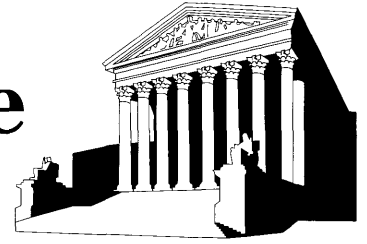


Reforming Civil Justice



A month ago, the most sweeping civil justice reforms in the last 100 years became law in England. The question this has given rise to in Hong Kong is whether the local civil justice system should follow suit. Our regular contributor JA McInnis looks at the issues.

Background

There is a generally held view in many countries that their civil justice systems require reform. People complain that systems are too slow, too expensive, too complex and too open to abuse. A host of measures have been proposed over a very long period of time in these countries to meet some of the challenges. However, until last month, no proposals for reform have gone as far as the current changes in England. The English reforms follow upon the release of the report *Access to Justice* by Lord Woolf.¹ The *Woolf Report*, as it has become known, contained 303 specific recommendations on reforming and improving the civil justice system. It was accompanied with a set of Draft Civil Procedure Rules (the *New Rules*) and followed shortly by a new Civil Evidence Act. Both have now become law with the *New Rules* taking effect on April 26, 1999. The bravado associated with the changes has been intense, and the Lord Chancellor no less has described the *New Rules* as: "heralding the beginning of a programme of the most fundamental change to the civil justice system ... since the 1870s."² In addition to the *New Rules* will be reforms in court administration, legal aid, information technology and training for judges. The intent is to reshape justice as it has been known. So what will it look like?

Principles in Reforming Civil Justice

The *Woolf Report* was premised upon a set of constant principles, and recalling the title, *Access to Justice*, the new civil justice system builds upon them. Put briefly, the principles dictate that the new system has to be *just* in its results; *fair* in the way it treats litigants; offer appropriate procedures at a *reasonable cost*; deal with cases *speedily*; be *understandable* and *responsive* to those who use it; provide as much *certainty* as the nature of the cases allow; and be *effective*. These are, of course, admirable principles, but how will they be achieved?

Features of the Reform

The new civil justice system is designed around a series of at

least nine features. Surprisingly, the most important feature is actually avoiding litigation whenever possible; hence some recognition, perhaps, that litigation will never be perfect. Trial procedures in the future will be designed to be less adversarial and more co-operative as well. While this may seem anathema to some, experience has shown that the procedures have been open to abuse. Lastly, the complexity and timescale of litigation will be reduced. Other key features of the reforms will address administrative aspects of the new system.

Implementing the Changes

The reforms are being implemented around the *New Rules* and something called *case management*. To date, under both the Hong Kong and English systems, cases have generally been moved forward under the control of the parties. Many now view this approach as outdated and once again subject to abuse. Under a system of *case management*, responsibility for controlling litigation passes from the litigants to the court. In assuming this responsibility the court is given new powers to move the cases along by refining the issues, increasing transparency, summarily disposing of some of the cases, and strictly timetabling the rest. It is, as noted, a significant change. The *New Rules* further both *case management* and the principles underlying the reform in various ways. Most significantly, there is now only one mode or way to begin a civil action; that is with a *claim form*. Gone are writs, originating summons, originating motions and petitions etc. These traditional modes of commencing a civil action have all been replaced with the *claim form* and *statement of case*. Gone too is the term plaintiff, replaced by the term *claimant*. All claims must now be accompanied with *particulars* according to the nature of the action and in greater detail than before. Money claims must be accompanied by a *statement of value* to facilitate the *case management* and allotment into new court streams or tracks depending upon the amount in issue. In addition, all *statements of case* (formerly pleadings) must be accompanied by a *statement of truth*. Anyone who has ever viewed claims as being solely for negotiating purposes

or delay may take some comfort from this change. Many in the construction industry involved in arbitration will be familiar with some of these terms. They have received general, although not unanimous, support in England. Significant new rules on disclosure of documents and costs further reinforce the reforms.

Lessons for Hong Kong

A few weeks ago at a *Forum on the Reform of the Civil Justice System in Hong Kong*³ the question was asked whether the local civil justice system should follow these English changes. Past and present leading members of the Hong Kong judiciary debated the changes and their possible application here. Justice Conrad Seagroatt spoke of progress that has been made in one area of the law of interest to the construction industry, namely personal injuries litigation; but was cautious regarding the implementation of *case management*, preferring to call instead for a "change in culture in relation to litigation from the outset".⁴ On the other hand, Justice David Leonard, who was formerly in charge of the arbitration list at Hong Kong's High Court, felt that many of the English reforms could usefully be put into operation in Hong Kong in the near future.⁵ So is there a choice or a lesson here for Hong Kong? The answer is yes. Hong Kong can benefit from the experience of reform not only in England but Australia, the United States and elsewhere as well. Much has already been learned in these

other countries, and it should be appreciated that there will be increasing pressure upon the civil justice system here to take into account the changes they have made. By so doing, benefits will ultimately accrue to Hong Kong, though not because we have followed one system or set of reforms rather than another, but because of a greater willingness on the part of everyone here to take them into account. It must also be understood, and past experience with reforms here and elsewhere has confirmed this, that reform prompts reform and this too poses new challenges. This is, after all, a lesson which goes well beyond just civil justice. ■AAC

- 1 *Access to Justice*, Final Report, July 1996
- 2 Foreword to the *Civil Procedure Rules*, 1999.
- 3 Held at the Ritz Carlton Hotel, 3-4 May 1999, and organised by the Faculty of Law at the University of Hong Kong.
- 4 'Reform and Change in Personal Injuries Litigation' paper presented at the *Forum on the Reform of the Civil Justice System in Hong Kong*.
- 5 See 'Reform in England: The Woolf Report and Consequences', paper presented at the *Forum on the Reform of the Civil Justice System in Hong Kong*.

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