

Equity Division Expedition List

On 11 November 1988, Mr. Justice Young, sitting in the Equity Division announced the course he proposed to adopt in administering the Expedition List in 1989.

When a new Magistrate goes to a country town I believe it is customary for the local solicitors to hold a welcome dinner and after the ice has been broken for the solicitors to ask questions to find out the new Magistrate's attitude to various matters, such as his tariff for sentences for prescribed concentration of alcohol, etc. As there is no hope of people here taking me to dinner to find that out, I am giving my policy speech on this, the first time I preside over the expedition list, to try and be helpful as to some of my attitudes.

I would like to commence with a couple of anecdotes. The first concerns Sir Thomas More who in the 1500's, so I am reliably told by Mr. McLaughlin of counsel, told his officer to call the next case and the reply was, "My Lord, there is not another cause in the whole Court of Chancery awaiting trial." Oh that my days were his days, except perhaps not my end. Then it is also said in the 1930's that a solicitor briefed a well-known silk for the following month, but the brief was speedily returned and the silk said quite heatedly "I already have a brief for next month."

We are not like the 1500's, we have got plenty of cases awaiting trial and all of us are doing more than one case a month. The Attorney-General's Department report for 1988 shows that there was a 13 percent increase in cases filed in this division between 1986/1987 and 1987/1988. There is no increase in the number of Judges or Masters to hear those cases. Our internal statistics show that despite our efforts the general list is getting further and further behind. In July 684 matters were within that list; in August there had been an increase of 49 to 733, a further increase of 42 in September up to 775 and a further increase of 34 in October bringing it up to 809. So despite our efforts the list falls further and further behind. So far as the expedition list is concerned, we have 95, 78, 133 and 84 cases in the list. Of these only 16, 12, 14 and 9 were granted expedition. A very small percentage. The short notice list has remained static at 101 to 104. It is taking six to eight months for a non-urgent short notice matter to be heard. The time between entry into the general list and hearing is one and a half to two years. There is no real chance of any further cases being listed before a Master before July.

Now as the general list gets further and further behind so the number of cases in the expedition list will increase and that is natural because everyone wants to get their case on. Indeed, justice can only be done if it can be done reasonably quickly. I recognise that, but I also recognise that the statistics show that on an average only eighteen cases a month will get fixed for hearing in the expedition list and obviously it depends on the length of the case; a six day case takes three items as long as a two day case, but that is the way things have worked out.

So of the thirty-two cases in the list today I would only be able to fix nine. What is going to happen to the other twenty-three, even if they are worthy of expedition? Not only have we got limited judicial facilities, we have also got limited back

up facilities. It would be best if this list could be computerised, but although we are very grateful for the provision of computer facilities this year, unfortunately the budget does not go to software so that we cannot process the list, so it is still being done by bits of paper.

Despite all these problems I will use every case management tool in my armoury to move this list along. I will, with the parties consent, pre-read each affidavit and document. I will insist on all these being filed before the hearing. I will sit at 8 am, if necessary, 5 pm if necessary. I will cancel fixtures if people are not complying with pre-trial directions, unless it is a case where obviously one party is trying to delay. I will expect the profession to co-operate by giving me proper information by people who know what they are talking about, by proper skill and by proper compliance with directions. I am told that the only way for case management is to call the list through often, but that is a great cost to the litigants. The more



pre-trials you have, the more costly litigation is. I am endeavouring to work out some administrative system to enable a lot of these motions for expedition to be dealt with on paper so that there only should be one or two appearances. I am currently talking with various senior members of the Bar to see if we can work out a scheme that I can disclose generally, but everyone is entitled to have their notice of motion for expedition heard and, if they wish it, to get reasons and so I do not want anyone to feel that if the list is moving rather quickly they cannot stand up at

any stage and say "I want reasons as to why you are dismissing my notice of motion for expedition." But it must be realised on the statistics that I have given that even if a case is one which needs to be heard before one and a half to two years that it would take it to come up from the bottom to the top of the general list, it still may not have as much priority as some other case. Is it really kind to put the parties to the cost of being in this list month after month, floating around as about fortieth priority? The client having to pay each month for representation when really there is no prospect of the case every being one of the nine or eighteen that will be set down for hearing. I tend to think not. So it may well be that cases that should be heard will in fact be dismissed on the basis that I think it is unfair to hold out prospects of hearing when I know the resources are too limited to go to those cases.

What I will try and do is each month assemble the cases in rough order of priority on the first hearing date of each month, which will normally be the second Friday in the month, and fix them about six weeks ahead. The other motion day during the month will be used for sorting through matters that are in the list for the first time. Eventually I hope to start this list at 2 o'clock and sit on the Friday morning for a short notice matter or half day urgent matter because I think 2 pm to 4.30 pm or something of that nature is probably far better for the profession than 10 o'clock. This week, next week, and 2 December we will try 10 o'clock and see what happens.

I will be grateful if you have any particular comments, when mentioning your matter, about how the list should be handled, to speak your mind. □