



THE HIGH COURT AMENDMENT RULES 1991

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 22nd day of July 1991

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 51c of the Judicature Act 1908, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least two of the other members of the Rules Committee (of whom at least one was a Judge of the High Court), hereby makes the following rules.

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RULES

1. Title and commencement—(1) These rules may be cited as the High Court Amendment Rules 1991, and shall be read together with and deemed part of the High Court Rules from time to time set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the High Court Rules).

(2) This rule shall come into force on the 15th day of August 1991.

(3) Except as provided in subclause (2) of this rule and in rules 6 (2), 16 (2), 19 (3), 20 (2), 25 (2), and 26 (4) of these rules, these rules shall come into force on the 1st day of October 1991.

2. Interpretation—(1) Rule 3 (1) of the High Court Rules is hereby amended by revoking the definition of the term “address for service” (as substituted by rule 2 of the High Court Amendment Rules 1990*), and substituting the following definition:

“‘Address for service’, in relation to any party, means the address of a place in New Zealand at which any document may be left for, or sent to, that party in accordance with these rules.”

(2) Rule 2 of the High Court Amendment Rules 1990* is hereby consequentially revoked.

3. New rules substituted—(1) The High Court Rules are hereby amended by revoking rules 40 to 44, and substituting the following rules:

“40. Subscription at foot of backing sheet—(1) At the foot of the backing sheet of every document for filing there shall be subscribed—

“(a) The name of the solicitor or firm of solicitors (if any) presenting it for filing and the name of any agent by whom the document is filed; and

“(b) Where the document is presented for filing by or on behalf of a solicitor or firm of solicitors—

“(i) The name and telephone number of the principal or employee dealing with the proceeding; and

“(ii) The address of any Post Office box or document exchange used by the solicitor or firm; and

“(iii) Any facsimile number used by the solicitor or firm.

“(2) The fact that the name of a solicitor or firm of solicitors is subscribed on a backing sheet shall be prima facie evidence that the backing sheet and the document to which it is affixed were filed by that solicitor or firm.

“Solicitor’s Authority to File and Sign Documents

“41. Authority to file documents—No solicitor shall file any document on behalf of any party unless the solicitor is either—

“(a) A solicitor who is in practice on his or her own account or as a principal in a firm of solicitors; or

“(b) A Crown counsel employed in the Crown Law Office; or

“(c) Where the party is the Public Trustee,—

“(i) A person of a kind described in paragraph (a) or paragraph (b); or

“(ii) The Office Solicitor (as defined in section 2 of the Public Trust Office Act 1957); or

“(d) Where the party is a Department (as defined in section 2 of the Public Finance Act 1989),—

“(i) A person of a kind described in paragraph (a) or paragraph (b); or

“(ii) The solicitor who is employed by that party as its Office Solicitor or principal legal adviser; or

“(e) Where the party is a corporation,—

“(i) A person of a kind described in paragraph (a) or paragraph (b); or

“(ii) The solicitor who is employed by that party as its principal legal adviser.

“41A. Adverse parties—Where a solicitor or a solicitor’s partner acts as solicitor for any party to a proceeding, or is a party to any proceeding, that solicitor shall not, without the leave of the Court, act for any other party to the proceeding not having the same interest in the subject-matter of the proceeding.

“41B. Solicitor’s warranty as to authorisation to file documents—Every solicitor by whom, or on whose behalf, a document is filed in the Court shall be deemed to warrant to the Court and to all parties to the proceeding that he or she is authorised, by the party on whose behalf the document purports to be filed, to file the document.

“42. Solicitor on the record—Subject to rule 45, the solicitor on the record for a party to a proceeding shall be the solicitor whose name appears on the memorandum subscribed to the first document filed by the party in accordance with rule 44.

“43. Authority to sign documents—(1) Any document which is required by these rules to be signed by a party may, unless the party’s personal signature is expressly required, be signed on behalf of the party by the party’s solicitor on the record.

“(2) Nothing in subclause (1) shall derogate from the authority of counsel to sign documents.

“44. Memorandum to be subscribed to first document filed by party—(1) At the end of the first document filed by a party there shall be a memorandum stating—

“(a) That the document is filed by the party in person, or by the party’s solicitor, as the case may be; and

“(b) Where it is filed by a solicitor,—

“(i) The name of the solicitor; and

“(ii) If the solicitor is a member of a firm or practises under a firm name, the name of the firm; and

“(c) Where it is filed by a solicitor who has another solicitor acting as the solicitor’s agent in the proceeding,—

“(i) The name of the agent or of the agent’s firm (if any); and

“(ii) The postal address of the party’s solicitor; and

“(d) An address for service; and

“(e) Where it is filed by a solicitor, any Post Office box address, document exchange box number, or facsimile number by which the solicitor will accept service of documents in the course of the proceeding.

“(2) The memorandum may be in one of the paragraphs of form 3.”

(2) Rule 2 of the High Court Amendment Rules (No. 2) 1988* is hereby consequentially revoked.

4. Change of solicitor or address for service—Rule 45 (2) (b) of the High Court Rules is hereby consequentially amended by omitting the expression “(d)”, and substituting the expression “(e)”.

5. Power to make order for security for costs—Rule 60 of the High Court Rules is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) Where the Court is satisfied, on the application of a defendant,—

“(a) That a plaintiff—

“(i) Is resident out of New Zealand; or

“(ii) Is a corporation incorporated outside New Zealand; or

“(iii) Is, within the meaning of section 158 of the Companies Act 1955, a subsidiary of a corporation incorporated outside New Zealand; or

“(b) That there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff’s proceeding,—

the Court may, if it thinks fit in all the circumstances, order the giving of security for costs.”

6. Search of certain records—(1) The High Court Rules are hereby amended by revoking rule 68, and substituting the following rule:

“68. (1) This rule applies to any proceeding, being—

“(a) A reference under section 42 (1) of the Human Rights Commission Act 1977; or

“(b) An application made to the Court under section 19 of the Citizenship Act 1977; or

“(c) An appeal made to the Court under or by virtue of any enactment, not being an appeal made to the Court under the Act or the District Courts Act 1947 or the Summary Proceedings Act 1957 or any Act specified in rule 66 (5).

“(2) In respect of any proceeding to which this rule applies, the Court may, of its own motion, or on the application of any party, make an order prohibiting the search of any records or documents.

“(3) Subject to subclause (2), any person (whether a party or not) shall be entitled during office hours to search the records of and the documents filed in the Court in relation to any proceeding (being a proceeding to which this rule applies) that is pending before the Court at the time of the search, and any former proceeding connected therewith.

“(4) Subject to subclauses (2) and (3), any party to any proceeding to which this rule applies (not being a proceeding that is pending before the Court at the time of the search), and any other person who establishes to the satisfaction of the Registrar that that person has an interest in or is affected by any such proceeding, or the solicitor or agent of any such party or other person, shall, on giving the Registrar not less than 24 hours’ notice in writing, be entitled to search the records of and the documents filed in the Court in relation to the proceeding.”

(2) This rule shall come into force on the 15th day of August 1991.

7. Hearings in Chambers—The High Court Rules are hereby amended by inserting, after rule 72, the following heading and rule:

“Hearings in Chambers

“72A. Where any proceeding or interlocutory application is heard and decided in Chambers, particulars of the hearing or the decision or both (including the reasons for the decision) may be published unless the Judge, Master, or Registrar, exercising jurisdiction in Chambers, otherwise directs.”

8. Proper office of the Court—Rule 107 of the High Court Rules is hereby amended by revoking subclause (5).

9. Application of summary judgment procedure—(1) Rule 135 (1) (a) (iv) of the High Court Rules is hereby revoked.

(2) Rule 135 of the High Court Rules is hereby amended by revoking subclause (2) (as added by rule 5 of the High Court Amendment Rules (No. 2) 1988* and amended by rule 5 of the High Court Amendment Rules 1990†), and substituting the following subclause:

“(2) Notwithstanding subclause (1) (c), a proceeding is not excluded from the application of rules 136 to 144 by reason only of the proceeding being—

“(a) A proceeding under paragraph (b) or paragraph (c) of rule 449; or

- “(b) A proceeding in which a claim is made for specific performance of an agreement; or
- “(c) A proceeding in which a mortgagee applies for the leave of the Court to enter into possession of mortgaged land; or
- “(d) A proceeding in which a claim is made for contribution or indemnity.”

(3) Rule 5 of the High Court Amendment Rules (No. 2) 1988* and rule 5 of the High Court Amendment Rules 1990† are hereby consequentially revoked.

10. Interlocutory application for summary judgment—Rule 138 of the High Court Rules is hereby amended by adding the following subclause:

“(3) No application for judgment under rule 136 or rule 137 shall be based on an allegation of fraud made in the statement of claim but the inclusion of such an allegation in the statement of claim shall not prevent the Court from giving judgment against the defendant if the Court is satisfied that a defendant has no defence to any other claim in the statement of claim or to a particular part of any such other claim.”

11. Modes of service—The High Court Rules are hereby amended by revoking rule 192, and substituting the following rule:

“192. (1) Except where an Act or these rules prescribes a particular and exclusive mode of service, service of a document that is required by these rules to be served may be effected in any of the following modes:

“(a) Personal service:

“(b) Service at an address for service given in accordance with these rules:

“(c) Service at an address directed by the Court as the address for service for the party or person:

“(d) Where the solicitor for the party or person has, under rule 44 (1) (e), specified a Post Office box address, document exchange box number, or facsimile number,—

“(i) By posting the document to that Post Office box address; or

“(ii) By leaving the document at a document exchange for direction to that document exchange box number; or

“(iii) By transmitting the document to that facsimile number.

“(2) In any case not provided for by these rules, service shall be effected in such manner and at such place as the Court directs.”

12. Service by means of Post Office box, document exchange, or facsimile number—The High Court Rules are hereby amended by inserting, after rule 206, the following rule:

“206A. (1) Where a document is served on a party or person in accordance with rule 192 (1) (d), that document shall,—

“(a) If posted to a Post Office box address, be deemed to have been duly served on the earlier of—

“(i) The fifth working day after the day on which it was so posted; or

“(ii) The day on which it was received; and

“(b) If left at a document exchange, be deemed to have been duly served on the earlier of—

“(i) The second working day after the day on which it was so left; or

“(ii) The day on which it was received; and

“(c) If transmitted to a facsimile number, be deemed, subject to subclauses (2) and (3), to have been duly served on the day on which it was so transmitted.

“(2) Where a document is transmitted to a facsimile number after 5 p.m. on any day, that document shall, subject to subclause (3), be deemed to have been duly served on the first working day after the day on which the document was received in a complete and legible condition.

“(3) A document transmitted to a facsimile number shall be deemed to have been received in a complete and legible condition unless—

“(a) The contrary is shown; and

“(b) As soon as practicable after the transmission is concluded, the solicitor to whom the document was transmitted notifies the person who transmitted the document that the document was incomplete or illegible or both when it was received.

“(4) Where a document is served under rule 192 (1) (d), the solicitor to whom the document was sent or transmitted shall, on receiving the document, immediately give to the person by whom the document was served an acknowledgment, in writing or by facsimile transmission, that the document has been received and shall include in that acknowledgment a statement of the date of service.”

13. Certificate of solicitor or counsel to be subscribed on application made without notice—Rule 237 of the High Court Rules is hereby amended by revoking subclauses (3) and (4), and substituting the following subclauses:

“(3) Subject to subclauses (4) to (4B), a certificate given under subclause (1) may be given only—

“(a) By a solicitor or counsel who is in practice on his or her own account or as a principal in a firm of solicitors; or

“(b) By the Solicitor-General or a Crown counsel employed in the Crown Law Office.

“(4) A certificate given under subclause (1) in relation to an application intended to be made *ex parte* for the grant in common form of probate or letters of administration may be given only—

“(a) By a person of a kind described in subclause (3); or

“(b) By any other solicitor or counsel whose standing is sufficient in the opinion of the Court or Registrar dealing with the application.

“(4A) A certificate given under subclause (1) in relation to an application intended to be made by the Public Trustee in any proceeding in which the Public Trustee is a party or is in any way interested may be given—

“(a) By a person of a kind described in subclause (3); or

“(b) By the Office Solicitor (as defined in section 2 of the Public Trust Office Act 1957).

“(4B) A certificate given under subclause (1) in relation to an application intended to be made by any party referred to in paragraph (d) or paragraph (e) of rule 41 may be given—

“(a) By a person of a kind described in subclause (3); or

“(b) By any solicitor who could file a document on behalf of that party in accordance with rule 41.”

14. General jurisdiction of Registrars in relation to interlocutory applications—Rule 270 of the High Court Rules is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) To hear and determine any application under rule 138A.”.

15. Enforcement of interlocutory order—Rule 277 of the High Court Rules is hereby amended by revoking subclause (5), and substituting the following subclause:

“(5) Where—

“(a) A party has a solicitor on the record; and

“(b) An order made under this rule against the party is served on the party—

“(i) By leaving a copy of the order at the office of the solicitor on the record or at the office of that solicitor’s agent; or

“(ii) By posting a copy of the order to the solicitor on the record or to that solicitor’s agent; or

“(iii) By serving a copy of the order in accordance with rule 192 (1) (d),—

the solicitor on the record shall, if that solicitor fails without reasonable cause to notify the party of the order, be liable to pay such fine or such costs as the Court directs.”

16. Application of rule 382—(1) Rule 383 (b) (i) of the High Court Rules is hereby revoked.

(2) This rule shall come into force on the 15th day of August 1991.

17. Fixtures—(1) The High Court Rules are hereby amended by revoking rules 433 and 434, and substituting the following rule:

“433. (1) Where a proceeding has been set down for trial in accordance with rule 431, the Registrar shall, as soon as practicable,—

“(a) Allocate a date for the trial of the proceeding (in these rules referred to as a fixture) in accordance with the information contained in the praecipe; and

“(b) Give written notice of the fixture to every person who has given an address for service in the proceeding.

“(2) Where a party has a solicitor on the record, notice under subclause (1) (b) shall be addressed to that solicitor.

“(3) In making fixtures under subclause (1), the Registrar shall, except in a case of special urgency or by direction of a Judge, adhere to the order in which proceedings are entered on the appropriate ready list.

“(4) Where the Chief Justice has appointed a Judge to superintend the efficient running of the business of the Court at any place, the provisions of subclauses (1) to (3) are subject to any administrative direction which is given by that Judge and which concerns the allocation of fixtures or the calling over of cases on any ready list.”

(2) Rule 435 (2) is hereby consequentially amended by omitting the words “or rule 434”.

18. Application of Part IV to other proceedings—Rule 449 of the High Court Rules is hereby amended by revoking paragraph (b), and substituting the following paragraph:

“(b) Any proceeding—

“(i) By any mortgagee or mortgagor, whether legal or equitable, of real property; or

“(ii) By any person entitled to or owning real property subject to a legal or equitable charge; or

“(iii) By any person having the right to exercise any powers, whether statutory or otherwise, under any mortgage or charge of real property or to redeem any mortgage or charge whether legal or equitable, of real property—

for the purpose of determining any sufficient question arising out of the plaintiff’s status as such mortgagee or mortgagor or person, or the exercise or purported or threatened exercise of any right or power conferred or alleged to be conferred by the mortgage or charge.”.

19. Part IX (Administrative Division) revoked—(1) The High Court Rules are hereby amended by revoking Part IX.

(2) Rule 11 of the High Court Amendment Rules 1986* is hereby consequentially revoked.

(3) This rule shall come into force on the 15th day of August 1991.

20. New Part X substituted—(1) The High Court Rules are hereby amended by revoking Part X, and substituting the following Part:

“PART X

“APPEALS TO HIGH COURT

“701. **Application of this Part**—(1) This Part shall apply to all appeals to the Court under any enactment (other than appeals under the District Courts Act 1947 or the Summary Proceedings Act 1957).

“(2) This Part shall not apply to any appeal or reference for the opinion of the Court by way of case stated.

“(3) This Part shall apply subject to any specific provision contained in the Act conferring the right of appeal.

“702. **Interpretation**—In this Part,—

“ ‘Appropriate officer’, in relation to a tribunal, means the Registrar or the Secretary or the clerk or such other officer of the tribunal who is responsible for the administration of the tribunal:

“ ‘Appropriate registry’ means the registry of the Court at which the appeal is, in accordance with rule 707, to be filed:

“ ‘Decision’, includes any order made by a tribunal or person:

“ ‘General appeal’ means every appeal to which this Part applies other than an appeal on a question of law only:

“ ‘Tribunal’ includes any person or body of persons exercising a power of decision conferred by or under any Act, other than the District Courts Act 1947 or the Summary Proceedings Act 1957, in respect of which there is a right of appeal to the Court.

“703. **Mode of bringing appeal**—Every appeal to which this Part applies shall be instituted by the appellant—

“(a) Filing a notice of appeal in the appropriate registry of the Court; and

“(b) Serving a copy of the notice of appeal on the Registrar of the Court, or the appropriate officer of the tribunal, by which the decision was made, or if there is no such appropriate officer, on the person by whom the decision was made.

“704. **Time for appeal**—The notice of appeal shall, within one month after the date of the decision, be filed and served in accordance with rule 703.

“705. **Extension of time for appeal**—(1) The Court may extend the time prescribed for appeal, or for taking any step in relation to an appeal, if the enactment conferring the right of appeal—

“(a) Permits the extension; or

“(b) Does not limit the time prescribed for appeal; or

“(c) Prescribes a longer period of time than that prescribed by rule 704.

“(2) Any such extension shall be sought by way of interlocutory application upon notice to all other parties who may be affected by the appeal.

“(3) An application under subclause (2) may be made before or after the expiration of the time prescribed for appeal or for taking any step in relation to the appeal.

“706. **Contents of notice of appeal**—(1) The notice of appeal shall specify—

“(a) The decision or the part of the decision appealed from; and

“(b) Any error of law alleged by the appellant; and

“(c) Any question of law to be resolved; and

“(d) The grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice of the issues involved to—

“(i) The Court; and

“(ii) The other parties; and

“(iii) The tribunal which, or person who, made the decision appealed from; and

“(e) The relief sought.

“(2) The grounds of the appeal may be amended by leave of the Court.

“707. **Place for filing notice of appeal**—(1) The appropriate registry of the Court for the purposes of this Part shall be,—

“(a) In the case of any appeal (other than an appeal referred to in paragraph (b))—

“(i) The office of the Court nearest to the place where the decision appealed from was made; or

“(ii) Any other office of the Court in which the parties agree that the notice of appeal may be filed:

“(b) In the case of an appeal from a decision of the Land Valuation Tribunal, the registry of the Court in or nearest to the place in which is situated the office of the District Court in which the proceedings are filed.

“(2) In any case to which subclause (1) (a) (ii) applies, the parties shall endorse on or lodge with the notice of appeal a memorandum of their agreement to the notice of appeal being filed in the office of the Court in which it is filed.

“(3) In any case to which subclause (1) (a) applies, if it appears to the Court, on application made to it, that the notice of appeal has been filed in the wrong office of the Court or that any other office of the Court would be more convenient to the parties, it may direct that the notice of appeal be filed in such other office, or that all documents filed in the appeal be transferred to the proper office or (as the case may be) to such other office.

“(4) In any case to which subclause (1) (b) applies, the Registrar shall forthwith send a copy of the notice of appeal to the Registrar at

Wellington who, subject to the directions given under rule 684 by the Chief Justice, shall arrange for the hearing.

“708. Service of copies of notice of appeal on other parties—Either before or immediately after the filing and service of the notice of appeal under rule 703, the appellant shall serve a copy of the notice of appeal on every other party to the matter in which the decision was given.

“709. Power to dispense with service—(1) Notwithstanding rule 708, the Court may, on sufficient cause being shown, dispense with service of a copy of the notice of appeal on any party to the matter in which the decision was given.

“(2) Any dispensation under subclause (1) may be on such terms as the Court thinks fit.

“710. Appeal not to operate as stay—The bringing of an appeal shall not operate as a stay of proceedings on the decision against which the appeal is brought unless the Court, or the tribunal or person by which or by whom the decision was given, so orders.

“711. Cross-appeal—Where any person other than the appellant wishes to contend on the hearing of an appeal that the decision appealed from should be varied or discharged, that person shall, at least 7 days before the day fixed for hearing the appeal, file and serve a notice of cross-appeal, and this Part shall apply accordingly with all necessary modifications.

“712. Documents to be lodged by tribunal with Registrar—(1) Except where the Court otherwise directs, the appropriate officer of the tribunal, or the person by whom the decision was made, shall, as soon as possible after being served with the notice of appeal, send to the Registrar at the appropriate registry—

“(a) Two copies of any application, documents, written submissions, statements, reports, and other papers lodged with the tribunal or person and relating to the decision appealed from or such greater number of copies as is required by subclause (3); and

“(b) Any exhibits in the custody of the tribunal or person; and

“(c) Two copies of the whole of the decision appealed from or such greater number of copies as is required by subclause (3).

“(2) Where there has been a hearing before the tribunal or person, there shall also be sent to the Registrar two copies of such notes of any evidence given at the hearing and made for the purposes of or under the direction of the tribunal or person as have been transcribed or such greater number of copies as is required by subclause (3). If the transcript is certified to be correct by the appropriate officer of the tribunal by which, or the person by whom, the decision was made, no further verification of its contents shall be required.

“(3) Where an appeal is required to be heard by more than one Judge, the number of copies of documents (including notes of evidence) required, by subclauses (1) (a), (1) (c), and (2), to be sent to the Registrar at the appropriate registry shall be increased to a number sufficient to provide one copy for the Court records and one copy for each of the Judges required to hear the appeal.

“(4) The provisions of subclause (2) shall not apply to any notes made personally by the members of the tribunal or the person who made the decision.

“713. Order for transcription of evidence—(1) Where there has been a hearing before the tribunal by which, or the person by whom, the

decision was made and the evidence given at the hearing was recorded but has not been transcribed, the Court may order, subject to such conditions as it thinks fit,—

“(a) In the case of a general appeal, that a transcript of the whole of the evidence be made and sent to the Registrar at the appropriate registry:

“(b) In the case of an appeal on a question of law only—

“(i) Where a ground of the appeal is that there was no evidence on which the tribunal by which, or the person by whom, the decision was made could properly have reached the decision or any part of the decision, that a transcript be made of all evidence given material to the issues involved and specified in the notice of appeal:

“(ii) Where the ground of appeal is any other question of law, and the Court is satisfied that a proper determination of the question of law so requires, that a transcript be made of such of the evidence given as appears necessary for the determination of the question of law specified in the notice of appeal.

“(2) No application for an order under this rule for the transcription of evidence shall be made—

“(a) By the appellant after the expiry of one month after the date of the lodging of the notice of appeal; or

“(b) By any other party to the appeal after the expiry of one month after the date of service on that party of a copy of the notice of appeal.

“(3) The Court shall, before making an order under this rule for the transcription of evidence, give notice to the tribunal which, or person who, made the decision that is the subject of the appeal.

“(4) If the tribunal which, or person who, made the decision appealed from wishes to appear and be heard before any order under this rule for the transcription of evidence is made, the tribunal or person shall, within 14 days after the date of the service on that person of a notice under subclause (3) of this rule, file a notice of intention to appear and be heard, and the tribunal or person and every party to the appeal shall then be entitled to be heard before any such order is made.

“(5) On any application for an order under this rule for the transcription of evidence, the Court may if it thinks fit, instead of requiring a transcript of evidence to be made, require a report to be made and lodged under rule 715.

“(6) The tribunal which, or person who, made the decision that is the subject of the appeal may, at any time, make application to the Court for an order that the cost of making any transcript in accordance with this rule be paid by any of the parties to the appeal.

“(7) The Court may, in its discretion, make an order accordingly, notwithstanding that the appeal has been abandoned or the appeal has been dismissed for want of prosecution.

“(8) A sealed copy of every order under this rule for the transcription of evidence shall be served forthwith upon the appropriate officer of the tribunal which, or upon the person who, made the decision that is the subject of the appeal.

“(9) Whenever an order under this rule requires a transcript to be made, the appropriate officer of the tribunal which, or the person who, made the decision shall certify as to the correctness of the transcript and send a copy

of it to the Registrar at the appropriate registry. No further verification of the contents of the transcript shall be required.

“714. Appeal from decision under section 21 of Valuation of Land Act 1951—(1) Where any decision of a Land Valuation Tribunal entered in a list of objections to which section 21 of the Valuation of Land Act 1951 applies is appealed against, or more such decisions than one are appealed against, the Valuer-General shall forthwith lodge, in duplicate, in the registry of the Court in which the notice of appeal is filed a fresh list of objections containing copies of the entries in the original list against the decisions on which the appeals have been lodged.

“(2) One copy may be a photocopy.

“(3) It shall not be necessary to attach to the duplicate copy a copy of the objections referred to in the Act.

“715. Power of tribunal to file report—(1) The tribunal which, or person who, made the decision shall, if the Court so directs, lodge with the Registrar a report setting out—

“(a) Any considerations (other than findings of fact) to which the tribunal or that person had regard in making the decision but which are not set out in the decision; and

“(b) Any material indicating the effect that the decision might have on the general administration of the enactment under which the decision was made; and

“(c) Any other matters relevant to the decision or to the general administration of the enactment to which the attention of the Court ought to be drawn.

“(2) Where any such report is so lodged, the Court may direct that a further report be lodged by the tribunal or person.

“(3) A copy of every report lodged pursuant to subclause (1) or subclause (2) shall be supplied forthwith by the tribunal or person to every party to the appeal, and any such party shall be entitled to be heard and to tender evidence on any matter referred to in the report.

“716. Right of respondent to be heard—(1) Any respondent to an appeal who wishes to appear and be heard on the hearing of the appeal shall, within 14 days after the date of the service on that person of a copy of the notice of appeal, file in the Court a notice of the respondent's intention to appear and be heard (which notice is required by rule 44 (1) to bear a memorandum stating (among other things) an address for service).

“(2) The parties to an appeal shall be—

“(a) The appellant; and

“(b) Any respondent who gives a notice of intention to appear and be heard as a respondent.

“(3) The parties to the appeal shall be entitled—

“(a) To be served with every document thereafter filed or lodged with the Registrar relating to the appeal; and

“(b) To receive a notice of the date set down for the hearing of the appeal; and

“(c) To apply for an order for security for costs of the appeal.

“(4) Where the tribunal which, or person who, made the decision appealed from is entitled to be heard under rule 718 (9), the tribunal or person shall give notice under this rule and shall thereafter be entitled to be served with documents and to be given notice as if the tribunal or person was a respondent to the appeal.

“(5) Either before or immediately after filing a notice under this rule, the person filing the notice shall serve a copy of it—

- “(a) On every other party to the matter in which the decision was given; and
- “(b) In the case of a notice served under subclause (1), on the appropriate officer of the tribunal or on the person who made the decision appealed from.

“717. **Setting down appeal for hearing**—At any time after—

- “(a) Copies of the notice of appeal have been served in accordance with rule 708; and
- “(b) Any documents required to be sent to the Court in accordance with rule 712 or rule 713 have been supplied to the Registrar at the appropriate registry,—

the appellant, or any party to the appeal who has filed a notice under rule 716 (1), may set the appeal down for hearing by filing a praecipe in form 33. Rules 426, 428, 429, and 430 shall apply thereto and thereafter rules 431 to 436 shall apply with all necessary modifications.

“718. **Hearing of appeal**—(1) Every appeal shall be by way of rehearing.

“(2) In every appeal that requires for its determination consideration of all or some of the evidence taken before the tribunal or person from whose decision the appeal has been brought, the evidence shall, subject to any special order, be brought before the Court as follows:

- “(a) As to any evidence given orally, by the production of—
 - “(i) The transcript thereof forwarded to the Court by the appropriate officer of the tribunal by which or the person by whom the decision appealed from was made; or
 - “(ii) A written statement read by a witness while under oath; or
 - “(iii) Such other materials as the Court thinks expedient:
- “(b) As to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as have been forwarded to the Court by the tribunal or person; and by the production by the parties to the appeal of such exhibits as are in their custody.

“(3) Notwithstanding anything in subclause (2),—

- “(a) In every general appeal, the Court may rehear the whole or any part of the evidence; and
- “(b) In any appeal, the Court shall rehear the evidence of any witness if the Court has reason to believe that any note of the evidence of that witness made by direction of the tribunal or person is or may be incomplete in any material particular.

“(4) In every general appeal, the Court shall have full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit.

“(5) The Court shall also have regard to any report lodged by the tribunal or person under rule 715 and to any matters referred to therein and any evidence tendered thereon, whether or not such matters would be otherwise admissible in evidence.

“(6) In the exercise of its powers under this rule, the Court may receive as evidence any statement, document, information, or matter that the tribunal or person would have been entitled to receive at the hearing at first instance.

“(7) In any appeal, the Court shall have all the powers and discretions of the tribunal or person whose decision is appealed from—

“(a) To hold the hearing or any part of it in private; and

“(b) To make orders prohibiting the publication of any report or description of the proceedings or any part of them.

“(8) In any appeal, the Solicitor-General shall, at the request of the Court, appoint counsel to appear and be heard as counsel assisting the Court.

“(9) At the hearing of any appeal from a decision made arising from a contested application, the tribunal which, or person who, made the decision appealed from shall, if the leave of the Court is first obtained, be entitled to be represented and heard on—

“(a) Any issue relating to the procedure followed in the course of reaching the decision appealed from; or

“(b) Any issue relating to the members of the tribunal or the person making the decision appealed from; or

“(c) Any matter which the tribunal or person appealed from has referred to in a report made under rule 715,—

but on no other matter arising in the appeal.

“(10) At the hearing of any appeal against a decision made arising from an uncontested application, the tribunal which, or person who, made the decision appealed from shall be entitled to be represented and heard on all matters arising in the appeal.

“718A. **Powers of Court hearing appeal**—(1) In allowing an appeal, the Court may—

“(a) Set aside or quash the decision appealed from:

“(b) Substitute any decision which ought to have been given by the tribunal or person whose decision is appealed from:

“(c) Make such further or other orders as the case may require.

“(2) Notwithstanding subclause (1), the Court may remit to the tribunal or person whose decision is appealed from, for further consideration and determination by the tribunal or person, the whole or any part of the matter to which the appeal relates.

“(3) In remitting any matter to the tribunal or person under this rule, the Court shall—

“(a) Advise the tribunal or person of its reasons for so doing; and

“(b) Give to the tribunal or person such direction as it thinks just as to any rehearing or to the reconsideration or determination of the whole or any part of the matter that is so referred.

“(4) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

“(5) The Court shall not be bound to allow the appeal on the ground merely of the improper admission or rejection of evidence, unless in the opinion of the Court a substantial wrong or miscarriage of justice has been thereby occasioned.

“718B. **Dismissal of appeal**—(1) If the appellant does not appear at the time appointed for hearing the appeal, the Court may dismiss the appeal.

“(2) If the appellant does not prosecute the appeal with due diligence, the Court may, on the application of any other party or of the tribunal or person whose decision is appealed from, dismiss the appeal.

“718c. **Registrar to notify decision of Court**—On the determination of any appeal, the Registrar shall send to the appropriate officer of the tribunal or the person whose decision is appealed from—

- “(a) A memorandum of the Court’s decision; and
- “(b) Any application, papers, and exhibits forwarded to the Registrar pursuant to rule 712 or rule 713.

“Land Valuation Proceedings

“718d. Land valuation claims, etc., referred to Court—(1) Where, pursuant to section 22 (2) of the Land Valuation Proceedings Act 1948, any claim, objection, application, or other proceeding is referred to and dealt with by the Court, any party thereto may apply to the Court for directions as to the procedure for hearing the same.

“(2) Unless the Court otherwise directs on any application under subclause (1), the ordinary procedure of the Court shall apply.”

(2) This rule shall come into force on the 15th day of August 1991.

21. Restriction on advertising of proceeding—The High Court Rules are hereby amended by revoking rule 700j (as inserted by rule 5 of the High Court Amendment Rules 1988*), and substituting the following rule:

“700j. Except where a statement of claim filed pursuant to rule 700c is filed by the defendant company, no person shall, unless the Court otherwise directs, publish any advertisement required by rule 700i or any other information relating to that statement of claim until at least 7 days after the date on which the statement of claim in the proceeding is served on the defendant company.”

22. Power to stay winding up proceedings—Rule 700k (1) of the High Court Rules (as inserted by rule 5 of the High Court Amendment Rules 1988*) is hereby amended by omitting the words “the advertising required by rule 700i”, and substituting the following words “any advertisement required by rule 700i or any other information relating to that statement of claim”.

23. Form 2 revoked—The First Schedule to the High Court Rules is hereby amended by revoking form 2.

24. Memorandum to be subscribed to first document filed by party—The First Schedule to the High Court Rules is hereby amended by revoking form 3, and substituting the form 3 set out in the Schedule to these rules.

25. Form 64 revoked—(1) The First Schedule to the High Court Rules is hereby amended by revoking form 64.

(2) This rule shall come into force on the 15th day of August 1991.

26. Transitional provisions—(1) All proceedings that, immediately before the 15th day of August 1991, are pending or in progress under Part IX or Part X of the High Court Rules in relation to any appeal may, subject to section 8 of the Judicature Amendment Act 1991, be continued, completed, and enforced under Part X of the High Court Rules (as substituted by rule 20 of these rules) and that Part shall, so far as practicable, apply to those proceedings. So far as it is not practicable for any provision of Part X of the High Court Rules (as substituted by rule 20 of these rules) to be applied to any such proceedings, the rules revoked by these rules shall, to such extent as may be necessary, continue to apply to those proceedings.

(2) If, in any proceedings to which subclause (1) applies, any question arises as to the application of any provision of the High Court Rules or of the rules revoked by these rules, the Court may, either on the application of any party to those proceedings or of its own motion, determine the question and make such order thereon as it thinks fit.

(3) The Acts Interpretation Act 1924 shall apply subject to subclauses (1) and (2) of this rule and to section 8 of the Judicature Amendment Act 1991.

(4) This rule shall come into force on the 15th day of August 1991.

Rule 24

SCHEDULE

NEW FORM 3 SUBSTITUTED IN FIRST SCHEDULE TO HIGH COURT RULES

Form 3

MEMORANDUM TO BE SUBSCRIBED TO FIRST DOCUMENT
FILED BY PARTY

Rule 44

THIS document is filed by the above-named plaintiff (*or* defendant, etc.) in person. The address for service of the above-named plaintiff (*or* defendant, etc.) is

OR

This document is filed by A.B., solicitor for the above-named plaintiff (*or* defendant, etc.), of the firm of X.Y.Z. The address for service of the above-named plaintiff (*or* defendant, etc.) is

Documents for service on the above-named plaintiff (*or* defendant, etc.) may be left at that address for service or may be—

- (a) Posted to the solicitor at [*Insert Post Office box address*]; or
- (b) Left for the solicitor at a document exchange for direction to [*Insert document exchange box number*]; or
- (c) Transmitted to the solicitor by facsimile to [*Insert facsimile number*].

OR

This document is filed by A.B., solicitor for the above-named plaintiff (*or* defendant, etc.), of the firm of X.Y.Z., whose postal address is

The solicitor's agent in the proceeding is

The address for service of the above-named plaintiff (*or* defendant, etc.) is

Documents for service on the above-named plaintiff (*or* defendant, etc.) may be left at that address for service or may be—

- (a) Posted to the solicitor at [*Insert Post Office box address*]; or
- (b) Left for the solicitor at a document exchange for direction to [*Insert document exchange box number*]; or
- (c) Transmitted to the solicitor by facsimile to [*Insert facsimile number*].

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

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

These rules amend the High Court Rules.

Except for rules 1, 6, 16, 19, 20, 25, and 26, these rules come into force on 1 October 1991. Rules 1, 6, 16, 19, 20, 25, and 26 come into force on 15 August 1991 (the date of the abolition of the Administrative Division of the High Court by section 3(1) of the Judicature Amendment Act 1991).

Rule 2 revokes the definition of the term “address for service”, and substitutes a new definition. The new definition recognises the changes being made by *rules 3, 4, 11, 12, 15, and 24* in relation to service being effected to a solicitor’s Post Office box address, document exchange box number, or facsimile number.

Rule 3 amends the rules relating to the authority of a solicitor to file and sign documents. The principal changes are—

- (a) Warrants to act and declarations of authority to act are abolished;
- (b) *Rule 41* (as substituted) specifies the class of solicitors who may file documents on behalf of any party (and thereby become solicitors on the record for that party). The class consists of—
 - (i) A solicitor who is in practice on his or her own account or as a principal in a firm of solicitors;
 - (ii) A Crown counsel;
 - (iii) Where the party is the Public Trustee, the Office Solicitor (as defined in section 2 of the Public Trust Office Act 1957);
 - (iv) Where the party is a Department (as defined in section 2 of the Public Finance Act 1989) or a corporation, the Office Solicitor or principal in-house legal adviser;
 - (v) Provision is made in the new *rule 44 (1) (e)* for service to be effected to a solicitor’s Post Office box address, document exchange box number, or facsimile number;
- (c) *Rule 41A* is new. It prevents a solicitor from acting for a party in certain cases of conflict of interest. The new rule is based on Order 45, rule 2 of the Federal Court Rules.

Rule 4 effects a consequential amendment.

Rule 5 extends the power of the Court to order the giving of security for costs. Rule 60 of the High Court Rules (as enacted in 1985) provided that one ground on which the Court could order the giving of security for costs was that the sole plaintiff is, or that all the plaintiffs are, resident out of New Zealand. Rule 60 (as now amended) provides instead that the Court may order the giving of security of costs where the Court is satisfied that a plaintiff—

- (a) Is resident out of New Zealand; or
- (b) Is a corporation incorporated outside New Zealand; or
- (c) Is a subsidiary of a corporation incorporated outside New Zealand.

The second ground on which the Court may order the giving of security for costs (namely, that the Court is satisfied that there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful) is unaffected.

Rule 6, which comes into force on 15 August 1991, revokes rule 68 (which relates to the search of records of the Administrative Division), and substitutes a new rule. The new rule, which is consequential on the abolition of the Administrative Division of the High Court on 15 August 1991, provides (among other things) that the Court may, of its own motion, or on the application of any party, make an order prohibiting the search of any records or documents in respect of certain proceedings.

Rule 7 inserts a new *rule 72A* into the High Court Rules. The new rule provides that where any proceeding or interlocutory application is heard and decided in Chambers, particulars of the hearing or the decision or both (including the reasons for the decision) may be published unless the Judge, Master, or Registrar, exercising jurisdiction in Chambers, otherwise directs.

Rule 8 revokes rule 107 (5), which provides that where an order is made under rule 107 (4) changing the proper office of the Court in any proceedings, each party is required to change that party’s address for service accordingly. Rule 107 (5) was made obsolete by the removal, by rule 2 of the High Court Amendment Rules 1990, of the requirement that an address for service must be the address of a place not more than 5 kilometres from the proper office of the Court.

Rules 9 and 10 extend the jurisdiction of the summary judgment procedure.

Rule 135 (as enacted in 1985) provided that the summary judgment procedure did not apply, among other things,—

- (a) To a proceeding that includes a claim by a plaintiff alleging fraud;
- (b) To a proceeding under Part IV of the High Court Rules (which relates to special cases).

The amendments remove the total exclusion in respect of a proceeding that includes a claim alleging fraud. Instead, the amendments provide that no application for summary judgment shall be based on an allegation of fraud made in the statement of claim. This means that the Court may give judgment if the Court is satisfied that the defendant has no defence to any other claim in the statement of claim or to a particular part of any such other claim.

The amendments also remove the exclusion in respect of special cases under rule 449 (b) (as substituted by rule 18 of these rules) or rule 449 (c).

Rule 11 revokes rule 192 of the High Court Rules (which relates to modes of service), and substitutes a new rule. The rule has been extended so that it now includes provision for—

- (a) Service at an address directed by the Court as the address for service of a party or person; and
- (b) Service by means of a solicitor's Post Office box address, document exchange box number, or facsimile number.

Rule 12 inserts a new rule 206A into the High Court Rules. The new rule relates to service by means of a solicitor's Post Office box address, document exchange box number, or facsimile number.

Rule 13 narrows the class of practitioners who are permitted to give the certificate required to be subscribed on interlocutory applications made without notice. Rule 237 (as enacted in 1985) permitted any solicitor or counsel in active practice to give such a certificate, except in the case of *ex parte* applications for grant of probate or letters of administration. Rule 237 (as now amended) provides that the class of practitioners who can give such a certificate is restricted to—

- (a) A solicitor or counsel who is in practice on his or her own account or as a principal in a firm of solicitors;
- (b) The Solicitor-General or a Crown counsel;
- (c) In the case of applications made by the Public Trustee, the Office Solicitor (as defined in section 2 of the Public Trust Office Act 1957);
- (d) In the case of applications made by a Department (as defined in section 2 of the Public Finance Act 1989) or a corporation, the Office Solicitor or principal in-house legal adviser.

The subclause that applies in respect of an *ex parte* application for the grant in common form of probate or letters of administration has been amended. The solicitor or counsel who certifies such an application must be a solicitor or counsel who is in practice on his or her own account or as a principal in a firm of solicitors or a solicitor or counsel who is within one of the specified exceptions or a solicitor or counsel whose standing is sufficient in the opinion of the Court or Registrar dealing with the application.

Rule 14 enables Registrars to exercise jurisdiction under rule 138A (as enacted by rule 8 of the High Court Amendment Rules (No. 2) 1988), which relates to service out of New Zealand.

Rule 15 amends rule 277 of the High Court Rules (which relates to the enforcement of interlocutory orders). The amendment is consequential on the changes made by rules 3, 4, 11, 12, and 24 in relation to modes of service.

Rule 16, which comes into force on 15 August 1991, revokes rule 383 (b) (i) of the High Court Rules. Rule 383 relates to orders for the consolidation of proceedings. The revocation is consequential on the abolition of the Administrative Division of the High Court on 15 August 1991 by section 3 (1) of the Judicature Amendment Act 1991.

Rule 17 relates to fixtures for trial. The High Court Rules as enacted in 1985 set out 2 different procedures for the making of fixtures. Rule 433 contained the procedure for Judge alone fixtures to be tried at Auckland, Hamilton, Wellington, or Christchurch. Rule 434 (which is revoked by rule 17) contained the procedure for all other fixtures. The new rule 433 (which is set out in rule 17) will now apply in respect of all fixtures for trial.

Rule 18 redefines the class of special cases referred to in rule 449 (b). That class presently includes a variety of proceedings by persons having an interest in a mortgage or charge of any property, or in any property subject to a charge. The principal effect of the amendment is that the class is redefined to apply only to cases where the mortgage or charge is of real property.

Rule 19, which comes into force on 15 August 1991, revokes Part IX of the High Court Rules (which relates to the Administrative Division). The revocation is consequential on the abolition of the Administrative Division of the High Court on 15 August 1991 by section 3 (1) of the Judicature Amendment Act 1991.

Rule 20, which comes into force on 15 August 1991, substitutes new rules relating to appeals to the High Court. The High Court Rules (as enacted in 1985) contained 3 separate sets of provisions, namely,—

- (a) Rules 689 to 700, which applied to any appeal to the Administrative Division against any order or decision of any tribunal pursuant to any enactment:

(b) Part X, which applied to all civil appeals to the Court other than appeals under the District Courts Act 1947 and appeals to which rules 689 to 700 applied:

(c) Part XI, which applied to cases stated for the opinion of the Court pursuant to any Act. This rule revokes Part X of the High Court Rules, and substitutes a new Part X which is to apply to all appeals to the Court under any enactment (other than appeals under the District Courts Act 1947 or the Summary Proceedings Act 1957).

The new Part X specifically states that it does not apply to any appeal or reference for the opinion of the Court by way of case stated, and Part XI of the High Court Rules (as enacted in 1985) remains intact.

The differences between Part X as enacted in 1985 and the new *Part X* include the following:

- (a) Some of the procedures that applied in relation to appeals to the Administrative Division have been incorporated into the new *Part X*:
- (b) The general time limit for appeal is one month after the date of the decision:
- (c) *Rule 705* (as now substituted) enlarges the power of the Court to extend time limits in relation to appeals:
- (d) *Rule 712* (as now substituted) introduces a new provision providing for certification of transcripts of evidence to avoid further verification of their contents:
- (e) *Rule 712* (as now substituted) also clarifies the position in relation to personal notes made by Judges or other decision makers. Such notes are not required to be sent with the transcripts of evidence to the Registrar at the registry at which the appeal is to be heard:
- (f) *Rule 713* is new. It enables the Court to order that a transcript be made of evidence given at the hearing before the tribunal or person whose decision is appealed from. This is to apply where that evidence was recorded but not transcribed:
- (g) *Rule 715* (as now substituted) provides that the tribunal which, or person who, made the decision appealed from shall, if the Court so directs, lodge a report. The Rules as enacted in 1985 empowered the Court to require a report, but enabled the tribunal or person whose decision was appealed from to file a report of its own volition in the case of appeals to the Administrative Division:
- (h) *Rule 716* (as now substituted) provides that any party to the appeal is entitled to apply for an order for security for costs of the appeal:
- (i) *Rule 716* (as now substituted) requires every person giving notice of intention to appear and be heard on the hearing of an appeal to serve a copy of the notice on other parties and also on the tribunal or person from whose decision the appeal has been taken:
- (j) *Rule 718* (as now substituted) provides, in *subclauses (9) and (10)*, that the tribunal or person whose decision is appealed from shall, if the leave of the Court is first obtained, be entitled to appear and be heard on matters arising in the appeal.

Rule 21 relates to the restriction on the advertising of a proceeding brought under Part IXA (which relates to companies (winding up)). *Rule 700j* (as enacted in 1988) prohibits, unless the Court otherwise directs, the publishing of the specific advertisements required by *rule 700i* until 7 days after the date of service of the statement of claim. *Rule 700j* (as now substituted) prohibits, unless the Court otherwise directs, the publishing of any advertisement required by *rule 700i* or any other information relating to a statement of claim within that same period.

Rule 22 is a consequential amendment flowing from the change made by *rule 21* of these rules.

Rule 23 (which is consequential on the amendments made by *rule 3 (1)*) revokes form 2, which is the form of warrant to act.

Rule 24 (which is consequential on the amendments made by *rules 3, 4, 12, and 15* in relation to modes of service) revokes form 3 (Memorandum to be subscribed to first document filed by party), and substitutes a new form.

Rule 25 (which comes into force on 15 August 1991 and which is consequential on the amendments made by *rules 19 and 20*) revokes form 64, which is the notice of appeal to the Administrative Division.

Rule 26, which comes into force on 15 August 1991, contains transitional provisions relating to appeals.

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These rules are administered in the Department of Justice.