



THE RULES COMMITTEE
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14 July 2004

Minutes/4a/04

CIRCULAR NO 62 OF 2004

Minutes of the Meeting held on Monday, 12 July 2004

The meeting called by Agenda/4a/04 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday, 12 July 2004, commencing at 10.00 am.

1 Preliminary

In attendance

Dr A Butler
The Hon Justice Baragwanath (in the Chair)
The Chief Justice Rt. Hon Dame Elias GNZM
The Deputy Solicitor-General Ms K Clark
The Hon Justice Chambers
Judge Doherty
Judge Joyce QC
Mr H Hoffmann (for Chief Parliamentary Counsel)
Mr T C Weston QC
Mr C Finlayson
Mr R Gill
Mr K McCarron
Ms L Fong (Clerk to the Rules Committee)

Apologies

The Hon Justice Robertson
The Hon Justice Venning

Confirmation of Minutes

The minutes of the meeting held on Monday, 24 May 2004 were taken as an accurate record and were confirmed.

2 Terrorism Suppression Act and r 107

Dr Butler's proposal was opposed by Mr Weston QC on behalf of the Bar, whose disapproval was noted.

Mr Finlayson is to consult with the NZLS on the matter, and in the meantime Mr Hoffmann is to draft amendment rules. The draft rules will be discussed at a telephone conference when a decision will be made.

3 Construction Contracts Act 2002 and Weathertight Homes Resolution Services Act 2002

The period for consultation is extended by 2 weeks, to allow the NZLS and NZBA to provide submissions. The Ministry of Economic Development is also to be consulted. The letter of the Hon Robert Smellie CNZM QC is to be distributed to these bodies for their comment.

Following receipt of the submissions, the Chair and Judge Joyce QC are to finalise the rules in consultation with the Hon Robert Smellie CNZM QC and Mr Kennedy-Grant.

Rule 461ZZU (1)(b)

The word "certified" is to be inserted before the word "copy".

4 District Court Omnibus

Costs

The Committee agreed to extract the costs regime from PCO5307/2 and send those rules out for consultation, once Mr Hoffmann had adopted the changes suggested in the sub-committee's Immediate Proposals document. The draft rules are to be sent out as a Rules Committee document, rather than as the sub-committee's document. The period for consultation is 4 weeks and the same people who were consulted with respect to the then proposed new costs regime for the High Court in 1999 are to be consulted.

District Courts Claims Paper

This document is to be sent out for consultation as the sub-committee's document, with suitable disclaimers. The period for consultation is 2 months.

There are a number of changes to be made:

- Judges Doherty and Joyce QC are to write two introductory paragraphs comparing the status quo at the District Courts with the changes recommended by the sub-committee paper, along with the reasons for those changes.
- “Claimant” and “respondent” are to revert to “plaintiff” and “defendant”.
- The “reply” document is to become “the claim”.
- The consultation document is to contain an expression of thanks to the sub-committee for their effort in formulating a new procedural regime for the District Courts.

5 Criminal Records (Clean Slates) Act 2004

The Committee requested Mr Hoffmann to consider whether rules are necessary to support this Act. The Chair is to send a letter to Dr Jo Lake to inform her of the steps the Committee is taking.

6 Enforcement of interim arbitral awards

The Committee agreed with the proposal set out in Ms Fong’s memorandum, and asked Mr Hoffmann to draft rules in line with those proposed in the memo.

7 Exchange of evidence

To be placed on the next agenda for all to comment. Ms Fong to distribute Justice Chambers’ paper.

8 Maori language in legal proceedings

The Committee thanked Ms Fong for her proposed amendment to r 62(c), but decided not to amend that rule. However, they agreed the title of r 512 should be amended to read “Language other than English”. Mr Gill is to consult with Mr John Clark as to the appropriate length of time for notice of proceedings in Maori.

9 Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

The Committee agreed with the recommendation of the Ministry of Justice and requested Mr Hoffmann to include reference to this statute in the rules. The Ministry is to be advised of these steps.

10 Omnibus 4

Document destruction

This issue is not to hold up the reform: r 296 is to be left as it is. Mr Finlayson is to raise the matter with the NZLS, to identify and inform members of their obligations.

Rule 300

The Committee agreed that a new subclause should be inserted in this rule referring to necessity, as in rr 301(4) and 302(4).

Rule 522(1)(c)

For future reference, the Committee noted that this rule needs to be mirrored in the District Court rules.

11 High Court criminal rules

The Committee agreed that a sub-committee be appointed to set an agenda for the creation of criminal rules for the High Court, which the Committee will sign off. Mr Finlayson agreed to consult the Criminal Practice Committee of the NZLS for names of potential members and to contact the Chair about this before the next meeting.

12 Electronic discovery sub-committee

Mr Finlayson is to invite Gillian Coumbe and Donna Buckingham to join the sub-committee, and is to report to Justice Venning to advance matters before the next meeting of the Rules Committee.

13 Rule making for the District Court

The Committee requested Mr Hoffmann to draw District Courts/3/04 to the attention of Mr Tanner, to advance the amendment of empowering statutes. The goal is to grant the Rules Committee authority over rules in all cases affecting the District Courts. Mr Tanner is to produce a plan of action for statutory reform.

14 Admiralty rules

These are to be sent out for consultation with the costs rules.

15 Part VI reform

Before the Committee pursues its own reform, it invites Mr Gill to obtain the Ministry of Justice's paper on execution.

16 Cross-border cases

Mr Finlayson agreed to gather the foreign components of litigation and assess the relevant rules for adequacy. He also undertook to set up a sub-committee to address the issues raised by the Chair in his papers.

17 Draft practice note

Practice note

The Committee agreed that the matters covered by Justice Doogue's paper had been subsumed by subsequent High Court rules amendments, or were a matter for the bench book.

Skeleton arguments

The Committee agreed to trial mandatory skeleton arguments for contested interlocutory applications. Skeleton arguments, a list of authorities and a chronology are to be the only documents permissible without leave of the court. The documents of both parties are to be filed at the same time with registry. A draft is to be prepared by PCO along the English lines (1.197 – 1.198, pp72-73 of the White Book) and inserted as a new rule in the relevant Part of the rules. The draft is to be circulated for consideration at the next meeting. Ms Fong was invited to address this matter.

18 General business

Care of Children Bill

Mr Hoffmann was requested to investigate whether the Ministries of Justice and Social Welfare were drafting the necessary rules under the Care of Children Bill.

Root and branch reform

Mr Finlayson raised the issue of simplification and refinement of the rules, for instance through the introduction of orders and the removal of the commercial list. Mr Finlayson is to report back to the next meeting on this matter, particularly on the corraling of appropriate groups of people to undertake this business. Anyone with contributions to make as to relevant amendments is to notify Mr Finlayson.

Supreme Court rules

Mr Weston raised the misplacement of a comma within r 5 of the Supreme Court rules. The Committee invited Mr Hoffmann to explore whether PCO has the ability to amend this punctuation.

The Committee is also to consider the provision of rules for interveners, including amicus briefs.

The meeting closed at 2.10pm.

The next meeting will be held on Monday, 6th September 2004.

Lisa Fong
Clerk to the Rules Committee