



THE RULES COMMITTEE

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7 September 2004

Minutes/5/04

CIRCULAR NO 83 OF 2004

Minutes of the Meeting held on Monday, 6 September 2004

The meeting called by Agenda/5/04 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday, 6 September 2004, commencing at 10.00 am.

1 Preliminary

In attendance

The Hon Justice Baragwanath (in the Chair)
The Chief Justice Rt. Hon Dame Elias GNZM
The Hon Justice Chambers
Judge Doherty
Chief Parliamentary Counsel Mr G Tanner QC
Mr T C Weston QC
Mr H Hoffmann
Mr R Guzman
Mr C Finlayson
Mr R Gill
Mr K McCarron
Ms L Fong (Clerk to the Rules Committee)

Apologies

The Deputy Solicitor-General Ms K Clark
The Hon Justice Robertson
The Hon Justice Venning
Judge Joyce QC

Confirmation of Minutes

The minutes of the meeting held on Monday, 12 July 2004 were taken as an accurate record and were confirmed.

Tabled papers

Mr Tanner tabled District Courts/9/04.

2 Terrorism Suppression Act and r 107

Draft r 107 prepared by Mr Hoffmann was endorsed for concurrence.

The correction of the definition of "working days" in Omnibus 4 recommended by General/7/03 and endorsed in Minutes/6/03 in September 2003, but overlooked, would be bundled with r 107.

3 District Court Rule 580

The Committee discussed the relationship of ss84B and 84D of the District Courts Act 1947 to r 580. Ms Fong was invited to consider whether r 580 can be amended to reflect the District Court Civil committee's proposal to permit examination of the judgment debtor by the registrar in the absence of the judgment creditor, or whether legislation would be needed. Ms Fong was also asked to write to the Whitireia Community Law Centre to advise them that the Committee was considering the matter.

4 High Court rules 840 and 700U

The Committee agreed with Judge Doherty's suggestion that counsel should be able to certify costs. Ms Fong was asked to investigate whether solicitors' signatures are required elsewhere in the rules and therefore whether there is a more widespread need for solicitor and counsel signatures to be made interchangeable.

5 Criminal Records (Clean Slates) Act 2004

The Committee endorsed the amendment of District Court rule 452 to apply to applications under ss 9 and 10 of the Clean Slates legislation.

6 Court of Appeal change requests

Legislative requests

The Committee agreed with the Hon Justice Chambers that the changes requested by the Court of Appeal to s58(2) of the Judicature Act 1908 and s398(1) of the Crimes Act 1961 are not likely to raise controversy. For the amendments to proceed expeditiously, a letter to the Attorney-General will be necessary to request that the changes be incorporated into the Statutes Amendment Bill 2004 and Ms Fong was asked to prepare a draft.

Proposed rules

The Committee noted that proposed r 12A(3) will need amending to read "15" working days.

The Committee recognised that the proposed amendments to r 33 are dependent on obtaining the legislative amendments described above.

The Committee agreed to consult with the NZLS and NZBA, and place the draft rules on the website. In the absence of objection arising from this consultation it will endorse the draft. The amended time limits proposed in r 27 were identified by the Committee as particularly requiring consultation.

7 Enforcement of interim arbitral awards

The Committee resolved to send the draft rules prepared by Mr Hoffmann to AMINZ for comment, and agreed that in the absence of objection by AMINZ the rules should be passed in the present form.

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

The Committee agreed with the amendments drafted by Mr Guzman subject to the following comments.

R 461ZZC

The Committee agreed with Mr Guzman's suggestion that "(c) a claim for recovery of debt" was already covered by the ordinary rules for recovery of debt via s 81(3) of the Construction Contracts Act 2002, and should be removed. The definition of "claim for recovery of debt" in r 3 should consequently also be removed.

R 461ZZD

The Committee agreed with Mr Guzman's comment that the suggested amendments to this clause were redundant in light of the qualification within the clause itself that the District Court Rules only apply "except as so far as they are inconsistent with the Construction Contracts Act".

R 461ZZF

The provision of relevant documents to the reviewing judge by the adjudicator will be retained, in order to allow the judge in the de novo hearing to quickly gain a clear understanding of the adjudicator's decision.

R 461ZZG

The Committee agreed with Mr Guzman that s 53 of the Construction Contracts Act 2002 makes unnecessary retention of the reference to "the Court nearest the place at which the relevant adjudication proceedings were held". However, while recognising the sense in Mr Guzman's point that the clause is redundant, the Committee decided to retain it in the interests of assisting the public.

Charging orders

Ms Fong and Mr Guzman agreed to confer on the introduction of a new Form P to cover applications for charging orders.

The Committee agreed to endorse the Construction Contracts rules once redrafted. It noted that the Weathertight Homes Resolution Services rules will have to wait for the corresponding regulations before concurrence can occur.

9 Maori language in legal proceedings

The Committee invited Mr Tanner QC to take over draft r 65A.

10 Exchange of evidence

The Committee discussed the various issues arising out of the questions posed by the Hon Justice Chambers in his paper, including the significance of concurrent exchange in matters of credibility, and agreement that the exchange of evidence was no longer attempting to replicate an oral trial. Ultimately the Committee agreed that consultation upon this matter should occur at the same time as root and branch reform.

11 Skeleton arguments

Mr Finlayson reported the NZLS support for this proposal.

A number of improvements of the draft rule prepared by Ms Fong were suggested:

- Reference in (1) to "accompanied" should be amended to reflect the deadlines set out in (3).
- Reference in (2) to "documents" should refer to "submissions".
- (3) should be checked for compatibility with the time limits for notices of opposition.

- The words “Unless unnecessary” should precede the first sentence of (6).
- The second and third sentences of (6) and (7) referring to agreed chronologies and lists of authorities should be removed in order to prevent over-engineering by the rules.
- A page limit should be introduced.

In addition, the Committee agreed that the requirements of the notices of application and opposition would not be subsumed in the new rule. Neither would an agreed bundle be desirable, nor a rule requiring an index.

Mr Tanner QC was invited to consider the proposal.

12 Root and branch reform

The Committee agreed that a rules tidy-up would not be possible on a small scale without substantive changes to the rules.

Mr Finlayson proposed (seconded by Judge Doherty) that the Chair, with the power to co-opt members, appoint a sub-committee to scope the requirements of a project to perform root and branch reform of the High Court rules. The motion was passed.

The Committee agreed it would seek seed funding from the Law Foundation and the Ministry of Justice to perform this initial scoping. The task of the sub-committee would be to design a structure to identify the desired changes to the rules and the most effective way to go about this. This would require identification of the purpose of the changes: whether to simplify the rules, or retain the benefit of guidance (as in the case of costs); and whether to augment party autonomy or case management. It would also require among other things investigation into a projected budget and available funding, and how best to ensure the benefit of interagency involvement.

13 Electronic filing

The Committee agreed to write to Ms Belinda Clark and to the State Services Commission to advise that the Committee will be working to create rules for electronic filing. The letters will indicate that the Committee sees this as needed in light of the time it takes for rules to come through and the fact it perceives electronic filing as an inevitable development, given the practice of electronic exchange of documents within the profession already. Ms Fong’s paper is to accompany these letters.

14 Electronic discovery sub-committee

Mr Finlayson reported the shared view of Ms Coumbe and Ms Buckingham that the tweaking of existing rules is all that is necessary in order to provide for electronic discovery. Mr Finlayson awaits a response from Mr Justin Smith before he is able to provide any further detail to the Committee on this matter.

15 NZLS meeting

This matter was dealt with in the discussion of other items on the agenda.

16 High Court Criminal Rules

The Chief Justice will consult with the Criminal Practice Committee as to the best approach to take in addressing the creation of criminal rules and report back.

17 Document destruction

Mr Finlayson awaits the comments of Mr Nicholas Till on this matter once the NZLS ethics committee has met and discussed this matter.

18 Third schedule amendment

Mr Tanner will consider the drafting of these proposed amendments.

19 Rulemaking for the District Court

The Committee endorsed Mr Tanner's proposed method to consolidate rules drafting powers in the Committee with the Statutes Amendment Bill 2004 as the appropriate vehicle for these changes. The Chair, Mr Tanner QC and Ms Fong are to liaise on this matter.

20 Cross-border cases

This matter was deferred to the next agenda to allow Mr Finlayson time to attend to this matter.

21 Part VI reform

The Chief Justice, the Chair and Mr Finlayson are to report back on this matter after consultation with NZLS.

22 Care of Children Bill

Mr Hoffmann reported that no rules were contemplated given the concurrent jurisdiction under the Guardianship Act, which would receive consequential amendments.

23 General business

The Chair announced the reappointment of the Hon Justice Chambers for a further term of three years.

The meeting closed at 2.10pm.

The next meeting will be held on Monday, 11 October 2004.

Lisa Fong
Clerk to the Rules Committee