

PART FOUR

KEEPING CASES OUT OF COURT

The danger has already been mentioned that the judicial system will founder under the sheer weight of matters coming before it. Good administration and management and improved procedures can do much to mitigate this danger but are unlikely to remove it. The question is whether the courts should be reserved for matters that are of some importance to the well being of society. This is an area which calls for examination. There is a real prospect of any criminal justice system being debased and depreciated by over use.¹

The ambit of the criminal law has been a continuous historical extension from the one initial offence of parricide; but this extension has now reached unprecedented proportions and this in turn is having its effects on the courts. The question that is now being generally canvassed is: can certain types of behaviour be de-regulated? Is the criminal law an appropriate instrument for dealing with many of the problems which have been brought under its aegis? The response in some jurisdictions has been a qualified "yes". Relieving the burden on the courts by keeping cases out of that forum has been achieved by three methods: decriminalisation, depenalisation or diversion and conciliation.