Submission from Martin Frost for the Legal Profession and Legal Aid (Scotland) Bill

My Recommendations:

1. A Yardstick of understanding

That it become compulsory prior to engagement that each client, following the first meeting with either a solicitor or advocate, is tendered a written précis by the lawyer of what that lawyer may or may not be able to achieve, when and at what cost to the client. Such précis to be chargeable to client and state aided only as to the first précis at an agreed increment feeing level purely on clients’ income ability – thereafter such repeat précis be funded entirely by the client. Note: the client only becomes liable to pay for the précis when the client agrees and accepts the lawyers’ précis proposal. When both client and lawyer agree the précis, both swear an oath to a ‘memorandum of understanding’ incorporated within the précis. No swear no legal services.

2. Visible accountability

The client, the lawyer, and each legal functionary and/or officer of the court (including judiciary) agree a ‘task specification’. Should any party breach such a task specification then not only will such breach constitute a criminal offence – but if such breach is wilful then damages to the other parties and state might flow. To the client, their task specification should be contained in the memorandum of understanding – obviously it would contain such matters as telling the whole truth, but should also confirm other issues such as time periods for the production of evidence under client control. To the lawyer, legal functionary, officer of the court or judge their task specification would be lengthier yet of a more general nature. Such specification would include an embargo upon speaking about client matters to outside parties (an outside party to include a spouse).

3. All activities recorded on tape

A taped recording of all meeting, phone calls etc should be kept. This is no more than what happens in the financial world. Similarly all tribunal or court hearings should be recorded – furthermore all decisions along with the judicial deliberations leading up to those decisions should be recorded --all recordings to be accessible as appropriate.

4. An independent complaints board

Unless my first three recommendations are entered into then the bottom line is that apart from public perception an independent complaints board will function little better than our existing setup. To make a rational judgement there must be evidence of the cause, effect and responsibility. Such evidence is largely bereft in the current system – indeed its very absence leads to confusion and the heart of ill will.

5. Who pays for the independent complaints board

The client pays the lawyer for the précis. The précis charge is then passed on by the lawyer to (say) the independent complaints board – this sum (depending upon amount) could then cover the costs of the complaints board and possibly also cover the costs of legal aid.

6. Legal aid to compensate the winner’s legal costs in court actions

Consideration should be made as to whether legal aid should be part loan and/or grant. Say in circumstances where upon the précis the lawyer states that in litigation there is only a 50% chance of success and subsequently the client loses. Then the client may be called upon to repay the loan occasioned by payment of the other side’s legal fees (which should be met by the losing party; change in rules needed).
7. Qualified lawyers preferred

In my opinion it would be a retrograde step to allow third parties other than qualified lawyers to give paid professional advice or represent individuals in court. I do believe an individual should have the right to directly consult with an advocate. I do believe that in a closed private limited company or a partnership a controlling director or partner should be allowed to represent the company’s interest. I do believe a party litigant should be entitled to use or call upon unqualified assistance but such should not be chargeable.

How the above will assist:

What is often ignored is that the existing Scottish legal system not only works well but provides a quality of justice superior than that found in most other countries in the world. Agreed all things can be improved upon but change does not per se constitute advancement. Speaking as a party litigant looking into – especially the Edinburgh legal fraternity – I see cronyism as the root stock to both perceived and actual legal maladies. Quite simply to break the incestuous power of cronyism you need to make all people (including the client) accountable. If nothing is committed to paper and/or recoded then personal accountability is lost in the sea of cronyism.

Fundamentally, I still believe in the intrinsic goodness of most people. That said I consider the system of accountability suggested above will radically improve not only the perception but actual justice.

Personal Background

As an individual I am told that I have been involved in more litigation in Scotland than any other party litigant. This has not been of my own choosing but due to a strange set of circumstances I was effectively blackballed from legal representation by the Faculty of Advocates and have experienced a lesser jaundiced outcome from members of the Scottish Law Society. If called upon I can provide full details but the fount of my legal troubles is (I believe) I am a victim of cronyism because I was not prepared to concur to a two tier system of justice in which establishment members (including judiciary) sorted matters for their mutual convenience. That said many of my friends are judges and lawyers, along with members of my family including my eldest son.

The method of accountability outlined above I believe will prevent and/or alleviate such cronyism which prompts the injustice that your ‘Bill’ seeks to remedy.