



THE RULES COMMITTEE

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27 May 2005

Minutes/3/05 (Amended)

Circular No. 54 of 2005

Minutes of meeting held on Monday 23 May 2005

The meeting called by Agenda/3/05 (Amended) was held in the Chief Justice's Chambers, High Court, Wellington, on Monday 23 May at 10 am.

1. Preliminary

In Attendance

Hon Justice Baragwanath (in the Chair)
Hon Justice Chambers
Hon Justice Randerson, Chief High Court Judge
Hon Justice Fogarty
Judge Doherty
Mr T Weston QC, NZ Law Society representative
Mr C Finlayson, NZ Law Society representative
Ms K Clark, Deputy Solicitor-General
Ms L Sinclair, Deputy Secretary, Ministry of Justice
Dr D Mathieson, QC, Special Parliamentary Counsel
Mr G Tanner QC, Chief Parliamentary Counsel
Mr H Hoffman, Parliamentary Counsel
Mr J Orr, Chief Legal Counsel, Ministry of Justice
Ms B Ng, Clerk to the Rules Committee

Apologies

Rt Hon Dame Sian Elias GNZM, Chief Justice of New Zealand
Judge Johnson
Judge Joyce QC
Mr R Fairbrother, MP
Ms Michelle Vaughan, Ministry of Justice

Confirmation of minutes

The minutes of the meeting held on Monday 11th April 2005 were confirmed as an accurate record.

Matters arising

The Rules Committee records its thanks to Justice Venning for his immense and sustained contribution to the Rules Committee and its work.

2. Consequential Amendments

The Committee considered and adopted the consequential amendments to the High Court Rules and the District Court Rules in light of recently enacted legislation. The Committee considered that it might be more appropriate for the amendments to take effect from 1 July 2005 instead of 1 August 2005. The change in commencement date would mean a waiver of the 28-day rule. The Committee agreed that the Clerk should contact Ms Michelle Vaughan and discuss changing the commencement date.

3. Rules Reform

Dr Mathieson reported to the Committee that the Rules Revision project sub-committees were to complete their work by the 30th September 2005.

Dr Mathieson advised the Committee that he was attending a meeting in Sydney on the New South Wales Project on Uniform Procedure Rules. The Committee agreed that Dr Mathieson should report back at the next meeting about the nature of the project and its progress.

4. Harmonisation of Rules on Discovery

Dr Mathieson agreed to discuss the matter in Sydney. He will report back on the Australian (New South Wales) position at the next meeting.

Ms Sinclair will arrange for Justice Baragwanath to discuss the topic with Ms Julie Nind at the Stage Two CER working group.

5. Part 7- Extraordinary Remedies

The Committee considered the provisional conclusions from the Extraordinary Remedies Working Committee and agreed that change is necessary both to the Rules and ultimately to the statutory provisions on extraordinary remedies. The Rules Committee would however prefer that the Working Committee prepare a re-draft of the rules on the assumption that for the purposes of the current reform the Judicature Amendment Act 1972 is unchanged. The Committee would also value the working committee's advice as to a longer term reform package including statutory reform.

6. District Court Claims

The Committee considered the submissions received on the District Court claims follow-up paper. The Committee invited Mr Tanner to initiate draft rules and liaise with Ms Sinclair and Judge Doherty about policy and resource issues in light of the submissions received.

7. Omnibus 5

The Committee noted that two main issues were brought up in submissions: the time required to give notice of an intention to speak Maori and skeleton arguments. Other changes were endorsed.

It was agreed by the members that 10 working days was not enough notice of an intention to speak Maori, and that the period should be extended to 15 working days.

It was agreed that Mr Tanner and his team should review section 251A Synopsis of Arguments in light of the submissions received by the Committee and the discussion at the meeting.

8. Hague Convention Rules

Mr Finlayson reported that members of the Cross-border Sub-Committee had attended a presentation by Mr David Goddard QC on the Draft Hague Convention Rules on exclusive choice of court agreements. The Clerk is to distribute materials from the presentation to members for their information. Mr Finlayson stated that the Draft Hague Convention Rules were not an immediate concern for the Committee at this point.

9. Interlocutory Appeals

The Committee considered the memorandum on interlocutory appeals by the Clerk. Justice Chambers reported that the Court of Appeal judges had considered whether leave should be required for interlocutory appeals. The judges consider that there are so few interlocutory appeals that statutory or rule changes are not required

It was agreed that Mr Tanner would look at the policy issues if a rule were introduced dealing specifically with interlocutory appeals. Justice Baragwanath and the Clerk would prepare a memorandum dealing with interlocutory appeals, and a possible requirement for leave to appeal in such cases. The memorandum will then be given to Mr Tanner for his consideration, and he is to report back to the Committee at the next meeting.

10. High Court Criminal Rules

Ms Sinclair will report back on her discussions with Justice Panckhurst after the first substantive meeting of his sub-committee.

The Committee agreed that the Non-Trial Disposal Sub-Committee should provide progress reports to the Rules Committee on the work that the Sub-Committee is doing. The Committee also agreed that it would provide guidance to the sub-committee.

11. Electronic Discovery

Ms Sinclair and Justice Baragwanath will confer on her discussions with Mr Andrew Bridgman, and report back to the Committee at the next meeting.

12. Electronic Filing

The Committee agreed that Ms Donna Buckingham should be flown up to Wellington to meet with Ms Sinclair and Mr Finlayson, and discuss issues regarding electronic discovery and electronic lodgement of court documents.

Mr Finlayson agreed to write to the Commencement Committee and to Dr Jo Lake about electronic filing in the courts.

13. Trial Counsel Incompetence

Ms Clark to forward to the criminal team at Crown Law for their consideration the materials from Justice Chambers on trial counsel incompetence and waiver of privilege. Ms Clark also to discuss the issue with Justice Simon France. The Committee agreed that a draft memorandum or report should be prepared and sent out for public consultation on the issue.

14. Suppression Orders

The Committee discussed the matter and agreed that there was little that could be done once materials had been circulated and/or posted on the Internet. It was agreed that the most appropriate way of dealing with such situations is to advise counsel to be aware of the issue.

15. Irish Working Group help

The Committee agreed to write a reply to the Irish Working Group on the principles behind Rule 47 (New Zealand) High Court Rules.

16. DCR 356 to 377

Ms Sinclair is to report back to the next meeting about the District Court Civil Rules Sub-Committee's meeting with Mr Paul Thomas, who expressed concern about DCR 356 to 377.

17. Old HCR 306

The Committee agreed to restore the old Rule 306 of the High Court Rules. Justice Baragwanath to write to Mr Osborne, thanking him for his letter to the Committee.

The meeting concluded at 1.00pm. The next meeting will be held Monday 4th July 2005.

The remaining meeting dates for 2005 are:

- Monday 4th July;
- Monday 5th September;
- Monday 17th October; and
- Monday 5th December.

Bernice Ng
Clerk to the Rules Committee