

NOTE re Applicability of Previous Caselaw

After November 1st, issues may arise about the applicability of cases decided under the previous Rules.

This is something that will have to be worked out by the Courts on a case-by-case basis, as happens whenever any enactment is repealed and replaced.

The New Rules contain important interpretation provisions in Part 1. The starting point is the text, as was the case under the previous Rules. There are now express purpose and intention provisions, some of which will be familiar and some of which are new. Context remains important, but of course some of the context has changed.

Previous case law will not be automatically binding, but does form part of the relevant interpretive history to be considered along with the new interpretation provisions. The result may be that different types of Rules require different treatment, e.g.:

- Rules that exist for the first time will likely have to be interpreted afresh.
- For those that are differently worded, it will be a matter of argument whether, or to what extent, the prior case law remains relevant.
- For Rules that closely retain wording or concepts from the previous Rules, the courts will have to consider both prior caselaw and any arguments based on the new interpretation provisions. No one would suggest there is a limit on what arguments can be put before a Court.

Rules of Court Committee
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