

APPROVED MINUTES OF ORDINARY CAUSE COMMITTEE MEETING

PERTH SHERIFF COURT

22 APRIL 2005

PRESENT

Sheriff Principal Sir Stephen S T Young, Bt, QC (Chairman)

Sheriff W Holligan

J d'Inverno

S Brand

A Johnson

J McCormick

G McKeand

Karen Stewart (Secretary)

1. **Apologies** : Paul Cackette
The minutes of the previous meeting were noted

2. **Appeals following decree by default**

A discussion took place on the content of the letter before the committee. Views expressed were :

- The formalising of the suggested procedure will invite laxity from practitioners.
- It was noted that when decree of default was granted in the Court of Session that a reclaiming motion was required.
- It was suggested that motions for shortened period for extract would be affected by the suggested procedure.
- The issue appeared to be potential for delay -v- genuine reasons for default.

It was suggested that abbreviated proceedings for subsequent appeals could be provided for by sheriffs principal in the form of a practice note.

The chairman agreed to report this suggestion to the sheriffs principal at their next meeting and if they agree, ask Sheriff Principal B A Kerr to write to the SCRC advising of the outcome of their considerations.

3. **Commercial Court Research (including discussion of agenda items 4 - *single issue cases* and 6 - *Letter from Bonnar & Co, Solicitors*)**

The committee welcomed the draft report and observed that it raises many wider issues. There was a lengthy examination of the issues and agreement reached that radical civil justice reform was necessary. The committee were advised of current work being undertaken on the future of civil justice by the Scottish Consumer Council and the Scottish Executive. The Nuffield seminars were discussed. It was thought that the issues raised under items 4 and 6 should be considered in the context of the bigger picture. If it was likely that the full council, like the sub-committee, viewed that

more radical reform was necessary then these items should be delayed until the way forward was more clearly visible.

It was agreed that this matter be placed before the SCRC at their next meeting to discuss the appropriateness of the SCRC approaching the Scottish Executive. In the meantime the chairman will discuss these matters with the other sheriffs principal.

4. Family Actions – single issue cases

The committee took the view after discussion that there is nothing under the current procedure to stop parties from expediting proceedings through their pleadings, use of joint minutes etc. The issue was not one which could be viewed in isolation and should be taken in the context of a wider review of civil procedure. See item 3.

5. Caveats

There was detailed discussion on the issue raised in the paper. The merits of having one caveat for both ordinary cause and summary applications was discussed along with the need to change the terms of the current forms. There was discussion on the effect upon the administration of courts. The suggestion to have a separate new S.I. for caveats gained approval.

The Committee agreed that the following proposals should be reported to the Council:

- **A composite S.I for caveats should be instructed – similar to C of S Rule**
- **Chapter 4 of OCR 93 should be repealed.**
- **Rule 2.8 and 2.9 of Summary Application Rules should be repealed.**
- **Interpretation of the content will require to be clarified in explanatory notes to avoid further ambiguity.**

6. Letter from Bonnar & Co, Solicitors

See item 3

Secretariat to write to Mr Conway, Bonnar & Co advising that the content of his letter had been referred back to SCRC for consideration along with the commercial court research.

7. Form F26

The committee considered the paper and agreed that there was no requirement for further amendment of the form.

8. Commission & Diligence – expenses of havers

There was general discussion on fees and expenses. It was noted that fees for solicitors and witnesses are fixed by the Lord President. It was agreed that there was need for clarification in the rules regarding the expenses payable to havers which would also assist in the taxation of accounts. The benefit to the progress of the case was questioned. If havers could ask for expenses, delays could occur. The issue of what is '*a fair and reasonable charge*' for havers to make was also discussed as was the proposition that 'havens' should be able to claim any expenses or outlays necessarily incurred.

Form G11 and equivalent forms for small claims and summary cause should contain a similar note to that set out in form G13 regarding expenses.

The secretariat was asked to draft a letter asking the Lord President's Advisory Committee on fees to consider the matter, seeking clarification on the rights of the 'haver' and requesting that they consider fixing and prescribing suitable fees. Sheriff Holligan will consider the terms of the letter on behalf of the committee prior to it being sent to the Lord President.

9. Date of next meeting

To be agreed at next SCRC meeting.