

APPEAL COMMITTEE

**JUDICIAL REVIEW**

REPORT

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*Ordered to be printed 11 July 2000*

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LONDON

# FIFTY-NINTH REPORT

from the Appeal Committee

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11 JULY 2000

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## ORDERED TO REPORT

1. Until 27 July 1999, practice direction 1.6 applicable to civil appeals read:

*“Admissibility of Petitions*

Petitions are not admissible for presentation if they fall into one of the following categories:

- (a) petitions for leave to appeal to the House of Lords from a refusal by the Court of Appeal to grant leave to appeal to that Court from a judgment of a lower court, or from any other preliminary decision of the Court of Appeal in respect of a case in which leave to appeal to the Court of Appeal was not granted<sup>1</sup>;
- (b) petitions for leave to appeal to the House of Lords against a refusal by the Court of Appeal or a Divisional Court of the Queen’s Bench Division to grant an *ex parte* application for leave to apply for judicial review under Order 53 of the Rules of the Supreme Court<sup>2</sup>;
- (c) petitions for leave to appeal to the House of Lords barred by paragraph 13(4) of Schedule 11, or by paragraph 7(4) of Schedule 22, to the Housing Act 1985;
- (d) petitions for leave to appeal to the House of Lords brought by a petitioner in respect of whom the High Court has made an order under section 42 of the Supreme Court Act 1981 (restriction of vexatious legal proceedings) unless leave to present such a petition has been granted by the High Court or a judge thereof pursuant to that section (other than a petition for leave to appeal against the s.42 order itself);
- (e) petitions for leave to appeal from a decision of the Court of Appeal on any appeal from a county court in any probate proceedings<sup>3</sup>;
- (f) petitions for leave to appeal from a decision of the Court of Appeal on an appeal from a decision of the High Court on a question of law under Part III of the Representation of the People Act 1983<sup>4</sup>.

Inadmissible petitions will not be accepted for presentation to the House; any fee presented in respect of such a petition will be returned. Where there is doubt as to the admissibility of a petition, it may, at the direction of the Principal Clerk, be accepted for presentation to the House so that its admissibility may be decided by an Appeal Committee; the fee paid in respect of such a petition will not be refunded if the petition is found to be inadmissible.”

2. Direction 1.6(b) was repealed on 27 July 1999, in the light of a decision of the Privy Council in the Bermudan case *Kemper Reinsurance Co. v. Minister of Finance and others*<sup>5</sup>.

3. Several petitions for leave to appeal, which previously would have been deemed inadmissible under direction 1.6(b), have been referred to the Appeal Committee. We consider that one of these petitions, *Regina v. Secretary of State for Trade and Industry (Respondent) ex parte Eastaway (Petitioner)*, should be granted leave to appeal so that the House might have the opportunity to examine the question as to whether the Court of Appeal’s refusal of leave to apply for judicial review is an order or judgment of the Court of Appeal within the meaning of section 3 of the Appellate Jurisdiction Act 1876. The matter would then be determined with the same authority as in the case of *Lane v. Esdaile*<sup>6</sup>. We consider that argument should at first be limited to the question of jurisdiction and that, should the House determine that it has jurisdiction to hear such an appeal, a further hearing on the merits should then be arranged.

## RECOMMENDATION

4. The Committee recommend that leave to appeal be given in the cause *Regina v. Secretary of State for Trade and Industry (Respondent) ex parte Eastaway (Petitioner)*.

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<sup>1</sup> Following the decision of the House in *Lane v. Esdaile* [1891] A.C. 10; see also *Whitehouse v. Board of Control* [1960] 1 W.L.R. 1093; [1960] 3 All E.R. 182n., H.L. No appeal lies from a refusal of leave to appeal to the Court of Appeal by a single Lord Justice in open court: section 54(6) of the Supreme Court Act 1981.

<sup>2</sup> Following the decision of the House in *Re Poh* [1982] 1 W.L.R. 2; [1983] 1 All E.R. 287, H.L.

<sup>3</sup> County Courts Act 1934, section 82.

<sup>4</sup> Section 157(1).

<sup>5</sup> [1998] 3 W.L.R. 630.

<sup>6</sup> [1891] A.C. 10.