THE RULES COMMITTEE

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28 September 1998

Minutes/3/98

CIRCULAR NO 40 OF 1998

Minutes of the Meeting held on Thursday 3 September 1998

The meeting called by Agenda/3/98 was held in the Judges' Common Room, High Court, Wellington, on Thursday 3 September 1998 commencing at 9.30 am.

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

In Attendance

The Hon Justice Doogue (in the Chair)
The Hon Justice Fisher
The Hon Justice Hansen
Mr K McCarron (for the Chief Executive, Department for Courts)
Mr C R Carruthers QC
Mr R S Chambers QC
Mr G E Tanner (Chief Parliamentary Counsel)
Mr R Carter (Assistant Parliamentary Counsel)

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

The Chief Justice (The Right Hon Sir Thomas Eichelbaum GBE)
The Acting Chief Justice (The Hon Justice Gallen)
Chief District Court Judge Young
The Attorney-General (the Rt Hon Douglas Graham MP)
The Solicitor-General (Mr J J McGrath QC)

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

On the motion of Justice Fisher, seconded by Mr Chambers, the minutes of the meeting held on Friday 12 June 1998 were taken as an accurate record and were confirmed.

Action By

(c) *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*

Court of Appeal (List Election Petitions) Rules 1998

Justice Doogue noted that the only comment comes from Justice Blanchard and that is that the Court of Appeal does not have a trust account. He noted that this is separate from any fees that might be paid into the court.

Justice Fisher noted that a trust account can be quite ad hoc in that a registrar may open a separate account for money paid into court for example.

Mr Carruthers noted that security for costs in the Privy Council will be paid the Court of Appeal.

Justice Doogue suggested that the rules should just delete the words "trust account" so that the money is paid to the Court of Appeal. The Committee noted that consequential amendments are required to rr 9, 10, 15, 16, 17 and 18.

Justice Doogue noted that there is no rule corresponding to r 18 of the Court of Appeal Rules in the High Court Rules and queried whether there is a need for it at all.

Mr Carruthers suggested that the High Court would have general powers of adjournment which the Court of Appeal may not.

Mr Chambers suggested that a specific rule could incorporate the High Court Rules for these purposes.

Mr Tanner said that the existing Election Petition Rules do say that any matter not provided for follows the High Court Rules as far as possible.

Justice Hansen referred also to r 19(3) of the Court of Appeal Rules which provides that the Court of Appeal has the powers and duties of the Court at first instance and Justice Doogue noted that there is no court of first instance in an election petition.

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Mr Tanner said that in the old rules the position was that for any matter not provided for the existing rules of the court should apply.

Justice Doogue suggested that the rules incorporate the provisions of the High Court other than those listed in r 798(2). The Committee noted that incorporating a rule like r 798 of the High Court Amendment Rules would then allow for the deletion of r 18 of the Court of Appeal Election Petition Rules.

In respect of r 19 Mr Chambers queried why it is necessary to single out attendance of a witness as a special provision when it would be within the High Court Rules which are proposed to be incorporated.

Mr Carruthers said that the High Court Rules would not be applicable for witnesses in the Court of Appeal.

Mr Chambers said that r 261 deems it to apply to the Court of Appeal.

Mr Carruthers suggested the other alternative is to ensure that this draft is comprehensive as to the procedure.

The Committee agreed that r 19 should be deleted and that a rule equivalent to r 798 be included with such modifications as are necessary as to refer to proceedings in the Court of Appeal.

The Committee agreed that the form on page 12 should be deleted.

Mr Chambers noted that when notice of intention is given before a constituency election petition the date of the hearing is not given, but it is given in the Court of Appeal.

Mr Carruthers said that in the High Court there is a substitution issue.

Mr Chambers agreed and noted also that Form 5 is not going to be published.

The Committee agreed that a supplementary draft should be made available to all the Committee members and Justice Blanchard, together with an extract from the relevant part of the minutes. It was agreed that Committee members would let the Secretary know within seven days if they wanted to have a meeting or a telephone conference to discuss it further.

Mr Tanner said that since these rules are presented to the House it would be preferable if they contained just the Election Petition Rules and do not have any other rule matters in them.

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Justice Doogue noted that the rules have to be tabled in the House 16 sitting days after they are made. Mr Tanner noted that the House will not be sitting in October anyway. He noted that the House has power under the Regulations (Disallowance) Act 1989 to disallow them.

High Court Amendment Rules (No.2) 1998

The Chairman addressed the High Court Amendment Rules 1998 (Election Petition/1/98).

Rule 798: Application of other rules and practice of Court - Justice Fisher queried whether the reference to the summary judgment procedure not applying should appear as part of the Election Petition Rules or as part of the Summary Judgment Rules. The Committee agreed that it should appear in both places, given that practitioners will be operating under fairly strict time limits.

Rule 799: Petitions and Rule 800: Service of petition - Justice Fisher suggested that a petition should be served within seven days on the basis that precision is desirable, given the constitutional context.

Mr Tanner referred to the Electoral Act 1993 s 230(5) which provides for the petition to be served as nearly as may be in the manner in which a statement of claim is served or in such other manner as may be prescribed by rules of court, and said that the Committee would need to ensure that there is no conflict with the statute.

Justice Doogue said that s 230(5) goes to the form of service rather than the time of it.

Mr Chambers said that r 127 does apply because it is not excluded by r 798(2). He considered that to bring in a "seven day" rule there would need to be a sub-rule (b) to r 800 and exclude r 127 in r 798.

Mr Tanner noted that there would be no conflict with the statute to include a rule relating to timing of service but considered it best left as it is because there is then the problem of how much of the other rules should be brought in to the Election Petition Rules.

Justice Doogue summed up the agreement of the Committee that r 800 stay as it is, and that r 799(2) be amended as Mr Tanner thinks best.

Rule 802: Respondent must file notice - Justice Doogue suggested that r 802(c)(ii) be more general than it is. He noted that it specifies forms of service as P O Box, DX or fax and suggested that the rule should include any other form of service agreed to by the solicitor to cover the future possibility of service by e-mail or other advance in technology.

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Mr Chambers said that that flexibility is not currently in the general rules and suggested that they should be at least consistent and further that some thought should be given as to when service is deemed to have taken place. He gave the example of e-mailing a document to a solicitor only to find that his secretary had not been able to open the attachment.

Justice Doogue said that if a solicitor agrees to accept service by e-mail then any problems of opening the attachment are for that solicitor and not for the person serving.

The Committee agreed that the new rules should not be controlled by the archaic systems of the old ones and agreed to include in r 802(c)(ii), "or any other reasonable means by which the solicitor will accept service of documents".

Rule 809: Names of Judges to be Gazetted - Justice Fisher queried why the names of the judges need to be gazetted and Mr Chambers said that all the Act requires is that the Chief Justice name the judges before whom the trial of a petition is to take place. Justice Fisher said that a number of similar appointments do not need to be gazetted such as High Court Judges sitting temporarily on the Court of Appeal. The Committee agreed that there is no need to provide for publication in the Gazette.

Rule 810: Time and place of trial - Justice Doogue noted that sub-rules (1) and (2) replicate s 236(1) of the Act and queried the necessity for it. The Committee agreed that Rule 810(1) and (2) could be deleted. In respect of r 810(3)(b) Justice Doogue queried the necessity for notice to be posted in the Court 14 days before the trial given that there is no statutory requirement for it. Mr Chambers referred to s 236(1)which requires only that notice of the time and place be given 14 days before the trial.

Justice Fisher queried to whom the notice is given and said that given the public element it would be more useful to have an advertisement rather than post a notice in court. Mr Chambers noted that under r 801 the petitioner must publish the petition in a newspaper circulating in the relevant district.

Mr McCarron noted that under r 801 the expense is on the petitioner whereas under r 810 it would fall on the court, but the Committee agreed the issue of expense should not be a significant one given that election petitions should be infrequent.

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Justice Doogue noted that Form 85 would cover an advertisement as well and the Committee agreed that r 810(3)(b) be deleted and a requirement for advertisement substituted.

The Committee queried whether r 810(5) which provides that the notice is that required by s 236(1) of the Act should be deleted. Mr Chambers suggested that it is a useful cross-reference for any non lawyers who might be reading the Election Petition Rules, and Justice Doogue suggested that the reference to this section in the Act could be placed in the heading to the rule. Justice Fisher queried whether the reference might not go as a "cf" at the end of the rule, but Mr Tanner said that the "cf" references are for the origin of the rule. The matter was left to Mr Tanner.

Rule 811: Evidence usually to be limited to matters listed - Justice Doogue queried why r 811(1) is there when s 240 is specific as to the evidence which can be admitted.

Mr Tanner said that it is a copy of existing r 33.

Justice Fisher said that it is implicit in s 240 that the court get to the substance of the issue without undue regard to technicality.

Mr Carruthers said that from experience election petition matters generate more heat than light and the scope for taking technical points should be reduced. The Committee agreed to delete r 811.

Rule 812: Notice of intention to apply for leave to withdraw petition - Justice Doogue noted that in sub-rule (3) there is another reference to the section of the Act and that was referred to Mr Tanner.

Rule 814: Time and place of hearing of application for leave to withdraw petition - Justice Hansen queried whether there should also be an advertisement of the time and place for leave to withdraw given that there is a right of substitution.

Mr Carruthers said that there is a distinction in that the advertisement of the time and place of trial is to let the electors know so they can come forward, but if there is no energy to continue with the petition he would have thought there would also be no energy for a substitution.

Mr Chambers queried whether other electors can join in to an election petition or whether it is only a candidate.

Justice Hansen noted that under r 815 there is a right to turn up and be substituted without notice.

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Mr Carruthers suggested that it may be an issue of priorities - substitution may have a lesser priority but still command the same right to advertisement as the time for trial.

Justice Doogue agreed that otherwise there would be a requirement that the person gave notice in advance that they wanted to appear and be represented and so got knowledge of the hearing.

Justice Doogue noted that s 230 refers to "any voter". He suggested that r 814(3) have an additional sub-clause (c)providing for advertisement of the hearing.

Mr Carruthers referred to r 812(1)(b) but Justice Hansen said that this is only the intention to apply for leave and it does not have the date of hearing on it.

Mr Carruthers said that under r 814(3)(b) notices given of intention to apply to be substituted in response to the application for leave to withdraw which has been advertised.

Mr Chambers suggested that Form 86 be amended to give the date of the hearing at the same time as notice of the hearing is given.

Justice Hansen said that the problem is that r 815(2)(a) gives a person the right to turn up at the hearing and be substituted, but the person will not know of the hearing unless it is advertised.

Mr Chambers noted that the Act is silent on the right to turn up and be substituted is with or without notice.

Mr Chambers identified two issues; whether the hearing date should be in the advertisement and whether a person should have to give notice in advance of any application to be substituted. In respect of the latter he said that he would have thought the court needs to know what is going to be involved in the hearing.

Mr Chambers said that s 253(1) provides that on the hearing of an application for leave to withdraw any person who might at first instance have presented may apply, which suggests the application may be made at the hearing.

Mr Carruthers said that under r 815(2)(b) a person would give notice of intention to withdraw the petition so that while the notice of intention to apply is filed the application is made by the time required by the Act. He suggested that all that is required that r 815(2)(a) be deleted. The Committee agreed.

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Mr Chambers queried whether r 812(4) and (6) should be amended to give the date of the hearing and Mr Carruthers said it is unnecessary. Justice Doogue agreed that there may be problems for the court in fixing a date at the time, and Mr Carruthers said that if there is no right to turn up on the day that problem is disposed of.

Rule 816: Notice of abatement of petition - Justice Doogue noted that under sub-rule (3) there is another reference to the section of the Act which was referred to Mr Tanner.

Rule 819: Notice of intention not to oppose petition - Justice Doogue noted that sub-rule (3) contains a reference to the section of the Act and that was referred to Mr Tanner.

Form 83: Constituency election petition - Justice Fisher suggested that the form could move away from archaic language such as "subscribed" and "your petitioner" and be reworded in plain English. Mr Tanner agreed that the form could begin "this is the petition of ..." and continue "the petitioner states ....".

In respect of paragraph 7, Justice Fisher noted that it is similar to a statement of claim under the Judicature Amendment Act in that it is getting into a separate section for grounds. He suggested that some headings might be inserted.

Mr Chambers noted further that if it is open to the respondent to amend then that should also be the case for the petitioner, and that it is not open to the petitioner to amend it at the moment.

Mr Carruthers suggested that the general rules as to forms could provide for forms to be adapted to meet circumstances, but Mr Chambers said that those rules are amended when it comes to the Election Petition Rules.

Justice Doogue suggested that the Committee withdraw his earlier suggestion in relation to r 802 so that the rules are not held up with difficulties over drafting, but that the Committee puts on the agenda a review of the form of service rules generally including r 802 and Form 83. The Committee agreed. Secretary

Form 84: Bond for security - Mr Chambers queried whether the amount of the bond is ever other than $1,000, and Mr Carter said that under s 232(2) it may be made up partly in cash and partly by bond. Justice Doogue noted that that means that the bond can be for less than $1,000 with the balance made up in cash.

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Form 86: Notice of intention to apply for leave to withdraw a constituency election petition - Justice Doogue noted that the form will need to be amended consequent upon the early discussion. He referred to the words in brackets in the second paragraph, "whether or not he or she has given notice in writing of his or her intention to do so" need to be amended to make it clear that notice in writing must be given.

Mr Chambers queried whether the form should say what the time limit is, and the Committee agreed that it should be within seven days of the advertisement.

(b) *Evidence by Affidavit*

Mr Tanner said that he was not clear what the principle should be. He noted that s 517 of the Companies Act does not refer to an "officer" any longer and the term "member" is not appropriate either. Mr Tanner asked whether there should be a general rule that an affidavit be made by any person on behalf of a corporation or whether that should be specified, or be left to an authorised person.

Mr Chambers referred to Evidence/1/98 which contains a helpful list.

Mr Carruthers referred to the point earlier made by Justice Fisher that an affidavit is evidence by a person who has the requisite knowledge and that it is nonsensical to have an affidavit by a company.

Mr Chambers noted that there are already rules providing that an affidavit may be made by a plaintiff so there needs to be some rule to provide that where the plaintiff is a corporation the affidavit may be made by any person with knowledge.

Mr Tanner noted that the expression "knowledge of the facts" appears elsewhere.

Mr Tanner agreed to check on whether there might be an consequential changes to other rules. Otherwise, it seemed that r 517 could be amended by providing for an affidavit by a person with the requisite knowledge. He noted that he was aware of a couple of places where the rules require the affidavit to be made by an employee of a company as for example when creditors are listed.

(c) *High Court Amendment Rules 1998*

Justice Fisher suggested that r 2(3)(4) be combined to read "an applicant for an interlocutory injunction must file a signed undertaking that the applicant will abide ...". The Committee agreed but referred

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it to Mr Tanner who noted that it was worded in that way to be consisted with r 627.

Rule 3: Time and method of giving judgment - Mr McCarron queried the need for the words "after the registrar has given notice in r 540(1)(b).

Justice Doogue queried the meaning of the term "approved by the judge" and also what is meant by "are available to the parties".

Mr Chambers queried whether a judge needs to have signed given that a common practice in registries is to advise the parties that a judgment will be available the next day. He noted that what may be at issue is the time from which the appeal starts to run.

Justice Doogue said the Committee would need to be careful not to word the rule in such a way that if judgment were not given until it was picked up by the parties because a party who anticipated an adverse decision might never pick it up.

Mr Chambers queried whether all the ramifications of the Temm decision are captured and Justice Fisher said that the term "read or pronounced" is quite complicated on analysis.

Mr Tanner noted that in *Bell Booth v Bell-Booth* (Court of Appeal, CA 195/97, Thomas J, 11 March 1998) the High Court judge was at home with a speaker phone speaking to his associate in chambers.

The Committee noted that judgments can be given from places other than court or chambers, particular on applications for an injunction. In that case judgment may be given over the telephone from just about anywhere.

The Committee agreed to defer the amendments to r 540 (although noting that the word "approved" in (1)(b) should read "signed") and be the subject of a paper prepared by a judge's clerk. — Justice Fisher

(d) *Summary Judgment Rules*

The Committee addressed the points raised by Mr Chambers in his letter of 31 August 1998 (Summary Judgment/4/98).

Paragraph two of Mr Chamber's letter relating to the intitulement of the rules was referred to Mr Tanner.

Paragraph three of Mr Chamber's letter relating to the sequence of the amendments was referred to Mr Tanner.

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Paragraph four of Mr Chamber's letter was to suggest that the marginal note to new r 137 read "summary judgment on liability" and the Committee agreed.

In paragraph five of his letter Mr Chambers suggested simplifying r 142(1), "if the court dismisses an application for judgment under r 136 or r 137, the court must give directions as to the future conduct of the proceeding as may be appropriate".

The Committee agreed.

In paragraph six of his letter Mr Chambers suggested that new r 142A(1) be amended by deleting the word "proceeding" and substituting "proceeding if not already filed", on the basis that statements of defence are frequently filed prior to the hearing of the summary judgment application, and the Committee agreed.

3. **Matters Referred for Statutory Amendment**

(a) *Expert Advisers*

Mr Tanner advised that this matter is before the Select Committee and that submissions closed on 11 September.

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

Mr Tanner advised that this amendment has been enacted.

(c) *Winding Up - Masters Jurisdiction*

Mr Tanner advised that this has been included in the Statutes Amendment Bill Part IV No 5 and that it is on the order paper awaiting a second reading for referral to a select committee. He said that the prospects of it being passed this year are now remote and it is more likely to be May or June next year.

(d) *Merger of High Court and District Court Rules Committees*

Mr Tanner advised that the progress of this amendment will depend on the amendment relating to expert advisers, and that if there are difficulties with the Expert Adviser's Amendment the provisions relating to the Rules Committees could be split off.

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4. **Admiralty Rules**

Justice Hansen said that the Christchurch Registrar had come back with a couple of queries about forms. He suggested the issues be left to Mr Carruthers and himself and Justice Giles to come back to the next meeting. Justice Hansen and Mr Carruthers agreed to look at Mr Corry's point as well. .

Justice Hansen
Mr Carruthers

5. **Appeals**

This matter was deferred until the next meeting.

6. **Costs**

(a) *Generally*

Justice Doogue thanked Justice Fisher and Mr Chambers for the work that they had done on costs.

Justice Fisher said that there were two preliminary comments to make on the draft. He noted that the word "allocate" should be substituted for "notional professional" in the heading. In respect of band C he said that they had come to the view that it is too parsimonious and should be doubled. He said that the whole rules envisaged two dimensions to setting costs, one a crude estimate of time and the other the level of skill and experience involved. He said that the time banding is necessarily crude, and the third band needs to sensibly address big cases so as to reduce the element of discretion when costs are awarded.

Mr Tanner noted that in Draft Rule 46(2)(a) the term "predictable and expeditious" is used while in 47(4)(f) the term "certainty and expedition" is used.

Justice Fisher expressed the agreement of the Committee to use the term "predictable" in both places, and Mr Chambers noted that it appears also on page 4(d). Justice Fisher noted the same issue arises on page 6(e).

In respect of page 2, r 3(c)Mr Tanner queried whether it was intended to take account of regional variations.

Mr Chambers said that he did not envisage (c) ever applying because there would be a practice note in force.

Justice Fisher said that he thought the practice note would be national and the rates would be national as well.

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Justice Doogue noted that he will receive advice in each centre on what rate will be appropriate. He noted also that the time taken will be almost totally dependent on experience and ability.

Justice Fisher agreed that the two are related and Mr Chambers noted that small cases can have complex interlocutory steps and vice versa.

Mr Tanner referred to draft rule 47(4)(a) and to the words "could be expected". He noted that those words imply a prediction of what might occur rather than what has occurred.

Justice Fisher said that he was trying to achieve objectivity and to get away from the time in fact used in favour of the time that ought to be.

Justice Doogue suggested the words "reasonably be expected".

Justice Doogue referred to draft rule 46(7) and noted the reference to "daily rate and/or daily rate category". He said that draft rule 46(3) comes back to a daily rate not a category of daily rate and that the words "daily rate category" are otiose in that they are not referred to anywhere else in the rule.

Justice Doogue referred to draft rule 47(7) and noted the provision that a band daily rate apply to all subsequent cost determinations in the absence of special reasons to the contrary.

Mr Chambers suggested that banding would not be done in advance very much but that all that would be done in advance is the daily rate category.

Justice Doogue made the point that there is a need to be able to set the band for part of a proceeding because interlocutory steps may become more simple or more complicated after discovery for example.

Justice Fisher suggested that in the second line on page 3 the words "steps in the proceeding" should be inserted.

Mr Tanner said that he saw no problems with the practice note approach and said that his main concern is to ensure that the detailed provisions do not compromise the overriding discretion in r 46(1).

Justice Fisher said that he considered r 46(1) as intended to address that.

Justice Doogue referred to the top of page 3 and said that the reference to steps in the proceedings will not necessarily refer to all subsequent costs determinations.

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Justice Doogue referred to page 4 sub rule (c) and noted that the Solicitor-General had also concurred that it should not be necessary to have to pay more costs just because counsel on the other side happens to represent a wider group.

Justice Fisher noted that this sub rule has changed since the Solicitor-General originally expressed his concerns and that the words "desirable for the costs claiming party to bring the proceeding" have been replaced by the term "necessary". After discussion the Committee agreed that the term should be "reasonably necessary". The Secretary agreed to check whether the Solicitor-General has any difficulty with the revised wording. Secretary

Mr Tanner referred to draft rule 48A and noted in sub rule (1) the requirement that costs become immediately payable; he contrasted that with sub rule (3) which gives the court a power to vary an order for costs.

Mr Chambers agreed that if there were a variation any payment in excess would need to be refunded.

Justice Doogue referred to the term "special reasons to the contrary" in r 48A and said that there can be very commonplace reasons for not wanting costs to be immediately payable. He gave the example of proceedings under the Matrimonial Property Act where an immediately payable award of costs may just exacerbate a situation when the parties should be encouraged to settle the proceedings.

Justice Fisher suggested substituting the term "particular" and the Committee agreed.

Justice Fisher then addressed the time allocation scale and referred to band C. He said that there comes a point where a case is too big to deal with by reference to a scale but there is still a need to balance predictability against individual justice. He said that he would like to see the times in band C doubled so that the discretionary cases are kept to a minimum.

Justice Doogue queried whether the time allowance for preparing the pleadings includes an allowance for taking instructions. He noted that a statement of claim cannot be prepared unless the practitioner knows what the evidence is and that the same applies for the defence. He suggested that the allowance for commencement of proceedings and for a statement of defence be increased. The Committee agreed that 2(a) to (d) should all be doubled.

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Justice Fisher said that in effect there is a third coming off these figures anyway so that if they are too parsimonious they penalise the winning party twice.

On page 8 Justice Doogue referred to 3(m) and (p) and suggested that the two be combined, given that the difference between them is .1. The Committee agreed that (m) should include the summary judgement application.

In respect of the costs on a notice of proceeding, Justice Fisher suggested these be left in the form as it stands on the basis that it is then up to a plaintiff to make their own estimation.

Mr Chambers said that the High Court Registry will look at the scale for the preparation of the statement of claim figure.

Mr Carruthers said that the schedule currently uses the word "issuing the proceeding".

Justice Fisher noted that there is no explicit link between r 121, Form 5 and the costs schedule. He noted that the plaintiff can specify the main remedy (damages) without limit and he saw no reason not to have the same approach for costs.

Mr Chambers suggested there is no reason why the costs which are sought should not be defended.

Justice Doogue noted that it would presumably also be open to pay into court the costs that are reasonable and challenge the quantum.

Justice Doogue said that he would like to finalise these rules by the meeting at 20 November 1998.

Justice Fisher agreed to prepare a letter inviting comment from the New Zealand Law Society, the New Zealand Bar Association, and those persons who made submissions on the original proposal. — Justice Fisher

The Committee also agreed that any draft letter should be subject to the approval of the Chief Justice, and the letter may record that the Committee has been asked by the Chief Justice to assist him with this issue, given that there will be a judicial practice note.

The Committee agreed that the letter should go out under the signature of the Secretary. — Secretary

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7. **General - Combined District and High Court Rules Committees**

Justice Fisher noted that there will be some restructuring with the enlarged Committee.

Mr Chambers said that there will be a need to bring the District Court Rules up to date because they have lagged behind in recent years.

Mr Carruthers suggested that there may ultimately be some sense in having just the one set of rules and Justice Doogue agreed that there could be different parts where necessary.

Justice Doogue said that once there are District Court Rules Committee members these and other wider issues can be looked at by a sub committee.

Mr Tanner said that the legislation could be through by the end of the year.

8. **Habeas Corpus**

This matter was deferred until the next meeting.

9. **Insolvency Rules**

Justice Hansen said that Master (Venning) had given him a copy of a draft which has not yet been discussed with the Law Society representative Jim Guest. He noted however that the Ministry of Commerce is looking at the whole issue and it may be overtaken by other events.

Mr Tanner said that he was not aware of how far the Ministry had got with it but said that he had seen an article in the August 1998 New Zealand Law Journal, "Competition Law - An Evolution" by Peter Allport the Chairman of the Commerce Commission which indicated that it was a live law reform issue.

The Committee agreed that the Secretary should make enquiries of the Ministry of Commerce. — Secretary

In respect of debtors petitions Justice Doogue considered it appropriate for the petition to be lodged with someone who has responsibility to advance the matter and he noted that if it is filed in court there is a public record.

Mr McCarron noted that once it is filed in court the official assignee then advertises.

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Justice Doogue said that if it is initially filed with the Official Assignee and the Official Assignee fails to advertise no one will know that the petition has been lodged except the debtor. Justice Doogue noted that the performance of an Official Assignee can be variable.

The Committee agreed that the item should remain on the agenda, although come off Parliamentary Council's list for drafting. The Committee also agreed that the Secretary should make enquiries of the Ministry of Commerce, and that Justice Hansen's sub-committee should report in due course. — Secretary, Justice Hansen

10. **Interlocutory Matters**

This matter was deferred until the next meeting.

11. **Masters**

Justice Doogue said that now the legislation is passed rules are needed for the review of Masters' decisions. He said that a distinction needs to be made between decisions that should be the subject of an appeal and those which should be the subject of a review and a *de novo* hearing.

Justice Fisher agreed to prepare a discussion paper which would identify the points. — Justice Fisher

Justice Doogue referred also to Master Faire's memorandum of 30 October 1997 on review of Masters' decisions.

The Secretary agreed to ensure that Justice Fisher has all of the Masters' papers available to him. — Secretary

12. **Pleadings**

This matter was deferred until the next meeting.

13. **General Business - Judgment**

Justice Doogue referred to his paper circulated under Judgment/2/98. He said that Article 35 of the first schedule to the Arbitration Act provides that the arbitral award shall be recognised as binding and upon application in writing to the High Court shall be enforced by entry as a judgment in terms of the award. He said that the issue is how the application to the High Court should be made. Justice Doogue said that Wylie on Arbitration suggests different ways and that McGechan suggests an application for summary judgment. Other alternatives are the statement of claim procedure or an originating

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application. He noted that the Wellington registry has just recognised a judgment and entered it without any application in writing to the court at all in any sense.

Justice Fisher suggested an originating application and Justice Doogue said that it would need to be on notice because it is like getting a writ of sale in respect of a judgment.

Mr Chambers suggested that it is almost like sealing a judgment.

Justice Doogue said that Article 36 provides that recognition or enforcement of a judgment may be refused only in circumstances listed.

Mr Chambers noted that r 458D applied the originating application procedure to applications under ss 6 and 10 of the Arbitration Act 1908, but Mr Tanner said that these related to referees and umpires. Mr Tanner also noted that the Arbitration Act 1996 does contemplate the making of rules for the purposes of the Act.

Mr Carruthers agreed to prepare a paper for circulation before the next meeting. — Mr Carruthers

In that context Mr Tanner noted that s 26M of the Judicature Act provides that a Master may act as a referee and queried whether any rules are required here also.

Mr Carruthers said that under the old Enforcement of Judgments Act there was an ex parte procedure and Mr Carruthers agreed that the procedure needs to be as cheap and as quick as possible.

Justice Doogue said that under the old Act Masters acted as a referee without any problems and there were no special rules.

The meeting closed at 2.45 pm.
The next meeting is to be held on Friday 20 November 1998

Secretary