1998/325

HIGH COURT AMENDMENT RULES (NO. 2) 1998

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 19th day of October 1998

Present:

THE RIGHT HON JENNY SHIPLEY PRESIDING IN COUNCIL

PURSUANT to section 51C of the Judicature Act 1908 and section 234 of the Electoral Act 1993, His 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 2 of the other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

ANALYSIS

1. Title and commencement
2. New Part 15 added

PART 15
CONSTITUENCY ELECTION PETITIONS
Preliminary Provisions
796. Interpretation
797. Application of this Part
798. Application of other rules and practice of Court

Petitions
799. Petitions

Service of Petition
800. Service of petition

Advertisement of Petition
801. Advertisement of petition

Representation of Respondents
802. Respondent must file notice

Security for Costs
803. Security by deposit of money
804. Registrar of Court may withdraw money deposited as security
805. Security by bond

Particulars of Objections
806. Petitioner must list objections to votes

807. Respondent must list objections to petition
808. Inspection and supply of lists

Trial of Petition

809. Notice of time and place appointed for trial of petition under section 236 of the Act

Withdrawal of Petition

810. Notice of intention to apply for leave to withdraw petition under section 252 of the Act
811. Form of application for leave to withdraw petition
812. Time and place of hearing of application for leave to withdraw petition
813. Application to be substituted as a petitioner

Abatement of Petition

814. Notice of abatement of petition under section 255 (3) of the Act
815. Application to be substituted as petitioner on abatement

Withdrawal and Substitution of Respondent Before Trial

816. Notice of respondent's death or loss of seat before trial of petition under section 256 (1) (a) or (c) of the Act
817. Notice of intention not to oppose petition under section 256 (1) (b) of the Act
818. Notice of application to be admitted as respondent to oppose petition

3. Consequential amendment to rule 135
4. New forms inserted
5. Revocations

SCHEDULE

New Forms 83 to 88 Inserted in First Schedule of High Court Rules

RULES

1. Title and commencement—(1) These rules may be cited as the High Court Amendment Rules (No. 2) 1998, and are part of the High Court Rules from time to time set out in the Second Schedule of the Judicature Act 1908 ("the High Court Rules").

(2) These rules come into force on 1 December 1998.

2. New Part 15 added—The High Court Rules are amended by adding, as Part 15, the following Part:

"PART 15

"CONSTITUENCY ELECTION PETITIONS

"*Preliminary Provisions*

"796. **Interpretation**—In this Part, unless the context otherwise requires,—

" 'Act' means the Electoral Act 1993:

" 'Petition'—

"(a) Means an election petition presented under section 229 (3) of the Act (that is, an election petition relating to either—

"(i) The return of a member of Parliament representing an electoral district; or

"(ii) A failure to present a return at an election for a member of Parliament representing an electoral district); and

"(b) Includes a petition complaining of no return that the Court, under section 229 (2) of the Act, allows to be heard as provided with respect to an ordinary petition under section 229 (3) of the Act:

" 'Registrar of Electors' means, in relation to an electoral district, the Registrar of Electors appointed under the Act for that district:

" 'Returning Officer' means, in relation to an electoral district, the Returning Officer appointed under the Act for that district.

Cf. S.R. 1996/218, r. 3

"797. **Application of this Part**—This Part applies to the determination, under sections 230 to 257 of the Act, of a petition.

"798. **Application of other rules and practice of Court**—(1) The other Parts of these rules (except the rules referred to in subclause (2)), and the general practice of the Court, apply where this Part applies except so far as they are modified by or inconsistent with the Act or this Part.

"(2) The following rules do not apply where this Part applies:

"(a) Rule 16 (How security to be given):

"(b) Rule 60 (Power to make order for security for costs):

"(c) Rules 98 to 104 (Change of parties by death, etc):

"(d) Rule 106 (Proceeding commenced by filing statement of claim):

"(e) Rule 107 (Proper office of the Court):

"(f) Rule 120 (Notice of proceeding to be filed with statement of claim):

"(g) Rule 121 (Requirements as to notice of proceeding):

"(h) Rule 122 (Place and time for filing statement of defence):

"(i) Rule 123 (Place of trial):

"(j) Rule 129 (Filing and service of statement of defence):

"(k) Rule 130 (Requirements as to statement of defence):

"(l) Rules 135 to 144 (Summary judgment procedure):

"(m) Rules 426 to 436 (Setting down and fixtures for trial):

"(n) Rule 474 (Discontinuance of cause of action):

"(o) Rule 481 (Mode of trial).

"*Petitions*

"799. **Petitions**—(1) A petition must—

"(a) Be in form 83, and contain the information required by that form; and

"(b) Be signed by the petitioner or, if there are 2 or more petitioners, each petitioner; and

"(c) Be presented to the Court by being filed in the registry of the Court nearest to the place where the election was held.

"(2) The Registrar of the Court must send a copy of the petition to the Returning Officer as soon as it is filed.

"*Service of Petition*

"800. **Service of petition**—A petition must be served as nearly as may be in the manner in which a statement of claim is served.

"*Advertisement of Petition*

"801. **Advertisement of petition**—(1) Within 7 days of the filing of a petition, a petitioner must, at his or her own expense, publish the petition in a newspaper circulating in the district to which the petition relates.

"(2) On an application made by a petitioner for the purpose, the Court may order that a petition need not be advertised in accordance with subclause (1).

Cf. S.R. 1996/218, r. 17

"*Representation of Respondents*

"802. **Respondent must file notice**—Within 7 days of being served with a petition, a respondent to a petition must file in the registry of the Court in which the petition is filed a notice—

"(a) Signed by or on behalf of the respondent; and

"(b) Either—

"(i) Appointing a solicitor to act for the respondent in relation to the petition; or

"(ii) Stating that the respondent intends to act for himself or herself in relation to the petition; and

"(c) Stating, for the purposes of proceedings to determine the petition,—

"(i) An address for service; and

"(ii) If a solicitor is appointed to act for the respondent, any Post Office box address, document exchange box number, or facsimile number by which the solicitor will accept service of documents.

Cf. S.R. 1996/218, r. 16

"*Security for Costs*

"803. **Security by deposit of money**—Security given by deposit of money must be given by the deposit of the money to the credit of the High Court Trust Account.

Cf. S.R. 1996/218, r. 23

"804. **Registrar of Court may withdraw money deposited as security**—The Registrar of the Court may from time to time withdraw from the High Court Trust Account all or part of any money deposited as security if the Court orders, or all parties to the proceedings agree, that that money be—

"(a) Paid to a respondent, for costs, charges, or expenses incurred by or on behalf of that respondent; or

"(b) Paid to a witness summoned on a petitioner's behalf, for costs, charges, or expenses incurred by or on behalf of that witness; or

"(c) Returned to a petitioner; or

"(d) Otherwise disposed of in accordance with the Act.

Cf. S.R. 1996/218, r. 24

"805. **Security by bond**—(1) Security given by bond must be given by a bond in form 84 containing the information required by that form.

"(2) A bond may be executed by no more than 5 sureties.

"(3) If a Registrar of the Court believes on reasonable grounds that a surety is insufficient, or that a bond is defective or inadequate, he or she may—

"(a) Require a surety to lodge an affidavit of justification with the bond; or

"(b) Impose any other requirement the Registrar of the Court considers necessary.

Cf. 1996/218, rr. 25, 26, 27

"*Particulars of Objections*

"806. **Petitioner must list objections to votes**—(1) This rule applies if a petitioner in his or her petition—

"(a) Alleges that a candidate not elected or returned has a majority of lawful votes; and

"(b) Objects to any vote.

"(2) If this rule applies, the petitioner must prepare a list of—

"(a) Each vote objected to; and

"(b) The heads of objection to each of those votes.

"(3) A petitioner must, at least 6 days before the day appointed for the trial of the petition, deliver a copy of the list—

"(a) To the Registrar of the Court; and

"(b) To any other party to the proceeding at that party's address for service.

"(4) A petitioner must also deliver to the Registrar of the Court enough copies of that list to enable the Registrar to supply the copies required to be supplied under rule 808.

Cf. S.R. 1996/218, r. 29

"807. **Respondent must list objections to petition**—(1) This rule applies if—

"(a) A petitioner in a petition complains of an unlawful election or return and claims the seat for some person; and

"(b) A respondent to the petition intends to give evidence, under section 236 (8) of the Act, to prove that that person was not duly elected.

"(2) If this rule applies, the respondent must prepare a list of—

"(a) The specific grounds upon which the respondent claims that that person was not duly elected or returned; and

"(b) In relation to each of those grounds, particulars of the facts upon which the respondent intends to rely.

"(3) The respondent must, at least 6 days before the day appointed for the trial, deliver a copy of the list—

"(a) To the Registrar of the Court; and

"(b) To any other party to the proceeding at that party's address for service.

"(4) The respondent must also deliver to the Registrar of the Court enough copies of that list to enable the Registrar to supply the copies required to be supplied under rule 808.

Cf. S.R. 1996/218, r. 30

"808. **Inspection and supply of lists**—On a request for the purpose by any person at the office of the Court, the Registrar of the Court must allow the person to inspect, or supply the person with a copy of, a list delivered to the Registrar under rule 806 or rule 807.

Cf. S.R. 1996/218, r. 32

"Trial of Petition

"809. **Notice of time and place appointed for trial of petition under section 236 of the Act**—(1) The Court must appoint a time at or after which the petition is to be tried.

"(2) The time appointed must be at least 21 days after the day on which the Court appoints that time.

"(3) The Registrar of the Court must, at least 14 days before the day of the time appointed for the trial,—

"(a) Give a notice of the time and place appointed for the trial to each party to the proceeding at that party's address for service; and

"(b) Publish a notice of the time and place appointed for the trial in a newspaper circulating in the district to which the petition relates.

"(4) A notice of the time and place appointed for the trial must be in form 85.

Cf. S.R. 1996/218, rr. 35, 36, 37

"*Withdrawal of Petition*

"810. **Notice of intention to apply for leave to withdraw petition under section 252 of the Act**—(1) A petitioner who intends to apply to the Court for leave to withdraw a petition must, at least 7 days before the time appointed for the hearing of the application,—

"(a) Serve a copy of a notice of intention to apply for leave to withdraw the petition on each respondent to the petition; and

"(b) Publish a notice of intention to apply for leave to withdraw the petition at least once in a newspaper circulating in the district to which the petition relates.

"(2) A notice of intention to apply for leave to withdraw a petition must be in form 86 and contain the information required by that form.

Cf. S.R. 1996/218, r. 40

"811. **Form of application for leave to withdraw petition**—An application for leave to withdraw a petition must be in form 87.

Cf. S.R. 1996/218, r. 42

"812. **Time and place of hearing of application for leave to withdraw petition**—(1) The Court must appoint a time at or after which an application for leave to withdraw a petition is to be heard.

"(2) The time appointed must be at least 8 days after the day on which the Court appoints the time.

"(3) The Registrar of the Court must, in such manner as the Court may direct, give notice of the time and place of the hearing to—

"(a) Each respondent; and

"(b) Each person who, under rule 813 (b), gives notice of an intention to apply to be substituted as a petitioner.

Cf. S.R. 1996/218, r. 41

"813. **Application to be substituted as a petitioner**—A person may, at a hearing of an application for leave to withdraw a petition, apply to be substituted as a petitioner in respect of the petition, if (and only if)—

"(a) The person would, under section 230 (1) of the Act, have been entitled to have presented the petition; and

"(b) The person has given the Registrar of the Court, within 7 days after the publication of the notice of intention to apply for leave to withdraw the petition, written notice that the person intends to apply to be substituted as a petitioner in respect of the petition.

Cf. S.R. 1996/218, r. 44

"*Abatement of Petition*

"814. **Notice of abatement of petition under section 255 (3) of the Act**—(1) If a petition abates under section 255 (1) of the Act (because of the death of a sole petitioner or of the survivor of several petitioners), the Registrar of the Court must, on learning of the death,—

"(a) Serve a notice of the abatement on each respondent; and

"(b) Publish the notice of the abatement at least once in a newspaper circulating in the district to which the petition relates.

"(2) A notice of the abatement must be in form 88.

Cf. S.R. 1996/218, r. 45

"815. **Application to be substituted as petitioner on abatement**—An application under section 255 (3) of the Act (to be substituted as petitioner on the abatement of a petition) must be made by written notice given to the Registrar of the Court.

Cf. S.R. 1996/218, r. 46

"*Withdrawal and Substitution of Respondent Before Trial*

"816. **Notice of respondent's death or loss of seat before trial of petition under section 256 (1) (a) or (c) of the Act**—(1) This rule applies if, before the trial of a petition, a respondent (other than a Returning Officer or a Registrar of Electors) dies or loses his or her seat because the House of Representatives resolves that his or her seat is vacant.

"(2) If this rule applies, the Registrar of the Court must, on learning of the death or the loss by the respondent of his or her seat, give notice of the death or loss.

"(3) The Registrar of the Court must give the notice by—

"(a) Publishing the notice at least once in a newspaper circulating in the district to which the petition relates; and

"(b) Leaving a copy of the notice signed by him or her, or on his or her behalf, with the Returning Officer; and

"(c) Serving a copy of the notice signed by him or her, or on his or her behalf, on each petitioner.

Cf. S.R. 1996/218, r. 47

"817. **Notice of intention not to oppose petition under section 256 (1) (b) of the Act**—(1) A respondent to a petition (other than a Returning Officer or a Registrar of Electors) who does not intend to oppose the petition must give written notice of that intention to the Registrar of the Court at least 10 days before the time appointed for the trial of the petition.

"(2) A respondent who gives notice must immediately—

"(a) Publish the notice in a newspaper circulating in the district to which the petition relates; and

"(b) Leave a copy of the notice with the Returning Officer; and

"(c) Serve a copy of the notice on each petitioner.

Cf. S.R. 1996/218, r. 48

"818. **Notice of application to be admitted as respondent to oppose petition**—An application under section 256 (1) of the Act (to be admitted as a respondent to oppose a petition) must be made by written notice given to the Registrar of the Court.

Cf. S.R. 1996/218, r. 49".

3. Consequential amendment to rule 135—Rule 135 (a) of the High Court Rules is amended by omitting the words "or Part 14", and substituting the words "Part 14, or Part 15".

4. New forms inserted—The First Schedule of the High Court Rules is amended by inserting, in their appropriate numerical order, the forms set out in the Schedule.

5. Revocations—The Election Petition Rules 1996* and the Election Petition Amendment Rules 1997† are consequentially revoked.

*S.R. 1996/218
†S.R. 1997/295

SCHEDULE Rule 4

NEW FORMS 83 TO 88 INSERTED IN FIRST SCHEDULE OF HIGH COURT RULES

Form 83 Rule 799 (1) (a)

CONSTITUENCY ELECTION PETITION

Part VIII, Electoral Act 1993

In the High Court of New Zealand

No. .....

..... Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

A.B. [*and others*], Petitioner(s), and

C.D. [*and others*], Respondent(s)

Election

This petition relates to the election of a member of Parliament for the Electoral District of: .....

Polling day: .....

Candidate(s): .....

Candidate returned as duly elected by Returning Officer: .....

Day on which the Returning Officer publicly notified result of poll: .....

Petitioner(s)

Note: See section 230 (1) of the Electoral Act 1993 for the persons who may present a constituency election petition.

Name(s): .....

Respondent(s)

Name(s): [*Insert the name of the member whose election or return this petition complains of, and, if the petition complains of the conduct of the Returning Officer, the name of the Returning Officer, and, if the petition complains of the conduct of the Registrar of Electors, the name of the Registrar of Electors.*]

Grounds

The petition is based on the following grounds: .....

.....

.....

.....

.....

Facts

The petition relies on the following facts: .....

.....

.....

.....

.....

SCHEDULE—*continued*

Form 83—*continued*

Determination(s) sought

The petition seeks the following determination(s): [*For example, That the candidate returned was not duly elected or returned and that the election was void, or That the candidate ..... was duly elected and should have been duly returned, or as the case may be.*]

....

Signature(s) of petitioner(s): [*Insert name(s)*] Date

Note: Once completed this petition must be presented by being filed—

(a) In the Registry of the High Court nearest the place where the election was held (see section 230 (4) of the Electoral Act 1993); and

(b) Within 28 days after the day on which the Returning Officer publicly notified the result of the poll (unless section 231 (2) of the Electoral Act 1993 applies).

The petition is filed by the petitioner(s) in person. The address for service of the petitioner(s) is

or

The petition is filed by A.B., solicitor for the petitioner(s), of the firm of X.Y.Z.

The address for service of the petitioner(s) is

Documents for service on the petitioner(s) 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

The petition is filed by A.B., solicitor for the petitioner(s), 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 petitioner(s) is

Documents for service on the petitioner(s) 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*].

SCHEDULE—*continued*

Form 84 Rule 805 (1)

BOND FOR SECURITY

In the High Court of New Zealand

No. .....

..... Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

A.B. [*and others*], Petitioner(s), and

C.D. [*and others*], Respondent(s)

I (*or* We):

[*Insert the full name, residence, and occupation of the, or each, surety*]

am (*or* are jointly and severally) bound to pay to Her Majesty in respect of the Government of New Zealand any amount not exceeding $[*Insert sum*], unless the petitioner(s) pays (*or* pay) all costs that in proceedings to determine the petition may become payable by the petitioner(s)—

(a) To any witness summoned on the petitioner's (*or* s') behalf; and

(b) To the respondent(s).

The Common Seal etc, *or*
This bond was signed by
[*Insert name of the, or each, surety*]
at this day
of 19

[*Insert signature(s) or seal(s)*]

before me

Signature: .....

A Solicitor of the High Court of New Zealand (*or* A Registrar, *or* Deputy Registrar, of the High Court of New Zealand) (*or* A Notary Public).

SCHEDULE—*continued*

Rule 809 (4) Form 85

NOTICE OF TIME AND PLACE APPOINTED FOR THE TRIAL OF A CONSTITUENCY ELECTION PETITION

In the High Court of New Zealand

No. .....

..... Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

A.B. [*and others*], Petitioner(s), and

C.D. [*and others*], Respondent(s)

The petition will be tried at ..... on the ..... day of ..... 19...., at .....am (*or* pm), or as soon after that time as the parties may be heard.

Dated this ..... day of ..... 19.... .

Signature: .....

(Deputy) Registrar of the High Court at .....

SCHEDULE—*continued*

Form 86 Rule 810 (2)

NOTICE OF INTENTION TO APPLY FOR LEAVE TO WITHDRAW A CONSTITUENCY ELECTION PETITION

In the High Court of New Zealand

No. .....

..... Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

A.B. [*and others*], Petitioner(s), and

C.D. [*and others*], Respondent(s)

The petitioner(s) will at such time and place as the Court may appoint for the purpose, being at least 7 days after the ..... day of ..... 19...., apply to the High Court for leave to withdraw the petition on the grounds that: .....

At the hearing of the application for leave to withdraw the petition, a person may apply to be substituted as a petitioner, if (and only if)—

(a) The person might in the first instance have presented the petition; and

(b) The person has given the Registrar of the Court, within 7 days after the publication of this notice, written notice that the person intends to apply to be substituted.

Dated this ..... day of ..... 19.... .

Signature(s) of Petitioner(s): .....

SCHEDULE—*continued*

Rule 811

Form 87

APPLICATION FOR LEAVE TO WITHDRAW A CONSTITUENCY ELECTION PETITION

In the High Court of New Zealand

No. .....

..... Registry.

In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

A.B. [*and others*], Petitioner(s), and

C.D. [*and others*], Respondent(s)

The petitioner(s) will on the ..... day of..... 19...., at .....am (*or* pm) (the time and place appointed for the purpose by the Court), or as soon after that time as the petitioner(s) may be heard, apply to the Court for leave to withdraw the petition on the grounds that:

.....

and on the grounds that the prescribed notice of the petitioner's (*or* s') intention to make this application has been duly served and published.

Dated this ..... day of ..... 19 .... .

Signature(s) of Petitioner(s): .....

SCHEDULE—*continued*

Form 88 Rule 814 (2)

NOTICE OF ABATEMENT OF A CONSTITUENCY ELECTION PETITION

In the High Court of New Zealand

No. .....

..... Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

A.B. [*and others*], Petitioner(s), and

C.D. [*and others*], Respondent(s)

This petition has abated because the petitioner (*or* the survivor of the petitioners) has died.

Any person who might in the first instance have presented the petition may apply to the High Court to be substituted as a petitioner, by giving notice to the Registrar of the Court within 28 days from the date of publication of this notice.

Dated this ..... day of ..... 19.... .

Signature: .....

(Deputy) Registrar of the High Court at .....

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, which come into force on 1 December 1998, amend the High Court Rules by incorporating the rules relating to constituency election petitions, which are presented to the High Court. Those rules are currently found in the Election Petition Rules 1996, which expire with the close of 30 November 1998. The rules relating to list election petitions are replaced by the Court of Appeal (List Election Petitions) Rules 1998.

Rule 2 adds a new *Part 15* applying to constituency election petitions.

Rule 3 makes a consequential amendment to rule 135 of the High Court Rules.

Rule 4 adds a new constituency election petition form and other forms to the First Schedule of the High Court Rules.

Rule 5 revokes the Election Petition Rules 1996 and the Election Petition Amendment Rules 1997.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette:* 22 October 1998.
These rules are administered in the Ministry of Justice and the Department for Courts.