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Understanding Committal Hearings

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When a person is charged with an indictable offence, the offence is usually tried by a judge and jury in the District Court or the Supreme Court.[1] The Supreme Court hears very serious indictable offences, such as murder and some very serious forms of sexual assault, while the District Court hears other indictable offences such as arson, malicious wounding, culpable driving, robbery, and break, enter and steal. Before an indictable offence may be tried, a preliminary hearing is conducted in a Local Court by a magistrate. This preliminary hearing is known as a committal hearing.

Committal proceedings, as they appear today, were created in England in 1848 by the *Indictable Offences Act*.[2] Historically, the purpose of the committal hearing was to determine whether there was sufficient evidence to justify sending the defendant[3] to stand trial before a judge and jury in the District or the Supreme Court. In this way, the committal hearing was an important means of preventing the executive branch of Government abusing its power of prosecution. Whether committal proceedings are warranted in the contemporary prosecution process has been earnestly debated.

The aim of this bulletin is to provide an overview of committal proceedings in NSW and to canvass some of the issues involved in this debate. First, an outline of the procedure involved in committal hearings is provided. The purpose and costs of these hearings are then discussed. This area of the law can be technical and complicated. The bulletin is not intended to cover all aspects of the law relating to committal hearings, and many of the procedures are discussed in a simplified form.

WHAT IS THE PROCEDURE FOR THE COMMITTAL HEARING?

There are a number of participants in the committal hearing, including the magistrate, the prosecutor, the defence lawyer and the defendant. The prosecutor represents the Director of Public Prosecutions. Since July 1987, the Director of Public Prosecutions has been responsible for the prosecution of all indictable offences on behalf of, but independently of, the Government.[4]

Prior to the committal hearing, the prosecution collect evidence from their witnesses in the form of written statements. The defendant and/or his or her solicitor are given copies of these statements and they then indicate which witnesses, if any, they will require to appear in court to give evidence orally.

The defendant is usually required to be present for the entire committal hearing. The committal hearing commences with the charge being read to the defendant. The defendant then enters a plea of 'guilty' or indicates that the matter is to be defended (i.e. that he or she intends to plead 'not guilty'). Alternatively the prosecution may indicate that the charges are withdrawn in which case the committal hearing does not proceed.

When a defendant pleads guilty, the prosecution usually submit a written statement of their evidence, known as a 'hand up brief', to the magistrate. Upon reading the evidence, if the magistrate accepts the plea of guilty, he or she commits the defendant to the District or the Supreme Court for sentencing.[5] Usually, however, the defendant indicates an intention to plead 'not guilty' and the matter is set down for a defended committal hearing.

The general procedure in a defended committal hearing is for the prosecution to give all their evidence first. The prosecution evidence may consist of written statements, oral evidence or both. Oral evidence is generally given by the prosecution witnesses only when the defence have requested it prior to the hearing. Often, however, the defence do not make this request and the prosecution evidence consists of written statements alone. When the prosecution evidence consists solely of written statements and the defence call no evidence themselves the procedure is known as a 'paper committal'. Any written statement tendered as evidence by the prosecution may be objected to by the defence. If they do object, the magistrate decides whether to reject the whole statement or any part of it. If the statement is rejected, the witness may be required to give evidence orally.

When oral evidence is given, each prosecution witness presents all of his or her evidence, after which he or she is cross-examined (i.e. questioned) by the defence. To minimise the stress and burden placed on some witnesses, the magistrate can prohibit the defence from cross-examining witnesses who claim to have been victims of certain violent offences, such as sexual assault and robbery.[6]

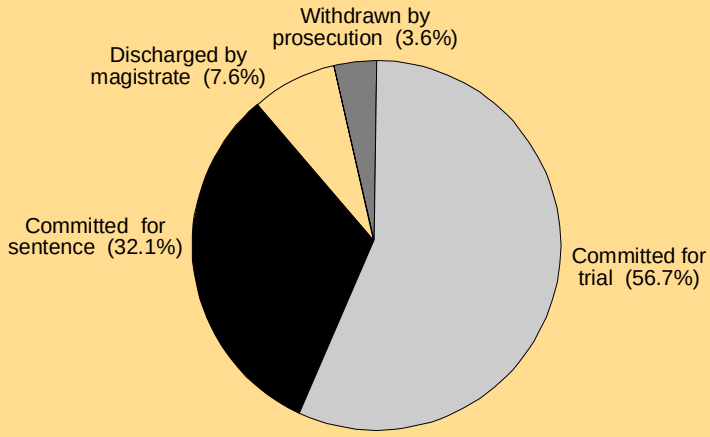
After all the evidence for the prosecution has been presented, the defence make their submissions to have the defendant discharged. The magistrate then determines whether the prosecution evidence is 'capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable

offence'. If the magistrate considers the prosecution evidence is inadequate, the defendant is discharged. If the magistrate thinks otherwise, the defendant is asked if he or she would like to say anything in answer to the charge, and then is asked if he or she would like to give any evidence or call any witnesses. Generally the defence do not call any of their own witnesses. It has been said that the defence use the committal hearing primarily to determine the best line of defence to take for the trial.[7]

When all of the evidence for the prosecution and any provided by the defence has been taken, the magistrate makes a second determination. If the magistrate considers 'a jury would not be likely to convict the defendant of an indictable offence' the defendant is discharged. If, on the other hand, the magistrate considers the evidence is sufficient, the defendant is committed to stand trial. The defendant may be committed for trial for any indictable offence shown by the evidence and not only for the offence with which he or she has been charged.

After a defendant has been committed for trial, the prosecutor on behalf of the Director of Public Prosecutions decides whether to continue with the proceedings for the offence charged. If the prosecutor thinks that the case should go to trial, he or she generally decides precisely what the charge, or indictment, should be. This process is known as 'finding a bill'. If the prosecutor considers that the case against the defendant is not sufficient, he or she recommends to the Director of Public Prosecutions that no 'bill' be found. In other words, it is recommended that no further proceedings be taken against the defendant. A defendant who is committed for trial is entitled to make an application for a 'no bill' before the trial starts, as indeed may any witness or member of the community.[8]

Figure 1: Outcome of committal hearings in NSW Local Courts



Source: NSW Bureau of Crime Statistics and Research (unpublished data).

WHAT IS THE PURPOSE OF THE COMMITTAL HEARING?

ELIMINATING WEAK CASES

As mentioned earlier, the purpose of the committal hearing is to determine whether there is sufficient evidence to justify sending the defendant to stand trial. It is of interest to know, therefore, the proportion of cases in which magistrates decide that the evidence is not sufficient for this purpose. A 1992 survey of committal hearings which were finalised in NSW Local Courts over a three month period indicated that 7.6 per cent of committal cases were discharged.[9] As seen in Figure 1, the outcome for the majority of committal hearings (88.8%) was a committal for trial or a committal for sentence. For only a small proportion of cases were the charges withdrawn by the prosecution (3.6%). These figures, however, may vary considerably from year to year and from court to court.

It has been suggested that the discharge rate for committal hearings is particularly low when compared with the proportion of matters which are 'no billed' by the Crown after a defendant has been committed to the District or the Supreme Court. In 1991, 8.0 per cent of the trial and sentence cases finalised in the District or Supreme Courts were 'no billed' by the Director of Public Prosecutions.[10] This does not necessarily reflect poor decision-making by magistrates. In the opinion of the Director of Public Prosecutions, magistrates wrongly commit the defendant for trial in less than 3 per cent of cases.[11] There are several other reasons why 'no bills' are filed. The predominant reason is that of 'no reasonable prospect of conviction'. In these cases it is likely that the committal hearing revealed important weaknesses in the prosecution case which made the expense and time of a trial unjustifiable. Other main reasons for the finding of 'no bill' include a request from the victim of the alleged offence not to proceed with the charge, a change in evidence or the loss of a witness.

DISCLOSING THE PROSECUTION CASE

It is often stated that a major benefit of a committal hearing is that it informs the defendant of the strength of the case against him or her and gives the defence the opportunity to test prosecution witnesses through cross-examination. A number of questions have been raised about this putative benefit.

Guidelines issued by the Director of Public Prosecutions indicate that, at the committal hearing, the prosecution should fully disclose their case and all other evidence which is relevant to the guilt or innocence of the defendant. According to the guidelines, only when 'there is a real need to protect the integrity of the administration of justice, including the need to prevent the endangerment of the life or safety of witnesses or interference with the administration of justice' may this

disclosure be limited.[12] In theory, if these guidelines are followed, the defence can test the entire prosecution case. Of course, in practice, the extent to which the prosecution case can be tested is dependent on whether the defendant can carry out effective cross-examination acting on his or her own behalf, or whether the defendant is adequately legally represented at the hearing.[13] It is not known what proportion of defendants are represented by a lawyer at committal hearings. Legal aid is, however, generally not available at committal hearings.

Committal hearings also assist the prosecution in that they can be made aware of how a witness will perform under the pressure of cross-examination.[14] Committal hearings have been criticised, though, for allowing very harsh cross-examination to occur which would not be attempted in front of a jury.[15] Obviously this can be beneficial to the defence, particularly if as a result a witness becomes reluctant to testify at trial. In some cases the defence can be denied the opportunity to cross-examine. The magistrate can choose to stop examination or cross-examination at any stage if he or she considers that hearing more evidence will not help him or her to form an opinion on whether or not the evidence would satisfy a jury beyond reasonable doubt. Despite this, the committal hearing usually allows the defence to compare evidence given at the committal hearing with the evidence given for a second time at the trial and use any inconsistencies to question the credibility of the witness. Dishonest or unreliable witnesses can be exposed thereby enabling the jury to make a better assessment of the value of the evidence.[16]

IDENTIFYING GUILTY PLEAS EARLY IN THE PROSECUTION PROCESS

In addition to the functions already described, the committal hearing also serves to identify guilty pleas early on in the prosecution process. If a defendant does not initially choose to plead guilty, he or she may do so after hearing the strength of the prosecution case at the committal hearing.[17] In 1991, over one-third (33.6%) of the cases committed to the Higher Criminal Courts in NSW were cases where the defendant pleaded guilty.[18]

Identifying guilty pleas at the committal stage has several benefits.[19] It ensures that court time and resources are used more efficiently, and it minimises stress and anxiety for both victims and defendants. It also enables sentencing to occur nearer to the date of the offence than might be expected if a trial were held. This may increase the deterrent effect of the criminal justice system.

REHEARSING THE CASE AND CLARIFYING THE ISSUES

Although more a benefit than a purpose, the committal hearing gives the prosecution and defence the opportunity to clarify and narrow the issues which could cause dispute at the trial. Issues can often be resolved more quickly before a magistrate than they can before a judge and a jury. A properly conducted committal hearing can therefore lead to a shorter trial.[20] Inevitably, however, committal hearings incur costs.

WHAT ARE THE COSTS OF COMMITTAL HEARINGS?

PUBLICITY

Criminal cases attract a certain amount of publicity. Sometimes publicity of a case during committal proceedings can attract witnesses whose evidence may be of great importance to either the prosecution or the defence. Over and above this, however, publicity can be prejudicial to a case and may jeopardise the fairness of the trial.[21] As a result of publicised evidence, jurors may form an impression of the nature and strength of the case against the defendant, or may be influenced by the magistrate's opinion of the case.

LOCAL COURT TIME COST

The length of the committal hearing can vary greatly, depending on a number of factors, such as the amount of oral evidence and cross-examination. Many hearings may be completed within the course of a day or so, but some hearings can take over a year to be completed.[22]

Presently, there are no statistics routinely collected on the duration of committal hearings in NSW. The mean duration of committals for trial for a recent sample of committal hearings, however, was found to be about 2.4 hours.[23] The duration of the hearing varied somewhat according to the offence. Among those committals for trial involving offences against justice procedures, the average length of the hearing was almost 7 hours. Committals for trial for fraud and theft offences, as well as motor vehicle theft offences, had a mean duration of more than 4 hours (4.9 hours and 4.1 hours, respectively). On average, committals for trial for break and enter offences were the shortest, at just over an hour in duration.

Annual statistics are collected on the numbers of committals for trial or sentence finalised each year in the Local Courts. In 1991, cases committed for trial or sentence to the District or Supreme Courts comprised 2 per cent of all cases finalised in the Local Courts in NSW.[24] As about 11 per cent of committal hearings do not result in a committal for trial or sentence (see Figure 1), it would be expected that committal hearings in total comprised a slightly larger proportion than 2 per cent of all the cases finalised in the Local Courts in 1991.

DELAY IN THE PROSECUTION OF CASES

As shown in Table 1, the time between arrest and completion of committal proceedings forms a large proportion of the overall period from arrest to finalisation of a case.

In 1991 the median duration from the date of the arrest to the date the defendant was committed to the District or Supreme Court was longest for persons who proceeded to trial, but were subsequently acquitted of all charges (185.0 days). For persons who proceeded to trial and were found guilty of at least one charge this period was somewhat shorter (159.0 days). For persons who pleaded guilty to all charges (i.e. proceeded to sentence only) the median duration from date of arrest to date of committal was 83.0 days, the shortest duration for any category of outcome. In those cases where the Director of Public Prosecutions did not proceed with the charges, the median duration from arrest to committal was

Table 1: Duration of proceedings and outcome of charges, persons charged in trial and sentence cases finalised, 1991

	Duration of proceedings		
	Pesons charged	Arrest to committal	Committal to outcome
Registry	Number	Median duration (days)	
Proceeded to trial:			
Acquitted of all charges	795	185.0	555.0
Found guilty of at least one charge	787	159.0	499.0
Other[25]	45	170.0	520.0
Proceeded to sentence only	3,643	83.0	210.0
No charges proceeded with	514	162.0	388.0
All charges otherwise disposed of	618	122.5	377.0

Source: NSW Bureau of Crime Statistics and Research 1992, New South Wales Criminal Courts Statistics 1991, NSW Bureau of Crime Statistics and Research, Sydney.

162.0 days. The duration figures varied according to the bail status of the defendant. When the defendant was held in custody awaiting trial, the median duration from arrest to committal was much shorter than when the defendant was on bail.[26]

CONCLUSION

A committal hearing is a preliminary hearing held in the Local Courts when a person has been charged with an indictable offence. This hearing is held to determine whether there is sufficient evidence to justify sending the defendant to stand trial before a judge and a jury in the District or Supreme Court. In the majority of committal hearings, the defendant is committed for trial or sentence to the Higher Criminal Courts by the magistrate.

Committal hearings have several benefits. Generally the committal hearing allows the defence to assess the strength of the prosecution case and gives them the opportunity to cross-examine witnesses. It enables the prosecution to identify guilty pleas early on in the prosecution process, and gives both parties the chance to clarify and resolve any problematic issues before they go to trial.

There are, however, costs involved in committal hearings. For the defence, publicity can be a major issue. Some committal hearings attract a considerable amount of attention which can be prejudicial and jeopardise the fairness of a trial. Costs to the criminal justice system include added demand on Local Court time, and a possible lengthening of the period between arrest and finalisation of a case where indictable charges are concerned.

It could be argued that the advent of an independent Director of Public Prosecutions has removed some of the historical justification for committal proceedings. The Government of the day no longer has direct control over the prosecutorial process. Whether this is sufficient to justify the abandonment of committal proceedings, however, clearly depends upon how one views the balance between the costs and the benefits of the committal process.

NOTES

1 Since March 1991, a defendant in criminal proceedings in the District Court or the Supreme Court can be tried by judge alone instead of a judge and a jury if he or she so elects.

2 NSW Law Reform Commission 1987, *Procedures from Charge to Trial: Specific Problems and Proposals*, vol.1, NSW Law Reform Commission, Sydney.

3 Throughout this paper, 'defendant' refers to the person accused of committing an indictable offence.

4 Office of the Director of Public Prosecutions, NSW, *1990-91 Annual Report*, Sydney.

5 The defendant may change his or her plea to 'not guilty' at the Higher Criminal Courts. If this occurs the judge may refer the case back to the magistrate in the Local Court or treat the case as if it had been committed for trial.

6 For details of these violent offences see Section 48EA of the *Justices Act 1902*.

7 NSW Law Reform Commission, op. cit.

8 NSW Law Reform Commission 1987, op. cit.; Spender, L. (ed.) 1991, *The Law Handbook*, Redfern Legal Centre Publishing, Sydney.

9 The sample comprised committal cases finalised in 116 Local Courts, or 75 per cent of all Local Courts in NSW, for the period from 13 January to 13 April 1992 inclusive. In some instances it was not possible to differentiate between cases and charges. As a result it is possible that the data presented overestimate the actual number of committals finalised in this period.

10 NSW Bureau of Crime Statistics and Research 1992, *New South Wales Criminal Courts Statistics 1991*, NSW Bureau of Crime Statistics and Research, Sydney.

11 Office of the Director of Public Prosecutions, op. cit.

12 Blanch, R.O. (Director of Public Prosecutions) 1991, *Prosecution Policy and Guidelines of the Director of Public Prosecutions, New South Wales*, Sydney, pp. 17-18.

13 NSW Law Reform Commission, op. cit.

14 Weinberg, M. 1991, 'A prosecution perspective', in *The Future of Committals*, ed. J. Vernon, Australian Institute of Criminology, Canberra.

15 Johnson, J. 1991, 'A case for abolition', in *The Future of Committals*, op. cit.

16 NSW Law Reform Commission, op. cit.

17 Brereton, D. & Willis, J. 'Evaluating the committal', in *The Future of Committals*, op. cit.

18 NSW Bureau of Crime Statistics and Research 1992, *New South Wales Criminal Courts Statistics*, op. cit.

19 Brereton & Willis, op. cit.

20 Weinberg, op. cit.

21 NSW Law Reform Commission, op. cit.

22 Brereton & Willis, op. cit.

23 NSW Bureau of Crime Statistics and Research (unpublished data). The sample comprised 220 committals for trial held in the Downing Centre, Sydney, for which the durations were extracted from the Transcription Services Files on 13 August 1991.

24 Data supplied by the Court Statistics Unit of the NSW Department of Courts Administration. The finalised cases included general, family and children's matters, and civil claims.

25 This category comprises those cases where the defendant was acquitted of one or more charges following a trial, but pleaded guilty to at least one other charge.

26 NSW Bureau of Crime Statistics and Research 1992, *New South Wales Criminal Courts Statistics*, op. cit.

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