

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, the 27th Day of September 1977

JUDICATURE AMENDMENT (NO. 2) BILL

Proposed Amendments

Hon. Mr THOMSON, in Committee, to move the following amendments:

Proposed clause 1A: To insert on page 1, after clause 1, the following clause:

1A. Number of Judges of Supreme Court increased—

(1) Section 4 of the principal Act (as inserted by section 4 (1) of the Judicature Amendment Act 1957 and amended by section 2 (1) of the Judicature Amendment Act 1976) is hereby further amended by omitting from subsection (1) the expression "21", and substituting the expression "22".

(2) Section 2 of the Judicature Amendment Act 1976 is hereby consequentially repealed.

Proposed clauses 3A to 3D: To insert on page 2, after clause 3, the following clauses:

3A. Number of Judges of Court of Appeal increased—

(1) Section 57 of the principal Act (as amended by section 2 (1) of the Judicature Amendment Act 1957) is hereby further amended by omitting from paragraph (c) of subsection (2) the expression "Two", and substituting the expression "Three".

(2) The said section 57 (as so amended) is hereby amended by omitting from subsection (6) the expression "two Judges" in both places where it occurs, and substituting in each case the expression "3 Judges".

3B. Additional Judges of Court of Appeal in certain circumstances—Section 58 of the principal Act (as substituted by section 3 of the Judicature Amendment Act 1957) is hereby amended by inserting, after subsection (1B) (as inserted by section 6 (1) of the Judicature Amendment Act 1974), the following subsections:

"(1c) Whenever the Chief Justice and the President of the Court of Appeal certify that it is necessary for the due conduct of the business of the Court of Appeal that the Court shall be enabled to sit in divisions in accordance with section 60A of this Act, and that, for that reason, it is expedient that any Judge or Judges of the Supreme Court who is or are or has or have been nominated by the Chief Justice should act as an additional Judge, or, as the case may be, as additional Judges of the Court of Appeal for

such period, not exceeding 3 months, as may be specified in the certificate, the Judge or Judges so nominated may act as a Judge or Judges of the Court of Appeal during the period so specified.

“(1D) Subsection (1C) of this section and this subsection shall cease to have effect on the expiry of the period of 2 years commencing with the date of the commencement of section 3B of the Judicature Amendment Act 1977.”

3C. Court of Appeal may sit in divisions—The principal Act is hereby amended by inserting, after section 60 (as substituted by section 3 of the Judicature Amendment Act 1957), the following section:

“60A. Court may sit in divisions—(1) The Court of Appeal may from time to time, as the President directs, sit in divisions, and all the powers of the Court may be exercised by any such division.

“(2) Each Division shall consist of such Judges of the Court (of whom at least 1 shall be a member of the Court pursuant to section 57 (2) of this Act) as are for the time being assigned to that Division by the President.

“(3) A Division of the Court may exercise any powers of the Court notwithstanding that another Division of the Court is exercising any powers of the Court at the same time.

“(4) The provisions of this section shall be read subject to the provisions of section 59 (1) of this Act.”

3D. Incidental orders and directions may be made and given by one Judge—The principal Act is hereby amended by inserting, after section 61, the following section:

“61A. (1) In any civil appeal or in any civil cause or matter pending before the Court of Appeal, any Judge of that Court, sitting in Chambers, may make such incidental orders and give such incidental directions as he thinks fit, not being an order or a direction that determines the appeal or disposes of any question or issue that is before the Court in such appeal, cause, or matter.

“(2) Every order or direction made or given by a Judge of the Court of Appeal under subsection (1) of this section may be discharged or varied by any Judges of that Court who together have jurisdiction, in accordance with section 59 of this Act, to hear and determine the proceeding.

“(3) Any Judge of the Court of Appeal may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by any rule of Court, and may confirm, modify, or revoke that decision as he thinks fit.

“(4) The provisions of this section shall apply notwithstanding anything in section 59 of this Act.

“(5) This section shall have effect from a date to be appointed by the Governor-General by Order in Council.”

Proposed clause 11: To add on page 9 the following clause:

11. Meaning of “convicted on indictment” in Crimes Act amended—(1) Section 3 (c) of the Crimes Act 1961 is hereby amended by inserting, after the words “or section”, the words “153A or section”.

(2) This section shall be deemed to have come into force on the 1st day of May 1977 (being the date of the commencement of section 153A of the Summary Proceedings Act 1957).

EXPLANATORY NOTE

The proposed clause 1A increases from 21 to 22 the number of Judges that, together with the Chief Justice, comprises the Supreme Court.

The proposed clause 3A increases from 2 to 3 the number of Judges that, together with the Chief Justice and the President, comprises the Court of Appeal.

The proposed clause 3B provides for the assignment to the Court of Appeal of an additional Judge or additional Judges for a period not exceeding 3 months. The power is exercisable only where the Chief Justice and the President certify that the work of the Court of Appeal is such that it is expedient to enable the Court to sit in divisions in accordance with section 60A of the principal Act (set out in the proposed *clause 3c*). It is for the Chief Justice to decide which Judge or Judges is or are to be assigned. This clause (and therefore the power conferred by it to appoint additional Judges to the Court of Appeal) is to subsist for 2 years, and will then expire.

The proposed clause 3c empowers the Court of Appeal to sit in divisions as the President may direct.

The proposed clause 3D empowers a single Judge of the Court of Appeal, in any matter within the civil jurisdiction of the Court, to make incidental orders and give incidental directions. It also empowers a single Judge to confirm, modify, or revoke any decision of the Registrar made within the civil jurisdiction of the Court.

The proposed clause 11 amends the definition of the term "convicted on indictment" in section 3 of the Crimes Act 1961. Section 153A of the Summary Proceedings Act 1957 (as inserted by section 15 (1) of the Summary Proceedings Amendment Act 1976) provides that, in certain circumstances, a defendant may plead guilty to a charge at any time before or during the preliminary hearing of the information. Where he does so, he is to be committed to the Supreme Court for sentence. Such a committal is not within the present definition of the term "convicted on indictment" in section 3 of the Crimes Act 1961. The chief consequence of this is that such a person has no right of appeal to the Court of Appeal against the sentence imposed in the Supreme Court, because the right of appeal given by section 383 of the Crimes Act 1961 applies only to persons convicted on indictment.

The amendment rectifies this omission, and is deemed to have come into force on the date of the commencement of section 153A of the Summary Proceedings Act 1957.