 (RC), which governs admiralty proceedings. As to the subordinate court process, see, *eg*, Ord 74, r 11A-D (RC), which concerns the issue of the judgment debtor summons pursuant to the Debtors Act, Cap 73, 1995 Ed.

[27] As in the past, this Order does not govern appeals from the subordinate court to the High Court, which are the subject of Ord 55C (RC).

[28] Though, the RC did introduce specific amendments. *Infra*, 'IV Other developments'.

[29] *Infra*, 'A Court's power of intervention'.

[30] *Infra*, 'IV Other developments'.

The advantages of the merged rules are manifest. They make life for the advocate who practises in both courts a good deal easier by not requiring him to apply a different procedural mind according to the court in which he appears. The consolidation of the five-year phase of amendments spares him from the laborious task of having to make sense of the mass of items of amending subsidiary legislation which had to be constantly tacked on to the two former sets of rules. From the perspective of the general administration of justice, a common procedure for both courts avoids a divergent jurisprudence. It ensures that the energy of reform may be focused on one system of rules thereby promoting greater efficiency. Progressive change can take effect immediately in both courts, thereby ensuring their development in unison. Judicial interpretation of rules, subsidiary legislation, practice directions, practice statements and other materials governing procedure can now have a common application. Indeed, it may not be too long before we have a merged volume of practice directions and related material for all the courts. Certainly, the disappearance of the antiquated procedures of the subordinate courts[31] and the incorporation of its rules in the RC means that these courts will not be left behind in the continuing process of reform. Furthermore, the significantly enhanced pecuniary jurisdiction of the district and magistrates' courts,[32] the extension of the district court's jurisdiction to hear and try particular types of proceedings,[33] and the process by which additional jurisdiction may be conferred on a district court,[34] demands a system of procedure on par with the High Court. Administrative reform in both courts, which has made such an important impact in recent years, can continue in tandem and benefit from shared expertise. The merger of the rules is also significant in that it complements the new fluidity between High Court and subordinate court processes. Statutory provisions in 1993[35] introduced new provisions governing the transfer of cases between these courts.[36] They empower the Chief

31 Particularly those in the SCR (1970). *Supra*, note 7.

32 The monetary limit on the district court's general jurisdiction has been increased to $100,000 and to $3m in respect of a grant of probate and administration actions. The limit on the magistrates' court's jurisdiction has been increased to $30,000. These limits may be varied by the President after consulting the Chief Justice. Even if a plaintiff brings an action which exceeds the district court limit, he may pursue it in that court if he is willing to abandon the extent of his claim above the limit: see the Subordinate Courts Act (Cap 321, 1985 Rev Ed), ss 26(a), 28 and 2, 31A, 52(1) and 2, 53, 31A, 52(3), and 22(1).

33 Subordinate Courts Act (Cap 321, 1985 Rev Ed), ss 20-23, 25-28, 30-31, 32-33 and 33A.

34 Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed), s 28A.

35 The Supreme Court of Judicature (Amendment) Act (No 16 of 1993) and the Subordinate Courts (Amendment) Act (No 15 of 1993).

36 See, *eg*, s 28A of the Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed) and s 41A of the Subordinate Courts Act (Cap 321, 1985 Rev Ed).

Justice to direct that certain proceedings commenced in the High Court be heard and determined by the district court in the interest of 'efficiency in the administration of justice' and 'more speedy disposal of [such] proceedings'. Suits commenced in the subordinate courts may be ordered to be heard by the High Court when this would promote efficiency in the administration of justice and 'more speedy disposal of [such] proceedings'. To complement these developments, new rules were introduced by the RC to provide the procedure for the transfer of cases between the courts.[37]

II. Developments Concerning General Proceedings

The great distinction of the 1996 reform lies in its merger of the rules of the Supreme Court and subordinate courts and the consolidation of the many changes to the rules effected since 1991. While the new RC also introduces various amendments (in the form of the modification of existing rules and the introduction of new provisions), these developments (some of which, as will be seen, are particularly significant) merely continue the reforming trend of the last six years. Nor should this new volume of rules, handsome and complete though it is, be thought to be the last word on the matter of Singapore's procedural evolution.

What, then, are the substantive changes introduced by the RC? Those that are of more general application in civil proceedings concern court intervention entailing a newly structured procedure for the exercise of its general power and its role in pre-trial conferences; the variation of process by which a writ of summons is renewed; a new approach to the modes of originating application; the extension of time by consent; matters relating to trial; new provisions regarding sanctions in relation to excessive bills of costs; the pleading process; and judgments and execution. The modification of specific proceedings and the introduction of new procedures will also be addressed.

A. *Court's Power of Intervention*

In 1994, Order 3A was introduced to the SCR.[38] Rule 1(1) provided that the court could, at any time after the commencement of proceedings, direct any party to appear before it (whether personally or by representation) so that it may 'make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter'. Most

[37] See Ord 89, rr 2-4 (RC).
[38] By the SC (Amendment) Rules 1994 (GN 260/94).

significantly, the court could so order irrespective of any other rule.[39] The provision empowered the subordinate court to depart from the rules of court when it was just, expeditious and economical to do so. Order 3A (RSC), which was re-structured and significantly modified by the RC, now applies to the High Court and takes the form of Order 34A, rule 1 (RC). The other provisions of this new Order concern the amended procedure for pre-trial conferences.

1. *General power and the re-structured procedure*

The incorporation of this power in the rules is a development of utmost significance for it alters the basic philosophy of the adversarial process. The traditional role of the court has been to adjudicate when called upon to do so in the course of litigation. Essentially passive in nature, the civil court has, over the centuries, only assumed an active role to ensure that the proceedings are conducted in a fair and just manner. As Lord Diplock said of the adversarial system:

> 'The underlying principle...is that the court takes no action in it of its own motion but only on the application of one or the other of the parties to the litigation, the assumption being that each will be regardful of his own interest and take whatever procedural steps are necessary to advance his cause.'[40]

The essential premise of Order 34A, rule 1 (RC) is that the rules of court do not always succeed in prioritising the values of expedition and economy. No doubt, the element of justice, the first of the three attributes (expedition and economy being the others) to be mentioned in the provision, must always be satisfied for the operation of this Order. For there may be situations in which it would be desirable in the interest of economy to make a particular order, but unjust to do so. For example, the court may be of the view that the time normally taken up by the process of automatic mutual discovery (including the process of exchange of lists and inspection) under Order 24 (RC) is not justified in the circumstances of the case. It may consider that in view of the limited number of issues involved and their simplicity, a conference between the parties is all that is necessary to determine what documents need to be produced. This step would save time and therefore expedite the case and promote economy. However, if

[39] The actual words used in Ord 3A, r 1 (SCR), and now in Ord 34A, r 1, are 'nothwithstanding anything in the rules'.

[40] *Allen* v *Sir Alfred McAlpine & Sons Ltd* [1968] 2 QB 229 at 254.

a party can show that it would be appropriate for his opponent to file a list of documents with a supporting affidavit (where, for example, the opponent may know of the existence of documents which he might not otherwise disclose), considerations of justice may require the court not to take the short-cut.

The fundamental question is, of course, the extent to which the court would assume the traditional role of the parties, and thereby take on the mantle of the the inquisitorial court of the civil law systems. For example, in German procedure it is the judge who directs the course of the action. He takes responsibility for the gathering of evidence and the formulation of issues with the assistance of the lawyers. It is the judge who will determine how often there will be hearings and how they are to be conducted. He will conclude when there have been enough hearings for him to reach a decision. In this system there is no main event in the sense of a trial, as the decision of the court is the natural conclusion of the sequence of meetings with the parties.[41] The structure of the adversarial process is very different, for it is characterised by the division between preparation for trial (interlocutory procedure) and trial.

Although Order 34A, rule 1 (RC) does not affect this structure, the fact that the court may 'make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter', would indicate that it may, if it wishes, act in an inquisitorial capacity in the appropriate circumstances. For example, there is nothing in Order 34A, rule 1 (RC) to prevent the court from requiring the parties to redefine or reformulate the issues according to its directions. It might make a pre-emptive order such as disallowing a future application for security for costs or an injunction. The court may take a direct role in the evidence to be produced by giving directions as to the witnesses to be called and the documentation to be tendered. It may limit or extend the scope of legal argument by indicating the legal authority which it wants the parties to submit on.

Of course, such direct intervention would involve a fundamental shift in the roles of the court and the parties. It would also negate the adversarial principle that litigants properly advised by counsel are in the most favourable position to control the substance and direction of their cases. The rationale of this principle is that the parties generally know much more about the facts of the case by virtue of their closer and continuing association with it. They are in a better position to decide on the scope of the issues, the

[41] For an account of the differences between German and Anglo-American procedure, see John J Langbein, 'The German Advantage in Civil Procedure', University of Chicago Law Review (1985) vol 52, no 4, p 823.

scope of legal argument and matters of evidence. If the court were to take an active role in these matters it would have to become sufficiently cognisant of all aspects of the case (at least as sufficiently cognisant as the parties) to be in a position to give the appropriate directions for its disposal. The additional judicial time that this would require would counter the current policy of ensuring that the courts make maximum use of their resources to avoid delays in the administration of justice. Furthermore, the power of the court to intervene in these matters raises the danger of uncertainty in the sense that the party's course of action may be changed at any time. Again, delay may result. The party's position may be jeopardised if his lawyer loses his initiative to the court. As the lawyer becomes less of a player he may feel that his role is less significant with the result that his commitment to his client's cause may be compromised. Most importantly, the rules of court contemplate that initiatives concerning the substance and direction of cases are the province of the parties, not the court.

Although an order may be made under Order 34A, rule 1 (RC) 'nothwithstanding anything in the rules'[42] (and therefore of all the rules), it is submitted that the Rules Committee could not have intended to introduce a system of court intervention which would operate against the *substratum* of the rules. Moreover, these rules – which embody the accumulated wisdom of more than a century[43] – create a reliability and certainty of process on which litigants can rely. No doubt, the rules of court do have their weaknesses (particularly in relation to the problem of delay).[44] However, they set the framework of the civil process which should not be compromised by an indiscriminate application of Order 34A, rule 1 (RC).

Order 34A, rule 1 (RC) should be seen as a means of enhancing the position of the court as the overseer of the civil process, and empowering it to intervene when necessary. In this system the parties continue to have control over the formulation of issues, investigation of facts and presentation of their cases. However, these privileges are subject to the power of the court to ensure that the parties are proceeding expeditiously and not abusing the court process. In a nutshell, Order 34A, rule 1 should not be seen as supplanting the adversarial process but rather as promoting its efficiency.

A better appreciation of the context of this new provision may be gained by comparing it to the inherent powers of the court expressed in Order 92, rule 4 (RC). By this rule the court may make any order 'as may be necessary to prevent injustice or to prevent an abuse of the process of court'.

[42] Ord 34A, r 1 (RC).

[43] The first Rules of the Supreme Court (UK) came out in 1883.

[44] See Review of Judicial and Legal Reforms in Singapore between 1990 and 1995, Butterworths Asia, 1996, pp 6-12.

As in the case of orders made and directions given under Order 34A, rule 1 (RC), the inherent power of the court may be exercised notwithstanding the rules. However, the similarity ends there. Whereas Order 92, rule 4 (RC) only operates when there is injustice or abuse (*ie*, when the ordinary rules of court fail), Order 34A, rule 1 (RC) enables the court to intervene whenever it is appropriate in the interest of expedition and economy. Although any order or direction made or given under Order 34A, rule 1 (RC) must be just, injustice is not, as it is in the case of Order 92, rule 4 (RC), a pre-condition for its operation. As the exercise of inherent power under Order 92, rule 4 (RC) ultimately depends on, and therefore is incidental to, a fundamental failure of the rules, it is a residuary process. It remains very much in the background until, in relatively rare circumstances, it is needed. In contrast, the Order 34A, rule 1 (RC) pre-conditions of expedition and economy are now the primary and prevalent objectives throughout the course of civil proceedings. The provision underlines the current policy of the courts to monitor and, if necessary, intervene in proceedings to ensure the appropriate progress of the case. Therefore, Order 34A, rule 1 (RC) is very likely to characterise the court's more active role.

2. *A more comprehensive procedure for pre-trial conferences*

Order 34A (RC) also introduces new and more extensive rules (rules 2 to 7) to govern pre-trial conferences.[45] These rules operate 'without prejudice' to rule 1, and apply the principle of that rule specifically to the pre-trial stages of the suit.[46] Indeed, the common thread throughout the whole of Order 34A (RC) is that the court may intervene by making orders and giving directions whenever it is just, expeditious and economical to do so. Therefore, the court may '…at any time before any action or proceedings are tried…direct parties to attend a pre-trial conference relating to the matters arising in the action or proceedings'.[47] The pre-trial conference was introduced to resolve delays caused by the reluctance of parties to consider settlement until the very last moment, and to remedy the common practice of vacating trial dates, a consequence of unpreparedness for trial. Although the rule is not mandatory, the court will normally hold a pre-trial conference to determine the status and direction of the suit. The parties are informed by notice in prescribed form[48] of the date and time appointed

[45] The first rules governing pre-trial conferences, Ord 34, r 5(3) and (4) (RSC) and (SCR) were introduced by the RSC (Amendment No 2) Rules 1991 (GN S 281/91) and the SC (Amendment) Rules 1992 (GN S 59/92).

[46] Ord 34, r 2(1) (RC).

[47] *Ibid*.

[48] Form 64A (RC).

for the conference.[49] The notice may also contain directions. At the conference, the court's task is to: '…consider any matter including the possibility of settlement of any or all of the issues in the action or proceedings and require the parties to furnish the court with any such information as it thinks fit,[50] and may also give all such directions as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the action or proceedings.'[51]

As this provision indicates, pre-trial conferences are primarily intended: to discover whether the parties are minded to settle the action (and, when appropriate, to encourage them in this respect); to urge the parties to limit the issues in dispute where such an approach is justified; and, if settlement is not possible, to give all appropriate directions to ensure that the parties are ready for trial. Other provisions concern the power of the court to give effect to the settlement (if reached),[52] the sanctions available to the court (which underline the importance of the directions given in the notice of the conference, and at the conference itself),[53] the

[49] Ord 34A, r 3 (RC).

[50] A form requesting information about various aspects of the case is completed by the parties for this purpose and submitted to the court. The questions concern such matters as: procedural issues which may be outstanding (*eg*, whether discovery and inspection have been completed, and whether the party intends to amend his pleadings or serve further pleadings); the identification of the issues in the case and the possibility of their limitation; details concerning lay and expert witnesses, and interpreters; the status of the agreed bundle; the estimated length of the trial and the earliest date of readiness for trial; and the status of settlement negotiations, if any (if no negotiations have taken place, the party is asked whether an attempt has been made to settle and whether an attempt will be made). Note that this list is merely intended to provide the general tenor of the questions on the form, and is not meant to be comprehensive. The form is not included in the RC.

[51] Ord 34A, r 2(2) (RC).

[52] Ord 34A, r 2(6) (RC).

[53] The court, having made directions under rule 2(2) or rule 3, may either on its own motion or upon the application of any party, if any party defaults in complying with any such directions, dismiss such action or proceedings or strike out the defence or counterclaim or enter judgment or make such order as it thinks fit. See Ord 34A, r 2(3) (RC). However, a judgment given or an order made in these circumstances may be set aside by the court on the appropriate terms, if an application for this purpose is made by the party concerned. Ord 34A, r 2(4) (RC). The application must be made within seven days of the date of the judgment or order: r 2(5). A party's failure to appear at the conference may result in similar consequences. The court may dismiss the action, strike out the defence or counterclaim, enter judgment, or make some other appropriate order. See Ord 34A, r 6(1) (RC). Where an order is made which concerns or affects an absent party, it may be set aside on such terms as the court thinks just. See Ord 34A, r 6(2) (RC). In making its determination whether to vary or set aside, it is suggested that considerations similar to those applicable to the setting aside of a default judgment would operate. The court would take into account such matters as the reasons for the non-appearance of the party concerned, and whether he can show that his case has merit. The court has the less drastic option of adjourning the conference

right of representation,[54] and the confidentiality of communications in the course of the conference.[55]

It must be said, however, that the structure of Order 34A (RC) raises some doubt as to whether the procedures in rules 2 to 7 (just considered) apply to a rule 1 situation where, for instance, the court directs the parties to appear before it at an earlier stage of the proceedings to determine a matter unconnected with pre-trial conference issues. The apparent lack of linkage between rule 1 and the remaining rules might lead to the conclusion that the ancillary provisions in rules 2 to 7, many of which are so important to the operation of the rule 1 power, are limited to pre-trial conference situations.[56] Obviously, the intention of the Rules Committee was to amalgamate the general power of the court to intervene when it is just, expeditious and economical to do so (rule 1) and the power to summon parties to a pre-trial conference on the same basis (rules 2 to 7). Furthermore, the power of the court to make orders and give directions under rule 1 would have little force if the sanctions and other measures contained in the remaining rules do not apply. Indeed, the predecessor of rule 1 – Order 3A, rule 1 (SCR) – was effectuated by ancillary rules.[57]

B. *Renewal of the Writ*

As with the power of the court to intervene pursuant to Order 34A, rule 1 (RC), the modifications to the process of renewal of the writ of summons were first put into effect (in their initial form) in the subordinate courts, when, in 1994, the life of the writ was reduced from twelve to six months.[58] As expected, this period was applied to the High Court process under the RC. But the amendments to the RC involved more than a decrease in the time allowed for renewal. They provide that the period of validity of the writ in both the High Court and subordinate courts is six months from the date of its issue, except where leave has been obtained to serve the writ

where one or more parties fail(s) to attend. See Ord 34A, r 6(3) (RC). In fact, the power to adjourn a pre-trial conference may be exercised 'from time to time, either generally or to a particular date, as may be appropriate'. See Ord 34A, r 5 (RC).

54 The parties do not have to attend the conference personally as they are entitled to be represented by their solicitors. However, if they wish to be present with their solicitors they must obtain the court's leave for this purpose. See Ord 34, r 4 (RC).

55 Ord 34A, r 7 (RC).

56 This also appears from the terminology of the latter rules and their margin notes, which constantly refer to 'pre-trial conference'.

57 See the former Ord 3A, r 1(2) (SCR) (sanctions concerning non-compliance) and Ord 3A, r 3 (SCR) (provision for setting aside or varying an order made in the absence of a party).

58 See the former Ord 6, r 4 (SCR), as amended by the SC (Amendment) Rules 1994 (GN S 260/94).

out of the jurisdiction under Order 11 (RC), or where the writ has been issued in admiralty proceedings governed by Order 70 (RC).[59] This outcome is provided by rule 4(1) which states:

> Subject to the other provisions of these rules,[60] for the purposes of service, a writ is valid in the first instance –
>
> (a) where leave to serve the writ out of the jurisdiction is required under Order 11, for 12 months, and
>
> (b) in any other case, for 6 months beginning with the date of its issue.

Order 6, rule 4(2) and (2A) set out further changes to the law of renewal. Rule 4(2) states:

> Subject to paragraph (2A), where a writ has not been served on a defendant, the court may by order extend the validity of the writ from time to time for such period, not exceeding 6 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the court before that day or such later day (if any) as the court may allow.

Rule 4(2A) provides:

> Where the court is satisfied on an application under paragraph (2) that, despite the making of reasonable efforts, it may not be possible to serve a writ within six months, the court may, if it thinks fit, extend the validity of the writ for such period, not exceeding 12 months at any one time, as the court may specify.

Rule 4(2) assumes that in the ordinary case it is reasonable to expect service to be effected within six months. There is a link between this development and the procedure by which a defendant, who is discomforted by an operational but unserved writ, can require the plaintiff to serve the writ or discontinue the action against him.[61] The rationale is that the plaintiff,

[59] See Ord 6, r 4(1)(a) and (b) and Ord 70, r 2(4) (RC) respectively.

[60] See Ord 70, r 2(4) (RC), which provides for a 12-month period in the case of admiralty proceedings.

[61] See Ord 12, r 8 (RC), which was introduced by the RSC (Amendment No 3) Rules 1991 (S) and the SC (Amendment No 2) Rules 1992 (S).

having commenced proceedings, should pursue his claim expeditiously in the interest of all the parties and the administration of justice. If he is uncertain about taking his case to court then, hopefully, he would be discouraged by this amendment from commencing proceedings and relying on what was previously a long period of validity and the court's jurisdiction to renew. The practice of issuing writs without any intention of taking the matter any further (a not uncommon tactic to pressurise the defendant into satisfying the claim) may amount to an abuse of process, and certainly congests the registry with excess documentation. The exceptions concerning service out of the jurisdiction and admiralty proceedings recognise that in these instances a longer period than six months may be, and often is, necessary for service to be effected.

The applicant who seeks to rely on paragraph (2A) must show that his situation is out of the ordinary; that even if reasonable steps to serve the writ are taken, it may not be possible to serve the writ during the six-month period. The rule is not so strict as to require the applicant to prove that service would actually be impossible. The affidavit in support would have to reveal how the case is extraordinary, particularly in relation to the circumstances of the defendant and the difficulties involved in effecting service. It should also be noted that the court has a discretion in determining the period of extension (between six and 12 months). The policy of the rule would seem to militate against granting a renewal for the full period of 12 months unless very clear justification can be offered for such a request. It might even be argued that as the Singapore position is more generous to the claimant than the corresponding English provisions (which fix the period of validity at four months and the period of renewal from four to 12 months),[62] the courts here may be stricter in their approach to renewal.[63] Certainly, this reflects the common law position in Singapore regarding the period of time in which the application to renew may be made. In *The Official Receiver, Liquidator of Jason Textile Industries Pte Ltd* v *QBE*

[62] See Ord 6, r 8(2) and (2A) (RSC(UK)).

[63] Note that the provisions of the RSC continue to apply to any writ of summons issued before the operational date of the new rules: para 8 of Pt I of the schedule to Ord 1, r 2(2) (RC). Similarly, the SCR (1986) (as amended by the Subordinate Courts (Amendment No 2) Rules 1992 (GN S 113/92) have effect in relation to any writ issued from 1 April 1992 until (but not including) 1 July 1994: para 5 of Pt II of the schedule to Ord 1, r 2(2) (RC).The result is that in the transitional periods for both the High Court and subordinate courts, the writ is valid for 12 months beginning with the date of issue: Ord 6, r 4(1) (RC). The cut-off date for the subordinate courts (1 July 1994) is earlier than that applicable to the High Court (*ie*, the operational date of the RC) because an amendment pursuant to the SC (Amendment) Rules 1994 (GN S 260/94)) reduced the period of validity to six months from that point in time.

Insurance (International) Ltd[64] (decided under the previous rule which provided that the validity of the writ was 12 months), an application was made to extend the validity of the writ 56 months after the writ was issued for five successive 12-month periods from December 1981 to December 1986. The Court of Appeal held that the court's power is limited to extending the validity of the writ for a maximum of 12 months at any one time. Applying the principle established by this decision to the new rule, an application for renewal must be made, in the ordinary case, at the latest within 6 months of the expiry of the writ.

C. *Originating Applications*

Changes to the mode of originating application to be employed in the course of interlocutory proceedings reflect the other priorities of the new Rules – simplification and economy of procedure. Take the motion process first. An application by summons is heard by the judge or registrar in private chambers, whereas an application by motion leads to a hearing by a judge in open court to which the public has access. The motion procedure is not available in the subordinate court process. As in the case of the summons, the rules indicate when the motion procedure is to be utilised. Traditionally, the motion procedure has been characterised by the importance of the issues involved, so that the more formal proceeding in open court is suitable. This is also signified by the procedure which empowers a judge hearing a matter in chambers to direct that the matter be heard in open court when 'he considers that by reason of its importance or for any other reason it should be so heard'.[65] The motion process might also operate when it is consistent with the demands of the case, as when witnesses need to be examined in open court on their affidavits. It may be said that while the informal summons procedure is generally employed for the majority of ordinary applications under the rules, the motion process is reserved for those circumstances in which it has a particular significance, or in which it has been established by convention.

However, the motion process is more expensive and time-consuming. It usually involves the attendance of witnesses, protracted legal argument, the involvement of a judge, and formality. In practice, when both procedures have been available, the party would, generally, have applied by summons rather than motion unless an application by motion was strictly necessary.[66]

64 [1989] 1 MLJ 1.

65 Ord 32, r 11 (RC).

66 For an example of a rule which makes both procedures available, see Ord 19, r 7(3)(RC), which concerns an application for judgment in default of defence.

Indeed, a party who applies by summons before a judge may have his matter adjudicated in open court if this is appropriate.[67] Although the motion process has been retained under the RC, it no longer applies to applications which may be appropriately resolved by summons in chambers. Numerous rules have been modified in this respect. An application under Order 12, rule 7 (RC) to dispute the jurisdiction of the court, or challenge the writ, or its service, must now be made by summons.[68] An application to set aside a proceeding, document, judgment or order for irregularity under Order 2 (RC) and to appoint a receiver pursuant to Order 30 (RC) 'may be made by summons'.[69] Although these words do not absolutely bar the motion process, the deletion of the application by motion from these two Orders[70] establishes that the summons in chambers is the proper mode of application in these cases. An application for summary determination of points of law or documentary construction under Order 14, rule 12 (RC) may only be made by summons or orally – not by motion, as was formerly the case.[71] The motion process was the prescribed mode for an application for the delivery of impounded documents out of the custody of the court.[72] This is no longer the position. Under the RC, the mode of application is not mentioned.[73] Most significant is the development concerning the interlocutory injunction, an application for which may now be made by summons.[74] In the past, the applicant in a non-urgent case would apply by way of notice of motion.[75] If the case was urgent he would have applied by *ex parte* summons and followed this with an application by notice of motion for the *inter partes* hearing. Although the application by motion has been excluded, the rule merely states that the application 'may be made' by summons.[76] Therefore, the motion process may continue to have a role where it can be clearly justified. The motion process continues to be utilised when a party applies for an order of committal in the High Court.[77] There may

[67] Ord 32, r 11 (RC). The judge may so act if the matter is of sufficient importance, or there are other reasons why it should be heard in open court. Although this rule concerns judges, it is not uncommon for a registrar to give such a direction. It is suggested that this is within the court's inherent procedural jurisdiction to ensure that its own processes are properly applied in the interest of justice.

[68] See Ord 12, r 7(2) (RC).

[69] See Ord 2, r 2(2) (RC) and Ord 30, r 1 (RC) respectively.

[70] *Ibid*.

[71] Compare the current Ord 14, r 13 (RC) with Ord 14A, r 2 of the former RSC.

[72] See the former Ord 35, r 10(1) (RSC).

[73] See Ord 35, r 10(1) (RC).

[74] See Ord 29, r 1(2) (RC).

[75] See the former Ord 29, r 1(2) (RSC).

[76] See Ord 29, r 1(2) (RC).

[77] Ord 52, r 3(1) (RC). Obviously, because of the seriousness of the situation.

be a case for a motion in certain instances in contentious probate proceedings.[78] It is the method by which applications are made to the Singapore Court of Appeal[79] (because it sits in open court); and it features in admiralty proceedings.[80]

Reform concerning the modes of originating application has been particularly necessary in relation to company procedure. Prior to the 1996 amendments, the RSC had provided for three modes of application – the originating summons, originating motion and petition. The general rule was that applications under the Companies Act[81] must be made by originating summons unless some other process is prescribed by the Act or the rules.[82] For example, an application for the rectification of the register could be made by originating summons or motion.[83] An application for an order validating the issue of, or allotment of shares, had to be made by originating motion.[84] If one sought to cancel the alteration of a company's objects, the application was required to be in the mode of petition.[85] Now, under the RC, every application under the Companies Act must be made by originating summons unless that Act (not the Rules) provides otherwise.[86] The streamlining of this procedure is likely to obviate the confusion for which the former Order 88 (RSC) had hitherto been responsible.

D. *Extension of Time by Consent*

Much of the reform introduced in the preceding six years has been aimed at reducing the delays which are inherent in the adversarial process. A major development in this respect which, sadly, was not retained in the RC, concerned the curtailment of the parties' right to extend the time prescribed by the rules and the courts for certain procedural steps to be taken in the proceedings. In the High Court, and in the subordinate courts before 1994, a party who needed additional time to serve, file or amend any pleading or other document merely had to obtain the written consent of the other party or parties in the suit for this purpose. It was immaterial that the period

78 See Ord 72, r 17 (RC).
79 See Ord 57, r 16(1) (RC).
80 See Ord 70 (RC) in general.
81 Cap 95, 1995 Ed.
82 See the former Ord 88, r 2(1) (RSC).
83 See the former Ord 88, r 3(1) (RSC).
84 See the former Ord 88, r 4(b) (RSC). Applications under each category of r 4 had to be made by originating motion.
85 See the former Ord 88, r 5(a) (RSC). Applications under each category of r 5 had to be made by petition.
86 See Ord 88, r 2(1) (RC). Note Ord 88, r 2(3) (RC) which prescribes an application by *ex parte* originating summons.

was prescribed by the rules or an order or direction of the court. Assuming that the consent was forthcoming a party could, in effect, defy the authority of the court by establishing its own time-table for procedural steps to be taken. It might be contended that a party in whose favour a judgment, order or direction is given or made should be entitled to waive his advantage because it is his right and his right alone. However, such a liberty assumes that the court operates in the interest of the party rather than that of the general administration of justice. The consequence is that the court's control of the proceedings is undermined, and its ability to stem delay compromised.

A change of approach, albeit temporary, came about in 1994 when the SCR were amended to exclude orders and directions of the court from the scope of the parties' agreement to extend time.[87] A new sub-rule[88] allowed the party concerned to apply to extend the time prescribed by an order or direction of the court by letter to the registrar.[89] The court retained the discretion to insist that a formal application be made by summons for the application to be heard. The effect of the amendment was that the parties could only agree to the extension of periods prescribed by the rules.

Significant though this development was, it continued to allow the parties to avoid the time limits prescribed by the rules of procedure by mutual agreement.[90] No doubt, the rationale for the process of extension of time by mutual agreement is to avoid overwhelming the court with applications for leave to extend time. If the court were to be bothered with an application in every such instance the problem of delay would only be exacerbated. Nevertheless, the untrammeled right of the parties to ignore rules of procedure has often been abused. Lawyers are only too willing to grant extensions of time as a matter of 'professional courtesy'. Often, the lawyer granting the request is frequently motivated by the knowledge that he may need such a favour himself from his opponent in the future, either in the same or a different suit. The great danger is that this practice may breed, and it many instances it has already bred, a general assumption that time limits do not have to be observed because the opposing lawyer will, in all likelihood, grant an extension. As delay can adversely affect the client in a variety of ways, it should never be the case that lawyers can dictate the pace of litigation by habitually granting time extensions to each other.[91]

87 See the SC (Amendment) Rules 1994 (GN S 260/94). The words 'or by any order or direction' were deleted from the Ord 3, r 5(3) (SCR).

88 Ord 3, r 5(4) (SCR).

89 This mode of application could only be utilised in the first instance.

90 This aspect of Ord 3, r 5(3) (SCR) was not modified.

91 An incidental but significant concern is that the client is not always informed of extensions of time. In view of the consequences of delay, it is vital that the client be regularly kept up to date on the progress of the case.

Perhaps the answer may be to introduce court-monitoring of agreements to extend time. For example, the rule might require that the court registry be notified of mutually agreed extensions. If a party or his lawyer has been abusing this right, for example, by constantly obtaining extensions by consent, he, or his lawyer, might be informed that no further agreed extensions will be allowed, or only allowed subject to certain conditions (for example, on the payment of costs), or on application to the court. The party's or lawyer's consciousness of potential sanctions may put a stop to the abuse of the rule.

Any hope that the RC might introduce more stringent measures to curb this practice has not been fulfilled. Indeed, the subordinate court amendments of 1994 were not adopted. Instead, subject to amendments concerning certain stages of the proceedings, there has been a return to the situation in which parties may not only agree to extend time limits prescribed by the rules, but also time-limits imposed by an order or direction of the court.[92] As to the changes introduced by the RC, they provide that the right of a party to consent to an extension of time does not apply to the time for setting down for trial or hearing, or for the filing of a notice of appeal. In these circumstances, an application must be made to court for the desired extension.[93] This amendment takes into account the tendency of the parties to delay at these vital stages of litigation and responds by requiring the court to endorse such arrangements.

E. *Matters Relating to the Trial*

1. *Subpoena*

A new rule empowers the registrar to revoke a subpoena on his own motion or on the application of any person.[94] This is a significant development in an area of procedure traditionally controlled by the parties. As a matter of general practice, the courts have only questioned the propriety of a subpoena on the basis of abuse of process. Although the court has always had the inherent power to set aside a subpoena in these circumstances, the exercise of this jurisdiction, which often depended on whether the opposing party challenged the subpoena, has been rare. Now that the Singapore court has an unfettered discretion in the matter, it is likely to exercise greater scrutiny over the use of the subpoena process. It may take a broader view of what constitutes misuse of the subpoena process so that

[92] *Ie*, in relation to the service, filing or amendment of a pleading or other document.
[93] See Ord 3, r 5(5) (RC) which was introduced by the RC.
[94] See Ord 38, r 14(4) (RC).

the power of revocation will not only be exercised where the process has been used for an ulterior purpose, but where the proposed witness is not in a position to offer any, or any significant, evidence in the case. For example, he may not have sufficient knowledge about the issues on which he is expected to give evidence; or he may not be in a position to add anything further to the evidence to be produced by other witnesses or sources; or the evidence which he would be asked to give is obviously inadmissible. The requirement that the evidence-in-chief of witnesses must be deposed in affidavits before trial would, unless affidavits cannot be obtained, be indicative of the nature of the evidence which is to be offered at trial. The improper use of the subpoena process in the circumstances just outlined would incur unnecessary costs (possibly additional hearing fees), unjustifiably involve the use of additional trial time, and require of the witness an unwarranted sacrifice of his time and commitment to the case. In this respect, there is authority to the effect that the court may set aside a subpoena if the witness would be oppressed as a result of giving the evidence required. In *Morgan* v *Morgan*,[95] the Watkins J agreed with the lower court's decision, in the course of a matrimonial proceeding, to set aside a subpoena which had been issued against the wife's father to obtain evidence from him regarding his wealth and testamentary intentions. The learned judge said: 'the paramount consideration (though I bear in mind the importance of the evidence) is the right of the individual.'[96] Similar sentiments were expressed in *Senior* v *Holdsworth, ex p Independent Television News Ltd*,[97] where Lord Denning, in determining whether the news organisation should be required to disclose untransmitted film, said that 'the court should exercise this power only when it is likely that the film will have a direct and important place in the determination of the issues before the court … If the judge considers that the request is … oppressive, he should refuse it'.[98]

It is not certain that the Singapore courts would prioritise the conflicting interests in favour of the witness; particularly if his evidence is crucial to the determination of the issues. It is suggested that the approach would depend on the nature of his circumstances, particularly the quality of his interest. For example, an invasion of his general privacy (an interest which is not protected by law) might not be considered to be less serious than excluding his material evidence in a case (which could directly affect the

[95] [1977] Fam 122.
[96] *Ibid*, at 126.
[97] [1976] QB 23.
[98] *Ibid*, at 34-35. Also see *Wakefield* v *Outhwaite* [1990] 2 Lloyd's Rep 157; *Parnell* v *Wood* [1892] P 137.

parties' legal interests).[99] The witness might be in a stronger position if he can show some legal basis for his complaint, such as the application of equitable principles to protect confidential communications. Of course, he would not be obliged to disclose any communications in respect of which he is able to claim privilege under the Evidence Act[100] or other statutes. All these considerations are important because of the right of the person affected by the subpoena to apply for its revocation on the basis of what he considers to be an improper use of the process. The registrar's decision may have a significant effect on the presentation of the calling party's case, as when the registrar revokes a subpoena concerning a witness which the calling party considers to be material. Accordingly, the registrar's decision is reviewable by a High Court judge (or a district judge in the subordinate court process) on the application of the aggrieved party.[101] The application is effected by summons supported by an affidavit, and must be made within 14 days of the registrar's decision.[102]

2. *Non-appearance of the parties*

The court is empowered to dismiss an action (or make an other appropriate order) if neither party appears at the commencement of the trial.[103] Previously, it could only strike the action out of the list of trials, an order which could be reversed by the restoration of the action. The new power complements a similar amendment in 1991 which enabled the court to give judgment or dismiss the action where one party did not appear.[104] The court may set aside a judgment or order made under these new rules as the justice of the case demands.[105] The court's exercise of its discretion to set aside an order of dismissal made on the non-appearance of both parties would, it is suggested, not only depend on the ability of one or both of the defaulting parties[106] to show that the case involves meritorious issues which should be tried. These new powers of the court in respect of the non-appearance of one or both parties were introduced for a specific purpose as they go beyond the mere taking of the action out of the list of trials with liberty

[99] *Ie*, the adoption of a balancing test might provide a just result in these circumstances.
[100] Cap 97, 1990 Rev Ed.
[101] Ord 38, r 14(5) (RC). An appeal lies whatever his decision: r 14(5) uses the terms '... any decision of the registrar'.
[102] Ord 38, r 14(6) (RC).
[103] Ord 35, r 1(1) (RC).
[104] RSC (Amendment) Rules 1991 (GN S 281/91). Previously, the court could only proceed with the case in the party's absence.
[105] See Ord 35, r 2 (RC).
[106] Depending on who applies to set aside.

to restore. Accordingly, the parties should not assume that all they have to show is some merit in their cause before the court will revoke the judgment or order of dismissal. Indeed, in *Vallipuram Gireesa Venkit Eswaran* v *Scanply International Wood Product (S) Ptd Ltd*,[107] interlocutory judgment was entered against a third party who had not appeared at the trial (although he was legally represented for the first three days).[108] The third party also failed to appear at the hearing for the assessment of damages despite having been notified. It was only when proceedings were taken for the registration of the judgment[109] in Malaysia that the third party began to act by applying for the judgment to be set aside.[110] Having ruled that the judgment could not be set aside on the basis of irregularity,[111] Judith Prakash J went on to consider whether the judgment ought to stand even though the issues between the defendant and third party had not been fully adjudicated upon. Her Honour said that the third party ought to have applied to set aside the interlocutory judgment within seven days after the trial as prescribed by the rules,[112] or for an extension of time (if acceptable reasons could given for the delay).[113] Instead, the application was made two years after the conclusion of the trial. The third party had not offered an acceptable explanation for its failure to participate in the trial and at the hearing assessment of damages,[114] and showed a lack of *bona fides*. Her Honour explained that in these circumstances it would not be appropriate for the court to examine the merits of the case and that the principles which govern an ordinary default judgment did not apply: 'The argument ... that in the case of a default judgment the important point is the merits of the litigants' case and that the court should give every opportunity to the litigants to put forward their case is, in my view, wholly inappropriate in a situation where, without any explanation whatsoever, a litigant has at a very late stage voluntarily decided to end its involvement in the proceedings

[107] [1995] 3 SLR 150.

[108] His lawyer applied for, and was granted, a discharge on the third day.

[109] Which had become final after the damages had been assessed.

[110] Having obtained an adjournment of Malaysian proceedings on the basis of his intention to set aside the judgment in Singapore.

[111] The court held that the judgment had not been entered for a larger amount than that actually due, as alleged.

[112] As prescribed by Ord 35, r 2(2) RSC. Note that by virtue of Ord 35, r 2(2) (RC), the period is now 14 days after the date of the judgment or order.

[113] The application to the court could have been made pursuant to Ord 3, r 5. See [1995] 3 SLR 150 at 155.

[114] The third party's excuse that it had not realised that the judgment was enforceable in Malaysia, and therefore did not participate in the proceedings was not justified. See [1995] 3 SLR 150, at 155.

and has deliberately embarked on a course which would mean that its case would not be put forward to the court.'[115]

3. *Trial before the registrar*

Previously, it was for the parties to apply to the court for the action to be tried before the registrar. Now the court has the power to give such an order on its own motion on the basis that the circumstances of the case warrant this mode of trial.[116] This development characterises the more direct involvement of the court as a manager of proceedings. It assumes, not unreasonably, that the court should have a role in determining the appropriate mode of adjudication (even if the parties have not put their minds to this), and ensures that the allocation of proceedings maximises the use of court resources. This is yet another measure which enables the court to act on its own initiative when necessary. Other developments in this mould include the court's general power to intervene in proceedings,[117] its entitlement to require an issue of law or documentary construction to be summarily determined in the course of an interlocutory proceedings,[118] its ability to make any order or give directions incidental or consequential to any judgment or order,[119] and the power of the registrar to revoke a subpoena on his own motion.[120]

F. *Sanctions Relating to Excessive Bills of Costs*

An excessive bill of costs may result in the imposition of sanctions. This has been the position for a long time and the principle remains the same. However, there are significant changes in relation to the amount overcharged and the court's power to punish. The former rule 8(7) of Order 59 (RSC) provided that if, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of a bill of costs was taxed off (that is, if the court reduced the amount by this proportion), the solicitor who presented the bill was not allowed the fees for drawing the bills and for attending the taxation.

[115] [1995] 3 SLR 150, at 155-156. Also see *Perwira Habib Bank Malaysia Bhd* v *Wastecol Manufacturing Sdn Bhd* [1988] 3 MLJ 215 (judgment in default of appearance not set aside because, *inter alia*, of the defendant's failure to explain and apparent lack of *bona fides*).
[116] See Ord 36, r 1 (RC).
[117] *Supra*, 'Court's power of intervention'.
[118] *Infra*, 'Other developments'.
[119] *Infra*, 'Judgments and execution'.
[120] *Supra*, 'Subpoena'.

This sub-rule has been reformulated so that now the proportion is one-half or more of the total amount of the bill. Additionally, new sanctions have been introduced. Therefore, if one-half or more of the total amount of the bill is taxed off (that is, if the amount of the bill is reduced by one-half or more), the registrar may order

(a) that the solicitor who presented the bill be disallowed the costs for the work done for and in the taxation of costs[121] and/or

(b) that the solicitor who presented the bill:

(i) stamp the bill with the whole of the amount of fees which would be payable if the bill was allowed by the registrar at the full amount thereof;[122]

(ii) be entitled to be re-imbursed by the paying party (in the case of a bill between party and party) or his client (in the case of a bill between the solicitor and his client) only the amount of fees payable on the amount allowed on taxation;

(iii) pay personally the difference between the amounts of fees mentioned in sub-paragraphs (b)(i) and (b)(ii) above; and/or

(iv) pay personally the fee payable for the registrar's certificate.[123]

These new provisions reflect the higher standard of duty and diligence required of the advocate in the conduct of proceedings[124] by widening the scope of penalties which the court might impose in the specific context of taxation of costs.

[121] Ord 59, r 8(7)(a) (RC).

[122] The stamp fees would, of course, be higher in this instance. See item 86 of Appendix B to the RC.

[123] Ord 59, r 8(7)(b)(i) – (iv) (RC). If the registrar decides to exercise his discretion by making one or both orders (*ie*, under r 8(7)(a) or (b)), he is required to enter a note of his action on the bill of costs. The order(s) must be included in the registrar's certificate: Ord 59, r 8(8) (RC).

[124] See Ord 59 r 8 (RC), which was introduced in 1991 by the RSC (Amendment No 2) Rules 1991 (GN S 281/91).

G. *Pleadings*

1. *Particulars in defamation cases*

The plaintiff who sues for defamation is now required to give full particulars in the statement of claim of the facts and matters on which he relies in support of his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered, and of any loss which is peculiar to the plaintiff's own circumstances.[125] As this new rule extends to all damages claimed (including aggravated damages), the decision of the Singapore High Court in *Lee Kuan Yew & Anor* v *Vinocur & Ors and another action*[126] must be reconsidered. In that case, the court, having surveyed the authorities on the subject, concluded that it was not necessary for the plaintiff to specifically plead the malicious attitude of the defendants and injury to the plaintiffs' feelings for the purpose of claiming aggravated damages. The court justified this outcome as the plaintiffs' pleas – that they had 'been gravely injured in [their/his] character, credit and reputation' and had been brought 'into public scandal, odium and contempt' – encompassed injury to feelings.[127] The court accepted that damages for defamation would include aggravated damages which are the necessary and immediate consequence of the injury to their 'character, credit and reputation' and their being brought into 'public scandal, odium and contempt'.[128] Furthermore, the court found that as the defendants had been aware of the plaintiffs' intention to claim aggravated damages by reason of previous applications for summary judgment, they could not have been surprised or embarrassed by the omission to plead the specific facts which gave rise to these damages.[129] The position under the new rule is that all circumstances giving rise to aggravated damages must be pleaded. Moreover, as this provision requires 'details of any conduct by the defendant which it is alleged has increased the loss suffered', malice, where it is the basis for a claim for aggravated damages, must be specifically pleaded. This would

[125] See Ord 78, r 3(3)(A) (RC), which was introduced by the RC. As in the case of other specific rules requiring particulars, the provision operates without prejudice to the generality of Ord 18, r 12 (RC).

[126] [1995] 3 SLR 477.

[127] *Ibid*, at 488.

[128] *Ibid*, at 490.

[129] *Ibid*. For cases in which the circumstances justified specific pleas, see *Prince Ruspoli* v *Associated Newspapers plc* (unreported), 11 December 1992, and *Perestrello E Companhia Limitada* v *United Paint Co Ltd* [1969] 1 WLR 570 (both cited and distinguished in *Lee Kuan Yew & Anor* v *Vinocur & Ors* [1995] 3 SLR 477).

accord with the rule[130] which requires an allegation of malice, where it is a ground for a claim, to be pleaded in the statement of claim.[131]

2. *Amendment of pleadings by agreement*

Parties may now agree in writing to the amendment of any pleading at any time in the course of the action,[132] except where the amendment concerns the addition, omission or substitution of a party in relation to a counterclaim.[133] The significance of this reform is that a party who would ordinarily require leave to amend may, instead, obtain the consent of the other party (or parties).[134] This should always be the first option with a view to saving expense and time. The development reflects a trend in the rules of allowing the parties a more direct role in expediting litigation.[135]

3. *Period of vacation excluded from computation of time*

In the interest of expedition, the period of the court vacation is no longer excluded in computing the time prescribed by the rules or order of court for serving, filing or amending any pleading.[136] The relevance of the vacation period to these matters brings to mind the administrative changes in the High Court by virtue of which it now hears applications during this time,[137] and more exceptionally, on Sundays and public holidays.[138]

[130] *Ie*, Ord 18, r 12 (RC).

[131] This form of malice should be distinguished from malice which is alleged in rebuttal to the defence of fair comment on a matter of public interest or publication upon a privileged occasion. Malice in rebuttal (often referred to as malice in fact or express malice) can only logically be pleaded in the plaintiff's reply to the defence. See *Lee Kuan Yew & Anor* v *Vinocur & Ors* [1995] 3 SLR 477, at 490-491.

[132] Ord 20, r 12(1) (RC).

[133] *Ibid*. This is a matter which raises more complex considerations relating to joinder of parties and, possibly, limitation. Accordingly, the court's involvement is necessary.

[134] In the form of a written agreement.

[135] See Ord 62, r 3(2) (RC), which allows the parties to agree to the mode of personal service, and Ord 62, r 6(1)(d) (RC), which applies the same principle to ordinary service.

[136] Therefore, the former Ord 3, r 3, Ord 18, r 5 and Ord 20, r 6 (RSC) have been deleted.

[137] See the Supreme Court Singapore, The Re-organisation of the 1990s, p 57.

[138] *Eg*, urgent applications for injunctions and related orders on Sundays and public holidays are officially sanctioned by the Practice Directions. See Supreme Court PD (1994), Pt XI, para 54.

H. *Judgments and Execution*

1. *Proceedings after judgment*

The power of the court to make orders after giving judgment (in order to complete it or give it effect) has been broadened. The post-judgment procedure had been governed by Order 44 (RC), which concerned post-judgment procedures in certain actions such as estate matters, wills, trusts and the sale of property. The court is no longer circumscribed by specific proceedings as it may, pursuant to the new rule 5 of Order 92 (RC), 'make or give such further orders or directions incidental or consequential to any judgment or order as may be necessary in any case'. The rule operates without prejudice to rule 4 of that Order which declares the inherent powers of the court.[139] Rule 5 might be regarded as a more specific application of the court's general discretion under rule 4 to maintain procedural justice. While the former Order 44 (RSC) catered to a variety of circumstances in which the court's involvement was and is necessary, the new rule 5 encapsulates the post-judgment role of the court in the form of a general principle of broad discretion. It should be noted, however, that as a rule of procedure, the new provision is subject to statutory law and may not be utilised to create new substantive rights.

2. *Garnishee orders*

One of the most important forms of enforcement by garnishee order is against a bank or other deposit-taking institution in respect of the judgment debtor's credit balance. Order 49, rule 1(3) (RC) provides that a 'debt due or accruing due' 'includes a current or deposit account with a bank or other financial institution (other than the Post Office Savings Bank), whether or not the deposit has matured and notwithstanding any restriction as to the mode of withdrawal'. The new rule gives effect to paragraph 18 of the first schedule to the Supreme Court of Judicature Act[140] and enables the Singapore court to attach deposits even if they have not matured, and despite restrictions imposed on the mode of withdrawal.

[139] Ord 92, r 4 (RC) states: 'For the removal of doubt it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of court.'

[140] The power was introduced in 1993 by the Supreme Court Judicature (Amendment) Act, 1993 (16/93).

3. *Examination of judgment debtor*

Any doubt that there might have been as to whether a judgment debtor might be interrogated by the court about his foreign assets (for the purpose of the enforcement of the judgment) has been resolved by the modified rule 1(1) of Order 48 (RC). A variety of approaches might have been taken in the past depending on the interpretation of the rule, which made no reference to foreign jurisdictions. The court might have preferred the narrow view by holding that that it only had power to examine the judgment debtor in relation to Singapore assets. It may have considered that its jurisdiction was broader than this where those assets could be used to satisfy the Singapore judgment (by virtue of a reciprocity agreement between Singapore and the foreign country or the transfer of the foreign assets to Singapore), or where the information concerning those assets might reveal details, hitherto unknown, about the judgment debtor's Singapore assets. In *Indian Overseas Bank* v *Sarabjit Singh*,[141] which concerned the former Singapore rule, the assistant registrar ruled that although the examination need not be confined to property within the jurisdiction, questions concerning property which the judgment debtor owned in Japan could only be asked if that property could be used to satisfy the judgment obtained in Singapore. As the judgment obtained in Singapore was not enforceable in Japan, the assistant registrar ruled that questions concerning the property there were not within the scope of Order 48 (RSC).[142] Order 48, rule 1(1) (RC) now provides that the oral examination of the judgment debtor extends to 'whatever property the judgment debtor has and wheresoever situated'. The broadening of this rule corresponds with the court's greater preparedness to make orders affecting assets in foreign jurisdictions in particular circumstances. For example, there is no reason why a judgment creditor who secures a 'worldwide' Mareva injunction to enforce his judgment should not seek information from a judgment debtor concerning his foreign assets

[141] [1990] 3 MLJ xxxi.

[142] Also see *Interpool Ltd* v *Galani* [1988] 1 QB 738 at 742, in which the English Court of Appeal held that the judgment debtor may be asked for information concerning his assets outside the jurisdiction 'which he can utilise to find out whether, in default of any English assets, there are foreign assets available to satisfy his judgment'. The case is distinguishable from *Indian Overseas Bank* v *Sarabjit Singh* as the judgment to be enforced was registered in England pursuant to a reciprocal enforcement scheme between England and France. However, even in the absence of such a scheme, it was arguable that information as to the judgment debtor's foreign property may aid the enforcement process, particularly if there is a chance that it may be transferred to the judgment creditor's own jurisdiction in the future.

under this rule, although the courts are generally inclined to make orders for discovery incidental to the injunction.[143]

4. *Stop order concerning funds in court*

A person who has an interest in funds in court may now apply to the court to restrict the movement of those funds. He may have a mortgage or other charge, or may have been assigned rights in those funds, or he might be a judgment creditor of the person who has an interest in those funds.[144] The application must be made by summons in an existing action and by originating summons when there are no subsisting proceedings.[145] The summons is required to be served on 'every person whose interest may be affected' by the order applied for, and on the Accountant General.[146] Although the court's general discretion as to costs is not affected, it is provided that the court may order the applicant to pay the costs incurred (as a result of the application) by the other parties and persons interested in the funds.[147]

5. *Other measures*

Other measures concern: the appointment of a date of execution;[148] a sanction whereby the court may direct that the costs of execution are not to be recovered as a disbursement when an appointment for execution has been vacated;[149] the deletion of the provision that dealings with property are void after seizure;[150] the withdrawal of the requirements that the registrar read back the statement of a judgment debtor under examination and ask him to sign it;[151] and the delimitation of the scope of contempt proceedings in the subordinate courts.[152]

[143] See *Gidrxslme Shipping Co Ltd* v *Tantomar-Transportes Maritimos Lda* [1995] 1 WLR 299, which concerned a worldwide *Mareva* injunction granted in aid of execution of arbitration award and a related order for discovery.
[144] Ord 50, r 6(1)(a)-(c) (RC).
[145] Ord 50, r 6(2) (RC).
[146] Ord 50, r 6(3) (RC). It is not to be served on anyone else.
[147] Ord 50, r 6(4) (RC).
[148] See Ord 46, r 11(1)(b) (RC).
[149] See Ord 46, r 11(2) (RC).
[150] Ord 47, r 8 (RSC) has been deleted.
[151] See Ord 48, r 3 (RC).
[152] See Ord 52, r 1(3) (RC). The subordinate courts may only commit for contempt in respect of proceedings in court.

III. Modification of Specific Proceedings

The amendments concerning specific proceedings – some archaic and others cumbersome – have also been important in developing a more modern procedure. The antiquated processes governing the application for a writ of *habeas corpus* have been removed by a substantial re-drafting of the Order.[153] The prerogative remedies, too, have been given attention so that the procedure is clearer and more effective.[154] Admiralty proceedings have undergone reform in respect of the warrant of arrest and the rules governing the 'preliminary act'.[155] Furthermore, the administrative machinery concerning non-contentious probate proceedings has been modified.[156] In proceedings involving the estate of a deceased person or property subject to a trust, a new rule[157] ensures that persons who are not parties – but who will or may be affected by the judgment of the court – have the opportunity to participate in the suit. The rule augments the policy of the existing provisions to ensure that all persons who might be affected are given the appropriate notice before being bound by the judgment of the court. [158]

IV. New Procedures

The new Order 55A (RC) introduces a new form of appeal. More specifically, it concerns an application 'to state a case' and an application 'by way of case stated' from 'any tribunal or person' to the High Court pursuant to statute. It should be read in the context of Order 55 (RC), which encompasses statutory appeals from 'a court, tribunal or person' to the High Court, but excludes applications which come within Order 55A (RC). Order 55A (RC)is essentially concerned with issues of law and jurisdiction (as opposed to more general appeals) which the High Court is to determine.[159] The RC also introduced a specific procedure to govern applications concerning a reference under Article 100 of the Constitution[160] for an advisory opinion on a question as to the effect of any provision of the Constitution.[161] Similarly,

[153] See Ord 54 (RC).
[154] See Ord 53 (RC).
[155] See Ord 70 (RC).
[156] See Ord 71 (RC).
[157] Ord 15, r 13A (RC).
[158] See Ord 15, rr 13-15 (RC).
[159] As in the case of Ord 55 (RC), Ord 55A (RC) does not apply to appeals from the subordinate courts which are governed by separate Orders.
[160] 1992 Ed.
[161] See Ord 58 (RC). The former Ord 58 (RSC), which governed Privy Council appeals, has been deleted.

a reference under section 56A of the Subordinate Courts Act[162] by a subordinate court to the High Court in respect of a question relating to the interpretation or effect of any provision of the Constitution is governed by a new set of provisions.[163] Following hot on the heels of Order 87A (RC), which was introduced in 1995 to govern appeals to the High Court from a decision of the Registrar of Patents pursuant to the Patents Act,[164] is Order 89C (RC), which concerns proceedings under the Employment Act.[165]

V. Other Developments

The RC has introduced various other modifications.[166] Practice directions have been given added force. Although they do not have the authority of substantive law,[167] the court has the general power to order that costs be paid by the party or advocate who fails to act 'reasonably' or 'properly'.[168] The failure to comply with a practice direction would come within the scope of this power. Now, with the introduction of new rules, documents must 'comply with such requirements and contain such information and particulars of parties or other persons as may be laid down or specified....'[169] The court is at liberty to reject any document submitted for filing for any default in this respect.[170] Additionally, the rejected document will only be treated as having been filed on the date on which it is subsequently accepted for filing by the court.[171]

The process for summary determination of issues of law and documentary construction, once within the province of a separate Order (Order 14A (RSC)), has been amalgamated with the provisions governing the normal summary judgment procedure.[172] However, the changes have not been limited to form. Under Order 14A (RSC) it was specifically provided that the

[162] Cap 321, 1985 Rev Ed.
[163] See Ord 58A (RC).
[164] Cap 221, 1995 Rev Ed. Accordingly, the former Ord 25, r 1(2)(g) (RSC), which concerned directions given in relation to patent actions, has not been included in the RC.
[165] Cap 91, 1996 Rev Ed.
[166] A number of these are very specific, or merely formal or technical, and will not be mentioned in the interest of avoiding obfuscation.
[167] See *Hume* v *Somerton* (1890) 25 QBD 239, at 243; *Barclays Bank International Ltd* v *Levin Bros (Bradford) Ltd* [1977] QB 270; *Jayasankaran* v *PP* [1983] 1 MLJ 379 (concerning a practice note).
[168] See Ord 59, rr 7 and 8 (RC).
[169] Ord 92, r 2A (RC). See Ord 92, r 3(1) (RC).
[170] See Ord 92, r 3(1) (RC).
[171] See Ord 92, r 3(2) (RC).
[172] The former Ord 14A (RSC) is reconstituted as Ord 14, rr 12 and 13 (RC).

jurisdiction of the court could be exercised by the registrar.[173] This provision has now been deleted.[174] Moreover, the court was only entitled to make its determination under Order 14A (RC) if the parties had the opportunity to be heard, or if they consented to the judgment or order on such determination.[175] It appears that this latter qualification has been removed because it is subsumed under the first condition: parties who decide not to be heard – but consent to the judgment or order – have had the required opportunity to be heard. The word 'fully' is substituted for 'finally' in rule 12(1)(b). It is assumed that this last modification is intended to emphasise that the issue(s) in dispute must be wholly resolved by the proceeding. Finally, the motion process is not available for this procedure, as it was in the past.[176]

The application of the interrogatory process before the commencement of the action and against non-parties has been extended to interpleader matters.[177] Changes have also been introduced to the procedure concerning the summons for directions,[178] the sale of immovable property by order of court,[179] the filing of documents at the time of setting the action down for trial,[180] affidavit formalities,[181] the lodgment of funds in court,[182] the administrative arrangements of the registry.[183] The 'official shorthand note' procedure (for the professional recording of the oral evidence of witnesses) has been extended to the subordinate court process.[184]

Finally, it should be mentioned that a pre-condition to the merger of

[173] See the former Ord 14A, r 1(4) (RSC).

[174] The registrar continues to have jurisdiction until a practice direction to the contrary is given effect: Ord 32, r 9 (RC).

[175] See the former Ord 14A, r 1(3)(a) and (b) (RSC).

[176] See the former Ord 14A, r 2 (RSC).

[177] See Ord 17, r 10 (RC).

[178] Ord 25, r 3(1)(a) (RC) is modified to include the bundles of documents referred to in the witnesses' affidavits. A new rule 9 is introduced to Ord 25 (RC) to govern the procedure for documents referred to by these affidavits. Ord 41, r 11 (RC) is modified in conjunction with this development.

[179] See Ord 31, r 2 (RC), which concerns the manner of carrying out the sale.

[180] See Ord 34, r 3 (RC). Note that the former subordinate court procedure for setting down has been superseded by Ord 34, which applies to both courts.

[181] See Ord 41, r 1(4) (RC) which allows a deponent who is giving evidence in a professional, business or other occupational capacity to state his office address, his position and employer or firm name instead of his residential address.

[182] Ord 90, r 17 (RC), which concerns unclaimed funds, is applied to funds in the Sheriff's account.

[183] See Ord 60 (RC). In particular, the storage of information 'in such medium or mode that [the registrar] may determine'. See Ord 60, r 2(2) (c) (RC).

[184] See Ord 38A (RC).

the rules of court was the re-constitution of the Supreme Court and subordinate courts' rules committees so that the power to make rules could be vested in a single rules committee. This has been achieved by amendments to section 80 of the Supreme Court of Judicature Act and section 69 of the Subordinate Courts Act.[185] Section 69(1) of the Subordinate Courts Act, as amended, links with section 80 of the Supreme Court of Judicature Act, as amended, by providing: 'The Rules Committee appointed under section 80(3) of the Supreme Court of Judicature Act may make Rules of Court regulating and prescribing the procedure and practice to be followed in the District Courts and the Magistrates' Court in the exercise of their civil jurisdiction and any matters incidental to or relating to any such procedure or practice.'[186]

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[185] By the Supreme Court of Judicature (Amendment) Act 1996 (3/96) and the Subordinate Courts (Amendment) Act 1996 (4/96) respectively.

[186] The constitution of the committee is set out in s 80(3), as amended by the Supreme Court of Judicature (Amendment) Act 1996 (2/96). For the provisions which govern the making of subsidiary legislation, see ss 19-26 of the Interpretation Act, Cap 1, 1985 Ed.

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