

## **CRIMINAL CASE MANAGEMENT:**

THE SOLUTIONS TO THE PROBLEMS IN THE CRIMINAL JUSTICE  
SYSTEM

## **CRIMINAL CASE MANAGEMENT**

- Introduced in the Home Circuit Court and the Gun Court Division of the Circuit Court in 2011
- Process piloted in the Half-Way-Tree Resident Magistrate's Court
- Currently being extended to other Courts

## WHAT IS CASE MANAGEMENT?

- A Judge driven process in matters before the Court
- Judges ensure that pre-trial issues are addressed effectively
- Judges ensure that cases are tried quickly and fairly

3

## CASE MANAGEMENT RULES

- The Rules governing Criminal Case Management were passed in 2011 and Gazetted in November 2011 as **The Judicature (Case Management in Criminal Cases) Rules 2011**.

4

## CASE MANAGEMENT RULES

- **Rule 2** confers a duty on the Court to actively manage each case that comes before it and give appropriate directions as early as possible. This includes:
  - The early identification of the real issues.
  - The early identification of the needs of witnesses
  - Achieving certainty as to what must be done, by whom, and when; the early setting of a timetable for the progress of the case
  - Monitoring the progress of the case and compliance with directions
  - Ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way
  - Discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings;
  - Encouraging the participants to co-operate in the progression of the case
  - Making use of technology

5

## CASE MANAGEMENT RULES

### **Rule 3**

- Requires each party to actively assist the Court in fulfilling its duty under Rule 2, (*with or without direction* to do so); and
- apply for a direction if needed to further the effective management of cases.

### **Rule 4**

- Requires each party to nominate an individual responsible for progressing the case.
- This must be done at the beginning of the case, and all other parties and the court must be notified as to who that individual is.
- This individual is called the case progression officer.

6

## **DUTIES OF THE CASE PROGRESSION OFFICER**

- Monitor compliance with directions
- Make sure that the Court is kept informed of events that may affect the progress of the case
- Make sure that s/he can be contacted promptly about the case during ordinary business hours
- Act promptly and reasonably in response to communication about the case
- If s/he will be unavailable, appoint a substitute to fulfil his/her duties and inform the other case progression officers

7

## **THE COURT'S CASE MANAGEMENT POWERS**

- In fulfilling its duty under Rule 2, the Court may give any direction and take any step actively to manage a case unless that direction or step is inconsistent with legislation.
- The court may:
  - nominate a Judge to manage the case;
  - give a direction on its own initiative or on application by a party;
  - ask or allow a party to propose a direction;
  - for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
  - give a direction without a hearing;
  - fix, postpone, bring forward, extend or cancel a hearing;
  - shorten or extend (even after it has expired) a time limit fixed by a direction;
  - require that issues in the case should be determined separately, and decide in what order they will be determined; and
  - specify the consequences of failing to comply with a direction.

8

## THE COURT'S CASE MANAGEMENT POWERS

- **What are some of these directions that the Court could give?**
- The Act does not state.
- The Court would determine what directions are necessary, given the nature of the case and the issues arising in the matter.
- The parties would need to know what directions they will and should apply for.

9

## COMPLIANCE

If a party fails to comply with a rule or direction, the Court may:

- fix, postpone, bring forward, extend, cancel or adjourn a hearing; **and**
- impose such other sanction as may be appropriate.

10

## VARYING DIRECTIONS

Either party may apply to vary a direction but only if:

- The Court gave it without a hearing or in their absence OR
- if the circumstances have changed.

Parties may agree to vary a time limit fixed by a direction only if:

- The variation will not affect the date for hearing or significantly affect the progress of the case in any way.

11

## THE PLEA AND CASE MANAGEMENT HEARING

### AT THE HEARING:

- The Plea and Case Management Form is to be completed by Defence Counsel and submitted to the Registrar of the Court.
- The Defendant's Plea should be taken if this was not already done
- The Court should be advised if the Defendant is likely to plead guilty
- The Court must set, follow or revise a timetable for the progress of the case, including a timetable(date) for trial
- The Court must, in giving directions, ensure continuity in relation to the Court and the parties' representatives, where appropriate and practicable
- The Court must find out if any direction has not been complied with, why, identify who was responsible, and take appropriate action.

12

## **THE PLEA AND CASE MANAGEMENT FORM**

- This Form is the main avenue by which Case Management is implemented and through which it operates.
- There are sections of the Form which are to be filled in by the Prosecution.
- Usually we do not receive the completed form to see what information has been filled in by Crown Counsel or the Court.

13

## **READINESS FOR TRIAL**

Each party is expected to:

- Be ready for trial
- Ensure they have complied with all directions
- Ensure their witnesses attend
- Make arrangements to present written or other material
- Promptly inform the Court and other parties of anything that may affect the duration of the trial or progress of the case in any way
- Advise if any special arrangement is required for evidence to be given by a particular witness, e.g. expert or child

Parties may be required to give a Certificate of Readiness.

14

## **ADDITIONAL LEGISLATION FOR CASE MANAGEMENT?**

The proposed legislation being considered are:

- The Law Reform (Notice of Alibi Evidence) Act
- Amendments to the Evidence Act
- Abolition of Statement from the Dock
- Law allowing for Defence Witness Statements
- Law allowing for the imposition of Cost Orders
- Agreement as to formal witnesses

15

## **NOTICE OF ALIBI EVIDENCE ACT**

- The Act will require Defence Counsel to disclose their Alibi witness(es) if they intend to rely on the defence of Alibi.
- This Bill proposes that the Accused shall not adduce evidence in support of an alibi, unless within 14 days of arraignment, he gives notice in writing to the DPP of the particulars of the Alibi.
- He cannot call any other person to give such evidence, unless a notice is served including the name and address of the Witness, or if the address is not known at the time, any information which might be of material assistance in locating the witness.
- If the particulars of the witness subsequently comes to light, the Defence should advise the DPP.

16



## **AMENDMENTS TO THE EVIDENCE ACT**

- The Evidence Act is being amended to better enable and formalize the rules whereby witnesses can give evidence by way of video link.
- Agreement of Experts evidence, such as Post Mortem and other Reports not in dispute is also being contemplated.

17

## **ABOLITION OF STATEMENTS FROM THE DOCK AND DEFENCE WITNESS STATEMENT**

- Contravene the right of the accused to remain silent and
- His other constitutional rights before the Court
- The burden of proof remains with the prosecution throughout the trial and it never shifts (except in rare strict liability offences).

18

## OTHER LEGISLATION

- Agreement of documents not in dispute, such as post mortem reports is a process which could be agreed to.
- Giving evidence by video link where the appropriate safeguards are put in place to maintain the integrity of the proceedings would also assist the process.
- The increase in Legal Aid fees which were approved years ago need to be implemented as the majority of criminal cases before the Courts are done by way of Legal Aid.

19

## A PROCESS WITHOUT TEETH?

- Lack of sanctions for non-compliance in the Case Management Rules
- Judges already have inherent powers to impose sanctions for breaches of a Court's Order.
- The active participants in the Justice system are subject to regulatory bodies and internal action can be recommended by the Court if these individuals do not comply with Orders of the Court.
- The Court can cite individuals for contempt of Court for non-compliance
- Subpoenas and warrants can be ordered and issued by the Court for parties or witnesses who fail to attend
- Disciplinary action can be taken or recommended by professionals who do not comply with Orders or timelines, such as Police officers, Attorneys, medical practitioners, Court staff.
- A possible means of enforcing Orders and timelines which has been discussed is to impose cost orders on delinquent parties.

20

## **ADDITIONAL PERSONNEL OR TECHNOLOGY REQUIRED?**

A major factor which has been cited in the implementation of Case Management is the need for additional Court staff and equipment.

- Rather than seeking to hire additional staff, existing staff members in each Court's Registry can be trained and equipped to carry out the functions of the Case Progression Officer.
- Video link evidence and teleconferencing has been contemplated for witnesses but there are still basic problems to be overcome, such as maintaining the phone lines, photocopy machines and files.
- Maximum capacity, potential and use out of what we do have, will go a far way in making the system efficient and clearing the backlog in the criminal courts.

21

## **WILL CASE MANAGEMENT FIX THE JUSTICE SYSTEM?**

### **Case Management in the Home Circuit Court - 1 year later**

- The PCM Form is completed and submitted to the Court Registrar.
- Disclosure takes place, a Plea and Case Management hearing date is set.
- Hearings are scheduled for a certain time, the form is filled in and submitted.
- **Not much else takes place.**
- 9 out of 10 times when the trial date arrives, the matter is not ready due to some of the same problems which have existed for years.
- If all parties involved in a matter do not hold up their end, then matters will continue to be adjourned on the date set for trial.

22

## THE SOLUTION

- Case Management foresees that Resident Magistrates will ensure that Orders and timelines are complied with.
- They also need to insist that police officers complete their investigations **before** the matters are brought to Court or within a short time of charging an Accused and bringing them before the Court.
- Both the Police Force and the Government laboratories need increased technical capacity and training to enhance forensic investigations and reduce the over reliance on eye witnesses which makes them susceptible to harm.
- Training of Court staff and all parties who are required to participate in such a new dispensation.
- The necessary equipment, such as photocopy machines, functioning phone lines, available facilities for police officers to call the witnesses or assist them with transportation to get to Court.

23

## THE SOLUTION

- The Civil Procedure Rules were idealistically hailed as new, efficient rules with overriding objectives that would bring us into the 21<sup>st</sup> Century.
- Unless and until we address the underlying problems within our Justice system as set out above and operate the actual elements of the system in an effective and efficient manner, introducing new Rules and Procedures will not fix the problems.
- All the individuals and agencies involved in the operation of the Justice system need to have co-operation and communication and uphold their end of the system in order for it to function effectively.
- Organization, supervision and accountability will also go a far way in improving the system and reducing the backlog.

24

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