



## THE RULES COMMITTEE

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21<sup>st</sup> October 2005

Minutes/6/05

### **Circular No. 101 of 2005**

### **Minutes of meeting held on Monday 17<sup>th</sup> October 2005**

The meeting called by Agenda/6/05 was held in the Chief Justice's Boardroom, High Court, Wellington, on Monday 17<sup>th</sup> October 2005 at 10 am.

#### **1. Preliminary**

##### *In Attendance*

Hon Justice Baragwanath (in the Chair)  
Hon Justice Randerson, Chief High Court Judge  
Judge Doherty  
Ms Julie Nind, Principal Advisor Public Law Group, Ministry of Justice  
Ms Megan Noyce, Advisor Public Law Group, Ministry of Justice  
Mr Rajesh Chhana, General Manager Crime Prevention and Criminal Justice, Ministry of Justice  
Mr A Beck, NZ Law Society representative  
Ms L Sinclair, Deputy Secretary, Ministry of Justice  
Dr Don Mathieson QC, Special Parliamentary Counsel  
Mr H Hoffmann, Parliamentary Counsel  
Mr Ian Jamieson, Deputy Chief Parliamentary Counsel  
Mr Jeff Orr, Chief Legal Counsel, Ministry of Justice  
Mr Kieron McCarron, Chief Justice's Judicial Administrator  
Mr Richard Living, Secretary to the Rules Committee  
Ms Bernice Ng, Clerk to the Rules Committee

##### *Apologies*

Rt. Hon Dame Sian Elias GNZM, Chief Justice of New Zealand  
Hon Justice Chambers  
Hon Justice Fogarty  
Judge Johnson, Chief District Court Judge

Judge Joyce QC  
Mr Russell Fairbrother, MP  
Ms K Clark, Deputy Solicitor-General  
Mr George Tanner QC, Chief Parliamentary Counsel  
Mr C Finlayson, NZ Law Society representative

### *Confirmation of minutes*

The minutes of the meeting held on Monday 5<sup>th</sup> September 2005 were confirmed as an accurate record.

## **2. Trans-Tasman Discussion Paper**

The Chair welcomed Ms Julie Nind and Ms Megan Noyce to the meeting.

Ms Nind summarised the background behind the discussion paper and the work of the Trans-Tasman Working Group in relation to that discussion paper. Ms Nind suggested that the Rules Committee (as a committee) might wish to make a submission on the discussion paper with respect to, among other things, perspectives and practical implications not considered by the working group.

The Committee agreed that the Rules Committee, the Judiciary and the Ministry of Justice needed to liaise closely with each other to ensure that all the issues are addressed at this general level of inquiry. It is at the level of specificity that the input of the Rules Committee is of most value and use.

The Rules Committee agreed that the Trans-Tasman Working Group would get in touch with the Steering Committee and discuss how best the Rules Committee can address the issues raised in the discussion paper.

## **3. Harmonisation on Rules of Discovery Committee: Privilege against self-incrimination**

The Committee supported the principles behind the proposed draft Australian rules on Anton Piller orders and Mareva injunctions.

The Committee agreed that the use of practice notes was unnecessary. In New Zealand all matters are addressed by way of rules and not Practice Notes. It was suggested that the Practice Notes should be subsumed into the rules or changed into a brief explanatory note.

The Committee agreed that a letter to Justice Lindgren should be sent thanking him for opportunity to be consulted. The letter should also discuss the use of Practice Notes in New Zealand. The Committee agreed that the issue privilege against self-incrimination in Anton Piller orders and Mareva injunctions should be put on the agenda of the Steering Committee.

## **4. Rules Reform**

Dr Don Mathieson reported that he had heard back from all but two of the sub-committees by the nominal due date of 30<sup>th</sup> September 2005.

It is expected that the Steering Committee will meet 3 weeks from the 17<sup>th</sup> October 2005 to discuss the reports from all the sub-committees. The meeting is expected to take 1 to 2 days.

The Rules Committee agreed that Justice Randerson and Michelle Vaughan from the Ministry of Justice should join the Steering Committee.

Dr Mathieson agreed to distribute the reports from all sub-committees to Rules Committee members seven days before the Steering Committee meets.

The Chairman thanked Dr Mathieson for his work to date.

#### **5. Omnibus 5**

Hugo Hoffmann explained the recent changes to Omnibus 5 in particular proposed HCR r 299A.

The Committee agreed that Omnibus 5 should proceed to concurrence, and that the operation the rules governing synopsis arguments for interlocutory applications would be monitored

The Chairman thanked Parliamentary Counsel for their considerable and valuable work on Omnibus 5.

#### **6. HCR r 82, Incapacitated Person**

The Committee agreed that the draft consultation paper should go out for consultation.

#### **7. Electronic Court Initiatives**

The Chair summarised the outcome of the meeting with Ministry of Justice officials on the Information Systems Strategic Plan.

It was noted that the Chief Justice, Liz Sinclair and Justice Randerson will liaise with each other on the progress of the ISSP and advise the Rules Committee of when its contributions should be sought. It was also suggested that the Chief District Court Judge or District Court Judge Doogue should also be part of the liaison process.

The Committee agreed that there should be cautious development of rules on electronic court initiatives. Rules for electronic court initiatives (filing, searches, appearances etc) should be put on the Steering Committee's agenda for consideration.

#### **8. Spoliation of Documents**

Rajesh Chhana from the Ministry of Justice at the invitation of the Rules Committee explained that spoliation of documents was not going to be addressed in the Evidence Bill 2005 for a number of reasons. It was expected that spoliation of documents would be addressed in the New Year.

The Chairman thanked Mr Chhana for attending the meeting and explaining the Ministry's position.

#### **9. Conduct of Trial Counsel**

The Committee agreed that the draft rule did not adequately address Justice Tipping's concerns expressed at the previous Rules Committee meeting (C 84: Minutes/04/05).

The Committee agreed that the Clerk would research the position in Australia and issues of implied waiver.

#### **10. Draft High Court Rule r 252**

It was noted that the draft rule did not address the possibility of an application to recall informally by memorandum. The draft rule also did not provide a time limit for the application, similar to that set out in HCR r 259.

The Committee invited Mr Hugo Hoffmann and Mr George Tanner to re-draft the HCR r 252 to ensure that there is a time limit set on making an application to recall.

### **11. Applications to Intervene**

The Committee agreed that the Clerk should prepare another paper addressing the issues of costs with respect to interveners and amicus curiae. This paper would be prepared in conjunction with Ms Karen Clark's forthcoming paper on costs in public interest litigation.

### **12. High Court Amendments and application for grant of administration**

The Committee agreed that forms 54 to 59 of Schedule One of the High Court Rules should be amended to take statutory changes into account. Form 53 should not be amended as suggested by the Registrar.

Mr Hugo Hoffmann and Mr George Tanner are to make the necessary changes in light of the Committee's discussion.

### **13. District Court Rules Reform**

Mr Ian Jamieson outlined the progress of the District Court Rules reform sub-committee.

The sub-committee is advanced in their development of rules on the District Court Claims procedure. The sub-committee has not yet turned its mind to changing the necessary forms.

Once the development of the rules on the District Court Claims procedure is complete the sub-committee will consult, in confidence, a number of practitioners and the writers of *McGechan on Procedure* and *Sim's Court Practice* on the new rules.

It was agreed that it would be up to the sub-committee to decide when to present a draft of the rules to the Committee for comment and consideration.

### **14. Pre-trial processes**

It was agreed that the development of the High Court Criminal rules should remain with the Criminal Rules sub-committee chaired by Justice Panckhurst. It was agreed that if a best practice manual was prepared, it should not be endorsed for use in proceedings and appeals.

The Committee agreed that there should be a formal request to the Criminal Rules sub-committee for an outline of topics in the best practice manual and a summary of the direction that the sub-committee is heading.

*The meeting finished at 1 pm.*

### Note:

The next Rules Committee meeting is on Monday 5<sup>th</sup> December 2005.