

IX Courts Administration

Running a criminal court in the days of small caseloads presented relatively few difficulties. The judge, on his own or with the aid of a clerk of court, could arrange a rough schedule according to which cases could be heard; both sides would appear in court on the allocated day and the case would proceed. Nowadays, the picture is substantially different: in urban centres, several courts and judges are operating at the same time; lawyers may have prior commitments in other courts and have to seek an adjournment in any other cases in which they are scheduled to appear; heavy workloads may prevent counsel from being prepared to proceed with a case on the scheduled date, forcing them to seek an adjournment. These adjournments will leave the courts empty on one day and create a bottleneck on another, and overall will create serious delays in the disposal of cases. To enable the courts to cope with increasing caseloads and the problems they generate, more sophisticated administration and scheduling of cases is required.

Gradually it is being realised in common law jurisdictions throughout the world that the problems relating to court administration, in both the judicial and non-judicial aspects, must be tackled seriously and comprehensively. The practice of court administration techniques is, however, still very much in its infancy. As a result, what follows here is merely a brief review of the limited action that has been taken.

In those Commonwealth countries which are turning towards court administration as a partial solution to the problem of delay, the trend is towards fixing responsibility for such administration firmly and clearly in the hands of a particular official or in the hands of a designated authority¹ rather than leaving it to individual judges who have more than enough to do hearing cases and preparing their decisions, and who, arguably, do not have the necessary administrative skills which the orderly functioning of the court system now requires.

In 1969 the Report of the English Royal Commission on Assizes and Quarter Sessions (the Beeching Report) stated that key administrative officers ought to exercise "firm managerial control over all matters affecting the smooth running of the courts other than those which have a direct bearing upon the discharge of judicial functions".² It was suggested that an officer, a "Courts Administrator", should be in charge at each court centre. The idea was that he would be responsible for the administration of the courts at the centre to which he was assigned and that he would be responsible to the Circuit Administrator, thus ensuring uniformity throughout each circuit.³ These recommendations having been implemented with minor modifications, such

court administrators have been appointed. One of their main functions is to act as a co-ordinator to enable the Chief Clerks at individual court centres to co-operate with one another in creating a system by which the resources of judge power, available court staff and accommodation facilities can be deployed in a manner which will enable court business to be disposed of efficiently.⁴

In proposing such a scheme, the Beeching Commission appreciated that the concentration of administrative power in the hands of full-time non-judicial officers would result in these officers making decisions of a quasi-judicial nature, and as a result, recommended that on constitutional grounds, "a visible and effective safeguarding of the position of the judges serving on the Circuits" should be provided.⁵ That safeguard is provided by the Presiding Judge system: the Lord Chief Justice appoints High Court judges to serve as Presiding Judges, two for each circuit, except the South-East which has three, one of whom is the Lord Chief Justice himself. On each circuit, the twin heads of the administrative system are the Circuit Administrator and the Presiding Judge present on the circuit. The Presiding Judges can exert considerable control over the judicial performance by seeing that the judges working on the circuit are assigned to cases commensurate with their special experience and ability. By maintaining close contact with the Circuit Administrator the Presiding Judge can advise on intended administrative action and anticipate problems which administrative decisions may cause judges.

After this system had been in operation for four years, one observer concluded that a strong unified court service staffed with competent personnel had been established in England and Wales, although it was still grappling for control of the court system and serious problems affecting the efficient running of the system persisted.⁶

The Circuit Administrators are directly responsible to the Lord Chancellor's Department within which a Court Business Branch has been established. The Lord Chancellor has an authority which is difficult to define: he is the head of the judges, a member of the Cabinet and he sits on the Woolsack, He serves as a high-level link between the executive branch of government and the judiciary, and, because his is a non-political office, he symbolizes the maintenance of the independence of the judiciary. He has ultimate control over the court administrators, and thus judicial independence from extraneous interference is preserved. In Canada the lack of a judicial officer with an equivalent status is proving to be a major stumbling block in developing an acceptable system of courts administration.

By 1975 all provinces of Canada had established, in some form, offices of Courts Administration, specially designed to gather and analyse information about the outputs of the system as well as improvements in courts administration.⁷ The most impressive efforts at promoting such an approach to the problems which the courts are facing have been those of the Ontario Law Reform Commission. Its proposals were based on the following argument:

Ontario should adopt a "systems" approach to courts administration, based on sound management principles consonant with the administration of justice and not on the traditional judicial model which focusses on the judicial hierarchy and structures authority and lines of communication accordingly. The courts must be regarded as an assembly of interdependent parts forming a complex but unitary whole.⁸

Ontario attempted to put this ideal into practice in an experimental scheme called the "Central West Project".⁹ A Project Management Team made up of personnel with shared expertise in all areas of courts administration developed a case-flow management system for the lower courts in a small area of the province. This system involved the complete rescheduling of all the business of the criminal courts, the changing of the time of the commencement of various courts, the re-allocation of duties between Provincial judges and justices of the peace, a change in the procedure for setting trial dates, a change in the intake procedure for scheduling first appearances of cases not previously dealt with, a change in adjournment procedures, a change in the number and location of various court sittings, the development of a new system for streaming certain types of cases into different courts, and the allocation of specific blocks of judicial time for the disposition of certain types of cases.¹⁰

The attempt to introduce the case-flow management system failed because in Canada the overall authority for courts administration is divided between the judiciary and the Ministry of the Attorney-General. The Attorney General, being a political figure, does not have that independent, unifying role which the Lord Chancellor in England has. The Project Management Team of the Attorney General's Ministry did not have the authority to execute their caseload system because the execution of every single administrative decision made by Ministry personnel depends entirely upon the decisions of individual judges made in individual cases, thus, the scheme failed. Above all, efficient and effective courts administration depends on central decision-making, co-operation and comprehensiveness.

In Ontario, as a result of the "Central West" experience it has been concluded, quite correctly, that the only way to achieve any unified

managerial control over case-flow is to place over-all control in the hands of a central authority with the ability to develop and apply case-flow management standards upon individual courts. Neither the constitution nor the public would permit this authority to be wielded by the Attorney General as this would be a fundamental breach of the independence of the judiciary. Effective management controls over individual courts and upon the court system as a whole can only be imposed where ultimate authority is vested in a judicial office. Thus, it has been proposed that ultimate authority and responsibility be conferred upon a Judicial Council composed of the senior judiciary.¹¹ Given the limited amount of time that judges have at their disposal for such functions and their own limitations as administrators on a grand scale, the effectiveness of this proposal remains to be seen.

Establishing a mutually acceptable definition of the respective roles of the executive and the judiciary in courts administration has not yet been achieved in Canada. Consequently, the executive feels constrained in implementing comprehensive plans for re-organising the courts. This jurisdictional question would appear to be impeding the speedy development of solutions to the problem of administering courts in Canada.¹²

The Courts Administration Act, 1975,¹³ established the office of Director of Court Administration in the Australian state of Victoria. The other stated aim of the Act is "to make provision for the more efficient disposal of business dealt with by the Courts of Victoria". This, however, will not be done directly through the Director of Court Administration as his statutory role is an advisory rather than an executive one, Section 4 of the Act provides:

The functions of the Director shall be -

- (a) to advise the Attorney-General with respect to any action which he considers would lead to -
 - (i) the more convenient, economic and efficient disposal of the business of the courts; or
 - (ii) the avoidance of delay in bringing civil and criminal actions to trial;
- (b) to confer from time to time with the Chief Justice of the Supreme Court, the Chief Judge of the County Court and the Chief Stipendiary Magistrate in relation to the matters referred to in paragraph (a);
- (c) to confer with the Chief Commissioner of Police, the Director General of Social Welfare, the Crown Solicitor and the Prosecutors for the Queen with respect to matters affecting criminal trials and appeals; and

- (d) to confer with members of the legal profession and all other persons concerned with the matters referred to in paragraph (a) in relation to those matters.

As one observer has noted, it may seem that the Victorian Director of Court Administration is a shadow of his English counterpart, but in his advisory and consultative roles, he will be able to make recommendations which should have a lasting impact on the performance of the court system in Victoria.¹⁴

Thus, even among the narrow range of examples we have at our disposal, it is fairly clear to see that the precise format of the development of courts administration has varied quite widely. We turn now to the kind of developments and results which this emphasis on courts administration is producing.

A recent Home Office Circular reported that in some English criminal courts an improved system of listing cases is producing significant savings of time and money.¹⁵ While the practice of magistrates' courts varies quite widely in this respect, these courts generally have adopted, with considerable success, a system whereby, on any particular day, any cases in which the court has become aware that there will be an application for a remand or adjournment are dealt with first and the lists of other cases are arranged in such a way that guilty pleas are dealt with before contested cases. Additionally, in some of the busier courts, a system has been successfully introduced whereby the court list is specifically divided into segments called at different times - for example, if charges and remands are dealt with first and the court sits at 10.30 a.m., summons cases are not called until 11.00 a.m. This kind of measure is of great benefit to defendant and counsel as well as witnesses, as they need no longer turn up at the beginning of the court day and perhaps have to wait a substantial period of time until their case is called. The time set for the hearing of a particular case is much more specific than previously.

In 1974, the Lord Chief Justice of England issued a Practice Note which set up an experimental listing procedure in the Divisional Court of Queen's Bench called the "Expedited Hearing List" to cover applications for prerogative orders and appeals by case stated to the Divisional Court.

The main purpose will be to secure the early disposal of short and simple cases, particularly those which involve sentences of imprisonment, disqualification for driving or possession of property. A characteristic of such cases will be that counsel can be adequately instructed at comparatively short notice.

Where leave is given to move for a prerogative order, the court may direct that the motion be entered in the 'Expedited Hearing List'. If such a direction is given, the court will nominate the week, normally two clear weeks ahead, in which the motion will be heard. The applicants should at once inform the respondents of the court's directions, should supply them with copies of the papers used in the application for leave, and agree with them where possible the date or dates convenient to all parties, being a day or days in the nominated week. If informed of a convenient date, the head clerk will take it into account in fixing the date of the hearing.¹⁶

As yet, there is no indication as to how useful this experiment has been.

One of the most recent English innovations in court management is the introduction of computer technology into this arena. Computers programmed to facilitate a comprehensive management system are being introduced in a number of summary courts. The scheme is still at an early stage but the court in Nottingham is now more or less ready to put the system into operation. The general theory underlying the new system is that it will bring together all the court business in a single system with ready recovery and also enable individual cases to be isolated and the full history of the case from the issue of the summons to the payment of the fine to be extracted as a running document. The ultimate advantage of such a record is that the whole pattern of the court's work can be quite readily examined, predictions as to staff requirements can be made and the costing of the whole judicial process can be undertaken accurately. One special merit of such a comprehensive system is the facility that it provides for the management of court business in an orderly and predictable way. Data can be incorporated in the system relating to such matters as the availability of witnesses - whether, for example, police officers will be on leave on given dates - predictions as to the time that the case will run on a hearing day and if the system is interconnected with police records, then the prior criminal history of the accused can be available on a terminal inside the court. With all the information that it is possible to include in computer programmes, it will obviously be readily adapted to the preparation of court lists and this should remove some of the continuing problems that summary courts have with allocating work to the various magistrates and also ensuring that the parties in a case have a fairly firm date and time on which the case will be heard.¹⁷

Due to the division of responsibility for courts administration in Canada which was discussed above, the initiative in developing more

expeditious methods of processing cases through the courts has come mainly from the judiciary. There has been a substantial re-adjustment in the schedule of the courts and the manner in which cases are assigned. In Ontario, the Chief Justice has implemented the rationalisation of court calendars, working with the senior judge in each judicial district to achieve a more efficient processing of charges before the courts and to facilitate the setting of trial dates. Many court sittings which ordinarily deal with a general list of cases have now been sub-divided with certain days being devoted to first appearances, pleas of guilty and short trials, while others are dedicated to the trial of general Criminal Code offences, narcotics offences and the more serious driving offences. This has resulted in a better use of judicial time and physical facilities. Additionally, in many instances, the period of time from the date of the offence to the final disposition of the matter has been shortened.¹⁸

This kind of specialisation has also been experimented with in the lower courts of Zambia. In response to the large volume of criminal business, the magistracy specialised its own functions to a considerable degree. In the larger cities, the Senior Resident Magistrate, assisted by a Resident Magistrate or Magistrate Class 1, handles the taking of all pleas and disposes of all cases where a guilty plea is entered. This helps ensure a compliance with the exacting standards of unequivocality and voluntariness which exist in Zambia. Where a not guilty plea is entered the case is assigned to a magistrate after consulting a general diary in which is kept a record of all the cases pending before magistrates in the district; the more serious cases usually being assigned to the more senior magistrates. Outside of the major cities, however, this form of specialisation does not prevail because the volume of cases does not warrant it.¹⁹

A rather interesting project was set up in a provincial court in Metropolitan Toronto which established that a 90 day disposition period for most criminal offences is feasible if operating under the ideal conditions of a fixed caseload with the same judge, Crown attorney and court clerk assigned to the same court. This fixed team approach reduced adjournments caused by defence counsel "shopping" for a lenient judge or an amenable Crown Attorney and those adjournments caused when a new prosecutor is assigned to a case at short notice. The success of this scheme is attributed to the fact that the judge has fairly extensive control over a particular section of the caseload. It is not known yet how far this particular project can be successfully extended.²⁰

Another effective mechanism for combating delay has been operating in the county courts in one judicial district in Ontario. This is the "criminal assignment court" which sits one afternoon a week to assign trial dates, usually for about a month from the assignment court hearing. The defence counsel in a case will receive a notice from the Crown Attorney's office, which is primarily responsible for the scheduling of criminal cases, stating that the case will come up at the assignment court on a particular day. Counsel may then get in touch with the Crown Attorney's office and agree upon a trial date acceptable to both sides. If there is such agreement he need not appear at the assignment court, otherwise, he must appear. The Assignment Court, presided over by a judge assisted by a Trial Co-ordinator, arranges trial dates and hears requests for adjournments. When called, most cases are ready to proceed and the major problem is finding a mutually agreeable trial date. Each week approximately 80 per cent of the cases on the list are assigned trial dates. In the remaining cases an adjournment to the next assignment court is usually sought. The judge demands an adequate reason before an adjournment will be granted, otherwise a trial date is set. A court-wide policy against the granting of adjournments on the day of trial once a trial date has been set by the assignment court has been a key factor in the efficient operation of this system.²¹

Developments and experiments such as these illustrate the potential which efficient court management has for tackling unnecessary delays in the processing of criminal cases through the courts, although, once more, care must be exercised to ensure that efficiency rather than justice does not become the ends of the system.

Footnotes

¹I.R. Scott, "Court Administration", (1970), 50 Australian Law Journal 30.

²Great Britain, Royal Commission on Assizes and Quarter Sessions, Report (London, 1969), Cmnd. 4153, para.

³Id. at para. 124.

⁴I.R. Scott, The Crown Court (London, 1972), p. 42.

⁵Beeching Report, supra footnote 2 at para.

⁶I.R. Scott, supra footnote 1 at p. 34.

⁷M. Debicki, "Courts" in D. Bellamy et al., The Provincial Political Systems (Toronto, 1976), pp. 368-80 at p. 372.

⁸Ontario Law Reform Commission, Report on Administration of Ontario Courts (Toronto, 1973), Vol. 1, p. 381.

⁹The experimental scheme is described in detail in Ontario, Ministry of the Attorney General, White Paper on Courts Administration (Toronto, 1976).

¹⁰Id. at p. 8.

¹¹Id. at p. 15.

¹²G.D. Watson, "The Judge and Court Administration" in A.M. Linden (ed.), The Canadian Judiciary (Downsview, 1976), at p. 168.

¹³No. 8752 of 1975.

¹⁴I.R. Scott, supra footnote 1 at p. 36.

¹⁵Home Office Circular No. 97/1978, (1978), 128 New Law Journal 756.

¹⁶Lord Widgery C.J., Practice Note, [1974] 3 All E.R. 528.

¹⁷"Computer Court Management", (1979), 3 Criminal Law Journal 48. See also Ontario, Ministry of the Attorney General, Annual Report 1974-75 p. 43. The computerised scheduling of court hearings and caseloads is attributed with saving \$180,000 a year in the court system. The computer system in operation in Ontario also has a "back filing" technique which allocates parking offences and re-issued summonses to the earliest possible court dates which have become open through the payment of fines or the re-adjustment of schedules.

¹⁸Ontario, Ministry of the Attorney General, supra footnote 17 at p. 28.

¹⁹F.O. Spalding et al., "One Nation, One Judiciary: The Lower Courts of Zambia", (1970), 2 Zambia Law Journal 1 at p. 136.

²⁰W. Howland et al., "Reports on the Administration of Justice in

Ontario on the Opening of the Courts for 1979", (1979), 13 Law Society of Upper Canada Gazette 3 at pp. 7-8. See also "An experiment in speeding up court process", (1980), 6 Commonwealth Law Bulletin 322.

²¹Ontario Law Reform Commission, supra footnote 8 at p. 293. In 1979, the Chief Justice of Ontario issued a Notice respecting trial dates and adjournments in the provincial courts. It provides that once a trial date has been fixed, adjournments will be granted only in exceptional circumstances. Default by counsel may give rise to disciplinary proceedings.