



The Rules Committee

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8 October 2013
Criminal Rules Subcommittee Minutes 01/13

Circular 95 of 2013

Minutes of the Criminal Rules Sub-Committee meeting held on 8 October 2013

The meeting was held at the High Court, Wellington, on Tuesday 8 October 2013.

1. Preliminary

In Attendance

The Hon Justice Ronald Young, Chair
The Hon Justice Winkelmann, Chief High Court Judge
Judge Davidson
Mr Mark Harborow

Mr Matt Dodd, Clerk

Apologies

Mr David Jones QC

2. Rule 4.1 Criminal Procedure Rules 2012

Received letter from the Minister for Courts regarding rule 4.1. Possible issue around 10 day time limit between first appearance and second appearance, particularly in small courts with infrequent sittings.

Mark Harborow: general feedback is that r 4.1 fine. Practice is for time limits to be dealt with by extensions granted under 1.7.

Judge Davidson: no difficulties with r 4.1 in DC.

Winkelmann J: suggest amendment to "if court does not sit within 10 days, at the next sitting of the court". Committee concluded that would be too long in outlying courthouses. Sufficient flexibility in power to extend time.

Action: no amendment needed. To review when more statistics are available. Young J to respond to Ministry accordingly.

3. Letter from Judge B Callaghan

Judge Callaghan proposes that list of applications that must be made in writing in r 2.12 be expanded.

Young J: list intended to be indicative only, not exhaustive. Application for discharge without conviction should be made in writing, but already covered by r 2.12(2)(p). Judge Davidson: many applications covered by the proposed expansion are made on the spot. Too onerous to require all to be made in writing. If applications are contested, they may be adjourned to be put in writing. Discretion in r 2.12(4) is sufficiently flexible. Theme of rules encourages writing without overly prescriptive interference with oral court process.

Action: no expansion or amendment necessary. Young J to write to Judge Callaghan.

4. Practice notes

The Ministry's research shows that practice notes are very hard to find and many are out of date.

Young and Winkelmann JJ agree that most of the practice notes need to be repealed, and that those that must remain should be collated in one accessible source. Mark Harborow: perception amongst Crown solicitors that some are irrelevant, for instance 2003 practice note on sentencing. Judge Davidson: 2003 practice note on sentencing repealed in practice. Agree that reassessment of practice notes needed. Winkelmann J: Ministry should provide access to criminal rules and any practice notes in one easily accessible place.

Action: Committee members to think about existing practice notes before next meeting. Classify into those that should be dropped, those that should be converted to rules, and those that should be kept.

5. Scope of work to be done by Committee

The current rules are not comprehensive. Should the Committee simply maintain and update the current criminal rules? Or should its mandate be to expand the coverage of criminal rules?

Winkelmann J: expanding the matters covered by the criminal rules is desirable. For instance, a code of conduct for experts giving evidence similar to that imposed in the civil realm. Young J: it would be more interesting to go broader. Judge Davidson: we should go broader. Previously issues have fallen through the cracks because there has not been a single body charged with dealing with these issues. Mark Harborow: agree that the scope of work should be broadened.

Action: Young J to produce a paper for next meeting, identifying areas where there are no rules. Mark Harborow to get input from Crown network on areas which are in need of rules. Also input from Criminal Bar Association.

6. Ministry assistance and research

Should the Ministry be directly involved in the Committee? The Ministry collects useful statistics and could offer some research or administrative assistance.

Young J: the Ministry should be called upon for information, but it is not necessary for the Ministry to have a permanent presence. High Court clerks provide sufficient administrative and research capacity. Mark Harborow: a degree of liaison with the Ministry would be helpful for educating front-line staff on rule changes.

Action: Young J to write to the Ministry advising the following: the Committee will ask for provision of statistics, ask the Ministry for comment on broad issues, seek the Ministry's advice on some matters, and where necessary invite Ministry representatives to attend meetings.

7. Composition of the Committee

The Committee is currently small. Will that be sufficient to manage the workload?

Young J: prefer to keep the Committee small. Can re-evaluate with time. Reluctant to expand membership before workload can be accurately assessed. Winkelmann J: very important for Mark Harborow and David Jones to ensure they liaise with the spheres they represent. Input from Crown Law and the Bar key. Judge Davidson sufficient for connection to police prosecutors.

Action: composition to remain unchanged. To be reassessed when workload becomes clear.

8. Publicity

It is important to publicise the existence of the Committee. Need to write to the Criminal Bar Association, Law Schools, LawTalk etc.

Judge Davidson: DC judges currently unclear about where to take issues with criminal rules. Need publicity within judiciary too.

Action: get sign-off from Chair of the Rules Committee and the judiciary before taking any steps to publicise the Committee.

9. Frequency of meetings

Currently meetings are held every two months.

Young J: Winkelmann J has least flexible timetable. Meeting location should be determined by whether she is in AKL or WLG. Other members to fly on the day for meeting. Winkelmann J: would be convenient to hold on the morning of Criminal Practice Committee meetings. May require Judge Davidson to replace existing DCJ representative on Criminal Practice Committee.

Action: Young J to examine possible dates and notify other members. Judge Davidson to discuss membership of Criminal Practice Committee with incumbent representative.

Meeting ended at 9.30am.