

Response

by

Sheriff Frank Pieri

To the Consultation Paper

Scottish Civil Courts Review

I am a full time Sheriff, having been appointed in 1995. Before that I was a full time Immigration Adjudicator, within a specialist Tribunal, the Immigration Appellate Authority. I am an advocate and have also practised as a solicitor.

I have had the chance to read the response by the Sheriffs' Association and agree with what is said in that response.

I should also like to add some thoughts of my own.

Personal Injuries Actions.

I understand it to be the case that some practitioners who generally raise personal injuries actions in the Court of Session have strongly criticised decision making in the Sheriff Court. Two points immediately come to mind.

The first point is this. If the concerns expressed were justified there should be a steady stream of Sheriff Court decisions in personal injuries cases being overturned on appeal. The fact that this stream is simply not there is a strong indication that the concerns expressed are ill founded.

The other point is this. There is also a large and respectable body of practitioners, including a number of personal injuries specialists, who as a rule raise personal injuries actions in the Sheriff Court rather than the Court of Session. That again is a strong indication that the concerns expressed have no foundation.

Specialisation.

The first thing that occurs to me about this is that if it is thought that specialist judges somehow have an advantage over generalists then specialisation should be applied throughout the whole judicial process to the final court of appeal. It seems to me, working on the hypothesis that cases are better dealt with by specialists (which, as I hope to make clear, is something I most certainly do not accept) there is no room for appeals from specialists to generalists.

Having said that, I am in any event against specialisation on the Sheriff Court bench.

I accept without hesitation that in certain fields where the law can be regarded as highly specialised there is a place for specialist Tribunals. Immigration, from my own experience, is one of those. That model should not however be applied to the whole justice system in Scotland.

Scotland is not a large country. The problems of volume of business that we have here are not the same as those faced in larger jurisdictions such as England. What works in larger jurisdictions is not necessarily a good solution in Scotland. While the law has become more complex the day when a Sheriff will be unable to cope perfectly well with say personal injuries law while at the same time dealing with family law, contracts, criminal law and the like is still a long way

off. Sheriffs are not pleaders. Sheriffs are specialists in decision making. Their ability to make a decision in one field is informed and enriched by their experiences and knowledge of other fields.

Beyond that it seems to me that specialisation would create recruitment problems in that resident Sheriffs in smaller courts would presumably no longer deal with the “specialist” work. They would lose their more interesting cases.

Ownership of cases and case management are however quite different issues. I believe these are to be welcomed. They can however easily be organised through the Court programme without any need for specialisation.

Procedure Rules.

We must seek to avoid a recurrence the situation we are in just now where the Procedure Rules and pleadings for personal injuries actions in the Court of Session (Chapter 43) are, and have been for some time, more streamlined and much less complicated than those in the Sheriff Court. For this reason alone I consider there should be one set of Procedure Rules to cover both the Sheriff Court and the Court of Session.

Sheriff Frank Pieri,
Hamilton Sheriff Court,
28th March 2008.