THE PUBLIC SOLICITOR'S OFFICE

DUTY LAWYER HANDBOOK

2012

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Cover Artwork by Nigel Galo

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Introduction

The purpose of this Handbook is to assist Public Solicitor Office lawyers, especially graduates, who attend the criminal jurisdiction of the Magistrate's Court as duty lawyer. It does not contain an exhaustive list of the relevant law. There is very little legislation or case law. Rather, the Handbook is a step by step guide to practical considerations that may arise whilst working as a duty lawyer.

The advice in this Handbook should be read as a starting point only, not as a complete answer to any difficult situation. If you are unsure of how to approach a specific situation, you should always seek advice from other lawyers, especially more experienced lawyers.

This Handbook should be read in conjunction with the Office Procedures Manual, Mr Robert Cavanagh's book 'Evidence Law and Advocacy in the Solomon Islands', the Solomon Islands Magistrates Bench Book and the 'Grey Book'. These can all be found on the Public Solicitor's Office website www.pso.gov.sb . Be aware that laws and procedures change over time, and that the information from any of these sources should be checked, particularly as time goes by and the works become dated.

Robert Cavanagh's book, in particular, is an excellent treatment of criminal law in the Solomon Islands. Duty lawyers should carry and read his book. The topics dealt with in this handbook are dealt with in much more detail in his work, and we suggest that duty lawyers take his book with them to court and use any waiting time in the court to read it.

The authors acknowledge the assistance of the Duty Lawyer Manuals of the NSW Legal Aid Commission and Queensland Legal Aid Commission. We also are grateful for the contributions of Anderson Kesaka, Kylie Anderson, Robert Cavanagh, Roslyn Cook, Solomon Kalu, Philippa Spence, Lisa Butson and Mr Douglas Hou, the Public Solicitor. We are particularly grateful to Louise Hiele of Save the Children who wrote the chapter on Juveniles and Principal Magistrate Judith Fleming for her very helpful comments.

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7 November 2012

Chapter 1

Who are We and What do we Do?

The Public Solicitor and the Public Solicitor's Office are public offices established pursuant to Section 92 of the *Constitution* of Solomon Islands, which states:

> **Public Solicitor**
>
> 92 (1) There shall be a Public Solicitor, whose office shall be a public office.
> …
>
> (4) The functions of the Public Solicitor are to provide legal aid, advice and assistance to persons in need in such circumstances and subject to such conditions as may be prescribed by Parliament, and in particular-
>
> (a) to provide legal aid, advice and assistance to any person in need who has been charged with a criminal offence; and
>
> (b) to provide legal aid, advice and assistance to any person when directed to do so by the High Court.
>
> (5) A person aggrieved by a refusal of the Public Solicitor to provide legal aid, advice and assistance to him may apply to the High Court for a direction under paragraph (b) of the preceding subsection.
>
> (6) Parliament may make provision for the Public Solicitor to make a reasonable charge for services provided by him to persons in need whom he considers are able to make a contribution towards the cost of those services.
>
> (7) Except as provided in paragraph (b) of subsection (4) of this section, in the exercise of the functions conferred on him by or under this section **the Public Solicitor shall not be subject to the direction or control of any other person or authority. (**Emphasis added)

Legal Officers and administration staff are public officers pursuant to the *Constitution* of Solomon Islands. Sections 93–95 of the *Constitution* therefore apply to all staff of the Office.

Who does the Public Solicitor's Office Represent?

The *Public Solicitors Act* (Cap 30) provides the legislative framework for grants of legal aid and assistance. Lawyers should be aware of the **Means and Merits Test** and be ready to apply this

test to prospective clients. A **guide as to who the Public Solicitor's Office will represent** at Central Magistrate's Court can be found at the end of this Chapter.

Questions or concerns about whether or not to act for a person should be relayed to the Chief Legal Officer in the Criminal Section in the first instance, and if he or she is not available, to the Public Solicitor.

If a person does not qualify for legal representation you may be able to assist them by providing legal advice, referring them to a private lawyer, or giving them a copy of one of the many Public Solicitor's Office brochures.

Annual Report

Each year the Office submits its annual report to the Ministry. The report is tabled in Parliament. A copy of the Office's Annual Report is in the library.

Website

The Public Solicitor's Office website was formally launched in October 2011. It can be viewed at www.pso.gov.sb.

Structure

All staff work under the supervision and direction of the Public Solicitor.

At present, there is a Criminal Unit, a Family Protection Unit (FPU) and the Landowners Advocacy and Legal Support Unit (LALSU). It is anticipated that each unit will be supervised by a Chief Legal Officer.

Lawyers in the Criminal Unit provide legal advice and representation primarily in the High Court and Court of Appeal, during circuit courts, holding legal clinics and providing a duty lawyer service at Central Magistrate's Court.

Currently the Public Solicitor's Office has regional offices in Gizo (1 lawyer), Auki (2 lawyers) and Lata (1 lawyer). Lawyers are deployed to circuit courts as required.

When appearing as a lawyer in court, you should keep in mind the vision, mission, values and core activities of the Public Solicitor's Office.

Our Vision

To provide a wide range of accessible quality legal services to the disadvantaged people of the Solomon Islands for the benefit of all the peoples of the Solomon Islands.

Our Mission

To defend the rights of the disadvantaged peoples of the Solomon Islands by providing professional and accessible legal services in an open, efficient and accountable way.

Our Values

The Public Solicitor's Office values are:

Integrity	We perform our functions ethically and with dignity and honesty.
Independence	We act in the interests of justice and in the defence of the rights of our clients without fear or favour.
Responsive and Proactive	We understand the needs of our client community.
Professionalism	We are committed professionals and we are aware of the responsibilities, duties and standards of our profession
Respect	We are sensitive to the cultural diversity of our people, our clients and our community.
Excellence	We are diligent, committed, reliable and innovative in everything we do.

Our Core Activities

Provide Legal Aid to Members of the Public	▪ Provide legal aid, advice and assistance to people in need in criminal and civil matters including land, family and other legal services ▪ Provide legal aid, advice and assistance to Provincial Centres ▪ Conduct appeals to the Court of Appeal of Solomon Islands and High Court Solomon Islands
Promotion and Protection of Rights	▪ Promote the freedoms and rights of individuals as guaranteed by the *Constitution* and applicable domestic and international law ▪ Conduct community education awareness to inform and educate the public about their rights and their responsibilities as citizens.
Contribute to Updating of the Laws of the Solomon Islands	▪ Promote the development of law and law reform through appeals and the challenge of administrative decisions by way of the Ombudsman and Judicial Review and make submissions and comment on matters of law reform.
Maintain and Develop Professional Standards and Capacity	▪ Provide training opportunities to all staff to improve their skills ▪ Recruit and train staff to perform and support the performance of these activities.

Chapter 2

Who Does the Duty Lawyer Represent?

Who Does the Duty Lawyer Represent?

On 25 September 2012 the Public Solicitor issued the following policy in relation to the provision of duty lawyer services at the Central Magistrate's Court. Please apply the policy whenever providing duty lawyer services at the Central Magistrate's Court.

THE PUBLIC SOLICITOR'S OFFICE

LEGAL AID SERVICES TO THE CENTRAL MAGISTRATE'S COURT

UPDATE 25 September 2012

The Public Solicitor's Office continues to be faced with an increase in demand for services while facing a reduction in staff able to provide those services.

The increased demand includes the appointment of a third judge to deal with the criminal list, an instruction to increase services to the provinces, to open an office in Lata and a direction that as of 1 November 2012 advisers within the office are not to manage files. In order to comply with these directions we must reduce the services we provide at Central Magistrate's Court. We are therefore faced with no option but to prioritize our services, with absolute priority given to matters which will go to trial or sentence in the High Court. Therefore, apart from matters which are currently listed, we will from today only be able to provide the following services at the Central Magistrate's Court:

Criminal Matters

1. Preparation and distribution of materials which can be used by Corrections staff to assist any person in custody to present a written application for bail and materials which can be used by any literate accused person, or an illiterate person with assistance, to prepare a written submission in support of mitigation of sentence;

2. Daily attendance by one graduate lawyer to assist any accused person in custody with making an initial bail application, but ongoing representation only in the circumstances set out below;

3. On-going representation in cases at Central Magistrate's Court including sentence submission and/ or trial (subject to merit and to a total maximum of one trial per week) for any juvenile or person with a significant difficulty charged with an offence with a reasonable prospect upon conviction of receiving a sentence of imprisonment;

4. Attendance on request to persons remanded in custody, for advice and assessment of qualification for aid subject to these guidelines;

5. Representation to all those who require it, in matters which will proceed to the High Court (for either trial or sentence). Unless justified, this will usually be by grant of aid for a short form inquiry only;

6. A criminal clinic on Thursday afternoon each week, to provide advice but not ongoing representation, in any criminal matter;

7. Attendance on all tours to Provincial magistrate's courts up to 1 tour in any 1 week; and

8. As directed by the High Court.

Civil Matters

1. Preparation and distribution of materials which can be used by applicants in civil matters on a broad range of civil matters including money claims;

2. Daily attendance if required by one graduate lawyer to assist any person seeking protection from violence, in matrimonial matters and matters relating to the welfare of children but not in other matters such as money claims;

3. On-going representation to persons seeking protection from violence, in matrimonial matters and matters relating to the welfare of children but not in other matters such as money claims;

4. A civil clinic on Tuesday, and family law clinics on Wednesday and Thursday each week (all clinics by appointment only), to provide advice but not ongoing representation, in any civil or family matter; and

5. As directed by the High Court.

Please do not hesitate to contact me should you have any queries or concerns over our services.

Mr Douglas Hou
The Public Solicitor
25 September 2012

Chapter 3

File Management

The purpose of file management is to ensure that clients are provided with the best possible service and that legal practitioners meet their professional obligations to clients, fellow legal practitioners, the courts and the Public Solicitor.

This file management guide is a short guide to the management of criminal files.

The Public Solicitor's Office criminal file management system consists of two systems - a physical file and an electronic database. A file must be opened for all matters conducted on behalf of the Public Solicitor by legal practitioners of the office. Files should be opened for all new clients, all new matters for existing clients and all new matters for previous clients. For example, if a legal practitioner appears in a sentencing matter and is then instructed to file an appeal, a file should have been opened for the sentence matter and a separate file should then be opened for the appeal matter. This ensures that all work performed is recorded on the database and can be accurately reported in our annual report. Similarly, if instructions are given by several co-accused in a matter, a separate file should be opened for each accused person.

"File" in this document means the physical, paper based file. A file should relate to one client and one matter and should contain the following:

- A cover sheet which records client name, file number, allocated solicitor, trial dates, past dates, next dates, appearing counsel and bail status OR a 'short contact' sheet for short matters or advice only matters.
- An intake sheet which records personal information about the client including their full name, contact details, sex, mental health status and so on, the offence name and the broad category of offence.
- A court results form which records court date, name of the judicial officer, prosecutor and defence counsel, bail status, next court date and other results.
- A file closing sheet which records the outcome of the matter at the end of the case.
- A committal sheet which records the outcome of both long form preliminary inquiries and short form preliminary inquiries.
- Other documents and papers which are punched and inserted onto the file pin, clipped to the file cover or placed in an envelope which is punched and placed on the file pin (e.g. original documents and photographs).

If a client has several different charges, one file should include all charges that would be expected to be contained in single Information and heard in a single trial. All other charges should be contained in separate files.

Files are kept intact by hole punching all paper to be inserted in the file and putting it on a file pin or clipping it to the file. If the file contains a document which should not be punched, such as photographs or original documents such as a birth certificate, it is best to clip the document onto the file, use a plastic sleeve or place the documents in an envelope which is punched and placed on the file pin. A good test of a whether a file is in order is to turn the file upside down and see if any loose paper comes out. If any papers fall out, the file is not in good order.

All papers inserted into a file should be placed in reverse chronological order, so that the history of the case can be quickly and accurately determined.

All activities relating to the file should be recorded and be placed on the file. These activities may include:

- All telephone calls made and received (including date, time, names of parties etc)
- All conferences with the client, witnesses, prosecution etc (including date, time, names of those present etc)
- A court result should recorded for every court appearance including the name of the Judge or magistrate, prosecuting counsel, defence counsel, date, whether the client was present, whether the client is on bail or has been remanded in custody, notes of all arguments, rulings, judgements etc
- A signed proof of evidence from the client (if the matter is expected to go to trial)
- A signed instruction to plead guilty (if required)
- Copies of all documents created for the case including submissions, bail applications, stay applications etc
- All correspondence including a print out of all emails and a copy of all letters (all letters and emails sent out from the Public Solicitor's Office should include the file number, as this is the easiest way of locating files)

- All changes in counsel handling the file should be recorded on the front cover sheet, along with the date of change of counsel. This will assist in locating the responsible counsel, should there be any queries about the matter

- A pre-trial conference check-list

After court, the file (with updated cover sheet, new court result sheet etc) should be placed in the file up-date tray, so that it can be recorded. The file up date tray is located in the office of the Chief Legal Officer of the criminal section. After being processed, the file will then be placed in the allocated legal practitioner's pigeon hole.

Public Folder

Accessing the public folder is an essential skill of a Public Solicitor's Office lawyer. Go to "my computer" and then open the public folder. The public folder contains submissions on law and sentence, precedents, forms, rosters and other helpful materials.

Database

The "electronic client database" is a short record of all files held by this office. The database is accessible by all legal practitioners. It includes:

- The client's name and personal details as per the intake sheet, including whether they were under the age of 18 at the time of alleged offence;

- The allocated legal practitioner;

- Appearance dates; and

- Outcomes

Legal practitioners are most likely to use the client database to search for past files relating to their clients, or to determine who is acting for a particular client (for example, if disclosure is handed to them but they are not told who the responsible legal practitioner is). Legal practitioners should not update the database themselves.

To use the database, you will require a username and password. It is important that you accurately and comprehensively record all important information on the physical copy of the file so that the database can be kept up to date.

FILE MANAGEMENT CHECKLIST

1. When you first appear for a client, open a file. If you start a file you should appear on that file until it is closed or transferred to another counsel.

2. Open the file as soon as instructions are received from the client. Record personal details (telephone number or other contact method if possible). Put the next court date on the file OR use a 'short contact' sheet if the matter is intended to be short (e.g. a single court appearance on tour, for a plea of guilty) or is advice only.

3. Write to the prosecution office immediately and request disclosure. See the example letter below. Keep a hard copy of the letter, along with all other correspondence and file notes, on the file.

4. Keep all relevant material pinned on the file in reverse chronological order. This includes the charge sheet, brief facts, correspondence, memos, notes, emails, submissions and other documents filed with the court.

5. Enter court dates on the file cover and in your personal diary. Record the trial date on the front of the file and make sure it is entered in the public folder criminal roster.

6. Take your diary to court and be aware of your unavailable dates. If a duty lawyer is appearing on your behalf, advise them of your unavailable dates.

7. Print all emails and keep them on the file. Make file notes and keep them on the file.

8. Record the results of each court appearance.

9. After each court appearance place the file in the tray in Chief Legal Officer's office.

10. When the case is finished, record the results and orders and place a copy on file and in the Magistrate's Court Result folder. Save a copy on the public folder under "Sentence Results". Place the file in closed file tray.

11. For clients with multiple charges, open a separate file for each separate set of charges.

12. For matters with more than one accused, open a separate file for each co-accused.

13. If a warrant is issued, hold the file for a short time. If the client does not return within a week or two, close the file. When the client is arrested, open a new file, retrieve the old file and keep them together.

14. Keep your desk tidy. If you have finished with a file put away rather than leaving it on your desk. It is much easier to track files and keep in control if your desk is tidy.

15. Use your filing cabinets. For Magistrate's Court files it is best to put the day of the month (1 to 31) on the top of the drop folders. It makes it easier for you and others to keep track of your commitments. It is also usually easier to separate those files which have been committed to the High Court from those within the jurisdiction or still within the jurisdiction of the Magistrate's Court. High Court files usually easiest kept in alphabetical order.

16. All court commitments should be entered in your personal diary and cross checked with the electronic roster.

17. Attendance: 8 am is start time. Starting on time will give you time to prepare for court.

18. Be familiar with the most common legislation (along with subsidiary legislation) used in Magistrate's Courts. This should include reading and being familiar with <u>at least</u> the following legislation:

    The Constitution;

    Correctional Services Act 2007;

    Court of Appeal Act (Cap 6) (amended 1987);

    Criminal Procedure Code (Cap 7) (amended 2009);

    Dangerous Drugs Act (Cap 98);

    Death and Fire Inquiries Act (Cap 9);

    Evidence Act 2009;

    Firearms and Ammunition Act (Cap 80) (amended 2000);

    Fisheries Act 1998 (as amended);

    Interpretation and General Provisions Act (Cap 85) (as amended);

Juvenile Offenders Act (Cap 14);

Liquor Act (Cap 144);

Local Courts Act (Cap 19);

Magistrates' Courts (Amendment) Act 2007;

Magistrates' Courts Act (Cap 3);

Money Laundering and Proceeds of Crime Act 2002 (amended 2004 and 2010);

Motor Vehicles (Third Party Insurance) Act (Cap 83);

Penal Code (Cap 26);

Penalties Miscellaneous Amendments Act 2009;

Probation of Offenders Act (Cap 28);

Traffic Act (Cap 131); and

Traffic Regulations (Cap 131).

(SAMPLE LETTER SEEKING DISCLOSURES)

Date Our Ref: (PSO file number)

The Officer in Charge
Police Prosecution Directorate
Mention Team

Dear Sir/Madam,

R v_____

I refer to the above matter and confirm that this office acts on behalf of the defendant.

He is to appear in the Central Magistrates Court on _____.

Could you please provide us with a copy of the prosecution brief in relation to this matter at your earliest convenience?

If you require any further information in relation to this matter please contact me on 28406 or email me on _____.

Yours faithfully,

Name of Lawyer
For Mr Douglas Hou
The Public Solicitor

Chapter 4

The Lawyer Client Relationship

The relationship between lawyer and client in criminal matters is governed by the *Legal Practitioners Act*, *Legal Practitioner (Professional Conduct) Rules*, *Public Solicitor's Act* and the unwritten rules of professional practice[1].

A legal practitioner must act honestly, fairly, and with competence and diligence in the service of a client. As a criminal defence lawyer your obligations include taking instructions and giving advice, as well as the preparation and conduct of the hearing of the matter to its conclusion or to the termination of the grant of legal aid. Your client must be advised fairly and honestly about any defence that may be available.

Your client provides instructions. You act on their instructions. A client does not act on instructions from their lawyer.

Once you accept instructions to act in a criminal matter your client has a right to expect that you will provide frank legal advice and conduct their matter lawfully, efficiently, and competently while protecting and advancing their interests to the exclusion of all other interests. The duty owed to your client is fiduciary, that is, of the highest order of trust. The only higher duty you owe is your duty to the Court. You should always explain this to your client.

Confidentiality

Tell your client that information provided to you is confidential. Rule 10 of the *Legal Practitioner Rules* clearly reinforces the confidential nature of a lawyer client relationship. The Rule states:

> 10 (1) A legal practitioner shall at all times strive to establish and maintain a relationship of trust and confidence with his client.
>
> (2) A legal practitioner shall impress upon his client that he cannot serve him adequately without knowing all facts that may be relevant to the client's case and that the client should not withhold information which the client might think is embarrassing or harmful to his interests.

[1] Parts of this Chapter have been extracted from the NSW Legal Aid Commission Duty Lawyer Manual

(3) A legal practitioner shall not, without the consent of his client, directly or indirectly –

(a) reveal the client's confidence;

(b) use the client's confidence in any way detrimental to the interests of that client; or

(c) lend or reveal the contents of the papers in any brief, advice or instructions to any person,

except to the extent—

(i) required by law, rule of court or court order, provided that where there are reasonable grounds for questioning the validity of the law, rule or order he shall first take all reasonable steps to test the validity of the same; or

(ii) necessary for replying to or defending any charge or complaint of criminal or unprofessional conduct or professional misconduct brought against him or his partners, associates or employees.

Managing Client Expectations

When you first meet your client you should explain that you work for the Public Solicitor's Office. You should explain that your services are free of charge.

Your job is to advise, take instructions, and conduct the defence role in the criminal proceedings to the best of your knowledge, skill, and experience. You are not there to invent or provide a defence nor to "get your client off" the criminal charges. Your duty is to provide legal advice and representation and you are not to suggest instructions or make decisions for your client about how to plead, or whether to apply for bail and so on. Your client makes these decisions about the case, as it is their case.

You will need to explain to your client that your highest duty is to the court and that you will not do anything that is dishonest, improper, or unlawful in the conduct of your client's case. For example, you cannot encourage your client to breach bail or not come to court.

Each time you see your client is an opportunity to clearly outline the next stage involved in the proceedings. It is just as important for your client to understand the process of court as it is to understand the outcome.

Tell your client that you may not be the only lawyer who will handle the matter in its entirety. Explain that whilst you have carriage of the matter and are responsible for the file that duty lawyers may appear at mention dates on your behalf.

Do not make promises to clients that you cannot keep.

If you think the matter is too difficult or complex for your level of knowledge, skill, and experience then discuss this with your Chief Legal Officer.

Communication with Clients

Use plain language when you speak to clients. Be open to questions and look for clues that your client may not understand. Offer to provide copies of disclosures to your client.

The Client in Custody

While it is very difficult in the midst of a busy duty lawyer's practice to see clients in custody, you should try to do so whenever reasonably possible.

If you are not able to go and see your client at prison, send them a message or a letter. Assure your client that you are working on their case. Spend time with your client when they are at court and ask them what information they require from you. They may want copies of police documents, or for steps to be taken to secure evidence relevant to their defence, such as contacting witnesses or investigating an alibi. This will usually mean that you will see your client who is in custody in the court detention area both before and after their court appearance.

It is important that your client gets a copy of the brief of evidence. Some clients prefer not to have these documents in their cells because other inmates and prison officers may look at them, so before you provide your client with a copy make sure you ask your client first whether they want a copy of any of these documents. This is very important in sensitive offences such as the sexual assault of children.

The Client at Liberty

You should ask for a telephone contact of your client or a relative. You should also encourage them to make an appointment to see you at the office to provide instructions.

Vulnerable Clients

Some Public Solicitor's Office clients are more vulnerable than others. This may be because they are children, elderly, suffer from mental illness, mental disorders or intellectual disability, lack language or literacy skills or are unfamiliar with the legal system. It is important to identify these disadvantages and to address them. It may take longer to take instructions from vulnerable clients. You may require an interpreter. Sometimes a support person such as a close relative may be able to assist your client.

If your client has a disability or is a juvenile you should bring this to the immediate attention of the court. Your client has a right to understand the court proceedings and the court has an obligation to provide an interpreter if one is required.

Sentencing

As soon as possible look up the penalties for each offence with which your client is charged (note the jurisdictional limit of the Magistrate's Court will affect the sentence that can be imposed, and also note that the *Penalties Miscellaneous Amendments Act 2009* has amended the penalty for many offences) and write this on their file. Advise your client if the offence carries a possible prison sentence. If there is even a remote possibility of a prison sentence being imposed, tell your client.

Advise your client of the sentencing options open to the Magistrate. You can make an assessment of the probable type and length of a penalty. You can say something like "It is unlikely that you will be sent to prison for this, although that is possible. I think it is more likely you will be given a sentence such as [specify]. If you are given a sentence of full time imprisonment we can lodge an appeal and I can apply for bail for you." It is also worth explaining the obligations under each sentence that may be imposed and the impact of breaching a court order.

Summary Trials in the Magistrate's Court

Give your client a genuine assessment of their chances of succeeding at trial. You should not put 'pressure' on a client to plead guilty. Remember, it is the client's case and they decide whether to plead guilty or not guilty.

If the case against your client is strong or overwhelming, tell your client and explain the reasons why the case is strong. Your advice might include a summary of the evidence expected at trial. You should also explain the discount available for pleading guilty, and the option of "pleading guilty with an explanation". Sometimes a client just wants to explain their side of the story to the court. Such a situation does not necessarily warrant a trial.

An accused person may plead guilty to committing an offence but dispute some of the particular allegations that are relevant to sentence. In such a case there can be a plea of guilty and a disputed facts hearing, sometimes known as a *Newton* hearing from the case of *R v Newton* [1983] Crim LR 198. It is always useful to discuss the disputed facts with the prosecution before court, as the prosecution may agree to amend or delete the disputed facts (see also Chapter 17 Negotiation on Charges). The prosecution must prove any disputed fact beyond reasonable doubt. This can be a good basis to ask the prosecution to accept your client's version of the facts. As a defence lawyer, your negotiations on facts are bound by your client's instructions. The prosecutor is not bound by instructions in the same way – he or she has a duty to follow guidelines and this can include resolving cases where possible without the need for a trial or disputed facts hearing.

On the other hand, if you think your client has a chance of success at trial, tell them. Remind your client that this a reasonable prospect only and that there is, of course, a chance that they will be found guilty, and your client must be prepared for that possibility.

It is a good idea to explain that, although you are acting on instructions, decisions about *how* the trial is to be run, and the strategy and tactics made in the case, will mostly be yours, but subject to their consent. Explain the decisions you make during the case, and why you have made them.

Absence from Trial

A fundamental aspect to the lawyer client relationship is that you attend court as required. The obligation not to leave your client unrepresented during or immediately before a trial is very important.

Under Rule 17(6), a legal practitioner shall not absent himself or herself from a trial unless there are unforeseeable and exceptional circumstances, AND the client consents AND there is another practitioner who can take over the trial.

What if I Cannot Attend a Trial?

You should advise the Chief Legal Officer (or Criminal Unit supervisor or Practice Manager) as soon as you are aware that you will be absent. Together you can work out the most appropriate approach to take with respect to the trial. For simple matters, a reallocation to another lawyer on the day before mention or trial, or even on the morning of the mention or trial, may be possible.

Other times, especially in complex matters with clients on bail awaiting trial, it may be best to apply to vacate the trial and allocate it to a different date. It is best to put the prosecution and court on notice as early as possible in such circumstances. This might include contacting the court and requesting an early listing of the case so that the difficulty can be communicated to the court. For clients in custody on remand, the option of vacating the trial should be a last resort. All such decisions are however ultimately in the control of the court.

The courts will often accept genuine reasons to vacate a trial. However, if Public Solicitor's Office lawyers start applying every other week to vacate trials, the courts will soon very carefully scrutinize applications to vacate the trial and may where they consider it necessary require the trial to proceed even if the accused is unrepresented. The reputation of the Office, and individual lawyer, is important in such situations. If our Office has a good reputation, we can rely on this for genuine and unforeseeable absences.

Acting early is crucial. Just as important is the discussion between file lawyer and supervising lawyer, so the approach can be tailored to the circumstances of the case and client.

Relevant factors include whether the client is in custody (trial should proceed if possible), the complexity of trial, availability of lawyers, availability of courts, age of the case, whether prosecution witnesses have travelled from the provinces, whether it involves a child or vulnerable witness who would already be stressed about coming to court and giving evidence, whether there is a need to view the crime scene etc.

The decision should also be made in consultation with the client. They should have some input and ultimately they provide us with our instructions. However, remember at all times that

ultimately such decisions can only be made by the court itself, and that the court may disagree with your analysis or submissions.

The replacement lawyer, if ready to proceed with the trial, will be in a position to oppose any adjournment application made by the prosecution (e.g. if witnesses not available). This could result in the charges being dismissed. Do not feel shy about letting the Chief Legal Officer know if there is a trial that you cannot do. The best approach is to be upfront and then we can reach a consensus on how to tackle the problem. This is better than one of us being ambushed with a trial while doing duty.

Chapter 5

Ethical Issues

There are many different approaches to identifying and resolving ethical issues. If you are unsure as to whether you have an ethical issue, assume you have one.

There is often no single correct answer to an ethical problem. If you are unsure how to resolve an ethical issue, choose the more ethical option.

This Chapter addresses some of the ethical issues that sometimes arise for Public Solicitor's Office lawyers and suggests principles to consider[2].

Professional Obligations when Approaching Ethical Problems

Being aware of your professional obligations is the proper starting point for approaching ethical problems.

Rule 9 of the *Legal Practitioner Rules* states:

> 9 (1) A legal practitioner shall treat a client fairly and in good faith, giving due regard to—
>
> *(a)* his special training and experience and the dependence by the client upon him; and
>
> *(b)* the high degree of trust which the client is entitled to place on him.
>
> (2) A legal practitioner shall always be frank and open with his client and with all others so far as his client's interest may permit and shall at all times give his client a candid opinion on any professional matter in which he represents that client.
>
> (3) A legal practitioner shall take such legal action consistent with his retainer as is necessary and reasonably available to protect and advance his client's interests.

[2] Parts of this Chapter have been extracted from the NSW Legal Aid Commission Duty Lawyer Manual

(4) A legal practitioner shall at all times use his best endeavours to complete any work on behalf of his client as soon as is reasonably possible.

(5) If a legal practitioner receives instructions from a client and it is or becomes apparent to him that he cannot do the work within a reasonable time, he shall so inform his client.

Rule 13 states:

13 (1) A legal practitioner shall not appear in any Court or in any matter where by reason of his connection with the client, whether that connection be blood relationship, relationship by matrimony or personal relationship, it will be difficult for him to maintain his professional independence.

(2) A legal practitioner shall not appear in any Court or in any matter where by reason of—

(a) his connection with the Court or a member thereof;

(b) blood relationship;

(c) relationship by matrimony; or

(d) personal relationship,

the impartial administration of justice may appear to be prejudiced.

Identifying that you Have an Ethical Issue

Identifying an ethical problem can be difficult. As a legal practitioner, you should be aware of situations that cause a conflict of interest, or have the potential to bring about a conflict of interest. If something about your client, or the instructions you have received from your client causes you discomfort, address it and find a solution.

You will be guided in answering ethical problems by:

- Giving considered thought to the particular matter, consulting the *Legal Practitioner Rules* and other ethical obligations that you are subject to as a legal practitioner.

- Conscientiously seeking advice from more experienced lawyers.

- Making decisions according to the duties that you owe. This in particular refers to the balancing of the duties that you owe to the Court and to your client. Your overwhelming duty will always be to the Court first and to your client second. Remember, under no circumstances should you mislead the Court. However you have no positive duty to disclose matters against your client's interests to the court.

Some Basic Rules

- Do not accept money or gifts from a client, or borrow money from a client
- Do not lend money to a client
- Do not have a sexual or intimate relationship with a client
- Do not represent a relative

Your Client Instructs: "I want to plead Not Guilty because the Complainant will not turn up to Court"; or asks, "What will happen if the Complainant does not turn up to Court?"

Your advice to your client could be in the following general terms.

If the complainant does not turn up to court:

- The prosecutor may be forced to proceed to summary trial in the absence of the complainant, and as there will be no evidence from the complainant, the matter may be dismissed.

- The prosecution may proceed in the absence of the complainant, seeking to rely on the complainant's statement, tendered pursuant to Section 118 *Evidence Act* (maker of statement unavailable).

- The matter may be stood down in the list and the police may try to find the complainant to bring him/her to court.

- A warrant may be issued for the complainant's arrest if s/he was summonsed to attend court and failed to answer the summons. If such a warrant is issued and executed, the complainant may be held in custody until the matter is heard, or may be granted bail.

- The prosecution may be granted an adjournment to find the complainant and ensure his or her attendance next time.

You should advise your client that any contact between your client and the complainant that could be construed as pressure on the complainant not to attend court could result in serious charges being laid against your client. It may also be a breach of bail conditions, as most bail conditions include a condition that there is no direct or indirect contact between an accused person and the complainant or (identified) witnesses.

Contact with Complainants

At law 'there is no property in a witness', so you can speak with prosecution witnesses. However great care should be taken in dealing with complainants. You have a duty not to influence a witness. A practitioner must not suggest or condone another person suggesting in any way to any prospective witness the content of any particular evidence that the witness might give at any stage in the proceedings.

As mentioned below it is best not to have any contact with a complainant, but, if for some reason you are speaking to a complainant, you should have an independent person present, such as another lawyer. Under no circumstances should your client be present during the conference. It would best for any contact to be made with the knowledge of the prosecutor or a lawyer from the DPP.

It is imperative that you keep detailed file notes of any contact with the complainant, clearly dated and where possible in the exact words of each party.

Your Client Brings the Complainant to You

Unless the matter involves a reconciliation application pursuant to Section 35 of the *Magistrate's Court Act*, you should discourage your client from bringing the complainant to talk to you, especially where this contact would be in breach of their bail conditions. You should have as little to do with the complainant as possible, so that no allegation can be made that you have pressured the complainant in any way.

You should explain to your client that it is not appropriate for you to speak to the complainant in the circumstances, and that the complainant should speak to the prosecutor.

When you next mention the matter in court, you should tell the Magistrate that the complainant has approached you and that you referred the complainant either to the prosecutor or an independent lawyer. In some circumstances it may be useful to request the court to list the matter early, so that any such issues can be dealt with quickly, particularly if the matter is listed for trial.

The Complainant Approaches You and Says: "I Lied to the Police"

If a complainant contacts you seeking to retract all or part of the complaint, you should advise the complainant:

- That you act for another party in the proceedings, and therefore cannot give the complainant any advice;

- The complainant should get independent legal advice about the consequences of their intended course of action; and

- The complainant should contact the police prosecutor, or DPP lawyer with carriage of the matter.

You should make a detailed file note regarding the complainant's contact.

You should not assist the complainant in making representations to the police or assist in preparing a statement for withdrawal of the complaint.

If a complainant contacts you suggesting that they will not attend court, that they will refuse to comply with a summons, or that they will change the evidence they propose giving, you should make a detailed file note. Do not enter into a discussion and do not make any further contact with the complainant.

A complainant may approach you at court, often on the day of the summary trial, in one of the above situations. You should explain that you cannot speak to them or give them advice, but you can tell the court they need independent legal advice. You can mention the matter before the Magistrate and state that you have been approached by the complainant and been made aware of the fact that the complainant requires independent legal advice before being called to give evidence.

The "independent lawyer" is likely to be another Public Solicitor's Office lawyer. To be independent, that lawyer should have no prior knowledge of the case and must not have represented the defendant previously. If you think it necessary, you might remind the independent lawyer of the provisions of Section 162 (unfavourable witnesses) and Section 146 (privilege against self–incrimination) of the *Evidence Act*, and provide the lawyer with a copy of those sections.

You need to be mindful that where a complainant approaches you and says that s/he lied to the police you then potentially become a witness in the case.

A practitioner, other than in exceptional circumstances, must not appear as counsel when it is known, or becomes apparent, that the practitioner will be required to give evidence material to the determination of contested issues before the court. It is for this reason that you should have another person present in a conference with a complainant or prosecution witness. If any issues arise, this other person could be called as a witness.

You should follow a similar approach to that set out above if you are approached by a prosecution witness in your client's matter. Remember that you are free to speak to other prosecution witnesses about the evidence they will be giving. The prosecution has no "property" in these witnesses. Care should always be taken when speaking to such witnesses. You should avoid being a witness in your own case.

Your Client Instructs: "I did the crime, but I want to plead Not Guilty"

If your client wishes to continue with their instructions to plead not guilty, you must be aware of the following Rules.

Rule 17 (4)–(5) states:

> (4) A legal practitioner, to whom a client has made a clear confession of guilt in respect of a charge—
>
> *(a)* may, if the confession is made before the proceedings have commenced; or
>
> *(b)* shall, if the confession is made during the proceedings,

continue to act for him, but shall not set up an affirmative case inconsistent with the confession by the client, in particular –

(i) asserting or suggesting that some other person committed the offence charged; or

(ii) calling evidence in support of an alibi.

(5) A legal practitioner may advise his client as to the plea to a criminal charge, if necessary in strong terms, but the client shall be allowed complete freedom of choice as to the plea he wishes to make.

The client who instructs you that s/he committed the offence however wants to plead not guilty puts you in a difficult situation. You should advise the client of this difficulty. You should also advise them of the option of a *Newton* hearing.

Your instructions in a trial amount to putting the prosecution strictly to proof. You cannot put any question in cross–examination that suggests that your client did not commit the offence, nor can you call any evidence to rebut the prosecution evidence that your client committed the offence.

At the end of the prosecution case, you can address the court that the prosecution's evidence fails to establish a *prima facie* case. You can also make a closing submission that the evidence fails to establish your client's guilt beyond reasonable doubt.

Inform your client that, under the circumstances, this is the only way the trial can be conducted. If your client insists on giving evidence in the trial, or on having witnesses called, you cannot continue to act in the matter, as you cannot call evidence that you know to be perjured.

In a situation such as this, it is essential that you get written instructions from your client. At the end of this Chapter, there is an example of written instructions from your client to put the prosecution to strict proof.

Your Client Instructs: "I didn't do the crime, but I want to plead Guilty"

You can only represent a client on a guilty plea if your client accepts the elements of the offence. If your client tells you that they did not commit an offence but they want to plead guilty you should:

- Exercise caution.

- Consider an adjournment. This will allow time for you to consider the matter, as well as to make an appointment with your client to discuss the implications of their instructions.

- Do not feel forced to do the matter that particular day. If your client insists on dealing with the matter on that day, they can represent themselves.

- Talk to your supervisor.

If this situation arises, the best option is to ask for an adjournment, which will give your client time to consider their position. If your client insists on entering a plea of convenience (i.e. "I didn't do it but I want to plead guilty"), the most widely held view is that it is not appropriate to act. Your client may enter the plea him/herself and appear unrepresented.

In the event that your client subsequently changes his or her instructions and admits the offence, you should only act for your client on written instructions that they accept the elements of the offence. See the relevant form at the end of this Chapter.

Reversing a Plea of Guilty

Once a plea of guilty is entered through a lawyer, it is extremely difficult to change the plea to not guilty. For this reason, you should take great care in advising your client of the significance of entering a guilty plea.

While it may not be possible for you to get written instructions from every client on the plea of guilty, there will be certain clients from whom you should obtain signed instructions. This will always be a matter for your judgment.

If your client indicates that s/he wants to reverse the plea of guilty after a conviction has been recorded, you can no longer act and must withdraw from the matter.

The situation may become very difficult for you because your client will have to seek leave to withdraw the plea of guilty. Your client will have to satisfy the court that he or she ought to be allowed to withdraw the plea, and may have to lead evidence as to how a plea of guilty came to be entered in the first place. You should seek the advice of your supervisor if this situation arises.

However, if your client was unrepresented when they entered a guilty plea, the court is more likely to accept your application to have the plea withdrawn. You should explain to the court that the client was unrepresented when the plea was entered, and now that they have received legal advice, they wish to defend the matter. The relevant test is outlined in *Police v Viliamu* [2008] WSSC 74 (8 September 2008).

Disclosing your Client's Unknown Convictions - Criminal Record of your Client

As a general principle, defence lawyers have no duty to disclose to the court or prosecution any material adverse to your client's interests and you should not do so unless instructed by your client.

You should be aware of Rule 17(9):

> (9) If, in a case, the Court has been led by the prosecution to believe that the accused person has no previous convictions, the defending legal practitioner is under no duty to –
>
> *(a)* disclose facts to the contrary which are known to him; or
>
> *(b)* correct any information given by the prosecution, if such disclosure or correction would be to his client's detriment, provided that the legal practitioner shall not –
>
> (i) lend himself to any assertion that his client has no convictions; or
>
> (ii) ask a prosecution witness whether there are previous convictions against his client in the hope that he will receive a negative answer.

If your client's record is inaccurate or incomplete and has been tendered on bail or at sentence, you are not obliged to draw a favourable inaccuracy to the attention of the prosecution. You should, of course, advise the court of any unfavourable inaccuracy. However, you are constrained in what you can say about the favourable but inaccurate record. You cannot positively assert that something is true if your instructions indicate it is not true. Therefore, you cannot take advantage of an absence of entries on a criminal record and make submissions that your client is a person of good character.

If the Magistrate asks "Is the record admitted?" you cannot mislead the court, and must advise the court that you are not instructed to answer that question. This may prompt a further line of inquiry that may reveal the full record. Remember that you cannot mislead the court.

Withdrawing from a Matter

Rule 17(7) states:

> (7) A legal practitioner who is defending in a criminal case is entitled to withdraw from the case if—
>
> *(a)* during the course of the trial and prior to final sentence, the defendant absconds; or
>
> *(b)* prior to or during the course of the trial, the defendant refuses to accept the jurisdiction of the Court.

There are other reasons why you may need to withdraw from a matter, including:

- Legal Assistance has been refused by the Public Solicitor's Office (e.g. client has failed the means or merit test).
- Your instructions are withdrawn or otherwise terminated.
- An ethical issue has arisen requiring you to withdraw.

It will always be a matter for your judgment as to whether you need to advise the court (in person or in writing) that you are no longer appearing. Where the case has not progressed beyond the mention stage, you may not consider it necessary to appear to advise the court that you no longer appear. On the other hand, if the matter is listed for a bail application or trial, you should appear and seek leave to withdraw from the matter within a reasonable time before the trial date.

<u>Instructions are Withdrawn or Terminated</u>

If your instructions are withdrawn or terminated, you are no longer retained to appear. You do not need to seek the Court's leave to withdraw if your client has withdrawn. If you consider it appropriate to do so, you can mention the matter and inform the court that your instructions have been withdrawn.

"An Ethical Issue has Arisen"

Where an ethical issue prevents you from continuing to act in a matter, the correct approach is to seek leave to withdraw. If you say to the Magistrate, "I seek leave to withdraw, an ethical issue has arisen", or words to that effect, the Magistrate will usually grant leave for you to withdraw. You may be asked what the nature of that difficulty is, particularly if it looks like a matter will have to be adjourned and valuable court time will be lost. You may only be able to answer in the most general terms, and you should certainly not divulge privileged information to the court.

Being Granted Leave to Withdraw

Where leave is sought to withdraw from a matter, it does not have to be granted. The Magistrate may refuse you leave to withdraw. If so, you must remain in the matter. However leave to withdraw is very rarely refused.

The Magistrate should usually not refuse leave where you indicate that it is an ethical problem that forces you to seek leave to withdraw.

Out of Court Discussions with Judicial Officers

Extreme care should be taken when talking to judicial officers about cases in which you are involved outside of open court. If you are invited to chambers to discuss a particular case you should only attend together with the prosecutor. It would be an extremely rare case where you would request a meeting in chambers and in such cases you would only attend with the prosecutor. You should always seek advice from a senior lawyer before requesting a meeting in chambers with a judicial officer.

You should also be aware that your client is not present during such meetings and it is nearly always more appropriate to have discussions in front of them in open court. That is a matter which requires you to exercise judgment and consider all the relevant circumstances. Meetings in chambers are exceptional and alternatives should always be considered. Remember, it is nearly always better to have every matter dealt with in open court.

You should never discuss a case with a judicial officer in any other setting, such as in a social setting.

The Leadership Code

Public Solicitor's Office legal officers should become familiar with the provisions of the Leadership Code. In particular you should be careful to avoid conflicts of interest. Note the sections on "Conducting Other Business" and the need for full disclosure of financial interests.

Instructions to Plead Guilty

1. I . . . . . instruct my lawyer . . . . . that I wish to plead guilty to the charge(s) of. . . . . .

2. The elements making up the charge have been explained to me.

3. The facts that the prosecution is alleging against me have been described by my lawyer to me and I understand what is being said about me by the prosecution.

4. I accept the facts alleged as accurately describing what I did.

5. [Alternatively] I did not do the following . . . . . [Strike out either 4 or 5]

6. I accept that I committed the offence(s).

7. I know that I could make the prosecution prove its case beyond reasonable doubt. I do not want to do this.

8. It has been explained to me that I could be sentenced to a significant amount of time in prison and/or receive a substantial fine.

9. It has also been explained to me that I should get a discount of my sentence for pleading guilty, but this has not been guaranteed by my lawyer.

10. No pressure has been placed on me by my lawyer to plead guilty.

Name Witness

Date Date

Instructions to Plead Not Guilty after Admitting Guilt to Instructed Solicitor

1. I . . . . . instruct my lawyer . . . . . that I wish to plead not guilty to the charge(s) of . . . . . .

2. The elements making up the charge have been explained to me.

3. The facts that the prosecution is alleging against me have been described by my lawyer to me and I understand what is being said about me by the prosecution.

4. I acknowledge that the facts alleged that constitute the elements of the offence accurately describing what I did. However, I still wish to plead not guilty and have my lawyer. . . . . represent me at my trial.

5. My lawyer has explained to me that I can instruct another lawyer because: knowing that I am guilty it would not be possible to suggest to any prosecution witness that they were not telling the truth about my involvement; that any prosecution witness could only be generally tested about how they could see or hear what they claim; and that my lawyer could not call me or any other witness to give evidence suggesting that I did not commit the offence, because to do this would be to promote a lie.

6. I want the prosecution to be made to prove its case beyond reasonable doubt.

7. It has been explained to me that I could be sentenced to a significant amount of time in prison, and that I would lose any discount for a plea of guilty if I proceed with my case and am found guilty.

8. My lawyer has advised me that the account that I have given is consistent with a plea of guilty.

Name Witness

Date Date

Instructions to Plead Not Guilty to Overwhelming Prosecution Case

1. I . . . . . instruct my lawyer . . . . . that I wish to plead not guilty to the charge(s) of . . . . . .

2. The elements making up the charge have been explained to me.

3. The facts that the prosecution is alleging against me have been described by my lawyer to me and I understand what is being said about me by the prosecution.

4. My lawyer has advised me that the prosecution case against me appears to be overwhelmingly strong.

5. I do not accept that I committed the offence(s).

6. I want to make the prosecution prove its case beyond reasonable doubt.

7. It has been explained to me that I could be sentenced to a significant amount of time in prison.

8. It has also been explained to me that I will not get a discount of my sentence if I plead not guilty and am convicted, or that I could have a hearing on any disputed facts.

9. No pressure has been placed on me by my lawyer to plead not guilty.

Name Witness

Date Date

Legal Practitioner (Professional Conduct) Rules - **Defending a person accused of crime**

17 (1) Subject to these Rules, a legal practitioner shall defend any person on whose behalf he has accepted instructions on a criminal charge irrespective of any opinion which he may have formed as to the guilt or innocence of that person.

(2) When defending a client on a criminal charge, a legal practitioner shall endeavour to protect his client from being convicted except by a competent tribunal and upon legally admissible evidence sufficient to support a conviction for the offence with which his client is charged.

(3) A legal practitioner shall not attribute to another person the crime with which his client is charged unless –

(a) he can properly do so in accordance with facts or circumstances; or

(b) there are facts or circumstances,

which reasonably suggest the possibility that the crime may have been committed by the person to whom the guilt is imputed.

(4) A legal practitioner, to whom a client has made a clear confession of guilt in respect of a charge—

(a) may, if the confession is made before the proceedings have commenced; or

(b) shall, if the confession is made during the proceedings,

continue to act for him, but shall not set up an affirmative case inconsistent with the confession by the client, in particular—

(i) asserting or suggesting that some other person committed the offence charged; or

(ii) calling evidence in support of an alibi.

(5) A legal practitioner may advise his client as to the plea to a criminal charge, if necessary in strong terms, but the client shall be allowed complete freedom of choice as to the plea he wishes to make.

(6) A legal practitioner defending shall not absent himself from a trial unless –

(a) there are exceptional circumstances which he could not reasonably have foreseen;

(b) he obtains the consent of the instructing legal practitioner or his representative or of his client; and

(c) a competent junior or other legal practitioner who is well informed about the case and able to deal with any question which might reasonably be expected to arise takes his place.

(7) A legal practitioner who is defending in a criminal case is entitled to withdraw from the case if— *(a)* during the course of the trial and prior to final sentence, the defendant absconds; or *(b)* prior to or during the course of the trial, the defendant refuses to accept the jurisdiction of the Court.

(8) If a procedural irregularity comes to the knowledge of a defending legal practitioner before the verdict in a trial is returned, he shall inform the Court as soon as practicable and shall not wait with a view to raising the matter later on appeal.

(9) If, in a case, the Court has been led by the prosecution to believe that the accused person has no previous convictions, the defending legal practitioner is under no duty to –

(a) disclose facts to the contrary which are known to him; or

(b) correct any information given by the prosecution, if such disclosure or correction would be to his client's detriment, provided that the legal practitioner shall not –

(i) lend himself to any assertion that his client has no convictions; or

(ii) ask a prosecution witness whether there are previous convictions against his client in the hope that he will receive a negative answer.

(10) A legal practitioner may advise his client about giving evidence in his own defence, but the client shall be allowed complete freedom of choice as to whether to give evidence or not.

(11) A legal practitioner when defending in a case shall not, in a plea in mitigation, make any allegation that is merely scandalous or calculated to vilify or insult any person.

(12) Unless there is good reason not to do so, a defending legal practitioner in a case shall attend his client after conviction and sentence or ensure that his instructing legal practitioner or a representative of that legal practitioner does so.

Chapter 6

Conflicts of Interest

If you are concerned that you have a conflict of interest you should discuss the situation with the Chief Legal Officer. Whilst it is important to avoid conflict of interest situations, it is also important to act for clients 'without fear or favour', even in controversial or unpopular cases. A client will only be reallocated to another lawyer if there is a genuine conflict of interest.

The general policy of the Public Solicitor's Office is that a client does not have the right to choose which Public Solicitor's Office lawyer will represent him or her. A client is required to accept their allocated lawyer unless there is an exceptional reason that justifies reallocation to another lawyer.

Conflict of Interest Between Two Accused

If there is a potential or real conflict between the interests of two clients, you should withdraw your representation from one client so that you can properly represent the other client. You should ask "*Can I represent one client and do the best job for him or her without being in a position where I might have to say something negative about the other client?*"

Examples of conflict of interest situations include:

- If Co-accused 1 incriminates Co-accused 2 in a record of interview, or in their instructions to you, there is a clear conflict of interest. You can not represent the second accused at trial. If both accused gave evidence at trial, you would have to cross examine one of your own clients.
- Even on a guilty plea, where there are differing levels of involvement in the offending (e.g. a principal offender and a minor accomplice) you may have a conflict of interest. If co-accused 1 was the armed robber and co-accused 2 only a 'lookout', you have a conflict, even if they both plead guilty. The lawyer for the 'lookout' should be trying to portray the robber as the more serious offender, so you should not act for both clients.

You should be aware of the potential for a conflict of interest to arise during a trial and anticipate this before the trial. Even where there is a potential for a conflict of interest, you should reallocate the accused to another lawyer.

Continue to act for the client your first took instructions from and reallocate the other client(s).

Conflict of Interest Between You and the Accused

You should be aware of Rule 13:

> 13 (1) A legal practitioner shall not appear in any Court or in any matter where by reason of his connection with the client, whether that connection be blood relationship, relationship by matrimony or personal relationship, it will be difficult for him to maintain his professional independence.
>
> (2) A legal practitioner shall not appear in any Court or in any matter where by reason of—
>
> *(a)* his connection with the Court or a member thereof;
>
> *(b)* blood relationship;
>
> *(c)* relationship by matrimony; or
>
> *(d)* personal relationship,
>
> the impartial administration of justice may appear to be prejudiced.

The effect of Rule 13 is that there is a conflict of interest in cases which involve only an appearance or perception of prejudice. There does not need to be actual prejudice. You should ask yourself: '*Would an ordinary person observing the case think that there was an appearance, or perception, of prejudice?*'

Conflict of Interest with a Previous Client

In general, you should avoid acting in a case if you will be required to cross examine a witness who was previously your client. There will be a risk that you received instructions in confidence, from the former client, that could make your position as cross examiner, and the previous client's position as a witness, highly inappropriate.

Chapter 7

Taking Instructions from Clients

There is no single correct way to advise clients or take instructions. Each lawyer will have his or her own style and manner of conducting client conferences.

The main purpose of taking instructions is to accurately, comprehensively and formally record what your client says about the matter. You should also record your advice to your client to avoid a later dispute about what you said or advised.

Whilst appearing as a duty lawyer you may have limited time to take detailed instructions. This is understandable, but instructions should nevertheless be comprehensive. Wherever possible, attempt to deal with a matter immediately and if it is necessary to apply for an adjournment in order to take instructions the adjournment should be as short as possible. During circuit courts it may be appropriate to adjourn a matter to the next day so that proper instructions can be obtained in the evening. This is also possible at Central Magistrate's Court. There is no need to adjourn a matter for 14 days in order to obtain instructions, especially in cases where your client is in custody. It might be appropriate to ask for the matter to be stood down until the afternoon, or the next day, or for a few days. The shortest possible time should be chosen. For trials, and especially trials in serious matters, you should make sure you have extremely detailed instructions from your client on file, preferably quoting the words that they use.

Explain the charges including the elements of each offence, the maximum penalty, and the range of likely penalties, the law about the discount for a plea of guilty and the option of a *Newton* hearing. Discuss any consequences of a penalty. These may include:

- Dismissal of the charge without conviction or penalty
- Conviction and placement on a bond to be of good behavior with or without sureties
- Fine with or without time to pay
- Imprisonment suspended subject to a period of good behaviour
- Imprisonment
- Drivers licence disqualification
- Loss of job e.g. public servant
- Forfeiture of property used in the offence e.g. car used in committing a crime
- Loss of fishing gear and boat and outboard for fishing offences
- Compensation for damage or loss of property
- Civil claim liability
- A criminal conviction may prevent some international travel

- The 'freezing' of a bank account

Analyse the brief fact sheet and the evidence contained in witness statements. Briefly discuss any evidence that may be inadmissible and the nature of the legal argument about that evidence. If you note in the brief that a defence arises, explain what that means to your client. Give an opinion about the strength of the prosecution case.

Explain that any information provided by your client is confidential, but that unless discussed in advance, that information will usually be put to the court. Answer any questions your client might have, and then take instructions.

Recording Your Advice to Clients

Make a thorough record of the advice you have provided. It may be as simple as "I advised client of charge, elements, facts, and penalty." Record the date, time, place and name of person giving advice. The notes you take will offer some protection against complaints, disputes, and allegations of incompetence on traversal of plea applications.

You should consider taking written instructions from your clients in relation to their decision to plead guilty or not guilty. See Chapter 5 Ethical Issues for further information about this. There is a '*pro forma*' document for your client to sign. Record your client's instructions in their own words.

Explaining the Court Process

Many clients will have no understanding of some of the important principles of criminal law. It is important that your client understands any trial process that he or she is about to experience.

During the first conference with the client, you may want to defer taking detailed instructions on the disclosures. Instead, you may choose to focus on developing a rapport with your client. You may wish to tell your client:

> "Today's conference is to explain the court process. I will not be asking you for your full story today about the incident. At a later date, when I ask for your full story, I will read you all the witness statements and ask you about them. Do you want a copy of the witness statements?"

The following legal rules apply to criminal trials:

- The law says that you are presumed innocent.

- The prosecution must prove the charge beyond reasonable doubt. You do not need to prove to the court that you are innocent. The prosecution must prove to the court that you are guilty.

- 'Proof beyond reasonable doubt' means the evidence must be very strong for a court to find you guilty. If the evidence is too weak you will be found not guilty. If the magistrate or judge thinks it is a 50/50 chance you are guilty, or only a possible chance that you are guilty, you must be found not guilty. Even if the evidence shows that you are probably guilty, this is not strong enough for proof beyond reasonable doubt.

- The magistrate or judge makes sure that your trial is fair. They will decide the case and will do so only on the basis of material provided in open court. The magistrate or judge is not allowed to have private discussions with the defence or prosecution outside of court.

- The prosecution will try to prove its case by bringing witnesses to court. The witnesses will tell their story to the magistrate or judge.

- The witnesses will be asked questions by the prosecutor.

- What a witness says inside court is evidence. The evidence is what the witness says in court, not what the witness has written in his or her statement.

- As your lawyer, I am allowed to ask each witness questions. This is called cross examination. I can test the evidence of each witness in this way.

- At the end of the prosecution case, you have three options. You can either give sworn evidence on oath (and be cross examined by the prosecutor), or give an unsworn dock statement (no cross examination), or give no evidence. You can also call witnesses.

- Your client may be convicted after trial. You should therefore be ready to immediately make sentence submissions. That is, part of your trial preparation will be to prepare sentence submissions in case your client is found guilty of some or all of the charges.

For guilty plea matters or in case there is a conviction after trial, you should also explain the various components of the court process, including entry of the plea, reading of the facts, acceptance of the facts, submissions by counsel and then sentencing remarks by the court.

Attending on Your Client after Conviction or Sentence

It is almost always good practice to speak to your client after they have been convicted or sentenced. You will need to explain the sentence, the obligations (if any) imposed as a result of the sentence and consequences of failing to perform the obligations. See Rule 17(12) of the *Legal Practitioner (Professional Conduct) Rules*.

Chapter 8

The Constitution

Fundamental Protections in the Constitution

The *Constitution* of the Solomon Islands is the supreme law of the Solomon Islands [Section 1].

Chapter II of the *Constitution* contains 16 sections dealing with fundamental rights and freedoms of persons within the jurisdiction of the Solomon Islands. Some of the protections which are enshrined in the *Constitution* and which would most frequently apply to clients of a duty lawyer include the:

- Right to be informed of the reason for arrest [s5(2)]
- Right to be brought to court after arrest without undue delay [s5(3)]
- Right to be tried within a reasonable time, or be released on bail [s5(3)]
- Protection from inhuman treatment – the use of torture, inhuman or degrading punishment or other treatment is prohibited [s7]
- A right to a fair trial within a reasonable time by an independent and impartial court [s10]
- In particular Subsections 10(2) to 10(11) include the:
    - right to the presumption of innocence [s10(2) (a)]
    - right to adequate time and facilities for the preparation of a defence [s10(2) (a)]. This could include proper disclosures
    - right to legal representation (at own expense) [s10(2) (d)]
    - right to examine prosecution witnesses, and the right to obtain attendance of and examine defence witnesses [s10(2)(e), see also s10(11)(b)]
    - right to an interpreter and right to be present at trial [s10(2)(f)]
    - right to a copy of a judgement and a record or proceedings [s10(3)]
    - protection against retrospective criminal laws including retrospective sentence provisions [s10(4)]
    - protection against double jeopardy – being tried twice for the same offence (except for appeal provisions) [s10(5)]
    - protection from being tried for an offence after pardon [s10(6)]

- right to silence at trial [s10(7)]
- right to a fair hearing within a reasonable time [s10(8)]
- courts to be held in public, unless by agreement of the parties or if the interests of justice require otherwise [s10(9)(10)]

- Protection of Conscience (including freedom of religion), Expression, Assembly and Movement [ss11, 12, 13, 14]

Duty lawyers should be aware of the Protection from Discrimination and apply this protection at all times to ensure that duty lawyer services are provided without unlawful discrimination. These fundamental protections can be enforced pursuant to Section 18 of the *Constitution*. These Constitutional provisions may be applied in a criminal case in a Magistrate's Court, especially if there is no precedent on an issue before the court. For example, early cases on bail frequently referred to the right to be tried within a reasonable time, or to be released on bail.

Chapter 9

Advising a Client at a Police Station

This is often the first contact a client has with the office. You may receive a telephone call from a police officer advising you that there is a person in custody, who is being interviewed under caution or who is about to be interviewed under caution, and who is seeking legal advice before continuing or commencing a caution interview. A good beginning point is to ask for the full name of the person in custody and the charges being investigated. It is also a good idea to check whether the police know or suspect that the suspect is a child. For serious charges (e.g. murder or rape) or in cases involving children, make every effort to attend the police station to provide advice to the client. If it is a minor charge, advice on the telephone is usually sufficient.

At the Police Station

If you decide to attend the police station advise the police officer of this and ask the officer to suspend any interview that has been commenced or to wait until you arrive before commencing an interview.

When you arrive at the police station, introduce yourself to the interviewing police officer. You should keep good notes, which would include notes of the telephone call that lead to you attending the police station and which would continue at the police station. In those notes write down the name of the officer in charge of the investigation and any officers that you speak to. Find out as much about the case being investigated as possible:

- Is the person under arrest – i.e. Are they free to leave?
- When were they arrested? Were they given any food, and if so, what?
- Is the person under 18 years old – i.e. are they a juvenile? If they are, has a responsible adult been contacted?
- What is the nature of the incident being investigated?
- What are the allegations?
- What is the likely charge(s)?
- Has an interview commenced?
- Do they require an independent interpreter?

- Will bail be granted by police after the interview?

Take notes as you go.

Request to speak to the client in private. Introduce yourself to the client and explain that you are a lawyer, you work at the Public Solicitor's Office, and that you are there to assist them and provide legal advice. Ask your client how long they have been kept in custody, what food or drink they have been provided with, where they have been kept and whether there are toilet facilities, whether they have been ill-treated or threatened and if so, by who.

Ask the client if s/he if wants you to contact a family member or other support person or if they need an interpreter. If an interpreter is needed the interpreter should be independent and competent. It should not be a police officer or a relative. If a record of interview takes place it should be recorded wherever possible in the language in which it is held, that is, the actual words in the language used by the accused person should be recorded, and the record should not be simply a record of the translation. If possible, both the original language and the translation should be recorded.

Tell the client what you know about the case. Explain to the client that the police want to ask them questions and record their answers. Advise the client that they have a right to silence and they do not need to answer any questions. The right to silence is guaranteed by law. The right to silence is part of the right an accused person, in this case a person who is likely still only a suspect, has to avoid incriminating themselves. It might be, for example, that police do not yet have sufficient evidence to prove a case against an accused person beyond reasonable doubt, and that things said by the accused person during their record of interview can then later be used against them, to fill in the missing parts of the prosecution case.

On the other hand, there are times when it is in a client's best interest to participate in a caution record of interview. This might include when the client has an alibi and when defences such as self-defence or provocation are raised. However, if there is any doubt about whether a suspect or accused person is to be advised by you as to whether they should or should not participate in a caution interview, it is best to err on the side of caution and advise them that they should remain silent. The vast majority of cases though do not involve alibi, self-defence or provocation and so in the majority of cases the best advice is advice to exercise the right to silence.

It is normally in a client's best interests to tell their story only when they go to court and not during a caution interview. Advise the client that when the case goes to court, they will usually

in serious cases have a lawyer to help them, and the judge or magistrate will act like a 'referee' to make sure the case proceeds fairly.

Advise the client that if they wish to exercise their right to silence the best way to remain silent is for the client to tell police "I do not wish to answer any questions". The client could tell police "I want to tell my story at court, not at the police station."

The client may wish to tell police "My lawyer has advised me to sit quiet and not answer any questions." These statements allow the client to 'shift' their decision to remain silent back to the lawyer. This is less confrontational and will make the client feel more comfortable. The client may be feeling under pressure because they are in custody, and may feel embarrassed to refuse the request of a police officer. The client could tell police, "My lawyer has advised me to sit quiet and I will follow that advice."

Alternatively, advise the client that if police continue to ask questions about the incident they should answer each question with "no comment". Alternatively the client can just sit in silence (mute). The police are not allowed to force a person to answer questions.

The client should be advised that it will usually reflect badly on an accused person at their trial if they selectively answer some questions that they police ask them, but refuse to answer others. An accused person is usually best advised if they are told that it is best if at the beginning they choose to exercise their right to silence and answer no questions, or if they decide to answer questions that they do so knowing that it will reflect badly on them if they begin by answering some questions, but then part way through the interview decline to continue to answer questions.

Explain *why* it is best not to answer any questions. You could mention some of the following 10 reasons:

1. There is no lawyer, magistrate or judge present in a police interview to make sure the questions are fair and lawful. It is best to tell your story at court, in front of a magistrate or judge. The magistrate or judge acts like a referee and makes sure the questions are fair. The lawyer will also be at court and make sure the questions are fair.

2. It is best to tell your story in court after you have heard the other witnesses tell their story.

3. If you get confused, or forget something or make a small mistake during a police interview, it will look bad for you in court.

4. It is best to get full and proper advice from a lawyer before you tell your story.

5. The advice to remain silent is based on many years of experience of Public Solicitor's Office lawyers. Many people living in prison would not be there if they had chosen to remain silent at the police station.

6. Telling your story to police will not stop the charges being laid. The police have already decided to lay charges so it is best to just stay quiet for now.

7. If appropriate, you can always provide a statement to police at a later date. This can be by way of interview or a written statement. There is no need to rush things and provide a statement today.

8. Telling your story to police will not help you get bail. It may make it harder to get bail.

9. The best option is to tell your story once in court, and only once. If you tell your story to police, and then for a second time in court, there is a greater chance that there will be inconsistencies in your stories. The prosecution will cross examine you on any inconsistencies.

10. The law says that the prosecution is required to prove any charges in court. An accused person does not have to prove anything. You are presumed to be innocent. Therefore there is no reason to tell your story to police.

The client can either accept or decline your advice. Remember you advise, they decide.

If the client accepts your advice, tell the police:

"My client has instructed me that he/she does not wish to answer any questions. I ask that you do not interview my client, and do not ask my client any questions about the incident."

Give the police a copy of the signed notification letter which is at the end of this Chapter. Keep a copy for your records.

You should ask the police not to commence any interview. This request is contained within the signed notification letter to police.

Police may nevertheless want to start the interview and record answers. The police may say that they need to give your client the opportunity to tell his or her side of the story. Or the police may want to record the client's refusal to answer questions. Neither of these reasons have any legal basis. The police will now have a signed, written record of the refusal to answer questions. There

is no requirement for police to commence an interview. You can offer to provide written instructions to police not to commence an interview.

If the police start the interview, there is always the danger that the client will answer the preliminary questions (name, address etc) and then continue providing answers to questions about the incident itself. This danger should be identified to the client and explained. Perhaps suggest to the client that they answer "no comment" to questions other than their name and address.

You have the choice to be present during any interview. Generally, this is not recommended. If you are present during the interview there is a risk that will become a witness in the case. If you have done a thorough job in advising the client you should not be needed in the interview.

However, if the client is a juvenile, or suffering from a mental disability, or otherwise vulnerable, you may choose to sit with them in the interview and provide assistance. Do not hesitate to interrupt the police questioning in order to assist your client.

After the interview, the police will either grant or refuse bail. A police officer can grant bail with conditions. Police sometimes say "Bail is not opposed but we want to take the accused to court for the magistrate to impose conditions." The danger with such a course is that the magistrate may refuse bail altogether, despite bail not being opposed. Therefore it is preferable to ask police to grant bail at the police station. This saves time, resources and may save your client's liberty. In cases involving children, it may be necessary to remind the police of the applicable principles of juvenile justice i.e. that detention should only be used as a last resort, that wherever possible children should be diverted from the formal justice system and that reintegration is not usually served by being remanded e.g. remand results in losing placement at school or employment. (See Chapter 23 for more detail on juvenile justice principles.)

If police intend to refuse bail, you should also take preliminary bail instructions at the police station. You may need to contact family or friends for a subsequent bail application at court later that day. If you are not able to personally appear at court, you should advise the duty lawyer to expect the client at court.

Be aware that police sometimes try for a second or third time to interview clients, often several days after they have been refused bail by the court. Advise your client of this possibility, and remind them not to answer any questions, and to ask police to contact the Public Solicitor's Office if such an interview is requested.

Voir Dire on a Record of Interview Under Caution

Many trials involve a challenge to the admissibility of the record of interview. If you attend a police station to provide legal advice you should make detailed notes of your attendance and keep them on the file.

Once the brief of evidence is received, you should scrutinise any *pro forma* cautions and typed templates used by police. These police documents often have defective cautions on them. The police should be using the exact words from the Judge's Rules. Instead police often add extra words and extra concepts to the caution. This can be misleading. This can result in the exclusion of the record of interview.

You should also be aware of other reasons for excluding records of interview and be prepared to take notes about these issues when you attend the police station.

Other reasons for excluding interviews in recent cases include the following reasons (remember when reading cases that the *Evidence Act 2009*, in particular Sections 3, 169 and 170, now apply to this area of the law):

1. No lawyer or parent/guardian was offered to a juvenile suspect prior to the commencement of the interview. See, for example, *R v Jimmy Rikiloni, Frank Firimolea and Johnson Baemaelia* High Court of Solomon Islands, CRC No. 5 of 2008. Note also that the Solomon Islands acceded to the UN Convention on the Rights of the Child (CRC) on 10 April 1995, and in particular, Articles 37 and 40 of the CRC.

2. No lawyer was offered to an adult suspect prior to the commencement of the interview. See, for example, *R v Iro, Fefele and Foatala* Criminal Case No. 325 of 2004 ruling on 6/7/05, *R v Tatau, Ome, Ross, Kwaimani and Basiagalo* Criminal Case no 500 of 2005, *voir dire* ruling on 30/10/06 and *R v Nelson Keaviri, Julius Palmer, Patrick Mare Kilatu, Keto Hebala and Willie Zomoro*, Muria CJ Criminal Case No. 20 of 1995, 27 June 1997

3. Police did not use the words of the caution that are found in the Judges Rules. Instead they changed the words and this changed the meaning of the caution. See, for example, *R v Talu* (CRC 402 of 2004, 13 July 2005), *R v Nelson Keaviri, Julius Palmer, Patrick Mare Kilatu, Keto Hebala and Willie Zomoro* (CRC 20-95 27th June 1997 per Muria CJ), *Kiki Hapea v The State* [1985] PNGLR 6 and *R v Lusibaea* [(2008) SBHC 11, 25 February 2008.

4. Police gave the caution too late, after they had already asked about the truth of the allegations and obtained an admission. "*The damage had been done….. it was then too late to caution*".

5. The interview was conducted in Pijin or in another language but recorded in English. See, for example, *R v Maka, Kalevalaka and Namokari* (Magistrate's Court, Unreported,

25th August 2009) and *R v Anika, Kerasolo and Ram*o (unreported, Magistrate's Court 20 July 2010).

6. The interview is conducted late at night. No food is provided. The interview is lengthy and without breaks. See, for example, *Osifelo v R* [1995] SBCA 3.

7. The accused is not asked if he understands the caution.

8. Threats, violence and other inducements are used by police, either before the interview, or at the interview.

9. An accused is being interviewed as a witness not as a suspect (an 'open' statement, that is, a statement taken without giving the caution), when they are in fact a suspect. See, for example, *R* v *Jimmy Rikiloni, Frank Firimolea and Johnson Baemaelia* High Court of Solomon Islands, CRC No. 5 of 2008.

10. The interview is not properly recorded or read back to the suspect. See, for example, *R v Lusibaea* [(2008) SBHC 11, 25 February 2008] and *R v Motui* (Crim Case 20 of 1997).

11. A record of interview, or pages of the record of interview, that are forged. See, for example, *R* v *Jimmy Rikiloni, Frank Firimolea and Johnson Baemaelia* High Court of Solomon Islands, CRC No. 5 of 2008.

When taking instructions from clients you should be aware of all the possible arguments for excluding a record of interview.

It would be desirable if police interviews with suspects, especially in cases of serious offences, were routinely recorded on either audio or video tape. This equipment is relatively cheap and easy to use. An audio or video recording would remove much doubt about how the interview was conducted, what was said and would save much court time. The Chief Justice has on several occasions called for this to be done. See, for example, *R v Tofola [1995] SBHC 48; HC-CRC 020 of 1992 (22 August 1995).*

'RULES BY CHIEF JUSTICE ON INTERVIEWS IN CONNECTION WITH CRIME'

(These Rules replace the Judge's Rules of the English High Court Judges which have been applied up to now in Solomon Islands. The Rules have been produced after wide consultation.

The pidgin version uses the spelling of words at present used in Solomon Islands in official publications. However should it be found that another form of spelling is more easy for police and suspects to understand then there is no objection to that spelling being used. The important thing is for the sense to be retained).

Preliminary:

Courts want to be fair to police officers who have a hard job to do in bringing cases to court but also to be fair to persons who are suspected and accused of crimes. The law says that if a man says something it may be brought up in court as evidence. But the court must be satisfied that the man said what he did of his own free will, that is, that he was not forced or threatened or promised something and he knew what he was doing. The following rules should be used in relation to interviews as then the court can see that a man was given the right warnings.

There are four stages in the interview of persons in connection with criminal offences. These rules set out what a police officer or other person in authority shall do at each stage so that a court can see that the interview was kept fair. If the interview is not fair because these Rules have not been kept or some other reason the court may refuse to hear evidence of what a person said.

Stage 1: Interviewing Witnesses

A police officer has a right to ask and record any questions or answers or statements when interviewing witnesses. Before the police officer has strong evidence that a crime has been committed, and that the person interviewed has committed it, all persons are interviewed as witnesses. ('Strong evidence' here means strong evidence that could prove before a court that the person is guilty)

Stage 2: Interviewing Suspects

When a police officer has strong evidence that a person has committed an offence he shall warn him to be careful of what he says. All warnings should be in a language easily understood by the person warned. All persons under arrest or in custody shall be so warned. This is so a court will know that the person was talking seriously and understood what he was doing. This warning given to suspects shall be –

(Suspect Interview Warning)

If you want to remain silent you may do so. But if you want to tell your side you think carefully about what you say because I shall write what you say down and may tell a court what you say if you go to court. Do you understand?

In Pidgin:

Sapos iu laek fo stap kwaet no moa iu savve duim. Bat sapos iu laek fo tell aot stori blong iu iu tink hevi nao long wanem nao iu tellem. Bae mi ratem kam samting nao iu tellem. Sapos iu go long court bae maet me tellem disfella court toktok blong iu. Iu minim?

Questions and answers should be recorded either during the interview or very shortly after it and agreed by all police officers present. The date and time when questioning began and finished should be written down together with the names of all present.

The best thing is for the suspect to also agree and sign the record but this is not essential.

Stage 3: Taking of a written statement from suspect

Again it is important that a person against whom there is strong evidence that could prove he has committed an offence should only make a written statement after warning of what he is doing.

A. If he wishes to make a written statement this warning shall be given:-

(Suspect Statement Invitation)

If you wish to remain silent you may do so. If you wish to, you may give a written statement. You can write it or I will. That is up to you. If you do give a written statement it may be produced to a court if you go to court. Do you wish to give a written statement?

In pidgin:

Sapos iu laek fo stap kwaet no moa iu save duim. Sapos iu lakem iu savve givem stori blong iu long paper. Iu savve raetem kam seleva o mi savve raetem. Hemi saed blong iu. Sapos iu givvem wan fela stori long paper ia bae mifella savve takem disfella paper long court for showem long court ia sapos iu go long court. Waswe, iu laek fo givvem stori blong iu long paper?

B. If the suspect agrees and asks the police officer to write the statement it should start -

(Suspect Statement Start)

I agree to give this statement of my own free will. I want the policeman to write down my statement. I have been told I can remain silent. I know the statement may be used in court. It is true what I now put in the statement.

In pidgin:

Mi seleva agree fo givvem stori blong mi long paper. Mi laekem policeman fo raetem kam stori blong mi. Olketa tellem mi finis mi savve stap kwaet no moa. Mi savve tu disfella paper ia might ia kamap long court. Stori bae me tellem hem turu wan.

(If the suspect writes the statement himself leave out the words "I want the policeman to write down my statement" or their pidgin equivalent)

This should be signed first or the suspect's mark affixed and the statement then written by the suspect or told by him to the police officer who writes it down in the words used.

The suspect should be given a chance to read the statement or it should be read to him. He should be asked if he wants to alter anything, correct anything or add anything. If he says he does, alterations should be made as requested or he should make the alterations himself. There should then be added

The following certificate;

(Suspect Statement End)

'I understand what is in the statement which I have read (or “which has been read to me"). It is true.'

In Pidgin:

'Mi savve gudfella wannem nao in saet long disfella paper ia. Mi readem finis (or "olketa readem hem kam long me finis"). Evri samting hem true nao.'

This certificate should be signed by the suspect (or his mark affixed to it) and signed by any persons present. If the suspect refuses to sign or affix his mark, this fact should be noted on the statement. The date and time when the statement is finished should be recorded.

Stage 4: Charging of Accused Person

When a person is charged, the charge should be read to him. Afterwards he should be warned as follows:-

“Do you wish to say anything about this offence which it is said you have committed? If so, I will write down what you say and the court may hear what you say. You may remain silent if you wish."

In Pidgin:

“Iu laek fo tellem eni samting about disfella samting ia wannem olketa say iu duim? Sapos iu tellem eni samting bae mi raetem and bae mi savve tellem disfella samting long court. Sapos iu laek fo stop kwaet no moa iu save duim”

(Stage 4 is the formal charge when the case is ready to go to court. When a man is arrested he must be told why he is arrested but that is not the time when he is charged for this stage.)

THE PUBLIC SOLICITOR'S OFFICE

HEAD OFFICE: PO BOX 553, HONIARA, SOLOMON ISLANDS
Tel: (677) 22348/28406/28404/28405
Fax: (677) 28409

NOTIFICATION TO POLICE

I have taken instructions from Mr/Mrs/Miss _____ .

This person is now a client of this office and has been advised as to their rights to participate in or refuse to participate in a record of interview. Our client has instructed us that they do not want to give a statement or take part in any interview.

Be advised that no attempt should be made to interview or obtain a statement from our client.

All communications about the alleged offence/s should be conducted through our office and not directly with the client.

Yours faithfully

Original given to [name and rank of officer] _____ on _____ at _____ am/pm.

Copy to be made and kept on client file

Chapter 10

Appearing as a Duty Lawyer

Try to obtain a court list the previous afternoon or early in the morning.

Apply the Public Solicitor's policy 'Legal Aid Services to the Central Magistrate's Court'.

Go through the court list and make sure that all Public Solicitor's Office matters on the list will be handled either by the duty lawyer or file lawyer. Cross check the court list with the duty roster.

Communicate with the other duty lawyers and discuss allocation of duty files.

Check the mentions box before leaving for court.

Check the detention area at court and ask the corrections staff there if any prisoner needs representation. If possible, attend on your client in the detention area both before and after each court appearance.

Check with the public in the court area to ask if there is anyone who needs representation. Be careful to note if any case involves a juvenile suspect. If so, the Court should be closed to the public when hearing that case.

If you are too busy to advise a new client who is on bail then ask them to attend at the Public Solicitor's Office for **criminal clinic** at 1.30 pm each Thursday to give instructions.

For ongoing matters open a file and complete the intake sheet on the inside front cover of the file. For 'one-off' matters such as advice only or immediate pleas of guilty, use a 'short contact sheet'. Write future court dates on the front of the file.

After court, put all files into the tray in the room of the Chief Legal Officer/Principal Legal Officer so that they will be recorded in the central diary – please do not give the files directly back to lawyers as this means that they will not be recorded in the central diary.

Consider writing or emailing the Police Prosecutions Office for disclosures immediately, rather than waiting until a court mention date and making an application for orders. Also, if a disclosure order is made by the court, consider confirming it in writing.

Consider whether an adjournment is in the client's best interests. If a matter is to be adjourned, consider whether a bail application should be made. Consider adjourning custody matters for less than 14 days if the file can be progressed in a shorter period of time.

If you are rostered as duty lawyer, attend to duty matters both in the morning at 9 am and the afternoon at 1.30 pm. Work as a team and strive to be positive, prepared and professional. Talk to your colleagues.

Chapter 11

Advocacy and Etiquette

Be punctual for court, properly prepared and dressed appropriately. Always have your diary.

The dress code for legal practitioners is set out in Central Magistrate's Court Practice Direction No. 1 of 2007. For men it is essentially dark trousers with opaque, clean, ironed long or short sleeved white shirt, buttoned at the collar with a necktie. Long sleeved shirts are to be buttoned at the wrist. Business shoes are to be worn. For women it is black trousers or 'appropriate' skirt and opaque, clean, ironed long or short sleeved white blouse or shirt. Business shoes to be worn.

Announce your appearance by saying "May it please the Court, counsel's name is….I appear for…."

Address a magistrate as "Your Worship" and a judge as "Your Lordship" or "My Lord". Do not say "you" to a judicial officer.

Stand when speaking to or being spoken to by a judicial officer.

If your opponent stands to speak, you should sit down.

Do not say "thank you" to the judge or magistrate. Instead use "May it please" or "As the Court pleases".

Stay silent and still when the oath is administered.

When your matter is concluded, ask to be excused, or stay at the bar table until the next counsel arrives, and then bow and leave the bar table. Give precedence to more senior counsel, and as a courtesy wherever possible allow members of the private bar to mention matters before you. Do not leave the bar table empty while the magistrate or judge is sitting.

Do not mislead the court. This means you must not make a submission which you know is false. Do not guess, just say "I do not know", and offer to find out.

If you later realise you have misled the court, correct the court record. If this is not possible without harming your client, seek leave to withdraw from the matter.

Your professional reputation is everything. Protect it at all costs. Once lost, it is irretrievable.

Persuasion is being the most reasonable person in the court room.

In change of plea or other contentious cases, get signed instructions.

If you are worried that you have an ethical problem, assume you do, and choose the more ethical option.

Be familiar with the *Legal Practitioners (Professional Conduct) Rules.*

When in court, do not read the paper, talk loudly, put feet up on the bench or eat, drink or chew betel nut. Your mobile phone should be turned off. Tell your client that they too should turn off their mobile phone.

Develop your own style of advocacy that suits your personality. Be relaxed and use pauses. Speak clearly and loudly enough for everyone in court to hear you. Use eye contact.

Chapter 12
Magistrate's Court Basics

Your client is always presumed innocent. The prosecution bears the onus or burden of proof in criminal matters. The standard of proof in all criminal matters is beyond reasonable doubt.

Jurisdiction

Offences for an adult at the time of the offence which must be heard in the High Court include Murder, Manslaughter, Attempt Murder, Rape, Acts Intending to Cause Grievous Harm, and Defilement of a Girl under 13. Note the expanded jurisdiction for the Juvenile Court – all cases (including rape) except "homicide" matters can be heard in the Juvenile Court, unless they are jointly charged with an adult (Section 4(1) *Juvenile Offenders Act*). Only the High Court can consider and grant bail in a charge of murder. A full list of the jurisdiction of all offences in the Penal Code is set out in Chapter 29.

The sentencing jurisdiction of Principal Magistrates and 1st and 2nd class Magistrates are dealt with in Chapter 13.

A Magistrate may refer a case to the High Court pursuant to Section 37 of the *Magistrate's Court Act*. This section could be used for cases involving special complexity, or requiring a sentence above the jurisdictional limit available to the Magistrate.

Technical Defences

You should be aware of statutory time limits and technical defences for some offences.

For offences with a maximum penalty of six months imprisonment or $100 fine or less, the charge must be laid within 6 months of the date of the offence [Section 206 *Criminal Procedure Code*]

Under Section 75 of the *Traffic Act*, for charges or careless driving, reckless driving, dangerous driving and excessive speed, the prosecution must give a notice of intended prosecution within 14 days of the date of the alleged offence.

All charges under the *Dangerous Drugs Act* must be sanctioned by the DPP [s 39(3) of the *Act*, see also *R v Maebinua* [1999] SBHC 136; HC-CRC 160 of 1999 (6 September 1999) and *R v Telili* [2011] SBHC 67; HCSI-CRC 12 of 2011 (27 July 2011).

Withdrawal of Charges

The prosecutor will sometimes seek leave to withdraw charges under Section 190 of the *Criminal Procedure Code*. Under this section, the court has two options, either discharging or acquitting the accused. A discharge leaves open the possibility of the charges being re-laid. An acquittal results in the end of the case forever. You should assess the merits of any prosecution application for 'withdrawal and discharge' and be ready to submit that the appropriate order is that of acquittal under Section 190(2)(b)(i). An acquittal is normally the appropriate order if the prosecutor is seeking to withdraw charges on the day of the trial, during the trial or within a few days before the trial.

Case Management

All parties have a duty to ensure cases are not unreasonably delayed. It is important for your individual professional reputation, and the reputation of the Public Solicitor's Office, that delays and unnecessary adjournments are avoided. Wherever possible, cases should not be continually adjourned for you to obtain instructions. Public Solicitor's Office lawyers should be ready to commence trials on the date they are listed. Having a good reputation in the area of case management will assist to ensure that legitimate adjournment applications are granted. Generally, adjournments should be a last resort and should not be sought without a very good reason.

Relisting Matters

If you need to have a matter relisted, you should approach the court registry. Write a letter to the Registrar advising the need for relisting, any reasons, and any need for a production order from the prison. You should also advise the prosecution of any request to relist a matter so that they can appear at court with their file.

If a client approaches you whilst a warrant is in existence for their arrest, you should advise them to surrender to the court. You can assist them by relisting the matter and then appearing on an application to have the warrant vacated. For further information see Chapter 15 on "Warrants".

Useful Resources for Research

Ross on Crime is a helpful starting point for legal research as is *Archbold* and *Blackstone*. You should try to find Solomon Island cases and prefer these to foreign cases. PACLII is also a very helpful research tool. Be aware that legislation on PACLII may not be up to date and there are

some errors within some legislation on PACLII. The 'Grey Book' is a very comprehensive research tool, although it is now quite old and so should be used with care.

Robert Cavanagh's 'Evidence Law and Advocacy in the Solomon Islands' deals with many of the topics that are also covered in this handbook, but in much more detail. Duty lawyers should carry this book with them and use any opportunity, such as waiting in court for a matter to be called on, to read the book.

Dealing with the Media

Journalists sometimes approach Public Solicitor's Office lawyers seeking information about a particular case that a lawyer has appeared in. It is normally appropriate to clarify what happened in court with the journalist so that they properly understand the court proceedings and outcome. This type of 'clarification' may assist them to accurately report court proceedings. If the case involves a juvenile defendant you might need to remind the reporter of the prohibition against publication of the identity of your client (see Section 4(b) *Juvenile Offenders Act*).

Other than this sort of clarification, generally you should not speak to the media about a particular case without the consent of the Public Solicitor and the written consent of your client.

You should avoid expressing your personal opinion in public about the outcome of a particular case. You should refrain from making any statement to the media, either on the record or off the record, about the merits of a particular court decision.

Chapter 13

The Jurisdictional Limits of Magistrates

Magistrate's Courts are established by the *Magistrates' Court Act [Cap 20]*, as amended by the *Magistrate's Court Amendment Act 2007*. They are courts of record and there are duties on Magistrate's to record the evidence given before them. They are subordinate to the High Court and have jurisdiction in both civil and criminal matters (criminal matters include all quasi-criminal matters and are effectively all matters which are not civil matters). This summary only deals with the criminal jurisdiction of Magistrate's Courts. Magistrates are appointed by the Chief Justice. Magistrate's Courts are to be conducted in English (although this also includes Pijin). Magistrate's are required to provide to the Chief Justice or a delegated judge each month a report "setting out the names, sex, and age of each defendant, the offence with which he was charged, such defendant's plea thereto and, if convicted, the date of the conviction, and the sentence or order in full". The Chief Justice or the delegated judge has certain powers to change any sentence imposed by a magistrate, however, if a change is to the prejudice of any person, then no order can be made changing the sentence unless the affected person has had an opportunity to be heard either in person or by counsel.

The Magistrate's Court is headed by the Chief Magistrate, who is assisted by a Deputy Chief Magistrate.

There are three levels of Magistrate's Courts. They are:

1. Principal Magistrate's Court presided over by Principal Magistrates
2. Magistrate's Courts of the First Class presided over by First Class Magistrates
3. Magistrate's court of the Second Class presided over by Second Class Magistrates.

It is important to know the jurisdiction of a Magistrate's Court before appearing in that court, as several significant limits are imposed on the jurisdiction of each of the divisions of these courts. The jurisdictional limits of Magistrate's Courts are defined by the *Magistrates Court Act* (as Amended) and the *Criminal Procedure Code*, as amended by the *Criminal Procedure Code (Amendment) Act 2009*.

- Principal Magistrate's Courts have the power to hear all summary offences, all offences which they are expressly empowered to hear and all offences which have a maximum punishment that does not exceed 14 years imprisonment. A Principal Magistrate's Court may not pass a sentence of imprisonment in excess of 5 years or impose a fine in excess of 50,000 penalty units and in cases where at one trial a person is convicted of two or more distinct offences the maximum aggregate penalty which can be imposed is 10 years imprisonment or 100,000 penalty units.

- Magistrate's Courts of the First and Second class have the power to hear all offences which are expressly conferred on them, or which are expressly stated to be tried summarily or which have a penalty which does not exceed 1 years imprisonment. A Magistrate's Court of the First or Second class must not pass a sentence of imprisonment in excess of 1 year or impose a fine in excess of 10,000 penalty units and in cases where at one trial a person is convicted of two or more distinct offences the maximum aggregate penalty which can be imposed is 2 years imprisonment of 20,000 penalty units.

At the time of writing one penalty unit is $1.00. For offences created by the *Penal Code* (Section 41) when no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding 2 years or with a fine or with both.

The Chief Justice, however, has the power to increase the jurisdiction of a Magistrate's Court and this has been done for a large number of offences. See Chapter 29 for a table summarising the offences which various Magistrate's Courts are by order of the Chief Justice authorised to hear.

Magistrate's Courts do not lose their jurisdiction to hear offences simply because the aggregate total of the maximum punishment available for a number of offences which are heard at the onetime exceeds the jurisdictional limit of that particular Magistrate's Court. However, when dealing with multiple offences at the one time Magistrate's Courts have the power to impose only twice the maximum punishment that they are empowered to impose for any single offence. Refer to Section 27 of the *Magistrate's Court Act* and Sections 7 and 9 of the *Criminal Procedure Code*.

Duty Lawyers should have to hand a copy of both the *Penalties Miscellaneous Amendments Act 2009* and the *Criminal Procedure Code (Amendment) Act 2009* which sets up a scheme of penalty units and in many cases significantly increases the maximum fine that can be imposed for a large number of offences over a large number of Acts including the *Penal Code*, *Traffic Act* and *Liquor Act*.

Principal Magistrate's Jurisdiction to deal with an offence

A Principal Magistrate can hear offences with the following maximum penalties
SS 4(b) CPC; 27(1) (a) Magistrates Court Act

- Fine of any amount
- Offences which are expressly to be heard summarily
- Not exceeding 14 years imprisonment
- <u>Additional Jurisdiction:</u> The jurisdiction of Principal Magistrates to hear offences has increased, See Chapter 29
  - Note: This <u>does not</u> increase the maximum sentencing jurisdiction

1st and 2nd Class Magistrate's Jurisdiction to deal with an offence

A 1st and 2nd Class Magistrate can hear offences with the following maximum penalties

- Imprisonment not exceeding 1 year
- Offences which are expressly to be heard summarily
- Fine not exceeding 10,000 penalty units (increased by *Penalties Miscellaneous Amendments Act 2009)*
- Additional Jurisdiction: The jurisdiction of 1st and 2nd Class Magistrates to hear offences has increased,

  See Chapter 29

  - Note: This does not increase the maximum sentencing jurisdiction

Chapter 14

Bail

Take instructions from your client. Do they want to make a bail application? You advise and they instruct. It is their decision as to whether or not to ask for bail. You should give realistic advice. Remember too the importance of bail for the rehabilitation and reintegration prospects of child defendants.

If your client wants bail, take instructions. See the instruction sheet at the end of this Chapter. Be ready and willing to ask for bail on the first mention, even with minimal instructions. If bail is refused, once disclosures are received or further instructions are taken you can argue a 'change in circumstances' and make another application.

Ask the prosecutor what their position is on bail. Feel free to discuss the merits of bail with the prosecutor. Sometimes it is easier to persuade the prosecutor than the magistrate. Remember that only the High Court can grant bail in a charge of murder.

If the prosecutor agrees to consent to bail, discuss suitable bail conditions. If they intend to oppose bail, try to find out their reasons for opposing bail.

In court, state that this is an application for bail. Try to let the prosecutor state the reasons for opposition to bail first, and then you reply with your submissions. Wanting more time to investigate the offence is not a sufficient reason to refuse bail.

The proper starting point is that there is a presumption *for* bail. Direct your submissions towards there being insufficient reasons not to grant bail. "[T]he burden is on the Crown to show that the applicant should not be given bail." *R v Bolea* [2011] SBHC 68.

Prosecution objections to bail should be based on real risks rather than mere speculation. See, for example, *Gitoa v R [2011] SBHC 154; HCSI-CRC 440 of 2011 (15 December 2011)*

> "It appears to have become a practice for the Crown to raise the usual risks (risk of flight, risk of re-offending and risk of interference with witnesses) as grounds for refusing bail and the argument has always been that the existence of these risks must be readily assumed and need not be proved as a fact due to the seriousness of the charges. There may be merit in that approach, **but I think the time has come for the courts to look for *real risks* rather than *assumed risks* as grounds for depriving an accused person of his right to bail. Rather than assuming that every person accused of serious**

> **offences is likely to abscond or re-offend or interfere with witnesses, I think there must be some evidence of a real or actual risk that the accused person will abscond or interfere with witnesses or re-offend.** To deny bail on the basis of assumptions runs counter to the presumption of innocence and the prima facie right to bail as provided for under Sections 5 and 10 of the *Constitution*. For someone to be placed behind bars for a considerable length of time awaiting trial only to be found innocent after trial would be nothing less than grave injustice." (Emphasis added)

Emphasise the positive aspects of the client's situation, for example, if there is a history of non-appearance and no surety available, consider whether your client could report to police every day. Keep in mind family ties, employment, study, youth, no priors, weak prosecution case, delay before trial, surety, co-accused on bail, hardship to others and other matters. Know your magistrate.

Be willing to address the weaknesses in the evidence which supports the charges. Read the remand brief and identify weaknesses in the evidence.

Propose suitable conditions. Be persuasive. Submit that the concerns of the prosecution can be addressed by bail conditions rather than refusal of bail. In borderline cases, suggest that it is an appropriate case for strict conditional bail.

Keep in mind the difference between cash deposit bail and principal or "own recognizance" bail.

If you propose a surety, try to have them at court. Explain to them their obligations and the option to apply to court in future if they want to be released from being a surety.

Be aware that a magistrate can refuse bail even if the prosecutor consents to bail. Be prepared to a make a full bail application even if the prosecution intends to consent to bail.

If bail is refused, you can make a further bail application in the same court if there is a change of circumstances. Passage of time can be a change of circumstance.

The Public Solicitor's Office has prepared a brochure to assist unrepresented accused to apply for bail. Copies should be kept at hand at Prisoner Affairs at Central Prison, at the provincial prisons and police lock-ups. A copy of the brochure is attached at the end of this Chapter.

High Court Bail

You can also apply on behalf of your client for bail in the High Court at any stage of proceedings, both for charges which would proceed to the High Court after committal, and for charges which would be dealt with only before a magistrate. For example, you do not need to wait for a charge of murder to be committed to the High Court in order to apply for bail for that charge in the High Court. An application for bail can be lodged in the High Court, even though there has not yet been a SFPI or LFPI held on the charges. You need to file a notice of "application for bail" and an affidavit in support of bail from your client.

Your client should not address the facts of the case or the nature of the prosecution evidence in the affidavit. Any admissions or assertions made about the facts of the case could later be used against your client during cross examination at a trial.

You should also obtain an affidavit from any proposed surety. Examples of these documents are available at the end of this Chapter. These documents, as well as precedents for written submissions, can be found on the public folder.

Juveniles

Remember that, apart from cases of "grave crime", there is an even stronger presumption in favour of bail for juveniles than for adults. If refused bail, juveniles are also "as far as practicable" to be separated from adults. See Sections 5 and 6 of the *Juvenile Offenders Act* and Chapter 23 Juveniles.

'Grave crimes' (Schedule 2, *Juvenile Offenders Act*) are:

- Murder
- Attempted murder
- Manslaughter
- Unlawful wounding
- Unlawful poisoning
- Causing grievous harm

BAIL APPLICATION INSTRUCTION SHEET

Name:

Age:

Family Circumstances[3] :

Address[4] :

Criminal History[5] :

Employment / Education[6] :

When Arrested:

Nature of the Charge:

---

[3] *Married, single, children, anyone that person is responsible for looking after. Ties to family demonstrate an unlikely risk of absconding whilst on bail.*

[4] *Where live, who with, for how long has client lived there, who owns the house, rent or buy/own the house. Stable and permanent residence is needed for bail and demonstrates that there is no real risk of absconding whilst on bail. Particularly if the client has lived there for a long time.*

[5] *Any previous convictions, if so are they relevant, how old are the previous convictions? Small matters such as drunk and disorderly or traffic mattes should not have an impact on bail. Also if convictions are old the court should place very little weight on them. No previous convictions or very old convictions demonstrate that there is no real risk of committing further offences whilst on bail.*

[6] *Employed, if so where, for how long, what type of work does the client do, what hours does the client work. Stable and permanent employment demonstrates that there is no real risk of absconding or failing to appear.*

RELEVANT ISSUES

1. Whether the defendant will abscond on bail

2. The nature of the accusation or 'seriousness' of the alleged offence/s

3. Nature of evidence to be adduced

4. The severity of punishment

5. Interference with witnesses

6. Risk of re-offending or committing further offence

7. The length of delay

8. Conditions

Police reporting
Curfew
Not to contact or approach witnesses
Not to associate with co-accuse

Proposed Surety (contact details and circumstances):

Name
Address
Telephone number
Occupation
Can the proposed surety provide a cash deposit?

(SAMPLE HIGH COURT BAIL APPLICATION NOTICE)

IN THE HIGH COURT Criminal Case No. of 200**[ ]**

OF SOLOMON ISLANDS

Criminal Jurisdiction

In the matter of: In the matter of an application for bail pursuant to the Criminal Procedure Code

BETWEEN:

[Name]

Applicant

AND

REGINA

Respondent

BAIL APPLICATION

LET ALL PARTIES concerned attend before the Honorable Mr. Justice _____

At the High Court, Honiara, Solomon Islands on the _____ day of _____ 2012 at _____ o'clock in the _____ noon on the hearing of an application on behalf of the applicant [Name] to be granted bail pending trial.

Dated this _____ day of _____ 2012

……

Counsel for the Applicant

This application was initiated by [ ] of the Public Solicitor's Office, PO Box 553, Honiara, Solomon Islands

(SAMPLE HIGH COURT BAIL APPLICATION AFFIDAVIT)

IN THE HIGH COURT Criminal Case No. of 2010

OF SOLOMON ISLANDS

In the matter of: An application for bail

Between:

HENRY SMITH

Applicant

AND

REGINA

Respondent

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL

I, HENRY SMITH of Burns Creek, Honiara, MAKE OATH and say as follows:-

1. I am the applicant in this matter and make this affidavit in support of my application for bail.

2. I am charged with one count of murder. My case was committed for trial in the High Court on 17 November 2010.

3. This is my first application for bail.

4. I have no criminal history.

5. I am married. I have one child who is 5 years old.

6. I normally reside with my wife and child at Burns Creek. I have lived in Honiara since I was a small boy.

7. I normally work as a taxi driver. If granted bail, I will resume work and support my family.

8. I have been in custody since my arrest on 15 February 2010. This is a period of more than nine months.

9. I am willing to comply with bail conditions.

10. The nearest police station is Henderson Police Post. I am willing to report to police. I am willing not to contact any witnesses and abide by a nighttime curfew.

Sworn by the Deponent)

At Honiara)

This day of November 2010) _____

Henry Smith

Before me

A Commissioner for Oaths

Chapter 15

Warrants

What to do When a Client has been Arrested on a Warrant

Speak to the prosecutor and/or have a look at the prosecutor's file to determine why the warrant was issued.

Ask the prosecutor if there are any fresh offences or if the only charges are those on the warrant.

If it is a simple matter (such as liquor offences, traffic offences, malicious damage etc) go through the brief statement of facts with the client. If they indicate that the brief facts are true, they have no defence and they are willing to plead guilty to the charge, then finish the matter there and then. Do not adjourn it again. Given that your client is already at court you may as well deal with as much as you can and this will save you all having to go back on another occasion. Pleading guilty and receiving a non-custodial sentence avoids the risk of being refused bail and thereby sent to prison for a matter which would not result in a prison sentence upon conviction. The forfeiture of any bail amount previously imposed may also be relevant to penalty.

If it is not possible to immediately finish the case, you will need to adjourn the case. You may need to get full disclosure, refer the file back to the previous lawyer or take further instructions.

If the prosecutor is applying to have the client remanded in custody then you will need to take instructions for a bail application. Just because the client has been arrested on a warrant does not then mean that they should always be remanded in custody.

Ask the prosecutor what his/her attitude is in respect of bail now. It may be that with a minor matter they agree to bail again despite the client being arrested on a warrant.

Take instructions from client about why they failed to appear. If they have breached bail conditions such as reporting conditions, find out why they have not been complying with their conditions.

Check to see if the warrant was issued for a failure to attend court on bail, or a failure to attend court in response to a summons. Failure to respond to a summons is less serious than failing to attend on bail. It means your client has not had the chance of bail previously and this may be a

good reason for bail to be granted. Also check to ensure that the summons was properly served, and whether an affidavit of service has been sworn.

If instructed to apply for fresh bail, ask the client if they know a relative, friend or employer who would be willing to provide a surety for the attendance of the client at court. A further bail application is more likely to be successful if there is a surety to propose and again is more likely to succeed if the surety is present in court and able to deposit cash bail. A short adjournment (say to 1.30 pm that same day or to the next day) may be required in serious cases to give time to contact the surety and have them attend court.

The court still needs to consider the grounds for refusing bail, i.e. risk of failing to appear, risk of flight and risk of commission of further offences. You will need to ensure that your instructions address all of these issues. Refer to the bail application instruction sheet and legal summary.

What to do if a Client Approaches you at the Office and they have a Warrant Outstanding

If a client approaches you whilst a warrant is in existence for their arrest, you should advise the client to surrender to the court.

You can assist them by relisting the matter and then appearing on an application to have the warrant vacated. Because the client is voluntarily surrendering to the court there are strong grounds for them to be granted bail by the court. If courts refuse bail in these circumstances people may be less willing to surrender on warrants, and this is not in the public interest. You should be ready to explain to the court why the person failed to appear previously and also be ready to propose bail conditions.

Chapter 16

Reconciliation

Identify the case as one in which a reconciliation application may be appropriate. Reconciliation is usually done in accordance with customary law, which will differ from place to place and from time to time. Be aware of Schedule 3 to the *Constitution*. As at the date of publication no Act has been passed as to the pleading, regulation or resolution of conflict between customary laws, although a Bill has been drafted which deals with some of these matters.

Pursuant to Section 35 of the *Magistrate's Court Act,* reconciliation is appropriate "*in any case of common assault or other matter personal or private in nature but not aggravated in degree...*" Be aware that you can negotiate lesser charges in order to make reconciliation an option.

Section 35 of the *Magistrate's Court Act*:

Reconciliation

35.—(1) In criminal cases a Magistrate's Court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any offence of a personal or private nature not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by such Court, and may thereupon order the proceedings to be stayed or terminated.

(2) In civil causes a Magistrate's Court and the officers thereof shall, as far as there is proper opportunity, promote reconciliation among persons subject to its jurisdiction and encourage and facilitate settlement in an amicable way and without recourse to litigation of matters in difference between them.

(3) Where a civil suit or proceeding is pending, a Magistrate's Court and the officers thereof may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

A felony cannot be reconciled e.g. larceny.

Aggravated cases, which cannot be reconciled, include:

- Actual bodily harm by more than one person or involving a weapon
- Criminal trespass by night with an intention to steal

Advise your client of the option of reconciliation. The client may need an adjournment to consider this option and to speak with relevant parties. An adjournment may also facilitate an opportunity for the parties to 'cool off' and naturally reconcile.

The complainant should attend court. Care should be taken in arranging this, as direct contact between your client and the complainant may be a breach of bail. The prosecution can be contacted and asked to arrange the presence of the complainant.

Approach the prosecutor and invite them to consent to the application.

Once in court, advise the Magistrate that you wish to deal with the matter by way of reconciliation under Section 35 of *Magistrate's Court Act*. It would generally be useful to have a copy of the practice direction (copy at the end of this Chapter) to hand up to the court. Even though this practice direction refers to Section 38(1) of the *Magistrate's Court Act*, the principles in the practice direction are still applicable.

Outline the nature of the reconciliation being relied upon and advise the court that the complainant is present. If compensation has been paid provide the details.

The court may ask the prosecutor for the facts of the case and require further information such as medical reports if there have been any injuries.

The court will probably ask the complainant some questions to make sure that the reconciliation is genuine. The court may ask for evidence to be called on this issue. You or the prosecutor may be invited to call the evidence from the complainant.

Remember that the court has discretion in these matters. The court can still refuse the application in circumstances where the prosecution consents.

If the application is granted, the court can either terminate the charges or stay proceedings temporarily – e.g. for one year. Where reconciliation has finally settled the matter, the proceedings should be terminated. The court may ask the parties to shake hands.

Offences of domestic violence pose particular challenges. If you have reason to believe that reconciliation is only taking place because of coercion you should consider withdrawing from the matter, as to continue in the case would be to mislead the court.

Even if the court rejects the application for reconciliation, it is still a powerful matter in mitigation on sentence. It '*demonstrates genuine contrition and remorse and .. it can …assist … with the possibility of reduction in sentence imposed*" [*Sosopu v R* [2005] SBHC 112 per Palmer CJ]

Practice Direction No 1 of 1989

RECONCILIATION UNDER SECTION 38(1) *MAGISTRATE'S COURT ACT*

When a magistrate is considering reconciliation of a criminal case under Section 38(1) of the *Magistrate Courts Act*, it is essential that he satisfies himself the reconciliation is genuine and has been freely accepted by the complainant. In order to do this, it will usually be necessary for the complainant to attend and to be questioned by the court. It is only in the most exceptional circumstances that reconciliation should be accepted without the attendance of the complainant and then only where there is clear evidence from the complainant of his agreement.

The scope of reconciliation is limited by the section to cases of common assault and "any offence of a personal or private nature not amounting to felony and not aggravated in degree." The practice of allowing reconciliation in aggravated cases must stop. Examples of cases where reconciliation should not be accepted include assaults causing actual bodily harm by more than one person or involving the use of weapons. Criminal trespass by night should not be reconciled where there is any evidence of an intention to steal and simple larceny is, of course, excluded because it is a felony.

Reconciliation should never be allowed automatically on the application of the complainant or the prosecution and should only follow a consideration of the relevant facts.

In cases where compensation is requested or offered, the decision is entirely one for the court. Thus it must hear sufficient facts to decide whether it is a suitable case and, if so, the sum that would be appropriate. Equally, when a sum has already been paid, the court must still decide whether it is sufficient or proper and act accordingly.

/2

It should not agree to reconciliation until it has clear evidence of the payment. The fact compensation has been paid and accepted by the complainant does not make that case suitable for reconciliation if it was otherwise unsuitable although it can, of course, still be a matter of mitigation.

In cases where compensation is ordered, payment should be made to the complainant in open court or there should be clear evidence of payment and receipt. No order of reconciliation should be made until this is done and this may frequently require a short adjournment. The fact of payment in court must be recorded in the court file and no receipt is then necessary.

In every case where reconciliation is allowed, the court must state whether the proceedings are terminated or stayed. Where it is satisfied the reconciliation has finally settled the matter, the case should be terminated but, if there is any concern that bad feeling may continue, it may be wise to consider ordering a stay only. In this case, a period must be set (usually a period of up to 12 months would be appropriate) and it must be explained to the defendant that he is liable to arrest and trial for the offence should he continue or repeat his misconduct within that period,.

Whilst many cases of matrimonial violence are suitable for reconciliation, the court should be especially careful before it is satisfied the victim has really agreed. In the majority of such cases, the appropriate order would be to stay proceedings. The court may also consider in such eases whether to bind over one or both parties under Section 32(2) of the *Penal Code* subject, of course, to the complainant's right to be heard first.

All the matters referred to in this direction must be noted in the record of proceedings.

Dated this 9th day of February 1989

Chapter 17

Negotiation on Charges

Obtain instructions from the client that s/he consents to you entering into negotiations with the prosecution. You should advise the client on the strength of the evidence, all available defences, possible penalties and the discount on sentence for a guilty plea. The client then instructs you on what he or she wants to do with the case.

Identify possible charges and facts that might resolve the matter. Any proposed facts must be consistent with your instructions.

Write “without prejudice” at the top of the negotiation letter. This reduces the risk of the letter being used against your client in later cross examination.

Identify the client, the next court date and the charges. Propose the charges and facts that you are seeking. Sometimes asking if a plea of guilty to certain charges would be accepted is better than making a direct offer to plead guilty to charges.

List reasons why your proposal should be accepted. Be persuasive. Refer to the DPP Guidelines where appropriate. These can be found on the Public Solicitor’s Office website.

Be aware of the danger that your letter might be an invitation for the prosecution to fix the problems with their evidence. It might be better in some cases to refer only generally to the evidential issues in your correspondence. In other cases it might be better to simply go to trial and hope that the prosecution does not identify the weaknesses in their case until it is too late.

If the weaknesses in the prosecution case cannot be overcome by extra evidence, the case is a good one for a negotiation letter.

Be prepared to have a second attempt at negotiating charges if your first proposal is rejected. You may need to propose a different charge.

If your offer is initially rejected, but accepted much later in time (e.g. morning of trial), or if the trial results in the outcome you proposed in the negotiation letter, you can use the negotiation letter in the subsequent submission in mitigation. It demonstrates an early willingness to plead guilty to the appropriate charges.

Record your client's instructions in a file note. For a plea of guilty on a serious offence it is good practice to request your client to give written instructions they will plead guilty, and that they are aware of all the relevant penalties.

POSSIBLE REASONS IN SUPPORT OF YOUR PROPOSAL

- There is sufficient sentencing power under the proposed charges to adequately punish the accused. [DPP Guideline 10.1 (b)].
- Police, prosecution and court resources will be saved by a guilty plea.
- Acceptance of the proposed charges avoids the need for a lengthy or complex trial. [DPP Guideline 10.2]. This saves resources and is in the public interest.
- The proposed charges adequately reflect the overall criminality of the accused's conduct. [DPP Guideline 10.1].
- The proposed charges take account of weaknesses in the prosecution case and possible defence [DPP Guideline 10.3].
- The proposed charge allows the case to be presented in a clear and simple way [DPP Guideline 10.3].
- A young offender should not be prosecuted for a first offence where the offence is not serious [DPP Guideline 22.3].
- The costs and difficulty of bringing witnesses to court for a trial is not in the public interest in circumstances where the matter could be dealt with by way of a guilty plea to the proposed charge.
- The prosecution cannot prove the elements of the offence beyond reasonable doubt.
- There are no reasonable prospects of a conviction.

- The proposed charge will avoid the ordeal of the victim and witnesses giving evidence and being cross examined at trial [DPP Guideline 21.3].

- A guilty plea assists with the backlog of trials [DPP Guideline 21.1].

- The proposed charges will avoid the adversarial nature of a trial and therefore foster reconciliation.

(SAMPLE LETTER SEEKING REDUCTION OF CHARGES)

Date Our Ref: (PSO file number)
Director of Public Prosecutions
Honiara

'Without Prejudice'

Dear Sir,

RE: R v JOHN TEVA

This matter is currently before the High Court awaiting a trial date. The accused is charged with four counts of indecent assault and one count of rape. He has been in custody since his arrest, a period of about 19 months.

Would the Crown be willing to accept a guilty plea to three counts of indecent assault and one count of attempt rape, in full satisfaction of the matter (i.e. withdrawal of the rape charge)? The following factors support this outcome:

1. There is sufficient sentencing scope within the proposed counts to properly punish the accused for his overall conduct. Each count carries a maximum of seven years imprisonment. With four different victims, sentences could be potentially accumulated up to a maximum of 28 years imprisonment.

2. There was no recent complaint, as the complainant did not report the incident for almost a month. The prosecution case is not strong.

3. If a trial was avoided the complainant would not be required to give evidence or be cross examined [DPP Guideline 21.3].

4. Police, prosecution and court resources would be saved and be able to be used for other cases. [DPP Guideline 21.1].

Please do not hesitate to contact me to discuss this matter.

Yours faithfully,

Name of Lawyer
For Mr Douglas Hou
The Public Solicitor

(SAMPLE LETTER REQUESTING WITHDRAWAL OF CHARGES)

Date Our Ref: (PSO file number)
Ms Mary Smith
Office of the Director of Public Prosecutions
HONIARA

"Without Prejudice"

Dear Ms Smith,

RE: *R v Ben JONES*

This matter is currently before the High Court awaiting a trial listing. An information alleging murder has now been filed. It is respectfully submitted that the evidence in this case is so weak that a *nolle prosequi* should be entered and the prosecution discontinued.

In summary:

1. Mr Jones participated in a record of interview. In that interview he said that he acted in self defence in stabbing the victim. He also gave this version to two other prosecution witnesses. The prosecution must negative beyond reasonable doubt any possibility that the accused acted in self defence.

2. There are *no* eyewitnesses to the fight between the accused and the deceased. There is 'no evidence' to disprove that the accused acted in self defence.

3. The injuries suffered by the accused were very serious and consistent with his account given to police. His injuries are consistent with "fending" away an unprovoked knife attack. The police photos of his injuries support self defence.

4. All the evidence suggests the victim started the fight. There is no evidence to suggest the accused started the fight.

5. There is no evidence the accused was angry towards the deceased.

6. The evidence of self defence is overwhelming. The prosecution case could only ever be a '50/50' proposition, at best. The accused may have acted in self defence. This reasonable possibility cannot be ruled out. The evidence for the charge does not amount to proof beyond reasonable doubt.

7. The prosecution cannot disprove self defence. This is the exact situation that confronted the court in *R v Somae,* a case in which the Court of Appeal confirmed that there was no case to answer.

8. The strength of the prosecution case should now be reassessed having regard to the course of the committal proceedings [DPP Guideline 9.8]. There is insufficient evidence to put the accused on trial. There is no reasonable prospect of a conviction [DPP Guideline 7.4]. The prosecution should be terminated.

9. "The finances available for prosecutions are finite and should not be wasted on prosecuting inappropriate cases, thereby reducing the resources available to prosecute worthy cases . [DPP Guideline 7.2]. Only fit and proper cases should be brought before the courts [DPP Guideline 9.1].

Mr Jones has been in custody for more than 12 months and faces no prospect of a trial until 2011. The justice of the case warrants this prosecution being immediately terminated.

Yours faithfully,

Name of Lawyer
For Mr Douglas Hou
The Public Solicitor

Chapter 18

Pre Trial Conferences

For Central Magistrate's Court cases, when a not guilty plea is indicated the matter will be adjourned for a Pre Trial Conference (PTC). Requests for a Long Form Preliminary Inquiry will also be listed for Pre Trial Conference. Pre Trial Conferences are usually listed on a Thursday morning.

At the Pre Trial Conference, the lawyer with carriage of the file should attend, not a duty lawyer. Both the defence and prosecution should have full instructions and be able to tell the court:

- If the matter can be proved by available evidence on the brief, and if so, how (the prosecutor will be asked this).
- What facts can be agreed.
- What matters and issues are in dispute.
- What witnesses are required.
- Length of trial.
- Any need for a *voir dire*.
- Whether a lesser charge might be appropriate.
- If the matter is not resolved at the Pre Trial Conference, it will be listed for trial.

The defence lawyer should not be asked "what is your defence?" and feel pressured to disclose their defence before trial. There are several ways of dealing with this situation. In most cases you should be able to assist the court by providing helpful information without going so far as to disclose specific details of your defence. There is no duty to disclose your defence and this goes against the right to silence. You can certainly assist the court, if you wish, by narrowing the issues for trial.

Note, in the case of *Tua v R* [2005] SBHC 77 the Chief Justice commented that:

> "Any court is entitled to conduct a pre-trial conference for the purpose of maximising court time, resources and facilities and securing the efficient conduct of a trial … The most that can be done is to request disclosure for the purposes of assisting the efficient conduct of the trial but without prejudice to the right of the accused to remain silent or reserve his defence till close of prosecution case. If the accused chooses to remain silent and reserve his defence, and require prosecution to prove its case, then there is nothing further the court can do. No adverse inference can be drawn against the accused even if after close of prosecution case he then elects to give evidence and run a defence which had not been disclosed earlier on."

In terms of court advocacy, a Pre Trial Conference is often challenging. You have to be aware of your duty to the client, whilst not being obstructive to the court.

You should have a firm plan as to what you want to achieve as an outcome of the Pre Trial Conference. Possible outcomes and approaches include:

1. Simply listing the matter for trial. Do not disclose major weaknesses in the evidence. Do not disclose your defence. Identify *voir dire* requirements, agreed witnesses, unavailable dates and length of trial. Do not agree witness statements if the statement is incriminatory and there is a chance the witness will not attend court.

2. Explaining to the magistrate the weaknesses in the evidence with hope that the magistrate will persuade the prosecution to reduce or withdraw the charge. The risk is that if the magistrate disagrees with your assessment of the evidence, or if the prosecution maintains the charge, you are providing the prosecution with the chance to find stronger evidence. However you should be able to predict the type of case where further evidence could be obtained and take the necessary precautions with your submissions to the court. In cases where the weaknesses in the evidence are incurable, do not hesitate to point them out to the court.

3. Explaining to the magistrate the nature of the evidence and the matters in dispute with possibility that the magistrate will persuade your client to plead guilty. This approach may be appropriate where the evidence is overwhelming but your client does not want to plead guilty. The Pre Trial Conference may be the best way to serve your client's interests. You may also consider asking for a sentence indication and this may persuade your client to plead guilty.

4. Adjourning the Pre Trial Conference. This could be for the purpose of obtaining further instructions, further disclosures or to commence or continue negotiations with the prosecution.

With Pre Trial Conferences for charges requiring a Preliminary Inquiry (murder, rape, etc), the court is sometimes reluctant to list Long Form PI's. You need to be mindful of limited court and prosecution resources in this area, but also the importance of a Long Form PI in appropriate cases. The defendant has a limited right to a Long Form PI. No justification needs to be given for

listing a Long Form PI but not all witnesses need to be called by the Crown during a Long Form PI.

You will need to be well prepared for a Pre Trial Conference. This will include completing the Magistrate's Court Pre Trial Conference Check List (see next page) and having it to hand during your Pre Trial Conference, but remember, you cannot be required to complete the form or part of the form if it is not in your client's interest to do so.

MAGISTRATES COURT

HONIARA

PRE TRIAL CONFERENCE CHECK LIST

A **Pre Trial Conference preparation form** **PTC Date** ……

Prosecution/Defence *(circle which party has completed this form*)

B. **Case number** …….

C. **Name(s) of accused(s)**

…….

…….

…….

D. **Charge** **Plea**

1. …… ……

2. …… ……

3. …… ……

4. …… ……

5. …… ……

6. …… ……

E. Prosecution facts, setting out a short summary of their case, is attached. **YES NO**

F. Charge……

(Complete one table for each charge)

Element of the offence	**Available prosecution evidence to prove this element.**	**Issues identified by defence relevant to this element of the offence.**

Prosecution and defence have discussed the issues in the case prior to the PTC and advise the court that no additional inquiries or evidence needs to be followed up before the PTC.

YES NO

Prosecution has checked it has sufficient evidence relating to each element of the charge. **YES NO**

Prosecution has confirmed that it has given full consideration to the evidence it holds and that the charges are to proceed as is. **YES NO**

Name of Prosecutor……Signature…….

Name of Defence lawyer……Signature…….

Date……

Chapter 19

Sentencing Options in Magistrate's Courts

Sections 24 to 27 of the *Penal Code* deals with punishments that can be imposed by courts, including imprisonment for life that can be served by a lesser term; the imposition of fines as well as imprisonment; concurrent and consecutive sentences and the commencement of sentences to the day the sentence was pronounced (see Section 24 *Penal Code*), unless otherwise provided for or ordered by a court. Be aware that the maximum penalties that may apply to some offences will be modified by the jurisdictional limits of particular classes of magistrates, and that the penalties set out for many offences in the *Penal Code* and in other statutes have been modified by the *Penalties Miscellaneous Amendments Act 2009*.

Dismiss with no Conviction

The Court may dismiss a matter without conviction pursuant to Section 35 *Penal Code*. Do not confuse Section 35 of the *Penal Code* with Section 35 of the *Magistrate's Court Act*. Section 35 *Penal Code* is as follows:

Discharge of offender without punishment

35. *Where, in any trial, the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, health or mental condition of the accused. or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge either absolutely or conditionally.*

Reconciliation

The Court may promote reconciliation and in appropriate case where reconciliation has taken place may stay or terminate the proceedings, see Section 35(1) *Magistrates Court Act* and Section 76 and Schedule 3 of the *Constitution*, but note that this only applies to offences which do not amount to felonies and are not aggravated in degree. See Chapter 16 on Reconciliation, where this provision is dealt with in more detail.

Fines

Fines can be imposed (Section 25 *Penal Code)* and imprisonment can be imposed as well as a fine; or in default of the payment of a fine (Sections 26 and 29 *Penal Code*). See the attached

chart on the amount of fines corresponding with terms of imprisonment for appropriate prison terms in default of payment of a fine.

A court can order the payment of compensation (Section 27 *Penal Code*) or the sale of moveable property for the payment of fines, compensation, costs, expenses and otherwise (Section 28 *Penal Code*).

A fine should be within an offender's capacity to pay. [*R v Churchill and Ors* [1966] 2 All ER 215, *Sovita v Police* [2000] WSSC 2, *R v Belcher* (1981) A Crim R 124, *R v Rollo* [1981] 2 NZLR 667]

Bonds

A court can put an offender on a good behaviour bond (Section 32 *Penal Code).*

A bond can ensure an offender is of good behaviour while on conditional liberty; and can be used for the following: providing security for keeping the peace (Section 30 *Penal Code*); good behaviour from person disseminating seditious matters (Section 31 *Penal Code*); providing security for good behaviour from vagrants and suspected person (Section 32 *Penal Code)*; or providing security for good behaviour for habitual offenders (Section 33 *Penal Code).*

Suspended Sentences

Suspended sentences are governed by Sections 44, 45, 46 and 47 of the *Penal Code*.

A court can only impose a suspended sentence if the offence warrants a term of imprisonment.

A suspended sentence cannot be imposed for an offence where a weapon has been used.

The court can pass a suspended sentence where the sentence of imprisonment imposed is not more than 2 years (Sections 44 *Penal Code*).

A probation order cannot be imposed at the same time as a suspended sentence.

Where a term of imprisonment is imposed on another offence at the same time as the suspended sentence the sentences need to be concurrent.

The court can order that the suspended sentence be served under supervision (Section 47 *Penal Code).*

Breach of Suspended Sentence

The Court can deal with an offender who has committed a subsequent offence whilst on a suspended sentence (Section 45 *Penal Code*). The court may impose the original sentence, vary the original sentence or do nothing with the original sentence. The submissions required from a legal practitioner are basically a plea in mitigation to avoid the client having the suspended sentence being served in custody.

If the original offence was sentenced before the High Court the matter will need to be committed to the High Court to deal with the breach. If the original sentence was before the Magistrates Court the breach can be dealt with by the Magistrates Court.

The court can issue a summons or warrant for the arrest of an offender on a suspended sentence where the person commits a further offence (Section 46 *Penal Code*).

Imprisonment

Most offences carry a specified maximum term of imprisonment. Where no punishment is specifically provided, there is a maximum term of imprisonment of 2 years (Section 41 *Penal Code*). Where a maximum period of imprisonment is provided for an offence, a shorter term of imprisonment, or a fine instead of, or in combination with, a period of imprisonment can be imposed.

Terms of imprisonment unless specified otherwise, are to be served consecutively. Terms of imprisonment, unless otherwise specified by a court or required by legislation, are deemed to commence on the date that the sentence is passed.

It is therefore very important to consider making a submission that multiple terms of imprisonment are to be served concurrently, and that an order is made that the terms are to be served concurrently, otherwise they will be served consecutively.

It also very important, where a person has spent any time in custody while waiting for the court to deal with an offence, for the court to appropriately deal with this period of pre-conviction detention. Full credit for pre-conviction detention is only achieved where the sentence is deemed to take effect on a date prior to the imposition of sentence, which correctly reflects the actual time spent in pre-conviction detention. Simply deducting the time spent in pre-conviction detention from the appropriate sentence, with the sentence to commence on the date that the sentence is passed, is less favourable to the prisoner.

If a prisoner has spent an uninterrupted time in pre-conviction detention from the date of their arrest to the date of sentence, then it is a simple matter to submit that the sentence should commence from the date on which the prisoner went into custody, that is, the date of their arrest.

If, however, a prisoner has spent a portion or portions of the time between the date of their arrest and the date of sentence at liberty on bail then the calculations become slightly more complex. One method of dealing with this is to add all the days spent in pre-trial detention and then subtracting those days from the date of sentence, with the result that the submission is that the court should then deem the sentence to commence from that new date.

Effective Sentence

The 'effective sentence' means that the term of imprisonment that a prisoner is to serve is to take into account remission. This allows for a one-third reduction in sentences exceeding one month provided that the prisoner has been of good behaviour (see Sections 2, 37 and 38 of the *Correctional Services Act 2007*).

Due to the effect of these sections sentences of identical length, if expressed in different ways, can result in varying effective terms, that is, in various lengths of time that a prisoner will actually spend in prison. For example, if a prisoner has spent exactly 1 year in pre-conviction detention and is then sentenced to a term of imprisonment of 2 years, the actual time the prisoner (if eligible for remission, and almost all prisoners are given remission) will vary according to how the sentence is expressed.

This is shown in the table below:

Formulation of sentence of Imprisonment	**Head Sentence**	**Modified Head Sentence**	**Actual time spent in prison**
If sentence is backdated to date of first going into custody, or deemed to commence on an equivalent date	2 years (24 months)	N/A	2/3 x 2 years = 16 months
If head sentence is reduced by 1 year only	2 years	1 year	1 year + (2/3 x 1 year) = 20 months

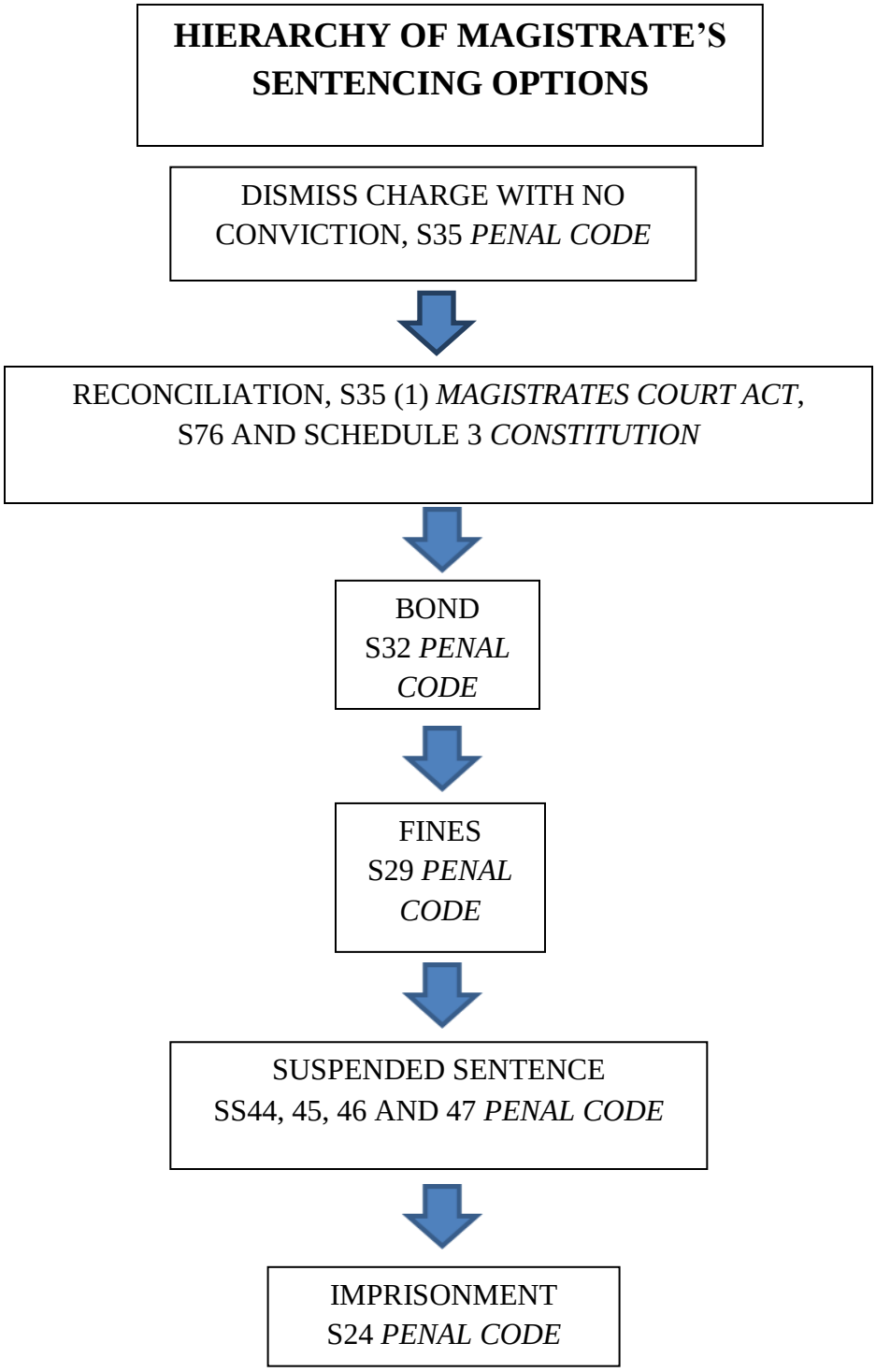
There are a large number of websites which can assist you with calculating dates for the commencement of sentence. One useful site, which can help with calculating questions like "What was the date 167 days before today?" is http://www.timeanddate.com/date/dateadd.html.

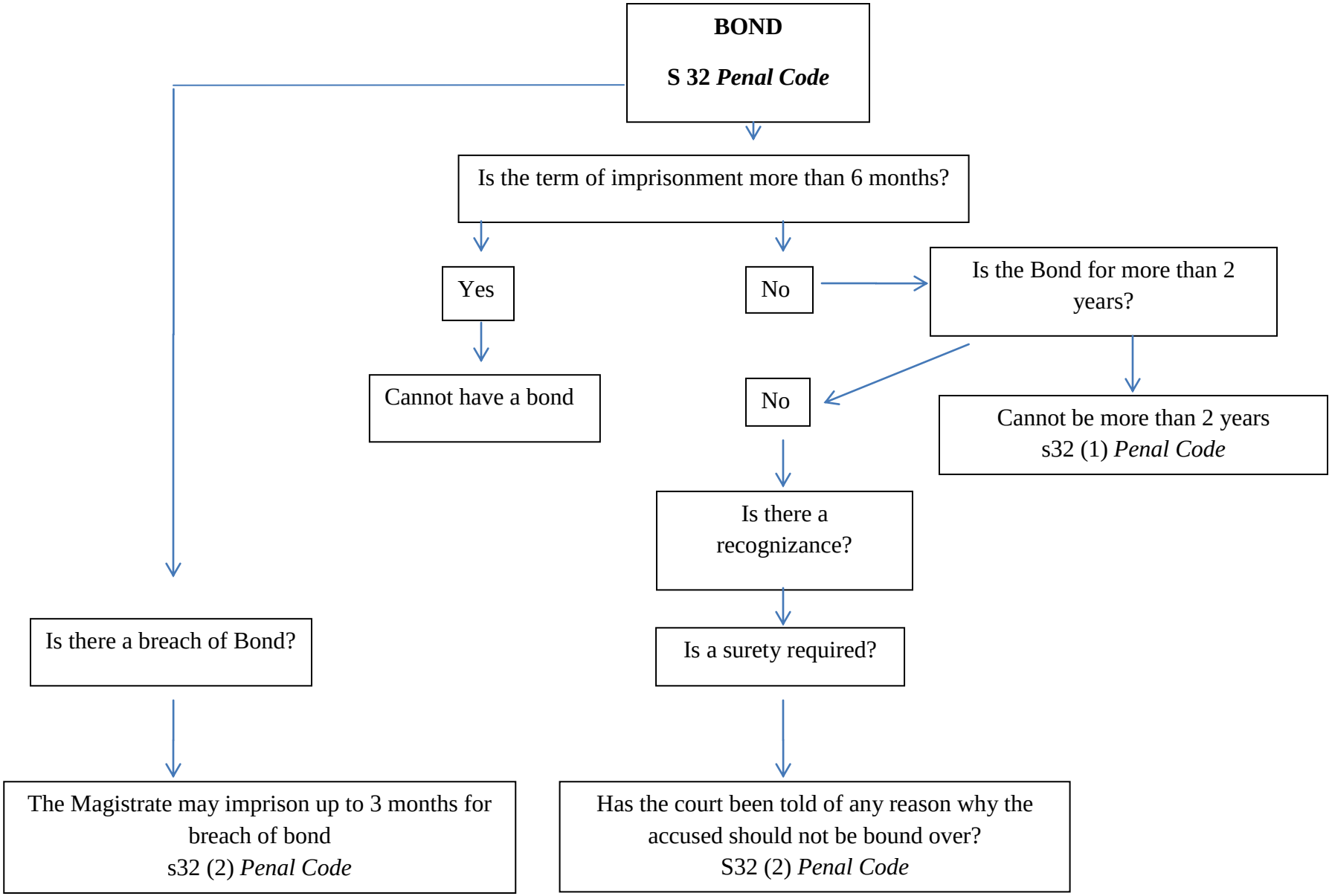
Juvenile Offenders

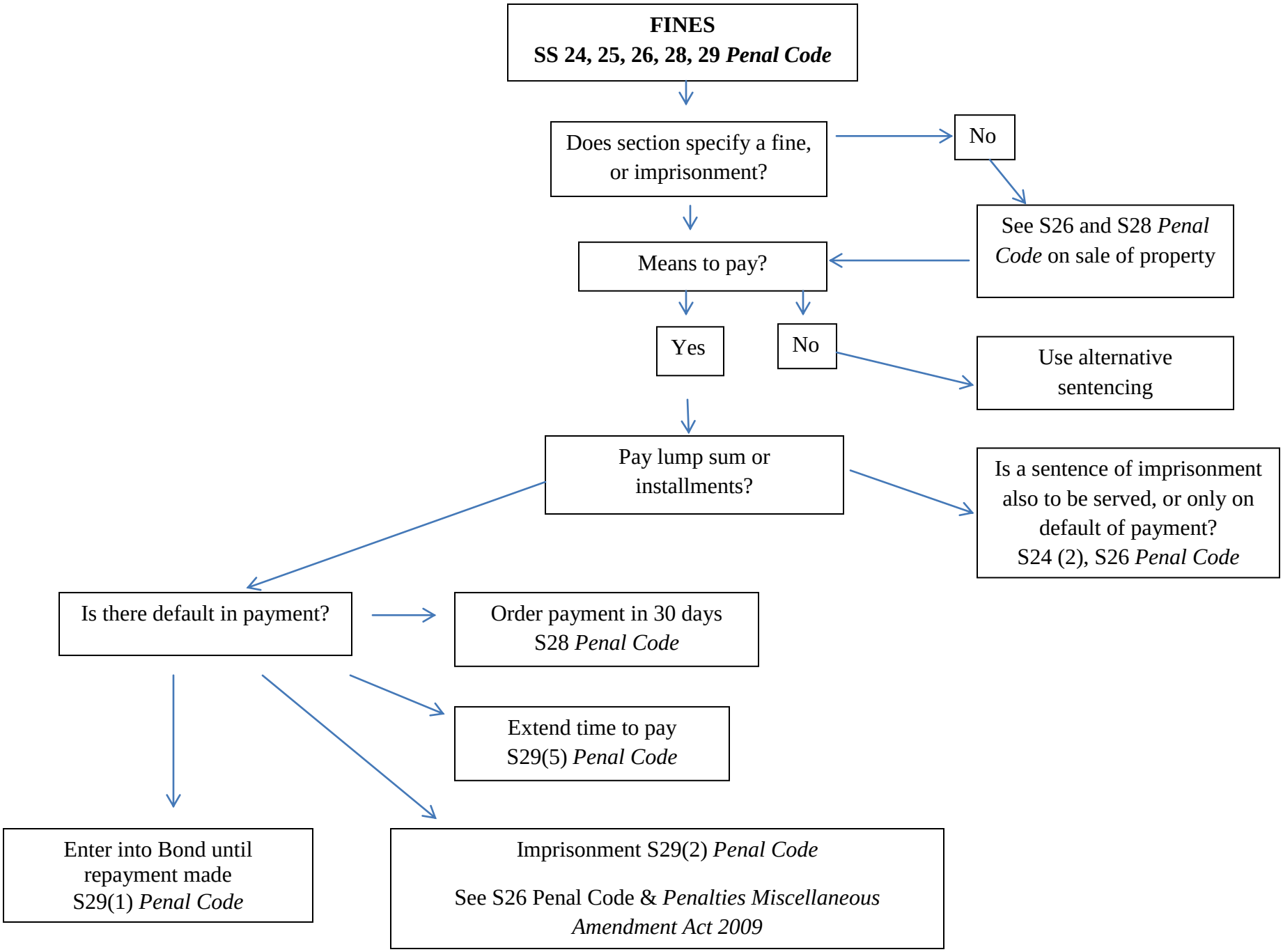
The sentencing options for offenders under the age of 18 years are set out in Section 16 of the *Juvenile Offenders Act.* See Chapter 23 Juveniles.

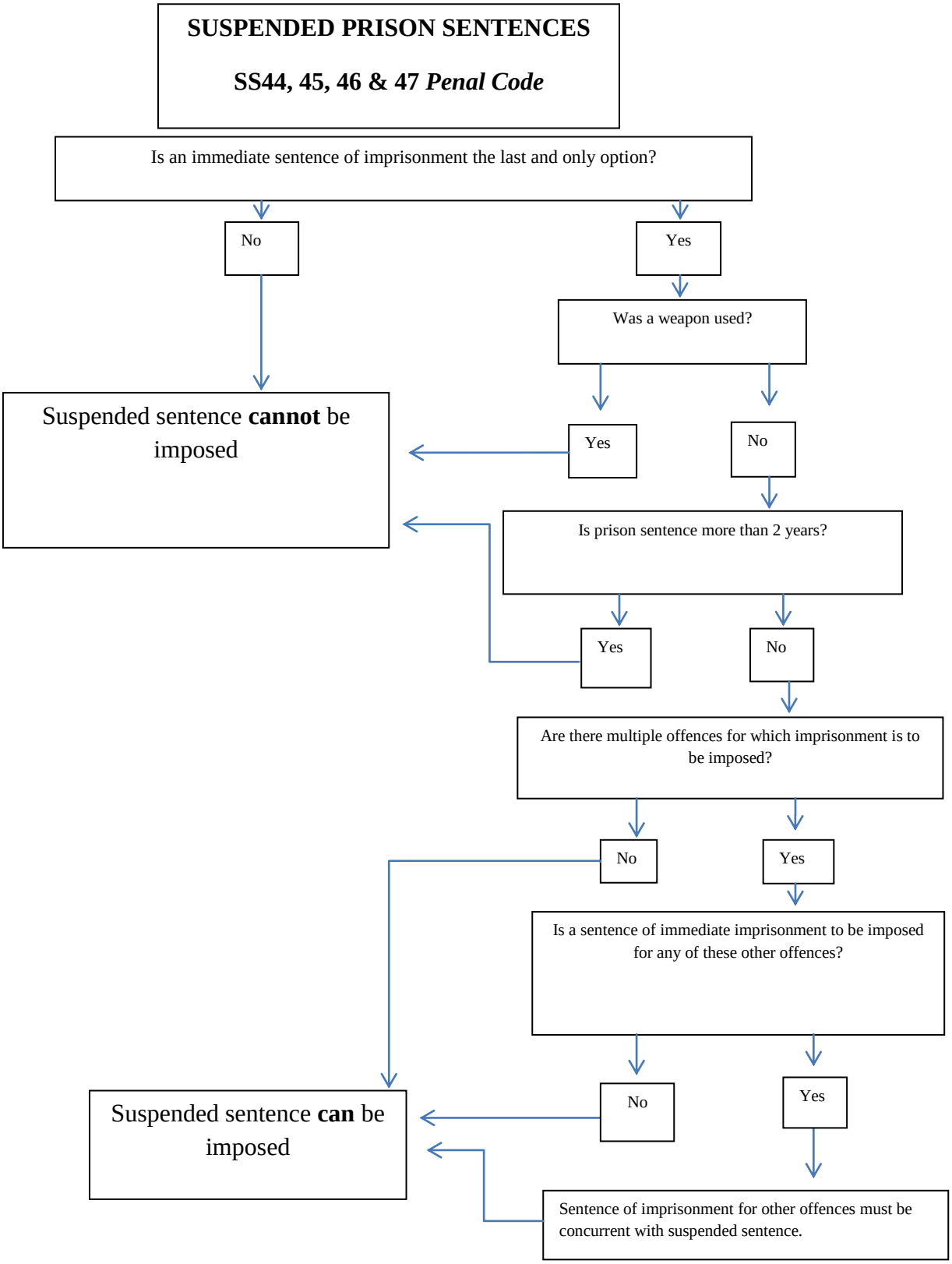
Attending on Your Client after Conviction or Sentence

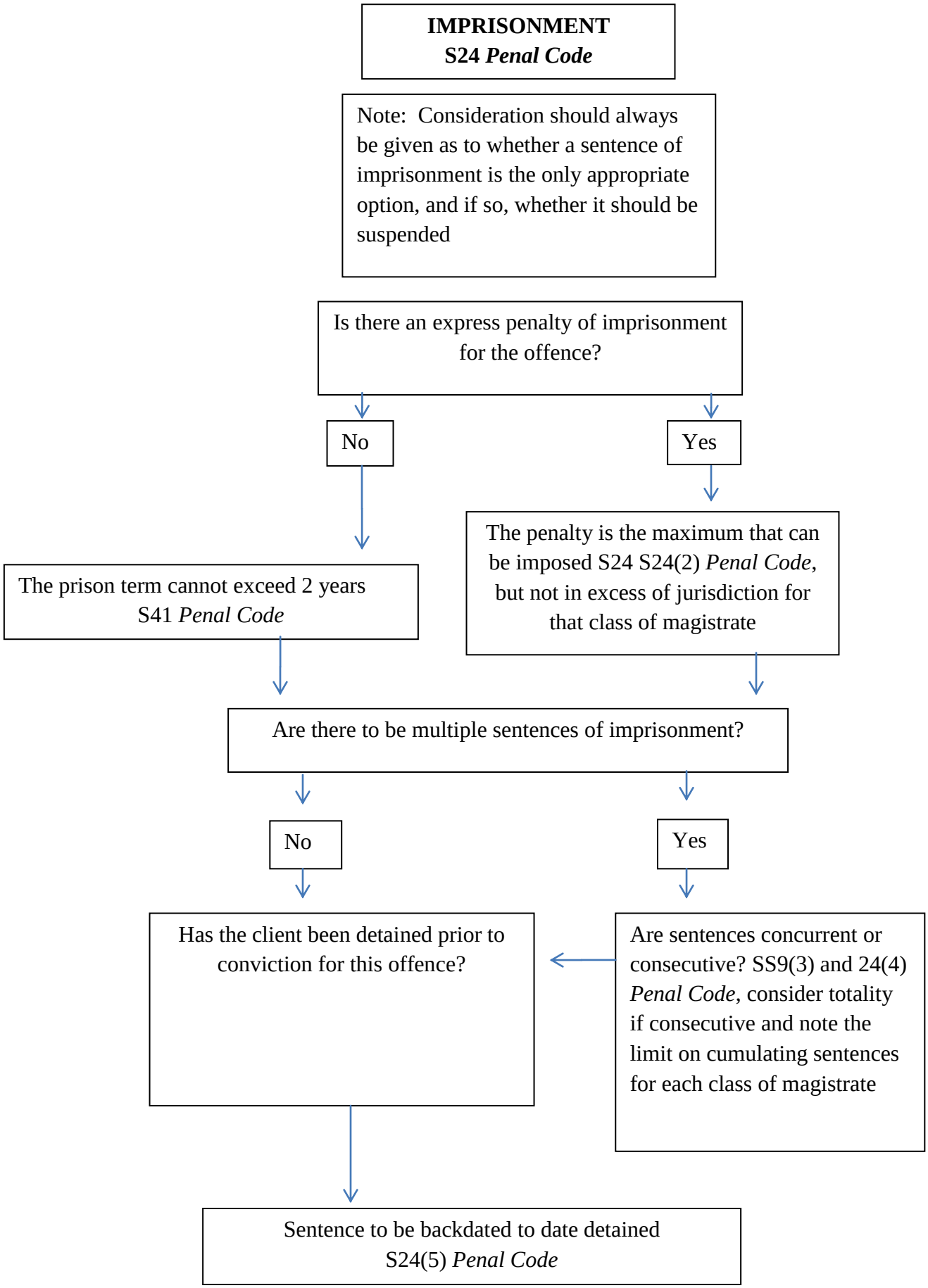
It is almost always good practice to speak to your client after they have been convicted or sentenced. You will need to explain the sentence, the obligations (if any) imposed as a result of the sentence and consequences of failing to perform the obligations. See Rule 17(12) of the *Legal Practitioner (Professional Conduct) Rules*.


HIERARCHY OF MAGISTRATE'S SENTENCING OPTIONS
DISMISS CHARGE WITH NO CONVICTION, S35 *PENAL CODE*
RECONCILIATION, S35 (1) *MAGISTRATES COURT ACT*, S76 AND SCHEDULE 3 *CONSTITUTION*
BOND S32 *PENAL CODE*
FINES S29 *PENAL CODE*
SUSPENDED SENTENCE SS44, 45, 46 AND 47 *PENAL CODE*
IMPRISONMENT S24 *PENAL CODE*


BOND
S 32 Penal Code
Is the term of imprisonment more than 6 months?
Yes
Cannot have a bond
No
Is the Bond for more than 2 years?
Cannot be more than 2 years s32 (1) Penal Code
No
Is there a recognizance?
Is a surety required?
Has the court been told of any reason why the accused should not be bound over? S32 (2) Penal Code
Is there a breach of Bond?
The Magistrate may imprison up to 3 months for breach of bond s32 (2) Penal Code


FINES
SS 24, 25, 26, 28, 29 Penal Code
Does section specify a fine, or imprisonment?
No
See S26 and S28 Penal Code on sale of property
Means to pay?
Yes
No
Use alternative sentencing
Pay lump sum or installments?
Is a sentence of imprisonment also to be served, or only on default of payment?
S24 (2), S26 Penal Code
Is there default in payment?
Order payment in 30 days
S28 Penal Code
Extend time to pay
S29(5) Penal Code
Enter into Bond until repayment made
S29(1) Penal Code
Imprisonment S29(2) Penal Code
See S26 Penal Code & Penalties Miscellaneous Amendment Act 2009


SUSPENDED PRISON SENTENCES
SS44, 45, 46 & 47 Penal Code
Is an immediate sentence of imprisonment the last and only option?
No
Yes
Was a weapon used?
Yes
No
Suspended sentence cannot be imposed
Is prison sentence more than 2 years?
Yes
No
Are there multiple offences for which imprisonment is to be imposed?
No
Yes
Is a sentence of immediate imprisonment to be imposed for any of these other offences?
No
Yes
Suspended sentence can be imposed
Sentence of imprisonment for other offences must be concurrent with suspended sentence.


IMPRISONMENT
S24 *Penal Code*
Note: Consideration should always be given as to whether a sentence of imprisonment is the only appropriate option, and if so, whether it should be suspended
Is there an express penalty of imprisonment for the offence?
No
Yes
The prison term cannot exceed 2 years S41 *Penal Code*
The penalty is the maximum that can be imposed S24 S24(2) *Penal Code*, but not in excess of jurisdiction for that class of magistrate
Are there to be multiple sentences of imprisonment?
No
Yes
Has the client been detained prior to conviction for this offence?
Are sentences concurrent or consecutive? SS9(3) and 24(4) *Penal Code*, consider totality if consecutive and note the limit on cumulating sentences for each class of magistrate
Sentence to be backdated to date detained S24(5) *Penal Code*

Chapter 20

Submissions in Mitigation of Penalty

You should develop your own style and method for pleas in mitigation. For minor charges, your submissions will sometimes be very brief. However for more serious charges you should have a structure to your submissions.

Getting Instructions from the Client

Make sure that the charge is appropriate. Is a lesser charge more appropriate? Do the agreed facts make out the offence?

Read the facts to your client, sentence by sentence. Note any dispute on the facts and, in the event of a factual dispute, approach the prosecutor to have the facts amended. If the facts are amended, you should delete the disputed facts with a thick black texta and then photocopy the brief facts so the court is not given a copy of the wrong facts. A *Newton* hearing, that is, a trial on the facts, may be needed if agreement cannot be reached.

If the prosecutor does not agree to your client's version of events, you should go back to your client and seek further instructions. Either your client then has a disputed facts hearing, or they admit the facts. Admitting the facts involves accepting the facts to be true. In some cases, especially for minor and inconsequential factual differences, you may prefer to proceed with the submission in mitigation and simply point out to the magistrate that some facts are not accepted and ask for them to be disregarded.

Discuss any possible consequences of a penalty (such as drivers licence disqualification, loss of job, forfeiture of property used in the offence, civil claim liability etc). Be aware that a criminal conviction may prevent some international travel. The court can sentence without a conviction being recorded (Section 35 *Penal Code*).

In Court

You should explain to the client what will happen in court. Outline the normal process for taking a guilty plea and making submissions. The charge will be read, your client will be asked if they understand the charge, a plea will be entered, and then the prosecutor will read the facts to the court. Quite often, your client will then be asked if the facts are agreed and if they have anything to say about them. If your client is not asked, you will be asked. If the facts are then agreed, the prosecutor will tender any previous convictions. You will be asked whether your client admits the previous convictions.

Then you make your submissions on sentence. The prosecutor may or may not make submissions in reply. Sentence will then be imposed.

When making submissions, your task is to be persuasive. Make eye contact with the magistrate. Be realistic and sincere. Use appropriate and original turns of phrase to capture the essence of your plea. Avoid clichés. Be ready to answer questions from the bench. Explain why your proposed sentence is suitable.

A standard format for a submission in mitigation may involve the following steps or 'chapters':

1. A very brief introduction of your client – for example - "*Ms Agnes is a 25 year old mother of four children with no prior convictions. This offence happened two days after her mother died.*" The introduction should be positive and brief, usually one or two sentences. Use your client's name. Humanise your client. Communicate any vitally important information in this opening sentence – their employment, or health status, or any other powerful personal circumstance that you will be relying on for mitigation. The circumstance may relate to the offence itself. The introduction should grab the attention of the magistrate and take the focus away from the crime itself, which will have just been described to the court. Your introduction is an important opportunity for persuasion. You can establish the theory or case concept underlying your submissions.

2. The circumstances of the offence. How and why did your client come to commit the offence? Tell their story of what happened. What was their role? Focus on facts that mitigate or explain the commission of the offence. Identify mitigating factors relevant to the objective criminality of the offence.

3. The personal circumstances of your client.

4. Technical aspects to sentence such as the timing of the plea, time spent in custody, parity issues, comparative sentences, prior criminal history, legislative provisions as to penalty or sentencing options (e.g. Section 44(2) of the *Penal Code* prevents a suspended sentence in cases involving use of a weapon) relevance of reconciliation or compensation and so on. You may also wish to refer the court to previous sentences in similar cases for comparative purposes.

5. Conclusion. Your final chance to persuade. You may wish to seek a specific type of sentence. In borderline custody cases, give strong reasons for not sending the client to prison. You could submit that the offence does not warrant the immediate removal of your client from the community and their family environment.

Here is a **checklist of matters** to consider during your plea[7]:

Objective Seriousness of the Offence

- Why the offence occurred
- The level of planning or impulsiveness involved in the offence
- Degree of participation
- Level of culpability displayed
- Place of the offence in the range of objective seriousness

Motivation for Committing the Offence

- Intoxication at the time of the offence
- "Need versus greed"
- Provocation
- Duress

The Subjective Features of the Offender

- Personal and family circumstances e.g. married or single, number of brothers and sisters, role in the family such as breadwinner or carer for young children or elderly relatives
- Age
- Education/Employment
- Health including mental health: see also Chapter 26 Mental Health
- Prior good character
- Character references
- Prior criminal record (Gaps, seriousness, commencement)
- Prospects for the future

The Effect of the Plea of Guilty

- Time of entering the plea – utilitarian value
- Evidence relating to contrition/remorse/reconciliation

Other Mitigating Factors

- Assistance to authorities
- Delay
- Youthfulness
- Compensation
- Reconciliation
- Co-operation with police

[7] This list is compiled with reference to the NSW Legal Aid Commission Duty Lawyer Manual.

Specific Issues Relating To Imprisonment

- Time already in custody – including at time of arrest
- Backdating of sentence
- Concurrency/cumulation
- Totality

Comparative Sentences

Principles Of Sentencing – can they be adequately achieved by the sentence option you are proposing?

- Punishment
- General deterrence and specific deterrence
- Protection of the community from the offender
- Rehabilitation (Remember that for juveniles rehabilitation and reintegration are the focus and punishment and general deterrence are not as relevant.)
- Recognising the harm done to the victim of the crime and the community

Selected Principles of Sentencing

- Proportionality – punishment must be in proportion to the objective seriousness of the offence.
- Parity – Co–offenders should, if other things are equal, receive the same sentence.

Possible Effects of Sentence.

- On livelihood
- Hardship of custody
- On family

Finally, the Penalty Option and Range That You Are Submitting Is Appropriate

SUBMISSIONS IN MITIGATION CHECKLIST

1. Examine the elements of the charge and the available evidence. Can the charge be proved? Consider negotiation of a lesser charge.

2. Always read the brief facts to the client. Ask if they agree with the facts.

3. If facts are disputed, negotiate the facts with the prosecution. Refer to the disclosures if necessary. Be prepared, with the consent of the prosecutor, to delete disputed facts with a thick black texta.

4. The brief facts should not allege conduct which amounts to an additional uncharged offence [*R v De Simoni* (1981) 147 CLR 383].

5. With a difficult client or a serious charge you should obtain written instructions from the client in the presence another lawyer. Those instructions should include the fact that the client is making a free choice in pleading guilty and that prison is the expected result.

6. Consider obtaining character references. In some cases you may wish to call evidence from family or character witnesses.

7. Where appropriate, prepare written submissions and use comparable sentence results.

8. Be structured and persuasive in your submissions. You may wish to address the circumstances of the offence, then the offender, then 'technical matters'. Identify the key features of the case that assist your client.

9. Try to use some persuasive "turns of phrase" in your plea. Avoid clichés. Emphasise your strong points.

10. Respond to questions from the magistrate or judge. Be aware of matters which the individual judge or magistrate may regard as important. Be realistic. Concede matters if appropriate. Being reasonable in your concessions makes you more persuasive.

11. In borderline custodial cases, where this option is available, ask for a suspended sentence. Submit that the defendant is not a person who needs to be removed from his or her family and community.

12. You should not represent a client on a guilty plea where the client denies the offence or asserts their innocence (a plea of convenience). Tell the client they should represent themselves or find another lawyer.

13. Explain the sentence imposed and advise the client they can appeal within 14 days.

14. Complete a sentence result sheet. Print a hard copy and also save an electronic copy of the public folder under the relevant offence type.

(SAMPLE REFERENCE LETTER)

R v

Date

The Presiding Magistrate
Magistrates Court at …….

Dear Sir/Madam,

GENERAL TOPICS TO BE COVERED:

- That the referee knows about the charge[s].
- How long the referee has known the accused.
- How the referee got to know the accused.
- What the referee thinks of the accused person's character or other relevant factor, in light of knowing about the charge[s].
- Anything specific about the accused.

Yours faithfully
Signed
Name printed

PENALTY PROVISIONS FROM 1 OCTOBER 2009

(*Penalties Miscellaneous Amendments Act 2009*)

New maximum fines

Penal Code		**Old max**	**New max**
Spreading false rumours	S63	$200	$2000
Drunk and disorderly in public	S175	$20	$600
Shouting etc. in town	S180	$10	$1000
Sorcery	S190	$40	$2000
Unlawful use of vessel	S292	$200	$5000
Unlawful possession of suspicious property	S316(2)	$100	$5000
Corrupt practices	S374	$600	$2000

Traffic Act		**Old max**	**New max**
Unlicensed vehicle	S7(1)	$500	$5000
No ID plates	S12	$200	$5000
Unlicensed driver	S20(4)	$200 or $500 for 2nd +	$5000
Breach provisional licence	S23(3)	$150	$2000
Reckless or dangerous driving – High Court	S39(a)	$1000	$20 000

Reckless or dangerous driving – Mag Crt	S39(b)	$500 – 1st $600 – 2nd +	$5000 $10 000
Careless driving	S40(1)	$500 – 1st $700 – 2nd	$5000 $7000
Drive while unfit – drink driving – High Court	S43(1)(a)	$2000	$20 000
Drive while unfit – Drink Driving – Mag Crt	S43(1)(b)	4400 – 1st $700 – 2nd +	$10 000 $10 000
Improper condition or overloading	S46(1)	$200	$5000
Taking vehicle without or authority – Mag Crt	S59(1)(b)	$200	$3000
Fail to stop and report accident	S63(4)	$200 – 1st $300 – 2nd +	$2000 $3000

Liquor Act		**Old max**	**New max**
Make liquor or possess implement	S50(2)	$1200	$30 000
Sell liquor without licence	S57(1)(a) S57(1)(b)	$200 – 1st $400 or 12mths 2nd +	$2000 $10 000
Carry or offer liquor for sale without licence	S59(2)(a) S59(2)(b)	$200 1st $400 – 2nd +	$1500 $10 000
Consume liquor in public place	S65	$200	$2000
Consume liquor on licensed premises under 21 yrs	S72(3)	$200	$10 000

These penalties are not retrospective. They only apply to offences committed on or after 1 October 2009. Section 10(4) of the *Constitution* provides:

> *"No penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed."*

For offences before 1 October 2009, you may need to look at default periods and work out whether a new default period is more or less severe than an old default period. You may want to ask for the old maximum penalty with the new default period.

The maximum penalty for Section 178 (iii) of the *Penal Code* has been increased from $10 to $1000. There seems to be a drafting error here. There is no s 178(iii). We should argue this provision does not apply to Section 178(a) to (t) – e.g. breach of the peace, obscene language.

CRIMINAL CASES

SENTENCE RESULT SHEET

Defendant:

Court:

Coram:

Counsel for Defendant/Prosecutor:

Offence/s:

Plea of guilty or trial:

Date of sentence:

Sentence:

Brief outline of facts:

Brief outline of mitigation:

Any other notes:

Chapter 21

Time to Pay Fines

Whenever the court is considering imposing a fine, you should ask your client if s/he requires time to pay the fine. You should then apply to the court for "time to pay" the fine. Remember that the court must consider the capacity of your client to pay a fine.

Default Periods –The new maximum default period FOR OFFENCES AFTER 1 October 2009 [Section 10(4) of the *Constitution* prevents retrospective application] are set out in Section 2 of the *Penalties Miscellaneous Amendments Act 2009*, which amends Section 26 of the *Penal Code*:

Fine	**Maximum Default Period**
Less than $100	5 days
$100 - $200	10 days
$200-$500	20 days
$500-$700	30 days
$700-$1000	40 days
$1000 - $1500	2 months
$1500 - $2000	3 months
$2000 - $5000	6 months
$5000+	6 months plus 6 months for every $2000 **Max period is 5 years**

Chapter 22

Lodging an Appeal and Applying for Bail Pending Appeal

Lodging the Appeal

All clients have a right to appeal against the sentence and/or conviction imposed by the Magistrate's Court. You should advise your client of this right.

An appeal must be lodged within 14 days, however either the Magistrate's Court or High Court may extend this time if there is 'good cause" [Section 285 *Criminal Procedure Code*].

A "Petition of Appeal" should be filed at the Magistrate's Court Registry, not the High Court Registry. File 4 copies of the Petition. Serve one on the Office of the DPP. An example of a Petition can be found at the end of this Chapter.

Bail Pending Appeal

If your client is appealing against a prison sentence, you should consider lodging an application for bail pending appeal.

If you are instructed to make an application for bail pending appeal you should write a letter to the Registrar of the Magistrate's Court advising that an appeal has been lodged and requesting that the case be relisted for a bail application. The court will need to issue a production order to bring the client from custody. An example of the letter can be found at the end of this Chapter.

If you are on circuit court and your client wishes to appeal, you can apply for bail pending appeal before you actually lodge the appeal petition. You must indicate to the court that you intend to lodge an appeal and then bail can be granted [Section 290 *Criminal Procedure Code*]. You should lodge the appeal when you return to Honiara.

In applying for bail, you should be aware of the prejudice your client will suffer if they are not granted bail. It can take 12 months or more for an appeal to be finalised in the High Court. If your client is appealing against a short term of imprisonment, and not granted bail pending appeal, they may have to serve most, or all, of the sentence before their appeal is heard.

This would amount to an obvious injustice if the appeal is eventually successful and a sentence other than imprisonment is imposed, or a shorter sentence imposed than that served in custody waiting for the appeal to be heard. The court should err on the side of caution and grant bail in cases where there is a risk of such injustice. To deny bail in such circumstance is effectively to take away the right of appeal. See *R v Sosupo* [2004] SBHC 14 (13 February 2004) and *Tamana v R* [1995] SBHC 41 (26 June 1995).

During the bail application, if it is heard by the same magistrate you are appealing from, you should avoid making submissions about the merits of the appeal. It is unlikely that the Magistrate will be persuaded that he or she has fallen into appellable error.

The submissions on the bail application should focus on likelihood of attending court, and prejudice if bail is refused.

Crown Appeals

The Public Solicitor's Office does not accept service of Crown appeals. The Crown should serve the appeal directly on to the respondent, even if the respondent was represented by a Public Solicitor's Office lawyer in the Magistrate's Court. The Public Solicitor's Office will only act on the appeal if instructed to do so by the respondent.

(SAMPLE PETITION OF APPEAL)

Criminal Procedure Code S.283

IN THE HIGH COURT

OF SOLOMON ISLANDS Criminal Case No. of 2011

In the matter of : An appeal from the Central Magistrates Court, Honiara

Between :

JOHN NAKAYAMA

Appellant

AND

REGINA

Respondent

TO: His Lordship the Chief Justice of the High Court of the Solomon Islands through the Central Magistrates Court, Honiara

The Petition of the Petitioner/Appellant states:

That on 25 January 2011 the Appellant was convicted by the Central Magistrates Court in Honiara on the following charge, contrary to Section 8(b) of the *Dangerous Drugs Act*:

1. Possess Prohibited Substance

Particulars of Offence

1. *That John Nakayama of Gizo, Western Province at Honiara in the Guadalcanal Province on 3rd October 2010 was found in possession of a substance to which Part 1 of the Dangerous Drugs Act (Ch 98) applied to wit Indian Hemp.*

In respect of the offence the learned Magistrate imposed a sentence of one month imprisonment.

TAKE NOTICE that the Appellant desires to seek leave to appeal the said sentence on the ground that:

1. The sentence imposed by the learned Magistrate was manifestly excessive.
2. That the learned Magistrate failed to properly consider the plea of guilty and other mitigating factors.

Further Grounds of Appeal may be filed once the written decision and court record are received.

AND THE APPELLANT SEEKS AN ORDER:

1. That the sentence be set aside
2. Bail be granted pending appeal
3. Any other order that the court thinks fit

Presented this 28th day of January 2011

_____

Name of Lawyer
For Mr Douglas Hou
The Public Solicitor

(SAMPLE LETTER TO CLERK OF COURT FOR BAIL PENDING APPEAL)

Date Our Ref: (PSO file number)

Clerk of Court
Central Magistrate's Court
HONIARA

Dear Sir/Madam,

Bail Application Pending Appeal

A Petition of Appeal has today been filed in the case of R v _____. A copy is attached to this letter.

Pursuant to Section 290 of the *Criminal Procedure Code*, the appellant wishes to make an application for bail pending appeal. The Prosecution has been served a copy of this application.

We therefore request that this matter be listed for a bail application today before any available Magistrate. A Production Order will need to be issued to bring the appellant to court.

Name of Lawyer
For Mr Douglas Hou
The Public Solicitor

cc: DPP

Chapter 23

Juveniles

Representing children who come into conflict with the law can be very challenging. You might find your own ideas about how children behave are challenged. Often child defendants come from traumatic or dysfunctional backgrounds that you might find shocking or distressing. You may encounter community outrage at the thought of children committing crime – particularly serious crime. You have to find the balance between utilizing the support of your client's family and ensuring that you act on the instructions of the child. You will need extra time and care to build rapport with, take instructions from and give advice to your young client.

But it can be extremely rewarding to act for children. Due to their immaturity and inexperience children are particularly vulnerable in the legal system and it can be very satisfying to use your skills and expertise to uphold their rights and ensure that they understand what is happening to them. The opportunity to be a positive role model for children who have made poor choices in the past can also be gratifying. Especially when you consider that children are still forming their personal identities and the potential for significant change in their lives is very real.

There are a number of special principles that have to be kept in mind when dealing with juvenile cases. These principles are contained in the Convention on the Rights of the Child (which Solomon Islands signed in 1995) and other related international instruments. These "juvenile justice principles" can be summarized as follows:

"Best Interests of the Child"
This means that the most important consideration in any decision affecting a child is how to achieve the best possible outcome for that particular child.

"Diversion"
This means that wherever possible, children who commit crime should be moved away from the formal justice system (e.g. given a warning by the police instead of being charged etc.)

"Detention as a Last Resort"
This means that the placing of children in custody should only be used when all other options have been exhausted. Any period of custody for a child should be for the shortest possible period of time. This is particularly relevant for bail applications and sentencing.

"Rehabilitation and Reintegration"

This means that the response to children who commit crime has to focus on supporting their rehabilitation and their ability to integrate back into their communities. This is especially important for sentencing and can be contrasted with the principles that apply to sentencing adults.

Juvenile Court is for 'young persons' aged from 14 to 17 years old, and any 'child' aged less than 14 years. Persons under 8 years of age cannot be charged. The Juvenile Court can deal with any offence other than 'homicide' but cannot deal with a person if another person charged with them is an adult (Section 4(1) *Juvenile Offenders Act*).

There is a presumption of *doli incapax* for those **under 12 years of age**. The law presumes that children under 12 do not know that their actions are criminally wrong. The prosecution must overcome this presumption with evidence [Section 14 *Penal Code*]. Unless there is evidence beyond reasonable doubt that the child appreciated their actions as criminally wrong, as opposed to naughtiness or morally wrong, the child must be found not guilty.

When dealing with a juvenile client, your instructions need to come from the client, not the parent or guardian. A juvenile may feel shy or embarrassed telling their story in the presence of their parent. In such a situation, you may need to ask to speak with the child on their own so that you can get proper instructions.

Where possible, a juvenile should attend court with a parent or guardian.

You should be familiar with the provisions of the *Juvenile Offenders Act*. Note that the charge of rape can be dealt with in the Juvenile Court, it does not need to be committed to the High Court.

Whenever circumstances permit, the court shall sit in a different room or on different days to ordinary court [Section 4(1) *Juvenile Offenders Act*].

The court has discretion to require the attendance of a parent or guardian [Section 10 *Juvenile Offenders Act*]. If your client is not able to bring a parent or relative to court, you should contact the Social Welfare Office on 20830 or 20569 and request one of their staff to attend court to support your juvenile client.

Juvenile Court is a closed court. Leave is required for those not directly concerned with the case to attend. News reporters shall not be excluded unless by special order of the court, but juveniles cannot be identified by any publication without the permission of the court [Section 4(4) *Juvenile Offenders Act*].

Bail should be granted unless: a grave crime; or there is a need to remove the juvenile from an undesirable associate, or release would defeat the ends of justice. [Section 5 *Juvenile Offenders Act*]

Sentencing – the court may order a social welfare report [Section 9(7) *Juvenile Offenders Act*].

Sentencing options include dismissal, discharge on recognizance, probation, care of relative or fit person, fine, fine or bond on parent, bond, detention, imprisonment, suspended sentence [Section 16 *Juvenile Offenders Act*].

Imprisonment should only be imposed if other options are unsuitable [Section 12(2) *Juvenile Offenders Act*]. Prison is a last resort.

No 'child' shall be sentenced to prison in default of payment of a fine or damages [Section 12 *Juvenile Offenders Act*].

In *R v K* [2006] SBHC 53 (6 December 2006) **,** Palmer CJ stated:

> "I bear in mind the guidelines set out in the Convention on the Rights of the Child regarding how young persons ought to be treated. That the best interests of the child should be the central concern in any sentencing process [Art 38] and that care and rehabilitation [Art 41] should be the main focus of any order of the courts on conviction."

In *Kelly v R* [2006] SBCA 21 (25 October 2006), the Court of Appeal said:

> "The *Juvenile Offenders Act* introduced a special regime ….. This statutory regime is plainly designed to ensure that in dealing with them for offences such child and young offender are treated differently from and more sensitively than adult offenders would be and are in similar circumstances. In this way the *Act* gives effect to the obligations of Solomon Islands under international treaties and conventions."

The DPP guidelines provide that a young offender should not be prosecuted for a first offence unless the offence is serious (i.e. max penalty greater than 5 years, weapon, and traffic). [Guideline 22.23]

Note that at the time of writing, the *Juvenile Offenders Act* is under review and is therefore likely to be amended in the near future.

(SAMPLE LETTER TO SOCIAL WELFARE)

Date Our Ref: (PSO file number)

Ministry of Health and Medical Services
Social Welfare Division
Honiara
Attention: Director

Dear Sir/Madam,

Re: Request for Social Welfare Report for Mr. JAMES TEENAGER

I am writing in relation to the above underlined. I confirmed that I act for Mr. Teenager who has been charged with the following offences:-

1 x Store Breaking c/s 300(a), *Penal Code*

1 x Escape from Lawful custody c/s 125, *Penal Code*

The defendant is a juvenile and has already entered a guilty plea to both charges this morning. He is to appear at the Central Magistrates Court for mitigation submission in two weeks.

The defendant has been convicted for similar offences by the Magistrates Court in 2011 and was given a suspended sentence.

To assist me in my submission and the court on sentencing, I humbly request that you visit the juvenile at Rove Correctional Centre for an interview, and compile a report to assist the court. I have attached copies of the Brief Facts for each offence.

The court seems to be very concerned about why this juvenile is re-offending with similar offences. Perhaps it is advisable that your report, amongst other things, should address such concerns.

Please do not hesitate to contact me should you have any queries.

Yours faithfully,

Name of Lawyer
For Mr Douglas Hou
The Public Solicitor

Chapter 24
Preliminary Inquiries

A Preliminary Inquiry, also known as a PI or committal hearing, must be held [Section 219 *Criminal Procedure Code*] if:

- The offence cannot be tried by the Magistrate's Court (e.g. rape or murder) OR
- The Magistrate is of the opinion it should be tried by High Court; OR
- The DPP applies for the matter to be tried in the High Court

A person is committed for trial at the end of a Preliminary Inquiry if there is ***sufficient evidence*** [Section 217 *Criminal Procedure Code*] to put the defendant on trial.

A Short Form Preliminary Inquiry is conducted pursuant to Section 211 of the *Criminal Procedure Code* and involves the following steps:

- Magistrate reads and explains charge to accused, and explains purpose of proceedings
- Accused enters plea of guilty, not guilty, or no plea.
- Statements of witnesses and exhibits are tendered.
- If appropriate you can make submissions on the strength of the evidence, or you may wish to concede there is sufficient evidence to send the matter to the High Court.
- Magistrate decides if there is sufficient evidence to commit the accused for trial.
- The accused is either committed for trial or discharged.

A Long Form Preliminary Inquiry is conducted pursuant to Section 212 of the *Criminal Procedure Code*. It involves the same steps, except that those witnesses required by the defence and called by the prosecution are required to give oral evidence. The statement of any witness to called at a LFPI to give evidence should not be tendered. It is the oral testimony that is the evidence, not what is in a written statement. The witnesses can be cross examined, but do not have to be cross examined. However, there are limits on the witnesses that the defence can require to give evidence at a LFPI, see *Gitoa v R* [2011] SBHC 111; HCSI-CRAC 46 of 2011 (8 August 2011). Chief Justice Palmer said, in summary:

- The right to cross examine Crown witnesses at a LFPI follows the witnesses' evidence in chief. The defence has no separate right to cross examine Crown witnesses at a LFPI.

- The primary purpose of a committal hearing is to determine if the facts alleged therein would, if proved in evidence, constitute sufficient grounds for committal for trial. It is to determine whether there is sufficient evidence to put the accused on trial in the High Court.

- If the prosecution decide not to call a witness to testify at committal proceedings, the defence *cannot* force them to do so.
- The onus of establishing sufficiency of evidence or sufficient grounds lies with the prosecution.
- The standard of proof that the prosecution are required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings and commonly referred to as a 'prima facie case' or a 'case to answer'.

A Preliminary Inquiry can filter out cases that are too weak to go to trial.

Long form or short form? The decision will differ in each case. Your client has the final say. You advise, they decide.

A Short Form Preliminary Inquiry may be appropriate if:

- It will be a guilty plea with no dispute on the facts.
- The evidence in the disclosures is so weak the defendant will not be committed for trial. You do not want to adduce incriminating evidence at a Long Form Preliminary Inquiry.
- The issues are clear and simple and there is no need to explore evidence before trial.

A Long Form Preliminary Inquiry may be appropriate if:

- You think you can create enough doubt through cross examination that there will insufficient evidence to commit for trial (i.e. you are hoping for a discharge). Maybe a very weak identification case that can be made weaker by cross examination. Or a case where one element of the offence is in doubt.
- You want to hear the witnesses so that you get a clearer picture of their evidence before trial. (e.g. unfavourable or hostile, police informant)
- You want to hear what the witnesses say under oath, as opposed to what is in their statement.
- You want to explore evidence and ask questions where the answers may hurt you. Best to do this at Preliminary Inquiry, rather than at trial.
- You want to hear the evidence to see if there is any merit in pleading not guilty at trial. After a Preliminary Inquiry the evidence may be so strong your client will then consider a guilty plea, and gain a discount on sentence.
- You may be able to explore the admissibility of certain evidence and lay the basis of a voir dire at trial.

- Lay the basis for a *nolle prosequi* (withdrawal of charge) submission to the DPP.
- To assist in getting bail by exposing weaknesses in the prosecution case.

You should not ask "Browne v Dunn" type questions at a Long Form Preliminary Inquiry. You should not put the defence case to the witnesses. You should not disclose the defence case at Preliminary Inquiry.

The defendant is entitled to give evidence at a Preliminary Inquiry but this should only be done in the most extremely rare cases. Seek advice before you consider this option. The danger is that you create a statement of the accused that is inconsistent with his or her statement at trial or in his or her record of interview.

A detailed description of the procedure in both Long and Short Form Preliminary Inquiries is set out in Chapter 15 Preliminary Inquiries in the Magistrate's Bench Book. An electronic copy of the Bench Book can be found on the Public Solicitor's Office website.

Procedure for Files Committed for Trial or Sentence to High Court

Obligations of Allocated Counsel

Immediately after the committal of a matter to the High Court for sentence or trial, the file should be dealt with in the following way by the allocated solicitor:

1. A committal record sheet should be completed and handed to the officer responsible for maintaining files committed to the High Court. This will usually by the Chief Legal Officer (criminal); and

2. The file cover sheet should be marked in the allocated solicitor field "committal cabinet". This will ensure that the file can be located. The file should then be put in the "files to be updated" tray where it will then be updated by the data entry officer, and the file delivered to the responsible officer

Obligations of the Responsible Officer

The responsible officer (usually Chief Legal Officer (criminal)) is to read each file and maintain a register of these files. In particular, this will include:

1. To enter the required information about the file in the register. This will include registering whether the client is on bail or in custody, whether a bail application needs to be made, whether disclosure is on the file, whether submissions need to be made to the Crown for a no bill or plea offer and so on;

2. To keep the register up to date if there are any changes in the status of a matter (e.g. release on bail);

3. To cross-reference the register with the prison remand list to ensure that all persons in-custody are appropriately represented and spend the minimum possible time in custody;

4. To ensure that all files are correctly filed and can be easily located, along with the Crown brief; and

5. To take the register to the High Court case listing meetings and use it to assist in the listing of matters for bail, sentence and trial with the aim that accused persons spend the least possible time in custody awaiting sentence or trial.

SUMMARY OF CLIENT INSTRUCTIONS AT COMMITTAL

Original – put on client file

Copy – put with committal notification sheet to Criminal Section Manager

Client Name:
Clients contact details and family/work contact:
Co-accused's Name:

Charge Name and date of offence	**Section & Act**	**Plea**	**Court, Magistrate & Date**

Evidence

Record of Interview	Admissible/inadmissible. What part is challenged, Reason for challenge
Witness Statements (complete for each statement); Name Are contents generally agreed What needs to be disputed What is challenged as inadmissible and	

why	
Identification Procedures	Admissible/inadmissible
Other:	Admissible/inadmissible
Other:	Admissible/inadmissible

Amnesty to be argued	Yes/No
Stay/abuse of process to be argued	Yes/No

Submissions to be made to DPP yes/no	Grounds:	ODPP Policy section:

Psychiatric Issues	Yes/No	Report requested: yes/no
Reconciliation conducted	Yes/No	With:

Defence

Defence Witness names (and contact details):

Have statements been taken from witnesses: yes/no

Summary of Issues/Defence
Defences to be considered: No evidence on one or more elements of offence Identification Self-defence Provocation Mistake Alibi 'Insanity' Other?

Name of lawyer acting at committal: _____

Date: _____

Chapter 25

High Court Directions Hearings

In 2011 the High Court commenced regular directions hearings for all matters committed for trial from the Magistrate's Court. Directions Hearings are usually held on Fridays.

File Allocation

The lawyer allocated with the file during the committal proceedings should maintain carriage of the file for the High Court Directions Hearings. This is the consistent with the general policy that it is preferable for a client to have the same lawyer from the start of his or her case until it finishes.

Negotiation of Charges

One of the underlying purposes of the directions hearings is to see if there is potential for a matter to be resolved as a guilty plea by way of negotiation. If your instructions reveal that the correct charge should be something less, propose an adjournment to enable you to pursue negotiations with the Crown for the alternative charge. If the matter does not resolve then it will most likely go to trial.

Before the Directions Hearing

Contact your client and make sure he or she attends court on the set directions hearing date. In some cases, the best method of contacting your client will be to leave a message at the police station where your client reports on bail.

If your client does not attend court, be ready to advise the court that you are either in contact with the client or you have lost contact. Also be ready to advise the court of bail conditions and the last known place of residence.

At the Directions Hearing

If the charge is to proceed, the Crown is required to file an "Information". This is the charge sheet that is filed in the High Court, sometimes also known as an "Indictment".

The Presiding Judge will check whether the depositions (court file) have been received from the Magistrate's Court.

The directions hearing may need to be adjourned to allow these things to happen.

Arraignment

You should prepare your client for arraignment. This is when the Information is read in court and your client is asked if they understand the charges, and if they do, they will then be required to enter a plea of guilty or not guilty. Make sure your client understands the arraignment procedure in advance of their appearance. You will need to have full instructions and a good understanding of the brief of evidence. Remember, for accused persons represented by counsel, if a guilty plea is entered, that plea will be 'locked in' and extremely difficult to change at a later date.

For murder charges the standard plea is 'not guilty'. The only sentence available for murder is life imprisonment, so there is little incentive to plead guilty, and little to lose by going to trial. Sometimes a client who is charged with murder might have a reasonable defence that could lead to a verdict of manslaughter. A judge can make a recommendation for a "minimum term" before parole, however this recommendation is not binding and there is no guarantee that such a recommendation would ever be implemented. It is however good practice to make submissions on a minimum term. If in doubt about the plea, seek advice from a more senior lawyer.

If a guilty plea is entered at a directions hearing, the matter is normally adjourned to the following week, or another suitable date, for mitigation submissions to be made.

If a not guilty plea is entered, the court may ask defence counsel to provide information in relation to the following matters:

1. How many witnesses there are in the prosecution brief and how many witnesses the defence proposes to call (if any).

2. Whether any witness statements can be tendered by consent. It may not be possible to indicate this information until closer to trial. You should seek advice from a senior lawyer if you are unsure about this.

3. Whether there are any preliminary issues before trial proper for example, challenge to a record of interview, speech impairment of a witness, alibi witnesses, interpreter problems, and psychiatric report and so on. These things might need to be sorted out before the trial proper.

4. Are further disclosures or particulars to be provided by the Crown?

5. An estimate of the number of days a trial might take.

If everything is in order, the court will send the matter to the Case Listing Committee for the allocation of a trial date. Currently there is a long waiting list for trial dates. There are well over 100 cases waiting for a trial date. Priority is given to those persons on remand for the longest period, and for those on bail, to the oldest cases in time. The remand wait from arrest to trial is presently at around 2 years. For those on bail, the wait is even longer.

As always, you should consider making a bail application if your client is in custody. A bail application needs to be filed separately and will be given a hearing date by the registry.

Direction hearings are a good forum to develop advocacy skills and confidence in the High Court. You will need to be well prepared. You will have to answer questions from the presiding Judge and be able to provide accurate and useful information to the court.

If you are responsible for coordinating the High Court directions hearing list you might find it convenient to use a table similar to the one below, to make sure that all the files are before the correct court at the correct time, and that the basic information required for the direction hearing has been collected.

CLIENT	**Court and Time**	**Counsel**	**Bail Status**	**Trial Date if any**	**Notes**

Disclosing the Defence Case

There is no duty to disclose your defence as this is contrary to the right to silence. You can certainly assist the court by narrowing the issues for trial. However, note, in the case of *Tua v R* [2005] SBHC 77 the Chief Justice said:

> "Any court is entitled to conduct a pre-trial conference for the purpose of maximising court time, resources and facilities and securing the efficient conduct of a trial … The most that can be done is to request disclosure for the purposes of assisting the efficient conduct of the trial but without prejudice to the right of the accused to remain silent or reserve his defence till close of prosecution case. If the

> accused chooses to remain silent and reserve his defence, and require prosecution to prove its case, then there is nothing further the court can do. No adverse inference can be drawn against the accused even if after close of prosecution case he then elects to give evidence and run a defence which had not been disclosed earlier on."

Be aware of your duty to the client, whilst not being obstructive to the court.

The High Court of Solomon Islands

Practice Direction N1 – 11

(Sections 229 and 233 Criminal Procedure Code)

COMMITTALS TO THE HIGH COURT FROM THE MAGISTRATES' COURT

High Court of Solomon Islands

Practice Direction: No. 1 of 2011

Committals to the High Court from the Magistrates' Court (Sections 229 and 233 Criminal Procedure Code)

1. **Commencement**
   This Practice Direction shall commence immediately.

2. **Earlier Practice Directions**
   This Practice Direction is supplementary to all other Practice Directions (in particular N1-05) that have been issued regarding Committals from the Magistrates' Court to the High Court and shall prevail where there is conflict.

3. **Application**
   This Practice Direction applies to new and existing committals coming before the High Court.

4. **Purpose**
   The purpose of this Practice Direction is to ensure time limits in pre and post committal stages are consistent with current criminal procedure requirements to ensure cases are being progressed in a timely manner with minimum delay.

5. **Reference**
   Sections 229 and 233 Criminal Procedure Code.

6. **Practice Direction**
   From first appearance in the Magistrates' Court to the date of committal for trial in the High Court, "Committal date", a maximum period of six months is expected, unless good cause is shown why an extension is warranted.

   If the accused is not committed within a six month period they are entitled to apply to the High Court for bail if on remand. In such instance delay may be relied upon as a ground on which the court's discretion may be exercised in favour of bail.

   Where an order for Committal to the High Court is made, it shall be to a specific date and time. This date will be the last Friday of each month at 9:00am before the Duty Criminal Judge, or otherwise if notified by the Registrar of the High Court. If the accused is on bail, he is to appear at the

High Court at the said date and time. If on remand, he is to be produced at the High Court on the said date and time.

The defendant will be arraigned at the first Appearance in the High Court and the following documents must be received to enable this to occur:
(a) Committal Papers[1] from the Magistrates' Court; and
(b) The Information from the Director of Public Prosecutions.

At the arraignment date, the plea will be taken. If a guilty plea is entered, the presiding judge shall proceed to deal with the case for sentence.

If a Not Guilty plea is entered the presiding judge shall issue directions requiring:
(a) The Prosecutor to file and serve on the defence a copy of the statement of case within 30 days.
(b) The defence to file and serve a Defendants statement 30 days thereafter; and
(c) List the case for the 1st directions hearing before himself/herself 30 days thereafter.

At the 1st directions hearing, he shall determine inter alia, the estimated time for trial and adjourn the case for mention thereafter before him. He shall then inform the Case Listing Committee (CLC) to fix the trial date for the case.

When the matter comes before the CLC, they shall fix the trial date and inform the trial judge of the date of trial.

Dated this 7th day of February 2011

(Sir Albert R Palmer)
CHIEF JUSTICE

[1] These consist of (i) written charge, (ii) the statements (original) of witnesses, (iii) depositions (if any), (iv) the statement (if any) of the accused person, (v) the summonses or recognisances and (vi) any documents or things which have been tendered or produced as exhibits and marked as such to the court (section 229 Criminal procedure Code). The original and two copies should be forwarded – **refer to PN N1-05.**

Chapter 26

Mental Health

What to do if your Client Appears to Have a Mental Health Problem.

Recognising signs of mental illness can be difficult. In more obvious cases, your client may have difficulty understanding and responding to you. This can sometimes be only a language problem. However it can also be evidence of a mental illness or other mental health condition.

Inappropriate laughter, talking to one's-self, hearing of voices of people not present and expression of delusions are also possible signs of mental illness.

You should try to obtain as much information as possible about any mental condition. Options include:

- Ask your client if they have a mental health condition.
- Ask your client if they have ever been admitted to a mental health ward at a hospital.
- Ask your client if they take medication currently or have taken medication in the past for a mental health condition.
- Try to contact relatives or relatives of your client and ask them about your client.
- Speak to the prosecutor to see if there is any suggestion of mental health issues on their file.
- Contact the Public Solicitor's Office and ask an officer to search for previous closed files for the client.
- Contact the psychiatrist at the National Referral Hospital and ask if he or she is aware of your client. The hospital may be reluctant to release information without a signed medical authority form (see the end of this Chapter).
- Ask your client for their medical card that they use at the hospital.

Dealing with a client who has mental health issues can require considerable patience and effort. You may need to adjourn matters to obtain reports. You should advise the court of the mental health issue

and hopefully the court will be accommodating and understanding of potential difficulties in dealing with the case.

What is the Relevance of a Mental Illness or Mental Condition?

Minor Charges

If your client appears to have a mental illness or condition, and the charges are very minor, you could consider adjourning the case and writing to the prosecution seeking withdrawal of the charges. It is not in the public interest to use scarce resources prosecuting mentally ill persons for minor offences. You should explain the nature of the illness and provide evidence, such as a medical report or contact details of a relative of your client.

If your client is facing very minor charges and is being held in the court cells, feel free to invite the prosecutor to talk with your client in the cells. If it is clear to the prosecutor that your client is ill, stand the matter down in the list and invite the prosecutor to seek instructions for the withdrawal of the charges.

You should also make efforts to contact family of the client so they are not released into a situation where they, or the general public, are not safe.

Mentally Ill at the Time of the Offence

For serious charges, a person who was mentally ill at the time of the offence may have a defence of 'insanity', pursuant to Section 12 of the *Penal Code*. If a person is found not guilty by reason of insanity they may be detained in custody until they are no longer mentally ill. This could be indefinitely. In the rare instance that your client was insane at the time of the offence, but is no longer insane, then they may be released after trial.

Therefore, in theory 'insanity' is a defence to a crime, however in reality the consequences of a finding of insanity (indefinite remand in custody) are worse than a finding of guilt (fixed sentence with definite release). For this reason you may wish to act in your client's best interests by not pursuing this defence at trial.

A person who was mentally ill at the time of the offence may either be fit to plead or unfit to plead at the time of trial.

Mentally Ill at the Time of Trial - Fitness to Plead/Stand Trial

If the client is suffering from a serious mental illness, he or she may be unfit to plead.

To be fit to plead, a person must be able to[8]:

1. Understand the nature of the charge.
2. Plead to the charge and exercise the right of challenge (challenge refers only to jury trials).
3. Understand the nature of the proceedings, namely, that it is an inquiry as to whether the accused committed the offence charged.
4. Follow the course of the proceedings.
5. Understand the substantial effect of any evidence that may be given in support of the prosecution.
6. Make a defence or answer the charge.

If your client is found to be unfit to plead, the case may be adjourned indefinitely and your client may be remanded in custody until he or she becomes fit for trial. In the event that the mental condition of your client does not improve, and he or she does not become fit for trial, the client could be held in custody forever.

If your client is unfit to plead, there is a real risk to his or her long term liberty. This is a cruel irony of the criminal law – a person who is unfit to plead, who is never convicted of an offence, may spend many more years in custody, without any certainty of release, than a person who is fit to plead and convicted of an offence.

If your client is unfit to plead, the prosecution may reconsider whether or not to proceed with the charges against your client. The seriousness of the charges may be a relevant consideration.

In most cases, it will be in the interest of your client to be fit to plead. Being unfit to plead does not necessarily lead to acquittal or release from custody. Unfortunately, being unfit to plead is likely to lead to an indefinite period of time in custody, possibly forever. The same situation may apply to a person who is found not guilty by reason of mental illness. This is clearly worse than a sentence with a fixed release date.

[8] *R v Presser* [1958] VR 45 at 48, *R v Pritchard* (1836) 7 Car & P 303 at 304; 173 ER 135, *Kesavarajah v The Queen* (1994) 181 CLR 230

Requesting a Psychiatric Report on Fitness to Plead or Mental Illness at the Time of the Offence

In the event you suspect your client is unfit to plead, or was mentally ill at the time of the offence, or both, you should write to a psychiatrist and request a report addressing the specific issues.
You should provide the psychiatrist with a copy of any disclosures, witness statements, record of interview and brief facts.

You should be aware that the report will be subject to lawyer client privilege. You should not release the report to the prosecution or the court unless it is the interests of your client. You should remind the psychiatrist not to release the report to any persons other than yourself.

Once you receive the report, you will have to decide whether it is in your client's interests to use the report in court. If the report does not assist your client, simply keep the report on file and do not release it to the prosecution or court. That is the right of your client and your duty as his or her lawyer.

If you release the report, the court or prosecution may use admissions made by your client to the psychiatrist in evidence. Any opinions unfavourable to your client (e.g. "he or she is a murderous psychopath who will kill again") might also be used against your client. So you will have to think carefully about the contents of the report and decide whether or not to release it.

There is currently only one psychiatrist in Solomon Islands. In the event that he is unable to prepare a report, you may need to consider using a psychologist or a doctor with significant experience in the field of mental health.

Relevant Legislation

Legislation	Section	Comment
Penal Code	3	Construction as in English criminal law
Penal Code	11	Presumption of sanity
Penal Code	12	Definition of insanity
Penal Code	13(2)(b)	Insane intoxication
Penal Code	35	Discharge due to mental condition etc

Penal Code	203	Homicide and diminished responsibility
Criminal Procedure Code	2	Definition of mental hospital
Criminal Procedure Code	3	Offences to be inquired into, tried and otherwise dealt with according to this code
Criminal Procedure Code	144	Inquiry by court into unsound mind and incapable of making his defence
Criminal Procedure Code	145	Procedure on defence of unsound mind at PI
Criminal Procedure Code	146	Defence of unsound mind at trial procedure thereafter
Criminal Procedure Code	147	Presumption of capacity to make his defence
Criminal Procedure Code	148	As above
Criminal Procedure Code	149	Non-insane incapacity to understand proceedings
Criminal Procedure Code	161	Alternative of infanticide
Criminal Procedure Code	180 & 267	Reports/depositions of medical practitioners etc
Criminal Procedure Code	256	Entry of plea if unfit
Criminal Procedure Code	272	Prosecution right of reply to unforeseen evidence

Sentence Considerations

If your client is suffering from a mental illness or mental condition, either at the time of the offence or the time of sentence or both, this may be a relevant factor on sentence.

Section 35 of the *Penal Code* may be called upon – the court can dismiss the charges based on the mental condition of the accused.

The moral culpability of your client may be diminished by reason of their mental illness or mental condition. The blameworthiness of your client will be less than that of a person without a mental condition.

Your client should not be used as a vehicle for principles of general and specific deterrence. These principles can be given less weight in the sentencing process. There is no point in a court imposing a harsh sentence on your client for the purpose of deterring other 'like minded' persons – that is other persons with the same or similar mental condition. The nature of mental illness is such that deterrence will have little or no impact on their behaviour. For a discussion of the effect of mental illness on sentence see "Ross on Crime, 5th Edition" at 19.1965. Ross summarises the relevance to sentence of an offender's mental illness (which are sometime known as the *R v Tsiaras* principles from the case of *R v Tsiaras [1996] 1 VR 398 at 400 (CA)*) as:

1. Reducing moral culpability, as distinct from legal responsibility. This affects punishment and denunciation is less likely to be relevant.
2. The mental illness may have a bearing on the kind of sentence that is imposed, and the conditions in which it should be served.
3. The role of general deterrence may be moderated or eliminated, depending on the nature and severity of the symptoms, whether at the time of offending, or at the date of sentence, or both.
4. The role of specific deterrence may be moderated or eliminated, depending on the nature and severity of the symptoms, whether at the time of offending, or at the date of sentence, or both.
5. Depending on the mental illness a sentence may weigh more heavily on a mentally ill offender than it would on a person of ordinary health.
6. Where there is a serious risk that imprisonment would have a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment.

These are strong grounds for not sending mentally ill persons to prison. Prisons should not be used as *de facto* mental health hospitals. A prison environment could further harm a person's already fragile mental state, and this is in itself a factor which mitigates against imprisonment.

What to do if your Client Threatens Self Harm or Suicide

If your client threatens harm whilst in custody, you should inform the Prison, both verbally and in writing. If your client is appearing in court in custody, you should mention your concerns to the Magistrate or Judge and indicate that your client has threatened self harm.

If your client is on bail, you should refer them to the National Referral Hospital. You should also contact a relative and advise them of the situation. You should make an immediate file note, recording what your client said, and your actions in response.

Your Mental Health

Working as a criminal defence lawyer at the Public Solicitor's Office can be a very stressful and difficult job. The workload is high. The pay, in relative terms, is low. Rarely will you be thanked or recognised for your efforts. The job involves dealing with the liberty of clients. Your client may be facing the awful prospect of spending the rest of his or her life in prison.

You are required, on a daily basis, to confront prosecutors, judicial officers and witnesses, and explain matters on behalf of your clients. The subject matter of the crimes of your clients can be very distressing and harrowing. It is therefore normal for lawyers at the Public Solicitor's Office to suffer from stress, burn out and general feelings of frustration, even disillusionment.

You need to be aware of this possibility and be ready to deal with these feelings as they arise.
Some hints for preventing and dealing with these issues include:

- Take leave from work. Taking a couple of weeks' leave two or three times a year allows for you to completely forget about work and relax. This is better than taking a few days every month.

- Stay fit and healthy. Eat enough healthy food. Get enough sleep. Do not use alcohol to deal with stress.

- Learn to switch off from work at the end of the day. Pursue other interests, with family or hobbies etc.

- Talk to your supervisor if you are feeling stressed.

- Offer to help out other lawyers when they appear stressed.

- Work as a team so that other lawyers do not resent having to do work that should be yours.

- If a particular file or client is causing you too much stress, talk to your supervisor and discuss options for reallocation.

- Ask for help from family or medical professional if things are getting too difficult.

Authority to Release Medical Information

TO: NAME OF HOSPITAL OR DOCTOR OR OTHER AGENCY

I, [insert NAME OF CLIENT], [Insert Date of Birth], hereby authorize [insert name of lawyer], my legal practitioner from the Public Solicitor's Office, to obtain copies and originals of all records, reports, notes and other documents relating to my medical conditions.

Signed_____

Witness_____

Date_____

Chapter 27

Oaths and Sworn Statements

In criminal matters, you must be a Commissioner of Oaths to witness a sworn statement.

In civil matters, you do not need to be a Commissioner of Oaths to witness a sworn statement. You can witness a sworn statement in a civil matter if you are a legal practitioner with a current practicing certificate.

In all matters, you cannot witness a sworn statement if you will be representing the party in the matter for which the sworn statement is being used. You cannot witness a sworn statement for your client or your client's witnesses.

When administering an oath: the deponent signs in your presence and holds the Bible and is asked to repeat after you the words:

> "I swear by Almighty God that this is my name and writing and that the contents of this my affidavit are true".

When administering a statutory declaration: the deponent signs in your presence and is asked the repeat after you the words:

> "I solemnly and sincerely declare that this is my name and writing and that the contents of this my statutory declaration are true".

The deponent and you should also sign the bottom of each page (including the front page) of any affidavit or statutory declaration.

Exhibits

Each exhibit must be marked with the initials of the person making the affidavit or statutory declaration e.g. "EX 1" and the Commissioner must state on it":

> "This is the exhibit referred to in the affidavit/statutory declaration of X sworn/declared before me on this day of 2011".

The Commissioner must then sign underneath and state that they are a Commissioner/Solicitor.

Translated Statements

It will be normal for the statement to be written in English. If the statement is interpreted into another language for the deponent, you should indicate this at the end of the statement by writing:

> "I certify that the Affidavit and Oath have been translated to the deponent in the *(state which)* language that the deponent understands. The deponent acknowledged that he understood what was contained in the affidavit.
>
> Signature of interpreter
>
> Full name of interpreter"

Certifying Copies

Do not certify a copy unless you are shown the original document. Mark on the copy:

> "I hereby certify that this is a true and proper copy of the original sighted by me".

Then sign and put the capacity in which you are certifying the copy.To become a Commissioner of Oaths, you need to apply to the High Court in writing and provide a copy of your curriculum vitae and practicing certificate.

Relevant Legislation

Section 314 of *Criminal Procedure Code*

Oaths Act

Solomon Island Civil Procedure Rules (2007)

Chapter 28

Circuit Courts (Court Tours)

The Public Solicitor's Office sends lawyers to all Principal Magistrate Circuits. The Auki and Gizo offices make efforts to staff circuits conducted close to their respective offices.

Generally, rostering for circuits should be confirmed at least one week before the commencement of the circuit. This will allow sufficient time for the Administration Section to make the necessary travel and accommodation bookings and to raise funds for per diems.

Where possible, two lawyers are sent on each circuit so that cases can progress more smoothly and the workload is more manageable.

Going on circuit is one of the more challenging aspects of working at the Public Solicitor's Office. It is also one of the most fulfilling parts of the job. You get to meet grassroots people from all corners of the nation and visit places that lawyers rarely get to see.

The workload can be very demanding. Court often sits into the evening and clients may attend upon you to provide instructions at all hours of the day and night. This requires patience and perseverance on your part. You need to remember that for the client, this may be their only day in court in the entire life, and therefore it is a nervous and important occasion.

It is important that you make adequate preparations for the circuit. Before the circuit:

- Make sure all of your files listed in Honiara during the circuit week are properly prepared for the duty lawyer. You should speak directly to the lawyer handling the file if there is any special requirement on the file.
- Do not go on circuit if you are listed for a trial or sentence submission or appeal in Honiara.
- Speak to staff at Central Magistrate's Court to confirm the circuit is proceeding and find out the date the magistrate intends to travel.
- Speak to the prosecutor and try to obtain a copy of the list. Ask if any matters are listed for trial.
- Locate files from the previous Circuit Court to that location. These are kept in the Circuit Court filing cabinet.
- If necessary, speak to the lawyer who attended the previous circuit to find out if there are any cases requiring special preparation or any other matters that you need to be aware of.
- Confirm travel and accommodation bookings with the administration section.

- Take sufficient pens, notepads and new files, forms, Robert Cavanagh's 'Evidence Law and Advocacy in the Solomon Islands', *Ross on Crime* and the Public Solicitor's Office *Duty Lawyer Handbook.*

- Take hard copies of the relevant legislation including *Penal Code, Criminal Procedure Code, Weapons Act, Liquor Act, Traffic Act, Juvenile Act, Fisheries Act, Evidence Act, Magistrate's Court Act.*

- Take a life jacket and marine safety equipment (radio, EPIRB and flares) if there is <u>any chance</u> you will be required to travel by boat.

- Arrange transport to the airport and a pick up when you return to Honiara.

You also need to prepare yourself:

- You may need to take additional food with you on circuit as shops and canteens may be poorly stocked or hard to find (e.g. Rennell and Bellona).

- Make sure you get enough sleep on circuit.

- Avoid the over consumption of alcohol as this makes it difficult to properly function in court and reflects poorly on the office.

Most of all enjoy the week on circuit and remember that you are an ambassador for the Public Solicitor's Office and the legal system in general.

Chapter 29

Jurisdiction of Offences – Penal Code

Please note that the following table, which sets out the revised jurisdiction of offences contained in the *Penal Code*, is based on the best information that was available at the time of its preparation. Due to the number of changes to jurisdiction that have been made over several decades, and the difficulty in obtaining the documents relating to the changes, it is possible that it contains errors. Please notify the authors if you find an error in this document. It is intended only as a guide and it should be checked wherever possible. The table applies to adults. See Section 22 Juveniles for the jurisdiction in respect of juveniles.

Short Description	Penal Code - Section	Maximum Punishment	Sanction Required	Increase in Jurisdiction	Minimum Jurisdiction (as amended)
treason	48	offence, life			HC
instigating invasion	49	life			HC
concealment of treason	50(a)	felony, life			HC
concealment of treason	50(b)	felony, life			HC
intent to depose H.M.	51(a)	felony, life			HC
intent to levy war against H.M.	51(b)	felony, life			HC
instigating invasion	51(c)	felony, life			HC
genocide	52	life if killing, in any other case 14 years			HC & PM for lesser
incitement to mutiny	54(a)	felony, life			HC
incitement to mutiny	54(b)	felony, life			HC
incitement to mutiny	54(c)	felony, life			HC
aiding in mutiny	55(1)	misdemeanour		all magistrates	all
incitement to sedition	55(2)	misdemeanour		all magistrates	all
procure desertion	56(a)	misdemeanour with 6 months			all
aids desertion	56(b)	misdemeanour with 6 months			all
harbours deserter	56(c)	misdemeanour with 6 months			all
knowingly aiding enemy alien	57(a)	felony, life			HC
permits escape of prisoner of war	57(b)	misdemeanour			PM
administer unlawful oath to murder	59(a)	felony, life			HC
takes unlawful oath to murder	59(b)	felony, life			HC
to engage in mutiny	60(a)(i)	felony, 7 years			PM
to commit offence other than murder	60(a)(ii)	felony, 7 years			PM
to disturb the peace	60(a)(iii)	felony, 7 years			PM
to form a confederacy	60(a)iv)	felony, 7 years			PM
to obey unlawful commands	60(a)(v)	felony, 7 years			PM
not to give evidence	60(a)(vi)	felony, 7 years			PM
not to reveal any confederacy	60(a)(vii)	felony, 7 years			PM
take unlawful oath	60(b)	felony, 7 years			PM
drills in use of arms	62(1)(a)	felony, 7 years			PM
present at unlawful drilling	62(1)(b)	felony, 7 years			PM
trained at drill	62(2)	misdemeanour			PM
fabricates rumours	63(a)	misdemeanour with 1 year or fine			all
acts to prejudice of public safety	63(b)	misdemeanour with 1 year or fine			all
excites hatred or contempt of a class	63(c)	misdemeanour with 1 year or fine			all
defamation of princes	64	misdemeanour			PM
piracy	65	as punished in England except that if in England liable for execution then			HC

		instead for life			
managing unlawful society	67	felony, 7 years			PM
member of unlawful society	68(a)	felony, 3 years			PM
allows meeting of unlawful society	68(b)	felony, 3 years			PM
takes part in unlawful assembly	74	misdemeanour with 1 year			all
riot	75	misdemeanour		all magistrates	all
rioting after proclamation	78	felony, 5 years			PM
preventing proclamation	79	felony, 5 years			PM
rioters demolishing building	80	felony, life			HC
rioters injuring building	81	felony, 7 years			PM
rioters interfering with aircraft etc	82	misdemeanour			PM
going armed in public	83	misdemeanour plus forfeiture of arms		all magistrates	all
possess weapon in restricted place	84(2)	misdemeanour		First Class	all
obstructing search of unlawful weapon	84(4)	misdemeanour		First Class	all except Second
forcible entry onto land	85	misdemeanour		all magistrates	all
holds possession of land	86	misdemeanour		all magistrates	all
affray	87	misdemeanour, 1 year			all
challenge to duel	88	misdemeanour		all magistrates	all
within intent breaks a dwelling house	89(a)	misdemeanour, 1 year		all magistrates	all
within intent to alarm, discharges firearm	89(b)	misdemeanour, 1 year		all magistrates	all
assemble for smuggling	90	misdemeanour, and on summary conviction 1 year			all
official corruption when employed in public service	91 (a)	felony, 7 years			PM
official corruption of employed in public service	91(b)	felony, 7 years			PM
extortion by public officers	92	misdemeanour, 3 years			PM
receiving property to show favour	93	misdemeanour, 6 months			all
judicial character	94	misdemeanour, 1 year			all
false claim by official	95	misdemeanour		all magistrates	all
abuse of office	96	misdemeanour but if done for gain is a felony, with 3 years	Yes		PM
false certificates by public officers	97	misdemeanour			PM
unauthorised administration of oaths	98	misdemeanour			PM
false assumption of authority of judicial officer	99(a)	misdemeanour			PM
without authority administers oath	99(b)	misdemeanour			PM
without authority testifies to register	99(c)	misdemeanour			PM
personating public officers	100	misdemeanour, 3 years			PM
threaten injury to public officer	101	misdemeanour	Yes		PM
perjury in court	102(1)	misdemeanour, 7 years			PM
false statement other than in judicial proceeding	103(a)	misdemeanour, 7 years			PM
uses false affidavits for Bills of Sale Act	103(b)	misdemeanour, 7 years			PM
makes false oath relating to	104(a)	misdemeanour, 7 years			PM

marriage				
makes false particular in marriage register	104(b)	misdemeanour, 7 years		PM
falsely represents to be person ale to forbid a marriage	104(c)	misdemeanour, 7 years		PM
makes false answer for registration of birth or death	105(a)	misdemeanour, 7 years		PM
makes any false certificate of birth or death	105(b)	misdemeanour, 7 years		PM
makes false statement as to live birth	105(c)	misdemeanour, 7 years		PM
makes any false statement for registration of birth or death	105(d)	misdemeanour, 7 years		PM
false declaration in statutory declaration	106(a)	misdemeanour	all magistrates	all
false statement in accounts required in any Act	106(b)	misdemeanour	all magistrates	all
false statement in any oral declaration pursuant to any Act	106(c)	misdemeanour	all magistrates	all
false declaration for registration as lawyer	107(a)	misdemeanour, 12 months		all
procuring false certificate of registration as lawyer	107(b)	misdemeanour, 12 months		all
aiders and abettors of perjury	108(1)	misdemeanour		PM
inciting perjury	108(2)	misdemeanour		PM
fabrication of evidence in judicial proceeding	110(a)	misdemeanour, 7 years		PM
knowingly uses fabricated evidence	110(b)	misdemeanour, 7 years		PM
making of inconsistent statements in judicial proceedings	111(1)	misdemeanour, 6 months		all
deceiving a witness	114	misdemeanour	all magistrates	all
destroying evidence	115	misdemeanour	all magistrates	all
conspiracy to defeat justice by accusing of crime	116(a)	misdemeanour	all magistrates	all
obstruction of justice be interfering with a witness	116(b)	misdemeanour	all magistrates	all
obstruction of process	116(c)	misdemeanour	all magistrates	all
compounding a felony	117	misdemeanour	all magistrates	all
compounding a felony in penal actions	118	misdemeanour	all magistrates	all
offer reward for stolen property with no questions	119(a)	misdemeanour	all magistrates	all
publishing offer of reward for stolen property with no questions	119(b)	misdemeanour	all magistrates	all
corruptly taking a reward	120	felony, 7 years		PM
disrespect of judicial proceedings	121(1)(a)	offence, 3 months or to rising of court and fine with default of 1 month		all
summonsed and fails to attend judicial proceedings	121(1)(b)	offence, 3 months or to rising of court and fine with default of 1 month		all
refuses to be sworn	121(1)(C)	offence, 3 months or to rising of court and fine with default of 1 month		all
refuses to answer questions or produce document	121(1)(d)	offence, 3 months or to rising of court and fine with default of 1 month		all
witness remains after being ordered to leave	121(1)(e)	offence, 3 months or to rising of court and fine with default of 1 month		all
disturbs judicial proceedings	121(1)(f)	offence, 3 months or to rising of		all

		court and fine with default of 1 month		
uses speech or writing during pending proceeding	121(1)(g)	offence, 3 months or to rising of court and fine with default of 1 month		all
publishes evidence directed to be held in private	121(1)(h)	offence, 3 months		all
attempts to interfere with a witness	121(1)(i)	offence, 3 months		all
dismisses a servant because he has given evidence	121(1)(j)	offence, 3 months		all
wrongfully retakes possession of land	121(1)(k)	offence, 3 months		all
commits an act of intentional disrespect to court	121(1)(l)	offence, 3 months or to rising of court and fine with default of 1 month		all
bribe with intent to pervert justice	122(a)	misdemeanour		PM
bribe to dissuade performance of duty	122(b)	misdemeanour		PM
injury, damage or threat with intent to obstruct justice	123(a)	misdemeanour	all magistrates	all
injury, damage or threat to dissuade performance of duty	123(b)	misdemeanour	all magistrates	all
injury, damage or threat for having given evidence	123(c)	misdemeanour	all magistrates	all
rescue from lawful custody if imprisoned for life	124(a)	felony, life		HC
rescue from lawful custody if imprisoned for 7 years or more	124(b)	felony, 7 years		PM
rescue from lawful custody in any other case	124(c)	misdemeanour		PM
Resisting arrest and escape	125	misdemeanour		PM
aids prisoner to escape	126(a)	felony, 7 years		PM
conveys anything in prison to facilitate escape of prisoner	126(b)	felony, 7 years		PM
being a gaoler permits escape of prisoner	126(c)	felony, 7 years		PM
conceal property taken under process	127	felony, 3 years		PM
obstructing court officers	128	misdemeanour, 1 year		all
fraud or breach of trust by public officer	129	misdemeanour		PM
false information to a public servant to do something	130(a)	misdemeanour, 6 months or fine		all
false information to a public servant to annoy any person	130(b)	misdemeanour, 6 months or fine		all
insult to religion of any class	131	misdemeanour		PM
disturbing religious assemblies	132	misdemeanour	all magistrates	all
trespassing on burial places	133	misdemeanour		PM
hindering burial of dead body	134	misdemeanour		PM
writing with intent to wound religious feeling	135	misdemeanour, 1 year		all
rape	137	life		HC

attempt rape	138	felony, 7 years		PM
abduction	139	felony, 7 years		PM
abduction of girl under 18 with intent to have sexual intercourse	140	misdemeanour	all magistrates	all
Indecent assault of a female	141(1)	felony, 5 years	all magistrates	all
assaulting modesty of a female	141(3)	misdemeanour, 1 year	all magistrates	all
defilement of girl under 13 years	142(1)	life		HC
attempted defilement of girl under 13 years	142(2)	misdemeanour, 2 years	all magistrates	all
defilement of girl 13 to 15 years	143(1)(a)	misdemeanour, 5 years	all magistrates	all
defilement of female with intellectual disability	143(b)	misdemeanour, 5 years		PM
procuration of female under 18 years with intent to have sexual intercourse	144(1)(a)	misdemeanour, 2 years	all magistrates	all
procuration of female to become prostitute	144(1)(b)	misdemeanour, 2 years	all magistrates	all
procuration of female to leave SI to become prostitute	144(1)(c)	misdemeanour, 2 years	all magistrates	all
procuration of female to frequent brothel in SI	144(1)(d)	misdemeanour, 2 years	all magistrates	all
procuration of female to have sexual intercourse by threats	145(a)	misdemeanour, 2 years	all magistrates	all
by false pretences procures any female to have unlawful sexual intercourse	145(b)	misdemeanour, 2 years	all magistrates	all
applies any stupefying drug to enable any person to have unlawful sexual intercourse	145(c)	misdemeanour, 2 years	all magistrates	all
householder permitting defilement of girl under 13 years on his premises	146	felony, life		HC
householder permitting defilement of girl under 15 years on his premises	147	misdemeanour, 2 years		PM
detention in a premises with intent she have unlawful sexual intercourse	148(1)(a)	misdemeanour, 2 years		PM
detention in a brothel	148(1)(b)	misdemeanour, 2 years		PM
disposing of minors under the age of 15 for immoral purposes by parent	149(1)	misdemeanour, 2 years		PM
obtaining minors under the age of 15 year for prostitution	150(1)	misdemeanour, 2 years		PM
knowingly living on earnings of prostitution	153(1)(a)	misdemeanour	all magistrates	all
soliciting	153(1)(b)	misdemeanour	all magistrates	all
gaining control over a prostitute	153(1)(c)	misdemeanour	all magistrates	all
keeping a brothel	155(a)	misdemeanour		PM
permits premises to used as a brothel	155(b)	misdemeanour		PM
letting premises knowing they used as brothel	155(c)	misdemeanour		PM
conspiracy to defile	156	misdemeanour		PM
attempt to procure abortion of another	157	felony, life		HC
attempt to procure own abortion	158	felony, life		HC
supplying drugs for abortion	159	felony, 5 years		PM
buggery	160(a)	felony, 14 years		PM

permit self to be buggered	160(b)	felony, 14 years		PM
attempt to commit buggery or indecent assault on male	161	felony, 7 years		PM
sexual act with person of same sex	162(a)	felony, 5 years		PM
procure act of gross indecency	162(b)	felony, 5 years		PM
attempts to procure sexual act with person of same sex	162(c)	felony, 5 years		PM
incest by male	163(1)	felony, 7 years	Yes	PM
incest by female above 15 years	164	felony, 7 years	Yes	PM
fraudulent pretence of marriage	169	felony, 10 years		PM
bigamy	170(1)	felony, 7 years		PM
fraudulent marriage ceremony	171	felony, 5 years		PM
nuisance	172	misdemeanour, 1 year		all
by way of trade possess obscene publications	173(1)(a)	misdemeanour, 2 years or fine		PM
exports or circulates obscene publications	173(1)(a)	misdemeanour, 2 years or fine		PM
distributing obscene publications	173(1)(b)	misdemeanour, 2 years or fine		PM
dealing with obscene publications	173(1)(c)	misdemeanour, 2 years or fine		PM
advertising means of obtaining obscene publications	173(1)(d)	misdemeanour, 2 years or fine		PM
exhibits indecent performance	173(1)(e)	misdemeanour, 2 years or fine		PM
person with no visible means of support	175(a)	2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and on breach 6 months		all
begging	175(b)	2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and on breach 6 months		all
common prostitute behaving indecently	175(c)	2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and on breach 6 months		all
drunk and disorderly	175(d)	2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and on breach 6 months		all
indecent act in public	175(e)	2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and on breach 6 months		all
soliciting	175(f)	2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and on breach 6 months		all
exposing wounds to obtain alms	175(g)	2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and on breach 6 months		all
subsequent conviction as	176(a)	2 months or fine or to be conveyed to		all

idle person		province of origin and reside there for period not exceeding 3 years and on breach 6 months 2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and	
false charity collection	176(b)	on breach 6 months 2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and	all
loitering	176(c)	on breach 6 months 2 months or fine or to be conveyed to province of origin and reside there for period not exceeding 3 years and	all
obscene exposure in public	176(d)	on breach 6 months	all
slaughter an animal in public way	178(a)	offence, 1 month or fine	all
driving cattle without proper assistance	178(b)	offence, 1 month or fine	all
exposing goods for sale on public way	178(c)	offence, 1 month or fine	all
hanging clothes over public way	178(d)	offence, 1 month or fine	all
wantonly ringing door bells	178(e)	offence, 1 month or fine	all
damaging signs	178(f)	offence, 1 month or fine	all
lays down materials in public way	178(g)	offence, 1 month or fine	all
throwing rubbish in to public way	178(h)	offence, 1 month or fine	all
throwing rubbish on footway	178(i)	offence, 1 month or fine	all
dangerous dogs at large unmuzzled	178(j)	offence, 1 month or fine	all
suffering rabid dog to go at large	178(k)	offence, 1 month or fine	all
blasting rocks without consent	178(l)	offence, 1 month or fine	all
puts indecent word or representation in public	178(m)	offence, 1 month or fine	all
uses threatening words in public	178(n)	offence, 1 month or fine	all
carrying meat without covering	178(o)	offence, 1 month or fine	all
playing games etc in public way	178(p)	offence, 1 month or fine	all
careless driving	178(q)	offence, 1 month or fine	all
permits cattle to obstruct public way	178(r)	offence, 1 month or fine	all
obstructs free passage on public way	178(s)	offence, 1 month or fine	all
leaves things on public way	178(t)Ii)	offence, 1 month or fine	all
places covering over public way less than 8 feet high	178(t)(ii)	offence, 1 month or fine	all
carrying naked light on public way	178(t)(iii)	offence, 1 month or fine	all
drunk and incapable in public	179	offence, fine	all
shouts after being warned to desist to annoyance of public	180(1)	offence, 1 month or fine	all
pollution of water	181	misdemeanour, 2 months or fine	all
posting placards without consent	182	offence, 1 month or fine	all
dangerous dogs at large	183(1)	offence, 1 month or fine	all
dog known to be dangerous	183(2)	1st offence: offence, 6 weeks or fine Subsequent offence: 2 months or fine or destruction	all
incites dog to attack	183(3)	offence, 6 weeks or fine	all

wearing uniform without right	184(1)	offence, 1 month or fine		all
wearing uniform to bring contempt	184(2)	misdemeanour, 2 months or fine		all
selling of badges	184(3)	misdemeanour, 6 months or fine		all
negligently spreading infection	185	misdemeanour	all magistrates	all
fouling air	186	misdemeanour	all magistrates	all
offensive trade	187	as for common nuisance		all
endangering property with fire	188	misdemeanour	all magistrates	all
entry upon property to intimidate	189(1)(a)	misdemeanour, 3 months unless building then 1 year and if at night misdemeanour, 1 year		all
remaining on property to intimidate	189(1)(b)	misdemeanour, 3 months unless building then 1 year and if at night misdemeanour, 1 year		all
unlawfully persist onto property	189(1)(c)	misdemeanour, 3 months unless building then 1 year and if at night misdemeanour, 1 year		all
trespass at night	189(2)	misdemeanour, 3 months unless building then 1 year and if at night misdemeanour, 1 year		all
performance of magic ritual to cause harm	190(a)	misdemeanour, 2 months or fine		all
possess article of harmful magic	190(b)	misdemeanour, 2 months or fine		all
manslaughter	199(2)	felony, life		HC
murder	200	life*		HC
infanticide	206	as for manslaughter		HC
attempt murder	215(a)	felony, life		HC
omits to do any act with intent to unlawfully cause death	215(b)	felony, life		HC
accessory after the fact to murder	216	felony, 7 years		PM
written threat to murder	217	felony, 10 years		PM
conspiracy to murder	218	felony, 10 years		PM
complicity in suicide	219(1)	felony, 14 years		PM
concealing dead body to conceal birth	220	misdemeanour		PM
destruction of a child	221(1)	felony, life		HC
disabling in order to commit felony or misdemeanour	222	felony, life		HC
stupefying in order to commit felony or misdemeanour	223	felony, life		HC
wounds to resist arrest	224(a)	felony, life	Principal Magistrates Courts	PM
unlawfully attempt to strike with knife	224(b)	felony, life	Principal Magistrates Courts	PM
unlawfully causes an explosion	224(c)	felony, life	Principal Magistrates Courts	PM
sends an explosive	224(d)	felony, life	Principal Magistrates Courts	PM
causes receipt of explosive	224(e)	felony, life	Principal Magistrates Courts	PM
places explosive	224(f)	felony, life	Principal Magistrates Courts	PM
throws corrosive fluid on	224(g)	felony, life	Principal	PM

any person			Magistrates Courts	
preventing escape from a wreck	225(a)	felony, life		HC
obstructs person who endeavours to save the life of person in wreck	225(b)	felony, life		HC
cause grievous harm	226	felony, 14 years		PM
places explosive with intent to injure	227	felony, 14 years		PM
poison another	228	felony, 14 years		PM
unlawful wounding	229	misdemeanour, 5 years		PM
administer poison	230	misdemeanour, 5 years		PM
intimidation	231(1)	offence, 3 years		PM
intimidation to prevent legal act	231(2)	offence, 3 years		PM
molestation to prevent entry to premises	231(3)	offence, 3 years		PM
failure to provide necessaries of life	232	felony, 3 years		PM
cruelty to children	233(1)	misdemeanour, 5 years	all magistrates	all
drives a vehicle in a way negligently as to endanger life	237(a)	misdemeanour	all magistrates	all
navigates a vehicle in a way negligently as to endanger life	237(b)	misdemeanour	all magistrates	all
does an act with fire in a way negligently as to endanger life	237(c)	misdemeanour	all magistrates	all
omits to take precautions against danger from his animal in a way negligently as to endanger life	237(d)	misdemeanour	all magistrates	all
gives medical treatment in a way negligently as to endanger life	237(e)	misdemeanour	all magistrates	all
dispenses medicine or poison in away negligently as to endanger life	237(f)	misdemeanour	all magistrates	all
with respect to machinery in a way negligently as to endanger life	237(g)	misdemeanour	all magistrates	all
omission to do any duty in a way negligently as to endanger life	238	misdemeanour, 6 months		all
dealing in poisonous substances in a reckless manner	239	misdemeanour, 6 months or fine		all
endangering aircraft or vessel	240	misdemeanour	all magistrates	all
exhibit false buoy	241	7 years		PM
conveying by hire an overloaded vessel	242	misdemeanour		PM
danger in public way	243	fine		all
common assault	244	misdemeanour, 1 year		all
assault causing actual bodily harm	245	misdemeanour, 5 years	all magistrates	all
assault on magistrate protecting wreck	246	misdemeanour, 7 years		PM
assault to commit felony or resist arrest	247(a)	misdemeanour, 2 years	all magistrates	all
assault police officer performing duty	247(b)	misdemeanour, 2 years	all magistrates	all
assault person to raise wages	247(c)	misdemeanour, 2 years	all magistrates	all
assaults in execution of process	247(d)	misdemeanour, 2 years	all magistrates	all
assault in execution of duty	247(e)	misdemeanour, 2 years	all magistrates	all
kidnapping	249	felony, 7 years		PM

kidnapping to confine	250	felony, 7 years		PM
kidnapping to cause grievous harm, slavery etc	251	felony, 10 years		PM
confinement of kidnapper person	252	felony		PM
child stealing	253	felony, 7 years		PM
abduction of girl under 15 years	254	misdemeanour	all magistrates	all
wrongful confinement	255	misdemeanour, 1 year or fine		all
compulsory labour	256	misdemeanour	all magistrates	all
stealing as simple larceny	261(1)	felony, 5 years	all magistrates	all
subsequent conviction for felony	261(2)	felony, 10 years	all magistrates	all
subsequent conviction for misdemeanour	261(3)	7 years	all magistrates	all
larceny of will	262	felony, life		HC
larceny of title to land	263(a)	felony, 5 years		PM
larceny of any court record	263(b)	felony, 5 years		PM
larceny of document relating to government employment	263(c)	felony, 5 years		PM
larceny of electricity	264	felony, as for simple larceny	all magistrates	all
larceny of minerals	265	felony, 5 years	all magistrates	all
larceny of mail bag	266(a)	felony, 10 years		PM
larceny from mail	266(b)	felony, 10 years		PM
larceny from mail packet	266(c)	felony, 10 years		PM
stopping mail with intent to rob	266(d)	felony, 10 years		PM
embezzlement of postal officer of money	267(a)	felony, life		HC
embezzlement of postal officer of other things	267(b)	felony, 7 years		PM
larceny in a dwelling house of value above $10	269(a)	felony, 14 years	First Class up to $1000	dependent on value
larceny in dwelling house by menace	269(b)	felony, 14 years	First Class up to $1000	dependent on value
larceny from the person	270	felony, 14 years	First Class up to $1000	dependent on value
larceny from ship in navigable river	271(a)	felony, 14 years	First Class up to $1000	dependent on value
larceny from wharf	271(b)	felony, 14 years	First Class up to $1000	dependent on value
larceny from vessel in distress	271(c)	felony, 14 years	First Class up to $1000	dependent on value
larceny by tenant above $10	272(a)	felony, 7 years		PM
larceny by tenant below $10	272(b)	felony, 2 years	all magistrates	all
larceny by servant	273(a)(i)	felony, 14 years	First Class up to $1000	dependent on value
embezzlement by servant	273(a)(ii)	felony, 14 years	First Class up to $1000	dependent on value
larceny by public servant	273(b)(i)	felony, 14 years	First Class up to $1000	dependent on value
embezzlement by public servant	273(b)(ii)	felony, 14 years	First Class up to $1000	dependent on value
fraud by application by public body	273(c)(i)	felony, 14 years	First Class up to $1000	dependent on value
fraud by withholding by public body	273(c)(ii)	felony, 14 years	First Class up to $1000	dependent on value
larceny of cattle	274	felony, 5 years	all magistrates	all
larceny of dog	275	first offence: misdemeanour, 6 months or fine Subsequent offence:	all magistrates	all

		18 months		
larceny of creature not subject of larceny at common law	276	misdemeanour, 6 months or fine		all
larceny of fish	277	offence, fine		all
conversion by attorney for ale	278(1)(a)	misdemeanour, 7 years	First Class up to $1000	dependent on value
conversion by director	278(1)(b)	misdemeanour, 7 years	First Class up to $1000	dependent on value
conversion by person with safe custody	278(c)(i)	misdemeanour, 7 years	First Class up to $1000	dependent on value
conversion by person receiving money	278(c)(ii)	misdemeanour, 7 years	First Class up to $1000	dependent on value
larceny of trees	279	misdemeanour	all magistrates	all
larceny of fence	280	misdemeanour	all magistrates	all
larceny of fruit and vegetables	281	misdemeanour	all magistrates	all
steals or with intent to steal damages glass or woodwork of building	282(a)(i)	felony, as for simple larceny	all magistrates	all
steals or with intent to steal damages metal of building	282(ii)	felony, as for simple larceny	all magistrates	all
steals or with intent to steal damages public ornament	282(iii)	felony, as for simple larceny	all magistrates	all
steals or with intent to steal damages trees etc where value is 10 cents and after two previous convictions	282(b)(i)	felony, as for simple larceny	all magistrates	all
steals or with intent to steal damages trees in pleasure garden above $2	282(b)(ii)	felony, as for simple larceny	all magistrates	all
steals or with intent to steal damages trees above $10	282(b)(iii)	felony, as for simple larceny	all magistrates	all
steals fruit or vegetable from any garden after a prior conviction	282(c)	felony, as for simple larceny	all magistrates	all
destruction of title to lands	283	felony		
obliterates title to lands	284	felony, 3 years		PM
destruction of will	285(1)	felony, life		HC
destruction of record	286	felony, 3 years		PM
removing minerals with intent to defraud	287	felony, 2 years	all magistrates	all
killing tame birds	288	misdemeanour or fine		PM
killing animal with intent to steal carcass	289	felony, as for stealing animal provided animal killed would have constituted felony	all magistrates	all
larceny of oyster	290(1)	misdemeanour, 3 months		all
obtaining advances of property of principal consigns security	291(1)(a)	misdemeanour, 7 years		PM
obtaining advances on property of principal	291(1)(b)	misdemeanour, 7 years		PM
unlawful use of vehicle	292	misdemeanour, 6 months or fine		all
robbery, armed	293(1)(a)	felony, life	Principal Magistrates Courts	PM
robbery, with violence	293(1)(b)	felony, life	Principal Magistrates Courts	PM
robbery	293(2)	felony, 14 years	Principal Magistrates Courts	PM
assault with intent to rob	293(3)	felony, 5 years	Principal Magistrates Courts	PM
utters demand with menaces	294(1)(a)	felony, life		HC
utters accusation of crime	294(1)(b)	felony, life		HC
accuses of crime	294(1)(c)	felony, life		HC
with intent to defraud compels execution of security by violence	294(2)(a)	felony, life		HC
with intent to defraud	294(2)(b)	felony, life		HC

compels execution of security by accusing of crime					
demanding with menaces	295	felony, 5 years		First Class	all except second
threatens to publish libel to extort to gain valuable thing	296(a)	misdemeanour, 2 years			PM
threatens to publish libel to extort to gain appointment to office	296(b)	misdemeanour, 2 years			PM
sacrilege by entry	298(a)	felony, 14 years			PM
sacrilege by exit	298(b)	felony, 14 years			PM
at night enters dwelling house	299(a)	felony, life		Principal Magistrates Courts	PM
at night exits dwelling house having entered with intent	299(b)(i)	felony, life		Principal Magistrates Courts	PM
at night exits dwelling house having committed felony	299(b)(ii)	felony, life		Principal Magistrates Courts	PM
burglary of dwelling house, shop, school, store, garage, factory, government building etc by entry	300(a)	felony, 14 years			PM
burglary of dwelling house, shop, school, store, garage, factory, government building etc by exit	300(b)	felony, 14 years			PM
housebreaking with intent to commit felony by entry at night	301(a)	felony, 7 years			PM
enters any dwelling house, place of worship, school store etc	301(b)	felony, 7 years			PM
at night found with dangerous weapon with intent to break or enter any building	302(a)	first offence: misdemeanour, 5 years Subsequent offence 10 years		all magistrates	all
without lawful excuse at night with key, picklock crow etc	302(b)	first offence: misdemeanour, 5 years Subsequent offence 10 years		all magistrates	all
at night having his face masked with intent to commit any felony	302(c)	first offence: misdemeanour, 5 years Subsequent offence 10 years		all magistrates	all
at night in any building with intent to commit any felony therein	302(d)	first offence: misdemeanour, 5 years Subsequent offence 10 years		all magistrates	all
conversion by trustee	304	misdemeanour, 7 years	Yes		PM
director with intent to defraud alters records	305(1)(a)	misdemeanour, 7 years.			PM
director with intent to defraud omits entry into record	305(1)(b)	misdemeanour, 7 years.			PM
director creates false statement	305(1)(c)	misdemeanour, 7 years.			PM
clerk with alters record	306(1)	misdemeanour, 7 years.			PM
with intent to defraud obtains	308(a)	misdemeanour, 5 years		all magistrates	all
with intent to defraud induces another person to make an security	308(b)(i)	misdemeanour, 5 years		all magistrates	all
with intent to defraud uses seal to convert into security	308(b)(ii)	misdemeanour, 5 years		all magistrates	all

in incurring debt obtains credit by false pretence	309(a)	misdemeanour, 1 year		all
makes a gift with intent to defraud creditors	309(b)	misdemeanour, 1 year		all
conceals property with intent to defraud creditors	309(c)	misdemeanour, 1 year		all
pretend to tell fortune	310	misdemeanour	all magistrates	all
obtains registration, licence by false pretence	311	misdemeanour	all magistrates	all
false declaration for passport	312	misdemeanour	all magistrates	all
receiving stolen property in case of felony	313(1)(a)	if felony, 14 years	all magistrates	all
receiving stolen property in case of misdemeanour	313(1)(b)	if misdemeanour, 7 years	all magistrates	all
receiving stolen mail	313(2)	as for stealing	all magistrates	all
receiving stolen goods outside of Solomon Islands	314	felony or misdemeanour, 7 years	all magistrates	all
possessing marked government stores	315(2)	misdemeanour	all magistrates	all
unlawful possession	316(2)	misdemeanour, 6 months or fine		all
arson of building	319(a)	felony, life	Principal Magistrates Courts	PM
arson of aircraft, vessel, vehicle	319(b)	felony, life	Principal Magistrates Courts	PM
arson of vegetables	319(c)	felony, life	Principal Magistrates Courts	PM
arson of mine	319(d)	felony, life	Principal Magistrates Courts	PM
attempt arson	320(a)	felony, 14 years		PM
set fire to adjacent thing	320(b)	felony, 14 years		PM
arson of cultivated produce	321(a)	felony, 14 years		PM
arson of hay	321(b)	felony, 14 years		PM
arson of trees	321(c)	felony, 14 years		PM
attempted arson of s321	322(a)	felony, 7 years		PM
setting fire to adjacent thing	322(b)	felony, 7 years		PM
casting away vessels	323(a)	felony, 14 years		PM
act tending to destruction of vessels	323(b)	felony, 14 years		PM
with intent to bring into danger, interferes with any beacon	323(c)	felony, 14 years		PM
attempt to cast away vessel	324	felony, 7 years		PM
wilful kill, maim or wound animal or bird	325	misdemeanour	all magistrates	all
damage property	326(1)	misdemeanour, 2 years unless otherwise specified	all magistrates	all
damage dwelling house by explosion with person in house	326(2)(a)	felony, life		HC
damage dwelling house by explosion which endangers life	326(20(b)	felony, life		HC
damage canal	326(3)(a)	felony, life		HC
damage bridge	326(3)(b)	felony, life		HC
damage bide and render impassable or dangerous	326(3)(c)	felony, life		HC
damage testamentary instrument or record of births etc	326(4)	felony, 14 years		PM
damage vessel in distress	326(5)	felony, 7 years		PM
damage vessel and it destroyed	326(6)(a)	felony, 7 years		PM
damage vessel with intent to render it useless	326(6)(b)	felony, 7 years		PM
damage beacon	326(6)(c)	felony, 7 years		PM
damage canal	326(6)(e)	felony, 7 years		PM
damage machine	326(6)(f)	felony, 7 years		PM
damage machine with intent	326(6)(g)	felony, 7 years		PM

to destroy it				
damage machine with intent to render it useless	326(6)(h)	felony, 7 years		PM
damage mine	326(6)(i)	felony, 7 years		PM
damage machine used in mine	326(6)(i)	felony, 7 years		PM
damage rope in mine and it destroyed	326(6)(j)	felony, 7 years		PM
damage rope with intent to destroy it	326(6)(k)	felony, 7 years		PM
damage dame	326(6)(l)	felony, 7 years		PM
damage document kept in a public office which is evidence of title to land	326(7)	felony, 7 years		PM
with intent to destroy property plants explosive	327	felony, 14 years		PM
communicating infectious diseases	328	felony, 7 years		PM
removing boundary marks with intent to defraud	329	felony, 3 years	all magistrates	all
willful damage to government boundary mark	330(a)	misdemeanour	all magistrates	all
if under obligation to repair boundary mark, refuses	330(b)	misdemeanour	all magistrates	all
willfully removes survey mark	330(c)	misdemeanour	all magistrates	all
threat to burn agricultural property	331	felony, 7 years		PM
forgery of will with intent to defraud	336(1)(a)	felony, life		HC
forgery of deed	336(1)(b)	felony, life		HC
forgery of currency	336(1)(c)	felony, life		HC
forgery of valuable security	336(2)(a)	felony, 14 years		PM
forgery of tile to land	336(2)(b)	felony, 14 years		PM
forgery of title to goods	336(2)(d)	felony, 14 years		PM
forgery of power of attorney	336(2)(d)	felony, 14 years		PM
forgery of entry in register of shares	336(2)(e)	felony, 14 years		PM
forgery of insurance policy	336(2)(f)	felony, 14 years		PM
forgery of charter-party	336(2)(g)	felony, 14 years		PM
forgery of tax certificate	336(2)(h)	felony, 14 years		PM
forgery of document affixed with H.M. seal or national seal	337(1)	felony, life		HC
forgery with intent to defraud of register of births etc	337(2)(a)	felony, 14 years		PM
forgery of copy of register of births etc	337(2)(b)	felony, 14 years		PM
forgery of any public record	337(2)(c)	felony, 14 years		PM
forgery of certified document	337(2)(d)	felony, 14 years		PM
forgery with intent of defraud of official document of court	337(3)(a)	felony, 7 years		PM
forgery of register kept by law or court	337(3)(b)	felony, 7 years		PM
forgery of any certificated copy of register	337(3)(c)	felony, 7 years		PM
forgery of document made	337(3)(d)	felony, 7 years		PM

by magistrate			
forgery of document by person authorised to administer oath	337(3)(e)	felony, 7 years	PM
forgery of document of head of government department	337(3)(f)	felony, 7 years	PM
forgery of any document to be used in evidence	337(3)(g)	felony, 7 years	PM
forgery of any certificate required for marriage	337(3)(h)	felony, 7 years	PM
forgery of any licence for marriage	337(3)(i)	felony, 7 years	PM
forgery of any certificate for registration of births or deaths	337(3)(j)	felony, 7 years	PM
forgery of any register of shipping	337(3)(k)	felony, 7 years	PM
forgery of any certificate of customs	337(3)(l)	felony, 7 years	PM
forgery of any other certificate	337(3)(m)	felony, 7 years	PM
forgery by clerk of judgment	338	felony, 7 years	PM
forgery of registers of births, baptisms, marriages, deaths or burials	339	felony, life	HC
making false entries in register of births etc	340	felony, life	HC
forgery of any other document	341(1)	misdemeanour	PM
forgery of any other public document	341(2)	misdemeanour	PM
forgery of any passport	341(3)	misdemeanour	PM
forgery of National seal	342(1)	felony, life	HC
forgery of any seal of court of record	342(2)	felony, 14 years	PM
forgery of any seal not court of record	342(3)(a)	felony, 7 years	PM
forgery of seal of notary public	342(3)(b)	felony, 7 years	PM
forgery of die of Chief Accountant	342(4)(a)	felony, 14 years	PM
forgery of die used for stamping gold	342(4)(b)	felony, 14 years	PM
forgery of die used for Stamp Duties	342(5)	felony, 7 years	PM
uttering forged document	343(1)	as for forgery of the die	dependent on object
uttering cancelled document	344	as for forgery of the document	dependent on object
demanding property on forged document knowing it forged	345(a)	felony, 14 years	PM
demanding property on forged document knowing will to be false	345(b)	felony, 14 years	PM
possession of forged documents, seals and dies	346(1)	felony, 14 years	PM
possession of forged die for marking silver	346(2)(a)	felony, 14 years	PM
possession of forged die under Stamp Act	346(2)(b)	felony, 14 years	PM
possession of forged die for wrapper under authority of customs	346(2)(c)	felony, 14 years	PM
possesses paper resembled to pass as currency note	347(a)(i)	felony, 7 years	PM
possesses paper resembled to pass as revenue paper	347(a)(ii)	felony, 7 years	PM
possesses any instrument to make marks on such paper	347(b)	felony, 7 years	PM

engraves anything to resemble a currency note	347(c)	felony, 7 years		PM
possesses any such engraved plate	347(d)	felony, 7 years		PM
uses or possesses any such paper on which marks are made	347(e)	felony, 7 years		PM
receives or possesses any special paper for making currency	348(a)	misdemeanour		PM
receives or possesses any special die for making currency	348(b)	misdemeanour		PM
receives or possesses and facsimile of the signature or design of notes	348(c)	misdemeanour		PM
receives or possesses any unfinished currency note	348(d)	misdemeanour		PM
falsifying warrants for money payable under public authority	349	felony, 7 years		PM
procuring execution of documents by false pretences	350	as if had forged the document		
letter written for certain purposed be signed by writer	351(1)	offence, fine		all
counterfeit gold or silver coin	352(1)(a)	felony and if gold or silver, life		HC
counterfeit copper coin	352(1)(b)	felony and if copper, 7 years		PM
gilding any coin to resemble gold	353(a)(i)	felony, life		HC
gilding any copper coin to resemble gold	353(a)(ii)	felony, life		HC
gilding anything to resemble gold coin	353(a)(iii)	felony, life		HC
gilding silver coin to resemble gold	353(b)	felony, life		HC
files any silver coin	353(c)(i)	felony, life		HC
files any copper coin to resemble gold	353(c)(ii)	felony, life		HC
impairing gold coin	354(1)	felony, 14 years		PM
possess filings of gold from coins	354(1)	felony, 7 years		PM
uttering counterfeit coin	355(1)	misdemeanour, 1 year	all magistrates	all
uttering counterfeit coin and has other counterfeit coins	355(2)(a)	misdemeanour	all magistrates	all
uttering counterfeit coin and with 10 days utters more coins	355(2)(b)	misdemeanour	all magistrates	all
possession of 3 or more counterfeit gold coins	355(3)	misdemeanour, 5 years	all magistrates	all
possessing of 3 or more counterfeit copper coins	355(4)	misdemeanour, 1 year	all magistrates	all
previous conviction for gold coin	355(5)(a)	felony, life	all magistrates	all
previous conviction for other coins	355(5)(b)	felony, life	all magistrates	all
utters gold coin less than passed off value	355(6)	misdemeanour, 1 year	all magistrates	all

utters metal resembling coin	355(6)(b)	misdemeanour, 1 year		all magistrates	all
buying or selling counterfeit coin where coin gold	356(1)(a)	felony and if gold or silver, life			HC
buying or selling counterfeit coin where coin copper	356(1)(b)	felony and if copper, 7 years			PM
importing counterfeit coin	357(1)(a)	misdemeanour, 14 years			PM
exporting counterfeit coin	357(1)(b)	misdemeanour, 14 years			PM
makes any medal resembling gold coin in size etc	358(a)	misdemeanour, 1 year			all
makes any medal with device resembling coin	358(b)	misdemeanour, 1 year			all
makes any medal if gilder will resemble a coin	358(c)	misdemeanour, 1 year			all
defacing coin	362(1)	misdemeanour, 1 year	Yes		all
utters defaced coin	362(3)	offence, fine			all
melting currency	363	misdemeanour, 6 months			all
mutilating currency notes	364	misdemeanour, fine			PM
imitation of currency on article for sale	365(1)	misdemeanour, 6 months			all
making resemblance to currency note	365(2)	misdemeanour, fine			PM
refuses to disclose name of printer	365(3)	misdemeanour, fine			PM
personation	367	misdemeanour			PM
makes a document such as deed in another name	368	felony, 7 years			PM
utters document falsely representing named person	369	as if had forged the document			
lending a document for personation	370	misdemeanour			PM
personation of testimonial	371	misdemeanour, 1 year			all
lending a testimonial for personation	372	misdemeanour		all magistrates	all
accepts reward as inducement to show favour	374(a)	misdemeanour	Yes	all magistrates	all
gives reward as inducement to show favour	374(b)	misdemeanour	Yes	all magistrates	all
deceiving principal	374(c)	misdemeanour	Yes	all magistrates	all
secret commission on government contracts	375	7 years or fine	Yes		PM
	379	attempt		all magistrates	all
soliciting others to commit offence	381	as if did the act			
neglect to prevent felony	382	misdemeanour			PM
conspiracy to commit felony	383	felony and if no punishment specified to 7 years, but if specified and less then the lesser			dependent on felony
conspiracy to commit misdemeanour	384	misdemeanour			PM
other conspiracies	385(a)	misdemeanour			PM
other conspiracies	385(b)	misdemeanour			PM
accessory after the fact	387	felony, and if no punishment provided, 3 years			dependent on felony

Chapter 30

Additional Resources

The Public Solicitor's Office has developed a range of brochures for the public on the criminal law, as well as on evidence and advocacy, environmental, timber, mining and protected marine areas. Some of these publications are substantial and are extremely useful to legal practitioners as well as the general public. They are useful to take with you on tour, and distribute to people and organizations who might be interested in them. A full list of these brochures and other resources (including a DVD) can be found at the Public Solicitor's Office website www.pso.gov.sb.

A copy of one of the simpler brochures is included in this handbook, as it is useful to provide to an unrepresented accused. It is "Applying for Bail". This brochure is designed to be used by unrepresented accused and contains information in Pijin and in English. It is intended to be used where there is no access to a duty lawyer. It has space for information to be written in either by the accused him or herself, or by a literate person on their behalf, with the intention that the written information can be handed up to a magistrate in court, if the accused person is not able or confident enough to speak for him or herself.

Other brochures produced by the Public Solicitor's Office on criminal law include:

- Bail (English)
- Beil (Pijin)

- Juvenile Justice (English)
- Juvanael Jastis (Pijin)

- Your Court Hearing and Disclosures (English)
- Kot Hiaring Blong Yu and Disclosures (Pijin)

- Magistrate's Court (English)
- Magistret Kot (Pijin)

- Mitigation (English)
- Mitigeison (Pijin)

- Police Powers (English)
- Olketa Paoa Blong Polis (Pijin)

- Sentence Appeal (English)
- Sentens Apil (Pijin)

Your name?: _____

Your age or approximate age: _____

Do have a job (if so, what is the name of your employer, and how long have you worked there)?:

_____

_____

_____

How many people do you support?: _____

Are you married (if so, what is your spouse's name)?: _____

Do you have children (if so, how many, and their ages)?: _____

Do you or your family members have any serious medical conditions?:

_____

_____

_____

Are you a student: _____

Where do you want to live if granted bail?:

_____

_____

_____

If you have lived there before, how long have you lived there: _____

Is that place close to a place where any witnesses live?: _____

Where is your home village?:

_____

_____

How long is it since you lived in your home village?: _____

Have you ever been convicted by a court of any other offence?: _____

Are you on bail for any other offence?: _____

Is there a police station close to where you want to live?: _____

What day were you arrested on?: _____

Do you have a passport?: _____

Can you comply with any special conditions which a court might want, such as a curfew (staying home at night), reporting to a police station, staying away from certain places such as a place where a witness lives or works, and so on?:

_____

_____

_____

Do you know anyone who would be willing to provide a surety for you (that is, a promise, perhaps backed up by some money, that you will attend court)?:

_____

_____

After hearing what the prosecution have said about why you should not be granted bail, is there anything you want to say about what they have said? For example, have they got something wrong, or do you have an explanation about something they have said?:

_____

_____

_____

_____

_____

APPLYING FOR BAIL

English

When arrested and charged by the Police you have the right to ask for bail.

Bail is where the police or court decides whether you will be released from custody if you go to court until your case is completed.

Bail should be granted unless there is a good reason that bail should be refused.

You may need a surety to get bail. A surety is a person who knows you and will promise that they will make you go to court. You and/or the surety may give the court money to show that the promise is serious. If you do not go to court you will not receive the money back. If you go to court that money should be returned.

Bail applications for the offences of murder and treason can only be made to the High Court.

If you are under 18 years old special rules apply to you.

You do not need a lawyer to apply for bail. You can ask for bail and tell the court why you should have bail as soon as possible.

If bail is refused, another bail application can be made if there is a change in circumstances. The same application cannot be made each time you appear in court. You can appeal the decision to refuse bail to a higher court.

The court will want to know the following things. You can give this information to the court by speaking to the magistrate or you can hand a completed form to the magistrate.

Time police arrestim you, you garem right for ask for bail.

Pijin

Taem police hem arrestim you and chargim you, you garem right for askem bail.

Bail hem taem wea police or court ba decide for tekem you out from custody or noma. Dis wan save happen noma if you need for go lo court. Bail save go on kasim time case blo you hem finis.

You garem right for tekem bail but if Court hem garem good reason for no givim you den hard for hem givim.

You need for garem wanfala surety before you save tekem bail. Surety hem wanfala man wea hem save gud lo you and ba hem promise for make sure that you go lo court. You or surety blo you save givim money lo court for showim court that you serious wetem promise you mekem ya. If you go lo court, ba court save givim back money ya lo you. If you no go lo court ba court no givim back money ya lo you.

Oketa bail application for oketa offences olsem murder and treason ba have to go lo High Court.

Samafala special rules save apply lo you if you under 18 years old.

You no need for garem lawyer for apply for bail for you. You save askem court seleva for bail and talem court why na you needim bail quicktime.

If Court hem no givim bail lo you, you save mekem nara bail application if circumstances blo you hem change. You bae no save mekem application everytime you appear lo court.

Nara something you save doim is for mekem application go lo higher court if lower court hem refusim bail application blo you.

Court bae like for save oketa something ya. You save tok wetem magistrate and givim this fala information go lo hem so that court hem save and also you save fillim wanfala form and den givim go lo magistrate.

This brochure is a simple guide to a complex area of the law. It is not a substitute for legal advice.

If you would like more information about applying for legal aid, applying for bail, having a trial or pleading guilty to a charge you can ask for brochures on these topics by calling the Public Solicitor's Office and asking for them to visit you in prison (Prisoner Affairs can help you to do this), or by coming to one of our offices in Honiara, Auki or Gizo.

Honiara:
PO BOX 553, HONIARA, SOLOMON ISLANDS
Tel: (677) 22348/28406/28404/28405
Fax: (677) 28409
Auki:
PO BOX 44, AUKI, MALAITA PROVINCE
Tel: (677) 40175
Gizo:
PO BOX 84, GIZO, WESTERN PROVINCE
Tel: (677) 60682