



PROSECUTOR'S CONSENT TO SUMMARY DISPOSAL UNDER SECTION 375(10) OF THE *CRIMES ACT 1900* – AGGRAVATED ROBBERY AND AGGRAVATED BURGLARY STATEMENT OF POLICY

BACKGROUND

Circumstances of aggravation

Both robbery and burglary are serious offences. Section 310 (aggravated robbery) and section 312 (aggravated burglary) of the *Criminal Code 2002* provide that the offences are aggravated if the offence is committed in company, or at the time of the offence the offender has an offensive weapon with him or her. The presence of one or other circumstance of aggravation increases the maximum penalty.

Jurisdiction of Magistrates Court

The Magistrates Court can dispose of some indictable matters **summarily** with the **consent of the defendant**. The jurisdiction to do so is limited by section 375 of the Crimes Act. Relevantly the court can deal with the offences of aggravated robbery and aggravated burglary in certain circumstances, essentially with the consent of the prosecutor – section 375(10)(d).

THE POLICY - MATTERS RELEVANT TO DECIDING WHETHER TO CONSENT

The following matters are relevant to deciding whether the prosecutor should consent pursuant to section 375(10) to an aggravated robbery or aggravated burglary charge being heard and determined summarily.

1. Available sentencing range

A major consideration is whether the Magistrates Court has the sentencing power available to it to impose an appropriate sentence in the particular circumstances. This is particularly significant in the light of the increased sentencing jurisdiction of the Magistrates Court which was brought in at the same time as the changes which allowed the Magistrates Court to deal with these matters.

2. Objective seriousness

Regard will have to be had to the objective seriousness of the particular offence. This involves weighing all of the circumstances. The greater the objective seriousness, the less likely it is that the prosecution will consent to summary disposal.

It is noted that these offences of their very nature will be committed in company and with the use of force, or at least the implicit threat of violence or damage to property. In those circumstances, **aggravating features** will include actual violence and actual damage to property. However it has to be said that the absence of actual violence or damage to property does not mean that a matter is not serious.

3. Other considerations

While it is not possible to forecast all relevant matters, some relevant matters include:

- The treatment of co-accused, for example the desirability of having co-offenders being dealt with together;
- The welfare of victims or other witnesses, for example, whether expedited hearing is desirable;
- Whether the offender is a child.