



## THE RULES COMMITTEE

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25 May 2004

Minutes/3/04

### **CIRCULAR NO 35 OF 2004**

#### **Minutes of the Meeting held on Monday, 24 May 2004**

The meeting called by Agenda/3/04 was held in the Chief Justice's Chambers, High Court, Wellington, on Monday, 24 May 2004, commencing at 10.00 am.

#### **1 Preliminary**

##### *In attendance*

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

##### *Apologies*

The Chief Justice Rt. Hon Dame Elias GNZM  
The Hon Justice Robertson  
The Hon Justice Venning  
The deputy Solicitor-General K Clark (for Mr T Arnold QC)

Mr A Beck

*Confirmation of Minutes*

The minutes of the meeting held on Monday, 5 April 2004 were taken as an accurate record and were confirmed.

**2 Construction Contracts Act 2002**

The Construction Contracts Act rules will undergo stakeholder consultation. Ms Fong will prepare a consultation paper to this end, and liaise with Ms Hilary Unwin at the New Zealand Law Society in order to obtain a list of specialist construction practitioners who would be suited to comment upon the rules.

A period of 2 weeks was fixed for consultation.

**3 Weathertight Homes Resolution Services Act 2002**

*Rule 461ZZY*

Subclause 2 should be removed.

*Form 40P*

After the words "process to enforce the order" there will be inserted a phrase in brackets along the lines of "[define District Court process as under s2 of the Weathertight Homes Act]."

*Form 40R*

An asterisk should be inserted after "(or adjudication);" and the reader directed to delete if not applicable. This recognises that consent to apply for transfer of proceedings will not always be necessary.

*Weathertight Homes Regulations*

These are found in the Weathertight Homes Regulations, rather than the rules. Both the rules and regulations therefore need to refer to each other, in order for instance to connect the forms in the rules to the notice requirements in the regulations. The Rules Committee agreed that any comments members had on this matter would be sent to Ms Fong to collate.

**4 Supreme Court Rules 2004**

The Committee considered the submissions of the Manager of Higher Courts, the New Zealand Law Society (NZLS) and the New Zealand Bar Association (NZBA) on the consultation paper concerning the draft Supreme Court Rules. It concluded:

*Rule 3*

The definition of "Court" should be extended to "Supreme Court or Court".

The words in parentheses should be removed from the definition of "criminal appeal".

The definition of "Registrar" should include reference to any Deputy Registrar of the Court, to enable the deputy to perform the duties of the Registrar on a day to day basis and not only in the absence of the Registrar.

The definition of "working day" follows the statute and should remain in its current form.

*Rule 5*

Subrule (3) should state that it is without derogation from the generality of subrule (1).

*Rule 6*

There is an inconsistency between subrule (1) and (2). To resolve this, subrule (2) should be made expressly subject to subrule (1).

Subrule (1) should refer to "the Court" rather than "a Judge" to remain consistent with rule 7.

*Rule 7*

There is ambiguity in the use of the words "the result of". The rule should read "A power conferred on the Court by these rules to give directions or to decide a matter other than the determination of an application for leave to appeal or an appeal may be exercised by a permanent Judge of the Court".

*Rule 8*

A margins requirement should be introduced, and the rule should refer to each appellant and each respondent in order to cater for multiple parties.

*Rule 9*

The reference to index should be retained, as discussed at the meeting of 5 April 2004.

*Rule 10*

"Notice" should be expanded to include any document required to be filed and served.

Reference to "the Registrar at his or her office" should be replaced with reference to "the Registry". This requires cross-referencing to rule 12(1)(a).

Subrule (1) should refer to mail, fax and email addresses published by the Registrar.

The provision for filing by email will require the Supreme Court Registry to obtain a generic email address.

An additional subrule should be included to clarify that the time and date of receipt of a notice is at the time of receipt by Registry, or when the Registry is next open for faxes and emails received after hours. This overrides the common law postal delivery rule.

Service upon parties should be to the address used in the court appealed from, at least in relation to the service of the originating document.

#### *Rule 12*

Reference to "the Registrar at his or her office" should be replaced by reference to "the Registry".

#### *Rule 13*

The word "prosecutor" is ambiguous. Subrule (2)(b) should read "'to the Solicitor-General or where the prosecutor is other than the Crown, that prosecutor".

#### *Rule 15*

The words "(if available)" should be inserted after the "reasons for the decision".

The Court of Appeal practice applying to copying of documents should be used for criminal appeals. The title of the rule should therefore be changed to "Documents required to accompany application for leave to appeal in a civil case".

#### *Rule 16*

This rule should be expanded to include matters under rule 15 relevant to criminal appeals, imposing the obligation on the registrar.

#### *Rule 19*

Matters to be stated in an application for leave should provide guidance to the appellant in an additional subrule. This subrule should give guidance similar to that provided for applicants for leave to appeal to the House of Lords, requiring that the application clearly and succinctly state in writing, signed by the appellant or counsel:

- the facts and points of law involved in the appeal;
- the decision against which the appeal is made; and
- a summary of reasons why leave to appeal should be granted.

It was noted that the ability to attach documents under subrule (3) was open to abuse, as those documents were not subject to a page limitation. Subrule (3) should be removed.

The Committee also resolved to notify to the Supreme Court judges of the problems with this rule relating to the format requirements.

Subrule (5) should be redrafted to include the words "in any particular case" after the words "any contrary direction".

*Rule 21*

After the words "allocate a hearing date for the application" should come the words "after consultation with the parties".

*Rule 22*

Reference to "appellant" in subrule (1) should be changed to refer to "applicant" to ensure that both the applicant and respondent have 5 days to file.

*Rule 23*

Subrule (2) should be redrafted to include the words "in any particular case" after the words "any contrary direction".

*Rule 24*

The word "be" needs inserting between "must" and "treated".

*Rule 25*

Insert at the end of this rule the words "including giving security for costs".

*Rule 41*

Subrule (2) should be moved to the end of Part 2, where it belongs in logical sequence.

*Rule 30*

This rule needs reworking to ensure it is clear that there is a separate power under this rule for the Registrar to fix security, in addition to the Court's power under rule 25. Redrafting must also clarify that the Registrar has power to attend to the details of security whether it was set under rule 25 or rule 30. Subrule (3) also needs to refer to security directed under rule 25, to avoid any ambiguity.

*Rule 31*

Subrule (1) should require the Registrar to notify the hearing date in writing.

*Rule 33*

This rule should be redrafted in line with the suggestions made by the NZBA concerning supervision by the Registrar.

The word "may" should be replaced with "must".

*Rule 34*

Subrule (3) should include cloth-binding.

The second subrule (6) is to become subrule (7)

*Rule 35*

This rule should clarify that the "appellant" includes the respondent advancing its own appeal.

*Rule 38*

Add subrule (5) stating that "Abandonment does not affect the determination of costs".

*Form 1*

Reference to "civil appeal" should be changed to "criminal appeal" in point 5.

Reference to "specificity" should refer to not only to the criteria under s13, but also the new requirements in rule 19 (based on the English and South African models).

The italicised reference to three copies of decisions is to be removed.

*Timetable for approval*

The timetable proposed for the Supreme Court rules is:

Tuesday 25 May 2004	Circulate the minutes. Mr Hoffmann to redraft of the rules based on the minutes
Friday 28 May 2004	Email the Supreme Court judges with the updated rules.
Thursday 3 June 2004	Responses of the Supreme Court judges to Mr Tanner by this morning. Mr Tanner to include any suggested amendments.
Friday 4 June 2004	Final draft to go to Rules Committee member for comment by the end of the day.
Tuesday 8 June 2004	Conference call 8.30am.

## **5 District Court Omnibus**

The Committee requested Ms Fong to prepare a consultation paper to accompany the paper written by the District Court Claims sub-committee. The consultation document is to incorporate the questions raised during the course of the sub-committee's term, the exchange of views between Justice Chambers and Judge Doherty and comments by the Rules Committee at this meeting, to provide the basis for an invitation of public submissions.

The Chair is to write a letter on behalf of the Committee to thank Paul Thomas for his contribution to the work of the sub-committee and his wife's baking.

## **6 Omnibus 4**

The Rules Committee considered the updated draft of the High Court Amendment Rules 2004 and made a number of improvements.

### *Rule 295*

The italicised note at the end of this rule should refer to "existing rule 293" rather than rule 268. The response to this question is that the existing words should be retained, as recommended.

### *Rule 298*

Subrule (1) refers to "possession or power" but should be changed to refer to control, to retain consistency through the rules.

### *Rule 304*

The title to this rule should be redrafted to replace the word "amended" with "corrected or supplemented".

### *Rule 520*

The "and" between (a) and (b) should be "or".

### *Rule 523*

The words "or state" should follow the references to "country", to include federal courts, judicial members and authorities.

### *Rule 523*

Amend the options in rule 523 to supplement (a) and (b) with a certificate, as mentioned in the note following rule 524A, as well as with a judicial discretion to accept the deposition.

### *Rule 540*

Subclause (8) should be made subject to subrule (7).

The meeting closed at 3.20pm.

The next meeting will be held on Monday, 12<sup>th</sup> July 2004.

Lisa Fong  
Clerk to the Rules Committee