The (Chill) Winds of Change

In the Autumn issue, Bar News drew the Bar's attention to Practice Note 61 which warned grimly of the introduction of Part 33 rule 8B, the effect of a breach of which was said to be that counsel and practitioners who failed to notify the Registrar of the Supreme Court of certain matters "will usually be ordered to pay personally any costs thrown away ..." *Bar News* is unaware of any case to date where such an order has been made.

Now the Government proposes to take a further step. In early November Cabinet resolved that the Supreme and District Courts are to be given a discretion to impose costs sanctions to be borne personally by legal representatives whose serious conduct or neglect causes serious delay in the resolution of claims. Although full details of the rules designed to effect this change are not yet available, the purpose, according to an officer of the Attorney-General's department, is to enable the Court to impose such costs sanctions without the requirement for a separate hearing. While it is easy to imagine the frustration of both the Government and members of the judiciary at court-time lost, where legal practitioners have apparently failed to prepare a case and seek an adjournment or where a step in a court-directed timetable has not been taken in time, it is ironic that in times when natural justice is dished out to one-and-all, left, right, and centre in large dollops, the legal profession is not (apparently) perceived as an appropriate beneficiary of its principles. It is hoped that occasions for the exercise of this new power will be few.

In a variation on a much the same theme the Court of Appeal has said (*W Dazenko Structural & General Engingeering Pty Limited v Fraser Hrones & Company Limited* unreported, 5 October 1990):

"(a) It is essential that parties and their legal advisors engaged in cases in the Building and Engineering list and in similar lists should understand the directions given to secure the speedy and efficient disposal of cases must be substantially and promptly complied with and that special fixtures mean just that. Litigants and their solicitors cannot presume either upon the indulgence of trial judges or of this Court to rescue them from defaults or delays of their own creation.

(b) That prejudice to litigants from delays cannot always be met or fully met by orders for costs or orders allowing interest on sums fully met by orders for costs or orders allowing interest on sums found to be due. It was pointed out that as long ago as 1917, Cullen CJ said in *Conroy v Conroy* [1917] 17 S.R. 680 at 684-685 that to adopt such a principle would mean that 'a litigant who is a man of means could always purchase his own time for the hearing of a case brought against him, and a party without means must await his adversary's convenience for the decision of his rights'.

(c) That at a time when the Courts of this State are under considerable pressure due to delays in the hearing of cases and the volume of litigation, the adjournment of cases which have been specially fixed for hearing involves prejudice to persons other than the litigants in question."

The interaction of these principles and the proposed costs sanction is clear. ❑

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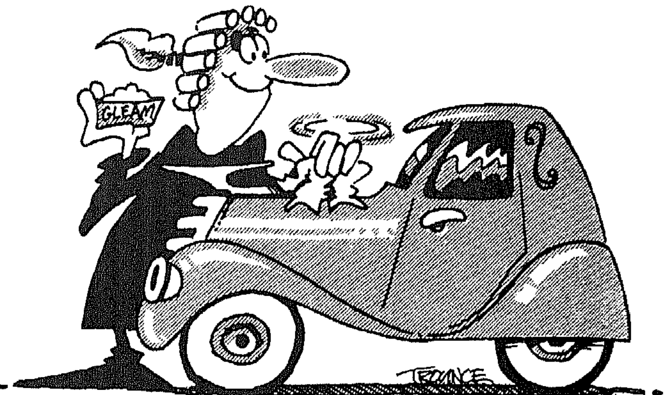

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