The adversarial system (AS) is a mode of dispute resolution where the competing claims of the parties are usually presented by legal representatives who have no interest in the outcome of the dispute, to an impartial non-interventionist third party with the power to impose a conviction (Bottomley and Parker).

There are 3 presumptions that characterise the AS and as we will see the problems of inequality to access justice arise. As McBonet famously put it: ‘there are two-tiers of justice’ where the upper tier is a traditional view of justice whilst the lower tier is the hidden view of justice which unfortunately concerns the majority of the cases.

Despite the imprecision of the term, the ALRC views justice as requiring:
- consistency in process and result
- a process free from coercion and corruption
- equality before the law

To ensure fairness, the judiciary needs to guarantee equal opportunity – regardless of resources – amongst litigants to assert or defend their legal rights. This is difficult to achieve if we look closely at the 3 presumptions characterising the AS which are the following:
1. presumption that both parties are equal and that each party has control over the litigation process.
2. presumption that both parties abide by the same set of substantives and procedural rules
3. presumption that judges are independent and non-interventionist
Inequality of the parties in practice

The AS by assuming that both parties are equal is being unrealistic. There is a huge gap between the theory and the practice. The major obstacles that face unwealthy litigants are the following:

1. Knowledge issues
2. Resource issues and power issues

In an AS, the parties play a central role before the court often regarded as a ‘battleground’ whilst the judge as a non-interventionist (Bottomley and Parker). Because of the presumption of equality, access to skilled lawyers is indispensable. IN this context, access to justice equates to access to lawyers.

However, various studies tend to show that there has been a significant increase of litigants in person before a court which is primarily caused by lack financial capacities of the party to obtain legal representation and legal aid. Query whether litigants in person are in as good a position to obtain justice as represent parties due to their inexperience, lack in legal skills and their ill preparation (LCA).

A second problem in practice is ‘the battle’ between ‘one shotters’ and ‘repeat players’ (Galanter). One shotters involve individual (spouses, common neighbours, etc.) whilst ‘repeat players’ concern corporation or government (ie prosecutor, etc).

It has been showed that repeat involvement of the latter give tremendous advantages such as:
- advanced intelligence about the process
- expertise and economies of scale
- working relation with keys players
- expertise in relation to use the legal system, etc.

Another major problem of inequality between the parties arises in relation to the lawyer and client relationship. The basis principal of legal practice is that the lawyer must obey the directions of the client. In theory, the lawyer is the servant of the client. What about the practise? Again, there is a double standard depending on the type of the particular client ie whether the client is indigent (often in criminal cases) or a commercial client (wealthy supposedly).

Socially disadvantaged clients depart from the model of client-control to adopt lawyer-control model (Naffine) where it is the lawyer who assumes command. This situations is reversed regarded the corporate client who might be knowledgeable and accordingly able to retain control of the legal process.

This difference in treatment is very appalling especially in the criminal context where 75-80% of cases are dealt with by guilty plea (usually suggested by the lawyer to avoid waste of time and money). [Proof? Source?] This is clearly a system of ‘justice without trial’ (Jerome Skolnick) and towards a particular type of litigants – the poor.

A major reform of the adversarial system
As the legal profession, the courts and the government are all actors of the judicial system. It seems reasonable to claim that they should all feel responsible for dealing with the problems of access to the judicial system. However, many express the view that neither the legal profession nor the courts should assume the State responsibilities (ALRC).

One must not forget that one of the most basic functions of the State is to ensure access to justice. The government should increase legal aid funding in order to bridge the gap between the wealthy and the poor. Also, it should increase the level of community education about the law generally to address knowledge resources and power issues.

The courts should bring about information or education initiatives aimed at the public. Simplified or user-friendly procedures and case management strategies are also encouraged to enhance accessibility to non-lawyers.

Finally, the legal profession should not forget its duty towards the community. There is an inherent moral obligation for lawyers to provide legal service to those who are in need (Ross). Accordingly, more pro bono work and volunteer work is encouraged. Furthermore, lawyers should provide flexible fee arrangements and lower their costs to the unhealthy.

It has been said that reshaping professional ethics may remedy some of the deficiencies of the AS. A renewed sense of professionalism amongst lawyers could have significant effect. This would notably remind lawyers their primarily duty towards their client – no matter who he is.

[D because fairly well structured discussion of relevant issues; intro week, not much original analysis, and didn’t really consider whether substantial overhaul required].