

Scuttlebutt (n – gossip/rumour)

Felicity Gerry on fees and guns

Scheme C

On March 1, 2012, the CPS will introduce Scheme C fees for advocates in prosecution cases drastically reducing fees (particularly for paper heavy cases) to the point that it is no longer reasonable remuneration. Initial indications are that there will be a wholesale rejection of Scheme C and there will be no one of any experience to prosecute serious criminal cases.

It is the general opinion of the criminal Bar that the fees currently paid by the CPS are inadequate for the work. Hard working, loyal prosecutors have accepted prosecution cases when they could have taken briefs elsewhere. Weekends and evenings haemorrhage away dealing with careful case preparation and more and more frequently advocates are required to personally case manage the cases in order to ensure that they are trial ready.

The feeling is that dedication and ability has been taken for granted and now is the time to make those feelings known. For many prosecutors, it is plain that Scheme C is wrong in principle. The axe has fallen disproportionately hard on the cases that require the greatest preparation and out-of-court work undertaken by the most able and senior prosecutors.

The idea that money has apparently been saved is an illogical notion since it has been re-directed to raise the fees for lower level cases which are typically done in-house. The scheme abandons, as the method of determining the core fee to be paid, the link between the volume of the evidence and the fee. It also includes an intention to pay on the new rates for any case being heard after August 1, 2012 regardless of whether the brief was sent out before that date. Overall, Scheme C shamelessly punishes the brightest, hardest working and most able practitioners. For some payment by page count has been a real pain. It takes time to agree the final page count and CPS caseworkers and barristers really have better things to do, but at least it was a neutral way to demonstrate which cases required significant preparation. Scheme C replaces this with fixed (gross) brief fees and a daily rate based effectively on the charge with no regard to the size of the brief or the complexity. The Scheme C fees for serious cases, such as rape, remain low and fail to reflect the extra work required in relation to legal applications, witness care and expert evidence.

On one case I once calculated that after prosecuting a three-day rape trial the profit could be as little as £80. It is basic stuff that a fee should reflect amount of work/complexity as well as charge and level of advocate and basic stuff that independent advocates will decide not to prosecute. Having just conducted

a grading procedure where the DPP said he wanted the most talented advocates to prosecute, it seems such a shame that he will lose this by not offering a proper fee.

Nine-year-old Shooter

Gobsmacking news from Washington this week as they put a nine-year-old child in the dock and required \$50,000 bail to be posted. The boy appeared dressed in an orange prison jumpsuit and crying having taken his father's gun to school and shot a fellow classmate when it accidentally fired. *The Independent* reported that police officials in Bremerton, west of Seattle across Puget Sound, said the boy put his backpack on his desk as a class was ending on Wednesday and a gun inside accidentally discharged. The bullet pierced the abdomen of Amina Kocer-

Bowman, eight, who was in a critical condition. It seems that the system in Washington is not to have an age of criminal responsibility but for a Judge to ascertain whether any accused child has the mental capacity to understand what they have done. The report goes on, "Prosecutors said they intended to charge the boy with unlawful possession of a gun, bringing a dangerous weapon to school and third-degree assault".

The words "der hello" spring to mind. Possession of the gun is naughty but

hardly unexpected in a country with such lax gun laws and in any event it would be more appropriate to look at the true owner, not the child. That he brought the gun to school is worrying but hardly criminal, how many kids bring in their parents things for "show and tell". If he has rubbish gun toting parents, what do you expect. Surely that's a matter for child protection not prosecution and finally, it's hardly an assault to accidentally fire a gun even with such dreadful consequences.

Such stupid laws and procedures simply succeed in making the Judge look stupid as she asked the boy if he could read (pointless and irrelevant to capacity).

Perhaps most revealing was his tearful reply "I have a little trouble [with reading]". Being naughty is not always a crime whatever the consequences.

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