



2016 Practice Note:

The Use of Electronic Common Bundles and Electronic Casebooks in the High Court

HCPN 2016/1 (civ and crim)

1 Introduction

- 1.1 This practice note is to be read and interpreted consistently with the Higher Courts Civil Electronic Document Protocol (the “Protocol”), which is found on the Courts website www.courtsofnz.govt.nz.
- 1.2 This practice note sets out guidance about when an order should be made for a common bundle and/or casebook to be filed electronically in the High Court, and the default directions that apply.
- 1.3 This practice note is not intended to effect any change to the requirements of the High Court Rules or the Criminal Procedure Rules 2013. In particular:
 - (1) all court documents such as pleadings, charging documents, affidavits, lists of documents and interrogatories, should continue to be filed in hard copy; and
 - (2) the rules as to pleadings, charging documents, privilege, confidentiality, evidence, and bundles apply to all documents in electronic form, and the Court may direct that inadmissible material be removed from an electronic common bundle.
- 1.4 The 2013 Practice Note on the use of electronic bundles in the High Court (HCPN 2013/1 (civ and crim) is revoked.
- 1.5 This practice note comes into effect on 25 July 2016.

2 Civil cases

Definitions

- 2.1 An electronic common bundle is the common bundle referred to in r 9.4 of High Court Rules.

- 2.2 An electronic casebook consists of the pleadings, evidence, (including briefs of evidence), the common bundle referred to in r 9.4, submissions and authorities in electronic form, or so many of them as may be directed or agreed to be filed in electronic form.

Process for considering whether an electronic common bundle and/or electronic casebook should be used

- 2.3 An electronic common bundle and/or electronic casebook will usually be appropriate when either the common bundle on its own or the casebook is likely to exceed 500 pages.
- 2.4 Before the first case management conference and as part of the discovery checklist discussions, parties will discuss whether an electronic common bundle or electronic casebook (or both) is appropriate for trial.
- 2.5 At the final case management conference in which trial directions are made, the parties will address the issue of an electronic common bundle or electronic casebook, and the Court may make such directions as are considered appropriate.
- 2.6 At the pretrial conference, if the trial is likely to involve reference to a significant number of documents or a number of documents of significant length, and no directions have been made as to an electronic common bundle, the parties will address the issue of an electronic common bundle, and the Court may make such directions as are considered appropriate for an electronic common bundle and/or for an electronic casebook.

Default directions

- 2.7 If an order is made for an electronic common bundle or electronic casebook the following directions will apply unless the order varies them:

Cooperation

- (1) The parties are to co-operate in the preparation of the electronic common bundle and/or casebook including:
- (a) an obligation, if requested, to provide electronic copies (multi-page images in searchable PDF format) of any documents to be included in the common bundle or electronic casebook that were discovered by that party; and
 - (b) an obligation, where it is fair and cost efficient to do so, to agree a format for an electronic common bundle or casebook and indexes that will be compatible with any litigation support or other software intended to be used by any party.

Obligations on party who files and serves the common bundle or casebook

- (2) The party who is to file and serve the electronic common bundle or electronic casebook for trial will:

- (a) prepare it in accordance with the Protocol (format, folders, names, indices and hyperlinking);
- (b) file and serve it in accordance with paragraphs 2.2 and 2.3 of the Protocol; and
- (c) comply with the requirements of the rules for the filing of hard copies.

3 Criminal cases

Process for addressing whether an electronic bundle should be used

- 3.1 When there are significant numbers of documentary exhibits the parties should discuss before hearing when the fixture is allocated, whether an electronic bundle is appropriate for the trial, and the form that bundle should take.
- 3.2 An electronic bundle is to be usable by prosecution and defence.
- 3.3 At the hearing when the fixture is allocated the parties should address the issue of an electronic bundle when there are significant numbers of documentary exhibits, and the Court may make such directions as are considered appropriate.
- 3.4 If an electronic bundle is being considered in a criminal trial, the following issues should be addressed:
 - (a) The scope and nature of the documents proposed to be included in an electronic bundle.
 - (b) The documents the prosecution intends to produce as exhibits.
 - (c) Any documents the defence may wish to refer to or produce as exhibits.
 - (d) What documents will need to be in paper form.
 - (e) The conversion of all documents, or those that are agreed, into electronic form.
 - (f) Fair trial issues and, if applicable, the effect on a jury.
- 3.5 An electronic bundle should be constructed using the format of the Higher Courts Civil Electronic Document Protocol with any necessary amendments so that documents such as new exhibits can, when appropriate, be added.

Hon Justice G J Venning
Chief High Court Judge – Te Kaiwhakawā Matua

18 July 2016