

John Hansen

John Hansen is visiting the IALS from New Zealand, where he is a High Court judge, as part of a project to research attitudes and approaches to case management in Britain. He explains some of the approaches his country has taken to judicial reform.

Politicians, business organisations and consumer groups in Britain have all voiced their dissatisfaction with the administration of justice, and called for those who go to law to be provided with a cheaper and more efficient service. Countries which have experienced similar pressures are drawing on the experiences of other jurisdictions also attempting to find answers to the common problems of spiralling costs and lengthening delays.

The British response to criticisms of its system of justice was the comprehensive report written by Lord Woolf. This contained a detailed package of reforms, which has stimulated a great deal of debate and a number of pilot projects. However, there is still a lot of work to be done before the process of change could be said to be under way.

In Justice Hansen's view New Zealand is a little further down the path of reform than Britain, although not as far as the Americans. In the 1980s a number of disparate initiatives were taken in the high and district courts until it was realised that this approach was unsatisfactory, and there was a need to draw everything together. As part of the reorganisation process a senior member of the judiciary went to America and invited a case management expert to run a number of case workshops in New Zealand. This led, in 1989, to the creation of the National Case Flow

Management Committee, which is responsible for the management of all civil and criminal cases in New Zealand.

SPEEDIER HEARINGS

Are cases being heard more quickly now than before?

'Criminal cases are given priority, and we have made real inroads in the area of jury trials. Under our system applications can be made for abuse of process as a result of delay, and there is also a guarantee of a swift and speedy trial under our Bill of Rights. Additional impetus was provided by the decision of R v Martin, where the Court of Appeal made a permanent stay in a rape case because of the delay in getting it to trial.'

CASE MANAGEMENT

Two case management pilots have been run in the High Court, one based around a master diary system and the other involving cases assigned to an individual judge from the date they were filed.

'The master calendar list in Auckland has dramatically reduced the overall time from filing to hearing. It does not seem to have made a major impact in reducing time from setting down to hearing, but I think the reason for this is that we have had to concentrate on the backlog of crime because of the implications of the Martin decision.'

Justice Hansen is aware that one criticism made of case management by some commentators is that litigation costs can be increased as a result. In his view case management has a key role to


play in reducing the overall cost of litigation to the parties by reducing delay. Legal costs may not be cut as a consequence, but Justice Hansen cites the example, given to him by one substantial corporate litigator, of a recent case subject to delay where the management expenses ultimately exceeded the company's legal bill.

ADR

He feels that alternative dispute resolution has a role to play in helping to make the system of justice more efficient and less expensive. In New Zealand there are provisions in the rules which empower the court to order a settlement conference, which takes the form of a mini-trial and is conducted by a Master, and consideration is being given to whether the power should also exist to order mediation. However, Justice Hansen does not see ADR as being a solution in itself and warns that costs can rise dramatically – as they already have in arbitration, for example.

PRE-TRIAL PROTOCOL

In Britain Justice Hansen has been particularly impressed by pre-trial protocols, which he regards as an excellent idea. On the basis of the New Zealand experience his advice is to run as many pilot schemes as possible because so many ideas do not work when put to the test:

'It is also absolutely essential to have the legal profession involved and behind you because then you get a team approach from judges, court staff and practitioners. A lack of co-operation from any one of those three groups can cause the system to fail.' 

CURRICULUM VITAE

John Hansen held a number of judicial appointments in Hong Kong after a background as a civil litigation lawyer in Dunedin. In 1987 the position of Master was created in New Zealand, and he returned the following year to become the first Master in South Island. He is currently an Executive Judge, which requires him to oversee all business on his circuit and report quarterly to the Chief Justice on outstanding cases. Justice Hansen has built up a reputation for expertise in the handling of fraud cases.

Interviewed by Julian Harris

Senior Information Officer

Institute of Advanced Legal Studies