

Sydney District Court Delays

The District Court introduces case management in an attempt to reduce the substantial delays in the civil jurisdiction.

At a time when the District Court's civil jurisdiction is about to increase from \$100,000 to \$250,000 it must be supposed that the Government proposes a very substantial increase in the number of Judges or some other radical proposal to assist the Court, because the Court is already struggling with serious delays.

In the 1960s the delay between praecipe and trial "blew out" to 20 months but was reduced to 6 months in the mid-1970s. By December 1986 the delay was 2 years. By 1990 the delay had increased to 3 years and 8 months.

The causes of the delay appear mainly to be:

- (a) more cases but a disproportionately lower increase in Judges;
- (b) a very substantial increase in tribunal and statutory appeals work;
- (c) a high level of adjournments which are very disruptive to the organisation of a list;
- (d) a significant increase in criminal work including matters which used to be heard in the Supreme Court.

The Lack of Judges

The increase in the number of Judges in the District Court (28 Judges in 1976 and 55 in 1991) has been inadequate, even with the successful arbitration and Associate Judge systems, to keep pace with the greatly increased work of the Court. At the present time, approximately two-thirds of cases that run to judgment are decided by Judges of the Court with the balance decided by arbitration. Even so, in August last year, 969 cases were disposed of. In September 1990, 836 were disposed of and in October, 910 were also completed. The rate of settlement has slowed greatly. In August 1990, 62.3% were settled. In September, 52.2% were settled and in October, 51% were settled. Some years ago, the settlement rate was much closer to 85%. The lack of sufficient full time Judges is already a problem, but will become much worse if the jurisdictional limit is increased by 2 1/2 times to \$250,000.

Tribunal Work

The massive increase in tribunal work has caused great strain to the available Judge sitting days. The *McBride* matter alone has absorbed one Judge for most of the last 21 months. Two and a half Judge sitting days per week are spent sitting on tribunals and special statutory appeals. That level of hearing is a major increase in demand on the Court compared with even 5 years ago.

Adjournments

Adjournments, particularly on the day of hearing but at any time close to hearing, remain a seriously disruptive problem for the organisation of lists. Even the level of adjournment of call-overs has caused delays. In August 1990 1,420 matters had to be called-over to produce 969 cases ready for listing and this was after a 3 1/2 year wait in the list. Adjournments on the day of hearing are a worse problem. In one month in 1990 16%

of matters were taken out of the list on the hearing date as "not ready to proceed".

Criminal Listing

The District Court has taken a great deal of work from the Supreme Court, particularly serious sexual assault trials which often prove demanding on Court time and resources. In recent times the Court has devoted much of its resources to speeding up the criminal lists. It has been able to do so largely because of the introduction of Associate Judges who sit in civil work only and the arbitration system.

The Downing Centre, while providing 5 additional court-rooms, cannot, in itself, have much impact on Court delays unless there is either:

- (a) an increase in the number of Judges overall;
- (b) the introduction of recorders, for example on country circuits as is used in England;
- (c) some other system to increase the number of trials heard.

"The increase in the number of Judges in the District Court ... has been inadequate"

Past Reforms and Future Proposals

The District Court has, for the last 3 years, had in place Listing Review Committees, both civil and criminal, to explore ways of increasing the speed of lists. The general arbitration system has made a substantial impact on listings. The Philadelphia system, with 3 sitting arbitrators (soon to be increased to 5) and a running list which is usually cleared every day by hearing or settlement, is disposing of up to 15 matters per day in addition to those being disposed of by the Court and the general arbitration system (private hearings usually in chambers or solicitors' offices).

A further reform has been the introduction of the pre-trial conference, a system that is very demanding on the time of Registrars and Assistant Registrars and which is heavily dependent for case disposal on the willingness of both parties to negotiate. The pre-trial conference system, which explores issues and readiness to a much greater extent than the old call-over system, has, nevertheless, not been able to reduce significantly the level of adjournments. It is plainly not as good a system as the direct, inquiring and active supervision of preparation and issues by a Judge as is seen, for example, in the Federal Court and in the Commercial and Equity Divisions of the Supreme Court. Despite all of these reforms and the increase in cases resolved, the delays remain a serious problem.

Judge Sitting Time

The amount of work required of a District Court Judge has increased enormously. In 1988/89 Court/Judge time was 94% occupied, which is a phenomenal rate in any jurisdiction.

Associate Judges

The Associate Judge system has, undoubtedly, assisted in the District Court and it is hoped that the system will continue. It is clearly second best to permanent appointments but does allow a greater case disposal rate.

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The Staunton Plan

The Chief Judge has proposed a new scheme which has the potential for radically varying the operation of the civil work in the District Court. The plan is based on schemes used in San Diego, both in State and Federal Courts, and involves a system of case management by a particular Judge which has some slight similarity to the directions schemes in the Federal Court and the Commercial and Equity Divisions of the Supreme Court.

The proposal is as follows:-

1. Initially 4 Judges will be assigned to the scheme.
2. Each Judge will be allocated 300 cases which they will retain from the time of allocation through all directions until they have heard the matter.
3. Each Judge will spend 1 day per week, initially, calling through all 300 matters, monitoring and directing the cases to ensure readiness.
4. Each Judge will be computer literate and will be provided with computer assistance to deal with the 300 matters.
5. Heavy listing penalties will be issued for failure to comply with directions or failure to be ready.
6. As existing cases are disposed of, new cases will be added to the Judge's allocation.
7. Counsel will be encouraged to attend the preliminary hearings.
8. Every matter fixed for hearing will be fixed as a special fixture. There will be no reserve list for those matters.

The system will clearly have substantial benefits including benefits for the profession. When a matter is listed for hearing it will definitely be heard on that day without any languishing in a reserve list with "not reached" markings. The identity of the Judge will be known at the outset and not minutes before a hearing. Settlement will therefore be easier to assess. Parties, including Counsel involved in the matter, will have more face-to-face exposure to one another prior to the hearing date which should assist in settlement and in determining issues. An active involvement of the Judge in a discussion of the issues prior to the hearing should have a similar effect. Access to interlocutory orders and directions will be simplified. The decaying effect on the readiness of a matter of long waits between praecipe and call-over will be avoided.

The Bar Council and the Law Society have both considered the proposal of the Chief Judge and both have given the scheme support.

Conclusion

The District Court remains a troubled Court with inadequate resources to deal with vast and increasing numbers of cases. While numerous schemes to improve case disposal numbers have been implemented very successfully, delays are still substantial, both in crime and civil work. There is a need for the appointment of more Judges, a continued use of Associate Judges and an increased use of the Philadelphia and general arbitration systems. However, even assuming the success of the Staunton plan, it is difficult to see how the District Court will manage an increase of its jurisdiction by 2 1/2 times the present level without an enormous injection of increased resources and of Judges. □