



THE RULES COMMITTEE

P.O. Box 180
Wellington

Telephone 64-4-4949 794

Facsimile 64-4-4949 701

Email: rulescommittee@justice.govt.nz

www.justice.govt.nz/rulescommittee

10th July 2006

Minutes/4/06

Circular No. 77 of 2006

Minutes of Meeting held on Monday 3rd July 2006

The meeting called by Agenda/4/06 was held in the Chief Justice's Boardroom, High Court, Wellington, on Monday 3rd July 2006 at 10am.

1. Preliminary

In Attendance

Hon Justice Baragwanath (in the Chair)
Hon Justice Randerson, Chief High Court Judge
Hon Justice Fogarty
Judge Doherty
Mr G Tanner QC, Chief Parliamentary Counsel
Ms L Sinclair, Deputy Secretary, Ministry of Justice
Mr B Brown QC, New Zealand Law Society representative
Mr A Beck, New Zealand Law Society representative
Mr K McCarron, Judicial Administrator to the Chief Justice
Ms Bernice Ng, Clerk to the Rules Committee

Dr D Mathieson QC, Special Parliamentary Counsel

Apologies

Rt. Hon Dame Sian Elias GNZM, Chief Justice of New Zealand
Hon Justice Chambers
Judge Joyce QC
Ms K Clark, Deputy Solicitor-General
Mr J Orr, Chief Legal Counsel, Ministry of Justice
Ms G Smith, Secretary to the Rules Committee

The Chair and Justice Randerson attended the meeting via teleconference.

Confirmation of minutes

The minutes of the meeting held on Monday 1st May 2006 were confirmed as an accurate record.

2. Judicature Amendment Act 2006

Court of Appeal

Rules on the delivery of judgments and the extension of time to seek leave to appeal were before the Executive Council today.

The matter of identifying Court of Appeal Judges in minutes, orders or decisions has been resolved.

Video conferencing rules

Ms Suzanne Giacommetti and Associate Judge Faire drafted the rules. The rules before the Executive Council were the minimum rules necessary to initiate video conferencing under s 26IB Judicature Act. Video conferencing was intended to be available only for matters under s 26I Judicature Act, hearings in chambers and conferences.

It was noted that the draft should also refer to affirmations as well as oaths.

Relevant members of the judiciary and the Ministry of Justice will develop more detailed rules and protocols on the use of video conferencing.

The Ministry of Justice will provide a full update on video conferencing issues and rules at the Committee's December meeting.

3. Expenses and Disbursements

The sub-committee will provide a full report at the September meeting.

4. Rules reform- High Court Rules

The draft to be considered at the Steering Committee meeting is a work in progress and not a final copy of the revised rules.

Dr Mathieson QC tabled a revised scheme of the revised High Court rules. The scheme follows the procedure of litigation with some variation in the sub-parts.

Drafting of the revised rules was in accordance with Parliamentary Counsel drafting guidelines and guidelines set out by Dr Mathieson. Parts of the revised rules that are not being drafted by Parliamentary Counsel were Summary Judgment and Execution. The part dealing with insolvency will be drafted once the Insolvency Law Reform Bill is passed.

The numbering system is similar to the numbering in the English rules, and avoids the bizarre numbering of some of the current High Court rules. However, it will not eliminate numbering problems where there are amendments.

The language of the rules is consistent with current drafting practice. The content and the meaning of the rules have been retained. A lot of the clauses had been shortened. The rules are to read within their immediate context, so there was no need to refer to related subclauses. Obsolete words had been replaced.

Internal checking ensured consistency of different parts of the rules. Mr George Tanner QC will check the entire draft.

The forms are still under revision. A group of users will be assembled to test the user friendliness of the revised forms. It will be made up of representatives from Crown Law, the High Court Wellington registry and practitioners.

The Committee agreed that legislative support for the High Court rules was desirable.

5. Interlocutory Applications

The Committee considered the memorandum and the proposed rules.

The introduction of a requirement to seek leave to appeal an interlocutory order after the last date fixed for doing so is to ensure that there is no undue delay or abuse of process.

However Ms Giacommetti has advised that the problem may be addressed by reference to it in the Court's initial order; both Rule 4 and s 16 JAA provide jurisdiction. (These may be compared with the case of more emphatic "unless" orders which are not seen to present problems.) Moreover the cost involved in filing an interlocutory appeal makes it unlikely for litigants and practitioners to file such appeals frivolously.

It was agreed that the matter should be referred to Associate Judge Faire for further consideration.

6. District Courts Rules reform

Parliamentary Counsel is currently checking the revised District Courts rules. The forms and the costs schedules still need to be done.

The District Courts rules will adopt the same drafting style and numbering system as the revised High Court rules. Again legislative support is desirable.

It is expected that the District Courts rules will operate on the same time frame as the High Court rules.

7. Incapacitated person- HCR r 82

The Committee considered the Clerk's memorandum.

An approach similar to the English Mental Capacity Act 2005 should be adopted in the rules. It was recognised that the English Act covered substantive issues and determined capacity in cases involving the protection of personal property and welfare not just the capacity to litigate.

It was agreed that another draft should be prepared to express the presumption that every person has capacity unless proven otherwise. The rule should be used only in exceptional circumstances. The rules should not cover substantive matters.

Categories of incapacity should be removed. Consideration should be given for removing the use of categories in other rules.

8. Mediation

The Committee discussed the desirability of more systematic procedures to facilitate mediation.

The Committee agreed that the Clerk and Justice Baragwanath would prepare a memorandum to inform the Chief Justice and Ms Clark of the issues.

The topic of mediation will be discussed in more detail at the next Committee meeting.

9. Class Action/Group action litigation

The Committee discussed the necessity for a requirement to have rules on class action litigation.

While there were currently no rules on bringing class actions in New Zealand, it was open to the High Court under the common law or in its general discretion to allow forms of class action proceedings.

It would nevertheless be useful for the Committee to look at whether class action procedures should be adopted in New Zealand. Justice Fogarty and Mr Beck will prepare a note on the matter. This will also allow Crown Law to consider its position.

10. Search of court records

This matter will be discussed at the next Committee meeting.

The Chief High Court Judge will give consideration to a memorandum to be circulated to High Court judges on the search of court records.

11. Summary Proceedings (Electronic Transactions) Rules 2006

Comments on the proposed rules will be made directly to Mr Tanner QC.

12. Evidence Bill

The Committee will send the requested materials to the Justice and Electoral sub-committee.

13. Case management of defamation proceedings

This matter will be discussed at the next Committee meeting.

The meeting concluded at 2.15pm.