



QUEENSLAND

A REPORT OF THE LAW REFORM COMMISSION

ON A BILL TO ESTABLISH AN
APPEAL COSTS FUND

Q. L. R. C. 12

REPORT OF THE LAW REFORM COMMISSION

APPEAL COSTS FUND ACT

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To the Honourable W. E. Knox, M. L. A.,
Minister for Justice and Attorney-General,
BRISBANE.

Under Item 10 of Part A of its programme of law reform as approved by the Honourable the Minister for Justice and Attorney-General, the Law Reform Commission is required:-

"To consider whether a suitor's fund should be provided to meet costs of appeal."

The accompanying draft Bill and Commentary represent the recommendations of the Commission in this regard.

The Commission has studied the legislation of other Australian States and has made enquiries concerning the administration of Funds established under such legislation, and is of the opinion that an Appeal Costs Fund should be established in Queensland. It has been considered unnecessary to circulate a working paper prior to compilation of this Report.

W. B. Campbell (Chairman)

B. B. McKeown (Member)

[Signature] (Member)

21 APR 1972

BRISBANE.

COMMENTARY

Costs in litigation are of great concern to litigants and quite often deter a party from embarking upon an action or appealing against an adverse decision in the Court of first instance.

In Queensland the Legal Assistance Act 1965-1971 provides assistance in appropriate cases to indigent or impecunious litigants but it is not only to these classes that the prospect of incurring costs acts as a deterrent.

The general rule in Civil Courts is that 'costs follow the event' and this is fair and equitable in most cases. However, the possibility remains that a litigant may bring an action and then have to launch appeals in a succession of Courts in order to resolve a single issue.

A mistake of law on the part of the trial judge, his illness during the course of the hearing, or his being bound by a precedent which only a higher Court can overrule (the principle of "stare decisis") as well as an abortive trial, for instance, where the jury disagrees or is discharged because of some procedural defect in the trial, can cause additional costs to be incurred through no fault of the party ultimately held responsible for paying them. In such cases it appears proper to provide relief to the innocent victim of these misfortunes and to mitigate the hardship caused.

Then, too, a decision of the trial judge may be upheld on appeal only to be reversed by an appeal to yet a higher Court. In this event the party originally successful has to pay, in his endeavour to support the original finding, the cost of two appeals as well as the cost of the trial.

This need has been recognised in a number of jurisdictions both inside and outside Australia and Funds known as Appeal Costs Funds or Suitors' Funds have been set up. Four Australian States, New South Wales, Victoria, Western Australia and Tasmania, have such Funds operating and recommendations were made in England by jurists over twelve months ago for the establishment of a Fund based on the New South Wales pattern.

Earlier, in the United Kingdom, the Evershed Committee proposed that the Attorney-General should have power to certify the use of public funds in cases involving points of law of substantial public importance for the purpose of an appeal to the House of Lords. This proposal would have application in some but not all of the cases of judicial error or bad precedents, for it is implicit in the proposal that funds would be made available only in matters of public importance, whereas it will be conceded that judicial error in a case of no public consequence whatsoever may cause considerable financial hardship, personal anguish and even involve loss of status by the individual.

There seems to be little justification for limiting the assistance granted if it can be extended to the wider field. It also appears to be asking too much of the individual seeking justice to require him at his own cost to take on appeal a judgment of an inferior Court which was bound by a precedent generally regarded as being of dubious authority or out of line with modern judicial concepts.

Then, too, situations are created where split decisions of an appellate Court, such as that of the High Court in Worthing v. Rowell & Ors, 44 A. L. J. R. 230, regarding the operation of State laws in Commonwealth enclaves overrule or distinguish by a mere majority of one, former well-recognised decisions, or leave large areas of law undecided. Any prospective litigant wishing to rely upon such decisions must feel some trepidation as to whether the alignment of judicial opinion on a subsequent appeal involving similar points of law might result in a different decision. For example, had Mr. Justice Taylor been alive and sitting on the appeal in Worthing's Case, it seems likely he would have supported the views held by Mr. Justice Kitto.

A similar change of judicial viewpoint became evident in the Transport Cases over a decade ago and with fresh appointments to the High Court, the views expressed in Worthing's Case may be varied.

.....
An analysis of the judgments in Worthing's Case, which is appended hereto in tabulated form as Annexure A may better illustrate the point.

It is not only within the structure of the Civil Courts that an appeal fund should be available. There is every reason why assistance should be available in respect of appeals from administrative tribunals, and the assistance should be available either for an appeal proper or by way of prerogative process which, in some cases, is the only remedy available. Under this umbrella would come Workers' Compensation Appeals, Cardiac Board Appeals, and the like.

There is no real need for this relief to be made available to persons charged in Criminal Courts in this State since there is a Public Defender whose services are fairly liberally made available to accused persons both in the Criminal Court and the Court of Criminal Appeal.

The next question to consider is where the money will come from and who will administer the Fund. In New South Wales and Western Australia filing fees for court documents were increased by administrative action and the increases so obtained diverted to the Fund. The Attorney-General for New South Wales, when moving the Second Reading of the Suitors' Fund Bill (1st May, 1951), said as follows:-

"What is proposed is that all filing fees be increased by one-ninth not by this Bill but by administrative action and that this increase be diverted to a special fund to be known as the Suitors' Fund. It is litigants who will benefit from the fund's existence and so it is reasonable to ask that litigants should contribute to it. In effect, it will be a form of insurance: every litigant will pay some slight additional court fees by way of a premium, as it were, to insure himself against a possible liability for appeal costs incurred through no fault of his. I cannot be dogmatic about this, and I shall not attempt to be."

When the scheme was established in 1951, 10% of Court fees were paid into the Fund. By 1955 this had reached such a level that the levy on fees was reduced to 1% at which figure it remained until 1966 when it was increased to its present figure of 4%. The Fund is now in a very buoyant condition.

Few claims were received in the first few years of operation but it has recently been used more. Between 1951 and 1959, 86 claimants received payments totalling \$43,864 whilst in the year ended 30th June, 1970, \$70,006 was paid out in respect of 112 claims. There has not been a steady growth of expenditure although the number of claims made has shown an annual increase.

.... The relevant New South Wales provisions appear later in this Report as Annexure B. The fluctuation of the Fund's operation is reflected in the attached table of statistics - Annexure C.
....

.... In Western Australia where the Fund is serviced from a fee additional to filing fees the experience of the years 1968, 1969 and 1970 is as related in the reports forming Annexure D hereto. The overall number of appeals in appellate Courts for those years were 93, 81 and 96 respectively of which 4, 4 and 14 were accepted as eligible for assistance. The balance of income over expenditure has risen in each of those years and apart from \$15,000 invested in a State Electricity Loan some \$28,784.56 was in credit with the Rural and Industrial Bank after 6 years of operation.

In Victoria the Fund receives: (a) upon the issue of any writ or summons whereby any action or suit is commenced in the Supreme Court - \$2.00; (b) upon similar processes in the County Court - \$1.00; and (c) upon complaint or summons in a Court of Petty Sessions - 10 cents. In Tasmania only the Supreme Court and Petty Sessions provisions apply as there is no County Court in that State, and the fees are identical with those imposed in Victoria. No figures have been extracted in respect of Victoria but Tasmania had run up a credit of \$9,449 in its first fifteen months of operation and issued only one Certificate of Indemnity in that time.

New South Wales alone has the practice of allocating an additional percentage of the normal filing fees. We prefer the fixed impost system of the other States. We also prefer the establishment of an Appeal Costs Board as has been done in Victoria and Western Australia rather than the system in New South Wales (see Annexure B).

There are differences between the States in the manner of operating the schemes, although the scope thereof is to all intents and purposes similar. In each case the quantum of the assistance and the people who may be assisted are restricted and the Crown is excluded as are incorporated bodies with large paid-up capital. Broadly speaking the claims are considered under the following heads:-

	<u>N. S. W.</u>	<u>Vic.</u>	<u>W.A.</u>	<u>Tas.</u>
(1) Appeals on a question of law	s. 6	s. 13	s. 10	s. 8
(2) Abortive proceedings	s. 6A	s. 18	s. 14	s. 15
(3) Appeals against quantum	s. 6B	s. 19	s. 15	s. 16

The draft Bill has been taken from the Victorian Act with only such alterations as are necessary to adapt it to Queensland and is divided into the following parts:-

PART I	- Preliminary	Sections 1-2
PART II	- Appeal Costs Fund and Board	Sections 3-7
PART III	- Financial	Sections 8-12
PART IV	- Indemnity Certificate	Sections 13-19
PART V	- General	Sections 20-24.

Although the Appeal Costs Fund in Victoria is available in the Industrial Conciliation and Arbitration Court and sundry Boards of Appeal, no provision is made for exacting any fee from litigants in these jurisdictions. If required this could be provided for by regulations. It would be possible to require the various Registrars to divert fees to the Fund but it is questionable whether the fees collected would warrant the administrative outlay.

Clause 13 of the Bill provides for the issue of an Indemnity Certificate which Certificate entitles a respondent in the circumstances provided to be paid from the Appeal Costs Fund. The Indemnity Certificate granted in an earlier appeal in a sequence of appeals shall be vacated in the event of a subsequent successful appeal (clause 17). Clause 18 provides that the Certificate has no force or effect during the time limited for appealing, seeking leave to appeal or the pendency of the appeal. Under clause 19 the grant or refusal of the Indemnity Certificate is in the discretion of the Court. No appeal lies against the exercise of this discretion.

Under clause 20 a party other than the Crown who has incurred additional costs by reason of a new trial had in consequence of the order for a new trial or the proceedings having been rendered abortive is entitled to such additional costs as he has incurred thereby.

Clause 21 contains a similar provision in relation to a new trial ordered where the verdict of the jury is contrary to the evidence or the quantum of damages is excessive or inadequate. Clause 22 provides for the case of a trial subsequent to a Court's refusal to sanction the compromise of an action by an infant plaintiff and because the amount of the judgment obtained is less than the amount agreed under the compromise, the plaintiff becomes liable to pay costs.

Under clause 23, any amount payable to a person from the Fund may be paid to his solicitor. Clause 24 is the usual provision for making Regulations.

A Bill to make provision with respect to the Liability for Costs of certain Litigation, to establish an Appeal Costs Fund to meet such Liability, to appoint an Appeal Costs Board, and for purposes connected therewith.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

PART I - PRELIMINARY

1. Short title, commencement and division of Act. (1) This Act may be cited as the Appeal Costs Fund Act 197.

(2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

(3) This Act is divided into Parts as follows:-

PART I - PRELIMINARY, ss.1-2;

PART II - APPEAL COSTS FUND AND BOARD, ss.3-7;

PART III - FINANCIAL, ss.8-12;

PART IV - INDEMNITY CERTIFICATE, ss.13-19;

PART V - GENERAL, ss.20-24.

2. Interpretation [Vic. s.2]. In this Act unless inconsistent with the context or subject-matter -

"appeal" includes an order to review, a case stated for the opinion or determination of a superior court on a question of law and a question of law reserved in the form of a special case for the opinion of a superior court, a motion for a new trial and any other proceeding in the nature of an appeal;

"appellant" includes the next friend of an infant or person under disability or the guardian ad litem of any person;

"Board" means the Appeal Costs Board constituted under this Act;

"costs" in relation to an appeal includes the costs of an application for an indemnity certificate in respect of an appeal but does not include costs incurred in a court of first instance except where otherwise expressly provided;

Abbreviations. Abbreviations used in references to other Acts in notes appearing at the beginnings of sections have the following meanings:- Vic. - Appeal Costs Fund Act 1964; Vic.7792, 7919, 8145 - Acts amending Appeal Costs Fund Act 1964; Qld. - Law Reform Commission Act 1968.

"court" includes any board or other body or individual from whose decision there is an appeal to a superior court on a question of law or which may state a case for the opinion or determination of a superior court on a question of law or reserve any question of law in the form of a special case for the opinion of a superior court;

"Fund" means the Appeal Costs Fund established under this Act;

"indemnity certificate" means an indemnity certificate granted under section 13 of this Act;

"Minister" means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act: The term includes a Minister of the Crown performing temporarily the duties of the Minister charged for the time being with the administration of this Act [Qld. 37 of 1968];

"respondent" includes the next friend of an infant or person under disability or the guardian ad litem of any person;

"sequence of appeals" means a sequence of appeals in which each appeal that follows next after another appeal in the sequence is an appeal against the decision in that other appeal;

"Supreme Court" means the Supreme Court of Queensland.

PART II - APPEAL COSTS FUND AND BOARD

3. Appeal Costs Fund [Vic. s. 3]. (1) There shall be kept in the Treasury a Fund to be called the "Appeal Costs Fund".

(2) Into the Fund shall be paid the amounts referred to in section 11 of this Act.

(3) Out of the Fund shall be paid the amounts referred to in section 14 and in sections 20, 21 and 22 of this Act and the costs of the administration of this Act.

(4) Interest derived from the investment of the Fund shall form part of the Fund.

(5) Where the Board certifies that the Fund is insufficient to meet any payment required by this Act to be made out of the Fund such payment shall be made out of the Consolidated Revenue (which is hereby to the necessary extent appropriated accordingly) and when any such payment is made out of the Consolidated Revenue it shall be deemed to be an advance to the Fund and shall remain a charge thereon to be recouped out of the Fund when funds are available.

(6) [Vic. 7919 s. 19] During the month of April 197 and the month of April in each year thereafter the Board shall calculate the amount of the total liability of the Fund on all applications held by the Board on the 31st day of March last preceding and during the month of October 197 and the month of October in each year thereafter the Board shall calculate the amount of the total liability of the Fund on all applications held by the Board on the 30th day of September last preceding.

(7) [Vic. 7919 s. 19] Where the moneys in the Fund excluding the amount so calculated on any occasion exceeds \$100,000 the Board shall issue its certificate for the payment from the Fund to the Legal Assistance Fund established pursuant to the provisions of the Legal Assistance Act 1965-1971 of so much of the money in the Appeal Costs Fund excluding any amount calculated under subsection (1) as exceeds \$100,000.

(8) [Vic. 7792 s. 2] In addition to any amount expressed by this Act to be payable out of the Fund in any case the Board may allow such amount as it thinks fit to a party to any proceedings for his costs of making application to the Board under this Act and where the Board allows such costs the Board shall include the amount of the costs in any certificate referred to in section 12.

4. Appeal Costs Board [Vic. s. 4]. (1) For the purposes of this Act there shall be a Board to be called the "Appeal Costs Board".

(2) The Board shall consist of three persons appointed by the Minister of whom -

- (a) one shall be appointed as chairman of the Board;
- (b) one shall be nominated in writing by the Bar Association of Queensland; and
- (c) one shall be nominated in writing by the Queensland Law Society Incorporated.

(3) If for any reason either of the bodies aforesaid does not within twenty-eight days after being requested in writing in that behalf by the Minister submit a nomination as aforesaid, the Minister may, without such nomination, appoint an otherwise eligible person to be a member of the Board to represent the interests of the body concerned and the person so appointed shall for all purposes be deemed to be duly appointed.

(4) The Minister may at any time remove any person appointed to the Board and appoint another person in his stead.

(5) Members appointed to the Board shall be entitled to hold office for such term not exceeding three years as the Minister determines but upon the expiration of the term for which any member is appointed he shall be eligible for re-appointment.

(6) For the purposes of any inquiry under this Act by the Board a member shall have the powers, authorities, protections, and immunities conferred on a commissioner by The Commissions of Inquiry Acts, 1950 to 1954 and the Chairman or member presiding shall have the powers and authorities conferred on a Chairman of a Commission within the meaning of those Acts.

(7) The provisions of The Commissions of Inquiry Acts 1950 to 1954 shall mutatis mutandis apply to and in respect of any witness or person summoned by or appearing before the Board.

(8) The claim to allowance of any witness before the Board or any person required to produce documents to the Board shall be paid out of the Fund in accordance with the provisions of this Act.

(9) In addition to any amount expressed by this Act to be payable out of the Fund in any case the Board may allow such amount as it thinks fit to a party to any proceedings for his costs of making application to the Board under this Act and where the Board allows such costs the Board shall include the amount of the costs in any certificate referred to in section 12.

5. Meetings of the Board [Vic. s.5]. (1) At any meeting of the Board the Chairman shall preside.

(2) Two members of the Board shall form a quorum of the Board but subject to there being a quorum the Board may act notwithstanding any vacancy in its membership.

(3) The decision upon any matter of the majority of members at any meeting shall be the decision of the Board on that matter.

(4) If at any meeting of the Board at which two members only are present the members differ in opinion upon any matter the determination of that matter shall be postponed to a full meeting of the Board.

(5) Subject to this Act and the regulations the Board may regulate its own proceedings.

(6) The provisions of the Public Service Act 1922-1968 shall not apply to the appointment of any member, and a member shall not, in that capacity, be subject to those Acts.

(7) The members of the Board shall be entitled to receive such fees, travelling expenses and allowances as are prescribed.

6. Functions of Board [Vic. s.6]. The functions of the Board shall be -

- (a) to exercise and discharge the powers, authorities, duties, functions and obligations conferred and imposed on the Board by or under this Act; and
- (b) to advise the Minister upon any matter submitted by him to the Board relating to the operation of this Act.

7. Staff [Qld. s.14]. The Governor in Council may appoint a secretary and such other officers of the Board as he shall from time to time deem necessary, and any officer so appointed shall receive such salary and allowances as the Governor in Council thinks fit.

PART III - FINANCIAL

8. Additional fee on writs, &c. [Vic. s.8]. In addition to any fee which may be payable under Act or the rules of any court upon any writ, summons, complaint or other document commencing any legal proceeding there shall be paid to the proper officer of the court the appropriate fee following, namely -

- (a) upon the issue of any writ, summons or other document whereby any action, suit or matter is commenced in the Supreme Court of Queensland - \$2.00;
- (b) upon the issue of any plaint, summons or other document whereby any proceeding is commenced in the District Court - \$1.50; and
- (c) upon the issue of any complaint, summons or other document whereby any proceeding is commenced in a Magistrates Court - 25 cents.

9. Additional fee not payable in certain cases [Vic. s.9]. The provisions of the last preceding section shall not apply in respect of any writ, summons, complaint or other document upon the issue of which no fee is payable pursuant to the express provisions of any Act or rule of court for the time being in force.

10. Statement to Treasurer of total number of writs issued [Vic. s.10]. During the months of January, April, July and October in each year the Under Secretary to the Justice Department shall cause to be prepared and sent to the Treasurer a statement signed by him setting forth the total number of writs, summonses or complaints upon which a fee is payable under this Act appearing from records in his custody or control to have been issued out of or returnable in the respective jurisdictions of all courts during the period of three months preceding the first day of the month concerned.

11. Treasurer to pay additional fees to Appeal Costs Fund [Vic. s.11]. Upon receiving any such statement as aforesaid the Treasurer shall cause to be paid out of the Consolidated Revenue (which is hereby to the necessary extent appropriated accordingly) and into the Appeal Costs Fund an amount equivalent to the sum of the additional fees payable under section 8 of this Act which are paid to the Consolidated Revenue in respect of the number of writs, summonses and complaints specified in the statement.

12. Payment out of Fund [Vic. s.12]. (1) No moneys shall be paid out of the Fund otherwise than upon and in accordance with a certificate of the Board.

(2) The Board shall not issue a certificate for the payment of any moneys out of the Fund unless it is satisfied that the payment is authorised by this Act to be made from the Fund and that the provisions of this Act and the regulations in relation to any claim for the payment have been complied with.

PART IV - INDEMNITY CERTIFICATE

13. Power to Supreme Court to grant indemnity certificate [Vic. s.13].

(1) Where an appeal against the decision of a court -

- (a) to the Supreme Court;
- (b) to the High Court of Australia from a decision of the Supreme Court;
- (c) to the Queen in Council from a decision of the High Court of Australia given in an appeal from a decision of the Supreme Court;
- (d) to the Queen in Council from a decision of the Supreme Court -

on a question of law succeeds, the Supreme Court may, upon application made in that behalf, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

(2) Where an appeal is determined by the Queen in Council or the High Court of Australia the power conferred upon the Supreme Court by the last preceding sub-section may be exercised by a judge of the Supreme Court sitting in chambers.

(3) District Court to grant indemnity certificate. Where an appeal against the decision of a court to a District Court on a question of law succeeds, the District Court may, upon application made in that behalf, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

14. Certificate entitles respondent to payment from Fund [Vic. s.14].

(1) Subject to this Act where a respondent to an appeal has been granted an indemnity certificate, the certificate shall entitle the respondent to be paid from the Fund -

- (a) an amount equal to the appellant's costs (if any) -
 - (i) of the appeal in respect of which the certificate was granted;
 - (ii) of any new trial had in consequence of any order made upon an appeal for a new trial; and also
 - (iii) where that appeal is an appeal in a sequence of appeals, of any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted -

ordered to be paid and actually paid by or on behalf of the respondent;

- (b) an amount equal to the respondent's costs -
 - (i) of the appeal in respect of which the certificate was granted;
 - (ii) of any new trial had in consequence of any order made upon an appeal for a new trial; and also
 - (iii) where that appeal is an appeal in a sequence of appeals, of any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted. -

as taxed or agreed upon by the Board and the respondent or the respondent's solicitor and not ordered to be paid by any other party; and

- (c) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, an amount equal to the costs incurred by him or on his behalf in having those costs taxed.

(2) Where an indemnity certificate has been granted as aforesaid and the Board is satisfied that the respondent unreasonably refuses or neglects or is unable through lack of means to pay to the appellant the costs referred to in paragraph (a) of the last preceding subsection or any part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, the Board may direct that an amount equal to those costs or to the part of those costs not already paid by or on behalf of the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction of the Board and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction.

(3) Notwithstanding anything to the contrary in the foregoing provisions of this section -

- (a) where the respondent was ordered to pay the appellant's costs the aggregate of the amounts payable from the Fund pursuant to paragraph (b) and paragraph (c) of subsection (1) of this section shall not exceed the amount payable from the Fund pursuant to paragraph (a) of the said subsection; and

- (b) the amount payable from the Fund to any one respondent under or pursuant to any one indemnity certificate shall not in any case exceed the sum of \$4,000 or such other amount as may be fixed for the time being in lieu thereof by the Governor in Council by proclamation published in the Government Gazette.

(4) The Governor in Council may by proclamation published in the Government Gazette vary or revoke any proclamation made under this section.

15. Power of Court to grant indemnity certificate to successful appellant in certain circumstances [Vic. s.14A]. Where -

- (a) there is an appeal against the decision of a Magistrates Court to the Supreme Court or a District Court on a question of law;
- (b) the respondent does not appear either in the proceedings before the Magistrates Court or on the appeal; and
- (c) the appeal succeeds but the Supreme Court or the District Court refuses to order the respondent to pay the appellant's costs of the appeal -

the Supreme Court or the District Court may, upon application made in that behalf, grant to the appellant in the appeal or to any one or more of several appellants in the appeal an indemnity certificate in respect of the appeal.

16. Certificate entitles respondent to payment from Fund [Vic. s.14B].

(1) Subject to this Act where an appellant in an appeal has been granted an indemnity certificate, the certificate shall entitle the appellant to be paid from the Fund -

- (a) an amount equal to the appellant's costs of the appeal in respect of which the certificate was granted as taxed or agreed upon by the Board and the appellant or the appellant's solicitor; and
- (b) where the costs referred to in paragraph (a) are taxed, an amount equal to the costs incurred by the appellant in having those costs taxed.

(2) Notwithstanding anything to the contrary in the foregoing provisions of this section the amount payable from the Fund to any one appellant under or pursuant to any indemnity certificate shall not in any case exceed the sum of \$200 or such other amount as may be fixed for the time being in lieu thereof by the Governor in Council by proclamation published in the Government Gazette.

(3) The Governor in Council may by proclamation published in the Government Gazette vary or revoke any proclamation made under this section.

17. Indemnity certificate vacated in certain circumstances [cf. Vic. s.15]. An indemnity certificate granted to a party in respect of an appeal, being an appeal in a sequence of appeals, shall be vacated if in a later appeal in the sequence the successful party is the one to whom the indemnity certificate is granted.

18. Indemnity certificate vacated in certain circumstances [Vic. s.16].

(1) An indemnity certificate granted to a respondent in respect of an appeal shall have no force or effect -

- (a) where a time is limited for appealing against the decision in the appeal - during the time limited for appealing against the decision in the appeal;
- (b) where an appeal lies against the decision in the appeal but no time is limited - until an application for leave to appeal against the decision in the appeal has been determined and where leave is granted, the appeal is instituted, or until the respondent lodges with the Board an undertaking in writing by the respondent that the respondent will not seek leave to appeal or appeal against the decision in the appeal, whichever first happens;
- (c) notwithstanding anything contained in the foregoing provisions of this subsection where the decision in the appeal is the subject of an appeal - during the pendency of the appeal.

(2) An indemnity certificate granted to an appellant in respect of an appeal shall have no force or effect -

- (a) where a time is limited for appealing against a decision in the appeal - during the time limited for appealing against the decision in the appeal;
- (b) where an appeal lies against the decision in the appeal but no time is limited - until an application for leave to appeal against the decision in the appeal has been determined, and where leave is granted, the appeal is instituted, or until the expiration of three months from the determination of the appeal, whichever first happens;
- (c) notwithstanding anything contained in the foregoing provisions of this subsection where the decision in the appeal is the subject of an appeal - during the period of the appeal.

(3) Where the appeal and a later appeal or later appeals form a sequence of appeals and the indemnity certificate has not been vacated under the last preceding section any reference in this section to the decision in the appeal shall be construed as including a reference to the decision in the later appeal or in each such later appeal (as the case may be) and any reference to the pendency of the appeal shall be construed as including a reference to the pendency of the later appeal or of each later appeal (as the case may be).

(4) Where an undertaking has been given by a respondent under the foregoing provisions of this section and thereafter he seeks leave to appeal or appeals against the decision to which the undertaking relates, the respondent shall, upon demand made by the Board, pay to the Board any amount paid to him, or for and on his behalf under the indemnity certificate and the amount concerned may be recovered by the Board from the respondent as a debt in any court of competent jurisdiction.

(5) Where any money is paid to an appellant or for or on behalf of an appellant by the Board in respect of an appeal and thereafter the appellant is a party in a successful appeal against such decision the appellant shall, upon demand made by the Board, pay to the Board any amount paid to him or for or on his behalf under the indemnity certificate and the amount concerned may be recovered by the Board from the respondent as a debt in any court of competent jurisdiction.

(6) Any amount paid to or recovered by the Board under subsections (4) and (5) shall be paid into the Fund.

(7) Nothing in this section shall affect the operation of section 19 of this Act.

19. No appeal against grant or refusal of indemnity certificate [Vic. s.17].

(1) The grant or refusal of an indemnity certificate shall lie in the discretion of the court and no appeal shall lie against any such grant or refusal.

(2) An indemnity certificate shall not be granted in respect of any appeal from proceedings begun in a court of first instance before the commencement of this Act.

(3) An indemnity certificate shall not be granted in favour of the Crown.

PART V - GENERAL

20. Abortive proceedings and new trials after proceedings discontinued.

(1) Where after the commencement of this Act - [Vic. s.18].

(a) any civil or criminal proceedings are rendered abortive by the death or illness of the judge, magistrate or justice before whom the proceedings were had or in the case of proceedings had before the Industrial Court on appeal of any member of the Court or by disagreement on the part of the jury where the proceedings are with a jury;

(b) an appeal on a question of law against the conviction of a person (in this section referred to as the appellant) convicted on indictment is upheld and a new trial is ordered; or

(c) the hearing of any civil or criminal proceeding is discontinued and a new trial ordered by the presiding judge, magistrate or justice for a reason not attributable in any way to the act, neglect or default, in the case of civil proceedings, of all or of any one or more of the parties thereto or their legal practitioners, or, in the case of criminal proceedings, of the accused or his legal practitioners, and the presiding judge, magistrate or justice grants a certificate (which certificate the presiding judge, magistrate or justice is hereby authorised to grant) -

(i) in the case of civil proceedings - to any party thereto stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to the act, neglect or default of all or any one or more of the parties to the proceedings or their legal practitioners; or

(ii) in the case of criminal proceedings - to the accused stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to the act, neglect or default of the accused or his legal practitioners - or

(d) a criminal proceeding in any court is adjourned by or on behalf of the prosecution and the presiding judge, magistrate or justice grants a certificate (which certificate the presiding judge, magistrate or justice is hereby authorised to grant if he is satisfied that by reason of the adjournment the accused has necessarily incurred expense) to the accused stating the reason why the proceedings were adjourned and that the reason was not attributable in any way to the act, neglect or default of the accused or his legal practitioners,

any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, who pays or is ordered to pay additional costs or on whose behalf additional costs are paid or ordered

to be paid by reason of the new trial that is had as a consequence of the proceedings being so rendered abortive or as a consequence of an order for or upon a new trial or as a consequence of the adjournment, as the case may be, shall be entitled to be paid from the Fund such costs as the Board considers have been reasonably incurred by him or on his behalf in the proceedings before they were so rendered abortive or were adjourned or the conviction was quashed or the hearing of the proceedings was so discontinued, as the case may be.

(2) No amount shall be paid from the Fund under this section to the Crown.

(3) For the purposes of this section, where in criminal proceedings a presiding judge, magistrate or justice directs that the proceedings being heard be discontinued with a view of other criminal proceedings based on the facts alleged against the accused being instituted, a new trial shall be deemed to be ordered.

(4) For the purposes of this section a criminal proceeding may be deemed to have been adjourned where the prosecution has notified the accused or his legal practitioners that a date has been fixed for the hearing of the proceeding and the proceeding is not listed for hearing on that day.

(5) An application for a certificate under subsection (1) with respect to the adjournment of a criminal proceeding may be made when the proceedings come on for hearing and a certificate may then be granted in accordance with the provisions of paragraph (d) in subsection (1).

21. New trial on ground that damages awarded are excessive or inadequate. [Vic. s.19] (1) Where after the commencement of this Act a new trial is ordered in an action on the ground that the verdict of the jury was against the evidence or the weight of the evidence or that the damages awarded in the action were excessive or inadequate, the respondent to the motion for the new trial shall be entitled to be paid from the Fund -

- (a) an amount equal to the costs (if any) of the appellant in the motion for and upon the new trial ordered to be paid and actually paid by or on behalf of the respondent:

Provided that where the Board is satisfied that the respondent unreasonably refuses or neglects or is unable through lack of means to pay the whole of those costs or part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, the Board may direct in writing that an amount equal to those costs or to the part of those costs not already paid by or on behalf of the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction;

- (b) an amount equal to the respondent's costs of the motion for and upon the new trial, as taxed or agreed upon by the Board and the respondent or the respondent's solicitor and not ordered to be paid by any other party; and
- (d) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, an amount equal to the costs incurred by him or on his behalf in having those costs taxed.

Notwithstanding anything to the contrary in the foregoing provisions of this subsection -

- (i) where the respondent has been ordered to pay the appellant's costs in the motion for and upon the new trial the aggregate of the amounts payable from the Fund pursuant to paragraph (b) and paragraph (c) of this subsection shall not exceed the amount payable from the Fund pursuant to paragraph (a) of this subsection;
- (ii) the amount payable from the Fund to any one respondent in respect of the motion for and upon a new trial shall not in any case exceed the sum of \$4, 000 or such other amount as may be fixed for the time being in lieu thereof by the Governor in Council by proclamation published in the Government Gazette.

(2) [Vic. 7792 s. 5] Where upon any appeal heard after the commencement of the Appeal Costs Fund Act 19 a new trial of any action or matter is ordered upon any ground whatsoever and upon the new trial the party who was the appellant in the appeal proceedings is ordered to pay the respondent's costs of the new trial the appellant shall be entitled to be paid from the Fund, subject to the limitations referred to in paragraphs (i) and (ii) in subsection (1), the amounts referred to in paragraphs (a), (b) and (c) of the said subsection which shall for the purposes of this subsection be read and construed as if any reference in those paragraphs to the "respondent" were a reference to the "appellant" and any reference therein to the "appellant" shall be read and construed as if it were a reference to the "respondent".

(3) The Governor in Council may by proclamation published in the Government Gazette vary or revoke any proclamation under this section.

(4) This section does not apply where the respondent to the motion for the new trial is the Crown.

22. Amount payable where court refuses to sanction a compromise in an action brought by an infant plaintiff. [Vic. s. 19A] (1) Where a court refuses to sanction the compromise of an action brought by an infant plaintiff and on the trial of the action the amount of the judgment obtained by the plaintiff is an amount which is not greater than the amount which the defendant had agreed to pay under the said compromise and the infant plaintiff or his next friend is ordered to pay the whole or part of the defendant's costs of the action on any ground including the payment of money into court by the defendant, the infant plaintiff or his next friend (as the case requires) shall be entitled to be paid from the Fund -

- (a) an amount equal to the costs ordered to be paid by the infant plaintiff to the defendant and actually paid by or on behalf of the infant plaintiff or his next friend;

Provided that where the Board is satisfied that the infant plaintiff or his next friend unreasonably refuses or neglects or is unable through lack of means to pay the whole of those costs or any part thereof or that payment of those costs or part thereof would cause the infant plaintiff or his next friend undue hardship, the Board may direct in writing that an amount equal to those costs or to the part of those costs not already paid by or on behalf of the infant plaintiff or his next friend be paid from the Fund for and on behalf of the infant plaintiff or his next friend to the defendant and thereupon the defendant shall be entitled to payment from the Fund in accordance with the direction and the Fund shall be discharged from liability to the infant plaintiff or his next friend in respect of those costs to the extent of the amount paid in accordance with the direction;

- (b) an amount equal to the infant plaintiff's costs of the action incurred after the date on which the court refused to sanction the said compromise as taxed or agreed upon by the Board and the infant plaintiff or his next friend or the infant plaintiff's solicitors and not ordered to be paid by any other party; and
- (c) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the infant plaintiff or his next friend an amount equal to the costs incurred by him or on his behalf in having those costs taxed.

Notwithstanding anything to the contrary in the foregoing provisions of this subsection -

- (i) the aggregate of the amounts payable from the Fund pursuant to paragraph (b) and paragraph (c) of this subsection shall not exceed the amount payable from the Fund pursuant to paragraph (a) of this subsection;
- (ii) the amount payable from the Fund to any one infant plaintiff or his next friend shall not in any case exceed the sum of \$4,000 or such other amount as may be fixed for the time being in lieu thereof by the Governor in Council by proclamation published in the Government Gazette.

(2) The Governor in Council may by proclamation published in the Government Gazette vary or revoke any proclamation under this section.

23. Payment to solicitor [Vic. s.21]. Any amount payable from the Fund may, if the Board thinks fit, be paid to his solicitor and on payment to his solicitor the Fund shall be discharged from liability to that person in respect of that amount.

24. Power to Governor in Council to make regulations [Vic. s.20]. The Governor in Council may make regulations prescribing all matters which by this Act are required or authorised to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act and in particular without limiting the generality of the foregoing provisions of this section for or with respect to -

- (a) the making of payments out of the Fund;
 - (b) the taxation or assessment of costs for the purposes of this Act in circumstances not provided for under the rules of the appropriate court or where a party to an appeal refuses to neglects to tax his costs;
 - (c) prescribing officers by whom bills of costs may be taxed for the purposes of this Act in different courts or in different jurisdictions of a court;
 - (d) regulating the preparation and service of bills of costs proposed to be taxed for the purposes of this Act;
 - (e) prescribing fees, travelling expenses and allowances of members of the Board; and
 - (f) prescribing forms for the purposes of this Act.
-

This was a demurrer by the plaintiff to the defendant's pleading that a regulation made under New South Wales law did not apply in places acquired by the Commonwealth for public purposes by virtue of section 52(1) of the Constitution.

The Bench comprised the Chief Justice and McTiernan, Kitto, Menzies, Windeyer, Owen and Walsh J. J. The Court by a majority (Barwick C. J., Menzies, Windeyer and Walsh J. J.) disallowed the demurrer.

On the application of pre-acquisition and post-acquisition State laws on such places there was a cross division of judicial opinion.

McTiernan, Kitto, Windeyer and Owen J. J. affirmed the application of pre-acquisition laws whilst Barwick C. J. and Walsh J. left the question open. Menzies J. seemed to favour the majority view.

Barwick C. J. and Menzies and Windeyer J. J. regarded section 52 of the Constitution as invalidating all post-acquisition State laws and were supported in this view by Walsh J. on a very limited ground by reason of the particular act involved without necessarily precluding all post-acquisition laws. These four constituted the majority. Although Walsh J. rejects the views of Kitto J., he leaves open the possible application of some post-acquisition laws.

Kitto J. adopted as part of his judgment a passage by Taylor J. from Spratt v. Hermes: 1965 114 C.L.R. 326, and it seems likely that had the late Mr. Justice Taylor been a member of the Bench he would have sided with the minority.

The above views can be tabulated thus:-

	C.J.	McTiernan	Kitto	Menzies	Windeyer	Owen	Walsh
Post-acq.	No	Yes	Yes	No	No	Yes	No (on very narrow grounds only)
Pre-acq.	Not decided	Yes	Yes	Yes (with reservations)	Yes	Yes	Not decided

This outline will bring home quite clearly the difficulty facing litigants in disputed areas when appellate Courts arrive at decisions on varying grounds with the result that no authoritative guidance can be obtained.

6. (1) Where an appeal against the decision of a court—
- (a) to the Supreme Court;
 - (b) to the High Court of Australia from a decision of the Supreme Court;
 - (c) to the Queen in Council from a decision of the High Court of Australia given in an appeal from a decision of the Supreme Court;
 - (d) to the Queen in Council from a decision of the Supreme Court,

Costs of certain appeals.
Subst. sec., Act No. 20, 1959, s. 2 (c)
Am., Act No. 8, 1960 s. 2 (b) (i).

on a question of law succeeds, the Supreme Court may, upon application made in that behalf, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

The jurisdiction conferred upon the Supreme Court by this subsection may be exercised by a judge of the Supreme Court sitting in chambers.

(1A) Where an appeal against the decision of a court to the Industrial Commission of New South Wales or to a District Court or to a judge of a District Court on a question of law succeeds, that Commission, Court or judge, as the case may be, may, upon application made in that behalf, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

(2) Where a respondent to an appeal has been granted an indemnity certificate, the certificate shall entitle the respondent to be paid from the Fund—

(a) an amount equal to the appellant's costs of—

(i) the appeal in respect of which the certificate was granted; and also

(ii) where that appeal is an appeal in a sequence of appeals, any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted,

ordered to be paid and actually paid by the respondent: Provided that where the Under Secretary of the Department of the Attorney-General and of Justice is satisfied that the respondent is unable through lack of means to pay the whole of those costs or part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, the said Under Secretary may, if so requested by the respondent, direct in writing that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction;

(b) fifty per centum or such other percentage as may be prescribed (at the time when the indemnity certificate is granted) in lieu thereof by the Governor by proclamation published in the Gazette of the amount payable from the Fund pursuant to paragraph (a) of this subsection or, where no amount is so payable, an amount equal to the costs of—

(i) the appeal in respect of which the certificate was granted; and also

(ii) where that appeal is an appeal in a sequence of appeals, any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted,

as taxed, incurred by the respondent and not ordered to be paid by any other party: Provided that where an amount is payable from the Fund pursuant to paragraph (a) of this subsection, but the Under-Secretary of the Department of the Attorney-General and of Justice directs that the costs of the appeal or appeals referred to in subparagraph (i) or in subparagraphs (i) and (ii) of this paragraph incurred by the respondent and not ordered

to be paid by any other party be taxed at the instance of the respondent or those costs are, without such a direction, taxed at the instance of the respondent, the amount payable from the Fund under this paragraph shall be the amount equal to those costs as so taxed; and

(c) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, an amount equal to the costs incurred by him in having those costs taxed.

Notwithstanding the foregoing provisions of this subsection—

(i) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, the aggregate of the amounts payable from the Fund pursuant to that paragraph and paragraph (c) of this subsection shall not exceed the amount payable from the Fund pursuant to paragraph (a) of this subsection;

(ii) the amount payable from the Fund under or pursuant to any one indemnity certificate shall not in any case exceed the sum of one thousand pounds or such other amount as may be fixed (at the time when the indemnity certificate is granted) in lieu thereof by the Governor by proclamation published in the Gazette.

The Governor may from time to time in like manner vary or revoke any proclamation under this subsection.

(3) An indemnity certificate granted in respect of an appeal to the respondent to the appeal, being an appeal in a sequence of appeals, shall be vacated if—

(a) in a later appeal in the sequence the successful party is the one to whom the indemnity certificate was granted; or

(b) an indemnity certificate is granted in respect of a later appeal in the sequence and the respondent to the earlier appeal is a party to the later appeal.

(4) (a) An indemnity certificate granted in respect of an appeal to the respondent to the appeal shall have no force or effect—

(i) where a time is limited for appealing against the decision in the appeal—during the time limited for appealing against the decision in the appeal;

(ii) where an appeal lies against the decision in the appeal but no time is so limited—until an application for leave to appeal against the decision in the appeal has been determined and, where leave is granted, the appeal is instituted, or until the respondent lodges with the Under Secretary of the Department of the Attorney-General and of Justice an undertaking in writing by the respondent that the respondent will not seek leave to appeal, or appeal pursuant to the leave granted, against the decision in the appeal, whichever first happens;

(iii) notwithstanding anything contained in subparagraph (ii) of this paragraph where the respondent gives the undertaking referred to in that subparagraph and thereafter seeks leave to appeal, or appeals, against the decision in the appeal—until the application for leave has been determined and, where leave is granted, the appeal is instituted;

(iv) notwithstanding anything contained in the foregoing provisions of this paragraph where the decision in the appeal is the subject of an appeal—during the pendency of the appeal.

Where the appeal and a later appeal or later appeals form a sequence of appeals and the indemnity certificate has not been vacated under subsection three of this section—

(v) the reference to the decision in the appeal in the foregoing provisions of this paragraph shall be construed as including a reference to the decision in the later appeal or in each such later appeal, as the case may be; and

(vi) the reference to the pendency of the appeal in those provisions shall be construed as including a reference to the pendency of the later appeal or of each such later appeal, as the case may be.

(b) Where an undertaking has been given by a respondent under the foregoing provisions of this subsection and thereafter he seeks leave to appeal or appeals, as the case may be, against the decision to which the undertaking relates, the respondent shall, upon demand made by the Under Secretary of the Department of the Attorney-General and of Justice, pay to the said Under Secretary any amount paid to the respondent, or for and on behalf of the respondent, under the indemnity certificate or, if the respondent notifies the said Under Secretary in writing of his seeking leave to appeal or of his appeal, as the case may be, any amount paid to the respondent, or for and on behalf of the respondent, under the indemnity certificate before the respondent gave the notification, and the amount concerned may be recovered by the said Under Secretary from the respondent as a debt in any court of competent jurisdiction.

Any amount paid to, or recovered by, the said Under Secretary under this subsection shall be paid by him into the Fund.

(c) Nothing in this subsection affects the operation of subsection three of this section:

(5) The grant or refusal of an indemnity certificate shall be in the discretion of the court and no appeal shall lie against any such grant or refusal.

(6) An indemnity certificate shall not be granted in respect of any appeal from proceedings begun in a court of first instance before the commencement of this Act.

(7) An indemnity certificate shall not be granted in favour of the Crown or a company or foreign company having a paid-up capital of one hundred thousand pounds or more.

In this subsection "company" and "foreign company" have the meanings ascribed to them by subsection one of section six of the Companies Act, 1936, as amended by subsequent Acts.

6A. (1) Where on or after the day on which Her Majesty's assent to the Suitsors' Fund (Amendment) Act, 1959, is signified—

(a) any civil or criminal proceedings are rendered abortive by the death or protracted illness of the judge, magistrate or justice before whom the proceedings were had;

(b) an appeal on a question of law against the conviction of a person (in this section referred to as the appellant) convicted on indictment is upheld and a new trial is ordered; or

(c) the hearing of any civil or criminal proceedings is discontinued and a new trial ordered by the presiding judge, magistrate or justice for a reason not attributable in any way to disagreement on the part of the jury, where the proceedings were with a jury, or to the act, neglect or default, in the case of civil proceedings, of all or of any one or more of the parties thereto or their counsel or attorneys, or, in the case of criminal proceedings, of the accused or his counsel or attorney, and the presiding judge, magistrate or justice grants a certificate (which certificate the presiding judge, magistrate or justice is hereby authorised to grant)—

(i) in the case of civil proceedings—to any party thereto stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to disagreement on the part of the jury, where the proceedings were with a jury, or to the act, neglect or default of all or of any one or more of the parties to the proceedings or their counsel or attorneys; or

(ii) in the case of criminal proceedings—to the accused stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to disagreement on the part of the jury or to the act, neglect or default of the accused or his counsel or attorney,

and any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, incurs additional costs by reason of the new trial that is had as a consequence of the proceedings being so rendered abortive or as a consequence of the order for a new trial,

Costs of proceedings not comp by reason death of judge. Ac or for oth reasons n attributable to acts, & of parties.
New sec. No. 20, 19 5. 3 (b).

as the case may be, then the Under Secretary of the Department of the Attorney-General and of Justice may, upon application made in that behalf, authorise the payment from the Fund to the party or the accused or the appellant, as the case may be, of the costs, or such part thereof as the said Under Secretary may determine, incurred by the party or the accused or the appellant, as the case may be, in the proceedings before they were so rendered abortive or the conviction was quashed or the hearing of the proceedings was so discontinued, as the case may be.

(2) No amount shall be paid from the Fund under this section to the Crown or to any company or foreign company having a paid-up capital of one hundred thousand pounds or more.

In this subsection "company" and "foreign company" have the meanings ascribed to them by subsection one of section six of the Companies Act, 1936, as amended by subsequent Acts.

6A. (1) (c) ["Act" in phrase "act, neglect or default" does not mean wrongful act, and includes act of plaintiff in conversing with juryman in public place near court although part-heard case not mentioned: *Greaves v. Blackburn* (1960), 78 W.N. 517; 1 A. Digest (2nd ed.) 528.]

6B. (1) Where on or after the day on which Her Majesty's assent to the Suitsors' Fund (Amendment) Act, 1959, is signified, a new trial is ordered in an action on the ground that the damages awarded in the action were excessive or inadequate, the respondent to the motion for the new trial shall be entitled to be paid from the Fund—

(a) an amount equal to the costs of the appellant in the motion for the new trial ordered to be paid and actually paid by the respondent: Provided that where the Under Secretary of the Department of the Attorney-General and of Justice is satisfied that the respondent is unable through lack of means to pay the whole of those costs or part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, the said Under Secretary may, if so requested by the respondent, direct in writing that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction;

(b) fifty per centum or such other percentage as may be prescribed (at the time when the order for the new trial is made) in lieu thereof by the Governor by proclamation published in the Gazette of the amount payable from the Fund pursuant to paragraph (a) of this subsection or, where no amount is so payable, an amount equal to the costs of the motion for the new trial, as taxed, incurred by the respondent and not ordered to be paid by any other party: Provided that where an amount is payable from the Fund pursuant to paragraph (a) of this subsection, but the Under Secretary of the Department of the Attorney-General and of Justice directs that the costs of the motion for the new trial incurred by the respondent and not ordered to be paid by any other party be taxed at the instance of the respondent or those costs are, without such a direction, taxed at the instance of the respondent, the amount payable from the Fund under this paragraph shall be the amount equal to those costs as so taxed; and

(c) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, an amount equal to the costs incurred by him in having those costs taxed.

Notwithstanding the foregoing provisions of this subsection—

(i) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, the aggregate of the amounts payable from the Fund pursuant to that paragraph and paragraph (c) of this subsection shall not exceed the amount payable from the Fund pursuant to paragraph (a) of this subsection;

(ii) the amount payable from the Fund in respect of the motion for a new trial shall not in any case exceed the sum of one thousand pounds or such other amount as may be fixed (at the time when the order for the new trial is made) in lieu thereof by the Governor by proclamation published in the Gazette.

The Governor may from time to time in like manner vary or revoke any proclamation under this section.

(2) This section does not apply where the respondent to the motion for the new trial is the Crown or a company or foreign company having a paid-up capital of one hundred thousand pounds or more.

In this subsection "company" and "foreign company" have the meanings ascribed to them by subsection one of section six of the Companies Act, 1936, as amended by subsequent Acts.

Costs of motion for new trial on ground that damages were excessive or inadequate. New sec., Act No. 20, 1959, s. 3 (b).

EXTRACT FROM SUITORS' FUND ACT 1951-1960

3. (1) There shall be a "Suitors' Fund" into which shall be paid the moneys referred to in section 5 of this Act and from which shall be paid the amounts referred to in subsection (2) of section 6 and in sections 6A and 6B of this Act and in subsection (1A) of section 14 of the Legal Assistance Act, 1943 as amended by subsequent Acts.
- (2) In addition to the moneys payable out of the Fund under this Act all costs of management of the Fund as certified by the Auditor-General shall be a charge against and shall be paid out of the Fund.
- (3) The Fund shall, subject to this Act and the regulations, be under the direction, control and management of the Under Secretary of the Department of the Attorney-General and of Justice.
- (4) All moneys payable to the Fund under this Act shall be paid to an account in Special Deposits Account in the Treasury, and such moneys and interest allowed thereon shall be made available to the Under Secretary of the Department of the Attorney-General and of Justice for investment or for the purpose of paying the amounts referred to in subsection (2) of section 6 of this Act or any other amount properly payable out of the Fund.
- (5) Interest at a rate to be determined by the Colonial Treasurer shall be allowed on the amount at the credit of such account.
- (6) The Fund shall as far as practicable be invested in securities in which trustees are by law authorised to invest.
- (7) Interest derived from the investment of the Fund shall form part thereof.
- (8) The income of the Fund shall not be subject to taxation under any Act of this State.
- (9) The accounts relating to the Fund shall be audited by the Auditor-General
4. (1) For the purposes of the exercise and discharge of the powers, authorities, duties, functions and obligations conferred and imposed upon him by this Act, the Under Secretary of the Department of the Attorney-General and of Justice is hereby declared to be a corporation sole under the name of "The Under Secretary of the Department of the Attorney-General and of Justice".
- The said corporation sole shall have perpetual succession and an official seal and may in the corporate name sue and be sued and shall be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property and of doing and suffering all such other acts and things as a body corporate may by law do and suffer.
- (2) The assets of the Fund shall be vested in the said corporation sole.
- (3) Where any property real or personal or the interest therein or charge thereon is vested in or is acquired by the said corporation sole, the same shall unless otherwise disposed of by the said corporation sole pass to and devolve on and vest in its successors.
- (4) The seal of the said corporation sole shall not be affixed to any instrument or writing except in the presence of by the direction of the Under Secretary of the Department of the Attorney-General and of Justice who shall attest by his signature the fact and date of the seal being so affixed.
- (5) The appointment of the Under Secretary of the Department of the Attorney-General and of Justice and his official seal shall be judicially noticed.
- (6) During the absence from whatever cause of the Under Secretary of the Department of the Attorney-General and of Justice the person holding the appointment of Assistant Under Secretary of the Department of the Attorney-General and of Justice has and may exercise and discharge the powers, authorities, duties, functions and obligations conferred and imposed upon the said Under Secretary by this Act.

The appointment of the said Assistant Under Secretary shall be judicially noticed.

5. (1) As soon as practicable after the last day of each month, there shall be paid to the Fund such percentage, not exceeding in any case ten parts per centum, of the fees of court collected in any court or in any jurisdiction of any court which are paid into the Consolidated Revenue Fund during the month ending on that day, as may be fixed by the Governor, upon the recommendation of the Colonial Treasurer, by proclamation published in the Gazette with respect thereto.

The Governor may from time to time in like manner vary or revoke any such proclamation.

(2) Any proclamation under subsection (1) of this section may fix different percentages in respect of -

- (a) different courts;
- (b) different jurisdictions of the same court;
- (c) courts held at different places.

(3) Any amounts payable to the Fund under subsection (1) of this section shall be paid out of the Consolidated Revenue Fund, and are hereby specially appropriated.

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Suitors' Fund Claims - Statistics.No. of Claims on the Fund:

<u>First years of operation</u>	<u>Recent Years</u>
1954 1	1966 97
1955 3	1967 99
1956 9	1968 105
1957 13	1969 107
1958 24	

Division of Claims according to the various ways in which a person may become entitled to lodge a claim:

	<u>1967</u>	<u>1968</u>	<u>1969</u>
Suitors' Fund Act, S.6:	22	23	27
Suitors' Fund Act, S.6A:	12	17	13
Suitors' Fund Act, S.6B:	16	14	26
Legal Assistance Act, S.14 (1A)	49	51	41

Amounts paid from the Fund:

	<u>1966.</u>	<u>1967.</u>	<u>1968.</u>	<u>1969.</u>
Suitors' Fund Act, S.6:	\$21,362.	\$36,852.	\$25,103.	\$39,767.
Suitors' Fund Act, S.6A:	\$11,185*	\$17,557.*	\$3,100.	\$2,898.
Suitors' Fund Act, S.6B:			\$10,811.	\$26,245.
Legal Assistance Act, S.14 (1A):	\$12,298.	\$12,637.	\$17,536.	\$22,989.
	\$44,845.	\$67,056.	\$56,550.	\$91,899.

*Combined figure for S's 6A and 6B.

Balance of the Fund:

	<u>Cash at</u> <u>Treasury.</u>	<u>Investments*</u>	<u>Total Balance</u>
December, 1962:	\$34,856.	\$191,958.	\$226,814.
" 1963:	41,952.	145,424.	187,376.
" 1964:	25,996.	127,238.	153,234.
" 1965:		Not available.	
" 1966:	78,515.	100,000.	178,515.
" 1967:	33,074.	170,000.	203,074.
" 1968:	35,391.	210,000.	245,391.

- *e.g. (a) Inscribed stock of the Metropolitan Water Sewerage and Drainage Board.
 (b) Commonwealth Inscribed Stock.

Amounts paid into the Fund:

	<u>Revenue.</u>	<u>Interest.</u>	<u>Total.</u>
1962:	\$17,658.	\$15,672.	\$33,330.
1963:	18,334.	10,456.	28,790.
1964:	19,452.	7,104.	26,556.
1965:		Not available.	
1966:	80,047.	6,152.	86,199.
1967:	84,502.	7,113.	91,615.
1968:	93,399.	9,484.	102,883.

Percentage of Court Fees paid into Consolidated Revenue pursuant to Section 5 of the Suitors' Fund Act:

1951-4:	10%
1955-64:	1%
1965-	4%

SUITORS' FUND ACT 1964-1969

Report of the Chairman, Appeal Costs Board,
appointed under the above Act, for the 12 months
ended 30th June, 1970.

Seven meetings of the Board were held during the year and 16 applications were considered.

Four of these applications were made under Section 14 of the Act as a result of proceedings part heard being rendered abortive by the death of the trial Judge.

The Board constituted that 14 applications complied with the provisions of the Act and that the applicants were entitled to a payment out of the Fund.

Two applications have not yet been finalized.

The financial position of the Fund as at 30th June, 1970 was as follows:

<u>Receipts</u>	<u>\$.</u>	<u>c.</u>	<u>Payments</u>	<u>\$.</u>	<u>c.</u>
Balance as at 1/7/69	38,319.77		Amounts paid on Certificates during the year ended 30/6/70	6404.94	
Contributions from Consolidated Revenue	10,479.80				
<u>Interest from Investments</u>			Fees paid to R.M. Franklyn as Assessor (Regn.?)	21.00	
S.E.C. Private Loan	834.38		<u>Balance:-</u> Private loan with S.E.C.	15,000.00	
R. & I. Savings Bank	576.55		Amount lodged in R. & I. Bank (Savings Bank)		
				<u>28,734.56</u>	
					<u>43,784.56</u>
	<u>\$50,201.50</u>				<u>\$50,210.50</u>

10th July, 1970.

CHAIRMAN.
APPEAL COSTS BOARD.

SUITORS' FUND ACT, 1964

Report of the Chairman of the Appeal Costs Board for
the 12 months ended 30th June, 1969.

Five meetings of the Board were held during the year and four applications were dealt with.

The Board was satisfied that each of the applications complied with the provisions of the Act and that the applicants were entitled to payment out of the fund.

As at the 30th June, 1969, the financial position of the Fund was as follows:-

<u>Receipts</u>		<u>Payments</u>	
	\$ c		\$ c
Balance as at 1.7.68.	29,186.68	Amounts paid on Certificates during year	2,740.10
Contributions from the Revenue Fund under the Suitors' Fund Act	10,583.80	Balance as at 30.6.69 Private Loan with S.E.C.	15,000.00
Interest from Investments: S.E.C. private loan	887.97	Amount lodged with R. & I. Bank (Savings Bank)	<u>23,319.77</u>
R. & I. Savings Bank Interest	<u>401.42</u>		<u>38,319.77</u>
	<u>1,289.39</u>		
	<u>\$41,059.87</u>		<u>\$41,059.87</u>

18th July, 1969.

CHAIRMAN
APPEAL COSTS BOARD.

SUITORS FUND ACT, 1964.

Report of the Chairman of the Appeal Costs Board appointed under this Act for the 12 months ended 30th June, 1968.

Four meetings of the Board were held during the period under review and five applications were dealt with.

The Board was satisfied that four of these applications complied with the provisions of the Act and that the applicants were entitled to payment out of the Fund.

One application was adjourned sine die to give the applicant an opportunity to lodge an indemnity certificate complying with the Form in the Schedule.

During the year the sum of \$15,000 not immediately required for the purposes of the Act was invested by the Treasurer as a private loan with the State Electricity Commission at $5\frac{9}{16}$ per cent.

The financial position of the Fund as at 30th June, 1968 was as follows:-

<u>Receipts</u>		<u>Payments</u>	
Balance as at 1.7.67.	20,499.07	Amounts paid on Certificates during the year ended 30.6.68	1,853.00
Contributions under Act from Consolidated Revenue	10,072.90	Balance:- Private Loan with S.E.C.	15,000.00
Interest on Contributions lodged in R. & I. Bank	467.71	Amount lodged in R. & I. Bank	<u>14,186.68</u>
	<u>\$31,039.68</u>		<u>29,186.68</u>
			<u>\$31,039.68</u>

18th July, 1968.

CHAIRMAN
APPEAL COSTS BOARD