



# The Rules Committee

## Te Komiti mō ngā Tikanga Kooti

31 March 2026  
Criminal Rules Minutes 03/26

### Circular 6 of 2026

#### Minutes of the Criminal Rules Sub-Committee meeting held on 30 March 2026

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

#### ***In Attendance***

Hon Justice Mander, Chair and Judge of the High Court  
Ms Fiona Guy Kidd KC  
Mr Joshua Chin, Criminal Manager Christchurch High Court  
Ms Julie-Anne Kincade KC  
Ms Zannah Johnston, Crown Law  
Ms Sophie Klinger, Acting Chief Advisor for Courts and Justice Service Policy, Representative of the Chief Advisor

Ms Cathy Pooke, Parliamentary Counsel Office  
Mr Henry Fitzgerald, Clerk to the Rules Committee

#### ***Apologies***

His Honour Judge Johnston, National Executive Judge of the District Court  
Ms Clare Cheesman, Manager, Justice Services, Auckland District Court Criminal  
Ms Megan Noyce, Chief Advisor, Courts and Justice Service Policy

### **1. Preliminary**

The Sub-committee confirmed the minutes of the 5 November 2025 meeting.

#### *Developments since the 5 November 2025 meeting*

At its 5 November 2025 meeting the Sub-Committee recommended that the Rules Committee amend r 5A.4 of the Criminal Procedure Rules 2012. Currently this rule requires the prosecutor to file a sentencing memorandum five working days before the sentencing hearing and the defendant to file a sentencing memorandum three working days before the sentencing hearing. The Sub-Committee recommended changing this to 10 days and five or six days respectively. The Rules Committee would determine whether the defendant deadline would be five or six days. At its 24 November meeting, the Rules Committee referred the matter to the Criminal Practice Committee. The Criminal Practice Committee recommended a 12/6-day timeframe from the prosecutor and defendant respectively. The Rules Committee Chair has indicated that the Rules Committee is likely to proceed the 12/6 timeframe to concurrence at its 13 April 2026 meeting.

## 2. Name suppression in sexual cases (part 2)

At its 24 November 2025 meeting, the Rules Committee agreed that proposed amendments to the Criminal Procedure Rules—recommended by the Sub-Committee to facilitate complainants being able to apply to lift their own name suppression or automatic suppression applying to a defendant in respect of certain sexual offences—should proceed to concurrence.

The Committee also agreed to refer to the Sub-Committee what was described in the referral letter from the Rules Committee Chair as the “other substantial change enacted by the Victims Of Sexual Violence (Strengthening Legal Protections) Legislation Act 2025 pursuant to which an alleged victim of offending can have their views considered in relation to whether a defendant has name suppression”. The letter requested the Sub-Committee to consider this change at its next meeting so any recommendations could be made at its meeting on 13 April.

At enactment, s 200(6) of the Criminal Procedure Act 2011 required a court to take into account any views the victim of an offence has regarding name suppression to be conveyed to the Court in accordance with s 28 of the Victims’ Rights Act 2002. Parliament amended s 200(6) in 2022 so that it references s 16B of the Victims’ Rights Act instead of s 28.

The substantive change to s 200 of the Criminal Procedure Act enacted by the 2025 legislation was the enactment of subs (7)-(9), which prohibits a Court from permanently suppressing the name of an adult offender convicted of specified sexual offences without the consent of the complainant unless the Court is satisfied the complainant is unwilling to engage with the matter or, despite all reasonable efforts, cannot be contacted.

Section 201(4)(a)(ii) and s 203(4)(a)(ii) have, since the Act’s 2011 enactment, expressly provided for complainants to be able to apply for orders to lift the statutory suppression that would otherwise apply. Parliament amended s 201(4)(a)(ii) and s 203(4)(a)(ii) in 2025 to add the words “in accordance with the Criminal Procedure Rules 2012”. The new rules made in respect of those sections facilitate the process by which complainants can make such applications.

The unanimous view of the Sub-Committee was that there is no need for rule changes to facilitate the ability of victims to have their views considered in relation to whether a defendant receives name suppression.

Sophie Klinger from the Ministry of Justice shared the Ministry’s view that the primary legislation provides enough clarity. The Ministry has developed forms and a website that will guide victims on the process. It is considered advantageous to preserve the flexibility of not having detailed rules on this point. It may be desirable to review the need for rules at a later point.

Zannah Johnston of Crown Law agreed. There is also a fact sheet for prosecutors on how to give effect to the new rules and there is provision for communication assistants to speak with complainants if needed.

As there is no onus on a victim under s 200 to initiate any process and no difficulties appear to have arisen with the prosecution taking the responsibility of conveying a complainant’s views about permanent name suppression in respect of all types of offending, the Sub-Committee did not consider

there was any need for rule changes. Unlike ss 201 and 203, no rules are explicitly required by the amendments to s 200, or appear to be needed.

The Chair will inform the Rules Committee of the Sub-Committee's view.

### **3. Code of conduct for expert witnesses in criminal proceedings**

At its 5 November 2025 meeting, the Sub-Committee considered draft amendments to the Criminal Rules from PCO introducing a formal code of conduct for expert witnesses in criminal proceedings. The Sub-Committee approved most of the draft amendments at that time.

A residual question for the Sub-Committee concerned the duty of expert witnesses to confer if a judge directs them to, without having the agreement of the prosecutor and defendant. The current draft provides that expert witnesses only have a duty to confer if a judge directs them and the prosecutor and defendant agree. The Sub-Committee considered whether a judge should be able to direct expert witnesses to confer in the absence of the agreement of the prosecutor and defendant. 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 possible implications for a defendant's right to silence. The Sub-Committee agreed to the Crown Law representative seeking some internal guidance about potential New Zealand Bill of Rights Act 1990 implications regarding a defendant's right to silence should expert witnesses have a duty to confer after a judge directs expert conferencing in the absence of a defendant's consent.

Zannah Johnston consulted with Crown Law's Bill of Rights Act team. Following that consultation, she expressed the view that so long as a judge only makes a direction imposing a duty to confer after a defence expert brief has been disclosed to the Crown and there has been an opportunity for parties to address the court as to why there should not be conferral, there ought not be any impediment to the Court being able to make a direction imposing a duty for experts to confer.

After receiving those views and those of the NZLS, and after further discussion, the unanimous view of the Sub-Committee was that allowing a judge to make a direction imposing a duty on experts to confer without the consent of the defendant, would not infringe a defendant's right to silence.

Fiona Guy Kidd KC advised that New Zealand Bar Association members agreed with this position and Julie-Anne Kincade KC shared that New Zealand Law Society members also agreed.

Julie-Anne Kincade KC noted a suggestion from the New Zealand Law Society that cl 9.1(b) of the Environment Court Practice Note could provide a helpful template for the analogous provision of the code of conduct for expert witnesses in criminal cases:

A party who engages an expert witness must either:

- (i) Give the expert witness a copy of this Code of Conduct; or
- (ii) Be satisfied that the expert witness has seen the Code of Conduct and is familiar with it.

The Chair agreed this represented a practical approach, particularly in respect to expert witnesses who routinely appear in the criminal jurisdiction. The Sub-Committee recommended the text from cl 9.1(b) of the Environment Court's practice note be adopted.

The Chair noted that the Criminal Procedure Rules 2012 cannot exactly mirror r 9.43 of the High Court Rules 2015. Rule 9.43(3) provides that an expert witness in civil cases who has failed to read or agree to comply with the code of conduct may only give their evidence with the leave of the court. That power to prevent expert evidence being given for non-compliance reflects s 26(2) of the Evidence Act 2006, which provides that in civil proceedings the expert evidence of an expert who has not complied with the rules of court may only be given with the permission of the Judge. There is no equivalent provision in the Evidence Act for criminal proceedings.

Zannah Johnston proposed making explicit the requirement that the court could only make a direction imposing the duty to confer after the court had granted all parties the opportunity to be heard. While this might not be strictly necessary because the right to be heard is an independently guaranteed right, the Chair agreed it would be a good safeguard. The Sub-Committee agreed.

Parliamentary Counsel will implement the agreed amendments to the draft rule and schedule containing the proposed code of conduct for criminal proceedings. The new draft will be circulated to members and be recommended to the Rules Committee for adoption in the event no further issues are raised in respect of the latest draft.

**Justice Cameron Mander**

Chair