

INTRODUCTION

[The] Law Ministers expressed their grave concern about increasing delays in the administration of justice - a problem faced by almost all Commonwealth jurisdictions. They agreed that it was one which called for positive and urgent action; and pledged themselves to providing remedies which in no way jeopardised the quality of justice and which respected the fundamental rights of all persons under the law.

Surveying the problem and the varied responses to it by countries in widely different parts of the Commonwealth, [the] Law Ministers were left with a heightened perception of the value of comparative approaches to solutions. They requested the Commonwealth Secretariat to assist them in their determination to meet this challenge, by both collating information on a Commonwealth-wide basis and arranging appropriate studies.

These statements are drawn from the Communique issued at the meetings of the Commonwealth Law Ministers in Winnipeg in 1977; this report is a direct result of the concern expressed there about delay and the call for information on how different Commonwealth jurisdictions have been approaching this problem. In the following pages the phenomenon of delay, its causes and consequences will be examined, with the bulk of the report being devoted to detailing the various ameliorative measures which have been pursued and, where the information is available, the effectiveness of these developments,

Writing exhaustively about the developments and experience of one country in dealing with trial delays would be an imposing enough task because this is an area in which remedial action is being taken almost daily with a wide variety of measures being pursued. I could not hope therefore to conduct a totally comprehensive review of all developments throughout the Commonwealth. It was not possible to catalogue every relevant measure in every jurisdiction; rather, selected examples are given. Some of the examples that appear are used because they represent a general development which has been taken up in several countries; others are used for their innovative value. Wherever possible, similar

provisions in other jurisdictions will be footnoted.

In surveying the countries of the Commonwealth it became quite obvious that the extent of delay in each country varies quite considerably. For some jurisdictions, usually the smaller developing nations, the problem has not yet surfaced, whereas in the industrialised nations it is an issue of great concern. Even in those countries where excessive delays have not yet emerged, it is very likely that they will at some point in the future, given the basic similarities of their legal systems to others prevailing in the Commonwealth. For these jurisdictions, the usefulness of this report will not be in providing information about possible methods of dealing with a worrisome situation, but in pointing out possible avenues of prevention. They are thus in an enviable position, for prevention is usually more palatable than the cure.

One final introductory note: delay is a problem in both criminal and civil cases, but this report is confined to examining development in eradicating delay in criminal proceedings. Although a consideration of civil procedure will be excluded, one important point should be made at the outset concerning the interplay between civil and criminal jurisdiction. Delay in criminal cases is treated as a very serious problem, and quite rightly so, for in many cases the very liberty of a citizen is at stake. It is of overwhelming importance that his fate should be decided within a reasonable time from the initial laying of the charges. Because of this vital consideration, the hearing of criminal cases is generally given priority against civil cases. This further delays the adjudication of the civil caseload of the courts which already suffers from its own indigenous delays. Significant progress cannot hope to be achieved in eliminating delays in civil proceedings until the hearing of criminal cases is expedited.

Before turning to an examination of Commonwealth developments and experience in dealing with trial delay, two preliminary concerns should be addressed in order to place such responses in a meaningful context. Firstly, why is delay in the criminal justice system a cause for concern, and secondly, what causes such delays?