

# TRIAL DIRECTIONS FOR THE LOCAL COURT ADVOCATE

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*“The operation of the general principles have a significance which goes beyond trial by jury. In New South Wales, and other Australian jurisdictions, trials for indictable offences are not infrequently conducted by a judge sitting without a jury. Summary offences are tried by magistrates sitting without a jury. In such cases, the reasoning of the judge, or magistrate, is constrained by the same principles as govern the deliberations of a jury.”*

Gleeson CJ in *Azzopardi v The Queen* [2001] HCA 25 at [2]

This paper will discuss trial directions (**Directions**) and their use in the Local and Children’s Courts.

Directions are not often considered routinely by advocates in the Local and Children’s Courts when preparing and presenting cases for hearing. They are perhaps seen by some as being relevant only to trials by jury in the District and Supreme Courts. But, as former Chief Justice Gleeson observed in *Azzopardi v The Queen*, the same principles of law govern the reasoning of magistrates hearing cases summarily as govern the deliberations of a jury. Directions are relevant in summary hearings and can be a useful tool for advocates to consider when preparing and presenting their cases.

In this context it is worth considering that in NSW over 90% of criminal prosecutions are dealt with to finality in the Local Court (Local Court of NSW Annual Review 2012). The Children’s Court has jurisdiction to hear and determine summarily a wide-range of criminal offences allegedly committed by children and young people. The Local and Children’s Courts dispense the bulk of criminal justice in this State.

This paper has two aims:

1. To provide an overview of six Directions which might more commonly arise in cases heard in the Local and Children’s Courts.

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2. To provide examples of how these Directions might be used to assist advocates in preparing and presenting their cases for hearing.

The six Directions outlined and discussed in this paper are:

1. The onus and standard of proof.
2. Circumstantial evidence.
3. Complaint evidence.
4. Identification evidence.
5. Character evidence.
6. Self-defence.

Other Directions will arise in the Local and Children's Courts. But this paper is limited in its scope to these six Directions.

This paper is intended to demonstrate how these Directions might be used in preparing and presenting cases for hearing. It should be seen as merely a starting point for further reading.

By way of further reading, attached to this paper is a table containing a list of Directions beyond the six discussed below. The table is designed as a quick reference guide. The Judicial Commission of NSW maintains the *Criminal Trial Courts Bench Book* (see in particular [2-000] – [4-000]) and LexisNexis a loose-leaf service *Australian Criminal Trial Directions*. Each of these services has been relied upon in preparing this paper.

## **1. Onus and standard of proof**

Directions in relation to the onus and standard of proof are perhaps considered by some to be matters that do not need to be recapitulated, so well-known are the underlying principles. But in all cases the onus and standard of proof are of critical importance.

The House of Lords in *Woolmington v DPP* [1935] UKHL 1 spoke of the “golden thread” of English Criminal Law:

- That it is the prosecution's duty to prove an accused person's guilt (subject to the defence of mental illness or specific statutory exceptions).
- No burden lies on an accused person to prove their innocence.
- If the evidence in a case raises a doubt as to guilt, the accused person is entitled to the benefit of that doubt.

- The criminal standard of proof beyond reasonable doubt is the highest standard of proof known to the law.
- It is insufficient for the prosecution to prove that the offence *might* have been committed or even that it is *more likely than not* to have been committed.

In NSW the “*golden thread*” is the basis of Directions about the onus and standard of proof.

### Onus

In relation to the onus of proof the Directions provides:

- That the burden of proving the accused’s guilt is placed on the prosecution.
- That burden is in respect of each element or essential fact forming the offence/s with which the accused is charged.
- That burden never shifts to the accused.
- There is no obligation on the accused to prove any fact or issue in dispute.

Where the accused calls evidence or gives an exculpatory account in a record of interview with police the Direction adds:

- That this does not alter the burden of proof.
- The accused does not have to prove that any version offered is true.
- The prosecution must satisfy the Court that the accused’s version or any version given by witnesses called on the accused’s behalf should not be accepted as a version that *could reasonably be true*.

### Standard

In relation to the standard of proof the Direction provides:

- That the prosecution must prove the accused’s guilt beyond reasonable doubt.
- That is the high standard the prosecution must achieve.
- The question that must be asked at the close of the evidence and after submissions is:

*Is there any reasonable possibility that the accused is not guilty?*

- The prosecution’s obligation is to prove the elements of the offence/s beyond reasonable doubt and not every single fact that arises on the evidence.

Where the accused calls evidence or gives an exculpatory account in a record of interview with police the Direction adds:

- That if the version offered by the accused or by witnesses called on the accused's behalf is accepted the Court must bring in a verdict of not guilty.
- That if it is *reasonably possible* that the version offered by the accused or by witnesses called on the accused's behalf is true the prosecution have failed to prove the accused's guilt beyond reasonable doubt.

### Liberato and Murray

Two Directions related to the onus and standard of proof are the *Liberato* and *Murray* Directions. Each only applies in particular circumstances.

A *Liberato* Direction is given in circumstances where there is a conflict between the evidence of a prosecution witness and the evidence of a defence witness and the outcome of the case turns upon that conflict. The direction is derived from the judgment of Brennan J in *Liberato v The Queen* [1985] HCA 66 at [11]:

*"When a case turns on a conflict between the evidence of a prosecution witness and the evidence of a defence witness, it is commonplace for a judge to invite a jury to consider the question: who is to be believed? But it is essential to ensure, by suitable direction, that the answer to that question (which the jury would doubtless ask themselves in any event) if adverse to the defence, is not taken as concluding the issue whether the prosecution has proved beyond reasonable doubt the issues which it bears the onus of proving. The jury must be told that, even if they prefer the evidence for the prosecution, they should not convict unless they are satisfied beyond reasonable doubt of the truth of that evidence. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the accused contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue."*

A *Murray* Direction is given in circumstances where there is a prosecution witness whose evidence is essential for the prosecution to prove its case beyond reasonable doubt. The direction is derived from the judgment in *R v Murray* (1987) 11 NSWLR 12 and says:

- That in such cases *caution* should be exercised before convicting the accused.
- That the Court must be satisfied beyond reasonable doubt of the *honesty* and *accuracy* of the essential prosecution witness before convicting the accused.
- The reason for caution is the onus and standard of proof placed on the prosecution.
- The evidence of the essential prosecution witness should be *carefully examined* to determine whether their evidence is reliable beyond reasonable doubt.

- In considering the evidence of the essential prosecution witness other evidence should be looked at to see whether it supports the evidence of that witness.

The following is an example of how these Directions may be used in practice.

### Example

The case is a prosecution in the Children’s Court for indecent assault allegedly committed by an accused young person (14) in a juvenile residential care facility at night time. The evidence available to the prosecution is:

1. A recorded JIRT interview with the complainant young person setting out the allegation.
2. A record of interview with the accused young person in which he denied the offence and gave an account of his movements inside the house on the night in question.
3. Evidence from carers on duty at the facility on the night in question to the effect that they did not hear or see anything to corroborate the complainant.

This is a case where the *Murray* Direction would apply. The Direction is capable of forming the basis of closing argument. For example:

The evidence of the complainant in this case must be carefully examined as to its honesty and accuracy because that evidence is essential to the prosecution’s proof of the offence and it is not supported by other evidence in the prosecution case.

In these circumstances, where the evidence of the complainant is essential to the prosecution discharging its onus of proof, the honesty and accuracy of the complainant’s evidence must be proved by the prosecution beyond reasonable doubt.

When assessing the honesty of the complainant’s evidence in this case the Court might consider:

[...]

and/or

When assessing the accuracy of the complainant’s evidence in this case the Court might consider:

[...]

The Court would consider the evidence of the accused young person in his record of interview with the police in determining whether the prosecution have discharged their onus of proving the offence beyond reasonable doubt.

The relevant question for the Court in relation to the accused young person’s record of interview is:

Whether what the accused young person says in that interview is *reasonably possible*?

If the answer to that question is yes then an acquittal necessarily follows.

What the accused young person says in his record of interview is reasonably possible because:

[...]

The accused young person does not need to prove that what he says in his record of interview is true. It is for the prosecution to satisfy the Court that the accused young person's account cannot be accepted as a version that could reasonably be true.

By using the Direction as a basis for closing argument the real issues in the case are readily identified:

1. The complainant's honesty.
2. The complainant's reliability.
3. The accused's account and the correct approach when considering that account.

## **2. Circumstantial evidence**

Directions in cases based wholly or in part upon circumstantial evidence builds upon what has been outlined above in relation to the Directions concerning the onus and standard of proof. However circumstantial evidence Directions centre upon the method of reasoning the prosecution relies on in order to prove its case.

The Direction provides:

- That in relying upon circumstantial evidence the prosecution asks that certain facts be found and from those an *inference* be drawn as to the existence of further facts.
- In a circumstantial case no individual fact can prove the guilt of the accused.
- The circumstantial evidence must be considered and weighed as a whole.
- The correct approach is to:
  - First determine what facts are established by the evidence (no particular fact need be proved beyond reasonable doubt).
  - Second ask whether those facts taken as a whole establish that the accused is guilty of the offence/s charged:
    - If such a conclusion doesn't reasonably arise the prosecution will have failed to prove its case.

- If such a conclusion does reasonably arise, then it must be determined whether there is *any other reasonable conclusion arising from the facts that is inconsistent with guilt*. If the answer is yes the prosecution will have failed to prove its case.

The last bullet point above focuses attention on what *conclusions* arise when considering the evidence as a whole.

In addition to the standard Direction, there is an additional Direction that applies in cases where there is an *“intermediate fact”* that is an indispensable link in the chain of reasoning the prosecution contends establishes the accused’s guilt i.e., the intermediate fact is essential: see *Shepherd v The Queen* (1990) 170 CLR 573. In such cases a Direction is given that the intermediate fact essential to the prosecution proving the accused’s guilt must be proved beyond reasonable doubt not because on its own it proves guilt but because it is an essential step in the reasoning the prosecution contends establishes the accused’s guilt.

The following is an example of how circumstantial evidence Directions may be used in the context of preparing and presenting a particular case for hearing.

#### Example

The case is a prosecution in the Local Court for break, enter and steal. The evidence is:

1. A statement from the victim to the effect that when he left for work that morning his property was secure.
2. When he arrived home that evening his garage door was open onto the street.
3. That some items had been taken from his garage.
4. There was a DVD on the driveway of the premises which belonged to the victim and normally was stored in the victim’s garage.
5. There was a fingerprint of the accused located on the outside cover of the DVD.

It is not proposed that the accused will give evidence or that evidence will be called on his behalf.

The Direction when used as a basis for closing argument might read:

The evidence in this case is wholly circumstantial.

The prosecution invite the Court to infer from the presence of the accused’s fingerprint on the DVD cover that he did break, enter and steal from the subject property.

The question for the Court is whether the presence of the accused’s fingerprint on the DVD cover establishes the accused’s guilt beyond reasonable doubt of each of the elements of that offence.

Because the evidence in this case is wholly circumstantial, the court would consider whether there are any other reasonable conclusions to draw from the evidence other than the guilt of the accused. If there are other reasonable conclusions to draw then the prosecution will have failed to prove its case.

The evidence permits other reasonable conclusions to be drawn. These include:

[...]

The Direction identifies the applicable test in a circumstantial case. By using the Direction you are able to succinctly state what the relevant question is and then answer that question by reference to the evidence. When an advocate cannot draw other reasonable conclusions on the evidence (other than the guilt of the accused) this may indicate something about the strength of the prosecution case.

### **3. Complaint evidence**

Complaint evidence arises in many types of cases, however much of the law that has developed in this area relates to cases of sexual assault. In the Local and Children's Courts complaint evidence is most likely to arise in cases alleging physical or sexual violence.

There are a number of evidentiary matters that an advocate must be conscious of when dealing with complaint evidence. These include:

- The restriction to first-hand hearsay (s.62 *Evidence Act 1995* (**Act**)).
- Evidence of complaint where the maker not available (s.65(2) of the Act).
- Evidence of complaint where maker is available (s.66(2) of the Act).
- Evidence of complaint led to re-establish the credit of the complainant (s.108(3) of the Act).
- Discretion to limit the use made of complaint evidence (s.136 of the Act).
- Warning as to the potential unreliability of hearsay evidence (s.165(1)(a) of the Act).

A simple example of complaint evidence is:

- A assaults B.
- B immediately tells C about the assault.
- Both B and C give statements to the police and give evidence at the hearing consistent with their statements.
- Evidence of what B told C about the assault is hearsay but admissible as complaint evidence pursuant to s.66 of the Act.



- The complaint evidence can be relied upon by the prosecution:
  - To establish consistency with the evidence given by B and therefore positively impact on B's credibility; and
  - For its hearsay purpose i.e., to prove the truth of the facts asserted by B to C about the assault.

Where complaint evidence is led the Direction provides:

- That the Court must decide whether complaint was made and if so what the content of that complaint was.
- If it is accepted that complaint was made, evidence of that complaint can be used as *some evidence* that the offence occurred i.e., evidence independent of the evidence given by the complainant.
- The Court is entitled to consider the timing and manner of the complaint that would indicate that the allegation is reliable.
- The weight to be given to it is a matter for the Court.
- The complaint evidence can also be used for consistency purposes i.e., that it makes the evidence of the complainant more believable than if they had not raised the complaint as and when they did.
- The relevant question is:

*Did the complainant act in a way that one would expect them to act given what they allege happened to them?*

- This question bears upon the consistency of the complainant's conduct given their allegation/s.
- On the contrary, if the complainant has not acted in a way that one would expect them to act given what they allege happened to them, then that may indicate that the allegation is false. Not that the allegation *must* be false, but that it *may* be false.
- Just because a person complains more than once does not make the complaint evidence more or less reliable.

The use that is made of complaint evidence can be limited pursuant to s.136 of the Act so that it is not admitted for its hearsay purpose but only for consistency purposes: see *Papakosmas v The Queen* (1999) 196 CLR 297. In these circumstances the Direction adds:

- That the complaint evidence only goes to the consistency of the conduct of the complainant.
- It may impact on the assessment of the complainant's credibility. But it can only be used in this way.
- It cannot be used as evidence that the allegation occurred.

Complaint evidence is only admissible when the complaint was made at a time when the events described were "fresh in the memory" of the complainant (see s.66(2A) of the Act; *Graham v The Queen* (1998) 196 CLR 606).

A lack of complaint or delay in complaint are both relevant to assessing the credibility of a complainant.

It is also sometimes the case that a delay in complaint can result in forensic disadvantage being occasioned to an accused. Such forensic disadvantage must be identified and particularised by the defence. Forensic disadvantage is sometimes subject to a Direction: see s.165B of the Act; *Longman v The Queen* (1989) 168 CLR 79. The length of the delay is also a relevant consideration. However, it is not as likely that forensic disadvantage will arise in cases being dealt with summarily.

#### Example

- The accused is a taxi driver.
- The accused drove the victim home at 11pm.
- The victim had been drinking but was not heavily intoxicated.
- The victim stated that when the accused took the fare from her he started to touch her on the breast and attempted to kiss her. The victim stated that she screamed and ran out of the taxi.
- The victim, 30 minutes later, rang her work to say she would not be coming in tomorrow. She was upset but did not mention anything about the assault.
- The next morning at 10am she told her boyfriend and his mother that she had been assaulted by the taxi driver (her boyfriend and his mother live across the road from where she resides and were both home on the evening of the alleged incident).
- The accused lives alone.
- After the victim spoke to her boyfriend and his mother she contacted her best friend and told her about the alleged incident (her complaints were consistent with her statement to police and with one another).

- After she spoke to her friend the police were contacted.
- The accused was arrested. He took part in an ERISP and agreed that he took the victim home in his taxi, but he denied that any assault took place.
- There was no camera working in the taxi and no other witnesses to the incident.

This Direction when used as a basis for closing argument might read:

The Court is entitled to consider the evidence of complaint in this case as being some evidence that the offence occurred (subject to a limit upon the use of the evidence pursuant to s.136 of the Act).

If it is found that the complaints were made then the Court must first determine the content of those complaints.

It is conceded in this case that the complaints made were consistent. However, the Court must then focus upon the *timing and manner* of each complaint in determining whether to rely upon that evidence.

In this case the following matters are relevant to the Court's assessment of the timing and manner of each complaint:

[...]

The Court would consider whether the complainant in this case acted in a way that one would expect her to have acted given what she alleges happened to her. The following evidence is relevant to the Court's assessment of this aspect:

[...]

If the Court finds that the complainant did not act in way that one would expect her to have acted given what she alleges happened to her, the Court may conclude that her allegation is a false one.

The fact that in this case the complainant complained to three people does not mean that her complaint is more or less reliable. Repetition of a false complaint does not make that complaint any less false.

From the Direction the central issues about complaint evidence clear:

1. The consistency/inconsistency of the complaint evidence to the complainant's evidence.
2. The timing and manner of the complaint.
3. What the complainant did and whether or not it is what would be expected.
4. The irrelevance of a multiplicity of complaints.

#### **4. Identification evidence**

Identification evidence comes in many forms and it's necessary to consider with some precision the type of identification evidence that is being led in a particular case. For example:

- Visual identification evidence – based wholly or in part upon what a person saw but does not include picture identification evidence (consider s.114 of the Act).
- Picture identification evidence – based wholly or in part on the person examining pictures (consider s.115 of the Act; *Festa v R* (2001) 208 CLR 593).
- Resemblance evidence – “it looked like” or “sounded like” (not sufficient to sustain a conviction but often admissible as part of a circumstantial case).
- Recognition evidence – accused is recognised by someone who knows or is familiar with them.
- Opinion evidence – for example ad hoc expert opinion of a police officer as to the identity of voices on an intercepted telephone recording.
- Description evidence – not strictly identification evidence but may warrant a warning.
- In-court identification – excluded by s.114 of the Act (if done a jury is often directed that the identification has no evidentiary value).

The Direction is a good starting point for considering the approach to take to identification evidence. The Direction provides:

- Evidence that the accused has been identified must be approached with *special caution*.
- Caution in relation to the *reliability* of the identification *not the honesty* of the identifying witness.
- Just because a witness is honest does not mean that the witness will give reliable evidence.
- Because the witness honestly and sincerely believes their evidence is correct their evidence will present as impressive, even persuasive. However, even if the Court thinks that the witness is honest in their evidence as to identification, that evidence must be approached with *special caution*.
- In assessing the reliability of the identification evidence the Court must consider:
  - Whether the person identified was a stranger to the witness (it is obviously harder to identify strangers than it is to identify people who are well known).
  - What opportunity (or period of observation) did the witness have?

- Did the witness focus their attention on the person or was it just a casual sighting that didn't have any significance for the witness at the time?
- In what light was their observations made?
- Was there anything about the person observed which would have impressed itself upon the witness? In other words, was there anything distinctive about the person?
- Was there any special reason for remembering the person observed?
- Was the witness under any stress or pressure at the time? If the witness was under any stress or pressure at the time, how might that have affected their ability to observe and store an image of the person's appearance in their memory?
- Does the witness come from the same racial background as the person identified? (It may be more difficult for a member of one race to identify an individual of another racial group).
- When was the witness first asked for a description of the person and how fresh was their memory at that time?
- How did any description given by the witness compare with the appearance of the accused?
- How long was it between the sighting of the person and the giving of the description to the time that the witness identified the accused?
- Any one of the above circumstances may possibly lead to error in the identification of the accused.

### Example

The accused is charged with committing an act of indecency. The facts are as follows:

- The victim was at a pub in Cronulla and had been drinking with her friends all day.
- She accidentally entered the men's toilet and saw a male person positioned at the urinal.
- The male person was urinating in an upwards direction towards his own mouth.
- The male person looked at her and said: *"do you want some of this?"*

- The male person started to move quickly towards her, his penis exposed, still urinating. The whole incident took place over approximately 10 seconds.
- The victim ran out of the toilet and kept running all the way to Cronulla police station.
- The victim gave police a description of the male person that she saw. She stated that he was a short Caucasian male, heavily tattooed, with short brown hair, wearing a white t-shirt.
- The accused was arrested at the pub and the victim took part in a line-up and identified the accused.
- The accused was not known to the victim.
- There were no other witnesses to the incident.

The Direction in relation to identification evidence may provide the outline of closing argument:

In this case the Court would approach the prosecution's identification evidence with *special caution* because the prosecution case is based to a significant degree upon that evidence.

The Court well knows the potential dangers associated with identification evidence.

In this case the reasons for special caution in relation to the evidence of identification include:

[...]

It is not suggested that the witness in her evidence was being anything other than honest in her recollections and beliefs. Because of this the Court might consider her evidence impressive.

But the relevant question for the Court to determine is whether her evidence of identification is *reliable*. Special caution is required because of the possibility that the witness is mistaken in her honestly held recollections and beliefs.

It is because of the factors identified above that the Court would exercise special caution before accepting the identification evidence in this case as reliable and convicting the accused of the offence on that basis.

The list of factors identified in the Direction which potentially affect the reliability of identification evidence can be used as a checklist for preparing cross-examination of the identifying witness.

## **5. Character evidence**

Character evidence is generally only raised when an accused is a person whom the prosecution would not dispute is of good character.

It is important to raise with the prosecution the intention of leading character evidence, so that if there is any issue or potential for rebuttal evidence to be called in relation to character you are on notice and can consider your position.

Evidence of an accused's good character goes directly to their propensity to commit the offence/s charged and to their credibility.

A Direction in relation to character evidence can be a powerful statement, particularly when combined with other Directions e.g., a *Murray* direction. Like other Directions discussed in this paper, Directions in relation to character bear close relationship to the onus and standard of proof.

The Direction provides:

- For the Court to take evidence of the accused's good character into account in the accused's favour on the question of whether the prosecution has proved their guilt beyond a reasonable doubt.
- It is relevant to the likelihood that the accused committed the offence.
- It can be taken into account by reasoning that a person of good character is unlikely to have committed the offence.

Where an accused has participated in a record of interview or gives evidence at the hearing, evidence of their good character is relevant to their credibility:

- It may be reasoned that a person of good character is less likely to lie or give a false account.

A Direction in relation to character can be particularly powerful where an accused has no criminal history and gives evidence at the hearing.

Character evidence can vary from evidence of no criminal antecedents to evidence of good character in a particular respect e.g., no offences of violence or no offences of dishonesty. This latter category of character evidence can be less compelling and has the potential to invite speculation. However, the risk of speculation is higher when the matter is before a jury, not so much before magistrates in the Local or Children's Courts. Raising character even in a limited way is something that should be given consideration.

### Example

This example is based on the same facts as the complaint example above. In addition to those facts:

- The accused has been taxi driver to 30 years.
- He has no criminal history.
- No complaints have ever been made against him in his employment.

- His employer gives evidence at the hearing to that effect.
- The accused also spoke of his good character in his record of interview with the police and gave evidence of it at the hearing.

An outline of closing argument might read:

The Court has heard evidence as to the accused's good character from both the accused and his employer. That evidence establishes that:

- The accused is 65 years of age.
- He has worked for 30 years as a taxi driver without a single complaint ever being made.
- He has no criminal history.

These matters going to the accused's good character have not been challenged by the prosecution.

From this evidence the Court might accept:

- That the accused is a person who would be unlikely to have committed an offence such as this; and
- That the accused is a person who is less likely to have lied to police during his record of interview and to the court in his evidence.

The Court would take the accused's good character into account in determining whether the prosecution has proven its case beyond a reasonable doubt. The accused's good character is a significant factor in this case when determining if the prosecution have discharged their onus of proof.

## 6. Self-Defence

Directions in relation to self-defence are based on the statutory test set out in s.418 *Crimes Act* and what his Honour Justice Howie observed in *R v Katarzynski* [2002] NSWSC 613.

The onus and standard of proof again informs Directions in respect of self-defence.

Bearing in mind the statutory test, the relevant questions that the Court must ask when the issue is raised on the evidence (either in the defence case or on the prosecution's evidence) are:

- Is there a *reasonable possibility* that the accused believed that their conduct was necessary to defend themselves (or was necessary for one of the other reasons identified by ss.418(2)(a)-(d))?
- If so, is there also a *reasonable possibility* that what the accused did was a reasonable response to the circumstances as the accused perceived them?



The prosecution bears the onus of proof (s.419) when the issue of self-defence is raised, and the prosecution must negative it beyond reasonable doubt. In practical terms this means the prosecution must prove beyond reasonable doubt either:

- That the accused did not genuinely believe that their conduct was necessary to defend themselves etc; or
- That what the accused did was not a reasonable response to the danger as they perceived it to be.

Correctly framing the issue of self-defence at the commencement of a summary hearing can assist in focusing the Court's attention to where the onus lies when the issue is raised on the evidence.

The test as it was explained in *Katarzynski* also assists with understanding what the relevant questions are in order for the defence to be raised before requiring the prosecution to negative the defence beyond reasonable doubt.

## **Conclusion**

This paper is not intended to be more than a summary of six Directions that advocates in the Local and Children's Courts might encounter in matters they prepare and present at hearing. It is intended to demonstrate how these Directions might be used in preparing and presenting cases for hearing.

Directions might be useful to an advocate when:

- Identifying the issues in the case in preparation for hearing.
- Developing and preparing an outline of closing argument.
- Preparing questions for cross-examination of prosecution witnesses.
- Conferencing and preparing questions for defence witnesses.

Directions will help keep the key issues in the case at the forefront of the advocate's mind.

Finally the use of Directions in the presentation of cases at hearing can only assist the Court to determine the appropriate outcome:

- They help frame the relevant questions and issues that the court must determine.
- Inform how particular types of evidence should be approached.
- Provide the principles of law in short form that help ensure a fair trial.

