



THE RULES COMMITTEE

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9th December 2005

Minutes/7/05

Circular No. 119 of 2005

Minutes of Meeting held on Monday 5th December 2005

The meeting called by Agenda/7/05 was held in the Chief Justice's Boardroom, High Court, Wellington, on Monday 5th December 2005 at 10 am.

1. Preliminary

In Attendance

Hon Justice Baragwanath (in the Chair)
Rt. Hon Dame Sian Elias GNZM, Chief Justice of New Zealand
Hon Justice Chambers
Hon Justice Randerson, Chief High Court Judge
Hon Justice Fogarty
Judge Joyce QC
Judge Doherty
Ms K Clark, Deputy Solicitor-General
Ms L Sinclair, Deputy Secretary, Ministry of Justice
Mr G Tanner QC, Chief Parliamentary Counsel
Mr A Beck, NZ Law Society representative
Mr K McCarron, Judicial Administrator to the Chief Justice
Mr Jeff Orr, Chief Legal Counsel, Ministry of Justice
Ms Bernice Ng, Clerk to the Rules Committee

Apologies

Mr C Finlayson, NZ Law Society representative
Richard Living, Secretary to the Rules Committee

Confirmation of minutes

The minutes of the meeting held on Monday 17th October 2005 were confirmed as an accurate record.

2. Harmonisation of Rules of Discovery Committee: Privilege against self-incrimination

The Chair stated that the Australian Judges of the Harmonisation Committee accepted and approved Justice Fogarty's recommendations (C 69: Discovery/5/05).

It is now over to the Ministry of Justice Trans-Tasman working committees to work on the substantive law. The Committee over time will pick up and follow through with the appropriate procedural rules.

3. Schedule of costs- HCR and DCR

High Court Rules

The Committee endorsed the use of the Producers Price Indices (PPI) as the basis upon which to increase the daily recovery rate in the High Court Rules.

The Committee accepted and endorsed the following costs categories:

Category	Amount
Category 1	\$1070
Category 2	\$1600
Category 3	\$2370

District Court Rules

The District Court Rules sub-committee had invited practitioners to make submissions on actual costs in the District Court in order to determine appropriate schedules of costs specific to the District Court. However, practitioner feedback was low.

The Committee accepted the New Zealand Law Society's advice that District Court costs should be set at 80% of costs set in the High Court.

It was agreed that changes to the costs schedule in the High Court and the District Court should go through concurrence at the same time as Omnibus 5 in the New Year.

4. High Court Costs, Schedule 3, item 16

The Committee considered a letter from Justice Wild on the adequacy of recovery of costs in complex litigation.

The Committee agreed that the current rate of recovery did not take into account complex litigation where a lot of time was spent on preparatory materials (submissions, affidavits etc) but little time was spent in the courtroom.

It was agreed that the Clerk would prepare a note on how best to take into account preparatory time in costs recovery.

5. High Court Rules, r 252

The Committee considered the latest re-draft of r 252.

Parts of the re-drafted rule had been drafted to match the wording in r 259. The Committee agreed that aspects of the draft rule and consequently r 259 were ambiguous and could be tidied up.

It was agreed that Mr Hugo Hoffmann would present another draft of r 252.

6. High Court Amendments and application for grant of administration.

The Committee considered drafts of Schedule One (forms 53 to 56).

The Committee agreed with the changes made.

7. Conduct of Trial Counsel

The Committee considered the Clerk's paper on implied waiver of professional privilege.

The Committee agreed that this was an important topic potentially involving the New Zealand Bill of Rights. There should be proper consultation with the profession, practitioners, judges and academics.

It was agreed that the Clerk would prepare a paper on how Australia, the United Kingdom and Canada dealt with the issue of privilege and allegations of misconduct of trial counsel.

8. Evidence Bill 2005

The Committee agreed that it should accept the invitation from the Justice and Electoral Select Committee and make a submission on the Evidence Bill.

Justice Randerson stated that Justice Gendall and Justice Simon France had been asked to make a submission to the Select Committee on behalf of the High Court Judges.

It was agreed that Justice Randerson would ask Justice Gendall and Justice Simon France to also consider aspects of the Evidence Bill that should be moved into the High Court Rules and vice versa. The Committee will then make its submission to the Select Committee by the end of February 2006.

9. Rules Reform

The Chair invited members of the Committee to comment on the papers presented to the Steering Committee.

It was agreed that more changes are required under the Probate section of the High Court Rules than that suggested by the paper of the Probate sub-committee especially with respect to the relationship between the High Court Rules and the Administration Act 1969.

The Committee agreed to invite Mr Peter Fantham and Mr Tony Mortimer, Senior Court Registrars to comment as they regularly deal with the Probate rules. The Committee also agreed that Mr Andrew Beck and Justice Randerson will make enquires as to suitable practitioners to contact for their input.

The Committee agreed that for the High Court Rules to go on the internet, the presentation of the Rules (numbering, order, headings) needs to be changed and updated (this topic was later discussed by the Steering Committee).

10. Protective Costs Orders, Interveners, and expenses and disbursements.

Ms Karen Clark apologised for the delay in the presentation of her paper. The Attorney-General is interested in matters of procedure and public interest litigation and Crown Law thought it was wise that the Attorney-General is briefed on the paper before it is presented to the Committee.

The Committee agreed that as the paper had greatly increased beyond its original scope, Ms Clark would circulate an outline of the paper to members of the Committee.

11. Membership

It was agreed that the formalities with respect to membership of the Rules Committee should be clarified and properly followed especially with respect to tenure and concurrence of Rules.

It was acknowledged that the Attorney-General had been inadvertently left off the Rules Committee distribution lists. In future, all circulars and correspondence relating the Rules Committee will go to the Attorney- General.

The meeting concluded at 12.45pm.

The next Rules Committee meeting is on Monday 13th February 2005.