

## GOVERNMENT NOTICE

No. 1/1997:

BARBADOS  
*In the Court of Appeal*  
**PRACTICE DIRECTION**  
**RE: SKELETON ARGUMENTS**

The President of the Court of Appeal with the concurrence of the Justices of Appeal and after consultation with the Bar Association issues the following Practice Direction:

*Application and Commencement:*

1. This Direction applies to all appeals from the High Court in civil cases which have a hearing date commencing on or after 1st July, 1997.

*Skeleton Arguments:*

2. Skeleton arguments will be compulsory except in the case of appeals which are heard as a matter of great urgency or any individual case where the Court otherwise orders.

*Content of Skeleton Arguments:*

3. The purpose of a skeleton argument is to identify not to argue the points. A skeleton argument should therefore be as succinct as possible. In the case of points of law, it should state the point and cite the principal authority or authorities in support, with references to the particulars page(s) where the principle concerned is enunciated. In the case of questions of fact, it should state briefly the basis on which it is contended that the Court of Appeal can interfere with the finding of fact concerned, with cross-references to the passages in the transcript or notes of evidence which bear on the point.

In the case of respondents whose arguments will be simply that the judgement of the court below is correct for the reasons given, the Attorney-at-Law for the respondent can send in a letter to that effect in lieu of a skeleton argument. Where, however, the respondent is going to rely on any authority or refer to any evidence which is not dealt with in the judgment of the court below, a respondent's skeleton argument must be lodged. The respondent's side must always lodge a skeleton argument in any case where there is a respondent's notice.

Skeleton arguments are not pleadings and save in exceptional circumstances (see paragraph 6 below) need not answer the skeleton arguments of the other side.

*Chronology of events:*

4. The appellant's skeleton argument must be accompanied by a written chronology of events relevant to the appeal, in a separate document.

*Time Table for exchange and submission of skeleton arguments:*

5. Skeleton arguments, a list of authorities and photocopies of each authority must be sent or delivered to the other side and four copies lodged with the Court of Appeal Registry not less than *fourteen days* before the date on which the hearing is due to commence.

*Supplementary Skeleton Arguments:*

6. Either side may lodge a supplementary skeleton argument if exceptional circumstances give rise to a need for one. This will only occur (a) if one side raised a point which could not have been anticipated on a reading of the notice of appeal or any respondent's notice and (b) if called for an answer e.g. confession and avoidance. Wherever a supplementary skeleton argument is called for, a copy of it must be sent to the other side and four copies lodged with the Court of Appeal Registry at the earliest possible moment.

*Oral Hearing:*

7. The following procedure will be adopted in all appeals to which this Direction applies unless the Court announces in any individual case that some other course should be adopted.

(a) The judges will already have read the notice of appeal, any respondent's notice, the judgement under appeal and the skeleton arguments. At the commencement of the hearing the presiding Lord Justice will state what other documents and authorities have also been read.

(b) It will not normally be necessary to open the facts unless otherwise directed. The Attorney-at-Law for the appellant will be expected to proceed immediately to the ground of appeal which is in the forefront of the appellant's case. Likewise, the Attorney-at-Law for the respondent will be expected to proceed immediately with his or her submissions on the issues in the appeal without any preamble. In an exceptional case, such as where there is technical evidence which will need to be explained by the Attorney-at-Law and to such extent some opening is necessary, the presiding Lord Justice will notify counsel in advance of the hearing.

No. 1/1997 - *Cont'd*

(c) When citing an authority which has been pre-read, an Attorney-at-Law should not read the case at length, but go immediately to the passage in the judgment where the principle relied on in the skeleton argument is to be found.

(d) When dealing with issues of fact, the passages in the transcripts or notes of evidence relied on will have been listed in the skeleton argument [see paragraph 3 above] and accordingly the Attorney-at-Law should so far as possible avoid reading from them in extenso.

*Miscellaneous:*

8. Failure to comply with this direction may result in costs being made payable by the Attorney-at-Law in default.

9. This Direction may, in the discretion of the Court hearing the appeal, be dispensed with at the time of such hearing.

10. This Direction is without prejudice to the power of the Court to dismiss any appeal under the Rules of Court for want of prosecution or under its inherent jurisdiction.

Dated this 15th day of August 1997.

D. A. WILLIAMS  
Chief Justice

No. 2/1997:

BARBADOS  
*In the High Court of Justice*  
PRACTICE DIRECTION  
RE: SALE IN LIEU OF FORECLOSURE

In any action where a plaintiff seeks relief by way of sale of real property in lieu of foreclosure,

(1) The plaintiff shall lodge or cause to be lodged with the Registrar all documents of title which relate to the property, and the plaintiff's Attorney-at-Law shall file a certificate verifying that, in his opinion, the said documents show a good title in the plaintiff.

(2) If the plaintiff and/or the plaintiff's Attorney-at-Law cannot comply with the foregoing directions, then

(i) the plaintiff and/or the defendant and/or any other person who can swear positively to the facts shall swear an affidavit setting out the facts which establish the defendant's title to the said property; and

(ii) the plaintiff's Attorney-at-Law shall file a certificate verifying that, in his opinion, the facts set out in the said affidavit sufficiently establish the defendant's title to property.

(3) The plaintiff or the plaintiff's Attorney-at-Law must give notice of the proceedings to all adult persons in actual occupation of the property; and an affidavit that this has been done must be filed before an order for sale is made.

(4) With a view to further ensuring that every household on the land is notified of the proceedings, the Registrar shall cause a copy of the notice mentioned in Order 31 Rule 2 (1) to be prominently affixed by the Chief Marshal to every building which is erected on the land; and the Chief Marshal shall make a return verifying that he has done so, stating how he was satisfied as to the identity of the land and giving the number of buildings to which he has affixed the said notice.

Made this 25th day of July, 1997.

D. A. WILLIAMS  
Chief Justice.

No. 3/1997:

BARBADOS  
*In the High Court of Justice*  
PRACTICE DIRECTION  
RE: FIXING OF DATES FOR TRIAL OF ACTIONS

The Chief Justice, after consultation with the Rules Committee of the Supreme Court, issues the following Practice Direction:

1. STATEMENT OF PURPOSE

The following Practice Direction is issued for the purpose of amending the practice relating to the fixing of trial dates in actions to be tried in open court.

2. GENERAL LIST

(1) All civil actions shall, on an application for a date of hearing of those actions in the manner set out in paragraph (3), and in compliance with the Rules or an order of the Supreme Court, be set down for a date of hearing of the trial in a *General List*.

97 - Cont'd

(2) The actions set down in the *General List* shall be numbered in sequence showing the date that each action was set down and the estimated length of trial.

(3) Where an action is defended it may be set down for a date of hearing for trial by any party in the action

(a) filing a Certificate of Readiness in the manner set out in *Form A* of the Schedule and serving a copy of that certificate on every other party in the action; and

(b) filing with the Registrar a Motions Day Notice in the manner set out in *Form B* of the Schedule and the Trial Record, with proof of service of these documents.

(4) Upon receipt of the copy of the Certificate of Readiness referred to in paragraph (3)(a), every other party to the action who is ready for trial shall sign it and file the same.

(5) Where at the time of the receipt of the copy of the Certificate of Readiness any other party is not ready for trial, that other party shall within 7 days of the receipt of the Certificate of Readiness, make an application to a Judge in Chambers for the matter not to be placed on the Motions Day List.

(6) Where no application is made pursuant to paragraph (5) within the time specified in that paragraph, the party filing a Certificate of Readiness may include in the Trial Record referred to in paragraph 3, that Certificate without the signature of the other party.

(7) Where an action is undefended, it may be set down for a date of hearing for trial by filing a Trial Record.

### 3. TRIAL RECORD

(1) The Trial Record shall contain

(a) an index,

(b) a copy of all pleadings including those relating to any counterclaim, cross-claim or third party claim,

(c) a copy of any demand or order for particulars and the particulars delivered pursuant thereto,

(d) a copy of any request to admit documents and a copy of the response thereto,

(e) a copy of any request for admission of facts and a copy of the response thereto,

(f) a copy of any notice of a motion to be made at trial,

(g) a Certificate of Readiness as set out in *Form A*, and

(h) a copy of any notice or order respecting the trial or any order made by a Judge in Chambers.

(2) The front cover of the Trial Record shall set out

(a) the names of the Attorneys-at-Law, parties to the action, their firm names (if applicable), their addresses for service and their business telephone numbers; and

(b) where any party is not so represented, the name of that party together with the address for service and the telephone number of that party.

(3) The party who sets the action down for trial shall at the commencement of the trial, deliver to the trial Judge and serve on every other party who has not been noted in default, a supplementary Trial Record containing all requisite documents filed and served since the filing of the Trial Record.

(4) Paragraphs (1) and (2) apply with the necessary modifications to any supplementary Trial Record.

### 4. MOTIONS DAY

There shall be a *Motions Day* to be held every two months on the first Monday of that period at 2.30 in the afternoon or such other time as may be determined by the Registrar.

No. 3/1997 – Cont'd

## 5. MOTIONS DAY LIST

- (1) Not less than 10 days before each Motions Day, the Registrar shall publish a Motions Day List containing
  - (a) all actions with respect to which a Motions Day Notice has been filed within a period of 2 months immediately preceding the publication date of the list;
  - (b) all other proceedings which the Chief Justice or any other Judge has directed to be placed on the list; and
  - (c) any actions which may have been traversed from the preceding Motions Day.
- (2) Actions in which notices in respect of a trial by jury have been given shall be listed separately from actions to be tried by a Judge without a jury.

## 6. DATES FOR TRIAL

- (1) At each Motions Day sitting the Registrar shall, with the concurrence of the parties by their respective Attorneys-at-Law, assign to each action listed on the Motions Day List a trial date or dates for such action.
- (2) The trial date to be fixed in accordance with paragraph (1) shall not be later than 6 months from the date of the Motions Day.
- (3) It shall be the duty of every Attorney-at-Law having conduct of an action (whether on behalf of a Plaintiff or a Defendant) that is listed on the Motions Day List to attend the Motions Day for the purpose of fixing a date of hearing in respect of that action. In the event that an Attorney-at-Law fails to attend or is not otherwise represented at the Motions Day, the Registrar shall, subject to paragraph (4), proceed in his absence to fix a date of hearing in respect of that action.
- (4) An application for an adjournment may be made by or on behalf of any party to an action which appears on the Motions Day List, and the Registrar may, if every other party to the

action consents, postpone the fixing of the trial date in respect of that action to the next ensuing Motions Day. If the other party or any other party does not consent to the adjournment, then the Registrar shall proceed to fix a trial date. If the party seeking the adjournment wishes to have the trial date vacated, then he must no later than 28 days before the trial date, make an application for that purpose by summons before a Judge; and on the hearing of the application the Judge shall not vacate the trial date unless he is satisfied that there are good grounds for so doing.

- (5) Nothing in the foregoing paragraph shall be construed as in any way fettering the trial Judge's discretion to grant an adjournment on the day of trial upon such terms as he deems fit.

## 7. FIXING DATE FOR TRIAL SUMMARILY IN SPECIAL CASES

Where

- (a) pleadings are closed, and
- (b) the circumstances warrant that the matter be tried summarily,

the court may, on the application by the Attorney-at-Law of any party to the action, fix a date for trial and may give necessary directions and may vary or avoid the procedures set out in this Practice Direction.

## 8. PRE-TRIAL BRIEF

- (1) Unless ordered otherwise, each party to an action shall prepare a Pre-Trial Brief containing,
  - (a) a succinct outline of the facts he intends to establish,
  - (b) a concise statement of the principles of law on which he relies, and
  - (c) citation of relevant statutory provisions and leading authorities.
- (2) Each party shall, at least *four days prior to the date of trial, file with the clerk*

1997 - Concl'd

- (a) the original copy of his Pre-Trial Brief which the clerk shall forthwith transmit to the trial judge, and
  - (b) a copy of that Brief for each opposite party.
- (3) The clerk shall advise each party when an opposite party files his Pre-Trial Brief and shall release to any party who has so filed, copies of the Brief filed by any other party.
  - (4) Documentary evidence shall not be included with the Pre-Trial Brief unless all parties have consented to its admission as evidence.
  - (5) If any party shall fail to file a Pre-Trial Brief in accordance with this Practice Direction, then the trial Judge shall have the discretion to make such order as he deems fit; however no action shall be dismissed nor shall judgement be entered against a party by reason of the party's failure to file such a Brief.

## 9. APPLICATION

- (1) Unless ordered otherwise, this Practice Direction also applies to any proceeding wherein the court has directed the trial of any issue.
- (2) In the event of any conflict arising between the provisions of this Practice Direction and the Rules of the Supreme Court, the Rules shall prevail.

## 10. COMMENCEMENT

- (1) This Practice Direction comes into operation on the 1st day of September, 1997.
- (2) Where a case had been given a date of hearing and is to be heard after the commencement date of this Practice Direction, the case shall be deemed to be on the *General List* on the date of commencement of this Practice Direction.

Dated this 15th day of August, 1997.

D. A. WILLIAMS  
Chief Justice.

**BARBADOS**

No. of

**SCHEDULE**

**FORM A**

**IN THE HIGH COURT OF JUSTICE  
CIVIL DIVISION**

Between:

\_\_\_\_\_  
and  
\_\_\_\_\_

**CERTIFICATE OF READINESS**

I, \_\_\_\_\_, Attorney-at-law for the Plaintiff/Defendant  
certify that the pleadings are closed, that I believe all pre-trial procedures have been completed and that  
we are now ready to proceed to trial.

Having consulted with the other Attorney-at-law on record, \_\_\_\_\_,  
inform the court that we estimate that the trial of the action will take \_\_\_\_\_ (hours, days);  
DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
Attorney-at-law for Plaintiff/Defendant

TO: THE REGISTRAR of  
The Supreme Court  
Bridgetown

AND TO: THE DEFENDANT/PLAINTIFF  
C/o His/Her Attorney-at-law

BY CONSENT

\_\_\_\_\_  
Defendant/Plaintiff

Filed by \_\_\_\_\_ Attorney-at-law for the Plaintiff/Defendant

BARBADOS

No. of

SCHEDULE (Cont'd)

FORM B

IN THE HIGH COURT OF JUSTICE  
CIVIL DIVISION

Between:

\_\_\_\_\_  
and  
\_\_\_\_\_

MOTIONS DAY NOTICE

To: ATTORNEY-AT-LAW for Plaintiff/Defendant

Take notice that this action (or issue in the action, as the case may be) is set down for trial on a date to be fixed at the Motions Day sitting at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Attorney-at-law for Plaintiff/Defendant