

PROCEEDINGS UNDER ARTICLE 53(3)

SUBMISSION OF QUESTIONS BY SUBORDINATE COURTS

Application of Part 5

5.1 (1) This Part deals with submissions to the Supreme Court by a subordinate court under Article 53(3) of the Constitution, of questions concerning the interpretation of the Constitution that concern a fundamental point of law.

[5.1.1] See further Part 4, *Government Proceedings Act* No.9 of 2007.

(2) This part is in addition to Rule 16.22 of the Civil Procedure Rules.

Starting Proceedings

5.2 (1) A proceeding under Article 53(3) is started by sending a Submission to the office of the Supreme Court anywhere in Vanuatu.

[5.2.1] See CPR [2.3.1] for the location of offices.

(2) The Submission must:

- (a) state the question to be decided; and**
- (b) state concisely the facts necessary to enable the Court to decide the question.**

(3) After the Submission is received the Court must fix a date for the first Conference in the matter.

(4) The Conference date must be between 14 and 21 days after the filing date.

Parties

5.3 The Court may order that the Attorney-General is to be a party to the proceedings, representing the Republic.

[5.3.1] See further Part 4, *Government Proceedings Act* No.9 of 2007.

Conference

5.4 (1) At the first Conference, the Court may:

- (a) order that the Attorney-General or another person become a party; and**
- (b) make orders about clarifying the Submission and the issues it raises; and**
- (c) refer the matter back to the subordinate court for better identifying any questions of law and fact; and**

- (d) fix a date for another Conference, if one is necessary; and
- (e) fix a hearing date; and
- (f) make orders about:
 - (i) filing and serving sworn statements to clarify the facts of the case; and
 - (ii) filing and serving written submissions and lists of authorities to be relied on; and
 - (iii) any other matter necessary to assist in managing the hearing of the Submission.

Hearing

5.5 (1) The hearing of the Submission must take place as soon as practicable and in open court.

[5.5.1] See further *CPR* r.12.2.

(2) However, the Court may order the public to be excluded from a specific part of the hearing in exceptional circumstances if it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.

(3) The Court must decide the order of events at the hearing.

Judgment

5.6 (1) After the hearing the Court must give judgment, as set out in this Rule.

(2) The judgment must be announced in open court.

[5.6.1] See further *CPR* r.12.2.

(3) The judgment must:

- (a) set out the Court's determination of the question submitted to it; and
- (b) state the Court's reasons for its determination.

[5.6.2] See further *CPR* r.13.1(1).

(4) The determination must state:

- (a) the Court's interpretation of the provision of the Constitution; and
- (b) whether or not an activity, or a provision of any Act or regulation, is unconstitutional as a result of that interpretation;

and

- (c) if a provision is unconstitutional, whether or not it can be severed; and
 - (d) if it can be severed, to what extent any remaining provisions of the Act or Regulation are valid after severance.
- (5) The Court must send a sealed copy of its determination to the subordinate court as soon as practicable.
- (6) Except as set out in subrule (7), the Court must ensure that copies of the judgment and reasons are available to the public.
- (7) However, the Court may withhold from the public a part of the reasons for its determination in exceptional circumstances:
- (a) out of respect for the rights and freedoms of a party or another person; or
 - (b) because it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.

Enforcement and costs

5.7 The Court may decide the question of costs of the Submission hearing or send the question to the subordinate court.

[5.7.1] Error in title of rule It appears that the title was copied from corresponding provisions in rr.2.12 and 4.13. It should, like r.3.10, have been titled simply "Costs" as it does not deal with enforcement and no such issues arise in the case of Submissions under this Part.

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