

**SUBSIDIARY LEGISLATION 234.11****MERCHANT SHIPPING CASUALTIES RULES**

13th August, 1974

*LEGAL NOTICE 94 of 1974.*

- 1.** The title of these rules is Merchant Shipping Casualties Rules. Title.
- 2.** In these rules, unless the context otherwise requires - Interpretation.  
 "the Act" means the Merchant Shipping Act; Cap. 234.  
 "Court" means the Court of Magistrates;  
 "inquiring officer" means the person appointed by the Minister to hold a preliminary inquiry under article 313 of the Act;  
 "investigation" means a formal investigation into a shipping casualty held under article 314 of the Act;  
 "Minister" has the same meaning as is assigned to it in the Act.
- 3.** (1) Where no other provision is made by these rules, the procedure is regulated by the laws ordinarily governing the procedure of the Court when sitting as a Court of Criminal Jurisdiction. General provisions.
- (2) Subpoenas to witnesses shall be issued by the inquiring officer, and such subpoenas shall, as far as practicable, be in the form used for summoning witnesses before the Court and shall be subject to the same rules.
- 4.** (1) When an investigation has been ordered the inquiring officer may cause a notice, to be called a notice of investigation, to be served upon the owner, master, and officers of the ship, as well as upon any person who in his opinion ought to be served with such notice. Notice of investigation.
- (2) The notice shall contain a statement of the questions which, on the information then in possession of the inquiring officer, he intends to raise during the hearing of the investigation, and shall be in the Form No. 1 in the First Schedule, with such modifications as circumstances may require.
- (3) The inquiring officer may, at any time before the hearing of the investigation, by a subsequent notice amend, add to, or omit any of the questions specified in the notice of investigation.
- (4) The inquiring officer, the owner, the master and any officer of the ship or other person upon whom a notice of investigation has been served, shall be deemed to be parties to the proceedings.
- (5) Any person who shows, to the satisfaction of the Court, that he has an interest in the investigation shall have a right to appear, and any other person may by leave of the Court appear, and such persons shall thereupon become parties to the proceedings.
- 5.** Any party may give to the other party notice in writing to Notice to produce.

produce any documents (saving all just exceptions) relating to the matters in question, and which are in the possession or under the control of such other party; and, if any such notice is not complied with, secondary evidence of the contents of the documents may be given by the party who gave the notice.

Affidavits.

6. Affidavits and solemn declarations may, by leave of the Court, be used as evidence at the hearing.

Proceedings in Court.

7. (1) Notwithstanding the absence of any of the parties upon whom a notice of investigation has been served, the Court may proceed with the investigation at the place and time appointed for the holding of such investigation.

(2) The proceedings shall commence with the production of witnesses by the inquiring officer and their examination by him.

(3) Such witnesses, after being examined by the inquiring officer, may be cross-examined by the other parties in such order as the Court may direct, and may then be re-examined by the said officer.

(4) Questions asked and documents tendered as evidence in the course of the examination of witnesses shall not be open to objection merely on the grounds that they do or may raise questions which are not contained in, or which vary from, the statement of the case, or questions specified in the notice of investigation or subsequent notices referred to in sub-rule 4(3).

(5) When the examination of the witnesses produced by the inquiring officer has been concluded, the inquiring officer shall state in Court the questions in reference to the casualty and to the conduct of the officers of the ship or other persons connected therewith upon which the opinion of the Court is desired, and, in framing the questions for the opinion of the Court, the inquiring officer may make such modifications in, additions to, or omissions from the questions in the notice of investigation or subsequent notices referred to in sub-rule 4(3) as, having regard to the evidence which has been given, the inquiring officer may think fit.

(6) After the questions for the opinion of the Court have been stated, the Court shall proceed to hear the parties to the investigation, and determine upon the questions so stated.

(7) Each party to the investigation shall be entitled to address the Court, either personally or through an advocate, to produce witnesses, or recall any of the witnesses who have already been examined for further examination, and generally to adduce evidence.

(8) The parties shall be heard and their witnesses shall be examined, cross-examined and re-examined in such order as the Court may direct.

(9) Any of the parties may also, with the permission of the Court, produce and examine further witnesses, who shall be subject to cross-examination and re-examination.

(10) When the whole of the evidence in relation to the questions for the opinion of the Court has been concluded, any of the parties

who desire so to do may address the Court upon the evidence.

(11) The Court may adjourn the investigation from time to time and from place to place.

(12) The decision of the Court shall always be given in writing and read in open court.

(13) At the conclusion of the investigation, the Court shall report to the Prime Minister, and the report shall be in the Form No. 2 in the First Schedule, with such modifications as circumstances may require.

(14) The Court may order that the costs and expenses of the investigation, or any part thereof, be paid by any of the parties to the proceedings.

**8.** An appeal from a decision of the Court made to the Court of Appeal under article 325 of the Act shall be made according to the following provisions of this rule: Appeals.

- (a) the party intending to appeal shall within fifteen working days, other than Saturdays, from the date on which the decision is given by the Court, file before such Court a notice of his intention to appeal and shall serve on such of the other parties to the proceedings as he may consider to be directly affected by the appeal a copy of such notice;
- (b) such party shall, within fifteen working days, other than Saturdays, of the filing of the notice referred to in paragraph (a), file before the Court of Appeal an application for the reversal or modification, as the case may be, of the decision given by the first Court, containing the general grounds of the appeal and shall serve a copy of such application on all the other parties referred to in the said paragraph (a) and the Registrar of the Court of Appeal shall thereupon put the appeal on the list for hearing on such date as the Court may appoint;
- (c) where the appeal is made by any party other than the Minister, the appellant shall, before the appeal is heard, give such security for the costs of the appeal, by way of deposit of money or otherwise, in such an amount as the Registrar of the Court of Appeal may direct;
- (d) the Court of Appeal may, if it thinks fit, order any person, other than the parties served with a copy of the application of appeal, to be added as a party or parties to the proceedings for the purposes of the appeal, on such terms with respect to costs and otherwise as the said Court may think fit;
- (e) the evidence taken before the Court from whose decision the appeal is brought shall be proved before the Court of Appeal by a copy of the notes of the Court or by such other materials as the Court of Appeal thinks expedient, and a copy of the evidence as well as

of the report to the Minister containing the decision from which the appeal is brought shall be transmitted by the Registrar of the first Court to the Registrar of the Court of Appeal on the request of the latter after the filing of the application to appeal;

- (f) the Court of Appeal shall have full power to receive further evidence on questions of fact as well as with respect to matters which have occurred since the date of the decision from which the appeal is brought;
- (g) the Court of Appeal shall have power to make such order as to the whole or any part of the costs of and occasioned by the appeal as the Court may think just;
- (h) subject to the foregoing provisions of this rule, every appeal shall be conducted under and in accordance with the general rules and regulations applicable to ordinary proceedings before the Court of Appeal;
- (i) on the conclusion of an appeal, the Court of Appeal shall give its decision in open court and shall send to the Minister a report of the case in such form as the said Court may think fit.

Rehearing by order of the Minister.

**9.** (1) Where the Minister directs a rehearing under article 325 of the Act, he shall cause such reasonable notice to be given to the parties whom he considers to be affected by the re-hearing as the circumstances of the case may, in the opinion of the Minister, permit.

(2) The provisions laid down in rule 8(d), (e), (f), (g), (h) and (i) shall apply to a re-hearing as if it were an appeal, and, where the Court re-hearing the case is not the Court of Appeal, as if such Court were the Court of Appeal.

Appointment of assessors.

**10.** (1) Subject to these rules, assessors for investigations into shipping casualties shall be appointed by the Court out of a list of persons for the time being approved by the Minister.

(2) If any investigation involves, or appears likely to involve, any question as to the cancellation or suspension of the certificate of a master, mate or engineer, there shall be appointed from the list of assessors referred to in sub-rule (1) not less than two assessors from Class I and Class II or from either of these classes described in the Second Schedule.

(3) Subject to any special appointment or appointments which the Court may think it expedient to make in any case where special circumstances appear to it to require a departure from these rules, saving in any case compliance with the requirements of sub-rule (2), assessors shall be appointed as follows:

- (a) where the investigation involves, or appears likely to involve, the cancellation or suspension of the certificate of a master or mate, but not of an engineer, two at least of the assessors shall be appointed from Class I;
- (b) where the investigation involves, or appears likely to involve, the cancellation or suspension of the

certificate of an engineer, one at least of the assessors shall be appointed from Class II.

11. The fees payable to the assessors appointed under rule 10 shall be fixed by the Court, having regard to the services performed by them. Fees to assessors.

FIRST SCHEDULE

FORMS

Form No. 1: Notice of Investigation

Rule 4(2)

To ..... master, mate, engineer, etc., of ..... or ..... belonging to the ship ..... of .....

I hereby give you notice that the Court of Magistrates has ordered a formal investigation into the circumstances attending the ..... and that subjoined hereto is a copy of a report (or statement of the case) upon which the said investigation has been ordered. I further give you notice to produce to the Court your certificate, the log-books of the vessel and any other documents relevant to this case, which may be in your possession.

I have further to give you notice that on the information at present obtained the questions annexed hereto are those upon which it appears desirable, and upon which the undersigned proposes to take the opinion of the Court; but these questions will be subject to alteration, addition, omission or amendment by the undersigned at the investigation after the witnesses called by him have been examined.

Dated this ..... day of ....., .....

Inquiring Officer.

Form No. 2: Report of Court

Rule 7(13)

In the matter of a formal investigation held at ..... on the ..... (here state all the days on which the Court sat) days of ....., before ....., assisted by ..... into the circumstances attending the .....

The Court, having carefully inquired into the circumstances attending the abovementioned shipping casualty, finds, for the reasons stated in the annex hereto, that the (here state finding of the Court).

Dated this ..... day of ....., .....

Magistrate

We (or I) concur in the above report.

Assessor  
Assessor

Annex to the Report

(Here state fully the circumstances of the case, the causes of the casualty, and the conduct of any persons implicated therein, and whether the certificate of any officer is either suspended or cancelled, and, if so, for what reasons).

---

SECOND SCHEDULE

Rule 10(2)

Class I - Masters

Holders of a certificate of competency as Master of an ocean-going ship granted or recognised under article 93 or 94 of the Act, with at least three years' service in any certificated capacity and two years service as a certificated Master in command of a merchant ship.

Class II - Engineers

Holders of a certificate of competency as first-class engineer granted or recognised under article 93 or 94 of the Act, with at least three years' service as an engineer in a merchant ship and two years' service as a chief engineer.

---