Justice Committee

Courts Reform (Scotland) Bill

Written submission from Angus S Logan, Solicitor

I am currently a partner in a small Edinburgh firm where I specialise in civil litigation and am accredited as a personal injury specialist solicitor. I have acted in all manner of personal injury and industrial disease cases, usually for pursuers but sometimes for defenders and insurance companies. Most often I have acted for members of trade unions with claims from 1982-2003 as a partner in a specialist trade union firm. From 2003 to date, the vast bulk of my practice has been in personal injury cases for pursuers and claimants. I agree with the greater thrust of the Bill and am pleased that the Scottish Government has introduced this proposed legislation.

I now comment on two main aspects of the Bill. From my experience of 32 years of litigating in the Court of Session and in sheriff courts, I feel well able to comment on the proposals (a) to establish an all-Scotland personal injury court and (b) to increase the threshold for Court of Session actions to £150,000.

I agree with both proposals (a) and (b) and agreed in large measure with the written submission of Simpson and Marwick. I also agreed with certain of the submissions of Lawford Kidd in so far as the use of counsel should be certified when suitable but the discretion of the new personal injury court to sanction use of counsel should be used sparingly, in my own view, since most personal injury cases are straightforward and can be handled by solicitors, far less by counsel or solicitor-advocates. The committee will be urged that personal injury cases are complex but in my experience of all manner of personal injury and compensation litigations over many years, the reality is that most such cases are in fact straightforward!

The proposal for an all-Scotland personal injury court with adequate resources and attracting existing expertise as well as enabling many “routine” personal injury cases to be handled by solicitors without the expense of counsel in a least the majority of cases, seems to me to be eminently sensible and I support proposal (a) for an all-Scotland personal injury court wholeheartedly.

Turning now to what I have termed above as point (b), the raising of the Court of Session threshold to £150,000, I am in a strong accord with this idea. For as long as I can remember large firms of personal injury lawyers, representing trade union clients, legal expenses insured pursuers and in recent years, often, “no win, no fee” pursuers have over-used the Court of Session for low value personal injury cases – sometimes even now, for only several thousand pounds. Certainly back in the early nineties and even earlier, I have sat in on meetings and discussions of personal injury lawyers seeking to campaign against any proposals to reduce numbers of low value compensation claims from the highest court. The advantages to the big personal injury firms of solicitors of being able to raise even low value cases in the Court of Session have been obvious. When a firm has hundreds of cases, many of them low value but some of higher value, it is economic and effective (and highly profitable) to litigate in the largest court where counsel can be used on a relatively “mass” scale and where the level of fees for solicitors has been generously high over
the years. Indeed in the last decade or so, in my experience, the same process of using the Court of Session for hundreds of actions has continued but this time with some of the big firms of solicitors using in-house solicitor advocates (usually partners in their own firms) to do the work formerly done by counsel but still in the Court of Session and thus doubly profitable to certain large firms, many observers may say.

Many submissions against raising the threshold to £150,000 will come from a relatively small lobby of large personal injury groups and even some submissions from trade union groups or campaigning “victim” groups as well as personal injury solicitor firms. The same groups as for the past 30 years will urge that the figure be set at, say, £50,000. That figure in my view is far too low in this expensive, legal environment if the higher courts. Indeed, in my experience it may be that what appears to be a number of submissions from different groups are quite possibly instigated, even drafted perhaps, by some of the large personal injury firms, cynics with knowledge might suggest.

Some of the information gathered by Lord Gill was to the effect that personal injury firms were no longer using counsel to the same extent after the advent of solicitor-advocates. And so the argument that a rise in the Court of Session threshold will detract from access to justice is in my view negated. What many see as the personal injury lobby, largely of big Edinburgh-based solicitor firms, has incredibly and effectively kept low value compensation cases in the most expensive court for decades. It is time to change that situation. In my submission, justice in personal injury cases can be well served by the proposals in the Bill for the new court and for the rise to £150,000 (which nowadays is not a huge sum). Justice considerations and expertise considerations can all be met in the new court though most actions there will be straightforward, however much personal injury interest groups may claim that there is some mysterious complexity about them. That argument is largely a chimera, if not a “smoke-screen”.

I urge the Government and the Parliament to press ahead with the proposals discussed by me above.

These parts of the Bill will hopefully be passed intact.

Angus S Logan
13 March 2014