

Advocacy in the Higher Courts in Scotland

A survey of decisions

in 2008

Custom Content 2009

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We have been tracking cases with written opinions in the Higher Courts in Scotland since 1 January 2008. Here are the results of our survey of 2008.

This survey is purely quantitative. It does not assess the quality of representation, nor are the results of any particular case recorded. This survey simply counts the number of times that an advocate or solicitor advocate appears in a published opinion of the court. That means that all the other work that an advocate or solicitor advocate might do is not reflected in this report. Certain advocates may have a busy advisory practice, solicitor advocates will have office based commitments.

Introduction

Scotland's legal system is separate from those of England and Wales and Northern Ireland. In Scotland, the legal profession is divided between solicitors and advocates, the distinction being similar to that between solicitors and barristers in England and Wales. Scottish solicitors have traditionally represented their clients in the lower courts (such as the Sheriff Court and the District Court), only being excluded from the High Court of Judiciary and the Court of Session. However, under Section 24 of the Law Reform (Miscellaneous Provisions) Scotland Act 1990, suitably qualified solicitors, known as solicitor advocates, were granted rights of audience in the Supreme Courts in Scotland as well as in the House of Lords and the Judicial Committee of the Privy Council. Solicitor advocates were first admitted in Scotland in 1993.

The total number of cases tracked in this survey is 321. This covers the Court of Session (Outer House and Inner House), the High Court of Justiciary, and the Land Valuation Appeal Court.

The Court of Session

The Court of Session is the supreme civil court of Scotland. It is both a court of first instance and a court of appeal and sits exclusively in Parliament House in Edinburgh.

The Inner House is the part of the Court of Session which acts as a court of appeal for cases from the Outer House and from

appeals in civil cases from the Sheriff Courts, the Court of the Lord Lyon, Scottish Land Court, and the Lands Tribunal for Scotland. Unlike in the High Court of Justiciary, there is a right of appeal to the House of Lords from the Inner House. The High Court of Justiciary is the supreme criminal court of Scotland.

The High Court of Justiciary

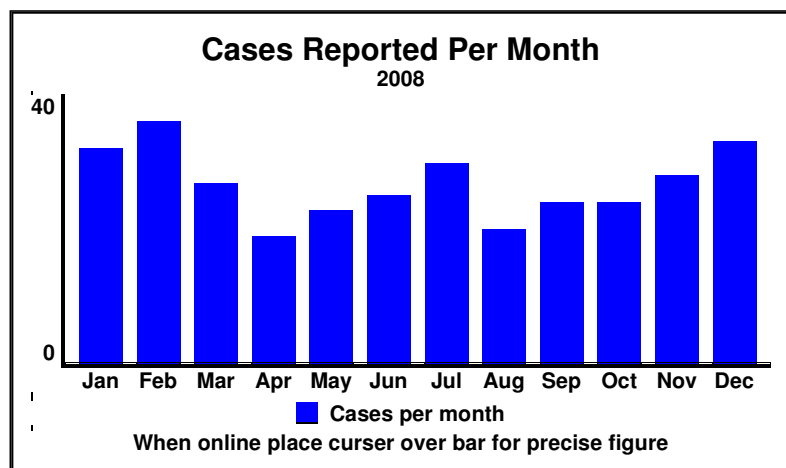
The High Court is both a court of first instance and a court of appeal for criminal cases. As a court of first instance, the High Court sits mainly in Parliament House, or in the former Sheriff Court building, in Edinburgh. The High Court also sits at various other locations in Scotland. As a court of appeal, it sits only in Edinburgh.

Only once has the the High Court of Justiciary sat outside Scotland, that for the trial of two individuals following the Lockerbie bombing.

Advocates

According to the Faculty of Advocates website (<http://www.advocates.org.uk>): "The Faculty of Advocates is an independent body of lawyers who have been admitted to practise as Advocates before the Courts of Scotland.

The Faculty has been in existence since 1532 when the College of Justice was set up by Act of the Scots Parliament, but its origins are believed to predate that event. It is self-regulating, and the Court delegates to the Faculty the task of preparing Intrans for admission as Advocates. This task involves a process of examination and practical instruction known as devilling, during which Intrans benefit from intensive structured training in the special skills of advocacy. No-one can be presented to the Court as suitable to be a practising Advocate without satisfying these training requirements. The Faculty also provides for its Members an ongoing



programme of talks, seminars and conferences covering a wide range of topics. The Faculty's training courses are regarded as among the best in the English speaking world."

Members of the Faculty of Advocates are commonly referred to as "Counsel".

Members of the Faculty of Advocates organise themselves into "Stables". While each advocate is self employed with each stable they share secretarial and administrative support.

Solicitor Advocates

According to a report published by the Scottish Government in 2000, civil and criminal practitioners gave slightly different reasons for becoming a solicitor advocate. Civil solicitor advocates stated that they had gained the qualification in order to expand the services available to their clients as well as for their own personal satisfaction. Criminal solicitor advocates had sought extended rights of audience in order to enhance their own careers and to do something different and more interesting. The majority thought that obtaining extended rights of audience would influence their careers and, along with managing partners, they believed that having a solicitor advocate would influence the development of firms.

