



The Rules Committee

Te Komiti mō ngā Tikanga Kooti

4 October 2023
Criminal Rules Minutes 09/23

Circular 7 of 2023

Minutes of the Criminal Rules Sub-Committee meeting held on 26 September 2023

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

In Attendance

Hon Justice Mander, Chair
Ms Julie-Anne Kincade KC
Ms Megan Noyce, Chief Advisor, Courts and Justice Service Policy
Mr Joshua Chin, Criminal Manager Christchurch High Court
Clare Cheesman, Manager, Justice Services, Auckland District Court Criminal
Zannah Johnston, Crown Law

Ms Anna McTaggart, Clerk to the Rules Committee
Ms Cathy Pooke, Parliamentary Counsel
Ms Georgia Shen, Secretary to the Rules Committee
Ms Fiona Alexander, Ministry of Justice
Ms Alvina Lal, Ministry of Justice

Apologies

His Honour Judge Collins, District Court Judge
Ms Fiona Guy-Kidd KC

1. Preliminary

Apologies

The apologies of Judge Collins and Ms Guy-Kidd were received and noted.

The Chair welcomed members to the first meeting of the reinstated Criminal Rules Sub-Committee, noting that the Sub-Committee had last met in 2015.

2. Automatic Name Suppression for Complainants in Sexual Violence Cases

The Chair noted that in the June 2023 meeting, the Rules Committee agreed to re-establish the Criminal Rules Sub-Committee. The Chair of the Rules Committee, Justice Cooke, referred to a letter he received

from the Minister of Justice about the need for a new, prescribed process for complainants to lift their name suppression and inviting the Rules Committee to consider this matter for inclusion in the Rules. The Rules Committee agreed to refer this piece of work to be further considered by the Criminal Rules Sub-Committee, with assistance from the Ministry of Justice.

Ms Noyce provided some background information on the issue, which fits within a broader package of work. On 3 April 2023, Cabinet agreed to a broad package of initiatives focused on supporting better outcomes for victims. This included introducing legislation to clarify and strengthen automatic name suppression settings for complainants in specified sexual cases, with the intention of streamlining the process and removing barriers. On 29 August 2023, the Bill passed its first reading in Parliament and was referred to the Justice Committee for consideration.

Ms Alexander noted that the Ministry sought the Sub-Committee's agreement:

- (a) to a proposed approach to amending the Criminal Procedure Rules 2012 to facilitate complainants in specified sexual cases applying to lift their automatic name suppression; and
- (b) for the Ministry of Justice to provide information about the proposal to the Justice Select Committee to support its consideration of the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill.

Ms Alexander noted that while there is currently a process in place to lift name suppression, complainants are not routinely advised of their options and that there was also minimal information available online or in courts. Without a step-by-step process in legislation, or publicly available guidance for how to apply, some victims seek independent legal advice and face the financial cost of doing so. Ms Alexander noted that the Ministry of Justice had developed a potential high-level process that may be suitable for inclusion in the Rules to work alongside legislation to address these issues. Ms Pooke noted that it may be possible for PCO to prepare draft rules before the proposal went to the Justice Select Committee.

Ms Cheesman noted that the high-level guidance referred to, in the context of who was responsible for informing the complainants about name suppression and how to apply to have it removed, that a police officer in charge or Crown prosecutor was mentioned. She asked whether any thought had been given to a situation where a defendant has pleaded guilty – do complainants meet with Crown Prosecutors in such a situation? She noted the potential for a complainant to slip through the cracks and suggested that the use of Court Victims Advisors could be considered. Ms Lal agreed to raise this point with colleagues.

Mr Chin enquired, from a registry perspective, whether the Crown Prosecutor would support a complainant to make an application and whether, any refusal of an application would be appealable as of right. Ms Noyce noted that there was an expectation that Crown Solicitors would provide support to a complainant making an application. Ms Lal noted that it was not anticipated that the process would be different from the one currently used.

The Sub-Committee agreed to the Ministry of Justice's proposals, and it was agreed that Ms Pooke and Ms Noyce would discuss the possibility of PCO preparing draft rules.

3. Three Strikes Repeal

The Chair noted that the next item which had been referred to the Sub-Committee was a review of rules to remove references to the three strikes regime. The two references to “stage three offences” identified by the Ministry of Justice were in rule 4.14 of the Criminal Procedure Rules 2012: rr 4.14(2)(b) and 4.14(5).

It was agreed that the rules should be amended, but that it would be more constructive to leave the discussion until the next meeting, sometime in late October.

4. Matters for Noting

The Chair flagged a matter for consideration in the future, relating to practice notes which were still in force, but had become obsolete. This matter had been raised by a Bench Books Editor who made inquiries to the Office of the Chief Justice who in turn referred it to the Criminal Rules Sub-Committee. He observed that was a matter considered but not finally determined by the previous Criminal Rules Sub-Committee. He noted that the Ministry of Justice had, in the past, prepared a memorandum on the status of various practice notes.

Ms Noyce agreed to make inquiries to determine whether there was any more recent information on this issue.

It was agreed that Ms Noyce and the clerk would liaise to determine the date of the next meeting.

Justice Cameron Mander
Chair