

## **PRESENTERS**

### ***The Hon Justice Chambers, Court of Appeal, Wellington***

His Honour commenced practice as a barrister in 1981 and took silk in 1992. He was appointed to the High Court in 1999 and to the Court of Appeal in November 2003. He is a current member and former Chairman of the Rules Committee.

### ***Christopher Finlayson, Barrister, Wellington***

Christopher is an editor of McGechan on Procedure. He is a member of the Rules Committee and taught Civil Procedure at Victoria University for many years.

### ***David Laursen, Barrister, Wellington***

David has been a barrister sole since 1999. His practice includes a range of civil / commercial litigation.

### ***The Hon Justice William Young, Court of Appeal, Wellington***

A barrister and solicitor between 1978 and 1988 and a barrister from 1988 to 1997. Justice William Young took silk in 1991, was appointed to the High Court in December 1997 and to the Court of Appeal in November 2003. He is a former member of the Rules Committee.

# CONTENTS

<b>1. INTRODUCTION .....</b>	<b>1</b>
<b>2. THE NEW CASE MANAGEMENT REGIME .....</b>	<b>3</b>
COMMENCEMENT OF THE NEW PROCEDURE.....	3
PURPOSE OF THE NEW RULES .....	3
FROM FILING TO TRIAL PREPARATION.....	4
<i>Filing</i> .....	4
<i>Summary judgment applications</i> .....	4
<i>Interlocutory injunction applications</i> .....	5
<i>First conference</i> .....	5
<i>Discovery</i> .....	6
<i>Interlocutory applications</i> .....	7
<i>Second conference</i> .....	8
<i>Review of interlocutory orders</i> .....	9
<i>Further conferences</i> .....	10
<b>3. DISCOVERY .....</b>	<b>11</b>
INTRODUCTION .....	11
RESPONSIBILITY OF SOLICITORS IN THE DISCOVERY PROCESS.....	11
MECHANICS OF DISCOVERY .....	15
PARTICULAR DISCOVERY .....	17
LEGAL PROFESSIONAL PRIVILEGE.....	19
(a) <i>A Central Case- Auckland District Law Society v Russell McVeagh</i> .....	19
(b) <i>What happened in the case?</i> .....	20
(c) <i>The Courts’ holdings</i> .....	21
(d) <i>Privilege basics</i> .....	22
(e) <i>The fundamental nature of legal professional privilege</i> .....	23
(f) <i>The correct approach where there is a claimed statutory override of legal professional privilege</i> .....	26
(g) <i>Possible Attack on Privilege under the Lawyers and Conveyancers Bill</i> .....	26
(h) <i>Once “waived”, always “lost”?</i> .....	28
(i) <i>Litigation privilege and waiver</i> .....	29
(j) <i>Challenge to privilege or confidentiality</i> .....	31
SCOPE OF DISCOVERY – SHOULD THE PERUVIAN GUANO TEST BE NARROWED?.....	32
INSPECTING AND COPYING DISCOVERED DOCUMENTS.....	36
EVIDENTIARY PROVISIONS RELATED TO DISCOVERY AND INSPECTION .....	38
DISCOVERY OF ELECTRONIC DOCUMENTS.....	38
(a) <i>Introduction</i> .....	38
(b) <i>The High Court Rules – are they adequate?</i> .....	40
(c) <i>Know the terminology</i> .....	40
(d) <i>Protecting clients in an electronic age</i> .....	41
(e) <i>Managing discovery of electronic documents</i> .....	42
(f) <i>Costs of discovery</i> .....	42
(g) <i>Production of documents</i> .....	44
(h) <i>Are special rules for electronic discovery required?</i> .....	45
<b>4. TRIAL PREPARATION AND COSTS.....</b>	<b>47</b>
EXCHANGE OF WITNESSES’ STATEMENTS AND PREPARATION OF COMMON BUNDLE OF DOCUMENTS .....	47
<i>New r 441M – exchange of indexes of documents intended for hearing</i> .....	48
<i>New r 441N – bundle of documents for hearing</i> .....	48
<i>New r 441O – consequences of incorporating document in common bundle</i> .....	49
<i>New r 441P – consequence of not incorporating document in common bundle</i> .....	49
<i>New r 441Q – plaintiff’s synopsis of opening and chronology</i> .....	50
PAYMENT INTO COURT AND CALDERBANK OFFERS.....	50
<i>Payments into court</i> .....	50
<i>Calderbank offers</i> .....	50

NEW DAILY RECOVERY RATES FOR COSTS.....	51
RECENT CASES UNDER THE NEW COSTS REGIME.....	52
<i>Scope of r 46 discretion</i> .....	52
<i>Relevance of actual costs</i> .....	54
<i>Second Counsel</i> .....	55
<i>Increased / indemnity costs</i> .....	55
<i>Refusal of/reduction in costs</i> .....	58
COSTS AGAINST LEGAL ADVISERS .....	60
<b>5. APPEALS.....</b>	<b>63</b>
OVERVIEW .....	63
THE NEW PROVISIONS OF THE DISTRICT COURTS ACT.....	64
THE NEW PART 10 OF THE HIGH COURT RULES .....	64
<i>General</i> .....	64
<i>Leave to appeal</i> .....	64
<i>Substantive appeals</i> .....	65
APPEALS FROM JUDGMENTS REVIEWING THE DECISIONS OF MASTERS .....	66
NEW RULES AS TO APPEALS TO THE COURT OF APPEAL.....	66
NEW RULES AS TO APPEALS TO THE SUPREME COURT.....	66
<b>APPENDIX ONE.....</b>	<b>69</b>
HIGH COURT AMENDMENT RULES 2003.....	69
<b>APPENDIX TWO.....</b>	<b>121</b>
DISTRICT COURTS AMENDMENT ACT 2002 .....	121