Opinion Paper

Effective Handling of Criminal Cases

[February 2014]
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About the Commission

The Commission consists of –

(a) a Chairperson, appointed by the Attorney-General;
(b) a representative of the Judiciary appointed by the Chief Justice;
(c) the Solicitor-General or his representative;
(ca) the Director of Public Prosecutions or his representative;
(d) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
(e) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
(f) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
(g) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
(h) two members of the civil society, appointed by the Attorney-General.

The Chief Executive Officer has responsibility for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.
Executive Summary

Opinion Paper «Effective Handling of Criminal Cases»
[February 2014]

As part of the process of review/reform of the criminal justice system, the Commission has considered the desirability of incorporating in our law some of the provisions of the UK Criminal Procedure Rules 2005 aimed at ensuring prompt adjudication of criminal cases. The Commission is of the opinion that the court and the parties must actively participate in case management with a view to improving the efficiency of the criminal justice system.
Improving the Efficiency of the Criminal Justice System: Effective Handling of Criminal Cases

1. Section 10(1) of the Constitution provides that, where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.¹

2. In order to ensure prompt adjudication of criminal cases, the Code of Ethics for Barristers provides that:

   16.1 *Both Prosecuting and Defence Counsel shall -*
   
   (a) ensure that the Court receives in good time their best estimate of the likely length of the trial (including whether or not there is to be a plea of guilty) and that the Court is given early notice of any change of such estimate or possible adjournment;
   
   (b) take all reasonable and practicable steps to ensure that the case is properly prepared and ready for trial by the time that it is first listed;
   
   (c) ensure that arrangements have been made in adequate time for witnesses to attend Court as and when required and plan, so far as possible, for sufficient witnesses to be available to occupy the full Court day;
   
   (d) where a witness (for example a doctor) can only attend Court at a certain time during the trial without great inconvenience to himself, try to arrange for that witness to be accommodated by raising the matter with the Court and with his opponent.

¹ In *Boolell v The State* [2006] UKPC 46 where reference was made to the decision of the House of Lords in *Attorney General’s Reference (No 2 of 2001)* [2003] UKHL 68, their Lordships considered that the following propositions should be regarded as correct in the law of Mauritius:

   (i) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.

   (ii) An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all.
3. In UK, the Criminal Procedure Rule Committee has enacted, under section 69 of the
Courts Act 2003, the Criminal Procedure Rules 2005 which determine the way a criminal
case is managed as it progresses through the criminal courts in England and Wales. The
Rules apply in all magistrates' courts, the Crown Court and the Court of Appeal (Criminal
Division).

4. According to the Rules, the **overriding objective** is that criminal cases be dealt with
justly.

Dealing with a criminal case justly includes –

(a) acquitting the innocent and convicting the guilty;

(b) dealing with the prosecution and the defence fairly;

(c) recognising the rights of a defendant;

(d) respecting the interests of witnesses, victims and jurors and keeping
them informed of the progress of the case;

(e) dealing with the case efficiently and expeditiously;

(f) ensuring that appropriate information is available to the court when bail
and sentence are considered; and
(g) dealing with the case in ways that take into account -
   (i) the gravity of the offence alleged,
   (ii) the complexity of what is in issue,
   (iii) the severity of the consequences for the defendant and others
        affected, and
   (iv) the needs of other cases.

5. Each participant, in the conduct of each case, must –

   (a) prepare and conduct the case in accordance with the overriding
       objective;

   (b) comply with these Rules, practice directions and directions made by
       the court; and

   (c) at once inform the court and all parties of any significant failure
       (whether or not that participant is responsible for that failure) to take any
       procedural step required by these Rules, any practice direction or any
       direction of the court. A failure is significant if it might hinder the court in
       furthering the overriding objective.
6. The court must further the overriding objective in particular when –

(a) exercising any power given to it by legislation (including these Rules);

(b) applying any practice direction; or

(c) interpreting any rule or practice direction.

7. As regards **case management**, the Rules set out, *inter alia*, the duty of the court and the parties, the courts’ case management powers:

= The duty of the court

8. The court must further the overriding objective by actively managing the case.

9. Active case management includes -

   (a) the early identification of the real issues;

   (b) the early identification of the needs of witnesses;

   (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
(d) monitoring the progress of the case and compliance with directions;

(e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;

(f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

(g) encouraging the participants to co-operate in the progression of the case; and

(h) making use of technology.

10. The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

11. The Court may appoint a court officer responsible for progressing the case (referred to as the case progression officer). A case progression officer must -
   (a) monitor compliance with directions;
   (b) make sure that the court is kept informed of events that may affect the progress of that case;
   (c) make sure that he can be contacted promptly about the case during ordinary business hours; and
(d) act promptly and reasonably in response to communications about the case.

= The duty of the parties

12. Each party must -
   (a) actively assist the court in fulfilling its duty in active case management, without or if necessary with a direction; and

   (b) apply for a direction if needed to further the overriding objective.

13. Each party must -
   (a) comply with directions given by the court;

   (b) take every reasonable step to make sure his witnesses will attend when they are needed;

   (c) make appropriate arrangements to present any written or other material; and

   (d) promptly inform the court and the other parties of anything that may -
(i) affect the date or duration of the trial or appeal, or

(ii) significantly affect the progress of the case in any other way.

= The court’s case management powers

14. In fulfilling its duty of active case management, the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.

15. In particular, the court may -

(a) nominate, *inter alia*, a justices’ clerk to manage the case;
(b) give a direction on its own initiative or on application by a party;
(c) ask or allow a party to propose a direction;
(d) 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;
(e) give a direction-
   (i) at a hearing, in public or in private, or
   (ii) without a hearing;
(f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
(g) shorten or extend (even after it has expired) a time limit fixed by a direction;
(h) require that issues in the case should be-
   (i) identified in writing,
   (ii) determined separately, and decide in what order they will be determined; and
(i) specify the consequences of failing to comply with a direction.

= Case preparation and progression

16. At every hearing, if a case cannot be concluded there and then, the court must give directions so that it can be concluded at the next hearing or as soon as possible after that.

17. At every hearing the court must, where relevant -

(a) if the defendant is absent, decide whether to proceed nonetheless;

(b) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;

(c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or appeal;

(d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and

(e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.
= Conduct of a trial or an appeal

18. In order to manage a trial or an appeal, the court—
   (a) must establish, with the active assistance of the parties, what are the disputed issues;
   (b) must consider setting a timetable that—
      i) takes account of those issues and of any timetable proposed by a party, and
      ii) may limit the duration of any stage of the hearing;
   (c) may require a party to identify—
      (i) which witnesses that party wants to give evidence in person,
      (ii) the order in which that party wants those witnesses to give their evidence,
      (iii) whether that party requires an order compelling the attendance of a witness,
      (iv) what arrangements are desirable to facilitate the giving of evidence by a witness,
      (v) what arrangements are desirable to facilitate the participation of any other person, including the defendant,
      (vi) what written evidence that party intends to introduce,
      (vii) what other material, if any, that person intends to make available to the court in the presentation of the case, and
      (viii) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal; and
   (d) may limit—
      (i) the examination, cross-examination or re-examination of a witness, and
      (ii) the duration of any stage of the hearing.
19. The Commission therefore recommends that, with a view to improving the efficiency of the criminal justice system, consideration be given for the incorporation of equivalent rules in our law.