



The Rules Committee

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15 December 2015
Criminal Rules Minutes 03/15

Circular 123 of 2015

Minutes of the Criminal Rules Sub-Committee meeting held on 25 September 2015

The meeting was held at the High Court, Wellington, on Friday 25 September at 9 am.

1. Preliminary

In Attendance

Hon Justice Venning, Chief High Court Judge (by AVL)
Hon Justice Simon France, Chair
His Honour Judge Davidson
Mr Mark Harborow (by AVL)
Ms Lynn Hughes (by AVL)
Ms Charlotte Brook
Ms Megan Anderson

Ms Helen Bennett, Clerk

Apologies

Mr David Jones QC

2. Minutes

The Sub-Committee confirmed the minutes of the 29 May 2015 meeting. One amendment made.

3. Matters arising from 29 May 2015 meeting

(a) Action point 3(b): Report on implementation of new CMM

Megan Anderson reported on the implementation of the new CMM. Delays had been experienced in making it electronically available because it needed external software programming assistance. The necessary work was expected to be provided in the next two weeks. Megan is to advise the Chair if it is not forthcoming in that timeframe.

The Sub-Committee agreed that counsel would be told to use the form in the interim. Charlotte Brook will alert the Crown Solicitor network and Lynn Hughes would alert the public defenders.

An issue arose with the wording of the Charge Notice provision on page two. It was agreed that Charlotte Brook would instruct the Crown Solicitors on its intended meaning. It can be monitored to see if it is working.

Action: Megan Anderson to provide a review for the Sub-Committee meeting in March 2016.

(b) Action point 3(a): Consultation draft of the Rules

The Sub-Committee considered the submission that had been received.

The submission by Mr N Chisnall was noted. It concerned whether, once leave was given to amend a summary of facts after plea, the Rules should provide for the ability of a defendant to withdraw his or her plea. The Sub-Committee confirmed its previous position that the existing provisions are sufficient. A defendant can generally seek leave to withdraw if he or she wishes – this will just be another situation where that might arise.

Several matters were raised by the Departmental Prosecutors' forum:

- (1) Rule 4.8(1)(d) – this concerned the need to provide a summary of facts. The suggestion is that greater clarity about how a dispute is to be identified would assist. The Sub-Committee did not consider that change is needed. The summary of facts will be the prosecutor's document and a defendant can identify any dispute by various methods. Prescription is not required.
- (2) Rule 5A.1(4) – this proposed extending the time for resolving disputes from 10 to 15 days. The Sub-Committee considers the shorter time frame is sufficient and provides impetus.
- (3) Rule 5A.2 – the query concerns the process by which a defendant is notified that the Crown wishes to amend a summary of facts following plea. It was suggested specific notice and hearing rights should be provided. The Sub-Committee disagrees. The general service provision in 2.4 applies. It is not necessary to say that the defendant is entitled to be heard.
- (4) Rule 5A.5(1)(e) – this query concerns the information the prosecutor provides in a sentencing memorandum. The Forum reads (e) as requiring the prosecutor to address the suitability of a residence. The Sub-Committee considered that was not a reasonable reading – the provision invites comment on the suitability of the defendant for an electronically monitored sentence.

Action: France J to ask the Rules Committee to finalise the Amendment Rules.

4. General business

(a) Access to Court documents

The latest draft from the Rules Committee was discussed. The Sub-Committee had previously expressed a preference for the existing rules to be retained. That approach not being accepted, it was agreed the new structure is suitable for the access to criminal records.

Concern was raised if Part 6 – the existing access rules – is to be repealed as to:

- (1) What information will be available in the Criminal Procedure Rules?
- (2) What would be the position for the District Court?

Action: France J to refer the two concerns to the Rules Committee.

(b) Future directions

One matter requiring further work was identified, namely provision of a form for distribution pre-trial to unrepresented litigants. France J to provide a paper for March 2016 meeting.

A final decision will be made in March 2016 as to whether a formal rule is required concerning when a final charge notice containing all charges is to be filed for an impending jury trial. Currently it is being managed, without apparent difficulty, by internal direction from Crown Law to Crown Solicitors.

Another possible issue is the applicability of the civil rules concerning expert witnesses to criminal proceedings.

Action: France J to provide paper on pre-trial form for distribution to unrepresented litigants.

5. Next meeting:

The future workload looks light. It is agreed there will be no November meeting. The March meeting will be held on 11 March 2016. If that is sufficient to deal with all existing matters, then future meetings will be suspended until the need to convene arises.

Date:	11 March 2016	Time:	9 am	Venue:	Wellington High Court
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Meeting closed at 9.55 am.

Criminal Rules Sub-Committee

Summary of Action Points: 11 March 2016

Minute Item	Description of Action Point	Responsibility	
3(a)	Criminal Procedure Amendment Rules 2015 <ul style="list-style-type: none">• France J to ask the Rules Committee to finalise the Amendment Rules.	<i>France J</i>	
3(b)	Implementation of the new CMM <ul style="list-style-type: none">• Megan Anderson to provide a review for the Sub-Committee.	<i>Megan Anderson</i>	
4(a)	Access to Court documents <ul style="list-style-type: none">• France J to refer concerns to the Rules Committee.	<i>France J</i>	
4(b)	Future meetings <ul style="list-style-type: none">• France J to provide paper on pre-trial form for distribution to unrepresented litigants.	<i>France J</i>	