



## THE RULES COMMITTEE

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14 May 2003

Minutes/3/03

### **CIRCULAR NO 35 OF 2002**

#### **Minutes of the Meeting held on Monday, 12<sup>th</sup> May 2003**

The meeting called by Agenda/3/03 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday, 12<sup>th</sup> April 2003, commencing at 10.00 am.

#### **1. Preliminary**

##### *1.1 In attendance*

The Hon Justice Chambers (in the Chair)  
The Chief Justice (the Rt. Hon Dame Sian Elias GNZM)  
The Hon Justice Venning  
Judge Doherty  
Judge Joyce QC  
The Solicitor-General (Mr. T Arnold QC)  
Mr. T C Weston QC  
Mr. C Finlayson  
Mr. K McCarron (for the Chief Justice)  
Mr. R Gill  
Mr Brian Hesketh (until 11.00 am)  
Mr Richard Living (until 11.00 am)  
Miss. H Lee (Clerk to the Rules Committee)

##### *1.2 Apologies*

The Hon Justice William Young  
Chief Parliamentary Counsel (Mr. G E Tanner QC)

### 1.3 *Confirmation of Minutes*

The fourth paragraph on page 3 of Minutes/2/03 was incorrect in that it stated that subclause (2)(a) should be "deleted". This was corrected by replacing the words "deleted to avoid inconsistency" with the words "modified to adopt wording consistent with".

The square brackets used in the third paragraph of page 6 of Minutes/2/03 were removed.

Subject to the above, the minutes of the meeting held on Monday, 7<sup>th</sup> April 2003 were taken as an accurate record and were confirmed.

### 1.4 *Matters Arising*

The Committee considered Amendments/5/03. It agreed that rule 309 (as modified by Minutes/2/03) should be divided into two rules. One rule should address the right to make copies of discovered documents, while the other should address the use to which such copies may be put. The reason for this division is to highlight the obligations and restrictions concerning the use of discovered material.

The Committee agreed that PCO should include this amendment in Omnibus 4.

## **2. Membership and Appointments**

The Chief Justice advised that Justice Venning's membership on the Committee is to be renewed pursuant to section 51B(2) of the Judicature Act 1908. She also advised that the Hon Justice Baragwanath will be appointed as a member to the Committee. Mr Hesketh undertook to prepare the necessary warrants.

## **3. Personnel**

The Committee noted Mr Hesketh's resignation from his role as secretary to the Committee. It thanked Mr Hesketh for his service to the Committee. In particular, the Chairman noted his efficiency and insightful commentary on various matters.

The Committee welcomed Mr Richard Living, who will be replacing Mr Hesketh as secretary to the Committee.

## **4. Discussion of Committee Role/Function (Reform of High Court Rules)**

The Committee considered the major review of the rules of court currently being undertaken in Alberta as well as various other methods of reform as described in General/1/03.

The Committee agreed that a fundamental substantive rethink of the rules as Alberta was presently undertaking was not required.

However, the Committee considered there was support (and a business case could be made out) for an "editorial reform" of the rules involving rationalisation, consolidation and restructuring of the current rules to simplify them, avoid duplication, achieve greater coherence and make them more accessible. Such a review could, for example, assess the appropriate level of prescriptiveness of the rules.

The Committee considered that a Judge and an experienced draftsman should be primarily responsible for such an editorial reform. This team could operate either through the Law Commission or as a subcommittee of the Rules Committee or a hybrid of both.

Justice Chambers and Mr Finlayson undertook to prepare a paper detailing the editorial reform option and how to progress it.

Justice Chambers also undertook to contact Justice Bruce Lander of the Supreme Court of South Australia, who is currently reforming South Australia's rules with the assistance of a clerk.

## **5. Matter referred to Parliamentary Counsel for drafting**

Justice Chambers explained that due to the extreme pressure PCO is currently under, drafts of Omnibus 3, Omnibus 4, costs rules for the DCR, Weathertight Homes Resolution Services Act 2002 rules, and Construction Contracts Act 2002 rules were unavailable for consideration at this meeting.

Justice Chambers told the Committee that he and Judge Doherty had met to discuss the extent to which Omnibus 3 could be carried across to the DCR. As a result of that meeting instructions were sent to PCO for rules to be drafted to incorporate various parts of Omnibus 3 and the District Courts Case Management Practice Note into the DCR. The District Courts Sub-Committee will consider those draft rules when they are available.

## **6. Oaths and Declarations**

The Committee considered Evidence/1/03 and Evidence/3/03 concerning the conflict between rules 523 and 524 and sections 10 and 12 of the Oaths and Declarations Act 1957.

The Committee directed Miss Lee to prepare a paper proposing appropriate amendments to rules to remedy the conflict and, in particular, consider whether the two rules are needed at all. Justice Chambers will consider the paper and instructions for amendment will be sent to PCO for inclusion in Omnibus 4. Miss Lee's paper and the instructions to PCO will be distributed to the members of the Committee so that any objection to the proposed amendments may be raised.

## **7. Admiralty Rules for the District Courts**

The Committee considered Admiralty/2/03, which conveyed Judge Perkins's and Mr Broadmore's objection to not including separate admiralty rules in the DCR. The Committee also considered the history and nature of preliminary acts.

The Committee agreed to proceed on the basis that, for consultation purposes, Omnibus 4 should provide for the introduction of a separate admiralty Part into the DCR, subject to the procedure for admiralty cases being as identical as possible to ordinary civil claims. However, the consultation paper should query whether separate admiralty rules, and in particular preliminary acts, are in fact necessary.

The Committee noted that one of the primary reasons for preserving preliminary acts, namely, protecting against relevant witnesses leaving the jurisdiction, may not often be relevant to the type of admiralty cases within the jurisdiction of the District Courts. Cases involving claims under \$200,000 are more likely to involve vessels domiciled in New Zealand.

The Committee directed Miss Lee to write a letter to Judge Perkins thanking him for the information he had provided and explaining the course of action the Committee had decided to take.

## **8. High Court Criminal Rules**

This matter was deferred to the next Rules Committee meeting.

## **9. Rulemaking for the District Court**

The Committee considered the update on the rulemaking power of the Committee with respect to the DCR in District Courts/2/03. The Ministry of Justice is still seeking cross-party support for the amendment to s122 of the District Courts Act 1947.

## **10. Proposed Family Court Rules Committee**

The Committee noted the current proposal to establish a Family Court Rules Committee. The Committee agreed that this proposal did not require the Committee's involvement. However, it noted that Judge Doherty has been asked by the Chief District Court Judge for his views on the proposed committee.

## **11. Part IV – procedure in special cases**

Justice Venning reported back to the Committee on the Part IV Subcommittee's response to Part IV/1/02. He considered that various cases to which Part IV applies are usefully commenced through that procedure, which can reduce the number of interlocutory applications and shorten the

length of trials. He accepts that exchange of affidavits could be ordered early on in a proceeding under the general rules, but suspects that after time that would not happen. Justice Venning noted that the abolition of Part IV would require a piecemeal shift of the various cases it covers into other parts of the rules. He considered the best approach would be to review Part IV as part of the proposed editorial reform of the rules.

The Committee agreed that the consultation paper accompanying Omnibus 4 should raise Part IV as a topic for input. In particular, the paper should raise whether there are advantages in abolishing Part IV. The paper should mention that the Committee's preliminary view is that Part IV should be retained.

## **12. Third Party Notices – Summary Judgment**

The Committee reconsidered Mr Drake's paper Summary Judgment/1/02. The courts have applied a stricter test for granting leave to file a third party notice in summary judgment proceedings as opposed to normal proceedings. Summary Judgment/1/02 advocates doing away with the distinction drawn by case law.

The Committee agreed to retain the status quo since the stricter test preserved the purity of the Summary Judgment procedure. Leave to issue third party notices could still be granted in cases that would otherwise result in significant injustice to defendants.

The Committee agreed to remove this matter from the agenda.

## **13. Execution and Contempt**

The Committee considered the matters raised by Execution/2/02 and Execution/1/02. In particular, the Committee noted the absence of any rules relating to the court's power to fine for contempt, the lack of clarity surrounding the area of contempt generally, jurisdictional limitations on the District Courts preventing them from enforcing their own orders, and the archaic language, documentation and procedure of Part VI of the High Court Rules.

The Committee directed Miss Lee to prepare a paper considering how Part VI may be simplified and annexing the best examples of execution codes from two or three other jurisdictions. The paper should also consider whether the provisions governing the enforcement of foreign judgments and arbitration awards should be moved into a new Part VI.

## **14. Summary Trials**

The Committee considered Mr Drake's paper (Summary Trials/1/02) describing the summary trial procedure used in British Columbia.

The Committee acknowledged that a summary trial process would result in a 'rougher' form of justice. However, it considered that making such a procedure available to parties, especially in circumstances where they consented, could be desirable. It also considered that summary trials may be an appropriate procedure for small claims in the District Court.

The Committee directed Miss Lee to prepare a paper reviewing the rules of British Columbia governing summary trials and investigating whether any other Canadian province had adopted this procedure.

The Committee agreed to reconsider this matter at the next meeting.

## **15. Small Claims**

Mr McCarron reported that the Chief Justice was presently waiting upon the completion of the Law Commission's report on the New Zealand court system before further pursuing the possibility of a simplified and inexpensive debt recovery system in the District Courts.

Both Judges Joyce and Doherty were of the opinion that there is no evidence of general dissatisfaction with the procedures available for debt recovery in the District Courts. They considered that there was more dissatisfaction with the execution process.

The Committee agreed to defer this matter until the District Courts Subcommittee had considered it and reported back to the Committee.

## **16. Exchange of Evidence**

This matter was deferred to the next Rules Committee meeting.

The meeting closed at 1:05pm.

The next meeting will be held on Monday, 30th June 2003.

Heidi Lee  
Clerk to the Rules Committee