



The Rules Committee

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12 December 2014
Criminal Rules Minutes 05/14

Circular 98 of 2014

Minutes of the Criminal Rules Sub-Committee meeting held on 14 November 2014

The meeting was held at the High Court, Wellington, on Friday 14 November at 9 am.

1. Preliminary

In Attendance

Hon Justice Winkelmann, Chief High Court Judge (by AVL)
Hon Justice Simon France, Chair
His Honour Judge Davidson
Mr David Jones QC (by AVL)
Mr Mark Harborow (by AVL)
Ms Megan Anderson

Mr Matt Dodd, Clerk
Ms Helen Bennett, Clerk

Apologies

Ms Lynn Hughes

2. Minutes

The Sub-Committee confirmed the minutes of the 12 September 2014 meeting.

3. Matters arising from 12 September 2014 meeting

(a) Action point 3(a): linking reg 6 of the Crown Prosecution Regs and r 4.12

France J: Crown Law is opposed to moving provisions from Crown Prosecutions Regs.
Winkelmann J: the goal is to make information easier to find for those who do not use the Regs regularly.

Action: France J to contact PCO and ask whether it is permissible to duplicate a regulation in the rules or include a cross-reference.

(b) Action point 3(b): funding for additional member

Megan Anderson: funding has been approved.

(c) Action point 3(f): return of amended charges to Youth Court after election of jury trial in the District Court

France J: wrote to MoJ and MSD. Megan Anderson: consultation workshops are being arranged. Proposal will then go to Cabinet. If approved, the aim is to include it in the Courts and Tribunals Enhancement Bill to be introduced in early 2015.

Action: Megan Anderson to report back at next meeting.

(d) Action point 3(g): report from CMM and TCM working group

Judge Davidson: produced compromise form out of two draft forms. Additional changes made to include reference to new Crown Charge Notice and space to include details where pre-trial admissibility hearing indicated on form but application not filed at same time. Trial of form will start in Christchurch promptly. Megan Anderson: initial problems with loading into CMS have been overcome. Trial begins in Christchurch on 20 November 2014. Length of trial will be dependent on uptake. It could take some time for new forms to start being filed. Users have been told that the new CMM form can be filed in any case after 20 November, even if they were previously issued with the old form. That should shorten the length of the trial.

Action: Megan Anderson to report back on trial at next meeting.

(e) Action point 3(h): alignment of time for filing formal statements and Crown TCMs

France J: consultation on proposal has started, waiting for responses.

Action: France J to report back at next meeting.

(f) Action point 3(j): judicial CPA training

Winkelmann J: what kind of training is needed? Primarily a District Court issue as in the High Court a small group of judges do callover work by AVL. Judge Davidson: primary area of concern is educating District Court bench on reforms to Crown Charge Notice, charge list for jury trial and CMM form. Ideally in April 2015. Could be done common room by common room in half day sessions. France J: probably helpful for High Court to do a similar exercise. Mark Harborow: there is real confusion in the District Court about the status of the different Crown documents: the Crown Prosecution Notice, the Crown Charge Notice, and the charge list.

Action: to be kept on the agenda for the next meeting.

(g) Action point 3(k): Notice of Response form

Megan Anderson: draft form has been delayed but is half way to completion. Mark Harborow: Auckland Crown have made their own precedent.

Action: Mark Harborow to send precedent to Megan Anderson.

(h) Action point 3(l): draft rules ready for consideration by Rules Committee

France J: draft was put on the agenda of the Rules Committee but promptly withdrawn because of an oversight. Megan Anderson: draft r 4, amending r 2.4 to require Crown s 138 notices to be notified in writing, was included in the draft sent to the Rules Committee. It was designed to remedy the problem of uncertainty as to the charges a defendant faced after amendments. Subsequently the new Crown Charge Notice was created to deal with the same problem without increasing the administrative burden (Police estimated it would require some 200,000 written notifications per year). Unfortunately, the Sub-Committee did not notice that draft r 4 was still included in the draft rules sent to the Rules Committee. France J: generally the Rules Committee prefers a large package of amendments to be dealt with at once, and to undertake consultation itself. Hope to have a complete package of amendments ready for March 2015 meeting.

Agreed: draft r 4 should be removed from the draft amendment rules.

(i) Action point 3(n): sensitive evidence

Action: Megan Anderson to circulate internal protocols on exhibit handling to the Sub-Committee.

(j) Action point 4: access to documents for restorative justice and domestic violence providers

France J: rather than respond to MoJ, sent response to Rules Committee capturing the Sub-Committee's concerns with the proposal, including the lack of a clear case being made for such a wholesale change. The matter is now being dealt with by the Rules Committee.

(k) Action point 5: new Crown Charge Notice

France J: the new Crown Charge Notice has been developed during consultation with the MoJ, the profession and the Chief District Court Judge. It is to be introduced on 21 November 2014. Informal feedback should be available by next meeting.

Action: Members working with the Crown Charge Notice to report back at next meeting.

(l) Action point 6: Rules Committee's proposed amendments to the Access to Court Documents rules

France J: wrote to the Rules Committee outlining the Sub-Committee's general concern that quite a lot of work had gone into the current structure of the rules and that the Sub-Committee was not convinced that consistency with the civil rules was necessary. Asher J has indicated the Rules Committee will consider and respond to that feedback.

(m) Draft Interpreters in Criminal Proceedings rules

France J: draft rules referred to the Ministry of Justice.

(n) Draft sentencing rules

Action: France J and Megan Anderson to work through the consistency points raised at the last meeting in the next fortnight. France J to circulate proposed changes to members of the Sub-Committee before sending to Winkelmann J and Chief Judge Doogue.

4. Information for unrepresented defendants

France J: used to be statutory requirement in the Crimes Act that certain information be given to unrepresented defendants. That requirement no longer exists under the Criminal Procedure Act. The Bench Book standard form is now out of date too. Winkelmann J: should this material be published in a booklet and given out by the Ministry?

Judge Davidson: were we planning to include this information in the rules? Currently, there is no mandatory requirement that this information be given. It is very important material. Megan Anderson: if the requirements were put in the rules, and appellate courts gave a decision on trial practice, then the rules would have to be changed. Winkelmann J: preferable not to put it in a rule, just provide the information, but keep practice consistent by putting it in the Bench Book.

David Jones: When is this information given? France J: in the High Court, this sort of material is given well in advance – weeks before trial. In the District Court the practice was usually that the statutory notices would be given to the defendant on the date of trial for signature. Mark Harborow: r 4.13 requires the registrar to give certain information to unrepresented defendants at first appearance. Could it be included in this information? Megan Anderson: the High Court team at the Ministry of Justice has done some work on material to be provided unrepresented defendants by registrars.

Judge Davidson: there are some problems with the drafts. Para 5.2 of the jury trial draft must be aligned with r 5.9 of the rules. Para 5.3 also needs to be aligned with s 14AC of the Juries Act 1981. Under that section, if a self-represented defendant wants access to the full list of jurors' details, the registrar must appoint counsel for the purpose of accessing that list and challenging jurors.

David Jones: what is the purpose of this information? Is it going to develop into a handbook for self-represented defendants? Winkelmann J: perhaps there ought to be two documents: a short document simply detailing a defendant's rights and a longer "Guide to Defending Yourself" style document. France J: this is on the margins of the legitimate role of the Sub-Committee, but given the Sub-Committee has already given it consideration, there is value in producing a further draft and getting feedback.

Action: France J to circulate another draft document for comment.

5. Amendment of r 5.9 – time for filing the Crown Charge List

Judge Davidson: there ought to be a requirement that the Crown Charge List be filed at a specific time. Ideally it would be filed either at first callover or a certain number of days before trial. Currently there is no requirement that it be filed earlier than the point at which the jury is sworn in. There is a practice in some regions that the charge list is filed in advance of the trial in the callover process. But sometimes there are differences in the particulars contained in the Crown Charge Notice and Crown Charge List.

Mark Harborow: lots of cases fall away between callover and trial. It would waste resources if the new Crown Charge List was required to be filed at first callover. Megan Anderson: the order of charges on the Crown Charge Notice often differs from the Crown Charge List because Crown Solicitors make decisions about the order they want charges presented to the jury. Ideally the filing date would be 5 working days before trial.

France J: in a simple trial, filing the charge list at callover would essentially duplicate the charge notice. The lack of requirement to file the Crown Charge List before trial was an oversight at the time of the drafting of the CPA. The charge list was invented during consultation to replace the indictment because the Act's drafters had not originally envisaged anything going to the jury. It is important the documents going to the jury be provided to opposing counsel and the Court in advance. Five days before trial is a good period of time.

Agreed: the Crown Charge List ought to be filed five working days before trial.

Action: France J to write to Crown Law and seek feedback on proposal. Mark Harborow also to seek feedback through Crown network. Item to be reviewed again at next meeting once feedback received and Crown Law representative available to attend.

6. Crown Law representative

Winkelmann J: Crown Law keen to have a representative on the Sub-Committee. Asher J has approved the appointment.

Action: France J to write to Crown Law.

7. Access to notes of evidence

France J: the issue of access to notes of evidence arose at the last meeting as part of discussion of the access to court documents rules. It was asked whether other jurisdictions designate a specific document as the "official" transcript. These issues commonly arise. By way of example, a recent event involving a prisoner led the media to request access to all of that prisoner's court files including the notes of evidence. It is very difficult make a decision on whether that information can be released within the short timeframes required by the media. That is particularly so where the file contains suppressed information. Redacting all the suppressed information would be an extraordinarily time-consuming process. One solution is to release such information only to accredited media who are aware of and abide by suppression rules.

Winkelmann J: there are a number of issues that the discussion paper does not address. For instance, people frequently ask for copies of the audio recording. Or ask for copies of the transcript when the audio recording has not been transcribed. We should formulate further questions and investigate the issue further.

David Jones: the Northern Territory approach to access to transcripts has some appeal. Parties are entitled to a copy of the transcript, unless the Court has ordered otherwise. Non-parties are also entitled to a copy of the transcript, unless the Registrar is of the opinion that it "ought to remain confidential to the parties", in which case leave from the Court is required.

Action: France J and Winkelmann J to formulate questions for further investigation and forward them to the Rules Committee for consideration as part of the broader access to court documents reforms.

8. Next meeting:

Date:	13 March 2015	Time:	9 am	Venue:	Wellington High Court
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Meeting closed at 10.30 am.

Criminal Rules Sub-Committee

Summary of Action Points: 14 November 2014

Minute Item	Description of Action Point	Responsibility	
3(a)	Linking reg 6 of the Crown Prosecution Regs and r 4.12 <ul style="list-style-type: none"> France J to contact PCO and ask whether it is permissible to duplicate a regulation in the rules or include a cross-reference. 	<i>France J</i>	
3(c)	Return of amended charges to Youth Court after election of jury trial in the District Court <ul style="list-style-type: none"> Megan Anderson to report back at next meeting. 	<i>Megan Anderson</i>	
3(d)	Report from CMM and TCM working group <ul style="list-style-type: none"> Megan Anderson to report back on trial at next meeting. 	<i>Megan Anderson</i>	
3(e)	Alignment of time for filing formal statements and Crown TCMs <ul style="list-style-type: none"> France J to report back at next meeting. 	<i>France J</i>	
3(f)	Judicial CPA training <ul style="list-style-type: none"> To be kept on the agenda for the next meeting. 	-	
3(g)	Notice of Response form <ul style="list-style-type: none"> Mark Harborow to send precedent to Megan Anderson. 	<i>Mark Harborow</i>	
3(i)	Sensitive exhibits <ul style="list-style-type: none"> Megan Anderson to circulate internal protocols on exhibit handling to the Sub-Committee. 	<i>Megan Anderson</i>	
3(k)	New Crown Charge Notice <ul style="list-style-type: none"> Members working with the Crown Charge Notice to report back at next meeting. 	<i>All members</i>	
3(n)	Draft sentencing rules <ul style="list-style-type: none"> France J and Megan Anderson to work through the consistency points raised at the last meeting in the next fortnight. France J to circulate proposed changes to members of the Sub-Committee before sending to Winkelmann J and Chief Judge Doogue. 	<i>France J</i> <i>Megan Anderson</i> <i>Winkelmann J</i>	
4	Information for unrepresented defendants <ul style="list-style-type: none"> France J to circulate another draft document for comment. 	<i>France J</i>	
5	Amendment of r 5.9 – time for filing the Crown Charge List <ul style="list-style-type: none"> France J to write to Crown Law and seek feedback on proposal. Mark Harborow also to seek feedback through Crown network. Item to be reviewed again at next meeting once feedback received and Crown Law representative available to attend. 	<i>France J</i> <i>Mark Harborow</i>	
6	Crown Law representative <ul style="list-style-type: none"> France J to write to Crown Law. 	<i>France J</i>	
7	Access to notes of evidence <ul style="list-style-type: none"> France J and Winkelmann J to formulate questions for further investigation and forward them to the Rules Committee for consideration as part of the broader access to court documents reforms. 	<i>France J</i> <i>Winkelmann J</i>	