

NORTHERN TERRITORY OF AUSTRALIA

Regulations 1980, No. 42*

Rules of Court under the Supreme Court Act

WE, the undersigned Judges of the Supreme Court of the Northern Territory, pursuant to section 86 of the Supreme Court Act, hereby make the following Rules of Court.

Dated this 9th day of October, 1980.

W.E.S. Forster C.J.
J. Toohy J.
J.F. Gallop J.
J.H. Muirhead

Judges of the Supreme
Court of the Northern
Territory

AMENDMENTS OF THE RULES OF THE SUPREME
COURT OF THE NORTHERN TERRITORY

1. The Rules of the Supreme Court of the Northern Territory are amended by omitting Order 34 and substituting the following Order:

"ORDER 34 - DISCOVERY AND INSPECTION

"Division 1 - Interrogatories

"1.(1) In any proceeding a party may deliver interrogatories in writing for the examination of the opposite party or parties.

Discovery by
interrogatories
S.A.O.31 r.1

"(2) Interrogatories delivered under sub-rule (1) shall have a note at the end thereof stating which of such interrogatories each party is required to answer.

"(3) Interrogatories which do not relate to any matters in question in the proceeding shall be deemed irrelevant notwithstanding that they might be admissible on the oral cross-examination of a witness.

*Notified in the Northern Territory Government Gazette
on [REDACTED] 1980.

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"(4) Interrogatories shall be in accordance with Form 23 in the First Schedule.

Where leave
necessary
S.A.O.31 r.2

"2. A party shall not deliver more than one set of interrogatories to the same party without the leave of the Court.

Copy to be
filed
S.A.O.31 r.3

"3. A copy of interrogatories to be delivered by a party shall be filed by him before they are delivered.

Applications to
set aside
S.A.O.31 r.4

"4.(1) Interrogatories may be set aside on the ground that they have been delivered unreasonably or vexatiously or may be struck out on the ground that they are prolix, oppressive, unnecessary or scandalous.

"(2) An application to set aside interrogatories shall be made within 14 days after delivery of the interrogatories.

Answer
S.A.O.31 r.5

"5.(1) Interrogatories shall be answered by affidavit to be filed within 21 days after their delivery or within such other time as the Court may allow.

"(2) A copy of an affidavit answering interrogatories shall be delivered to the interrogating party not later than the day upon which the affidavit is filed.

"(3) An affidavit in answer to interrogatories shall be in accordance with Form 24 in the First Schedule.

Interrogatories
to corporation
S.A.O.31
r.5A

"6. Where a party to a proceeding is a body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order.

Objections may
be taken in
answer
S.A.O.31 r.6

"7. An objection to answering an interrogatory may be taken in the affidavit in answer -

- (a) on the ground that the interrogatory is unreasonable, vexatious, prolix, oppressive, unnecessary, scandalous or not bona fide for the purpose of the proceeding;
- (b) on the ground that matters inquired into are not sufficiently material at that stage of the proceeding; or
- (c) on any other ground.

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"8. If a person interrogated omits to answer or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be, either by affidavit or by viva voce examination as the Court may direct.

Order for
further answers
S.A.O.31 r.7

"9.(1) If a person against whom an order is made under rule 8 fails to comply with the order, the Court may make such order as it thinks fit including, in particular, an order that the proceeding be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

Failure to
answer
S.A.O.31 r.8

"(2) If a person against whom an order is made under rule 8 fails to comply with it then, without prejudice to sub-rule (1), he shall be liable to committal.

"(3) Service on a person's solicitor of an order made against the person under rule 8 shall be sufficient service to found an application for committal of the person disobeying the order, but the person may show in answer to the application that he had no notice or knowledge of the order.

"10. A party may put in evidence at the trial of a proceeding or of any issue therein, some only of the answers to interrogatories or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of the opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer or part shall be put in evidence.

Answers as
evidence
S.A.O.31 r.9

"Division 2 - Discovery and Inspection of Documents

"11.(1) After the close of pleadings in a proceeding begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the proceeding.

Discovery of
documents
S.A.O.31 r.10

"(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

"12.(1) Subject to this rule and rule 14, the parties to a proceeding between whom pleadings are

Lists of
documents
S.A.O.31 r.11

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closed shall make discovery by exchanging lists of documents and, accordingly, each party shall, within 21 days after the pleadings in the action are closed or deemed to be closed as between him and any other party or within such other time as the Court may allow, make and deliver to that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action.

"(2) Without prejudice to any directions given by the Court under Order 20, rule 7, this sub-rule shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

"(3) Sub-rule (2) shall apply in relation to a counter-claim as it applies in relation to an action.

"(4) On the application of any party required by this rule to make discovery of documents, the Court may -

- (a) order that the parties to the proceeding or any of them shall make discovery under sub-rule (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order; or
- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at the stage of the proceeding, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage,

and the Court shall make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

"(5) An application for an order under sub-rule (4) shall be by summons, and the summons shall be taken out before the expiration of the period within which discovery of documents in the action is required to be made by virtue of this rule.

"(6) Any party to whom discovery of documents is required to be made under this rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under sub-rule (1) and the party on whom such a notice is served shall, within 14 days after service of the notice, make and file an affidavit in compliance with

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the notice and deliver a copy of the affidavit to the party by whom the notice was served.

"(7) In the case of actions with respect to which pleadings have closed or are deemed to have been closed pursuant to the provisions of Order 27, rule 3 prior to the commencing date of these Rules and with respect to which no order for discovery has been made, the pleadings shall be deemed to have been closed for the purposes of this rule on the commencing date of these Rules.

"13.(1) Subject to the provisions of this rule and of rules 14 and 18, the Court may, at any time after the commencement of a proceeding (whether begun by writ, originating summons or otherwise), order any party thereto to make and deliver to any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter and may, at the same time or subsequently, also order him to make and file an affidavit verifying such a list and to deliver a copy thereof to the other party.

Order for list
of documents
S.A.O.31 r.12

"(2) Where a party who is required by rule 12 to make discovery of documents fails to comply with any provisions of that rule, the Court may, on the application of any party to whom the discovery was required to be made, make an order against the first-mentioned party under sub-rule (1) or, as the case may be, order him to make and file an affidavit verifying the list of documents he is required to make under rule 12 and to deliver a copy thereof to the applicant.

"(3) An order under this rule may be limited to such documents or classes of documents only or to such only of the matters in question in the cause or matter as may be specified in the order.

"14. Where, on an application for an order under rule 12 or 13, it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

Preliminary
determination
of issues
S.A.O.31 r.13

"15.(1) A list of documents made in compliance with rule 11 or with an order under rule 13 shall enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of classes of documents of the same nature, each class, sufficiently to enable it to be identified.

Form of list of
documents
S.A.O.31 r.14

"(2) If it is desired to claim that any documents are privileged from production, the claim must be made

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in the list of documents with a sufficient statement of the grounds of the privilege.

"(3) An affidavit verifying a list of documents required under this Order shall be in accordance with Form 25 in the First Schedule.

Service of
list of
documents
S.A.O.31 r.15

"16.(1) A defendant who has pleaded in a proceeding shall be entitled to have a copy of any list of documents served under any of the rules of this Order on the plaintiff by any other defendant to the action and a plaintiff against whom a counter-claim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counter-claim by any other defendant to the counter-claim.

"(2) A party required by virtue of sub-rule (1) to supply a copy of a list of documents shall supply it free of charge on a written request made by the party entitled to it.

"(3) Where, in an action begun by originating summons, the Court makes an order under rule 13 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of the list.

"(4) In this rule, 'list of documents' includes an affidavit verifying a list of documents.

Order for
discovery of
documents
S.A.O.31 r.16

"17.(1) Subject to rule 18, the Court may, at any time on the application of any party to a proceeding, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described in the application is, or has been at any time, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with it and what has become of it.

"(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 12 or 13.

"(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

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"18. On the hearing of an application for an order under rule 13, 17, 34 or 35(1), the Court, if satisfied that discovery is not necessary or not necessary at that stage of the proceeding, may dismiss or, as the case may be, adjourn the application and shall, in any case, refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the proceeding or for saving costs.

Order where
discovery not
necessary
S.A.O.31 r.17

"19. A party who has served a list of documents on any other party, whether in compliance with rule 11 or with an order under rule 13, shall allow the other party to inspect the documents referred to in the list (other than any of which he objects to produce) and to take copies thereof and, accordingly, he shall, when he serves the list on the other party, also serve on him a notice stating a time within 7 days after the serving thereof at which the documents may be inspected at a place specified in the notice.

Inspection of
documents
S.A.O.31 r.18

"20. A copy of every list of documents or affidavit of documents served or exchanged pursuant to the provisions of this Order shall be filed either before or within 7 days after the day on which the same shall be served or exchanged, as the case may be.

Filing copy of
list of
documents
S.A.O.31 r.18A

"21.(1) A party to a proceeding shall be entitled at any time to serve a notice on any other party, in whose pleadings or affidavits reference is made to any document, requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

Notice to
produce for
inspection
S.A.O.31 r.19

"(2) The party on whom a notice is served under sub-rule (1) shall, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice and stating which, if any, of the documents he objects to produce and on what grounds.

"22.(1) If a party who is required by rule 19 to serve a notice or who is served with a notice under rule 21(1) -

Order for
production for
inspection
S.A.O.31 r.20

(a) fails to serve the notice required under rule 19 or 21(2), as the case may be;

(b) objects to produce any documents for inspection; or

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(c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or there,

then, subject to rule 24(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place and in such manner, as it thinks fit.

"(2) Without prejudice to sub-rule (1) but subject to rule 24(1), the Court may, on the application of a party to a proceeding, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the proceeding.

"(3) An application for an order under sub-rule (2) shall be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

Order for
production to
the Court
S.A.O.31 r.21

"23. At any stage of a proceeding the Court may, subject to rule 24(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the proceeding and the Court may deal with the document when produced in such manner as it thinks fit.

Order for
production
only where
necessary
S.A.O.31 r.22

"24.(1) No order for the production of any document for inspection or to the Court shall be made under any of the foregoing rules unless the Court is of the opinion that the order is necessary either for disposing fairly of the proceeding or for saving costs.

"(2) Where, on an application under this Order for production of any document for inspection or to the Court, privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

Verified
copies
S.A.O.31 r.23

"25.(1) Where production of any business books for inspection is applied for under these Rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

"(2) An affidavit made under sub-rule (1) shall

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state whether or not there are in the original book any and what erasures, interlineations or alterations.

"(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

"26. The provisions of this Order shall be without prejudice to any rule of law which authorizes or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

Privilege
S.A.O.31 r.24

"27.(1) If any party who is required by these Rules or by any order made thereunder to make discovery of documents or to produce any documents for the purpose, fails to comply with any provisions of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision or to rules 13(2) and 22(1), the Court may make such order as it thinks fit including, in particular, an order that the proceeding be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

Failure to make
discovery or
produce
documents
S.A.O.31 r.25

"(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to sub-rule (1), he shall be liable to committal.

"(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

"28. Any order made under this Order, including an order made on appeal may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the proceeding in connection with which the original order was made.

Power to
revoke or vary
S.A.O.31 r.26

"Division 3 - Medical Reports

"29.(1) Where a claim is made by or on behalf of a party for damages for or in respect of personal injury, however caused, such party shall, from time to time if and as required by the party against whom the claim is made, submit himself for examination by a duly qualified medical practitioner provided and paid by the party requiring the examination.

Medical exam-
ination of party
claiming damages
S.A.O.31 r.27

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"(2) A reasonable sum to cover any travelling expenses necessarily incurred by the party to be examined in going to and returning from the place of examination shall, if demanded, be paid to the party to be examined by the party requiring the examination.

"(3) If a party refuses to submit himself to an examination as required by this rule or in any way obstructs the examination, the Court may order that all further proceedings in the action be stayed until the examination has taken place.

"(4) Where an order is made under sub-rule (3), a party shall not be entitled to any damages or compensation in respect of any period during which he refuses to submit himself to or obstructs the examination.

"(5) Upon demand made by or on behalf of a party examined pursuant to this rule, the party who required the examination shall deliver to him a full and true copy of every report of the medical practitioner relating to such examination.

"(6) Where delivery of a report is not made within one week after the demand, the report shall cease to be privileged from discovery and the cost of obtaining discovery thereof shall, unless otherwise ordered, be borne by the party in default.

Delivery of
copy of
medical
report
S.A.O.31 r.27A

"30.(1) In the case of any proceeding for or including a claim for damages for or in respect of personal injury, every party shall deliver to every other party a full and true copy of every medical report received by him or his solicitor relating to such personal injury, provided that no report to which this rule would otherwise apply need be delivered where the party in receipt of such report does not intend to adduce evidence from the author of such report or tender such report or any part thereof at the trial of the action.

"(2) The copy of a report referred to in sub-rule (1) shall be delivered within 7 days of receipt by the party or his solicitor.

"(3) In a proceeding to which this rule relates any party may apply, at any time and from time to time ex parte on affidavit, for an order that he be exempt from the requirements of this rule with respect to a specified medical report on the ground that the disclosure of the same would be unduly prejudicial to him.

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"(4) On the hearing of an application under sub-rule (3), the Court may -

- (a) exempt the party from the requirements of this rule with respect to the report the subject of such application for such period, and on such terms and conditions, as to the Court or a Judge may seem fit; or
- (b) order the disclosure in part of the report the subject of the application.

"(5) On an application pursuant to sub-rule (3), the medical report in respect of which the application is made shall be exhibited in a sealed envelope to the affidavit upon which the application is made and the Court shall be at liberty to peruse the report for the purposes of such application.

"(6) An order made pursuant to sub-rule (3) may be revoked or varied either wholly or in part, and on such terms and conditions, as to the Court may seem fit on application at any time by any party to the proceeding.

"(7) For the purposes of this rule, 'medical report' means a written medical report and -

- (a) shall include a report from a medical practitioner, dentist, psychologist, psychiatrist, physiotherapist, chiropodist or any other person in connection with any injury or illness referred to in the pleadings, but shall not include any statement or report on any matter in which the person giving the report is not acting in his professional capacity in giving the statement or report; and
- (b) shall not include any oral statement or comment subsequently recorded in a proof or recorded in a document intended to be used as a proof or from which a proof is or is intended to be drawn.

"(8) Where it is necessary for the proper understanding of a medical report, there shall be delivered with the copy of the report a full and true copy of any communication to or of other documents in the possession of the person furnishing the report.

"(9) A party may apply at any time on summons for an order that a copy of a communication or other document referred to in sub-rule (8) be furnished to him by any other party as may be necessary to comply with sub-rule (8).

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"(10) In a proceeding, where a party fails to deliver a copy of a report in accordance with this rule, the Court may make such order as to an adjournment of the trial or as to costs, or as to both, as the Court thinks fit.

"(11) No medical practitioner, dentist, psychologist, psychiatrist, physiotherapist, chiropracist or other person referred to in sub-rule (7) shall, if objection be taken when such evidence is tendered, be competent to give evidence on behalf of a party at the trial of any action to which this rule applies unless a copy of all reports which have been furnished by that medical practitioner, dentist, psychologist, psychiatrist, physiotherapist, chiropracist or other person to that party have been delivered to the other party or parties to the action in accordance with this rule except where an order made pursuant to sub-rule (4) is still in force or by consent or by leave of the Court.

Filing
affidavit of
medical
evidence
S.A.O.31 r.28

"31.(1) A party to a proceeding in which medical testimony is relevant may, not less than 21 days prior to the date fixed for the hearing of the action, file in the Court and serve on the other party or parties an affidavit or affidavits of the medical evidence which he intends to adduce on the hearing of the action.

"(2) Subject to sub-rule (3), an affidavit or affidavits filed under sub-rule (1) shall be made by the medical practitioner or practitioners whose evidence is to be tendered.

"(3) Where a written report by a medical practitioner would be admissible in evidence under section 26D of the Evidence Act, the report may be exhibited to an affidavit made by the party or his solicitor or by some other person who is able to establish the facts necessary for the admission of the report under that section.

"(4) An affidavit filed under this rule may include all such evidence as the medical practitioner could give if called to give oral testimony, but nothing in this rule shall make admissible anything which would not otherwise be admissible.

Attendance of
medical
practitioner
S.A.O.31 r.29

"32.(1) If a party on whom an affidavit or affidavits is or are served under rule 31 requires the medical practitioner who gave a report or made an affidavit, as the case may be, to attend at the trial to give evidence orally the party shall, not less than 7 days prior to the date fixed for the hearing of the action, give notice to the party filing the affidavit

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that he requires that party to call the medical practitioner concerned to give oral evidence at the trial.

"(2) Notwithstanding failure to give any notice under sub-rule (1), the trial Judge may direct, on such terms or conditions as to costs or otherwise as he thinks fit, that the medical practitioner be called to give oral evidence.

"(3) If no notice is given under sub-rule (1) then, subject to the discretion of the trial Judge to require the medical practitioner to be called as a witness in the action, the party filing the affidavit may tender the affidavit, and the reports, if any, annexed thereto of any medical practitioner not required under sub-rule (2) to give oral evidence, as evidence for that party in the action without formal proof of the signature or identity of the medical practitioner who purported to sign such report or affidavit.

"(4) If, in the opinion of the trial Judge, the attendance of any medical practitioner required to attend pursuant to notice given under sub-rule (1) was unnecessary or unjustified, the Judge may order the party giving such notice to pay the costs of the attendance of the medical practitioner in any event.

"(5) If, in any proceeding, the procedure referred to in rule 31 is not adopted by any party, and the Judge, or the Master on the taxation of any bill of costs in relation to the proceeding, is of opinion that such procedure should have been followed, the Judge or Master may order or direct that such party shall not receive any additional costs caused by the failure to adopt such procedure, or any portion of such costs, or that he pay to the other party such additional costs, or any portion thereof, notwithstanding any other order as to costs made in the said action.

"33. In any action where an affidavit is filed and served under rule 31 and the medical practitioner concerned is nevertheless called to give oral evidence, the affidavit and any exhibits thereto shall be received as part of the evidence in chief of the witness, unless the Court otherwise orders and, in an action where such an affidavit is not filed such an affidavit and its exhibits may be so received in the discretion of the Court.

Evidence
S.A.O.31 r.30

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"Division 4 - General

Order re
documents
before action
commenced
S.A.O.31 r.31

"34.(1) On the application of a person who appears to the Court to be likely to be a party to a subsequent proceeding in the Court, the Court shall have power to order a person who appears to be likely to be a party to the proceeding and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise in the proceeding -

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce to the applicant such of those documents as are in his possession, custody or power.

"(2) On the application of a person referred to in sub-rule (1), the Court shall have power to make an order providing for any one or more of the following matters:

- (a) the inspection, photographing, preservation, custody and detention of property which is the property of, or is in the possession, custody or power of, a person who is likely to be a party to a subsequent proceeding and which may either become the subject-matter of those subsequent proceedings, or which may be or become in any way related to or connected with the subject-matter of those subsequent proceedings, or as to which any question may arise in those subsequent proceedings;
- (b) the taking of samples or the observation of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with, or the taking of such other action in relation to any such property as may be necessary or expedient for the purpose of obtaining full information or evidence including, in the case of video tapes, audio tapes, recordings, films and any other means of recording sight or sound and the giving of all such directions as may be necessary or expedient for the screening or playing thereof.

Order re
documents
after action
commenced
S.A.O.31 r.32

"35.(1) On the application of a party to a proceeding, the Court shall have power to order a person who is not a party to the proceeding and who appears to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising in the proceeding -

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- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce to the applicant such of those documents as are in his possession, custody or power.

"(2) On the application of a party to a proceeding referred to in sub-rule (1), the Court shall have power to make an order providing for any one or more of the following matters:

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession or custody of, any party to the proceeding but which is the subject-matter of the proceeding, or which is in any way related to or connected with the subject matter of the proceeding, or as to which any question arises in the proceeding;
- (b) the taking of samples or the observation of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with, or the taking of such other action in relation to, any such property as may be necessary or expedient for the purpose of obtaining full information or evidence including, in the case of video tapes, audio tapes, recordings, films and other means of recording sight or sound and the giving of all such directions as may be necessary or expedient for the screening or playing thereof.

"(3) The provisions of this rule are without prejudice to the exercise by the Court of any power to make orders which is exercisable apart from those provisions.

"(4) In this rule, 'property' includes any land, chattel or other corporeal property of any description including, but without limiting the generality of the foregoing, video tapes, audio tapes, recordings, films and other means of recording sight or sound.

"36.(1) An application for an order under rule 34 for the disclosure of documents before the commencement of a proceeding shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

Procedure for
an order under
rule 34 or 35
S.A.O.31 r.33

"(2) An application after the commencement of a proceeding for an order under rule 35(1) for the disclosure of documents by a person who is not a party to the proceeding shall be made by summons,

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which must be served on that person personally and on every party to the proceeding other than the applicant.

"(3) A summons under sub-rule (1) or (2) shall be supported by an affidavit which must -

- (a) in the case of a summons under sub-rule (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to a subsequent proceeding; and
- (b) specify or describe the documents in respect of which the order is sought and show, if practicable, by reference to any pleading served or intended to be served in the proceeding, that the documents are relevant to an issue arising or likely to arise in the proceeding and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

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

"(5) An order under rule 34 or 35(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court or a Judge thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

"(6) No person shall be compelled by virtue of an order under rule 34 or 35(1) to produce any documents which he could not be compelled to produce -

- (a) in the case of a summons under sub-rule (1), if the subsequent proceeding had already begun; or
- (b) in the case of a summons under sub-rule (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

"(7) For the purposes of rules 21 and 22, an application for an order under rule 34 or 35(1) shall be treated as a proceeding between the applicant and the person against whom the order is sought.

Supreme Court Rules

"37. This Order shall apply to a person under disability and to his next friend and guardian ad litem.

Application of
this order
S.A.O.31 r.34

"38. Wherever, by or pursuant to any of the provisions of this Order, an affidavit is required to be made by a party, being a body of persons, whether corporate or unincorporate, which is empowered by law to sue or be sued, whether in its own name or in the name of an officer or other person, such affidavit shall be made by the secretary or other proper officer, agent or servant of that body."

Affidavits by
body corporate
and others
S.A.O.31 r.35

2. The First Schedule of the Supreme Court Rules is amended -

- (a) by omitting from Form 23 "Order 34, rule 6" and substituting "Order 34, rule 1";
- (b) by omitting from Form 24 "Order 34, rule 11" and substituting "Order 34, rule 1";
- (c) by omitting from Form 25 "Order 34, rule 14" and substituting "Order 34, rule 5";
- (d) by omitting from Form 26 "Order 34, rule 18" and substituting "Order 34, rule 21"; and
- (e) by omitting from Form 27 "Order 34, rule 19" and substituting "Order 34, rule 21".