

# Committal Proceedings

*Section 82 Criminal Procedure Act (NSW) 1986*  
*Sim v Magistrate Corbett [2006] NSWSC 665*

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Every criminal prosecution begins in the Local Court. Serious offences are heard in the District and Supreme Courts but must first be committed for trial or sentence by a magistrate in the Local Court. The accused person can apply to cross-examine prosecution witnesses at the Committal hearing. Every defence lawyer in NSW should understand the test and how to make the application. This paper is designed to assist legal practitioners in the state of NSW.

## ‘Substantial’ & ‘Special’ Reasons

For regular prosecution witnesses, the burden is on the defendant to demonstrate ‘substantial reasons’<sup>1</sup> why, in the interests of justice, the witness should attend to give oral evidence. For complainants in offences involving violence, the bar is raised and the defendant must demonstrate ‘special reasons’.<sup>2</sup>

The leading case is *Sim v Magistrate Corbett [2006] NSWSC 665* where Whealy J summarised the principles at [20]:

- 1. The purpose of the legislation is to avoid delays in the criminal process by unnecessary or prolix cross-examination at committal.*
- 2. The onus is on the defence to satisfy the Local Court that an order should be made directing the attendance of witnesses.*
- 3. The process is an important part of the committal proceedings. The refusal of an application may have a significant impact upon the ability of the defendant to defend himself. As well, the prosecution has a real interest in ensuring only appropriate matters are sent for trial.*
- 4. In relation to matters falling within s91 [now s82(5)] Criminal Procedure Act 1986, the defendant must show that there are reasons of substance for the defendant to be allowed to cross-examine a witness or witnesses.*
- 5. The obligation to point to substantial reasons is not as onerous as the reference to “special reasons” in s93 [now s84(1)]; nevertheless it raises a barrier, which must be surmounted before cross-examination will be permitted.*
- 6. Each case will depend on its own facts and circumstances. It is not possible to define exhaustively or even at all what might, in a particular case, constitute substantial reasons. It may be a situation where cross-examination may result*

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<sup>1</sup> s82 Criminal Procedure Act

<sup>2</sup> s84 Criminal Procedure Act

*in the discharge of the defendant or lead to a successful no-bill application; it may be a situation where cross-examination is likely to undermine substantially the credit of a significant witness. It may simply be a situation where cross-examination is necessary to avoid the defendant being taken by surprise at trial. The categories are not closed and flexibility of approach is required in the light of the issues that may arise in a particular matter.*

7. *Substantial reasons might exist, for example, where the attendance of a witness is sought to enable cross-examination in respect of a matter which itself might give rise to a discretion or determination to reject evidence at trial.*
8. *The expression “substantial reasons” is not to be ascertained by reference to synonyms or abstract dictionary definitions. The reasons advanced must have substance in the context of the committal proceedings, having particular regard to the facts and circumstances of the particular matter and the issues, which critically arise or are likely to arise in the trial.*

## Submissions

The submissions will turn on the facts of your particular case. They would go something like this:

*YH, the defendant seeks an order under s82 CPA that Mr Smith attending the committal hearing to give oral evidence. The onus falls on the defendant to show substantial reasons why the order is required in the interests of justice.*

*There is a strong public interest in ensuring that only appropriate matters are sent for trial. If deficiencies in the prosecution case are identified early, then time and public resources can be saved.*

*In my submission, the prosecution case rests heavily on the evidence of Mr Smith and refusing the application will have a significant impact upon the ability of the defendant to meet the prosecution case and could lead to a miscarriage of justice.*

*We have grave concerns regarding Mr Smith’s credibility and reliability given his acknowledged mental illness, his substance abuse problems, his rancorous history with the defendant, his failing memory and eyesight and his prior history of false complaints and perjury.*

*If he does not attend for cross-examination, then there is a strong possibility that both the prosecution and defence will be taken by surprise at trial.*

I am available every day if you have any interesting issues.

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