



## THE RULES COMMITTEE

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14 March 2005

Minutes/1/05

### **CIRCULAR NO. 18 OF 2005**

#### **Minutes of the Meeting held on Monday 14 February 2005**

The meeting called by Agenda/1/05 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday 14 February 2005 at 10.00am.

#### **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  
Hon Justice Venning  
Judge Joyce QC  
Mr T Weston QC, NZ Law Society representative  
Mr G Tanner QC, Chief Parliamentary Counsel  
Dr J Lake, Ministry of Justice  
Mr K McCarron, Judicial Administrator to the Chief Justice  
Mr R Living, Secretary to the Rules Committee

##### *Apologies*

Hon Justice Chambers  
Judge Doherty  
Mr C Finlayson, NZ Law Society representative  
Ms K Clark, Deputy Solicitor-General

##### *Confirmation of Minutes*

The minutes of the meeting held on Monday 6 December 2004 were confirmed as an accurate record.

## *Personnel*

The Chairman welcomed Justice Randerson to the Committee. The Committee noted the impending retirement of Judge Carruthers, Chief District Court Judge, and resolved to write a letter of welcome to his successor, Judge Johnson.

### **2. Rules reform**

The Chairman thanked the Rules Reform Sub-committee for its scoping paper. The Committee agreed that the rules could benefit from a tidying and re-ordering process, but that root and branch reform would be too ambitious and would take too long. Mr Tanner agreed to provide a brief to the Committee about separate committees that could be established to provide expert assistance in respect of particular areas of the rules.

### **3. Adjustments to time allocations and/or daily recovery rates**

The Committee agreed that, subject to consultation with the legal profession, the District Court daily recovery rates should be increased as follows:

- District Court Category 3 = \$1450 (equal to High Court Category 2)
- District Court Category 2 = \$970 (equal to High Court Category 1)
- District Court Category 1 < \$970

### **4. DCR Notice of Proceeding**

The Committee agreed to amend DCR 463 so that it mirrors HCR 460, which allows costs on entry of judgment for a liquidated amount to be fixed by the Registrar, and to update DCR Notice of Proceeding (Form 4) accordingly.

### **5. Omnibus 5**

The Committee agreed to send the consultation paper to interested parties.

### **6. Document destruction**

The Committee agreed to write to Andrew Bridgman of the Ministry of Justice to enquire whether this matter could be included within the Evidence Bill. The Committee also agreed that "spoliation of documentary evidence" is more accurate than "document destruction".

### **7. Care of Children Act 2004 consequential amendments**

The Committee approved the replacement of references to the Guardianship Act 1968 in HCR 66(5) and 448(1) and DCR 69(4) with references to the Care of Children Act 2004.

### **8. Signature and certification of documents by counsel**

The Committee agreed that this issue will be addressed as part of the rules reform project.

## **9. Electronic discovery sub-committee**

The Committee noted Ms Buckingham's report. Justice Venning reported that the sub-committee has concluded that electronic discovery should be dealt with by its own set of rules rather than the general discovery rules. It was agreed that the sub-committee would prepare some draft rules for the Committee's consideration.

## **10. Cross-border cases**

Mr Finlayson joined the meeting at 1pm. He reported that Professor Campbell McLachlan of Victoria University has agreed to work with Professor Tony Angelo and Mr Finlayson to undertake a study of those High Court rules that have a foreign component, with a view to determining what, if any, changes need to be made. Mr Finlayson will report in detail on this issue at the next meeting of the Rules Committee.

## **11. Access to court files**

The Committee agreed that the current HCR 66 is appropriate, but that there may be inconsistency in its application. The Committee therefore agreed to refer Television New Zealand's concerns to the Ministry of Justice.

## **12. Costs in the High Court**

The Committee agreed that the Chairman would write to the editor of McGechan on Procedure in respect of this matter.

## **13. Court of Appeal (Criminal) Amendment Rules 2005 and Court of Appeal (Civil) Rules 2005**

Justice Chambers joined the meeting at 1pm via teleconference to discuss this item. The Committee agreed to the following amendments:

### *Criminal Rules*

- Amend the definition of "victim" to refer to the meaning given in the Parole Act 2002.
- Insert an express power in the rules for the Court to extend or shorten the time requirements.

### *Civil Rules*

- Stipulate in rule 5 that the Court's power to extend time requirements may be exercised retrospectively (i.e. after time has expired), except where barred by statute.
- Remove rule 22 (No right to oral hearing) as this is a provision that should be authorised by statute.

## **14. High Court Criminal Rules**

The Chairman reported that Justice Panckhurst has agreed to accept the chairmanship of the Criminal Rules Sub-committee. Other members will include the

Chief Justice or nominee, the Chair of the Rules Committee or nominee, Robert Lithgow, Professor Richard Mahoney, a representative of the Criminal Practice Committee, and a representative for District Courts.

**15. Execution**

The Committee agreed that this issue will be addressed as part of the rules reform project. Dr Lake agreed to report back to the Committee about the contribution of registry expertise to the Execution Sub-committee.

**16. General business**

The Chairman noted that in response to an invitation from Justice Lindgren, the Convenor of the Australian Harmonised Rules Committee, he will attend a meeting on 12 March regarding the harmonisation of court rules, practice notes and precedents in relation to *Mareva* and *Anton Piller* orders.

**17. District Courts claims paper**

Judge Joyce reported that progress on this project has been slowed by the unavailability of some members of the sub-committee. He advised that the sub-committee was due to meet again on 21 and 22 March and that an update will be provided at the next Rules Committee meeting.

**18. Exchange of Evidence**

The Committee agreed that this issue will be addressed as part of the rules reform project.

**19. Rule-making for District Courts**

The Committee noted that the Chairman has written to the Attorney-General to request that amendments to the rule-making provision in the District Courts Act 1947 be included in a Statutes Amendment Bill.

**20. DCR 580**

Ms Sinclair of the Ministry of Justice is to report back at a future meeting on the difficulty in principle with registrars from the Collections Unit performing work of a judicial nature.

The meeting concluded at 1.30pm. The next meeting will be held on Monday, 11 April 2005.