

JUSTICE 2 COMMITTEE

SCOTTISH PARLIAMENT

**THE DRAFT SHERIFF COURTS (SCOTLAND) ACT 1971 (PRIVATIVE
JURISDICTION AND SUMMARY CAUSE) ORDER 2001**

**SUBMISSIONS OF THE ASSOCIATION OF PERSONAL INJURY
LAWYERS**

NOVEMBER 2001

The executive committee would like to acknowledge the assistance of David Short, Executive Committee Member, APIL for assisting with the preparation of these submissions.

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. We currently have 106 members in Scotland who, in all likelihood, act for the majority of personal injury victims in the jurisdiction. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To promote health and safety;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.

2. APIL strongly opposes clause 3 of the Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2001, which seeks to raise the summary cause limit from £1,500 to £5,000, in so far as it will impact upon personal injury litigation. Our opposition stems from our concern for the likely effect such an increase would have on the ability of injured victims to achieve access to justice. We urge the Justice 2 Committee to reject the draft Order in its current form.

3. Whilst it may appear advantageous to increase the summary cause limit to £5,000 for certain types of cases, we would like to draw the Justice 2 Committee's attention to the potential effect on the ability of injured victims to achieve access to justice. Firstly, we are concerned that the abbreviated summary cause procedures in the Sheriff's Court would be unsuited to some

personal injury claims. It would be a mistake to equate the value of a claim with the complexity of the issues involved. Many personal injury claims may have a value below £5,000 but still involve extremely complex issues, for example, industrial disease cases. The summary cause procedures could prevent the necessary analysis of the issues involved and impact upon the development of the law in this area.

4. Secondly, we are concerned about the impact of such an increase on the quality and consistency of decision making that is currently achieved within the Court of Session. Personal injury law has developed into a specialised area of law and the Court of Session judges have developed the necessary expertise to deal with personal injury claims. Practitioners rely greatly on reported decisions and the precedents created by the Court of Session to analyse claims, advise clients and develop strategies. It is imperative, in the interests of justice, that injured victims with similar claims should be treated equally and in accordance with the same law and legal tests. The problem with increasing the summary cause limit is that more personal injury claims would be dealt with in the Sheriff Court in which there would be unlikely to be many reported decisions and where the decisions of Sheriffs would not carry the same weight as Court of Session Judges. This could lead to disparity in the approach to personal injury claims and so to an unfairness, which in our view, would be unacceptable.
5. Finally, the ability of an injured victim to achieve access to justice will be affected by the recoverability of legal costs in claims falling within the summary cause limit. Whilst the issue of legal costs may seem far removed from the issues under consideration it is important to note that legal costs are inextricably linked to the issue of access to justice. Despite a common misconception, legal costs are incurred personally by injured clients and not by their legal representatives. Where, however, the injured client is successful in his claim for damages, he will be able to recover his legal costs from the losing party.

6. In summary cause actions the successful litigant is unlikely to recover any more than 50 per cent of the legal expenses incurred to his legal representatives. At the moment, because the limit is so low, this affects a relatively small number of personal injury claims. It is common for personal injury solicitors, therefore, to bear the burden of these unrecovered costs despite the fact that they are not legally obliged to do so.
7. If the summary cause limit is increased as proposed to £5,000, however, a much larger number of personal injury claims will be subject to the costs rule outlined above. We fear that in this situation solicitors will be unable to continue to carry the increased financial burden of unrecovered costs on behalf of their clients. Legal representatives are likely, therefore, to either:
 - Require the injured client to meet the unrecovered costs themselves; or
 - Cease to take on personal injury claims with a value below £5,000.
8. In the first situation, injured clients of modest means would be required to pay the legal costs out of their compensation. This is unacceptable because compensation is carefully calculated to meet the losses and expenses caused by the relevant injury, such as medical treatment or nursing care. Alternatively, the injured victim of modest means could be unable to pursue his claim and so be unable to access justice. This would result in that victim being unable to access the money he needs to cope with his injuries.
9. It certainly appears that the proposed increase in the summary cause limit will lead to injured victims in Scotland being treated far less favourably by the Scottish civil justice system than their counterparts in England and Wales. We would be happy to assist the Justice 2 Committee to collate further information on this point.
10. We have previously submitted that in view of the fact that the summary cause limit has remained at £1,500 for a number of years, the summary cause limit could be increased to £3,000 to reflect inflation and we reiterate that

submission. Alternatively, if the limit is increased to £5,000 we submit that personal injury claims should be excluded.

11. In conclusion, we are extremely concerned about the effect the proposed increase in the summary limit may have on access to justice for the victims of personal injury. Such victims are already in a vulnerable position as a result of their injury and this vulnerability should not be exacerbated by a change in jurisdictional rules.