CHAPTER VI

RECOMMENDATIONS

A. Introduction

Delay in litigation is a problem in our fast developing nation. In the past, a Civil case could be disposed of within a year. Now, it is an accepted fact that any Civil case will take an average of two to three years in order to be fully disposed of.

There is an urgent need to overcome the problem of delay and the backlog of cases and to search for probable solutions.

B. The Case For Reorganisation Of Our Court System

It is suggested that the Subordinate Courts should be re-structured. There should be an increase in the capacity of the Courts such that the widened jurisdictions and increased flexibility of the Court structures will help to bring about an efficient and speedy despatch of judicial business. In this respect, the Courts should be given wider jurisdictions to help ease the backlog.

To restructure the Court system is not an easy task to perform. Firstly, one has to consider what principles of Court system should be included to effect a good Court system, and which will help to remove the existing defects that impede the smooth functioning of our Court structures.

To begin with, it is interesting to examine the Beeching Committee Report on Assizes and Quarter Sessions 1969 and the findings and proposals made therein with reference to the English Court system.

In making the recommendations, the Beeching Committee considers certain principles which will help promote the achievement of high quality justice conveniently at low cost.

These principles include:[1]

a.	Ease of physical access	Convenience
b.	An early hearing	
c.	The assurance of trial on a date of which reasonable notice has been given.	
d.	Suitable accommodation.	
e.	Judicial expertise	Quality
f.	Adequate and dependable legal representation.	
g.	Efficient use of all manpower.	Economy
h.	Optimum use of buildings.	

With these principles in view, the Beeching Committee outlines its objectives[2] which include :-

(i) simplify the Court structure.

(ii) deploy Judge power as flexible as possible.

---

[1] Report of the (Beeching) Royal Commission on Assizes and Quarter Sessions, 1969, Cmnd. 4153, para. 112, p. 48.

[2] Ibid., para. 172 p. 64.

(iii) relate Court locations to travelling facilities for the public.

(iv) secure the efficient administration of all Court services.

(v) ensure that the Courts are built and maintained as economically and efficiently as possible.

The writer submits that the principles and objectives enumerated above should be introduced into our Court system which is lacking in many ways. Although the English Court system has a longer and more complicated history, it is submitted the English and Malaysian Court system face similar problems and difficulties in the administration of the Courts and justice.

One of the proposals made by the Beeching Committee involves the separation of criminal and civil business of the higher Courts.[3] It is found that the exercise of concurrent jurisdictions in civil and criminal matters by the Assize Courts contributes partly towards delay in the disposation of civil trials. This is because of an increasing heavy criminal workload which is always given priority to be tried before Civil cases the trials of which are consequently deferred.[4] As a consequence, two broad divisions of the English Court structure are recommended. There are the Crown Court which exercises criminal jurisdictions

---

[3] Ibid., para. 183, p. 68.

[4] Ibid., para. 77, p. 37.

and the High Court which adjudicates Civil matters.[5] It is submitted that this proposal is relevant to the Malaysian context in solving the problem of Court congestion and delay in the High Courts.

The next proposal involves the increase in the number of permanent Judges and the appointment of partime Judges known as Recorders.[6] This is necessary to facilitate the flexible use of Judge power which can promote the economic use of judicial time in those Courts of heavy workloads. The New Jersey Court system implemented in 1948 a state-wide mobility of county Judges who were assigned to various countries. Experience shows that the Judges who sit in the same Courthouses are able to dispose of more cases than if they are to sit alone at different places.[7]

Under the Assize system, there has been an inefficient use of Judge power in that the Assize Judges are required to go on circuit according to pre-determined time schedules irregardless of the available workloads. This is further aggravated by the fact that the workloads of the Courts fluctuate unexpectedly. This gives rise to the situation where some Courts are overloaded and others underused. Judicial time is

---

[5] Ibid., para. 183, p. 68.

[6] Ibid., para. 243, p. 83.

[7] Lewis Mayers, The American Legal System, First Edition, Harpers and Brothers, New York, 1955.

also wasted on travelling days and Commission days. A Commission day is one where the Assize Judge is welcomed on his arrival to the Assize town and when his Commission is read out.[8]

Although we do not have an inflexible Assize system, our Court system faces a shortage of Judges and consequently the inflexibility of Judge power. Nevertheless, the Government has taken steps to remedy the problem by proposing for the appointment of judicial Commissioners and Judges by the Yang DiPertuan Agong after consultation with the Lord President. This replaces the Parliamentary role in the appointment of Judges.[9]

For the purpose of efficiency, it is submitted that the present administrative-cum-judicial officers such as the Senior Assistant Registrars and the Special Sessions Court President should be relieved from their administrative duties. This will enable them to give full and undivided attention to their judicial functions. A similar recommendation has been made by the Beeching Committee.[10] To maintain an organised control over the administration of the Courts, there must be uniform administration under the two Chief Justices of Malaysia. Under the present Court system, this does not seem to be the case.

Another proposal made by the Beeching Committee is the necessity of convenient Court location which should provide easy accessibility to all

---

[8] Report of the (Beeching) Royal Commission on Assizes and Quarter Sessions, 1969, para. 74-78, p. 36-37.

[9] The Constitution (Amendment) Bill, 1976.

[10] Report of the (Beeching) Royal Commission on Assizes and Quarter Sessions, 1969 para 176(g) p. 65.

litigants.[11] The Courts must be located at places of considerable population size and within daily travelling distances so that Court services can be easily available to the litigants. This will ensure that there will be continuity of Court sittings, of predictability in dates of hearings and the economic use of Court facilities and manpower. At the present moment, we do not have a well-located Court structure to meet the needs of the rural litigants. Most of the Courts are located in State Capitals while in the smaller towns only the services of small badly-equipped Court-houses of low jurisdictions are available.

There are a number of restricting factors which must be considered if the proposals of the Beeching Committee are to be implemented. One must consider the costs and other economic considerations which are likely to be incurred if more Courts, Court buildings and Court staff were to be provided.[12] The available public funds are required to satisfy other priorities and needs of the country. At this developing stage, the Government needs a lot of public funds to implement the Third Malaysia Plan.

It is difficult to implement the proposal for an increased number of Judges because the number of judicial talent available is limited. This is particularly true in England where most of its judicial talent is drawn from the Bar.[13]

Furthermore, although maximum Judge power may be provided to ensure the economic use of judicial time, delay in the disposition of

---

[11] Ibid., para. 275, p. 91.

[12] Ibid., para. 113, p. 48.

[13] Ibid., para. 115, p. 49.

cases can still be caused if the duration of each Civil trial remains unpredictable. The Beeching Committee recommends that a reasonably probable maximum judicial time be allowed to anticipate for any fluctuations of workload.[14] This may avoid any inconvenience that may be caused to litigants, witnesses and others. However, the Beeching Committee finds it difficult to reconcile the elements of physical accessibility, early hearings and predictability of time because of the uncertainty of workload and the varying durations of each Civil trial.

The proposals of the Beeching Committee have been implemented in The Courts Act 1971. Since then, many demerits of the Assize system such as poor location, infrequent sittings, inflexibility of the system and inefficient use of resources have been overcome.

It is submitted that a Law Commission should be set up to study our present Court structure and if necessary to implement the principles of a good Court system into our Court system.

Another interesting point to note is the possibility of simplifying our Court structures. The Beeching Committee recommends the abolition of the Assize system. In considering this point in our Malaysian context, should we continue to maintain the various divisions in the Subordinate Court; and if not, should we not merge the Subordinate Courts into the High Court structure? The principle behind the sessional divisions of Courts is to maintain various standards of justice which vary according

---

[14] Ibid., para. 126, p. 51.

to the degree of costs involved. The Subordinate Courts will serve as cheaper Courts which are easily accessible to the poorer litigants; while the High Court litigation is more expensive. In keeping with the social spirit, the divisions of jurisdictions are necessary.

It is suggested that there should be a merger of the Subordinate Courts and the High Courts.[15] Such an attempt will help to simplify the Court structures. It is proposed that Civil Tribunals should be set up to replace the High Court and the Subordinate Courts. The Civil Tribunals are to be made easily accessible to all litigants and thus abolishing costs differences. In addition, the Civil Tribunal will be served by a greater number of High Court Judges and judicial commissioners which will provide a flexible use of Judge power. This suggestion may benefit the public considerably, nevertheless, this is a radical overhaul of the entire organisational Court structure which is more difficult to implement.

The availability of legal personnel to staff a new Court system of enlarged capacity is limited and this is a problem in itself.

One possibility of overcoming the problem is by offering attractive and competitive terms of service to well-qualified legal personnel of calibre, dynamism and ambition. This is hoped to help check the drain of judicial personnel to the lucrative private legal practice.

Alternatively, a scheme for compulsory judicial service for newly qualified law graduates and barristers should be implemented. The

---

[15] Brian Abel-Smith and Robert Stevens, "In Search of Justice," 1968, p. 199 and 213.

recruitment programme for judicial personnel should also include lay Magistrates and Justices of the Peace. There may be doubts as to the desirability of their addition to the judiciary in respect of their lack of legal knowledge and training. The Beeching Committee reports that the lay Magistrates[16] do play a beneficial role in the administration of justice. Their opinions with particular reference to the sentencing of criminals are important in reflecting public sentiments and inclinations. This advantage serves to offset any delay and wastage of time caused by them when they take time to decide.

On the other hand, the Justice of the Peace should be recruited into the judiciary to perform an active role in the administration of justice. In fact, they are judicial officers of low jurisdictions not exceeding that of a Second-Class Magistrate.[17] They constitute a portion of the public, who are very willing to offer their services to society.[18] Their inadequacies as judicial personnel can be remedied if the Government will take the necessary steps to train them with sound legal knowledge and judicial expertise.

The shortage of Court interpreters may be a problem for the enlargement of the Court's capacity. This is because every additional Court will require the service of at least three interpreters. This problem may be overcome by setting up an institution for the training of interpreters. This institution should undertake to conduct an interpreter's

---

[16] Report of the (Beeching) Royal Commission on Assizes and Quarter Sessions 1969, Cmnd, 4153, para. 271, p. 89.

[17] The Subordinate Courts Act 1948 (Revised 1972), S. 98.

[18] See, "J.P.s Service Offer", reported editorially in The Star, 27th March, 1976.

professional course so as to equip the interpreters with linguistic and interpretation skill.

C. The Case For A Court Or Tribunal Of Motor Accident Claims.

TABLE D

CLASSIFICATIONS OF CIVIL TRIALS IN THE SPECIAL SESSIONS COURT

Year	Running-down	Tenancy	Goods Supplied	Money Claimed	Miscella-neous	Total
1974	258	8	68	97	12	443
1975	313	8	72	133	5	531
Total	571	16	140	230	17	974

Source: Drawn from statistical data compiled with the help of the clerical staff of the Subordinate Court Registry, Ipoh.

Note: The above figures DO NOT include Sessions Courts' cases.

A study of Table D shows that out of 531 cases registered in 1975 in the Special Sessions Court, Ipoh, 313 cases are running-down actions. More than 50% of the total number of cases registered involves insurance claims.

The Perak Bar Committee has proposed the setting up of a Motor Accident Claims Tribunal.[19] The object of such a suggestion is to help

---

[19] See Appendix A. p. 108-116.

the Subordinate Courts in the disposition of all the running-down cases expeditiously. Usually, the main issues in dispute in a running-down action involve the ascertainment of liability and the determination of the quantum of damages incurred. The tribunal will adjudicate claims for compensation for bodily injuries or death arising out of a motor accident. The Perak Bar Committee discusses the problem of staffing the claims Tribunal with suitable legal personnel. It compared the Indian Motor Vehicles Act wherein Sections 110, 110A and 110F provide for the Constitution of a Claims Tribunal. The persons qualified for appointment are High Court Judges, the District Court Judges or those who are qualified to hold the above appointments. The Perak Bar Committee submitted a rather wide choice of selection for the members of the Claims Tribunal to include members of the Bar who have no personal interests connected in the claims dispute. Perhaps, this may be a possible solution.

In this respect, one may set up the Claims Tribunal in a similar manner as that of the Rent Control Tribunal; the constitution and powers of which are prescribed in S. 12 to S. 15 of the Rent Control Act, 1966. Since the creation of the Rent Control Tribunal, the adjudication of rent disputes has been conducted expeditiously. Moreover, it relieves the High Court of the burden of adjudicating rent disputes. Like the Rent Control Tribunal, the Claims Tribunal should be governed by Federal law which should provide for special procedures which help to simplify the proceedings.

Since the Franks Committee Report on Administrative Tribunals and Enquiries, there has been a drastic increase in the roles of the Tribunals. In England, in particular, the Tribunal is favoured as a useful forum for the adjudication of certain disputes relating to industrial disputes, rent disputes or insurance disputes. The arguments for the establishment of tribunals are many and the reasons supporting the arguments tend to attack at the weaknesses of the Court system. While the Tribunals can provide a less formal, economical and simpler procedure in the disposition of a trial, the Courts function as formal, expensive and procedurally technical institutions.[20]

Brian Abel-Smith and Robert Stevens in "In Search of Justice, 1968" proposed a spectrum approach. Basically, this spectrum approach seeks to merge the good qualities of Tribunals and the Courts so that a general adjudicatory system can be formulated. In this proposal, a well structured Court System with reformed and flexible procedures will be created with the object of providing the services of a spectrum of Judges specialised in the many fields of interest to the potential litigants. They are of the view that instead of dispensing with the services of the Courts by the creation of Tribunals, the usefulness of the Courts should be enhanced to serve society. The formalistic and cumbersome Court procedures can be reformed to suit the needs of society. It is submitted that this proposal requires serious considerations with regard to our Malaysian context of the Court structures.

---

[20] Brian Abel-Smith and Robert Stevens, "In Search Of Justice", 1968, p. 218-33.

D. Outlook For Reform And Procedural Changes

It is an undeniable fact that our rules of Civil Procedure have many defects and one of which is that they allow postponements which cause delay. Probable proposals to remedy the defects have been presented by the Winn Committee. It advocates the imposition of interests on damages if the insurance companies delay in settling the claims. The Winn Committee also proposes that the Court should be empowered to order interim payment of part of the damages in cases where it is reasonably clear that damages will be awarded inevitably. Both of the proposals have been implemented in the Administration of Justice Act, 1969 in England.

The third remedy recommended by the Winn Committee is rather controversial. It involves the imposition of penalties on the parties who cause procedural delay. This is to enable the Court to enforce a strict observance of the time-limits as prescribed in the rules of Civil Procedure.[21] The argument against this proposal is that the rules of Civil Procedure should not carry any penal sanctions but rather to provide guidelines by which the parties to the dispute can arrive at a reasonable and fair settlement. Besides, it is felt that final sanctions against non-compliance will not operate effectively when the extensions of time are made by the mutual consent of the parties.

Perhaps, it may be useful to examine the rules of Civil Procedure of other countries and it is hoped that we can adopt some of the good qualities of their procedural rules.

---

[21] Report of the (Winn) Committee on Personal Injuries Litigation, 1968, Cmnd. 369, para. 323, p. 94.

The French rules of Civil Procedure[22] is based on the Inquisitional system. A prominent feature of this system is that the Judge takes an active role in the conduct of Civil trials. There are three main stages which include the findings of fact, the conclusion and the audience. The examination of witnesses and the record of evidence is carried out at an early stage under the supervision of the Judge. The lawyers of the parties can only question the witnesses indirectly, through the Judge. The audience is the equivalence of our trial process which lasts not more than an hour.

In America, two devices have been introduced between the stages of the pleadings and the trial. The Pre-trial Discovery and the Pre-trial Conference[23] are intended to minimise the multiplication of procedural questions and other theoratical problems inherent in the formalistic pleadings. Diposition which involves the examination of witnesses on oath is the chief feature of the Pre-Trial Discovery. This device is to ensure that accurate evidence is perpetuated with the least likelihood of distortion of the evidence at the trial.

The Pre-Trial Conference is called at the instance of the Judge before the trial so as to simplify the issues in dispute. Here the Judge takes on active part in the settlement of disputes before the trial. Unfortunately, such a device seems to produce more forms of justice because

---

[22] A Justice Report, "Going to Law - A Critique of English Civil Procedure", Stevens and Sons, London, 1974, para. 103, p. 29.

[23] Ibid., para. 129-137, p. 35-38.

the merits of the case are rarely objectively decided on. The Winn Committee rejected the adoption of this device into the English rules of Civil procedure because it tends to complicate delay and increase the cost of litigation and it does not result in a higher rate of settlement.[24]

It is submitted that these two devices do not work favourably well since they offer more opportunities to the parties to extend their areas of disputes which consequently lead to delay.

The Scottish rules of Civil Procedure[25] is quite similar to the English rules from which our rules of Civil procedure are derived. The entry of appearance and pleadings constitute the basic initial steps. The parties are allowed to amend their pleadings in the Adjustment Roll at the stage of 'Open Record'. After fourteen days, the Adjustment Roll is officially closed and no one can amend the pleadings unless one can show 'special cause' for it. The time limits are strictly observed. The Court assumes an active role in the conduct of the trial of the preliminary points of law wherein the issues in dispute are argued and proofs of evidence made out.

An overriding feature in these procedural systems is an active Court intervention in the conduct of the trial process. The Advisory Committee of the Council of Justice under the Chairmanship of Sir John Foster recommended a radical proposal of a new procedural system which

---

[24] Report of the (Winn) Committee on Personal Injuries Litigation, 1968, Cmnd 369, para. 355.

[25] A Justice Report, "Going to Law - A Critique of the English Civil Procedure", Stevens and Sons, London, 1974, para. 142, p. 39.

seeks to favour an active Court control. It is submitted that this new procedural system[26] deserves due consideration and it can help to minimise procedural delay made at the instance of the parties.

The chief features of this new procedural system are as follows :

a. The action begins with a complaint instead of a Writ which is filed by the plaintiff, at the Court. The complaint is a document which contains a detail and fuller allegations of facts and the manner of how the allegations of facts are to be proved.

b. The defendant is notified as to the general nature and extent of the dispute. Within eight days, the defendant must inform the Court of his intention whether to contest or not to contest the action. If he does not do so, the plaintiff can apply for summary judgement.

c. Withih 21 days, the defendant must send his defence to the Court. If the plaintiff asks for summary judgement, the defendant can, by way of affidavits, show that the summary judgement should not be given because of arguable issues involved.

---

[26] Ibid., para. 159, p. 44.

d. The Master can on his own motion make an order for directions on matters relating to the granting of summary judgements, discovery of further and better particulars. The Master can decide any issues of facts which prove not to be seriously in dispute. The Master is also empowered to make orders from time to time to ensure that the case is expeditiously and fairly disposed of. Since the Master's orders are made without hearing, the parties can apply to the Judge for variations of the orders, which will be heard orally.

e. Finally the Judge will try all substantive issues of facts or law according to the rules of Evidence presently adopted.

The active control of the Court will prevent dilatory litigants from employing delaying tactics to prolong the trial at their convenience. The inclusion of the 'offer of proof' in the complaint seeks to ensure the elimination of the element of surprise in the method of proofs and also to prevent any distortion of evidence at the trial stage. The stringent requirement of the pleadings will also ensure careful and precise drafting of the documents of pleadings.

A strict compliance of time-limits[27] is another feature

---

[27] Ibid., para. 207, p. 58.

of this new procedural system. The present rules of procedure do not enforce the time-limits strictly while they are waived by the parties concerned to suit their conveniences. Naturally, delay in litigation will be caused. Under the new procedural system, the Court will be empowered to order the parties who delay the proceedings to bear costs. If the Solicitor delays in his own interest at the expense of his clients, the Court can discriminate against the defaulting Solicitor when making the order.

It is submitted that a good and effective procedural system for Civil litigation must possess three main characteristics. It assumes a complementary role by providing a proper machinery for the enforcement of substantive rights. It must also ensure that in enforcing the substantive rights of the wronged, no one should be prejudiced or be deprived of the protection of the rules of natural justice. All in all, the rules of Civil procedure should assist the Courts and the parties to settle their disputes fairly such that a just result can be reached. The remedy allowable by the operation of the rules of Civil procedure should be economical, effective and be speedily obtainable. In fairness to all, the rules of civil procedure should ensure that each civil action should be decided on the full facts of the case without any obstructive technicalities to prevent a speedy settlement of the case. If any party is dissatisfied with the judgement, they should be given convenient access to an effective system of Appeals.

The proposals mentioned above should be examined carefully and perhaps the adoption of these proposals can benefit greatly to the smooth functioning of our litigation system.

CHAPTER VII

CONCLUSION

Delay in litigation, if left unsolved, will have an undesirable impact on our society. Its existence also reflects on an inefficient litigation system. Our Court system constitutes the arena wherein the machinery of justice can be activated to enforce our rights such that remedies can be obtained speedily.

However, this does not seem to be the case in Malaysia. Backlog of cases does prevail in the Courts so as to hasten the need for a major overhaul of our local Court system. The Subordinate Courts Act 1948 (Revised 1972) still retains the features of the old Court system which are more suited to the social conditions of 1948. Obviously, this Court structure is inadequate to meet the social needs of the 1970s.

Parliament should look into the question of establishing a new Court structure of enlarged capacity so that Civil proceedings can be disposed of expeditiously. At present, a hardworking judge cannot accomplish much in one working day since his ability is restricted by the shortage of staff and time factor.

On the other hand, the principles governing our rules of Civil Procedures as contained in the R.S.C. and the S.C.R. should be reassessed and reexamined. Undoubtedly, these rules of civil procedures have contributed towards delay in litigation.

The attitude of the various parties involved in the litigation process should be changed. The lawyers should restrain themselves from seeking postponements too often. Instead, they should press for early trials. The parties to a Civil action should not be allowed to indulge in dilatoriness at the expense of justice.

There are many areas of further research in respect of the various recommendations laid down in Chapter VI. The various litigation systems of England and America may provide possible answers to solve the problem of delay here. Nevertheless, the writer suggests that a more detail study should be made, perhaps by a Royal Commission, to examine into the suitability of the various methods so discussed in Chapter VI to expedite trial proceedings.

It is submitted that Parliament should play a major role in effecting any changes in our litigation system. It is felt that any major overhaul of the present litigation system will necessarily have tremendous effects on our social and economic set-up of the Malaysian society.

In conclusion, our litigation system must not be allowed to sag in its function to provide for an efficient administration of justice; any defects which cause delay should be removed.

APPENDIX A

THE REFERENCE TO THE REPORT ON THE BACKLOG OF CASES IN THE IPOH COURTS

On 3rd August 1973, the Perak Bar Committee appointed a sub-committee to examine and to study the backlog of cases in the High Court and the Special Sessions Court, Ipoh. The report made several important findings and suggestions. The writer reproduced certain relevant aspects of the report below. The findings and suggestions include :-

"REASONS FOR THE BACKLOG OF CASES IN THE HIGH COURT, IPOH.

The present practice in the High Court is for one judge to deal with criminal cases throughout a month and for the other judge to deal with civil cases. During the following month, the judge who took the criminal cases in the preceding month takes civil cases and the other judge the criminal cases devotes on the average, about four days a week to civil cases and one day a week on chambers matters. Civil Appeals from the Subordinate Courts were also heard on civil days. However, recently, in an effort to reduce the backlog a number of Civil Appeals have been heard and disposed of during chambers days.

There are possibly many factors which have led to the large backlog of cases in the High Court, Ipoh. In the first instance, one has to bear in mind that the practice of appointing two Judges in the State of

Perak was established during prewar days and as from 1974, there have always been 2 Judges in Perak. In 1947, the number of cases filed in the High Court has risen continuously until it reached a peak in 1969 with 787 cases being filed. With the amendments "to the legislation leading to the establishment of Courts of Special Presidents a number of cases on the backlog in the High Court, Ipoh was transferred to the Court of the Special President, Ipoh. This resulted in a drop in the number of cases filed in the High Court, Ipoh. In 1971, 303 cases were filed in the High Court, Ipoh but this has increased to 447 in 1972 and the number of cases that will be filed in the High Court, Ipoh is expected to increase in the years to come. Also criminal cases have always had priority over civil cases. For example when a criminal case, e.g. a murder trial or a rape case, continues for longer than had been expected any civil cases that are in the way are taken off to enable the criminal case to continue and to be concluded early. Further it must also be borne in mind that Malaysia is a fast developing country where literacy has been and is on the increase. The number of lawyers who practised in 1949 was about 30 and the number of lawyers now practising is 93. All these factors have resulted in the amount of litigation in the Courts increasing and continuing to increase."

"EFFECT OF DELAY".

The number of civil cases disposed of by the High Courts, Ipoh in 1971 was 80 and in 1972 was 99, thereby making an average of 90 cases a year. With the backlog of 1299 cases and 32 Civil Appeals, a really alarming situation confronts the public in this State. At the present rate

of disposal, it will take more than 20 years for the present backlog to be cleared and that is without referring to cases that will be filed during that period.

The Sub-Committee would like to emphasize that delay does the cause of justice no good. Our former Chief Justice had stated, 'Justice delayed is Justice denied'. Delay in the disposal of cases in our High Courts is causing, therefore, a lot of hardship and misery and to loss of confidence in our Courts. For example :-

(a) In an accident case where a Plaintiff, who had received injuries leading, may be, to paralysis or loss of employment or means of earning, may be without means of succour until his case on the fixing list comes up for hearing which may be many years from the time the action is filed.

(b) The fact that a civil suit once it joins the fixing list is unlikely to be heard for years is well-known and some insurance companies utilise this fact to effect settlements in running-down action at amounts considerably lower than what the Courts would award. On the other hand, the Courts in this country in running-down action have during recent years allowed interest on the amounts awarded from the date of filing of the action. This may be unfair to insurance companies who settle the amount of the judgement in running-down actions. In cases where there could be no serious dispute as to liability or quantum the awarding of interest would be wholly justified but there are cases where serious disputes

as to liability and/or quantum exist which could only be resolved by a Court after all the evidence is placed before it. In such cases, the awarding of interest may not be justified when one takes into account the fact that the delay in the hearing of the cases was in no way attributable to the Defendants in the action.

(c) A breadwinner of a family could be killed in an accident and the family's action for loss of support will not be heard for years. That family could be without any means of supporting itself; it, no doubt, had suffered a grievous loss, but the delay in the disposal of the family's action instead of helping to ameliorate their loss, only goes to aggravate it.

(d) In a case involving mining land the lessee may apply for cancellation of the sublease on the grounds of breaches of conditions of the sublease. The application is made to the Mines Court but there is a provision in the Mining Enactment for either party to apply for the transfer of the case from the Mines Court to High Court. A miner, who is in breach of the terms of the sublease, could avoid immediate cancellation by applying for the transfer of the case from the Court to the High Court. Once this happens, there would be a delay of years during which time the miner would continue to work the land and may completely work the land before the case comes up for hearing in the High Court.

One could easily give many more such examples. The Sub-Committee feels that the general public is becoming dissatisfied with our Courts and there is a growing loss of confidence in the High Courts as the forum where all their disputes could be resolved. Something should be done to remove the cause of dissatisfaction and to arrest and remove this loss of confidence.

The delay in the hearing of cases could also give rise to other difficulties. There have been occasions during the hearing or fixing lists when cases were called up for dates to be fixed for hearing when counsel for one of the parties had informed the Court that his client had died. Again, a lawyer could do all he can to get the cases ready for trial but due to the length of delay, he is forced to put aside the files and deal with other income-producing work. When eventually these old cases are called up and fixed for hearing, he has to trace his client and witnesses.

Delay therefore could affect the outcome of a case and thus the quality of justice that is finally meted out.

RECOMMENDATIONS

A very serious problem posed by the large backlog of cases confronts our High Courts in Ipoh and it should be tackled on a permanent basis. The Sub-Committee makes the following recommendations :-

(a) Appointment of more Judges in Perak. There are now two Judges. The Sub-Committee appreciates that though Perak

requires as many as five Judges it would be impossible to request for that many. But at least for a start the number should be increased from two to four. In making this recommendation the Sub-Committee realises that the Malaysian Constitution will have to be amended, that more Court houses will have to be built and that new staff will have to be recruited. From the time two Judges were first appointed in Perak in 1947 everything has more than doubled; population, literacy, development of the country, the number of lawyers - why not, therefore, the number of Judges.

(b) By constituting or establishing separate tribunals to deal with running-down actions - something like the Rent Tribunals. A random examination of the particulars supplied by about fifteen of the law firms in Ipoh disclosed the fact that at least 60% of the cases on the backlog are running-down actions. If, therefore, these cases and all other running-down actions were transferred to a separate tribunal for disposal it would result in the reduction of the backlog by more than half. Some countries have adopted this system. One such country is India which has established Motor Accident Claims Tribunals to dispose of all running-down actions. Statutory provision for this was made in 1956 by amendment to the Indian Motor Vehicles Act with the addition of the following new sections 110, 110A to 110F. By virtue of these sections any State Government in the Indian Union could constitute Motor Accident

Claims Tribunals in such areas as may be specified for the purpose of adjudicating on claims for compensation in respect of accidents involving death or bodily injuries arising out of the use of motor vehicles. The Claims Tribunals are only substitute forums which provide no new remedy or right. The provisions are only procedural. The members of the Claims Tribunal are appointed by the State Government but the only persons qualified for appointment are :-

(a) if he is or has been a Judge of the High Court;

(b) if he is or has been a District Judge;

(c) if he is qualified for appointment as a Judge.

The problem in this country and this State stems largely from a shortage of Judges and Special Presidents. The Sub-Committee would, therefore, recommend that the Government consider :-

(a) the constituting or establishing of separate Motor Accident Claims Tribunals to deal with or adjudicate upon all claims arising from the use of motor vehicles.

(b) that members of the Motor Accident Claims Tribunals be confined to former Judges, Special Presidents and members of the Bar. Any lawyer interested in a case should, of course, not be eligible for appointment. Lawyers interested will usually be on record in respect of cases. As a further precaution a declaration should be signed by all those appointed as members of the Claims Tribunals stating that they had no

personal interest whatever (monetary or otherwise) in the matters disposed of by the Claims Tribunals.

The implementation of either of the above two recommendations made by this Sub-Committee would, of course, take some time. This Sub-Committee, therefore, makes the following further recommendations so as to provide some measure of immediate relief.

(a) It is a well-known fact that more running-down actions will be settled before they come up for hearing. Therefore, if the running-down actions on the backlog of cases in the High Courts were fixed for hearing immediately, most of them, in fact (something in the region of about 90%) would be settled. Therefore with the sole object of reducing the backlog appreciably and bringing relief to injured persons and/or families of deceased persons, this Sub-Committee recommends that all running-down actions which have been on the backlog for more than six months should be fixed for hearing immediately. The Sub-Committee feels that it would be quite safe to fix two or three running-down actions for disposal in one day and if this were done, in all probability most of the cases so fixed would be settled.

(b) Judges from States where there is little or no backlog should be called upon to assist in clearing the backlog of cases in Perak. This Sub-Committee understands that Selangor

and possibly Penang have little or no backlog of cases. It should, therefore, be possible for Judges from these States to be spared so that they could help in tackling the backlog of cases. The question that would then arise is again about additional Court houses and Court staff. As this will only be a temporary measure, the Courts could be housed temporarily in any suitable place - for instance in the High Court Library, in any of the Magistrate's Courts available, in the Municipal Council Chambers or in such other places. If necessary the Court staff may have to be brought in from outside the State to assist in staffing these temporary Courts."

APPENDIX B

THE REFERENCE TO A SPEEDY DISPOSAL AND FIXING OF CASES

The Ipoh High Court Registry handed out a court circular dated 31st May, 1975 to the Secretary of the Perak Bar Committee. This circular contained an appeal by the Registrar to the members of the Bar Committee to co-operate in disposing of cases speedily. The writer reproduces below the full terms of the circular. The terms of the appeal are as follows :-

"1. It is felt that the Registrar of Cases and Fixing List does not necessarily reflect the true position as there may well be cases which have either been settled or become permanently abated and incapable of being proceeded with. All solicitors are requested to look into cases in the Fixing List in respect of which they appear on record and to inform the Registry immediately of cases ascertained to be defunct and take such steps as may be necessary to have such cases discontinued or struck out.

2. There would appear to be free and indiscriminate use of Originating Motions and sometimes even Originating Summonses in applying for interlocutory or other relief in extant and pending matters. This is not only procedurally incorrect but also unnecessarily clusters up the Registry records and gives a distorted view of the current number of pending cases. Solicitors should note that applications in and pertaining to any

particular cause or matter should in fact be made in that cause or matter and not by way of any fresh originating process to avoid duplication of proceedings.

3. Recent experience has shown that a number of cases fixed for hearing at the behest of solicitors for one or more parties are not in fact ready for trial. There have been a number of cases where agreed bundles and other documents are filed just before or even on the very date fixed for hearing, the time estimated for the length of hearing bears no resemblance to the actual time required for trial, issues tend to be considered and efforts made to frame them not only on the date but at the very moment of time fixed for hearing, applications for amendment of pleadings are made at the commencement and in the course of the trial itself, and other such occurrences which invariably result in either applications for adjournment or unnecessary waste of time and not infrequently in cases remaining part heard leaving a considerable gap in time between the initial and continued hearing.

As a result it is felt that steps should be taken to ensure requisite preparedness in cases fixed for hearing, and accordingly the following prerequisites and requirements will henceforth be required to be observed for the purposes of fixing cases for hearing:

(a) There should be strict compliance with all current Practice Notes and strict observance of the time limits imposed therein for the doing of acts and filing of documents. Wherever

possible, it is desirable that the required acts and filing of documents should be done well before the time stipulated therein.

(b) Discovery should be made as soon as possible after the close of pleadings. No case will be fixed for hearing if discovery has not been made by all parties concerned before the fixing date.

(c) Priority in the fixing of dates for hearing will be given to cases where the agreed bundle and other requisite documents have been filed before the fixing date.

(d) The Registry should be notified well before the fixing date of the estimated time to be taken for hearing of cases, and it should primarily be the duty and responsibility of the Plaintiff's or Applicant's solicitors to liaise with the solicitors on the other side in this regard. All cases in the Fixing List will henceforth include an indication of the estimated time required for hearing, and solicitors acting in cases in the current Fixing List should take immediate steps to complete the list in respect of this requirement.

(e) Applications for amendments, settling of issues and all other interlocutory applications should, as far as possible, be made well before the date fixed for hearing unless in wholly unavoidable circumstances.

(f) There should be wider resort to mutual inspection of documents and the procedure provided for admissions of facts and documents to eliminate wastage of time and save costs.

(g) It is appreciated that there may well be good reason and unavoidable circumstances which might make compliance with any one of the foregoing difficult or impracticable or even necessitate an application for adjournment of a case fixed for hearing. The event of such a contingency will of course have to be determined on a consideration of the particulxr circumstances of each such case and the merits of any such application per se."