

Order 31 Rule 12 of the Rules of the Superior Courts as inserted by the Rules of the Superior Courts (No.2) (Discovery), Order 1999

(1) Any party may apply to the Court by way of notice of motion for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his or her possession or power, relating to any matter in question therein. Every such notice of motion shall specify the precise categories of documents in respect of which discovery is sought and shall be grounded upon the affidavit of the party seeking such an order of discovery which shall:

- (a) verify that the discovery of documents sought is necessary for disposing fairly of the cause or matter or for saving costs;
- (b) furnish the reasons why each category of documents is required to be discovered.

(2) On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or by virtue of non-compliance with the provisions of subrule 4(1), or make such order on terms as to security for the costs of discovery or otherwise and either generally or limited to certain classes or documents as may be thought fit.

(3) An order shall not be made under this rule if and so far as the Court shall be of the opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

(4) (1) An order under subrule 1 directing any party or under rule 29 directing any other person to make discovery shall not be made unless:

- (a) the applicant for same shall have previously applied by letter in writing requesting that discovery be made voluntarily, specifying the precise categories of documents in respect of which discovery is sought and furnishing the reasons why each category of documents is required to be discovered; and
- (b) a reasonable period of time for such discovery has been allowed; and
- (c) the party or person requested has failed, refused or neglected to make such discovery or has ignored such request.

Provided that in any case where by reason of the urgency of the matter or consent of the parties, the nature of the case or any other circumstances which to the Court seem appropriate, the Court may make such order as appears proper, without the necessity for such prior application in writing.

(2) Any such discovery sought and agreed between parties or between parties and any other person shall, subject to subrule 4 below, be made in like manner and form and have such effect as if directed by order of the Court.

(3) In any case in which discovery has been sought and agreed and has not been made within the time agreed, the party who has sought same may make application pursuant to rule 21 provided that when seeking discovery the party requested was informed that:

- (a) such voluntary discovery was being sought pursuant to Order 31 rule 12 subrule 4;
- (b) agreement to make discovery would require it to be made in like manner and form and would have such effect as if directed by order;
- (c) failure to make discovery may result in an application pursuant to rule 21;

and the Court may, if satisfied that it is proper so to do, make such order under rule 12, 19 and 21 as is appropriate or such other order as appears just in the circumstances.

(4) An application for discovery whether under rule 12(1) or (4) shall be made not later than twenty eight days after the action has been set down or in matters which are not set down, twenty eight days after it has been listed for trial provided that the Court or the party requested may order or agree, as the case may be, to extend the time for the application for discovery in any case which it appears just and reasonable so to do.

(5) The costs of an application to Court for discovery in any case in which prior written application has not been made or in which application has not been made within the time provided, shall be in the discretion of the Court