



16 June 2009

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Dear Malcolm

**Criminal Procedure (Simplification Project) – Development of a formalised sentence indication scheme**

The Society's Criminal Law Committee is grateful for the opportunity to comment on the above Ministry of Justice discussion document. The committee's responses to the questions in the discussion document are set out below.

1. *Do you think a formalised sentence indication scheme should be developed? Why? Why not?*

Yes. It would be a useful tool for Judges to have available to them when dealing with a person who is indecisive as to their plea.

2. *If you think there should be a formal sentence indication scheme what features do you think should be included? What features should not be included?*

A formal sentence indication scheme should ensure that all relevant mitigating or aggravating sentencing factors are present before a sentence indication can be given.

If a prosecutor makes a submission as to the appropriate "tariff", and the court subsequently imposes a sentence that is significantly lower than the prosecutor's submission, any subsequent appeal against sentence should not enable the defendant to change his or her plea if the appeal against the sentence is successful. Such a situation wrongly places a defendant, who is given a sentence that is manifestly inadequate, in a better position than a defendant who is sentenced in the usual manner, but receives a sentence that is also manifestly inadequate. In both cases the sentencing Judge will have made an error in law, by sentencing the defendant to a sentence that is "manifestly inadequate". If a legislative solution is created for sentence indications, a provision should be included to allow prosecutors to enter a note on the Court record at the time of sentencing that the sentence is "manifestly inadequate" so it may be appealed (subject to the Solicitor-General's consent) on the grounds that it is "manifestly inadequate".

Paragraph 59 of the discussion document states that a request for a sentence indication to a reduced charge ought to be allowed. This should only be allowed where a reduction in

charges is offered by the prosecution. If the prosecution does not intend to “reduce charges” then no such indication should be sought or given.

A sentence indication should be allowed to indicate the length of sentence or level of fine considered appropriate by the Judge. A Judge should be able to offer a sentence indication, even if a defendant has not sought one. This would enable the Court to progress a case. Sufficient notice to the prosecutor as to the occurrence of, or request for, a sentence indication to enable the preparation of submissions as to appropriate nature and length of sentence. Victim impact statements must be placed before the Court, where relevant, before a sentence indication is given. Sentence indications must be given in open court.

3. *Do you think that there are some circumstances where it is appropriate for the prosecution to make the application for a sentence indication? If so, what are those circumstances?*

No. The purpose of a sentence indication is to enable a reluctant defendant to make up his or her mind to plead guilty after receiving an indication of how severe the possible sentence might be. It would not be appropriate for the prosecution to participate in that part of the process, except to ensure that “manifestly inadequate” sentences are not imposed.

4. *Do you think Judges should be required to make explicit the discount being given when giving a specific sentence quantum?*

Yes. It is best practice for Judges to quantify exactly how the Court arrives at a sentence.

5. *Do you think it is appropriate to have a generic legislative regime to cover all courts – or separate regimes for the High Court and District Court?*

The High Court and District Court should have a similar legislative regime, as both courts deal with serious offending. Less serious summary offending in the District Court should follow the same principles.

6. *Do you have any other comments about any aspects of the proposed sentence indication regime?*

A Practice Note that comes into force on 29.6.09 has been issued by the Chief District Court Judge to promote consistent practices for committal proceedings under Parts 5 and 5A of the Summary Proceedings Act 1957 in the District Court. Note paragraphs 13 to 20 which refer to sentence indications.

The committee hopes that the above comments are of assistance to the Ministry. If you wish to discuss any matters raised in this letter please contact me, or the committee secretary, Rhyn Visser by phone (04) 472 7837 or email [rhyn.visser@lawsociety.org.nz](mailto:rhyn.visser@lawsociety.org.nz).

Yours sincerely



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