

**REPORT OF THE CRIMINAL PRACTICE COMMITTEE
FOR THE YEAR ENDED 31 DECEMBER 2008**

The Committee met five times during 2008. 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:

Robert Lithgow QC..... New Zealand Law Society
Aaron Perkins..... Crown Solicitor
Karyn McLean..... Ministry of Justice
Ryhn Visser..... (Observer) New Zealand Law Society

The following members retired from the Committee:

Maria MacDonald..... Ministry of Justice

MATTERS DISCUSSED

The key matters discussed and noted by the Criminal Practice Committee were:

Middlebanding Discussion Document

The Committee discussed a Law Commission report on the middleband procedure. The impact of transferring some High Court only offences to middleband offences, the potential for increased pressure on District Courts and the additional paperwork and transfer of files between the District Court and High Court was considered. Further discussion on middlebanding will be required in 2009.

Amicus Curae

The Committee discussed the appointment of amicus curae in criminal trials. The Committee referred the matter to the Law Society inviting it to hold a seminar for its members on the topic.

Media Guidelines

Members provided comment on the draft protocol for Police and Crown Prosecutors developed by Crown Law and the Police. A final protocol was adopted by the Crown and the Police taking account of the Committee's response.

Mrs J Ablett Kerr QC, Mr Lithgow QC and Mr P Winter and the Committee developed draft media guidelines for defence counsel. These will be presented to the New Zealand Law Society in due course with an invitation that the Society consider their adoption.

Reports Requested under Section 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003

Psychiatrists preparing s 38 Reports express concern to the Committee that during interviews with accused persons the accused may discuss the factual circumstances which gave rise to the charges the accused currently faces. The psychiatrists were concerned whether the information obtained by them from an accused person might be used in a future criminal trial. The Committee agreed that the Chief Judges of the District Court and High Court be encouraged to advise psychiatrists to be cautious about including the factual circumstances of the alleged crime provided by the accused in any report.

Jurors and Jury Trials

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

- (a) Juror excusals: in particular, the lack of consistency relating to validation and threshold for excusals. The Committee recommended that the Ministry undertake a review of the criteria for excusals to ensure national consistency.
- (b) Juror DVD: The Ministry updated the Committee on work relating to the new juror information DVD. Committee Members provided comment on the scripts and visual content. A final DVD was approved.

- (c) Juror Satisfaction Survey: The Ministry of Justice, with the Committee's encouragement, developed a juror satisfaction survey dealing solely with administrative matters as they affect jurors.
- (d) Juror Fees: The Committee discussed Juror fees and suggested that the Ministry investigate reimbursement of actual juror wages for long trials and increasing juror fees annually.

Jurors and Section 374 Crimes Act 1961

The Committee discussed the Supreme Court judgments of *R v Wong* [2008] NZSC 29 CA and *R v Rajamani* [2008] 1 NZLR 723 as they dealt with the circumstances where a jury is reduced to ten members. Reform of the current statutory test requiring the existence of exceptional circumstances (in the absence of consent) to reduce a jury below eleven members was considered. Some members of the Committee favoured no change. Those who favoured change discussed either relaxing the exceptional circumstances test or, in appropriate long trials, selecting more than twelve jurors. The Committee considered these alternatives. The majority favoured a relaxation of the "exceptional circumstances" test to allow verdicts to be given with a ten member jury. The Committee also discussed the application of the majority verdict provisions of the 2008 Crimes Amendment Act to ten member juries. There was little support for the application of the majority verdict regime where a jury is reduced to ten members.

Other Issues discussed by the Committee

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

- (i) A draft of the Police Prosecution Service Policy and Practice Statement.
- (ii) Alternate Jurors.
- (iii) Memorandum on Exceptional Circumstances test.
- (iv) The Criminal (Procedure) Simplification Project and Criminal Procedure Bill (Ministry of Justice and Law Commission) including middleband process, suppression of names and representative charges.
- (v) Bench Book Material re Criminal Procedure for Mentally Impaired Persons.
- (vi) Proposed legislation on Electronic Monitoring (EM Bail).
- (vii) Practice Note on Preliminary Hearings including Youth Court.
- (viii) Admissibility of Previous Convictions.
- (ix) Sentencing Indications in the High Court.
- (x) The Ministry of Justice provides reports at each meeting on legislative progress of Bills affecting criminal law.

Appendix

At the end of 2008 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 Robert Lithgow QC	New Zealand Law Society, Wellington
Mr Peter Winter	Criminal Bar Association, Auckland
Mr Brendan Horsley	Crown Law Office, Wellington
Dr Warren Young	New Zealand 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
Mr Aaron Perkins	Crown Solicitor, Auckland
Ms Karyn McLean	Manager, Criminal/Youth Jurisdiction, District Courts, Ministry of Justice
Mr Ryhn Visser	(Observer) New Zealand Law Society

Non- member 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

Ms V Sim, Law Commission

Mr C Mander for Mr Horsley, Crown Law Office

Mr B Erasmuson and Mr A Rean, New Zealand Police

Ms R Jamieson, Mr M Luey, Ms A Lee, Ms K Paterson Ms S Howan and Mr G Millard, Ministry of Justice

Secretarial services were provided by Ms C Inturi and Ms A Wilson from the Ministry of Justice.