

IN THE SUPREME COURT OF TONGA

PRACTICE DIRECTION NO.1 OF 2010 : INDICTMENTS

1. A trial in the Supreme Court must be commenced by indictment. [Constitution - clause 11]
2. A Judge has the power to direct the form of indictments. [Constitution - clause 89]
3. Judgments of Superior Courts of Commonwealth countries are regarded as having persuasive authority.
4. Ultimate responsibility for the indictment rests with counsel for the prosecution who must ensure that it is in proper form before arraignment [see *Newland* [1988] QB 402].
5. In England the Crown Court [Administration of Justice] [Miscellaneous Provisions] Act 1933 requires an indictment to be signed by a "proper officer" of the court. In *Morals* [1988] 87 Cr. App. R.9 it was held that the trial of an accused on an unsigned indictment was null.
6. In Tonga there is no equivalent to the 1933 Act and no "proper officer" of the court has been identified.
7. It is accepted without dispute that all important legal documents such as writs, petition, notices and orders are signed and dated. There appears to be no reason not to require indictments to receive the same official seal of approval.
8. Henceforth all indictments presented for arraignment must be signed and dated. It will be for the Solicitor General to decide the appropriate signatory but in the absence of any other signature the Court will require that the indictment be signed by prosecution counsel appearing at arraignment.

M.D. SCOTT
CHIEF JUSTICE



20 October 2010.