CRIMINAL APPEAL (AMENDMENT) ACT 1994 No. 15

NEW SOUTH WALES

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Criminal Appeal Act 1912 No. 16

SCHEDULE 1—AMENDMENTS

CRIMINAL APPEAL (AMENDMENT) ACT 1994 No. 15

NEW SOUTH WALES

Act No. 15, 1994

An Act to amend the Criminal Appeal Act 1912 to make further provision with respect to the composition of the Court of Criminal Appeal for appeals against sentences, the evidence which may be given on appeal and the delivery of judgments of that court; and for other purposes. [Assented to 10 May 1994]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Criminal Appeal (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Criminal Appeal Act 1912 No. 16

3. The Criminal Appeal Act 1912 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Constitution of court**):

At the end of section 3, insert:

(2) More than one sitting of the court may be held at the same time.

(2) Section 5AA (**Appeal in criminal cases dealt with by Supreme Court in its summary jurisdiction**):

(a) Omit section 5AA (3), insert instead:

(3) Any such appeal is to be by way of rehearing on the evidence (**"the original evidence"**), if any, given in the proceedings before the Supreme Court in its summary jurisdiction.

(3A) The Court of Criminal Appeal may however give leave to adduce fresh, additional or substituted evidence but only if the court is satisfied that there are special grounds for doing so. If the court does give leave, the appeal is to be by way of rehearing on the original evidence and on any fresh, additional or substituted evidence so adduced.

(b) From section 5AA (4), omit "referred to in subsection (3)", insert instead "heard on appeal".

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 6AA:

After section 6, insert:

Appeal against sentence may be heard by 2 judges

6AA. (1) The Chief Justice may direct that proceedings under this Act on an appeal (including proceedings on an application for leave to appeal) against a sentence be heard and determined by such 2 judges of the Supreme Court as the Chief Justice directs.

(2) Such a direction may only be given if the Chief Justice is of the opinion that the appeal is not likely to require the resolution of a disputed issue of general principle.

(3) For the purposes of proceedings the subject of a direction under this section, the Court of Criminal Appeal is constituted by the 2 judges directed by the Chief Justice.

(4) The decision of the court when constituted by 2 judges is to be in accordance with the opinion of those judges.

(5) If the judges are divided in opinion:

(a) as to the decision determining the proceedings, the proceedings are to be reheard and determined by the court constituted by such 3 judges as the Chief Justice directs (including, if practicable, the 2 judges who first heard the proceedings on appeal); or

(b) as to any other decision, the decision of the court is to be in accordance with the opinion of the senior judge present.

(6) Proceedings heard by the court constituted by 2 judges under this section are rendered abortive for the purposes of section 6A (1) (a1) of the Suitors' Fund Act 1951 if they are required to be reheard because the judges were divided in opinion as to the decision determining the proceedings. The rehearing of the proceedings is considered to be a new trial for the purposes of that Act.

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 22A:

After section 22, insert:

Judgment of the court may be delivered by a single judge of the court

22A. (1) When judgment in a proceeding in the court is delivered it is not necessary for any of the judges before whom it was heard to be present in court to state their opinions.

(2) The opinion of any of the judges may be reduced to writing and made public by any judge of the court when judgment in the proceeding is delivered.

(3) The judgment of the court has the same effect as if each judge of the court whose opinion is so made public had been present in court and declared his or her opinion in person.

(4) For the purpose of delivering judgment the court may be constituted by one or more judges of the court.

(5) Section 30, Schedule 1:

After section 29, insert:

Savings and transitional provisions

30. Schedule 1 has effect.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 30)

Criminal Appeal (Amendment) Act 1994

1. (1) The amendment made to this Act by Schedule 1 (2) to the Criminal Appeal (Amendment) Act 1994 does not apply to any appeal from a decision made in proceedings commenced before the commencement of the amendment.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The amendment made to this Act by Schedule 1 (3) to the Criminal Appeal (Amendment) Act 1994 applies to any appeal, or application for leave to appeal, made to the Court of Criminal Appeal whether before, on or after the commencement of the amendment, but not to proceedings commenced to be heard by the Court of Criminal Appeal before that commencement.

(3) The amendment made to this Act by Schedule 1 (4) to the Criminal Appeal (Amendment) Act 1994 applies to proceedings for judgment in the Court of Criminal Appeal whether the proceedings were commenced before, on or after the commencement of the amendment.

[*Minister's second reading speech made in—*
Legislative Assembly on 17 March 1994
Legislative Council on 20 April 1994]

BY AUTHORITY

FIRST PRINT

CRIMINAL APPEAL (AMENDMENT) BILL 1994

NEW SOUTH WALES

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Supreme Court (Amendment) Bill 1994.

The Criminal Appeal Act 1912 establishes the Court of Criminal Appeal to hear certain appeals in criminal cases, including appeals against convictions and sentences.

The object of this Bill is to amend that Act:

(a) to provide that in an appeal from a decision of the Supreme Court exercising its summary jurisdiction (and from certain other courts) the Court of Criminal Appeal is not required to hear additional or substituted evidence (as it is required to do at present) but may give leave to adduce fresh, additional or substituted evidence if there are special grounds for doing so; and

(b) to allow the Chief Justice to direct that an appeal against a sentence (including an application for leave to appeal) be heard by only 2 judges, instead of 3 judges (as is presently the case), if in the opinion of the Chief Justice the case is not likely to require the resolution of a disputed issue of general principle; and

(c) to provide that in a case to which (b) applies, if the 2 judges do not come to the same decision on the proceedings, the proceedings are to be reheard and determined by a court consisting of 3 judges (including, if practicable, the 2 judges who first heard the proceedings on appeal); and

(d) to allow any judge or judges of the Court of Criminal Appeal to deliver the judgment of the court so that the judges who heard the proceedings need not be present at the sitting of the court when judgment is delivered; and

(e) to make minor and consequential amendments and enact transitional provisions.

The Supreme Court (Amendment) Bill 1994 also amends the Suitors' Fund Act 1951 to enable a party to proceedings that are required to be reheard as referred to in (c) above (or under the parallel provisions of the Supreme Court (Amendment) Bill 1994) to be paid the party's costs on the aborted proceedings out of the Suitors' Fund established under that Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments to the Criminal Appeal Act 1912.

Schedule 1 contains the amendments to the Criminal Appeal Act 1912 described above.

FIRST PRINT

CRIMINAL APPEAL (AMENDMENT) BILL 1994

NEW SOUTH WALES

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Criminal Appeal Act 1912 No. 16

SCHEDULE 1—AMENDMENTS

CRIMINAL APPEAL (AMENDMENT) BILL 1994

NEW SOUTH WALES

No. , 1994

A BILL FOR

An Act to amend the Criminal Appeal Act 1912 to make further provision with respect to the composition of the Court of Criminal Appeal for appeals against sentences, the evidence which may be given on appeal and the delivery of judgments of that court; and for other purposes.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Criminal Appeal (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Criminal Appeal Act 1912 No. 16

3. The Criminal Appeal Act 1912 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Constitution of court**):

At the end of section 3, insert:

(2) More than one sitting of the court may be held at the same time.

(2) Section 5AA (**Appeal in criminal cases dealt with by Supreme Court in its summary jurisdiction**):

(a) Omit section 5AA (3), insert instead:

(3) Any such appeal is to be by way of rehearing on the evidence (**"the original evidence"**), if any, given in the proceedings before the Supreme Court in its summary jurisdiction.

(3A) The Court of Criminal Appeal may however give leave to adduce fresh, additional or substituted evidence but only if the court is satisfied that there are special grounds for doing so. If the court does give leave, the appeal is to be by way of rehearing on the original evidence and on any fresh, additional or substituted evidence so adduced.

(b) From section 5AA (4), omit "referred to in subsection (3)", insert instead "heard on appeal".

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 6AA:

After section 6, insert:

Appeal against sentence may be heard by 2 judges

6AA. (1) The Chief Justice may direct that proceedings under this Act on an appeal (including proceedings on an application for leave to appeal) against a sentence be heard and determined by such 2 judges of the Supreme Court as the Chief Justice directs.

(2) Such a direction may only be given if the Chief Justice is of the opinion that the appeal is not likely to require the resolution of a disputed issue of general principle.

(3) For the purposes of proceedings the subject of a direction under this section, the Court of Criminal Appeal is constituted by the 2 judges directed by the Chief Justice.

(4) The decision of the court when constituted by 2 judges is to be in accordance with the opinion of those judges.

(5) If the judges are divided in opinion:

(a) as to the decision determining the proceedings, the proceedings are to be reheard and determined by the court constituted by such 3 judges as the Chief Justice directs (including, if practicable, the 2 judges who first heard the proceedings on appeal); or

(b) as to any other decision, the decision of the court is to be in accordance with the opinion of the senior judge present.

(6) Proceedings heard by the court constituted by 2 judges under this section are rendered abortive for the purposes of section 6A (1) (a1) of the Suitors' Fund Act 1951 if they are required to be reheard because the judges were divided in opinion as to the decision determining the proceedings. The rehearing of the proceedings is considered to be a new trial for the purposes of that Act.

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 22A:

After section 22, insert:

Judgment of the court may be delivered by a single judge of the court

22A. (1) When judgment in a proceeding in the court is delivered it is not necessary for any of the judges before whom it was heard to be present in court to state their opinions.

(2) The opinion of any of the judges may be reduced to writing and made public by any judge of the court when judgment in the proceeding is delivered.

(3) The judgment of the court has the same effect as if each judge of the court whose opinion is so made public had been present in court and declared his or her opinion in person.

(4) For the purpose of delivering judgment the court may be constituted by one or more judges of the court.

(5) Section 30, Schedule 1:

After section 29, insert:

Savings and transitional provisions

30. Schedule 1 has effect.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 30)

Criminal Appeal (Amendment) Act 1994

1. (1) The amendment made to this Act by Schedule 1 (2) to the Criminal Appeal (Amendment) Act 1994 does not apply to any appeal from a decision made in proceedings commenced before the commencement of the amendment.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The amendment made to this Act by Schedule 1 (3) to the Criminal Appeal (Amendment) Act 1994 applies to any appeal, or application for leave to appeal, made to the Court of Criminal Appeal whether before, on or after the commencement of the amendment, but not to proceedings commenced to be heard by the Court of Criminal Appeal before that commencement.

(3) The amendment made to this Act by Schedule 1 (4) to the Criminal Appeal (Amendment) Act 1994 applies to proceedings for judgment in the Court of Criminal Appeal whether the proceedings were commenced before, on or after the commencement of the amendment.

SECOND READING SPEECH

LEGISLATIVE COUNCIL

SUPREME COURT (AMENDMENT BILL) 1994

AND

CRIMINAL APPEAL (AMENDMENT) BILL 1994

SECOND READING SPEECH
LEGISLATIVE COUNCIL

SUPREME COURT (AMENDMENT) BILL 1993
AND
CRIMINAL APPEAL (AMENDMENT) BILL 1993

(PRESIDENT CALL NOTICE OF MOTION IN NAME OF MINISTER)

MINISTER TO SAY:

MR PRESIDENT, I MOVE THAT LEAVE BE GIVEN TO BRING TWO BILLS FOR ACTS TO AMEND THE SUPREME COURT ACT, 1970 AND THE CRIMINAL APPEAL ACT, 1912 TO REGULATE THE ADDUCING OF EVIDENCE ON APPEALS TO THE COURT OF CRIMINAL

APPEAL UNDER S.5A OF THE CRIMINAL APPEAL ACT, TO STREAMLINE PROCEDURES FOR THE PUBLICATION OF RESERVED JUDGMENTS IN THE COURT OF APPEAL AND COURT OF CRIMINAL APPEAL, AND TO ALLOW TWO JUDGE BENCHES OF THE COURT OF APPEAL AND COURT OF CRIMINAL APPEAL TO HEAR APPEALS ON THE QUANTUM OF DAMAGES OR SEVERITY OF SENTENCE WHERE NO DISPUTED ISSUE OF PRINCIPLE ARISES.

(WHEN AGREED TO)

MINISTER TO SAY:

MR PRESIDENT, I BRING UP THE BILLS.

(MINISTER HANDS TWO COPIES OF THE BILLS TO CLERK WHO READS THEM A FIRST TIME).

MINISTER TO SAY:

MR PRESIDENT, I MOVE:

THAT THESE BILLS BE NOW READ A SECOND TIME.

THE BILLS ARE THE SUPREME COURT (AMENDMENT) BILL AND THE CRIMINAL APPEAL (AMENDMENT) BILL.

AS THEIR PRIME PURPOSE IS TO DEAL WITH RELATED MATTERS CONCERNING THE COURT OF APPEAL AND COURT OF CRIMINAL APPEAL THEY ARE BEING INTRODUCED TOGETHER AS COGNATE BILLS.

THE BILLS DEAL WITH THREE MATTERS. THE FIRST INVOLVES THE AMENDMENT OF S.5AA(3) OF THE CRIMINAL APPEAL ACT, 1912.

SECTION 5AA OF THE CRIMINAL APPEAL ACT PERMITS APPEALS TO THE COURT OF CRIMINAL APPEAL FROM CONVICTIONS OR ORDERS AS TO COSTS MADE BY THE SUPREME COURT IN ITS SUMMARY JURISDICTION.

CURRENTLY SUB-SECTION (3) DOES TWO THINGS: IT PROVIDES THAT SUCH APPEALS SHALL BE BY WAY OF RE-HEARING AS DISTINCT FROM A HEARING DE NOVO, AND THAT THEY SHALL PROCEED ON THE EVIDENCE GIVEN BEFORE THE SUPREME COURT IN ITS SUMMARY JURISDICTION AND ON ANY EVIDENCE PRESENTED AT THE APPEAL EITHER IN ADDITION TO OR SUBSTITUTION FOR EVIDENCE GIVEN BEFORE THE SUPREME COURT IN ITS SUMMARY JURISDICTION.

SUB SECTION (3) ALSO APPLIES TO APPEALS TO THE COURT OF CRIMINAL APPEAL FROM THE LAND AND ENVIRONMENT COURT EXERCISING ITS SUMMARY JURISDICTION, THE COURT OF COAL MINES REGULATION IN ITS SUMMARY JURISDICTION, AND CONVICTIONS FOR OFFENCES IN THE SUPREME OR DISTRICT COURTS EXERCISING THEIR JURISDICTION UNDER PART 10 OF THE CRIMINAL PROCEDURE ACT, 1986 WHICH DEALS WITH THE DETERMINATION OF SUMMARY OFFENCES RELATED TO INDICTABLE OFFENCES.

THE AMENDMENTS DO NOT ALTER THE FIRST OF THESE FUNCTIONS. THE SECOND IS ALTERED BY THE INSERTION OF A NEW SUB-SECTION (3A) WHICH PROVIDES THAT THE COURT OF CRIMINAL APPEAL MAY GRANT LEAVE TO ADDUCE FRESH, ADDITIONAL OR SUBSTITUTED EVIDENCE ONLY IF THE COURT

IS SATISFIED THAT THERE ARE SPECIAL GROUNDS FOR DOING SO.

SO FAR AS ITS SECOND FUNCTION IS CONCERNED, SUB-SECTION (3) IN ITS CURRENT FORM REPRESENTS A DEPARTURE BOTH FROM THE GENERAL LAW POSITION, AND THAT APPLICABLE TO APPEALS IN THE COURT OF APPEAL, WHICH ARE ALSO BY WAY OF RE-HEARING.

AT COMMON LAW A VERDICT REGULARLY OBTAINED WAS NOT TO BE DISTURBED IN THE ABSENCE OF SOME INSISTENT DEMAND OF JUSTICE. IN THE CONTEXT OF FRESH EVIDENCE THIS REQUIRED THE FULFILLMENT OF TWO CONDITIONS:

(1) THAT REASONABLE DILIGENCE MUST HAVE BEEN EXERCISED TO PROCURE THE EVIDENCE WHICH THE DEFEATED

PARTY FAILED TO ADDUCE AT THE TRIAL, AND

(2) IT MUST BE REASONABLY CLEAR THAT IF THE EVIDENCE HAD BEEN AVAILABLE AT THE TRIAL AN OPPOSITE RESULT WOULD HAVE BEEN PRODUCED: WOLLONGONG CORPORATION V. COWAN (1954) 93 C.L.R. 435 AT 444.

THE COMMON LAW RESTS ON AT LEAST THREE CONSIDERATIONS: THAT CASES COMING BEFORE COURTS OUGHT TO BE PROPERLY PREPARED; THAT THERE OUGHT TO BE A FINALITY TO LITIGATION; AND THAT A CORRECT UNDERSTANDING OF THE ROLE OF APPELLATE COURTS IS THE IDENTIFICATION AND CORRECTION OF ERROR IN COURTS BELOW.

ALTHOUGH THE CONTEXT IS SLIGHTLY DIFFERENT, SIMILAR CONSIDERATIONS APPLY WHERE THERE IS AN APPLICATION FOR A NEW TRIAL ON THE GROUND OF FRESH EVIDENCE FOLLOWING THE CONVICTION OF AN ACCUSED AFTER A TRIAL ON INDICTMENT. THE AUTHORITY FOR THIS IS GALLAGHER V. THE QUEEN (1985-6) 160 C.L.R. 392 AT 395, 400, AND 409-10.

SO FAR AS APPEALS TO THE COURT OF APPEAL ARE CONCERNED, THE COMMON LAW APPROACH IS REFLECTED IN S.75A(8) OF THE SUPREME COURT ACT WHICH PROVIDES THAT WHERE AN APPEAL TO THE COURT OF APPEAL IS FROM A JUDGMENT AFTER A TRIAL OR HEARING ON THE MERITS, THE COURT OF APPEAL SHALL NOT RECEIVE FURTHER EVIDENCE EXCEPT ON SPECIAL GROUNDS.

IT WILL BE SEEN THAT IN ITS CURRENT FORM S.5AA(3) OF THE CRIMINAL APPEAL ACT IS ANOMALOUS IN TWO RESPECTS. FIRST, IT CREATES A DIFFERENT TEST FOR THE ADDUCING OF FRESH EVIDENCE AS BETWEEN THE COURT OF APPEAL AND COURT OF CRIMINAL APPEAL. SECONDLY, IT IS ANOMALOUS THAT THE CRITERION GOVERNING THE ADDUCING OF FRESH EVIDENCE IN THE COURT OF CRIMINAL APPEAL FROM A CONVICTION IN THE SUPREME COURT SHOULD DIFFER ACCORDING TO WHETHER THE CONVICTION FOLLOWED A SUMMARY HEARING OR A TRIAL BY JURY.

IT IS THE PURPOSE OF THE AMENDMENT TO S.5AA TO REMOVE THIS ANOMALY AND TO INTRODUCE GREATER UNIFORMITY. IT HAS THE SUPPORT OF THE CHIEF JUSTICE.

THE SECOND PURPOSE OF THE AMENDMENTS IS TO INSERT S.22A INTO THE CRIMINAL APPEAL ACT, 1912 AND S.45A INTO THE SUPREME COURT ACT, 1970. THE PROVISIONS ARE IN SUBSTANTIALLY THE SAME TERMS, AND ARE DESIGNED TO STREAMLINE THE PROCEDURE FOR DELIVERY OF RESERVED JUDGMENTS IN THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL.

WHERE JUDGMENTS OF THE COURT OF CRIMINAL APPEAL OR COURT OF APPEAL ARE RESERVED, THE JUDGES' REASONS ARE NORMALLY REDUCED TO WRITING AND ARE PUBLISHED FORMALLY BY A BENCH COMPRISING THREE JUDGES OF APPEAL AT LEAST ONE OF WHOM PARTICIPATED IN THE HEARING OF THE APPEAL; OR THREE SUPREME COURT JUDGES COMPRISING THE COURT OF CRIMINAL APPEAL AT LEAST ONE

OF WHOM PARTICIPATED IN THE HEARING OF THE APPEAL.

THE CURRENT PROCEDURE IS SOMEWHAT CUMBERSOME, AND THE AMENDMENTS ARE DESIGNED TO PERMIT THE PUBLICATION OF RESERVED JUDGMENTS BY A BENCH COMPRISING ONE JUDGE ALONE, WHO NEED NOT HAVE PARTICIPATED IN THE ORIGINAL HEARING OF THE APPEAL BEFORE THE COURT OF APPEAL OR COURT OF CRIMINAL APPEAL.

AS THE PROCEDURE FOR PUBLISHING REASONS FOR JUDGMENT AT THE APPELLATE LEVEL IS LARGELY FORMAL, IT IS NOT NECESSARY THAT A BENCH OF THREE JUDGES BE CONVENED FOR THE PURPOSE. ALBEIT IN A MINOR WAY, THE AMENDMENTS WILL CONTRIBUTE TO A MORE EFFICIENT USE OF JUDICIAL RESOURCES, AND MAY

SHORTEN, AGAIN ALBEIT BRIEFLY, THE PERIOD DURING WHICH LITIGANTS HAVE TO WAIT FOR APPELLATE JUDGMENTS.

THE PROVISIONS ARE VERY SIMILAR IN THEIR TERMS TO S.42 OF THE SUPREME COURT OF QUEENSLAND ACT, 1991. AMONG OTHER THINGS, THAT ACT ESTABLISHED A PERMANENT COURT OF APPEAL IN QUEENSLAND SIMILAR TO THAT ESTABLISHED IN THIS STATE IN 1965. AGAIN, THE PROPOSAL HAS THE SUPPORT OF THE CHIEF JUSTICE.

THE THIRD GROUP OF AMENDMENTS IS MORE SIGNIFICANT. CURRENTLY APPEALS TO THE COURT OF CRIMINAL APPEAL AND COURT OF APPEAL ARE HEARD BY BENCHES COMPRISING THREE JUDGES. THE AMENDMENTS WHICH WOULD ADD S.6AA TO THE CRIMINAL APPEAL ACT, 1912 AND S.46A

TO THE SUPREME COURT ACT, 1970 PROPOSE THAT IN CERTAIN CIRCUMSTANCES THE CHIEF JUSTICE MAY DIRECT THAT APPEALS TO THE COURT OF APPEAL OR COURT OF CRIMINAL APPEAL MAY BE HEARD AND DETERMINED BY BENCHES COMPRISING TWO JUDGES ONLY.

IN RESPECT OF THE COURT OF CRIMINAL APPEAL THE POWER WILL BE LIMITED TO APPEALS ON THE SEVERITY OF SENTENCE AND IN THE CASE OF THE COURT OF APPEAL THE POWER WILL BE LIMITED TO APPEALS CONCERNING THE QUANTUM OF DAMAGES IN CASES ARISING OUT OF DEATH OR PERSONAL INJURY.

IN EITHER CASE, THE SECTIONS MAKE IT CLEAR THAT THE POWER SHALL ONLY BE EXERCISABLE IN CASES WHERE IT APPEARS

THAT NO DISPUTED QUESTION OF PRINCIPLE ARISES.

IN THE EVENT THAT THERE IS A DIVISION OF OPINION BETWEEN THE TWO JUDGES COMPRISING THE BENCH FOR A QUANTUM OR SEVERITY APPEAL AS TO HOW THAT APPEAL SHOULD BE DETERMINED, THE MATTER SHALL BE RE-HEARD BEFORE A BENCH OF THREE JUDGES. SHOULD THERE BE A DIFFERENCE OF OPINION ON MATTERS WHICH DO NOT GO TO THE DETERMINATION OF THE APPEAL ITSELF, THE VIEW OF THE SENIOR JUDGE PRESENT WILL PREVAIL.

THE USE OF TWO JUDGE BENCHES AT THE APPELLATE LEVEL IS NOT UNUSUAL, AND THEY HAVE EXISTED IN THE UNITED KINGDOM FOR SOME YEARS.

IT IS CONVENIENT TO NOTE HERE THAT THE CURRENT PROPOSALS FOR TWO JUDGE BENCHES TO DEAL WITH SEVERITY AND QUANTUM APPEALS ARE SUPPORTED BY THE CHIEF JUSTICE.

THE INTRODUCTION OF TWO JUDGE BENCHES TO HEAR SEVERITY AND QUANTUM APPEALS WILL NOT ONLY BENEFIT LITIGANTS IN THE COURT OF CRIMINAL APPEAL AND COURT OF APPEAL, BUT WILL ALSO LEAD TO A MORE EFFICIENT USE OF JUDICIAL RESOURCES.

THE COURT OF APPEAL NORMALLY SITS IN TWO DIVISIONS, I.E. TWO BENCHES OF THREE JUDGES THROUGHOUT THE 46 WEEK LAW TERM. SINCE 1992 THE COURT HAS MAINTAINED A SEPARATE GENERAL DAMAGES LIST INTO WHICH QUANTUM APPEALS ARE ENTERED, AND HAS

CONDUCTED DAMAGES APPEALS LISTS TO DISPOSE OF QUANTUM APPEALS. CURRENTLY THERE ARE TWO BENCHES OF THREE JUDGES AVAILABLE TO HEAR SUCH APPEALS.

THE AMENDMENTS PROPOSED BY THE SUPREME COURT (AMENDMENT) BILL WILL ALLOW THERE TO BE THREE BENCHES OF TWO JUDGES TO DEAL WITH SUCH APPEALS. THE IMPLICATIONS FOR THE DISPOSITION OF QUANTUM APPEALS, AND BENEFITS FOR PARTIES TO SUCH APPEALS, ARE CLEAR. IT MAY ALSO BE THAT INCREASED DISPOSITION RATES OF QUANTUM APPEALS MAY MAKE AVAILABLE MORE JUDICIAL TIME FOR THE HEARING OF OTHER APPEALS WHICH WILL STILL BE REQUIRED TO BE HEARD BY THREE JUDGE BENCHES. AGAIN, THIS SHOULD HAVE BENEFITS FOR PARTIES TO SUCH APPEALS.

AS I HAVE SAID, EACH BILL PROVIDES THAT IN THE EVENT THAT A TWO JUDGE BENCH HEARING A SEVERITY OR QUANTUM APPEAL IS UNABLE TO AGREE AS TO HOW THAT APPEAL SHOULD BE DETERMINED, THE APPEAL IS TO BE RE-HEARD BEFORE A BENCH OF THREE JUDGES WITH, IF PRACTICABLE, THE ORIGINAL TWO JUDGES COMPRISING PART OF THE THREE JUDGE BENCH.

IT IS ANTICIPATED THAT IT WILL ONLY BE INFREQUENTLY THAT A TWO JUDGE BENCH WILL BE UNABLE TO AGREE AS TO HOW A SEVERITY OR QUANTUM APPEAL SHOULD BE DETERMINED.

ACCORDINGLY, IT IS ANTICIPATED THAT RE-HEARINGS BEFORE BENCHES OF THREE JUDGES WILL BE RARE. HOWEVER, TO THE

EXTENT THAT THERE MAY BE DISAGREEMENT BETWEEN JUDGES COMPRISING A TWO JUDGE BENCH IT IS ACKNOWLEDGED THAT LITIGANTS MAY INCUR ADDITIONAL COSTS BY REASON OF THE INABILITY OF SUCH JUDGES TO AGREE.

THIS HAS BEEN ANTICIPATED BY PROVISIONS IN THESE BILLS AND AN AMENDMENT TO S.6A OF THE SUITORS' FUND ACT, 1951. THAT SECTION CURRENTLY PROVIDES THAT IN CIRCUMSTANCES IN WHICH, AS A RESULT OF NO ACT, NEGLECT OR DEFAULT ON THE PART OF PARTIES TO CIVIL OR CRIMINAL PROCEEDINGS A TRIAL IS RENDERED ABORTIVE AND A NEW TRIAL RESULTS, SUCH PARTIES ARE ENTITLED TO CLAIM ON THE FUND IN RESPECT OF THE ABORTIVE TRIAL.

THE EFFECT OF THE PROPOSED AMENDMENTS IS TO DEEM A HEARING

BEFORE A TWO JUDGE BENCH UNABLE TO AGREE TO BE AN ABORTIVE HEARING WITHIN THE MEANING OF S.6A OF THE SUITORS FUND ACT, AND THE SUBSEQUENT RE-HEARING BEFORE A BENCH OF THREE JUDGES TO BE A NEW TRIAL WITHIN THE MEANING OF THAT SECTION.

THE INTENTION IS THAT, TO THE EXTENT THAT PARTIES MAY INCUR ADDITIONAL EXPENSES IN AN APPEAL AS A RESULT OF THE INABILITY OF MEMBERS OF A TWO JUDGE BENCH HEARING A SEVERITY OF QUANTUM APPEAL TO AGREE, THEY WOULD BE ABLE TO APPLY TO HAVE SUCH ADDITIONAL COSTS PAID FROM THE FUND.

THE SYSTEM OF TWO JUDGE BENCHES HEARING SEVERITY AND QUANTUM APPEALS PROVIDED FOR BY THESE BILLS WILL OPERATE FOR AN INITIAL TRIAL PERIOD OF

TWO YEARS. DURING THAT PERIOD ITS ADMINISTRATIVE SUCCESS AND DEMANDS ON THE SUITORS' FUND WILL BE MONITORED.

AS PART OF THE MONITORING PROCESS THE REGISTRARS OF THE COURTS OF APPEAL AND CRIMINAL APPEAL WILL COLLECT, ON A MONTHLY BASIS, STATISTICS AS TO: THE NUMBER OF MATTERS DEALT WITH BY TWO JUDGE BENCHES; THE PROPORTIONAL RELATIONSHIP BETWEEN MATTERS DEALT WITH BY TWO JUDGE BENCHES AND THREE JUDGE BENCHES; THE NUMBER OF TIMES THERE IS A DISAGREEMENT BETWEEN MEMBERS OF A TWO JUDGE BENCH, AND THE ADDITIONAL TIME TAKEN TO DISPOSE OF A SEVERITY OR QUANTUM APPEAL WHERE A TWO JUDGE BENCH HAS BEEN UNABLE TO AGREE.

STATISTICS ONCE COLLECTED WILL BE REPORTED TO THE COURT'S PRINCIPAL REGISTRAR AND CHIEF EXECUTIVE OFFICER WHO WILL REPORT TO THE CHIEF JUSTICE AND DEPARTMENT OF COURTS ADMINISTRATION. THE STATISTICS WILL ASSIST IN SHOWING WHETHER THE SCHEME IS ACHIEVING ITS AIM OF EXPEDITING THE DISPOSITION OF SEVERITY AND QUANTUM APPEALS WITHOUT INCREASING COURT RESOURCES.

I COMMEND THE BILLS TO THE HOUSE.

srs2
david3