Justice Beech-Jones

The Court of Criminal Appeal

By Helen Roberts

Helen Roberts, Deputy Senior Crown Prosecutor, interviewed the Court of Criminal Appeal List Judge, Justice Beech-Jones, about practice and procedure in the Court of Criminal Appeal.

Helen Roberts (HR): *The Court of Criminal Appeal is a busy jurisdiction which often hears more than one appeal in a day. Bearing this in mind, are there ways in which counsel can best assist the Court in the way that they approach written and oral advocacy?*
Justice Beech-Jones (JB): Yes. The biggest difference between the Court of Criminal Appeal and other appellate Courts is the number of different matters that may be dealt with in a single hearing day. It is not unusual for the Court to hear a conviction appeal and two or three sentence appeals in one day. As a consequence, the Court can be very time pressed with respect to the preparation and hearing of those matters.

Regarding written submissions, there are a number of things that can assist. I note that my observations are my own, and not those of 'the Court', and that they are most relevant to counsel less experienced in the Court of Criminal Appeal.

On behalf of the appellant in a conviction appeal, a clear and objective statement of the evidence and the respective parties' cases at trial not only assists the Court but enhances your ultimate submission. In an appeal in which the ground of appeal is a complaint that the verdict is unreasonable, good written submissions will clearly introduce the basis upon which that submission is ultimately going to be advanced, rather than simply taking the Court through all of the evidence in what may appear to be an unfocussed way. The majority of judges hearing your appeal will be experienced in presiding over jury trials (and many will have been experienced as counsel in those trials as well). Again, in conviction appeals, it is always relevant to know whether the point now being taken was raised at trial or it is new, and this is something that should be addressed up front.

For my part, I prefer a style of written submissions in which the proposition for which counsel ultimately contends is stated at the outset. I find the Dennis Lillee style in which the run up is very long before a

delivery that is very fast less effective in this jurisdiction. I would prefer that counsel just come to the point.

HR: *Does your preference for counsel coming directly to the point apply to the presentation of the oral argument as well?*
JB: Yes it does. By the time of the hearing date, the judges hearing the appeal will have read the material, which they receive a few days before the hearing date. It may be that they have read all of it closely, or only had the opportunity to read the written submissions, but they will have familiarity with the subject matter of the appeal. Obviously there will be exceptions, but for my part, I find it of much greater assistance when counsel commences with the proposition for which they contend, before taking the Court to the evidence or the legal authorities at length.

In presenting your oral argument, it is important to be responsive to the Bench rather than simply to speak to your written submissions or prepared speaking notes. When appearing for the respondent, you should attempt to address the concerns or questions of the judges that you perceive to have arisen during the appellant's oral submissions.

HR: *Do you have any other advice for newer or less experienced advocates in the CCA?*
JB: It is worthwhile taking the opportunity, particularly now that Court is being held in person again, to go and watch an appeal or two, to get some idea of the style and pace in the CCA.
HR: *Are there matters of practice and procedure which are not as well adhered to as they might be, or to which you would like to draw counsel's attention?*
JB: Generally speaking, things are done very well. One area which is sometimes overlooked, is the question of any restrictions on publication that are necessary or appropriate in a particular matter. If any orders have been made in the Court below, it should be expressly considered whether or not there are any further orders required. In interlocutory appeals, consideration should be given to whether it is appropriate to request that publication of the judgment be restricted until the conclusion of the trial or at least kept off caselaw for a period (which is not the same thing). It should not simply be assumed that this will be done. In sentence appeals there may be issues with, for example, assistance to authorities which might require some navigating with respect to what will be published in the final judgment. There is a balance to be struck between open justice, and necessary non-publication in appropriate cases. Ideally these issues should be addressed or at least noted in the written submissions in advance, where this is possible.

HR: *I understand there are new Criminal Appeal Rules soon to be published. Can we expect any major changes?*
JB: The new Rules are principally a modernisation of the existing Rules. There is likely to be some amendment to time limits. Provision is likely to be made for case management by a judge for complex appeals, including fresh or new evidence appeals, or voluminous or lengthy appeals. BN

The *Supreme Court (Criminal Appeal) Rules* 2020 commenced on 1 May 2021.