

6 May 2014

Hon Justice Young
Criminal Rules Subcommittee
Wellington High Court
2 Molesworth Street
Pipitea
Wellington 6140

Email: youngr@courts.govt.nz

Dear Justice Young

CMM and TCM Forms: feedback on proposed changes

Thank you for your letter of 14 March 2014 regarding the current case management memorandum (CMM) and trial callover memoranda (TCM) forms produced by the Ministry of Justice. The New Zealand Law Society (Law Society) appreciates being consulted on the existing forms. Our brief comments are set out below.

Criminal Law Committee

The Law Society's national Criminal Law Committee considers that the pre-formatted documents are overly formulaic. The case review hearing for jury trial cases and the case management memorandum are both regular targets of complaint.

The general concern is that the case review hearing for jury trial cases and the case management memorandum do not assist in any way in progressing jury trial cases. For example, the case management memorandum is meaningless when disclosure has not been completed for complex cases, all parties are in agreement that more time is needed, and an adjournment is sought. Lawyers have attempted to set this out in a Registrar's Remand form but have been advised the case management memorandum must be filled in and filed regardless. A simple alternative would be for counsel to be permitted to notify the court that a case management memorandum will not assist, and the case should be capable of adjournment straight through to trial callover.

In terms of the CMM document itself, as opposed to the general procedural concern, some parts of the case management memorandum could be useful if the parties are in a position to provide the court with early indications on parts of the proceedings. For example, a preliminary estimate of trial time, an indication of any obvious pre-trial applications, and space to indicate if an early sentence indication is sought are all potentially useful. However, this sort of material could easily be covered in checklist form. A one to two page checklist could cover key points that the court would like to know more about, and provide space for additional material if required. A separate case management memorandum or checklist for jury trial cases may also be appropriate.

The trial callover memoranda have not received much critical attention. Both the process of having a trial callover, and the material canvassed in the trial callover memoranda, largely reflect the standard practice in many District Courts around the country prior to CPAI.

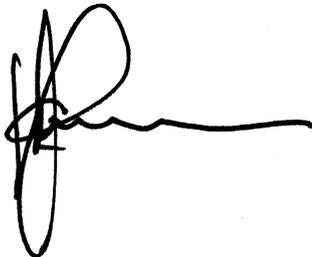
Feedback from the profession

The profession was also notified via the Law Society's weekly e-bulletin *LawPoints* of the opportunity to comment, and two responses were received. These are reproduced verbatim:

- "Everything is much more regimented and it contributes to a growing backlog of trials with clients electing jury trial as the default option because it's easier to go down than up. Police have to do much more paperwork anticipating not guilty's for clients who just need a bit of time to come around to pleading guilty (or who use the time for rehab/counselling etc). Meetings with police at CMM stage tend to be rituals and there is a need for more creativity over alternatives to proceeding remorselessly with the charges. Everyone trying to make it work and it's good for the minority of cases that go the full distance to trial."
- "I was recently, when acting as Duty Lawyer, shown a CMM form that is given to unrepresented defendants. I noted that it used technical language and gave the impression that the defendant may have to tell the judge what the issues are. In that respect the form should indicate (in plainer language than I am using now) that the defendant need not say what is in dispute, if the defendant thinks disclosing might prejudice the chance of an acquittal, although procedural cooperation could be a mitigating factor in the event of the court having to impose sentence. The form could also be clearer on when a sentencing indication can be sought, in the sense that one doesn't have to be dispensed with before the subsequent questions regarding issues etc are answered. Perhaps the form could also advise unrepresented defendants to bring with them to the CMM all the disclosure material they have received as it may be possible to discuss it with a duty lawyer so that a decision on plea, or a reaction to a sentence indication, can be made."

We hope these brief comments are helpful to the Criminal Rules Subcommittee. If you wish to discuss the submission please contact the Criminal Law Committee convenor, Jonathan Krebs, through the Committee secretary, Rhyn Visser (phone (04) 463 2962 or email rhyn.visser@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Moore', with a long horizontal flourish extending to the right.

Chris Moore
President