Medicolegal

Most sweeping changes in civil law for a century

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The Civil Justice Review, published last week, is the most sweeping agenda for change in the civil courts of England and Wales for over a century. If adopted it will mean a massive shift of business from the High Court to the county court, which will try most cases concerning £25 000 or less. With the aim of cutting the delays that plague the system new timetables will be set for the steps in litigation, with the court exercising much more control over the progress of cases.

Charged by the Lord Chancellor with the task of finding ways to cut costs, delay, and complexity, the team of officials, lawyers, and laymen under Sir Maurice Hodgson, former chairman of ICI and British Home Stores, took evidence from 760 individuals and organisations, including the Medical Defence Union, the Medical Protection Society, the Medical and Dental Defence Union of Scotland, the Medical Commission on Accident Prevention, and Action for the Victims of Medical Accidents. A key proposal is that there should be a move towards a more "cards on the table" approach in the pretrial stage. "Early exchange of written material, including witness statements, would enable parties to identify earlier where their differences lay, facilitate earlier settlements where appropriate, and enable trials to concentrate on the main issues," argues the report.

The system is already moving towards more openness. Changes in the Supreme Court rules in 1987 provide for advance disclosure of experts' reports unless the court considers that there is sufficient reason for not ordering disclosure. The new rules also allow the court to direct that there should be a meeting of the opposing parties' experts, who may prepare a joint statement indicating the aspects of agreement and disagreement between them.

The review body proposes that statements of non-expert witnesses should be disclosed in advance too. And when a party refuses to make a pretrial admission of specified facts or documents that are later proved at trial the court should have power to impose a costs sanction. Studies of the existing system carried out as part of the review show that the average time for a personal injury case in the High Court to get to trial is five years from the incident that sparked off the action. Plaintiffs' and defendants' solicitors identified three causes for the delay: waiting for the plaintiff's medical condition to stabilise, waiting to obtain a medical report, and waiting for trial.

Medical reports to be disclosed as soon as possible

The review body suggests that medical reports should be disclosed as soon as possible after service of the writ, and recommends that the Department of Health and Social Security should take steps to expedite release of medical reports by hospitals. Statements of special damage and estimates of future loss of earnings should be given to defendants much earlier to facilitate

evaluation of claims, encourage early settlement, and shorten trials, the report suggests.

The Law Society, in its evidence on personal injury litigation, admitted that some solicitors lacked skill in this topic, and the factual study of the existing system identified inertia by both plaintiffs' and defendants' solicitors as a principal cause of delay. The report recommends written professional standards on the conduct of litigation, to be issued by the Law Society and the Bar, and suggests that any schemes for specialisation in particular areas of the law that may be set up should be based on objective criteria of competence and experience.

Alternatives to the tort system, such as no fault compensation, were outside the review body's brief, but it suggests that the Lord Chancellor should consider, in consultation with the insurance industry, the feasibility of a no fault scheme for less serious road accidents, to be financed by private insurance.

The Lord Chancellor is also urged to set up a special study of the case for introducing a form of class action into English law. This would allow a group of litigants who blame their injuries on a single cause—for example, side effects of drugs—to have their claims disposed of in a single consolidated action. The Legal Aid Bill, its parliamentary passage now nearly finished, already contains a provision allowing new rules to be made for funding cases like the litigation over benoxaprofen.

The review body suggests that the time has come to re-examine the present ban on contingency fees and other forms of incentive scheme in which lawyers are paid according to the outcome of the case. Abuse of the system could be controlled by specific regulations rather than a complete ban, it argues.

Is decaffeinated coffee safe to drink? Is carbon tetrachloride still used to remove caffeine?

In Britain carbon tetrachloride is no longer used to extract caffeine, which is now removed with carbon dioxide, water, or methylene chloride. Only methylene chloride extraction leaves any residues of the extractant in the product, but the level is negligibly low. Thus the concentrations of residual methylene chloride in the decaffeinated coffee powders that have been analysed have all been below 1 part per million. Furthermore, powders manufactured according to good manufacturing practice standards contain less than 0.01 parts of residual methylene chloride per million so that the concentration in decaffeinated coffee as drunk is no more than a fraction of 1 part per billion.

Methylene chloride has been shown to be mutagenic in laboratory tests conducted in vitro but not in vivo. Lifetime exposure of mice to high concentrations of methylene chloride by inhalation has been shown to increase the risk of them developing tumours of the lung and liver. Similar exposure of female rats increases the risk of them developing benign mammary tumours. But lifetime exposure to methylene chloride in drinking water, even in high concentrations, was not associated with any increase in the incidence of any kind of neoplasm in either rats or mice, nor with any other form of toxicity. So it is reasonable to conclude that the consumption of decaffeinated coffee carries no risk to health as a result of the extraction process.—FRANCIS J C ROE, independent consultant in toxicology and cancer research, London.