



THE RULES COMMITTEE

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5th May 2006

Minutes/3/06

Circular No. 58 of 2006

Minutes of Meeting held on Monday 1st May 2006

The meeting called by Agenda/3/06 was held in the Chief Justice's Boardroom, High Court, Wellington, on Monday 1st May 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
Judge Joyce QC
Ms K Clark, Deputy Solicitor-General
Mr G Tanner QC, Chief Parliamentary Counsel
Ms L Sinclair, Deputy Secretary, Ministry of Justice
Mr J Orr, Chief Legal Counsel, Ministry of Justice
Mr B Brown QC, New Zealand Law Society representative
Mr A Beck, NZ Law Society representative
Mr K McCarron, Judicial Administrator to the Chief Justice
Ms Bernice Ng, Clerk to the Rules Committee

Apologies

Rt. Hon Dame Sian Elias GNZM, Chief Justice of New Zealand
Hon Justice Chambers
Ms G Smith, Secretary to the Rules Committee

Chair

Fogarty J chaired the first part of the meeting while the Chief Justice, Randerson and Baragwanath JJ appeared before the Justice and Electoral Select Committee on the Evidence Bill.

Confirmation of minutes

The minutes of the meeting held on Monday 3rd April 2006 were confirmed as an accurate record.

2. Rules Reform: High Court Rules

The Steering Committee will meet on the 3rd and 4th July 2006.

Mr George Tanner QC informed the Committee that work on the High Court Rules reform project was going well. Dr Don Mathieson QC hopes to despatch a large bundle of redrafted rules to Steering Committee members by the 19th June 2006.

3. Judicature Amendment (No. 3) Act 2006

Parliamentary Counsel in conjunction with Justice Chambers drafted the new rules.

Delivery of judgments

The Committee queried the continuation of the requirement of any two judges in respect of delivery of judgments in open court, especially where the two judges may not happen to be members in the instant case. The question would be forwarded to Justice Chambers and the Court of Appeal for their consideration.

The Committee acknowledged that subclauses 4 to 8 of proposed new rule 49 would be reworded to make clear what the Registrar must do if so requested by one of the parties awaiting delivery of a judgment from the Court of Appeal. In this light r 540 will be referred to the Steering Committee for clarification.

The wording in proposed new r 34 should be clarified and the word "delivery" inserted. The new sub clause would make clear that any application for review be in writing and must be made within 10 working days after the delivery of the Judge's decision.

These draft rules should be promulgated well before the next Committee meeting in July. Justice Chambers, George Tanner and Mr Brendan Brown QC will confer and consult with each other and the Committee during the redrafting process.

Extension of time to seek leave to appeal to the Court of Appeal

The Committee discussed the current Court of Appeal (Civil) Rules, r 14. The members of the Court of Appeal had yet to consider the new drafts.

The Committee recognised that the rule is better placed in the High Court Rules, as potential appellants must seek leave first from the High Court, and then if leave is rejected, the appellants can go to the Court of Appeal and seek leave to appeal there.

In the alternative to the current proposed draft was a rule that allowed the High Court discretion to extend the time to seek leave to appeal.

The wording in the proposed draft rules could be tidied up and clarified.

The proposed redrafts will go back to Parliamentary Counsel and Justice Chambers. It is intended that this proposed rule change would come in with the new rules under the Judicature Amendment (No 3) Act 2006.

Associate Judges and video conferencing rules

Associate Judge Faire and Parliamentary Counsel will discuss and draft the new rules providing for video conferencing in matters involving the Associate Judge's jurisdiction.

Identification of Court of Appeal Judges in judgments

The Committee considered a letter from the Minister for Courts, the Honourable Rick Barker on the introduction of rules providing for the identification of Court of Appeal judges in judgments issued from that court.

The Committee agreed that minutes, directions and other orders should also identify the Court of Appeal judge or judges involved. It would make the administrative process in appellate proceedings more transparent.

Parliamentary Counsel will prepare a memorandum and draft rule for discussion at the next Committee meeting. It will then be sent to the members of the Court of Appeal for discussion and decision.

While the suggestion by the Minister was agreed to in principle, rules are the responsibility of this Committee the practice of the Court of Appeal is for the members of that Court.

A letter will be written to the Minister for Courts thanking him for his letter.

4. HCR, r 82- Incapacitated persons

The Committee discussed the proposed redrafted HCR r 82. The proposed rule sets out the common law test for incapacity and does away with the categories listed in the current r 82 except the category involving persons under the Age of Majority Act.

The main issue facing the Committee is creating a fair and just procedure in light of the new Mental Health legislation. The procedure should recognise that there is a presumption of capacity until the court is satisfied that this is not the case in the particular proceedings.

It was agreed that the Clerk and Parliamentary Counsel would examine the approach taken in other jurisdictions, in particular New South Wales and the United Kingdom.

The Committee thanked Ms Suzanne Giacometti, Parliamentary Counsel for her excellent work on both the Judicature Amendment Act draft rules and the HCR r 82.

5. Third Schedule, High Court Rules and Expenses and disbursements

Expenses and disbursements

The Committee discussed the Clerk's consultation paper. At issue were the mechanisms involved in establishing whether or not expert's fees were recoverable, the determination of a reasonable fee, and proportion of that reasonable fee that the party can recover. Those factors should be subject to the Court's (broad) discretion.

There was also a need for transparency in the process. There should also not be a general rate of recovery (for example, two thirds of reasonable costs).

Preparation costs on appeal or review

In light of the Clerk's paper, and comments from members of the Committee, it was agreed that all preparation costs for appeals and reviews, and not just from Associate Judges should be reviewed. Recovery for preparation costs should not be linked to the number of hearing days.

A sub-committee comprised on Justice Fogarty (Chair), Brendan Brown QC and Mr Andrew Beck will look at the issues of the recovery of expert's fees, disbursements and preparation costs and report back to the Committee at its next meeting.

6. Group Action/Class Action Litigation

The Committee considered whether it could look at the introduction of Group Action/Class Action rules.

Ms Liz Sinclair and Mr Jeff Orr will ask their respective policy colleagues whether the Ministry of Justice has considered the introduction of such rules, and whether it could be a future Ministry project. Ms Sinclair will also ask Ms Julie Nind of the Trans-Tasman working group whether the issue will be considered in their work.

Options at that stage will include writing to the Minister for the Law Commission and to other ministers concerning the introduction of class action/group action litigation.

7. Leave to file interlocutory applications

The Committee discussed whether the current High Court Rules should be amended so that leave is required if a party wishes to file an interlocutory application after the last date fixed for doing so.

Parliamentary Counsel will present a draft new rule at the next meeting.

8. Evidence Bill

The Chair reported back to the Committee on the hearing before the Justice and Electoral Select Committee on the Evidence Bill.

The meeting finished at 1.15pm.