

CORRESPONDENTS

Australia

Australian Capital Territory Law Courts (C.L. Hermes, Chief Magistrate)
Management and Special Services Division (P.E. Baskett)
High Court and Federal Court (F.W.D. Jones, Registrar)
New South Wales, Department of the Attorney General and of Justice (T.W. Haines,
Under Secretary of Justice)
Bar Association (R.P. Meagher, President)
Queensland Department of Justice (H. Atkinson)
Bar Association (J.S. Douglas, Hon. Sec.)
Law Society (Maria Behan, Asst. Executive Officer)
South Australia Courts Department (G.F. White, Director)
The Law Society (K.R. McCarthy, Q.C.)
Tasmania, Supreme Court and Sheriff's Department (W.D. Clay, Ag. Registrar)
Victoria, State Law Offices (R.T. Viney)
The Victorian Bar (D.L. Harper, Hon. Sec.)
Victoria Law Foundation (Professor I.R. Scott, Executive Director)
Western Australia, Crown Law Department (C. Langoulant, Crown Solicitor and R.M.
Christie)

The Bahamas Legal Department (Constant McDonald, Asst. Counsel)

Belize Attorney General's Ministry (R. Rajasingham, Solicitor General)

Bermuda The Bar (Stephen P. Cook, Hon. Sec.)

Botswana Attorney General's Chambers (D.D. Will)

Canada

Canadian Bar Association (N. Roger Gauthier, Deputy Executive Director)
Alberta Law Society (W.B. Kelly, Secretary)
British Columbia Court of Appeal (The Honourable N.T. Nemetz, Chief Justice)
Supreme Court (Ms E. Dunn, Law Officer)
Manitoba Department of the Attorney General (Gil Goodman, Q.C., Asst. Deputy
Attorney General)
Law Society (Keith Turner, Q.C., President)
New Brunswick Office of the Attorney General (Wylie B. Willkie, Director, Legal
Research)
Northwest Territories Law Society (Donald M. Cooper, President)
Ontario Ministry of the Attorney General (John Cavarzan, Director, Constitutional Law)
Law Society of Upper Canada (A. Burke Doran, Q.C.)
Québec Barreau de Montréal (G.A. Allison, Batonnier of Montréal)
Chambre des Notaires (Julien S. Mackay, Director)

Cyprus Ministry of Justice (Frixos Michaelides, Director General)

England and Wales

Lord Chancellor's Department (R.H.H. White)

Senate of the Inns of Court and the Bar (Sir Arthur Power, K.C.B., M.B.E.)

Fiji Crown Law Office (Champa Punja, Legal Officer)

Guernsey Bar Association (J.M. Le Pelley, Secretary)

Guyana Bar Association (A. Chase, President)

Hong Kong Supreme Court (T.J. Ryan)

India

Ministry of Law, Justice and Company Affairs (Y.P. Sud, Asst. Legislative Counsel)

Bar Association (R.K.P. Shankerdass, Hon. General Secretary)

Isle of Man Law Society (The Honourable T.W. Cain, Attorney General)

Kenya Attorney General's Chambers (J.F. Shields, Chief State Counsel)

Law Society (P.K. Muite, Vice-Chairman)

Kiribati Attorney General's Chambers (The Honourable M. Jennings, Attorney General)

Malawi High Court (The Honourable J.J. Skinner, Chief Justice)

New Zealand Department of Justice (B.J. Cameron)

Law Society (W.M. Rodgers, Secretary General)

Northern Ireland

Enforcement of Judgments Office (A.E. Anderson, Master)

Law Society (Sydney Lomas, Secretary)

The Queen's University of Belfast (Professor D.S. Greer)

Scotland Scottish Courts Administration (C.J. Workman)

Singapore Attorney General's Chambers (Chao Hick Tin)

Solomon Islands Chief Justice's Chambers (The Honourable Francis Daly, Chief Justice)

Swaziland Attorney General's Chambers (A. Nithianandan, Ag. Attorney General)

Tuvalu Office of the Prime Minister (The Honourable Neil Davidson, Attorney General)

Zimbabwe Bar Council (B.H. Christie, Hon. Secretary)

REPORTS OF COMMISSIONS, ETC.Australia

New South Wales	
Law Reform Commission: Working Paper on the Courts	1976
Queensland	
Law Reform Commission: Working Paper on a Bill to Consolidate, Amend and Reform the Supreme Court Acts and Ancillary Acts regulating Civil Proceedings in the Supreme Court (Q.L.R.C.W.P.24)	1982
Western Australia	
Law Reform Commission: Small Debts Court (Project No.63)	1979

Canada

Conference on the Costs of Justice (Canadian Institute for the Administration of Justice)	1979
Ontario	
Law Reform Commission: Administration of Ontario Courts	1973
Attorney General's Committee on the Appellate Jurisdiction of the Supreme Court of Ontario (the Kelly Committee)	1977
Civil Procedure Revision Committee (the Williston Committee)	1980
Law Reform Committee: Class Actions	1982
Québec	
Comité ad hoc sur l'Administration de la Justice en Matières Civiles (the de Grandpré Committee)	1981

England

Royal Commission on Assizes and Quarter Sessions (the Beeching Commission) Cmnd. 4153	1969
Royal Commission on Civil Liability and Compensation for Personal Injury (the Pearson Commission) Cmnd. 7054	1978
Personal Injuries Litigation Procedure Working Party (the Cantley Report) Cmnd. 7476	1979
Royal Commission on Legal Services (the Benson Commission) Cmnd. 7648	1979
Review Body on the Chancery Division of the High Court (the Oliver Report) Cmnd. 8205	1981

India

Law Commission 77th Report: Delay and Arrears in Trial Courts	1978
Law Commission 79th Report: Delay and Arrears in High Courts and other Appellate Courts	1979

Kenya

Law Society Committee: The Expeditious Disposal of Cases (First Interim Report)	1979
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New Zealand

Committee on Court Business (the Speight Committee)	1974
Royal Commission on the Courts	1978

Papua New Guinea

Law Reform Commission: Reorganisation of the Local and District Courts
(Working Paper No.16)

1980

PAPERS RECEIVED

Canada

British Columbia

Hon. N.T. Nemetz, C.J. "Judicial Administration and an Independent Judiciary"
(Address to a Conference of the Judges of Québec)

Ontario

R.M.J. Werbicki "The Pretrial Conference in the Supreme Court of Ontario."
(Canadian Bar Review)

England

Senate of the Inns of Court and the Bar: Submissions Nos.13 and 17 to the Royal
Commission on Legal Services

Law Society: Replies to the Royal Commission on Legal Services, Section XI, Speed
and Cost

New Zealand

J.T. Eichelbaum, Q.C. "Delays in the Administration of Justice" (Reply from New
Zealand to a Questionnaire from the International Bar Association)

Singapore

M. Khoo Kah Lip "Procedural Reforms on Court Congestion in Singapore" (Malayan Law
Journal)

United States of America

Weller, Ruhnka and Martin "American Experiments for Reducing Civil Trial Costs and
Delays" (Civil Justice Quarterly)

Zimbabwe

Hon. J.V.R. Lewis, J.P. "Savings of Time and Costs in Civil Litigation" (Zimbabwe
Law Journal)

General

Cappelletti, Garth and Trocker "Access to Justice: Variations and Continuity of a
World-Wide Movement" (Advance proof)

LEGISLATION, PRACTICE DIRECTIONS, ETC., RECEIVED

Australia

Queensland

Order in Council of 6 November 1980 (Rule of Court), etc.

Victoria

Magistrates' Court Act 1971 (No. 8184)

Magistrates' Court (Civil Jurisdiction) Act 1979 (No. 9349)

Bahamas

Practice Directions by the Chief Justice 1973 to 1978

Rules of the Supreme Court 1978 (S.I.46 of 1978)

Bar (Disciplinary Proceedings) Regulations 1981 (S.I.21 of 1981)

Canada

Judges Act (c.J-1)

Manitoba

Evidence Act (Cap. E150), s.50.2

Queen's Bench Rules, rr.285 to 316 (Discovery)

New Brunswick

Rules of Court (Regulation 81-174 under the Judicature Act o.c. 81-878)

Ontario

White Paper on Courts Administration, 1976

Unified Family Court Act 1976 (Chap. 85) (as amended)

Provincial Courts Act (Chap. 369) (as amended to 1980)

Provincial Court (Civil Division) - Pilot Project: Cabinet Submission

Provincial Court (Civil Division) Project Act, 1979 (1979 Chap. 67)

Ontario Regulation 470/80

Kiribati

Magistrates' Courts Ordinance, 1977

Malta

Code of Organisation and Civil Procedure (Amendment) Act 1981 (Act VIII of 1981)

Code of Organisation and Civil Procedure (Amendment) (No.2) Bill 1981

Zimbabwe

High Court (General Division) Rules, 1971 (o.26, r.182)

QUESTIONS TO FACILITATE THE DIAGNOSIS OF
THE CAUSES OF DELAY IN CIVIL PROCEEDINGS

- A. Are there unreasonable delays in civil proceedings?
 - A 1.1 Have complaints been received from legal practitioners?
 - A 1.2 If so, have they been verified?
 - A 2.1 Have complaints been received from members of the public?
 - A 2.2 If so, have they been verified?
 - A 3 Have apparently excessive delays been observed by the courts themselves?
- B. At what stages do delays occur?
 - B 1 Between taking out the writ and serving it?
 - B 2 Between service of the writ and the summons for directions?
 - B 3 During discovery?
 - B 4 Between discovery and the date for hearing?
 - B 5 During adjournments?
 - B 6 Between hearing and judgment?
 - B 7 Between judgment and satisfaction?
- C. If there are unreasonable delays, are they wholly or partly the fault of the courts?
 - C 1.1 Is the procedure unduly complicated?
 - C 1.2 Are there unnecessary steps that might be eliminated?
 - C 1.3 Would trials be shortened and/or adjournments avoided by the introduction of additional or different pre-trial procedures?
 - C 2.1 Are the courts too accommodating in granting adjournments?
 - C 2.2 Do judges reserve judgments for too long?
 - C 3.1 Are heads of sections of the staff of the courts of the appropriate grade?
 - C 3.2 Are the numbers of professional, administrative and clerical staff adequate?
 - C 3.3 Is the ratio of professional to administrative staff appropriate?
 - C 3.4 Is the staff organised to the best advantage?
 - C 3.5 Are there weak links in the personnel?
 - C 4 Are the methods of recording proceedings adequate?
- D. If there are unreasonable delays, are they wholly or partly the fault of the litigants and/or their lawyers?
 - D 1.1 Are proceedings being instituted prematurely or when there is no serious intention of prosecuting them as a way of exerting pressure during negotiations?
 - D 2.1 Are proceedings delayed by deliberate procrastination (e.g. debtors trying to gain time)?
 - D 3.1 Are solicitors taking on more work than they can pursue effectively?
 - D 4.1 Are counsel too often asking for adjournments, and too ready to accommodate each other?
 - D 5.1 Are counsel too reluctant to pass on briefs when they are already heavily committed?
 - D 5.2 Does a fused profession tend to reduce or to aggravate delays?
- E. Does the law of limitation tend to make parties institute proceedings prematurely?

NOTE ON EXAMINATION FOR DISCOVERY AND
THE "ECONOMIC LITIGATION PROGRAMME"

Having regard to the importance attached in Canada to the examination for discovery, extending to non-party witnesses, it is interesting to note that in the United States the process appears to have been abused, with resultant increase in costs and delay. It has been said that -

"thanks to the wonders of modern word processing technology, it takes very little time to produce several hundred questions, often only peripherally relevant to a claim, or defence, that it may take weeks or even months to answer."¹

It seems strange that the courts have not stamped out such abuses, by striking out any questions that cannot be shown to be necessary and by penalising offenders in costs.

Be that as it may, the abuse of discovery led in California to what was known as the "Economic Litigation Programme". It is said that this virtually abolished the process of discovery, without any overall saving of time, as there was a corresponding increase in the time taken by the trial. Not only was the quality of justice lowered, but the procedure led to fewer settlements, because it was more difficult to analyse the merits of a case.

1. "American Experiments for Reducing Civil Trial Costs and Delays" (Weller, Ruhnke and Martin. Civil Justice Quarterly, p.154)

NOTE ON THE FRAMING OF ISSUES

In India, section 146 of the Code of Civil Procedure, 1882, required the judge at the first hearing of a suit to frame the issues. This is still the procedure in India and also in the East African countries where the Code formerly applied.

In the majority of cases, it is possible to condense the issues into a few short questions. In practice, counsel frequently submit agreed issues to the judge, but he is not bound to accept them if he does not consider that they fairly represent the issues raised by the pleadings. The issues as framed may be amended by the judge at any time before passing a decree. In East Africa, it has been held that the issues may be amended on appeal.

The framing of issues does not appear to have been a formal requirement elsewhere, although it was the creation of very eminent English jurists and it has been the practice of some English judges.

Simplification or narrowing of the issues is one of the objects of a pre-trial conference and may, of course, be achieved on a summons for directions.

Apart from its salutary effect in clearing the minds of all concerned, the framing of issues has two specific merits. First, it encourages settlements, because it leads to the realisation by each party of what is at stake and of the strength or weakness of his case. Secondly, it enables the court to exercise more control over the hearing, by exposing what is irrelevant.

It is suggested that the framing of the issues should be undertaken at an earlier stage than in India; possibly immediately the pleadings are closed or when discovery is complete.

THE NORTHERN IRELAND JUDGMENTS ENFORCEMENT OFFICE

- A. In Northern Ireland, the recommendations of a Joint Working Party which reported in 1965 led to legislation¹ under which a Judgments Enforcement Office was set up in 1970. The legislation provided several new methods of enforcement, including attachment of earnings and restraining orders against shares in private companies, while the power to appoint a receiver was considerably enlarged.
- B. The essential difference between the new system and the old is that once an application for enforcement has been accepted, the initiative passes to the Enforcement Office. An Enforcement Officer visits the debtor and questions him as to his means, except when it is thought necessary to summon him and examine him under oath, and the Chief Enforcement Officer decides in his discretion what form of order is appropriate. The creditor cannot insist on any particular order.
- C. Most orders operate initially as provisional orders, so as to permit the debtor to show cause, and there are provisions to enable third parties who regard themselves as adversely affected to apply for relief.
- D. Where a money judgment cannot be enforced within a reasonable time, a certificate of unenforceability may be granted and this constitutes an act of bankruptcy on the part of the debtor.
- E. Although suggestions have been voiced that the new system does not work as well as had been hoped, it seems clear from detailed statistics provided by the Master for the Enforcement of Judgments that it has resulted in a substantial increase in the number of judgment debts recovered: from about 30% in 1963, which was regarded as a typical year, to just over 50% in 1978 and 1979. There has also been a marked increase in the number of applications for orders, which would appear to indicate public satisfaction with the work of the Office.

1. Judgments (Enforcement) Act (Northern Ireland) 1969 (1969 c.30 (N.I.)), as amended by the Judicature (Northern Ireland) Act 1978 (1978 c.23) and the Judgments Enforcement (Northern Ireland) Order 1981.