

Legal Practice Course
Discussion and group work
COURT PROCEDURES, PROTOCOLS AND
JURISDICTION OF THE MAGISTRATES COURT
Saturday 5th February 2000 11.30am – 1.00pm.

Ms Diane M Fingleton, Chief Stipendiary Magistrate

Good Morning, my name is Ms Diane Fingleton. I currently hold the demanding position of Chief Stipendiary Magistrate for Queensland. I hope that during today I can share with you my knowledge and experience and hopefully give you an insight into the operation of Queensland Magistrates Courts.

There are presently 73 Stipendiary Magistrates servicing 83 Courthouses throughout Queensland. Our structure consists of myself the Chief Stipendiary Magistrate, a Senior Stipendiary Magistrate and eight Supervising Magistrates. Seventeen Magistrates have a circuit of courts of which they routinely service. The remaining Magistrates are somewhat more stable, however, they may be required to serve at various centres as the workload demands. The current number of Stipendiary Magistrates will be increased by 2 due to the introduction of the Drugs Court and the *Child Protection Act*. There is also some discussion at the moment on the possibility of appointing part-time Magistrates. To cover the periods when Magistrates are unavailable due to leave, appointed Clerk of the Courts perform the duties of Acting Magistrates. I also have an Executive Secretary and a Research Officer to assist with the administrative side of my duties.

The Magistrates Courts play a vital role in Queensland's court system. Recent figures indicate that 92% of all Queensland civil actions were dealt with through the Magistrates Court. Of the Defendants appearing in Queensland courts for criminal offences almost 95% were finalised within the Magistrates

Court. The Magistrates Court also deals with Domestic Violence applications, Small Claims, Minor Debt Claims, Coronial Inquests, Peace and Good Behaviour Orders, Traffic matters including applications for work licences and Revocations of Community Service Orders to name but a few. To cover these functions Magistrates require a good knowledge of a wide and diverse range of legislation (Copy of frequently used Acts attached)

CRIMINAL MATTERS

All criminal matters commence in our recently completed Courts 1, 2 & 3 complex, commonly referred to as the arrest courts. These courts are located in Roma Street (Cnr Roma and Garrick Streets) next to the Police Headquarters. Court 1 operates every day of the year except for Sundays, Good Friday and Christmas day. Defendants appear in Court 1 via a number of ways. They may appear in custody due to either the seriousness of the offence or due to past instances of failing to honour bail undertakings. Defendants also appear in compliance with their bail undertaking (entered into generally 14 days beforehand when they were arrested) and after receiving a Summons or a notice to appear under the *Police Powers and Responsibilities Act*.

Applications for adjournments from the arrest court are heard in Court 3 between 9.00 and 9.30am. Court 3 also hosts the Video-link facility enabling court to be conducted via a direct link with the Arthur Gorrie Correctional Centre, thereby reducing both the transport and staffing costs of the Correctional facility. It also removes the risk of attempted escapes. It is envisaged that future uses of this facility will be widened throughout other correctional facilities.

Court 1 commences to hear pleas of guilty/not guilty at 9.30am. Lengthy pleas of guilty (those taking in excess of 20 minutes) can either be heard on the same day in Court 5 at 2.15pm or remanded to Court 5 on any Tuesday – Friday at 9.30am.

The last Thursday of each month is a general callover of all summary matters that have been committed up to a higher Court in conjunction with more serious indictable offences. Often these offences are dealt

with by the judge (under s.651 of the Criminal Code) and the prosecution offers no evidence on the return date. To assist defendants, duty lawyers are present on each day of court to assist with pleas of guilty and remands. The arrest courts also have the assistance of a Major from the Salvation Army, Community Corrections and Mental Health.

Pleas of not guilty result in the matter being remanded to Court 5 for hearing but only after the defendants legal representation or the unrepresented defendant has perused the QP9's.

Court 5, situated on the 1st floor of 179 North Quay, becomes the daily callover court of criminal hearings for both summary trials and committal hearings. It allocates trials and hearings to other courts and deals with the pleas of guilty, requests for adjournments and hand up committals. Court 5 also has a daily duty lawyer to assist with pleas of guilty and remands. The Legal Aid office fund a percentage of defended hearings in Magistrates Courts.

In July 1995 a Committal Project was established to expedite the committal process in the Brisbane Central Courts (Magistrates Court) and Ipswich Magistrates court. It allows for the Crown Prosecution, replacing the Police Prosecutions, to be responsible for the prosecution of all committal proceedings from the early stages. The involvement of the Crown at this early stage also allows for charges to be withdrawn/netod where prosecution evidence may not reach the threshold of proving guilt beyond a reasonable doubt. Previously, the Crown only became involved in these matters after the Magistrates Court committal proceedings and any withdrawal of charges or substitution of lesser charges then occurred. The project streamlines the preparation of committal proceedings through early mention dates and in turn enables problems such as briefs not being supplied to defendants, to be ironed out early in the process. Committal mentions are heard in Court 5 on each Monday and Committal hearings are heard throughout the week from Court 5.

Committal proceedings are necessary for indictable offences carrying a penalty of 3 years or above (outside the jurisdiction of magistrates court). At the end of the proceeding a Stipendiary Magistrate will decide if there is enough evidence so that a properly instructed jury may find the defendant guilty, if so he/she will commit the defendant to stand trial in either the District or the Supreme Court depending on the offence committed. S.552A of the *Criminal Code* allow for some indictable offences to be dealt with summarily with the election of the prosecution. S.552B requires the defendant's consent not be tried before a jury and covers offences such as fraud where the value is not more than \$5,000.00 or stealing offences with a value under \$1,000.00.

Court No.2 deals with drink driving and disqualified driving related offences on a daily basis.

Defendants applying for a work licence are remanded to a future date in Court 14. The adjournment allows the defendants sufficient time to organise evidence for their application.

A general traffic callover is held in Court 14 on Tuesdays. This court deals with traffic matters such as speeding, due care and attention and parking offences. Contested hearings are remanded to a future date in Court 15.

Provisional Licences

A significant number of matters coming before the traffic courts relate to applications for licences.

Applications can be made under S.29 of the *Transport Operations (Road Use Management – Driver Licensing) Regulation 1999* to set aside a cancellation resulting from the accrual of demerit points.

Applications are also made under S.87 of the *Transport Operations (Road Use Management) Act 1995* for a restricted licence following a conviction for driving whilst under the influence of liquor or a drug. If successful, the drivers licence is restricted to specified circumstances directly connected with the applicant's means of earning the applicant's livelihood. The applicant may, as is often the case, be legally represented.

In sentencing offenders, Magistrates follow the 'Sentencing Guidelines' set out in S.9 of the Penalties and Sentences Act. Types of penalties include: -

Fines (S.45 P&SA)

Fines Option Orders (S.57 P&SA)

Probation/Community Service (S.91/101 P&SA)

Recognisances with conditions that the offender be of good behaviour (S.19 P&SA)

Intensive Correction Orders (S.112)

Imprisonment (S.153 P&SA)

Suspended Imprisonment (S.144 P&SA)

And may include orders for Restitution and Compensation under (S.35 of the P&SA)

Court 15 on Wednesdays hears and determines breaches of Fine Option Orders, Probation and Community Service.

Civil

Magistrates also hear and determine civil cases. Civil matters have a monetary jurisdiction of \$50,000.00 in respect of a specific amount of money or damages including personal injuries, defamation, goods sold and delivered, work done, damages or negligence. Solicitors are able to represent both parties, but parties may also act for themselves.

All actions are to be commenced in the correct Magistrates Court jurisdiction. An action may be commenced in a district where:

- a). A defendant resides or carries on business;
- b). All or part of the claim or cause of action arose; or
- c). An agreement by the defendant, in writing, to pay the debt at a particular place.

A **Minor Debt Claim** is an alternative to a Claim, however, the maximum jurisdiction is \$7,500.00.

Minor Debt Claims apply only to liquidated demands, ie. fixed amounts, where there is a dispute over payment of an amount of money. Solicitors may prepare the documentation, however, they are generally not able to appear on behalf of the parties.

Small Claims are concerned with disputes between consumers and traders, damages to property by a motor vehicle, dividing fence disputes (before the fence has been erected), residential tenancy disputes and mobile homes. The maximum jurisdiction is \$5000.00 (increasing to \$7500.00 on 2nd May 2000).

Chambers

Regularly there arise occasions in which a party will make an application to a Magistrate in Chambers for a court order to assist in the progression of their matter. These applications are heard at 9.00am by all available Magistrates and range from application to set aside judgments to applications for substituted service orders. Applications taking in excess of 30 minutes are listed for 2.15pm on Mondays, Wednesdays and Fridays.

The recently introduced *Uniform Civil Procedure Rules* allow for matters to be referred by a court order to an ADR process. A Practice Direction has been issued requiring all civil trials of 2 or more day's duration must be referred to ADR mediation. Some of the benefits of mediation are a reduction in costs and the ability of parties to come to their own resolution as opposed to a resolution forced upon them by a Court order. In both our Small Claims and Minor Debts there is a process in place whereby mediation is offered to parties, before court, on the day of their hearing. This process is offered by the Dispute Resolution Centre, is free of charge and results so far are encouraging.

COURT PROTOCOL

Presiding over the court is a Stipendiary Magistrate. Magistrates are to be referred to as 'Your Worship'. If a Magistrate is not available (as may be the case in remote areas of Queensland) two justices of the peace handle the proceedings. Accompanying the Magistrate will be a 'Depositions Clerk'. They perform the functions of recording proceedings and preparing the necessary paperwork such as Remand Warrants and Bail Undertakings.

In Criminal cases there is a police prosecutor (or a representative of Crown Prosecutions in committal proceedings in Brisbane and Ipswich) and a Defendant. The Defendant may be represented by a solicitor or a barrister or may wish to conduct his or her own defence. The Magistrate will explain the court process and purpose to unrepresented defendants and respond to any requests for clarification of the court process during the hearing.

In Domestic Violence Applications a Police Prosecutor will generally represent the aggrieved person however, they may represent themselves or have legal representation, including Legal Aid. A support worker may also be seated in the court to provide assistance to the aggrieved if so required. Domestic Violence applications are heard in a closed court.

Generally Magistrates Courts are open to the public to attend. Small Claims, Minor Debt Claims, Children's Court and other matters involving minors giving evidence are not open to the public. Evidence from minors involved in proceedings, normally of a sexual nature, can be obtained via a number of means. S.21A of the *Evidence Act* authorises a Magistrate to exclude a defendant from the courtroom or alternatively obscure the child view of the defendant through the use of screens. The Magistrate may also exclude all persons from the Court or allow the child to give evidence via a monitor located in a room separated from the court. This reduces the possible trauma for children facing cross examination in these matters.

Media are allowed in the Courtroom but are unable to take photographs or film proceedings. You will often see Artists impressions of defendants or other participants in Newspapers.

When addressing Magistrates or examining witness, as a member of the legal profession you are generally required to stand. As professionals you are expected to behave in a manner reflective of that position in court. Mobile phones are to be switched off as a matter of courtesy to the court and I am positive that, for the rest of your career, **one** reminder from a Magistrate will be more than sufficient. The use of taping equipment, apart from the court recording equipment is also not allowed. Proper attire, expected of a professional is also required for appearances in court. Occasions may arise when you are not dressed to this standard and I would recommend an apology to the court before anything else. Upon entering and leaving the court you are expected to bow.

The Magistrates Court, in comparison, is slightly less formal than the higher courts. We do not have court bailiffs, stenographers or juries.

Industrial Magistrates Court

There are matters that are dealt with by the Industrial Magistrate in Chambers. These are applications by aged and/or infirm workers to be exempt from the award wage, applications for exemption from membership of an industrial organisation on conscientious grounds (eg teachers at non-government schools who assert that they teach there because of religious convictions) and applications for Private Employment Agency Licences.

Matters that are heard in the Industrial Magistrates Court include:

Prosecutions under the *Workplace Health & Safety Act* (eg failure to ensure a safe workplace);

Applications for the recovery of wages and prosecutions of employers who do not keep proper time and wages books;

Applications by workers disputing a Workcover Queensland decision to reject their application for compensation and prosecutions by Workcover Queensland of persons suspected of fraud in their applications;

Commonwealth Matters

Taxation Office prosecutions of persons who fail to lodge their annual returns;

Commonwealth Prosecutions of Customs Act breaches, Social Security Breaches, Crimes Act breaches and international Extradition Matters.

These matters are dealt with initially by way of regular callovers whereby matters proceed either by adjournment, plea or ex-parte. Defended matters are then dealt with by way of summary trial or committal proceedings (depending on breach and seriousness). Committals are sent to Court 5 and summary trials are heard before an Industrial Magistrate.

Family Law

Our jurisdiction of Family Law matters include applications for maintenance that fall outside the Child Support Agency guidelines, confirmation of provisional orders from overseas, Applications for Declarations of paternity (DNA tests) and the enforcement of current orders (garnishing wages).

Our Family Court jurisdiction will soon be enhanced with Family Court matters being dealt with by specialist Family Law Magistrates in some centres. Should parties choose, by consent, to apply to the Magistrates Court in relation to applications for residence, contact or property (with a limit of

\$20,000.00) they will enjoy the benefits of a significant reduction in both the current costs and time delays sometimes encountered in the Family Court.

Peace and Good Behaviour Orders

Magistrates also make orders that one party must keep the peace and be of good behaviour towards an applicant after they have been satisfied that threats have been made to either do bodily injury or procure another to do bodily injury to the applicant or destroy or damage or procure one to destroy or damage property of the applicant in relation to Peace and Good Behaviour matters.

Domestic Violence

Magistrates frequently deal with applications for both temporary and permanent Domestic Violence Orders, urgent applications and applications to vary or revoke existing orders. These are heard in Court 10 throughout the week. Magistrates may grant temporary orders on the first mention date to protect the aggrieved until the hearing is finalised. A final Domestic Violence Order is then made if sufficient grounds have been proved.

In Brisbane we have a permanent Children's Court Magistrate to ensure consistency in sentencing juveniles. We also have a permanently appointed Coroner and a full time Referee for the Small Claims Tribunal. All Queensland Magistrates are Industrial Magistrates, Small Claim Referees, Coroners, Children's Court and Family Law Magistrates in addition to exercising their Civil and Criminal Jurisdiction.

Hints for representing defendant on pleas of guilty

You should be familiar with the sentencing guidelines and principles. Magistrate's arguments for heavy penalties that deter defendants under S.9(1) (c) of the P&SA can be rebutted through S9(1)(b) where courts should provide conditions that will help the offender be rehabilitated.

Advise that Magistrate if you believe a recorded conviction will affect your client's economic or social wellbeing or chances of obtaining employment and supply reasons to support your argument.

Ensure you mention the defendant's early plea and any co-operation your client gave to police.

Remember to ask your client how long it would take them to pay any fine. Experience will allow you to have a fairly good idea of expected penalties. Your client will also have the option of applying for a Fine Option Order if they satisfy the court as outlined in S.57 of the P&SA.

Mitigating circumstances such as the events leading up to the commission of the offence or the Defendants unfortunate background that has resulted in his appearance before the court should be mentioned in mitigation of penalty.

Pay attention to the Criminal History of your defendant and note relevant penalties. Low penalties may support your client's advice that the Magistrate viewed the previous offence lightly.

I invite any questions on the procedures and protocol of the Courts or any general questions you may have.

THIS IS NOT AN EXTENSIVE LIST OF ALL ACTS UTILISED BY STIPENDIARY MAGISTRATES

ACTS INTERPRETATION ACT 1954(R10)
 BAIL ACT 1980 (R3)
 CHILD PROTECTION ACT 199910/99
 CLASSIFICATION OF PUBLICATIONS ACT 1991(R3)
 CORONERS ACT 1958 (R3)
 CORRECTIVE SERVICES ACT 1988 (R4)
 CRIMES (CONFISCATION) ACT 1989 (R3)
 CRIMES (CONFISCATION) REGULATION 1996 (R2)
 CRIMINAL PRACTICE RULES (R1)
 DIVIDING FENCES ACT 1953(R1)
 DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989 (R2)
 DRUGS MISUSE ACT 1986 (R4)
 DRUGS MISUSE REGULATION 1987 (R3)
 EVIDENCE ACT 1977(R4)
 FOOD ACT 1981 (R3)
 FOOD STANDARDS REGULATION 1994 (R2)
 INDUSTRIAL ORGANISATIONS ACT 1997 (R1)
 INDUSTRIAL RELATIONS ACT 1990 (R3)
 INDUSTRIAL RELATIONS ACT 1999 (R1)
 INDUSTRIAL RELATIONS REGULATION (R1)
 INDUSTRIAL RELATIONS REGULATION 1990 (R2)
 INDUSTRIAL COURT RULES 1990(R1)
 JUSTICES ACT 1886(R5)
 JUSTICES REGULATION 1993 (R6)
 JUSTICES (FEES) REGULATION 1992 (R1)
 JUVENILE JUSTICE ACT 1992 (R5)
 JUVENILE JUSTICE REGULATION 1993 (R3)
 LIQUOR ACT 1992 (R5)
 LIQUOR REGULATION 1992 (R6)
 MAGISTRATES COURT ACT 1921 (R2)
 MENTAL HEALTH ACT 1974 (R2)
 MENTAL HEALTH REGULATION 1985 (R2)
 MOTOR VEHICLES SAFETY ACT 1980 (R2)
 MOTOR VEHICLES SAFETY REGULATION 1994 (R2)
 PAWNBROKERS ACT 1984 (R1)
 PAWNBROKERS REGULATION 1994 (R4)
 PEACE AND GOOD BEHAVIOUR ACT
 PENALTIES AND SENTENCES ACT 1992 (R5)
 POLICE POWERS AND RESPONSIBILITIES ACT 1997 (R1)
 POLICE POWERS AND RESPONSIBILITIES REGULATION 1998 (R1)
 POLICE SERVICE ADMINISTRATION ACT 1990 (R2)
 PROPERTY LAW ACT 1974 (R5)
 PROPERTY LAW REGULATION (R.2.) *
 REGULATORY OFFENCES ACT 1985 (R1)

RENTAL BOND ACT 1989 (R1)
 RENTAL BOND REGULATION 1992 (R2)
 RESIDENTIAL TENANCIES ACT 1994 (R4)
 RESIDENTIAL TENANCIES REGULATION 1995 (R3)
 SECOND-HAND DEALERS AND COLLECTORS ACT 1984 (R2)
 SECOND-HAND DEALERS AND COLLECTORS REGULATION 1994 (R5)
 SMALL CLAIMS TRIBUNAL ACT 1973 (R3)
 SMALL CLAIMS TRIBUNAL REGULATION 1993(R1)
 TRAFFIC ACT 1949(R4)
 TRAFFIC REGULATION 1962 (R3)
 TRANSPORT INFRASTRUCTURE ACT 1994 (R7)
 TRANSPORT INFRASTRUCTURE (RAIL) REGULATION 1996 (R1)
 TRANSPORT INFRASTRUCTURE REGULATION 1995 (R1)
 TRANSPORT INFRASTRUCTURE (PORTS) REGULATION 1994 (R2)
 TRANSPORT INFRASTRUCTURE (ROADS) ACT 1991 (R3)
 TRANSPORT INFRASTRUCTURE (ROADS) REGULATION 1991 (R8)
 TRANSPORT INFRASTRUCTURE (STATE-CONTROLLED ROADS) REGULATION 1994 (R1)
 TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995 (R3)
 TRANSPORT OPERATIONS (ROAD USE MANAGEMENT – DRIVER LICENSING) REGULATION 1999
 TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) REGULATION 1995 (R2)
 TRANSPORT OPERATIONS (ROAD USE MANAGEMENT- DANGEROUS GOODS) REGULATION 1998 (R1)
 TRANSPORT OPERATIONS (ROAD USE MANAGEMENT- FATIGUE MANAGEMENT) REGULATION 1998 (R1)
 UNIFORM CIVIL RULES (R1)
 VAGRANTS GAMING AND OTHER OFFENCES ACT 1931 (R1)
 WEAPONS ACT 1990 (R3)
 WEAPONS CATEGORIES REGULATION 1997 (R1)
 WEAPONS REGULATION 1996 (R2)
 WORK COVER QUEENSLAND ACT 1996
 WORK COVER QUEENSLAND REGULATION 1997 (R2)
 WORKERS' COMPENSATION ACT 1990 (R4)
 WORKERS' COMPENSATION REGULATION 1992 (R4)
 WORKPLACE RELATIONS ACT 1997 (R1)
 WORKPLACE RELATIONS REGULATION 1997 (R2)

COMMONWEALTH ACTS

CRIMES ACT 1914 (R7)

Ms Fingleton,

Location is the Mercure Hotel.

Your session is from 10.00am - 11.15am on Saturday 19th February 2000.

Arrive at reception approx. 9.45am, they will direct you to the appropriate room.

You will need to park at 179 North Quay as there is no parking available.

Copies of the paper have already been supplied to CLE.

Good Luck.

Jason.