



THE RULES COMMITTEE

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Monday 26 February 2007

Circular No. 7 of 2007

Minutes of Meeting held on Monday 12 February 2007

The meeting called by Agenda/1/07 was held in the Chief Justice's Boardroom, High Court, Wellington, on Monday 12 February 2007 at 10am.

1. Preliminary

In Attendance

Hon Justice Baragwanath (in the Chair)
Rt. Hon Dame Sian Elias GNZM, Chief Justice of New Zealand
Hon Justice Randerson, Chief High Court Judge
Judge Joyce QC
Judge Doherty
Dr David Collins QC, Solicitor-General (incoming)
Mr G Tanner QC, Chief Parliamentary Counsel, Parliamentary Counsel Office
Mrs K Clark, Deputy Solicitor-General, Crown Law (outgoing)
Ms L Sinclair, Deputy Secretary, Ministry of Justice
Mr A Beck, New Zealand Law Society representative
Mr J Orr, Chief Legal Counsel, Ministry of Justice
Dr D Mathieson QC, Special Parliamentary Counsel, Parliamentary Counsel Office
Ms Suzanne Giacometti, Parliamentary Counsel, Parliamentary Counsel Office
Mr K McCarron, Judicial Administrator to the Chief Justice
Ms G Smith, Secretary to the Rules Committee
Dr Heather McKenzie, Clerk to the Rules Committee

Apologies

Hon Justice Chambers
Hon Justice Fogarty
Mr B Brown QC, New Zealand Law Society representative
Mr Charles Chauvel MP

2. Welcome to new members

The Chair welcomed the Solicitor-General and the appointment of Mr Chauvel, delegate of the Attorney-General to the Rules Committee and acknowledged the contribution that each would make.

Confirmation of minutes

The minutes of the meeting held on Monday 4 December 2006 were confirmed as an accurate record.

Matters arising

i. Vote of thanks to former Clerk

The Chair proposed and the meeting endorsed with enthusiasm a vote of thanks to the outgoing Clerk to the Committee, Bernice Ng for her perceptive, energetic and invaluable contribution to its work.

ii. Search of Court records

The sub-committee formed by the Chief Justice will advise the Rules Committee regarding search of Court records in due course as to the need for rule changes.

iii. Mediation

The Chair will discuss with David Williams QC during the week of 19 February 2007 the need for, and practicality of, introducing mediation in the High Court Rules

3. District Court Rules

In response to Justice Chambers' request that discussion of the draft District Court Rules be deferred until the April 2 meeting, the Committee decided to defer discussion.

Because of its importance and urgency, a special Rules Committee meeting is set for Friday 2 March.

The Chair thanked Judges Doherty and Joyce JJ for their tireless and able work. The Solicitor-General applauded their endeavours as an important step in the process of increasing access to justice.

The latest amendment proposals will be integrated into the draft rules, and an up-dated copy distributed to Committee members before the 2 March meeting.

4. High Court Rules

Dr Mathieson QC presented a timetable for the consultation and discussion process. This was accepted, and is as follows:

6 March 2007	Steering Committee meeting (final pre-consultation meeting)
9 March 2007	Alterations decided at meeting of 6 march 2007 to have been incorporated, and distributed to entire Rules Committee
2 April 2007	Rules Committee meeting: Committee to discuss documents distributed on 9 March
5 April 2007	The following bundle of documents to be distributed to all Rules Committee members, District Law Societies, Bar Associations, New Zealand Society of Accountants, New Zealand Business Round Table, AMINZ etc:

Complete Rules
Complete Forms
Constituency Petition Forms
Comparative analysis with existing High Court Rules
Scheme document of Rules
Memo outlining significant changes (from Dr Mathieson)
A Law Talk explanation, with an invitation to visit the appropriate web site, will have been written for publication at about the same time

- 30 June 2007 Submissions to consultation papers distributed on 5 April due to the Secretary of the Rules Committee, Gina Smith
- 2nd half of July 2007 Final meeting of Steering Committee to consider submissions
- 3 September 2007 Rules Committee to consider revised draft from Steering Committee, and sign off on the Rules

Resourcing issues were identified with respect to Ministry of Justice involvement in the project, and the Chief Justice expressed the hope that the Ministry and Committee could work in tandem lest there be duplication of effort or slippage. Ms Sinclair will meet with Ministry of Justice staff to finalise timing/ resource issues.

Dr Mathieson QC reiterated that enactment of the Rules will require a short statute unlikely to invite controversy or involve significant Ministry resources. Their main areas of substantive effect will relate to electronic filing and service. The need not to lose momentum was identified.

The Chair thanked Dr Mathieson QC for his work on the project.

5. High Court Amendment Rules 2007

It was decided, with Mr Beck dissenting, that the Rules Committee does have the jurisdiction to make a definition of 'minor' different from that in the Age of Majority Act 1970 by virtue of ss 4 (2) and (3) of that Act, and s 51C Judicature Amendment Act 1908. This is on the basis that such a change remains within the scope of 'the practice and procedure of [the higher courts]' (s 51C Judicature Amendment Act 1908).

Hon Justice Randerson proposed several changes to Ms Giacometti's draft, which were accepted by the Committee:

- r 86D (1) Insertion of 'and may be made ex parte,' before 'unless the Court orders otherwise.'
Note: consistency with other rules concerning ex parte applications needs to be checked
- r 86D (2)(b)(ii) 'an adult' to be consistent with r 82
- r 82 Delete 'weakness' and change to: **incapacitated person** means a person who by reason of physical, intellectual or mental impairment' (exact wording left to Ms Giacometti)
- r 89 (2) Test of 'knowledge' too high, change to a test of 'belief on reasonable grounds'
- r 94 (4) Addition at the end of: 'without leave of the Court'

Ms Giacometti will incorporate the changes, and redistribute to the Committee for confirmation.

Judge Joyce QC raised the issue of consistency with District Court Rules. Mr Tanner pointed out that the District Court Rules are affected and informed by statutes including the Harassment Act 1997.

6. Class Actions

The Chair invited the Committee to determine whether it should:

- i) initiate this debate; and
- ii) if so, in what manner?

It was decided that the Committee would circulate a consultation paper on 30 April 2007. The Ministry of Justice's public law team's input would be via submissions to this paper.

Several changes were suggested to the draft consultation paper received from Fogarty J, which will be made by the Clerk to the Committee.

7. Ministry of Justice Survey

The Chair referred to the report which contains data as to public confidence as to means of accessing justice and invited the Committee to consider whether there were aspects to which it should respond. The Chief Justice observed that such surveys are neither new nor surprising in their findings; and are a crude measure of public perception.

While the desirability of the Committee contributing to access to justice was endorsed, it was considered that the Committee's role is limited to the efficient and effective performance of its current programme.

8. General business

The additional Committee meeting on Friday 2 March was confirmed.

The meeting closed at 12.25pm.