

## Australia's adversarial v. France's non-adversarial legal system

### Adversarial trial (PROOF)

- Assumption is that truth is revealed through a contest between the parties presenting evidence before a passive adjudicator
- Common law utilising countries usually adopt this system: e.g., Britain, USA, India, New Zealand, South Africa, Fiji, Canada

Trial Process	
Role of Judge	<p>An impartial adjudicator and judge who oversees the trial. They have various responsibilities, including:</p> <ul style="list-style-type: none"> <li>• Ensuring a fair trial by enforcing trial procedures (upholding natural justice).</li> <li>• Deciding the remedy in civil trials.</li> <li>• Deciding the sentence in criminal trials.</li> </ul> <p>• In the absence of a jury, the judge will also decide the facts of the case (which evidence is believable and thereby whether the accused/defendant is guilty).</p>
Role of parties	<p>Legal (either natural or artificial) persons who dispute about how law should resolve their disagreement in court.</p> <p>Prosecution/plaintiff: Bears the onus/burden of proof, must reach the standard of proof required.</p> <p>Defendant: Presumed innocent with no burden of proof, has a right to silence.</p> <p>Both parties are responsible for:</p> <ul style="list-style-type: none"> <li>• Gathering evidence.</li> <li>• Presenting evidence in court.</li> <li>• Testing other parties' evidence.</li> <li>• Arguing about how statute law should be interpreted in their case.</li> </ul>
Role of legal representation	<p>'Equalisers', bear the burden of running the case on behalf of a party. They are legal experts hired by any party, and often are required to have any chance of success.</p> <p>Their responsibilities include:</p> <ul style="list-style-type: none"> <li>• Examining and cross-examining witnesses.</li> <li>• Submitting high-quality evidence to court to be deliberated upon by the judge/jury.</li> </ul>
Rules of evidence	<p>Andrew Mollard and Gene Gibson: example of focus of system on evidence/proof presented rather than the truth (see advantages/disadvantages).</p> <p>Relevance: evidence must be applicable to the case: bearing relevance to establishing the action or inaction alleged or, in some cases, the intent to undertake such an action. Evidence must be able to be tested and relate to matters of fact in contention. Irrelevant evidence is excluded.</p>

# Non Adversarial Review Of Migration Decisions The Way Forward

**RJ Alexander**



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