

PRESENTERS

Associate Judge Faire, High Court, Auckland

Judge Faire was a litigation partner with the Hamilton law firm Stace Hammond Grace & Partners for 25 years' until May 1996. He practised principally in the area of civil litigation. Appointed a Master of the High Court in May 1996, he is now an Associate Judge of the High Court. In that role he has responsibility for personal and corporate insolvency cases and all interlocutory aspects of civil proceedings in the High Court.

Graeme Hall, Partner, Buddle Findlay, Auckland

Described in the Asia Pacific Legal 500 as a star litigator, Graeme is the leader of Buddle Findlay's Auckland litigation team. He has practised as a commercial litigator in both New Zealand and in England on a wide range of disputes. He appears regularly in the High Court, but has a broad range of experience in a variety of tribunals and courts, which has included appearances before the Privy Council.

Sarah Katz, Partner, Russell McVeagh, Auckland

Sarah's focus is on complex commercial litigation, with a particular emphasis on commercial and corporate law, contract law, tax and banking disputes. She is recognised in various international directories (including Asia Pacific Legal 500, Chambers Global and the Legal Media Group's Guide to the World's Leading Litigation Lawyers) as one of New Zealand's leading commercial litigators. Sarah regularly appears as counsel in major commercial matters in the High Court and the Court of Appeal, as well as before numerous other statutory bodies and tribunals.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

1.	INTRODUCTION.....	1
2.	COMMENCEMENT OF PROCEEDINGS	2
2.1	TIMING ISSUES	2
2.2	DIALOGUE WITH THE OPPOSING PARTY	2
2.3	KEY FACTORS TO CONSIDER	3
2.4	COMMUNICATING WITH YOUR CLIENTS	3
3.	TYPES OF PROCEEDINGS.....	5
3.1	PLEADINGS GENERALLY	5
3.2	STATEMENT OF CLAIM AND NOTICE OF PROCEEDING	5
	<i>Statement of claim: HCR 5.25 – 5.35.....</i>	<i>5</i>
	<i>Notice of proceeding: HCR 5.22 – 5.24.....</i>	<i>7</i>
3.3	ORIGINATING APPLICATIONS: HCR PART 19	8
	<i>Mandatory use of originating applications.....</i>	<i>8</i>
	<i>Use of originating application process with leave of the court</i>	<i>9</i>
	<i>Procedure.....</i>	<i>10</i>
3.4	SUMMARY JUDGMENT	11
3.5	COMMERCIAL LIST.....	12
	<i>Purpose</i>	<i>12</i>
	<i>Eligibility for and entry on the Commercial List</i>	<i>13</i>
	<i>Special procedure for disputes concerning constructions of commercial documents</i>	<i>17</i>
	<i>Commercial List Procedure – HCR Part 29</i>	<i>17</i>
3.6	TRACKS	19
3.7	DEFENCES.....	19
3.8	REPLIES	21
4.	CASE MANAGEMENT CONFERENCES.....	22
4.1	OVERVIEW.....	22
4.2	PROCEDURE.....	22
4.3	DRAFTING CASE MANAGEMENT MEMORANDA	23
4.4	ATTENDANCE AT CASE MANAGEMENT CONFERENCES	24
4.5	KEEPING THE COURT INFORMED	24
4.6	ALLOCATING A FIXTURE	24
4.7	UTILISING CASE MANAGEMENT CONFERENCES	25
5.	INTERLOCUTORY APPLICATIONS - AN OVERVIEW	26
5.1	INTRODUCTION	26
5.2	PROCEDURAL REQUIREMENTS: HCR 7.19 TO 7.52.....	27
5.3	EVIDENCE ON INTERLOCUTORY APPLICATIONS.....	28
5.4	DEFENDED/OPOSED APPLICATIONS: HCR 7.39.....	28
	<i>Synopsis of argument</i>	<i>28</i>
5.5	REVIEW OF OR APPEAL FROM INTERLOCUTORY ORDERS	29
6.	GETTING STARTED - INTERLOCUTORIES TO CONSIDER AT THE OUTSET OF PROCEEDINGS.....	31
6.1	ACTING FOR A PLAINTIFF	31
6.2	ACTING FOR A DEFENDANT	31
6.3	SERVICE OF PROCEEDINGS	31
	<i>Serving proceedings overseas: HCR 6.27 and 6.28.....</i>	<i>32</i>
	<i>Challenges to jurisdiction</i>	<i>33</i>
	<i>Forum non conveniens</i>	<i>34</i>
6.4	CAPACITY ISSUES / ENTITLEMENT TO SUE	34
	<i>Incapacitated persons: HCR 4.29 - 4.48.....</i>	<i>34</i>
	<i>Derivative actions: ss 165 - 167 Companies Act 1993</i>	<i>34</i>

	<i>Liquidation</i>	35
6.5	CHALLENGES TO VENUE: HCR 5.1 & 10.1	35
6.6	PARTIES TO A PROCEEDING	37
	<i>Necessary parties</i>	37
	<i>Striking out and adding parties: HCR 4.56</i>	38
	<i>Third parties: HCR 4.4 - 4.9</i>	38
	<i>Claims between defendants: HCR 4.18-4.22</i>	39
6.7	CONSOLIDATION OF PROCEEDINGS: HCR 10.12.....	39
6.8	SECURITY FOR COSTS: HCR 5.45	40
7.	INTERIM RELIEF	43
7.1	OVERVIEW	43
7.2	PRESERVING EVIDENCE.....	43
	<i>Search orders (Anton Piller orders): HCR Part 33</i>	43
7.3	PRESERVING ASSETS	45
	<i>Freezing orders (Mareva injunctions): HCR Part 32</i>	45
	<i>Preservation of property order: HCR 7.55</i>	48
	<i>Pre-judgment charging order: HCR 17.41</i>	48
7.4	INTERIM INJUNCTIONS: HCR 7.53.....	49
	<i>Applications for an interim injunction</i>	49
	<i>Mandatory Interim Injunctions</i>	51
	<i>Applications with or without notice</i>	51
	<i>Interim injunctions and the Crown</i>	52
	<i>Examples of interim injunctions</i>	52
8.	MARSHALLING AND CLARIFYING THE FACTS	53
8.1	OVERVIEW	53
8.2	DISCOVERY - GENERAL PRINCIPLES: HCR 8.24 - 8.26.....	53
8.3	INSPECTION OF DOCUMENT REFERRED TO IN PLEADING OR OTHER DOCUMENT: HCR 8.23	55
8.4	DISCOVERY BEFORE PROCEEDINGS HAVE COMMENCED: HCR 8.25	55
8.5	PARTICULAR DISCOVERY AFTER PROCEEDINGS HAVE COMMENCED (FURTHER AND BETTER DISCOVERY): HCR 8.24	57
8.6	PARTICULAR DISCOVERY AGAINST A NON-PARTY: HCR 8.26	58
8.7	SEEKING FURTHER AND BETTER PARTICULARS OF PLEADINGS: HCR 5.21, 5.26, 5.27, 5.54 & 5.48	58
8.8	INTERROGATORIES: HCR 8.1 - 8.13.....	60
8.9	APPLICATION FOR EXAMINATION OF WITNESS REFUSING TO MAKE AFFIDAVIT: HCR 9.75.....	62
9.	DISPOSAL OF PROCEEDINGS OTHER THAN BY TRIAL	63
9.1	SUMMARY JUDGMENT: HCR 12.1 - 12.16.....	63
	<i>Plaintiff's summary judgment application</i>	63
	<i>Defendant's summary judgment application</i>	64
9.2	DISMISSAL OR STAY WITHOUT TRIAL ("STRIKE OUT" APPLICATIONS): HCR 15.1 - 15.2.....	65
9.3	DEALING WITH LIMITATION ISSUES.....	67
9.4	DISMISSAL FOR WANT OF PROSECUTION: HCR 15.2	69
9.5	JUDGMENT BY DEFAULT: HCR 15.3 - 15.14	69
9.6	JUDGMENT ON ADMISSION: HCR 15.15 - 15.17	71
9.7	DISCONTINUANCE: HCR 15.18 - 15.25	71
9.8	JUDICIAL SETTLEMENT CONFERENCES: HCR 7.79	72
	<i>Advantages and disadvantages</i>	73
	<i>Preparation</i>	74
9.9	MEDIATION.....	74
	<i>Advantages and disadvantages</i>	75
9.10	JSC OR MEDIATION? MAKING AN INFORMED CHOICE.....	75
9.11	COURT ORDERED MEDIATION: THE NEW JSC?.....	76
10.	NARROWING THE SCOPE OF TRIAL	77
10.1	PRELIMINARY QUESTION: HCR 10.14 - 10.21	77
	<i>Determination of discrete legal and/or factual issues</i>	77
	<i>Separate trials on liability and quantum</i>	78
10.2	NOTICE TO ADMIT FACTS: HCR 8.14	78

11.	PREPARING FOR TRIAL	80
11.1	OVERVIEW	80
11.2	EVIDENTIAL ISSUES / ADMISSIBILITY CHALLENGES.....	81
11.3	EVIDENCE IN TRANS-TASMAN PROCEEDINGS: HCR 9.58 - 9.67 AND SECTIONS 154 - 162 EVIDENCE ACT	82
11.4	TAKING EVIDENCE OVERSEAS FOR USE IN CIVIL PROCEEDINGS IN THE HIGH COURT: S 188 EVIDENCE ACT	83
11.5	EVIDENCE BY VIDEO LINK.....	83
12.	APPENDIX.....	85
	HIGH COURT OF NEW ZEALAND FAST TRACK PRACTICE NOTE	86