



THE RULES COMMITTEE

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17 February 2004

Minutes/1/04

CIRCULAR NO 12 OF 2004

Minutes of the Meeting held on Monday, 16th February 2004

The meeting called by Agenda/1/04 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday, 16th February 2004, commencing at 10.15 am.

1 Preliminary

In attendance

The Hon Justice Venning (in the Chair)
The Hon Justice Chambers
The Hon Justice Robertson
Mr K McCarron (for the Chief Justice)
Mr C Finlayson
Ms L Fong (Clerk to the Rules Committee)

Apologies

The Chief Justice (the Rt. Hon Dame Sian Elias GNZM)
Judge Doherty
Judge Joyce QC
Chief Parliamentary Counsel (Mr G E Tanner QC)
The Solicitor-General (Mr T Arnold QC)
Mr T C Weston QC
Mr A Beck
Mr R Gill

Confirmation of Minutes

The minutes of the meeting held on Monday, 10th November 2003 were taken as an accurate record and were confirmed.

2 Papers tabled at the meeting

The Chairman tabled a copy of a letter from Justice Fisher to Mr Derek Firth dated 13 September 2003.

3 Personnel

The Chairman noted the Rules Committee's appreciation for the contribution and service of the Honourable Justice Young, and extended congratulations to him on his appointment to the Court of Appeal. The Chairman invited Justice Young to join the Committee for lunch at its next meeting on 5 April 2004.

The Chairman also recorded the appointment of a new clerk to the Rules Committee, Ms Lisa Fong.

4 Supreme Court Act 2003 – Consequential Amendments

The Committee considered the draft of the Courts-Martial Appeal Amendment Rules and the Criminal Proceedings (Search of Court Records) Amendment of rules 2004 (Amendments/1/04) which contain amendments consequential to the Supreme Court Act 2003.

The Committee raised no issue with the proposed rules. It was agreed that subject to confirmation from Justice Blanchard that the Supreme Court also had no issues, concurrences would be returned to the secretary by the weeks end to allow the rules to come into force by 1 April 2004.

5 Omnibus 4

The Committee considered the latest draft rules of Omnibus 4 (Amendments/2/04).

Discovery

The Committee agreed that given the decision at its last meeting, amendment was necessary to R295(2)(b), to which the words "are relevant to a matter in question" needs to be substituted, and R295(4) which should be deleted.

The Committee also agreed that some matters would be left for later and more full consideration, namely the test for relevance (considered in (Discovery4/03)) and electronic discovery. Mr Finlayson was appointed to the sub-committee to look at electronic discovery.

Justice Venning undertook to redraft R298 to simplify listing requirements and circulate the amendments to Justice Chambers and Mr Finlayson before making them available to Mr Tanner.

Rule 4 New rule 33 substituted

The Committee agreed that the words "if applicable" should be added to R33(1)(a)(iv) as the date for the next hearing may not be able to be set at the time.

The Committee agreed that it was not practical to continue a heading on the reverse side of the first page as required by r33(2) and agreed it should read "be continued on another sheet".

Rule 7 New rule 285 substituted

The Committee noted that the phrase "in the interests of justice" was a new addition, but one that reflected the position at common law.

Rule 14 Liquidated demand

The Committee endorsed the recommendation of Mr Hugo Hoffman that an amendment to R48H(3) was unnecessary.

Rule 16 Authority to take affidavits in New Zealand

The Committee agreed that Mr Tanner should be heard again before final approval was given to this rule and rule 17.

Rule 17 New rules 533 to 524A substituted

The Committee agreed that R523(1)(b) and (c) should be combined to become R523(1)(b)(i) and (ii).

Rule 18 Time and mode of giving judgment

The Committee agreed that the last sentence of R540(4) should be removed unless Parliamentary Counsel could advise good reason for the words "The time endorsed must be subsequent to the time of the performance of the Registrar's duty under this subclause" in discussions with the Chairman.

The Committee agreed that the delivery time should be "directed or nominated" rather than simply "nominated" under R540(5).

Schedule 2

The Committee agreed that Justice Venning should pursue the insertion of a requirement that bankruptcy notices and petitions for bankruptcy should indicate the level of costs which the creditor sought. It was also agreed the forms should advise what costs were payable on a 2B basis. However, the blanket stipulation of 2B costs would not be possible without amendment of the costs rules.

5 District Court Omnibus

The Committee directed Ms Fong to convert the paper of the District Court Sub-Committee (District Courts/1/04) into a draft consultation paper for distribution before the next meeting, when it will be discussed in detail.

If individual members have particular comments on the paper they should make them available to Judge Doherty and Judge Joyce before the next meeting if possible.

6 Construction Contracts Act 2002

The Committee considered the redraft of the rules for the Construction Contracts Act 2002 (Construction Contracts/1/04). The Committee recommended the following changes be presented to Judge Doherty, and if he and Parliamentary Counsel agreed, the rules could be approved before the next meeting.

R461ZZJ

The Committee noted that R461ZZJ should use wording consistent with the District and High Court Rules.

R461ZZK

The Committee also agreed that the requirement that the parties be compelled to attend a conference should be deleted.

R461ZZK(1) R461ZZL(1)(b) and R461ZZL(2)

The Committee agreed in principle that the phrase "fairly, inexpensively, simply and speedily as is consistent with justice" should be deleted and replaced with the wording used in R425 and the new case management requirements for consistency, but noted that the rule reflects the old wording of R438, and will be consistent with the existing District Court rules. PCO to consider.

7 Weathertight Homes Resolution Services Act 2002

The Committee considered the redraft of the District Court Rules for the Weathertight Homes Resolution Services Act 2002 (Construction Contracts/1/04).

The Committee agreed to refer the queries of the draftsman to Judge Doherty and Judge Joyce QC for their comments.

8 Personal Property and Securities Act

The Committee considered the correspondence between Ms Kay Brown and Ms Lee and agreed that Ms Fong would draft a letter on behalf of the Chairman to the Ministry of Economic Development to confirm the Committee's decision to pursue a change to the Judicature Act 1908 to allow Masters to undertake the work. Ms Fong is to raise this matter with Mr Tanner in order to determine the appropriate addressee and also which bill could possibly be used as a vehicle for change.

9 Maori Language in legal proceedings

The Committee agreed that Ms Fong consider two related issues concerning Maori language in legal proceedings.

First, the existing R62-65 for translation of documents predate the Maori Language Act and therefore may need deletion or redrafting to ensure consistency with that Act.

Secondly, Ms Fong is to consider the draft rules (General/9/03) generated by Ms Lee and consider whether the requirement for notice is covered by the draft rules. Reference is to be had to the white book and any rules under the Welsh Language Act (upon which the relevant provision of the Maori Language Act is based).

The outcome of this research is to be considered by the Committee at the next meeting.

10 Alternative Dispute Resolution and the Judiciary

The Committee considered the results of the survey conducted by the NZBA on judicial settlement conferences (General/10/03). Subject to the opinion of the Executive Judges', it was agreed that the Chairman would communicate with the NZBA to thank it for its input, indicate that in the opinion of the Committee R442 was wide enough to allow judges to express a view on the merits of a case at a settlement conference and signal that the matter would be raised at the Judges' Conference. The Chairman would also advise the NZBA that, subject to advice from the Executive Judges, caucusing was not considered appropriate at the moment.

11 Notice of Proceeding Advice

The Committee considered the concern raised (Pleadings/01/03) over the advice on the notices of proceeding Form 6 and Form 64C, only the latter of which incorporated advice specific to company defendants. The Committee agreed to amend Form 6 to incorporate the advice relevant to companies from Form 64C.

The Committee also considered existing Form 64C, and agreed that the form should be amended by removal of the last sentence "Nor can a company appear to conduct a proceeding except by counsel". This would resolve two issues, the distinction created between solicitors and counsel in the Form, and

the fact that judicial discretion remains to allow directors of a company to represent it on minor appearances.

These matters are to be referred to Mr Tanner for incorporation into Omnibus 4. Mr Tanner would also be consulted as to whether other forms need like amendment.

12 Rulemaking for the District Courts

The Committee noted this would become work in progress for Ms Fong, who is to identify the enactments involving a power to make District Court Rules, and the responsible bodies.

13 High Court Criminal Rules

The Committee agreed that Justice Baragwanath was the appropriate member of the Committee to oversee this matter.

It noted that Ms Lee had prepared a paper identifying the weaknesses and invalidity of some of the criminal practice notes. Ms Fong was asked to update the consultation paper and draft rules from Ms Lee's paper, after consideration of the English practice notes. This is to be circulated before the next meeting.

14 Part VI Reform

This item was carried over till the next meeting. The Committee agreed the matter was to be considered under Justice Venning's and Mr Beck's sub-committee.

15 Exchange of Evidence

The Committee agreed that this issue is under the auspices of Justice Chambers, and that Mr Finlayson and Mr Weston could review and comment upon the matter Justice Chambers' paper on the issue, which has been distributed.

16 Common bundle/archiving

The Committee agreed that a common bundle of exhibits was itself an exhibit as suggested in option 1 of the paper by Ms Rosic (General/2/04), and was not a document which requires to be archived. It was agreed that there is no significance in the use of the word "file" in relation to common bundles. Counsel's openings and/or issues papers can be treated in the same manner as other submissions. These matters can be confirmed by a direction from the Executive Judges to the registry.

The Committee noted that this matter did not require a rule change.

17 Costs against unsuccessful legally aided persons

The Committee discussed the paper written by the Ministry of Justice (Costs/1/04) and identified the issues raised within it as substantive, requiring legislative changes, which it was not appropriate for the Rules Committee to pursue. It agreed to send the Access to Justice paper to the Chief Justice and Executive Judges for a formal response to the Ministry of Justice. Ms Fong was asked to draft a letter on behalf of the Chairman to let the Ministry of Justice Access to Justice team know that these were the steps being taken.

18 Time limits to appeal

Summary judgment

The Committee considered the issues raised by Mr Finlayson on referral (Summary Judgment/1/04) as to whether there was an inconsistency between R141(1) and (3) and R244(3) and concluded that there was no such inconsistency, leaving no need to redraft. The Committee noted that the three day period should remain for notices of opposition to summary judgment.

Appeal to the Court of Appeal

The Committee also considered Mr Christopher Chapman's concern (Appeals/1/04) over R26P(1)(AA) and acknowledged his point. However the Committee noted that R5 of the Court of Appeal Civil Rules as amended and in force 1 January 2004, now provides for the required 20 working day limit for leave to appeal. Mr Finlayson is to advise Mr Chapman.

19 General business

Arbitration

The Committee considered the issue of enforcement of interim awards in arbitration, which require 14 days of notice. Both Justice Fisher and Mr Derek Firth raise the point (letter of 13 September 2003, tabled) that it appears that despite Justice Wild's investigation of the matter in consultation with the New Zealand Arbitration Institute, this issue remained unresolved. The Committee asked Ms Fong to consider a rule change, after discussion with Justice Fisher, for the next meeting.

The meeting closed at 1pm.

The next meeting will be held on Monday, 5th April 2004.

Lisa Fong
Clerk to the Rules Committee

