

Around the Courts

The Commercial Legal Aid Scheme

This scheme, which was the Bar Council's response to a suggestion by Rogers C.J. Commercial Division, was set up and has been administered in its first period of operation by the Commercial Law Liaison Committee, chaired by David Bennett Q.C. Its aims and general outline have been explained in an earlier article in *Bar News* of Spring 1988. In short, it is a pro bono publico scheme, whereby counsel donate their services, instructed by solicitors working on the same basis.

The scheme has had a couple of cases referred to it by the Commercial Judges, and it is hoped that the Bar's participation will benefit not only the hapless client, involved in litigation either financially or legally beyond his or her grasp, but also the court, whose modern approach to commercial hearings does not work at its best when a litigant appears in person.

The first case was perhaps typical of what we may expect and will be a common occasion for this scheme's involvement. A guarantor/mortgagor wished to cross-claim against the plaintiff bank in order to raise matters concerning the bank's conduct of the mortgage sale of her properties held as securities by the bank. The issues included the scope of an exclusion clause in the mortgage and the effect of the Trade Practices Act upon that clause.

The fact that the scheme's first client was unsuccessful in court is not itself a sign of weakness in the scheme. Indeed, it seems clear that even this losing case benefited from the able representation provided by Malcolm Oakes and Philip Taylor. Messrs. Blake Dawson Waldron instructed counsel and are to be commended for their thorough-going contribution.

Some queries and problems will need to be tackled fairly soon. However, taking the most obvious one - how to select persons to be chosen under the scheme - alone, it is likely that more experience will be required before present general principles can be empirically refined. □

Local Court

The Chief Magistrate of the Local Court, Mr. Briese, has issued a practice note in respect of criminal proceedings.

Practice Note No. 1/89

The development of time standards for case disposal is part of the Court's overall programme of case flow supervision. In accordance with that concept the Chief Magistrate has issued the following Practice Note.

- (i) This Practice Note does not apply to Civil Claims or Family Law.
- (ii) This Practice Note applies to all charge and summons matters.
- (iii) Courts with infrequent and irregular sittings, and those which have developed time standards to meet local conditions, will comply as far as possible with the Practice Note.

1. On the first return date, where possible, pleas of guilty should be entered and finalised on that date.
 - (a) On the first return date, an adjournment will be granted for a period (preferably not to exceed 14 days) in order to allow the defendant to obtain legal advice. If a plea of guilty is determined upon, the defendant should obtain all necessary references etc. in order to be able to have the plea dealt with on the adjourned date. Unrepresented defendants will be informed by the Court of the purpose for the adjournment.
2. On the adjourned day, the defendant will be required to inform the court whether a plea of guilty or not guilty is then to be entered.
 - (a) (i) Pleas of guilty (summary): should be dealt with if possible. If a further adjournment is required to obtain references, pre-sentence reports etc., the minimum period of adjournment commensurate with obtaining those materials will be granted. This should not exceed four weeks. But as a matter of practice such material should be obtained during the adjournment period and the matter disposed of on the adjourned date.
 - (ii) Pleas of guilty (indictable): Prosecution must be in a position to advise when a brief will be ready for service. This should not exceed 4 weeks. The matter will be adjourned for service of the S.51A brief. The committal for sentence to the District or Supreme Court should be dealt with on the adjourned date.
 - (b) Pleas of not guilty
 - (i) Summary matters: will be forthwith listed for hearing. Prosecution and defence must be in a position to advise the Court of the number of witnesses required and the estimated length of hearing.
 - (ii) Indictable matters: prosecution must be in a position to advise when a brief will be ready for service. This should not exceed 4 weeks. A date will be fixed for service of the S.48 brief. A date will be fixed for the defence to serve notice and that date will be the next adjourned date (the total period should not exceed 6 weeks).
 - (iii) On the next adjourned date, indictable matters will be fixed for committal hearing. Both parties should be in a position to give a proper estimate of hearing time.
 - (iv) If the matter is to proceed by way of paper committal only (i.e. no witnesses are to be called), practitioners should be prepared for the matters to proceed on the adjourned date.

The Criminal Listing Directorate

On the 13th July 1989 the Directorate completed two years of operation. A number of changes were implemented during this period which affect the listing of matters before the District Courts. The Director, John Castellan, describes the changes.

SYDNEY DISTRICT COURT

The Directorate is now located at Remington Centre, Level 12, 175 Liverpool Street, Sydney.

Trials, short matters and appeals are allocated hearing dates at the Directorate's Call-overs which are conducted at the new premises. Call-overs are conducted at Long Bay Goal for those accused who are in custody and are unrepresented.

Pre-trial hearings are conducted by the trial Judge in lengthy special fixtures.

Trials are listed for the first day of each week. Priorities are determined four weeks prior to the trial week. As Judges become available during the trial week trials are allocated in order of priority.

The Director is not able to allocate specific dates for Sydney Trials, however some degree of certainty was introduced some 18 months ago.

Trials with priority 1 to 13 are required to be ready to proceed on the Monday.

Trials with priority 14 to 16 are not required to proceed before the Tuesday.

Trials with priority 17 to 20 are not required to proceed before the Wednesday, and

Trials with priority 21 or more are not required to proceed before the Thursday.

Trial priority information is pre-recorded and can be obtained as follows:

Trials: listed one and two weeks ahead (02) 287 7531
listed three and four weeks ahead (02) 287 7530.

Where there is to be a change of plea or a change in the estimated duration or there is some difficulty in the trial proceedings - parties should contact the Senior Listing Officer (trials) (02) 287 7323.

Similar difficulties in short matters and appeals should be notified on (02) 287 7334.

SYDNEY WESTERN DISTRICT COURT

The head office for Sydney West is located at Level 1, 20 Charles Street, Parramatta - (02) 891 0839. The Directorate also has offices located at Liverpool Court House - (02) 602 7122 from which all Liverpool and Campbelltown matters are listed and an office at Penrith Court House - (047) 313 999 which is responsible for Penrith and Katoomba listings.

Trials are fixed at call-overs conducted monthly at each centre and are listed some 2-4 months in advance. Trial priorities are determined 4 weeks prior to hearing.

Trials are listed for specific dates with the number listed determined by the number of trial Courts available.

3 trial Courts - list 8 trials Monday - 8 trials Wednesday
2 trial Courts - list 5 trials Monday - 5 trials Wednesday
1 trial Court - list 3 trials Monday - 3 trials Wednesday

At Parramatta and Penrith the trials listed are called over by the Senior Judge at 9.15 a.m. and 9.30 a.m. respectively.

Trials are then allocated to available Judges, the remaining matters are stood over or transferred to other centres.

One week per month is set aside at each centre for short matters and appeals.

COUNTRY DISTRICT COURT

The Directorate has regional offices located at:

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|-------------|---------------|
| Lismore | (066) 21 9992 |
| Newcastle | (049) 26 0644 |
| Wollongong | (042) 27 3923 |
| Dubbo | (068) 81 1401 |
| Wagga Wagga | (069) 23 0552 |

Country trials are now listed for Call-over by the trial judge in Sydney, two weeks prior to the sittings. Those ready to proceed are then allocated specific trial dates. Up to five trials are listed each week of the sittings. (One category A trial and one short Category B trial is listed as a back-up on the Monday, one short category B trial is listed on the Tuesday, one category A trial and one short category B trial is listed as a back-up on the Wednesday).

Parties are advised as to what information the Judge will require at the Call-over and in most cases this is conveyed to the Court by City agents. In order to further reduce the inconvenience and costs to parties it is proposed to conduct these call-overs at country centres where possible.

At this stage short matters and appeals will continue to be listed for the first day of the sittings. Enquiries regarding country trials should be directed to (02) 287 7534 or to the appropriate Regional Office.

Practitioners experiencing listing difficulties should contact me on (02) 287 7321.

Category A includes those matters where:-

. the accused is in custody (on remand)

. the allegations are of child sexual assault

. culpable driving charges involving a death

. the trial is listed as a special fixture

. a trial is given a Category A rating by a Judge or by the Director. □