

4. Working Together for Safety

Speaker - Mr Brian Hine - Acting Chief Magistrate, Queensland

Thank you for inviting me to address your state conference. I have been given a number of questions to guide me in my short speech this morning. I propose to look at some of those questions and then to make myself available for any additional questions, which you might like to ask.

Firstly - What are the magistrates' views of the role of court assistance workers?

Magistrates see the role of the court assistance worker primarily as that of a support person for the aggrieved in the domestic violence matter. The precise nature of this role may vary from court to court.

Court assistance workers are assumed to have an understanding of the dynamics of domestic violence, as well as training and experience in dealing with those who have been involved in domestic violence. The support which they offer is seen to include providing assistance to an aggrieved person in the completion of an application for a protection order, and to give support during the court hearing.

They are expected to have a working knowledge of the *Domestic and Family Violence Protection Act 1989* and of the support services that are available within the particular community wherein they operate.

The court assistance worker is also seen to have a role in establishing procedures for making referrals to appropriate community organisations, and they are seen to have a role contributing to the development and implementation of courthouse safety protocols.

How do Magistrates envisage court assistance workers operating in a coordinated way with the justice system?

To focus my answer to this question, I have been provided with the following quote from the *Practice Standards for Working with Women Affected by Domestic and Family Violence*, produced by the Department of Families:

“Workers who provide court assistance provide an important role in the establishment and maintenance of coordinated community responses (CCR,s) with pivotal links to Police, Courts and other services providing support and assistance to people affected by domestic and family violence.”

A number of courts are involved in the establishment of Integrated or Coordinated Community Responses to domestic violence. These involve the development of shared protocols between the Magistrates Court, the police and community organisations, and will result in a closer working relationship between these bodies.

Of course, with the expansion of the Act, the Court Assistance Workers will need to be aware of persons ranging from elders through the spectrum to teenagers. With this, Magistrates will be looking to them for assistance in identifying and recommending service providers who support the broader scope of people coming before the Courts in domestic violence matters.

What is happening in the Queensland Magistrates Court with the broadening of the domestic and family violence legislation?

This year's Queensland Magistrates' State Conference was held here in Brisbane in early April. At that conference, Mr Stephen Page, a solicitor with Bennett, Carroll & Gibbons, provided an update on domestic violence matters to the Magistracy. His speech was focused upon the changes to the legislation arising from the *Domestic Violence Legislation Amendment Act 2002* Qld and the *Discrimination Law Amendment Act 2002* Qld.

In his concluding comments, Mr Page offered the following predictions:

What will the effect of the new legislation be? Certainly services in the sector were concerned when the 1999 amendments were passed, in part because of a concern that there might be a massive influx of lesbian clients without any further government money or resourcing.

Whilst there have certainly been applications by gay and lesbian people for protection orders, there has not been, to [his] information, such a massive influx at all, but merely a relatively small number of new applications.

The predictions of the width of these changes include that it will now cover certain incidences of elder abuse, the abuse of HIV positive people by their carers and the use by high school children to stop bullying by their boyfriends/girlfriends.

It is hard to predict what effect there may be.

What changes have the courts seen in Domestic Violence applications since the amendments under the *DV Legislation Amendment Act* and the *Discrimination Law Amendment Act* commenced on 10 March and 1 April of this year?

Comparing the number of applications lodged in the month in this financial year with the corresponding number of applications lodged in the same month of the previous financial year the following is observed. DV applications increased by 43.2 per cent in March of this year as compared with March of 2002; 41.4 per cent in April and 47.3 per cent in May. The increases for the preceding months in the financial year ranged from -5.3 percent in October to 15.6 per cent in December with an average increase of 5.98 per cent. So speaking generally, we have seen a substantial increase in the number of applications made since the changes in the legislation commenced.

Has the trend also been reflected in the number of Protection Orders made? Again comparing the number of orders made within any given month with those of the corresponding month of the year beforehand. For March, April and May of this year, there were increases in the number of Protection Orders of 37.2 per cent, 38.2 per cent and 39.9 per cent. These figures can be compared to the increases prior to the commencement of the amendments, which ranged from -8.4 per cent in November to 16.8 per cent in December with an average increase in the number of protection orders of 5.3%. This is evidence of an increase in the number of Protection Orders being made under the new provisions of the legislation.

Different Magistrates have different approaches to domestic violence applications.

The High Court of Australia in the matter of *Re Colina; Ex parte Torney* [1999] HCA 57 (22 October 1999) made the following comments in relation to the authority of a Chief Justice or Chief Magistrate to direct other magistrates in their judicial capacity.

The flaw in the argument is that it assumes a relationship between a Chief Justice and a member of his or her court which is contrary to fundamental principles of judicial independence. It is frequently overlooked that the independence of the judiciary includes independence of judges from one another. The Chief Justice of a court has no capacity to direct, or even influence, judges of the court in the discharge of their adjudicative powers and responsibilities. The Chief Justice of the Family Court has, by virtue of s 21B of the Family Law Act, responsibility for ensuring the orderly and expeditious discharge of the business of the court. That administrative responsibility does not extend to directing, or influencing, or seeking to direct or influence, judges as to how to decide cases that come before them.

Similarly, in the office of Acting Chief Magistrate, I cannot direct, influence or seek to direct or influence any other Magistrate as to how they decide cases that come before them, including domestic violence applications.

When deciding cases, Magistrates are directed only by the law itself, whether statutory or case law. To this effect, material is distributed to Magistrates when it becomes available. This includes decisions of the higher courts, update services and legal journals.

What type of training do magistrates attend or possess?

To qualify for appointment as a Magistrate, an applicant must have at least five years experience as:

- a) a barrister or solicitor of the Supreme Court; or
- b) a barrister, solicitor, barrister and solicitor or legal practitioner of:
 - i) the Supreme Court of another State or a Territory; or
 - ii) the High Court.

If a person was employed in a Magistrates Courts Office before the 1st of January 1992 and had qualified for admission as a barrister or solicitor of the Supreme Court and then was so admitted, they are taken to have been a barrister or solicitor from when they qualified.

The appointments to the position of Magistrates have a wide variety of experience and bring with them different depths of knowledge in the range of fields of law dealt with in the Magistrates Courts. New appointees are given one week of intensive orientation. They are then given further assistance by their peers in the first few months as they become proficient in the roles and responsibilities of the Magistrate.

Professional development is encouraged through attendance at conferences. There are limited resources for sending Magistrates to conferences, so many choose to do so at their own expense.

As I mentioned earlier, the Queensland Magistracy holds a conference each year. This takes the form of either a single conference involving all Magistrates from around the state or a number of regional conferences for surrounding Magistrates. An update on the legislative changes regarding Domestic Violence has featured at the conferences for this year and for 2002. Domestic violence issues are always raised and discussed. The conference provides a great opportunity for Magistrates to raise the different approaches that they take to these matters and to learn from each other.

So in the limited time that I have had available to talk today, I hope that I have shed some light on the expectations concerning the role of court assistance workers, especially given the changes to the legislation. I have also briefly identified the impact of those changes on the courts. Finally I have provided a limited insight into the way in which Magistrates operate.

I expect that there may now be some more specific questions concerning how the Magistracy and DV Court Assistance Workers deal with domestic violence matters in the current legislative environment.

I wish to thank you all for the difficult job you do and the assistance you provide to the court. Your assistance is appreciated by the magistrates all over Queensland. I wish you well on your deliberations at your conference.