DRAFT EXPLANATORY NOTES TO THE CIVIL PROCEDURE (AMENDMENT) RULES NO.33 OF 2019

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One person may sue or defend on behalf of all in same interest (1) A person may institute a representative suit on behalf of all plaintiffs or all defendants, as the case may be, who have the same actual and existing interest in the subject matter of the intended suit, for the benefit of all.	(1) A representative suit may be instituted by a person on behalf of all plaintiffs or defendants where the plaintiffs or defendants have the same actual and existing interests in the subject matter and for the benefit of all. **Suggested Note** "*When there are multiple plaintiffs or defendants named in any action, these rules allow any individual plaintiff or defendant—the "representative"—to act and speak on behalf of all of the other parties on their side of the action as long as the interests of the representative are identical to every other party that they intend to represent."* **Representative suits are brought on behalf of people of the same class of interests. The rules are meant to ensure that the representative has authority of the class or interested persons and enables issues of costs of the suit to be dealt with so that suits are not filed on behalf of people who have not given their written consent. It also enables court to join other interested persons to the representative suit.**
(2) An application for a representative order shall be made by an intending plaintiff or defendant who intends to represent all plaintiffs or defendants for the benefit of all as the case may be, who have the same actual and existing interest in the subject matter of the intended suit.	(2) An intending plaintiff or defendant in a representative suit shall make an application for a representative order to represent all plaintiffs or all defendants for the benefit of all where they have the same actual or existing interest in the subject matter. **Suggested Note** *"If a plaintiff or defendant wants to act as a representative for other parties on their side of the action, the representative first needs to seek a Representative Order from the Court hearing the action."*
(3) Before the court grants an order for a representative suit, the applicant shall satisfy the court that— (a) all the plaintiffs or defendants, as the case may be, have an actual	(3) Court shall grant a representative order where the applicant satisfies court that— (a) As the case may be, all the plaintiffs or defendants have an actual and

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and existing interest in the subject matter of the intended suit; (b) all the persons represented have authorized the applicant to sue or defend in the suit, and the authorization shall be in writing duly signed by the represented persons; and (c) the application is brought with a proposed plaint or defense, as the case may be, showing— (i) a list of all persons so represented; and (ii) that all persons so represented have the same actual and existing interest in the suit.	existing interest in the subject matter. (b) He or she has been authorized in writing by all represented persons to sue or defend in the suit and the authorization is properly signed. (c) The application is submitted with a proposed plaint or defense showing— (i) a list of persons represented; and (ii) that the represented persons have the same real existing interests in the matter. **Suggested *Note*** *"In their application, as long as the representative satisfies the Court that (i) they actually have exactly the same interests in the action as everyone they want to represent and (ii) everyone the representative wants to represent is listed and has agreed, in writing, to be represented, the Court must grant a Representative Order.*
(4) Subject to subrule (2), the court shall, in such case, give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court may in each case direct.	(4) Court shall, subject to subrule (2), give notice of the institution of the matter to all persons by personal service or where personal service is impracticable by public advertisement. **Suggested Note** *"When the Court grants a Representative Order, it must notify every party on all sides of the action. Notice should be by personal service, if possible. However, if personal notice is not practical (if the number of parties to be notified is too large, for example), the Court may notify the parties by public advertisement.*
(5) Any person with the same interest wishing to be made a party to a representative suit may apply to the court to be made a party to the suit.	**(5)** Any person with same interests may be made a party to a representative suit by applying to Court. **Suggested Note** *Not sure there is a way to make this clearer.* **Any person with the same interest who is not on the list indicated in the representative order may apply to be joined as a party or be included on the list of parties represented in the suit by the same representative**
(6) For purposes of this rule, "a representative action" means a suit in which there are numerous persons having the same interest in one suit	(6) "A representative action" means a case with different persons who possess the same interests in a case who can be represented by one or more of such

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and where one or more of such persons, may, with the permission of the court, sue or be sued or may defend in the suit on behalf of or for the benefit of all persons interested."	persons to benefit all with permission of court. **Suggested Note** *"As outlined in the previous comments, a 'representative action' is one where the Court gives permission to one party to speak and act for all identically interested parties on that side of the action."*
1. SUMMONS FOR DIRECTIONS (1) The court shall, for purposes of preparing for every action to which this rule applies, provide an occasion for consideration of a suit for a scheduling conference and trial of the suit so that— (a) any matter which should have been dealt with by an interlocutory application and has not been dealt with may, so far as possible be dealt with; and (b) directions may be given for the future course of action as appears best to be adapted to secure the just, expeditious and economical disposal of the matter.	**1. SUMMONS FOR DIRECTIONS** (1) For purposes of preparing for every action to which this rule applies, the Court shall provide a scheduling conference and trial of the matter so that— (a) Any matter not dealt with by an interlocutory application is dealt with; (b) Directions may be given for a fair, efficient and effective disposal of the matter. **Suggested Note** "*When an action is filed under this rule, the Court must ensure the matter moves forward fairly, quickly and efficiently. Accordingly, the Court must have a session to discuss the schedule for the matter and set a trial date."* **It is meant to cheapen the cost of litigation by giving a forum or occasion to deal with all interlocutory matters that can be handled by the registrar** **To provide a stock taking process before the matter is fixed for trial before a judge so that the parties are given directions to comply with preparation and submissions of witness statements, documents, expert reports etc. It promotes efficiency, economy and conservation of time and material resources involved in taking evidence/ It also gives a first early opportunity to refer to ADR or refer agreed issues to expert arbitration.** **To narrow down the issues for trial of the suit if the dispute is not resolved through ADR**
(2) Where a suit has been instituted by way of a plaint, the plaintiff shall take out summons for direction within 28 days from the date of the last reply or rejoinder referred to in rule 18(5) of Order VIII of these Rules. (3) The summons in subrule (2) shall be returned within fourteen days from the date they are taken out.	(2) The complainant shall take out summons for direction within 28 days from the date of last reply. (3) The summons in subrule (2) shall be returned in fourteen days.

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(4) This rule applies to all actions instituted by way of a plaint, except— (a) an action in which the plaintiff or counterclaimant has applied for a default judgment under Order IX rules 6 and 7, summary judgment under Order XXXVI or where application for leave to file a defence under Order XXXVI is refused; (b) an action in which the plaintiff or defendant has applied under Order VI rules 29 or 30 or Order XV rule 2 for determination of the suit on a point or points of law; (c) an action in which an order for the taking of an account has been made under Order XX;1044 (d) an action in which an application for transfer to another division, court or tribunal has been made; or (e) an action in which a matter has been referred for trial to an official referee or arbitrator.	(4) This applies to all actions brought about by a plaint, save for— (a) applications for default judgment, summary judgment and where leave to file a defence is refused (b) action for determination of the suit on a point or points of law. (c) action for an order for the taking of an account. (d) application for transfer to another division, court or tribunal in an action (e) matter has been referred for trial to an official referee or arbitrator in an action
(5) In a case where discovery of documents is required to be made by any of the parties, the period of 28 days referred to in paragraph (2) may be extended either by order of court or on application of either party to the suit.	(5) The period of 28 days in paragraph 2 may be **extended** by court order or by party's application if there is need to **obtain more or further** information by any party.
(6) If the plaintiff does not take out a summons for directions in accordance with subrules (2) or (6), the suit shall abate.	(6) If the complainant does not take out summons for directions in line with subrule 2 or 6 the **suit** shall be **removed from the list of pending suits**
(7) Where a suit has abated under subrule (7), the plaintiff may, subject to the law of limitation, file a fresh suit.	(7) Where the matter in subrule (7) does not go forward in line with law of limitation the complainant may file a fresh matter. **NB where the suit has been removed from the list of pending suits, the plaintiff may file a fresh suit if the time set by law to file that suit has not elapsed.**
(8) In the case of an action which is proceeding only in respect of a counterclaim, references in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim	(8) For the case of a counterclaim references in this rule shall be taken as references to the party making the counterclaim.

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2. DUTY TO CONSIDER ALL MATTERS (1) When the summons for directions first comes to be heard, the court shall consider whether— (a) it is possible to deal with all matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions; (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage; or (c) there is an interlocutory application that has not been dealt with and if so, deal with it at that point.	**2. DUTY TO CONSIDER ALL MATTERS** 1) On the first hearing court shall consider whether— (a) It is possible to handle all matters required by the next rules of this Order. (b) It is quicker and efficient to move all or any of the matters to a later date; or (c) There is a pending Interlocutory application and if yes court will deal with it at that time. **Suggested Note** "*At the first hearing after the initial summons, the Court will examine the status of the action and will try to consolidate all appropriate matters into the action – including interlocutory applications that have already been filed.*"
(2) If when the summons for directions first comes to be heard, and the court considers that it is possible to deal with all the matters at the same time, it shall deal with them immediately and shall endeavor to ensure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also dealt with.	2) If it is possible to handle all matters at the same time at first hearing, court shall deal with them there and then together with any pending Interlocutory applications. **Suggested Note** *"At the first hearing after initial summons and after all appropriate claims are consolidated, the Court must address all of those claims, if possible."* **(summons are taken before the Registrar in a High Court and the intention is to prepare the case for trial or have it resolved through ADR. The Registrar deals with all interlocutory matters at this stage. The interlocutory matters to be dealt with are listed. They may include for instance, discovery of documents, stay of suits, consolidations of suits, admissions of evidence, etc.**
(3) If, when the summons for directions first comes to be heard, and the court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons, the court shall deal immediately with such matters as it considers can conveniently be dealt with and adjourn the consideration of the remaining matters and shall endeavor to ensure that all other matters	3) If court considers it necessary to adjourn dealing with matters that can be dealt with at hearing of the summons, it should deal with matters it can consider immediately and shall ensure that a registrar deals with pending interlocutory applications at a resumed hearing of the summons for directions. **Suggested Note** *"As stated above, the Court should address as many matters as possible—including interlocutory applications—at the first hearing after initial summons. If the Court decides adjourn any matters*

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which must or can be dealt with on interlocutory applications by a registrar and have not been dealt with are dealt with then or at a resumed hearing of the summons for directions.	*within the action, it must make every effort to address those matters at the next hearing.*
(4) Where an action is ordered to be transferred to a Magistrates Court or some other court, nothing in this Order shall be construed as requiring the court to make any further order on the summons.	4) Where an action is ordered to be transferred to another Court, no any other order will be made on the summons. **Suggested Note** – *"If an action is transferred to another Court, the original Court has no more responsibility for the matter."*
(5) Where the parties have agreed to an order as to the place, mode or trial before all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions, no such order shall be made until all those matters have been dealt with.	5) No order shall be made if there are any matters not agreed on by the parties. **Suggested Note** – *"The Court will not grant any order concerning the scheduling or manner of trial, even if the parties agree, unless the order addresses all matters raised within the summons."*
(6) Where a question or issue is ordered to be tried before an official referee or arbitrator, the court may without giving any further directions, adjourn the summons for direction so that the issue can be heard by the referee.	6) A referee may move the summons for directions to another date to first handle an issue or a question. **Suggested *Note*** - *"If an action or claim within an action is assigned to a mediator or arbitrator, the court may adjourn the matter to wait for a decision."*
(7) Where summons for directions are adjourned without a fixed date for resuming the hearing, either party may restore it on the list of matters for hearing on a two days' notice to the other party.	7) A party may list a summons for directions on matters for hearing list if it was adjourned without a specific date for resume on a two days 'notice to another party. **Suggested Note** – *"If the Court adjourns the first hearing without setting a new hearing date, any party may schedule a new hearing date as long as they provide notice to other parties at least 2 days before the new date."*
3. PARTICULAR MATTERS FOR CONSIDERATION (1) Upon hearing of the summons for directions, the court shall on its own motion, consider whether any order should be made or direction given in the exercise of the powers conferred by any other law as - (a) to whether evidence on particular matters may be given by way of affidavits without the need to call the deponent for cross	**3. PARTICULAR MATTERS FOR CONSIDERATION** 1) After hearing of summons for directions court shall decide whether any order should be made or direction given in the exercise of the powers given by any other law as- (a) to Whether use of affidavits is enough evidence. (b) To whether evidence will only be in written form or any other form.

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examination for avoidance of expenses and inconvenience of calling witnesses to prove particular matters; (b) to whether evidence of witnesses shall be in written form or in such other manner as may be contained in the court order; (c) to whether the number of expert witnesses may be limited; and (d) to whether exhibits may not be admitted in evidence unless the opposite party has been given an opportunity to inspect at least within a reasonable time not less than ten days prior to the hearing unless the court in special circumstances sees it fit to waive the inspection.	(c) Whether there is a restriction on number of expert witnesses. (d) Whether un-inspected exhibits should be admitted as evidence unless court has waived the inspection. **Suggested Note** – *"The Court may make specific orders concerning the presentation of evidence, including but not limited to (i) allowing written affidavits (statements) instead of in-person testimony, (ii) whether presented evidence should only be in writing, (iii) the number of expert witnesses allowed to testify, and (iv) the procedure for the parties to inspect proposed exhibits at least 10 days before trial.*
(2) In matters relating to land, the registrar shall visit the locus with the parties before the hearing of the case and shall record all the developments on the land at the time of visiting the locus and shall prepare a report to that effect.	2) The Registrar should visit locus before hearing the case and record all the details of the land at that time. **Suggested Note** – *"In cases involving land, before trial the registrar shall visit the land with the parties. The registrar will produce a report for trial that documents the status of the land and its structures."*
4. ADMISSIONS AND AGREEMENT TO BE MADE At the hearing of the summons for directions, the court shall endeavour to ensure that the parties make all admissions and agreements as to the conduct of the proceedings which ought reasonably to be made by them, and the Order from the summons may record the admissions or agreements so made, and any refusal to make any admission or agreement.	**4. ADMISSIONS AND AGREEMENT TO BE MADE** All parties shall make all admissions and agreements as to the conducted proceedings at the time of hearing. **Suggested Note** – *"At the first hearing after the initial summons, The Court should attempt to get the parties to reach agreement about how the matter will proceed. The Court will document those agreements (as well as any issues where the parties will not agree) on an Order."*
5. DUTY TO GIVE ALL INFORMATION AT HEARING (1) Subject to subrule (2), no affidavit shall be used on the hearing of the summons for directions except by the leave or direction of court and subject to subrule (6). (2) The parties to the action and their advisers have the duty to give all information and produce all such documents as the court may reasonably require for purposes of enabling it to properly deal with the	**5. DUTY TO GIVE ALL INFORMATION AT HEARING** **(**1) No affidavit shall be used on hearing unless it is by the leave or direction of Court. ……. (2) It is the duty of the parties and their advisers to give Court all the information it requires to properly handle summons.

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summons. (3) The court may, if it appears proper so to do in the circumstances, authorise any such information or documents to be given or produced to the court without being disclosed to the other party but, in the absence of such authority, any information or document given or produced under paragraph (2), shall be given or produced to all the parties present or represented on the hearing of the summons as well as to the court.	(3) All the information or documents in sub paragraph (2) shall be given to all the parties present unless Court has declined disclosure to another party. **Suggested Note** – *"Testimony or information will not be presented by affidavit unless the Court specifically allows. If the Court allows the presentation of evidence by affidavit, (i) the parties have a duty of candor to the Court, to provide complete and accurate information, and (ii) all written affidavits and information are provided to all parties (unless the Court has ordered information not disclosed)."*
(4) Subject to paragraph (1), leave of court shall not be required for use of an affidavit by any party at the hearing of the summons for directions in connection with any application for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit.	(4) Subject to Paragraph (1) no affidavit shall be required at hearing if an application for the order is required to be supported by it. **Suggested Note** – *"Despite the general rule above (that the Court must give permission for parties to file affidavits), if an application, motion or order independently requires submission of an affidavit, a party does not need permission from the Court to submit that affidavit."*
(5) If the court upon hearing of the summons for directions requires a party to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (5), the court may— (a) cause the facts to be recorded in the Order with a view to such special order, if any, as to costs of the trial, or (b) if it appears to the court to be just and fair, order the whole or any part of the pleadings of the party concerned to be struck out, or, if the party is the plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.	5) If Any documents or information is required by court and it's not given court may; (a) Make the facts to be recorded. (b) Dismiss the pleadings of the concerned party if it is just. **Suggested Note** – *"If a party fails to turn over documents or information as ordered by the Court, the Court may (i) document the noncompliance for consideration at the time court costs are assessed, (ii) strike all or a portion of other pleadings from the noncompliant party, or (iii) completely dismiss the claim or counterclaims of the noncompliant party.* *Nothing in this rule requires any party to produce any document that is privileged."*
(6) Notwithstanding anything in the foregoing provisions of this rule, no information or document which is privileged from disclosure shall be required to be given or produced under this rule without the consent of	6) Information or documents not authorized for disclosure shall not be produced under this rule without the author's authorization.

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the author of the document or information.	
6. DUTY TO MAKE INTERLOCUTORY APPLICATIONS BEFORE HEARING OF SUMMONS FOR DIRECTIONS (1) Any party to whom summons for directions are addressed, shall, so far as practicable, apply before the hearing of the summons for any order or directions which he or she may desire as to any matter capable of being dealt with by an interlocutory application and shall in not less than seven days before the hearing of the summons, serve on the other party a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons. (7) Where the hearing of the summons for directions is adjourned and any of the parties to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under subrule (1), that party shall in not less than seven days before the resumed hearing of the summons, serve on the other party, a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons. (8) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application shall be made under the summons by giving the other party two days' notice stating the grounds for the application.	**6. DUTY TO MAKE INTERLOCUTORY APPLICATIONS BEFORE HEARING OF SUMMONS FOR DIRECTIONS** (1) Any party shall within 7 days before hearing serve another party any other order or directions to be dealt with by an interlocutory application. **<u>Suggested Note</u>** – *"If there are issues within the action that can be addressed by an interlocutory application, the applying party must raise those issues at least 7 days before the initial hearing and notify the opposing party of those issues.* 7) A party shall serve another party different orders and directions to be heard on the rescheduled hearing date for the original summons. **<u>Suggested Note</u>** – *"If a party, after adjournment of the initial hearing, wants to address any issues not addressed in the summons, they can do so at the resumed hearing as long as they specify the relief requested and serve notice of that request on the opposing party at least 7 days before the resumed hearing."* **<u>Suggested Note</u>** – *"Before final judgment on an action, any issues that can be addressed by an interlocutory application must be raised through a summons to the other party served at least 2 days before the application."* A two days' notice shall be served to another party in case of any *application* made after the summons for directions but before judgement.

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7. MATTERS THAT MAY BE DEALT WITH IN SUMMONS FOR DIRECTIONS. (1) All formal matters preliminary to the trial and all interlocutory applications as stipulated under Order L rule 3 of these Rules may be handled under summons for directions and the registrar shall have powers and jurisdiction to handle the interlocutory applications. (2) The parties shall, after compliance with directions in the summons, and where the matter has not been referred for alternative dispute resolution or referred to another court, produce a trial bundle for purposes of a scheduling conference before the trial judge in accordance with the Guidelines for Scheduling Conference prescribed in Part IV of the Schedule to these Rules.	**7. MATTERS THAT MAY BE DEALT WITH IN SUMMONS FOR DIRECTIONS.** (1) All Interlocutory applications stated under Order L rule 3 of these rules and all formal matters before trial. (2) If parties comply with the directions in the summons and the matter is not referred for alternative dispute resolution or to another court, they will produce a trial bundle for scheduling a conference before the judge.
8. COMPLIANCE WITH SUMMONS FOR DIRECTIONS The summons for directions shall be complied with within forty five days from the date of hearing the summons for directions under rule 1 (3) and thereafter, the plaintiff shall, within seven days from the last of the compliances in the summons for directions, have the suit fixed for a scheduling conference before the trial judge."	**8. COMPLIANCE WITH SUMMONS FOR DIRECTIONS** Compliance with summons for directions will be Within 45 days after hearing and thereafter within 7 days from the last of the compliances **the plaintiff has a duty to** have the matter fixed for a scheduling conference.
4. Amendment of Order XVII. The Principal Rules, are amended in Order XVII by substituting for rules 5 and 6 the following— **"5. Dismissal of suit for want of prosecution.** (1) In any case, not otherwise provided for, in which no application is made or step taken for a period of six months by either party with a view to proceeding with the suit after the mandatory scheduling conference, the suit shall automatically abate; and (2) Where a suit abates under subrule (1) of this rule, the plaintiff may, subject to the law of limitation bring a fresh suit."	**4. Amendment of Order XVII.** The principal rules are amended by substituting rule 5 and 6 as follows; **5. Dismissal of suit for want of prosecution** (1) If 6 months' elapse after mandatory scheduling conference without any party making an application the case shall be closed. **Suggested Note** – *"After 180 days,* ***from the time of completion of the scheduling conference,*** *the Court will dismiss any case that has been abandoned by the parties. A case has been abandoned if neither party has filed any pleadings or taken any meaningful steps to advance the matter.* (2) Where the matter is closed subject to subrule (1) the plaintiff may bring a fresh suit. **Suggested Note** – *"Any action dismissed under this rule may be refiled by the*

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	plaintiff subject to the law of limitation.
5. Amendment of Order XVIII. The principal Rules, are amended in Order XVIII by inserting immediately after rule 5 the following rule— **"5A. Witness statement.** (1) The evidence of a witness shall consist of a witness statement which shall be filed after the scheduling conference on the direction of the trial judge and served upon the opposite party. (2) The witness statement shall be formally tendered as evidence in chief of the witness after the witness has appeared in court and taken oath. (3) Before a witness statement is admitted as the evidence in chief of a witness, the witness may, with leave of court, correct any typographical, arithmetic or other error which does not go to the substance of the testimony filed in court and served on the opposite party and any correction made shall be countersigned by the witness in court. (4) A witness may be cross examined on his or her witness statement at the option of the opposite counsel or party after the evidence has been formally received on the court record by order of the court admitting it as evidence in chief of the witness. (5) Except with the consent of the parties, a witness who does not appear	**5. Amendment of Order XVIII.** The principal rules are amended in Order XVIII by inserting immediately after rule 5 the following; **5A. Witness statement** (1) After scheduling conference, a witness statement shall be filed and also served to the opposite party and will work as part of evidence. **Suggested Note** – *"The testimony of any witness shall be recorded in a witness statement. That statement must be filed after the scheduling conference and before trial and a copy of the statement served on all other parties.* *That statement will be formally offered into evidence at trial after the witness appears in court and has taken the oath.* *However, before the statement is admitted into evidence, the Court may allow the witness to correct non-substantive errors within the statement (i.e. typographical errors). Any such corrections will be countersigned by the Court.* (2) After the witness has appeared in court and taken Oath the witness statement shall be officially submitted as evidence. (3) Any error in witness statement may be corrected and countersigned by the witness in court if granted permission by court. (4) A witness may be cross examined on his or her witness statement after evidence is on court record. **Suggested Note** – *"Once a witness statement is admitted by the Court, opposing counsel may cross examine the witness **on** the witness's statement.* (5) A witness statement shall be removed **from the court record** if it's not submitted for cross examination unless it is agreed on by both parties.

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to tender in the witness statement and be cross examined, shall have his or her statement expunged from the court record.	**Suggested Note** – *"If a witness fails to appear for trial, admission of their statement and cross-examination, their testimony and witness statement will* ***be removed from the court record****.*
(6) The witness statement shall be filed on the date fixed by the trial Judge.	(6) The trial Judge shall fix the date for filling the witness statement.
(7) A witness who has not filed a witness statement shall not be heard except with leave of court.	(7) A witness without a witness statement shall not be heard unless court grants them permission. **Suggested Note** – *"A witness who has not recorded a written statement may only testify at trial with specific permission of the Court."*
(8) A witness statement shall— (a) include the full name, address, age and occupation of the witness; (b) include the number of the statement; (c) include identified and verified initials of each document referred to; (d) be numbered in paragraphs; (e) include a statement of the witness regarding the witness's present and past relationship, if any, with any of the parties— (i) whether the witness is a party to the proceedings or an employee of the party; and (ii) where relevant, the capacity in which the statement is made and a description of his or her background, qualifications, training and experience, if the information may be of relevance to the dispute or to the contents of the statement;	(8) A witness statement shall – (a) include the full name, address, age and occupation of the witness; (b) include the number of the statement; (c) include identified and verified initials of each document referred to; (d) be numbered in paragraphs; (e) a statement of the witnesses' past and present relationship with any of the parties- (i) whether the witness is a party to the proceedings or an employee of the party; and (ii) Any relevant information to the dispute including the background of the witness, qualifications, training and experience. **Suggested Note (for (e))** – *"disclose any present or past relationship between the witness and any party including being an interested party in the action or any employer/employee or business relationship.* *In addition, the witness statement should include all relevant information about the witness, including training, education, experience and any other information that might be relevant to the issues in the action.*
(f) be recorded in English and as far as possible, in the witness's own	(f) Be recorded in English without changing meaning of the witnesses' words. **Suggested Note** – *"Whenever possible, a witness statement should be recorded in English and should be in the witness's exact words."*

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words; g) where the witness statement was not recorded in English, a statement in the language in which the witness statement was originally prepared and the language in which the witness wishes to give testimony at the hearing; (**Not clear though the subsequent rule h carries the proper meaning. The witness statement in another language other than English shall be recorded in that language and translated into English)** (h) where the witness writes the statement in a language other than English, the statement shall include a translation of the statement verified by the translator, on oath; (i) give a full and detailed narration of the facts and the source of the witness's information as to those facts, sufficient to serve as the witness's evidence in the matter in dispute; (j) include documents on which the witness relies, that have not already been agreed to at the scheduling conference and contained in the trial bundle, shall be provided subject to any rules of procedure on scheduling conference; (k) contain a statement at the bottom as to whether he or she believes the statement of fact in it to be true; (l) sufficiently identify any document to which the statement refers without repeating its contents, unless it is necessary for identification of the document; (m) be legible and typed on one side of the paper and bound in a manner that does not hamper filing; and	(g) Where the witness statement was not recorded in English it shall be in the language that the witness wishes to give testimony in at hearing. (h) Where the statement is not in English language it will include a translated statement proven by the translator on Oath. **Suggested Note** – *"A witness statement taken in a language other than English must be taken in the language in which the witness intends to testify at trial. That statement must be translated into English by an interpreter who will sign the statement, under oath, affirming that it was correctly and completely translated."* (i) A detailed description of all the information in the witness statement and its source. (j) Documents included in trial bundle shall be provided. (k) Include a statement for the witness to confirm that the given information in the statement is correct. (l) Identify clearly any document that the statement refers to without repeating its content. (m) be clearly typed one side of the paper and properly bound in a way that does not tamper with filing. (n) be clearly signed and dated at the bottom of each page. (**9) A WITNESS STATEMENT SHALL NOT**— (a) include any information or belief that are not (**admissible)** ~~tangible~~ in evidence. **Suggested Note** – *"include any statements or information that would not be admissible in evidence at trial."*

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(n) be dated and signed at the bottom of every page. (**9) A WITNESS STATEMENT SHALL NOT**— (a) include any matter of information or belief which are not admissible in evidence; and (b) contain lengthy quotations from documents or provide legal or other arguments. (10) For purposes of this rule, "witness statement'' means a written testimony signed by a witness and filed in court and served on the opposite party for purposes of having it tendered in court as the evidence in chief of the witness."	(b) Include ~~exaggerated~~ quotations from documents (**NB what is meant is that the documents itself can be produced in evidence and should not be quoted at length and the law does not have to be quoted in evidence. It will be part of the lawyers address to court).** **Suggested Note** – *"include lengthy passages or quotes from other documents or any legal arguments."* (10) For purposes of this rule, Witness statement" This is evidence by a witness in a written form that is duly signed that is served to court and the opposite party. **Suggested Note** – *"Under this rule, a witness statement is ~~a~~ written ~~record~~ **evidence** ~~expected trial testimony/evidence to be given by~~ **of** a witness. A witness statement must be signed by the witness and both served on all parties and filed with the Court.*
6. Amendment of Order L. The principal Rules, are amended in Order L— (a) by substituting for rule 3 the following— **"3. Formal and interlocutory matters.** A Registrar shall handle interlocutory matters within fourteen days of the filing of an application"; and (c) by inserting immediately after rule 3 the following— **"3A. Application for ex parte interim order.** (1) The court shall, in all cases, before granting relief for an interim order, direct notice of the application to be given to the opposite party, except where it appears that the giving of such notice would cause undue delay and that the object of granting the interim relief would thereby be defeated. (2) All applications for interim relief shall be inter-parties except for	**6. Amendment of Order L.** The principal Rules, are amended in Order L- (a) By substituting for rule 3 the following- **"3. Formal and Interlocutory matters.** Interlocutory matters shall be handled by a Registrar within 14 days after filing of an application." **Suggested Note** – *"When a party files an interlocutory application in any matter, a Registrar must address the application within 14 days of the date of filing."* And (b) By Inserting immediately after rule 3 the following- (1) A notice of application shall be given to the opposite party before granting relief for an interim order unless this will cause delay. **Suggested Note** – *"**Before** any court grants any interim relief to any party, the Court must notify all other parties of the request unless doing so would ~~create~~ **lead to** the very harm the party was trying to avoid."* (2) All applications for interim relief shall be between both parties apart from

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exceptional circumstances that may include— (a) where the matter is urgent in nature; (b) where there is a real threat or danger; or (c) where the application is made in good faith,	exceptional circumstances that may include- (a) Where the matter is urgent. (b) Where there is a serious threat or danger; or (c) Where the application is honestly made. **Suggested Note** – *"A party requesting interim relief must serve the application on all other parties unless (i)* **there** *is not sufficient time to do so, (ii) notice would create a threat or danger, or (iii) the application is made in good faith.*
(3) The court shall only consider the hearing of an application for interim relief where there is a pending substantive application with a likelihood of success.	(3) Only where there is a pending substantive application with a possibility of success, court shall hear the interim relief. **Suggested Note** – *"A court cannot even consider an application for interim relief unless it is part of an* **existing** *action where there is a reasonable likelihood of success for the requesting party."*
(4) An application for an ex parte interim application shall be made orally. (5) Subject to subrule (2), an ex parte interim order shall be granted only in exceptional circumstances and for a period not exceeding three days from the date of issue and upon hearing of the substantive application, the order shall lapse.	(4) Ex parte interim application shall be orally made. (5) An ex parte interim order shall only be permitted in exceptional circumstances subject to subrule (2) and within 3 days from the date of issue and after hearing of the substantive application it will expire. **Suggested Note** – *Ex parte interim orders must only be granted in extraordinary circumstances. Ex parte interim* **orders** *expire no more than 3 days from the date of issuance or upon the Court hearing the merits of the application*
(6) The applicant shall, within the three days referred to in sub-rule (5), present proof of effective service on the opposite party.	(6) The applicant shall present evidence of effective service on the opposite party within the 3 days referred to in subrule (5) above. **Suggested Note** – *A party that obtains an ex parte interim order must provide proof of service of that order* **on** *all parties within the 3 days of the issuance of the order.*
7. Amendment of Appendices. The principal Rules, are amended in Appendix by inserting immediately after Form 14, the following— "(a) Form 14A Summons Directions	**7. Amendment of Appendices.** The principal Rules, are amended in Appendix by inserting immediately after Form 14, the following— "(a) Form 14A Summons Directions

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(Order XIA, rule 1); and (b) Form 14B Matters which may be Considered upon Summons for Directions (Order XIA, rules 2 and 7" **8. Amendment of Schedule.** The principal Rules are amended by inserting immediately after the Schedule, the following Schedule 2. **"SCHEDULE 2 PART IV** **GUIDELINES FOR SCHEDULING CONFERENCE** (Order XIA, rule 7(2))	(Order XIA, rule 1); and b) Form 14B Matters which may be Considered upon Summons for Directions (Order XIA, rules 2 and 7" **8. Amendment of Schedule.** The principal Rules are amended by inserting immediately after the Schedule, the following Schedule 2. **"SCHEDULE 2 PART IV** **GUIDELINES FOR SCHEDULING CONFERENCE** (Order XIA, rule 7(2))