



The Rules Committee

Te Komiti mō ngā Tikanga Kooti

December 2024
Minutes 11/2024

Circular 41 of 2024

Minutes of Meeting of 25 November 2024

The meeting called by Agenda 11/06 (C 31 of 2024) convened at 10.00 am using the Microsoft Teams virtual meeting room facility.

Present (Remotely)

Rt Hon Dame Helen Winkelmann GNZM, Chief Justice of New Zealand
Hon Justice French, Special Purposes Appointee and President of the Court of Appeal
Hon Justice Cooke, Chair and Judge of the Court of Appeal
Hon Justice Fitzgerald, Chief High Court Judge
Hon Justice Gault, Judge of the High Court
His Honour Judge Kellar, District Court Judge
Ms Alison Todd, Senior Crown Counsel as Representative of the Solicitor-General
Mr Daniel Kalderimis KC, New Zealand Law Society Representative and Barrister
Ms Caroline Greaney, Deputy Secretary (Policy) in the Ministry of Justice and Representative of the Secretary of Justice

In Attendance (Remotely)

Ms Akanksha Munshi-Kurian, Senior Legal and Policy Advisor at the Ministry of Justice
Ms Andrea King, Senior Group Manager in the Ministry of Justice
Ms Cathy Pooke, Parliamentary Counsel Office Rules Committee Liaison
Ms Cathy Rodgers, Parliamentary Counsel Office
Ms Georgia Barclay, Clerk to the Rules Committee
Mr Kieron McCarron, Chief Advisor Legal and Policy Supreme Court
Mr Richard McKenna, Judicial Resource Manager and Deputy Registrar at the Court of Appeal
Mr Sam Kunowski, General Manager in the Ministry of Justice
Mr Tim Wilkinson, standing in for Ms Georgia Shen, Secretary to the Rules Committee

Apologies

Hon Judith Collins KC MP, Attorney-General
His Honour Judge Taumaunu, Chief District Court Judge
Ms Stephanie Grieve KC, New Zealand Law Society Representative and Barrister
Mr Paul David KC, Special Purposes Appointee and New Zealand Bar Association President

1. Preliminary

Minutes of previous meeting

The Committee approved the minutes of its meeting of 30 September 2024, subject to one minor change.

2. Te Reo Māori and sign language in courts

In previous meetings, the Committee agreed to propose amendments to the rules enabling court participants to participate in te reo Māori. That matter was paused at the Ministry of Justice's request to enable the costs implications of the amendments to be investigated, with a particular focus on proposed r 1.14 which would have the costs of any translation of documents payable by the Crown.

The Ministry's updated position was that it would like to review the proposed rules in practice once they are promulgated to evaluate any costs implications, with the opportunity to come back to the Committee if necessary. It also suggested using a "in the interests of justice" test to guide the broad discretion of High Court judges to allow document translation under the proposed rules.

The Committee discussed the Ministry's updated position, and agreed with the Ministry's first suggestion of a review once any changes were in place. In respect of the second suggestion, the Committee discussed whether there should be a test and what it should be. The Committee agreed to consider raising the issue with Te Hunga Rōia Māori o Aotearoa through members the previous sub-committee assigned to this matter, including Justice McHerron.

3. Improving Access to Civil Justice

a. High Court Rules

The Committee considered proposed amendments to the High Court Rules, which had been updated following the Committee's review of public submissions at its 30 September 2024 meeting.

The Committee reviewed proposed changes. It was broadly supportive of the proposed rules but agreed to some minor changes as follows:

- Remove the existing r 7.17.
- Amend proposed rules 7.1AA(4) and 30.3A(2) to specify that the case management procedure outlined in r proposed r 30.3A would solely apply to applications for extraordinary remedies under pt 30 of the Rules and would not apply to case management under the Judicial Review Procedure Act 2016.
- Amend proposed r 8.18 so that continuing disclosure obligations would apply to all documents that fall under proposed 8.4(1) — including adverse documents — rather than only to adverse documents.

- Ensure proposed r 9.7(1) refers broadly to “a witness”, as that rule is intended to apply to both fact and expert witnesses.
- Amend proposed r 9.7(2), which provides requirements for witness statements, to differentiate between fact and expert witnesses.
- Consolidate references to case management in the proposed costs schedule to avoid the schedule differentiating between case management in different types of proceedings.

The Committee agreed that in the time preceding the next Committee meeting, the sub-committee would review the proposed amendment rules and make minor changes, and that any matters of substance would be communicated to Committee members for decision outside of a formal meeting. It was observed that the proposed amendments had not yet been subject to PCO’s usual checks, which would soon be carried out.

b. Timetable for introduction, education and training

The Committee agreed with the proposals provided in a memorandum from the Ministry of Justice, including the proposal to aim for a commencement date of 1 January 2026. Forms of education were discussed and some broad approaches that could be used — roadshows and a booklet — were agreed upon. The Committee also agreed to make provision for an eventual review of the proposed rule changes.

4. Court of Appeal (Criminal) Rules

The Committee considered a draft form of proposed significant amendments to the Court of Appeal (Criminal) Rules 2001 which had been brought to the Committee by French P following extensive public consultation on the part of the Court of Appeal. The Committee was broadly supportive of the proposed revised rules but suggested the rules could make greater use of plain English and could benefit from a flowchart.

The Committee agreed to refer the draft amendments to the Parliamentary Counsel Office, who would make such changes and otherwise ensure compliance with its standard drafting practices. The Committee agreed not to refer the amendments to the criminal rules sub-committee in light of the extensive public consultation that had already taken place.

5. Practice note Supreme Court

The Committee considered a Practice Note that the Supreme Court proposed to issue that would give greater clarity and predictability about what costs may be ordered for the leave, preparation and hearing stages in appeals before the Court, as well as an accompanying memorandum from Kós J.

The Chair suggested that it may be more appropriate for the contents of the proposed Practice Note to be issued in the form of a rule change. Representatives of the profession agreed. It was agreed that these concerns would be communicated to the Supreme Court so that the Court could review the best means of progressing the matter.

6. Miscellaneous matters

a. Rule 20.13 of District Court Rules

The Committee considered a proposed amendment to r 20.13 of the District Court Rules 2014 put forward by the Ministry of Justice. The amendment would see ss 93 and 102A of the Local Electoral Act 2001 added to r 20.13, which lists the applications for which the originating application procedure in the District Court may be used.

The Committee agreed with the proposed amendment and asked PCO to draft the change for consideration at its next meeting.

b. Outstanding COVID-19 Amendments

The Committee approved of the proposed amendments to the High Court Rules that would revoke some amendments made in response to COVID-19, which had in turn revoked some requirements relating to signatures on documents.

It was agreed these amendments would be added to the Improving Access to Civil Justice rule amendments that would go before Cabinet in the new year, although these particular amendments could have an immediate commencement date.

c. Miscellaneous amendments

The Committee considered various suggestions made by judges and members of the public, set out in a memorandum from the Chair.

It agreed to the following:

- To amend r 29.2 of the High Court Rules to clarify that the fact an application for summary judgment has been made is not itself a ground to oppose assignment to the commercial panel.
- To amend the High Court Rules to clarify that where a defendant to an originating application under Pt 19 is being served overseas they should be served with a notice of proceeding of the kind referred to in r 6.31.
- To amend the default judgment rules in subpt 2 of the High Court Rules to provide that judgment by default can only be given on an amended statement of claim that has not been served with the leave of the Court.
- To amend r 5.13(1)(d) so that it refers to “the place of residence” rather than “the registered office”, which is not the specified location under the related r 5.11(1)(g).
- To amend r 15.20(1) to remove a perceived tension between rr 15.20 and 15.19.

In relation to a suggestion that standard timetabling for judicial settlement conferences should be implemented it was agreed that this was better implemented by a timetable by standardised minute, rather than a rule change.

It was also agreed to defer the matter relating to Commissions of Inquiry, with the Ministry to continue its work on that matter.

d. Public release of meeting materials

The Committee considered whether it was appropriate for meeting materials to be automatically publicly available on the Courts of New Zealand website. The point was made that this approach could encourage greater public engagement, but equally that some materials would not be appropriate to publicly release, such as provisional minutes that had not been approved and draft amendments to rules provided on a confidential basis by PCO. The Committee agreed to revisit this matter at the next meeting.

e. Review of rates for costs awards.

The Committee agreed it was an appropriate time to review the daily recovery rates for costs awards. To pursue this, research would first be undertaken to assess how the Committee had previously approached such a task. The Committee would follow the same procedure as it had previously used, and the access to justice sub-committee could be employed to achieve that if necessary.

7. Other matters

The Committee agreed to have its first meeting in person next year, and to thank those that had left the Committee in the recent past.

Justice Francis Cooke
Chair