THE RULES COMMITTEE

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Wellington

2 December 1994

Minutes/4/94

CIRCULAR NO 30 OF 1994

Minutes of the Meeting Held on Thursday, 24 November 1994

1. **Preliminary**

The meeting called by Agenda/4/94 was held in the Judge's Common Room, High Court, Wellington on Thursday 24 November 1994 commencing at 9.30 am.

2. **In Attendance**

The Chief Justice (Right Hon Sir Thomas Eichelbaum, GBE)
The Hon Justice Doogue (in the Chair)
The Hon Justice Thomas
Master Hansen
Mr R F Williams (for the Secretary for Justice)
Dr G P Barton QC
Mr C R Carruthers QC

3. **Apologies for Absence (Item 1(a) of Agenda)**

Chief District Court Judge Young
The Attorney-General (The Hon Paul East MP)
The Solicitor-General (Mr J J McGrath QC)
Mr H Fulton
Mr W Iles QC CMG (Chief Parliamentary Counsel)

MAS:59330

4. **Confirmation of Minutes (Item 1(b) of Agenda)**

The minutes of the meeting held on Thursday 11 August 1994 were taken as an accurate record and were confirmed subject to page 5, item 9(b), reading Part X High Court Rules.

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

Matters arising from the minutes were considered under the topics on the agenda.

6. **The papers Tabled at the Meeting**

By Mr Carruthers:

- Letter from C A McVeigh of 24 November 1994 on Draft Rules relating to exchange of witnesses statements.

7. **Admiralty Rules (Item 3 of Agenda)**

Master Hansen said that there was to be one other practitioner to give some input into this and Mr Giles had been mentioned in that context. He said that he had received a volume of material from the Secretary relating to rules in other jurisdictions. Master Hansen said that he is going to be spending some time in Auckland next year, as is Mr Carruthers; he identified a need for them to get together and present a draft but realistically that would be some time away.

8. **Appeals (Item 4 of Agenda)**

(a) **R A Batchelor and Others v Tauranga District Council**

At Justice Thomas's suggestion, Justice Doogue agreed that he would speak to the President of the Court of Appeal about this matter.

(b) **Part X High Court Rules**

Mr Carruthers said that he had referred the matter to the Civil Litigation and Tribunals Committee and to the Bar Association on the basis that what is proposed is a rule along the lines of s 10 of the Judicature Amendment Act 1972. He advised that neither body saw any problems with the proposal and the matter was referred to Mr Iles to consider an amendment along the lines of s 10 of the Judicature Amendment Act 1972.

(c) **Court of Appeal Technical Advisers**

Justice Doogue advised that he spoke to the President who was agreeable to a statutory amendment and that Justice Doogue had then written to the Minister of Justice setting out the proposal and the background to it. Justice Doogue then

advised that a response was received, signed by the Minister, but apparently prepared in Law Reform Division which was very negative about the proposal. The Secretary then wrote a letter in response to which there has been no substantive reply.

Mr Williams said that he would follow the matter up with the Department in an effort to expedite matters.

At Justice Doogue's suggestion the Secretary undertook to forward a copy of the correspondence to members.

9. **Costs (Item 5 of Agenda)**

(a) **Generally**

Mr Carruthers said that he and Mr Fulton had not gone so far as to finalise a draft on it. He also advised that there had so far been incomplete feedback from the profession.

Justice Doogue advised that the Judges had not yet discussed it either.

Dr Barton had one comment to make on the letter from Dave Smith of the Legal Services Board and that was that he did not agree that less generous costs be awarded against the legally aided litigant. The Committee agreed.

Justice Doogue said that he was aware of a number of cases where a legally aided litigant should never have taken the matter to trial had the case been properly evaluated.

(b) **Security for Costs**

Mr Carruthers advised that the Civil Litigation and Tribunals Committee had recommended a review of the Court of Appeal rules as a whole including the rules relating to security for costs, and that no particular problems had been raised; there were however some criticisms which were referred to at the last meeting, in particular the different process in different registries for applying - formal application, letter or automatically done by the Registrar. He noted also that there is a variation throughout the country in the amount that is fixed. The other point that was noted was that the time for paying was thought to be a little short and draconian in its effect. He noted also that there is another mechanism for fixing a higher sum than was charged initially - it is done by the Registrar who fixes it on the first day or it is done by a Judge who has a broader jurisdiction.

Justice Thomas asked about the point raised in the Robert Jones litigation, namely that the amount of security had to be fixed within the fourteen day period, and said that he did not see why the amount of costs should not be varied according to the circumstances regardless of whether or not that was done within the fourteen days.

Dr Barton noted that r 34(4) contemplates the making of an application for security before or after the notice of appeal has been served.

Justice Thomas said that he had no objection to the appellant applying within the fourteen days on the basis that the security had been fixed too high, and Dr Barton noted that time would not run until the notice is served which is why the rule is worded the way it is.

Master Hansen noted that from the respondents' point of view they would want to review it to make sure that the amount is sufficient.

Justice Thomas said that the other major item is the issue of time for appealing from an interlocutory judgment.

Justice Doogue said that however r 34 is considered, it is desirable to put the matter beyond doubt in some way. Given that any amendment to that rule will require an approach to the Court of Appeal, Justice Doogue considered it appropriate for the Committee to consider whether any other rules should also be the subject of an approach at the same time. He therefore suggested that the Civil Litigation and Tribunals Committee and the Bar Association be invited to comment as to whether any of the Court of Appeal rules are causing difficulty within the profession.

The Committee therefore agreed that this item should appear on the next agenda under the topic of "Court of Appeal Rules", with the topic of security for costs contained within it.

10. **Discovery (Item 6 of Agenda)**

The Chairman noted that this item is scheduled to be discussed comprehensively in the meeting to be held in June 1995.

Dr Barton said that the material that he has contemplates a general duty to give discovery and he queried whether this was envisaged to be before an order or notice for discovery. He said that some of the material that he had received from the Bar Association on the Federal Court rules in the United States indicates that there is now a requirement to give discovery automatically once the proceedings have been instituted. He said that he was not sure that it was a good idea for the parties to be unnecessarily lumbered with an expensive procedure. He expressed the need to be careful of imposing an general duty to give discovery.

11. **Exchange of Witness Briefs (Item 7 of Agenda)**

The Chairman referred to the draft provided by Mr Iles, and invited Mr Carruthers to report back on the view of the profession.

Mr Carruthers said that he had referred the draft to the Bar Association and the Civil Litigation and Tribunals Committee. He said that the most important issue arose in relation to the exchange in that the rule envisages simultaneous exchange with opportunities to reply; the suggestion that has emerged is that there be a staggered exchange given that the role of the defendant is to respond to the plaintiff's case. To that end the suggestion was made that the plaintiff's evidence be delivered first and the defendant's evidence be delivered later in response to that. By way of explanation, Mr Carruthers said that the current procedure enshrined in the rules is that the defendant is not obliged to make a decision about the giving of evidence until the plaintiff's evidence has been concluded. He advised also that a question was raised as to where the rule in *Browne v Dunn* (1983) 6 R 67 (HL) stands in relation to the proposed rules and said that the defendant should be able to preserve the right to elect to be non suited. He accepted that there is an advantage to the plaintiff in being to see which of the defendant's witnesses are likely to be called. In summary, Mr Carruthers said that there are two main concepts: the simultaneous exchange of briefs, and the preservation of the defendant's position. In that context he said that the plaintiff has the advantage that, while not being able to refer to the defendant's briefs, the plaintiff can nevertheless open his or her case with some knowledge of how it is likely the defendant's case is likely to run. Mr Carruthers therefore suggested the deletion of proposed Rule 441H(b).

Whether the Exchange should be Simultaneous

Dr Barton said that in his experience, parties are reluctant to put their case so fully that the other side is able to prepare supplementary material to meet any particular point. He said that the concept of exchange of evidentiary material in anticipation of it being read out in Court brings a type of pre-trial by correspondence. He queried how that fits into the ethos of litigation as we know it, being an adversarial matter with each side conducting its case so as to exploit legitimate advantages.

Master Hansen said that in his experience of pre-trial matters, counsel invariably request a simultaneous exchange and the only exceptions to that are where there is expert evidence when it may be appropriate for the defence to reply.

Justice Thomas said that he was strongly in favour of simultaneous exchange. He reminded the Committee that originally it was not intended that these rules should automatically supplant a procedure tailored to an individual case at a conference. He noted that the exchange takes place after the proceedings have been set down for trial and the notion of a staggered exchange is more appropriate earlier in the proceedings. He noted also that simultaneous exchange is based on the procedure in the Court of Appeal in England and is in fact what is operating in practice in most cases. He acknowledged the tension between the adversarial system and the need to get the work of the Courts through expeditiously, but said that he considered the simultaneous exchange the fairest one because it denied the defendant the opportunity to tailor its case with the advantage of the plaintiff's evidence. In practice he said that he had not found that supplementary briefs were a problem. He noted also that the other advantage of simultaneous exchange is that questions of credibility can be very obvious from a reading of the two briefs.

Mr Carruthers said that at some stage the Committee will have to grapple with the point that there are two concepts being confused here; discovery, and the preparation of evidence for trial. Mr Carruthers read from a letter received from Mark Camp in response to the article in "LawTalk". In it, Mr Camp said that the exchanging of briefs of evidence had let in inadmissible evidence and made litigation expensive. Mr Camp then referred to the fact that on English authority, briefs of evidence are exchanged contemporaneously on the basis that they are analogous to discovery. Mr Camp disagreed with that view and said that briefs of evidence are just that. He considered that the simultaneous exchange means that the defence speculates as to the plaintiff's case with the result that the defence briefs may fail to meet the case that the plaintiff puts forward. Mr Camp considered that a sequential exchange would avoid that and give the defence an opportunity to reply to the plaintiff's briefs.

Justice Doogue said that it is intended that the rule be a default rule rather than an overriding one, and that there would in fact be a conference on most files. He added that in most cases the parties prefer a simultaneous exchange, and that avoids the defence being open to the accusation that it has tailored its briefs to meet the plaintiff's ones. That is particularly so where there is a factual contest. Justice Doogue noted also that once the parties learn what the case is for the other side, there is a greater chance of settlement.

The Chief Justice said that he understood the view of the profession that the whole process of exchange of briefs of evidence does not fit the traditional views of how litigation is conducted. Nevertheless, he said that there is a move away from traditional notions of keeping cards up ones sleeve and trial by ambush towards a large element of discovery and ascertaining the actual truth of the matter rather than the facts as presented by the parties. In the light of those remarks he considered it appropriate that any exchange of briefs should be simultaneous.

Mr Carruthers said that he saw this as a discovery process and that he would like to see disclosure at a much earlier stage of what the essential elements of the parties case will be. He suggested that much of what is proposed could be justified if the rule operates as a default rule, although he appreciated that Mr Iles when drafting it had worded it to apply only to certain proceedings.

Dr Barton said that one of the problems of that is that parties then have to justify departing from the default rule with the result that the default rule becomes the settled one. Justice Thomas recalled that the earlier draft did emphasise that the rules were not to supplant Counsel's initiative in going to the Court at an earlier stage.

Mr Carruthers noted however that the rule is not completely framed as a default rule because it refers to the principles of the exchange of briefs, for example, reference to them in opening and evidence at trial.

Dr Barton said that a simultaneous exchange is better for the plaintiff than the defendant.

Mr Carruthers said that where the case is within a week or so of trial, the briefs to be led can be exchanged so that the defendant knows what the plaintiff's evidence will be, and the

plaintiff knows what the defence will do if they elect to call evidence; if there is any significant departure from that at trial, then the briefs of evidence are available.

Justice Doogue noted that there was a clear majority in favour of a simultaneous exchange of briefs of evidence and suggested that the profession's concerns might be met if r 441K was highlighted.

Mr Carruthers said he did not think the "trial by ambush" comment was really a fair analysis, and that rather the profession was trying to get efficiency and fairness into the process.

Justice Doogue summed up the discussion by recording that there was agreement that if there is to be a default rule, simultaneous exchange is preferred to a staggered one, provided that r 441K appears at the outset so it is plain that the rule is not determinative.

Justice Thomas added also that Mr Iles should be invited to go back to the earlier draft which had particularly addressed this point.

Draft Rules

Mr Carruthers expressed a concern as to whether r 441H(b) was so wide that it prevented reference to any of the material in the statement. The rule provides that a party may in opening his or her case refer to that statement and Mr Carruthers raised the question whether the plaintiff can frame the opening along the lines that on a particular issue, if the defence contends one thing then the plaintiff's answer to that is spelt out.

Justice Thomas says that the rule needs to state clearly whether statements can be referred to or not.

Dr Barton said that he saw problems with, on the one hand the parties knowing each others case in advance, but not being allowed to refer to it in Court.

Mr Carruthers pointed out the plaintiff opens the plaintiff's case, and that this can be done without referring to anything other than that.

Dr Barton said that the plaintiff may often open a case on documentary material that has come from the other side.

As against that Mr Carruthers said that statement which has been exchanged is not evidence until it has been given in Court so there is no point in referring to the statement in opening at all.

The Chief Justice expressed it that, in any litigation, the plaintiff is not entitled to open on evidence that the plaintiff does not know is going to be called. He noted that that applies starkly in criminal cases but applies also in civil ones.

Dr Barton agreed, but said that given the change in ethos so that the parties are forced to exchange prior to the trial evidence that they may lead, it is somewhat artificial that the parties are not allowed to refer to it. He predicted that sooner or later a party will argue that evidence that has been exchanged constitutes an admission and that the brief of evidence is itself evidence.

Justice Thomas noted that the statement is signed and be at least possible to argue that the brief constitutes a prior inconsistent statement.

Justice Thomas said that in his experience plaintiffs are opening on an agreement bundle of documents and are opening on the total case. He added that in his experience, the plaintiffs do conduct themselves properly and did not in practice frame the opening address as though it were a closing address.

Mr Carruthers said that an agreed statement of facts is in a different category because the plaintiff required the agreed statement of facts so it could prove its case.

Justice Thomas said that he thought the conduct of the plaintiff's opening would have been the same even in the absence of an agreed statement of facts because the plaintiff would have referred to factual material and advised the Court which of that would not be in dispute. He considered that there was an enormous saving of time in being able to conduct the case knowing what facts were agreed upon.

The Chief Justice suggested that what Justice Thomas was advocating could be done under the rule because Counsel is not disclosing what the defence witnesses are anticipated to say, but, subtly differently, advising the Court of what the real issues are.

Mr Carruthers asked about the role of the rule in *Browne v Dunn* in the context of whether the defence should call evidence.

Justice Doogue suggest that the rule could contain a direction that nothing affects the rule in *Browne v Dunn.*

Justice Thomas cited an example of a case where it was agreed at trial that there was no need to put the defendant's case to the witnesses because of the exchange of briefs. He said that there were significant savings of time as a result in what were already long cross-examinations.

Mr Carruthers said that that would necessitate going through all the material in the defendant's briefs, except if there were agreement at the outset of the case that all the defendant's witnesses in respect of whom briefs had been provided would be called; if no agreement were reached then the rule in *Browne v Dunn* would need to be preserved.

Justice Doogue identified the need to guard against pushing parties into filing supplementary briefs in order to reply to a case that may or may not be put to them.

After discussion the Committee agreed that unless the parties agree the rule in *Browne v Dunn* should apply.

Mr Carruthers then turned to r 441G and in the context of it being a default rule queried what should be the procedure if briefs are exchanged 28 days after the precipe with the trial being set 12 months away, and there are further developments in the case. The Committee agreed that that situation could be accommodated by another interlocutory application.

Mr Carruthers then turned to r 441I and queried what is being covered in respect of cross-examination on the statement.

Justice Doogue said that the rule covers the situation where the evidence led at trial is not in accordance with the brief that has been signed and the party wants to cross-examine on the previous signed statement. He said that he had taken the view that there should not be cross-examination, largely because most inconsistencies are errors which are picked up in the pre-trial preparations. Nevertheless, he said that there needed to be a clear rule on whether there should be cross-examination on the prior inconsistent statement.

Justice Doogue said that r 441I(1) might apply where the plaintiff includes material in the brief to meet a possible defence only to find that the defence does not touch on it. The material is then excluded from the plaintiff's case but the defence might try to get some mileage out of it at trial by cross-examining by reference to it.

Mr Carruthers said that his point might be met if r 441J recognises that that rule does not go to previous inconsistent statements on the basis that it is not a matter of the trial Judge granting leave or giving directions if a party wishes to cross-examine on a previous inconsistent statement. Thus the question of leave under r 441I(1) would not arise where the cross-examination was simply to prove a previous inconsistent statement.

The Committee agreed that r 441J should be amended to provide that nothing in the preceding rules deprives any party of his or her right to cross-examine on a previous inconsistent statement. Alternatively, that amendment could be inserted into r 441I(1) or 441L.

Mr Carruthers then turned to r 441A(1)(a) and the Committee agreed that the double negative made the rule difficult to understand and it requires consideration.

Mr Carruthers then turned to r 441B and noted that ordinary briefs of evidence are compulsorily exchanged while briefs of evidence of expert witnesses are a matter for directions under r 438.

Justice Thomas suggested that with experts simultaneous exchange is not generally appropriate.

Justice Doogue said that in practice experts have generally exchanged briefs, and Justice Thomas noted that the operation of this rule is late to leave the exchange of experts evidence

and he thought it unlikely that a party would not have briefed an expert witness with the trial only a month away.

Mr Carruthers suggested that the general directions might be sufficient but suggested that if the default rule is to apply it should perhaps include the expert witness on the basis that it will not otherwise get picked up if the parties have done nothing about it.

After discussion the Committee agreed that the words "not being an expert witness" be deleted from r 441B(1).

Mr Carruthers then turned to the general issue of compliance with orders for exchange and the penalties for being late. He referred to a Whangarei trial which had had to be adjourned and the question was raised whether there was a power to stop the witness being called. In the event the trial went ahead but there was a substantial order for costs. He said that there was a need to have some consequences of failure to comply with the order to exchange briefs of evidence.

Justice Doogue floated the suggestion that the evidence not be adduced without the leave of the Judge but the Committee agreed that that would be too draconian.

Nevertheless, Justice Thomas said that at a meeting of Judges and counsel involved with the commercial list in Auckland the main complaint was that Judges were not being severe enough in orders for costs where there had been non-compliance with orders.

Justice Thomas suggested that a rule could provide for costs to be awarded in cases of non compliance, irrespective of the outcome of the trial - the use of the word "may" would get around the difficulty of cutting across the Judge's discretion.

Master Hansen queried whether it was then appropriate to have such a provision in all rules when there was non-compliance.

Justice Doogue suggested that this issue should be highlighted when the Committee comes to discuss costs.

The Committee recorded its appreciation for Mr Carruthers' helpful comments.

Letter from C A McVeigh

In respect of 1(a) Justice Thomas noted that it is a common complaint that costs are increased by preparing evidence in advance, but he queried what great additional work is required.

Mr Carruthers said that a brief from which counsel is going to lead acts as a prompt, and there is considerably more work involved in a full brief of evidence. Having said that he acknowledged that if the regime of exchanging briefs of evidence involves moving the costs from the court to the litigant then that has to be accepted.

Justice Thomas agreed that costs now lie where they can more appropriately be borne by the parties rather than the court.

Mr Carruthers added also that the rule should recognise that the party which incurs the costs should also, as appropriate, be compensated.

Dr Barton identified Mr McVeigh's second point as being that the regime carries within itself occasions when further expense is going to be generated.

Mr Carruthers queried how the statement can be adduced as evidence at all if the written statement is not itself adduced as evidence.

Justice Thomas said that this rule is designed to cover the situation where the witness is not able to give evidence but counsel wishes to use the statement.

Mr Carruthers said that the exceptions, such as evidence admissible under the Evidence Act, should be spelt out and Justice Doogue agreed that there should be a saving in respect of evidence otherwise admissible in respect of rr 441J and 441L.

In respect of point 1(b) of Mr McVeigh's letter the Committee agreed that the only point not already covered in earlier discussions was that relating to jury trials, and Justice Doogue said that he had not imagined the rules would apply to a jury trial; he noted that the situation would be rare and that there would inevitably be an application for directions in any event. After discussion, the Committee agreed that there was no need to make a specific exception for jury trials.

The Committee then turned to point 1(c) of Mr McVeigh's letter and noted that it had been covered in the earlier discussion.

The Committee then turned to Mr McVeigh's commentary on r 441A. Justice Thomas expressed the rule to mean that the rules will apply to the extent that they are not inconsistent with the particular order made and indeed he envisaged that Judges and Masters would make an order in terms that rr 441A to 441I would apply subject to the provisions in the specific order.

Justice Doogue said that in practice the parties will turn their minds to this rule if they are seeking an order for directions; alternatively, if the parties are reaching agreement they should ensure that their position is protected in respect of this rule.

Justice Thomas referred to draft rules from other jurisdictions such as Australia and thought that the wording of the rule could be more clear. The Committee agreed that Mr Iles could look at the rule from that perspective.

The Committee then looked at Mr McVeigh's comments on r 441B, and Justice Thomas noted that that was the very reason for providing a period of 28 days.

In respect of r 441B(3)(b) Justice Thomas said that that was the only way of expressing it and the Committee agreed.

The Committee then turned to Mr McVeagh's comments on r 441C. Dr Barton said that he could not understand the comment, and Justice Doogue said that there was no apparent conflict - if the parties wish to adduce evidence then they could do so and if not they can apply for leave.

The Committee then turned to Mr McVeigh's comments on r 441D and Mr Carruthers said that the parties would apply for leave in any event and the Committee agreed that they could not see any difficulties with this rule.

The Committee turned to Mr McVeigh's comments on r 441E.

Justice Doogue noted that if the witness is truly illiterate the evidence is not going to be by brief anyway.

Justice Thomas imagined there could be a problem where the witness does not speak english, but Master Hansen said that it is up to the court to provide an interpreter and have the brief translated and certified in the normal way.

The Committee then turned to Mr McVeigh's comments on r 441F.

Justice Thomas said that the terms of the rule itself answer the point because r 496 provides for evidence to be oral except where otherwise directed by the court or required or authorised by the Rules or by any Act, and this rule provides such an authority.

Dr Barton noted that in any event the brief becomes evidence once it is read and that in itself is oral.

In respect of r 441F(2)(c) and (d) Dr Barton said that there may be some delays but he thought that those would be minor.

The Committee then turned to Mr McVeigh's point on r 441G and noted that his point about the rule being in conflict with r 496 had already been covered in the earlier discussion.

Justice Thomas said that sub r (2) does require classification as to who may seek the leave of the court.

Justice Doogue said it was probably implicit that it was the party providing the written statement and Justice Thomas suggested that those words be inserted.

Justice Doogue agreed that if there were agreement between all the parties to the proceeding then it does not matter who seeks to adduce the oral evidence; it is only if it is to be with the leave of the court and opposition that it requires clarification as to who seeks to adduce it.

Justice Thomas considered it odd that someone other than the party who prepared the statement should adduce it.

Mr Carruthers said that if the statement which has been exchanged contains information which assists the defendant, the defendant ought to be able to apply to have it adduced in the usual way.

Mr Carruthers said that he thought the Evidence Act is wide enough to cover all the circumstances where written statements can be admitted.

Having said that, Justice Thomas felt that he did not want to enlarge the circumstances where evidence can be admitted beyond that permitted by the Evidence Act.

The Committee agreed that having regard to the Evidence Amendment Act r 441G(2) is unnecessary.

The Committee then turned to r 441H and considered that it had largely been dealt with by the earlier discussion.

Dr Barton said that the second sentence is not restricted to the jury situation, but Mr Carruthers did not see that a problem should arise because counsel is going to be talking about the plaintiff's case and the evidence to be called and outlining what it is without embarking on a final submission.

The Committee noted that Mr McVeigh's comments on r 441I had been met by the earlier discussion.

The Committee then turned to Mr McVeigh's comments on r 441K, and Justice Thomas said that the comment seemed to proceed on a misunderstanding of the rule in that once there is provision for a date which is later the impact of the rule is lost.

The Committee agreed that the draft needed dividing up into default provisions, and those applicable generally to exchange of briefs.

The Committee agreed also that Mr Carruthers should report back to Mr McVeigh and the Bar Association with the Committee's response to his comments.

The Committee agreed also that the draft rules should go back to Mr Iles for redrafting and further consideration by the Committee. Justice Doogue noted that any amendment to the rules is likely to be promoted towards the end of next year as part of the annual amendments.

12. **Interrogatories (Item 8 of Agenda)**

Discussion on this matter was deferred.

Master Hansen noted that interrogatories should become increasingly uncommon with the exchange of briefs of evidence.

13. **Masters (Item 9 of Agenda)**

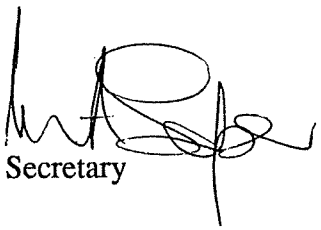
The Chief Justice advised that the subject of review of Masters' decisions would be discussed at the Executive Judges meeting on Friday, 25 November 1994.

Justice Thomas said that the practice note had been discussed among the Auckland Judges who took the view that it was for them to determine any questions of law, and they were not amenable to the suggestion that the practice note be treated as a guide. He considered that there had to be some substance to the criticism that a question of law should not be dealt with by way of a practice note and, in the light of that opposition (which he anticipated would be voiced at the Executive Judges meeting), he suggested that the Committee might pursue a statutory amendment.

The Chief Justice agreed that it would be sensible to look at other alternatives, given the opposition from the Judges and the Committee agreed that it is appropriate to endeavour to achieve the intent of the draft practice note for statutory amendment.

The meeting closed at 12.45 pm. The next meeting will be held on Thursday 23 February 1995.

Merry Christmas and a happy New Year.



Secretary

ADDENDUM TO THE MINUTES OF THE MEETING HELD ON 24 NOVEMBER 1994

ACTION REQUIRED BY:

Justice Doogue

To speak to the President of the Court of Appeal re *R A Batchelor and Others v Tauranga District Council.*

Master Hansen

At a future date, and in conjunction with Mr Carruthers, present a draft on the Admiralty Rules.

Mr Williams

Follow up with the Justice Department the proposed statutory amendment in relation to Technical Advisors in the Court of Appeal.

Mr Carruthers

Confer with Master Hansen on a draft on the Admiralty Rules.

Prepare, with Mr Fulton, a draft on costs.

Invite the Civil Litigation and Tribunals Committee and the Bar Association to comment on any difficulties with the Court of Appeal Rules.

Report back to Mr McVeigh and the Bar Association with the Committee's response to Mr McVeagh's comments on r 441K.

Mr Fulton

Prepare, with Mr Carruthers, draft on costs.