

## **RULE 26 – USE OF EVIDENCE OUTSIDE THE PROCEEDING**

### **Application**

- (1) This Rule applies to
  - (a) evidence obtained under:
    - (i) Rule 25 (Discovery of documents);
    - (ii) Rule 27 (Examination for discovery);
    - (iii) Rule 28 (Pre-trial examination of witness);
    - (iv) Rule 29 (Discovery by interrogatories); and
    - (v) Rule 30 (Physical examination and inspection); and
  - (b) information obtained from such evidence.
- (2) This rule does not apply to evidence or information obtained otherwise than under the rules referred to in subrule (1).

### **Deemed undertaking**

- (3) All parties and their lawyers are deemed to undertake not to use evidence or information to which this rule applies for any purposes other than those of the proceeding in which the evidence was obtained.

### **Exceptions**

- (4) Subrule (3) does not prohibit a use to which the person who disclosed the evidence consents.
- (5) Subrule (3) does not prohibit the use, for any purpose, of
  - (a) evidence that is filed with the court,
  - (b) evidence that is given or referred to during a hearing, and
  - (c) information obtained from evidence referred to in paragraphs (a) or (b).
- (6) Subrule (3) does not prohibit the use of evidence obtained in one proceeding, or information obtained from such evidence, to impeach the testimony of a witness in another proceeding.

**Order that undertaking does not apply**

- (7) If satisfied that the interests of justice outweigh any prejudice that would result to a party who disclosed evidence, the court may order that subrule (3) does not apply to the evidence or to information obtained from it, and may impose such terms and give such directions as are just.