VIII Speeding Up the Appellate Process

> Appeals illustrate, as nothing else could that speed of disposal of court business and the requirements of justice may point in opposite directions. An appeal always involves delay yet rights of appeal are generally regarded as desirable in principle.[1]

Originally, the common law of England recognised no right of appeal proper in criminal matters. One exception was the writ of error which lay to set aside a conviction where there was an error on the face of the record. This remedy, however, was so limited in its application that it was rarely used. From early times the practice arose whereby a judge who had a difficult case would stay the execution of sentence and refer the matter for discussion at an informal meeting of judges. If they were of the opinion that an accused had been improperly convicted, they would recommend a pardon, otherwise the sentence was executed. This informal gathering was eventually erected into a court for Crown Cases Reserved in 1848 which was composed of all the judges. Their power was only to determine any questions of law that arose upon the trial of an accused at either assizes or quarter sessions, and not questions of fact or sentence. In addition, only the prisoner and not the Crown could appeal and even then, it was not a matter of right. That right was eventually promulgated in the English Criminal Appeal Act, 1907, which created the Criminal Court of Appeal.[2] Similar measures were enacted throughout the Commonwealth as it came to be realised that rights of appeal were fundamental to the proper administration of criminal justice. Generally there now exists an absolute right of appeal on a question of law, with a more restricted right on mixed questions of fact and law, on questions of fact and against sentence.

There are three purposes behind the appellate review of criminal convictions: firstly, to see that justice is done in a particular case, that is, to ensure that the defendant had a fair trial and that no prejudicial error was committed; to provide a judicial mechanism for the on-going development of the criminal law, both substantive and procedural, in the common law manner; and lastly, to ensure the uniform and even-handed administration of criminal justice throughout a particular jurisdiction.[3] The right of appeal is thus an important procedural safeguard.

Courts of appellate jurisdiction have not been immune to the ills afflicting the courts of first instance; they too are facing ever-increasing caseloads and mounting backlogs. Increasing volume carries a constant dual threat: that the judicial machinery will break down from overload and that efforts to keep the mass moving so as to avoid a breakdown will erode the quality of adjudication. In order to avoid either eventuality, attempts are being made throughout the Commonwealth to streamline the appellate process.

There are certain unavoidable delays in getting a case ready for appeal: counsel must often be allotted the appellant under legal aid; the legal representative or the appellant must draw up the grounds for appeal and the transcript of the trial must be prepared.[4] There is a limit to the extent to which the time available for these preparations can be curtailed.

Because the right of appeal is seen as being so fundamental to the proper administration of justice, speeding up the appellate process by curtailing that right has not been a widespread solution. In India, however, the Criminal Procedure Code of 1973 provides that there is no right of appeal in petty cases:

> s. 376 - Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:-
> (a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment or fine;
> (b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or both such imprisonment or fine;
> (c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or
> (d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees.[5]

In addition,there is in India, no appeal where an accused pleaded guilty if he was convicted in the High Court or in the Metropolitan Magistrates' Court except as to the extent or legality of sentence.[6] The Malawi Criminal Procedure and Evidence Code similarly provides that there shall be no appeal from a plea of guilty where the accused has been convicted by a subordinate court, except as to the extent and legality of sentence imposed.[7]

A more general trend in the reform of appellate procedures is that of replacing multiple rights of appeal with a single right of appeal with a revision or second appeal only on some substantial question of law. Provision for too many successive appeals and revisions has the effect of delaying the final disposal of cases.[8] In Tanzania, for example, before the court system was simplified, there existed a number of courts, and often a party was allowed three or four appeals. Taking a case up to the Central Court of Appeal might involve as many as seven appeals. This was both time-consuming and expensive.[9]

The administration of justice in Sri Lanka underwent radical reform in the early 1970s, one result being the vesting of all appellate authority in a single court - the Supreme Court.[10] This means that there will be only one appeal in criminal proceedings, rather than the two which were available prior to 1971. This departure was inspired by the necessity to eliminate the massive recurrent backlog of appeal cases that accumulated owing to the multiple appeal system and the excessive workload of the courts. The original jurisdiction of the Supreme Court has largely been removed in order to conserve sufficient judicial time for the speedy disposal of appeals. To reinforce this goal of the adequate judicial consideration of appeals, it has also been provided that appeals from decisions of Magistrates' Courts shall be heard by at least two judges and appeals from the District Courts and High Court by at least three judges.[11]

Attempts have also been made to modernise certain appellate procedures which are no longer relevant to modern conditions, a prime example being the abolition of the appeal de novo. In this instance, Canadian experience will be examined. Until 1976, an appeal from summary conviction was by way of a trial de novo. This was essentially a new trial before an appeal court in which the accused stood in exactly the same position procedurally as he stood after the entry of his plea before the summary conviction court. If he had pleaded not guilty at trial, the Crown on appeal was required to present its evidence and prove its case beyond a reasonable doubt. In 1976,[12] sweeping changes were introduced which effectively abolished trial de novo, substituting an appeal on the record of the proceedings in the lower court. In a news release issued by the Minister of Justice at the time the amendment was proposed, it was explained:

> The de novo or new trial appeal procedure from summary conviction cases was formulated when most of these cases were heard by lay magistrates. It was thought essential to permit the dissatisfied party the opportunity of having the case heard by a legally trained trial judge. This justification no longer exists since there is a broad availability of trained magistrates. The procedure is unnecessarily time-consuming and a serious inconvenience for the witnesses.[13]

On the whole, Commonwealth jurisdictions provide a right of appeal to a superior court with a further rehearing only in very exceptional cases.[14] It is unlikely that the right of appeal can be restricted further in order to expedite the final disposal of criminal cases. The type of measures that are being adopted are those which restrict the scope of appellate review; those which deter groundless appeals and those which streamline the administration and processing of appellate cases.

If an appeal court is willing to alter a trial judgement on grounds of a minor nature, it is more than likely that more people will lodge an appeal in the hope of having their conviction overturned or their sentence reduced. As one commentator has pointed out, a reduction in the number of appeals, and hopefully, a concomitant speeding up of the hearing of the remainder, might be achieved if the scope of appellate review is limited.[15] This can be done in several ways: firstly, the appellate court should only review factual determinations to ascertain whether they are reasonably supported by the evidence; secondly, the court should consider issues which were not raised in the trial court only to prevent manifest injustice or to determine jurisdictional questions, and the court should not disturb a trial court judgement unless there was a denial of substantial justice or a serious departure from established procedure.[16]

While an absolute right of appeal on a question of law is usually provided in common law jurisdictions, leave to appeal must be sought where the grounds of appeal rest on questions of fact or fact and law or if the appeal is against sentence.[17] Groundless appeals are discouraged by the necessity of obtaining leave to appeal whenever the point is not one of law alone. This requirement was written into the original legislation creating the English Court of Criminal Appeal in 1907 and was subsequently adopted by other Commonwealth countries. Even in 1907 obtaining leave was seen as a "seive" which "would hold back the hopeless cases".[18] By coupling the necessity of obtaining leave with the authority of a single judge to grant or deny leave in the name of the court, the Act erected a screening mechanism from the outset. Under the "single judge system" applications for leave to appeal are referred to a single judge rather than the full court of three judges and he has the power to refuse or grant such leave. If he refuses, however, the applicant is at liberty to renew his application to the full court.[19] A similar provision exists in the Supreme Court and the Federal Court of Appeal in Nigeria: a single judge of those respective courts is empowered to exercise any power vested in the court other than the final determination of a cause or matter. In criminal cases, if a judge of the court refuses an application for the exercise of any such power, the applicant is entitled to have his application determined by the full court.[20] In Canada, if the single judge refuses leave to appeal, the accused may appeal for leave to the full court by filing a notice of application for leave within seven days of the single judge's refusal.[21] By utilising the single judge procedure, the appeal court is freed of the task of dealing with a percentage of really hopeless cases, since, if the single judge thinks that some arguable point is involved he will grant leave.

As to the effectiveness of this system as a screening mechanism: in the English Court of Appeal in 1970 there were 8,280 applications for leave to appeal; 3975 of these were abandoned; in 3363 cases leave was refused and leave granted in 942. In 1973, there were 6171 applications, 1541 abandonments, 3516 refusals and 1114 cases leave to appeal was granted. The percentage of cases screened out by the single judge refusing to grant leave to appeal rose from 41 per cent in 1970 to 57 per cent in 1973.[22] This is impressive evidence of the procedure as a screening device. One can readily imagine the additional judge time that would have been required if all applications for leave had been brought before the full court. Of course, if every unsuccessful applicant were in fact to renew his application, the single judge procedure would lose its point and become simply a time-consuming interim step. Yet, in practice, only a minority of would-be appellants renew their applications. In 1970 in England one-sixth of all applications refused by a single judge were renewed; the reaminder were abandoned.[23] A former Lord Chief Justice of the Court of Appeal has expressed the opinion that the percentages of abandonments are considerably greater than was previously the case due to a change in procedure: formerly the prisoner was merely told by the prison governor that his application was refused. Nowadays he gets a copy of a form showing that on a certain date his application was considered by the judge signing the form and that the judge had refused the application for the reasons stated on the form.[24]

An alternative to the leave to appeal procedure is provided in some Commonwealth jurisdictions in the form of a certificate granted by the trial judge. The Criminal Law Consolidation Act, 1935, of South Australia, as amended, provides an absolute right of appeal on a question of law; a right of appeal on questions of fact or fact and law on the certificate of the trial judge; a right of appeal with leave of the Full Court of Appeal on other grounds, including sentence, unless the sentence is fixed by law.[25] In Queensland, a person convicted on indictment may appeal with leave of the appeal court <u>or</u> the certificate of the judge of the court of trial on questions of fact, or mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal.[26] A similar provision in the Canadian Criminal Code provides a right of appeal on grounds of fact or fact and law with leave of the Court of Appeal or a judge thereof or upon the certificate of the trial judge that the case is a proper case for appeal.[27] In these instances, it is clear that the trial judge is to some extent playing the role of the "single judge", although, having supervised the trial at first instance, his objectivity may be slightly coloured. In the Canadian context it has been observed that the certificate of the trial judge as an alternative to the leave of the Court of Appeal should not be granted by the trial judge as a matter of course; he should be satisfied that there is a reasonable doubt that the verdict is correct and his certificate should contain a statement to the effect. This provision will only apply where there has been a trial by jury rather than trial by judge alone, otherwise the certificate would obviously be inconsistent with his finding as to the guilt of the accused beyond a reasonable doubt.[28]

An interesting measure designed to reduce the scope of criminal appeals was enacted in the Criminal Appeal Rules, 1979, of South Australia. They provide that the Full Court will not allow a ground of appeal that relates to a direction or any omission to direct upon a question of fact alone, or upon a question of mixed law and fact or that relates to a decision as to the admission or rejection of evidence given by a judge presiding at the trial, unless express objection was taken or express submissions were made with respect thereto by the applicant to the presiding judge.[29]

Where the single judge or certificate procedure does not exist to screen cases and for the screening of appeals on questions of law there is often a procedure for the summary dismissal of what are known as "frivolous" appeals. In England, the percentage of criminal appeals falling into this category is estimated as ranging between 60 and 90 percent.[30] The English Criminal Appeal Act, 1968, section 20 provides:

> If it appears to the registrar of criminal appeals of the Court of Appeal... that a notice of an appeal which involves a question of law alone does not show any substantial ground of appeal, he may refer the appeal to the Court for summary determination; and where the case is so referred the Court may, if they consider that the appeal is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.

Substantially similar provisions exist in Canada,[31] Queensland,[32] Scotland,[33] South Australia,[34] Tasmania,[35] Malawi,[36] India[37] and Kenya.[38]

The requirement that the prospective appellant must seek leave to appeal where the ground of his appeal is not purely a matter of law and the summary dismissal of groundless appeals are aimed at preventing the appellate courts being swamped under a mass of "hopeless" appeals, and in so doing, expedite the appellate process for those cases worthy of consideration.

Courts of appeal, in making their decisions, will generally rely more or less exclusively on the transcripts of the trial. The hearing of new evidence is the exception rather than the rule in many jurisdictions,[39] although one observer attributes a measure of the delays experienced in the English setting to the great opportunities which exist in the Court of Appeal to submit new evidence on any issue, if it is in writing. Presenting the testimony of live witnesses, however, requires the leave of the court. Application for leave is typically accompanied by an affidavit giving the substance of what the witness will say. On sentence appeals the court has an easy-going attitude and will listen to virtually anything the appellant wants to offer; but on conviction appeals, the evidence is supposed to be limited to that which is admissible under the ordinary rules of evidence in trial court.[40] Thus, the more evidence an appeal court has to consider over and above the trial transcript, the more time is consumed, particularly if a single judge must hear multiple applications for leave to introduce new evidence. While all steps must be taken to secure justice for the appellant, restraint must be exercised to avoid transforming an appeal hearing into what is essentially a completely new trial.

As a rule, appellate courts will not alter the decision of the trial court unless there are substantial grounds for so doing. As a result, even where an appellant is technically in the right, his appeal may be dismissed if 'no substantial miscarriage of justice has actually occurred', and if no reasonable trier of fact would or could have given any other verdict than that which in fact was given, and no substantial injustice has been done. This rider covers the kind of situation where, for example, a fact has been elicited by an improper leading question, but the fact was of no relevance to the outcome of the trial.

Fairly typical of such saving provisions is section 353(1) of the South Australian Criminal Law Consolidation Act, 1935, as amended. It reads as follows:

> The Full Court on such appeal against conviction shall allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported, having regard to the evidence, or that the judgement of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:
> Provided that the Full Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.[41]

It is hoped that a prospective appellant having been informed of this policy and the relative merit of his own case by counsel will not pursue an appeal where the error is a marginal one which the appeal court is unlikely to correct.

The importance of timely and forthright legal advice cannot be underestimated in reducing appellate court caseload and expediting hearings on appeal. Most jurisdictions have a time limit for the lodging of appeals, although provision is usually made for cases being received out of time in special cases.[42] If the convicted person has not yet received advice from counsel as to the merits of his appeal then this period is near expiry, he is likely to proceed with his case, however weak it might actually be. New machinery was promulgated in England in 1974 to avoid such an unsatisfactory state of affairs. The essence of the new procedure is reliance on a pamphlet "Preparation for Proceedings in the Court of Appeal, Criminal Division" issued by the Registrar of Criminal Appeals. Under this, counsel's brief contains instructions to advise or assist on questions of grounds of appeal: counsel should state at the end of a case either that in his view there are grounds or that there are no grounds or that he needs further time for consideration. If either grounds or provisional grounds are thought to exist, counsel should either draft them or state that they will follow within 14 days. This is handed to his instructing solicitor before he leaves the court, together with his written view which must be signed by him. If counsel cannot advise at the court, he must send written advice within 14 days. The timetable is such that the client gets clear advice within the 28 day period allowed for filing an application for leave to appeal.[43] If, in counsel's view there is no ground for an appeal it is to be hoped that his client will act accordingly and refrain from lodging a notice of leave to appeal.

Other measures of deterrence exist to discourage convicted persons from lodging frivolous appeals. Those countries in which the court of appeal has the power to increase sentence on appeal have a ready-made deterrence mechanism. This power to increase sentence on appeal exists in Scotland,[44] Uganda,[45] Tasmania,[46] South Australia[47] and India.[48] When the English Court of Criminal Appeal was established in 1907 it had the power to increase sentences, but this was removed by the Criminal Appeal Act, 1966. During the debate on this Bill, several politicians argued that if this change were made, the Court would be swamped by appeals. Many people now feel that this prediction has been fulfilled and some have suggested that the power to increase sentence be restored.[49] One study of the deterrent effect of the power to increase sentence on appeal concluded, however, that although there has been a large increase in the number of appeals in England, it is not possible to say with any degree of certainty that frivolous appeals have contributed disproportionately to the increase.

> The safe conclusion seems to be that there is little evidence for supposing either that the abrogation of the power to increase sentence caused an increase in appeals or that the restoration of the situation as it was before 1966 would lead to a reduction in their number.[50]

Unless an appellant is released on bail pending his appeal, he will spend the interim period in custody. Thus, whether this period will ultimately count towards his sentence is of great significance to him, particularly given the length of time it may take for his appeal to be finally decided. In Uganda there exists what is called the "six weeks rule":[51] the first six weeks spent in custody pending the determination of an appeal is not counted as part of his sentence, unless the appeal court directs otherwise. By contrast, the Scottish rule provides that the time during which an appellant, after admission to bail, is at large pending the determination of his appeal shall not be reckoned as part of any term of imprisonment under his sentence, but for the appellant in custody, this interim period shall be reckoned as part of any term of imprisonment imposed, subject to any direction from the Court to the contrary.[52]

Before 1966, English law provided that if an application for leave to appeal were refused, the defendant automatically lost credit for time served up to a maximum of 42 days, unless the court directed otherwise. The Criminal Appeal Act, 1966, abolished this automatic loss of time, providing instead that in cases of unsuccessful applications for leave to appeal, the full court or single judge might direct in its discretion, that part or all of the time served pending the appeal not count towards the sentence. In other words, the time served now counts unless the appellate court directs otherwise. In the years immediately following that change in the law, the Court of Appeal, Criminal Division, seldom exercised its discretion to direct that time not count.[53] However, in 1970 the Lord Chief Justice read a Practice Note pointing out the strain on the court and the appellate process of having so many unarguable applications. In view of this continued escalation in applications and of the fact that legal aid on appeals was widely available, it was announced that in future the Court would not be reluctant, in connection with unarguable applications, to direct that the time served not count towards the ultimate sentence.[54] Further,

> [W]here an application devoid of merit has been refused by the single judge and a direction for loss of time has been made, the full court, on renewal of the application, may direct that additional time shall be lost if, once again, it thinks it right so to exercise its discretion in all the circumstances of the case. The object is to enable prompt attention to be given to meritorious cases by deterring the unmeritorious which stand in their way.[55]

Immediately after this policy was announced, the volume of case filings in the Court of Appeal fell dramatically. Within three or four weeks, filings had dropped from nearly 1,000 a month to approximately 500 monthly. The total caseload for 1970 ended up roughly on a level with that of 1966, substantially lower than that of the three intervening years.[56] There has not been, however, any wholesale deprivation of time by the Court. From May to December, 1970, directions for time not to count were entered in 547 of the 2,693 applications refused by the single judge - a ratio of approximately one in five. The aggregate time directed to be lost was 12,895 days, an average of 23 days lost in each case in which the direction was made. On the data available, it would appear that although these directions are made selectively, the deterrent effect is strong.[57]

More recent developments, however, indicate that the effectiveness of this provision has waned somewhat. The Lord Chief Justice has seen fit to issue a further Practice Note directed at discouraging the lodging of hopeless appeals:[58]

> In order to accelerate the hearing of those appeals in which there is some merit, single judges will, from 15th April 1980, give special consideration to the giving of a direction for loss of time, whenever an application for leave to appeal is refused. It may be expected that such a direction will normally be made unless the grounds are not

> only settled and signed by counsel, but also supported by the written opinion of counsel. Advice on appeal is, of course, often available to prisoners under the legal aid scheme. Counsel should not settle grounds, or support them with written advice, unless he considers that the proposed appeal is properly arguable. It would, therefore, clearly not be appropriate to penalise the prisoner in such a case, even if the single judge considered that the appeal was quite hopeless.
>
> It is also necessary to stress that, if an application is refused by the single judge as being wholly devoid of merit, the full court has power, in the event of renewal, both to order loss of time, if the single judge has not done so, and to increase the amount of time ordered to be lost if the single judge has already made a direction, whether or not grounds have been settled and signed by counsel. It may be expected that this power too will, as from 15th April 1980, normally be exercised.

The Australian situation is fairly straightforward: under recent legislation enacted in Victoria, no appellant will run the risk of losing custody credit;[59] Tasmanian appellants are allowed full credit "unless the court otherwise orders";[60] the remaining States operate under provisions which reproduce subsection 14(3) of the English Criminal Appeal Act, 1907, that is, time served pending an appeal shall not count, unless direction is given to the contrary. This section rests the reason for forfeiture of appeal time on the basis that the offender is being "specially treated as an appellant" while in custody. An appellant who wishes to avoid possible forfeiture can request that the prison authorities treat him as an ordinary prisoner rather than accord him the "special treatment" provided by the prison regulations.[61]

An interesting practice occurs in Ontario: in that province appeals by those convicted and sentenced to a period of imprisonment are sometimes heard in a court room within the prison itself. This saves the manpower and cost involved in the transportation of prisoners to the court. Also, it has had the effect of reducing the number of such appeals, which, as one commentator has observed, are often motivated by the desire to take a trip to town and have a day out of prison.[62]

The hearing of a case on appeal involves a great deal of administrative work, and delays also occur in this part of the process. Before an application for an appeal to leave can be considered, the papers in the case must be obtained from the trial court and in most cases a transcript must be made from the shorthand notes or recording of the trial.[63] In Ontario it has been found that the main cause of delay with appeals is the time required for transcription of the evidence of trial proceedings.[64] In order to expedite appeals and eliminate unnecessary costs, a Practice Direction was issued limiting the contents of transcripts:

> All court reporters are being instructed as follows:
> 'that hereafter, unless otherwise ordered by a judge of the Court of Appeal and notwithstanding other instructions from counsel, they are to omit from all transcripts of evidence for criminal or civil appeals:
> (a) all proceedings on the challenge of the array or of jurors for cause;
> (b) any opening address of the trial judge;
> (c) the opening and closing address of counsel;
> (d) all proceedings in the absence of the jury and all argument, in the absence of the jury, and where there is no jury, excepting objections to a charge and the trial judge's ruling thereon together with any reasons for his ruling;
> (e) all objections to the admissibility of evidence excepting only a notation that an objection was made together with any ruling of the trial judge including any reasons for his ruling.'
> In supplement to that instruction counsel are required to avoid ordering the transcription of any and all evidence that is not essential to an appeal ....In all cases counsel are also required to agree as to undisputed facts rather than having evidence to prove them transcribed. Failure of counsel in these respects...may invoke the sanctions of the Court.[65]

In England, it is the Registrar of Criminal Appeals who decides, on the basis of the grounds of appeal stated in the application, what portions of the trial proceedings are to be transcribed, and he notifies the "shorthand writer" accordingly. Only as much of the transcript is ordered as is essential to enable the court to pass on the grounds asserted in the application.[66]

The Registrar is in charge of a sophisticated piece of administrative machinery - the Criminal Appeal Office - designed to expedite the preparation and processing of appeals. One American commentator has expressed the view that this is perhaps the key to the Court of Appeal's ability to cope with its large caseload.[67] The role of the Registrar's office is best described as total management of the case from the initiation of appellate proceedings by the defendant to the point where actions by a judge of the court is to be taken.

After filing the application for leave to appeal, the defendant or his counsel need do nothing more to perfect the appeal. The Registrar takes entire charge of the matter at that point. His office is responsible for the presentation to the judges of the case in a satisfactory format within an acceptable time. This includes obtaining and assembling the record and putting it before the court. The entire criminal appeals process is facilitated by the use of a number of printed forms; little or nothing is left to be devised ad hoc by anyone. Often these forms can be employed simply by checking the appropriate blanks. This makes each step quicker and easier for the staff, judges, lawyers and particular for any unrepresented defendants. They also provide some safeguard against a defendant overlooking a matter which would be in his interest and make the contents of a case file easier to grasp since there is a relatively high degree of uniformity and succinctness of information.[68]

A new system of monitoring the progress of appeals was introduced into the Ontario Court of Appeal in 1978: a colour-coding scheme has provided a mechanism whereby appeals can be isolated where the rules have not been complied with or where there appear to be unjustifiable delays. Before this system was operational, in order to put the Court on a current basis, all appeals which were over a year old and had not been proceeded with were dealt with by five special purge courts. The Court intends to continue monitoring appeals with the goal that almost every appeal will be heard within six months of the judgement appealed from,[69] a worthy objective.

This section on appellate procedure has served to illustrate that modernising and streamlining the rules of criminal evidence and procedure is only one method of eradicating the worst delays in the criminal justice system; administrative efficiency in the court organisation is also necessary if the processing of cases is to be expedited. It is to the issue of courts administration in a more general context that we now turn.

Footnotes

[1] Great Britain, Scottish Home and Health Department, The Sheriff Court (Edinburgh, 1967), Cmnd. 3248, para. 66.

[2] R.E. Salhany, Canadian Criminal Procedure (Toronto, 1978), pp. 306-307.

[3] D.J. Meador, Criminal Appeals: English Practices and American Reforms (Charlottesville, 1973), p. 7.

[4] Lord Parker of Waddington "The Criminal Division of the Court of Appeal", (1970), 12 Criminal Law Quarterly 307 at p. 317.

[5] Indian Criminal Procedure Code, 1973, section 376.

[6] Id. section 375,

[7] Malawi Criminal Procedure and Evidence Code, Cap 8:01, section 348.

[8] H.R. Khanna, "Some Reflections on Criminal Justice", (1975), 17 Journal of Indian Law Institute 505 at p. 509.

[9] "Report on Judges' and Magistrates' Conferences, Nov. 1967-March 1968", (1968) 1 Eastern Africa Law Review 167 at pp. 168-69.

[10] Sri Lanka Administration of Justice Law, No. 44 of 1973, effective January 1, 1974. For commentary see L.J.M. Cooray, "Administration of Justice in Sri Lanka", (1976), 7 Hong Kong Law Journal 67.

[11] L.J.M. Cooray, id. at p. 80.

[12] Criminal Law Amendment Act, 1975-75-76, c. 93, sections 89-95.

[13] R.E. Salhany, supra footnote 2 at p. 341.

[14] For example, in England, an appeal lies to the House of Lords from any decision of a Divisional Court of the Queen's Bench Division in a criminal cause or matter, at the instance of the defendant or the prosecutor, but only with the leave of that court or of the House of Lords itself. Leave will not be granted unless the Divisional Court certifies that a point of law of general public importance is involved, and it appears to that court or to the House of Lords, as the case may be, that the point is one which ought to be considered by the House.

[15] S. Shetreet, "Remedies for Court Congestion and Delay: The Models and the Recent Trend", (1978-79), 17 University of Western Ontario Law Review 35 at p. 54.

[16] Id.

[17] For example, Criminal Procedure (Scotland) Act, 1975, c. 21, section 228 and Tasmania Criminal Code Act, 1924, as amended, section 401.

[18] Great Britain, Report of the Interdepartmental Committee on the Court of Criminal Appeal (London, 1966), Cmnd. 2755, p. 25.

[19]"The Lord Chief Justice on Criminal Appeals", (1969) 46 Law Guardian 11, at pp. 13-14.

[20]Nigeria Supreme Court Act, 1960, section 2 and the Federal Court of Appeal Decree, 1976, section 10. For further discussion of these provisions see A.O. Obilade, The Nigerian Legal System (1979), pp. 171-81.

[21]Canadian Criminal Code R.S.C. 1970, c. C-34, section 603(3).

[22]For a full breakdown of the Court of Appeal caseload see R.M. Jackson, The Machinery of Justice in England (1977), p. 207.

[23]D.J. Meador, supra footnote 3 at pp. 45-46.

[24]Lord Parker of Waddington, supra footnote 19 at pp. 13-14.

[25]Section 352.

[26]Queensland The Criminal Code Act, 1899, as amended, section 668D(6).

[27]Canadian Criminal Code, supra footnote 21 at section 603.

[28]R.E. Salhany, supra footnote 2 at p. 310.

[29]The Criminal Appeal Rules, 1979. See Australian Legal Monthly Digest 1979, para. 640.

[30]D.J. Meador, supra footnote 3 at p. 11. The former Lord Chief Justice put the figure at 75 per cent - Practice Note [1970] 1 All E.R. 1119.

[31]Canadian Criminal Code, supra footnote 21 at section 612.

[32]Queensland The Criminal Code Act, 1899, as amended, section 671H(2). This provision applies to leave to appeal against a conviction or against sentence.

[33]Criminal Procedure (Scotland) Act, 1975, section 256. Here, the decision as to the summary determination is purely that of the court.

[34]South Australia Criminal Law Consolidation Act, 1935, as amended, section 365.

[35]Tasmania Criminal Code Act, 1924, as amended, section 416(2).

[36]Malawi Criminal Procedure and Evidence Code, cap. 8:01. section 351.

[37]Indian Criminal Procedure Code, 1973, section 384.

[38]Kenya Criminal Procedure Code, sections 352 and 352A.

[39]For example, Canada - see R.E. Salhany, supra footnote 3 at p. 328.

[40]D.J. Meador, supra footnote 3 at pp. 73 and 133.

[41]See also Canadian Criminal Code, supra footnote 21 section 613(1)(b)(iii); Tasmania Criminal Code Act, 1924, as amended, section 402 and Uganda Criminal Procedure Code, section 331(1).

[42]For example, in England notice of leave to appeal must be served within 28 days; in Queensland the period is 14 days and in Malawi, 10 days.

[43]R.M. Jackson, _supra_ footnote 22 at pp. 208-209.

[44]Criminal Procedure (Scotland) Act, 1975, section 254(4).

[45]Uganda Criminal Procedure Code, section 333.

[46]Tasmania Criminal Code Act, 1924, as amended, section 402.

[47]South Australia Criminal Law Consolidation Act, 1935, as amended, section 353(4). The courts of South Australia have in effect abrogated this power, the Full Court announcing that an appeal court should not act _sua sponte_ to increase sentences but should only so act in suitable cases where there has been a cross-appeal by the Crown - _Fischer v. Chambers_ (1972) 4 S.A.S.R. 105 at p. 114.

[48]Indian Criminal Procedure Code, 1973, section 386.

[49]S. White, "Deterrence and Criminal Appeals: the effect of the Criminal Appeal Act, 1966", (1975), 38 _Modern Law Review_ 369.

[50]_Id._ at p. 392.

[51]Uganda Criminal Procedure Code, section 333(3).

[52]Criminal Procedure (Scotland) Act, 1975, section 268.

[53]D.J. Meador, _supra_ footnote 3 at p. 63.

[54]Lord Parker C.J. Practice Note [1970] 1 All E.R. 1119.

[55]_Id._ at p. 1120.

[56]D.J. Meador, _supra_ footnote 3 at pp. 64-65.

[57]_Id._ at p. 65.

[58][1980] 1 All E.R. 555.

[59]Victoria, Act No. 8701, assented to May 1975, amending the Social Welfare Act, 1970, by introducing section 202A.

[60]Tasmania Criminal Code Act, 1924, as amended, section 415(4) and Prison Regulation 98.

[61]For a typical provision to this effect see Queensland Prisons Act, 1958, as amended, section 26(2). For a more detailed discussion of the Australian situation see F. Rinaldi, _Essays in Australian Penology_ (Canberra, 1976) and "Penalising the Appellant in Appeals by Convicted Persons", 50 _Australian Law Journal_ 9.

[62]S. Shetreet, _supra_ footnote 15 at p. 41.

[63]New Zealand Royal Commission on the Courts, _Report_ (Wellington, 1978), para. 220.

[64]W. Howland *et al.*, "Reports on the Administration of Justice in Ontario on the Opening of the Courts for 1979", (1979), 13 *Law Society of Upper Canada Gazette* 3 at p. 9.

[65]Supreme Court of Ontario, Revised Practice Direction (1977) *Criminal Lawyers' Association Newsletter* 11.

[66]D.J. Meador, *supra* footnote 3 at p. 30.

[67]*Id.* at p. 28.

[68]*Id.* at pp. 28-40.and D.R. Thompson and H.W. Wollaston, *The Court of Appeal, Criminal Division* (London, 1969), pp. 101-104.

[69]W. Howland *et al.*, *supra* footnote 63 at p. 9. In Nigeria, an administrative directive has been promulgated which requires all appeals to be heard within three months of the trial judgement - Correspondence from the Solicitor General's Division, Lagos, dated January 22, 1979.