LAW REFORM COMMITTEE

Inquiry into County Court appeals

Melbourne — 13 February 2006

Members

Ms D. A. Beard
Ms E. J. Beattie
Mr R. Dalla-Riva
Ms D. G. Hadden
Mr J. G. Hilton
Mr R. J. Hudson
Mr D. Koch
Mr A. G. Lupton
Mr N. J. Maughan

Chair: Mr R. J. Hudson
Deputy Chair: Mr N. J. Maughan

Staff

Executive Officer: Ms M. Mason
Research Officer: Mr N. Bunt

Witnesses

Mr R. Nankivell, Legal Policy Officer; and

Dr D. Neal, SC, Member, Victorian Bar Council; and

Dr G. Lyon, SC, Secretary, Criminal Bar Association of Victoria.

The CHAIR — Welcome to this public hearing of the parliamentary Law Reform Committee in relation to County Court appeals. I welcome representatives from the Victorian Bar Council and the Criminal Bar Association of Victoria, who are presenting together: Dr David Neal, member of the Victorian Bar and Mr Ross Nankivell, legal policy officer from the Victorian Bar Council; and Dr Gregory Lyon, SC, who is the secretary of the Criminal Bar Association of Victoria.

This is a hearing that is subject to parliamentary privilege. Therefore the usual privileges that attach to proceedings and indeed transcripts of Parliament apply to these hearings. There is an expectation that your submission will be on the public record, and, as a consequence, after you have corrected the transcript, it will appear on our web site. If there are any aspects of your evidence that you would like to give in camera, please indicate that. If you would like to talk to your submission, we have half an hour, so if you could do that for 10 or 15 minutes, then we would like to ask some questions. I know the three of you want to present, so if you could do that now.

Dr NEAL — Thanks for the opportunity to address the committee. The committee should have already received the written submission from the bar and the criminal bar. That is a joint submission from both organisations and, as you will have seen from the written submission, our view is very strongly for the retention of appeals to the County Court by way of rehearing.

If we move straight to the central rationale for our position, it is this: the volume of work that is done in the Magistrates Court and the increasing seriousness of that work in many areas of the criminal law necessarily means that there is going to be some degree of slippage in the quality of the decision-making that occurs in the Magistrates Court. That is not really to reflect adversely on the quality of the magistracy at all, but the key feature of it is this: that these are summary proceedings and you do not have to sit for very long in any of the major Magistrates Courts in this state to see that a lot of the cases that are dealt with there are dealt with in a very speedy manner, and it is speedy in terms not only of the hearing before the court but also speedy in terms of the amount of time that the practitioners — in particular the defence practitioners — have to prepare the cases.

I have sat at Ringwood court, for example, and watched a duty lawyer deal with a large number of cases by 10.00 a.m. when I knew that he had only had about an hour at the court previous to that to see the people who were coming before the court, some of whom were up for quite significant penalties, including potentially custodial penalties, or others of the range of penalties that can apply. That really does mean that he is seeing 10 people in an hour — that is, for 6 minutes each — on matters that are fairly significant and, with the best will in the world and the most experienced practitioner in the world doing the duty court work, there is going to be some slippage, and that is to say nothing of what occurs in court when those cases are heard where matters of some significance may be omitted.

Or in the press of business in the Magistrates Court, the magistrates will be hurried on certain things and will not have the opportunity to hear submissions on trickier points or possibly simply will not even hear crucial, factual things because the client did not think that this was a significant feature, but it turns out if you had the time to explore the case, you would find that it is.

Given the volume of cases that come before the Magistrates Court and the relatively low percentage of appeals — I think the figures we were able to gather show that it is about 3 per cent of the cases that are appealed — and given a relatively high success rate on those appeals of some 81 per cent, I think the figure ultimately turns out as a measure of quality control to be not unreasonable figures. That is, if a system — any system — is processing such a large number of cases to say, 'Look, only 3 per cent of those are identified as requiring a cross-check', if you like, and then within that 3 per cent, for 80 per cent of those cases to resolve in some sort of successful outcome seems to me to show two things.

Firstly, that as a measure of performance if the system is only producing 3 per cent errors, or slightly below that, when you take out the unsuccessful appeals, that is not a bad performance, in fact, and given the seriousness of the issues that are being dealt with to say that the system would invest what it takes to hear the appeals in that 3 per cent of cases does not seem a huge impost on a system that is, after all, at the end of the day supposed to be a criminal justice system with an emphasis on the word 'justice'.

When then you see that 80 per cent of those appeals end up being successful, you have to say, 'Perhaps given the throughput, it is to be expected', and you wonder, I suppose — at least I wonder — if the system were really being resourced, in particular resourced from the legal aid standpoint to its full extent, whether there would not be a significantly higher number of cases that went on appeal to the County Court. Even that 3 per cent figure probably understates the error rate in the system as it presently stands.

If there were to be introduced a system which required appeal, for instance, on an error of law, in these cases, I wonder how many of that 3 per cent or how many of the 80 per cent of successful appeals would fall by the wayside. I would count that, too, as a significant injustice if that were to occur. It seems to me that presently the system has a balance of throughput and quality where a substantial check on the throughput has to be the right to get a rehearing as of right to ensure that the system does not drop off people who should not be falling between the cracks.

I think the system already does drop a lot of people through the cracks, and I think the proposal to abolish appeals by way of rehearing would mean that a significant additional number would, and there is a significant cost of injustice associated with that, and it does not occur to me that the resources tied up in the County Court in hearing these appeals are resources that are ill spent. In fact I think they are very well spent, and certainly I think that is the view that both the bar council and the criminal bar share, but that is the main point that the bar council would want to put before the committee. Perhaps, Greg, if there is anything you would like to add, you could do that now.

Dr LYON — I thank you for the opportunity to speak to these submissions. Having practised as a criminal lawyer now full time since 1985 and having spent years in the Magistrates Court, particularly in my formative years, but having appeared in both the Magistrates Court and the County Court I make a couple of observations.

First, the three courts in Victoria are geared to different levels of representation, they are geared to different levels of seriousness of offence, and the judges and magistrates appointed are geared and have different aptitudes to the tasks they have to perform. The aptitude to become a magistrate is not one to be scoffed at by any means at all. They deal with high volumes of material and high volumes of cases over a variety of issues.

I was speaking to a magistrate at a social function the other day who has been on circuit for the last number of months, and within one day he may cover six or eight jurisdictions in the course of his work. In doing that, that is not to say he only hears six or eight cases in that he might hear 10 or 12 pleas, adjourn a number of matters off and then move into a coroner's inquest, then move into the Children's Court, family law interventions and so forth.

It is a system that works well because it provides justice at a relatively low cost. Solicitors can go in with one or two matters. They do not have to prepare outlines of submissions, and magistrates know that they can apply commonsense to situations without having to have regard to the black letter of the law. They are not required in the course of their sentencing remarks or in their determination to necessarily have regard to the latest unreported cases. They can get through it and come to practical decisions.

As David says, though, occasionally slips are made. We know that the appeal rate is about 2 or 3 per cent. As it is at present, practitioners can then provide the service of representation on appeal at a relatively low cost because it is by way of hearing de novo. Many of the practitioners who

appear in the lower court appear in the County Court. There is no need for outlines of submissions. County Court judges know that they do not have to provide written judgments. The proceedings are not transcribed so there is no court of record, so there is no appeal, as of right, from the County Court to the Supreme Court. It is a system that operates with the same sort of efficiency as the Magistrates Court, and it gets through the work and gets through it quietly and efficiently.

If you want to see the difference in how the system runs, can I respectfully suggest that you spend a day listening to the presentation of a dozen pleas in the Magistrates Court, go to the County Court and see how a plea is presented there, then go to the Supreme Court and see how a plea is presented there. You could then go back to the Magistrates Court and see the volume of work, then go to the County Court and see how the appeals system works, then go to the Supreme Court and see how the appeal system works there, where there are lists of authorities, directions hearings and outlines of submissions presented.

The problem of abolishing appeals de novo, particularly if it is replaced by questions of law appeal is that you make the system inaccessible on the one hand to many of those who can use the system efficiently now, you make it more costly and you are putting more opportunities for black letter lawyers, for the few clients that have a lot of resources, to go over the decisions of magistrates, to go over the written judgments of County Court judges, and find further errors.

The difficulty of the abolition of de novo appeals, as I see it, is that it slows the system down and increases the complexity attending to the hearings in both the Magistrates Court and the County Court.

Mr NANKIVELL — I have only a very short point to make. I understand that another witness has suggested to the committee that New South Wales no longer has appeals by way of rehearing de novo, and I would like simply to make a submission on that.

In New South Wales there were amendments to their Justices Act in 1998, and the current provision in relation to appeals against conviction is found in section 18(1) of the Crimes (Local Courts Appeal and Review) Act 2001 of New South Wales. That section reads:

> An appeal against conviction is to be by way of rehearing on the basis of certified scripts of evidence given in the original Local Court proceedings …

The New South Wales Attorney-General, in his second-reading speech on that legislation, said:

> Appeals will continue to be by rehearing.

So that there was no change other than the fact that the transcript would be used as the evidence. The practice in New South Wales is that it is by way of rehearing, and if there is to be any challenge to the credibility of a witness, then notwithstanding that the evidence is already in the transcript, leave is sought and given for that witness to be called, so that the New South Wales District Court does in fact make its own determination rather than having to find error on the part of the local court, which is the equivalent of our Magistrates Court.

The CHAIR — Can I clarify that, though, because if, as you have put it and as I understand it, it is a rehearing on the Local Court transcript — in other words, it is a rehearing based on the evidence that has been given — strictly speaking, that is not a pure de novo complete rehearing of the case fresh from the beginning with the opportunity for counsel to bring new witnesses or lead new evidence. It is a rehearing based on the transcript, which is slightly different from a full de novo hearing.

Mr NANKIVELL — With respect, that is not entirely so because there is a very broad discretion to permit new evidence, and in particular where the credibility of a witness is in issue, to call that witness, so that the District Court judge may see and hear that witness's evidence and see and hear cross-examination of that witness.

The CHAIR — That does still relate to a witness who gave evidence at the original Local Court hearing. I am just trying to understand the distinction. It is not a complete de novo hearing.

Dr NEAL — It is a rehearing variation on a theme but it is certainly not an appeal properly understood as an appeal error of law.

The CHAIR — It is sort of a half-way house?

Dr NEAL — It is more than that, I think.

Mr NANKIVELL — It is more than that because the District Court in New South Wales does not take as a presumption the lower court decision is wrong unless error can be shown, unless the determination of the Local Courts is either unsupported by the evidence or it is contrary to the weight of evidence. That is the difference between de novo — the District Court judge decides the case for him or herself based essentially on the transcript but also based on fresh evidence by leave.

Mr LUPTON — Perhaps the committee would better understand that distinction if you would give us an example of how in practice the District Court in New South Wales conducts this hearing based on the transcript. How does a rehearing in New South Wales under this system actually operate?

Mr NANKIVELL — It operates on the basis if either side wishes a particular witness to be called, then they seek leave to do so. We assume leave is then given — and it is routinely given where any question of credibility arises because it would be absurd for the District Court judge to decide an issue of credibility on rehearing without actually seeing and hearing the witness.

Mr LUPTON — So for that does the District Court judge simply read the transcript and then hear any submissions from counsel?

Mr NANKIVELL — I understand that is how it is done.

The CHAIR — You will forgive us because this is our first day but one of things we will need to do is at least go and have a look at why the New South Wales act was brought in. Presumably there was a rationale that restricted in whatever limited way de novo appeals because in effect it does appear there are some restrictions — for example, just your saying it has to be by leave. In a full de novo appeal you do not have to ask the leave of a court to bring a witness.

Mr NANKIVELL — I would then ask the committee for leave to file a supplementary submission.

The CHAIR — That would be very helpful to us, and we can look at also any information you have on how the de novo system operates in other jurisdictions. If you have any information about how it works in practice, that would be very helpful to us.

Mr NANKIVELL — I would be happy to put in a supplementary submission.

Dr NEAL — I think it is important because really it is not so much the New South Wales system is anything other than a de novo hearing. The variation really is in the manner of receiving the evidence at that hearing. My guess — I have just asked Greg; I certainly have not any direct experience of the practice in this area in New South Wales — is I would be surprised if the judge on the rehearing heard a submission from counsel saying, 'At the lower court the following witnesses clearly should have been called and were not', or where there was any substantial objection to the evidence that was given in the way Ross has suggested the judge would not as a matter of fairness say they really need to hear it.

Correspondingly, if the practitioners have not got any problem with the transcript of the evidence given below, it may be that it is done by consent. It would be very interesting to see how that is handled but the essence of it really is that it is a hearing de novo rather than an appeal on an error of law. That is the important distinction — it is simply the manner in which the evidence is reheard at the rehearing that seems to vary based on the legislative statement. I would be interested to hear in practice.

The CHAIR — We need to understand more about the purpose of the act, the restrictions and what the effects have been in practice.

Dr LYON — It is also important to bear in mind too that hearing de novo means a hearing de novo both in relation to cases where conviction is an issue — that is, an appeal against the finding of guilt but in the vast majority of cases in my experience of appeals to the County Court hearing de novo applies to the rehearing of the sentencing discretion. That is a plea of guilty may or may not have been entered at the lower court; a penalty was imposed and most hearings in the County Court, I would expect you would find, are appeals against the severity of the sentence.

I raise that simply because I urge caution about getting too caught up on reading transcripts of the hearings below. The greatest effect of a plea comes from its oral presentation in court and hearing the witnesses for yourself. If there is something about those witnesses that touches a County Court judge, then it is best heard from the witness box and not read on a transcript. I urge you not to get too caught up on the transcripts.

Dr NEAL — Courtroom dynamics are important.

The CHAIR — It would not surprise you to know the view of the DPP and Victoria Police is that these appeals should be abolished. In essence the argument is why do it twice when you can do it once? It does not occur in other aspects of the legal system and you now have magistrates who are fully trained and experienced. Why do we not encourage a system where a case is properly dealt with in the Magistrates Court? Every time you have an appeal which goes to a higher appellate court you have increased costs and you are taking up the time of that court. So why would you not have a system where it is incumbent upon the barrister or solicitor and magistrate to make sure they work to get every aspect of the case right while in the lower court?

Dr NEAL — I guess that suffers the vices of all recommendations that are based on having an ideal world. Unfortunately we do not have that. The figures that are presented in our submission are not figures from the days prior to legally qualified magistrates sitting; they are current figures.

I can only reiterate what we have already said in relation to that — 3 per cent of appeals from any system, especially a system which deals with literally thousands of cases of all sorts and very difficult cases, is small. Sitting in the Magistrates Court for a day, most clients who go there say what depressing places they are. They see so much human misery there, frankly — people whose social, economic and other situations are just dreadful and where they are dealt with.

It is not production line justice — that is too much — but there is a terrible impetus in the system, terrible in a very literal sense of the word, to deal with people's cases because they want to have them dealt with and to relieve the anxiety. I think those courts, given all those circumstances do a remarkably good job. But it is simply utopian to think they are not going to make significant numbers of errors. It is also utopian in the face of the present legal aid system which is hopelessly under resourced.

That example I gave you from the Ringwood Magistrates Court about duty lawyers would be repeated in all the major suburban courts on a daily basis. We know the people who are doing the duty lawyering are increasingly more junior. Candidly I would say if the system were fixed and properly resourced, then you might want to entertain the submissions the DPP and Victoria Police

are putting. But there is no realistic possibility of that occurring and given that is accepted you have to make sure you invest a modest amount in quality control. That is what is being done. Three per cent of appeals is a very small percentage and when you see 80 per cent of those appeals are in fact successful, you have to say surely that is money that is well spent.

Mr LUPTON — Can I just take up that point? I am interested in your view of this element. It seems generally accepted that most decisions are regarded as being well made and the low appeal rate seems to justify that belief. The bulk of appeals are really on sentence. If 80 per cent of them, according to your submission, are allowed, that does not necessarily mean the sentence was wrong, does it? It simply means as an exercise of discretion another person looking at it made a slightly different decision?

Dr NEAL — That is such as it may be. You are dealing with some 90 or more magistrates on sentencing issues. It is true that people's views vary. Just simple systems analysis would say you need some quality control to ensure there is some consistency. It is inevitable with that many magistrates making that many decisions there will be some who stray outside the given parameters.

Dr LYON — I would imagine a number of those sentencing appeals mean the difference between someone actually serving a period of imprisonment and being released back into the community.

Dr NEAL — In a sense the appeal operates as a sort of funnel which says these decisions are outside the parameters, which then gives guidance back to the magistrates hopefully to stay within the parameters.

Mr LUPTON — At the moment the parameters are rather vague, aren't they? We are not dealing with sentencing appeals on the basis of manifestly excessive; we are simply dealing with a different judicial officer coming to a slightly different conclusion. You can have a situation where a magistrate sentences somebody to four months jail and a County Court judge looks at it and sentences them to three months jail. And that is a success, in a sense, obviously for the person involved, but does that mean the magistrate is wrong? I argue it is a legitimate process to suggest it is not.

Dr NEAL — I think you might find a number of judges at the Court of Appeal saying, when the High Court turned them over, that it is the same sort of an argument. We do not have mathematical precision in the legal system; it is not like that. But we do have a system of quality control through appeals so that as you go through these filters, hopefully the one truth emerges.

As you say, who is to say that Judge X in the County Court is wiser on these matters than Magistrate Y in the court below? Who knows on the sentencing appeals in fact whether the 10 minutes spent by the legal aid duty lawyer in Ringwood Court on Friday morning produced all of the relevant information and witnesses or that someone did not say they were just so desperate they were going to grab the opportunity today because they could not bear living with the uncertainty? They would rather get it dealt with.

Then all of a sudden they get something which gives them a shocking fright and things get prepared properly. Then they will get to see a lawyer who will see the case and prepare it thoroughly, who will have the opportunity to call witnesses and prepare proper plea material, perhaps to organise medical examinations if that is relevant — those sorts of things. Then the system gets a jolt so quality is injected into it. But the truth of the matter is that with the 10 or 20 people who are dealt with at the Ringwood Magistrates Court on Friday morning, probably there are more errors than we see in the County Court by a significant measure.

The fact that some of them get such a jolt that they are prompted into appeal should not obscure the fact that there are a lot of other cases that are unprepared. As I said earlier, in all probability

there should be a higher rate of appeal than 3 per cent rather than a lower one. It is not simply that the appeals going up is one person's view versus another person's view — it might well be one person's view based now on proper information which was not before the court because of all the reasons we have talked about.

The CHAIR — Isn't the stronger point, though, that if you abolish de novo appeals, it does not necessarily mean you could not appeal against the excessive nature of the sentence?

Dr NEAL — It would be a much more cumbersome process, though, because when you have to prepare error of law, as we have said in the submission, that is a much more cumbersome process involving preparation of case law and arguments. Truthfully they go on in the Court of Appeal about whether there is a manifest error of law, but I defy you really to say it was a manifest error of law versus my judgment is better than your judgment as to whether this was too much or too little. They really are judgments of degree and to a large extent they frankly get dressed up in the language of error of law when in fact these are subjective judgments within a legal framework about whether something was too high or too low.

Mr HILTON — You have said a couple of times there is significant under-appeal, that 3 per cent is significantly less than it should be. I am interested in what you believe the true figure should be and why you say that 3 per cent is significantly less. What objective evidence do you have that that is the case?

Dr NEAL — I cannot.

Mr HILTON — So it is all purely speculation from your point of view?

Dr NEAL — It is not just speculation; it is observation.

Mr HILTON — If it is observation, that is objective. So what is the objective evidence?

Dr NEAL — Observations of cases going through Magistrates Courts where you look at the case and think to yourself, 'It is clear that the lawyer representing this person has only seen them for only a brief amount of time. I wonder what was said in the record of interview. I wonder what the witnesses will say. I wonder, if the police evidence were tested, how it would stand up'.

Mr HILTON — All you are saying is there is a possibility that it could have been appealed. You are not saying to us in any way that you have objective evidence of fact. I just wonder what credence we should put onto your assertion that 3 per cent is significantly less than what it should be?

Dr NEAL — All I can say is as experienced lawyers we watch the other cases in court while we are waiting for our cases to come on and you can see where the problems are. I have not done the research. I did not take a sample of the 10 cases I saw that morning and then thoroughly prepare. I have not got that sort of evidence.

Mr LUPTON — Isn't the only evidence of that the ones that do go on appeal?

Dr NEAL — I do not think so. It is the dark figure, if you like. It is the dark figure of how many cases are there — there must be some; let us start with that. There must be some cases were if were they properly legally investigated and run, you would find they should have appealed as well.

Mr HILTON — You cannot say that. You can say 'probably'.

Dr NEAL — That is what I am saying.

Mr HILTON — That is right, but unless you can actually prove that is the case I just wonder how valid that assertion is.

Dr NEAL — All I am saying, Mr Hilton, is just that. You asked what is the evidence. I said that the only evidence I can give you is the observation of myself and other experienced lawyers who watch these cases in court and who have these concerns.

We have not got, and do not claim to have, empirical evidence, but when you watch the ways in which the cases are done and you know because of the cases you have done, you wonder whether the record of interview on which a plea is based could actually be admitted because the person was young or 'This person is clearly mentally disabled' or for whatever other range of reasons you say, 'I could bet my life on this one, this one and that one'. The duty lawyer simply has not got time to even read the transcript of the record of interview if they are only spending 6 minutes with them before court.

Ms BEATTIE — In the Magistrates Court what proportion of appellants would be represented by the Victorian bar or the Criminal Bar Association of Victoria members and what proportion represented by legal aid in your view?

Dr LYON — The vast majority of representation in the Magistrates Court is by solicitors and not members of the bar. As to whether they are members of any organisation does not really matter although you do get practitioners stepping outside their areas of specialisation to do cases in the Magistrates Court because it is sometimes perceived as easier. Most of the work is done by solicitors.

There are specialist firms that make their income from a high volume turnover of work by employing junior solicitors and by requiring them to go to court usually with more than one, sometimes many more than one, case. As for Victoria Legal Aid (VLA), I have had experience — I was in the Magistrates Court on Friday doing a bail application. I received my brief late the night before and had the opportunity to work it up. I had the experience to work it up and I had the focus of working up one case.

One of the co-accused was represented by the VLA duty lawyer who had 13 bail cases pleas and he did not have the instruction or the wherewithal to do a bail application on that day. The difficulty was I got bail for my client and my client was the head of this supposed criminal ring. A solicitor was briefed for another; his client got off. The client who was represented by an experienced VLA solicitor but someone who had 13 cases is going up for bail on Wednesday so he languishes in custody all that time. It is a little bit off the track, but it gives you some idea of the sorts of difficulties that are placed on some solicitors on some occasions. It just gives a little example of how things can slip through the system.

The CHAIR — Do you want to make any comment at all on the 1999 changes beyond what is in your submission?

Dr NEAL — I would like to make a personal one, I suppose — let me put it that way. That is in relation to the extraordinary circumstances provision, in order to be allowed to withdraw an appeal. I do not have direct experience with that, but I certainly have had other members of the bar say to me, firstly, that it is a rather extraordinary thing when we are trying to get cases out of the system that you will not allow people who want to withdraw their appeals to withdraw them; and, secondly, that as a matter of principle it seems that that is part of an incentives scheme to try to discourage appeals. Already there is a disincentive against appealing because the possibility is always there that you will get a higher sentence. To say over and above that that once you get your toe in the water in the system and beyond a certain point you will not be able to withdraw from it, I do not see the wisdom of that.

The rationale for it has to be about courts case management and where that is going on, and people are saying, 'If you put in an appeal and you make a mistake, you could end up having a longer sentence.'. I think that is too high a penalty for a procedural error. I gather that the practice is — and our submission sets this out — that almost routinely judges accept the withdrawal of appeals. That is giving a lie to the criterion of extraordinary circumstances. If you are unlucky enough in the County Court to draw a judge who takes a harder line than that, there is a sort of atypicalness, which is again unfortunate. It is well known in legal practice that some magistrates and judges give heavier sentences than others and that if you draw that particular judge, you would certainly want to withdraw your appeal because the chances are that you are going to get a heavier whack. But then, who cares!

Ms BEATTIE — May I suggest you give us a list in case we need it one day?

Dr NEAL — No, that will cost.

Mr LUPTON — Brief counsel, I think is the answer.

Dr NEAL — That is right; exactly. Either of us would be available — —

Dr LYON — It would be a pleasure, I can assure you!

The CHAIR — There is a suggestion — I think it was put by the Law Institute of Victoria, which I think the DPP accepted — that it would more reasonable to say that anyone could withdraw at any point up to three weeks before the case being due to come on for hearing. Do you think that would be a reasonable limitation?

Dr NEAL — I think you should be able to withdraw at any stage.

Dr LYON — Even the severest judge in the Court of Appeal will allow you to abandon an appeal on the day of the hearing and will encourage you to do so if they feel that the case is weak. It should not become more onerous down the line. That is my view.

Mr NANKIVELL — I would like to just add one thing. We have not covered at all in these oral submissions the distinction between appeals by way of rehearing de novo in criminal matters versus intervention orders which are sort of quasi-criminal under the Crimes (Family Violence) Act, and I refer the committee to what we have said about that in our written submissions. Also in connection with what I was saying about New South Wales, I simply note that there is a case coming on for hearing in the New South Wales Court of Criminal Appeal in relation to whether rehearing really means de novo in relation to apprehended violence orders, which is the New South Wales equivalent of our intervention orders. It is an issue in that context.

The CHAIR — We would be very happy to take further submissions from you on that if that develops or you have some further thoughts that you would like to put to us. Unfortunately we are out of time. I thank you very much for taking the time to come here and give us your free advice on this occasion. We appreciate your taking the time to make written submissions and coming to speak with us today. Thank you.

Witnesses withdrew.

Proceedings in camera follow.