



RULES COMMITTEE | TE KOMITI MŌ NGĀ TIKANGA KOOTI

## MEDIA STATEMENT

8 August 2024

### **Rules Committee to allow costs awards for successful litigants-in-person**

*Chair of the Rules Committee, the Hon Justice Francis Cooke, announces the first in a series of rules changes to enhance access to civil justice*

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The *Rules Committee | Te Komiti Mō Ngā Tikanga Kooti* has agreed to allow litigants-in-person to be awarded costs if their case succeeds, in the first of a series of rules changes aimed at improving access to justice and reducing costs and other barriers.

The Committee has formally approved changing the rules that apply in the District Court, High Court, Court of Appeal and Supreme Court. This follows extensive consultation over the last five years with the profession and the wider community on the Committee's work to address the increasingly unmet need for civil justice in Aotearoa New Zealand.

The rule change to allow litigants-in-person to be awarded costs if their case succeeds is the first of several changes being proposed by the Committee. Other significant changes arise from the Committee's Improving Access to Civil Justice reforms and its [November 2022 Report](#).

"The changes contemplate a transformation in the way that civil litigation is conducted in the High Court," said the Hon Justice Francis Cooke, Chair of the Rules Committee.

### **Costs for litigants-in-person who are successful in their claims – \$500 a day**

The change is to take effect from September 2024, and involves amending the rules to allow litigants-in-person to be awarded costs if their case succeeds.

"After extensive consultation, the Committee concluded that prohibiting any award of costs when a litigant-in-person succeeded could not be justified, particularly when they were liable for costs if they failed," Justice Cooke said.

However, the Committee considered that awarding costs on the same basis as legally represented parties was not appropriate. "Costs awards are usually regarded as a contribution to actual legal expenditure, so there needed to be some pragmatic adjustment if costs were awarded to litigants-in-person," Justice Cooke said. This change was considered reasonable given litigants-in-person would likely incur indirect costs in the time and effort required to conduct the litigation.



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Litigants-in-person will be assessed for costs, applying the same regime under the rules. “The Committee decided that the most sensible approach was to create a new daily recovery rate that would apply to litigants-in-person, set at a level that was below the lowest daily recovery rate currently prescribed by the rules,” Justice Cooke said.

A daily recovery rate of \$500 a day will apply in the District Court, High Court and Court of Appeal. Costs in the Supreme Court would fall within the Court’s discretion, but it could take into account the changes made by the Committee.

Creating a new daily recovery rate within the existing framework of the rules meant the existing, well-understood regime will apply to litigants-in-person. “The Committee has sought to strike a balance that is fair and reasonable,” Justice Cooke said. “A daily rate of \$500 a day would lead to relatively modest costs awards proportionate to the time of cost and effort that litigants-in-person engage in.”

The Committee considered whether the rule change would encourage unmeritorious claims by litigants-in-person. It decided that because an award of costs would only be made if a litigant-in-person were successful, and therefore an unsuccessful litigant-in-person would still be liable to pay costs if their case failed, the change would not lead to increased litigation abuse. The Committee also decided, after consultation, not to change the current approach allowing in-house lawyers to be eligible for costs on the same basis as external lawyers.

The new costs regime will apply to steps taken in a proceeding on or after 1 September 2024.

### **Other changes to follow**

The Rules Committee has also been continuing on its project to reform the rules relating to the way in which litigation is conducted in the High Court following on from the Committee’s Report.

“The Committee has been working quite closely on the detailed formulation of new rules as a consequence of its Report, and proposed rules are nearly ready for release,” Justice Cooke said.

There has been further consultation, and changes to proposals earlier made. “The proposed rules have been sent to previous submitters for comment. There also will be a period of time to engage with the profession on the content of these rules and how civil litigation will be conducted,” Justice Cooke said.

“The new rules will require a change in practice in courts, and the judiciary looks forward to the support of the legal profession to engage co-operatively on the procedural steps required in a proceeding. There will also be a greater emphasis put on ensuring that litigation is conducted in a proportionate way, given what is at stake, and much earlier identification of the issues on which the litigation depends.”



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These further changes to the High Court Rules 2016 are expected to be introduced next year.

### **Background**

As part of its wider review of the Rules of Court, the Committee in early 2019 looked at the rules relating to costs for litigants-in-person.

This was prompted by the Supreme Court's judgment in *McGuire v Secretary for Justice* [2018] NZSC 116, in which the Court noted or made criticisms of the position that most litigants-in-person were not entitled to an award of costs, while practicing lawyers and parties represented by in-house lawyers could obtain costs. The majority in that case considered it was better for Parliament or the Rules Committee, rather than the Court, to effect any reform.

In May 2020, the Committee sought comment from the legal profession, users of in-house counsel, and other court users on potential changes. A history of its review process can be found [here](#).

The Committee is comprised of the Chief Justice, Heads of the Court of Appeal, High Court and District Court, the Chair, Judges of the High Court and District Court, the Attorney-General, the Solicitor-General, representatives of the legal profession, the Secretary for Justice, and other attendees and observers.

Francis Cooke

**Chair of the Rules Committee | Judge of the Court of Appeal**

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