

1 Introduction

At the end of a trial, after you have heard and considered all the relevant evidence and have entered a conviction, you must sentence the offender to an appropriate sentence: *s187* as amended by *s6 Criminal Procedure Code (Amendment) Act No 13 of 1989*.

You may either pass sentence immediately after conviction or at another time. If you do not pass sentence immediately, you must either remand the accused in custody or allow the accused to go at liberty on any conditions as you think fit: *s187(2) Criminal Procedure Code*.

The accused is able to ask the Court to take his or her comments into consideration before it passes sentence (known as a plea in mitigation).

You must explain the sentence and your reasons for it so that the accused understands what he or she needs to do.

At this time, you are also able to make other orders.

2 Jurisdiction

A Magistrate may sentence an offender to:

- imprisonment up to a maximum of 2 years; or
- any other sentence available by law.

A Senior Magistrate may sentence an offender to a maximum of 5 years imprisonment: *s14(4)* as added by *s10 Schedule Judicial Services and Courts (Amendment) Act No 4 of 2003*.

See Types of Sentences below, for further explanation of these penalties.

For two or more distinct convictions, a Magistrates' Court may pass **consecutive** sentences of imprisonment (to be served one after another) to a maximum of 4 years: *s14(5)* as added by *s10 Schedule Judicial Services and Courts (Amendment) Act No 4 of 2003*.

According to the legislation, the ability to pass consecutive sentences up to twice normal sentencing jurisdiction does not appear to extend to Senior Magistrates.

2.1 Where No Penalty in Act

Where an Act creates an offence but no penalty is expressed, the default penalty is a maximum VT 5000 fine or a maximum 1 year imprisonment or both the maximum fine and imprisonment: *s36(3) Interpretation Act*.

3 Sentencing Principles

There are five basic sentencing principles to be considered by the Court. These are:

- Deterrence;
- Prevention;
- Rehabilitation;
- Punishment; and
- Restoration.

Deterrence

The sentence is designed to deter the offender from breaking the law again and acts as a warning to others not to do the same.

Prevention

The sentence is to prevent the offender from doing the same thing again.

Rehabilitation

The sentence is to assist an offender to reform and not offend again.

Punishment

The sentence is to punish the offender for his or her criminal behaviour.

Restoration

The sentence serves to restore or repair the damage done to others by the offender.

When considering the appropriate sentence, you should have one or more of these principles in mind. Ask yourself which of the sentencing principles apply in this case?

4 Sentencing Discretion

The level of sentence in each case is a matter for you to decide, up to the maximum limit for the offence and within your sentencing jurisdiction. The sentence in each case must be just and correct in principle and requires the application of judicial discretion.

The act of sentencing needs you to balance:

- the gravity of the offence;
- the needs of society; and
- an expedient and just disposal of the case.

4.1 Factors Influencing Sentence

There are a number of factors which will influence you when deciding what sentence to pass.

Some factors will cause you to deal with the offender more harshly – these are called aggravating factors. Some factors will cause you to deal with the offender more lightly – these are called mitigating factors. You need to take all the factors into account when passing sentence.

Aggravating factors include:

- the use of violence;
- persistent offending;
- damage to property;
- age and vulnerability of victim;
- value of property stolen;
- premeditated acts;
- danger to the public; and
- prevalence.

Mitigating factors include:

- guilty plea (but note that the Court cannot penalise an offender for exercising his or her right to plead not guilty);
- genuine remorse;
- reparation;
- reconciliation;
- young offender;

- first offender;
- provocation; and
- no harm or minimal harm to person or property.

There are also a number of factors that float between these two categories, depending on the circumstances. In these cases, you need to evaluate the weight to be given to each of them in terms of the appropriate sentence to be considered by the Court.

These include the following:

- previous good character;
- victim acquiescence;
- family ties;
- custom ties;
- political instability; and
- responsible position.

4.2 Previous Convictions

The prosecution will need to show the Court any previous criminal convictions that the accused has. This guides you in setting the sentence by helping you to assess the previous character and the likelihood of the offender re-offending.

In assessing previous convictions, you have to be aware of the result and effect of a previous sentence. If, for example, a person is before you having been convicted of being drunk and disorderly, and has a similar offence from 1986, the earlier offence may not be taken into consideration as it has been so many years since the conviction.

If that person is convicted of a similar offence later in the year, then the Court may deal with him or her more harshly.

A previous conviction may be proved by proving the identity of the accused, along with:

- a copy of an extract signed by the officer having custody of the Court records recording the conviction; or
- a certificate signed by the officer of the prison in which any part of the punishment was inflicted, or by production of the warrant of commitment under which the punishment was suffered: *s75 Criminal Procedure Code*.

4.3 Plea in Mitigation

Before sentence is given, ask the offender if he or she has anything to say on their own behalf. This is known as a **plea in mitigation**. This can be done by either the offender or by a lawyer. You should consider any comments made before sentencing.

4.4 Compensation by Custom

Whenever assessing the penalty to be imposed upon conviction, you must take into account any compensation or reparation made or due by the offender: *s119 Criminal Procedure Code*.

See *Public Prosecutor v Dick* [2004] VUSC 2; Criminal Case No 01 of 2004.

If the compensation or reparation due by the offender is still undetermined at the time of sentencing, you may postpone passing sentence if you believe that the postponement will not cause undue delay: *s119 Criminal Procedure Code*.

4.5 Further Information and Reports

Decide whether any further information or reports are necessary. These will give further background and are useful in assessing the sentence to be given.

4.6 Consistency

One of the most common criticisms of the Court is that sentences are inconsistent. Failure to achieve consistency leads to individual injustice.

It is most important that you are consistent when sentencing. You must:

- treat similar cases in the same way;
- treat serious cases more seriously than less serious cases; and
- treat minor cases less seriously than serious cases.

A means of ensuring consistency is to seek continuity in the **approach** to sentencing, both as an individual and with other judicial officers presiding over the matter with you.

5 A Structured Approach to Sentencing

You must develop a systematic method of working through each sentence. Make sure you have as much information as possible by taking into account all applicable reports.

The format on the following page is a useful guide for you to work through.

Sentencing Format

Introduction

What the offender has been convicted of.

The relevant facts

If there was a defended hearing, refer to the evidence called.

If there was a plea of guilty, refer to the Summary of Facts.

The law

Statute:

Maximum sentence and any mandatory requirements, such as mandatory disqualification.

Common law:

What do the higher Courts say?

Mitigating and aggravating features

Make sure you address any arguments that the accused or their lawyer has put forward.

Relating to the offence:

Aggravating factors, e.g. danger to the public, premeditated attack, major impact on the victim.

Mitigating factors, e.g. no harm to person or property, minor offence.

Relating to the offender:

Aggravating factors, e.g. personal information; previous convictions; lack of remorse.

Mitigating factors, e.g. personal information; age; good character; remorse shown; customary steps taken to restore the damage.

Relevant factors from reports

The Pre-Sentence Report, particularly the recommendation.

Pronounce sentence

Make sure you explain the sentence so the offender understands. Using the headings in this checklist is a good way of covering your reasons. Record your sentence on the Court record.

Advise on rights of appeal

When someone has been found guilty and sentenced following trial, or has pleaded guilty and is sentenced, explain their rights of appeal.

6 Sentences and Orders

6.1 Dismissal of Charge

Even if a charge against an accused is proved, you may make an order dismissing the charge, after inquiring into the circumstances of the case, unless a minimum penalty is expressly provided for by any enactment: *s43(1) Penal Code*. Such a discharge is considered an acquittal: *s43(2) Penal Code*.

Despite discharging a person under *s43 Penal Code*, if you are satisfied that the charge has been proved, you may make any order as to payment of costs, damages, payment of compensation or the restitution of any property, as would be available under any enactment applicable to the offence charged: *s43(3) Penal Code*.

Nothing in *s43 Penal Code* affects the power of the Court to convict and discharge any person: *s43(4) Penal Code*.

6.2 Probation

In any case where imprisonment may be imposed, you may order probation in addition to, or instead of, any other sentence: *s45(1) Penal Code*.

Probation sets out a number of conditions with which the offender must comply. These conditions, which are supervised by a Magistrate and by a Probation Officer are designed to monitor the offender's behaviour to ensure he or she does not re-offend.

The period of probation may be from one to three years: *s45(2) Penal Code*.

Conditions of Probation

When granting probation, it must be granted upon general, and where appropriate, special conditions: *s46(1) Penal Code*.

General conditions

An offender on probation **must always** be subject to the following general conditions. He or she must:

- establish residence in a given place;
- appear when called upon by the probation officer;
- receive visits from the probation officer and furnish all information and documents for verifying his or her means of support;
- advise the probation officer in advance of any change of employment, residence and the reasons for the change;

- inform the probation officer of any intended absence from his or her place of residence of over 15 days and of his or her return; and
- obtain the prior permission of the probation officer before any departure abroad: *s47 Penal Code*.

Special conditions

In addition to the mandatory general conditions, you **may** order the offender's compliance with any of the following special conditions. You may order the offender to:

- take up residence in any specified place(s);
- not to be present in any specified place(s) without special permission;
- remain employed or to follow a course of instruction or vocational training;
- submit to measures of control or treatment, including hospital treatment, in particular for curing an addiction to alcohol or drugs;
- contribute to his family expenses or pay regularly any maintenance due by him or her;
- compensate any person for damage caused by his or her offence;
- not drive any motor vehicle or any class of motor vehicles;
- avoid specified places or premises;
- abstain from wagering or to abstain from consumption of alcohol;
- avoid the company of specified offenders, in particular his or her co-offenders or accessories to the offence; and
- not to receive or lodge any specified persons or class of persons at his or her residence: *s48 Penal Code*.

The Magistrate in the offender's home district nominated for supervising probation may, at any time, suspend any or all of the special conditions or may vary them to make them less onerous. If doing so, the Magistrate must record the reasons for doing so in writing: *s46(4) Penal Code*.

See *Public Prosecutor v Moli* [2000] VUSC 31; Criminal Case No 023 of 1999.

Compliance with Conditions

Compliance with the conditions must be supervised by a Magistrate nominated for that purpose, with the assistance of honorary probation officers: *s46(2) Penal Code*.

The probation officer supervising the offender is chosen and may be replaced by the Magistrate in charge of the case: *s46(3) Penal Code*.

The probation officer must satisfy himself or herself that the offender observes the general and special conditions of the probation order and must encourage the offender's reform, particularly his or her re-adjustment to family and occupation: *s49(1) Penal Code*.

The probation officer must report regularly to the Magistrate on the progress of the probation and must advise the Magistrate if there are any matters of difficulty: *s49(2) Penal Code*.

Breach of Conditions

If the offender breaks any of the general or special conditions, you must order the termination of the probation and must sentence the offender afresh: *s50 Penal Code*. The offender is then ineligible for probation: *s50 Penal Code*.

6.3 Community Service Orders

If you sentence an offender to a term of imprisonment of six months or less, you may as an alternative order the person to perform specified community work. The order must specify:

- the work;
- the period of work, not exceeding 100 hours; and
- any other specified conditions: *s15(1) Judicial Services and Courts Act*.

Breach of Order

An offender undertaking community work who is absent from the work, without lawful excuse, is guilty of an offence. Upon conviction for such a breach, you may order:

- that the offender be sentenced for the original offence and the probation order discharged; or
- that the offender be imprisoned for a maximum one month or a maximum fine of VT 20,000 and the probation order to continue: *s15(2) Judicial Services and Courts Act*.

6.4 Fines

In addition to any fine prescribed by law as penalty for an offence, where the penalty provided is a limited term of imprisonment, instead or as an alternative, you may fine the offender: *s51(2) Penal Code*.

Any fine imposed as an alternative penalty to imprisonment **must exceed** a sum calculated at the rate of VT 100 for every day of the prescribed maximum term of imprisonment to which the offender is liable: *s51(3) Penal Code*.

For example, if the maximum term of imprisonment for an offence is 30 days, a fine imposed as an alternative to imprisonment must exceed VT 3000.

Whenever you sentence an offender to pay a fine, you may:

- allow whatever time you consider appropriate for payment;
- extend such time;
- direct that payment is to be made in instalments;
- allow further time for payment of an instalment;
- vary the instalment; or
- order that payment be deducted from wages: *s192(1) Criminal Procedure Code*.

Fine by Instalments

If an offender fails to pay any instalment within the time fixed and does not obtain further time or a variation of the order, you must order recovery of all the unpaid instalments, as if there had been no allowance for payment by instalments: *s192(2) Criminal Procedure Code*.

Default on fine by instalments

If the offender has been ordered to pay the fine by instalments and has defaulted on one or more of the instalments, the sentence of imprisonment must not be executed until the date for payment of the final instalment: *s52(2) Penal Code*. If the offender has paid one or more of the instalments, the term of imprisonment must be reduced in proportion to the amount paid: *s52(2) Penal Code*.

Imprisonment on Default

When sentencing an offender to pay a fine, you may direct as part of the sentence that if the offender fails to pay the fine within the prescribed time that he or she be imprisoned for a term calculated at the rate of one day imprisonment for every VT50 of the fine: *s52(1) Penal Code* as amended by *s1 Penal Code (Amendment) Act No 14 of 1989*.

For example, as part of the sentence you may order that default of a fine of VT50,000 will result in 100 days imprisonment. The period of imprisonment for default must not exceed 6 years: *s52(1) Penal Code* as amended by *s3 Penal Code (Amendment) Act No 27 of 1989*.

The period of imprisonment for default is in **addition** to any other period of imprisonment the offender has been sentenced: *s52(1) Penal Code*. Upon completing the period of imprisonment for default, the offender is free from paying the fine: *s52(1) Penal Code*.

Awarding Expenses Out of Fine

Whenever you impose a fine or confirm a fine on appeal, you may order the whole or part of the fine to be applied in defraying expenses properly incurred in the prosecution: *s105(1) Criminal Procedure Code*.

If the fine is in a case subject to appeal, no payment from the fine may be made before the end of the period for appeal or before the appeal has been heard: *s105(2) Criminal Procedure Code*.

You may also order the restoration to the lawful owner of any property seized or forfeited, by way of penalty, or order the proceeds from the sale of such property to the lawful owner: *s105(3) Criminal Procedure Code*.

6.5 Periodic Detention

In any case where you could sentence an offender to imprisonment for a limited term, you may instead sentence the offender to undergo periodic detention for a minimum of one month and a maximum of six months: *s44(1) Penal Code*.

To give effect to the sentence of periodic detention, you must issue a warrant under your hand, with the seal of the Court: *s190 Criminal Procedure Code*.

Periodic detention involves the offender's loss of liberty for a maximum of 36 hours between Friday evening and Sunday evening in each consecutive week throughout the term in which periodic detention has been imposed. During the period, the offender must perform unpaid community work for a maximum of 8 hours each day: *s44(2) Penal Code*.

As far as possible, during the periods of detention, the offender should be treated as though he or she were undergoing a sentence of imprisonment: *s44(2) Penal Code*.

Before deciding to impose a sentence of periodic detention, you must have regard to:

- the nature of the offence;
- the age and circumstances of the offender, including his or her occupation or employment, family circumstances, the prospects reformation; and
- any other circumstances you consider relevant: *s44(3) Penal Code*.

Periodic detention can be a useful tool when a serious punishment is required but imprisonment would do more harm than good. For example, if an offender is supporting a family and is trying to make behavioural changes, periodic detention may be very appropriate. Periodic detention, rather than imprisonment will allow the offender to continue to work to support his family and may help him continue with counselling or other rehabilitative measures.

Breach of Conditions

If an offender fails on any occasion to surrender himself or herself to custody, to properly perform the community work, or otherwise violates the terms of the sentence or rules governing periodic detention, the sentence of periodic detention lapses: *s44(4) Penal Code*.

The offender must then be taken into custody before the original Court to be sentenced afresh, and he or she is no longer eligible for periodic detention: *s44(4) Penal Code*.

6.6 Imprisonment

Magistrates may impose sentences of imprisonment up to a maximum two years.

Senior Magistrates may impose sentences of imprisonment up to a maximum five years.

Procedure

When sentencing an offender to a term of imprisonment, you must draw up a warrant under the seal of the Court for his or her committal, stating the sentence: *187(3) Criminal Procedure Code*. This must be delivered to the officer having custody of the offender and will serve as full authority for carrying the sentence described: *ss 187(3), 189 Criminal Procedure Code*.

No sentence of imprisonment may be enforced until after the time for appeal has passed or the offender has elected to begin serving his or her sentence, unless:

- the offender is already in custody pending trial; and
- no warrant of arrest or remand has been issued prior to the time of judgment: *s36 Penal Code*.

Ideally, imprisonment should only be considered when no other sentence is appropriate. Ask yourself:

- Is it necessary to impose a sentence of imprisonment?
- Is there a viable alternative sentence available?

This is particularly so for offenders under the age of 16, where imprisonment may only be ordered if no other method of punishment is appropriate: *s38(1) Penal Code*.

Concurrent and Consecutive Sentences

When more than one offence is tried together and the offender is convicted on more than one charge, the respective sentences are deemed to be concurrent sentences (served at the same time), unless you order them to be served consecutively (one after the other): *s39(1) Penal Code*.

This will most often occur when more than one charge arises from one event. For example, if an offender commits theft and damages property at the same home, the two separate offences should be treated as one transaction and the sentences of imprisonment should run concurrently, unless there is a good reason to do otherwise.

Where two offences are tried separately, and the offender is convicted on more than one charge, the sentence passed later for an offence committed prior to the earlier trial, shall be deemed to be concurrent sentences, unless you order them to be served consecutively: *s39(2) Penal Code*.

You may not order a sentence to run concurrently with any sentence which had already become final before the commission of the second offence: *s39(3) Penal Code*. For example, if an offender is released from prison and re-offends, you may not order the sentence to run concurrently for the time already served.

For consecutive sentences, they must be enforced in the order in which the warrants of imprisonment are notified to the offender: *s40 Penal Code*.

When ordering consecutive sentences, a Magistrate may order up to a maximum of four years: *s14(5)* as added by *s10 Schedule Judicial Services and Courts (Amendment) Act No 4 of 2003*.

The ability to sentence up to double the normal term of imprisonment does not apply to Senior Magistrates.

Calculating the Term of Imprisonment

For a term of imprisonment expressed in days, each day means 24 hours: *s37(1) Penal Code*.

For a term of imprisonment expressed in months, each month means one calendar month: *s37(2) Penal Code*.

For a term of imprisonment expressed in months and years, it shall be calculated by calendar date: *s37(3) Penal Code*.

The duration of a sentence of imprisonment includes and runs from:

- the day on which the offender is taken into custody; or
- in the case of concurrent sentences passed on different dates, the day on which the offender was taken into custody under any of the sentences: *s37(4) Penal Code*.

Offender already in custody

If the offender has been in custody pending trial or appeal, the term of custody must be wholly deducted from the calculation of the sentence remaining: *s41(1) Penal Code*.

If the offender has been in custody pending trial or appeal and is later sentenced to a fine only, you may relieve the offender from paying the whole or part of the fine: *s41(2) Penal Code*.

6.7 Sentence if Called Upon

After taking into account the circumstances, including the nature of the offence and character of the offender, any court which convicts or sentences an offender may, instead of passing sentence, order the offender to appear for sentence if called upon. This may be upon such conditions as you think fit: *s42(1) Penal Code*.

Making such an order does not limit or affect your power under any applicable enactment to make any order as to payment of costs, damages, compensation or for the restitution of any property, even though the offender has not been sentenced: *s42(2) Penal Code*.

You may order that an offender subject to such an order be called upon for sentence any time up to three years from the date of conviction: *s42(3) Penal Code*.

If you do not specify the period for which the offender may be called upon, the offender may be called upon only within one year from the date of conviction: *s42(3) Penal Code*.

Using this tool can help gauge whether an offender has made lasting changes that would justify not imposing a sentence immediately. For example, if an offender claims to have stopped drinking alcohol at the time of sentencing, you may consider deferring the sentence to see if the change is permanent and if it solves the problem behaviour.

If Called Upon

If the offender is called upon, any judicial officer having jurisdiction to deal with the original offence (whether he or she heard the case) may sentence or otherwise deal with the offender: *s42(4) Penal Code*.

Before sentencing the offender, the judicial officer must inquire into the circumstances of the case and the conduct of the offender since the order was made: *s42(4) Penal Code*.

6.8 Suspended Sentence

If, in view of the circumstances and in particular the nature of the crime and the character of the offender, you consider that imposing a penalty on an offender would be inappropriate, you may order the suspension of the execution of any sentence imposed, on the condition that the person commits no further offence against any Act, regulation, rule or order within a period you fix, not exceeding three years: *s1(a) Suspension of Sentences Act*.

When ordering the suspension of the execution of the sentence, explain clearly to the person sentenced the nature of the order and shall ascertain that he has understood its meaning: *s1(d) Suspension of Sentences Act*.

At the end of the period, if the person has not have been convicted of any further offence, the sentence shall be deemed to be annulled: *s1(b) Suspension of Sentences Act*.

If the person is convicted of another offence before the end of such period, the sentence must be immediately executed, in no case concurrently with any subsequent sentence: *s1(c) Suspension of Sentences Act*.

6.9 Confiscation of Property

Upon conviction for any offence, you may order the confiscation of any property of the offender seized which was:

- used in committing the offence; or
- represents the proceeds of the offence: *s53(1) Penal Code*.

Property which may be seized includes any ship, boat, aircraft or motor vehicle used by the offender to travel to or away from the place where the offence was committed: *s53(2) Penal Code*.

6.10 Restitution of Property

Upon conviction for any offence where property was unlawfully obtained, you may order the offender to pay restitution to the person lawfully entitled to the property: *ss54, 107 Penal Code*.

In the order, you may also direct that if the offender fails to make restitution within the period specified in the order that the offender be imprisoned for a term calculated at a rate of one week's imprisonment for every VT 1000 of the value of the property concerned: *s54 Penal Code*.

For example, if the offender fails to make restitution of goods worth VT 10,000, he or she may be imprisoned for 10 weeks.

If the offender defaults on the restitution and is imprisoned for the appropriate term, he or she is still liable to make restitution of the property: *s54 Penal Code*.

6.11 Confinement of Addicts or Partially Insane Persons

You may order a person addicted to alcohol or drugs or who is suffering from a mental illness to confinement in a specified health institution, if:

- the criminal offence arose from the addiction or mental condition; and
- you are of the opinion that the offender's liberty is a danger to himself or herself or to the public: *s55(1) Penal Code*.

In the case of a person addicted to alcohol or drugs, the confinement must not exceed 2 years, and in the case of a mentally ill person must not exceed 5 years: *s55(2) Penal Code*.

The two or five year period of confinement may be terminated earlier upon review: *s55(3) Penal Code*.

Review

For all persons who are confined but not by periodic detention or by imprisonment, a full report on his or her condition and the necessity of detention must be sent to the Supreme Court at maximum of 12 month intervals: *s56(1) Penal Code*.

The Supreme Court then reviews all confinements and will make orders as to the continuation or dismissal of the detained person.

6.12 Recognizance to Keep the Peace

Whenever you are informed on oath that a person is likely to commit a breach of the peace or do any wrongful act that may cause a breach of the peace, you may require the person to show why he or she should not be ordered to enter a recognizance for keeping the peace: *s23A(1) Criminal Procedure Code* as added by *Schedule 1 Criminal Procedure Code (Amendment) Act No 13 of 1984*.

At your discretion, you may order:

- the recognizance to be with or without sureties; and
- for any period up to one year: *s23A(2) Criminal Procedure Code* as added by *Schedule 1 Criminal Procedure Code (Amendment) Act No 13 of 1984*.

While an order to keep the peace is not a sentence, it can be a useful tool to control parties when conviction for an offence and a sentence is impossible or otherwise impractical. This is particularly useful when there are ongoing disputes between parties which have the potential to escalate into a situation where an offence may be caused. Ordering each party to keep the peace may help prevent an offence from occurring.

Inquiry Procedure

1. When you receive the information on oath and you deem it necessary for the person to come before the Court, you must make an order setting out:
 - the substance of the information received;
 - the amount of the recognizance;
 - the term which it will be in force; and
 - the number, character and class of sureties (if any) required: *s23B Criminal Procedure Code*.
2. If the person is not present before you in Court, you must issue a summons requiring him or her to appear, or a summons if he or she is in custody: *s23D Criminal Procedure Code*.

You may also issue an arrest warrant, if a Police report or other information gives you reason to fear the commission of a breach of the peace which can only be prevented by the immediate arrest of the person: *s23D Criminal Procedure Code*.

Every summons or warrant must be accompanied by a copy of the order when served on the person: *s23E Criminal Procedure Code*.

If you see fit, you may also allow the person to appear by advocate to show cause why he or she should not be required to enter into a recognizance for keeping the peace: *s23F Criminal Procedure Code*.

3. When the person does appear in Court, you must read the order over to him or her, and explain the substance of the order if he or she requests: *s23C Criminal Procedure Code*.
4. Once read or explained, you must proceed to inquire into the truth of the information and take further evidence as appears necessary: *s23G(1) Criminal Procedure Code*.

The procedure for taking and recording evidence shall be conducted as nearly as practicable as for a trial: *s23G(2) Criminal Procedure Code*.

When more than one person is involved, you may deal with them in the same or separate inquiries: *s23G(3) Criminal Procedure Code*.

5. If it appears that that it is necessary for the person to enter into a recognizance to keep the peace or be of good behaviour, you must make an entry on the record to that effect, and release the person from custody or discharge him or her as necessary: *s23I Criminal Procedure Code*.
6. If it appears necessary that in order to keep the peace or be of good behaviour, the person must enter into a recognizance, with or without sureties, make an order accordingly: *s23H Criminal Procedure Code*.

Content of the Recognizance

The recognizance entered into must bind the person to keep the peace or to be of good behaviour, as necessary: *s23K Criminal Procedure Code*.

If the recognizance is to keep the peace, the commission, attempt, or aiding, abetting, counselling or procuring of any offence punishable by imprisonment is a breach of the recognizance: *s23K Criminal Procedure Code*.

The recognizance:

- must be fixed with due regard to the circumstances of the case and must not be excessive;
- must be entered into only by his or her sureties, if the person is a minor;
- must not require the person to give security different in nature, larger than, or for a longer time than that specified in the original order drawn up from the information: *s23H(1) Criminal Procedure Code*.

Any person you order to give security may appeal to the Supreme Court: *s23H(2) Criminal Procedure Code*.

Period of Recognizance with security

If you require security to be given for a certain period, the period commences:

- on the date of the order, unless you fix a later date; or
- on the expiration of any term of imprisonment to which the person has been sentenced: *s23J Criminal Procedure Code*.

Imprisonment for Failing to Give Security

If a person fails to give security on or before the date of commencement, you must commit the person to prison, pending the decision of the Supreme Court. The proceeding must then be given to the Supreme Court as soon as practicable: *s23M Criminal Procedure Code*.

If the person is already in prison on the date, he or she must be detained in prison until the period expires or the security is given: *s23M Criminal Procedure Code*.

The maximum period of imprisonment for failure to give security is two years: *s23M(4) Criminal Procedure Code*.

If the person gives the security to the officer in charge of the prison, the officer must refer the matter to the Court who made the order, and await further orders: *s23Q(5) Criminal Procedure Code*.

Release

If you believe that a person imprisoned for failing to give security may be released without hazard to the community, you may make an immediate report of the case for the Supreme Court to decide: *s23N Criminal Procedure Code*.

Sureties

You may reject any surety offered on the grounds that the surety is an unfit person. You must record your reason for rejecting any offered surety: *s23L Criminal Procedure Code*.

Any surety may apply to cancel any recognizance he or she has entered into for the peaceable conduct or good behaviour of another person: *s23Q(1) Criminal Procedure Code*.

If a surety applies to be cancelled, you must issue a summons or warrant, requiring the person for whom the surety is bound to appear before you: *s23Q(2) Criminal Procedure Code*.

When the person appears, you must cancel the recognizance and order the person to give fresh security of the same description as the original security for the outstanding portion of the term of the recognizance: *s23Q(3) Criminal Procedure Code*.

6.13 Compensation

On the dismissal of any charge, if you believe the charge was frivolous or vexatious, you may order the complainant to pay to the accused a reasonable sum for the accused's trouble, expense and any special loss, in addition to any costs: *s103 Criminal Procedure Code*.

Recovery of Compensation

Any sum you award for compensation must be specified in the conviction or order: *s104 Criminal Procedure Code*.

If the person then fails to pay the compensation and defaults on distress, he or she is liable to imprisonment in accordance with *s52 Penal Code*, unless the compensation is paid sooner: *s104 Criminal Procedure Code*.

6.14 Restoration of Property

Where any property is taken from an accused upon his or her arrest, you may order:

- that the whole or part of the property be restored to the person who appears to be entitled to it (including the accused or such person as he or she may direct); or
- that the whole or part of the property be applied to the payment of any fine, any costs, or any compensation directed to be paid: *s108 Criminal Procedure Code*.

7 Costs

All costs awarded are in addition to any compensation awarded: *s100(1) Criminal Procedure Code*.

All orders for costs may be appealed to the Supreme Court: *s102 Criminal Procedure Code*.

7.1 Costs Against the Accused

In addition to any sentence imposed upon the offender in respect of the offence, you may also order the offender to pay the public or private prosecutor, reasonable costs up to a maximum of VT 100,000: *s98 Criminal Procedure Code* as amended by *s1 Criminal Procedure Code (Amendment) Act No 13 of 1989*.

7.2 Costs Against a Private Prosecutor

You may order a private prosecutor to pay reasonable costs to an accused, up to a maximum of VT 25,000, if:

- the prosecution was originally brought on a summons or warrant issued by a Court on the application of a private prosecutor; and
- you consider that the private prosecutor had no reasonable grounds for making the complaint: *s99(3) Criminal Procedure Code*.

7.3 Costs Against the State

In the case of a dismissal of the charge, you may only order the State to pay costs to an accused, if you feel the prosecution was unjustified or oppressive: *s101(1) Criminal Procedure Code*.

Witnesses called on behalf of the State are entitled to payment of attendance fees and allowances, unless you disallow the fees: *s101(2) Criminal Procedure Code*. These fees may be recovered from any party ordered to pay costs: *s101(1) Criminal Procedure Code*.

7.4 Recovery of Costs

Any sum you award for costs must be specified in the conviction or order: *s104 Criminal Procedure Code*.

If the person then fails to pay the costs and defaults on distress, he or she is liable to imprisonment in accordance with *s52 Penal Code*, unless the compensation is paid sooner: *s104 Penal Code*.

8 Enforcement of Fines, Penalty, Costs, Compensation and Other Expenses

8.1 Enforcement By Warrant

Whenever you order money to be paid, the money may be levied on the real and personal property of the person by distress and sale through a Court warrant. This applies to money ordered to pay:

- a fine;
- a penalty;
- compensation;
- costs; or
- other expenses: *s193(1) Criminal Procedure Code.*

Such a warrant may be executed by the distress and sale of any property of the person anywhere in Vanuatu: *s193(4) Criminal Procedure Code.*

When enforcing an order, it must be levied on personal property first and real property second. If the person has sufficient personal property to satisfy the order, his or her real property must not be sold: *s193(1) Criminal Procedure Code.*

If the person pays or tenders to the officer executing the warrant the sum mentioned in the warrant, along with the applicable expenses of the distress up to the time of payment, the officer must cease to execute the order: *s193(2) Criminal Procedure Code.*

Any sums received by executing the warrant must be applied in the following order:

- first to the costs of execution;
- secondly to the fine; and
- thirdly to the costs due by the offender in virtue of the conviction or order: *s193(3) Criminal Procedure Code.*

Objections to Attachment of Property

Any person who claims to have any legal or equitable interest in the property being used to satisfy the warrant may, at any time prior to the Court receiving the proceeds from the sale, give notice in writing of his or her objection to the attachment of the property: *s194(1) Criminal Procedure Code.*

The notice must:

- briefly set out the nature of the objector's claim to the property; and
- must certify the value of the property in the notice along with an accompanying affidavit as to value: *s194(1) Criminal Procedure Code*.

Upon receiving such a notice, you must:

- direct the executing officer to halt the execution; and
- direct the objector to appear before the Court to establish his or her claim upon a date specified in the notice: *s194(2) Criminal Procedure Code*.

A notice outlining the time and place when the objector will appear must then be served upon:

- the person whose property was to be attached; and
- any person entitled to the sale or proceeds of the property: *s194(4) Criminal Procedure Code*.

Upon the date fixed for hearing the objection, you must investigate the objection. You may hear from the objector and any other person served with a notice of the hearing: *s194(5) Criminal Procedure Code*.

After investigating the matter, you may then order the property to be released from attachment, if you are satisfied that the property was not in the possession of or being held in trust for the person ordered to pay the money: *s194(6) Criminal Procedure Code*.

If the objector fails to appear on the date fixed for the hearing, or the objector fails to establish his or her claim, you must order the attachment and execution of the warrant over the property to proceed and must make any order as to costs: *s194(7) Criminal Procedure Code*.

8.2 Enforcement by Committal to Prison

Instead of enforcing the payment of a fine, a penalty, compensation, costs or other expenses by distress, you may commit the person to prison for a specified time.

You may enforce by imprisonment, rather than by distress, if:

- you believe that distress and sale of the person's property would be ruinous to the person or to his or her family;
- the person has no property upon which to levy the distress; or
- any other sufficient reason appears: *s195 Criminal Procedure Code*.

You may enforce by committal instead of or after issuing a warrant of distress: *s195 Criminal Procedure Code*.

The term of imprisonment must be specified in the warrant, unless the person is earlier released for payment of the amount owed plus all expenses of the commitment and conveyance to prison: *s195 Criminal Procedure Code*. If full payment is received by the officer in charge of the prison having custody of the person, the officer must release the person, unless the person is in custody for another matter: *s196 Criminal Procedure Code*.

Part Payment

If the person pays any part of amount owed while committed to prison, the term of imprisonment must be reduced as nearly as possible in proportion to the sum owed in relation to the total number of days: *s197(1) Criminal Procedure Code*.

For example, if the person committed owes VT 10,000 and has been committed for 10 days, if he or she pays VT 1,000, the term of imprisonment should be reduced to nine days.

If the person committed wishes to make part payment, the officer in charge of the prison must take him or her before a Court as soon as possible, and the Court must certify the amount of payment and make all applicable orders to reduce the term of imprisonment accordingly: *s197(2) Criminal Procedure Code*.