



The Rules Committee

Te Komiti mō ngā Tikanga Kooti

30 November 2023
Criminal Rules Minutes 29/23

Circular 2 of 2024

Minutes of the Criminal Rules Sub-Committee meeting held on 29 November 2023

The meeting was held at 9:00am using the Microsoft Teams facility.

In Attendance

Hon Justice Mander, Chair
Ms Julie-Anne Kincade KC
Ms Fiona Guy-Kidd KC
Ms Megan Noyce, Chief Advisor, Courts and Justice Service Policy
Mr Joshua Chin, Criminal Manager Christchurch High Court
Clare Cheesman, Manager, Justice Services, Auckland District Court Criminal
Zannah Johnston, Crown Law

Present

Ms Anna McTaggart, Clerk to the Rules Committee
Ms Cathy Pooke, Parliamentary Counsel Office
Ms Cathy Rodgers, Parliamentary Counsel Office
Ms Georgia Shen, Secretary to the Rules Committee
Ms Fiona Alexander, Ministry of Justice
Ms Alvina Lal, Ministry of Justice

Apologies

His Honour Judge Collins, District Court Judge

1. Preliminary

Apologies

The apologies of Judge Collins were received and noted.

The Sub-Committee confirmed the Minutes of the 27 September 2023 meeting.

2. Automatic Name Suppression for Complainants in Sexual Violence Cases

At the Criminal Rules Sub-Committee's first meeting on 26 September 2023, it agreed to a high-level process for lifting complainants' automatic name suppression for inclusion in the Criminal Procedure Rules 2012 and for the Ministry to provide information about the proposed approach to the Justice Committee for their consideration alongside the Bill. This accorded with the Ministry's advice that the Rules Committee had expressed the view, in June 2023, that it would be beneficial for the Select Committee and submitters to consider the proposed amendments in the Bill and potential amendments to the Rules side-by-side to understand their full effect. The Rules Committee also agreed at the time that an exposure draft of the Rules amendment could be developed for this purpose.

Accordingly, the Sub-Committee agreed the Ministry could instruct the Parliamentary Counsel Office (PCO) to draft amendments to the Rules with a view to providing draft Rules to the Justice Committee, if the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill is reinstated.

Draft amendment rules were circulated to Sub-Committee members for comment prior to the meeting. The Ministry of Justice also consulted with the Ministry's national and regional court service delivery teams.

Ms Alexander summarised the draft rules which provide that the prosecutor must, as soon as reasonably practicable after a defendant has entered a plea, inform the complainant about name suppression and how to apply for it to be lifted. If a complainant chooses to apply for an identity publication order they must file a written application (or indicate if they wish to make an oral application) and supporting affidavit, reflecting their understanding of the nature and effect of their decision to lift a statutory order. A judicial officer may determine an application on the papers or direct the matter be set down for a hearing. It was envisaged that the process would be supported by an application template and guidance documents for applicants.

Ms Guy-Kidd KC noted that when deciding an application, the Judge would have to be satisfied the applicant understood the implications of applying to lift their name suppression. She queried whether an oral application would sufficiently satisfy the Judge.

Ms Noyce noted that the current rules governing an application allow an application to be made orally as well as in a written format, and that the new draft rules aimed to achieve a consistent approach. Ms Noyce observed that r 2.12 of the Criminal Procedure Rules 2012 permits the judicial officer or Registrar to whom an application is made to direct that it be made in writing and suggested the inclusion of a similar clause in the amendment rules. The Sub-Committee supported this proposal.

It was agreed that after the inclusion, by PCO, of a clause permitting the court to direct that an oral application be made in writing, the draft rules may be provided to the Justice Select Committee to support its consideration of the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill.

3. Review of the Rules to remove references to three strikes

After further discussion, it was agreed that references to the three strikes regime should be removed from the rules. This recommendation will be conveyed the Rules Committee to be actioned.

4. Out of date practice notes

The Chair observed that the previous Sub-Committee had made some progress on reviewing out of date practice notes but did not appear to have completed the process before it ceased to meet in 2015. A number of practice notes, which have been rendered redundant by the enactment of legislation such as the Criminal Procedure Act 2011, have not been officially revoked.

The Chair observed that the appropriate pathway would seem to be to refer obsolete practice notes to the relevant Heads of Bench to revoke. However, these practice notes would first have to be identified. While some were clearly no longer relevant, others may require closer examination.

It was agreed that the Chair will discuss the issue with the Judicial Office and will report back to the Sub-Committee.

5. Victim impact statements

In September 2023, the Criminal Bar Association wrote to the Chief District Court Judge, Judge Taumaunu and the Chief High Court Judge, Justice Thomas, to express concern about the current practice throughout New Zealand for victim advisors obtaining victim impact statements very late, and the process whereby these victim impact statements are presented to the Court. The Chief High Court Judge referred the letter to the Sub-Committee for consideration.

The Criminal Bar Association propose that the Criminal Procedure Rules 2012 be amended to include provision for the filing and service of victim impact statements to align with the time for the filing of the prosecutor's sentencing submissions – at least five working days prior to the sentencing hearing.

The Sub-Committee expressed general support for this suggestion. The Sub-Committee agreed that if such a requirement were to be included, it should be expressed in a new rule, rather than in an additional sub-clause in an existing rule.

Ms Johnston observed that under the Victim's Rights Act 2002, if a victim impact statement has been prepared by the prosecutor, it must be submitted by the prosecutor to the judicial officer. Accordingly, even if a victim impact statement were submitted later than five working days prior to the sentencing hearing, the prosecutor would still be required to file it.

The Chair noted that while this was true, the suggested amendment was directed towards the obligation of the prosecution rather than the victim. Victims do not have a formal role in preparing victim impact statements. The proposed amendment would signal to the prosecutor the necessity to take a proactive approach in relation to victim impact statements which would include following up with the police about a victim impact statement at an earlier stage.

Ms Kincade KC agreed and observed that the provision of victim impact statements at an earlier date would address other issues defence counsel commonly encounter in relation to victim impact statements, for example, how to deal with irrelevant material. Presently, victim impact statements are often submitted on the morning of a hearing, and it would be easier to deal with any issues in advance rather than in court.

It was agreed that the Chair will consult with relevant legal profession groups, including the New Zealand Law Society and New Zealand Bar Association, as well as Crown Law.

6. Matters for noting

The next Criminal Rules Sub-Committee meeting will be organised in early 2024.

Justice Cameron Mander
Chair