



THE RULES COMMITTEE

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14 December 2004

Minutes/7a/04

CIRCULAR NO 129 OF 2004

Minutes of the Meeting held on Monday, 6 December 2004

The meeting called by Agenda/7/04 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday, 6 December 2004, commencing at 10.00am. Mr C Darlow (President of the New Zealand Law Society) was present for the first item of business.

1. Rules reform

With the assistance of Mr Darlow's contribution to the discussion, the Committee agreed to proceed with a rules reform scoping committee led by Mr Tanner QC. The sub-committee is to comprise the Chief Justice or nominee; the Chair or nominee; the Ministry of Justice's representative; Mr Finlayson; and Mr Don Mathieson, with the power to co-opt members. The sub-committee was invited to prepare a scoping paper to identify what approach should be taken to the review of the High Court Rules. Suggested issues the sub-committee might address include:

- Reordering of the rules;
- Re-writing in plain language;
- Improving the numbering system;
- Electronic filing;
- Dealing with cross-border disputes;
- Proposal for funding and communication with central govt on funding (the Ministry of Justice proposed funds would be available from the 2006 budget round for the Rules Committee to take up the Law Commission's suggestions in *Delivering Justice For All*).

Mr Darlow left during discussion. The agenda was then followed.

2. Preliminary

In attendance

The Hon Justice Baragwanath (in the Chair)
The Chief Justice Rt. Hon Dame Sian Elias GNZM
The Hon Justice Chambers
The Hon Justice Robertson ACJHC
The Hon Justice Venning
Judge Joyce QC
Judge Doherty
The Deputy Solicitor-General Ms K Clark
Chief Parliamentary Counsel Mr G Tanner QC
Mr T C Weston QC
Mr C Finlayson
Ms L Sinclair
Mr K McCarron
Ms L Fong (Clerk to the Rules Committee)

Confirmation of Minutes

The minutes of the meeting held on Monday, 18 October 2004 were confirmed as an accurate record.

Personnel

Judge Doherty's reappointment to the Committee for a further three year term until 21 November 2007 was noted.

Tabled Papers

Justice Baragwanath tabled the response from the State Services Commission: Electronic Filing/2/04.
Justice Chambers tabled the Court of Appeal response to submissions on the Court of Appeal (Civil) Rules 2004: Court of Appeal/8/04.

3. Omnibus 5

The Committee invited Mr Tanner QC to make the following changes to Omnibus 5:

Rule 65B

Remove proposed r 65B, which is better suited to a direction to the registry or practice note.

Rule 251A(6)

Remove the words "except with the leave of a judge".

Arbitration rules

The arbitration rules were endorsed. Mr Tanner QC was invited to ensure that the references to "plaintiff" and "defendant" clearly referred to the party applying for judgment and the party against whom judgment was sought, rather than their respective roles in the arbitral proceeding.

Consultation

The Committee agreed that apart from the arbitration rules (which have already undergone consultation), Omnibus 5 should go out for consultation once these changes have been made.

4. District Court Amendment Rules

The Committee agreed that the rules should proceed to concurrence.

5. Court of Appeal (Criminal) Amendment Rules 2004 and Court of Appeal (Civil) Rules 2004

Criminal rules

The Committee agreed with the amendments proposed by the Court of Appeal judges in Court of Appeal/6/04, and invited Mr Tanner QC to incorporate these. Mr Tanner QC was also invited to make the necessary modifications to the rules as a result of the Parole (Extended Supervision) Amendment Act 2004.

The Committee agreed the redrafted proposed rules would be circulated and any further suggested amendments would be made by telephone conference.

Civil rules

Rule 5

The Committee agreed that a power equivalent to that contained in High Court Rule 6 should be added to this rule. It also agreed that the references to "matter" in draft r 5(1); "case" in r 5(2); and "proceedings" in r 5(3) should be systematised.

Rule 6

In the interests of clarity, the Committee agreed to put subrule (3) first, followed by (1) and (2). This would indicate that the current subrule (1) refers to documents once the case has been filed.

Mr Tanner QC agreed to prepare a draft of the Civil rules for the next meeting, bearing in mind the comments above and the Court of Appeal's memo.

6. District Court Claims paper

The District Court Claims paper was referred back to the District Court Claims sub-committee to work on in light of the submissions received. Mr Weston QC highlighted the need to look particularly at the division between liquidated and unliquidated claims. The Australian experience, discussed at a recent conference attended by Justices Randerson and Heath, will warrant consideration.

When it reports back, the sub-committee is to provide a plan of how to take the matter forward, with reference to the Ministry of Justice's submissions.

7. District Court rule 580

The Committee identified difficulty in principle with collections registrars' performing work of a judicial nature, but that is not within the jurisdiction of the Rules Committee to remedy. Ms Sinclair was invited to address this matter and to report back.

The amendment suggested by the District Courts Civil Committee in para 11 of Ms Fong's memo, was endorsed.

8. Adjustments to time allocations and/or daily recovery rates

The Committee noted the submission from NZLS that its members were content with the quantum and time allocations. It invited the profession's representatives on the Committee to consult with the members of their organisations about whether a two-for-one recovery rate for preparation of appeals (item 16 in the third schedule) is thought appropriate. At present the rate is the time occupied by the hearing measured in quarter days.

9. Electronic filing

The Committee invited Mr Tanner QC to take up this matter within the rules reform sub-committee. Its task will include making the arguments regarding timing, funding, efficiencies and public good for the introduction of the electronic filing.

10. Electronic discovery sub-committee

The Committee noted the sub-committee's report; and awaits the report of Ms Buckingham and further advice from the sub-committee at the next meeting.

11. Cross-border cases

The Rules Committee noted Mr Finlayson's report and that he will convene a sub-committee including Professors Angelo and McLachlan and Mr Goddard

QC and will report to the next meeting as to plans for developing necessary rule and legislative changes

12. Document destruction

The Committee invited Ms Fong to send out her paper for consultation, once the relevant statutory provisions and rules from other jurisdictions have been incorporated.

13. High Court Criminal Rules

The Committee agreed with the Chair's and Chief Justice's proposal that they be authorised to set up a sub-committee and to co-opt members to consider and report on the making of criminal rules. These will include the adaptation of the criminal practice notes into rules. Judges Doherty and Joyce QC were invited to propose a suitable District Court judge to join this sub-committee.

14. Originating applications

The Committee agreed that r 458D(1) should be amended to include applications under s329(1) of the Companies Act 1993. This amendment should be incorporated in Omnibus 5.

15. General business

The Committee authorised the Chair and Mr Weston QC in consultation with Mr Finlayson on behalf of the profession to establish a sub-committee to address the types of execution most appropriate for the High Court Rules. The sub-committee will be Christchurch-based and is to include a senior solicitor in a firm and a member of the High Court registry such as Mr Peter Fantham. The sub-committee is to report back to the next meeting of the Rules Committee.

Ms Sinclair agreed to provide to the sub-committee any accumulated knowledge the Ministry of Justice has on execution.

16. Exchange of evidence

The Committee agreed that this matter should not go to the rules reform sub-committee, but should be included in the agenda for discussion at the next meeting.

17. Counsel's signatures and certificates

Mr Tanner QC indicated that PCO will provide a memo with views on whether it is appropriate for counsel sign different court documents, for consideration

at the next meeting. Consultation (which will include the profession) will follow.

18. Ms Fong

The Chairman, with the endorsement of the Chief Justice and members, expressed the Committee's grateful appreciation for the outstanding contributions to its work by Ms Fong; noted with pleasure her appointment to the Crown Law Office; and extended its warm good wishes to her for the future.

The meeting finished at 3.00pm.

The next meeting will be held on Monday, 14 February 2004.

Lisa Fong
Clerk to the Rules Committee