



The Rules Committee

Te Komiti mō ngā Tikanga Kooti

27 November 2023
Minutes 11/2023

Circular 2 of 2024

Minutes of Meeting of 27 November 2023

The meeting called by Agenda 11/23 (C 32 of 2023) convened at 9:45 am using the Microsoft Teams virtual meeting room facility.

Present (Remotely)

Rt Hon Dame Helen Winkelmann GNZM, Chief Justice of New Zealand
Hon Justice Cooper, Special Purposes Appointee and President of the Court of Appeal
Hon Justice Thomas, Chief High Court Judge
Hon Justice Cooke, Chair and Judge of the High Court
Hon Justice Muir, Special Purposes Appointee and Judge of the High Court
His Honour Judge Kellar, District Court Judge
Ms Alison Todd, Senior Crown Counsel as Representative of the Solicitor-General
Mr Jason McHerron, New Zealand Law Society Representative and Barrister
Mr Daniel Kalderimis, New Zealand Law Society Representative and Barrister
Maria Dew KC, Special Purposes Appointee and New Zealand Bar Association President
Mr Sam Kunowski, attending on behalf of Mr Rajesh Chhana

In Attendance (Remotely)

Hon Justice Kós, Judge of the Supreme Court
Ms Cathy Pooke, Parliamentary Counsel, PCO Committee Liaison
Ms Cathy Rodgers, Parliamentary Counsel Office
Ms Georgia Shen, Secretary to the Rules Committee
Ms Anna McTaggart, Clerk to the Rules Committee
Ms Georgia Barclay, incoming Clerk to the Rules Committee from 2024

Apologies

Hon David Parker MP, Attorney-General
Hon Justice O’Gorman, Judge of the High Court (able to attend part)
Hon Judge Taumaunu, Chief District Court Judge
Mr Rajesh Chhana, Deputy Secretary (Policy) in the Ministry of Justice as Representative of the Secretary of Justice

1. Preliminary

Minutes of previous meeting

The minutes of the previous meeting as provisionally circulated in **C 31 of 2023** were received and adopted, with one small change.

Matters arising:

Court of Appeal and Supreme Court Amendment Rules (C 28 of 2023)

These documents are now available and will be circulated to those Courts for comment.

Meeting dates for next year

Confirmed as 8 April, 24 June, 30 September, 25 November 2024 — Teams invitations to be circulated.

2. Improving Access to Civil Justice

The Chair led a discussion on the proposed drafting instructions for the changes to the High Court Rules (**C 34 of 2023**). These had been amended by the sub-committee and PCO as a consequence of the Committee's comments at the last meeting. The draft instructions were approved by the Committee subject to the changes noted below.

Proposed Rule 1.2 Overriding Objective

The Committee debated the proposed broader statement of the overriding objective that had been formulated by the sub-committee on the basis of the English and Welsh rule. Whilst there were aspects of this formulation that were supported by the Committee it was decided to revert to the shorter and simpler version of the objective as provided in the initial draft. It was nevertheless also agreed that the sub-committee should continue to work with PCO on a fuller formulation for consideration after conducting additional research.

Proposed Rule 9.7 Requirements in relation to witness statements

The Committee agreed not to change proposed r 9.7 by inserting the term "unnecessarily" in proposed r 9.7(2)(f) as the limitations on referring to documentation were already adequately identified.

Proposed Rule 8.4 Initial disclosure

The Committee agreed with the proposal that initial disclosure be verified on affidavit.

The Committee agreed to revoke the proposed r 8.4(2) and (3) in relation to certification non-compliance with providing initial disclosure. Directions from the Court would be appropriate for such circumstances.

The Committee agreed to change r 8.4(1B) to remove “or any person associated with the party who is directly involved in the events-” as it involved complexity and may invite argument.

Proposed Rule 7.5 Judicial issues conference

The Committee considered whether r 7.5(2), which outlined the purpose of judicial issues conferences, was necessary but agreed it served a useful purpose.

It was agreed to add in an explicit reference to a duty to cooperate in preparation for and throughout the judicial issues conference process in r 7.5(2).

The Committee also agreed to add in a reference to tikanga as an agenda item for the conferences in r 7.3(3) and to extend the matters to be considered in relation to expert evidence in r 7.5(3)(d).

Proposed Rule 7.1 Standard directions prior to judicial issues conference

The Committee agreed to change wording in r 7.1(1)(a)(i) from “within” to “no later than”.

The Committee agreed to remove the reference to applications to join third parties from the proposed r 7.1(1)(a) but asked the sub-committee to consider implementing a specific rule that addresses the issue of joining third or subsequent parties.

The Committee approved the revised dates of 20 days (plaintiff) and 40 days (defendant) for the service of witness statements.

Proposed Rule 9.5 and 9.5A Admissibility of documents in common bundle

The Committee further debated the formulation of the rule for admissibility of documents in the common bundle and approved the proposed re-wording of r 9.5A (subject to a greater focus on plain English drafting).

Proposed Rule for events arising from documents in narrative form

The Committee debated whether parties should file and serve a document outlining the events the party alleged were disclosed by the contemporaneous documents in narrative form. The required chronologies would not set out such a narrative and the objective was to remove such documents from witness statements. The proposal by the sub-committee was for this to be included in opening submissions, and that the dates for openings should be changed so that openings were served by the parties earlier.

The Committee agreed that requiring a narrative to be served was appropriate, but decided that this should be exchanged before opening submissions. The Committee also agreed that such a narrative should be served later than the witness statements. The Committee agreed that the narrative of events should be in a separate document, and that the plaintiffs narrative should be provided no later than 30 working days before trial, and the defending parties no later than 20 working days before trial. Those dates could be varied by Court directions. The Committee decided to leave the time for opening statements as currently provided.

General observations

The Committee agreed it will be appropriate to review the costs schedules to reflect the proposed changes.

The Committee agreed to discuss how to implement the proposed changes at the next meeting, including considering when the changes would be implemented, and the form of seminars (etc) that would take place before the changes took effect.

3. Supreme Court Rules 2004

Justice Kós spoke to the proposal for draft changes to the Supreme Court Rules (**C 36 of 2023**). Issues were identified with some of the proposals and Justice Kós agreed to revise the proposed rules and re-submit them to the Committee.

The Committee also agreed as a consequence to review the powers under the Rules to give greater ability of the High Court to decline to accept the filing of abusive proceedings given the increasing numbers of such proceedings being filed in that Court. For a similar reason the Committee agreed to investigate options around adjusting automatic fees waivers.

4. Law Commission Tikanga paper: He Poutama

The Committee considered whether changes to the Rules were appropriate in light of the Law Commission's paper.

The Committee agreed to make the change to the proposed rule concerning the Judicial Issues Conference to include reference to tikanga.

The Committee also agreed that the Chair should engage with relevant parties as a first stage of considering whether other changes to the Rules should be considered by the Committee.

5. Matters for Noting

The Committee endorsed the Chair's expression of thanks to the outgoing Clerk to the Rules Committee, Ms Anna McTaggart, and thanked her for the professional way in which she had undertaken her role as clerk.

Justice Francis Cooke
Chair