

We need to look at civil justice system - How can Disputes Best be Solved out of Court? BY JOHN STURROCK

The recent announcement by the Justice Minister that the Scottish Executive is considering a review of civil justice is most welcome. This offers an exciting opportunity to examine how we, in modern Scotland, address disputes which affect individuals, organisations and business. It must be remembered that most disputes are resolved without going to lawyers, as they always have been, by discussion and negotiation. Of those which do come to lawyers, many are dealt with quickly and effectively without lengthy procedures or resort to the courts. But what about those that require a greater involvement by professionals and the justice system?

Key to the success of such a review will be the process by which it takes place. Just as it represents an opportunity, it will also be viewed by some as a threat and by others as the time to launch attacks or promote special interests. Will the baby go out with the bathwater? Will proposals be sufficiently radical? What happens if.....?

It will be natural for people and institutions to seek to protect their positions and express their concerns. There may be anger. However, the traditional exchanges, involving defending positions and knocking down new ideas, will not produce the kind of creative thinking which Scotland and its people deserves.

It will be vital that the review process builds confidence that it is a genuinely open inquiry. It will need clear over-arching objectives, of course, and the facility to explore the critical issues so that it can identify the principal concerns with the present situation and develop a range of options for moving ahead. Observers will be encouraged if they are told that the Executive has no pre-determined view about what it is trying to achieve and that there is openness to learn from developments in civil justice in other countries.

A good start has been made by the Scottish Consumer Council. In November 2005, it published a report into the civil justice system in Scotland. The report was preceded by a series of fascinating seminars addressed by experts from around the world. The report sought to examine the features which give rise to concern and what proposals for change might be made. It pointed to the lack of empirical research. It highlighted a number of areas where a review is necessary. These included the costs associated with going to court, the relationship between civil and criminal business, the role of the courts, the need for specialisation among judges and lawyers' remuneration.

For some commentators the recommendations of the report did not go as far they would like. Some suggested that a wider review would address how we resolve disputes more generally and whether, when and to what extent courts should be engaged. One of the most interesting contributors to the seminar series, Professor Carrie Menkel Meadow from Georgetown University, pointed to research which suggests that we are now in a post-litigation era. Research carried out a few years back in Scotland confirmed that most people prefer to reach agreement than to go to court. Businesses say the same. Pretty obvious perhaps – but does the present system enable or inhibit that outcome?

Senior lawyers now talk openly of the need for change in the system and of the benefits that will bring to Scotland as a place where disputes of all sorts can be dealt with quickly and effectively. It is interesting that Dublin has projected itself as an international centre for resolving disputes. Scotland has a good reputation for its integrity and common sense. A refreshed civil justice system would not only be good for people here but might well encourage the return of business which often goes elsewhere, while also attracting new clients and work to this country. That is surely a good thing.