- if the accused puts his or her character in issue, evidence of bad character may be admitted at common law; or
- where the accused gives evidence, he or she may in certain circumstances face cross-examination on his character.

When the accused is called as a witness for the defence, the previous convictions and the bad character of the accused can be admitted as evidence under *s141(f) CPC* where:

- the proof that he or she has committed or been convicted of the other offence is ruled admissible as evidence to show he or she is guilty of the charge now being determined; or
- if the accused has personally or by his or her lawyer asked a question of a prosecution witness in order to establish his or her own good character; or
- if the accused has him or herself given evidence as to his or her own good character; or
- part of the defence case involves impugning the character of the complainant or witnesses; or
- when the accused has given evidence against any other person charged with the same offence.

Also the previous convictions of a witness, other than the accused, may be admitted as evidence on cross-examination in some cases. See *s6 Criminal Procedure Act 1865 (UK)*.

The cross-examiner may call evidence to prove the conviction if the witness:

- denies having been so convicted;
- does not admit a conviction; or
- refuses to answer.

Admissibility of evidence of good character

An accused may introduce evidence to show that he or she is of good character. By doing so, however, they put their character in issue and the prosecutor may cross-examine witnesses or, in some cases, the accused about their character and about any previous convictions.

The purpose of introducing evidence of good character is primarily to establish the credibility of a witness or the accused, as well as to point to the improbability of guilt. Evidence of good character also becomes very important when sentencing the accused upon conviction of an offence.

See *R v Tahoe* [1996] SBHC 34 (Criminal Case No. 14 of 1995) regarding the use of good character evidence in a criminal trial. Also, see *R v Sine* [2001] SBHC 16 (Criminal Case No. 16 of 2000).

8:

MANAGEMENT OF PROCEEDINGS

1 General Organisation for Court

Before you go to Court:

- make sure that both clerks are present and ready for Court to commence;
- if there is a need to have a 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 9:30 am.

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 10.00am –10.15am
  - lunch 12.00 noon- 1.00pm
  - afternoon break 3.00pm – 3.15pm
  - finish 4.00pm.

2 Keeping the Court Record

When dealing with the case, always fill out, sign, and date the Court record making sure that you note what you have done. Abbreviations may be used. Remember, you or another Magistrate will need this information in the future.

Standard information to be noted on the Court record is:

- election (if appropriate);
- plea;
- name of counsel, or if unrepresented, that you have raised the matter with the accused and he or she has declined or neglected to arrange legal advice;
- all remands and any conditions;
- the grant of bail and any conditions;
- adjournments and details;
- any amendment to the charge;

- witness numbers and hearing time when defended;
- preliminary hearings – whether a prima facie case is established or not, committal to the High Court;
- the conviction or discharge;
- the sentence and full details;
- any award of costs, the amount and to whom they are to be paid.

If there is a report on the file which would be relevant, note on the Court record:

> "see report from …… on file"

Longer notes should be dictated and left on the file rather than recorded on the Court record.

Do not record reasons for your decisions on the Court record – just the decisions. If your reasons are recorded and on the file, you can indicate this on the Court record, for example:

> "Bail refused – for reasons, see memo on file".

Common abbreviations include:

NG	Not Guilty
G	Guilty
ROB	Remanded on Bail
BTC	Bail to Continue
RAL	Remanded at Large
WA	Warrant of Arrest

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.
- Next, call cases where the accused is in custody to free up Police and prison officers.
- Call adjourned cases and those that had the accused previously remanded.
- Deal with matters that 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.

4 Disclosure

Natural justice requires that an accused is entitled to know what the charge 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:

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

5 Adjournments

You have the discretion to adjourn a hearing at any time before or during the hearing of any case to a certain time and place: *s52 MCA*. You must state the new time and place in the presence of the parties or their advocates.

In the meantime, the accused may:

- go at large;
- be committed to prison; or
- be released upon entering into a recognisance, with or without sureties.

No adjournment shall be for more than:

- 30 days, if the accused is at large; or
- 15 days, if the accused is remanded in custody.

See *s191 CPC*.

You must exercise your power to adjourn judicially, by weighing several competing considerations, which include:

- the interests of the accused to a fair trial;
- the interests of the public in ensuring efficient prosecutions;
- the reasons for the adjournment;
- any fault.

Note your discretionary power must be exercised in such a way as to ensure that the accused has a fair trial according to law.

Cases offering guidance include:

- *Carryer v Kelly* (1969-1970) 90 WN (Part 1) NSW 566;
- *R v Maher* [1987] 1 QdR 171;
- *Appleton v Tomasetti* (1983) 5 ALR 428;
- *R v Swansea Justices & Davies, Ex parte DPP* (1990) 154 JPR 709: "The power to refuse an adjournment is not a disciplinary power to be exercised for the purpose of punishing slackness on the part of one of the participants in the trial. The power to adjourn is there so that the Court shall have the best opportunity of giving the fairest available hearing to the parties".

6 The Mentally Ill Accused

The procedure in cases where the accused is of unsound mind or otherwise incapacitated is provided for under *ss144-149, s256 CPC*.

If at any time after a formal charge has been presented, you have reason to believe that the accused may be of unsound mind so as to be incapable of making his or her defence, you may adjourn or postpone the case from further proceedings.

If the offence allows bail to be taken, you may release the person on sufficient security that the person will be looked after safely and prevented from doing harm to him or herself or to any other person.

Alternatively, if the case is one where bail is not available, you must order the accused into safe custody as you think fit.

You will need to transmit the Court record to the DPP for consideration by the Governor General: *s144 CPC*.

The Governor General then has discretion to direct the accused to be detained in a mental hospital or other suitable place of custody until the Governor General makes a further order to have the accused attend the Court to be tried on the charges as before: *s144(5) CPC*.

Where there is a postponement of proceedings, proceedings may be resumed if you receive certification from the DPP that the accused is capable of making his or her defence: *s147 CPC*.

Where the accused raises the defence of insanity at trial and the evidence before the Court supports such contention, you can make a special finding to the effect that the accused was not guilty by reason of insanity, and report the case to the Governor General for a committal order: *s146 CPC*.

7 Cultural Knowledge

Some knowledge about the different ethnic groups and their diverse cultures would be an added bonus for the Magistrate in his or her daily work. What may appear strange and weird for one set of group may be the acceptable norm in another.

Cultural ties/connections (wantokism) are strong, and do explain the behaviour of people in certain situations. Wantokism can be a blessing but, if not controlled properly, can become a burden. It can affect decision making in certain situations, whereby preferences are sometimes given to wantoks or relatives.

8 Victims

Victims of crime are usually the main prosecution witnesses.

Magistrates are expected to treat victims 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 and 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.

8.1 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. Take into account 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.

8.2 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, stating words like "she was drunk" is not relevant or appropriate unless the victim's actions are clearly relevant to mitigate the offence and you are certain about the facts.

8.3 Victims of Sexual Offences

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

- the nature of the crime;
- the role of consent, with its focus on the credibility of the victim;
- the likelihood that the accused 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 accused 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;
- they may be subject to cross-examination by the accused if there is no defence counsel, which can be a very embarrassing for the victim and his or her family.

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 accused. 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 accused

Unlike some other types of crimes, it is often the case that the victim and accused 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 accused 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 victims' view of the accused. 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.

9 Child Witnesses

Section 134 CPC sets out that every witness in any criminal matter shall be examined upon oath. However, the Court may take without oath the evidence of any person of immature age provided that the Court thinks it just and expedient to do so. This provision provides for the possibility that children can be competent witnesses in a criminal trial, even in cases where they might not understand the implications of swearing an oath.

It is important that special arrangements be made if a child is to be called as a witness in a criminal proceeding. You should use your discretion to protect the child witness.

- In cases of indecency, the Courtroom should be closed.
- You should also consider whether a screen should be used to screen the child witness from the accused. The prosecution can be ordered to provide a screen. In the rural Courts, a mat may have to be used as a screen.
- If a screen is not available, you can ask the child to face you and not to look anywhere else during evidence-in-chief and cross-examination.

When cross-examination of the child is conducted, you are expected to be sensitive to the child's special vulnerability in deciding whether or not you should allow the questions to be asked, as under the *Convention of the Rights of the Child*, the judiciary must give primary consideration to the interests of children.

Regardless of whether a child shall be called to give sworn or unsworn evidence (i.e. is competent) is at your discretion, and will depend upon the circumstances of the case and upon the child who is being asked to give evidence.

10 Unrepresented Accused

Because of the expensive cost of hiring lawyers to conduct proceedings, a significant number of litigants appear in the Magistrate's 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, all accuseds 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 following:

- the charge(s);
- that if found guilty, there is a probability of an imprisonment term;
- that legal aid may be available and how to apply for it.

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;
- any issues arising out of the evidence.

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

- advise of the right to a lawyer;
- advise of the right to apply for legal aid;
- put each charge and ask for election/plea.

11 Disruption and Misbehaviour

The accused is entitled to be present in Court during the whole of his or her trial, unless he or she interrupts the proceedings: *s10(2)(f) Constitution*.

Where a accused is required to appear in Court, but fails to do so, you may

- issue a warrant for his arrest: *s88 CPC*;
- 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 $100, proceed without the accused: *s188 CPC*.

You have power to impose criminal sanctions for offences relating to judicial proceedings: *s121 Penal Code*. Offences under this provision include:

- failure to attend Court after being summoned: *s121(1)(b) PC*;
- refusal to be sworn in: *s121(1)(c) PC*;
- refusal to answer question during trial: *s121(1)(d) PC*;
- obstructing or disturbing the proceedings: *s121(1)(f) PC*.

Where the above offences are committed in view of the Court, you may order that the accused be detained in custody till the rising of the Court on the same day: *s121(2).*

Magistrates do not have inherent jurisdiction to cite anyone with Contempt of Court. If you think that someone should be charged with one of the offences under *s121 Penal Code*, then refer the matter to the DPP for investigation and prosecution.

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 than time reasonably required for pleadings, discovery or Court events, is unacceptable and should be eliminated".

On the question of who controls litigation, 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 maintaining a current docket".

Judicial commitment is required to make any case management system.

Goals

The goals of case management are to:

- ensure the just treatment of all litigants by the Court;
- promote the prompt disposal of cases;
- improve the quality of the litigation process;
- maintain public confidence in the Court; and
- 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".

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, the prosecution, and counsel 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.

Standards

It will be the Solomon Islands judiciary, in consultation with the Attorney-General and the Director of Public Prosecutions, who needs to set the standard it wishes to apply to disposition of criminal cases. Experience has shown that without the support of one these other parties, the judicial objective to efficiently manage its cases cannot be achieved.