# CRIMINAL BAR ASSOCIATION OF NEW ZEALAND INC.

PO Box 135
Shortland Street
Auckland
Phone (09) 379 8330
Email: president@criminalbar.org.nz
Website: criminalbar.org.nz

His Honour Judge Taumaunu
Chief District Court Judge
By email: Maranda.Kapua@justice.govt.nz

Tena Koe Chief District Court Judge,

**Re: Draft Bail Application Scheduling Protocol**

The Criminal Bar Association (CBA) is grateful for the opportunity to comment on the Draft Bail Application Scheduling Protocol.

The CBA is in receipt of the correspondence by the Law Society and the Public Defence Service and endorses their comments.

The CBA further comments as follows:

**Applications**

In addition to those listed CBA would add bail sought on a change of circumstances after bail declined (whether EM bail or simple bail).

**Guidelines –**

*Guidelines 1-4*

- The CBA strongly supports guidelines one and two in their current wording. Guideline three is also supported but the CBA suggests that the 24 hours notice for scheduling be worded in stronger term than 'an expectation'. It is also noted that while a remand in custody to the next substantive date makes sense to avoid unnecessary appearances it is noted that certainly in the Auckland District Courts Region, case review dates (if a plea has already been entered) can be months out and some prisoners experience considerable difficulty contacting counsel due to prison lock up times and therefore may be constrained in their ability to communicate that they have, for example, acquired an address such that an application is ready to proceed.
- In relation to guideline four this may be appropriate when there are mere days between, say when an EM Bail report would be ready, and a scheduled appearance. The practical realities of moving forward case review hearing dates may nullity the intention of this guideline. The practice may also present difficulties in the new

Auckland District Court bail hearing list. This has three days a week where opposed bails are heard.

*Guidelines 5-8*

- In relation to 'unsuitable' defendants and repeated bail or EM Bail applications (guidelines 5 and 7) the CBA supports the comments made by Law Society at paragraph 6 and 7 of their correspondence but cautions against the guideline referring only to residential rehabilitation as in addition to rehabilitation / reintegrative facilities a supportive family address in, say a provincial town, may minimise risk of a young city based offender such that in that location they might be considered a suitable candidate for bail / EM bail.
- In relation to both the matter raised in guideline eight and in relation to determination of suitable addresses for simple bail, it would greatly assist if the timetabled expectations extended to the prosecution and EM Bail teams. Anecdotally Counsel can wait more than a week for PPS / Crown to respond to even simple bail variations such that it is sometimes necessary to ask the court to list it simply to prompt a response.
- Similarly, if a defendant is remanded in custody for a short period so that PPS (rather than BSS who in Auckland are very responsive) can confirm the suitability of an address or views of the complainant, a timetabled expectation in the Bail protocol ought to reflect the expected timeframe. It is submitted that this should be 24 hours.
- EM Bail reports ought to be expressed timetabled in the protocol to ensure they are completed 10 working dates from filing. While this is the current timeframe, the reality is that EM Bail work to the court date, providing the report 1- 2 days prior to the hearing date allocated even if this is six weeks out. Without this being expressly provided for in the Bail Protocol, the CBA is concerned that this will shift the onus on defence counsel to chase prosecution, BSS, and EM Bail in order to get the file ready for a bail application to be made. Including express timetabling for PPS/ Crown, defence, EM Bail and the Courts will ensure that the process is fair.
- There also ought to be express provision to allow defence counsel to bring on a bail application for a 15 minute timetabling hearing if these timetabling expectations are not being met.

Further Comments:

1. The PDS have raised the issue of a national (or regional) duty Judge(s) to remotely hear bail applications on Saturdays. The CBA strongly supports this suggestion. Rather than necessarily dealing with substantive opposed bail applications this Judge could deal with matters where for example the defendant is subject to a reverse onus provision, but bail is not opposed. This could cover people with historic qualifying offences which technically makes them subject to ss.10 or 12 of the Bail Act or low-level Class A and B dealing offences which trigger s.16 and 17A. In addition, such a judicial officer, subject to an on-call Crown prosecutor being available, could also deal with breaches of bail on Crown matters. At least in the

Auckland District Court these are routinely remanded to the Monday even where the breach is minor, and bail is not opposed once the crown appears. This proposal would alleviate the pressure on the Monday lists and could also be available during the week for those Courts that do not have a Judge sitting every day. This could likely be deal with in a 1-hour slot from 11-12 on Saturdays in Auckland. Other courts could operate regional AVL bail lists. There is considerable support for this proposal from CBA members in smaller centres where, in particular in relation to breaches of bail on Crown matters defendant may be remanded in custody (and often held at Police stations rather than Department of Corrections facilities) for several days until the next bail list day even when bail is not opposed.

2. Clarification as to whether the guideline for bail variations also apply to family violence matters would assist as these currently cannot be dealt with on the papers and therefore take up court sitting time even where the variation is unopposed or does not relate in any manner to the safety of the complainant.

3. There should be an express timetabling expectation for EM bail applications. This should be 10 working days from receipt of the application. In the Auckland District Court bail dates are being given up to six weeks after filing of the application. This is unacceptable and inconsistent with the intent of the protocol and raises serious concerns about the ability to implement this in Auckland.

4. Where there is an expectation that a bail application can be heard on the defendant's first appearance – i.e. counsel has all information required and the address does not need to be checked there should be an expectation that this should be able to be argued irrespective of what time the matter is called if the list Judge is still sitting. Anecdotally some Judges refuse to hear bail applications called after the afternoon tea adjournment. If this does occur due to the late hour of the day – close to 5pm then adjournment should be to the following day and not 'the next available bail date' which might be some weeks hence.

Yours faithfully,

Adam Simperingham
President
Criminal Bar Association