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Case Conferences and Sentence Indications in the Higher Courts

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Speakers



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Resolution



Value of resolution

Worboyes v R [2021] VSCA 169

- **All other things being equal, the value of a plea during the pandemic is worth greater weight in mitigation than otherwise**
 - **A sentencing judge must ensure that the plea of guilty results in a perceptible amelioration of sentence**
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- Utilitarian benefit
 - Benefits to accused
 - Benefits to victims

Agenda



Tools for resolution

What tools exist to help us achieve resolution in the higher courts in the context of the extraordinary backlog?

- Case conferences
- Sentence indications

Case conferences

Judicial intervention to assist either party understand potential outcomes (at trial or plea) and encourage reasonable resolution.

Useful where:

- Prosecution has not grappled with the brief / evidence / way the case must be put;
- Prosecution is resisting a reasonable resolution;
- Accused struggling to understand strength of the Crown case;
- Client struggling to understand *Worboyes* discount;
- Final attempt to exhaust resolution

Court approaches

County Court

- Survived from Active Case Management measures put in place because of pandemic
- No practice note
- Usually suggested by one of parties
- Currently only Judges, but JR's have started doing 'intensive directions hearings'

Supreme Court

- Mostly being conducted by retired Judges, back as reserves
- Practice Note being developed
- Envisaged model will include use of Judges and JR's



Fees for Case Conferences

VLA

County Court

- Counsel's Preparation \$ 1,479
 - Appearance \$ 1,258
- \$ 2,737

Supreme Court

- Counsel Preparation & Appearance \$ 1,688

OPP

County Court

- Counsel's Preparation (if required) \$ 814
 - Appearance \$ 1,190.20
- \$ 2,004.20

Supreme Court – no set fee

Sentence indications

Expanded sentence indication powers in the higher Courts.

Sections 207–209A of the *Criminal Procedure Act 2009*.

Substantive rules:

- The Court may indicate that *if* the accused pleaded guilty, the Court would be likely to impose:
 - A sentence of a specified type;
 - A specified maximum total effective sentence;

- If accused pleads guilty at the earliest opportunity following the indication, the Court *must not* impose a more severe sentence than indicated.

Sentence indications

Practical steps:

- Settle basis for indication with the prosecution;
- Obtain date from County Court. Advise:
 - Whether opposed;
 - Unsuitable dates;
 - Estimate duration of hearing if application granted;
- Seven days prior, defence to file application, submissions and materials relied upon.
- Three days prior, prosecution must file submissions.

Court approaches

County Court

- Short Practice Note
- Ensure compliance with filing requirements

Supreme Court

- Practice Note expected shortly
- Smaller division, timing is a factor

Sentencing Indication hearing

If application is granted – expect hearing will follow

- Preparation covering matters similar to a plea hearing

Submissions as to penalty

- Court now allowed to give a specific number, and would be greatly assisted by being given some idea
- Easier for defence to provide court with an idea of what sentence might result in resolution
- Difficulties for the prosecution, but still scope to assist the court appropriately

■ **The court may refuse to give an indication**

Post hearing

Time for defence to consider

- If accepted – plea listed before same judge

Effect of sentencing indication at plea hearing

- Court cannot impose a more severe sentence
- Still possible the sentence might come down

Sentencing indication not accepted

- Fact of sentencing indication not admissible at trial
- Still possible for same judge to hear trial

■ **The judge's decision is final!**

How many applications?

Only one application unless change in circumstance

- New legislation qualifies as a change in circumstances – court ability to give a number
- Depending on timing, consider your bench
- A different judge is not bound by an earlier sentencing indication

Fees for Sentencing Indications

VLA

<u>County Court</u>	\$ 1,239
<u>Supreme Court</u>	\$ 1,688

OPP

<u>County Court</u>	\$ 778.80
<u>Supreme Court</u>	no set fee



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Megan Tittensor is an experienced trial advocate based at Gorman Chambers in Melbourne.

She has appeared in all types of criminal matters; notably murder, conspiracy, corporate and tax fraud, Occupational Health and Safety as well as drug and sexual offences.



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Caitlin accepts briefs in all areas of criminal and administrative law.

Caitlin has been involved as a junior in multiple pieces of large scale litigation including the Royal Commission into the Management of Police Informants. She also appears unled in trials, pleas, and bail applications.

Prior to practice, Caitlin worked as a solicitor advocate in both private and legal aid panel firms. She was also Associate to The Honourable Justice Lasry of the Supreme Court of Victoria.



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