

Appendices



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Appendix 1

Extra Surety Consultation

Failure to pay amount of surety ordered to be forfeited: section 6(1) *Crown Proceedings Act 1958*

The law in Victoria now

Section 6(1) of the *Crown Proceedings Act 1958* applies when bail has been breached and forfeited and the court orders payment of the amount of the surety. In default of payment of the surety the amount is to be obtained by seizing and selling the property of the surety. In default of seizure and sale, the surety may be imprisoned for a term not exceeding two years.

His Honour Justice Gillard's remarks in *Mokbel*

In considering an application under section 6 of the *Crown Proceedings Act 1958* for the forfeiture of bail and the payment of a surety, Justice Gillard made comments regarding the adequacy of the maximum term of imprisonment which may be imposed for failing to meet a surety:

'The Court invites Parliament to consider increasing the (current maximum two year) period, bearing in mind that the purpose of the default provision is to encourage both the accused and the surety to comply with their undertakings.'

Justice Gillard further noted that the two-year period of imprisonment had been the maximum since 1977, and was in his view inadequate when the undertaking is to pay a sum fixed as high as \$1 million.

Other cases on penalty for failing to meet surety

The only Victorian case, reported or unreported, that the commission has been able to find on this issue is *Re Condon* [1973] VR 427, which was referred to by His Honour Justice Gillard in *Mokbel*. In *Condon* the surety was ordered to pay the amount of the surety, which was \$5000, or in default to be imprisoned for 12 months. The amount of \$5000 was in those days substantial, and particularly so for Condon, as it amounted to half the value of her house. It was considered by the judge in that case to be 'substantial' but not 'unduly high' as the accused had been bailed on a charge of armed robbery which had netted \$280 000.

We have been unable to find any cases decided on section 32A of the *Queensland Bail Act 1980*, which contains a similar provision.

Legislation in other Australian states

In most other Australian jurisdictions, default of payment of the surety, or default of an order to seize and sell the property, is treated as defaulting on payment of a fine.

Queensland and Victoria are the only states which have an immediate default to a sentence of imprisonment, which in both cases is a maximum of two years. In other states if the amount cannot be recovered through civil enforcement orders the amount of the surety is enforced as if it was a fine. That is, a community based order is imposed in default of payment of the amount, and imprisonment is ordered only as a last resort on default of the community based order. The maximum term of imprisonment which can then be imposed is limited to: three months in NSW and the Northern Territory, and six months in the ACT and South Australia. In Tasmania and Western Australia the term of imprisonment is not limited but is calculated by reference to the amount of the surety. (See table overleaf for further information.)

QUESTIONS

Is the current penalty of two years imprisonment for failing to meet a surety provided for in section 6(1) of the *Crown Proceedings Act 1958* inadequate?

For what reasons should the current penalty either remain as it is or be increased?

Should the current provision remain, or is the civil forfeiture regime found in many other Australian states to be preferred?

Appendix 1

Extra Surety Consultation

Comparative table: Consequences of failure to pay amount of surety ordered to be forfeited

JURISDICTION	PROVISION	CONTENT	EFFECT
Australian Capital Territory	<i>Bail Act 1992 s 37</i>	Recovery as a fine under division 3.9.2 of the <i>Magistrates Court Act 1930</i>	Section 154D <i>Magistrates Court Act 1930</i> A fine defaulter may be committed to prison for a maximum of six months.
New South Wales	<i>Bail Act 1978 s 53I</i>	Unpaid bail money ordered to be forfeited to be recovered by the State Debt Recovery Office	<i>Fines Act 1996</i> provides for a civil forfeiture regime, then a community based order scheme, with imprisonment as the last resort where the fine has not been satisfied and community based order revoked: imprisonment for maximum of three months (s 90). NB: Separate offence in s 42A for fraudulent disposal of assets to prevent security being realised
Northern Territory	<i>Bail Act 1982 s 40</i>	Payment to be enforced under Part 8 of the <i>Fines and Penalties (Recovery) Act 2001</i>	Section 109 of the <i>Fines and Penalties (Recovery) Act 2001</i> allows forfeited bail to be recovered as a fine. Fines recovered by a civil forfeiture regime, then a community based order scheme, with imprisonment as the last resort where the fine has not been satisfied and community based order revoked: imprisonment for maximum of three months (s 88).
Queensland	<i>Bail Act 1980 s 32A</i>	Court ordering forfeiture of bail security to order that in default of payment the surety be imprisoned for a term of not more than two years	
South Australia	<i>Bail Act 1985 s 19</i>	Pecuniary forfeiture may be recovered as a fine	<i>Criminal Law (Sentencing) Act 1988</i> provides for civil recovery mechanisms, community service orders. Failure to comply with community service order may result in imprisonment for a maximum of six months (s 71).
Tasmania	<i>Bail Act 1994 s 21</i>	Amount may be recovered under s 80 of the <i>Justices Act 1959</i>	Section 80 of the <i>Justices Act 1959</i> was repealed in 1997 by the <i>Sentencing Act 1997</i> . As <i>Sentencing Act</i> re-enacts the repealed provisions the reference is taken to be to the provisions of the <i>Sentencing Act 1997</i> (s 17 <i>Acts Interpretation Act 1931</i>). Those provisions allow for community based order, civil recovery or imprisonment. Imprisonment is for the term of one day for every \$100.
Victoria	<i>Bail Act 1977 s 32</i> <i>Crown Proceedings Act 1958 s 6</i>	In default of payment of amount or seizure and sale of property surety to be imprisoned for a term not exceeding two years	
Western Australia	<i>Bail Act 1982 s 49</i>	Payment to be enforced under Part 5 of the <i>Fines Penalties and Infringement Notices Enforcement Act 1994</i> or order made under s 59 of the <i>Sentencing Act 1995</i>	Part 5 applies Part 4 (enforcement of fines) to unpaid sureties. Part 4 allows for civil recovery, work and development orders and in default imprisonment. Maximum period of imprisonment is calculated as one day for every \$150 of the fine or the maximum term of imprisonment for the offence. Court may also fix a period of imprisonment in default of payment under s 59 of the <i>Sentencing Act 1995</i> .

Appendix 2

Magistrates' Court of Victoria Data

Warrants of apprehension for failure to appear on bail

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	TOTAL
Children's Court							
Case finalised— offence type known	197	229	242	209	229	301	1407
Case unfinalised— offence type unknown	38	42	53	39	104	151	427
Magistrates' Court							
Case finalised— offence type known	5109	5551	5831	5959	5761	6458	34 669
Case unfinalised— offence type unknown	1267	1287	1551	1910	3218	3264	12 497
Total finalised cases	5306	5780	6073	6168	5990	6759	36 076

Explanatory notes:

1. Data is based on number of warrants issued against defendants. Where a defendant fails to appear more than once, both warrants are counted. The data is a count of cases. Where a case has become part of a consolidation, the consolidation is counted and the cases making up the consolidation are not included.
2. Data excludes defendants whose first warrant of apprehension order was before the five years of data provided.
3. Cases that were finalised prior to 2000-01 but have come back for a breach hearing where the breach may have resulted in a warrant of apprehension order have been excluded.

Data prepared by Court Services, Department of Justice, 16 May 2006 and 29 November 2006.

Appendix 3

Victoria Police Data

Fail to answer bail

YEAR	DISTINCT ALLEGED OFFENDERS			ALLEGED OFFENDERS	CHARGES	RECORDED OFFENCES*
	MALE	FEMALE	TOTAL**			
1999-00	2621	744	3378	4723	4979	1762
2000-01	2880	823	3719	5381	5763	1934
2001-02	2819	820	3645	5299	5620	2103
2002-03	2895	844	3744	5298	5708	2381
2003-04	2905	837	3744	5342	5723	2537
2004-05	3461	982	4449	6299	6871	3318
2005-06	3348	857	4210	5620	6378	6318

* The procedure in which fail to answer bail offences are recorded on LEAP changed on 1 July 2005, which resulted in an increase of approximately 3000 recorded offences.

** Includes people where sex is unknown

Distinct Alleged Offender: Count of distinct offenders who had been processed with Fail to Answer Bail at least once in reference period

Alleged Offenders: Count of Offender Processings which have at least one Fail to Answer Bail charge

Charges: Number of Fail to Answer Bail charges recorded on LEAP

Recorded Offences: Count of Fail to Answer Bail offences recorded on LEAP

Note: Because Fail to Answer Bail offences were recorded differently to other offences before 2005-06, these statistics have not been extracted in accordance with official Victoria Police statistical processes; as such, extreme care is advised in the use of these figures.

Produced by Corporate Statistics, Victoria Police. Extracted from LEAP on 18 July 2006 and subject to variation.

Appendix 4

Office of Public Prosecutions Data

Warrants issued for failure to answer bail

	2000	2001	2002	2003	2004	2005	2006
County Court	143	144	100	113	136	107	96
Supreme Court	1	1	0	0	1	0	1
Magistrates' Court	79	147	176	167	165	170	176

Notes: The Magistrates' Court figures relate only to indictable matters proceeding by way of committal, not all Magistrates' Court cases. Data supplied by Registry Section, Office of Public Prosecutions, 15 January 2007.

Appendix 5

Method of Processing Children by Victoria Police

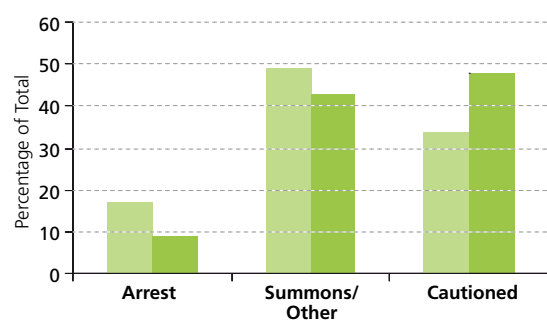
Children processed in Victoria 2004–2005

	ARREST		SUMMONS/OTHER		CAUTIONED		TOTAL
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	
Indigenous	69	17	205	49	143	34	417
Non-Indigenous	821	9	4173	43	4570	48	9654

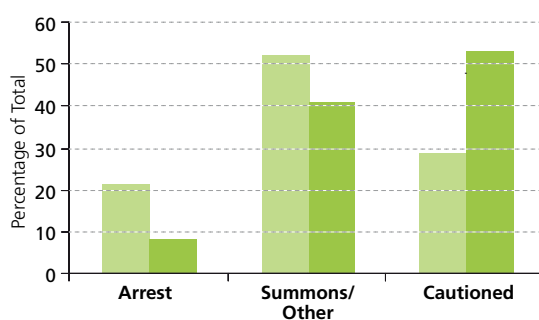
Children processed in Victoria 2005–2006

	ARREST		SUMMONS/OTHER		CAUTIONED		TOTAL
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	
Indigenous	83	21	204	51	113	28	400
Non-Indigenous	727	8	3961	40	4986	52	9674

Children Processed in Victoria 2004–2005



Children Processed in Victoria 2005–2006



LEGEND
■ Indigenous Children
■ Non-Indigenous Children

Method of Processing

Victoria Police Data provided by the Indigenous Unit, Department of Justice, 29 March 2007.

Appendix 6

Consultations

CONSULTATION	PARTICIPANTS	DATE
1	Terry Hannon, researcher	13 April 2005
2	Commonwealth Department of Public Prosecutions	14 April 2005
3	CREDIT Bail Support program	15 April 2005
4	Strategic Policy and Diversity Unit, Corrections Victoria	18 April 2005
5	Juvenile Justice, Department of Human Services	19 April 2005
6	Federation of Community Legal Centres	20 April 2005
7	Victoria Legal Aid	22 April 2005
8	Victorian Aboriginal Legal Service	22 April 2005
9	Office of Public Prosecutions	26 April 2005
10	Criminal Law Section, Law Institute of Victoria	28 April 2005
11	Prosecutor, Victoria Police	4 May 2005
12	Aboriginal Liaison Officer, Magistrates' Court of Victoria	5 May 2005
13	Client Service Officers, Victorian Aboriginal Legal Service	4 May 2005
14	Children's Court of Victoria	5 May 2005
15	Operational Police Officer, Victoria Police	10 May 2005
16	Disability Coordinator, Melbourne Magistrates' Court	16 May 2005
17	Daniel Gurvich, Barrister-at-Law	17 May 2005
18	Magistrates, Melbourne Magistrates' Court	19 May 2005
19	Australian Federal Police	22 May 2005
20	Criminal Justice Enhancement Program	24 May 2005
21	Youth Unit, Port Phillip Prison	31 May 2005
22	Victorian Criminal Bar	1 June 2005
23	Office of the Public Advocate	3 June 2005
24	Registrars, Melbourne Magistrates' Court	7 June 2005
25	Central After Hours Assessment and Bail Placement Service, Department of Human Services	8 June 2005
26	State Training Office, Court Services and Justices of the Peace and Bail Justices' Registry, Department of Justice	16 June 2005
27	Shepparton Police	20 June 2005
28	Client Service Officer, Victorian Aboriginal Legal Service, Shepparton	20 June 2005
29	Shepparton Magistrates' Court	20 June 2005
30	Victoria Legal Aid, Shepparton	21 June 2005
31	Moe Magistrates' Court	23 June 2005
32	Court Drug Assessor, Moe Magistrates' Court	23 June 2005
33	Moe Police	23 June 2005
34	Defence lawyers, Moe	23 June 2005
35	Murray Mallee Community Legal Centre	27 June 2005
36	Mildura Police	27 June 2005
37	Juvenile Justice, Mildura	27 June 2005
38	Mildura Magistrates' Court	27 June 2005
39	Juvenile Justice, Gippsland	29 June 2005
40	Indigenous community representatives, Geelong	30 June 2005
41	Police Prosecutions Unit, Geelong	30 June 2005

Appendix 6

Consultations

CONSULTATION	PARTICIPANTS	DATE
42	BAYSA Youth Services, Geelong	30 June 2005
43	Defence lawyers, Geelong	30 June 2005
44	Geelong Magistrates' Court	30 June 2005
45	Victims Support Agency	1 July 2005
46	County Court of Victoria	6 July 2005
47	Royal Victorian Association of Honorary Justices	11 July 2005
48	Supreme Court of Victoria	3 August 2005
49	Victims Assistance and Counselling Program	1 September 2005
50	Sentencing Advisory Council	5 January 2006
51	Court Integrated Services Program	5 January 2006
52	Indigenous Issues Unit, Department of Justice	25 January 2006
53	Koori Court Unit, Court Services	6 April 2006
54	Victoria Police Legal and Corporate Policy	10 May 2006
55	Victims Support Agency and Victoria Police Victims Strategy Project Team	18 May 2006
56	Honorary Justices Project, Court Services, Department of Justice	22 June 2006
57	Victims of Crime Coordinator, South Australia	1 August 2006
58	Criminal Justice Enhancement Project	8 August 2006
59	Honorary Justices Project, Court Services, Department of Justice	13 September 2006
60	Indigenous Issues Unit, Department of Justice	19 September 2006
61	Victoria Police Legal and Corporate Policy	3 October 2006
62	Court of Appeal, Supreme Court of Victoria	13 October 2006
63	Melbourne Magistrates' Court	25 October 2006
64	Court Integrated Services Program	7 December 2006
65	Indigenous service provider	12 December 2006
66	Police Officer, Moreland Criminal Investigation Unit	7 February 2007
67	Victims Support Agency, Department of Justice	15 March 2007
68	Koori Court Unit, Court Services	3 April 2007
69	Koori Court Officer, Broadmeadows Magistrates' Court	3 April 2007

Appendix 7

Submissions

NO	SUBMITTED BY	AFFILIATION	DATE RECEIVED	SURETY SUBMISSION RECEIVED
1	B Doogue and R Edney	Doogue & O'Brien, Criminal Defence Lawyers	21 April 2005	
2	Tom Munro	Solicitor	9 May 2005	
	Tom Munro	Outer Eastern Suburbs Regional Office, Victoria Legal Aid	11 May 2005	
3	CONFIDENTIAL		2 June 2005	
4	Jon Klestadt	Geelong Magistrates' Court	24 August 2005	
5	Sergeant Kyle McDonald	Prosecutions Division Research and Training Unit, Victoria Police	10 October 2005	
6	Paul Mullett	The Police Association, Victoria	16 December 2005	6a
7	Derek Sauer	Bail Justice	21 December 2005	
8	Michael Wilson	Bail Justice	11 January 2006	8a
9	Tom Munro	Solicitor	13 January 2006	
10	Arthur Rogers	Disability Services Division, Department of Human Services	18 January 2006	10a
11	Stephen Mayne	Bail Justice	24 January 2006	
12	Father Peter Norden SJ	The Ignatius Centre, Jesuit Social Services	24 January 2006	
13	Dr Chris Corns	La Trobe University	25 January 2006	13a
14	ANONYMOUS		31 January 2006	
15	Kristen Hilton	PILCH Homeless Persons Legal Clinic	31 January 2006	
16	Justin Quill	The Herald and Weekly Times	31 January 2006	
17	Associate Professor John Willis	Latrobe University	31 January 2006	17a
18	Steve Kirby	Bail Justice	31 January 2006	
19	John Fox	Bail Justice	30 January 2006	19a
20	Kerrie Bence	South Eastern Centre Against Sexual Assault	31 January 2006	
21	Lynnette Barratt	Solicitor	7 February 2006	21a
22	Chief Magistrate Ian Gray	Magistrates' Court of Victoria	7 February 2006	22a
23	Jenny Peachey	Victoria Police Corporate Strategy and Performance	7 February 2006	23a
24	Tony Parsons	Victoria Legal Aid	7 February 2006	24a
25	Jill Gleeson	Victims Assistance Program, Sunraysia Community Health Service	9 February 2006	
26	Toni Ditz	Eastern Victims Assistance and Counselling Program	10 February 2006	
27	Janelle Morgan	Courts and Programs Development Unit, Department of Justice	10 February 2006	
28	David Christian	WISE Employment Services	13 February 2006	
29	Catherine Gale	Law Institute of Victoria	15 February 2006	29a
30	Paula Grogan	Youthlaw	20 February 2006	
31	Pauline Spencer	Federation of Community Legal Centres	21 February 2006	
32	Stan Winford	Fitzroy Legal Service	21 February 2006	32a
33	Mark Pedley	Deputy Director (Melbourne), Commonwealth Director of Public Prosecutions	22 February 2006	33a
34	Frank Guivarra	Victorian Aboriginal Legal Service	22 February 2006	34a
35	Vanda Hamilton	St Kilda Legal Service	25 February 2006	
36	Lindsay Smail	Geelong Association of Honorary Justices	25 February 2006	

Appendix 7

Submissions

NO	SUBMITTED BY	AFFILIATION	DATE RECEIVED	SURETY SUBMISSION RECEIVED
37	Graeme Johnson	Justice of the Peace	28 February 2006	37a
38	Vivienne Topp	Mental Health Legal Centre	28 February 2006	
39	His Hon Chief Judge Michael Rozenes	Bail Act Review Sub-Committee, County Court of Victoria	03 March 2006	39a
40	Sue Hogan	Urban Seed	06 March 2006	
41	Glenn Barr	Office of Public Prosecutions	10 March 2006	41a
42	Gill Callister	Department of Human Services	17 March 2006	
43	Phil Grano	Office of the Public Advocate	05 April 2006	
44		Knox Honorary Justices Group	03 May 2006	
45	Stephen Shirrefs	Criminal Bar Association	12 May 2006	
46	D Leo King	Royal Victorian Association of Honorary Justices	25 May 2006	46a
47	Peter Matthews	Barrister	26 June 2006	
48	Nancy Hanley	Court Network	26 July 2006	
49	Pauline Spencer	Magistrate	30 March 2007	

Appendix 8

Roundtables

ROUNDTABLE	PARTICIPANTS	DATE
1: The Tests for Bail	Richard Blackwell, Victoria Legal Aid Serge Sztrajt, Victoria Legal Aid Tony Parsons, Victoria Legal Aid Mark Higginbotham, Police Prosecutions Jessie Hughes, Law Institute of Victoria Chief Judge Michael Rozenes, County Court Judge Roy Punshon, County Court Stephen Shirrefs SC, Criminal Bar Association Magistrate Lisa Hannan, Magistrates' Court (now Judge Hannan) Paul Coghlan QC, Director of Public Prosecutions President Chris Maxwell, Court of Appeal Chief Magistrate Ian Gray, Magistrates' Court of Victoria Stan Winford, Federation of Community Legal Centres Joel Orenstein, Federation of Community Legal Centres	21 March 2006
2: Children and Young People	Sally Reid, Youth Referral and Independent Third Person Program Jan Noblett, Juvenile Justice, DHS Cherie Thompson, Police Prosecutions Sue Hay, Police Prosecutions Jane Gibson, Victoria Legal Aid Stella Stuthridge, Law Institute Victoria Bernie Geary, Child Safety Commissioner Anna Radonic, Youthlaw Jack Vandersteen, Office of Public Prosecutions Magistrate Peter Power, Children's Court	29 March 2006

Appendix 8

Roundtables

ROUNDTABLE	PARTICIPANTS	DATE
3: After-hours Bail	<p>Vivienne Topp, Mental Health Legal Centre Stephen Shirrefs SC, Criminal Bar Association Anna Radonic, Youthlaw Serge Sztrajt, Victoria Legal Aid Magistrate Lisa Hannan, Magistrates' Court (now Judge Hannan) John Fox, Bail Justice Michael Bourne, Court Services, Department of Justice Andrew Closey, Law Institute of Victoria Barry Bolton, Registrar, Magistrates' Court Magistrate Peter Power, Children's Court Leo King, Royal Victorian Association of Honorary Justices Rodney Stewart, Victoria Police Jan Noblett, Juvenile Justice, DHS Phil Grano, Office of the Public Advocate Rosemary Ebel, Central After Hours Assessment and Bail Placement Service Stan Winford, Federation of Community Legal Centres</p>	4 April 2006
4: Victims and Bail	<p>Kerrie Bence, South East Centre Against Sexual Assault Toni Ditz, Victims Assistance and Counselling Programs Karen Hogan, Gatehouse Centre Will Crawford, Federation of Community Legal Centres Noel McNamara, Crime Victims Support Association Lauren Darling, Victoria Police Chief Inspector Alan Kennedy, Victoria Police Inspector Richard Koo, Victoria Police Suzanne Whiting, Victims Support Agency Samantha Horsfield, Victoria Legal Aid Libby Eltringham, Domestic Violence and Incest Resource Centre Fred Kent, Court Network</p>	9 May 2006
Indigenous Bail Forum	<p>Ray Ahmat, Chair, Hume Regional Aboriginal Justice Advisory Committee Joanne Atkinson, Hume Regional Aboriginal Justice Advisory Committee Michael Bell, Barwon South West Regional Aboriginal Justice Advisory Committee Michael Bourne, Court Services, Department of Justice LeeAnne Carter, Aboriginal Liaison Unit, Melbourne Magistrates' Court Raylene Fennell, Loddon Mallee Regional Aboriginal Justice Advisory Committee Antoinette Gentile, Indigenous Issues Unit, Department of Justice William Glenbar, K Milward Consulting Services Rox Jackson, Barwon South West Regional Aboriginal Justice Advisory Committee Greta Jubb, Victorian Aboriginal Legal Service Ben Mante, Indigenous Issues Unit, Department of Justice Daphne Milward, K Milward Consulting Services Karen Milward, K Milward Consulting Services Peter Rotumah, Metro South East Regional Aboriginal Justice Advisory Committee Rosie Smith, Koori Court Unit, Department of Justice Matthew Stewart, Northern/Western Region, DHS Annette Vickery, Koori Court Unit, Department of Justice</p>	4 May 2006

Glossary

Bail justices are volunteers who make bail decisions at night and on weekends when courts are not open.

Chroming refers to the practice of inhaling paint fumes.

Cognitive impairment includes, but is not limited to, impairment due to intellectual disability, mental illness, dementia and acquired brain injury.

Community-based dispositions include community-based orders, intensive corrections orders, combined custody and treatment orders and parole.

A **corroborator** is a police officer who assists the informant, who is the main coordinating officer of the investigation. Whenever an accused is arrested an informant and corroborator are assigned to the case.

Counsel is the term used to describe the lawyer who advocates for an accused in court.

Defendant means a person who is charged with an offence.

Emerging communities are those groups of new migrants who do not have a history of immigration to Australia.

The **first mention date** is the date the accused first appears before the court, usually the Magistrates' or Children's Court.

In chambers means in the judge or magistrate's office. Some decisions can be made in chambers rather than in open court.

Inherent jurisdiction in this case refers to the Supreme Court's ability to hear any matter.

Interlocutory applications are procedural matters decided during the course of a case. They are not determinative of the final outcome of the case.

Intervention orders restrain the behaviour of a person in some way for a set or indefinite period. Breaching an intervention order is a criminal offence.

Leave to appeal is the permission a court gives to a party to appeal a court decision. Parties have a right to appeal some decisions. For others, they must apply for leave.

A **police informant** is the officer in charge of the investigation of the accused.

A **schedule** is located at the back of an Act of Parliament.

Substantive provisions are sections of an Act that create, define and regulate people's rights or liabilities.

To **show cause** means to provide good reasons.

A **surety** is a person or people who undertake to ensure an accused will appear in court and abide by their other bail conditions. The surety puts up security, such as money or title to a residential property, which can be taken by the court if the accused fails to appear.

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