

# NORTHERN TERRITORY LAW JOURNAL

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## ARTICLES

### **Crown appeals and double jeopardy** – *The Hon Justice Dean Mildren RFD*

The rule against double jeopardy has relevance in all stages of criminal prosecutions. Its long history is based on notions of fairness and to prevent oppression. The rule is constitutionally enshrined in many countries. It was the principal reason why the Crown could not appeal against either conviction or sentence. Crown appeals against sentence came to be allowed in all jurisdictions by the 1970s, but the rule proscribed the circumstances under which courts of criminal appeal would increase sentences. As the result of media campaigns, recent legislative changes in many jurisdictions have opened the possibility of Crown appeals against conviction, and have removed the operation of the rule on sentencing appeals. The courts of criminal appeal still have a discretion in some circumstances to dismiss a prosecution appeal even if satisfied that the sentence passed was manifestly inadequate. .... 3

### **The court's duty to ascertain jurisdiction** – *Cameron Ford*

Where proceedings are limited to questions of law, may a court accept the concession, or lack of complaint, of a party that the question is one of law and assume jurisdiction, or is it under an independent duty to determine its jurisdiction and reject the proceeding if the question is not one of law, notwithstanding the wishes of all parties for the proceeding to be heard on the merits? 13

### **The Territories and Kirk v Industrial Relations Commission (NSW)** – *Cameron Ford*

Because of express reference to the State Supreme Courts in Ch III of the Constitution, the High Court held in *Kirk v Industrial Relations Commission (NSW)* that Parliament may not change the defining characteristics those courts had at federation by removing their supervisory jurisdiction. This article maintains that, on the

current judicial separation of Ch III and s 122, that particular reasoning does not apply to the Territory Supreme Courts but that a modified version of the reasoning prevents Parliament from altering the supervisory jurisdiction Territory Supreme Courts enjoyed at the time they were invested with the judicial power of the Commonwealth. .... 28

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