

**REPORT OF THE CRIMINAL PRACTICE COMMITTEE
FOR THE YEAR ENDED 31 DECEMBER 2010**

The Committee met four times during 2010.

MEMBERSHIP

At the end of 2010 the members of the Criminal Practice Committee were:

Rt Hon Dame Sian Elias, Chief Justice of New Zealand

Hon Justice O'Regan, Judge of the Court of Appeal
(replaced by Hon Justice Glazebrook, Judge of the Court of Appeal)

Hon Justice Winkelmann, Chief High Court Judge

Hon Justice Ronald 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

Acting Superintendent Craig Tweedie, Acting National Manager, Police Prosecution Service,
Ministry of Justice

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

Mr Aaron Perkins, Crown Solicitor, Auckland

Mr Malcolm Luey, Manager, Criminal Law, Crime Prevention and Criminal Justice, Ministry of
Justice

Ms Karyn McLean, Manager, Criminal/Youth Jurisdiction, District Courts, Ministry of Justice

Non-member attendees included:

Inspector Erasmuson, Acting National Operations Manager, Police Prosecution Service, New Zealand Police

Mr K McCarron, Judicial Administrator to the Chief Justice

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

Ms V Sim, New Zealand Law Commission

Ms A Hill, Legal Services Agency

Ms S Howan, Ministry of Justice

Ms C Murray-Brown, Ministry of Justice

Ms Esther King, Ministry of Justice

Ms S Turner, Ministry of Justice

Mr R Davies, Ministry of Justice

Ms V Johns, Ministry of Justice

Ms R Jamieson, Ministry of Justice

Mr Ryhn Visser, (Observer) New Zealand Law Society

Ms J Cornwall, Ministry of Justice

Secretarial services were provided by Ms D Livas, Ms T Chin, Mr M Wilkinson, and Ms A Thomson from the Ministry of Justice.

His Honour Judge Walker resigned from the Committee at the end of 2010. His Honour Judge Davidson will be attending the Committee in 2011.

CRIMINAL PROCEDURE SIMPLIFICATION PROJECT

Submissions

The Committee monitored the progress of the Criminal Procedure (Simplification) Project throughout the year (including timeframes for tabling and introducing the Criminal Procedure (Reform and Modernisation) Bill). Members of the Committee advised that they would be making submissions on the Bill. The Committee noted the NZLS and the Judges had commented on the Bill. The Committee were informed that they would be consulted once the Bill, had been drafted.

Audio Links and Audio Visual Links in Proceedings

The Committee discussed the Courts (Remote Participation) Bill and the provisions for using audio visual links (AVL) in criminal procedural matters. This discussion focussed on the arrest of a person in one area and their appearance in another. The Committee was advised that an appearance via AVL fulfils the corresponding legal requirements in relation to a person's appearance at a proceeding under every enactment and rule of court, unless that other enactment or rule expressly provides otherwise.

POLICE AND DEFENCE MEDIA GUIDELINES

The Committee considered the new Police and Defence Media Guidelines. The later drafted by the Committee. These were finalised and published in Police publications and LawTalk.

CRIMINAL PROCEDURE (MENTALLY IMPAIRED PERSONS) ACT 2003, s 38 and procedural reforms

The Committee discussed confidentiality and procedural difficulties in relation to the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP)). The areas discussed were:

(a) Section 38 CP(MIP) – Reports and Psychiatrists Protocol

The Committee recommended an amendment to the Evidence Act 2006 to the effect that assessment reports under section 38 of CP(MIP) should be privileged and that the admissibility of assessment reports should be reviewed. The Ministry of Justice are considering this recommendation as part of an Evidence Amendment Bill. Work will commence in 2011. The Committee will continue to comment on this issue as it progresses.

(b) Procedural Reforms

Some Committee members expressed the view that this legislation should be amended as a matter of urgency as procedural difficulties were causing delay and cost.

The Committee approached the Minister of Justice who agreed a review of the procedural provisions was required. This review is on the Ministry of Justice's work programme for 2011. The Committee will continue to comment on this issue as it progresses.

LEGAL AID REFORMS

The Committee discussed legal aid reforms as proposed by the Government. Some members were concerned about the impact of the reform on court function. They asked that there be appropriate consultation with judges and lawyers before settling on specific reforms. A representative from the Legal Services Agency attended the November 2010 Committee meeting and discussed the progress of the Legal Services Bill. The Committee will consider the draft Legal Services Bill at its first 2011 meeting.

VICTIM RIGHTS REVIEW

The Committee discussed the Victims Rights Review by the Ministry of Justice. Serious concerns were raised by members of the Committee about changes to Victim Impact Statements, the ability of Judges to maintain courtroom control in view of these changes and the potential implications on Police resources from these reforms. The Committee asked to remain informed about the review.

MEASURES TO REDUCE THE LENGTH OF CRIMINAL TRIALS

The Committee was advised that the seminars on this topic arranged in 2009 were to be postponed until the reforms in the Criminal Procedure (Reform and Modernisation) Bill were passed when the content of the seminar would be reassessed.

NATIONAL JUROR SATISFACTION SURVEY

The Committee were advised on the outcome of the 2009 National Juror Satisfaction Survey which surveyed the services and facilities provided to jurors by the Ministry of Justice. Overall 90% of jurors were satisfied or very satisfied with the services and facilities. Areas of dissatisfaction were outlined (eg, lack of information about where to go, lack of information about what was required as a juror, quality of facilities). The Ministry informed the Committee of steps taken to improve the juror experience (eg, improving the Ministry's website relating to jurors, the centralised calling service and payment to the jurors).

SECTION 27 OF THE SENTENCING ACT AND COMMUNITY INITIATIVES

It came to the Committee's notice that only rarely were requests being made under section 27 of the Sentencing Act 2002, to hear about the background of an offender. A framework for discussing issues relating to section 27, community initiatives and restorative justice was raised and deferred until February 2011.

QUESTIONING OF YOUNG PEOPLE

The procedure during police questioning of young people was raised as a potential issue for the Committee. *R v Z* [2008] 3 NZLR 342 was referred to. The New Zealand legislation was compared to the Canadian guidelines. This item was deferred until the February 2011 meeting.

BABIES IN PRISONS

How female prisoners with babies or very young children are dealt with in prisons was a topic of discussion. *Garnett*, CA 187/2009 was noted. The Committee expressed interest in hearing more about the procedure regarding prisoners with babies in prisons. A table comparing New Zealand conditions with other comparable countries was prepared. It was agreed that a representative from the Department of Corrections would be invited to attend the first meeting in 2011 to report on how it dealt with such prisoners.

INTELLECTUALLY DISABLED PERSONS IN THE COURT/CORRECTIONS SYSTEM

The Committee was concerned with how those with intellectual disabilities and other functional disabilities (eg, head injuries) were managed in the Courts and by Corrections, particularly at sentencing and post-conviction. A representative from the Department of Corrections was invited to attend the first meeting of 2011 to discuss this issue. It was suggested that the current review of the Criminal Procedure (Mentally Impaired Persons) Act 2003 could be expanded to include disabled/ mentally ill persons and the problems this causes. The Committee also contemplated that an initiative like the Porirua Community Links release programme may work with disabled/mentally ill persons.

CRIMINAL CONFERENCING

The Committee discussed the call over regime in the Auckland District Court and Auckland High Court and noted that the idea behind criminal conferencing was to dispense with multiple call overs. The idea of criminal conferencing was discussed. Some members noted that for it to work effectively, counsel would need to be sufficiently familiar with the file and that if there was a scheme, it would have to be agreed to by the Crown, defence bar and Legal Services. The matter was to be discussed further in 2011.

CLAIM OF RIGHT

The Committee was advised of the amendment options being considered to reform the Claim of Right defence. Committee members discussed the options and expressed a view on their preferences.

COMMITTAL PROCEEDINGS: UNDER THE NEW PARTS 5 AND 5A OF THE SUMMARY PROCEEDINGS ACT 1957

The Committee received statistics on procedures under Part 5 and 5A of the Summary Proceedings Act 1957 at each meeting. Some members of the Committee had serious concerns regarding police applications for extensions of time to file witness statements, low levels of applications for oral evidence orders, delays in the process and automatic committal. Committal proceedings are now being considered as part of the Criminal Procedure (Simplification) Project. Committee members considered that a review of case files may be needed to determine what particular aspects of the process are causing delay.

LEGISLATION

The Committee was updated on the progress of relevant proposed legislation. The Committee considered a number of bills, including the Criminal Procedure Bill, and the Sentencing and Parole Reform Act 2010. Further discussion on the Sentencing and Parole Reform Act 2010, the Sentencing Amendment Act 2009 (final protection orders at Judges discretion) and the Sentencing (Offender Levy) Amendment Act 2009 have been deferred until February 2011.