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CRIMINAL:

PRELIMINARY ENQUIRIES

1 Introduction

Every offence triable only in the Supreme Court shall be the subject of a preliminary enquiry by a Senior Magistrate: *s143 Criminal Procedure Code*.

Before the commencement of the trial, the prosecution must make a complaint and the intended accused shall be provisionally charged with the offence before a Magistrate's Court presided over by a Senior Magistrate: *s143(2) Criminal Procedure Code*.

During the period of the preliminary enquiry, the intended accused shall:

- remain subject to the jurisdiction of the Magistrate's Court; and
- be remanded in custody or bail from time to time, for periods not exceeding 14 days at the discretion of the senior Magistrate: *s143(3) Criminal Procedure Code*.

Purpose of a Preliminary Enquiry

The purpose of the preliminary enquiry is for the Magistrate to determine whether there is a sufficient case, or evidence or grounds, to put the accused on trial before the Supreme Court. In this respect, the Magistrate's Court acts as a gatekeeper and prevents prosecutions which have insufficient evidence from proceeding to the Supreme Court.

All the rules and procedures in respect to a preliminary enquiry are contained in *ss143-152 Criminal Procedure Code*. Therefore, it is important that these rules are followed: see *Julian Motis v Public Prosecutor*, Vanuatu Appeal Court.

2 Role of the Magistrate

In a preliminary hearing, it is **not** the function of Magistrates to:

- determine, or even comment on, the guilt or innocence of the accused;
- believe or disbelieve any of the witnesses;
- disallow any evidence.

The only question to be answered by the Magistrate is:

“Has a *prima facie* case been made against the accused on the evidence before me, if that evidence is not discredited?”

Preliminary enquiries protect the accused from baseless charges because the Magistrate is required to discharge the accused in cases where there is not sufficient evidence to commit the person to trial by the Supreme Court.

3 The Process

The Senior Magistrate is not bound to hold any formal hearing. He or she must consider the matter without delay, but may do this in whatever manner and at whatever time(s) he or she considers to be appropriate: *s145(1) Criminal Procedure Code*.

The following process may assist:

Reading Over the Charge

Read over the charge and explain to the accused:

- the charge; and
- the purpose of the proceedings; and
- that he or she will have the opportunity later on in the enquiry to make a statement if he or she chooses to: *s145(3) Criminal Procedure Code*.

Statements of Witnesses and Exhibits

The prosecutor may prepare and furnish to the Senior Magistrate and intended accused:

- a draft Information for the charge(s); and
- the statement of any witness whom they intend to call in proof at the trial in the Supreme Court; and
- any exhibit which they intend to produce at trial in the Supreme Court.

If you have considered the written statements of witnesses, documents, exhibits and submissions made by the prosecutor and find that the statements disclose sufficient grounds for committing the accused to trial, you **must**:

- ensure that the accused understands the charge;
- ask the accused if he or she wishes to make any statement in his or her defence;
- explain to accused that he or she is not bound to make a statement but if he or she choose to do so, the statement will become part of the evidence at trial: *s145(3) Criminal Procedure Code*.

Everything that the accused person says must be recorded in full.

If the accused or his or her advocate does address the Court, the prosecution will have the right of reply.

Make Your Decision

You must decide whether there is a *prima facie* case on the evidence (if it is not discredited): *s145(2) Criminal Procedure Code*.

The Senior Magistrate shall record his or her decision in writing and deliver copies to the prosecutor and the intended accused: *s146(1) Criminal Procedure Code*.

The decision must show clearly that the Senior Magistrate authorises or does not authorise the laying of the proposed against the intended accused: *s146(1) Criminal Procedure Code*.

If the Information is authorised

If the information is authorised, a copy of the authorised proposed information must be sent by the Senior Magistrate to the nearest registry of the Supreme Court: *s146(1) Criminal Procedure Code*.

The intended accused shall be remanded to a date specified for trial in the Supreme Court, either in custody or on bail: *s146(2) Criminal Procedure Code*

No Information will be accepted for filing in the registry unless it has been specifically authorised by the Senior Magistrate: *s146(3) Criminal Procedure Code*.

If the Information is not authorised

If the information is not authorised, the intended accused shall immediately:

- be discharged; and
- if in custody, be released: *s146(2) Criminal Procedure Code*.