

**REPORT OF THE CRIMINAL PRACTICE COMMITTEE
FOR THE YEAR ENDED 31 DECEMBER 2007**

The Committee met five times during 2007. A list of members is appended to this report.

MEMBERSHIP

The Committee welcomed two new members this year following three retirements. The following members were welcomed onto the Committee:

Justice Ronald Young (Chair, Judge of the High Court)
Mr Peter Winter (Criminal Bar Association)

The following members retired from the Committee:

Justice Williams (Chair, Judge of the High Court)
Mr Philip Morgan QC (Representative for the New Zealand Law Society)
Mr Richard Earwaker (Criminal Bar Association)

The Committee recorded its thanks to Justice Williams for his hard work and leadership. Justice Williams chaired the Committee for many years.

The Committee noted with sadness the death of Mr Ken Stone and acknowledged his contribution to the prosecution of crime in the Wellington area.

MATTERS DISCUSSED

Matters discussed and noted by the Criminal Practice Committee were:

Section 372 Crimes Act 1961

Currently s372 of the Crimes Act does not allow a Judge of his/her own motion to correct an erroneous sentence. Section 77 of the Summary Proceedings Act 1957 allows a District Court Judge exercising summary jurisdiction (unless an appeal has been filed) to do so. The Committee invited the Ministry of Justice to promote an amendment to s372 to allow sentence correction consequent upon a Judge's own motion.

Pre-trial Matters

The Committee discussed a range of pre-trial matters including a checklist for pre-trial conferences.

A Practice Note including a pre-trial checklist for pre-trial conferences in longer High Court trials was drafted. The conferences are designed to ensure consistency of the approach by counsel and to avoid last minute adjournments with the trials and are presided over, where practical by the Trial Judge.

The streamlining of evidence by eliminating unnecessary witnesses, reducing the length and complexity of scientific evidence and the use of admissions under s369 Crimes Act 1961.

A District Court Criminal Jury Trial Practice Note was discussed. There was general support for the practice note although some discussion with respect to how the committing Court had to provide copies of depositions and the time from committal to first callover.

The Committee noted the development of a Practice Note on appeals to the Court of Appeal from pre-trial rulings. Members were invited to provide comment on the functioning of the Practice Note.

Discussions took place around the development of a joint Practice Note for the High Court and the District Court on pre-trial applications in criminal cases.

Jurors and Jury Trials

The Committee discussed a range of topics involving juries and jury trials. They included:

Committee recommended the Ministry of Justice update its current juror informational video. The Ministry agreed to do so. The Committee provided feedback to the Ministry on the content of the new DVD.

The Ministry of Justice, with the Committee's encouragement, are developing a juror satisfaction survey dealing solely with administrative matters as they affect jurors.

The Committee recommended the Ministry of Justice consider whether juror anonymity in particular jury trials is required and if so how this might be achieved.

The Committee noted the Criminal Procedure Bill which provides in part for majority verdicts, delayed selection of jury foreman, and discretionary sequestration had yet to be passed.

The Committee noted with concern the number and percentage of juror excusals by registrars. The Committee suggested the Ministry of Justice consider whether court registrars too readily granted jurors excusals. The Ministry are to develop further guidelines for registrars and to investigate ways of making juror service more attractive for potential jurors. The Committee recommended to the Ministry that juror payment should increase, be set at a realistic level, and be linked to the Consumer Price Index (CPI).

Amicus

The Committee discussed the appointment of Amicus Curae in criminal trials, especially the role of counsel as Amicus and the role of the Judge in appointing Amicus. A paper by Justice Asher on the respective roles was distributed to the Committee for discussion and further action.

Psychological Reports on Offenders

The Committee received a presentation from Community Probation Psychological Services (CPPS), Department of Corrections relating to the provision of court ordered reports on offenders. The Committee recommended the development of guidelines to assist Judges and counsel requesting such reports. These reports can provide actuarial risk screening, information where less serious offending occurs but where assessing future risk is important and psychological aspects relating to offending.

Other Issues that were discussed by the Committee

The Committee received reports and provided feedback on the following topics:

The Police Adult Diversion Scheme

The Early Operation of the Evidence Act 2006. The Committee agreed to keep a review of the Evidence Act as a regular agenda item.

The operation of electronic monitoring of bail from the New Zealand Police.

The service level agreement between the Ministry of Justice and Corrections, especially as it applied to the content and timeliness of reports for the disposition of criminal cases. Given the Sentencing Act requirements, the number, type and content of such reports have changed requiring a re-negotiation of the service level agreement.

The development of a prosecution protocol (Crown counsel and police) with respect to public comment on criminal cases before the Courts. The Committee provided feedback on the draft protocol. It proposes, in 2008, to encourage the development of similar protocols for defence counsel.

The Committee provided feedback to the Law Commission on its report on search and seizure.

The Ministry of Justice provides reports at each meeting on legislative progress of Bills affecting criminal law.

Appendix

At the end of 2007 the members of the Criminal Practice Committee were:

Rt Hon Dame Sian Elias	Chief Justice of New Zealand
Hon Justice Robertson	Judge of the Court of Appeal
Hon Justice Randerson	Chief Judge of the High Court
Hon Justice Young	Judge of the High Court (Chair)
His Honour Judge Johnson	Chief District Court Judge
His Honour Judge J Walker	Judge of the Wellington District Court
Mrs Judith Ablett- Kerr QC	New Zealand Law Society, Dunedin
Mr Peter Winter	Criminal Bar Association, Auckland
Mr Ken Stone	Crown Solicitor, Wellington
Mr Brendan Horsley	Crown Law Office, Wellington
Dr Warren Young	Law Commission
Superintendent Graham Thomas	National Manager, Police Prosecution Service, New Zealand Police
Mr Rajesh Chhana	General Manager, Crime Prevention and Criminal Justice, Ministry of Justice
Mr Graeme Astle	National Operations Manager, Higher Courts, Ministry of Justice
Ms Maria McDonald	Acting Manager, Criminal/Youth Jurisdiction, District Courts, Ministry of Justice

Non- members attendees included:

Mr K McCarron, Judicial Administrator to the Chief Justice

Ms D Iversen, Judicial Administrator to the Chief High Court Judge,

Mr D Conway and Mr D Hilton, Legal Officers from the New Zealand Law Society

Secretarial services were provided by Ms M McDonald, Ms T Dyall and Ms C Inturi from Ministry of Justice.