

PART TWO

DEALING WITH DELAY

The preceding discussion of the causes and effects of delays in the criminal justice system will at least have given some indication of the nature and size of the problem we are currently being confronted with and what the consequences are likely to be if we fail to act to eradicate or prevent this retardation of justice. Just as there is no simple cause of delay, there is no simple, nor single, solution. Combative measures can be pursued on various levels: those which will regulate the intake of the courts and those which will speed up a case's progress through the system.

Commonwealth developments to deal with the problem of delays have been located on three planes: those reforms which aim to speed up the traditional court processes; those which create new procedures and tribunals for dealing with special types of cases and those which aim to keep certain cases out of the court system altogether. On all these levels a basic problem has had to be confronted: the balancing of efficiency in the workings of the system against the rights of the accused and the conveniences of the major participants. As might be expected, measures which fit into the first class given above have proved to be the most popular. The common law jurisdictions favour adherence to the principles and practices of their historical tradition as far as possible, simply because, despite its defects, it also has significant merits, notably in terms of protecting the rights of the accused. In modifying the existing trial process, there are generally two main objects in view:

The first is to increase the efficiency of criminal procedure as a means of convicting the guilty, while preserving all proper safeguards against the danger of convicting the innocent. The second is to simplify the law and procedure by getting rid of unnecessary complications and by abolishing or modifying rules which...."Have ceased to be appropriate in modern conditions."¹

With such underlying purposes in mind, along with an awareness of such factors as the time wasted in court on peripheral matters, on detailed proof of formal issues and on frivolous appeals, reforms have evolved. In general terms they endeavour to keep unnecessary matters out of court; to cut down on the amount of oral evidence; to restrict access to jury trial and streamline the jury trial process; to facilitate disposal by guilty pleas; to speed up the appellate process and to reorganise court systems so that they function more efficiently. It is to a more detailed examination of these measures that we now turn.