

# INVESTIGATION UNIT TRAINING PACKAGE

(C)

## COURT MODULE

### *Units*

<i>Unit C1</i>	<i>Court Structure</i>
<i>Unit C2</i>	<i>Court Craft</i>
<i>Unit C3</i>	<i>Participants in Court</i>
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## Unit C1: COURT STRUCTURE

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### Objectives

*By the end of this unit you will be:*

- aware of the different courts in New Zealand
- familiar with the structure of court

## Court Structure

### INTRODUCTION

The District Court is the first in the chain of courts in which hearings and appeals can be held. It is usual for prosecutions by the Ministry to be heard in the District Court. It is the first tier of the court structure.

There are two ways in which Ministry prosecutions can be heard. The first is by judge alone where a judge will hear all the evidence and then make a decision on that evidence. The second is by jury trial. In these cases the judge will assist 12 jurors to deliberate over the case.

The majority of the Ministry's prosecutions are resolved by the defendant entering guilty pleas. These prosecutions are managed by Legal Services and often the investigator does not need to be involved.

However, when a defendant enters pleas of not guilty the investigator will need to work with Legal Services to progress the tasks required when managing a defended hearing.

The defendant has the right to elect whether they are tried by judge alone or whether they are tried by a jury. The Ministry's Legal Services team will represent the Ministry on cases tried by judge alone. Matters to be tried by a jury are referred to the Crown Solicitor's office. In both cases the investigator will be required to prepare for a trial which includes completing statements, preparing and summoning witnesses, attending to disclosure and most likely giving evidence.

At a jury trial, 12 jurors will be appointed and will decide, based on all the evidence presented to them, whether the prosecution has proved their case beyond a reasonable doubt (the criminal standard of proof). A unanimous decision is the best outcome but a majority decision (of say 11-1) may also be acceptable. Where a decision cannot be reached, or a majority verdict is not acceptable, the case will have to be heard again before another jury. A jury may also continue with 11 jurors if one juror has been excused (usually due to illness).

The judge's role in a jury trial is to ensure that the trial runs in accordance with the governing law and that all jurors understand any legal concepts involved, for example, what constitutes an element of an offence. The judge offers guidance to the jury on all legal matters that arise.

There is the power to apply to have the case heard in the High Court whether the defendant has elected to have the matter heard before a judge alone or before a jury. This power is rarely used as the circumstances of the case would have to be unusual before the High Court would entertain such an

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application but you should be aware that this power exists. The types of cases that could go directly to a High Court jury trial include sexual offences and/or murder.

## HIGH COURT

The High Court is the second tier in the court structure. In the main, the only way that the Ministry's prosecution cases make it to the High Court is when the decision of the District Court judge is disputed (either as to the conviction, sentence or a point of law). In these cases an appeal can be lodged with the High Court. Either the prosecutor or defence counsel can do this. If the Ministry wishes to pursue an appeal we need to instruct the Crown Solicitor's office.

See your Legislation Module and Reviews and Appeals Module for more information on the topic on civil appeals which follows the same court structure. Also see the Case Law unit with regard to decisions of the higher courts being binding on the lower courts, for example, a decision of the Court of Appeal is binding on the High Court and District Court; and a High Court decision is binding on the District Court. District Court decisions are not binding on higher Courts or future District Court decisions.

## COURT OF APPEAL

The Court of Appeal has no power to hear cases in the first instance as the District Court and High Court can. As the name suggests the Court of Appeal can only hear appeals from the District and High Court decisions.

## SUPREME COURT

The Supreme Court Act 2003 establishes the Supreme Court of New Zealand. The Act establishes within New Zealand a new court of final appeal comprising New Zealand judges –

- to recognise that New Zealand is an independent nation with its own history and traditions; and
- to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be resolved with an understanding of New Zealand conditions, history and traditions; and
- to improve access to justice.

Since 1 July 2004, the Supreme Court of New Zealand replaced the Judicial Committee of the Privy Council, which is located in London.

## HEARING STRUCTURE

When a case is brought to court there is a set pattern by which these cases proceed whether they are heard by a judge alone or by a judge and jury.

The prosecutor always goes first in presenting the facts relied on by the informant in support of their case. In a jury trial the prosecutor "opens" first in that he/she gets the first opportunity to address the jury. This would not always happen in cases that are being presided over by Judge alone, although the prosecutor has an opportunity to make an opening address to the Court. In this address the background facts, elements of the offence that need to be proved, and a brief rundown of the evidence will be given. The prosecutor then calls witnesses who give evidence in support of the case.

Once each prosecution witness is called and has given their evidence in chief defence counsel is entitled to cross examine each prosecution witness. Following cross examination the judge may ask questions of a witness.

Once the prosecutor has presented all the evidence, the defence counsel then gets an opportunity to address the judge or jury with his/her client's case and may call witnesses to give evidence in support of their case.

Just as a defence counsel can cross examine the Ministry's witnesses so too can the prosecutor. Again the judge can also ask questions of a witness.

A defendant does not have to give evidence in cases.

When all the evidence has been heard, both the prosecutor and defence counsel have an opportunity to sum up their cases. This is called their closing address.

If the case is heard by a judge alone, then he/she will make a decision at that time or if the issues are complex, the judge may reserve his/her decision to further consider all the evidence. If the case is heard before a judge and jury, the judge will direct the jury on the aspect of law involved and the jury will then retire to consider their decision.

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**NEXT UNIT - UNIT C2: Court Craft**

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## COURT MODULE

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## Unit C2: COURT CRAFT

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### Objectives

*By the end of this unit you will:*

- know the mechanics of the court process
- understand the place of formality in the court process
- understand the way you give evidence in court



## Court Craft

### INTRODUCTION

The presentation of a prosecution case is a mixture of hard work and immaculate preparation (of both documentary and people evidence).

Remember that the whole presentation is put forward in a public venue with all the participants required to take a particular role.

Knowledge of the way a court case is presented is helpful so that not only is it presented correctly, but the formalities and peculiarities of court behaviour are observed.

### COURT TECHNIQUE

It is most important to remember that this is a criminal trial and that a certain degree of formality is required. The style of advocacy and the presentation of witnesses should be on a more formal basis than say, the Family Court or Social Security Appeal Authority cases, where some informality might be expected.

The primary task for the Ministry is to prove the ingredients of all charges *beyond reasonable doubt*. This will be done by witnesses adducing evidence which supports the charges, so that there is no doubt which will allow the then alleged offender to be acquitted.

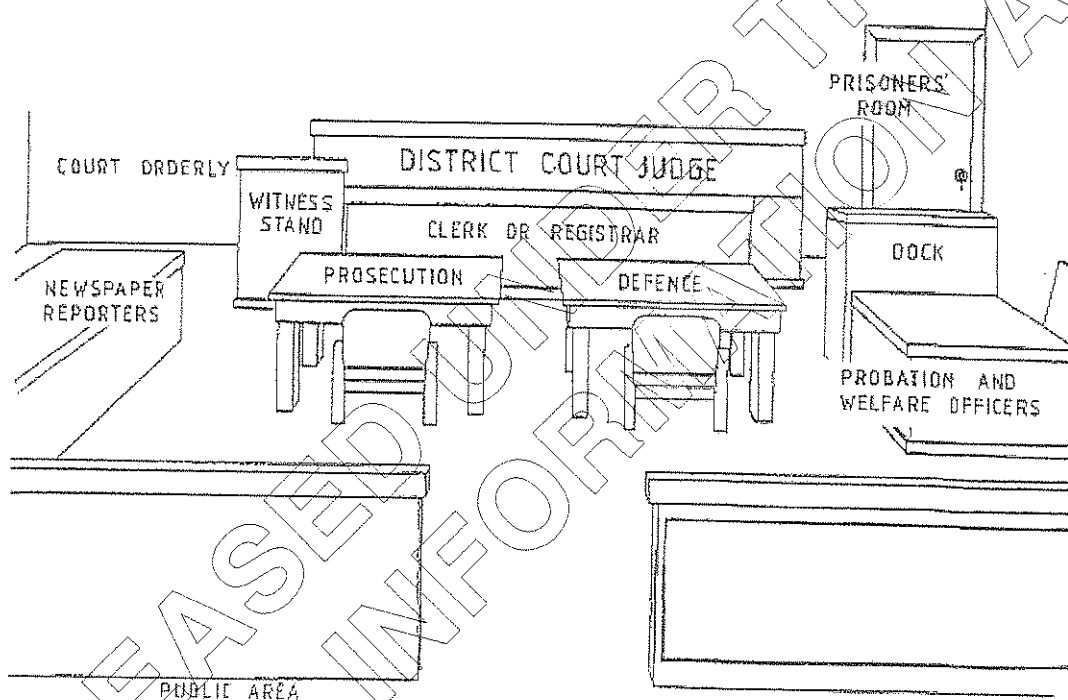
The Prosecution Module outlined briefs of evidence and summoning of your witnesses. As the officer in charge of the case not only could you be required to give evidence you will also need to support the witnesses appearing for the Ministry. Many people have not given evidence in a court of law so you will need to support and put your witnesses at ease while the case progresses.

The task of a witness is to persuade the Court that their evidence is to be believed and to produce any relevant documents to assist in this primary objective. Their evidence should be in written form (a "brief of evidence" or "brief") which you would have prepared and discussed with them some reasonable time before the Court is due to hear the charge(s). It is best practice for you, as the officer in charge, to go over the witnesses briefs with them prior to them giving evidence.

As part of the preparation of a brief of evidence, all the documents to be produced as evidence should be examined by the witness to make sure that they remember their contents and that the document is what they expect.

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You should also be familiar with the Court layout, so that you know where you will be required to give your evidence from and where you can sit after having given your evidence, if you wish to stay for the duration of the case. Similarly, you should know where the prosecution counsel (Police, Crown or Ministry solicitor) will be sitting in Court, so you have a familiar face to obtain assistance from as you move towards the place where you will give evidence. The following is a general layout and may differ in the Court you appear in. In particular, the prosecutor is likely to sit in front of defence counsel and their client.



**Dress**

Be aware of the seriousness of the occasion and dress accordingly, with discretion and respect. Present yourself in a professional dress manner. Men are expected to wear a tie and jacket, and women, a jacket.

**Behaviour**

When the judge enters or leaves the courtroom, you will be asked to stand. You will usually give your evidence standing in the witness box, though there are some local variations. If you have any questions over the appropriate behaviour, check this with the prosecutor before the hearing.

**Addressing the Court**

Call the judge "Your Honour" or "Sir/Madam" (pronounced "Marm"). Call the prosecutor, defence counsel, defendant or other witnesses by their surname eg, Mrs Smith or Mr Brown.

## ATTENDANCE IN COURT

The Ministry will usually obtain written summons for all Ministry staff and non-staff witnesses except you as the Investigator. It is important that you receive sufficient notice of the hearing by discussing this with the prosecutor *well* before the likely date of hearing. While the prosecutor is in charge of the case, they will be very busy conducting the court proceedings. You as the officer in charge will need to take a lead role in looking after the witnesses while they are waiting to give evidence. It is likely that the Ministry witness(es) will know all the other witnesses. It is good practice to ask them not to discuss their evidence with each other before they give evidence. Please reassure them, as attendance in Court is almost always nerve-racking, and a confident witness is much more likely to be a persuasive witness.

## EVIDENCE

Be aware that witnesses are almost always excluded from the hearing before they have given evidence, although this may not apply to the chief prosecution witness (or officer in charge of the case). The prosecutor may ask the Court's leave for the officer in charge to be seated by them throughout the case, although this may be impossible if you are attending to witnesses.

Remember that your evidence will be recorded as you give it. It is usually typed as you are giving it, so make sure that you slowly and clearly. Leave a small gap between any questions and your answers and give all your answers to the judge. Thus, when either prosecutor or defence counsel ask a question, face them to receive the question, allow a pause then turn to the judge and give the answer.

- **Swearing or affirming (truth telling)**

A witness has a choice of whether to swear "on the Bible", to "affirm" (declare) or use some other culturally appropriate method of assertion that they will tell the truth when they give evidence. Make sure the prosecutor knows how you want to make your assertion, particularly if that method is unusual.

The Registrar will administer the oath or affirmation to the witness in the usual form of words. The English system of administration is used, so there is no need to place a hand over the heart or raise it in the air as you may have seen on TV.

- **Examination in Chief**

This is the witness's opportunity to set out their "story", with both the prosecution and defence witnesses being asked to give direct evidence of the matters that they are familiar with and entitled to

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present evidence about. In all but the most unusual cases, the witnesses will have been "briefed", and their evidence prepared in a brief with the counsel in charge of the case. During the course of preparation, difficulties with the evidence will have been discussed, so that the reasons for the evidence that you thought was invaluable and which has been rejected by your counsel are considered and explained. Ministry witnesses will have been advised when and how documents are produced to the Court as exhibits. While exhibits have been discussed in a previous module, the correct way to introduce these to the Court is as follows:

"This is (... *document* ...) referred to in my evidence and which I now produce to the Court as Exhibit (... *numbered in sequence* ...)."

The document is then given to the Court Registrar, who will stamp it and hold it as part of the Court file. The prosecutor should have provided you with a photocopy to refer to during the course of giving further evidence and for cross-examination.

- **Cross-examination**

This seems to be the most feared part of Court practice. Some witnesses may be concerned that they will immediately be broken down by an aggressive defence counsel, and could be made to look like a liar! This is far from the truth (we hope!). Make sure that you discuss the likely cross-examination with the prosecutor, and, if you think it helpful, either ask the prosecutor to practice with the witness or practice with the witness yourself if you are comfortable doing so.

## QUESTIONING

If the prosecutor or defence counsel ask you questions which are not clear about or do not understand, seek clarification from the questioner before answering. If you do not know the answer, do not be afraid of saying so. Whatever you do, do not make it up. If you are asked by any counsel for a "yes" or "no" answer only, or if counsel cuts you off before you have finished your answer, which causes a lack of accuracy or completeness of the answer, ask the judge if you can complete your answer. Usually, this will be allowed.

If you are asked for an opinion, make sure that you have sufficient expertise to provide that opinion. If not, then say to the Court that you can only answer the question from your own experience, letting the Court decide your expertise. This becomes an issue for counsel conducting the case.

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- If you are asked "*is it possible ...?*", then put the answer into context. It is more persuasive to say "*it may be possible, but it is highly unlikely*" than just saying "*no*", unless it is actually impossible.
- If the questioner is aggressive, misinterprets or misquotes you, be assertive in your correction, but do not react to the aggression.

The key to any court action is preparation. The relationship between you and the prosecutor is vital and preparation is the prime requirement within this relationship. If there is any concern over this issue, please discuss this with your Legal Services.

### PREPARING YOUR WITNESS

As mentioned above you will be responsible for looking after all of the witnesses that the Ministry will call to give evidence. Again as mentioned above many witnesses that you call would not be familiar with giving evidence and it can be daunting for them.

You need to ensure that you have meet with them, imparted all of the techniques discussed in this module and done your best to help them feel at ease.

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**TEST**

1. Find the wording of the oath or affirmation that you will use in Court.
2. Are you entitled to give evidence about:
  - entitlement for benefits
  - the method of paper filing in the Ministry and the reasons why income declarations are now used less than previously
  - the method of investigation of a person who is suspected of being in a marriage type relationship.
3. What should you do if you receive a summons from the client's solicitors to appear in Court for the evidence?

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## ANSWERS

1. Find the wording of the oath or affirmation that you will use in Court.

*Oath*

"Do you swear by Almighty God that the evidence you are about to give touching the matters before this Court will be the truth, the whole truth and nothing but the truth?"

*Answer*

"I do".

*Affirmation*

"Do you solemnly, sincerely and truly declare and affirm that the evidence that you are about to give touching the matters before this Court will be the truth, the whole truth and nothing but the truth?"

*Answer*

"I do".

2. Are you entitled to give evidence about:

- **entitlement for benefits**

Not usually, unless you have a particular expertise in that area. Even then it would be usual for another staff member other than the investigator, to give this evidence of current Ministry practice.

- **the method of paper filing in the Ministry and the reasons why income declarations are now used less than previously**

Not usually, unless you have a particular expertise in that area. Even then it would be usual for another staff member other than the investigator, to give this evidence of current Ministry practice. Particularly as far as office practice is concerned. This should be discussed with the local Legal Services solicitor.

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**- the method of investigation of a person who is suspected of being in a marriage type relationship**

Usually you are able to give this evidence particularly when the questions address the way you have conducted a particular case. Then, you might be the only person who could know how the investigation was conducted and that will be the reason for your giving evidence.

**3. What should you do if you receive a summons from the client's solicitors to appear in Court for the evidence?**

Discuss this with your local Legal Services solicitor. While this would be unusual, it is possible. The desired outcome will be for the Service to call you as their witness and make you available for cross-examination by the defence counsel. However, it may be tactically advantageous for you to be called by the defence to give evidence.

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**NEXT UNIT - UNIT C3: Participants in Court**



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### Objectives

*By the end of this unit you will:*

- be able to discuss the roles of the participants on a court hearing

## Participants in Court

### INTRODUCTION

Each participant in the prosecution process has a role to play. The roles are historically based and this has led to some recent questioning of some of those roles, and particularly, procedures where for example, some of the language is archaic or some of the results may seem overly biased toward one side or another.

However, the process has been little changed recently and the prosecution process remains as a dramatic moment in the life of society. As a result, it will have traumatic effect on most people involved - not just the defendant but also the witnesses and the professional law officers as well.

The usual persons involved are:

- The Judge
- The Registrar
- The Prosecutor
- Defendant
- Defence Counsel
- Witnesses
- Press
- Court Attendant
- Public
- The Jury
- Probation Services

### PEOPLE INVOLVED IN THE COURT PROCESS

#### ***The Judge - (District Court)***

A judge has always been a senior solicitor before being elevated (promoted) to the Bench. A criminal court is a serious place and to show this a judge in a criminal case wears a black judicial gown (but not the wig of a High Court Judge). The judge is called "Your Honour" or "Sir/madam" (pronounced marm).

#### ***The Registrar***

The Registrar, or Clerk, sits in front of the judge usually on a lower level. The Clerk (called Mr or Madam Registrar) is responsible for the administration of the case and makes sure that the business of the day runs smoothly.

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The Registrar has control of the list of business and the necessary files which make up the list. The Registrar calls the case and is responsible for deciding which case will be heard and in which order. Ministry Legal Services team will cultivate this relationship as they control when the case is called and the likely waiting time in Court.

***The Prosecutor***

This will be the Police, the Crown Solicitor or the Legal Services Solicitor. The Prosecutor presents the Ministry's case to the Court.

***Defendant***

This is the technical term for the person who is being prosecuted in a criminal hearing.

***Defence Counsel***

This is the solicitor acting for the defendant. The Defence Counsel's task is to put the defendant's position in the best possible light and to discover whether the prosecutor has made its case beyond reasonable doubt.

Often other Counsel concerned with other cases can be present during your case. This is normally perfectly proper.

***Witnesses***

There can be witnesses both for the prosecution and the defence. The Prosecutor's witnesses are the first to give evidence and should have been briefed ie, a written statement of their evidence will have been prepared which will have been discussed with the Prosecutor before the Court hearing. This is the usual role of the Ministry staff. Occasionally you may be summonsed to give evidence on the part of the defendant (client), usually about the practice of the Ministry. If you are ever served with a summons to give evidence for a defendant, please seek advice from your Legal Services solicitor. If you are asked to give evidence on behalf of a defendant, then advise the defendant or their Counsel that you are unable to give such evidence without a summons.

***The Press***

One of the underlying principles of justice in New Zealand is that justice must be able to be seen being done. The freedom of the Press to report any criminal case extends to cases of benefit fraud, unless a judge makes an order either suppressing the name of a defendant or any details of evidence in the case. In benefit fraud cases, this would be unusual, though not impossible.

A relationship with local newspaper reporters may assist in the publication of benefit fraud case details which plays its own part in the deterrence of further offending.

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***Court Attendant***

The Court Attendant is responsible for the security of the court and calls parties and witnesses into court, carries messages and exhibits and announces the arrival and departure of the judge.

***The Public***

The criminal court is usually held in public unless there are private ("chambers") matters to discuss. These private matters usually relate to matters of points of law. Almost everything else is held in public, even if evidence or identity of parties is suppressed. If evidence or other matters are suppressed, you are not allowed to give details of the suppressed material to anybody, including the Ministry file.

***The Jury***

A jury, once selected, is made up of 12 people (men and women). It is used in a District Court where a defendant has elected jury trial or in a High Court hearing. Almost always if there is to be a jury, a benefit fraud case will be heard before a District Court jury. It is their task to decide upon the verdict of "guilty" or "not guilty" to the charge(s). Their task is to decide on the facts (set out in the evidence) after they have been instructed in the law by the judge.

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**TEST**

1. How many jurors have to say that the defendant should be found "not guilty" before the verdict of the jury is, in fact, "not guilty"?
2. Are newspaper reporters allowed to report a successful method of defrauding the Ministry - a new and highly undetectable method of obtaining improper benefit advances?
3. What is the role of a witness for the Ministry?
4. How is the Ministry's client referred to in Court, and what do you call the client when you give evidence about him/her in Court?

## ANSWERS

1. **How many jurors have to say that the defendant should be found "not guilty" before the verdict of the jury is, in fact, "not guilty"?**

Normally twelve (a unanimous verdict) but a majority verdict may also be acceptable (say 11-1). A jury may run with less than 12 jurors if one juror is excused.

2. **Are newspaper reporters allowed to report a successful method of defrauding the Ministry - a new and highly undetectable method of obtaining improper benefit advances?**

Unless the evidence of the method has been suppressed by the Judge, the newspaper reporter is allowed to report the method of fraud. If there are concerns about a method, discuss the prospects of suppression of evidence with the prosecutor. There will usually be little difficulty in having this evidence suppressed.

3. **What is the role of a witness for the Ministry?**

The role of the Ministry's witness is to present the evidence to the Court that the defendant has committed an offence, but for the Court to decide, not the Ministry witness, that the defendant is guilty. For that reason, avoid language that explicitly or impliedly gives this impression.

4. **How is the Ministry's client referred to in Court, and what do you call the client when you give evidence about him/her in Court?**

The client can be referred to as either "the client" or preferably by name eg, Mr Smith. He can also be referred to as "the defendant", though this may give an unfortunate impression (see answer to question 3).

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**NEXT UNIT - UNIT C4: Sentencing**

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### Objectives

*By the end of this unit you will:*

- be able to discuss the types of sentencing available
- be aware of the principles of sentencing as they affect benefit fraud cases

## Sentencing

### INTRODUCTION

Sentencing occurs after a defendant has either admitted the charges filed against them or has been found guilty at a hearing of those charges.

A judge is likely to deal with sentencing immediately after conviction, unless the matter is particularly serious, and imprisonment or home detention will be a sentencing option. It is likely that sentencing will happen immediately after conviction in a benefit fraud case though there is an option for the judge to defer sentencing and request either a pre-sentence report and or submissions from the defence counsel or prosecution counsel.

Usually a pre-sentence report will be required to be compiled by a community probations officer together with the option of other reports as is appropriate - victim impact, or more usually a reparation, or community care report. For Ministry staff, there has been a move away from seeking reparation from the Court, though this may be appropriate from time to time.

At a later date when the reports have been completed, the defendant returns to Court for the judge to impose sentence. There are a wide variety of sentences available which are discussed below.

There are sentencing principles which guide judges both statutory principles and precedent, which suggest both the type of sentence available and its severity.

Principles of the Sentencing Act include but are not limited to holding the offender accountable for harm they may have caused to the victim, denounce the conduct of an offender, deter the offender or others from committing the same or similar offending, protect the public and assist the offender into rehabilitation.

Further principles otherwise used must take in to account the gravity, the seriousness of the offence in comparison with other types of offence and consider the effect of the offence and sentence has on the offender, the victim the offender's family, whanau and community.

The statutory guidelines set out in the Social Security Act 1964 allow for a sentence of up to a maximum 12 months imprisonment and/or a fine of up to \$5000 for each benefit fraud charge under the Act. The Crimes Act allows for

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a range of sentences from 3 months to 10 years imprisonment depending on the nature of the offending.

## TYPES OF SENTENCES AVAILABLE

There are a wide variety of sentences available. A judge can also impose more than one type of sentence at a time.

### ***Diversion***

While this is an option for ordinary Police prosecutions, it is not an option for benefit fraud matters. There may be ways to achieve the same result. Generally the types of cases that should be given this type of consideration should have attracted an imposition of a penalty under Section 86(2) and have not been referred to the District Court in the first instance.

### ***Discharge Without Conviction***

Both the Sentencing Act 2002 (section 106) and the Crimes Act 1961 (s.347) allow for discharge without conviction. This has the effect that a person has an acquittal despite guilt being proven. If this sentence is used, it is possible for the Court to impose Court costs and/or reparation.

### ***Conviction and Discharge***

The effect of this sentence is that a person is convicted but that there is no other penalty. Again this is likely to be rare in any but the most trifling of benefit fraud cases (section 108 Sentencing Act 2002).

### ***Order to come up for sentence if called upon – commonly called a deferred sentence***

If a court does not wish to impose an immediate sentence, then this option is available. This allows for the release of the offender but allows some control for a period of up to 1 year. To achieve this, conditions for release can be imposed with no apparent limitation on the type of conditions. If the conditions are complied with, no further penalties are applied but if not, the offender can be re-sentenced on the charges for which this penalty was imposed. (Section 110 Sentencing Act 2002)

### ***Fine***

For benefit fraud cases, fines of up to \$5000 on each charge can be imposed. The law also provides for installment payments and further consequences, should the fines not be paid.

### ***Reparation***

This is a court directed method of payment by an offender where there has been property loss which almost invariably happens in benefit fraud matters. Generally the Ministry should not seek reparation because the Ministry has

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statutory powers within the Act to effectively obtaining overpayments direct from the client.

If imposed, the amount of reparation should be realistic and generally not require a long period to repay. As a result, reparation may not be for the full amount of the overpayment. Further, just because reparation has been ordered does not prevent the Ministry from recovering any overpaid benefit over and above the reparation ordered. This is an area where a case by case approach should be discussed with your Legal Services solicitor should reparation be considered.

***Supervision***

Supervision is a community based sentence which requires offenders to address the cause of their offending. Supervision can be imposed for not less than 6 months and not more than 1 year. Once sentenced to Supervision the offender would need to comply with conditions imposed such as restrictions on where they reside, participation in treatment or attendance in rehabilitation programmes.

***Intensive Supervision***

Intensive Supervision is a community based sentence which requires offenders to address the cause of their offending. Supervision can be imposed for not less than 6 months and not more than 2 years.

***Community Work***

Community Work is a community based sentence where the offender will be required to do unpaid work in the community. A judge can impose Community Work sentences between 40 and 400 hours.

Community Work can be work done with a group supervised by the Community Probation Service or can be on an individual basis through placement with an agency. The offender may also do a combination of group or individual Community Service.

Offenders who do group Community Work are supervised by the Community Probation Service and a Work Party Supervisor will organise work projects. This sentence type was introduced by the Sentencing Act 2002 and incorporates the former sentences of Community Service and Periodic Detention.

***Community Detention***

Community detention again is a community based sentence but places a curfew on the offender. This sentence must be imposed for a period of less than 6 months. A curfew period exceeding 2 hours but not exceeding 48 hours can be imposed.

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***Home Detention***

Home detention was introduced in October 1999. This sentence allows offenders to serve their prison sentence at their home or approved place of residence (such as a Marae). Home detention allows offenders to maintain family relationships, work or seek employment and attend rehabilitative programmes that are designed to address the cause of their offending.

***Imprisonment***

If under any enactment an offender is liable to imprisonment the court may impose imprisonment for the maximum term provided for the particular offence or any lesser term. Any terms of imprisonment are usually imposed concurrently rather than cumulatively ie, if there are 6 willful omission charges under section 127 Social Security Act for which the offender received 6 months imprisonment on each charge, the total sentence is 6 months rather than 3 years if the sentence is concurrent. Concurrent sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are of a similar kind and are a connected series of offences.

A person who is sentenced to more than 12 months imprisonment can be paroled after service of 1/3 of their sentence, but those receiving under 12 months (most usual for benefit fraud cases) must be released after serving half their sentence (section 90 Criminal Justice Act 1985).

The commencement date of a term of imprisonment can be deferred for a period of up to two months on humanitarian grounds or if there are exceptional circumstances. Section 110 of the Sentencing Act 2002.

**SENTENCING PRINCIPLES**

As well as the penalty provisions of the statutes involved and any guidance from sentencing precedents, the sentencing judge will have regard to the aims and objectives of sentencing in order to decide what social factors should influence the choice of a particular penalty. The principle aims and purposes of sentencing are detailed in sections 7 & 8 of the Sentencing Act 2002. Each of the factors that are to be considered are weighed in the balance before the decision to impose a particular sentence.

Section 9 of the Sentencing Act 2002 also outlines the factors that are to be taken into account as aggravating and mitigating factors.

7. Purposes of sentencing or otherwise dealing with offenders—

(1)The purposes for which a court may sentence or otherwise deal with an offender are—

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- (a) to hold the offender accountable for harm done to the victim and the community by the offending; or
- (b) to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm; or
- (c) to provide for the interests of the victim of the offence; or
- (d) to provide reparation for harm done by the offending; or
- (e) to denounce the conduct in which the offender was involved; or
- (f) to deter the offender or other persons from committing the same or a similar offence; or
- (g) to protect the community from the offender; or
- (h) to assist in the offender's rehabilitation and reintegration; or
- (i) a combination of 2 or more of the purposes in paragraphs (a) to (h).

(2) To avoid doubt, nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to.

8. Principles of sentencing or otherwise dealing with offenders—  
In sentencing or otherwise dealing with an offender the court—

- (a) must take into account the gravity of the offending in the particular case, including the degree of culpability of the offender; and
- (b) must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and
- (c) must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and
- (d) must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and
- (e) must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders

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in respect of similar offenders committing similar offences in similar circumstances; and

(f) must take into account any information provided to the court concerning the effect of the offending on the victim; and

(g) must impose the least restrictive outcome that is appropriate in the circumstances; and

(h) must take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and

(i) must take into account the offender's personal, family, whanau, community, and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose; and

(j) must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including, without limitation, anything referred to in section 10).



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**TEST**

1. What is the maximum penalty for benefit fraud cases?
2. What is the minimum penalty for benefit fraud cases?
3. What is the difference between a an order to come up for sentence if called upon and deferred commencement?
4. What community service facilities or options are available for a person convicted of benefit fraud in your area? Answer with reference to a local community corrections officer.

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## ANSWERS

**1. What is the maximum penalty for benefit fraud cases?**

Social Security Act - for each charge, the maximum penalty is 12 months imprisonment and/or a fine of \$5000. Some Crimes Act Charges where the amount is less than \$500 then the maximum penalty is only 3 months imprisonment.

Crimes Act - for each charge a maximum penalty of up to 7 or 10 years imprisonment depending on the value of the amount obtained by the offending.

**2. What is the minimum penalty for benefit fraud cases?**

In neither the Social Security Act nor the Crimes Act is a minimum penalty set out and therefore the lightest penalty able to be imposed is a discharge without conviction. This may include an order for costs. See s.19 Criminal Justice Act 1985 and s.227 Crimes Act 1961.

**3. What is the difference between a deferred sentence and a suspended sentence?**

If a deferred sentence is imposed and a defendant reappears before a Court for further criminal offending within a period of up to 12 months, the defendant can be re-sentenced on the previous charges to any available sentence. The deferral of the commencement of a term of imprisonment means that the sentence is directed to be started on a day other than that which it is imposed.

**4. What community service facilities or options are available for a person convicted of benefit fraud in your area? Answer with reference to a local community corrections officer.**

This cannot be answered without reference to a local community corrections officer. However, the service available is likely to be for the benefit of the community in various ways as diverse as gardening for the local IHC hostel to the setting up of a Kohanga Reo computer administration system. In each case, there should be an attempt to craft the programme for the benefit of the community taking into account the skills of the defendant.

**CONGRATULATIONS!!**

You have now finished the **Legislation and Case Law Module**

**WELL DONE!**

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