

CHAPTER I

INTRODUCTION

A. Objectives

The writer intends to make a study of the nature, causes and impact of delay in litigation and to examine to what extent the rules of Civil Procedure are responsible for delay. Since the court house constitutes the chief arena of litigation, the writer proposes to examine the local court system; the malfunctioning of which can aggravate the problem of delay. In this connection, it is also one of the objectives of this paper to search for probable solutions and recommendations so that delay may be overcome.

B. Scope Of Study

The scope of this paper is intended to cover the above objectives. The objectives, the scope of study, the methodology, the limitations and the hypothesis of this paper are spelt out in Chapter I.

In Chapter II and III, the origin, the development and the structure of the local court system are dealt with briefly. This is intended to introduce the lay reader to the various structures of the courts that are available in Malaysia. To keep to the theme of this paper, the criminal jurisdictions of the courts have been omitted.

In Chapter IV, the writer discusses the institution of an action by way of a Writ in the High Court; and the institution of an

action by way of a summons in the Subordinate Courts. The above Civil Procedures have become the standard procedures in civil litigation. This Chapter deals briefly on the origin and impact of these procedures on delay.

In Chapter V, the writer explores into the nature and causes of delay. At the same time, the roles of the various legal personnel are examined, while a brief study is made on the sociological, economic and political impact of delay on society.

The writer searches for probable solutions and recommendations by exploring into the efforts made in England, America and to counter the problem of delay in litigation in Chapter VI. Perhaps, if the necessity arises, we may have to adopt similar approaches in our litigation system.

Finally, this paper will conclude in Chapter VII which gives a short summary of the whole paper.

C. Methodology

Various methods of research have been adopted to collect relevant data for this paper. The writer attached herself to the Registries of the High Court and the Subordinate Courts, Ipoh, for some time; and went through the fixing lists for civil actions and court files to trace the conduct of pending civil actions.

The writer also attached herself to a local Solicitors' firm¹ so that she could observe the preparation of civil actions by the litigants and their solicitors. The writer also spent some of her time in the Courts to follow civil trials and to observe the manner in which the trial proceedings were conducted.

Personal interviews were conducted to obtain valuable information based on the interviewees' experiences and their personal knowledge which could not be obtained by reading. Those personnel whom the writer had interviewed included solicitors, magistrates, court clerks and other court officers. Questionnaires were distributed to obtain more information and to reach a wide range of personal opinions. This method was used when personal interviews could not be resorted to due to the lack of time.

D. Limitations

It was not possible to obtain the views of every practising lawyer on delay in litigation. To overcome this problem, the writer sought to obtain such opinions from representative bodies such as the Perak Bar.

E. Hypothesis

This paper is written on the assumption that the problem of delay still remains unsolved at the time of writing.

¹ Maxwell, Kenion, Cowdy and Jones, Solicitors and Advocates Firm, Ipoh.

F. A Preliminary Review²

In the 1940s, the problem of delay rarely arose to clog the smooth disposition of civil proceedings. The Courts were able to cope up with the workload since many cases filed were duly disposed of within six months to a year.

From 1947 onwards, the number of cases filed in the Courts had risen continuously until it reached a peak in 1969. Slowly and surely, delay in the administration of justice arose as more and more civil actions took at least one year to three years to be fully disposed of.

Although in 1969, two Special Sessions Courts were created to help ease the backlog, they provided no panacea to the problem. Several appeals were made to the Bench and the Bar to help eradicate delay and to avoid the backlog of cases.

In particular, a serious backlog of cases occurred in Perak, which led to the formation of a Sub-Committee of the Perak Bar in 1970 to examine the problem of backlog of cases. The Sub-Committee predicted in the report that if the situations remained unimproved, it would take at least twenty years to clear the backlog. Up till today, efforts are still being made to overcome delay.

^{2/} See Appendix A. p. 108 - 116.