

The Law Association's Comments on The Criminal Division and District Criminal and Traffic Courts Act

These comments, observations and recommendations are to be read in conjunction with the Law Association's letter to the Honourable Attorney General dated June 29th 2018, a copy of which is attached hereto.

The expansion of the jurisdiction of High Court Judges

The Act creates a division of the High Court known as "the Criminal Court". The jurisdiction of the Criminal Court is to comprise the jurisdiction exercisable by the High Court in all criminal matters and the jurisdiction of a Court of summary jurisdiction in all criminal matters. Effectively, therefore, the jurisdiction of the High Court, now called the Criminal Court, is enlarged by the addition of all summary criminal offences.

Thus, a High Court judge sitting in the Criminal Court will now exercise jurisdiction in relation to all indictable offences ordinarily referred to the High Court, and all summary offences, including offences triable either way and the jurisdiction of Masters of the High Court is also expanded to include summary criminal offences.

In effect, therefore, the number of judicial officers who may be available to try summary offences is thereby increased.

The judges and masters who are to exercise this expanded jurisdiction are determined by the Chief Justice who is empowered to assign whomsoever he might think fit to do so.

The precise location of sittings of the Criminal Court is to be determined by the Chief Justice, in consultation with the assigned judge.

Much is left unstated in the Act. Thus, while the existing rules and administrative arrangements dictate how the trial of indictable offences is distributed among judges of the High Court, there is no indication as to how the trial of summary offences is to be distributed. Will it be the Chief Justice who determines the judge's list? Is it the Chief Magistrate who now exercises administrative authority in relation to the list? Are the lists to be determined by the geographical area in which the offence is committed?

Whatever the answer to these questions, the Law Association is concerned that there is a perceptible shift in the terms and conditions of service of High Court judges and in their relationship with the Chief Justice.

A judge may be assigned to any location determined by the Chief Justice to try summary offences. Presumably, he or she may be assigned to any Magistrate's Court where such offences are ordinarily tried. Whether because of the type of matters which the judge is assigned to adjudicate on, or the place where such adjudication may take place, this may be justifiably perceived as a demotion.

Furthermore, the potential exists for the power of assignment to try more mundane matters, wherever such trials may take place, to be used or perceived to be used as a disciplinary measure for any judge who has not found the favour of the Chief Justice.

It appears to the Law Association that these measures have constitutional implications because of the impact they may have on the terms and conditions of service of judges.

While we understand the need to increase the number of judicial officers who may attend to summary criminal offences, we see that need being satisfied by vesting jurisdiction in masters. There is no need to vest such jurisdiction in High Court judges whose time is in any event already amply monopolised by the indictable offences list.

Administration of the Criminal Division

We have already commented on the fact that the Deputy Court Executive Administrator, who heads the Criminal and Traffic Court Administrative Department, may be appointed by the Court Executive Administrator on contract for a fixed term less than five years, and therefore may not enjoy the security of tenure which even his or her staff enjoy as public servants. It is unacceptable that the head of what is intended to be an independent State institution may not be similarly independent.

The Deputy Court Executive Administrator reports to the Court Executive Administrator whose powers over the administration of the Criminal Division are being fleshed out in the Act.

As yet, the overall powers of the Court Executive Administrator have not been established in any one place. The post of Court Executive Administrator is created under the Judicial and Legal Services Act and the functions of the holder of the office are set out, no doubt, in an administrative document established for the purpose.

It is assumed that the Court Executive Administrator reports to the Chief Justice but the time is now ripe to examine and set out in one place, in law, the powers of the office holder of what is becoming an expanding enterprise, and that office holder's relationship with the judiciary and other statutorily established judicial officers.

Matters which need to be addressed are:

- i) The relationship between the CEA and the Chief Justice;
- ii) The relationship between the CEA and other judges of the Supreme Court;
- iii) The relationship between the CEA and the Registrar, Deputy Registrars and Masters;
- iv) The relationship between the CEA and other members of judiciary staff.

These relationships have been allowed to evolve over time without any clear guidance and have depended largely upon the personality of the office holder. The time has come to debate and enshrine in law the functions and authority of this increasingly important office-holder.

20th July 2018