



Section 17C of the Court of Appeal Act, inserted on 11 September 1997, makes provision for appeal to this Court in certain circumstances after an interlocutory judgment or order in a criminal proceeding. Unless the primary Judge certifies that determination on appeal is proper (and there is no certificate here), an appeal may only be brought with this Court's leave [s. 17C (1)].

Moreover, by s. 17C (5) it is provided:

"(5) a notice of appeal or notice of application for leave to appeal under this section shall be given within 10 days of the date of the interlocutory judgment or order from which appeal is made."

In the present case, the application is out of time. His Honour's order was made on 13 April 2000, but the application for leave to appeal was not filed until 3 May 2000. There is no provision empowering this Court to extend that time. It must follow that the application will be dismissed as incompetent.

We would add that, in any event, leave would be granted to the Crown to appeal against an interlocutory order for costs only in the most exceptional of cases.

There remains the question of the costs of this application.

By s. 25(1) of the Court of Appeal Act it is provided:

"25 (1) On the hearing and determination of an appeal under this part of the Act no costs shall be allowed to either side."


"This part of the Act" is Part III, dealing with "Appeals in Criminal Cases."

Section 25 (1) was in this form before the introduction of the

Crown appeal against sentence by s. 17 B, and before the introduction of s. 17C itself. Section 25 (1) therefore contemplated only an appeal other than a Crown appeal until 1 September 1997. Moreover, in eliminating costs, s. 25(1) speaks of "the hearing and determination of an appeal" as the context. We would not read this provision as excluding the Court's inherent power, in an appropriate case, to award costs where there has been no appeal because an incompetent application for leave has been dismissed. This is such a case. The Crown must pay the respondent's costs of this incompetent application.

The order of the Court is:

Application for leave to appeal dismissed as incompetent, with costs.

  
Burchett J



  
Tompkins J

  
Beaumont J