

# Criminal Practice Committee

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Annual Report

For the year ended 31 March 2017

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## About the criminal practice committee

This is a report of the Criminal Procedure Committee (CPC), chaired by the Hon Justice Lang. It covers the period from April 2016 to March 2017.

The Criminal Practice Committee (CPC) was established in 1988. It brings together all those professionally involved in the criminal justice system at a senior level to progress matters of importance to the operation of the criminal justice system and to inform the Executive. The Committee has two primary functions:

- to monitor and progress action of issues relevant to the operation of the criminal justice system; and
- to provide a forum for discussion and comment on legislative and policy developments.

## Membership

Members of CPC include judges, legal practitioners, registrars and Ministry of Justice policy advisers. It also includes representatives from the New Zealand Law Commission, Law Society, Crown Law and New Zealand Police (see *Appendix 1* for a list of current members).

Justice Young retired from his position as chairperson of the CPC. Justice Lang assumed the role of chairperson in June 2014.

## Operational matters

### Law Commission

Hon Douglas White QC and Donna Buckingham attended meetings in 2016 to update on Law Commission initiatives. This included a review of the Search and Surveillance Act, proposed family and sexual violence law reforms, a review of DNA evidence in criminal proceedings and the law of contempt. Members of the CPC gave feedback and raised possible issues with the Law Commission's developing proposals.

The CPC's relationship with the Law Commission is important. The Commission updates the CPC not as a formal consultation, but as a matter of courtesy. It also seeks advice and feedback from the CPC. The Commission also reviewed its protocol for consulting with the judiciary going forward and discussed this with the Committee.

## **Legal Aid Services**

Early in the year CPC members discussed concerns from appellate judges as to the experience levels of appellate Legal Aid approved counsel. In April 2016, Legal Aid Services provided a response to CPC on the quality and experience standards that apply before criminal lawyers are approved to appear as Legal Aid providers in an appellate court. It was noted that the current criteria for appellate approved counsel was insufficient for what is expected from criminal appeal advocates in terms of breadth and depth of experience.

## **Access to expert witnesses and timing of ESR reports**

Early in 2016, concerns had been raised about the access to expert witnesses, especially forensic pathologists. The process to access experts is currently ad hoc and CPC members agreed it would be helpful to centralise a point of contact in Legal Aid for expert witnesses.

After discussing this issue with Legal Aid Services and the Ministry of Justice, the Ministry created a shorter form that asks all the questions Legal Aid needs to know upfront as a method of reducing the amount of paperwork and length of time required to get funding.

Concerns were expressed that forensic pathologists in Auckland appear to be unwilling to peer review each other's work. The Chief High Court Judge has corresponded with the Chief Forensic Pathologist in Auckland regarding this issue and it appears to have arisen due to a shortage of pathologists and consequential workload pressures on pathology staff in Auckland. Steps are being taken to employ and train more forensic pathologists and to manage their workload but this remains an ongoing issue.

These issues were a major focus of the CPC throughout the year and will continue to be examined this year.

## **Reducing murder charges to manslaughter**

The Deputy-Solicitor General outlined the current process of how murder charges are reduced to manslaughter. The proposed reduction is first considered by senior Crown counsel and the final decision is made by the Deputy Solicitor-General. This decision must be signed off by the Solicitor-General and the decision is guided by the Prosecutorial Guidelines. Victims are always consulted. It was emphasised that cost is never a sufficient reason to reduce murder to manslaughter – the public interest is too great.

The Judge has no role to play in any decision to amend charges since this is a matter of prosecutorial discretion. As a matter of practice a sentence indication will not be given on a manslaughter charge where the defendant is still charged with murder even though the Criminal

Procedure Act 2011 permits indications to be given for charges not currently on the charging document.

### **Workload and filing issues**

Trial workload issues at the District Court are being managed and the situation is generally improving nationally. There are, however, significant procedural delays in the Manukau District Court, partly due to a shortage in courtrooms. Courtroom constraints are also affecting provincial High/District courts. Concerns were also discussed in relation to delays in filing at all courts which results in limited time for the other party to respond. It was discussed whether increased numbers of telephone conferences could be used to manage delays in timing and clarification of hearing issues. This had already been a successful process in the High Court.

### **Delays in sentencing**

There was some concern about delays in sentencing that were caused by a range of factors. Pre-sentencing (PAC) reports are often not provided to the Court or defence counsel in a timely manner and this was discussed as being a primary cause of delays in District Court sentencing. The ability of assessors to only check one possible home detention address at a time was also causing delays in PAC reports being processed. It was also highlighted that delays in sentencing are dictated by capacity of sentencing lists and scheduling constraints.

Corrections implemented a 15 working day deadline for PAC reports to be completed prior to sentencing. Despite this, it was evident that some issues remained in meeting this deadline.

### **Issues arising where Crown witnesses granted anonymity**

At the March 2017 meeting, issues arising out of trials where witness anonymity orders have been made were discussed. One trial in the High Court was aborted recently after it transpired that defence counsel had acted for one of the witnesses granted anonymity. This issue will be further examined this year.

The CPC has recently met in March 2017. It is due to meet again on 23 June 2017.

## Appendix one – Membership

### CPC 2017 membership:

	Rt Hon Dame Sian Elias, Chief Justice
	Hon Justice French, Court of Appeal
	Hon Justice Venning, Chief High Court Judge
Chair	Hon Justice Lang, High Court
	Her Honour Judge Jan-Marie Doogue, Chief District Court Judge
	His Honour Judge Barry, District Court
	Hon Douglas White QC, President of the Law Commission
	Steve Bonnar QC, NZ Law Society, Wellington
	Elizabeth Bulger, NZ Law Society, Wellington
	Brendan Horsley, Deputy Solicitor-General, Criminal, Crown Law
	Brett Crowley, Criminal Bar Association
	Superintendent Gary Allcock, Police Prosecution Service
	Andrea King, Ministry of Justice
	John Richardson, Criminal Caseflow Manager, Auckland High Court
	John Houghton, Acting Southern Regional Manager, District Courts, Ministry of Justice
	Madeleine Laracy, Public Defence Service, Ministry of Justice (until November 2017)
	Campbell Savage, Public Defence Service, Ministry of Justice (from November 2017)
Observer	Debbie Iversen, Judicial Administrator to Chief High Court Judge
Secretary	Allanah Colley, Judges Clerk, Wellington High Court