

Criminal Practice Committee

Annual Report

For the year ended 31 December 2013

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ABOUT THE CRIMINAL PRACTICE COMMITTEE

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).

OPERATIONAL MATTERS CONSIDERED

In 2013, the Committee monitored and considered a number of operational issues, including:

- ***Pre-charge warning statistics:*** The Committee was concerned that there was insufficient transparency around the use of pre-charge warnings. Initially, police explained they would release statistics on pre-charge warnings when requested under the Official Information Act, but had no plans to proactively publish this information. Members asked police to reconsider that position. As a result, police agreed to consider publishing this information at least annually.
- ***Legal Services Agency:*** Concerns were expressed about legal aid under the new Criminal Procedure Act. The Legal Services Agency held workshops with defence counsel to discuss the proposed changes. With regard to high-cost cases, the Legal Services Agency advised that interim grants of up to 40 hours work are now available. Grants staff are now authorised to make grants for a wider range of work without referring the matter to a specialist adviser, Funding for expert witnesses must now be approved within 10 days of application. Interactions between counsel and internal specialist advisers are to become less formal, with questions and advice encouraged.
- ***National Juror Satisfaction Survey:*** The Ministry of Justice advised that in 2012 92 per cent of surveyed jurors reported being satisfied with the information and support they received when summoned, during selection and after jury service.
- ***Formal witness statements:***
 - Concern was expressed about delays in police filing formal written statements under the pre-CPA system. Justice Young confirmed it was possible to apply for a second extension of time for filing formal witness statements, and that a hearing could be held if the extension was opposed. Police advised that managers around the country had been reminded of their obligations relating to formal statements.

- Justice Winkelmann wrote to the Solicitor-General, noting her concern that some statements were being filed with irrelevant and inadmissible material. Crown Solicitors have agreed to a process whereby statements are returned to police where the statement is unfit for filing. Where this is impractical, Crown Solicitors will 'red-line' material the Crown does not propose to lead as evidence at trial.
- **Screens for witnesses in court:** The Ministry of Justice property team advised that many courts did not have witness screens that allow defendants to see and hear the witness when giving evidence (ie. one-way mirror glass). The Ministry asked an Auckland-based company to design a prototype screen for use in courts. As an alternative solution, the Ministry advised that some courts have been supplied with cameras connected to a television. This allows the witness to be obscured behind a solid screen, but displays their image on a television visible to the defendant.
- **Digital CCTV evidence guidelines / facial mapping protocol:**
 - Crown Law advised that guidelines for handling digital CCTV evidence had been developed. Initially called the "facial mapping protocol", the name was changed to "Guidelines for using digital CCTV evidence in law enforcement" to reflect the broadened scope of the guidelines, The guidelines focus on process.. Experts are expected to comply with forensic standards (such as ISO 17025) and keep notes of their methods for review and replication by others. Members were given copies of the guidelines at the September 2013 meeting.
 - Crown Law advised that a second set of guidelines, dealing with still images and non-CCTV video, is still being developed.
- **Criminal Cases Report:**
 - In April 2013, members of the Committee noted their concern about the quality of statistical information provided by the Ministry of Justice. After meeting with the Chair, the Ministry agreed to develop a new criminal cases report to reflect the new Criminal Procedure Act and the changes it entailed, beginning with the November 2013 meeting.
 - Ministry of Justice statistics showed a low number of protocol cases going to the High Court. Judicial members made it clear that all protocol cases should come to the High Court for decision, and that they did not believe this was currently happening. It was noted that protocol offences should be identified at an early stage as it affects the grant of legal aid.
- **Criminal rules and expert witnesses in criminal cases:** The Committee discussed issues around the use of experts in criminal cases.
 - It is customary in criminal cases that none of the experts involved in the case are shown the Code of Conduct for expert witnesses. The High Court Rules dealing with experts do not apply in criminal cases. It was noted that courts still allow partisan experts, which can be a problem, and that the Crown can attack defence experts on methodology, without asserting a position on theirs.
 - Various members agreed to approach the Institute of Judicial Studies, the Criminal Bar Association and the Law Society to suggest that seminars be held on scientific method and the obligations of expert witnesses in criminal trial.
 - Members discussed how the Criminal Procedure Rules might be amended to deal with expert witnesses in criminal cases. It was suggested that a sub-committee of the Rules

Committee could be established to deal with these matters. This led to the establishment of the Criminal Rules Sub-Committee, chaired by Justice Ronald Young.

- Mr Sainsbury approached the Legal Services Agency to investigate developing a list of approved experts witnesses in order to expedite legal aid grants for such witnesses and minimise trial delays with trials.
- **Briefing on Law Commission projects:** The Committee was briefed on the work of the Law Commission, such as the contempt of court project.
- **Self-represented litigants:** The Committee discussed the information available to self-represented litigants about court processes and their rights. The Ministry of Justice agreed to remind staff that addresses must be redacted from the list of jurors given to self-represented defendants. The Ministry of Justice explained that it had developed draft informational materials for self-represented defendants. Those materials have not yet been finalised.

LEGISLATION AND POLICY DEVELOPMENT

In addition to considering operational issues of concern, the Committee discusses policy and legislative developments. In 2013, the Committee discussed the following:

- **Criminal Procedure Act 2011**
- **Criminal Procedure (Mentally Impaired Persons) Act 2003:** the Committee was informed that reform of this Act is not a Ministerial priority. Members of the Committee expressed strong concern with the low priority afforded to reform and felt it should be made a priority.
- **Criminal Procedure Amendment Bill:** the Committee discussed potential problems with the procedure to be followed where Category 1,2 and 3 charges accompany Category 4 charges. However the Bill had already been through the Select Committee stage when the Committee considered it.

PRESENTATIONS RECEIVED BY THE COMMITTEE

The Committee received the following presentations in 2013:

- **Canterbury Criminal Justice Panel Pilot:** Justine O'Reilly and Superintendent Searle explained the functioning of this regional partnership programme. Some members of the Committee expressed concern that the programme resembled an alternative justice system. The process was not conducted in public. It was agreed that there is a need for a consistent and fair justice system that is publically accountable. Members expressed concern about the exercise of discretion as to eligibility, and thought that there would be uneven treatment if the system was to be only used in some parts of New Zealand. This could bring the justice system into disrepute.
- **District Court Workload Reports:** Mr Henderson and Mr Batchelor from the Ministry of Justice presented a statistical report on District Court workloads. Members reiterated the point that it is important that the Ministry collect qualitative information such as the reasons for adjournments, as well as quantitative information.

APPENDIX – MEMBERSHIP AND ATTENDANCE

The members of the Criminal Practice Committee during 2013 were:

Rt Hon Dame Sian Elias, Chief Justice of New Zealand

Hon Justice Randerson, Judge of the Court of Appeal

Hon Justice Winkelmann, Chief High Court Judge

Hon Justice Young, Judge of the High Court (Chair)

Her Honour Judge Doogue, Chief District Court Judge

His Honour Judge Barry, Judge of the Wellington District Court

Hon Sir Grant Hammond, New Zealand Law Commission

Mrs J Ablett-Kerr QC, New Zealand Law Society, Wellington

Mr R Lithgow QC, New Zealand Law Society, Wellington

Mr N Sainsbury, Criminal Bar Association, Wellington

Mr A Perkins, Crown Solicitor, Auckland

Mr C Mander, Crown Law Office, Wellington

Superintendent C Tweedie, National Manager, Police Prosecution Service, New Zealand Police

Ms A Kalders, Chief Probation Officer, Department of Corrections

Mr D Fagan, Department of Corrections

Mr B Horsley, Director, Public Defence Service, Wellington

Ms S Turner, General Manager, Courts and Justice Services Policy

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

Ms L Ariell, Ministry of Justice

Mr J Richardson, Case Flow Manager, District Courts and Special Jurisdictions, Ministry of Justice

Non-member attendees included:

His Honour Judge Boshier (as alternative to Sir G Hammond)
Mr K McCarron, Judicial Administrator to the Chief Justice
Ms D Iversen, Judicial Administrator to the Chief High Court Judge
Mr R Daysh (as alternative to Sir G Hammond)
Ms M Laracy, Crown Law (as alternative to Mr C Mander)
Superintendent B Searle, New Zealand Police
Inspector M Johnson (as alternative to Superintendent C Tweedie)
Inspector J Walker, New Zealand Police
Ms J O'Reilly, New Zealand Police
Mr R Visser, Secretariat, New Zealand Law Society
Mr M Luey, General Manager, Criminal Justice, Ministry of Justice
Ms M McCreadie, Ministry of Justice
Ms R Jamieson, Ministry of Justice
Ms J Bhula, Ministry of Justice
Ms H Lilley (as alternative to Mr G Astle), Ministry of Justice
Mr M Henderson, Judicial Resource Analyst
Mr P Batchelor, National Judicial Resource Advisor

Secretarial services were provided by:

Ms C Hickey (Secretary), Ministry of Justice
Ms C Brown (Secretary), Ministry of Justice
Ms A Thomson (Secretary), Ministry of Justice