

## 8. Management of proceedings

### 8.1 General organisation for court

Before you go to court:

- make sure that the clerk is present and ready for court to commence;
- if there is a need to have another court interpreter, then ensure that the person is duly sworn and his or her role is explained before the proceedings start;
- ensure that you have a police orderly for your court and that he or she is briefed about the order of proceedings;
- if there are chamber matters, they should not proceed beyond 9:30am.

When in court:

- start court on time and rise at the expected time. This is not only for your benefit but also for counsel, the prosecutors and court staff. General rising times are:
  - morning break: 11.30am - 11.45am
  - lunch: 1.00pm - 2.15pm
  - afternoon break: 3.30pm - 3.45pm
  - finish: 4.30pm.

### 8.2 The evidence sheet

#### 8.2.1 General

- There will be an evidence sheet for each file against the defendant.
- The file will have the reference number of the case at the top right-hand corner.
- The colour of the file may indicate the type of case contained in the file:
  - blue for criminal cases;
  - brown for civil matters;
  - pink for traffic cases; and
  - orange for appeal matters.
- You must check that the information contained in the charge sheet is duly sworn and that the dates of the offence and appearance are correct.

#### 8.2.2 Endorsing the criminal evidence sheet

Remember that those who follow you need to know what you have done. At the conclusion of the proceedings you should endorse each evidence sheet with:

- the action you have taken in court,

- the correct date, and
- your signature.

Do all of the above in court if that is possible.

Neatness, precision and full information are essential.

Standard information in the evidence sheet includes:

- Election if applicable,
- Right to counsel,
- Plea,
- Name of counsel,
- All remands or adjournments and conditions of such,
- Bail and bail conditions,
- Any amendment to the charge, fresh plea and election,
- Consent to amendment by the defendant,
- Name and evidence suppression and details,
- Service of disclosures,
- Witness numbers and hearing times,
- Interlocutory applications and rulings,
- The final disposal of the case whether it be:
  - the conviction of the defendant,
  - dismissal of the charge,
  - dismissal for want of prosecution,
  - withdrawal of the charge by leave, or
  - acquittal of the defendant,
- The sentence and details, and
- Any award of costs, the amount and by whom they are to be paid.

### 8.2.3 Common abbreviations

- RTC: Right to counsel
- CREU: Charge read, explained and understood
- RIC: Remand in custody
- F/B: Fresh bail
- B/E: Bail extended

- F/P: Formal proof
- PG: Plead guilty
- PNG: Plead not guilty
- F/S: Fresh service
- N/S: Not served
- N/A: No appearance
- NPS: No proof of service
- Adj: Adjourn
- B/W: Bench warrant
- BWE: Bench warrant extended
- M: Mention
- H: Hearing
- R: Ruling
- S: Sentencing
- J: Judgment
- S/D: Stood down

### 8.3 Order of calling cases

The following is a suggestion in the order of calling cases.

- Call through defended hearing cases to find out which are ready to proceed and stand down cases according to estimated time for hearing.
- Call cases where defendants are in custody to free up police and prison officers.
- Call adjourned cases and those that had defendants previously remanded.
- Deal with matters where counsel appear consecutively so they can get away.
- Deal with sentencing matters and judgments near the end of the list.
- Finally, deal with the balance of the list, which may include closed-court proceedings.

### 8.4 Disclosure

Defendants are entitled to know the evidence against them before they enter a plea to the charge. Counsel should know the evidence against their client before they advise them what to do: s[insert] Constitution.

Early disclosure of the police evidence is essential for the proper working of the case-flow management in criminal proceedings.

## 8.5 Adjournment in the District Court

s [154](#) Criminal Procedure Act 1972 (CPA)

On the date fixed for the commencement or continuation of a trial, you may not allow an adjournment to commence or continue with the trial on the application of the prosecution, without any good cause or reason: s [154\(1\)](#) CPA. 'Good cause or reason' does not include multiple applications for adjournment by the prosecution.

Where you are satisfied that good cause or reason is shown for adjournment, you may adjourn the trial as you deem appropriate: s [154\(3\)](#) CPA.

When you adjourn a trial, you may:

- where the accused person is on bail, extend the bail with or without varying the bail conditions;
- where the accused person is remanded, extend the period of remand or where it is permissible, grant bail with or without any conditions;
- where the accused person is a serving prisoner, issue an order for the prisoner to be brought to court at a later date; or
- make any other orders as you deem fit: s [154\(4\)](#) CPA.

Where you dismiss an application for an adjournment by the prosecution, you should:

- order the prosecution to proceed with the trial; and
- where the prosecution is unable to proceed with the trial, may order the accused person be discharged or acquitted: s [154\(5\)](#) CPA.

### 8.5.1 Non-attendance of parties after adjournment

ss [155 - 157](#) CPA

Where the accused does not attend before the court at the time and place to which the trial or further trial of any criminal proceeding has been adjourned, and he or she has consented to the trial taking place in his or her absence, the court may, in its discretion proceed with the trial or further trial as if the accused were present. If the complainant does not attend, himself or herself or by his or her legal practitioner, the court may dismiss the charge as the court shall think fit.

Where the accused has not consented to the trial taking place in his or her absence or the court has in its discretion not proceeded with the trial or further trial, the court may issue a warrant for his or her arrest and for the accused to be brought before the court and should further adjourn the trial. If the District Court convicts the accused in his or her absence, it may set aside the conviction if it is satisfied that the absence was from causes over which the accused had no control and that he or she had a probable defence on the merits.

A sentence passed on a person under section [155](#) is deemed to commence from the date of his or her arrest in execution of the committal warrant, and the person making the arrest should endorse the date on the back of the warrant: s [157](#) CPA.

## 8.6 The mentally-ill defendant

The procedure in cases where the defendant is of unsound mind or otherwise incapacitated is provided for under the Criminal Procedure Act 1972 (CPA).

If at any time after a formal charge has been presented, you have reason to believe that the defendant may be of unsound mind so as to be incapable of making his or her defence, you may adjourn the case and make an order for a medical report or to make other enquiries as you deem necessary: s [109](#) CPA.

Upon receipt of such medical evidence, if you are of the opinion that the defendant is of unsound mind that he or she is incapable of making a defence, postpone further proceedings and make a report of the case to the President: s [109\(2\)](#) CPA.

The President has the discretion to issue a committal warrant for the commitment of the defendant to a mental hospital or other suitable place of custody: s [109\(4\)](#) CPA.

Where there is a postponement of proceedings, you may resume proceedings if you consider that the defendant is capable of making his or her defence. A certificate from the medical officer of the mental hospital would be sufficient evidence to confirm the same: ss [112](#) and [113](#) CPA.

Where the defendant raises the defence of insanity at trial and the evidence before the Court supports such contention, make a special finding to the effect that the defendant was not guilty by reason of insanity, and report the case to the President for a committal order: s [111](#) CPA.

## 8.7 Victims

Victims of crime are usually the main prosecution witnesses. There is no specific legislation dealing with victims, but Magistrates are expected to treat them with courtesy and compassion. In particular, you should restrain defence lawyers from humiliating victims of crime in court. Especially vulnerable witnesses, such as the very young, very old, or disabled, are entitled to special measures for the giving of evidence. Consider the use of screens, allowing people in wheelchairs to give evidence from the floor of the court instead of the witness box and ensuring that a family member or friend can sit with a child victim or elderly victim while giving evidence.

### 8.7.1 Checklist

1. Identify the victim/s.
2. At all times treat the victim/s with courtesy and compassion.
3. At all times respect the victim/s privacy and dignity.
4. If the victim and offender both want a meeting, encourage that to occur.
5. Consider the victim's views on a bail application.

6. Before sentencing, consider:

- the impact on the victim;
- giving the victim the opportunity to speak to the court;
- receiving a victim impact report.

### 8.7.2 Judicial language and comment

Ensure that you acknowledge any statements by the victim in your sentencing remarks. A brief summary is appropriate.

Be careful about “blaming” the victim, for example, she was drunk, unless the victim’s actions are clearly relevant to mitigate the offence and you are certain about the facts.

### 8.7.3 Victims of sexual offences

Three factors that make sexual offence trials particularly distressing for victims are:

1. the nature of the crime;
2. the role of consent, with its focus on the credibility of the victim; and
3. the likelihood that the defendant and victim knew each other before the alleged offence took place.

#### Nature of the crime

The crime experienced by sexual offence victims is more than an assault. Due to the sexual nature of the acts and the physical invasion of the person, victims often experience feelings that are not present in other types of crimes.

The trial process adds to the difficulty that sexual offence victims experience because:

- they must face the defendant in open court,
- they are usually required to recount the offence against them in explicit detail in order to establish the elements of the offence and
- they may be subject to cross-examination by the defendant if there is no defence counsel, which can be a very traumatic experience.

#### Focus on the victim’s credibility

The role of consent makes adult sexual offence trials different from most other criminal proceedings. Behaviour that is ordinarily legal (engaging in sexual activity with another adult) becomes illegal in the absence of consent.

When the alleged offence occurs in private, which is often the case, often the trial comes down to the word of the victim against the word of the defendant. Therefore, the trial often turns on whether the victim is a credible witness.

Due to the fact that the credibility of the victim is at issue, it is necessary for the defence to use cross-examination of the victim to try and discredit them. This may further victimise the victim. Overseas research shows that some victims find this to be like a second rape/sexual offence.

#### Relationship between the victim and defendant

Unlike some other types of crimes, it is often the case that the victim and defendant knew each other before the offence occurred. This can increase the distress and difficulty experienced by the victim because they have been betrayed by someone they trusted, and because family and other relationships usually mean on-going contact between the defendant and the victim.

#### Dealing with victims of sexual offences

In order to minimise the distress of victims of sexual offences, you should:

- conduct the trial and control the demeanour of those in the courtroom in a manner that reflects the serious nature of the crime;
- ensure the safety of the victim in the courtroom;
- ensure that court staff understands the danger and trauma the victim may feel;
- consider allowing an advocate of the victim to sit with them during the trial to offer support;
- enforce motions that protect the victim during testifying, such as closing the courtroom and providing a screen to block the victim's view of the defendant. This is especially important where the victim is a juvenile;
- know the evidentiary issues and rules that apply in sexual offence cases, such as corroboration, recent complaint and the inadmissibility of previous sexual history. This will enable you to rule on the admissibility of evidence and weigh its credibility;
- consider allowing a victim impact statement in sentencing.

## 8.8 Child witnesses

s 55 Child Protection and Welfare Act 2016 (CPWA)

Under the Convention on the Rights of the Child, the judiciary must give primary consideration to the interests of children.

The [Child Protection and Welfare Act 2016](#) (CPWA) provides that court proceedings involving children should be undertaken in accordance with the following requirements:

- the hearing of the cases shall be expedited and prioritised as far as is practicable;
- measures shall be applied and enforced to protect the child's privacy, including closed court proceedings and bans on publishing the child's identity or any information leading to identification of the child;
- measures shall be applied and implemented to protect the safety of children and their families and to prevent intimidation and retaliation;
- appropriate facilities and support shall be provided to children with disabilities;

- children are entitled to have a parent, guardian, legal representative or other appropriate support person agreed to by the child, present with them at all stages of the court proceedings;
- child-friendly court procedures shall be promoted and applied, including alternative arrangements for giving testimony such as the use of screens, video-taped evidence and closed circuit television;
- social and legal counselling is to be provided where appropriate and children shall be given adequate information concerning the purpose and effect of the court processes;
- children shall be fully accorded the right to effectively participate in any proceedings that affect them, to express their views, and to have those views given due weight;
- police officers, prosecutors, lawyers and court officers are to receive specialised training in dealing with cases involving children;
- no proof of resistance to establish non-consent in sexual assault proceedings is to be required where the victim is a child;
- no corroboration of a child's evidence in criminal proceedings for sexual assault is to be required;
- the use of prior sexual conduct to establish non-consent in sexual assault proceedings involving a child is prohibited;
- expert evidence regarding patterns of disclosure or behaviour of children in cases involving sexual abuse is to be automatically admissible; and
- discriminatory provisions or processes applying to children are to be removed.

## 8.9 Unrepresented defendants

Because of the expensive cost of hiring lawyers to conduct proceedings, a significant number of defendants appear in the District Court on their own behalf. Most have little or no idea of court procedures and what is involved and rely on the system to assist to some extent.

If at all possible, every defendant charged with an offence carrying imprisonment terms should be legally represented. However, if legal representation is not available, then you are to ensure that he or she understands:

- the charge(s),
- that the Office of the Public Legal Defender is available to assist with legal representation, and
- that if found guilty, there is a probability of an imprisonment term.

To assist in the smooth running of any hearing, you should give an initial explanation outlining:

- the procedure,
- the obligation to put their case,
- the limitation of providing new evidence,



- the need to ask questions and not make statements, and
- any issues arising out of the evidence.

For an unrepresented defendant, before plea or election is entered:

- advise of the right to a lawyer,
- advise of the right to apply to the Office of the Public Legal Defender,
- put each charge and ask for election/plea.

See the Fijian cases of *Akuila Kuoutawa & R Labasa Crim Appeal No. 2/75*:

“in the case of an unrepresented defendant, any statutory defence should be brought to his attention”.

See also *Alipate Karikai v State Labasa Crim Appeal No. 110 of 1999*, HC of Fiji.

### 8.10 Disruption and misbehaviour

The defendant is entitled to be present in court during the whole of his or her trial, unless he or she interrupts the proceedings. The defendant’s right is protected by the Constitution: Art [10\(3\)\(f\)](#).

Where a defendant is required to appear in court, but fails to do so, you may:

- proceed with the trial as if the defendant was present, if he or she has consented (personally or by his or her legal practitioner): s [155\(1\)](#) CPA,
- issue a warrant for his or her arrest: s [155\(2\)](#) CPA,
- adjourn the proceedings to such time and conditions as you think fit, or
- where the maximum penalty is only 6 months and a fine not exceeding \$200, proceed without the defendant: s [151](#) CPA

### 8.11 Contempt of court offences

Ss [7-11](#), and [15](#) Administration of Justice Act 2018 (AJA)

It is an offence to conduct or do any act which constitutes a contempt of court. A person who is convicted of contempt of court is liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding two years or both.

Where an offence of contempt in the face of the court is committed (under section [8](#)), you may order:

- the contemnor or alleged contemnor to be remanded in custody until the rising of the court; or
- any other orders you may deem fit.

The District Court has the power and jurisdiction to punish for contempt of court for any non-compliance with its judgment, decision, direction or order under the Domestic Violence and Family Protection Act 2017 or any other written law vesting such power.

The Supreme Court has its inherent jurisdiction in respect of contempt of court. Further, it has the power and jurisdiction to try and punish for contempt of the court in the form of scandalising the court (under s 7 AJA), in the face of the court (under s 8 AJA) and unauthorised audio and visual recording (under s 9 AJA).

### 8.11.1 Contempt in the face of the court

s 8 AJA

A person commits contempt in the face of the court where he or she:

- assaults, threatens, intimidates or wilfully insults a judicial officer, interpreter or a witness, during a sitting or attendance in a court. This also applies where this happens in going to or returning from the court to whom any relevant proceedings relate, or immediately after the delivery of a judgment, decision or order.
- wilfully interrupts or obstructs the proceeding of the court.
- wilfully disobeys an order or direction of the court.

## 8.12 Case management

The American Bar Association expresses the following in relation to case-flow management:

“From the commencement of litigation to its resolution, any elapsed time other from reasonably required for pleadings, discovery and Court events is unacceptable and should be eliminated.”

On the question of who controls litigation and judicial involvement it says:

“To enable just and efficient resolution of cases, the Court, not the lawyers or litigants should control the pace of litigation. A strong judicial commitment is essential to reducing delay and once achieved, maintaining a current docket”.

To make any case management system work requires judicial commitment.

### 8.12.1 Goals of case management

The goals of case management are:

- to ensure the just treatment of all litigants by the court,
- to promote the prompt and economic disposal of cases,
- to improve the quality of the litigation process,
- to maintain public confidence in the court, and
- to use efficiently the available judicial, legal and administrative resources.

The following quotes from the 1995 Report of the New Zealand Judiciary, at page 14, provides a good description of case-flow management:

“It is essentially a management process and does not influence decisions on the substantive issues involved in a case. Case-flow management acknowledges that time and resources are not unlimited, and that unnecessary waste of either should be avoided”.

“The principles of case-flow management are based on the managing of cases through the Court system to ensure they are dealt with promptly and economically and that the sequence of events and their timing are more predictable. The progress of cases through the Courts is closely supervised to ensure agreed time standards are met, and the early disposition of cases that are not likely to go to trial is encouraged”.

### 8.12.2 Principles

The principles of case-flow management are:

- Unnecessary delay should be eliminated.
- It is the responsibility of the court to supervise the progress of each case.
- The court has a responsibility to ensure litigants and lawyers are aware of their obligations.
- The system should be orderly, reliable and predictable and ensure certainty.
- Early settlement of disputes is a major aim.
- Procedures should be as simple and easily comprehensible as possible.