



The Rules Committee

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6 September 2015
Criminal Rules Minutes 02/15

Circular 78 of 2015

Minutes of the Criminal Rules Sub-Committee meeting held on 29 May 2015

The meeting was held at the High Court, Wellington, on Friday 29 May at 9 am.

1. Preliminary

In Attendance

Hon Justice Venning
Hon Justice Simon France, Chair
His Honour Judge Davidson
Mr David Jones QC (by AVL)
Ms Lynn Hughes (by AVL)
Ms Charlotte Brook
Ms Megan Anderson

Ms Helen Bennett, Clerk

Apologies

Hon Justice Winkelmann, Chief High Court Judge
Mr Mark Harborow (by AVL)

2. Minutes

The Sub-Committee confirmed the minutes of the 13 March 2015 meeting.

3. Matters arising from 13 March 2015 meeting

(a) Action point 5: Draft sentencing rules

Guilty plea procedure

Several issues were discussed. The primary discussion concerned the proposed requirement that a summary of Facts be available at the time of plea and whether there should be a facility for the Crown to seek later amendments when it assumes responsibility. The Committee reaffirmed its position that there be a requirement that a summary should be available at the time of plea. It appears there are

presently some regional variations but the Committee did not consider it necessary to accommodate that nor appropriate to do so.

There was then discussion of the paper by Charlotte Brook requesting process for the Crown to amend the summary once it assumed responsibility. It is sometimes the case that the summary, often prepared early, does not adequately capture the criminality.

During discussion various views emerged, but ultimately a consensus was reached that there should be limited ability to seek leave to amend. The Committee was agreed it should be a leave situation. It was decided to allow the existing rules and processes to deal with situations where leave is given – a defendant can ask to withdraw the plea, or seek a disputed fact hearing or accept the change.

Action: France J to finalise the draft in accordance with discussion and send it to Bill Moore and to heads of High Court and District Court.

6B.6(4)

France J: asked about clause 4, specifically 6B.1(4). He noted that it is 10 working days after plea is entered, so the police have 5 days and the Crown has 5 days. He asked Ms Brook if she was asking for an extension. Charlotte Brook: replied yes, for Crown matters. Judge Davidson: asked if she wished to push it out further. Megan Anderson: said it would push into pre-sentence reports. Charlotte Brook: said those time frames were problematic in Crown matters anyway. Megan Anderson: said Justice Lang has reached an agreement with Corrections. Judge Davidson: said it was only going to be a rare occasion and would have occurred anyway. France J: said his instinct was to leave it as nothing in the end turns on it. The Sub-Committee should leave it as an incentive and if a problem emerges then the Sub-Committee will address it then. The sentencing aspect and proposed changes are enough. The goal was to finish redrafting and send it to Bill Moore. It would also go to Justice Asher and the Rules Committee with a covering memo and the Rules Committee will determine the consultation process as it is an amendment to ehir rules. Sentencing has to go out for consultation. It has been run past Justice Winkelmann and now Justice Venning, but will need to go to Chief District Court Judge Doogue.

(b) Action point 3(c): Report from CMM and TCM working group

France J: Megan Anderson is to update the Sub-Committee on the CMM. It has been circulated to members, court staff, judges and police and prosecutorial impact queried. There have been no substantive difficulties raised. He checked with IT at Justice and it will take 4 weeks to give them enough time to get communications sorted. The new CMM will be made available online for counsel who like to upload from home. Lynn Hughes: asked where could it be put on the MOJ website in a better or more visible place. Megan Anderson: said that this question was one of the matters raised in feedback and MOJ will try to put it on the homepage. France J: said the Sub-Committee did ask for it to go ahead and be given priority. In all the aims of making the Act more efficient, getting the new form out will help. Enough trialling has been done and now it needs to be implemented.

France J: noted Lynn Hughes' feedback comment about estimated time is a valid point. It is difficult to estimate when have no idea about the nature of a file. Judge Davidson: added that estimated length of a Judge alone trial on the front page would help even though it is likely to be inaccurate. He noted Lynn Hughes' memo where an issue was brought up about using a document to attempt to bind police to witnesses. He said there is no provision in form for that, and the Sub-Committee should be loathe to making the form long again. Megan Anderson: being

held to account can help with timeframe and make sure that the file is actually brought to trial. She said she would see if she could work through the issue with the police and timing given to police. Lynn Hughes: added that a witness list helps with estimating the timeframe. Megan Anderson: queried whether it was the list or the numbers. Lynn Hughes: said that at the PDS the names on the list can be an intended list. She understood the point about not lengthening the form and would talk more to Megan Anderson.

Judge Davidson: noted the provision for estimated jury trial length, and said it should include estimated Judge-alone and jury trial length.

France J: said there were no other specific points and the Sub-Committee should leave the CMM with the general endorsement so it could be implemented sooner rather than later. Judge Davidson: added that the Sub-Committee has pushed this because the biggest disengagement with the system has been the existing CMM.

David Jones: said he was approached by a practitioner and was sent through a bundle of documents. In part (c), there are two issues: (1) in the existing form the framing of the question is misleading in that lawyers and judges think there is a requirement for the defendant to list facts, and (2) the judicial attitude of judges requiring responses to that issue. He noted the issue was probably because people list everything to be in dispute and judges try to focus on the issues. Judge Davidson: said the wording of the amended form makes it clear that this is not a coercive aspect of the CMM and is instead voluntary.

Venning J: said there is a difference requiring disclosure of those briefs and disclosure of general defence. Judge Davidson: noted that the revised CMM provides a section for details of any expert or young or vulnerable witnesses, and signals management. Venning J: said he believed the present form to be sufficient. Lynn Hughes: added that how the new form is drafted the person filling out the form can state who his or her expert is. Judge Davidson: noted that it is a management tool and does not meet other obligations. France J: said that he did not accept what underlay that comment about being a management tool. He said that the time will come where it will become stricter. The expert is to be independent. It can disrupt disclosure timeframe. This area actually needs toughening as the system cannot afford to lose trials. Venning J: noted the delay in the High Court trials. France J: added that the High Court loses a fixture if an expert appears late.

Action: Megan Anderson to provide a timeline and Ministry of Justice is to provide some guidance for assistance.

4. General business

Megan Anderson: issue with filing of appeals. Registry staff has queried what the proper court of filing for appeal either to the District Court or the High Court following on from the previous Act. There seems to be no provision for it and whether the Sub-Committee can put it into the Rules. She has been asked to put to the Sub-Committee for views. France J: replied there was no rule to proper registry, but assumed it was for where the trial was to be heard. Charlotte Brook: cited an example where a trial was heard in Rotorua and the sentencing was in Hamilton. Venning J: said that from a High Court view, it would be a matter of convenience. It would still be intitled as in the Rotorua High Court and heard in Hamilton. Judge Davidson: absent any transfer it remains in the same court. France J: can have a rule in the appeals part "wherever substantive matter was heard or plea entered, that it where it is heard". Megan Anderson: use language in the statute. France J: can draft it, run it by Megan Anderson and send to Bill Moore.

Action: France J to draft a rule for appeals part and provide to Megan Anderson and then to Bill Moore.

5. Next meeting:

Date:	25 September 2015	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: 25 September 2015

Minute Item	Description of Action Point	Responsibility	
3(a)	Draft sentencing rules <ul style="list-style-type: none"> France J to send the draft CMM to Bill Moore and heads of High Court and District Court. 	<i>France J</i>	
3(b)	Report from CMM and TCM working group <ul style="list-style-type: none"> Megan Anderson to provide a timeline and Ministry of Justice is to provide some guidance for assistance. 	<i>Megan Anderson</i>	
4(a)	Filing of appeals <ul style="list-style-type: none"> France J to draft a rule for appeals part and provide to Megan Anderson and then to Bill Moore. 	<i>France J</i> <i>Megan Anderson</i>	
4(b)	Future meetings <ul style="list-style-type: none"> France J to circulate memo to members. 	<i>France J</i>	