



## THE RULES COMMITTEE

P.O. Box 180  
Wellington

Telephone 64-4-4949 794

Facsimile 64-4-4949 701

Email: [rulescommittee@justice.govt.nz](mailto:rulescommittee@justice.govt.nz)

[www.justice.govt.nz/rulescommittee](http://www.justice.govt.nz/rulescommittee)

27 April 2005

Minutes/2/05

### **CIRCULAR NO. 34 OF 2005**

#### **Minutes of the Meeting held on Monday 11 April 2005**

The meeting called by Agenda/2/05 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday 11 April 2005 at 10.00am.

#### **1. Preliminary**

##### *In attendance*

Hon Justice Baragwanath (in the Chair)  
Hon Justice Chambers  
Hon Justice Randerson, Chief High Court Judge  
His Honour Judge Johnson, Chief District Court Judge (from 12pm)  
Judge Joyce QC  
Judge Doherty  
Mr T Weston QC, NZ Law Society representative  
Mr C Finlayson, NZ Law Society representative  
Mr K McCarron, Judicial Administrator to the Chief Justice  
Ms K Clark, Deputy Solicitor-General  
Ms L Sinclair, Deputy Secretary, Ministry of Justice  
Mr H Hoffmann, Parliamentary Counsel  
Mr R Living, Secretary to the Rules Committee

##### *Apologies*

Rt. Hon Dame Sian Elias GNZM, Chief Justice of New Zealand  
Hon Justice Fogarty  
Mr G Tanner QC, Chief Parliamentary Counsel

## *Confirmation of Minutes*

The minutes of the meeting held on Monday 14 February 2004 were confirmed as an accurate record.

### **2. Rules Revision Project**

Justice Baragwanath tabled a letter from Mr Tanner identifying various committees to undertake aspects of the rules revision work, and reported that all prospective members of the committees have agreed to participate in the project. Justice Baragwanath thanked Mr Tanner, Mr Finlayson and Don Mathieson QC for their work in devising the committees.

### **3. Omnibus 5**

The Committee considered the submission from the NZ Law Society, regarding the requirement to file skeleton arguments in advance of defended interlocutory hearings, and agreed that Justice Randerson would discuss the need for this requirement more fully with Associate Judge Faire and report back to the Committee.

### **4. District Courts costs regime**

The Committee agreed that Judge Joyce and Judge Doherty, in consultation with the District Courts Civil Litigation Committee, would review the District Court daily recovery rates in light of a sample of representative cases, and report back to the Committee at the meeting of 11 July. It was also agreed that the Law Commission should be consulted on this matter.

The Committee agreed to a request from the Ministry of Justice to make an urgent amendment to the District Courts Rules to enable registrars to set costs for liquidated cases.

### **5. Cross-border cases**

The Committee noted that this work has been subsumed into the Rules Revision Project, and that Professor Campbell McLachlan has agreed to chair the Cross-border Disputes Sub-committee.

### **6. Draft Hague Convention re choice of forum**

The Committee noted the material provided by the Ministry of Justice regarding the draft Hague convention on exclusive choice of court agreements, and agreed that the Cross-border Disputes Sub-committee would consider the material and, if necessary, draft a submission to the Ministry for the Committee's approval.

### **7. Execution**

Ms Sinclair confirmed that Peter Fantham, High Court Registrar at Christchurch, would be available to assist the Execution Sub-committee.

## **8. District Court claims**

The Committee considered the response of the District Court Claims Sub-committee to submissions on the initial consultation paper, and noted that any rules to implement the proposed model should include provision for the defendant to have immediate recourse in respect of vexatious or improper claims. The Committee agreed to distribute the Sub-committee's response to all those who made submissions, and that the period for consultation would be one month in order to allow the Committee to consider any feedback at its next meeting.

## **9. DCR 580**

The Committee noted that Ms Sinclair will report back at the next meeting on the difficulty in principle with collections registrars performing work of a judicial nature.

## **10. Interlocutory appeals**

The Committee noted Mr Weston's memo and Andrew Beck's article in *The New Zealand Law Journal*, and agreed that Justice Chambers would investigate the number of appeals to the Court of Appeal on interlocutory matters and report back at the next meeting, before any decision was taken about the possible introduction of a leave provision. It was also agreed that the Clerk should research the practice in Australia and the UK in respect of interlocutory appeals, for consideration at the next meeting.

## **11. Protective costs orders**

The Committee noted the *Corner House* case, and agreed that the Clerk should research costs orders in 'public interest' cases, with a view to possibly amending HCR 46. The Committee also noted several related examples: *Beddoes* orders, the interveners' undertaking as to costs in *Hosking v Runting* [2003] 3 NZLR 385, and the Environmental Legal Assistance Fund administered by the Ministry for the Environment.

## **12. Federal Court of Australia website**

The Committee noted the article provided by Mr Finlayson regarding features of the Federal Court of Australia website. The Committee also noted that the AIJA annual conference is to be held in Wellington on 7-9 October with the principal theme of "Technology in the Courts".

The Committee agreed to consider the inclusion of an Electronic Matters Sub-committee within the Rules Revision Project, although it may proceed on a longer timeframe. It was also agreed that Mr Finlayson would investigate the possible composition of such a Committee, which should include a Ministry of Justice representative, and report back directly to Justice Baragwanath, the Chief Justice, and the Chief High Court Judge.

**13. Self-incrimination privilege in Anton Piller/Mareva cases**

The Committee noted the proposal of the Australasian Chief Justices' Harmonisation of Rules on Discovery Committee to remove the privilege against self-incrimination for search orders and freezing orders. Ms Sinclair undertook to raise this issue with her colleague Andrew Bridgman, Deputy Secretary (Policy & Legal Branch), in respect of the Working Group on Trans-Tasman Court Proceedings, and report back to the Committee.

**14. High Court criminal rules**

The Committee noted Justice Panckhurst's draft memorandum to members of the Criminal Rules Sub-committee. Ms Sinclair undertook to contact Justice Panckhurst to discuss financial support for the Sub-committee.

The Committee also noted that it has the power to make criminal rules for indictable offences only, and that the Law Commission is undertaking a review of the law for summary proceedings.

**15. Electronic discovery**

The Committee noted that Mr Finlayson will provide an update on the work of the Electronic Discovery Sub-committee at the next meeting.

**16. General business**

The Committee agreed that the Clerk should investigate the possibility of rules about applications to intervene, with particular reference to an article on the topic by an Australian judge in the Australian Law Journal several years ago (Mr Finlayson to provide citation).

The meeting concluded at 1.00pm. The next meeting will be held on Monday, 23 May 2005.