THE RULES COMMITTEE

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29 June 1998

Minutes/2/98

CIRCULAR NO 26 OF 1998

Minutes of the Meeting held on Friday 12 June 1998

The meeting called by Agenda/2/98 was held in the Judges' Common Room, High Court, Wellington, on Friday 12 June 1998 commencing at 9.30 am.

1. **Preliminary** **Action By**

(a) *In Attendance*

The Hon Justice Gallen (Acting Chief Justice)
The Hon Justice Doogue (in the Chair)
The Hon Justice Fisher
Chief District Court Judge Young
Mr K McCarron (for the Chief Executive, Department for Courts)
Mr R S Chambers QC

(b) *Apologies for Absence (Item 1(a) of Agenda)*

The Chief Justice (The Right Hon Sir Thomas Eichelbaum GBE)
The Hon Justice Hansen
The Attorney-General (the Rt Hon Douglas Graham MP)
The Solicitor-General (Mr J J McGrath QC)
Mr C R Carruthers QC
Dr M Palmer (Deputy Secretary for Justice)
Mr G E Tanner (Chief Parliamentary Counsel)

(c) *Confirmation of Minutes (Item 1(b) of Agenda)*

On the motion of Mr Chambers, seconded by Justice Fisher, the minutes of the meeting held on Friday 27 February 1998 were taken as an accurate record and were confirmed.

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(d) *Matters Arising from the Minutes (Item 1(c) of Agenda)*

Justice Doogue noted that matters of any substance are on the agenda for the meeting.

2. **Matters referred to Parliamentary Counsel (Item 2 of Agenda)**

(a) *Election Petition Rules*

Mr Tanner advised through the Secretary that the Election Petition Rules are in the process of being drafted. — Mr Tanner

(b) *Insolvency Rules*

Mr Tanner advised through the Secretary that he is still waiting for input from Justice Hansen's sub committee. — Justice Hansen

(c) *Rule 183 and Proposed New Property Law Act*

Justice Doogue noted that this item awaits a new Property Law Act when that is passed.

(d) *Search of Court Records*

Justice Doogue reminded the Committee that the Chief Justice had raised the point that if there is an application for leave to commence intended proceedings it is open to search the record. He said that Mr Tanner's draft gives a right of search in three circumstances: if the interlocutory application relates to a proceeding that has been determined, if the interlocutory application relates to an intended proceeding and leave to bring the proceeding is refused and with the leave of a judge in any case where the interlocutory application relates to an intended proceeding and the judge is satisfied that the proceeding has not been commenced within a reasonable time. The Committee agreed that this draft meets the situation. — Mr Tanner

(e) *Summary Judgment Procedure*

Justice Doogue referred to Parliamentary Counsel's draft (Summary Judgment/3/98).

Mr Chambers referred to r 136(2) and suggested that the words "claim in the plaintiff's statement of claim" should read "cause of action in the plaintiff's statement of claim". He said that the exiting ambiguity raises the policy issue of whether it should be possible for a defendant to use this procedure when the defendant wants to challenge one cause of action; he said that it is open to abuse by the defendant who tries to buy time and picks off a "make weight" cause of action.

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Justice Fisher said that the wording should read "satisfies the court that no cause of action in the plaintiff's statement of claim could succeed".

Justice Doogue said that that wording is potentially ambiguous because it is still capable of being read as applying to an individual cause of action and suggested, "the plaintiff's claim cannot succeed".

The Committee agreed to refer it back to Parliamentary Counsel on the basis that the emphasis should be that none of the causes of action in the plaintiff's statement of claim can succeed.

Mr Chambers referred to r 137 and suggested that the words "if the party applying for summary judgment satisfies the court" be replaced by "if the plaintiff satisfies the court" on the basis that r 137 would not apply to a defendant's application.

Justice Fisher queried whether the rule can apply to counter claims and third party notices.

Mr Chambers said that counter claims are dealt with under r 144.

Justice Fisher asked whether it would do any harm to leave the word "party" and Mr Chambers and the Committee agreed to leave the rule as originally drafted.

Mr Chambers referred to r 141 which requires a notice of opposition and affidavit to be filed and served at least three days before the hearing. He pointed out that the average lay litigant will not realise that under r 14 Saturday, Sunday, Christmas Day, New Years Day and Good Friday are excluded from the computation from time when the period fixed is less than six days. He suggested that the term "working days" should be used.

Justice Doogue noted that the term "working day" is defined in r 3 and excludes the period from 25 December to 15 January, and the Committee agreed that it is appropriate for this definition to apply in r 141.

Mr Chambers noted that a consequential amendment will be necessary to Forms 13 and 13A and he suggested that the definition of the term "working day" be included in the forms also.

Mr Chambers suggested that there is no need for r 142A which provides that the statement of defence be filed within 30 days after any application by a plaintiff for judgment is dismissed because the court must always give directions on the future conduct of the proceeding under r 142.

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Justice Doogue raised the possibility that the application might be dismissed by consent, also noted that in the existing summary judgment rules r 142A was inserted by the High Court Amendment Rules (No 2) 1988. Justice Doogue assumed that something must have happened to cause it to be put in and suggested that the Committee should leave it there.

Justice Fisher suggested that r 142A begin with the words "subject to directions under r 142", and he noted that 30 days is a generous allocation of time given that the defendant will already be familiar with the proceedings.

Justice Doogue agreed that 30 days is almost an incentive to a defendant to apply if the defendant wishes to waste time.

The Committee agreed that r 142A should refer to 14 days.

Mr Chambers then referred to r 4(2) on page 5 of the draft which amends Form 13. He referred to the explanation that the plaintiff may obtain judgment by default if the application for summary judgment is dismissed and the defendant fails to file a statement of defence. Mr Chambers noted that the rules say that the defendant does not necessarily have to file a statement of defence and if a summary judgment application is dismissed the matter will, in any event, be determined by directions from the judge about the future conduct of the litigation.

Justice Doogue queried whether this form should be brought into line with the ordinary notice of proceeding.

Mr Chambers said that it is odd that no statement of defence is required in summary judgment and Justice Doogue noted that defendants do often file them and queried whether it should be compulsory.

Justice Doogue noted however that the presence or absence of a statement of defence makes no difference.

The Committee agreed that rule 4(2) is unnecessary in respect of the change to Form 13 unless there is some reason for it of which the Committee is not aware.

Justice Doogue noted also that removing this amendment to Form 13 would remove the confusing reference to the time limit which could also be such other time as fixed by the judge under r 142.

Mr Chambers then referred to Forms 13 and 13A and noted that technically it requires counsel to sign certifying that the statement of

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defence has been filed and that the defendant has applied to the court which technically at time of signing are not true.

Justice Doogue said that it is really signed in escrow until it is served and the Committee agreed.

Justice Doogue then referred to the memorandum at the end of the first schedule. Items 1 and 2 contain the advice to consult a solicitor and on legal aid which will be inappropriate because the plaintiff has already commenced proceedings. Items 3 and 4 of the memorandum would remain.

The Committee agreed that the summary judgment rules could be referred back to Parliamentary Counsel and could then be circulated for concurrences.

Justice Doogue also suggested that the rules should be scanned so that the time periods such as "days", "working days" and "clear days" and any other terms be made consistent. This matter was referred to the Parliamentary Counsel Office accordingly. — Mr Tanner

3. **Matters Referred for Statutory Amendment**

(a) *Expert Advisers*

Justice Doogue advised that the Cabinet Legislation Committee has approved this item for inclusion in the Judicature Amendment Bill in the 1998 legislative programme. It is also proposed to include provision for the combination of the High Court and District Court Rules Committee with a view to the Bill being introduced on 16 June and passed by 1 December.

(b) *Grant of Probate or Letters of Administration to an Attorney*

The Chairman advised that this is now included in the Statutes Amendment Bill No 3, having being split off from the Statutes Amendment Bill No 2. The Secretary advised that she had appeared before the Government Administration Select Committee. There had been an objection raised by the Law Society on the basis that they could not see the necessity for the amendment and the Secretary tabled before the Committee the papers that were available to the Rules Committee. The Committee agreed that the Secretary should write to Justice Barker and Mr Robertshawe once the amendment has been passed. — Secretary

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(c) *Removal of proceeding from High Court and Court of Appeal*

Justice Doogue advised that this has been enacted in the Judicature Amendment Act 1998.

(d) *Review of Masters' Decisions*

Justice Doogue noted that this has been passed in the Judicature Amendment Act 1988 and comes into force by Order in Council. He noted that rules are required. — Secretary

(e) *Service on Companies*

Justice Doogue noted that s 387 of the Companies Act has now been amended.

(f) *Summary Judgment Procedure*

Justice Doogue advised that this matter has been amended by the Judicature Amendment Act 1998 and that rules are now required. — Secretary

(g) *Winding Up - Masters' Jurisdiction*

Justice Doogue advised that the Parliamentary Counsel Office now has instructions from the Ministry of Justice to include this in the Statutes Amendment Bill. — Mr Tanner

4. **Appeals**

(a) *Appeals from the District Court*

Justice Doogue referred to his paper circulated under Appeals/1/98. He referred to the consensus at the last meeting that there be consistency between the District Court, High Court and Court of Appeal and the decision that the appeal time be consistent at 28 days. He noted that to achieve a similar position between the District Court and the High Court as between the High Court and the Court of Appeal it would be necessary for the whole of Part V of the District Courts Act 1947 to be reconsidered with a view to simplifying ss 71 to 78 of that Act along the Lines of s 66 of the Judicature Act 1908, with requisite provisions in the High Court Rules to reflect the provisions in the Court of Appeal Rules. Justice Doogue then took the Committee through the rest of his paper.

Mr Chambers referred to r 61C(6) which provides that where a decision of a Master has been the subject of a review and then an appeal the leave of the High Court is required to go to the Court of

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Appeal, and asked the Chief District Court Judge whether there is any way of having review of the judges decision by two others.

Justice Doogue referred to the procedure in the High Court where interlocutory matters were dealt with in the chambers list and a party dissatisfied with the outcome could apply for a review of that decision and have a considered hearing.

Mr Chambers considered that there must be provision for the review of any judicial decision however minor and he noted that even a consent timetable order for example may need review.

Chief Judge Young said that an interlocutory hearing which determines substantive proceedings should be subject to appeal. In other cases he considered there should be a right of review and appeal with leave only.

Mr Chambers said the difficulty arises where a review in the High Court follows a detailed argument with a considered decision from the Master.

Chief Judge Young said that there can be resource difficulties in providing two judges to review an interlocutory matter.

Justice Fisher suggested that it may be feasible in the District Court to have a practice note which gives guidelines indicating that when the interlocutory matter has been fully argued the dissatisfied party should seek leave to appeal.

The Committee acknowledged that there could not be two exactly similar systems for the District Court and the High Court because of the special relationship of Masters in the High Court.

Mr Chambers suggested that in the District Court there would be a choice between review and appeal on the basis that leave to appeal would be most unlikely to be given if the decision were not first subject to a review, but that seeking leave to appeal would be appropriate in a case that has been fully argued and been the subject of a considered decision.

Justice Doogue said that in the High Court every decision should be the subject of a review first and, now that two judges are made available in the High Court this can stop a lot of minor matters going to the Court of Appeal.

Justice Fisher said that if a statement of claim were struck our on the basis that it did not disclose the cause of action, and there were in fact

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a major issue of law involved, whether the matter goes to the Court of Appeal could lie in the discretion of the High Court judges.

Justice Doogue said that the amended rule could provide that where the decision is a final one leave could be obtained either from the High Court or the Court of Appeal. Justice Doogue cited the example where an application for summary judgment was dismissed and it took two years to get to the Court of Appeal. He said that there should be review in the High Court and no further right of appeal in such cases. He noted that the Court of Appeal will at some stage be the final court and it should be determining fundamental points after a considered decision of the High Court.

Justice Doogue agreed to leave the discussion at that point but to put it on the agenda for the next meeting, with the issues relating to the District Court and the High Court as separate items. — Secretary

Chief Judge Young agreed to get one of his staff to prepare a paper for the next meeting on how this would actually work in the District Court. — Chief Judge Young

The Chairman, with the Assistance of the Secretary, agreed to prepare a similar paper for the High Court. — Justice Doogue/ Secretary

Justice Doogue referred to paragraph 10 of his paper (Appeals/1/98) and said that this needs to be prepared as a separate item at some stage for a future agenda. — Secretary

5. **Commerce**

(a) *Penalties, Remedies and Court Processes under the Commerce Act 1986*

Justice Fisher considered it inappropriate for the Rules Committee to make submissions to a department on law changes and said that any comments would need to be confined to machinery provisions.

Justice Doogue commented that there is actually no need to retain a commercial list at Auckland now that good case management is giving the same results.

Mr Chambers agreed that the commercial list is now handling a comparatively smaller number of files and he queried whether it is sensible to preserve it as a separate entity.

The Committee agreed that it did not wish to comment on question one raised by the Ministry and that questions two and three are really matters for the Judges. The Committee also agreed that it did not wish — Secretary

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to comment on question four but noted that the High Court Rules already provide for class actions. The Committee agreed that the Secretary should respond accordingly.

6. **Costs**

(a) *Generally*

Justice Fisher identified three aspects to consider: the constitutional framework of having half the provisions in the rules and half the provisions in the practice note, the details arising from submissions which he has catered for in a new draft, and his change of having three schedules of time depending on the level of complexity of the case. Justice Fisher noted in addition that there have been suggestions there be more than one, say three, daily rates to cater for different levels of seniority and expertise.

Justice Gallen said that the Legal Services Board is currently looking at the reallocation of legal aid so as to combine the categorisation of counsel and the categorisation of work without compromising the number of cases that receive legal aid.

Justice Fisher said that he has come to realise that there is a flaw in his proposition in that it is envisaged that the scale should recompense a succeeding party for two thirds of the actual out of pocket expenses and that comes about through r 46(3)(b) when the daily rate is set. The problem is that when you go to the scale costs are penalised again because the times are conservative. For that reason he suggested that there be three scales depending on the magnitude of the case. By way of example where there is currently one day allocated for the preparation of a statement of claim he suggested that a scale two case would have two days and a scale three case five days.

Mr Chambers suggested that the scale could be applied to differing parts of the case so that a detailed interlocutory application in an otherwise small case could be awarded costs in a higher scale.

Justice Fisher said that there is also some overlap with the rule for reduced costs or increased costs in the judge's discretion. He considered whether it should be dealt with in that context but decided that the discretion should remain independent for the exceptional case. He said that he and Mr Chambers could convert the existing scale into three separate bands.

Justice Fisher/ Mr Chambers

Justice Doogue said that the terminology could link up with the case management bands.

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Justice Doogue said that the allocation for the statement of defence is also too low and that the time allocation should be the same as for a statement of claim. He suggested that these figures could be referred to Master Faire because of the Masters' familiarity with interlocutory proceedings. — Justice Fisher/ Mr Chambers

The Committee agreed that the rules, subject to any further discussions on the matters of detail, could be referred to the Parliamentary Counsel Office now.

The Committee then turned its attention to the matters of detail.

Rule 46:

Mr Chambers noted that r 46(1) provides for costs to be in the discretion of the court but draft r 46 then goes on to provide a detailed "shopping list" on how the discretion will be exercised. He suggested that the rule might say that while it is all in the discretion of the court unless there are special reasons to the contrary costs will be determined in accordance with these rules.

Chief Judge Young suggested that the point can be met by the fact that r 46(2) and (3) commenced with the words "unless the court in its discretion directs otherwise.

Justice Doogue referred also to r 46(1) in the High Court Rules which says that except as expressly provided in any Act all matters relating to the costs of or incidental to any proceeding or any step therein shall be in the discretion of the Court. He suggested that that provision could be mirrored in the new draft.

Mr Chambers then addressed draft r 46(4)(b) and said that it is unclear whether the rule is speaking of a suitable rate for the particular counsel whose costs are being met. He said that that leads on to the question as to whether the parties can put in evidence for the purpose of the court exercising its discretion taking into account factor (b).

Justice Fisher said that the intention was not to address particular counsel appearing but rather to provide for a daily rate suitable for cases of the nature of the one before the court.

Mr Chambers said that factor (b) will be taken into account in fixing the practice note and that counsel may want then to argue that if the factors in draft rule 46(4) are applied the result does not equal two thirds of what it is reasonable to charge in the case.

Justice Fisher said that what he had in mind was that the court would go straight to draft r 46(4)(d) and apply the applicable practice note

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and that only if there were no practice note would the court look at items (a) to (c). He said that he understands Mr Chambers to be reading it that even when there is a practice note the judge goes back to (a) to (c) and puts a gloss on it when applying the practice note.

Justice Doogue suggested that draft r 46(1)(b) should be situated in relation to the discretion as a whole not to the daily rates.

Justice Fisher said that the intention was to arrive at a view of how long the case took and then arrive at a daily rate which would in practice give a result of two thirds of what the case actually cost.

Mr Chambers said that the guiding two thirds principle should apply when the Chief Justice comes to fix the daily rates.

Justice Doogue pointed out that if costs are not fixed in accordance with the second schedule and the practice note then the two thirds rule needs to apply then as well.

Justice Fisher said that in practice under draft r 46(3) and (4) in every case the court would be using the daily rate with the two thirds guideline built into them. Even for something not identified in the second schedule would still get guidance from using the second schedule and still be applying these daily rates.

Mr Chambers suggested that draft r 46(4) be split into two parts: one to provide for such rate as the court thinks appropriate having regard to any applicable practice notes on daily rates, and secondly in fixing practice notes about daily rates the Chief Justice will take into account 46(4)(a) to (c) and that (a) to (c) would also be applicable in the absence of a practice note.

Chief Judge Young said that the discretion of the Chief Justice is in setting the daily rates not the percentage to be applied to them. Given that the two thirds is the basic principle for discussion he considered it inappropriate to leave that to the discretion of a practice note.

Justice Doogue suggested that the two thirds principle should come under draft r 46(3) as part of the general principles.

Mr Chambers queried whether it is then open to a party whose costs under the scale amount to only forty percent of his actual costs to apply to the court and say the scale should not apply and that he should get two thirds of his actual costs.

Justice Doogue said that that would be overcharging which is the whole reason for the regime.

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Justice Fisher said that the intention is that except in exceptional cases the costs will be two thirds of what is arbitrarily fixed in the schedule not two thirds of what is actually charged.

Justice Fisher said that it may be clearer if draft r 46(4)(b) referred to charging in accordance with the second schedule ie these provisions.

Justice Fisher said that the general aim is that the daily rate will equal two thirds of the rate for the time expended in accordance with the second schedule.

Mr Chambers asked whether it is envisaged that anyone should be able to make a submission that the daily rate is unreasonable because it does not reflect two thirds of a fair fee.

Justice Fisher said that it is not envisaged that that submission should be able to be made.

In that case, Mr Chambers said that the two thirds principle is simply an instruction to the person fixing the daily rate.

Justice Gallen said that it should therefore go in that part of the rule relating to the fixing of the daily rate.

Justice Fisher said that the rules should be able to operate without a practice note and that if there is a practice note the judge should disregard draft r 46(4)(a) to (c). For that reason he considered that draft r 46(4)(d) should be listed before (a) to (c). Justice Fisher said that in setting the practice note the Chief Justice will look at the default position.

After discussion the matter was referred to Justice Fisher to redraft in the light of the comments received. — Justice Fisher

Rule 47

Justice Fisher then referred to draft r 47(5)(c) which provides that where costs are payable from a fund and the costs claiming party was a necessary or proper party to the proceeding affecting the fund and did not act unreasonably or improperly in the proceeding the court may order a party to pay indemnity costs. He said that he has a concern that it may be used by a beneficiary in family protection proceedings and that it might be better to delete it.

Justice Doogue said that it has its origin in cases of people under disability.

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After discussion the Committee agreed that this provision should be deleted.

Rule 48

In draft r 48A Mr Chambers noted that there needs to be a reference to the banding process.

Justice Doogue raised the issue of how to define the term "interlocutory".

Justice Fisher said that all costs are discretionary so ultimately nothing will turn on the definition of what is interlocutory.

Justice Fisher agreed to redraft these rules in consultation with Mr Chambers and then refer the matter straight to the Parliamentary Counsel Office, with a view to asking Mr Tanner if he can arrange for a final version for the next meeting. — Justice Fisher/ Mr Chambers

Mr Chambers said that he would consult the Law Society and Bar Association on whether the time allocations are fair. — Mr Chambers

Justice Doogue noted in respect of the second schedule that the words "notional professional" need to be deleted from the beginning of the first column.

Justice Fisher said that he was trying to emphasise the point that this is meant to be a reimbursement for reasonable not actual time and Justice Doogue suggested using the word "allocated". The Committee agreed.

7. Evidence

(a) *Cross Examination in Review Proceedings*

Mr Chambers said that he had had second thoughts about the desirability of proceeding on this matter and the Committee agreed that it should be removed from the agenda, subject to Mr Chambers checking with Mr Carruthers. — Mr Chambers

(b) *Evidence by Affidavit*

Justice Doogue referred to the paper by the Judges' Clerk and said that it will shortly be answered by the summary judgment rules and a pending court decision which will put the matter to rest. He said that he had asked the Judges' Clerk to look at r 517 to see if it affected other rules. He suggested the matter be referred to the Parliamentary Counsel Office for consideration and to look at the rules generally in — Mr Tanner

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relation to affidavits by corporations to make sure that the provisions are consistent.

Justice Gallen said that the important thing is knowledge and authority and that does not necessarily come by defining the person to make the affidavit.

The Committee agreed and the matter was referred to Parliamentary Counsel on that basis.

8. **General**

(a) *Servicing of the Rules Committee*

Mr McCarron said that there is currently a review being undertaken of the National Office and tied in with that is the issue of where resources are to be located. He is not therefore able to report with any certainty on progress for servicing of the Rules Committee. — Mr McCarron

(b) *Uniform Draft Rules in Australia*

Justice Doogue said that he had tabled this paper for information at this stage. Justice Doogue advised that there are not yet any draft rules. He said that initiatives date back to the Council of Chief Justices of Australia and New Zealand in 1994. Because the difficulties in cost drafting initiatives have focussed on admiralty, corporations law and appeals. The Australian institute of judicial administrators has been asked to draft model rules but the project is a long term one which is proceeding at a sedate pace.

Justice Fisher agreed that if there is to be a move towards uniformity then New Zealand should be part of the process, although the Committee agreed that the practical aspects are fearsome.

The Committee agreed that we should be part of the process rather than outside it.

9. **Habeas Corpus**

(a) *Law Commission Report*

Justice Doogue agreed to put out a memorandum and that the matter could be dealt with by an exchange memoranda as being essentially an exercise in identifying matters in the proposed legislation which should be the subject of a rule. The matter was referred to the Secretary to coordinate the responses and identify any areas of disagreement. If need be any outstanding issues can be resolved by a telephone conference. — All

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The matter could then be referred to the Parliamentary Counsel Office to draft any suggested amendments to the rules and to s 54C.

10. **Insolvency Rules**

(a) *Debtors petitions and statutory holidays*

Justice Doogue said that the proposal is to file the debtors petition with the official assignee rather than the High Court.

Justice Fisher presumed that there would be some processing by the Official Assignee because filing with the Official Assignee would be different from filing in court where the parties themselves would progress the matter.

Chief Judge Young pointed out that filing the debtors petition in court is the act of bankruptcy.

Justice Doogue said that he understood filing with the Official Assignee would become the act of bankruptcy.

Justice Gallen said that he did not understand that to be what is suggested because the paper refers to filing with the Official Assignee to enabling staff to assess the debtors position before a petition is filed.

Mr McCarron said that the debtors petition process was seen as an administrative one and that it was more appropriate for the Ministry of Commerce to deal with it. His understanding of the earlier discussions was that the intention was to remove the reference to filing in court.

Justice Gallen said that that raises the issue of what the act of bankruptcy is to be and Justice Doogue said that filing with the Official Assignee would then be the act of bankruptcy.

Chief Judge Young raised the issue about public record and Mr McCarron said that the Ministry of Commerce had a sophisticated electronic data system and they are in practice better placed to deal with the flow on consequences.

Chief Judge Young said that the real issue is that there should be some public record which is independently verifiable.

The Committee agreed that the matter should be referred back for further elucidation in particular on the provisions of the Insolvency Act and the rules that would require amendment. — Mr McCarron

The point from Master Gambrill about statutory holidays was referred to the sub committee dealing with the insolvency rules. The Secretary — Secretary

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agreed to enquire as to when Justice Hansen's sub committee can report.

11. **Interlocutory Matters**

(a) *Generally*

This matter was deferred until the next meeting.

12. **Judgment**

(a) *Time and mode of giving judgment*

Justice Doogue said that this issue arose as a result of the death of Justice Temm.

Justice Fisher said that in practice the system operates such that where a decision is not read in open court it takes effect from the time that it is promulgated by being released to the parties and the public.

Justice Fisher noted that r 540 is anachronistic in that it deals with a judgment in open court.

Mr Chambers suggested deleting the words "in open court" so that judgment would be given when it is read or pronounced by a judge or given out by the registrar.

Justice Doogue raised the issue of what the position should be if the Judges' Associate is to advise the parties. He noted further that there is a reference to the rule to "of the court" when chambers judgment is "of the judge".

Mr Chambers said that there are occasions when a judge will issue a judgment but reserve the right to make amendments for grammatical or other minor textual reasons.

Justice Fisher said that it is important not to confuse the decision with the reasons for it.

Justice Doogue expressed the agreement of the Committee (subject to any comments by Parliamentary Counsel Office) that the rule 540 should read "judgment shall be deemed to be given when the decision is read or pronounced by the judge with or without reasons", and the Committee also agreed that the proviso should remain as presently worded. — Mr Tanner

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13. **Pleadings**

(a) *Certificate by Lawyer responsible for document*

Justice Doogue noted that Mr Carruthers is to report on this item. Mr Carruthers

(b) *General - written briefs rules*

Justice Doogue noted that Mr Carruthers is to report on this item. Mr Carruthers

14. **General Business**

Mr Chambers pointed out that r 236A provides that in an application for an interlocutory injunction the applicant must give an undertaking in terms of r 630. He noted that we have now repealed r 630.

Mr Chambers said that this is a procedural matter which Mr Tanner had raised with him and the Committee agreed to refer it to Mr Tanner to redraft accordingly. Mr Tanner

Mr Chambers also queried whether it is necessary for the parties to file an undertaking at all and suggested that the rules be amended to provide that every interlocutory injunction is sought on the basis of an undertaking to pay damages.

Justice Doogue said that it does have the effect of bringing home to a plaintiff the obligations they undertake when seeking an injunction.

The Committee agreed that Mr Tanner should bring his suggested amendment to the next meeting.

The meeting closed at 1.15 pm.
The next meeting is to be held on Thursday 3 September 1998

Secretary