

From: Judicial Registrar Barry R Johnstone
Sent: Friday, 21 June 2019 3:04 PM
To: DJCS-VLRC-LawReformMail (DJCS)

Subject: Contempt in the face of the Court

Dear Sir/Madam,

I wish to comment on the subject matter of your consultation paper regarding issues concerning contempt.

The subject of how judicial registrars (JRs) of the Magistrates' Court deal with certain types of behaviour in court is in fact proposed to be discussed at the next State JR meeting in July next,

JRs have delegated jurisdiction pursuant to section 16I of the *Magistrates Court Act 1989* (MCA). The extent of such jurisdiction is outlined in Part 2 of the *Magistrates' Court (Judicial Registrar) Rules 2015*.

Since JRs were legislated in 2006 the delegated jurisdiction (eg: traffic matters and personal safety intervention order applications) of JRs has increased and there is no reason to believe that further jurisdiction won't be delegated in the future. I believe statistics show that JRs deal with a significant number of matters across the State in proportion to their number (13 JRs appointed as at June 2019) and in comparison to the number of sitting magistrates (in excess of 100).

JRs deal with less serious matters however predominately the parties before the court are self-represented. Many have had no previous legal advice (usually because of the cost) and/or little understanding of court processes. To many parties the penalties ordered by JRs (even though monetary, as imprisonment is precluded by section 16I(b), MCA) may cause hardship and consequently they become upset and sometimes aggressive in court. Although for the most part the JR may be able to calm the situation or, if necessary, arrange for security to be on standby, on occasions a party or a member of the public will become more aggressive or agitated than is acceptable. It becomes more problematic if in fact it is the party who has a proceeding before the court. The JR has a discretion to order the party be removed but the threshold appears to be where "*the person has abused that right [to remain in court] for the purpose of obstructing the proceedings by unseemly, indecent or outrageous behaviour*" (see *Boros v O'Keefe* [2017] VSC 560 at para 21).

In any event, magistrates have the issue addressed by the provisions of section 133, MCA. Whilst not suggesting JRs have any power to imprison as provided therein, JRs should be able to resort to some penalty in the event (however unlikely) that a party or member of the public goes way beyond the boundaries of acceptable behaviour in court.

For the public in a courtroom the JR who is presiding is the face of the administration of justice and of the court. The JR, in my view, should have the option of being able to warn an unruly person that they may be penalised for their behaviour, which is supported by legislation.

I therefore submit that some form of legislation be enacted to support JRs in their judicial role in such circumstances

Regards

Barry R. Johnstone
Judicial Registrar

