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Bahamas: Law & Practice and Trends & Developments

John F. Wilson KC and Adrienne N. Bellot
McKinney, Bancroft & Hughes

BAHAMAS

Law and Practice

Contributed by:
John F. Wilson KC and Adrienne N. Bellot
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Contents

McKinney, Bancroft & Hughes is one of the largest and oldest firms in The Bahamas and conducts an extensive international and domestic practice from its offices in the cities of Nassau and Freeport. Established in 1945, the firm's philosophy of delivering superior levels of service by industry specialists was established by its founding partners.

Authors

John F. Wilson KC is the senior partner at McKinney Bancroft & Hughes and heads the firm's litigation practice group. He specialises in contentious trust disputes along with private client advisory work. Mr Wilson KC regularly advises many of the larger trust companies in The Bahamas. In addition to his litigation and trust private client work, Mr Wilson KC is one of the leading shipping attorneys in The Bahamas. Mr Wilson KC obtained his LLB with Honours from the University of Buckingham and was called to both the English and Bahamas Bars in 1994.

Adrienne N. Bellot is an associate at McKinney Bancroft & Hughes. After obtaining her LLB with Honours from the University of the West Indies, Cave Hill, Adrienne completed professional training at the Eugene Dupuch Law School, and was called to The Bahamas Bar in 2020. Her first two years at the Bar were spent clerking as Judicial Research Counsel to two Supreme Court judges, conducting research and writing draft judgments and rulings. The role provided a privileged view into the decision-making process of the judiciary and elements of effective advocacy and nurtured her legal research and writing skills. She joined McKinney Bancroft & Hughes in 2023.

McKinney Bancroft & Hughes

Mareva House
4 George Street,
Nassau
The Bahamas

Tel: +1 (242) 502-9750
Fax: +1 (242) 328-2520
Email: nassau@mbhbahamas.com
Web: mckinney.com.bs

1. General

1.1 General Characteristics of the Legal System

The Bahamas' legal system is based on the common law adversarial model. Trials and hearings are heard orally, with written submissions used to supplement the oral arguments.

1.2 Court System

There is a single court system, comprised of three levels:

- the Magistrate's Court, which can be categorised as a small claims court in respect of civil matters;
- the Supreme Court; and
- the Court of Appeal.

The highest appellate court is the Privy Council, which sits in the UK. The Supreme Court comprises divisions, including criminal, common law and equity, commercial, family, and probate.

1.3 Court Filings and Proceedings

Generally, court filings and proceedings are open to the public. However, the court may, in special circumstances, order that proceedings be held in camera and/or files sealed upon the application of a party if it determines that the reasons for such privacy justify bypassing the open justice principle.

1.4 Legal Representation in Court

Legal representatives are required to be called to The Bahamas Bar for audience before the court. The Bahamas Bar is closed, which means that only citizens of The Bahamas are qualified to be called to the Bar save where the person is appointed to a legal post or has been granted special admission. The Bar Council may grant special permission for foreign lawyers to practise. This special admission is usually temporary.

2. Litigation Funding

2.1 Third-Party Litigation Funding

In theory, third-party funding is not available. However, where the funder has a legitimate interest in the outcome of the subject matter, third-party funding is permitted.

2.2 Third-Party Funding: Lawsuits

Third-party funding is available for any type of litigation provided that the funder has a legitimate interest in the outcome of the subject matter.

2.3 Third-Party Funding for Plaintiff and Defendant

Both the plaintiff and the defendant can benefit from third-party funding.

2.4 Minimum and Maximum Amounts of Third-Party Funding

There is no minimum or maximum amount a third-party funder will fund.

2.5 Types of Costs Considered Under Third-Party Funding

This is not applicable in the jurisdiction.

2.6 Contingency Fees

Contingency fees are prohibited.

2.7 Time Limit for Obtaining Third-Party Funding

Time limits do not apply to third-party funding of litigation.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

There are no rules requiring parties to take pre-action steps before commencing an action.

3.2 Statutes of Limitations

The limitation period for instituting actions in simple contract or tort is six years. The limitation period for instituting actions for personal injuries is three years generally and one year where the action is against a person acting in execution of statutory or other public duty.

3.3 Jurisdictional Requirements for a Defendant

Regardless of the defendant's location, the Bahamian courts have jurisdiction over any action arising from acts or events that took place within the country.

3.4 Initial Complaint

Save for bankruptcy and insolvency proceedings, family proceedings, non-contentious probate proceedings and proceedings instituted under any enactment where the enactment regulates the proceedings, the following documents are filed to initiate a lawsuit:

- standard claim form;
- fixed date claim form; or
- originating application.

If standard claim and fixed date claim forms are used, they must be accompanied by a statement of case except in urgent cases where the court allows the claim form to be filed without a statement of case.

The court may allow a statement of case to be amended at a case management conference (CMC) or at any time upon application to the court.

A statement of case may be amended once without the court's permission at any time prior to the date fixed by the court for the first CMC.

Any amendment that (i) adds or substitutes parties after the end of the relevant limitation period or (ii) makes changes to statements of case after the end of the relevant limitation period, requires the court's permission.

3.5 Rules of Service

The initiating party is responsible for bringing the proceedings to the attention of the defendant(s) by serving them. Parties outside the jurisdiction can be sued. The Civil Procedure Rules provide for service outside the jurisdiction.

3.6 Failure to Respond

Where the defendant fails to file an acknowledgment of service or fails to file a defence, the claimant can obtain default judgment. However, some types of claims are exempted from default judgment.

3.7 Representative or Collective Actions

The court has the power to appoint one or more persons with sufficient interest in the proceedings to represent all or some of those persons with the same or similar interests. The parties to a representative action must have the same or similar interests.

3.8 Requirements for Cost Estimate

There are no requirements to provide clients with a cost estimate of the potential litigation at the outset, although it is good practice to do so.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

It is possible to make interim/interlocutory applications before trial. Parties are able to obtain remedies from the applications; eg, injunctions, payment into court, or security for costs.

4.2 Early Judgment Applications

Parties can apply for early judgment by applying for summary judgment on the claim. The court may grant summary judgment if it considers that the claimant has no real prospect of succeeding on the claim or the issue or if the defendant has no real prospect of successfully defending the claim. The court may also order summary judgment on its own volition. The court may order that a statement of case or any part thereof be struck out. As it is a draconian measure, the court will only strike out claims in "plain and obvious" cases.

4.3 Dispositive Motions

The dispositive motions that are commonly made before trial are summary judgments and striking out. The court will grant summary judgment where it has decided that the claimant has no real prospect of succeeding on the claim or where the defendant has no real prospect of defending the claim. The court will strike out an entire claim in plain and obvious cases where:

- there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;
- the statement of case does not disclose any reasonable cause or ground for bringing the claim;
- the statement of case is frivolous, vexatious, scandalous, an abuse of the court's process or is likely to obstruct the just disposal of the proceedings; or
- the statement of case does not accord with the rules on how to commence an action.

4.4 Requirements for Interested Parties to Join a Lawsuit

The court may add a new party to proceedings without an application if it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings or if there is an issue involving the new party that is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

The court may not add a party except by substitution after the case management conference on the application of an existing party unless that party can satisfy the court that the addition is necessary due to a change of circumstance that became known after the case management conference.

4.5 Applications for Security for Defendant's Costs

A defendant can apply for an order requiring the plaintiff/claimant to pay a sum of money as security for the defendant's costs. This is known as an application for security for costs.

4.6 Costs of Interim Applications/ Motions

The general rule is that all applications must be listed for hearing at a case management conference or pre-trial review. Where an application is made which could have been dealt with at a case management conference or pre-trial review, the court will order the applicant to pay the costs of the application unless there are special circumstances.

4.7 Application/Motion Timeframe

The timeframe within which the court will deal with interlocutory applications depends heavily on the court's calendar. However, applications for proceedings already filed will usually be heard within six weeks of the application having been filed. In the case of an urgent application, the applicant's attorney will file a certificate of urgency, explaining the urgency of the application. In this case, the application will be heard within two to seven days, depending on the degree of urgency.

5. Discovery

5.1 Discovery and Civil Cases

Under the Civil Procedure Rules 2023, which recently replaced the Rules of the Supreme Court, discovery has been replaced by disclosure. Disclosure is available in civil cases. Each party has a duty to disclose the documents that are or have been in its control. The standard of disclosure required is that each party is required to disclose all documents that are directly relevant to the matters in question in the proceedings. Disclosure is administered by the litigants. There are no mechanisms by which the scope and/or costs of the discovery process can be curbed.

5.2 Discovery and Third Parties

It is possible to obtain discovery from a third party via a Norwich Pharmacal Order (NPO). This is applicable in situations where an individual, inadvertently involved in the tortious acts of others, is obliged to assist the wronged party. Despite not being personally liable, they must provide complete information and disclose the identities of the perpetrators (Norwich Pharmacal Co. v Commissioners of Customs and Excise [1974] AC 133). In order to obtain an NPO, the party wishing to obtain the discovery must commence an action for this purpose.

5.3 Discovery in This Jurisdiction

The general approach to disclosure is for parties to disclose all relevant documents in their possession.

5.4 Alternatives to Discovery Mechanisms

There are mechanisms for disclosure.

5.5 Legal Privilege

The Bahamas adheres to the concept of legal privilege, which safeguards confidentiality in legal proceedings. This means that any communications between a lawyer and their client, if made for the purpose of giving or receiving legal advice, remain shielded from public disclosure. This privilege extends equally to communication between in-house counsel and their employer, as long as the communication occurs within the context of legal advice.

5.6 Rules Disallowing Disclosure of a Document

Legal privilege is the only exception to disclosure.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Injunctions may be awarded where the applicant has satisfied the court of the following:

- there is a serious issue to be tried;
- damages would not be adequate remedy; and
- the balance of convenience lies with granting the injunction (more prejudice would be caused by not awarding the injunction).

The following types of injunctions are available:

- mandatory injunctions;
- prohibitory injunctions;
- interim injunctions; and
- final injunctions.

Recently, the Supreme Court decided that free-standing injunctions (injunctions where there are no substantive proceedings in the context of which the injunction is sought) can be awarded.

Injunctions to prevent parallel proceedings in another jurisdiction are available. An action must be commenced for this purpose. They are usually brought on the ground that the appropriate forum for the proceedings is The Bahamas.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

In urgent circumstances, injunctions can be obtained within two to three days. There are no arrangements that can be made for out-of-hours judges, nor are there any similar procedures available.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

In urgent circumstances, it is possible to obtain ex parte injunctive relief without notice to the respondent.

6.4 Liability for Damages for the Applicant

The applicant can be held liable for damages suffered by the respondent if the respondent suffers damages as a result of the injunction when the injunction was wrongly obtained. Ordinarily, before granting the injunction, the court will require the applicant to give an undertaking in damages for this reason. The need for an undertaking in damages is enhanced where the injunction is sought ex parte. In certain circumstances, the court can request that the undertaking be collateralised – ie, that security be provided.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Injunctive relief can be granted against worldwide assets of the respondent.

6.6 Third Parties and Injunctive Relief

The court has jurisdiction (pursuant to TSB International v Chabra [1992] 2 All ER 245) to grant a freezing injunction against a third party against whom the claimant asserts no cause of action provided that the injunction is ancillary and incidental to a claim in respect of a defendant against whom the claimant does assert a cause of action.

6.7 Consequences of a Respondent's Non-compliance

If the respondent fails to comply with the terms of an injunction, they can be held in contempt of court, whereby the party will be penalised for failing to comply with the court order.

7. Trials and Hearings

7.1 Trial Proceedings

Trials take place in person. They involve oral arguments and witness expert examination at a physical hearing.

7.2 Case Management Hearings

In case management conferences and short interlocutory hearings, the courts continue to utilise remote video platforms, which were implemented during the COVID-19 pandemic. In respect of more complex applications and trials, the court will set a pre-trial review to give directions to bring the matter on for hearing or trial.

These pre-trial reviews are also heard via remote video platforms.

7.3 Jury Trials in Civil Cases

Jury trials are not available in any civil cases.

7.4 Rules That Govern Admission of Evidence

Evidence is usually taken at trial, although witness statements, which stand as evidence in chief at trial, are exchanged in advance of the trial. Evidence is taken from the person with first-hand knowledge of the evidence in question. In certain circumstances, hearsay evidence is admissible and it is left to the court to determine what weight to attribute to it.

7.5 Expert Testimony

Expert testimony is permitted. However, it is restricted to evidence that is reasonably required to resolve the proceedings justly. Parties can only call expert witnesses with the court's permission. If two or more parties wish to submit evidence on the same issue, the court may direct that expert evidence be given by an independent expert witness.

7.6 Extent to Which Hearings Are Open to the Public

In The Bahamas, the open justice principle applies. Accordingly, all matters to be heard in open court are open to the public, and transcripts of those hearings are also available to the public. However, the public is not permitted to attend chamber applications.

7.7 Level of Intervention by a Judge

The level of intervention by a judge during a hearing or trial varies depending on the judge. However, judges often intervene as much as is required to determine the matter. If the judge requires that a question be asked of a witness in order to determine the issue and the question has not been asked by counsel, the judge will ask the witness the question.

Judges often reserve judgments at the conclusion of trials. With respect to hearings, whether the ruling is reserved to a later date depends on the complexity of the issues, the implications of the decision and whether evidence and submissions have been submitted.

7.8 General Timeframes for Proceedings

Once the defence has been filed (within 28 days from the filing of the statement of claim), the case management conference takes place not less than four weeks but not more than twelve weeks thereafter. The trial date(s) depends on the availability of the court's calendar, which can be anywhere from a few months to nine months from the date of the case management conference. Typically, unless it is a very complex, document-heavy matter, it takes approximately 18-24 months to bring a matter on for trial, depending on the court's calendar. The duration of the trial would depend on the number of witnesses to be called and examined and the length of those examinations.

8. Settlement

8.1 Court Approval

Court approval is required where one of the parties is a minor.

8.2 Settlement of Lawsuits and Confidentiality

The actual terms upon which a matter has been settled will be confidential. However, it may not be possible to keep the fact of the settlement of the proceedings confidential, as this would be

reflected on the filed consent order settling the proceedings.

8.3 Enforcement of Settlement Agreements

The consent order, which contains the terms of the agreement, can be enforced.

8.4 Setting Aside Settlement Agreements

Consent orders often contain a provision for "liberty to apply" which provides for the parties to return to court to have the terms of the consent order varied.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

The awards typically available to a successful litigant who obtains judgment in his/her favour would vary depending on the remedies claimed in the action. These remedies can range from an award of damages, a declaration, an order for an accounting, and an injunction. All the foregoing remedies would be available after the conclusion of a full trial.

9.2 Rules Regarding Damages

Punitive damages apply in certain cases of damages. For example, exemplary damages are available in circumstances where it is appropriate to punish the defendant for outrageous behaviour and deter him/her or others from repeating it. There is some overlap between exemplary and aggravated damages, but the recovery of both is duplicitous and strictly prohibited. There are no rules limiting maximum damages.

9.3 Pre-judgment and Post-judgment Interest

The Civil Procedure (Award of Interest) Act, Ch 80, provides that the court may, if it thinks fit, order that there be included in the sum of judgment interest at the rate it thinks fit on any part of the damages awarded or the entire sum of the damages awarded. The interest awarded can be for the whole or any part of the period from the date when the action arose to the date of judgment. It is in the court's discretion.

Post-judgment interest accrues on the full judgment debt and accrues annually until paid.

9.4 Enforcement Mechanisms of a Domestic Judgment

The following mechanisms are available for the enforcement of a domestic judgment:

- warrant of execution;
- in relation to securities, a charging order, stop order or stop notice;
- in relation to land, a fixed date claim form to enforce the equitable charge;
- appointment of a receiver; and
- writ of sequestration.

9.5 Enforcement of a Judgment From a Foreign Country

The Reciprocal Enforcement of Judgments Act, Ch 77, facilitates the enforcement of judgments, orders and awards in The Bahamas. However, the Act only applies to judgments and orders from Barbados, Bermuda, Jamaica, Leeward Islands, St. Lucia, Trinidad, British Guiana, British Honduras, Australia, and the United Kingdom. Judgments and orders obtained in other countries must be enforced by commencing a new action in The Bahamas for the purpose of enforcing that foreign judgment/order.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

Judgments and orders from the Supreme Court can be appealed to the Court of Appeal as of right. Judgments and orders from the Court of Appeal can be appealed to the Privy Council, which is the highest appellate court.

10.2 Rules Concerning Appeals of Judgments

Final judgments and orders made by the Supreme Court can be appealed to the Court of Appeal. However, leave from a Supreme Court judge is required to appeal interlocutory orders of the Supreme Court.

Appeals from the Court of Appeal to the Privy Council require leave of the Court of Appeal, which is granted where the monetary value of the judgment exceeds BSD4,000 and/or the appeal raises a point of general public importance.

10.3 Procedure for Taking an Appeal

In the case of an appeal from the Supreme Court to the Court of Appeal, the intended applicant must file a notice of appeal within fourteen days in the case of an appeal from an interlocutory order and six weeks in other cases from the date of the judgment or order from the court below. Intended applicants can apply for extensions of time for this period.

In respect of an appeal from the Court of Appeal, the intended appellant must apply for provisional leave within six weeks, during which time they must pay the bond and settle the record of the appeal.

10.4 Issues Considered by the Appeal Court at an Appeal

Appeals can be taken on both points of law and points of fact. The appellant must prove that the judge erred either in not making a factual finding or on a point of law. However, an appellate court will not re-hear the matter, but there will be a review of the first instance decision. An appeal court will only consider new points which were not made before the court below where the party making the point did not have a reasonable opportunity to advance the point before the court below and if it relates to new evidence that was not available to the party at the time of the trial.

10.5 Court-Imposed Conditions on Granting an Appeal

There is no ability for the Supreme Court to impose conditions on granting leave to appeal where leave to appeal is required. As a condition of prosecuting an appeal, the Court of Appeal requires the intended appellant to pay a bond for prosecuting the appeal.

10.6 Powers of the Appellate Court After an Appeal Hearing

The appellate court can reverse or affirm the decision of the court below, or send the matter back to the court below to be reheard.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

Costs are entirely in the discretion of the court. Ordinarily, however, the successful party is awarded costs. As such, the losing party pays the costs (the “reasonable” amount of attorney fees) of the successful party. The court may, however, make no order as to costs. There are

two methods of quantifying the costs. Costs may be determined by the court based on fixed costs or based on prescribed costs. Fixed costs are costs fixed by the rules for certain stages of the proceedings. The rules set out scales for the costs attached to claims.

Where fixed costs are not applicable, prescribed costs apply. Costs are determined based on the value of the claim.

11.2 Factors Considered When Awarding Costs

When awarding costs, the court considers the following factors:

- the conduct of the parties both before and during the proceedings;
- whether a party has succeeded on particular issues, even if not ultimately successful in the case, although success on an issue that is not conclusive of the case confers no entitlement to a costs order;
- the manner in which a party has pursued a particular allegation, a particular issue, or the case;
- whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the costs of the proceedings;
- whether it was reasonable for a party to pursue a particular allegation or raise a particular issue and whether the successful party increased the costs of the proceedings by the unreasonable pursuit of issues; and
- whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.

11.3 Interest Awarded on Costs

Interest is awarded on costs based on the judgment rate.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

Mediation is seldom used. The most popular method of ADR is arbitration.

12.2 ADR Within the Legal System

The legal system does not promote ADR very much. ADR is not integrated into the Civil Procedure Rules.

12.3 ADR Institutions

Institutions offering and promoting ADR are not very well organised in The Bahamas.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

The Arbitration Act, 2009, governs the recognition and enforcement of arbitral awards by the Supreme Court.

13.2 Subject Matters Not Referred to Arbitration

There are no subject matters that may not be referred to arbitration in The Bahamas.

13.3 Circumstances to Challenge an Arbitral Award

Parties can challenge arbitral proceedings as to the substantive jurisdiction of the tribunal, on the ground that there was a serious irregularity affecting the tribunal, the proceedings or the award, on a point of law.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

In The Bahamas, arbitration awards are treated as judgments pursuant to the Arbitration (For-

eign Arbitral Awards) Act, 2009. Awards made pursuant to an arbitration agreement in a state other than The Bahamas that is a party to the New York Convention are enforceable pursuant thereto.

Domestic arbitral awards are enforceable in the same manner as a judgment or order of the court.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

As far as is known, there are no proposals for dispute resolution reform in The Bahamas.

Trends and Developments

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Mareva House
4 George Street,
Nassau
The Bahamas

Tel: +1 (242) 502-9750
Fax: +1 (242) 328-2520
Email: nassau@mbhbahamas.com
Web: mckinney.com.bs

Civil Procedure in The Bahamas in Light of the Long-Awaited Civil Procedure Rules

The prevailing trend in The Bahamas currently centres on comprehending and ensuring a seamless transition from the former court rules that governed Bahamian court proceedings to the newly implemented Bahamian Civil Procedure Rules 2022 (CPR).

Up until 31 March 2023, actions in the Bahamian Supreme Court were governed by the 1978 Bahamian Rules of the Supreme Court (RSC). These rules, reflecting their age, struggled to keep up with the evolving demands of a contemporary judicial system, ultimately outliving their usefulness. Originally, the 1978 rules were modelled on the English rules of the Supreme Court as they existed then. However, while the English rules had been extensively fine-tuned and amended, culminating in a comprehensive overhaul with the introduction of the English Court Procedure Rules reform in 1997, the Bahamian rules lacked such flexibility. Consequently, they became increasingly inadequate in dealing with the complex commercial and trust disputes presented to the courts. The transition to a CPR regime in England, a change adopted by several Commonwealth countries, underscored the pressing need to modernise the procedural rules in The Bahamas.

This need for modernisation was acknowledged by Chief Justice Sir Michael Barnett (as he then was) on 10 September 2010, when, in his first speech to the Bahamas Bar Association following his appointment, he stated:

“I also obtained a greater appreciation of the challenges that face this country, as well as other countries, as we all seek to provide to persons both, natural and corporate, their constitutional right to a fair hearing within a reasonable time. I was satisfied that we had to look at the way in which we conducted proceedings in court. This was now the 21st century. Surely it was necessary to determine whether the procedural rules enacted 30 to 50 years ago still match the needs of the modern Bahamas.

As chairman of the Rules Committee, I determined that it was necessary that we should look at the rules of the Supreme Court. These rules were enacted in 1978, more than 30 years ago. The English Rules of Civil Procedure upon which our 1978 rules were based had undergone a radical change more than ten years ago. The common law countries in our CARICOM region had themselves already reformed their rules or were well on the way to implementing reforms. We had not yet done so.”

It would be another 13 years before the Bahamian Civil Procedure Rules, 2022 would finally be implemented by Chief Justice Sir Ian Winder, giving effect to the substantive work of his predecessor Sir Brian Moree CJ in completing the drafting of the new rules.

The “old rules”

As noted above, for more than forty years, The Bahamas operated under the Rules of the Supreme Court, 1978, which were effectively a replication of the English Rules of the Supreme Court in force at that time. From then until now, these were the rules under which we operated. The reliance of the Bahamian judiciary on the RSC, given its harmony with the English Rules, facilitated the development of Bahamian procedural jurisprudence in lockstep with those of England and Wales. It was not uncommon for Bahamian judges to plug lacunas in our 1978 rules or to address any unintended problems created by the application of our rules, by reference to any modification in the England RSC

which had been designed to plug similar lacunas or address similar problems in their rules.

After the ushering in of the English CPR in 1997, Bahamian procedural jurisprudence was no longer developing in lockstep with the English counterpart procedural rules. The break in the harmonious development of the Bahamian and English procedural rules became evident from the observations of Winder J (as he then was) in considering the scope of the Re Barrell jurisdiction in RTL v ALD [2015] 1 BHS J No 82. When presented with authorities decided after the implementation of the English CPR rules Winder J stated:

"The authority advanced by the respondents does suggest that the rule is not as rigid as to require the exceptional circumstances. Having considered these authorities it appears to me that they are all largely based upon environments which have undergone CPR reforms. The Bahamas, however, has not as yet introduced any CPR changes and therefore I find that the Barrell jurisdiction remains the state of the law."

The RSC were simply outdated, as they had been promulgated more than forty years ago. The Bahamas became the very last Commonwealth Caribbean jurisdiction to move away from the old rules of the Supreme Court and to embrace the more modern approach to procedural justice introduced by the CPR regime. In fact, many jurisdictions redeveloped their respective Civil Procedure Rules well before The Bahamas introduced its own. Therefore, the introduction of the CPR was long awaited by the legal profession in The Bahamas.

The "new rules" and changes thereunder

The new CPR has brought about significant changes to civil procedure in The Bahamas. As the CPR has been in effect for only eight months, some of the effects of the changes remain to be seen. Nevertheless, the overarching objectives driving these significant transformations provide a clear understanding of their anticipated outcomes.

The overarching objective of the CPR is to deal with matters justly and at proportionate costs. "Justly dealing with matters" is further explained by the CPR to include the following principles:

- ensuring that the parties are on an equal footing;
- saving expenses;
- dealing with the case in ways which are proportionate to:
- the amount of money involved; the importance of the case; the complexity of the issues; and the financial position of each party;
- ensuring that it is dealt with expeditiously and fairly;
- allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
- enforcing compliance with rules, practice directions and orders.

With a view to dealing with matters justly and at proportionate costs, Rule 11.3 makes it a requirement for all interlocutory applications to be made at the case management conference. It imposes cost consequences for applications submitted outside this timeframe, specifically when they could have been made during the case management conference or the pre-trial review.

The CPR has been described by many Bahamian attorneys to be "front-loaded" as compared

to the RSC. In claims for personal injuries, for example, the claimant is required to provide more details than before, such as the medical report to be relied on at trial at the commencement of the action. In this way, claimants with no real intention of litigating the matter are discouraged from filing claims and earlier settlement is encouraged as a result of defendants knowing at an early stage what evidence they face.

Statements of claim are required to be served with claim forms, which are the originating document under the new CPR unless the court has given permission for the documents to be filed separately or unless the claim form sufficiently sets out the claimant's case. This should have the effect of preventing unnecessary delays in the progression of matters before the courts and, hopefully, substantially reduce the delays that have plagued the Bahamian judicial system.

The court has the power to direct that expert evidence be given by one single expert witness where two or more parties wish to submit expert evidence on the same issue. This should eliminate the excess time and costs arising from conflicting expert witnesses, which was a common issue under the old rules. As a result, it controls the volume, quality and impartiality of expert evidence, thereby constraining parties from summoning any number of experts of their choosing to provide evidence at trial.

Under the old rules, leave was always required to serve process out of the jurisdiction. Under the new CPR, leave is required in fewer instances, and in most cases, process documents can be served outside the jurisdiction without leave.

What was "discovery" under the old rules is now "disclosure" under the CPR. The procedure of "automatic" discovery of non-specified documents without order is abolished under the CPR. The court is responsible for regulating disclosure in accordance with the overarching objective of the rules. The parties are to only seek disclosure in reasonable circumstances and to co-operate with discovery requests.

Costs under the CPR

Perhaps one of the most significant changes in civil procedure brought about by the CPR is the transformation of costs. Describing the taxation of costs under the old rules as time-consuming would be an understatement. Costs have been transformed significantly. The CPR has dispensed with taxation of costs altogether. Costs are quantified on three bases: fixed costs, assessed costs and prescribed costs. Fixed costs provide for fixed amounts that will be allowed by way of costs where proceedings are ended rather quickly without protracted history. Fixed costs apply in four circumstances:

- the costs to be endorsed on a claim for a specified sum of money that the defendant must pay, in addition to the sum claimed and interest to avoid judgment being entered;
- the costs to be allowed when a default judgment is entered;
- the costs to be allowed on the enforcement of a judgment; and
- the costs allowed on claims for recovery of possession to land or delivery of goods.

All other costs are quantified using costs prescribed according to set scales. Generally, costs are determined by the value of the claim. In claims for unspecified general damages, the claimant's costs are based on the amount awarded, while the defendant's costs are based on either an agreement between the parties or an order of the court. Claims that are not for a

monetary sum are valued at a sum specified in the rules.

However, the court can revise this sum upwards or downwards at a management conference if it considers that the prescribed costs would be excessive or substantially inadequate. In addition to the costs for the entirety of the claim, the rules provide prescribed costs for costs allowed at various stages of the claim:

- up to and including service of defence;
- after defence and up to and including the case management conference;
- from case management conference and up to and including first pre-trial review; and
- to trial and up to default judgment, including assessment of damages.

This new method of handling costs offers the benefits of transparency, certainty, and fairness to all parties involved. It simplifies the calculation process, enabling litigants to have a clear understanding of their potential costs liability well in advance. Additionally, the court retains the discretion to award only a portion of the prescribed costs.

Assessed costs are used for the quantification of costs in respect of procedural applications. The court must, on determining any interlocutory application at any time other than during the case management conference, pre-trial review or the trial, decide which party should pay costs, assess the amount of costs and direct when costs are to be paid. Under the old rules, the court was not required to fully resolve cost issues. By addressing the costs of specific applications as the case progresses, the aim is to discourage unnecessary interlocutory applications.

Conclusion

The changes discussed above represent some of the more salient changes introduced by the new CPR regime. The objectives of the new CPR are laudable and only time will tell if the overarching objective of the CPR is substantially achieved.

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