(a) when the proprietors by unanimous resolution so resolve; or
(b) when the Court (that is the Supreme Court in its equitable jurisdiction) is satisfied that, having regard to the rights and interests of the proprietors as a whole, it is just and equitable that the building shall be deemed to have been destroyed and makes a declaration to that effect. Where the Court makes such a declaration it may impose such conditions, and give such directions (including directions for the payment of money), as it thinks fit for the purpose of adjusting as between body corporate and the proprietors and as amongst the proprietors themselves the effect of the declaration.

In lieu of making a destruction order the Court may settle a scheme for the re-instatement in whole or in part of the building. Under this clause the Court is given wide discretionary powers. It seems that such a wide discretion in the Court is necessary, because it is impossible to foresee with reasonable certainty all the difficulties and conflicting claims that may arise. Where the Court does make a destruction order, the whole parcel vests in the former lot proprietors as tenants in common in accordance with the unit entitlement of their respective lots. Clause 12 of the Bill provides for the disposition by the body corporate, as statutory agent for the proprietors and on their direction, of the building deemed to have been destroyed.

*A. F. RATH**

LAY REVIEW OF LOCAL GOVERNMENT ACTION
LOCAL GOVERNMENT ACT, 1919 (N.S.W.), S.341

The powers and functions of local government bodies are on the increase rather than on the wane. Provision is made in the Local Government Act, 1919 (N.S.W.),[1] for the bringing of appeals from decisions of Councils on applications for various approvals provided for in the Act. Section 341 of the Local Government Act provided, in its initial form, for an appeal to a judge of the District Court where a Council had refused an application made to it in respect of a subdivision or a building application. For many years such matters were dealt with by the judges of the District Court until, in 1941, the legislature thought fit to amend s.341 so as to provide that such appeals should be determined in the Land and Valuation Court.

The ambit of the matters dealt with by the Land and Valuation Court on appeal from Councils was extended by the provisions of s.342N(2) of the Act, which gave dissatisfied applicants for development approval a right of appeal from decisions of the local Council. Since 1941 a large number of appeals have been determined in the Land and Valuation Court, pursuant to one or other of these sections. However, sweeping changes to s.341 were made by the Local Government (Amendment) Act, 1958 (N.S.W.).[2] The 1958 Act set up a Board of Subdivision Appeals and a Board of Building Appeals to hear and determine appeals against decisions of Councils in respect of applications on these matters. The jurisdiction formerly exercised by the Land and Valuation Court in these matters was thereby terminated. The Board of Subdivision Appeals and the Building Appeals Board (which is more correctly described as "The Cumberland, Newcastle and Wollongong Board of Appeal") consist of five and four members respectively, all of them laymen. The Boards sit as arbitrators and have the powers and functions of arbitrators under the Arbitration Act, 1902. Appeals under s.342N(2), in respect of applications to

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[1] No. 41 of 1919. [2] No. 21 of 1958.

develop and use land and buildings, are still heard in the Land and Valuation Court.

Objections to the removal of litigious business from the jurisdiction of courts of law and the vesting of such jurisdiction in administrative tribunals are manifold and have been freely aired in the past. It seems unnecessary here to go over familiar ground in that respect. However, whilst it is not unusual for a fresh jurisdiction to be set up and vested in an administrative body, it is both unusual and undesirable for the legislature to take away a jurisdiction from a court which is already functioning efficiently and which has given general satisfaction to both appellants and respondents alike. The reasons actuating the legislature in passing the 1958 amendments to s.341 can only be a matter for conjecture. The main criticisms commonly levelled at courts these days by laymen are: (a) that it is difficult to obtain a speedy hearing; and (b) that the costs of litigation before the courts are unreasonably high. Neither of these criticisms seems to have much validity in relation to the despatch of business in the Land and Valuation Court.

As to the delay in the hearing of appeals in the Land and Valuation Court, the position has never constituted any embarrassment either to appellant or respondent. Appeals (and, for that matter, other matters) in the Land and Valuation Court are dealt with expeditiously and it has always been possible for parties to obtain an early hearing in that Court. It would be fair to say that there is less delay in the hearing of matters in that Court than in any other jurisdiction presided over by judges of the Supreme Court. Indeed, most actions in the District Court would take longer to be heard than matters in the Land and Valuation Court. As to costs, the judges of the Land and Valuation Court have quite commonly made orders for costs which are commensurate with the value of the subject-matter involved. Four scales of costs apply in matters before the Court and, by fixing costs on one of the four scales, a judge has always been able to mould his order for costs so as not to cast any unfair burden on one party or another.

It is submitted that no advantages whatever accrue to appellants or respondents by the amendments made to s.341. As to delay in hearing, an appeal before the Board of Subdivision Appeals and the Buildings Appeals Board is in no way more expeditious than was an appeal on the same matter before the Land and Valuation Court. The necessity for a reasonable time in which to prepare an appeal for hearing before the Boards means that a period of at least a few weeks must elapse after lodgement of notice of appeal and before hearing. Both parties require time to prepare their evidence, instruct solicitor and counsel, and generally get the appeal ready for hearing. The position in this respect is no different than was the position in similar appeals before the Land and Valuation Court.

As to costs, it is submitted that the position in the Boards is unsatisfactory as well for appellant as for respondent. The Boards have power, as arbitrators, to fix and award costs in proceedings before them. It is too early at this stage to form any general view as to the practice the Boards will adopt in awarding costs; but it may be assumed that the Boards will have little experience to draw upon for this purpose, since none of their members has any legal training or experience whatever. The position may well arise where parties appearing before the Boards will not be able to assess with any satisfactory degree of certainty what order for costs might be expected from the Boards. There are no scales of costs which they can draw upon in framing orders, and it is likely that litigants before the Boards will be most uncertain of their position.

Over the years during which appeals were dealt with by the District Court judges and the judges of the Land and Valuation Court, certain principles of general application were laid down by the courts. These principles acted as a

guide to both appellants and respondents and infused some clarity and certainty into a branch of the law which is of necessity not capable of being laid down in precise terms. Questions as to the suitability of subdivision and building applications are not matters which allow of the application of rigid rules. However, a perusal of reported decisions given in the Land and Valuation Court over the years does disclose lines of authority of general application. Even *in futuro* decisions of the Boards will presumably not form the subject of any reported decisions. They will form no guide to future litigants, for the awards made by the Boards will not come under public notice. In any event, the Boards can hardly be expected to lay down principles with the clarity and consistency expected from constituted courts of law. It is quite conceivable, for instance, that the constitution of the Boards will vary greatly from year to year. Views of various Boards may vary widely within a short period of time. It is submitted that the effect of the legislation will therefore be to infuse a much greater degree of uncertainty into the law and practice relating to appeals than was formerly the case.

It is not reasonable to expect the same standards of consistency of interpretation and application of principle from a Board consisting wholly of lay members as has been provided in the past by experienced judges. The amendments made to s.341 by the 1958 Act afford yet another example of the dangers of removing important matters from the jurisdiction of well recognised legal tribunals which have dealt with them successfully over many years, and vesting them in untried lay administrative tribunals.

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