



The Rules Committee

Te Komiti mō ngā Tikanga Kooti

17 November 2025
Criminal Rules Minutes 11/25

Circular 25 of 2025

Minutes of the Criminal Rules Sub-Committee meeting held on 5 November 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 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

Ms Lison Harris, Policy Manager for Victims and Harm Reduction, Ministry of Justice
Ms Annabella Anders, Policy Advisor for Victims and Harm Reduction, Ministry of Justice

Apologies

Ms Clare Cheesman, Manager, Justice Services, Auckland District Court Criminal
Ms Julie-Anne Kincade KC

1. Preliminary

The Sub-committee confirmed the minutes of the 20 August 2025 meeting.

2. Timeframes for sentencing memoranda

The Sub-Committee considered a memorandum from the Criminal Practice Committee, recommending that the Criminal Procedure Rules are amended to require sentencing submissions to be filed at least 10 working days before the sentencing hearing for the prosecutor and at least 5 working days before the hearing for the defence. Rule 5A.4 currently requires that the prosecutor files submissions no later than 5 working days before the sentencing hearing and that the defence files submission no later than 3 working days prior.

The Sub-Committee agreed that moving the deadline for filing forward would assist all parties. Defence counsel would be less prejudiced in the event prosecution submissions are late, and the prosecution would have more time to consider and respond to any personal mitigating factors raised in defence submissions. Importantly, judges would have more time to consider submissions in advance of sentencing.

It was noted that the Chief Registrar for the District Court has suggested a timetable of 10 and 6 working days, rather than 10 and 5. This would allow registries an extra day to assemble the sentencing files before being placed before the assigned District Court judge and allow the Court 5 clear working days to prepare for a sentencing list. The Sub-Committee was supportive of this suggestion.

The Sub-Committee agreed to endorse the Criminal Practice Committee's suggestion to the Rules Committee and raise with it the Chief Registrar's alternative suggestion of 10 and 6 working days. The Sub-Committee agreed to also recommend that r 5A.5A be amended so that prosecutors must use best endeavours to file victim impact statements at the same time as the sentencing submissions. That was the original intent behind the rule, which currently requires statements to be filed 5 working days before.

The Sub-Committee requested PCO prepare draft rule changes to reflect the Sub-Committee's recommendations.

3. Name suppression in sexual cases

The Sub-Committee considered draft rules from PCO along with a paper from the Ministry of Justice that recommended a path forward for how service of applications to remove name suppression could be enacted, the Ministry having spoken with registries and operational services. The Sub-Committee largely agreed with the Ministry's suggestions and agreed service should proceed as follows, in respect of both applications to remove a complainant's own name suppression (under s 203 of the Criminal Procedure Act 2011) and applications to remove a defendant's automatic name suppression (under s 201 of the Criminal Procedure Act):

- The Registry will be responsible for service. The general rules about service will continue to apply as regards timelines, personal service and proof of service. Registries will be given guidance specifying how to effect service and that the Registry is not to effect service by posting documents to the person's last known address or leaving them with a member of their residence, unless directed to by the court.
- The Registry will serve the application in its entirety on the prosecutor.
- Defendants will have a right to be informed of the fact that an application has been made but will not have the right to see all documents attached to the application. Judges will be able to direct that the defendant is provided with further information if the Judge considers that appropriate. Accordingly, the Registry will serve defendants with a notice that an application has been made and any other information directed by a Judge. The notice will explain that the application may mean the defendant's name can be published and that the defendant should consider seeking legal advice. Court staff will be supported with guidance outlining how to generate the notice.

- If service cannot be effected on a defendant, the court will retain discretion to make an order lifting suppression. Because the complainant's application is not one that is required to be made in writing, the rules for notices of response (rr 2.14 and 2.15) do not apply.
- Both the prosecutor and defendant have the right to make written submissions in relation to the application. The Judge must consider any written submissions received before finally determining the application. Neither the prosecutor nor the defendant have the right to be heard orally, although a Judge may direct that they can be.

4. Code of conduct for expert witnesses in criminal proceedings

The Sub-Committee considered draft amendments from PCO which would introduce a formal code of conduct for expert witnesses in criminal proceedings. The Sub-Committee approved most of the draft amendments. In the absence of s 26 of the Evidence Act 2006 having application to criminal proceedings, the draft amendments do not include an equivalent to r 9.43 of the High Court Rules 2016, which sanctions non-complying expert evidence by only allowing it to be given by leave of the Court.

The only controversial question for the Sub-Committee concerned the convening of expert conferences. The current draft amendments provide that a judge can only direct expert conferencing if the parties agree. The Sub-Committee considered whether judges should also be able to direct expert conferencing if the judge has heard from both parties, even in situations where there is not mutual consent. The situation was raised where defence counsel may be unable to obtain instructions from a defendant, potentially due to fitness concerns, but conferral would assist the process. However, the Sub-Committee was also concerned about the implications on a defendant's right to silence should a judge be able to direct conferral in the absence of the defendant's agreement.

The Sub-Committee agreed the Crown Law representative would seek further internal advice about potential NZBORA implications regarding a defendant's right to silence should a judge be able to direct expert conferencing in the absence of their consent.

5. Acknowledgment of service

The Sub-Committee formally recorded its gratitude to Ms Georgia Barclay in her capacity as clerk to the Sub-Committee for her diligent work and assistance over the last two years.

Justice Cameron Mander
Chair