

IN CONFIDENCE

High Court Rules—Company Representation 2011

Governor-General

Order in Council

At Wellington this day of 2011

Present:
in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Rules

1 Title

These rules are the High Court Rules—Company Representation 2011.

2 Commencement

These rules come into force on [].

3 Principal rules amended

These rules amend the [].

“5.43A Representation of companies other than by lawyers

“(1) When a company is a party to a proceeding it may apply to a Judge under subclause (2) for leave to do either or both the following:

“(a) file pleadings or other documents by an authorised agent without appointing a solicitor to be solicitor on the record for the company:

“(b) appear and be represented at the trial or hearing of the proceeding, or in any interlocutory application connected with the proceeding, by an authorised advocate.

“(2) An application under subclause (1) may be made by interlocutory application without notice to the other parties to the proceeding.

“(3) The application must be—

“(a) made at the first reasonable opportunity, and in any event no later than 2 working days before action under paragraph (a) or paragraph (b) (as the case may be) of subclause (1) is taken; and

“(b) supported by an affidavit by a director or secretary of the company, stating the circumstances (which may include the financial circumstances of the company), and the reason for making the application, and attaching a copy of a resolution by the directors of the company authorising either or both—

“(i) a named company officer to file pleadings or other documents in the proceeding without instructing a solicitor:

- “(ii) a particular company officer to act as advocate for the company at the trial or hearing.
- “(4) A Judge may dispense with either or both the requirements in subclause (3) if there are exceptional circumstances, or the matter before the court needs to be dealt with on an urgent basis.
- “(5) The fact that an application has been made under this rule is not in itself a ground for the company to seek an adjournment of any trial or hearing.

“5.43B Granting or refusal of leave

- “(1) The Judge must grant an application for leave under rule 5.43A unless subclause (2) applies.
- “(2) The Judge must refuse leave if—
 - “(a) there is a conflict of interest between the agent or advocate and the company, or a substantial risk of such a conflict developing; or
 - “(b) in the case of an authorised advocate, a difficult question of law is likely to arise at the trial or hearing; or
 - “(c) in the case of an authorised advocate, the advocate is likely to be a witness or a deponent of an affidavit; or
 - “(d) the Judge is not satisfied that the authorisation of the agent or advocate (as the case may be) has been adequately proved; or
 - “(e) the Judge is satisfied that any other party to the proceeding or an interlocutory application will be seriously prejudiced if leave is granted; or
 - “(f) justice could not be achieved if the application were granted.

“5.43C Effect of leave

- “(1) If leave is granted under rule 5.43B, any reference in these rules to a solicitor, or to action required to be taken by a solicitor, is to be construed as a reference to the company’s agent or authorised advocate, whichever is appropriate, or to action by that agent or advocate.
- “(2) If a company is given leave to file pleadings or other documents under rule 5.43A(1)(b), the authorised agent may draft

and settle a pleading or other document without instructing a solicitor.

- “(3) Despite subclause (1), the agent or authorised advocate is not to be treated as if he or she were a lawyer for the purposes of rule 1.20, or an officer of the court, and is not entitled to administer on oath or affirmation under the Oaths and Declarations Act 1957.”

Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*:

These rules are administered by the Ministry of Justice.
