

## **REPORT OF THE CRIMINAL PRACTICE COMMITTEE FOR THE YEAR ENDED 31 DECEMBER 2005**

The Committee met four times during 2005.

### **Membership**

The Committee welcomed new members this year following a number of resignations.

The following members were welcomed onto the Committee:

Hon Justice Robertson, Judge of the Court of Appeal

Hon Justice Randerson, Chief High Court Judge

His Honour Judge Johnson, Chief District Court Judge

Mr P Morgan QC, New Zealand Law Society

Mr B Horsley, Crown Law Office

Mr G Astle, National Operations Manager, Higher Courts, Ministry of Justice

Mr A Arulambalam, Manager, Criminal/Youth Jurisdiction, District Courts,  
Ministry of Justice

The following members resigned from the Committee:

Hon Justice William Young, Judge of the Court of Appeal

His Honour Chief Judge D Carruthers, Chief District Court Judge

His Honour Judge G Rea, Judge of the District Court

Ms N Crutchley, Deputy Solicitor-General

Mr G Turkington, New Zealand Law Society

Ms F Saunders-Francis, Manager, Operations and Judicial Support,  
Ministry of Justice

Matters discussed or noted by the Criminal Practice Committee were:

### **Crimes Act 1961: possible abolition of some of the partial defences**

The Committee devoted much of one meeting to a discussion on the Law Commission paper on the definition of insanity, the possible abolition of provocation, and introduction of diminished responsibility. There was lengthy discussion on the proposals in this paper and comments were passed onto the Law Commission.

## **Law Commission Report: Criminal Pre-trial Processes: Justice Through Efficiency**

The Committee discussed at length the recommendations on defence disclosure, status hearings, and proposing sanctions on counsel and the parties for non-compliance. Various views on the merits of these recommendations were exchanged and comments were provided to the Law Commission.

### **Timing for filing submissions on sentence**

The Committee continued discussions on the timeframe requirements for the Crown and Defence to file submissions on sentence.

The Committee accepted that the time frame for the filing of sentencing submissions depended, in part, on the time for delivery of pre-sentence reports. The Committee was advised that was part of the Service Level Agreement discussions between the Ministry of Justice and the Department of Corrections. The Committee was updated on the progress of these discussions and provided feedback on the proposals.

In 2006 the Committee will look at the various timeframes under consideration in the Service Level Agreement and whether the Sentencing Practice Notes should be amended to allow for sequential submissions rather than simultaneous ones.

### **Statutory reforms in criminal area**

At each meeting, the Committee received advice as to the position concerning progress on the statutory reforms in the criminal area.

### **Other matters considered included –**

- (a) **Middle-band offences** – The Committee was advised of what appeared to be the uneven practice, nationally, of the portions of middle band offences retained in the High Court and those transferred to the District Court. Statistical evidence, however, was inconclusive on the topic.
- (b) **Jury empanelling** – The committee considered whether it should recommend an amendment to the Juries Act 1981 providing that the Act and jurors' summonses should require jurors to be liable to serve "until the end of the trial" deleting reference to the week in which jurors were summonsed. It was decided to make no such recommendation.
- (c) **Bail appeals** – Concerns were expressed at delays in receiving transcripts and judgments from the District Court for bail appeals. On

investigation that was shown to be a local problem which needs attention.

- (d) **Filing of indictments: 42 day period** – The Committee considered whether a reduction in the timeframe would assist the despatch of criminal business but decided against making any recommendation in that regard.
- (e) **Assessments of pre-trial rulings and appeals from pre-trial rulings** – The Committee considered the extent to which pre-trial hearings resolve issues in a lasting way should be undertaken and whether appeal rights require amendments. That work is ongoing.
- (f) **Police bail history forms** – There were complaints concerning the difficulty in following bail history forms. That matter was considered by a District Court Committee which is likely to overcome the problem.
- (g) **Police bail forms** – There was concern as to the form and content of some Police opposition to the bail forms. The Police agreed to correct the position administratively.
- (h) **Cases causing delays in the High Court** – Concern was expressed about delays in cases reaching a hearing in the High Court. The Chief Judge has set up a separate committee which is seeking ways to streamline processes and hearings.
- (i) **Communications received by Court from parties and role of Registrar** – It was agreed that the Court Manuals should be amended to make it clear that it is not appropriate for Registrars to engage in casual email correspondence with parties and counsel. Counsel should ensure either side receives copies of email correspondence with the Registrar and Registrars need to be cautious in the emails they forward to Judges.
- (j) **Adjournments of Extended Supervision Applications** – The Committee considered whether offenders who are subject of an application for an extended supervision order should be able to consent to being remanded in custody for more than 8 days. The Committee decided not to promote an amendment.
- (k) **Costs in Criminal cases** – The Committee agreed to recommend to the Ministry that the scale of costs in the Costs in Criminal Cases Act 1967 be urgently updated to at least Legal Aid or Crown Solicitor's rates and be regularly updated by reference to the increases in the Consumers' Price Index.

Hon Justice Williams  
Chair, Criminal Practice Committee

## Appendix

At the end of 2005 the members of the Criminal Practice Committee were:

Rt Hon Dame Sian Elias	Chief Justice
Hon Justice Robertson	Judge of the Court of Appeal
Hon Justice Randerson	Chief Judge of the High Court
Hon Justice Williams	Judge of the High Court (Chair)
His Honour Judge Johnson	Chief District Court Judge
His Honour Judge J Walker	Judge of the District Court
Mrs J Ablett Kerr QC	New Zealand Law Society, Dunedin
Mr Morgan QC	New Zealand Law Society, Hamilton
Mr Earwaker	Criminal Bar Association, Auckland
Mr K Stone	Crown Solicitor, Wellington
Mr Brendan Horsley	Crown Law Office, Wellington
Dr W Young	Law Commission
Superintendent G Thomas	New Zealand Police
Mr R Chhana	General Manager, Crime Prevention and Criminal Justice, Ministry of Justice
Mr G Astle	National Operations Manager, Higher Courts, Ministry of Justice
Mr A Arulambalam	Manager, Criminal/Youth Jurisdiction, District Courts, Ministry of Justice
Mr Roger Gill	Manager, High Court, Wellington

Mr K McCarron, Judicial Administrator to the Chief Justice, also attended meetings.

Secretarial services were provided by Ms D Livas, Ministry of Justice.

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