

SPEECH TO THE HOLYROOD CONFERENCE

The focus of today's discussion will be the use of digital innovation and technology in the administration of justice. Until recently, a discussion of that subject would have been futile. There would have been no point in superimposing new technology on a justice system that was in failure. Things are different now.

The background to my speech today is the Courts Reform (Scotland) act 2014 which came into law on 10 November last. It is the single most important piece of legislation in the field of civil justice for over a century. The purposes of the Act are best understood in the context of the Scottish Government's Making Justice Work programme. This programme has made it possible for reform in the entire justice system to be implemented according to a systematic, integrated plan. It is an outstanding example of public administration in Scotland.

It has been a privilege for me to lead the Scottish Civil Courts Review and to see its key principles transformed into law.

On the whole, the public, the politicians, the litigants' interest groups, the commercial sector, and above all, those who work in the system and know it from the inside, were enthusiastic in their reaction to the recommendations of

the Review and to the Courts Reform Bill through which the prospect of a modern civil justice system became a reality.

Future generations will be surprised to learn that in the early years of the 21st century there were sections of the legal profession who thought it right to conduct civil litigations of a value of £5000 in the highest civil court in the land; or that we tolerated a system in which the legal costs of the first day of an action could exceed the value of the claim.

It is my impression that those lawyers who opposed change assumed that the profession was living in a static legal world. Events have disproved that assumption. In the Scottish legal world change is all around. Solicitor firms of high repute have gone to the wall. Famous legal names have disappeared as a result of the entry of international law firms into Scotland.

Even without the civil justice reforms the profession would have faced the prospect of radical change. Consider the changes that have occurred in the profession since we reported in 2009. Would anyone now contend that, for example, the structure of the solicitor profession or the system of legal aid will be the same in ten years' time as it is now?

All of the controversy over civil justice reform must now be put behind us.

The Scottish Parliament has passed the Act. What was the subject of debate is now the law of the land.

So, now that the tumult and the shouting has died, as Kipling put it, it is time to look ahead in a positive way. I am pleased to announce that the timetable for commencement of the provisions of the Act has now been finalised.

By July next the lengthy process of appointment of the first summary sheriffs will be put in hand. In time, those summary sheriffs will deal with the new simple procedure, which will come into force in the Spring of 2016.

In September, at the start of the new legal year, a number of the key reforms will take effect, namely:

- the establishment in Edinburgh of a sheriff court with a Scotland-wide jurisdiction for personal injury cases;
- the extension of the exclusive jurisdiction of the sheriff court to actions with a value of up to £100,000;
- the establishment of the Sheriff Appeal Court, at first with jurisdiction for criminal cases and after January 2016 with jurisdiction also in civil cases;
- and finally, the introduction of the permission stage to judicial review proceedings.

The reforms present opportunities to litigants, to the profession and to judicial office holders at every level. In the Court of Session our administration will no longer bear the burden of low-value litigations.

At sheriff court level solicitors will have the opportunity to deal with claims of significant value and to exercise skilled advocacy in cases that in former days would have been litigated in the higher courts. But litigants should have a choice of representation; and therefore should have also access to the services of the Bar. There will be many important and complex sheriff court litigations where the services of counsel should be available to either side.

Whether at first instance or in the Sheriff Appeal Court, section 108 of the 2014 Act imposes a positive duty on the court to sanction the employment of counsel if it considers that in all the circumstances it is reasonable to do so. In making that judgment the court must have particular regard to the difficulty or complexity, or the likely difficulty or complexity, of the proceedings; the importance or value of any claim in the proceedings; and the desirability of ensuring that no party gains an unfair advantage by virtue of the employment of counsel. The court may also have regard to such other matters as it considers appropriate. This provision reflects the expectation underlying the Report of the Civil Courts Review that counsel would have a real and meaningful role in the work of the sheriff court in its expanded jurisdiction.

In consequence of the reforms, the shrieval bench will be relieved of the burden of minor criminal work. The sheriffs will have the opportunity to pursue specialisms in the field of civil law, such as family law and commercial law, and to specialise in the criminal field in cases of serious crime under solemn procedure. This will present the sheriffs with the demanding task of improving their judicial skills and in accepting a high degree of responsibility; but that is a challenge that any sheriff should be glad to accept.

At the third tier level the new office of summary sheriff will lead to the recruitment of a group of sheriffs, who will be specialists in their own way, dealing with lower value cases that presently occupy much of a sheriff's time – small claims, small debts, housing repossessions, family disputes, child-related matters, children's hearing referrals and the bulk of summary prosecutions throughout Scotland.

Finally, the sheriff appeal court will achieve efficiencies at the appellate level by removing business from the Inner House and the Appeal Court respectively; by expediting cases through the first tier of the appeal process and by preventing unmeritorious claims from being pursued in the higher courts.

When the relevant provision comes into force, I intend to appoint Sheriff Principal Mhairi Stephen QC to be President of the Sheriff Appeal Court. She will be the first woman to be appointed as president of an appellate court in Scotland. I am confident of the court's success under her expert leadership.

The reforms seek to remedy one of the besetting problems in our courts in modern times - that of maximising the productive use of available court time. The three keys to the successful implementation of the reforms will be judicial specialisation; judicial case management and flexibility of shrieval deployment.

Under the new system sheriffs will be expected to be flexible in response to the needs of the courts. Efficiency will no longer be impeded by the traditional boundaries between sheriffdoms or by rigid procedural rules whose justification has long been forgotten.

The summary sheriffs will be expected to sit in different courts and in different sheriffdoms - on the same day, if need be.

The whole purpose of these reforms is to maximise the efficiency and the output of the courts. We can no longer allow the progress of an action to be dictated by the convenience of the parties or their lawyers. The court has interests and responsibilities of its own.

The new regime is logical and rational. It is long overdue. I am confident that the legal profession will adapt to it and contribute to its success.

Today's theme is how we bring the court system into the modern world and, perhaps more importantly, how we bring the modern world into the court system. It was recognised in the Scottish Civil Courts Review that improvements in information and communication technology were fundamental to the success of the court reforms. My prediction is that we will move quickly towards the paperless court, towards the filing of writs from the lawyer's desk; towards the virtual court with remote access by judges, lawyers, clerks and witnesses and towards hearings that are no longer based on oral evidence.

In July last year, I had the pleasure of opening the new Civil Justice Centre and Commercial Court in Aberdeen. It is an example of the installation of new technology in a new justice centre. It has been using much of the technology that is being introduced throughout the Scottish court system, including improved video link technology. With it, we are edging nearer to the prospect of a 'virtual court'. Eric McQueen will explain the technology in more detail.

These processes may seem to be innovative and state-of-the-art, but the individuals and businesses who deal with our court system are already well

practised in utilising such technology. Digital innovation is essential if we are to improve access to justice, reduce time and expense for the litigant and ease the administrative burden on our court staff.

But access to justice should not operate solely in favour of those already using the system. Access to justice encompasses a broader aim – to open our courts to public scrutiny and to public understanding and, in that way, to de-mystify our law and its procedures.

In recent years there has been considerable pressure from the media for the televising of proceedings in the courts. On one or two occasions my predecessors have allowed there to be cameras in court.

When I became Lord President it was clear to me that there was no overall policy in the matter. We simply could not go on making *ad hoc* decisions on individual applications to film or to televise. I therefore appointed a committee under the leadership of my colleague Lady Dorrian to consider the matter in depth, to carry out a public consultation and to report to me with findings and proposals.

I have now received the report of Lady Dorrian's committee. I thank her for having conducted this study so skilfully and thoroughly and I thank her Committee for their good judgment and their openness to change. This morning, Lady Dorrian's Report has been made public. The conclusions of

her Committee represent the consensus view of my colleagues in the Court of Session. They are as follows:

- Filming of civil and criminal appeals and legal debates in civil first instance proceedings, such as judicial review or hearings on the Procedure Roll should be allowed for live transmission. Subsequent news broadcasting and documentary film-making should be allowed subject to clear and comprehensive guidelines.
- In certain circumstances and subject to certain safeguards, criminal trials may be filmed for documentary purposes, but not in cases involving children, sexual offences and vulnerable witnesses.
However, no live transmission should be allowed for any criminal first instance business, or for first instance civil proceedings involving witnesses.
- For subsequent news broadcasts, the delivery of the sentencing remarks of the judge should be permissible, with filming focused only on the judge.
- Similarly, in first instance civil business filming for documentary purposes may be allowed, but should exclude certain cases such as those involving family and immigration matters.

- Filming should be subject to robust, clear and comprehensive guidelines.
- Journalists who register with the Scottish Court Service to gain access to the electronic portal-based system, should also be required to undertake compliance with the Contempt of Court Act. Journalists so registered should be permitted to use live text-based communication. Any person who is not on the register should require the permission of the presiding judge.

I am happy to announce that I accept all of Lady Dorrian's recommendations.

Lady Dorrian's recommendations deal with matters of principle. Our task now will be to translate these principles into practice. I therefore intend to issue guidance to the media to indicate the approach that will be taken in relation to the televising of court proceedings. This may involve further consultation with the media on practical points.

Scotland prides itself on the independence of its legal system. That independence is worth defending. We have a system to be proud of. But we are inevitably subject to the influences of a much larger legal system that is our neighbour. Much of our statutory law nowadays is common throughout the United Kingdom.

If the continued independence of the Scottish legal system is a cause worth fighting for, our courts must meet the needs of the litigant. Unless the courts can provide a justice system that is expeditious, economical and excellent, Scots law faces atrophy and our independent legal profession faces an uncertain future.

A legal system develops through its case law. If Scots law is to be a vigorous system it has to provide a forum that attracts important litigations on important points of law.

But in addition to serving the litigant, the legal system should serve the wider community and its needs.

Our legal system should be a driver for economic progress in Scotland. Our courts and our judges can and should contribute to the prosperity of our country. We can do that if, by the excellence of our judges, and our legal profession and the efficiency of our courts, we make Scotland a forum of litigation that not only retains litigations that at present go elsewhere but also becomes a forum of choice for litigations from abroad.

In the 1960s and 1970s the economy of Scotland was transformed by the discovery of North Sea oil. The judges and lawyers of that time were not alert to the opportunity that Scotland could be an international forum for resolving

disputes in the oil and gas industry. We paid a price for our complacency when the international oil and gas industry passed us by.

Half a century on we should look at Scotland's economic opportunities and see how the courts can best serve them. In recent years a commitment to renewable energy has brought wind power to the fore as an energy source. Other forms of renewable energy may follow. Our resources of energy may be increased by the retrieval of shale gas, if that should be allowed. It seems to me therefore that the opportunity that our natural resources present should be served by the court system.

Twenty years ago my distinguished colleague Lord Penrose single-handedly created within the Court of Session a specialist commercial court. Today it is a prestigious and efficient court that enjoys the confidence of the profession and of the commercial world. I wish to build on that.

It is therefore my intention to launch a feasibility study into the creation of an Energy and Natural Resources Court in the Court of Session to provide a specialist forum for litigations in these fields. I shall look to the advice and assistance of the Scottish Civil Justice Council in that study. In keeping with my view that the courts must serve the litigant, I propose that if such a court should be established, it should sit in other centres, Glasgow or Aberdeen for example, if the need should arise.

We have the courts. We have the manpower. We have the skills of our judges and of our lawyers. My ambition is that we should create a court of international renown that will make its own contribution to Scotland's prosperity.

For the last 40 years, to my own knowledge, the Court of Session and the Appeal Court have suffered from the chronic problem of backlogs and lengthy waiting times for diets. Part of the problem was that the court did not actively manage cases or curtail the length of oral advocacy. The theory was that the judges knew nothing about the case until counsel read the pleadings and other documents and explained what the issues were. There followed a detailed reading of the statutory materials and the case law. Only then did counsel make their submissions.

In less than a year and a half we solved the backlog problem. That has been achieved through careful judicial case management, judicial preparation in advance of the hearing and by the requirement of written submissions: - in short, by judicial efficiency. I am grateful to my judicial and administrative colleagues for what has been achieved.

We have an opportunity now to improve upon these efficiencies and to avoid a relapse into the bad old ways. More importantly, we have a responsibility to litigants, to the public, and to the profession to ensure that our judiciary

has control of the business of our courts. That responsibility is great. It will be achieved only through a concerted effort by all judicial office holders. In the public's eyes, we are one, whether we are summary sheriffs, sheriffs or senators of the College of Justice. We take the same oath. We serve the same society. And we, like the lawyers and the public, are now on the road to the new digital world. It is the pathway to a modern justice system of which we can be proud.