

1. JURISDICTION

Restructuring of court and adjustments of jurisdiction

4.1 Although it means going back earlier than the period in respect of which correspondents were asked to report, it is impossible to begin this section without reference, first, to the fact that in 1968 jurisdiction in divorce was extended in England to the county courts and it became obligatory to commence proceedings in those courts, and, secondly, to the report of the Royal Commission on Assizes and Quarter Sessions (the Beeching Commission) published in 1969.¹⁴

4.2 The Beeching Report led to a complete restructuring of the courts of England and Wales, with the object of providing a simpler system. The changes mainly affected the criminal courts but on the civil side the result was a three tier structure for ordinary civil matters, consisting of the County Courts, the High Courts and the Court of Appeal, with magistrates' courts exercising considerable jurisdiction in family matters.

4.3 One of the possibilities considered by the Beeching Commission was -
"the establishment of a single civil court of wide jurisdiction and uniform procedure in which the only important variable would be the powers of the judge."

They also considered a more modest suggestion that all civil proceedings might be started in common form. They concluded, with some reluctance, that they could not give effect to either proposal, because a partial or total assimilation of the Rules of the Supreme Court and the County Court Rules would be needed, for which the Commission was ill-qualified as a body and which would seriously have delayed their report. More recently, the new County Court Rules 1981 have gone some way towards assimilation with the Rules of the Supreme Court.

4.4 In the same year that the Beeching Commission was reporting, British Columbia enacted legislation¹⁵ to increase the number of Supreme Court judges from 16 to 34 and to repeal the County Courts Act. This was, in effect, the same as merging the County, District and Supreme Courts. This raised a constitutional issue, because it called for amendment of the federal Judges Act and no such amendment has been enacted.

4.5 The possibility of such a merger received full and detailed consideration by the Ontario Law Reform Commission.¹⁶ They did not recommend merger for several reasons but essentially because they feared that it would dilute the quality of justice at the highest level. There was also the constitutional difficulty of the Judges Act.

4.6 In one respect, merger would have been easier in Ontario than in most countries, because there the rules of practice were basically the same for the Supreme Court and the County Courts.

4.7 Merger was achieved in New Brunswick in 1978, when the whole structure of the judiciary was reformed.¹⁷ The Supreme Court and the County Court were merged and two new courts established, a Court of Appeal and a Court of Queen's Bench. The latter is a court of unlimited jurisdiction, civil and criminal, divided into a Trial Division and a Family Division. There is also a Small Claims Court¹⁸ and an experimental Unified Family Court.¹⁹

4.8 In the same year, the question of merger was considered in relation to New Zealand by the Royal Commission.²⁰ The Commission concluded that the disadvantages inherent in a merger of the courts outweighed the advantages but they did strongly support integrated administration and, whenever possible, common procedures.

4.9 The financial limits on the jurisdiction of subordinate courts has everywhere been increased. In England the latest increase took the jurisdiction of the county courts from £2,000 to £5,000 in actions founded in contract or tort and in certain other actions, and from £15,000 to £30,000 in the equity jurisdiction.²¹

4.10 Following the report of the Royal Commission, there was a considerable reconstruction of the courts of New Zealand. The Supreme Court was reconstituted as the High Court,²² which was relieved of much of the criminal and most of the family work previously performed by the Supreme Court. The magistrates' courts were reconstituted as District Courts²³ with greatly enhanced jurisdiction (their financial limit was raised from NZ\$3,000 to NZ\$12,000) and they have been given a Family Court division.²⁴ These changes will relieve the High Court of a considerable amount of work.

4.11 In New South Wales, the Supreme Court was reconstituted in 1970²⁵ and for the convenient despatch of business was divided into a Court of Appeal and a court of six divisions, Common Law, Equity, Admiralty, Divorce, Protective and Probate. Within the Common Law division, there is a commercial list. The limit of the District Court has been raised to A\$100,000, with unlimited jurisdiction in personal injury cases.

4.12 In Western Australia, a District Court was established in 1969²⁶ and the policy has been gradually to build up its jurisdiction as the community and the legal profession became accustomed to it. Its jurisdiction was enlarged from A\$6,000 to A\$10,000 in 1972.²⁷ There was a general review of the distribution of jurisdiction between courts in 1976, which resulted in the enlargement of the jurisdiction of the District Court to A\$20,000 and that of the Local Courts to A\$3,000;²⁸ and again in 1981, which resulted in the enlargement of the District Court to A\$50,000 and that of the Local Courts to A\$6,000.²⁹ The 1981 increase in the jurisdiction of the Local Courts was slightly more than was necessary to adjust for the fall in the value of money; the more substantial increase in the jurisdiction of the District Court was the implementation of policy.

4.13 Gibraltar increased the jurisdiction of the Court of First Instance (the equivalent of a County Court) in 1979³⁰ from £300 to £1,000.

4.14 In Victoria, the Magistrates' Courts were given civil jurisdiction in 1973³¹ subject to a financial limit of A\$200, but this figure was increased to A\$1,000 in 1978³² and to A\$3,000 in 1979.³³

4.15 In South Australia, the ordinary civil jurisdiction of District Courts when presided over by judges was increased from A\$8,000 to A\$20,000 in 1974 and to A\$60,000 in 1982.³⁴

4.16 In Malawi, the civil jurisdiction of the magistrates was increased in 1980,³⁵ as regards Resident Magistrates from K.800 to K.2,500; as regards Magistrates First Grade from K.800 to K.1,500; and as regards Magistrates Second Grade from K.300 to K.750.

4.17 Ontario initiated in 1979,³⁶ as a pilot project, a Provincial Court (Civil Division) for the judicial district of York. This court is operated by the judges and staff of the Small Claims Courts and has jurisdiction in respect of claims between C\$1,000 and C\$3,000. It was considered that such claims are not true small claims and that if the jurisdiction of the Small Claims Courts were extended to C\$3,000, the character of those courts would change. At the same time, it was felt that the intermediate claims called for a simplified procedure, similar to that of the Small Claims Courts. The project was aimed at reducing both costs and delays, as well as making the courts more accessible to the public. The court was set up for a trial period of five years: it has proved a success and it is expected that its life will be extended for a further five years and that similar courts will be set up in other urban centres.

4.18 In New South Wales, it is proposed to increase the jurisdiction of the District Court from A\$20,000 to A\$100,000 and that of the Magistrates' Courts from A\$3,000 to A\$5,000. It is intended progressively to transfer all personal injury cases from the Supreme Court to the District Court.

4.19 In Hong Kong, the jurisdiction of the District Court is presently limited to HK\$20,000 but it is proposed to double that figure. The court also hears landlord and tenant disputes, workers' compensation claims and undefended divorces: it is proposed to enlarge this jurisdiction to include all matrimonial proceedings, including defended divorces.

4.20 In Tasmania, it is proposed to relieve the burden on the Supreme Court by increasing the jurisdiction of the Court of Requests, at the same time creating a Small Claims Court to take over the minor cases.

4.21 It is a curious feature of some of the Indian High Courts that they only have jurisdiction above a financial limit: Rs.50,000 for Bombay, Calcutta, Delhi, Himachal

Pradesh and Madras and Rs.20,000 for Jammu and Kashmir. The Law Commission of India endorsed a proposal that the limit be raised to Rs.100,000.³⁷

4.22 The merger of all civil courts is an attractive idea because it appears so simple, but in practice there would almost certainly be difficulties arising out of procedural needs. The advantages of a single court would largely disappear if the procedure varied according to the jurisdiction and powers of the judge. This is not, of course, an argument against administrative integration, which can be achieved without any merger of the courts themselves.

4.23 The idea of an uniform basic procedure appears more practicable. All civil proceedings whatever the court might be initiated by a simple, standard, document and the main steps to be taken could be the same. Within such a framework, the higher courts could have fuller rules of procedure to meet the more complex problems they have to decide, particularly as regards interlocutory matters.

4.24 Such a measure of standardisation would make their work easier for legal practitioners; would enable executive and clerical officers to be transferred from one court to another; and would make possible the promotion from one court to another of judges who have shown special, appropriate, aptitude.

4.25 The structure of courts would seem to be a matter for each country to determine, according to its own particular circumstances but most countries seem to favour a basic three tier structure.

4.26 Assuming such a structure of courts, it would seem essential for the sharing of the judicial workload between them to be reviewed at regular intervals.

4.27 There are three reasons for this. First, it is desirable that the volume of work going to the highest courts be limited, because of their responsibility for overseeing the growth and development of the law and because of their constitutional role. They must not be overburdened with work that can be dealt with effectively at a lower level.

4.28 Secondly, changing social attitudes may affect the level of court which cases of a particular kind should be dealt. The outstanding example of this is divorce. In England, there was a time when a private Act of Parliament was required. When the courts were given power to grant decrees, the matter was considered of such gravity that jurisdiction was reserved to the High Court. Now, in almost all countries of the Commonwealth, divorce is granted much more readily and consequently it has become a matter for subordinate courts. Québec is even considering divorce by consent.

4.29 With this must be linked the question how far a branch of the law can be brought entirely within the jurisdiction of a particular court. For example, the changed attitude towards matrimonial causes has made possible the family court at subordinate level. This was impossible when divorce was exclusively a High Court matter. There is also a tendency to cut across the rigid financial demarcation of jurisdiction, which is illogical though convenient, as, for example, in the jurisdiction conferred on the District Court in Western Australia as regards personal injury cases (see para.9.6). These are matters which each country must determine according to its circumstances: there can be no general rules.

4.30 Finally, any fall in the value of money means that the financial limits of subordinate courts have to be adjusted. This has been a particular feature of the last decade. Generally, the aim has been to restore in real terms the jurisdiction which the lower courts previously enjoyed, but usually the increases have fallen short of achieving even that target. The raising of such limits usually follows long after a fall in the value of money. It is not desirable to change the limits of jurisdiction too often, as this makes for uncertainty, but it is desirable that such changes as are necessary be made promptly and in a period of continuing inflation there is no reason why changes should not, within reason, anticipate future levels. If the jurisdiction of the subordinate courts is kept reasonably constant in real terms, a progressive increase in the burden on the superior courts can be averted.

The use of masters and registrars

5.1 The burden on the judges of the superior courts has, in some jurisdictions, been relieved not only by transferring work to other courts but also by giving greater powers to masters and registrars.

5.2 In England, a working party was set up under Lord Scarman in 1978 to examine ways and means of relieving pressure on the Court of Appeal Civil Division, where there had been a heavy increase in the volume of work. The aim was to achieve procedural improvements, without lowering the standard of justice and without any substantial increase in the number of Lords Justices of Appeal. The conclusion reached was that there was a need for a lawyer who would exercise judicial as well as administrative responsibilities during the pre-appeal period. It was recommended that he should supervise the appellate process from the entry of an appeal to the hearing. He would control the listing of appeals, in consultation with the Master of the Rolls and other Heads of Division, assessing the weight and complexity of each appeal. He would be responsible for seeing that all relevant documents were available and legible and that the judges have a proper opportunity to study their papers before the hearing. He would hear interlocutory applications, subject to a right of appeal to a single Lord Justice, and he would have power to refer the more complex matters to a single Lord Justice for final disposal. He would also assist appellants appearing in person to prepare their papers. These proposals were approved and the new post of Registrar was created by the Supreme Court Act 1981.³⁸

5.3 The Review Body on the Chancery Division (the Oliver Report)³⁹ made several recommendations regarding the work of the masters. Perhaps the most important, a repetition of an earlier recommendation by the Harman Committee,⁴⁰ was that the right of adjournment from the master to the judge should be replaced by a right of appeal to a judge in chambers, as in Queen's Bench. The Review Body believed that the right of adjournment "is a positive incitement to recalcitrant litigants to play for time by requesting adjournments even in perfectly hopeless cases." This recommendation has very recently been implemented.

5.4 Proposals similar to those of the Scarman working party were made in 1977 by the Attorney General's Committee on the Appellate Jurisdiction of the Supreme Court of Ontario (the Kelly Committee), as part of a scheme for reorganising the Court of Appeal Office. It was suggested that a chief legal officer with the status of a master should, under the guidance of a judge, gradually take over all the interlocutory work, in addition to screening the notices of appeal and presiding at pre-appeal conferences. These proposals have not been implemented.

5.5 In New South Wales, the jurisdiction of the masters has been widened and additional appointments have been made. Masters now have complete jurisdiction to hear actions for personal injuries arising out of motor vehicle accidents. Registrars, too, have been given wider powers, particularly in relation to settlements and to interlocutory applications. The changes appear to have had good results in relieving the pressure of judges' time, but it is too early for a complete assessment.

5.6 In Western Australia, the jurisdiction of the master was greatly enlarged in 1979.⁴¹ He may now exercise all powers and functions of a judge in chambers, except proceedings relating to the liberty of a subject, injunctions, appointments of receivers, reviews of taxation of costs and matters relating to the construction of statutes and documents. This has given the master considerably more work but has left the chamber judge more time to take on the short cause list.

5.7 In the same year, the Family Court Act was amended⁴² to provide for the appointment of the registrar as a stipendiary magistrate, so as to enable him to relieve the judges by exercising the court's summary jurisdiction.

5.8 In Queensland, two masters have recently been appointed to the Supreme Court,⁴³ with duties which include callovers and certain chamber applications, as well as giving judgment in certain trials where liability is not in issue. This has given the judges more time for disposing of contentious business.

5.9 Until 1974 the registrar of the High Court of Malawi was professionally unqualified and all chamber applications had to be taken by the judges. Since then, the registrars have been legally qualified and have done the work that is done in England by masters and registrars.

5.10 Similarly, in the Solomon Islands, where the Chief Justice is the only resident judge, the rules of the High Court were amended in 1980 to give the registrar, who is professionally qualified, wide powers to deal with matters prior and subsequent to trial.

5.11 In Cyprus, a judicial officer has been specially designated by the Supreme Court to assess compensation, so as to expedite the trial of cases relating to compulsory acquisition and requisition.

5.12 The Royal Commission on the Courts of New Zealand recommended the creation of the office of master, with initially two in Auckland and one in Wellington,⁴⁴ but this awaits the new Code of Civil Procedure, on which work is not yet complete.

5.13 In Kenya, a proposal was put forward⁴⁵ that judges should be relieved of most routine chamber applications, including summonses for directions, consent orders and the examination of debtors, by the appointment of a master to take over those duties, but the proposal was not adopted.

Specialisation and flexibility

6.1 Specialisation may take the form of divisions or sections within a court; the allocation of categories of cases to judges with particular experience of the relevant branches of the law; or the setting up of separate courts to deal with specific subjects.

6.2 In England, the High Court was created by the fusion of what had been separate courts and so it was convenient for administrative reasons for there to be Divisions within the new court. Where the Chancery Division was concerned, there were, again for historical reasons, groups of judges within the Division. These have recently been abolished,⁴⁶ following the recommendations of the Oliver Report, although some specialisation lingers on. There is certainly more flexibility.

6.3⁴⁷ In New Zealand, an Administrative Division of the Supreme Court was created in 1968 to hear such prerogative writ applications as are referred to it by the Chief Justice and appeals from the many administrative tribunals. The establishment of a separate Administrative Court had been suggested but the idea was rejected. The Royal Commission, reporting in 1978, favoured the retention of the Division and expressed the opinion that, while all judges of the Supreme Court should retain their jurisdiction to grant prerogative writs, it was preferable for such cases to be directed to the Administrative Division. The Commission also favoured appeals in family matters going to judges with an aptitude for such work and who should specialise in it. Generally, the Commission, while finding the subject a particularly difficult one, regarded a move towards specialisation as inevitable and, within limits, desirable, but they stressed that over-specialisation is not advantageous. They did not favour the creation of further Divisions but only the allocation of cases on an administrative basis to make the best use of judicial expertise.⁴⁸

6.4 In Ontario, a Divisional Court was set up within the Supreme Court in 1972⁴⁹ and the Williston Committee, reporting in 1980, recommended that it should be preserved.⁵⁰ They suggested that the Supreme Court should be divided into a Court of Appeal and a High Court, and that within the High Court there should be a Divisional Court, which would deal with applications for judicial review and most appeals, except those from the High Court and the County Courts. As this specialised work called for continuity but was likely to be unpopular, it was proposed that judges should be assigned to it for periods of not less than a year.

6.5 The Law Reform Commission of Queensland in 1982⁵¹ invited opinions on the question whether a separate Court of Appeal should be constituted. They pointed out that such a change would enable judges of appeal to concentrate exclusively on appellate work, and free other judges from it, with consequent benefit to the conduct of the work; and also the opposing argument, that such specialisation of functions was not desirable and that the number of judges and the volume of work did not warrant the change. The Commission did not include any provision for a separate Court of Appeal in the draft legislation they prepared, so it is clear that they did not favour it.

6.6 The Commission also sought opinions on whether or not divisions should be established within the Supreme Court. They pointed out that where a court is composed of a large number of judges and where legal work has traditionally been handled by judges and practitioners who have specialised in the jurisdiction of a particular division, there are good grounds based on administrative efficiency and expertise for preserving such divisions but that where the number of judges is relatively small, greater flexibility might outweigh the advantages which accrue from specialisation.

6.7 The Law Commission of India in 1979 expressed the view⁵² that it is the function of the Chief Justice when constituting benches to take into account the special aptitudes of the individual judges, both to make the best use of the talents of the judges and to save time because a judge experienced in a particular branch of the law will dispose of cases more quickly than one unfamiliar with the subject.

6.8 The matter came up particularly over the question whether there should be a central tax court, a subject on which conflicting opinions had been expressed by committees appointed to consider it. The Commission came down against the creation of such a court but they did favour the constitution of special tax benches, to be selected from amongst those with special knowledge and experience in tax matters, to sit continuously until all arrears had been disposed of.⁵³

6.9 At the subordinate level, the Legal Action Group in England advocated the establishment of special courts, such as family courts, small claims courts and landlord and tenant courts. Apart from the matter of small claims, the Senate of the Inns of Court opposed the suggestion,⁵⁴ considering that a proliferation of tribunals, procedures and appellate systems, administering increasingly specialist fields of law, would increase rather than reduce confusion in the mind of the lay litigant. The Senate thought that the County Courts and, in family matters, the magistrates' courts, are the proper forum for local disputes of civil character and that where improvements are necessary, they should be within the existing system.

6.10 The advantages that result from the assignment of judges to the class of case with which they are most familiar are obvious: they know the law with which they are dealing and the latest authorities on it, without need for research, and they know the current levels of damages or compensation. The disadvantages of rigid specialisation are, however, great.

6.11 In the first place, the nature of the work coming before a court is never constant. The number of cases of a particular category may rise or fall suddenly and unpredictably. If there is specialisation among the judges, some will be more busy than others and the work load cannot be spread; to do so, except in an emergency, would be to defeat the object of specialisation. Also, a judge who specialises is likely to be less adaptable in practice than one who is used to a wide variety of work.

6.12 Secondly, the judge who is always dealing with the same kind of case is likely to become set in a routine; he is in danger of becoming bored; his familiarity with the subject means that he has no occasion to take a fresh look at it, and so the law he administers ceases to grow or to change with the changing patterns of other branches of the law.

6.13 It would appear that specialisation is not generally popular with judges.

Commercial lists and commercial courts

7.1 In England, a commercial list has existed since 1895 and it became known as the Commercial Court long before it was given that title by statute in 1970.⁵⁵ It is, therefore, outside the scope of this paper but must be mentioned because its practice has been followed in New South Wales and considered in New Zealand.

7.2 In New South Wales, as in England, the judge taking the Commercial List personally conducts the directions hearings and superintends the preparation of the litigation. He may order or refuse interrogatories and discovery. He insists upon prompt timetables for interlocutory steps and sometimes suggests a separate trial of particular issues. There are said to be mixed views on the benefits of this close superintendence but it is acknowledged that cases in the Commercial List are disposed of more promptly than other litigation.

7.3 In Queensland, also, there is a commercial list and not a separate court or division. It has expeditious procedures for determining commercial disputes.

7.4 In New Zealand, the Royal Commission,⁵⁶ while not recommending the creation of a Commercial Court or even a separate Division of the Supreme Court, remarked that the English Commercial Court has worked so well that some special procedure for commercial cases, possibly including the appointment of official referees, would be advantageous.

Family divisions and family courts

8.1 Western Australia established a Family Court in 1976.⁵⁷ It exercises both federal and non-federal jurisdiction in matters of divorce, maintenance and custody of children, guardianship and property disputes between married persons.

8.2 In 1976, Ontario set up,⁵⁸ as an experiment, a Unified Family Court for a single district, the Judicial District of Hamilton-Wentworth. It was to be presided over by a judge or junior judge of a county court, who would also be a local judge of the Supreme Court and might also be authorised to exercise the jurisdiction of a judge of a provincial court (family division). The court was given wide jurisdiction in matrimonial matters and matters concerning children, including criminal jurisdiction for dealing with juvenile delinquents. There are provisions for the establishment of a detention and observation home, to be operated as part of the court, and for the appointment of probation officers. Informally, the experiment is judged to be a success: a professional evaluation study has been undertaken, but its report is not yet available.

8.3 New Brunswick in 1978, created a Family Division of the Supreme Court,⁵⁹ and also set up experimentally a Unified Family Court for the Judicial District of Fredericton. It has enormously wide jurisdiction in all aspects of or impinging on family life, civil and criminal. The court is staffed by personnel from various disciplines, including lawyers, social workers, psychologists, psychiatrists, counsellors and others, and wholly new procedures are said to have been introduced to fit the functions and the spirit of the court. It will clearly be a long time before an experiment of so radical a nature can be seen in its true perspective.

8.4 The Royal Commission considered the establishment of a Family Court for New Zealand both necessary and desirable.⁶⁰ They recommended that it should take the form of a Family Division of the District Courts and should take over original jurisdiction in all family matters.⁶¹ It would be manned by specialist judges (although they should not deal only with family cases) with support services provided by social workers and others, and its proceedings would be characterised by informality. These recommendations were accepted and implemented by legislation in 1980.⁶² It should perhaps be added that this was not an entirely new departure, as the Domestic Proceedings Act 1968⁶³ had required the specific appointment of magistrates to exercise the domestic jurisdiction of the court, so creating a class of specialist magistrates.

8.5 Manitoba has a Family Division of the Provincial Judges Court, set up in 1972⁶⁴ and early in 1981 a Family Law Chambers court was instituted, which entails a judge being assigned each week to hear matters under any law relating to matrimonial causes, separation, alimony, maintenance, custody of and access to children, disposition and division of marital property and questions between spouses as to the title to property.

8.6 Legislative provision for Children's Courts has been made in Swaziland but it has not yet been implemented.

Personal injury cases

8.1 Personal injury cases present particular problems. The injured person must institute proceedings to avoid finding his claim barred by limitation but in the majority of cases neither side wishes an early trial because it is unsatisfactory to assess damages, on a lump sum basis, until the injured person's condition has stabilised. This results in a protracted interlocutory period in circumstances where a speedy process is desirable to resolve the anxieties and possibly hardship suffered by the plaintiff. At the same time, uncertainty as to the prognosis discourages attempts to settle. And these protracted cases appear to form the majority of those that go to trial.⁶⁵

9.2 No-fault schemes for compensation for industrial injuries have, of course, been operating for many years and Saskatchewan began such a scheme in respect of road injuries in 1946. This was followed by other provinces of Canada, of which the latest is Québec,⁶⁶ where it is reported that in consequence "thousands of claims" did not have to go to court for a decision where the fault lay. These Canadian schemes do not exclude the right to sue for damages in tort.

9.3 In Australia, Victoria⁶⁷ and Tasmania⁶⁸ operate no-fault schemes in respect of motor vehicle accidents and of the latter, it is said that personal injury litigation has fallen by about 80%. It is pleasing to read that there were no adverse consequences as regards the cost of personal injury motor insurance. Under these schemes, the right to take action in tort remains, but a claim in tort can relate only to loss not covered by the no-fault scheme.

9.4 New Zealand in 1972⁶⁹ set out to reduce the number of, and eventually to eliminate, personal injury cases. A compensation scheme was set up for earners, which is contributory, and for persons injured or killed in motor vehicle accidents, which is paid for by a levy on motor vehicles. The Act provided that no action should lie for damages in respect of

injury or death if at the time of the accident the injured or deceased person had or was deemed to have cover under the Act. The following year, an amendment excluded, with very limited exceptions, any action not brought under the Act.⁷⁰ This resulted in a substantial reduction in the number of cases brought in the High Court. Since 1978, the phasing out of all personal injury cases from the courts has been completed and in such cases no claim can now be brought for damages at common law.

9.5 These and other schemes were considered by the Pearson Commission in 1978. Many of their observations are irrelevant to the present inquiry. They commented that in New Zealand "the no-fault benefits are not at a level which fully replaces tort in every case." They mentioned also the possible weakening of incentive on the part of manufacturers to guard against the production of defective goods. They recommended the introduction of a no-fault scheme for road injuries but not to the exclusion of the remedy in tort. They did not recommend the extension of the no-fault principle into other spheres at least for the present. Their recommendation for the introduction of a limited scheme has not been implemented.

9.6 Western Australia has now relieved the Supreme Court of all personal injury cases arising out of motor vehicle accidents, with unlimited jurisdiction conferred on the District Court.⁷¹

9.7 In New South Wales, it is proposed progressively to transfer all personal injury cases from the Supreme Court to the District Court. At the same time, the New South Wales Law Reform Commission has been asked to examine the advantages and disadvantages of no-fault insurance. New South Wales has a peculiar problem: it is reported that a major cause of delay is the reluctance of many medical practitioners to become involved in litigation, with the result that most such cases have to wait on the convenience of the few practitioners who are willing to appear.

Small claims

10.1 In England, the problem of small claims has been under consideration since 1970. The problem was simply this: the costs of a formal trial had become out of all proportion to the amounts in issue. Even if a successful plaintiff were awarded his costs, the solicitors' charges that he would have to pay often meant that it was not worth while to pursue a valid claim, and, of course, there was always the risk of losing and having to pay both his own and the defendant's costs. At the same time, the solicitor's charges that seemed heavy to the party were inadequate recompense in the eyes of the solicitor for the time he would have to give to the case, and so solicitors were not anxious to take on the prosecution of small claims.

10.2 The present system, contained in the County Court Rules as amended in 1981, provides for the automatic reference to arbitration of claims involving £500 or less, although the reference may be rescinded in certain exceptional cases, including cases where there are difficult questions of law and where there are allegations of fraud. Claims in excess of £500 may be referred to arbitration on the application of one of the parties. The arbitrator is usually the Registrar. The hearing is informal and may be dealt with on documentary evidence alone; where oral evidence is taken, it is not limited by the strict rules as to admissibility that apply in court proceedings. A party may be represented by a solicitor but, where the reference is automatic, it will be at his own expense, as solicitors' charges are not allowed.

10.3 The reduction of delay was not the purpose of these changes but in fact the informal procedure, usually with only the arbitrator and the parties present, has enabled claims to be determined very much quicker than was possible with a formal trial. At the same time, it must be said that the provision which precludes orders for costs has been criticised on the ground that it operates unjustly: it is said that it favours debtors by making it not worth while for creditors to pursue just claims.

10.4 In Scotland, a type of small claims arbitration within the Sheriff Court is the subject of current experiment and there is a new procedure to deal with actions for sums up to £1,000, a limit which may be raised by subordinate legislation.

10.5 Ontario has a long history of small claims courts, going back to 1792. Instituted as the Court of Requests, it became known as the Division Courts and since 1970 as the Small Claims Courts. The Williston Committee, in relation to these courts, considered the schemes for compulsory arbitration that had been operated in the United States for more than ten years, in some states for sums well in excess of what is ordinarily regarded as

a "small claim". The Committee was not satisfied that the claims made for these schemes had been substantiated. They confined themselves to recommending that the results of these schemes be watched closely with a view to their introduction into Ontario on an experimental basis, if they are proved to have been as successful as has been claimed.⁷²

10.6 In Québec, there is a Small Claims Court to deal with claims of C\$500 and under and in New Brunswick one with jurisdiction up to C\$750. The procedure in New Brunswick is quite informal and the rules of evidence do not apply. The hearing is before the clerk or master, who delivers a report to the judge containing his findings on the matters in dispute, his recommendations and his notes of evidence. The judge may remit the proceedings for clarification or further evidence. Subject to this, he files directions for judgment with the clerk, who endorses a note of it on the summons. This constitutes the entry of judgment.

10.7 Tasmania is currently considering the creation of a Small Claims Court, from which solicitors would be barred.

10.8 In South Australia, the problem of small claims has been met, not by setting up any new court or tribunal, but by amending the law to give the existing courts greater freedom of action when dealing with claims not exceeding A\$500.⁷³ The strict rules of evidence cease to apply; counsel have no automatic right of appearance and the parties generally appear in person. These changes have considerably reduced the time spent hearing and determining such cases. There are also special listing arrangements.⁷⁴

10.9 A Small Claims Tribunal was established in Western Australia in 1974. The tribunal consists of a referee, from whose decision there is no appeal or right of review. The tribunal hears claims arising out of contracts and tenancy bonds brought by "consumers" (a term which includes tenants) involving sums of less than A\$1,000. The Law Reform Commission of Western Australia in 1979 recommended its abolition and the creation of a special division of the Local Court, to be known as the "Small Debts Division", to adjudicate small disputed claims for debts or liquidated demands, available not only to consumers but also to traders and others, with a simple procedure similar to that of the Small Claims Tribunal. The present idea is to have no interlocutory proceedings but to list a case for trial immediately the defendant has given notice of his intention to defend. It will probably be necessary to give the clerk or designated magistrate power to seek further information of his own motion if he thinks it necessary. The recommendation has not yet been implemented.

10.10 In New Zealand, a pilot scheme for small claims tribunals was set up in 1977 in three areas.⁷⁵ Each such tribunal is a division of a magistrate's court. The jurisdiction of the tribunals is limited to claims not exceeding NZ\$500 and legal representation before the tribunals is prohibited. The primary function of these tribunals is "to attempt to bring the parties to a dispute to an agreed settlement". The experiment proved very successful. The scheme was extended to two further areas in 1979-1980 and a further four tribunals are being established in the Auckland area. It seems likely that the whole country will soon be covered.

10.11 Western Australia is not the only jurisdiction to have had a court or tribunal created for the protection of a particular section of the community. In principle, it seems to run contrary to the rule of law that there should be any court or tribunal that serves the interests of consumers but not of suppliers or of tenants but not of landlords. Although financial limits are not entirely satisfactory, a financial limit which applies to all litigants seems preferable to a jurisdiction limited to favour a particular class of litigant.