



The Rules Committee

Te Komiti mō ngā Tikanga Kooti

July 2025
Criminal Rules Minutes 06/25

Circular 15 of 2025

Minutes of the Criminal Rules Sub-Committee meeting held on 4 June 2025

The meeting was held at 9:00am using the Microsoft Teams facility.

In Attendance

Hon Justice Mander, Chair and Judge of the High Court
His Honour Judge Johnston, National Executive Judge of the District Court
Ms Fiona Guy Kidd KC
Mr Joshua Chin, Criminal Manager Christchurch High Court
Ms Julie-Anne Kincade KC
Ms Megan Noyce, Chief Advisor, Courts and Justice Service Policy
Ms Zannah Johnston, Crown Law

Ms Cathy Pooke, Parliamentary Counsel Office
Ms Georgia Barclay, Clerk to the Rules Committee

Apologies

Ms Clare Cheesman, Manager, Justice Services, Auckland District Court Criminal

1. Preliminary

The Sub-committee confirmed the minutes of the 24 March 2025 meeting, with some minor changes.

2. Name suppression in sexual cases

The Sub-committee considered the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill. The Justice Committee took no issue with the draft amendments to the rules provided to it by the Sub-committee that dealt with name suppression of complainants, but did decide to recommend amending [s 201\(4\)\(a\)\(ii\) of the Criminal Procedure Act 2011](#) to ensure that if a complainant in a sexual case applies to the court under that provision to remove automatic name suppression for a defendant, the application is made in accordance with the Criminal Procedure Rules 2012. The recommendation aligns with an existing amendment in the Bill to s 203(4)(a)(ii).

The Sub-committee agreed that the Criminal Procedure Rules do not seem to currently provide an explicit pathway for complainants to make an application under s 201(4)(a)(ii). The Sub-committee

agreed in principle to add a similar rule to that already proposed which would explicitly allow for applications to be made under s 201(4)(a)(ii).

The Sub-committee agreed that, while it would be ideal to progress this matter in time for the Bill passing into law and commencing, it would not be able to proceed to the Rules Committee in time for its next meeting, given remaining questions over whether service on a defendant would be required.

3. Code of conduct for expert witnesses in criminal proceedings

The Sub-committee endorsed a dedicated code of conduct for expert witnesses in criminal proceedings, agreeing a criminal code would increase judicial confidence in experts and increase ease of reference for experts themselves. It agreed to broadly recommend replicating r 9.43 of the High Court Rules in the Criminal Procedure Rules. However, an issue arises as to whether r 9.43(3), which provides that the evidence of an expert who does not comply with the Code cannot be given without the leave of the Court, can or should be replicated in the absence of the statutory authority for such a prohibition, as is currently provided by s 26 of the Evidence Act for civil proceedings.

The Sub-committee also discussed different views about whether it would be appropriate in a criminal code to impose a duty on experts to confer if directed to do so by the court: it could be an unduly burdensome requirement in the absence of pleadings in a criminal trial compared to a civil trial, the right to silence, and other fair trial issues. Under the civil code the duty to confer only activates if a judge directs conferral. The appropriateness of a Judge being able to direct a similar requirement in the Criminal Procedure Rules was discussed, as was the idea that the duty could be replaced by a statement that the parties may agree to have their experts confer.

For the purposes of further discussion, the Sub-committee agreed that Cathy Pooke from PCO would draft an equivalent of r 9.43 and a schedule containing a code of conduct — with a statement that the parties may agree to have their experts confer, rather than an explicit duty. The Sub-committee would consider the draft, along with the issues raised about r 9.43(3) and expert conferencing, at its next meeting.

Justice Cameron Mander
Chair