PART 21 Counterclaims And Other Additional Claims

PART 21

Scope and interpretation

21.1

This Part applies to:

(1) a counterclaim by a defendant against the claimant or against the claimant and some other person;

(2) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and

(3) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).

21.2

In these Rules:

(1) 'additional claim' means any claim other than the claim by the claimant against the defendant ; and

(2) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim .

Application of these Rules to additional claims

21.3

An additional claim shall be treated as if it were a claim for the purposes of these Rules , except as provided by this Part.

21.4

Rules 7.20 to 7.25 (time within which a claim form may be served) do not apply to additional claims .

21.5

Part 13 (default judgment) applies to a counterclaim but not to other additional claims .

21.6

Part 15 (admissions) applies to a counterclaim , but only:

(1) Rule 15.1 (which provides that a party may admit the truth of another party's case in writing); and

(2) Rules 15.12 and 15.13 (admission by notice in writing — application for judgment):

apply to other additional claims .

Defendant's counterclaim against the claimant

21.7

A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim .

21.8

A defendant may make a counterclaim against a claimant :

(1) without the Court's permission if he files it with his defence. The defence and counterclaim should normally form one document, with the counterclaim following on from the defence; or

(2) at any other time with the Court's permission.

21.9

Part 11 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim .

21.10

Where a claimant serves a reply and a defence to counterclaim , the reply and the defence to counterclaim should normally form one document, with the defence to counterclaim following on from the reply.

Counterclaim against a person other than the claimant

21.11

A defendant who wishes to counterclaim against a person who is not already a party must apply to the Court for an order that that person be added as an additional party.

21.12

An application for an order under Rule 21.11 may be made without notice unless the Court directs otherwise.

21.13

Where the Court makes an order under Rule 21.11, it will give directions as to the management of the case.

Defendant's additional claim for contribution or indemnity from another party

21.14

A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by:

(1) filing a notice containing a statement of the nature and grounds of his additional claim ; and

(2) serving the notice on that party.

21.15

A defendant may file and serve a notice under Rule 21.14:

(1) without the Court’s permission, if he files and serves it:

(a) with his defence; or

(b) if his additional claim for contribution or indemnity is against a party added to the claim later, within 28 days after that party files his defence; or

(2) at any other time with the Court’s permission.

Procedure for making any other additional claim

21.16

Rules 21.17 to 21.24 apply to any additional claim except:

(1) a counterclaim only against an existing party; and

(2) a claim for contribution or indemnity made in accordance with Rule 21.14.

21.17

An additional claim is made when the Court issues the appropriate claim form.

21.18

A defendant may make an additional claim :

(1) without the Court’s permission if the additional claim is issued before or at the same time as he files his defence; and

(2) at any other time with the Court’s permission.

21.19

Particulars of an additional claim must be contained in or served with the additional claim .

21.20

An application for permission to make an additional claim may be made without notice, unless the Court directs otherwise.

21.21

Where an application is made for permission to make an additional claim , the application notice should be filed together with a copy of the proposed additional claim .

21.22

An application for permission to make an additional claim must be supported by evidence stating:

(1) the stage which the proceedings have reached;

(2) the nature of the additional claim to be made or details of the question or issue which needs to be decided;

(3) a summary of the facts on which the additional claim is based; and

(4) the name and address of any proposed additional party.

21.23

Where delay has been a factor contributing to the need to apply for permission to make an additional claim an explanation of the delay should be given in evidence.

21.24

Where possible the applicant should provide a timetable of the proceedings to date.

Service of claim form

21.25

Where an additional claim may be made without the Court's permission, any claim form must:

(1) in the case of a counterclaim against an additional party only, be served on every other party when a copy of the defence is served;

(2) in the case of any other additional claim , be served on the person against whom it is made within 14 days after the date on which the additional claim is issued by the Court .

21.26

Rule 21.25 does not apply to a claim for contribution or indemnity made in accordance with Rule 21.14.

21.27

Where the Court gives permission to make an additional claim , it will at the same time give directions as to its service .

Statement of truth

21.28

The contents of an additional claim should be verified by a statement of truth.

Matters relevant to question of whether an additional claim should be separate from the claim

21.29

Rule 21.30 applies where the Court is considering whether to:

(1) permit an additional claim to be made;

(2) dismiss an additional claim ; or

(3) require an additional claim to be dealt with separately from the claim by the claimant against the defendant .

21.30

The matters to which the Court may have regard include:

(1) the connection between the additional claim and the claim made by the claimant against the defendant ;

(2) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him; and

(3) whether the additional claimant wants the Court to decide any question connected with the subject matter of the proceedings:

(a) not only between existing parties but also between existing parties and a person not already a party; or

(b) against an existing party not only in a capacity in which he is already a party but also in some further capacity.

Effect of service of an additional claim

21.31

A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.

21.32

When an additional claim is served on an existing party for the purpose of requiring the Court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the additional claim .

Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice

21.33

Rules 21.34 to 21.38 apply if:

(1) the additional claim is not:

(a) a counterclaim ; or

(b) a claim by a defendant for contribution or indemnity against another defendant under Rule 21.14; and

(2) the party against whom an additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim .

21.34

The party against whom the additional claim is made is deemed to admit the additional claim , and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim .

21.35

Subject to Rule 21.36, if default judgment under Part 13 is given against the additional defendant , the additional claimant may obtain judgment in respect of the additional claim by filing a request in Form P13/01 or Form P13/02.

21.36

An additional claimant may not enter judgment under Rule 21.35 without the Court’s permission if:

(1) he has not satisfied the default judgment which has been given against him; or

(2) he wishes to obtain judgment for any remedy other than a contribution or indemnity .

21.37

An application for the Court’s permission under Rule 21.36 may be made without notice unless the Court directs otherwise.

21.38

The Court may at any time set aside or vary a judgment entered under Rule 21.35.

Procedural steps on service of an additional claim form on a non-party

21.39

Where an additional claim form is served on a person who is not already a party it must be accompanied by the following, which can be set out in one or more documents:

(1) a form for defending the claim;

(2) a form for admitting the claim;

(3) a form for acknowledging service ; and

(4) a copy of:

(a) every statement of case which has already been served in the proceedings; and

(b) such other documents as the Court may direct.

21.40

A copy of the additional claim form must be served on every existing party.

Case management where a defence to an additional claim is filed

21.41

Where a defence is filed to an additional claim the Court must consider the future conduct of the proceedings and give appropriate directions.

21.42

In giving directions under Rule 21.41 the Court must ensure that, so far as practicable, the original claim and all additional claims are managed together.

21.43

Where the defendant to an additional claim files a defence, other than to a counterclaim , the Court will arrange a hearing to consider case management of the additional claim . This will normally be at the same time as a case management hearing for the original claim and any other additional claims .

21.44

The Court will give notice of the hearing to each party likely to be affected by any order made at the hearing.

21.45

At the hearing the Court may:

(1) treat the hearing as a immediate judgment hearing;

(2) order that the additional claim be dismissed;

(3) give directions about the way any claim, question or issue set out in or arising from the additional claim should be dealt with;

(4) give directions as to the part, if any, the additional defendant will take at the trial of the claim; and

(5) give directions about the extent to which the additional defendant is to be bound by any judgment or decision to be made in the claim.

21.46

The Court may make any of the orders in Rule 21.45(1) to 21.45(5) either before or after any judgment in the claim has been entered by the claimant against the defendant .

Titles of proceedings where there are additional claims

21.47

Where there are additional claims which add parties, the title to the proceedings should comprise a list of all parties describing each by giving them a single identification. Subject to Rule 21.56, this identification should be used throughout.

21.48

Claimants and defendants in the original claim should always be referred to as such in the title to the proceedings, even if they subsequently acquire an additional procedural status.

21.49

Additional parties should be referred to in the title to the proceedings in accordance with the order in which they are joined to the proceedings, for example ‘Third Party’ or ‘Fourth Party’, whatever their actual procedural status.

Examples:

(1) If the defendant makes an additional claim against a single additional party, the additional party should be referred to in the title as ‘Third Party’.

(2) If the defendant makes separate additional claims against two additional parties, the additional parties should be referred to in the title as ‘Third Party’ and ‘Fourth Party’.

(3) If the defendant makes a counterclaim against the claimant and an additional party, the claimant should remain as ‘Claimant’ and the additional party should be referred to in the title as ‘Third Party’.

(4) If the Third Party in example (2) makes an additional claim against a further additional party, that additional party should be referred to in the title as ‘Fifth Party’.

21.50

If an additional claim is brought against more than one party jointly, they should be referred to in the title to the proceedings as, for example, ‘First Named Third Party’ and ‘Second Named Third Party’.

21.51

In group litigation, the Court should give directions about the designation of parties.

21.52

All parties should co-operate to ensure that two parties each making additional claims do not attribute the same nominal status to more than one party.

21.53

In proceedings with numerous parties, the Court will if necessary give directions as to the preparation and updating of a list of parties giving their roles in the claim and each additional claim .

21.54

If an additional party ceases to be a party to the proceedings, for example because the claim against that party is discontinued or dismissed, all other additional parties should retain their existing nominal status.

21.55

In proceedings where there are additional parties, the description of all statements of case or other similar documents should clearly identify the nature of the document with reference to each relevant

party.

Examples:

(1) In example 21.49(1), the defendant's additional claim should be headed 'Defendant's Additional Claim against Third Party' and the Third Party's defence to it should be headed 'Third Party's Defence to Defendant's Additional Claim'.

(2) In example 21.49(3), the Defendant's counterclaim should be headed 'Defendant's Counterclaim against Claimant and Third Party' and the Third Party's defence to it should be headed 'Third Party's defence to Defendant's Counterclaim'.

21.56

In proceedings where there are Fourth or subsequent parties, additional parties should be referred to in the text of statements of case or other similar documents by name, suitably abbreviated if appropriate. If parties have similar names, suitable distinguishing abbreviations should be used.