

The Future of Committals: A Case for abolition.

THE criminal justice system that exists today is broadly the same as that inherited from the British. However, it is becoming obvious that the value and protection of the rights of the individual bestowed by common law may well be eroded unless serious endeavours are embarked upon to reduce the length of the criminal trial process.

Steps must be taken to eliminate waste in time, effort and costs by achieving fewer delays at the pre-trial stage. While the prime aim of the courts is justice, the legal system needs to be reminded that it is accountable as any other publicly funded system as to the time and funds it expends to fulfil its functions.

It is appropriate to consider the place of the committal proceeding in contributing to the delays which an accused person currently faces while awaiting trial.

The early English preliminary hearings were originally held in private. The accused could be questioned without being informed of his rights. He had no right to legal representation and was not allowed to hear what the witnesses had to say.

We like to think we have progressed somewhat from those times. This system has been modified constantly over the years to ensure that the rights of the individual are protected in the process.

One result is the greatly increased cost of operating the criminal justice system. Another is the increased time consumption of the proceedings.

The primary purpose of the committal proceeding is to provide a 'filter' to ensure that no one stands trial unnecessarily.

The tests to be applied are:

1. The magistrate, after hearing the evidence for the 'prosecution' must be of the opinion that a jury will be satisfied beyond a reasonable doubt that the accused has committed the offence; and

2. After hearing the evidence for the 'defence' he should commit the accused for trial unless he believes that a jury would not be likely to convict the accused of the offence.

This is an address presented by Deputy Commissioner John Johnson to a recent Australian Institute of Criminology seminar.

These tests are applied after the Director of Public Prosecutions has assessed the available police evidence and determined whether the accused has a case to answer.

The second purpose of committal proceedings is to test the strength of the prosecution witnesses' evidence.

This cross-examination is often used as a 'dress rehearsal' for the actual trial. The process is frequently misused for purposes unrelated to determining

whether the accused should be committed or not. The witnesses are subjected to deliberate aggressive questioning techniques which may not be permitted before the jury and occasionally causes some witnesses to refuse to attend the trial to avoid a repeat performance.

The accused, if legally represented, is presented with proportionally increased costs. Effective legal representation is only available in direct proportion to the users capacity to pay.

The third purpose of the committal hearing, to provide the accused the opportunity of calling evidence to rebut the prosecution case, is a major contributor to the extensive delay from the time a charge is actually laid against a person to the time that person arrives before a jury.

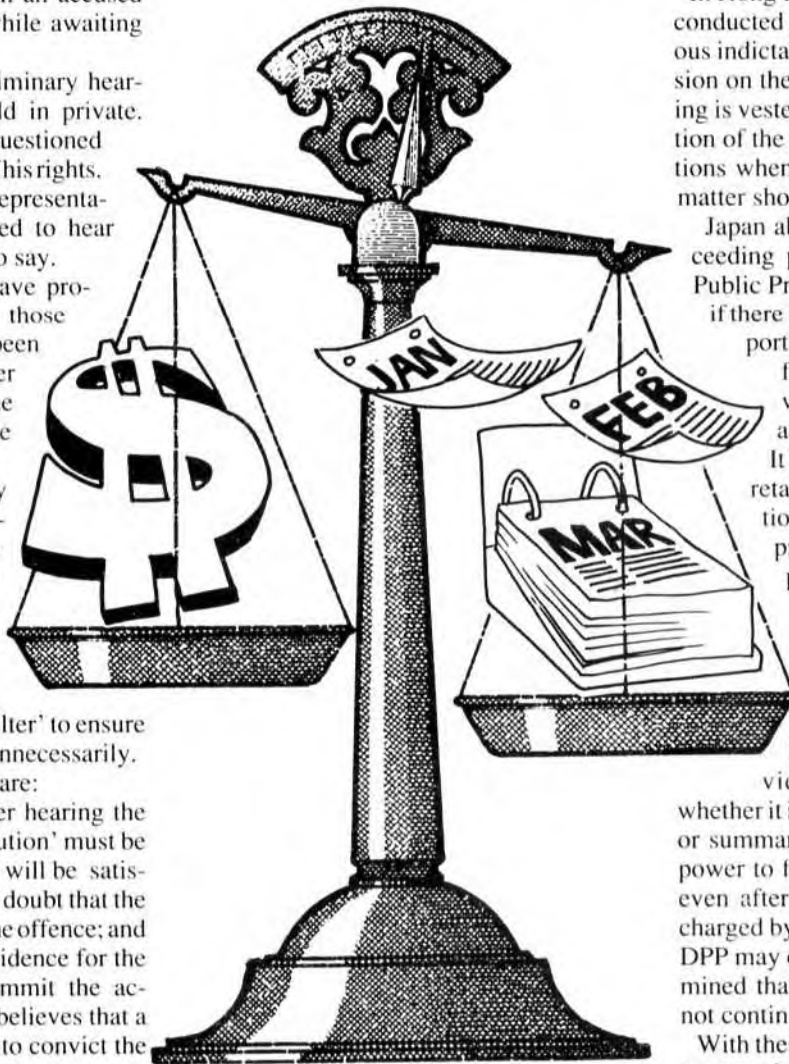
In Hong Kong a committal hearing is conducted for a limited number of serious indictable offences only. The decision on the need for a committal hearing is vested entirely within the discretion of the Director of Public Prosecutions when considering if a particular matter should go to trial.

Japan abolished the committal proceeding prior to World War II. A Public Prosecutors office determines if there is sufficient evidence to support prosecution and if so satisfied, issues an indictment which is then served on the accused.

It is possible for the accused to retain the benefits and protection afforded by the committal procedure, and there are simpler and more efficient methods of filtering out cases that should not proceed to trial than by the present laborious scheme.

The Director of Public Prosecutions currently reviews every criminal case whether it is tried before Judge and jury or summarily. The DPP also has the power to file an ex-officio indictment even after the accused has been discharged by the magistrate. Further, the DPP may offer a 'no-bill' if it is determined that a particular matter should not continue to trial.

With these supervisory powers in existence, the need for the person control-



ling the assessment of a case for committal to be a magistrate, is further diminished. The position and responsibilities are more 'administrative' rather than 'judicial'.

By substituting the DPP in the role currently fulfilled by the magistrate in committal proceedings, the facility to overrule or right any breach of procedure would lie with the superior court during a pre-trial review. Several immediate benefits are obvious. The magistrates would be freed to address the backlog of summary matters, witnesses would not be required to give evidence on oath on two separate occasions and police investigators would not be tied up in lengthy appearances. There would also be a reduced risk of a jury being exposed to adverse publicity surrounding a case prior to the actual trial.

Inadequate disclosure of the prosecution case, reluctant disclosure of known



Deputy Commissioner John Johnson

alibi by the defence, shoddy and inept cross-examination are all practices which have eroded the effectiveness of the committal proceeding and hence fuelled further argument for its abolition and replacement by more efficient administrative techniques.

There are other ways of enabling the accused to know and test the prosecution case, to review the decision to prosecute and to eliminate undisputed issues. The objective is to reduce the delay in bringing the proceeding to a final result and minimise the cost of the whole process.

Pre-Trial Review

This involves a prescribed mechanism for assessing the whole process leading

up to the trial. It has the potential to bring the parties together to determine issues, make rulings and give directions with the overall view to creating a more streamlined trial process.

Electronic Recording Of Interviews

Considerable time at the committal and subsequent trial is involved in contesting the authenticity of any alleged confession or admission. A feasible method with the potential to provide considerable savings in time, effort and subsequent cost is the electronic recording of police interviews. Almost every law reform commission and committee which has examined the subject in recent times has endorsed the idea in principle.

The Hand-Up Brief

This system involves the supply of a complete copy of the prosecution case material to the Magistrate. The first and most obvious benefit is that the witnesses do not need to attend and give evidence before the trial. The second, reduces the task of assessing the evidence and determining appropriateness, to a straightforward viewing of the written material by the reviewing Judge. This has the accumulative effect of creating a mechanism which can completely replace the committal hearing.

If there are any objections to any particular aspect of the evidence by the defence the relevant witness may be required to attend and be cross-examined to determine authenticity or demeanour only after a ruling by the Judge.

Properly used in conjunction with adequate pre-trial disclosure and prior notice of issues to be contested, the hand-up brief as a matter of course has the capability to contribute considerably to savings in court time.

Pre-Trial Disclosure

The disclosure and review procedures need to be reviewed to develop a more efficient process of dealing with the multitude of pre-trial issues which otherwise consume unnecessary amounts of the trial court's time. It should be possible and practical to eliminate some issues from the trial altogether.

There is a tendency at this time, in efforts to streamline the existing committal proceeding, for the net effect to be less disclosure being provided, thus

leaving more issues to be contested at the actual trial. If the prosecution case was presented to the defence at an earlier stage and the defence was required to indicate its defences, the committal as such would no longer be necessary.

If advance disclosures were obligatory and automatic in all cases, the defendant would be in a position to make a better informed choice between summary hearing and jury trial. They would also be better informed to assess the likely success of the case against him and determine any potential plea accordingly.

If the defence was required in advance of the trial to indicate the nature and extent of its defences, there is little doubt that criminal trials would be shorter and possibly fewer.

A minimum prosecution disclosure should include:

- full details of the charge/indictment;
- copies of all documents/tapes which contain a record of any conversation by the accused with police or witnesses;
- copies of all witness statements taken by police;
- details of all forensic/medical and exhibit material; and
- a copy of the person's criminal record.

Plea Negotiation

It may serve the public interest better if the certainty of a conviction for a slightly lesser or varied charge is secured, rather than the uncertainty of a conviction of the original offence actually being obtained before a contested trial.

Election To Trial By Judge Alone

When a person is charged with a serious crime there are distinct benefits in such a person being able to elect to have a trial by Judge alone. The main benefits would be:

- no need to instruct the jury on points of law or give directions;
- no risk of jury contamination by media or other influences;
- the process would be a more streamlined, shorter and cheaper trial; and
- the committal hearing would be unnecessary.

There is no simple method of reducing the time involved in criminal trials and their lead-up. Change will not occur unless all parties involved are receptive to the concept in principle.

The legal profession, understandably, has a self interest to protect and may resist what it sees as a potential threat to its role or livelihood.