

Final Report

Second study commission – 2013

Study Commission 2 looked at two common issues faced by Courts and Tribunals throughout the world:

- a) Access to justice for self represented litigants; and
- b) Promoting efficiencies in, reducing the cost of, and encouraging the early resolution of civil disputes.

Self Represented Litigants

Litigants have the right to appear in civil matters for themselves in all common law countries and most civil law countries. Legal aid is available in all countries however in most countries eligibility-criteria must be satisfied for the litigant to receive funding. There is a very disturbing trend throughout the world to reduce the availability of legal aid. A consequence has been an increase in the numbers of SRLs. So that some courts that have not faced the problem of SRLs are now finding that they need to respond to the new challenges. SRLs commonly do not understand court processes and procedures, do not have the legal knowledge and skills to look after their interests and are often not objective and dispassionate (understandably), there are greater burdens on court administration and judges to ensure that SRLs are not disadvantaged by the absence of legal representation, at the same time maintaining impartiality and not overcompensating the conduct of the trial to the prejudice of the other party.

The Study Commission looked at the various ways measures in which Courts/Tribunals have sort to adjust to the increasing numbers of SRLs. Key measures have included:

- Better assistance for SRLs. Many jurisdictions now offer administrative support services to SRLs on processes and procedure (but not legal advice);
- improvements in access to information and resources on line and in hard copy;
- simplification of court forms and court processes;
- more flexible processes;
- identification and management of cases involving SRLs from an early stage;
- training for judges on best practices in handling cases involving SRLs;

- development of guidance and guidelines, techniques and tools for judges including some mediation skills in managing SRLs;
- Mandatory pre trial mediation.

The increase in SRLs has also meant an increase in difficult, vexatious litigants. To assist judges to deal with such litigants, some Courts/Tribunals have been given the power to declare a person vexatious with the consequence that the person cannot commence proceedings without the leave of the Court. Most jurisdictions though rely on a power to dismiss proceedings summarily as unmeritorious or an abuse of process. In some jurisdictions, judges are given specific training in how to manage vexatious litigants.

There was general discussion on the effectiveness of these initiatives and measures and a sharing of ideas in relation to handling SRLs..

Civil process reforms

It is not sufficient if the right to access to court is recognised only theoretically. There were strong statements from the participants that costs remain a significant barrier. Court/Tribunals have continued to focus on measures and practices that assist to deliver a more efficient and less costly resolution of civil disputes. In many countries, there are now pre action protocols that require participants to take, and engage in, certain steps that are designed to clarify and narrow the issues in dispute and to encourage people to resolve their disputes without the need for Court adjudication. In some countries these obligations are also imposed on the courts in the management of civil disputes. ADR continues to be used in tandem with, and or as part of, the court processes and in many countries mediation is a compulsory step. Many Courts/Tribunals now have appropriate training for judges who mediate, recognising that competent and effective mediators require very different skills to judges and thus most judges would require training and practice in order to develop those skills.

Many Court/Tribunals reported that as part of reforms that have been implemented courts had been or are being modernised with the introduction of electronic court file and online case management systems, the use of video-link and the accessibility of internet within the courts.

It is generally thought that these processes are useful and should be supported but that there should be continued discussion and monitoring of the effectiveness of these reforms.

Topic for next year:

Challenges for civil environmental law (working title)