

LAW REFORM COMMITTEE

Inquiry into warrant powers and procedures

Melbourne — 20 October 2004

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Mr G. Sullivan, principal solicitor, West Heidelberg Community Legal Centre.

The CHAIR — Gary, welcome to this parliamentary Law Reform Committee inquiry into warrant powers and procedures. As you know, our proceedings are governed by the Parliamentary Committees Act. Everything you say at this hearing is subject to parliamentary privilege. We have a presumption that the evidence you give will be public unless, of course, you want any aspect of it to be in camera. After having given you an opportunity to correct the transcript, we will publish that material on our web site and use it in making our recommendations and considering the body of our report. Perhaps you might start by outlining the key elements of your submission and then we might open it up for questions.

Mr SULLIVAN — I would like to say that the PERIN:

... procedures ... lend themselves to the cost-saving advantages of automation, computerisation and timely processing. The result is efficient, cost-effective enforcement of compliance ...

I would like to say that but I cannot. I am actually quoting from the Department of Justice, which you have quoted at page 64 of your discussion paper. I would like to say those things, but I cannot. Essentially the main thing I want to talk about is the PERIN system and the way it operates which, based on the people we see, is an unfair system.

I should briefly say where I come from. I am the principal solicitor of the West Heidelberg Community Legal Service which is a small generalist centre based on a large public housing estate — the original Olympic Village estate. We have a close relationship with the Banyule Community Health Centre; we share the premises of the health centre; and we also have a close relationship with La Trobe University. La Trobe University has prepared a report under our banner to which I notice reference is made at page 65 of the discussion paper, and I am grateful it has found its way into the discussion paper.

The basis of my evidence today derives essentially from the client contact we have as part of the professional lawyer-client relationship, but it also comes from referrals from community agencies, financial counsellors and, interestingly, other community legal centres, and also the membership of what is known as the PERIN working group of the Federation of Community Legal Centres — so there are a number of aspects.

The focus of your inquiry is whether existing laws and procedures promote fairness, consistency and efficiency. As I indicated, my comments will mainly be directed to the infringement notices provisions which I think I call the PERIN system, so I mean the PERIN fine system when I talk about that.

I would readily concede at the outset that in fact the PERIN system does work well for most people. By ‘most people’ I am thinking of those people who know that when they transgress they pay the price and because the price is reasonable it is a price that they are prepared to pay, and they do pay. That clearly is the situation with most people who deal with the PERIN system. So for most of those people, they never get to this stage of warrants. In order to talk about the warrants process, in my view it is important to say that from where we sit most people deal appropriately with the PERIN system because they see that it works reasonably well, but it is based on a fundamental flaw. Perhaps I should correct myself there; I should not say it is a flaw.

As you would appreciate, the purpose of PERIN is to take matters away from our court system, and there are many and good reasons why those matters should not be before the courts. But what I will say is that there are dangers in slicing and dicing the justice system, and that is what we have here. That is what has happened with PERIN, and it continues.

I last made some submissions in 1996 or 1997 to the Public Accounts and Estimates Committee, and it produced a report some years back. There have been significant changes in those last seven or eight years, but we still have some fairly major problems. The fundamental problems are not going away. From where we sit we see more and more of our people being exposed to the PERIN

system, and the figures you have bear out that it is a popular system for our government agencies and the like — and, as I said, for good reason.

I want to relate a number of client experiences, with your consent, just to let you know about the experience some people have with the system. I want to give you some case studies. I want to spend a little bit of time on the description of PERIN in your discussion paper. I want to consider the arrangements, administrative and otherwise, of the PERIN court. I would like to take you to some decisions of the Victorian Supreme Court and a recent decision of the full Federal Court.

If there is time I would like to respond to the Law Institute's submission to you which, from where I sit, seems to ignore the fact that lawyers who are members of the Law Institute also represent debtors as well as creditors. Finally, I want to make some comments about a proposal for a warrants act or a warrants office, if I can call it that. Is it satisfactory if I do it in that way?

The CHAIR — Absolutely.

Mr SULLIVAN — If I could start with some case studies: in the first person I want to mention I will call the subject Danny. I have some paperwork from which I need to refresh my memory so I will have that in front of me as I say this.

Mr DALLA-RIVA — Were those notes taken at the time?

Mr SULLIVAN — Thanks, officer! This is correspondence, first up. In early 2004 Danny was trying to negotiate instalment arrangements with the PERIN court. He made proposals; he set out his financial circumstances. His fines had grown alarmingly. I think from memory — in fact my notes will tell me — they were in the range of \$10 000. I can check that in a moment. But he did not get anywhere with the PERIN court, because in March 2004 the PERIN court wrote to him saying it refused his application. Part of the letter states this:

Payment in full is required immediately of the balance currently outstanding: total: \$9363.

That letter has the PERIN court letterhead on top.

Consider the context for this man. He has nearly \$10 000 worth of fines. He is trying to negotiate his way through. He makes an offer. He gets not just a rejection. Unsurprisingly he lost interest in trying to deal with the PERIN system after that and he got on with his life. In August, though, the inevitable occurred, and he was arrested on penalty enforcement warrants. He was deposited at the Mill Park police station. By this stage the 2000 amendments to schedule 7 of the Magistrates' Court Act have swung into operation. So there was a discussion between him and the sheriff about unpaid community work. There is no doubt that occurred.

He was working and he, like a number of other people, has described a discussion with the sheriff's staff and also with police sergeants and the like which goes something like this: 'Yes, you have been arrested here. There is this process. If you go in front of the magistrate, and that is what we are going to do because we are very busy, when you talk to the magistrate they will be able to sort out some arrangements with you', and instalment arrangements and the like were discussed. The person is thereupon bailed, as he was, to the Magistrates Court.

On 13 October his matters came before a magistrate and I appeared for him. In fact under the 2000 amendments the court is quite limited in what it can do. One of the things that is not an option is instalment payments, as the magistrate readily explained. The fact that this man had four young children, the fact that he was married, that he had stabilised remarkably — and he is a man I have known over some years — and that he had virtually a full-time job as a truck driver meant nought in these particular proceedings, because in order to get anywhere for this man we had to establish 'exceptional circumstances'. The magistrate correctly took the view, in my view, that none of what I was putting to him were exceptional circumstances. Maybe we could have an argument

about that, but the fact is that the magistrate then noted his options, took account of his options, and jailed the man. That man has now spent a week or so in jail.

In fact while I speak about that I should perhaps go out of order for a moment. There is a Victorian Supreme Court decision in the case of Coman in 1962 which states that imprisonment in default of payment of fines is not determined imprisonment within the Crimes Act. You tell Danny that. He is sitting in the watch-house at the moment. I went to visit him yesterday morning and things had moved on a bit in the last week or so. The jails are pretty full; he was not able to get out of the watch-house, so I do not know how long he will remain in the watch-house. It would appear that in the last week or so someone succeeded in getting some contraband into the watch-house, so his family and his children who had been going to see him daily can now see him only once a week. It is an understandable response by the police, but this man sits in a watch-house, and I do not know how long he will be there as he serves his time for these particular matters.

Mr LUPTON — What length of imprisonment was he sentenced to?

Mr SULLIVAN — He is due to be released next month. I think he is due to be released in late November, from memory. I do not have the material in front of me — I have misplaced it — but I think it is late November.

Mr LUPTON — So it is something like six weeks.

Mr SULLIVAN — Yes, around about six weeks. So he sits in the watch-house. Then there is John.

The CHAIR — So in this case, unless you want to summarise it all at the end, what are the changes you would like to see to address Danny's situation?

Mr SULLIVAN — I will make these comments in relation to a couple of cases, but I will take your question. I have trouble with the concept of 'exceptional circumstances' here, because in spite of what a Supreme Court judge says these people are being placed into our jail system.

The irony that I see of what the judge said in the 1962 decision is that when we think about imprisonment under the Crimes Act we are thinking about people who are being jailed for perhaps repeat burglaries or quite serious matters — arson, attempted murder and these sorts of matters. In fact, now that I think about it, as I look at committee members I remember that one of the comments I made to the committee in 1997 was that just the day or so before I came before that committee I had appeared for a man who had been charged with assault on police. He had the benefit at least that he had a particular day that he had to go to court. He was able to obtain legal advice. He was able to have representation. He had the benefit of the Sentencing Act, as it now is, in front of him. He in fact did not go to jail. He had struck a police officer.

The people I am talking about now are people who have committed parking offences. They are the ones who are being placed in jail, and they are a particular group of people. There are characteristics of these people that come up again and again. So I would say to the committee that I do not understand the logic of the Parliament imposing concepts like exceptional circumstances, because what that does in my view is restrict the ability of our judicial system to do its job properly.

From where I sit, when I am making submissions to magistrates I may as well be making submissions to politicians who sit on the bench. Politicians are politicians; judges and magistrates are judicial officers, and we should not confuse the roles. So that is my view: that we have different roles here, and there is a confusion of roles. I am very conscious and I see the way that the system of our great neighbour, the United States of America, is moving, and I can see that it has its attractions to many people in Australia. But in my view we do not follow the American system; we follow the British system, and we have some confusion occurring here.

I am sorry that I am being so indirect in this, but what I would like to say is that judges and magistrates should be permitted to decide on all the facts available to them to make their decisions; and the politicians should get out of the courts. Do not say to magistrates and judges, 'You must find exceptional circumstances'. Leave it to those people to decide.

In some situations I will still be representing people who will still go to jail, but I sense from the magistrates that I have appeared before that they sometimes feel their hands are a bit tied by legislation. That is an uncomfortable feeling to be standing at the bar table with. Obviously a magistrate is not able to say that. I believe you may have a magistrate appearing before you today. It is a difficult question, because again it may not be appropriate to even raise this issue. So I can say it. The magistrate may not be able to say it, and the committee may not be able to ask it. So I simply say that I have that sense that our courts are a bit limited in what they can do. You should free them up to make these decisions; if that occurred we would not have this group of people at risk of going to jail.

Mr MAUGHAN — What are regarded as exceptional circumstances?

Mr SULLIVAN — Yes, I can perhaps go on and give you some examples in the other case studies. The next one is perhaps a good one. John is another person who received a letter like the one I referred to in the first case study. He had also sought to settle his outstanding matters with the PERIN court. The matters amounted to nearly \$6000. He received a letter dated 28 April 2003, with the letterhead of the PERIN court, Magistrates Court Victoria, on the top, which states in part

I wish to advise that the court has refused your application.

Payment in full is required immediately of the balance currently outstanding: total: \$5967.

He is an Aboriginal man. He has acquired brain injury. He was in a car accident at about two years of age. Last year he witnessed a shooting, and as a result of that he is finding it very difficult to leave his home for all sorts of reasons. He now has a condition: a post-traumatic stress diagnosis.

Mr MAUGHAN — How did he rack up his fines?

Mr SULLIVAN — They were mainly language charges, alcohol charges and having no ticket. The most serious I could find was smoking at a railway station.

Mr LUPTON — So they are public transport types of matters?

Mr SULLIVAN — Yes, he is a public transport-type person, up and down. I have another one of those. John's matters went before the special circumstances court of the Magistrates Court ultimately in August this year and they resolved satisfactorily. The committee will be aware of the special circumstances court, I am sure. That court is working wonderfully well. The staff, Anne Condon, Annie Merios, the disability coordinator, the people responsible for that particular list, and the magistrates themselves who sit on that list are doing a good job in what I think everybody agrees are difficult circumstances.

Mr LUPTON — The evidence the committee has heard about the special circumstances list has been very positive, but I get the impression that it is rather haphazard as to who gets there and how they get there. Can you give the committee any insight into that?

Mr SULLIVAN — I think in the early days the only people who were getting into the special circumstances list were people who happened to go to a community legal centre like mine, and so we were getting small numbers of people, and I think we still have that effect today, to put it in brief. The community welfare sector is increasingly aware of the existence of the special circumstances list, but I think there is still a bit more knowledge that we need. That is one of the final recommendations that I make to the committee today about the lack of education here and

that we as people who know our way around these systems forget that most members of the public cannot navigate their way around the system.

So, yes, the special circumstances list is doing a wonderful job. What I would say, though, is that its workload is increasing all the time and it has increased the scheduling of people. I do not want to suggest it is a cattle market, but waiting outside at 1:45 p.m. with 30 or 40 pretty anxious people, I can see the strain building on their faces as they wait to go in front of the court. And very commonly these are people with diagnosed mental illnesses, so they are often very anxious as part of their condition. Most of us get a little bit anxious when we go before a court, but these people are very, very anxious. As I say, in those circumstances the people who run that list are doing a wonderful job and are to be commended.

Mr DALLA-RIVA — In the earlier case study you cited where the initial letter had been saying the person's offer was rejected, why did the PERIN court reject it?

Mr SULLIVAN — That is a good question. Reading between the lines, what is happening is that the person has made an offer of a dollar figure per fortnight or per month. People who are familiar with debtors and what is the best way to deal with debtors know that you have to be able to negotiate with them and do it as early as you can and talk to them, and all these sorts of things. So what we have here is an incredible distance between the debtor — if I can call the person a debtor — and the creditor, and this simply exemplifies that.

What I think the people at the PERIN court mean when they write those sorts of letters is, 'We reject it, but you come back to us. We have knocked you back at that \$20 a month, but if you come back and offer \$30 or \$40 a month we will say yes. We will not tell you that we are looking for \$40 a month. We just reject your \$20 a month. You come back to us'. The onus seems to be on these people to come back. I say that because of the experience of financial counsellors. I do not know whether the committee has financial counsellors appearing before it, but I am sure this is what they will say to you, 'We get one of these letters, we know how to interpret that. We get back to the PERIN court and we put another figure, or we argue about why it can be only \$20 a month'. I think that is going on. You will get those letters, and those of us who know how to deal with the system just ignore them.

But these letters in fact went to the individuals themselves; they did not come through our legal service. These people had done the job themselves. They had gone off themselves to try to sort it out, and then, as I say, we learnt afterwards that if they had come through financial counsellors, legal services and the like it does not stop there; we can usually sort it out.

In terms of special circumstances, I would like to give a slightly different case study, which is of another person who has appeared in the special circumstances list. Richard has a huge number of matters. They amount to five figures — well over \$10 000. Again, Richard is a person who is up and down on the trains most of the time, putting his feet on the seat and the like. He has language matters; he has had assault matters in relation to the officers who look after the safety of our commuters.

Richard has been in front of the special circumstances list on a number of occasions. Because of the huge number of matters the court has said, most recently a couple of weeks ago, 'Yes, you are doing much better, Richard, but we are still not confident about you. You need to come back and see us one more time'. So he is scheduled to come back in front of the special circumstances list in February next year. We thought we had sorted everything out. The court had told us that things were under control. We knew there were outstanding matters.

Totally out of the blue last week the sheriff arrived and, to cut a long story short, had the penalty enforcement warrants. When I rang the sheriff he explained that there was a communication breakdown. You can imagine what effect having the sheriff turn up had on this particular family. This man has an intellectual disability, as do members of his family. They thought people were

sorting out the problems. They lose faith and confidence in people when things like this happen. It was just an error; it was an oversight; it was a communication breakdown. I shall refer to one or two more and then I shall make some other comments.

Mr MAUGHAN — Are you convinced that that is the case, that there was a communication breakdown, or was it a deliberate ploy by the sheriff?

Mr SULLIVAN — No, it was not deliberate. No, I am quite satisfied. A series of phone calls occurred. I was not the only one; I suspect somebody from the court staff also telephoned. I am confident it was a communication breakdown. But that is again part of the recommendations I want to make to the committee. The structure that we have seems to encourage these communication breakdowns to occur. No-one seems to have looked at the structure we really have all that closely.

I now refer to a different kind of case study — an extraordinary one. I recently represented a man who is a university lecturer. He is studying for his PhD and his way of getting by is teaching medical students. He had separated from his wife, and he has a young child. Again I say this partly to give you an outline of the sorts of stories we get. He and his wife had broken up. Many of the fines were her fines, but he had decided to pay for them. That happens in this system; it is not uncommon. He pays for the fines. There were CityLink fines in relation to these cameras in the tunnel.

These cameras do not seem to be working that well, but he got six months off the road because of these particular matters. So we have got to the stage where he has had the penalty enforcement warrant, he is feeling significant injustice, as you can well imagine. All right, he has to wear the thing but he has made a decision to pay his wife's fines — that is history.

He then has a deal with the fact that he learns through the newspapers that the speed cameras do not work that well and he is thinking, 'I have six months off the road because of these blasted cameras. I wonder whether there is any justice there'. Now he has got his lawyer saying to him, 'The magistrate up there is saying "You are going to jail if we cannot sort this out"'. The magistrate was not going to muck around on this particular day. Fortunately the magistrate decided to agree to an adjournment. It was a relatively short adjournment, and I suspect it was to allow me as his counsel to say to him, 'That magistrate is fair dinkum. He is going to lock you up'. This man could not believe that he was going to be locked up. He had been through the process. This is a man who is studying for his PhD. He could not believe that he was about to be locked up.

What happened in his case was that he obtained a loan for the whole amount, and that was paid, in spite of the fact in his mind, and I think fairly so, he was not actually responsible for many of these fines, but it had gone to that stage of the warrants and was before the court and he paid the whole fine so he does not go to jail.

On one other case study, you raised a question about the sheriff. This is one where we are not altogether happy with the sheriff. Janine, who has had drug and psychiatric issues, is currently an undischarged bankrupt. She shifts around for all sorts of reasons. She gives her mother's address as her home address. Again, this is a common experience. I know as far as the people who look after our roads and the like you are supposed to keep your address up to date on your licence, your registration and all this sort of thing. Some people just say, 'Well, I know if it goes to mum, I will get it'.

Who turns up at mum's but the sheriff. Mum lives in Bendigo. Unfortunately mum got so frightened by being told about how her daughter would be going off to jail very quickly. The mother has paid \$400 to the sheriff on the spot. I think that is disgraceful. It has caused a situation where according to Janine, she and her mother are not even talking. Janine says, 'I will pay my mother back. I promise I will pay my mother back, but mum has paid \$400 directly to the sheriff as a result of this.'

There are other case studies, but I am conscious of the time. I will not go too much into those. Can I take you to your discussion paper?

The CHAIR — Just on that, she felt pressured to pay on the spot?

Mr SULLIVAN — She thought that the sheriff would go a bit easier on her daughter. She passed on information about her daughter, and she fully expected that the sheriff would be going off to her daughter who lives in the West Heidelberg area, arresting her daughter and locking her up, so that is why she paid the money.

On page 63 of your discussion paper — I cannot see it in front of me — the PERIN court is described as 'an administrative rather than judicial "chamber" of the Magistrates Court ...'

The CHAIR — Yes, it is in the first paragraph.

Mr SULLIVAN — Yes, thank you. It is an interesting description, and the characterisation of the PERIN court is an important issue. The community has high expectations of the judicial process and, as I have outlined, people may lose their liberty as a result of court processes. In my view though the PERIN court is a cut-and-paste job.

Not only is it a cut-and-paste job, in my view it is shrouded in secrecy. It is a public body, but many of the public do not really know what goes on in there. And we are talking about the liberty of the citizen here, I might add. I make some assertions, and I expect that I may well be corrected on those, but make those in my defence on the basis that I could be wrong about this because I do not know. But I wrote to the Attorney-General this year complaining about the PERIN system. I was complaining about one particular thing. I received a response from the director of enforcement management, and that letter stated that the company Tenix Solutions:

... provides operational and administrative support for the agencies, which retain their core prosecution and legal functions ...

This is in the letter. The author of the letter asserted that that company had no input into 'the core legal processes' of the court. I do not think you can slice and dice core legal processes; that is my conclusion because I think that is a lot of nonsense. But it means we should ask: what is a court, and is the PERIN court truly a court, and is it seen as a court? I criticised it last time as a computer court. I had the sort of cryovac idea that here was this great big machine. Now things have moved on a little bit; it is a functioning machine, and it is sending sheriffs out to put people into court.

In the 1993 case *St Kilda City Council v. Kenyon* the case was described as administrative in character by his honour Judge Ashley. I will quote from the full Federal Court case of *State of Victoria v. Mansfield*. This appears at paragraph 45:

... The absence of discretion in the registrar's making of an enforcement order and the administrative character of the PERIN process are not necessarily incompatible with a court process. Courts may exercise administrative powers from time to time ...

At paragraph 48 it held:

... Both the ordinary court procedure ... and the PERIN procedure are procedures of the Magistrates Court and involve the imposition of a penalty by that court (either by a magistrate or a registrar).

That decision is not a relevant decision purely for Ms Mansfield; that was an attempt to have PERIN fines listed in this woman's bankruptcy — she is an undischarged bankrupt. The Federal Court agreed; the full Federal Court overturned that decision, so we have the full Federal Court decision as the law, and the law applies.

I see us as being in a state of flux at the moment. We have guidance from the Supreme Court, and we have some guidance from the full Federal Court. It says that the PERIN court is indeed a court. Funnily enough we did not really know that for sure — that is why these cases have been run. But

that is the law and we are bound by it. Unfortunately in my view the PERIN court does not operate like a court.

The complaint that I made to the Attorney-General came from conversations between people who were employed by this company, Tenix Solutions. I would contact the PERIN system, if I could call it that, and I would find myself talking with people from a private company, which, according to the letter to me, provides operational and administrative support. But it was about instalment orders. There we go again! People are trying to sort out their problems. So we found ourselves dealing with a private company.

The reason I say it is shrouded in secrecy is because apparently commercial-in-confidence rules apply, and we do not know what the arrangements are between the government and this particular company. I believe that the contract was entered into under the Kennett government a few years ago and it is due for review in a year or two. But we are troubled by this particular organisation and its relationship with the PERIN court. But as I said, I do not know too much about it; I may well be corrected about this. But the PERIN court in terms of its staffing we know only has a relatively small number of people.

I do not know how many people are employed by Tenix Solutions to do this sort of work. I think it is inappropriate to have a private company doing this sort of work. I do not think you can slice and dice this kind of work. I think somebody needs to have another think about this contract when it comes up. Those are matters perhaps for you in your court rather than for me.

The CHAIR — If it could be described as a court!

Mr LUPTON — Can I go back to the issue you raised earlier with your first case study where the person who attempted to enter into negotiations that had failed ultimately ended up in jail and is in jail now? Could you describe in a bit more detail why it seems to be the case that the court was restricted in its sentencing options?

Mr SULLIVAN — The 2000 amendments introduced a new part 4 to schedule 7 of the Magistrates' Court Act that is headed 'Imprisonment'. One of the complaints that I made — and it was not just me; a number of us made it — in the 1990s was that people were being incarcerated without the opportunity of putting anything before a court. They were being taken directly to jail. There would be an enforcement order, a warrant, and on the basis of that warrant the sheriff would eventually turn up, and a number of people found themselves in prison as a result of that. The Attorney-General introduced this legislation, so we now have an opportunity to be heard. The way it works, as I said, is that once the warrant is issued and once the person is taken to the watch-house, if he or she does not obtain the benefit of a custodial community permit or is not issued with one within 48 hours, the person must be released on bail. A custodial community permit is similar to a community-based order; it is about community work. But the hearing is structured very carefully in part 4. Clause 23 talks about an adjournment and on what basis an adjournment may be made. Clause 24 then describes, having given the person an opportunity to be heard, what the court may do. You will see at clause 24(2) that imprisonment is the first option — that is, reduction of imprisonment by up to two-thirds — or in subclause (c) that, if satisfied, in exceptional circumstances make a community-based order under the Sentencing Act.

Mr LUPTON — That is where the exceptional circumstances come in.

Mr SULLIVAN — Yes.

Mr LUPTON — And that is a criterion that is not applicable to somebody coming through the normal Magistrates Court process?

Mr SULLIVAN — That is exactly right. And I do not understand the logic of that, why the court is restricted in that way. But equally I do not understand why other sentencing options are not available at that point as well. That is the point — —

Mr LUPTON — Presumably you would recommend that the normal Sentencing Act provisions apply and that subclause (c) just not be applicable.

Mr SULLIVAN — Think about the way the special circumstances list works. The powers are fairly broad, and in the case of Richard, as I said, what is happening I suppose is really a form of direct supervision over Richard. He has to keep his nose clean, and he has been. He has a monthly ticket at the moment. In fact the initial monthly ticket that he got actually came out of the court fund after an appearance at court earlier this year when I represented him. He did not have a ticket that day, so he just came straight into court because his mother, as he calls her, gives him \$10 or \$5 a day and he got \$5 that day. He was asked by the magistrate why he did not buy a ticket and he said that he wanted to have some lunch. It was lunch or ticket. It was a fairly tense moment in the court, and fortunately in my view the magistrate calmed down and said, 'We will solve this immediately'. She said to her staff, 'Go out and organise a monthly ticket. See if you can do that', and he has done that.

The special circumstances list is an example where people are able to think laterally within a judicial context about problem cases. The cases that I put before you today are virtually all problem cases; I acknowledge that. As I said at the outset, the majority of people who go through the PERIN system basically think it is a fair cop; they pay their fine and they move on. These are people who struggle.

To finish, the difficulty here is that the purpose of PERIN is to go outside the judicial system. I used an expression earlier on — that is, that with these people unfortunately I cannot see how you can get away from using the judicial system. There is some acceptance as a result of the 2000 amendments, but it did not go far enough in my view.

Mr LUPTON — One of the things I have just been grappling with is whether or not we attempt to look at ways of improving the PERIN process or improve the ability of people to get transferred back into the general Magistrates Court process as a way of trying to overcome some of the problems that you are talking about. Could you give us some views about that?

Mr SULLIVAN — Administratively it is proving quite difficult to do that. That in fact is where I came from originally; that was my own thought process originally for these people.

Mr LUPTON — Do you mean transferring them to — —

Mr SULLIVAN — Yes, to get them into the open court situation, but that is proving quite difficult. The case of Richard perhaps exemplifies that, where we have got one large group of PERIN matters, but we still have another large group of PERIN matters. Understandably the court wants to deal with somebody in one go. In fact I could digress and say that in terms of seeking revocation which gets you into open court, what I have had to do is appear in front of courts at Heidelberg, Broadmeadows, Sunshine — I think from memory — in relation to one single client because it was the council over in Broadmeadows that had the ticket or it was the Heidelberg council. I was getting particular prosecutors from particular places who had their day, so I was having to appear in front of different magistrates.

I have no qualms in saying to the magistrate immediately, 'Three weeks ago I was in front of your brother magistrate on exactly the same facts and circumstances. This is not this person's fine; it is somebody else's fine'. It is in my view an inapplicable way to use our magistrates. It is not just time consuming. A magistrate is being asked to make exactly the same decision on exactly the same facts and circumstances because of the way our PERIN system works. I am talking about revocation there. So if you just want to go through the revocation process and you have somebody who has three or four councils or Victoria Police — —

That is the other one. Is it Victoria Police in Melbourne or is it Victoria Police in Heidelberg? Because they all run separately — they all run separate operations. What the PERIN court does is it sends out, when you make your application revocation — as I have written — —

I had one client who had seven different days that he had to appear in court. Admittedly three or four of those days were in the one court — Melbourne Magistrates Court — but with different prosecutors, because a number of the councils and the like use this particular court. I was required to appear again and again to run exactly the same thing. I agree with what you said in principle, but it is proving quite difficult to do that in practice.

Mr LUPTON — Given that the PERIN court works well for most people and that the idea is that it is automated — and that is the benefit of the scheme for the ones who are able to cope with that kind of system — how do you think we ought to be looking at picking up as early as possible the people who cannot cope with the automated type of system?

Mr SULLIVAN — Yes. As I said earlier, in dealing with debts there are some basic principles. The first one is that you do not let the debt grow too big and you throw resources at the problem as early as you can. We do not see that happening in the PERIN system. We see the debt getting bigger and bigger. What we are seeing in the northern suburbs of Melbourne — again I do not have much evidence to back myself up, but I have a sense of it — is that recently the sheriffs have decided they are going to have to enforce these penalty enforcement warrants. I have checked, and there seem to be more matters happening in the northern suburbs than in the southern suburbs, but that again is a resource issue. I do not know if the government has employed more sheriffs or what is going on, but something like that has occurred.

I wish that when the government thinks about these things it would think about the position of the public here, because we have gone through a period of some years where this has not been a major problem for us, but a change has come out of the blue. I appeared for somebody yesterday, and last Thursday at Heidelberg Magistrates Court I represented a person, and there were eight of these people to be dealt with before Heidelberg Magistrates Court. That is an awful lot of these people. From memory, the evidence I gave in the late 1990s was that under the system then, even though we complained bitterly about the fact that people were being incarcerated, my understanding from the figures was that there were only ever one or two people a week who were being incarcerated. The actual numbers were not that high. I would be surprised if those numbers are all that different. I think we are probably still only talking about relatively small numbers of people within our jail cells. The figures in Victoria — and you have probably looked at them — are better than those in a number of other states in Australia. There is no doubt about that. We have smaller numbers of people incarcerated for these sorts of matters.

But, as I say, the opposite of that is going on now. We have a large number of these matters going before our magistrates courts, so it is a resourcing issue as well. If the government is going to resource more sheriffs, then perhaps it needs to resource the public as well, so the public can go off to legal aid, community legal centres or financial counsellors and get some advice. I am conscious that I am giving evidence here, but at times it has been not far off panic stations in the last couple of months, with financial counsellors getting people very, very distressed. They have to give an answer to a person immediately, because the individual has been told, ‘This is a seven-day notice. Seven days from now we can lock you up’. Seven days is not a lot of time, in my view. I understand why the seven-day notice is imposed, but organising advice, seeing a financial counsellor, getting in touch with a lawyer, getting advice back from that lawyer and all that sort of thing takes a few days to do. Those of us who are in court come back from court and have a couple of these messages waiting for us, and they are difficult to respond to quickly.

Before I forget, I will take to you the law institute submission and then come back to the issue of a warrants act. I am conscious of the time, so I will keep this brief. The Law Institute of Victoria submission argues in part that creditors who obtain judgment debts in the Magistrates Court ought not be required to register them in the Supreme Court in order to initiate action via the sheriff against a judgment debtor’s real estate. It sounds fine in principle — a wonderful idea. I am sure they will put it far more eloquently than me. I wonder whether people have thought of the downside of this. We have a situation now where a creditor gets their judgment debt in the Magistrates Court and has to go through the process of registering it in the Supreme Court if they

want to take action against real estate. I appreciate that the jurisdiction of the Magistrates Court is going up quite markedly.

Unfortunately if the proposal is accepted in the way the law institute put it, what we could then see is debtors relying on the good faith of creditors — in other words, what is to stop a creditor who gets a \$600 judgment debt in the Magistrates Court immediately going after somebody's real estate? The proposal sounds good as far as it goes, but once you look at something like that you need to think about the rules that apply here, because legal centres have had that happen in the past. We have had clients coming in when people have registered very small judgment debts — admittedly under the current process — and then gone after the matrimonial home or something like that. So, yes, listen to the learned people from the law institute, but consider the implications of what they are saying. I did write to them a week or two ago, and they may well have some further suggestions for you in relation to that.

Another matter they raise is a quasi interpleader summons where, from where I sit, there is a dispute between a creditor and the sheriff about the value of a debtor's property. What the law institute proposed in its submission was that there be a quasi interpleader proceeding. They say in their submission that both debtors and creditors could make use of this. For the life of me I cannot see why a debtor is ever going to want to make use of this particular proceeding, because what is happening in fact is that the sheriff is coming to the person's premises, looking at their goods and saying 'It's not worth it' and then going back to the creditor, who says 'No, in fact it is worth something'. If I understand the submission properly and if that is what the law institute is saying, I simply say this: I cannot see the point of the process, but if the process is being considered, who is going to be paying the cost for this? I hope for goodness sake it is not going to be the debtor. If we are talking about a quasi interpleader process, this in my view is between the sheriff and the creditor, and it seems to me that the debtor should not have to pay for that process.

Finally, I will make some comments. As I indicated, I believe you could consider introducing legislation to create a warrants act. The experienced people are the people who should be managing these warrant issues. Unfortunately there is evidence that they are poorly trained and that at times they do not appear to understand their responsibilities or how they fit into the system. The public has little understanding of how this all works. There would be a role for public education if there were something like a warrants office.

The literature tells us the courts review warrants. In my view courts do review some warrants, and in fact in the criminal sphere they will throw out some police actions if they are unhappy with warrants, but it is very uneven. The courts will look at some warrants and will not look at other warrants. If that has happened, that has happened. In fact I recall that I have already had a couple of magistrates saying that to me in recent weeks. I have attempted to take magistrates to conversations between a sheriff and my client at the police station, and I have said 'Look, Your Worship, what the sheriff told my client and what my client acted on was wrong information. My client acted on that, and we find ourselves in this proceeding now because my client got the wrong information'. Two magistrates have basically said, 'I don't care about that, Mr Sullivan. I'm not going to review that. Let's deal with this now'. One or two other magistrates have said, 'I'll listen to what you've got to say'. So sometimes the courts will review warrants and other times they will not. If there were a structure, there could be some way to follow events. There could be a maintenance of records. There is not much record keeping in relation to these warrants. Nobody quite knows what goes on. You probably know more than most Victorians now about how these warrants operate. So there may be a function to set up an office of warrants so that these could be followed through.

The last thing I want to say is that as a result of the Mansfield decision in my view it is incumbent on this state to create one single office. Forget about having the sheriff's office, civic compliance, enforcement management, PERIN court — it has to be the PERIN court. The public needs to know it is dealing with the PERIN court. If you do that, you create a one-stop shop for the public. Thank you.

The CHAIR — Thank you. One of the last witnesses referred us in relation to notice of enforcement orders from the PERIN court to provisions for revocation and cancellation of an enforcement order; the referral of an alleged offence to the Magistrates Court; and the requirement for a statutory declaration, sworn statement and so on, setting out the grounds on which revocation is sought. Does that add anything to the range of special circumstances that are prescribed by the legislation? Given that the legislation seems to specifically refer to a mental disorder or an intellectual impairment, does it actually broaden the grounds on which an enforcement order can be revoked?

Mr SULLIVAN — I would not have put it quite like that. If I understand you correctly, if that application by the person is successful, the person may well end up in open court. If they end up in open court, there are not those restrictions. One does not need to make an assertion about intellectual disability, mental disorder or something like that. The statutory declaration is sometimes used by councils, police and the like. They will look at the material, and it is a way for them to check their own records — for example, is the person making it up. If the person says they are living at a particular place or something like that, they can check it out. It is a bit hard to answer that particular one, but I do not think it relates directly to the mental disorder issue.

The CHAIR — No, it does not, but I just wondered whether that would have been an avenue for your first case study, where the options were only imprisonment or payment of the fine.

Mr SULLIVAN — It is interesting that somebody who has a mental health issue and who is in a bit of strife has come into our office. I drafted a letter to the PERIN court — I do not know whether I have done this the right way, because I had to belt it off yesterday afternoon — saying, ‘Could you directly list this in the special circumstances list? I will forward in due course material in relation to mental health’. I am not even using the statutory declaration process for that one. I think that is what will happen: they will accept that, and all the material will go into the special circumstances list. So it could be done that way.

The CHAIR — Thank you for coming along and giving us your time and expertise.

Mr SULLIVAN — Thank you for listening to me.

The CHAIR — It was very informative, and it has certainly given us a lot of food for thought in terms of our deliberations.

Witness withdrew.