

## **RULE 2 – EFFECT OF NON-COMPLIANCE**

### **Non-compliance with rules**

- (1) (a) Unless the court otherwise orders, a failure to comply with these rules shall be treated as an irregularity and does not nullify a proceeding, a step taken or any document or order made in the proceeding.
- (2) Subject to subrules (3) and (4), where there has been a failure to comply with these rules, the court may
  - (a) set aside or stay a proceeding, either wholly or in part,
  - (b) set aside or stay any step taken in the proceeding, or a document or order made in the proceeding,
  - (c) allow an amendment to be made under Rule 24,
  - (d) dismiss the proceeding or strike out the statement of defence and grant judgment, or
  - (e) make any other order it thinks just.
- (3) The court shall not wholly set aside or stay a proceeding on the ground that it was required to be commenced by an originating process other than the one employed.

### **Application to set aside for irregularity**

- (4) An application for an order under subrule (2)(a), (b) or (d) shall not be granted unless;
  - (a) it is made within a reasonable time, and
  - (b) the application is made before the party applying has taken a fresh step after knowledge of the irregularity.

### **Consequences of certain non-compliance**

- (5) Where a person, contrary to these rules and without lawful excuse,
  - (a) refuses or neglects to obey a subpoena or to attend at the time and place appointed for the examination for discovery,
  - (b) refuses to be sworn or to affirm or to answer any question put to the person,
  - (c) refuses or neglects to produce or permit to be inspected any document or other property,

(d) refuses or neglects to answer interrogatories or to serve an affidavit of documents, or

(e) refuses or neglects to attend for or submit to a medical examination;

then

(f) where the person is the plaintiff, petitioner or a present officer of a corporate plaintiff or petitioner, or a partner in or manager of a partnership plaintiff or petitioner, the court may dismiss the proceeding, and

(g) where the person is the defendant, respondent or a third party, or a present officer of a corporate defendant, respondent or third party, or a partner in or manager of a partnership defendant, respondent or third party, the court may order the proceeding to continue as if no appearance had been entered or no defence had been filed.

(6) Where a person, without lawful excuse, refuses or neglects to comply with a direction of the court, the court may make an order under subrule (5)(f) or (g).

#### **Dismissal for want of prosecution**

(7) If upon application by a party it appears to the court that there is want of prosecution in a proceeding, the court may order that the proceeding be dismissed.

#### **Want of prosecution**

(8) Notwithstanding Rule 3(6), a defendant or respondent may apply to have a proceeding dismissed for want of prosecution without serving notice of intention to proceed.

(9) The court

(a) may, with or without terms, dismiss the proceeding for want of prosecution or give directions for the speedy determination of the proceeding, or

(b) except in a family law proceeding, shall dismiss so much of the proceeding that relates to the applicant where for five or more years no step has been taken that materially advances the action or proceeding.