



THE RULES COMMITTEE

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7 April 2004

Minutes/2/04

CIRCULAR NO 23 OF 2004

Minutes of the Meeting held on Monday, 5 April 2004

The meeting called by Agenda/2/04 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday, 5 April 2004, commencing at 10.05 am.

1 Preliminary

In attendance

The Hon Justice Venning (in the Chair)
The Chief Justice Rt. Hon Dame Sian Elias GNZM
The deputy Solicitor-General K Clark (for Mr T Arnold QC)
The Hon Justice Chambers
Judge Doherty
Chief Parliamentary Counsel (Mr G E Tanner QC)
Mr T C Weston QC
Mr H Hoffman
Mr A Beck
Mr K McCarron
Mr R Gill
Ms L Fong (Clerk to the Rules Committee)

Apologies

Judge Joyce QC
Mr C Finlayson

Confirmation of Minutes

The minutes of the meeting held on Monday, 16 February 2004 were taken as an accurate record and were confirmed.

2 Personnel

Justice Young joined the Committee for lunch in appreciation for his contribution and service to the Rules Committee and as congratulations on his appointment to the Court of Appeal.

The Chairman welcomed Ms Sandra Petersson from the Alberta Law Reform Institute, who gave a presentation on the progress of the Alberta Rules of Court Project.

3 Supreme Court Rules 2004

The Committee considered the draft Supreme Court Rules. The Committee raised a number of points.

Rule 6

The Committee agreed that this rule would be redrafted in conjunction with r 10.

Rule 8

The Committee noted that this rule contemplated that practice notes would set the requirements for the format of documents other than those forms in the schedule to the rules.

It noted that r 8(1) could be included in r 5 and that r 8(2) can be incorporated into r 9.

Rule 10

The Committee noted that there may be an issue as to jurisdiction with the proposed rule. This rule could be redrafted to provide the registrar with power to reject non-complying documents in similar terms to HCR 23. This was based on the reasoning that vexatious applications would generally be non-complying.

Rule 6 would therefore also need to be redrafted to be made subject to the acceptance of the application for leave.

The issue of vexatious litigants could be raised as an issue in the consultation document.

Rule 11

This rule should be clarified to show that an index was intended by the "register".

Rule 12

Notice in r 12(2) should be redrafted to state "A notice may be served on a party by delivering it ...".

Rule 13

The consultation document should note that r 13(2) could be redrafted to require the reasons for the decision to be available before the time limit for leave to appeal to the Supreme Court starts running. Although the rule presently reflects those of the High Court and Court of Appeal, reasons are suggested to be especially necessary to make an appeal to the Supreme Court, because of the leave requirement. The alternative option is to leave the rule as it is, but extend the time to apply for leave.

Rule 13(3) is to read "the Court may, on application, extend the period prescribed", rather than refer to "special leave".

Rule 16

The rule should be redrafted to clarify that "judgment" in r 16(1)(c) refers to the proposed substantive appeal, not to leave to appeal.

Rule 21

Rather than cross-appeal, the respondent will be required to seek leave to appeal also. Rule 26 will require redrafting in order to reflect this. The consultation paper should note that this is done in order to reflect the requirement in the Supreme Court Act for leave for all appeals.

Sub-rule (1) should state that additional written material and responses to the other party's submissions are in addition to the 10 page limit. Accordingly, sub-rule (6) can be deleted.

Reference to oral presentation of leave to appeal should be removed in sub-rule (1), as this suggests that leave given on the papers does not require written submissions. The requirement for written submissions in (1) should apply generally.

Sub-rule (4) should be removed, as notice of application of leave to appeal is unnecessary. Instead, application for leave to appeal will be filed at the same time as submissions for application for leave.

Rule 22

Reference to "cross appeal" should be redrafted to refer to the "respondent's appeal".

Rule 24

The title of this rule should read "Filing of bundle of authorities".

Rule 25

The Committee noted that since a cross-appeal must now be an appeal in its own right, an extra 35 minutes will be available to the parties to make oral submissions.

Rule 26

This title of this rule should read "Leave required for respondent to appeal".

Sub-rule (3) should be removed and the entire r 26 should be reconsidered in light of the changes to r 21 and the removal of cross-appeals.

Rule 28

The word "indicated" in the title and sub-rule (1) should be redrafted to read "granted".

Sub-rule (2) should include the contents of r 44(2), which will be removed.

Rule 32

The Committee proposed the removal of the automatic security for costs, which would become a condition the Court could impose under r 27. This matter was flagged for discussion in the consultation document.

Rule 33

Sub-rule (2) is to be redrafted to read "The Registrar must allocate a hearing date after consultation with parties", in order to make the process more Court-driven than the current drafting implies.

For the same reason, the order of sub-rule (1) and (2) should be swapped.

Rule 35

Sub-rule (1) should be redrafted to exclude the words "The appellant must, when applying for the allocation of a hearing date or" in light of the changes made in r 33. The reference to r 33(2) should be redrafted to read r 33(1).

The 10 day period to file the case on appeal should be increased to 25 working days, subject to a specific direction of the Court at the time of allocation of the hearing date.

Rule 36

The Committee identified an issue for consultation in the length of time for filing the case on appeal and written submissions. The Committee suggested 20 working days for written submissions to be lodged under r 33(3), then 10 working days for the respondent's written submissions in reply to be lodged under r 33(4).

Rule 37

“Case on appeal” should be removed from the title to this rule.

Sub-rule (1)(a) should be deleted. Sub-rule (1) should instead read that the bundle should consist only of the authorities that each counsel considers essential to his or her case. Although peripheral cases are not desired by the Court, the current test in (1)(b), linking the bundle to oral submissions, is too narrow.

Two bundles are to be filed with the Court: those cases the appellant considered important, then any additional cases important to the submissions of the respondent. These bundles are to be filed at the same time as submissions.

Rule 38

Sub-rule (1) is to be redrafted to remove the reference to apply for allocation of a hearing date and to replace this with abandonment in the event of failure to file a case on appeal within the time limit, with provision for extension of the period to file the case on appeal in sub-rule (2).

Rule 39

Sub-rule (2) is to become part of the general rule on abandonment under r 38.

Rule 40

Sub-rule (4) should refer to a notice for abandonment of a criminal appeal.

Rule 41

This rule is to be moved to r 35(4).

Rule 42

Reference to special leave should be removed from sub-rule (2) and replaced with “leave of the Court on application”.

The clause “unless the evidence concerns matters that have occurred after the date of the decision appealed against” should be deleted.

Rule 44

Sub-rule (1) is unnecessary as this is already covered by the power under s25(1)(b) of the Supreme Court Act.

Sub-rule (2) should be moved into r 28 governing the grounds for appeal.

Sub-rule (3) is unnecessary.

Rule 45

The Committee noted sub-rule (1) would be dealt with by practice note or by the practice of the registry.

Both sub-rule (1) and (2) should refer to "must" rather than "may".

Rule 47

The Committee referred the issue of whether there should be costs in criminal appeals for further discussion in the consultation paper.

Rule 50

This rule can be deleted, as it does not affect the Supreme Court, but the trial court.

Schedule

The Committee agreed the forms should be included in the consultation paper, with the comment that there it may be that no forms are necessary, given the explicit directions in the rules as to what the applications for leave must cover. However, if forms are retained, an alternative is to provide a standard form modelled on the notice of interlocutory appeal for the High Court.

Concluding remarks

The Rules Committee agreed that once redrafted, the Supreme Court Rules would be sent out for consultation with an accompanying consultation paper written by Mr Tanner and Ms Fong.

The rules and paper would be circulated to the Law Society, Bar Association and others, and made available on the Rules Committee website, with 28 days to respond.

The meeting closed at 3.20pm.

The next meeting will be held on Monday, 24th May 2004.

Lisa Fong
Clerk to the Rules Committee