
Editorial

A Dearth of Lord Justices?

Come autumn leaves, come Masters of the Rolls annually wringing their hands about the mounting backlog of business in the Court of Appeal. Last year, Sir Thomas Bingham said in his annual review of the Court's work that the backlog of 1,619 appeals amounted to "a denial of justice". This year, in his review of the legal year 1994-95, he noted that the backlog had reached 1,833 by the end of September, and he estimated that, on present trends, this figure was likely to rise to 2,234 by the year 2,000.

Sir Thomas observed that in some categories of case the present situation can involve a delay of 19 months before an appeal is heard, a situation which he described as intolerable: in his view, "the existing delays, and still more those which are projected, should be an acute source of public concern". Calling, as he and his predecessors have done so often before – with limited success – for an urgent increase in the number of Lord Justices, he said that the alternative was "delay of a length inconsistent with the due administration of justice". He argued that delays of this order are serious in any court, but are particularly so in the Court of Appeal which, he said, "is the pivot of our legal system".

There is, on the face of it, some room for demurring at the description of the Court of Appeal as 'pivotal', given that its volume of business is small compared with that of the trial courts, where the delays are also serious. The most recent Departmental Report of the Lord Chancellor's Department shows, for instance, that the proportion of cases disposed of by the

Queen's Bench Division of the High Court within one year of the case being set down, declined from 66 per cent in 1990 to 37 per cent in 1993-94. But, it has to be remembered that appeal courts do have a wider function than that of trial courts. Apart from the important task of correcting error in a particular case, their attention to problematic legal issues has an important ripple-effect on the work of all the courts below. The metaphor of the pivot is perhaps overstating matters, but cannot be dismissed out of hand as special pleading by the head of the Court of Appeal.

What is to be done? Given that the judges themselves seem to have done their best to speed up the turnover of appellate business, there is force in Sir Thomas's plea for an increase in the number of Lord Justices. But the betting must be against the Lord Chancellor making any significant concessions in that direction. The wider significance of this episode, and its likely outcome, is that it is symptomatic of the continuing transformation, under Lord Mackay's Lord Chancellorship, of the administration of justice into a Treasury funded public service, like any other, and governed by the same imperatives of value for money as health and education. The constitutional implications of this are profound – and, for judges, including Masters of the Rolls, profoundly uncomfortable.

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