

Practice Directions

Local Court Act

PRACTICE DIRECTION

RETURN OF SUMMONS PRIOR TO HEARING DATE

The following practice direction is issued pursuant to section 21 of the Local Court Act and will apply from 5 May 1997 and replaces the one issued in October 1995.

Background

In some cases, practitioners request the court to issue summons for the production of documents returnable before the date of commencement of a hearing. It is important that this is not abused by practitioners using the Summons to witnesses in place of non-party Discovery.

Proposed new rules will incorporate these new procedures. Until the new rules come in the following procedure

shall apply.

Procedures

If a party wishes for the early return of a summons to witness before the matter is set down then an application can be made to the Court either in a pre-hearing conference or by way of interlocutory application.

The summons shall give the witnesses a reasonable time in which to comply with the summons and be made returnable on an interlocutory applications day. Any orders for access to the documents will be made on that return date.

In regards to summons issues after a matter has been set down then the party

may file a summons to be issued for an early return date without leave of the Court.

(a) Upon receipt of the documents the matter shall be listed in the interlocutory applications list or before the Judicial Registrar in a directions hearing for directions on the inspection of the documents (or for any other directions considered necessary); and

(b) notify all parties that the documents have been received into the custody of the Court and of the date, time and place of the directions hearing.

- I L Gray
Chief Magistrate
1 May 1997

High Court Rules - Amendments *continued from page 5*

general oversight of their preparation in cases where the Registrar is satisfied it has been done efficiently.

Per hour:

-solicitor \$108.40
-clerk \$36.20

47. Where appeal or application books are prepared in a solicitor's office, the Taxing Officer may in his discretion allow such sum as he thinks just and reasonable having regard to work and labour properly performed and charged for material used. In exercising his discretion the Taxing Officer shall have regard to commercial rates for copying and binding and is not obliged to apply the photographic or machine made copy costs otherwise allowable in this scale.

GENERAL CARE AND CONDUCT

48. The Taxing Officer may, where the case or circumstances warrant it, allow an amount to be claimed under this item, in addition to any item which appears in this scale, for general care and conduct. In exercising his discretion the Taxing Officer may have regard to any matters which he considers relevant including:
- (a) the complexity of the matter and the difficulty and novelty of the questions raised or any of them;
 - (b) the importance of the matter to the party and the amount involved;
 - (c) the skill, labour, specialised knowledge and responsibility involved therein on the part of the solicitor;
 - (d) the number and importance of the documents prepared or perused without regard to length;
 - (e) the time expended by the solicitor;
 - (f) research and consideration of questions of law and fact.

WITNESS EXPENSES

49. Witnesses called because of their professional, scientific or other special skill or knowledge

Per day \$610.20

50. Witnesses called other than those covered in Item 49 \$64.40

51. Witnesses remunerated in their occupation by wages, salary or fees, the amount lost by attendance at Court.

52. Where the witness resides more than 50 kilometres from the Court, such sum as the Taxing Officer thinks reasonable for the actual conveyance, together with a reasonable amount for sustenance or maintenance.

53. The Taxing Officer may also allow such amount as he thinks reasonable and properly incurred and paid to witnesses for qualifying to give skilled evidence.

54. Notwithstanding anything in the scale, the Taxing Officer may allow to an expert witness a special fee for attendance at Court not covered by the foregoing paragraphs of this item when the witness is acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing. The scale in this item does not affect the existing practice of allowing qualifying fees to witnesses.

DISBURSEMENTS

55. All Court fees, counsel's fees and other fees and payments to, the extent to which they have been properly and reasonably incurred and paid shall be allowed.

56. The remuneration allowed to a solicitor shall be governed by the foregoing scale but in special cases the Taxing Officer may in his discretion allow such additional charges or disbursements as considers reasonable.

