



WORKING GROUP
ON A
COURTS COMMISSION

SIXTH REPORT

CONCLUSION

November, 1998

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The Sixth Report is the final Report of the Working Group on a Courts Commission which was established in October, 1995 and met for the first working meeting on 6th November, 1995. Five Reports and two Working Papers of the Group have been published to date, see list attached.

The Sixth Report presents a short overview of the work of the Group and reports on matters outstanding.

Courts Service. The major work of the Group related to the Courts Service. In the **First, Third and Fourth Reports** advice was presented to the Government on the establishment of a Courts Service. **The Courts Service Act, 1998** passed into law on 16th April, 1998, the Courts Service Transitional Board was thereby established. Its function is to prepare for the Courts Service and appoint a Chief Executive Designate. The Chief Executive Designate has been appointed subject to contract. It is anticipated that the Courts Service will commence in 1999.

Change Management. The modernisation of the courts was envisaged as a **two track process**. On the one hand is the institutional change, the introduction of the Courts Service. On the other hand is the introduction of modern management techniques. The work done so far in this area is set out in Chapter II of the Sixth Report.

Case Management. Case Management was also addressed by the Working Group and a Conference was held with international experts. The Conference papers are published in the Working Paper on Case Management, May, 1997.

Information. The issue of information on the Courts and for the Courts' Staff has been an important part of the work of the Group. It was addressed in the **First Report**, in the **Working Paper on Information and the Courts**, November, 1997 and in Chapter IV of this Report. (Access to Court Documents).

Family Law Courts. There is an analysis of and recommendations on Family Law Courts in Chapter V.

Drug Courts. In the **Fifth Report** the Group recommended that a Drug Court Planning Programme be commenced, a Drug Court Planning

Committee be formed and that a Drug Court Co-ordinator be appointed. This report has been published and the Minister for Justice, Equality and Law Reform has announced that he has secured Government approval for the establishment of the Drug Court Planning Committee to prepare for the establishment of a Drug Court Pilot Project in the District Court early in 1999.

Court Sitting and Vacations are considered in Chapter VII where conclusions are reached and recommendations made. The fact that Court work continues throughout the year is described. To illustrate this the work done in the Courts in August and September, 1998 is set out. For example, the statistics gathered show that the High Court sat every day in July and August except for the day of the funeral of The Hon. Mr. Justice Peter Shanley. It is recommended that the term "vacation" is a misnomer, is misleading, and should be abandoned, that the Court year should be described as being divided into Court Terms and Recesses. It is recommended that the system of organising the legal year should not be altered at this time of great change in the Courts but that the Courts Service should formulate a policy on Court Sittings and keep a number of matters under review.

The issue of Judicial Conduct and Ethics is the subject of Chapter VII. The system of regulating judicial conduct in a number of other jurisdictions is considered. It is recommended that the Chief Justice establish a Committee to advise and prepare the way, if determined appropriate, for the establishment of a Judicial Body which would contribute to high standards of judicial conduct and establish a system for the handling of complaints of judicial conduct.

An end and a beginning. This report brings to an end the work of the Group. It is also a beginning — the Courts Service Transitional Board is in being and the **Courts Service** will commence in 1999.

Publications of the Working Group on a Courts Commission

First Report

Management and Financing of the Courts, April, 1996.
Summary

Second Report

Case Management and Court Management, July, 1996.
Summary

Third Report

Towards the Courts Service, November, 1996.
Summary

Fourth Report

The Chief Executive of the Courts Service, March, 1997.

A Working Paper

Conference on Case Management, May, 1997.

A Working Paper

A Working Paper on Information and the Courts, November, 1997.

Fifth Report

Drug Courts, February, 1998.
Summary

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Introduction

The Working Group on a Courts Commission was established in October, 1995 by the Minister for Justice Mrs. Nora Owen, T.D.. The Working Group was requested to carry out a wide ranging review of the courts. The Terms of Reference of the Group were:

1. To review, (a) the operation of the Courts system, having regard to the level and quality of service provided to the public, staffing, information technology, etc.; (b) the financing of the Courts system, including the current relationship between the Courts, the Department of Justice and the Oireachtas in this regard; (c) any other aspect of the operation of the Courts system which the Group considers appropriate.
2. In the light of the foregoing review, to consider the matter of the establishment of a Commission on the Management of the Courts as an independent and permanent body with financial and management autonomy (as envisaged in the December 1994 document entitled "A Government of Renewal").
3. To have investigative, advisory and recommendatory functions and to make a report (and any interim reports and recommendations as they see fit) to the Minister for Justice on the foregoing matters.

The first working meeting was held on 6th November, 1995 and thereafter the Working Group met on subsequent Monday mornings and tackled the issues raised in its Terms of Reference enthusiastically and with energy. On the change of government in June 1997 and the appointment of Mr. John O'Donoghue, T.D., as Minister for Justice,

Equality and Law Reform the Group continued its work and Reports. This is the Sixth Report of the Group, five Reports and two Working Papers have been published.

This document contains a short overview of the work of the Group and reports on matters outstanding.

CHAPTER I

The Courts Service

At the commencement of the Group's work it soon became apparent that the first question to be addressed was the relationship between the Courts, the Department of Justice and the Oireachtas and whether an independent body enjoying financial and management autonomy should be established to perform the functions relating to the courts then primarily performed by the Department of Justice. In April 1996 in the First Report, Management and Financing of the Courts, the Group recommended that there should be established an independent and permanent body to manage a unified court system. It was recommended that the body be known as the Courts Service and be created by statute.

On 25th May, 1996 the Government approved the publication of the First Report and accepted in principle the primary recommendation that there be established by statute an independent and permanent body to manage a unified court system to be known as "The Courts Service" subject to appropriate arrangements being agreed as to accountability to the Dáil for the Courts Service and agreement on the most effective arrangements as to the composition of the Board of the Service. The Government determined that the Chief Executive Officer should be a member of the Board. The Minister for Justice asked the Working Group to submit further reports on how the establishment of a new Courts Service could be progressed.

The Third Report of the Working Group, Toward the Courts Service, dated November, 1996 was the Group's response. In that report were set out proposed Heads of a Courts Service Bill. In the Third Report the Group recommended that steps be taken as a matter of urgency to legislate for a Courts Service as advised.

In November, 1996 the Government decided that the necessary legislation establishing the Courts Service, as advised by the Working Group, should be drafted as a matter of priority. The Government authorised the Minister for Justice to request the Working Group to

prepare immediately a report on the post of Chief Executive of the Courts Service.

In March 1997, the Fourth Report, The Chief Executive of the Courts Service, was presented by the Working Group to the Minister. That Report contained a person specification of the Chief Executive of the Courts Service, a job outline for the Chief Executive, a draft advertisement for the post and a proposed core management structure of the Courts Service.

On 16th April, 1998 the Courts Service Act passed into law. It provided for the immediate establishment of the Courts Service Transitional Board with the functions of preparing for the assumption by the Service of the functions to be vested in it on its establishment and of appointing a Chief Executive Designate who will become the Chief Executive of the Courts Service. The Chief Executive Designate has now been appointed subject to contract and his function under the Act will be to assist the Transitional Board in carrying out its function of preparing for the establishment of the new Service.

Throughout the duration of the Working Group contact was made and maintained with other jurisdictions especially the United States of America, Australia, Canada, England and Wales, Northern Ireland and with the European Courts. As the work of the Group progressed interest was expressed by other countries in the Irish approach. For example, at the request of the Council of Europe, the Working Group organised a "Council of Europe and Working Group on a Courts Commission Working Meeting for members of the Russian Judiciary" in Dublin on 10th June, 1998. The Conference was attended by the Chief Justice of Russia, Chairman Viacheslav Mikhailovich Lebedev, Chairman of the Supreme Court of the Russian Federation; Valentin Semionovich Cherniavsky, Director of the Judicial Department under the Supreme Court of the Russian Federation; five judges who chair Regional Courts; Vladimir Ivanovich Shyriayev, Director of Economic Affairs of the Supreme Court of the Russian Federation and Vladimir Ivanovich Gukov, Director of International Legal Affairs of the Supreme Court of the Russian Federation. Also, at the request of the Council of Europe, a representative of the Working Group, Mr. Justice Ronan Keane, attended Conferences at Rostov upon Don, Russian Federation; Kiev, Ukraine; and Lublin, Poland and spoke on the reports of the Working Group and the Irish Courts Service.

CHAPTER II

Change Management

The modernisation of the management of the courts was envisaged as a two track process. On the one hand was the institutional change, the introduction of the Courts Service. On the other hand was the development of modern management techniques, such as team work and partnership and the growth of a new management ethos.

In September 1996 the Courts Training Centre made a submission to the Working Group outlining possible future directions that the Training Centre could take to assist in moving the service in the direction outlined by the reports of the Working Group.

The process commenced following discussions between the Working Group on a Courts Commission, the Courts Training Centre and the Centre for Management and Organisational Development (Department of Finance). Arising from these discussions it was agreed to put in place a series of training events with the objective of:

- (a) Raising consciousness among staff as to the implications of change for the Courts,
- (b) Providing staff with examples of change management initiatives from both national and international contexts,
- (c) Assisting staff in identifying key organisational and management issues that would be required to be addressed in the new Courts Service,
- (d) Providing senior Courts management with a range of options of management development programmes to assist them develop their role and skills in the changing context of the Courts,
- (e) Providing a communications channel for staff to engage in the change process,
- (f) Encouraging staff to express their fears, concerns and hopes for change, and

- (g) Facilitating staff to engage in researching and formulating strategies in respect of key organisational and management issues.

The design and structure of the seminars and workshops enabled staff from all functional areas of the courts within their own grading band to engage in the process. This had the beneficial effect of allowing colleagues to come together and focus on a range of common concerns requiring to be addressed in the new Courts Service.

A range of facilitative and process type interventions were used in assisting in this process, they included:

- Workshops/Seminars
- Conferences
- Sample questionnaires
- Group Discussions
- Focus Groups
- Keynote speakers

It was recognised that critical to the success of such a process was the engagement of all staff in the diagnosis of the key organisation and management issues.

This process challenged participants to think through in a strategic manner issues to do with:

- Current organisational mandates both formal and informal,
- Internal and external environmental analysis,
- Stake holder analysis,
- Key values within the administrative systems, and
- Identification of key issues.

This surfaced a number of fundamental questions to do with the organisation of the administrative arm of the courts:

- What is the Courts Service as an organisation?
- What does it do and how does it discharge its functions?
- What should it aim to become?

The programme continued in the workshops centred around syndicate group exercises on matters such as:

Who are the stake holders in the Courts Service?

What are their needs and expectations?

How do they measure our performance?

How do we perform against their criteria?

What are the courts' needs from the stake holders?

What are the values and culture within the current service?

What are the most important values staff would like to see in the new Service?

The methods by which the new Courts Service can set about developing best practice in the fields of:

Customer Service,

Human Resources Management, and

Internal and External Communications.

A major event organised was the Senior Managers Conference held on the 9th and 10th January, 1997. This was the first occasion that Senior Managers involved in the courts system had ever met together.

This was followed throughout 1997 by a series of events which allowed all staff within the court service an opportunity to engage in the change process. Workshops were held in Dublin, Cork, Limerick, Athlone, Sligo, Galway and Kilkenny.

Groups who were facilitated included:

County Registrars,

Senior Managers,

Assistant Principal Officers,

Chief Clerks District Court,

Chief Clerks Circuit Court,

Higher Executive Officers and Court Clerks,

Executive Officers and Staff Officers, and

Clerical Officers.

In all 29 workshops were undertaken in 1997. Over 600 staff attended.

The highlight in 1997 was the Conference, "Managing for Excellence in a New Courts Service", jointly organised by the Courts Training Centre and the Organisational Development Unit of the Department of Justice, Equality and Law Reform, attended by over 350 people and held on the weekend of the 31st October to 2nd November, 1997. Keynote speakers from the United States of America and Australia addressed the Conference on issues including the preparation and presentation of a budget, the planning and putting in place of policies and programmes to meet the challenges of the 21st Century and the development of a management and leadership culture within the Courts Service.

The workshops also allowed for an interaction between the Working Group and staff. At all of the workshops a speaker from the Working Group attended and kept staff up to date with the Working Group's programme. There was always a question and answer session with the speaker and the staff.

In the 1997 workshops the emphasis was on:

- The working environment as they view it,
- Their concerns on the proposed new structures,
- The background to the recommendations of the Working Group,
- How they could influence the process of change,
- The new sets of relationships, and
- Accountability.

Following on from the 1997 programme a number of groups and individuals made submissions to the Working Group on their views on and ideas for the new Courts Service.

The momentum of the programme has been maintained. The workshops in 1998 started the process of staff sketching out:

- Performance criteria for the new Courts Service
- The new change process
- The skills staff would need to be able to successfully partake in the new Service
- The key building blocks to make the change process work
- Possible strategies to effect positive change in the system

A model system and

Best practices in a number of key areas/issues.

As in 1997, there were speakers at the workshops who kept staff up to date with the progress in bringing the new Courts Service to fruition. This allowed staff to question and explore the key moves and timetable for the start of the new Service.

The culmination of the 1998 process was the formation by the Senior Managers of study groups consisting of themselves and other staff to examine a number of key building blocks for the new Courts Service. The topics covered were:

Management and Leadership

Values and Culture

Customer Service and Core Work practices

Finance and I.T.

System, Policy and Legislation

HRM and Training

Communications

Performance Management

The groups formulated suggestions and ideas on the range of topics which were termed the central building blocks for the new service.

The point of this exercise was not to prescribe answers or indeed solutions but to allow participants to engage collectively with colleagues from different functions and levels within the organisation on defining the best way forward. Sessions were conducted in a very positive manner by participants. All of the groups involved were positively disposed towards the new Courts Service.

The papers of the study groups were presented to the Courts Service Transitional Board on 23rd September, 1998. Two representatives of each group made an oral presentation to the Transitional Board on each topic.

It is clear that the sessions have awakened staff to the possibilities that change can bring, helped to allay some of the fears they had, identified champions within the organisation who could lead the change at all levels, started the process of building a corporate identity for the

new service, helped remove some of the barriers to change, and helped staff to network with each other.

The approach described enabled participants to paint pictures of what will be required if the new Courts Service is to achieve the required standards of effectiveness and efficiency. This was an exciting and unique undertaking of which all speakers and participants can be justly proud.

The events were organised by the Courts Training Centre and were facilitated by Tom Clarke, Senior Training Specialist, Centre for Management and Organisational Development (Department of Finance) and Terence Agnew, Courts Training Officer.

CHAPTER III

Case Management

In addition to considering the management structure of the Courts at a national level the Working Group also looked at some aspects of management at jurisdictional level.

In the Second Report of the Working Group, Case Management and Court Management, July, 1996, several proposals were made. It was recommended that appointments to the Presidency of Benches be for seven years, non renewable. This recommendation became law in section 4, Courts (No. 2) Act, 1997.

Also, in the Second Report recommendations were made as to the Rules Making Committees. It was recommended that when the Courts Service was established that the Chief Executive Officer (or his or her nominee) together with a senior member of staff of the relevant jurisdiction nominated by the Chief Executive Officer be members of each of the Rules Making Committees and that the necessary legislative steps to so enable be taken. Section 30 and section 31, Courts Service Act, 1998 provide that the Chief Executive Officer (or his or her nominee) shall be a member of the Superior Courts Rules Committee, the Circuit Court Rules Committee and the District Court Rules Committee.

In Chapter 3 of the Second Report the Group raised the issue of judicial case management. Judicial case management involves active oversight by the court of the progress of court proceedings. It represents a fundamental change of approach. It would signal a significant transfer of the responsibility for the management of civil litigation from the litigants and their legal advisers to the courts. The Group planned four steps. Step one envisaged highlighting the issues, facilitating a debate, consulting the relevant parties and organising a Conference on Court and Case Management. Step two was a Conference where international experts on the topic from other jurisdictions debated the issues. Step three was consultation with key groups following the Conference.

Finally, step four envisaged a final report to the Minister on Court and Case Management.

A Conference was held on 16th November, 1996.¹ The Right Honourable, The Lord Woolf, Master of the Rolls, England and Wales, spoke of judicial case management as being crucial to the changes necessary in the Civil Justice System in England and Wales. The Honourable Mr. Justice Brian Kerr spoke of commercial actions as an example of case management in Northern Ireland. The Honourable Aaron Ment, Chief Court Administrator, Connecticut Superior Court, United States of America spoke of Connecticut's experience of case management. The specific type of case management suitable to family law courts was described by the Honorable James D. Garbolino, Placer County Superior Court, Auburn, California, United States of America. A consideration of the Australian experience was given by The Honourable Mr. Justice Ronald Sackville, Federal Court of Australia. These and other papers made for a most successful Conference in raising the issue of case management. In closing the Conference the Chairman, The Honourable Mr. Justice Declan Costello, spoke of the need for reform.

Judicial Case Management as a concept continues to be analysed by the Presidents of each Jurisdiction and other Judges. Practical steps are being developed to manage cases and lists. This matter is best advanced now by the Judiciary, the Judicial Studies Institute, the Courts Service and the Courts Training Unit.

In the Second Report the Working Group also studied administrative case management in the Court system. This was an ongoing process throughout the existence of the Working Group. Most of the offices considered in the Second Report were attached to the High Court. However, many of the issues raised therein were relevant to other jurisdictions. It was anticipated that other jurisdictions would be considered in later Reports.

With the advent of the Courts Service Transitional Board and the planned commencement of the Courts Service in 1999, the Working Group considers that matters of court management, including administrative case management, are matters for the Courts Service. The Working Group will transfer to the Courts Service all the relevant documentation of its work in this field.

¹ The papers of the Conference are published in the Working Paper entitled Working Group on a Courts Commission, Conference on Case Management, May, 1997.

CHAPTER IV

Information and Access to Court Documents

- 4.1 Information and communication** should be essential features in the Courts Service. Information and communication systems should be established both for those within the Courts Service and by the Courts Service for the purpose of providing information on the Courts to the public.
- 4.2** After the recommendation of the First Report of the Working Group² an **Information Desk** was established in the Four Courts.
- 4.3 A Working Paper on Information and the Courts**³ recommended that there be established an Information Office within the proposed Courts Service.
- 4.4** The **Courts Service Act, 1998** at s.5 delineates the functions of the Service and states that, inter alia, it shall:
- “(c) provide information on the courts system to the public”.
- 4.5** It is envisaged that the Courts Service will establish an **Information Office** as soon as practical after it comes into operation.
- 4.6** Part of the information process and access to the courts is the question of **access to court documents**.

² First Report of the Working Group on a Courts Commission entitled “Management and Financing of the Courts”, April, 1996 Recommendations B.1.

³ Published, November, 1997.

4.7 REQUEST

The Government noted the findings of the Commission on the Newspaper Industry including a recommendation of the Commission concerning the provision of procedures for making available to bona fide journalists acting as such the right to inspect court documents which have become part of a public hearing in court. The Government decided that, due to its detailed and technical nature, the Working Group on a Courts Commission should be requested to review and report on this recommendation. Consequently, the Minister for Justice requested the Working Group to consider and report on the matter.⁴

The Commission on the Newspaper Industry, which was chaired by the former Chief Justice Mr. Justice Thomas A. Finlay and which reported in June, 1996, stated:—

“7.59 Two other matters which do not form part of the law of libel but which receive significant emphasis in submissions on the burdens imposed by the existing law of libel on newspapers, are the questions firstly of access by newspapers to court records and documents so that they can have an accurate source of information for reporting court proceedings ...

7.60 These problems, though submitted by a number of different newspapers, are particularly the concern, the Commission is satisfied, of local papers.

7.61 The Commission accepts the genuineness of these complaints and would recommend that there should be a simple and certain procedure for making available to bona fide journalists, exercising their right to provide material for newspapers, the right to inspect court documents which have become part of a public hearing in the Court.”⁵

⁴ Request from the Minister for Justice to the Working Group on a Courts Commission, 20th December, 1996.

⁵ Report of the Commission on the Newspaper Industry, 1996.

4.8 A TIME OF HISTORIC CHANGE

The request of the Minister came at a time of historic change in the management of the courts. When the Minister made the request the courts were managed by the Courts Division of the Department of Justice. However, from the establishment of the Working Group in 1995 steps have been taken by the Government to alter the management structure of the courts. As part of the ongoing process, on 16th April, 1998 the Courts Service Act, 1998 was signed by the President. Accordingly, in time, the management of the courts will be transferred from the Courts Division of the Department of Justice, Equality and Law Reform to the Courts Service.

Consequently, events have overtaken this request in that the management of the courts will be a matter for the Courts Service in due course. These advices are made with that transition in mind.⁶

4.9 WORKING ARRANGEMENTS

The Working Group considered carefully the issues raised in the request. Research was done on the issue in Ireland and in other jurisdictions. Written submissions were sought and received from both individuals and institutions. A list of those who made written submissions is in Appendix A.

The Working Group conducted a Conference on Saturday, 25th April, 1998 on the issue of Access to Court Documents. At that Conference oral submissions were made, some being to emphasise matters which had already been covered in written submissions and others to highlight new issues. A list of those who made oral submissions at the Conference is in Appendix B.

Papers were presented to the Conference from:

- (a) Chief Justice Thomas R. Philips, Texas.
President of the National Conference of Chief Justices,
United States of America.
- (b) Ms. Denise Davis,
Director of Texas Judicial Council.

⁶ A Report in the words of this Chapter was sent by the Working Group to the Minister for Justice, Equality and Law Reform in May, 1998 when it was suggested that it could be published as part of this concluding Report of the Working Group on a Courts Commission.

- (c) The Hon. Judge Mike Wood,
Judge of Harris County Probate Court No 2 and
Chair of Texas Judicial Council Committee on Court
Records.
- (d) Mr. Mike Wicksteed,
Chief Press Officer and Deputy Head of
Communications,
The Lord Chancellor's Department,
London.

The first three papers gave us the benefit of the American experience on access to court documents. Mr. Wicksteed presented a paper entitled "The Role of the Lord Chancellor's Press Office". This paper is to be found in Appendix C. This is a very useful paper. As Mr. Wicksteed said:

"... in the spirit of not reinventing the wheel,
we're happy to share our experiences."

The Conference was very successful. It provided a focus for discussion and a frank exchange of views. It enabled examination and dialogue on the practical issues and difficulties which arise in the day-to-day reporting of the courts. It was a forum which should be convened again in an appropriate format.

The Working Group has considered carefully the submissions, both oral and written, which have been presented to it, the papers of the speakers at the Conference on the 25th April, 1998 and research done within the Group.

4.10 FREEDOM OF INFORMATION

There has been a major change in the law on information and government. The Freedom of Information Act, 1997 came into force on 21st April, 1998. This Act enables members of the public obtain access to information in the possession of public bodies to the greatest extent consistent with the public interest and the right to privacy. However, with certain exceptions, the Act does not apply to a record held by the courts.⁷

⁷ Freedom of Information Act, 1997, Section 46.

Departments of State and Public Bodies are establishing freedom of information offices and systems. They are doing so pursuant to the Freedom of Information Act, 1997.

In view of the Constitution of Ireland and the general freedom of information policy of a modern democratic State as illustrated by the Freedom of Information, Act, 1997, it is appropriate that similar structures be established in the Courts Service to aid public access to information including access to public documents of court proceedings.

4.11.i CONSTITUTION

The Constitution states that justice shall be administered in courts established by law by judges appointed in the manner provided by the Constitution and, save in special and limited cases as may be prescribed by law, shall be administered in public.⁸ The majority of cases are held in public. The issue then arises as to what documents of the court proceedings, or part thereof, are public. The ultimate decision as to whether a court document is public or not lies with the judiciary.

4.11.ii IN CAMERA

Some cases are held in camera or with specific restrictions as to what may be published.⁹ These cases have specific rules as to publication. Access to documents in such cases is limited.

4.12 COURT DOCUMENTS

Court documents may be documents of a case held in public where the particular documents are public; or documents of a case held in camera where the documents are not in the public domain; or documents of a case held where there is a statutory discretion as to public access. In addition, there may be other issues e.g. vexatious proceedings. Where there is a doubt as to the status of a document it is for the court to resolve the matter.

Furthermore, the time at which documents, or part thereof,

⁸ Article 34.1 Constitution of Ireland.

⁹ Circumstances in which a case is heard in camera or where a court has a discretion to exclude persons are set out in Appendix A, Working Group on a Courts Commission, A Working Paper on Information and the Courts, November, 1997.

become public documents is a matter for determination. While there are many cases where the status of documents is clear there are also many situations where the matter is not apparent. These issues are not always easy to determine.

For example, there is the matter of the “constructive opening” of documents. The “constructive opening” of documents in court arises when a document is partially opened in court but the full contents of the document are not read out. This poses difficulties for journalists if there is no court order as to the portions not read out in open court. Are the portions which have not been read out public? Is it appropriate to provide the full document to journalists? This issue may arise in opening any document but most frequently may occur in relation to affidavits in ex parte applications.

These issues cannot be determined by a broad general rule. While it is necessary in certain circumstances to obtain a Court Order as to the status of a document, Courts Service staff should be placed in a position to make an informed decision in most cases. However, court staff should be given Guidelines, training and a centre directing the matter.

4.13 GUIDELINES

It is advisable that there be drafted Guidelines to enable court staff to determine whether or not a document, or what portion of it, is a public document. Some initial research has been done by the Working Group which has made it clear that a Guidelines document would involve at least several months work by a legally trained person. Such Guidelines would deal with each jurisdiction, District Court, Circuit Court, High Court and Supreme Court. The Guidelines would set out the court documents, the order or statutes that are relevant and answer the question as to whether the particular information can be released. A set of Guidelines is currently being drafted in England and Wales. When it is published it would be of assistance in drafting Irish Guidelines. However, Irish Guidelines would be different because of the Constitution of Ireland and Irish Law.

In other jurisdictions Guidelines have been drafted to aid the judiciary. Such a document could also be drafted for the Irish Bench under the direction of the judiciary and could prove very useful.

4.14 TRAINING AND SEMINARS

In addition to the Guidelines it is advised that there be training for court staff on the issue of the access of the public to court documents. This training would be for the relevant staff of the Courts Service throughout the country.

4.15 INFORMATION AND THE COURTS

The matter of access to court documents is part of the wider issue of information and the courts. The Working Group has advised the Minister for Justice, Equality and Law Reform¹⁰ that:—

“The most appropriate method of meeting the need for the communication of information between the courts and the community is the creation of an Information Office for the Courts. This would be within the new Courts Service.

The creation of the Courts Service and the introduction of modern management techniques within the Courts should take place side by side with the free flow of information on the new developments within the Courts to the community. Thus, an Information Office should be established as soon as possible.”

The Working Group described the functions of an Information Office as being (1) Public Information Function; (2) Media Liaison Function; (3) In-House Courts Service Communications; and (4) Instructions.

The Media Liaison Function was described as:

“In pursuance of this aspect of the Information Office’s remit it would be the function of the Information Office to:

- (i) Facilitate accurate coverage of court proceedings.
- (ii) Assist the reporting of high profile trials.
- (iii) Establish and maintain relations with media organisations and their employees.

¹⁰ Working Group on a Courts Commission, A Working Paper on Information and the Courts, November, 1997.

- (iv) Listen to the requests of court reporters and seek to accommodate them.
- (v) Meet on regular basis with court reporters to alert them to forthcoming judgments of interest. These meetings would be for the purposes of information only, and would not be attributable to the Information Office and would not refer to the substance of any undelivered judgment.
- (vi) Advise reporters of upcoming events of interest such as the swearing-in of a new judge or the retirement of existing judges.
- (vii) Operate a system whereby provision would be made to bona fide members of the Press of copies of public court documents.
- (viii) Seek to facilitate proper journalistic standards in court reporting.
- (ix) Bring to the attention of court reporters orders affecting the reporting of a trial.
- (x) When requested, convey to members of the media a judge's concerns about the reporting of a particular trial.
- (xi) Point out errors of fact appearing in media reports of court proceedings, either by contacting the journalist in question or, if necessary, by issuing an appropriate press release.
- (xii) Serve as an outlet for judicial response to media criticism when requested to do so.
- (xiii) Provide information on the Courts Service generally, as required."¹¹

The In-House Courts Service Communications was described as:

“In pursuance of this aspect of the Information Office's role the functions of the Information Office would include:

¹¹ Ibid p.24.

- (i) To support the Chief Executive of the Courts Service to maintain communications with the staff and the judiciary.
- (ii) The publication of a Newsletter within the Courts Service.
- (iii) To ensure that the work and progress of the Courts Service are highlighted including the dedicated work of individual staff who provide service to the public.
- (iv) To ensure that there are clear guidelines for all who work within the courts on the need for communication within the service and also guidelines for communication with the public.¹²

Whereas it is not envisaged or advised that access to court documents would be limited to channels through the Information Office, the Information Office would have a central role in providing information, organising the establishment of Guidelines on the status of court documents, and, in conjunction with the Human Resources division, in organising training and seminars for Courts Service staff.

4.16 PUBLIC AND PRESS

In general, the public and the press have the same right of access to court documents. The access is to documents which are part of the public record of a court case. Thus, the public, including the press¹³ and academics, have the right of access to the documents. In practice, the reality is that most people obtain information of court cases through a news report and do not personally seek the documents. Thus, when journalists seek documents, whereas in general they are in the same position as the public, they are seeking them in effect for the public. Thus, to reflect this situation and as a courtesy, the courts should be of assistance to the journalists in their daily work.

In certain circumstances the bona fide journalist is in a special position. The court has a discretion to exclude persons, but not

¹² Ibid p.25. (The underlining is added).

¹³ the term "the press" is used to describe all journalists whether working for newspapers, radio or television.

bona fide representatives of the press, from Criminal trials in specific circumstances. These circumstances include Sections 114 and 131 of the Children's Act, 1908, as amended by Section 29 of the Children's Act, 1941; Section 20 subsection (3) of the Criminal Justice Act, 1951; Section 16 subsection (2) of the Criminal Procedure Act, 1967; Section 6 of the Criminal Law (Rape) Act, 1981 as inserted by Section 11 of the Criminal Law (Rape) (Amendment) Act, 1990 and Section 2 of the Criminal Law (Incest Proceedings) Act, 1995. The admittance of representatives of the press to such trials is usually coupled with reporting restrictions designed to protect the anonymity of those involved. Thus Section 7 of the Criminal Law (Rape) Act, 1981 as amended by Section 17(2) of the Criminal Law (Rape) (Amendment) Act, 1990 prohibits the publication of material likely to identify a complainant in the prosecution of a sexual assault offence except in the limited circumstances set out in the Act. Section 8 of the 1981 Act prohibits the publication of material likely to identify the accused in the prosecution of a rape offence. Such material may only be published after he has been convicted or following a judicial directive given pursuant to Section 8. Similarly Section 3 of the Criminal Law (Incest) Proceedings Act, 1995 provides that after a person has been charged with an offence under the Punishment of Incest Act, 1908, nothing which is likely to identify either the accused or the person in relation to whom the offence is alleged to have been committed shall be published or broadcast. The purpose of such legislation is to protect the victim.¹⁴ Great care has to be taken in these cases in determining what documents or what portions of documents are in the public domain.

4.17 ACADEMICS

In other jurisdictions close relationships have developed between the world of academia and the courts. This has not happened in Ireland. Academic analysis and study of the courts is beneficial to the courts system. Facilities should be made available to academics to study the court process.

¹⁴See Working Group on Courts Commission, A Working Paper on Information and the Courts, November, 1997. Appendix A.

4.18 PRACTICAL MATTERS

There are major policy and constitutional issues relevant to the matter of access to court documents. However, many practical matters are also of great importance to journalists and others working in the courts. Such practical matters include the provision of court lists, the names and addresses of parties and the names of judges and counsel.

4.19 FACILITIES

There were many submissions to the Working Group describing how the facilities in courtrooms are inadequate for journalists. They referred to matters such as acoustics and the provision of seating in court. There is a clear lack of facilities for journalists in many of the courts.

4.20 DESIGNATED COURT REPORTERS

There were submissions both for and against specially designated court reporters. The Working Group does not advise that there be designated court reporters who are given favoured status. The relationship between courts and journalists is one dependent on trust and high standards. This is enhanced if there is continuity and reporters who specialise in court reporting. Nevertheless, it is not advised that a limited number of specialists be afforded special facilities in the courts.

4.21 FAMILY LAW

The special position of family law cases was referred to in many submissions. Submissions were made that family law cases should be treated in the same way as e.g. rape cases where the public, but not bona fide journalists of the press, is excluded. One submission put it clearly:

“Without media reporting, a major information gap exists regarding the form and extent of family law problems, as a result of which the public is insufficiently alerted and equipped to deal with the problems or contribute to their resolution. Only those actually practising in the field can begin to gauge the seriousness of the problems and the

extent to which they are neglected through lack of designated resources or appropriate remedial action.”

The belief that there should be reporting of family law cases came from many different areas — journalistic and court staff. As one submission stated:

“There is a sense of mystique surrounding the whole area [of family law] and there is a whole body of “urban myths” built up around what happens in the family law courts due to the unavailability of information.”

The issue of family law cases and the in camera rule is dealt with in Chapter V of this Report. It is clear from the submissions that the current lack of information on family law cases is a cause of concern to many.

4.22 BANKRUPTCY

This Report is addressed to the general work of the courts, with the exception of the previous paragraph. However, there are other special jurisdictions. Some courts feature in many news reports, others are rarely mentioned. Specific attention was drawn in one submission to bankruptcy proceedings. Since the Bankruptcy Act, 1988 came into force the public have been afforded a very high degree of access to bankruptcy documentation. By virtue of Section 82(4) of the Bankruptcy Act, 1988 the court bankruptcy file, which is held in the Examiner’s Office of the High Court, is open for inspection by any member of the public on payment of the prescribed search fee. Thus, in this area public access to the documents of court proceedings has arrived. It may provide a precedent for the future.

4.23 INFORMATION TECHNOLOGY

Information Technology will itself bring many changes to the courts as it is integrated into the proceedings and courtroom. Currently many documents are still created manually. Producing and copying such documents casts a heavy burden on already hard working court staff. On the introduction of information technology throughout the Courts Service the generation and

production of documents will ease and with it the access to records.

4.24 INTERNET

Important developments on the provision of electronic access to case law are taking place internationally. Initial steps have been taken here, some judgments have been placed on the Internet. This should be developed.

4.25 RECOMMENDATIONS

- (i) An Information Office should be established as soon as possible as part of the Courts Service. It is not envisaged that the Information Office itself would be the source of all information on the courts and court cases. However, it would be the centre for information on the courts.

A person should be appointed forthwith to commence the work of the Information Office. He or she would become a part of the Courts Service on its establishment. In the meantime he or she would have an important role in providing information internally within the courts on the developing Courts Service. He or she would also be in the position of commencing the work to enable better access to public court documents. In addition, he or she would also be able to commence developing the other roles of the proposed Courts Information Office e.g. media liaison. All of this would be invaluable within the courts and within the community in the transition to a Courts Service.

- (ii) Guidelines for Courts Service staff on public access to court documents are recommended. It is advised that a lawyer be contracted to draft these Guidelines for the Courts Service.
- (iii) Training should be available, through seminars and otherwise, for court staff.
- (iv) The facilities of the courts should be improved to aid court reporters.
 - (a) Acoustics of courts should be such as to enable the proceedings to be heard.

- (b) Basic facilities such as seating for journalists should be available in all courts.

- (v) New Courthouses should include basic press facilities. Old Courthouses should have press facilities improved wherever and whenever possible.
- (vi) A Press Room (or Media Centre) should be established within the Four Courts Complex with appropriate facilities. This would be a dedicated area, properly wired etc.. A similar facility should be available in due course in other major court centres.
- (vii) All personnel in courts should be identifiable. In other jurisdictions judges have their name plate before them in court. Counsel should introduce themselves and their solicitors by name.
- (viii) Court Lists should be available prior to the sitting of the court.
- (ix) A rule or practice should be developed by the courts as to constructively opened documents.
- (x) A copy of written judgments should be made available immediately on the judgment being delivered.
- (xi) Judgments and other information from and on the courts should be available on the Internet.
- (xii) A Forum should be established to enable representatives of the judiciary, court staff and press meet. This liaison committee should be established in due course to enable discussion on the development of relevant and appropriate matters in the courts and Courts Service.

APPENDIX A

LIST OF THOSE WHO MADE WRITTEN SUBMISSIONS

1. Ms. Breda Allen, County Registrar, Co. Wicklow.
2. Mr. Frank Cullen, Co-ordinating Director, National Newspapers of Ireland.
3. Mr. Seamus Dooley, Irish Organiser, National Union of Journalists.
4. High Court Press Reporters.
5. Mr. John Kilraine, Journalist.
6. Mr. Tomás Mac Ruairí, Court Reporter.
7. Mr. John Maddock, Journalist for The Irish Independent and Evening Herald
8. Mr. Ray Managh, Court Reporter, The Four Courts.
9. Ms. Andrea Martin, Solicitor, RTE.
10. Mr. P. Oliver McCarthy, Acting Chairman, District Court Chief Clerks Working Group
11. Mr. Diarmaid McDermott, Ireland International News Agency Ltd.
12. Ms. Maeve McDonagh, Lecturer in Law, University College Cork
13. Mr. Eoin O'Dell, and Mr. Bruce Carolan, Irish Association of Law Teachers.
14. Mr. Tom O'Malley, Lecturer in Law, UCG.
15. Provincial Newspapers Association of Ireland
16. Mr. Noel Rubotham, Official Assignee in Bankruptcy.
17. Ms. Mary Wilson, Court Reporter for RTE.
18. Mr. Kieron Wood, Barrister-at-Law.

APPENDIX B

LIST OF THOSE WHO MADE ORAL SUBMISSIONS TO THE CONFERENCE ON 25TH APRIL, 1998.

1. **Academic**
Ms. Marie McGonagle, Faculty of Law, Galway University.
2. **Provincial Newspapers Association of Ireland**
Mr. Nicholas Nally.
3. **Court Reporters**
Ms. Mary Carolan, Reporter, Irish Times.
Mr. Ray Managh, Court Press Reporter.
Mr. Tomás Mac Ruairí, Court Reporter.
Mr. John Kilraine, Court Reporter.
4. **R.T.E**
Ms. Andrea Martin, Solicitor.
Ms. Mary Wilson, Court Reporter, RTE.
5. **Office of the Official Assignee**
Mr. Noel Rubotham, Official Assignee in Bankruptcy.
6. **The Law Society**
Mr. Laurence Shields, President, The Law Society.
7. **County Registrars' Association**
Ms. Breda Allen, County Registrar, Co. Wicklow.
8. **The Bar Council**
Mr. Liam McKechnie, B.C.L., S.C.
9. **National Newspapers of Ireland**
Mr. Frank Cullen, Co-ordinating Director, N.N.I.
10. **High Court Bench**
The Hon. Mr Justice Paul Carney, Judge of the High Court.

11. **Irish Association of Law Teachers**
Mr. Bruce Carolan, Membership Secretary, IALT, Dublin Institute of Technology.
12. **Circuit Court Bench**
Judge Carroll Moran, Judge of the Circuit Court
Judge Patrick McCartan, Judge of the Circuit Court.
13. **Technology in the Court**
Mr. Brian Dempsey, S.C.

APPENDIX C

Paper presented by Mr. Mike Wicksteed

to

**Conference on Access to Court Documents,
25th April, 1998**

on

“The Role of the Lord Chancellor’s Press Office”.

The office of the Lord Chancellor dates back over 1000 years — in fact the first holder of the office was appointed in A.D. 605. However, the Lord Chancellor’s Department was only created in 1972, whilst the Lord Chancellor’s press office has been around for a mere 11 years.

In 1987 the press office consisted of one press officer — today the Department’s Communications Branch has a head, three press officers, a small internal communications team, a publications co-ordinator and administrative support staff — twelve of us in all. And, believe me, we’re kept busy.

In this short session this morning I shall outline how those of us in the press office carry out our work — in particular with regards to the courts and the judiciary, I hasten to add, I don’t intend to preach. I’m from New Zealand: we’re used to having our slightly larger Australian neighbour trying to tell us how to do things better — In other words “their” way! But aspects of our learning experience at the LCD may well be relevant and adaptable to your situation here in the Republic. I am a firm believer in the saying “there’s no point in trying to re-invent the wheel”.

Who do we work for? Well, the simplistic answer is the Lord Chancellor’s Department. And, of course that’s true.

The role of the Departmental press office is, via the media, to inform the public about the Lord Chancellor’s policies and initiatives, and the activities and achievements of his Department.

This is both a reactive and proactive task. Not only do we answer a steady stream of telephone, fax and e-mail enquiries from national and local newspapers and agencies, specialist legal journals, and television and radio stations, but we also undertake campaigns to publicise those areas of work which we have a duty to bring to the attention of the

public. Last October's introduction of Part IV of the Family Law Act, 1996, which improved the lot of those subject to domestic violence, is a good example.

Pro-action can be achieved in a number of ways: Interviews with the Lord Chancellor or our junior Minister, Ministerial press conferences and speeches, press notices, background briefings by officials, filming facilities, and leaflets. We recently added to this litany of facilities by developing our own Internet web site — www.open.gov.uk/lcd for those of you with an IT bent — which is evidencing an amazing immediacy of impact: "hits" on our site have increased from about 300 each week this time last year, to nearly 20,000 a week.

However, with the speed of modern communications and the multiplicity of outlets, contact with the media is still the best way to reach the widest audience — and, in my opinion, will remain so for the foreseeable future.

It is our job to provide the media with information about the Department in a clear, cogent form. Journalists, in particular the specialist, national legal correspondents with whom we deal on a daily basis, expect — rightly — accurate information, presented speedily and courteously. Without the benefit of our input, unbalanced, often inaccurate reporting may result. However, no press office can promise that the facts as supplied are going to be presented in the way its masters would necessarily like best. Guarantees are rarely given, and the days are long gone when copy was submitted for clearance. And, no matter what you may have read, we do not put a political "spin" on any issue — indeed, as civil servants we are specifically forbidden to do so.

But there is more to the LCD press office's remit than handling Government policy issues, important as they are.

The Courts

A sizeable portion of our working day (and sometimes evenings) is spent on matters relating to the Court Service — the executive agency responsible to the Lord Chancellor for managing the courts in England and Wales — the judiciary, of whom the Lord Chancellor is the Head, and the Official Solicitor, mostly in cases of international child abduction. Peripherally we provide advice to the Judicial Studies Board and to the Public Trust Office.

Much of our work is done on the phone. A reporter rings the Crown Court at X asking for the address of a defendant — fails to penetrate

the outer defences of the switchboard operator, who blithely says: “ring the press office in London” — we then have to ring the court etc, etc,. This is indicative of an old — and in our opinion outmoded — attitude towards the media. “Don’t touch ’em with a barge pole. They’re trouble”, or “We’re not resourced to deal with media requests.”

Very short-sighted. Treat them like this and they will be trouble! After all, reporters are professionals trying to do a job.

So, we’re trying to inculcate a different, more positive, attitude to the media amongst our court staff. Starting this summer LCD press officers will be out on circuit providing media awareness training for court managers.

We’ll be showing them the virtues of establishing a decent rapport with their local media. We’ll be telling them about reporters’ needs, the types of questions court staff should be dealing with — and, just as importantly, the types of questions it might be more sensible to let press office handle on their behalf.

We’ll be offering tips on how to handle simple media interviews on matters of fact — jury service, small claims procedures and the like. We will stress that a local response to a local news organisation carries far more authority, or credibility, than does a remote press officer in London.

In many respects we believe that court managers should act as a conduit between their judges and the local media. We’ll be suggesting that court managers make a point of meeting the chief reporters and news editors of their local media. Trust grows from understanding — but it’s a two-way street.

And, if the information the media seek is in the public domain there is, of course, no reason why they shouldn’t be given it. The question is: “what information can they have?”. It’s a good one, there’s no easy answer — yet. We have experienced a certain unevenness of knowledge in this area. One court manager will say “yes” to a reporter’s request — another will say “no”. And often, if they’re not sure, “no” it is!

So, we in the press office have produced a guide for ourselves and court managers on the release of information. It’s currently being checked out by Court Service officials. The next step will be to get our lawyers to give it the thumbs up. Obviously, it must be accurate if we’re to retain credibility.

We also intend to encapsulate media guidance for court staff into a handy reference booklet, probably later this year.

The Judges

Turning to our other main constituency, the judges. At the Lord Chancellor's direction, we offer a media advice service to the judiciary — when they ask us for it.

In 1989, by way of a letter to the Lord Chief Justice, which was circulated to the judiciary, the then Lord Chancellor, Lord Mackay of Clashfern, said that in his view it should be left to the judges themselves to decide whether, and on what conditions, they should give interviews to journalists or appear on radio or television. Policy-wise, this was a complete about-face.

The Lord Chancellor, Lord Irvine of Lairg, concurs with this approach.

Lord Mackay made it clear that judges “must avoid public statements either on general issues or on particular cases which might cast any doubt on their complete impartiality and, above all, they should avoid any involvement, either direct or indirect, in issues which are, or might become, politically controversial”. He also felt that there were cases in which the media might: “In a spirit of enquiry, wish to explore matters affecting the legal system so as to secure a wider public understanding of the working of the law, and that the value of such programmes may be enhanced by the participation of judges”.

In 1996, shortly after his appointment as Lord Chief Justice, Lord Bingham of Cornhill said: “I think it is absolutely fundamental that judges should be very careful indeed to make sure that they do not publicly make statements that undermine their reputation for impartiality and neutrality”.

Today more judges are willing to consider taking part in media interviews — especially where they have an established expertise in areas such as the handling of child witnesses, witness protection, or IT and the courts.

On the other hand, as I mentioned earlier, public scrutiny of the justice system has increased significantly, and the number of column inches and broadcast time devoted to it has grown accordingly.

Although this has resulted in more requests for judges to appear on television and radio programmes, or to talk to the press, it has also led to a proliferation of subjective media comment, including editorials and opinion columns, about the judiciary generally and about individual judges and particular cases, and to judges being waylaid by the media as they leave court or even at home, a practice known as “doorstepping”.

As LCD press office has expanded, so has its role in providing assistance to judges — more so especially in the last two or three years.

We have made a point of getting out and talking to judges to find out what they expect of us and, as a result, we are in the process of publishing a media guide for judges — a small reference booklet they can quickly turn to in time of need.

We also give talks about media matters to judges attending Judicial Studies Board seminars — normally the criminal sentencing refreshers — and to circuit sentencing seminars, I have given four such talks already this year. The substance of the talk is basically to flag up media awareness and how we can help. I point out some of the more obvious pitfalls but, most importantly, stress that the judges have access to a press officer 24-hours a day, seven days a week, should they need advice, or just someone to talk with, about a media-related matter.

This invariably results in a judge ringing me up the following week: “You said X, Y and Z at Cheltenham on Friday — now here’s my problem. Put your money where your mouth is!” Or words to that effect.

A most important dictat is that neither the Lord Chancellor nor any members of his Department, including press officers, may comment on a judicial decision. When speaking to the media or offering advice to individual judges, press officers are always careful to stress the importance of judicial independence. Comment on a judicial decision would breach this principle, as well as being seen, however wrongly, as standing to anticipate or prejudice any appeal proceedings that may ensue.

Nevertheless, there are a number of areas where we can help judges:

- in instances of misreporting, we can issue a statement to the media on a judge’s behalf correcting errors of fact. We always stress that speed of action is essential in such cases. I have brought across a case study that will be available to you at the end of this session and I hope you will find it interesting. I’m not familiar with Irish media, but I doubt you have a publication as potentially unpleasant and as unfair as an English tabloid when in full, indignant and seemingly righteous flight.
- it has been recommended to judges in England and Wales that, before passing sentence in a controversial case, or in a case where a sentence departs from the norm, they might consider preparing a note of their sentencing remarks for distribution to the media — by hand to reporters in court, and by fax to the LCD press office. At the judges’ request we distribute these notes to the media on their behalf.

- when a judge is asked by a television or radio programme to give an interview or to participate in a documentary, or a media discussion, we are always happy to offer advice. This advice includes information about the type of programme in question, or research into the particular programme's approach and format, other participants, and such like.
- where a judge decides to accept an invitation, we will provide practical tips on how to deal with, what is to most, a new and strange environment.
- if a judge is approached by a print media journalist for an interview, we can often help by giving details of the particular publication or individual journalist, and also provide useful additional information about the feature or series in question, and advice on interview techniques.
- we distribute important speeches by senior judges to the media, and issue statements — always making it clear that we do so on behalf of the individual judge and not the Lord Chancellor or the Government. We also place important speeches on the LCD's Internet web site.
- with the national expansion of the Court Service's e-mail network, we send Circuit Administrators and Circuit Group Managers copies of LCD and Courts Service press notices, as well as media-related advice that may be of interest to officials and judges alike, such as forthcoming television documentaries with a legal bent, press features or surveys that have come to our attention, or just as importantly 'round robin' requests to judges for interviews.

Unfortunately, there are a number of areas where we cannot help judges, or at least, not directly:

- often the Department may well not be able to publicly respond on behalf of judges to criticism of the Judiciary, general or specific. Nevertheless, the Lord Chancellor takes every opportunity he can to put media comment in context and publicly to support the judges in their work.
- while the Department understands how hurtful and irritating unfair criticism of, or personal comments about, judges can be, there is little we can do — except in cases of misreporting or factual error as I have already mentioned.

- when a judge says something stupid, or at any rate non-PC, he or she is on their own. We will certainly talk with them about how to deal with a problem, if they approach us, but that's about the limit of it.
- it is for judges themselves to report instances of false reporting, unfair criticism or harassment to the Press Complaints Commission, or to demand corrections from the media if they regard it as appropriate. We advise them on the PCC's complaint procedure.
- the Department cannot offer legal advice to judges when they suspect they have been libelled, or provide funds to pursue a libel case. But we will provide them with advice on how they might wish to brief their solicitors.

High Profile Events

We can also offer assistance to judges and their court managers in the arrangements for the media at high-profile trials: the aim being to prevent the so-called 'media circus'.

This has proven successful in several cases, none more so than at the trial of Rosemary West where we were faced with a press contingent of 150 reporters, as well as camera crews, photographers and court artists. Last week alone my press officers provided such assistance, on thankfully a much lower scale, to the war crimes committal at the Bow Street magistrates' court in London, and at the start of a murder trial at the Crown Court in Lewes.

Conclusion

At the request of Lord Saville of Newdigate, the English Lord of Appeal in Ordinary who is chairing the Bloody Sunday Inquiry, I advised the members of the tribunal on how best to handle the media aspects at their Opening Statement in Derry, the judges' subsequent press conference and their visit to the Bogside — the first time we had been asked to assist in a public inquiry.

Last Monday we organised a special facility to enable the media to view the Lord Chancellor's newly refurbished official residence in the Palace of Westminster. Another first.

We're still on a learning curve in the LCD press office.

And, in the spirit of not re-inventing the wheel, we're happy to share our experiences.

CHAPTER V

Family Law

5.1 INTRODUCTION

The Working Group considered that the operation of the Courts dealing with Family Law presented particular and special problems and that specific recommendations should be made in this area. The Working Group therefore set up a subcommittee on Family Courts. This was chaired by Mrs Justice Susan Denham, Chairwoman of the Working Group. The other members were Mrs Justice Catherine McGuinness of the High Court (formerly of the Circuit Court) and Ms Róisín McDermott, then Chairwoman of Women's Aid.

Both the subcommittee and the Working Group as a whole were conscious of the detailed and comprehensive study of the whole area of Family Courts carried out by the Law Reform Commission in their Consultation Paper published in March 1994, and in their Report published in March 1996, and of the valuable recommendations contained in that Report.

Since the setting up of the Working Group and of its subcommittee, there has been considerable legislative development in the Family Law area. This includes the coming into force of the Family Law Act, 1995, the Domestic Violence Act, 1996, the Family Law (Divorce) Act, 1996 and the Children Act, 1997.

As set out in the First Report of the Working Group, submissions were received both from groups and from individual members of the public in regard to the Courts system. These submissions are listed at Appendix B of the Group's First Report. Among these submissions there were a large number which dealt with the Family Law area. The Working Group at three meetings in June, 1996 met a number of groups who had made written submissions on Family Courts and held discussions with them.

These groups are listed at Appendix A of this Chapter. Since then the subcommittee has received a number of further submissions in connection with Family Law matters and has included all these submissions in its considerations. The Working Group is most grateful to all those who made submissions and in particular to those who attended in person.

5.2 HISTORY

The Constitution in Article 41.1 stresses the importance of the family as “ ... the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights ...”. The same article provides that the State “ ... guarantees to protect the Family in its constitution and authority. ... ”.

However, the Articles of the Constitution which deal with the Courts (Articles 34-37) make no specific reference to Family Courts. At the time of the enactment of the Constitution, family and matrimonial cases very rarely came before the Irish Courts, and it is hardly surprising that the framers of the Constitution saw no need to make provision for Family Courts. Very considerable change has taken place in society and in family structure in Ireland since 1937, and it could well be argued that part of the protection of the family envisaged in Article 41 should now be the provision of an equitable and effective system of Family Courts.

The jurisdiction of the Irish Courts in the Family Law area has developed in a somewhat piecemeal fashion over the years. Prior to 1870 matrimonial matters such as divorce a mensa et thoro (Judicial Separation), nullity, restitution of conjugal rights and jactitation of marriage fell altogether outside the jurisdiction of the Civil courts; they were dealt with by the ecclesiastical Courts of the Established Church, the Church of Ireland. These Courts possessed no jurisdiction to dissolve a marriage (divorce) as the Church regarded marriage as indissoluble. When the Church of Ireland was disestablished under the Irish Church Act, 1869, the jurisdiction of the ecclesiastical Courts ceased and under the Matrimonial Causes and Marriage Law (Amendment) Act, 1870, this jurisdiction was vested in a new Court of Matrimonial Causes and Matters. Under the Judicature (Ireland) Act, 1877, the matrimonial jurisdiction was transferred to the Probate and Matrimonial Division of the High Court of Justice in Ireland. On

the establishment of Saorstát Éireann the jurisdiction passed to the High Court of Justice created by the Courts of Justice Act, 1924. Subsequently, under the Courts (Establishment and Constitution) Act, 1961 it vested in the High Court established under the present Constitution. The President of the High Court also exercised Wardship jurisdiction over minors; until recent years this jurisdiction dealt almost solely with the affairs of minors who possessed property.

During the early years of the State the District Court had a limited jurisdiction to grant maintenance to wives in cases of desertion. Under the Children Act, 1908 it also had quite an extensive jurisdiction in regard to neglected or ill-treated children and children who lacked proper guardianship. This jurisdiction remained in being until the coming into force of the Child Care Act, 1991 and is continued in that Act. There were, however, no specific Family Courts and no specific Family Court judges.

The development of modern Statute Law in the area of the family dates from the enactment of the Married Women's Status Act, 1957 and the Guardianship of Infants Act, 1964, which, respectively, enabled disputes regarding the beneficial ownership of matrimonial property and the custody of children to be brought before the High Court. The number of Family Law cases, however, was still very low.

The major growth in development of the Irish Family Law jurisdiction dates from the 1970's onwards with the enactment of the Family Law (Maintenance of Spouses and Children) Act, 1976, which, in addition to making full provision for maintenance of dependant family members, introduced for the first time the barring order jurisdiction. The 1976 Act was followed by a number of Family Law statutes (listed at Appendix B to this Chapter) culminating in the Judicial Separation and Family Law Reform Act, 1989, a comprehensive and innovative statute which not only brought together and extended existing remedies but also for the first time introduced the concept of separate Family Courts. The 1989 Act was followed in 1991 by the Child Abduction and Enforcement of Custody Orders Act and since 1995 by further legislation dealing with separation and divorce, domestic violence and the law regarding children.

Despite the provisions of the Judicial Separation and Family Law Reform Act, 1989 and later statutes no separate family division or Family Courts system has developed. High Court, Circuit Court

and District Court judges in Dublin spent periods of time ranging from two weeks to a year dealing with family lists. In the Circuit and District Courts outside Dublin the regular judges set aside a day or part of a day at each sitting for Family Law. As is pointed out in the Law Reform Commission Report on Family Courts (Page 2):

“Judges who deal with Family Law matters in Ireland are not required by law to have any special qualifications, training or experience in, or aptitude for, Family Law matters”.

The considerable growth of statute law has been, if anything, outpaced by the vast increase in the numbers of Family Law cases coming before the Courts since the mid 1970's. In 1989 when the Judicial Separation and Family Law Reform Act came into effect the time span between the issue of proceedings and the trial of an Action in the Dublin Circuit Court was approximately six weeks. In 1996, due mainly to the increase in the number of cases, the time span had grown to some eighteen months. Since the establishment of the Working Group the appointment of more Circuit Court judges has greatly reduced the backlog in Court lists.

The past twenty years therefore has seen a striking development and transformation of substantive Family Law. This has been the legislative response to the wide variety of problems associated with the breakdown of family relationships. Irish society has over the period seen a large increase in overt family breakdown, with many more couples seeking to resolve matrimonial difficulties through the Court system, although there are now considerable financial resources for counselling and mediation as alternatives.

5.3 CURRENT SITUATION

The situation in Family Law at the time when the Working Group was set up in 1995 was graphically and correctly described by the Law Reform Commission in its Report on Family Courts as a system in crisis (page ii):

“The courts are buckling under the pressure of business. Long family law lists, delays, brief hearings, inadequate facilities and over-hasty settlements are too often the order

of the day. At the same time too many cases are coming before the courts which are unripe for hearing, or in which earlier non-legal intervention might have led to agreement and the avoidance of courtroom conflict. Judges dealing with family disputes do not always have the necessary experience or aptitude. There is no proper system of case management. Cases are heard behind closed doors, protecting the privacy of family members but offering little opportunity for external appreciation, criticism, or even realisation, of what is happening within the system. The courts lack adequate support services, in particular the independent diagnostic services so important in resolving child-related issues. The burden placed on those who operate the system, especially judges and court officials, has become intolerable. Legal aid and advice services, despite substantial recent investment, continue to labour under an expanding case-load, and too many litigants go to court unrepresented. An unhealthy two-tier system of family justice is developing in which poorer often unrepresented litigants seek summary justice in the District Court, while their wealthier neighbours apply for the more sophisticated Circuit Court remedies. Finally, there is to the whole family justice system a negative ethos which does little to encourage the responsible resolution and management of family conflict by family members themselves.

The situation described here is chronic. It has arisen as a result of a failure to appreciate and address the consequences for the family justice system of the substantial increase in family breakdown over the last quarter of a century. The family justice system is now in crisis.”

The criticisms made by the Law Reform Commission were echoed by many of the groups dealing with the family law system who made both written and oral submissions to the Working Group.

A Court dealing with a Family Law matter has in general wide and far reaching decisions to make regarding children, family income and assets, the fate of the family home, etc.. Cases may be psychologically complex, requiring family assessments by psychiatrists, psychologists and social workers. They may be financially complex, requiring full discovery, evidence by

accountants and careful regard to the tax implications of Court orders. Recent legislation has provided for complex orders in regard to the splitting of family pensions. The only limit to the Circuit Court jurisdiction in judicial separation cases is that the family's real property should not exceed £200 rateable valuation. Thus cases where large businesses and very high incomes are involved can be, and are, run in the Circuit Court. Such cases take time.

In all cases coming before the Courts, if justice is to be done the parties must be given an adequate opportunity to put their case and to be heard by the Court. This is crucially important in Family Law matters, when not just one issue but the whole shape of the family's future is being decided. Frequently, misunderstanding and bitterness has built up and both husband and wife have a psychological as well as a legal need to be heard in evidence. Failure to give adequate time to the hearing often means that the parties leave the Court deeply dissatisfied and this can result in reluctance to carry out the orders made by the Court, leading to yet more litigation.

Since 1995 the problem of delay in the hearing of Family Law cases has been very much reduced. This has been achieved in the main by the appointment of a considerable number of Circuit Court Judges who have helped to clear the Family Law backlog both in Dublin and in other parts of the country.

At the time of the introduction of legislation providing for divorce it was anticipated that, in the initial period at least, there would be a large number of cases where couples who had been separated for many years would seek to regularise their position. This expectation has not, as yet, been borne out. As far as delay itself is concerned, therefore, the problem has largely been solved. However, delays still occur in other areas, notably in regard to Domestic Violence cases in the District Court where the case load has virtually doubled since the enactment of the Domestic Violence Act, 1996. This Act created a new remedy (the safety order) and brought unmarried couples and other relatives into the ambit of Domestic Violence legislation. It has also been pointed out to the subcommittee that a change in the system of pleading in the Circuit Court Judicial Separation and Divorce cases has meant that cases not ready for hearing (of which there are very considerable numbers) are held in the Circuit Court Office rather than being listed in the Court Lists. This may

give a false impression that there are very few Family Law cases awaiting hearing.

Many of the other difficulties inherent in the Family Law Court system listed by the Law Reform Commission (in the passage quoted above) still remain and there is still a lack of adequate support systems for the Family Law Courts. In some cases the increased number of Judges has not been paralleled by any increase in the number of office staff dealing with Family Law and this has meant that the staff involved are working under very heavy pressures.

5.4 STATISTICS

There has been a considerable increase in the number of family law cases dealt with by the District Courts in the last five years. In the year ending 31st July, 1993 13,038 family law cases were dealt with by the District Court. However, in the year ending 31st July, 1997 21,045 family law cases came before the District Court.

Number of Family Law Cases Dealt with by the District Courts In Years Ending 31/07/93 to 31/07/97	
Year Ending	Number of cases dealt with
31/07/1993	13,038
31/07/1994	14,276
31/07/1995	14,582
31/07/1996	16,809
31/07/1997	21,045

Divorce proceedings are also increasing the work of Family Law Courts. Thus, in the Circuit Court as of 31st March, 1998 there were 1,295 divorce applications on hand. Of these 136 were in Cork and 563 in Dublin.

DIVORCE STATISTICS: JANUARY — MARCH 1998

Circuit Court Office	Applications on hand 01.01.98	Received Jan to Mar	Applications granted Jan to Mar	Refused Jan to Mar	Withdrawn Jan to Mar	Applications on hand 31.03.98
Carlow	17	10	9	0	0	18
Carrick-on-Shannon	3	2	2	0	0	3
Castlebar	35	14	14	0	0	35
Cavan	9	8	0	0	0	17
Clonmel	21	16	15	0	0	22
Cork	131	62	57	0	0	136
Dublin	407	352	196	0	0	563
Dundalk	22	22	14	0	0	30
Ennis	28	16	13	0	0	31
Galway	14	43	14	0	0	43
Kilkenny	21	9	5	0	0	25
Letterkenny	11	12	6	0	0	17
Limerick	38	35	7	0	0	66
Longford	6	3	3	0	0	6
Monaghan	10	2	2	0	0	10
Mullingar	12	14	3	0	0	23
Naas	28	15	7	0	0	36
Portlaoise	4	4	2	0	0	6
Roscommon	7	2	3	0	0	6
Sligo	11	7	7	0	0	11
Tralee	21	29	10	0	0	40
Trim	27	10	8	0	0	29
Tullamore	8	4	3	0	0	9
Waterford	23	6	0	0	0	29
Wexford	25	27	20	0	0	32
Wicklow	19	26	10	0	0	35
High Court*	12	10	5	0	0	17
TOTALS	970	760	435	0	0	1,295

*figure on hand 1/1/98 estimated for High Court

However, even though there has been a considerable increase in family law cases they are only a small percentage of the work of the District Court

- Of the 749,017 Civil and Criminal cases heard in the District Court in 1994, 1.74% were Family Law cases.
Of the 139,300 Civil cases heard in the District Court in 1994, 10.25% were Family Law cases.
- Of the 714,686 Civil and Criminal cases heard in the District Court in 1995, 2% were Family Law cases.
Of the 134,450 Civil cases heard in the District Court in 1995, 10.8% were Family Law cases.

- Of the 666,564 Civil and Criminal cases heard in the District Court in 1996, 2.52% were Family Law cases.
Of the 136,746 Civil cases heard in the District Court in 1996, 12.29% were Family Law cases.
- Of the 654,422 Civil and Criminal cases heard in the District Court in 1997, 3.2% were Family Law cases.
Of the 109,015 Civil cases heard in the District Court in 1997, 19.3% were Family Law cases.

**FAMILY LAW CASES
AS PERCENTAGE OF CIVIL CASES IN THE DISTRICT COURT**

	1994	1995	1996	1997
Family Law cases as a percentage of Civil cases	10.25%	10.8%	12.29%	19.3%

Family Law cases as a percentage of District Court cases have nearly doubled between 1994 and 1997. Also, Family law cases usually take a great deal of time before the Court.

5.5 OPTIONS

There are a number of options open to the Government for the provision of a Family Court system which would adequately serve individual litigants and society in general. The Group set out three possible models.

5.5.a Regional Family Courts

The first option is the one recommended by the Law Reform Commission in their report on Family Law Courts. This option would envisage the establishment of a system of regional Family Courts located in approximately fifteen regional centres throughout the Country. The regional Family Courts would operate as a division of the Circuit Court and in the context of a full range of family support, information and advice services. These Courts should have a unified Family Law jurisdiction, wider than that of the present Circuit Family Court, and including such matters as proceedings under the Succession Act, 1965, Wardship proceedings, adoption proceedings, proceedings under

the Child Care Act, 1991 and under the Child Abduction and Enforcement of Custody Orders Act, 1991.

The Law Reform Commission recommended that the Family Law Jurisdiction of the District Court should be limited to the making of emergency orders and interim orders in situations of emergency. The regional Court structure should have a proper system of pre-trial procedures and case management.

5.5.b A Dedicated Family Court Structure

The second option would reflect the type of system which operates in Australia. The Australian Family Court is a separate entity with procedures, personnel and support services appropriate to deal with Family Law matters. Accordingly, the Family Court is separate from the ordinary Courts and has its own judges who are specially appointed for this work. The Australian Family Law Act, 1975 provides that a person shall not be appointed as a judge of the Family Court unless he or she is, by reason of training, experience and personality, suitable to deal with matters of Family Law. The Family Court bench is composed of the Chief Justice of the Court, the Deputy Chief Justice, judge administrators, senior judges and other judges. It is important to note that many functions in the Australian Court especially at the preparatory stage of cases are carried out by judicial registrars, thus freeing the Judges for actual trials.

One of the main advantages of the Australian system is the range and extent of the support services provided to the Court. These include a large in-Court counselling service which offers both counselling and mediation. This service is complemented by marriage counselling organisations in the community which may be "*approved*" under the 1975 Act and funded by Parliament. Parties to or children of a marriage can seek the services of a Court counsellor at any time even before litigation is contemplated. After the commencement of litigation the Court can advise and sometimes even direct parties to attend counselling. The entire counselling and mediation service is funded by Parliament.

A major feature of Australian Family Law is the comprehensive case management system operated by the Court. This includes a valuable statement of case management principles, outlines of

administration of the system and detailed guidelines to be followed in bringing a case to trial. The first principle is that:

“The Court has a responsibility and a duty to those who approach it to facilitate the just resolution of disputes in a manner which is prompt and economical”.

and it is stated that the Court:

“Must concern itself with the pace of litigation from commencement to disposition”.

It is also stated that the Court must set realistic time limits for case preparation and monitor the progress of cases against those limits.

A dedicated family court structure such as exists in Australia is very expensive. It involves considerable expenditure by the State.

5.5.c Improvement of the Current System

The third option is that, without going so far as the radical restructuring of the Family Court system required by options A or B, it would be possible to make improvements in the current system by the creation of a Family Law Division (which would include District, Circuit and High Courts) and the provision of greater resources for Family Law.

A Family Law division of the District Court could be located in better equipped District Court Houses which already exist in some of the larger towns in each District Court area. Better facilities could be provided in fewer and larger Courthouses. The advantages (the main one being accessibility) of having a Courthouse in the immediate locality for Family Law can well be offset by the fact that the hearing of family cases in an area some distance from where the parties live can afford a greater degree of privacy than is the case at present. District Judges dealing with Family Law should be selected with regard to their experience and suitability for this particular area of law and should have the benefit of proper library facilities and secretarial and typing facilities. There is a need for the consolidation and updating of the Rules of Court and the streamlining of the operation of the listing system.

The Circuit Family Court established by the Judicial Separation and Family Law Reform Act, 1989 would have to be given the

number of Judges and staff which is needed to make it a reality. The Family Law division of the Circuit Court should be clearly divided from the civil and criminal Courts. Pre-trial procedures and administrative call-overs of cases should be introduced. Since the Courts and Court Officers Act, 1995 administrative and quasi judicial powers have been given to County Registrars, these powers should be increased in the areas of case management where the County Registrars would have a substantial and important role to play. Family Law Judges should be afforded back up facilities such as up-to-date information technology and be given research facilities and administrative assistance.

There should also be a separate Family Division in the High Court where the Judge dealing with Family Law should have considerable expertise in dealing with Family Law cases. Again the Court must be provided with the necessary staff and resources to deal with and manage case loads. As in the other Courts the provision of information technology and proper statistical recording is essential.

5.6 RESOURCES

5.6.a Personnel

It is clear that any reform of the Family Court system will require not only additional Judges but additional Court personnel. The Circuit Court has the core Family Law jurisdiction in Judicial Separation, Divorce and Nullity. The Dublin Circuit Family Law Office is over-worked and under-staffed and in the Circuits outside Dublin the Family Law work is handled by staff who are already dealing with criminal and civil work. Additional personnel to deal with such matters as public information, case management, Court listings and non-judicial hearings are not only desirable and necessary but also a worthwhile investment of resources, since they will assist in cutting down expensive Court time. The same would apply to counselling and mediation personnel.

For some years the Court Probation and Welfare Service provided an excellent service of family assessment for the District Court. Due to the increasing workload in the Criminal Law area, this service has now been withdrawn and is greatly missed,

particularly in the context of the increased District Court workload arising from the Domestic Violence Act, 1996.

Under the Judicial Separation and Family Law Reform Act, 1989, the Family Law Act, 1995, the Family Law (Divorce) Act, 1996 and the Children Act, 1997 the Circuit Court may of its own motion or on an application by either or both parties make an Order giving directions to procure a report from such persons as it may nominate on any question affecting the welfare of children. (The 1997 Act provisions are not yet in force.) These Orders are frequently made in cases where custody and access disputes arise and the resulting reports and expert evidence are of great assistance to the Court. The assessments and reports are generally carried out by child psychiatrists or psychologists and are inevitably costly. Since many Family Law litigants are legally aided, the cost of obtaining an assessment often falls on the Legal Aid Board, again a costly method of providing assessments from the State's point of view.

The service provided by the Probation and Welfare Service to the District Court in the past was recognised as professional, competent and independent. Probation and Welfare Officers developed ongoing relationships with dysfunctional families and the service was invaluable in getting an insight into the problems with such families. Probation Officers were often able to assist litigants to agree a solution in relation to children so that the Court was not obliged to impose its decision but could make a Consent Order which is much more likely to be adhered to than a Court-imposed decision. The Probation Officers who operated the system had full social work qualifications and were respected by Judges, legal personnel, and litigants alike.

In improving the current system the provision of an adequately staffed Family Probation and Welfare Service would be an essential resource for all Family Courts. Most cases do not necessarily require the professional skills of a consultant child psychiatrist. Where such skills are needed (as where a child is gravely disturbed) a panel of suitably qualified child psychiatrists and psychologists could be set up to assist the Probation Service on a case-by-case contract basis. It is understood that the Probation and Welfare Service is currently under review by an expert group.

5.6.b Buildings

The matter of Court accommodation has been referred to in the Working Group's First Report (at pages 22-23). Strong opinions have been expressed to the Group about the inadequacies of buildings. There needs to be more consultation between architects and court users (professional and otherwise). The Group accepts that good work in improving Court accommodation has been carried out in certain areas in recent years. However, many Court buildings are seriously inadequate. While inadequate Court buildings are unsuitable for all litigants, particular difficulties arise in Family Law cases. In many courthouses there are no waiting rooms or consultation rooms and the parties in Family Law cases are forced to wait for long periods in public corridors and hallways, or even outside in the street, or across the road in the nearest cafe or public house, before their cases are dealt with. They have no privacy to consult their legal advisers and can readily find themselves practically eyeball to eyeball with their estranged spouses. The courtrooms themselves can be large and intimidating.

In general the Group would accept that the cost of providing proper Family Law facilities in every courthouse is prohibitive. By means of a system of regional courts or by selecting certain courthouses as being already suitable (or readily made suitable), it should be possible to provide Family Law Courts at a number of central and convenient District Court and Circuit Court locations and to confine Family Law hearings to those courthouses except in cases of emergency. As far as High Court hearings are concerned, provision should be made for waiting and consultation rooms in reasonable proximity to the Court.

5.6.c Finance

It must be accepted that Family Law is not an area of the Courts system which can ever be self-financing. Many of the litigants are on low incomes and come within the ambit of the Legal Aid scheme. The vast majority of the others are on average limited incomes, the family home being the sole major asset. To charge High Court fees or stamp duty would serve only to deny such people access to the Court. Proper case management systems, however, should reduce wastage of Court and judicial time and thus cut down on the general cost of Family Law Courts.

5.6.d Mediation Service

It is well recognised that adversarial Court hearings may not be the best way to resolve the disputes that arise through family breakdown. Certainly the Courts ought not to be the place of first resort as they often are at present. Counselling may bring about reconciliation of the parties and mediation can assist separating couples to reach an agreed solution without recourse to the Courts. This principle is in theory accepted in our legislation, e.g. Sections 5 and 6 of the Judicial Separation and Family Law Reform Act, 1989 and parallel sections in the later legislation (Family Law (Divorce) Act, 1996 and Children Act, 1997) provide that solicitors acting for both parties should discuss with their clients the possibility of reconciliation or mediation and provide the names and addresses of counsellors and mediators.

In recent years the State provided family mediation service, which for many years had been confined to a limited service in Dublin, has received considerable additional funding and is beginning to operate outside Dublin. However, it is still not available in all areas and further expansion is needed. Some private mediators can be very costly and there is no adequate countrywide system of accreditation and training of counsellors and mediators.

Mediation can be very advantageous in some cases, especially in disputes concerning custody and access. But it needs to be more thoroughly appraised than it is at present. It is generally accepted that it is unsuitable in cases where there is domestic violence and one partner is living in fear of the other. Indeed, if either person feels in anyway intimidated by the other mediation is not the answer. Difficulties can also arise where there is insufficient disclosure of financial resources in complex cases. Mediation is at its most successful when there is a genuine equality between the parties. The Law Reform Commission in their consultation paper and in their report on Family Courts provide an excellent survey of issues relating to mediation and recommends the establishment of a professional mediation service with adequate numbers of trained mediators and proper facilities for consultation and the supporting administrative framework. The Working Group concurs with the Commission's recommendation that this service must contain sufficient safeguards to ensure that the allied goals of fairness and justice are achieved and that it should develop a strict code of practice.

5.6.e Supervised Access

There is a need for a supervised access system to be considered as part of the back up services for the Family Courts.

5.7 COMMUNICATION

5.7.a To the Public

The Working Group in its first report made recommendations (at page 53) on improvement of general communications between the Courts and the general public. The recommendations included the establishment of information desks located in Courts where people might obtain information on matters pertaining to the Courts. In a welcome move such an information desk has been provided in the Four Courts. While Family Courts are not attended by members of the general public, there is certainly a need for this type of information desk in Court buildings to assist not only the parties but also their witnesses and other members of the general public who may need information on Family Law matters.

5.7.b To Litigants

Persons facing the trauma of family breakdown with the additional strain of a Court hearing need to be as fully informed as possible before they appear in Court. In the present Court system this is left to solicitors and counsel where the parties are legally represented and to Court officials where, as frequently happens, the parties are unrepresented. The giving of full information is not the primary task of either lawyers or Court officials, and the exigencies of a very heavy workload can mean that there is not enough time available for an *"information session"*.

Under the case management system operated by the Australian Courts, some three weeks after an application for divorce or judicial separation is filed in Court the parties are required to attend an information session conducted by a Registrar. The information session deals with children's issues, reaction to separation, court processes, case management information and information on property and maintenance matters. The Registrar, who records the attendance of all parties, may be assisted by a Court counsellor.

Such an information session would prove extremely helpful and in some cases might assist the parties to reach agreement. To provide such information sessions it would be necessary to appoint additional specially trained Registrars and/or Court Clerks.

5.7.c Between Professionals

While the transfer of the majority of Family Law cases from the High Court to the Circuit Court and the District Court under the Courts Act, 1981 had advantages as regards accessibility and cost, it had the disadvantage that from 1981 onwards there was a sharp reduction in the number of written and reported judgments in Family Law. While in the past Circuit Judges quite frequently gave reserved and written decisions, these were often reported in, for instance, the Irish Law Times Reports, in more modern times written judgments by Circuit Court Judges are rare. This has meant an undesirable lack of written judgments on many aspects of judicial separation cases and other matters which are dealt with in the Circuit Court. Such High Court judgments as are available deal with matters such as child abduction and adoption cases which are outside the jurisdiction of the Circuit Court. In the case of nullity, while there was an abundance of High Court judgments during the late 80's and early 90's, this jurisdiction too was extended to the Circuit Court by the Family Law Act, 1995 and there may well be a similar lack of jurisprudence in this field in the future. Of even more importance is the establishment of a consistent jurisprudence in regard to divorce; again the lack of Circuit Court written judgments may well militate against this.

Both for Counsel and Solicitors and for Judges themselves this lack of written judgments means that it is difficult to build up a consistent jurisprudence on major Family Law matters. Solicitors and Counsel can also find it difficult to advise their clients as to the likely outcome of their cases and as to the parameters of settlements.

This difficulty has been highlighted by writers on family law. In an Irish Times article entitled "*Open Sesame for Divorce*" Mr. Alan Shatter stated that:

"In Family Law proceedings, the affected parties could be engaging in a game of judicial roulette where the outcome of

the case could be affected by which judge hears the case rather than be affected by a previous set of precedents”.

Mr. Frank Martin of University College Cork in an article in the Irish Law Times commented:

“In camera Family Law proceedings tend to contravene the promulgation principle. Untrained and sometimes unsympathetic judges deal indifferently with some family cases. There is an absence of a cogent and sophisticated body of legal precedents, particularly in the judicial separation ancillary orders context. Reported and unreported cases which are available are in general little more than a historical record of how particular judges chose to exercise their discretion or how they applied a vague standard to a particular set of facts. Judicial Separation case-law from 1990 to 1996 is revealing in many senses. Most of the reported and unreported High Court cases, especially those dealing with ancillary orders, rarely if ever refer to previous case-law”.

This situation has been to some extent improved in the past few years by the publication of the Family Law Journal which is produced by the Family Lawyers Association, an organisation of barristers and solicitors practising in the Family Law area. Recently a new publication, Irish Family Law Reports Monthly, has appeared and this should also be helpful. It is to be hoped that the setting up of either a distinct Family Court Division or Regional Family Courts will encourage the production of reserved and written decisions and that these would be reported fully.

5.8 INFORMATION TECHNOLOGY

The introduction of an effective system of case management in Family Law Courts and the proper planning and provision for Family Law Courts in the future is dependent on the collection and analysis of accurate statistical information. This aim can realistically only be achieved by the introduction of information technology covering the whole Family Court system.

5.9 CHILDREN'S COURT

The Children's Court, which is part of the District Court jurisdiction, is held in a purpose built Courthouse in Smithfield in Dublin. It deals both with juvenile crime and with cases under the Child Care Act, 1991. The Law Reform Commission in its report has recommended that the jurisdiction under the Child Care Act, 1991 both in Dublin and elsewhere should be transferred to the proposed Regional Family Courts except for the making of emergency "place of safety" orders.

As far as criminal cases involving children are concerned the major problem experienced by the District Court has been the lack of suitable places for juvenile offenders who require custodial care. The Children's Court, when dealing with relatively minor offences, could well be developed along the same principles as the Drug Courts recommended in the fifth report of the Working Group. As in the case of the proposed Drug Courts extra resources would be required to provide innovative alternatives to custodial sentences. The Children Bill, 1996, at present before the Dáil, provides several such alternatives to custody.

5.10 LEGAL REPRESENTATION OF CHILDREN

Until 1991 there was no statutory provision for the separate representation of children in Family Law proceedings. In cases where the welfare of children was in issue Judges occasionally interviewed children in private in their chambers. This can give a child of suitable age an opportunity to express his or her own views. However, Judges have no specific expertise in interviewing children and there is always the danger that the child may be overly influenced by one or other parent. It is also inappropriate and stressful for the child to be put in the position of choosing between the father and the mother. In the main, Courts tend to ascertain the child's view through the medium of expert reports from child psychiatrists, social workers or probation officers.

The Child Care Act, 1991 deals with the separate representation of the child in care proceedings. Section 25 empowers the Court to make the child a party to care proceedings and to appoint a solicitor to represent the child where necessary. Section 26 empowers the Court to appoint a guardian ad litem

for a child in care proceedings where this is necessary in the interests of the child.

In his book *Family Law in the Republic of Ireland* (4th Edition) Alan Shatter comments on these Sections as follows (Page 643):

“The Act gives the court no guidance as to who should be regarded as qualified to act as a guardian ‘ad litem’ nor does it contain any provision to ensure a person so acting is entirely independent of both the health board that brought the proceedings and the child’s parents or other custodians. Even more curiously, the Act fails to prescribe the duties of a person so appointed.”

Section 28 of the Guardianship of Infants Act, 1964 (as inserted by the Children Act, 1997) also provides for the appointment of a guardian ad litem for a child (and for legal representation of the guardian ad litem) in cases arising under the relevant sections of the 1964 Act. The Section sets out the circumstances in which a Court may decide to appoint a guardian ad litem and suggests the possibility of appointing as a guardian a person who has already made a report to the Court on the child. The fees and expenses of a guardian ad litem thus appointed and the costs of obtaining legal representation for the guardian are to be met by the parties in such proportions as the Court may determine. Given the difficulty that already arises for non legally aided persons in paying for the services of experts who carry out assessments of children it is hard to see how parties will be able to meet the additional expense of a guardian ad litem and separate representation. As in the case of the 1991 Act, the 1997 Act does not set out any specific qualifications for a person who is to act as guardian ad litem. The court may, under s.28(3) of the Act of 1964, as inserted by s.11 of the Act of 1997, appoint as a guardian ad litem the person from whom, under s.47(1) of the Act of 1995, a report is procured by the Court. There is, therefore, in effect, some guidance on who that person should be and what qualifications that person should have. In this context the Law Reform Commission recommended that an independent panel of social workers should be established from which the Court could appoint guardians ad litem.

The Group considers that the policy as contained in the 1997 Act should be reviewed in the light of experience of its operation, particularly with a view to giving to the Court power to appoint

guardians ad litem and to provide for the separate representation of children in particular cases. It is, however, a discretion that should be sparingly exercised as it could create as many problems — costs, delay, an increase in the adversarial nature of the proceedings — as it solves. In many cases separate representation of the child is not really necessary as the welfare of the child can be ascertained through expert or other evidence.

5.11 THE JUDICIARY

At present all members of the judiciary may be required to deal with family law cases — as is, of course, the case in all other types of litigation dealt with by the courts. Internal arrangements operate in the different courts whereby a judge may be assigned for a specific period to deal with family law cases.

In the High Court this period is generally no more than a few weeks at a time. In the Dublin Circuit Court, since the enactment of the Judicial Separation and Family Law Reform Act, 1989, the practice has been for a judge to be assigned to the Family Law Court for a period of a year. In Circuits outside Dublin the ordinary judge of the Circuit deals with family law cases among his or her other responsibilities. In the District Court in the Dublin area a judge is generally assigned to the Family Law Court in Dolphin House for a considerable period — at least a Law Term and often longer. District Judges outside Dublin are in the same position as Circuit Judges outside Dublin, the Judge of the District Court deals with family law cases amongst his or her other responsibilities.

A relatively small number of District Judges deal with Child Care Act, 1991 cases and other public law cases in the Children's Court in Dublin and these judges serve for sufficiently long periods to build up a specialist knowledge and expertise in this area.

The Law Reform Commission in its Report on Family Courts make a number of recommendations in regard to judges for the proposed Regional Family Courts, including the assignment of selected Circuit Court Judges to those courts for a period of at least one year. The Commission does not, however, recommend a permanent family law judiciary. The Commission suggests that the selection and assignment of judges “should be determined by the President of the Circuit Court together with two ordinary

judges of that Court,” and that “... only those judges should be selected who, by reason of training, experience and personality, are suitable persons to deal with matters of family law”. (Page 41)

Under the present system judges are assigned to the family courts by the Presidents of each of the respective courts. The recent increase in the numbers of judges, especially in the Circuit Court, should make it possible for judges to be assigned to the family court on the basis of their particular experience, interests, and temperament. It is desirable that each judge should serve for a reasonable period — at least a Law Term and possibly a year.

It has been suggested that there is a need for more written judgments by Circuit Court judges. This would assist in building up a consistent family law jurisprudence. At present there is no typing service available to Circuit Court judges. Outside Dublin library and research facilities are minimal or non-existent. These facilities should be provided both for Circuit Court and for District Court judges. Family Court judges should also be provided with information, particularly with regard to new legislation, through the Judicial Studies Institute. The Institute has already begun to fulfil this role through seminars dealing with legislation on the division of pensions and with domestic violence.

5.12 THE IN CAMERA RULE

Article 34.1 of the Constitution provides that “Justice shall be administered in courts established by law ... and, save in such special and limited cases as may be prescribed by law, shall be administered in public.” Section 45(1) of the Courts (Supplemental Provisions) Act, 1961 provides that “Justice may be administered otherwise than in public in ... matrimonial causes and matters ... and minor matters” (cases involving children). The general practice has been not to admit the public or the media to family proceedings.

More modern family law statutes, frequently contain a mandatory provision that cases under these statutes must be heard “in camera”. Such statutes include the Family Law (Maintenance of Spouses and Children) Act, 1976, the Family Law (Protection of Spouses and Children) Act, 1981 (now repealed and replaced by the Domestic Violence Act, 1996, which contains a similar provision for in camera hearings), the Family

Home Protection Act, 1976, the Judicial Separation and Family Law Reform Act, 1989, the Child Care Act, 1991, the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996. Other statutes confer a discretion to hear proceedings in camera, and Court Rules also make provision for family law proceedings to be heard in camera. In practice all proceedings in Family Law Courts are heard in camera.

The purpose of the in camera rule has been to ensure that the privacy of the family is protected by the holding of all family law cases in closed courts. Change in the in camera rule would require amendment of the statutes listed above.

There is no doubt that almost all family law litigants are extremely anxious to avoid publication of the facts of their cases and would be fearful of the presence of the public or press reporters at family law hearings. However, there has been increasing criticism of the in camera rule in recent times from those regularly involved in the family law courts, and it is to be noted that criticism of some aspects of the operation of the in camera rule was almost universal among the expert groups who made submissions to the Working Group. The in camera rule was also bitterly criticised by a number of individual litigants, some of whom had been unrepresented in court, and by groups representing husbands, many of whom felt that they had received less than justice. While allowance must be made for the personal point of view of some of these critics, it is nevertheless significant that criticism of the undiluted operation of the in camera rule is becoming more and more widespread.

On the subject of the privacy of family law proceedings in general, the Joint Oireachtas Committee on Marriage Breakdown underlined the importance of public scrutiny acting as a check on arbitrary decision-making in its 1985 Report.

“The reasons why family proceedings are dealt with in private, sometimes referred to as in camera, is that frequently evidence in the case refers to personal and intimate aspects of the parties’ lifestyle. If such matters were dealt with in open court, many who have a just cause of action might be deterred from proceeding further ... In camera hearings do, however, have a detrimental side-affect. Public scrutiny is the natural enemy of arbitrariness and injustice in a legal system. Our courts, while hearing family cases, have operated without this salutary check.

When decisions are made in private, members of the general public can often misunderstand what takes place in court. This can diminish confidence in the fairness of the administration of justice in this particular field.”

This criticism reflects the opinions of other knowledgeable groups. The additional criticism is also made that the operation of the in camera rule has hidden from the public at large the extent of marriage breakdown and consequent family law litigation in our society. This can, for instance, prevent public representatives and the public at large from evaluating properly the situation, such as the need for the provision of support services to aid couples whose marriages are in difficulty.

In general, other countries examining the issue of privacy in family law proceedings have agreed that a balance must be struck between openness and privacy. While the litigants in family cases are entitled to a degree of privacy, the public is also entitled to know the way justice is being administered in the courts.

The Law Reform Commission of Canada stated “We believe that legislative provisions should prevent undue publicity and promote private hearings and the confidentiality of court records. The parties, the judge and auxiliary personnel should have every opportunity to examine the total situation with a view to achieving reconciliation, amicable settlement or the most appropriate judicial disposition. Although this necessitates some degree of privacy and confidentiality, it should not be confused with total secrecy. The public is entitled to know the way justice is administered in the courts; no court should be permitted to operate in secrecy.” LRC Canada, “The Family Court”, Working Paper No. 1 (1974) p.36.

In Australia a majority of the Joint Select Committee on the Family Law Act (1980) were in favour of relaxing the publication restrictions because the existing provisions were “too restrictive and inhibit proper public debate concerning the work and performance of the court.” It recommended that the publication of the details of proceedings under the Act should be permitted, provided that the names of parties and any other identifying information were prohibited from disclosure, and that severe penalties could be imposed for infringement.

It is desirable that a balance be found between the right of privacy of the litigants and children and the right to a fair,

transparent and accountable system of justice in this area. It is also clear that policy reform, research, accountability and provision of adequate services cannot take place without accurate statistics from the courts on a regular basis.

Pilot Project

With these aims in mind the Working Group recommends that a pilot project be set up, initially for a period of one year, whereby a researcher/reporter in family law be appointed. This researcher/reporter could be a barrister or solicitor who would be adequately funded for the year to undertake a number of tasks which would include—

- the assembling of regular family law statistics for the various courts, say on a quarterly basis
- the recording of family law decisions and written judgments (deleting names and other identifying details) and their transmission to relevant reporting publications such as Irish Law Reports Monthly, Irish Family Law Reports Monthly, and The Family Law Journal and publications of the Courts Service.
- the preparation of a weekly or monthly article reporting on current family law decisions, statistics and other relevant matters, which could be published by the Courts Service.

Such a researcher/reporter would have access to the family courts but would have the responsibility of ensuring that there would be no breach of the right to privacy of the individual litigant.

In addition, the Working Group would support the recommendation of the Law Reform Commission that bona fide researchers and students of family law should be permitted to attend family proceedings. Access by a bona fide researcher to family proceedings should not be refused by a judge except on the basis of compelling and stated reasons. The attendance of students should be at the discretion of the judge.

5.13 CASE MANAGEMENT

The proper management of family law cases is regarded as of prime importance in a number of other jurisdictions. Lord Woolf in his interim report “Access to Justice” to the Lord Chancellor

on the Civil Justice System in England and Wales (1995) lists four features of the present system which highlight the need for case management as follows:

- Delay in progressing cases.
- Cases being adjourned at short notice.
- Excessive and unexpectedly long hearing of cases.
- Cases being settled on the morning of the hearing.

As far as the Dublin Circuit Court is concerned, two judges have now been provided on a continuing basis to deal with the family law list. If full advantage is to be taken of the judicial time so provided a system of case management should be introduced as a matter of urgency whereby listing of cases and other non-judicial functions could be carried out by a senior court registrar. This “case management registrar” would be in addition to the two registrars sitting with the family law judges and carrying out the normal court duties. His/her duties could include—

- receiving applications and allocating hearing dates
- deciding the number of cases to be listed per day taking into account that solicitors must notify the registrar of lengthy cases
- holding a monthly call-over to identify cases that are settled or not yet ready for hearing. This would enable other cases to be slotted in where cases are settled or taken out of the list for other reasons
- the taking of adjournments by consent and the fixing of new hearing dates
- the monitoring of cases that are not completed by a judge on the date of hearing and the consequent rearrangements of the list
- the holding of regular meetings with the judges and with practitioners to discuss the progress of the list in general
- the keeping of proper and adequate statistics on all matters affecting the Family Law Court. This would require the introduction of modern information systems.

This type of case management could be carried out by County Registrars on the Circuits outside Dublin — particularly with a view to ending the present system of listing vast numbers of cases on each family law day, most of which have no realistic hope of being heard. In essence, special care needs to be taken in organising and managing family law lists. This should be done to reduce delay and enhance access to the court.

The problems of delay and the other difficulties listed above are not so acute in the High Court and the District Court, but the system of management outlined above could be adapted to these courts, with the aim of reducing the amount of judicial time spent in non-judicial work.

Careful and selective recruitment of suitable experienced registrars and court clerks to operate the system would be essential. A training programme should also be established.

The Working Group notes that the Circuit Court Rules Committee has introduced a revision of the Family Law Rules, for applications under the Family Law Act, 1995. In drafting these rules the Committee took steps to rectify the former situation where cases were frequently adjourned for long periods on the application of a Respondent who had filed no pleadings but who appeared on the day of the hearing seeking legal aid. This is a welcome development and has assisted in the general management of the lists.

In the longer term, the Working Group would support the development of a unified Family Court Office as recommended by the Law Reform Commission (Pages 77 — 8 of the Report on Family Courts). This development would be closely connected with the other recommendation on the unified administration of the courts contained in the First Report of the Working Group.

5.14 ACCESS TO LEGAL AID

It is of the utmost importance that family law litigants should have available to them adequate competent legal advice and, if necessary, representation. The advice and negotiation skills of experienced family lawyers can frequently prevent litigation altogether, or at least can reduce and clarify the issues between the parties. The crucial importance of legal aid and access to justice was recognised by the European Court of Human Rights in the Airey case (*Airey v. Ireland* [1979] 2 EHRR 305). One of

the few pieces of published research of family law — the study “Marital Breakdown and Family Law in Ireland” by Tony Fahey and Maureen Lyons of ESRI — highlights the number of unrepresented family law litigants, particularly in the District Court.

The provision of legal advice and representation is of no great difficulty for those of ample means. In the past 15 — 20 years there has been a welcome increase in the number of solicitors and barristers who practise extensively in family law and who have developed a high level of understanding and expertise. These practitioners have established the Family Lawyers’ Association, which among other functions provides regular educational seminars on family law matters and publishes the Family Law Journal containing full reports of family law judgments together with articles of special interest to family lawyers.

Very many family law litigants, however, have not the financial means to employ private solicitors and counsel. In response to the needs of those in the lower income groups the Government in 1979 established the Scheme of Civil Legal Aid and Advice under the Legal Aid Board. The purpose of the Scheme is to make the services of solicitors and if necessary barristers available to people of modest means at little cost. Civil legal aid and advice services are provided by solicitors in the full-time employment of the Board at Law Centres established by the Board. In addition a limited service in family law cases in the District Court is provided through private solicitors. The Civil Legal Aid Act, 1995, which came into effect on 11th October 1996, put the Legal Aid Board on a statutory footing.

In the past there was much public criticism of the limited nature of the Legal Aid Scheme, which resulted in long waiting lists and inability to deal with urgent cases. However, a large expansion in the provision of civil legal aid by the Board has taken place in recent years, and legal services are now provided throughout the country. This expansion of the Legal Aid Board’s services has been of great advantage to family law litigants, but delays still occur in certain areas. The 1997 Report of the Legal Aid Board shows that demand for free legal aid grew by 29%, largely because of the introduction of divorce and domestic violence legislation. The waiting time to see a solicitor was six months or more in many parts of Dublin, Leinster and Cork. The

appointment of additional staff for centres with long working lists has recently been sanctioned.

While the Legal Aid Scheme deals with some non-family law matters the vast majority (98% of court cases and 90% of legal advice cases) are in the family law area.

Past criticisms of the Legal Aid Board have been on the grounds of the quantity of its services, not on the grounds of quality. The solicitors who work for the Legal Aid Board have developed a high level of expertise and of understanding of the particular difficulties faced by family law clients. They are enabled to instruct experienced counsel from the family law bar. The present Legal Aid Board Scheme works satisfactorily for those who are eligible for its services. However, it needs to be kept continually under review both in regard to the sufficiency of centres and personnel, and in regard to the type of services it provides.

There remains the problem of litigants in the middle income group who do not qualify for civil legal aid but who find the burden of legal costs in the Circuit and High Courts very difficult to bear, especially if there is prolonged litigation. Of particular difficulty is the situation where one party is legally aided and can therefore pursue appeals and other protracted forms of litigation while the other party, whose income is perhaps only marginally over the legal aid limit, is forced to meet these proceedings out of his or her own resources.

The position of such middle income family law litigants is one which needs further research and review.

5.15 RECOMMENDATIONS

1. Family Law Divisions

Family Law Divisions should be set up in the High Court, the Circuit Court and the District Court, with improved resources in staff and ancillary services (Section 5.5.c). This should be put into effect in the short term.

2. Personnel

All family courts should be staffed with adequate numbers of personnel selected on the basis of training, experience,

temperament and ability to communicate with the general public.

3. Venues

Suitable centrally situated court venues in both District Court and Circuit Court areas should be selected for family law hearings. All courts should be provided with consultation rooms and information facilities.

4. Regional Family Courts

In the longer term there should be a planned progress towards the system of Regional Family Courts recommended by the Law Reform Commission in its Report of Family Law Courts.

5. Case Management

Basic steps towards a full system of case management should be introduced at an early date. In particular in the Circuit Court this function should be carried out in Dublin by a Family Case Management Registrar, while in other circuits this function could be carried out by the County Registrar.

6. Information Technology

Case management and general planning for the family courts must be based on accurate statistical information. Both management and the keeping of statistical records require the provision of dedicated family law Information Technology.

7. Support Services

The Court Probation and Welfare Service should be expanded to include a family law section. The provision of such a service at all court levels is vital to an effective and just system of family law courts. This section would provide independent assessments and reports where needed to all family law courts, and if necessary give expert evidence at hearings. In certain cases where particular psychiatric or psychological difficulties are present the Service should be enabled to obtain an expert report on a contract basis. A

panel of suitably qualified psychiatrists and psychologists should be drawn up to provide such reports.

8. Family Mediation Service

The present programme of expansion of the publicly funded Mediation Service which has centres in Dublin, Limerick, Cork, Tralee and Wexford and which plans further centres for Dundalk, Galway and Athlone in the near future is welcomed and should be continued. In order to ensure effective professional standards of mediation, a countrywide system of training and certification of mediators should be established. Certification should be an essential qualification for practice as a family law mediator.

9. Marriage Counselling

Marriage Counselling should be provided through “approved” bodies and these should receive assistance from public funds. As with mediators, counsellors should be properly trained and certified, and public funding should be dependent on this.

10. The Judiciary

Judges should be allocated by the Court Presidents to the Family Law Divisions on the basis of their experience, legal knowledge, inclination and temperament. Each judge should be prepared to spend at least a law term in the Family Division, but judges should not be assigned permanently to family law. Judges should be enabled to attend meetings and seminars, particularly in regard to newly enacted legislation, in the family law area.

11. Legal Aid

The Working Group welcomes the recent expansion of the Civil Legal Aid Scheme and the fact that the Legal Aid Board has now been put on a statutory basis. It is essential that the operation of legal aid services be kept under review. The position of middle income family law litigants is one which needs further research and review.

12. The In Camera Rule — A Pilot Project

While appreciating the desire of family law litigants for privacy, the Working Group is conscious of the detrimental side effects of the in camera rule. The Group recommends as a pilot scheme the appointment of a qualified solicitor or barrister to record and report on family law decisions and to assemble family court statistics for publication on a regular basis. All personal identification of parties would be prohibited. The reporter/researcher should be enabled to attend family law court hearings with the consent of the parties. This project should report to the Courts Service.

13. Court Hearings

Family law hearings should be conducted in accordance with law. While a degree of informality in family courts is prescribed in a number of family law statutes this should not mean a descent into disorganisation, a lack of respect for the court or for the rights of litigants, or a major disregard for the rules of evidence. Family law cases are of crucial importance to the parties involved, and litigants should be able to rely on a proper, full and dignified hearing, and on a fair, transparent and accountable system of justice.

APPENDIX A

Groups who met the Working Group in June, 1996 included the following:

1. Monica O'Connor and Denise Charleton, Woman's Aid
2. Patricia McKay and Isabel Butler, Aim Family Services
3. Ragnal O'Riordan, Family Lawyer's Association
4. Ann O'Neill and Eileen Prenderville, CARI Foundation
5. Nuala Doherty and Sinead Heaney, Sligo Social Services
6. Peter Nolan, John Boylan, Probation and Welfare Service Branch of IMPACT
7. Frank Brady and Elizabeth Agnew, Legal Aid Board
8. Dr. Brenda Dowling and Colette Halpin, Child and Adolescent Section, Royal College of Psychiatrists (Irish Division)
9. Liam Ó Gogáin, Alan Byrne, Frank McGlynn and Norman New, Parental Equality
10. Roisin Connolly, Gerry White, Coolock Community Law Centre
11. Eugene Davy and Brian Sheridan, The Law Society of Ireland

APPENDIX B

FAMILY LAW STATUTES AND RULES

1. Married Women's Status Act	1957	No. 5 of 1957
2. Guardianship of Infants Act	1964	No. 7 of 1964
3. Marriages Act	1972	No. 30 of 1972
4. Maintenance Orders Act	1974	No. 16 of 1974
5. Maintenance Order Act 1974 (Commencement) Order	1975	S.I. 23 of 1975
6. Family Law (Maintenance of Spouses and Children) Act	1976	No. 11 of 1976
7. Family Home Protection Act	1976	No. 27 of 1976
8. Family Law Act	1981	No. 22 of 1981
9. Circuit Court Rules (No. 3) 1982 (Family Law) (Protection of Spouses & Children) Act	1982	S.I. 152 of 1982
10. Circuit Court Rules (No. 6) Order 68, Married Women's Status Act, 1957 S.12 Guardianship of Infants Act, 1964, Family Law (Maintenance of Spouses and Children) Act, 1976, Illegitimate children (Affiliation Orders) and Order 69, Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870	1982	S.I. 158 of 1982
11. Circuit Court Rules (No. 7) Family Home Protection Act, 1976	1982	S.I. 244 of 1982
12. Domicile and Recognition of Foreign Divorces Act	1986	No. 24 of 1986
13. Status of Children Act	1987	No. 26 of 1987
14. Family Law Act	1988	No. 31 of 1988
15. Blood Tests (Parentage) Regulations	1988	S.I. 215 of 1988
16. Judicial Separation and Family Law Reform Act	1989	No. 6 of 1989
17. Rules of the Superior Courts (No. 1) Amendments to Orders 3 and 70. Family Law Proceedings	1990	S.I. 97 of 1990
18. Child Abduction and Enforcement of Custody Orders Act	1991	No. 6 of 1991
19. Child Care Act	1991	No. 17 of 1991
20. Occupational Pensions Schemes (Disclosure of Information) Regulations	1991	S.I. 215 of 1991
21. Maintenance Act	1994	No. 28 of 1994
22. Family Law Act	1995	No. 26 of 1995
23. Domestic Violence Act	1996	No. 1 of 1996
24. Family Law (Divorce) Act	1996	No. 33. of 1996
25. Family Law (Miscellaneous Provisions) Act	1997	No. 18 of 1997
26. Children Act	1997	No. 40 of 1997
27. Rules of the Circuit Court (No. 1) of 1997 (Judicial Separation and Family Law Reform Act, 1989 and Family Law Act, 1995 and Family Law Divorce Act, 1996)	1997	S.I. 84 of 1997
28. Pension Schemes (Family law) Regulations	1997	S.I. 107 of 1997
29. Rules of the Superior Courts (No. 3) of 1997 Amendment of Order 70A, Family Law Proceedings	1997	S.I. 343 of 1997

CHAPTER VI

Drug Courts

The Minister for Justice, Equality and Law Reform, Mr. John O'Donoghue, T.D., requested the Working Group to advise on the establishment of a Drug Courts system. The Working Group commenced studying this issue in October, 1997. Meetings were held, submissions were received and the issue was analysed in detail. A Conference with experts from the United States of America was held in Dublin on 31st January, 1998.

The Fifth Report of the Working Group, Drug Courts, dated February, 1998, was presented by the Working Group to the Minister. The Working Group recommended that:

- A Drug Court Planning Programme be commenced.
- A Drug Court Planning Committee be formed.
- A Drug Court Co-ordinator be appointed.
- Training and education are crucial to the success of a Drug Courts Programme.

Justice through treatment

The philosophy which underpins Drug Courts is radically new. It involves a fundamental alteration in the approach of society and the courts. Currently the courts operate the adversarial system of legal procedure. Thus, in criminal cases the parties present their opposing views, the prosecutor prosecutes, the defence defends and the court makes a decision of guilt or innocence on the evidence presented. The sanctions for the guilty include imprisonment and or a fine. However, in a Drug Court the role of the judge and other court personnel is transformed. The judge becomes a central figure in a court centred treatment programme.

In September, 1998 the Minister for Justice, Equality and Law Reform published the Drug Courts Report. The Minister also announced that he

had secured Government approval for the establishment of a Drug Court Planning Committee to prepare plans for the establishment of a Drug Court pilot project in the District Court early in the New Year of 1999.

Philosophy

The Working Group believes that a successful Drug Courts scheme will encourage the development of other projects with the same philosophy toward the accused. This philosophy and type of court may be a future approach to developing programmes, for example, for children and juveniles and for cases of domestic violence.

CHAPTER VII

Court Sittings and Vacations

7.1 REQUESTS

The Minister for Justice, Equality and Law Reform, Mr. John O'Donoghue, T.D., requested the Working Group on a Courts Commission to review the current system of court sittings. On an earlier occasion the Minister for Justice, Mrs. Nora Owen, T.D., referred the matter of access to the courts during the Summer Vacation to the Working Group. Owing to the heavy workload engendered by the primary concern of the Working Group, the Courts Service, this matter was not reached for consideration until 1998.

Written and oral submissions were sought and received.¹⁵ Information was sought from other jurisdictions as to their system of court terms.¹⁶ A round table discussion was held with persons representative of the public interest and the study of law.¹⁷

The requests to the Working Group were made at times when there were considerable court delays. Delay in the court system is therefore an issue in this Chapter and has a bearing on the conclusion. The Working Group analysed the information and considered carefully the issues. In this Chapter the Working Group responds to the Ministerial queries.

7.2 THE CURRENT SYSTEM

Under the current system the legal year commences in the Autumn and is divided up into court sittings and vacations. These

¹⁵ See Appendix K.

¹⁶ See Appendix L.

¹⁷ See Appendix M.

sittings vary from jurisdiction to jurisdiction. Thus, it is necessary to consider each court separately.

7.2.i THE DISTRICT COURT

Initially the District Court had no terms, it sat all year. The Judges had six weeks annual leave taken sometime during the year when a substitute sat in his or her place. In practice little work was done during August.

In 1970 it was ordered that the District Court would not sit during the month of August for exercising its civil jurisdiction.¹⁸ In the case of criminal matters it was ordered that each Judge's District (except Dublin Metropolitan District) would comprise one District Court Area, coterminous with the District, and a weekly sitting of the District Court would be held for each such area¹⁹ (in Cork City two sittings per week would be held) for the transaction of summary business which could not be deferred until after August. The President of the District Court makes arrangements for necessary court sittings in the Dublin Metropolitan District.²⁰ See Appendix A for the sittings of the District Court for August, 1998 under these arrangements for urgent business.²¹ At Christmas time the District Court does not organize sittings for the nine consecutive days commencing on 23rd December. At Easter the court does not hold sittings on the six consecutive days commencing on Easter Thursday. Provision is made for urgent cases. Under Section 26(i)(f) of the Courts of Justice Act, 1953 the Minister may make appropriate orders varying the places or altering the days or hours for the time being appointed for holding the District Court in or for any District Court area. This power is being transferred to the Courts Service.

Nature of the Court

The District Court comprises the largest bench of judges. It is a local court of limited jurisdiction. It has a criminal, civil, family law and licensing jurisdiction. There are currently 49 District Court

¹⁸ District Court Districts (Amendment) Order, 1970 (S.I. No. 160 of 1970).

¹⁹ See schedule to S.I. No. 161 of 1970.

²⁰ District Court Areas (Amendment) Order, 1970 (S.I. No. 161 of 1970).

²¹ See Appendix A to Chapter VII.

Judges²². This jurisdiction hears the majority of cases which come before the courts. They are the courts before which the majority of litigants appear.

The President of the District Court is responsible for the organisation of prompt and efficient discharge of the business of the District Court throughout the State. This is done through 38 permanently assigned District Judges and a maximum of 12 moveable judges who can be temporarily assigned to Districts in instances of sickness, annual leave or to assist in the disposal of the Court's business.

While the District Court is a court of limited and local jurisdiction, its work load has increased greatly over the last decade both in volume and in increased jurisdiction.

Holidays

District Judges are entitled to six weeks leave during the year. Subject to what is arranged for urgent sittings they must take August and an additional two weeks.

Vacation Sittings

There are vacation sittings of the District Court. For example, in Dublin in August 1998 there were two judges dealing with criminal matters and there were court sittings each week day and on Saturday mornings; from Monday to Friday another judge sat on Family matters; on Tuesdays and Thursdays a judge dealt with juveniles. The Working Group received computer printouts of over 200 pages setting out the business conducted by the District Court during August, 1998. There were 3,021 hearings in August. There is further analysis of these figures in Appendix A to this Chapter. In each provincial district there was a vacation sitting once a week and in Cork twice a week.

The current practice where, during vacations, an Assistant Secretary in the Department of Justice, Equality and Law Reform is required to make an order for District Court Sittings will be transferred to the Courts Service. Consideration should be given to transferring this power to the President of the District Court or a nominated judge of that court. To aid the administration of the

²² 49 District Court Judges on 14th September, 1998.

vacation courts the President of the District Court might consider creating a panel of judges for vacation work.

Saturdays and Bank Holidays

Dublin District Judges sit on Saturday in rotation. Moveable judges sit on bank holidays. Provincial judges take special courts on Saturdays. Judges are on call for urgent cases. In certain District areas this can mean sitting at antisocial hours regularly.

District Court Office

The District Court offices are open throughout the year.²³ The offices in Dublin are open from 10.30 a.m. to 12.45 p.m. and from 2.00 p.m. until the close of the court each week day (which time may vary) and Saturday mornings. These offices are also open on bank holidays and public holidays when the District Court sits.

7.2.ii THE CIRCUIT COURT

The President of the Circuit Court and the individual Circuit Court Judges manage their court terms approximately in accordance with the sittings of the High Court terms. However, individual Circuit Court Judges vary their circuit work to suit each circuit. For example, where the need arises extra sittings have been arranged in September.

During the vacation the Circuit Court sits to determine urgent matters. Thus, in Dublin in the 1998 Long Vacation sittings were arranged for every two weeks. However, Circuit Court Judges were rostered "on call" during August and September to deal with any other applications or matters that arose. Judges also dealt with part heard or other cases which they had adjourned from a previous term into a special date during these months.

In 1996 the Minister for Justice asked the Presidents of the various courts to clear arrears in September. The Circuit Court sat from 16th September 1996. All Criminal Circuit Courts sat with the exception of Cork Circuit Court.

In 1997 the Acting President of the Circuit Court The Honourable Mr. Justice Diarmuid Sheridan, at the request of the

²³ S.I. 5/1961 as amended. District Court (Areas) Order 1961.

Minister for Justice, Equality and Law Reform, organized additional sittings of the Circuit Court to deal with criminal matters in September.

Circuit Court Offices

The Circuit Court Rules²⁴ prescribe the days and hours on and during which Circuit Court offices are open for public business. The Rules state that the offices shall be open to the public for the transaction of business on every week day between the hours of 10.00 a.m. and 4.30 p.m. with the exception of Saturday and public holidays. They provide that the County Registrars may, however, direct that, instead of Saturday the office under his or her control be closed on whatever weekday is customarily observed as the weekly half holiday in the town in which such office is situated.

In practice, Circuit Court offices around the country are open to the public each weekday from 10.00 a.m. to 4.30 p.m. (in some offices they open earlier) although staff are available for telephone queries for longer hours.

August and September 1998

During August and September four scheduled vacation sittings took place in the Dublin Circuit Court. These were held on 12th and 26th August and 9th and 23rd September.²⁵ On 12th August 125 applications were dealt with by two judges. On 26th August over 100 applications were determined. On 9th September over 200 applications were before two Circuit Court Judges and the County Registrar. On 23rd September 185 applications were heard by two Circuit Court Judges and the County Registrar. The Circuit Court in Dublin sat on a further 10 occasions during the vacation. An analysis of the cases heard is set out in Appendix B to this Chapter.

The Dublin Circuit Court Office maintains normal opening hours during the Long Vacation in August and September. Every effort is made to clear up any outstanding matters e.g. judgments,

²⁴ S.I. 179/1950 as amended (S.I. 167/1964) — Circuit Court Rules 1950 Order 1, Rule 6.
See Appendix D.

²⁵ See Appendix B to Chapter VII.

orders, accounts, while continuing to provide the normal service. For example, over 2,000 Civil Bills were issued in the Dublin Circuit Court during the Long Vacation, while the Jury Office is always at full stretch ensuring that juries are ready for the new term in the High Court, Central Criminal Courts and Circuit Criminal Courts.

A similar picture emerges on examining the provincial Circuit Court Offices.²⁶ The Circuit Court Office in Clonmel would be typical. During the months of August and September, four vacation sittings were arranged for courts in Nenagh, Tipperary and Clonmel. These sittings heard emergency civil applications, some family law matters and some marriage exemptions. Complex landlord and tenant arbitrations which had been outstanding for some time were also completed. The normal work of the office, which includes Land Registry, Probate and Sheriff's duties, also continued. Nearly 130 grants of probate were made and almost 220 Civil Bills were filed. All of the accounts, including the Under-Sheriff's Account, General Cash Account and Equity Account were brought up to date.

The Roscommon office of the County Registrar was also busy with the routine business of Land Registry, Sheriff Section, filing court documents, completing statistics and accounts, organising the calendar for the Midland Sittings for 1999, preparing draft lists for sittings, two County Registrar Motion Courts were held, a jury was summoned for the next term, nine Taxation of Costs were completed, there were four repossessions of property organised (after all four were arranged three were cancelled and one proceeded), the County Registrar also held an Accounts Enquiry in an equity matter and completed the related certificate. Both the County Registrar and the Chief Clerk attended seminars relating to the Courts Service.

Thus, in fact, the office of the County Registrar carries on work as usual throughout August and September. It is the main period when staff take holidays (especially in August) but this does not effect the output of the office. The only relief is that the court only sits for urgent applications. The time is used to tidy up outstanding work.

²⁶ The Working Group wishes to convey its gratitude to the County Registrars who made this survey possible by their assistance to the Working Group.

7.2.iii THE HIGH COURT

The High Court in Dublin has four “sittings” each year. They are called Michaelmas, Hilary, Easter, and Trinity. The Michaelmas Sittings begin on the first Monday in October and end on the 21st December, the Hilary Sittings begin on 11th January and end on the Friday preceding the Easter Vacation. The Easter Sittings begin on the Monday following the Easter Vacations and end on the Thursday preceding Whit Sunday. The Trinity Sittings begin on the Wednesday of the week following Whitsun week and end on 31st July.²⁷

The vacations of the courts and offices of the High and Supreme Court are set out in Order 118 Rule 2 of the Superior Court Rules²⁸ as four — being the Christmas; Easter; Whitsun and Long Vacation. The Christmas Vacation begins on 24th December and ends on 6th January. The Easter Vacation begins on the Monday of the week before Easter week and ends on the Saturday of Easter week. The Whitsun Vacation begins on the Friday of the week preceding Whitsun and ends on the Saturday of Whitsun week. The Long Vacation begins on the 1st of August and ends on the 30th September. The sittings of the Supreme Court and the High Court for 1996, 1997 and 1998 pursuant to Order 118 Rule 1 of the Rules of the Superior Courts are set out in Appendix D to this Chapter.

Vacation Sittings

It used to be that there was not much urgent work during the vacation time. Thus it was ordered²⁹ that:—

“One of the Judges of the High Court shall be selected at the beginning of each Long Vacation for the hearing in Dublin during vacation of all such applications as may require to be immediately or promptly heard. Such Judge shall act as a vacation Judge for one year from his selection. In the absence of arrangement between the Judges, the vacation Judge shall be the Judge last appointed if he has not already served as vacation Judge for two years, and, if he has

²⁷ See Order 118 Rule 1 Rules of the Superior Courts — set out in Appendix C.

²⁸ See Appendix C.

²⁹ Order 118 Rule 5 Rules of the Superior Courts. See Appendix C.

already so served, then the vacation Judge shall be the junior Judge who has not served for two years according to juniority of appointment, and if and whenever all the Judges have served for two years then and in such event each Judge in succession in order of juniority shall act as vacation Judge for one year. Any other Judge of the High Court may sit in vacation for any vacation Judge. The Chief Justice shall not be liable to act as vacation Judge.”

This rule is entirely obsolete. The modern situation is quite different.

During the long vacation a significant amount of work is done by the High Court. There are formal vacation sittings and, in addition, High Court judges offer themselves for a “duty week”. During that week he or she usually sits each day in the Four Courts.

A survey was held in August and September 1998 of the vacation sittings of the High Court³⁰. This survey was done on behalf of the Working Group on a Courts Commission.³¹ In the absence of a statistics office for the courts it was an informal survey. However, from the figures (which are set out in detail in Appendix E to this Chapter) it can be seen that there were formal vacation sittings on:

12th August, 1998.

26th August, 1998.

9th September, 1998.

23rd September, 1998.

On each of these occasions two High Court Judges presided. In addition, there was a judge on duty at all times.

In fact, the High Court sat every working day in August and September except for Friday 11th September, 1998. On that date was held the funeral of The Hon. Mr. Justice Peter Shanley, Judge of the High Court.

³⁰ See Appendix E to this Chapter.

³¹ The Working Group wishes to convey its gratitude to the Registrars of the High Court who made this survey possible by their assistance to the Group.

The details of the cases heard by the High Court in August and September are set out in Appendix E. The type of work conducted in the High Court in August and September varied from bail lists of 48 cases and over, to applications for injunctions, applications in relation to wards of court, family law, etc..

Offices of the Supreme Court and High Court

The offices of the Supreme Court and High Court are open for public business on every day of the year except Saturdays, Sundays, Christmas Day and the seven following days, St. Patrick's Day, Good Friday, and the days duly appointed as public holidays in public offices.³²

The hours during which such offices are open for public business are as follows:—³³

- (a) during the sittings, from half past ten o'clock in the forenoon to half past four o'clock in the afternoon;
- (b) during the long vacation, from half past ten o'clock in the forenoon to one o'clock in the afternoon;
- (c) during other vacations, from half past ten o'clock in the forenoon to two o'clock in the afternoon.

7.2.iv SPECIAL CRIMINAL COURT

The Special Criminal Court sat on three occasions during August and September.³⁴ It heard cases on 31st August, 3rd September and 29th September, 1998.

7.2.v THE SUPREME COURT

The Supreme Court holds the same formal sittings as the High Court. It too is available for urgent cases during August and September. By the nature of its work this does not arise as frequently as in the High Court. This year the court sat on three occasions to deal with urgent appeals.³⁵

³² Order 118 Rule 4(1) Rules of the Superior Court. See Appendix C.
³³ Order 118 Rule 4(2) Rules of the Superior Courts. See Appendix C.
³⁴ See Appendix F.
³⁵ See Appendix G.

7.2.vi THE LONG VACATION OF 1998

Throughout the Long Vacation 1998, the judges and court staff continued to provide a service to the public. The extent of that service is set out in the appendices to this chapter.

7.3 THE SYSTEM IN OTHER JURISDICTIONS

The Working Group considered the systems to regulate the legal year in other jurisdictions. Different factors apply elsewhere, such as whether it is a common law and adversarial system or a civil code and inquisitorial system, as under the adversarial system there is an emphasis on oral hearings. Thus, some States' systems are more relevant than others.

7.3.i NORTHERN IRELAND

In Northern Ireland the system of law is common law, with a court based adversarial procedure. The basis for establishing the terms and recesses is contained in Order 64, Rules of the Supreme Court (Northern Ireland) 1980. The term "vacation" refers to the longer break in the summer. Thus in the legal year 1997 — 1998 there was a Michaelmas Term from early September to 21st December with a week Recess at Halloween; the Hilary Term ran from 6th January to the Friday before Good Friday, after the Christmas Recess from 22nd December to 5th January; Trinity Term was set from the second Monday after Easter Sunday to 30th June, after the Easter Recess of two weeks over Easter; the vacation ran from 30th June to 5th September.³⁶ The sittings of the High Court, Crown Court and County Court follow this schedule. During the recesses and vacation there is a rota of judges for emergency applications. In addition, the Belfast Crown Court usually sits for the first week in July and for the last week in August (approximately).

Potentially the magistrates' courts can sit on any day of the year. However no courts sit on Good Friday or Christmas Day.

³⁶ The schedule of sittings and vacations of the Court of Appeal and High Court in Northern Ireland for 1997-1998 is set out in Appendix H.

7.3.ii ENGLAND AND WALES

In England and Wales there are four terms in the Judicial year — Michaelmas, Hilary, Easter and Trinity. There can be some slight variation in the dates for each Division of the High Court. The dates for 1997/1998 were:

Michaelmas — 1st October to 17th December;

Hilary — 12th January to 8th April;

Easter — 21st April to 22nd May;

Trinity — 2nd June to 31st July.

The vacations lie between these terms. However, only the High Court and Court of Appeal sit these terms. In the vacation provision is made for urgent court business to be conducted by vacation judges.

The Crown Courts and County Courts sit throughout the year.

7.3.iii COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

The Court of Justice of the European Communities and the Court of First Instance do not sit in terms. However, there are three periods of court vacations for the Court of Justice³⁷ and the Court of First Instance.³⁸ In the judicial year 1997 — 1998 these were:

Christmas 19th December to 12th January.

Easter 3rd April to 27th April.

Summer 17th July to 14th September.

The court has vacations on the public holidays of Luxembourg. Also the President of the Court and the President of the Court of First Instance do not fix proceedings in the week that includes Ash Wednesday or the week including All Saints Day or a week at Whit. The court is available each day of the year and may be convened for emergencies during the vacation.

During the vacations the courts continue to function normally save that there are no public sittings. The registry of the court

³⁷ Rules of Procedure of the Court of Justice, Article 28. See Appendix I.

³⁸ Rules of Procedure of the Court of First Instance, Article 34. See Appendix J.

remains open and any time limits are not suspended. Provisions allow for the exercise of functions by the President of the Court during the vacation period and for members of either court to convene in order to consider important matters.

7.3.iv UNITED STATES OF AMERICA

In the United States of America there exists the federal court system and the separate State court system in each of the States. Thus there are many different methods of planning the court year.

7.3.iv (A) The Federal Courts

(a) The Supreme Court of the United States

By law the Supreme Court of the United States holds a term of court commencing on the first Monday in October each year, a continuous annual term ending the day before the first Monday in October of the following year. Oral arguments to the court are generally conducted during two week argument sessions extending until April, with intervals of at least two weeks between argument sessions. After giving its decisions in all the cases it has agreed to hear during the term, usually in June or early July, the court takes a summer recess. Because of this system the court does not need to convene a special term to handle matters arising during the Summer. The court has established procedures to ensure that emergency matters receive immediate attention.

(b) Federal Courts of Appeal and District Courts

The Federal Courts of Appeals and District Courts are not required to hold formal terms of court. While the common law distinction between term time and vacation time originally existed in the District Courts it was rendered largely meaningless with the adoption of federal procedure rules that deem the courts “always open” for the purpose of filing documents, issuing and returning process, and making and directing motions, orders and rules. Recognising that court terms had become an anachronism, in 1968 Congress abolished statutory requirements for the holding of formal terms in the District Courts.³⁹ Each court determines the

³⁹ See 28 U.S.C. § 138.

times of holding court sessions. In practice, some District Courts continue to honour the “terms” concept, particularly where the court has outlying divisions to which judges must travel. While an entire Court of Appeals or District Court is rarely, if ever, in recess for any significant period of time, individual judges travel on judicial business, take vacations or go on sick leave.

As high-level government officials, judges are exempt from the laws that govern most federal employees’ working hours and absences from work. Instead, judges determine their own hours and vacations. In 1967 the Judicial Conference (the policy making body of the Federal Judiciary) adopted a policy that the vacations of individual judges should not exceed one month a year in Circuit and District Courts where the disposition of business is not current.⁴⁰ Recently the idea of sabbatical leave programmes for judges has been proposed and is being discussed.

The offices of the clerk of court must be open during business hours on all days except Saturdays, Sundays and legal holidays. Since the courts are deemed always open for filing purposes, each court has established a procedure for receiving documents outside normal business hours. Most courts also assign at least one judge on a rotating basis to hear emergency matters arising outside regular business hours.

7.3.iv (B) State Courts

There are as many State legal systems as there are States. Two are illustrated, as examples.

(a) Connecticut Court System

The Connecticut Court system is comprised of the Supreme Court, the Appellate Court and the Superior Court. Major divisions and functions include Administrative Services, Court Operations, Family Services, Bail Commission, Victim Services, Housing Services, Housing Court, Central Infractions Bureau, Adult Probation, Alternative Services, Juvenile Detention Services, Support Enforcement, Probate Court, Sentence Review and Public Defender Services.

⁴⁰ 1967 JCUS, p.62.

The Connecticut Superior Court hears cases all year round. However the Supreme and Appellant Courts hear cases from September until June. The period of July and August is called Recess.

The Supreme Court of Connecticut sits in terms and these terms commence on the first Tuesday of each month except July, August and September. Each term shall continue until the business ready for disposition at its beginning is disposed of. Special terms may be held at any other time or place as fixed by rule of the judges or on call of the Chief Justice.⁴¹The Appellate Court⁴² traditionally hears cases from September to June, however the Chief Judge of the Appellate Court schedules sessions as necessary. Therefore “with the approval of the Chief Justice, the Chief Judge shall (1) schedule such sessions as may be necessary at such locations as the facilitation of the court business requires, (2) designate as many panels as may be necessary, each consisting of three judges assigned by him ...”.⁴³

Provision is made under Section 52-265a of the Connecticut General Statutes which allows a party who is aggrieved by an order of the Superior Court in an action involving a matter of substantial public interest to move for an expedited appeal process. In this respect therefore provision is made for the Supreme Court to hear matters of an urgent nature when the court is not in session.

Judges of the Superior Court are entitled to vacation and personal leave at any stage during the vacation year which runs from September 1st to August 31st. Each judge is entitled to 20 vacation days and 5 personal leave days. A judge may accumulate up to 30 vacation days at any one time i.e. where days have been carried over from a previous year. Personal leave days may not be accumulated. The Administrative Judge has the sole authority to grant or deny any vacation request.

Judges of the Supreme and Appellant Courts take vacations when the court is in recess, at their discretion.

⁴¹ Section 51-200 of the Connecticut General Statutes.

⁴²This court consists of nine judges, who shall also be judges of the Superior Court and the judges shall be released from sitting on the Superior Court, except that the Chief Justice may assign any such Judge to sit on the Superior Court whenever in his judgment the public business requires it.

⁴³Section 51-917c of the Connecticut General Statutes.

The legal holidays for the period October 1, 1997 to September 30, 1998 in Connecticut were as follows:

Monday, October 13, 1997	Columbus Day
Tuesday, November 11, 1997	Veterans' Day
Thursday, November 27, 1997	Thanksgiving Day
Thursday, December 25, 1997	Christmas Day
Thursday, January 1, 1998	New Years' Day
Monday, January 19, 1998	Martin Luther King Day
Thursday, February 12, 1998	Lincoln's Birthday
Monday, February 16, 1998	Washington's Birthday
Friday, April 10, 1998	Good Friday
Monday, May 25, 1998	Memorial Day
Friday, July 3, 1998	Independence Day
Monday, September 7, 1998	Labour Day

In addition, Superior Court sessions were suspended on June 1, June 24-26 and June 29, 1998, except for arraignment and matters the administrative judge considered an emergency. All clerks' offices remained open on these days. These suspensions were to accommodate the annual meeting of the Connecticut Bar Association (June 1st), The Connecticut Judges' Institute (June 24-26) and the Annual Meeting of the Superior Court Judges (June 29th).

All Superior Court buildings are open for business from 9.00 a.m. to 5.00 p.m. Monday through Friday, except on legal holidays.

Court Clerks' Offices in Judicial District, Geographical Area and Housing Courts are open for business from 9.00 a.m. to 1.00 p.m. and 2.30 p.m. to 4.00 p.m..

(b) Delaware Court System

The Delaware court system is comprised of the Supreme Court, Court of Chancery, Superior Court, Family Court, Court of Common Pleas, Justice of the Peace Courts, Municipal Court of Wilmington, Aldermans' Courts and related judicial agencies. The

interrelationship between the courts is pyramidal with the Justice of the Peace Courts and the Aldermans' Courts at the base and the Supreme Court at the apex. The Supreme Court is the State's Appellate Court which receives direct appeals from the Court of Chancery, the Superior and the Family Court.

Administrative policy for the court system is set by the Chief Justice of the Supreme Court, in consultation with the other Justices.

In Delaware all courts sit all year round. Traditionally the Supreme Court used to close during July and August, however now although the Supreme Court has a "light schedule" during August, it remains open for business.

Each Justice is entitled to six weeks annual leave to be taken at his/her own discretion.

All Courts, except the Justice of Peace Courts, close during the prescribed legal holidays, these are as follows for 1999:

New Year's Day	Friday, January 1, 1999
Dr. Martin Luther King (Birthday)	Monday, January 18, 1999
President's Day	Monday, February 15, 1999
Memorial Day	Monday, May 31, 1999
Independence Day	Sunday, July 4, 1999, (observed on Monday, July 5, 1999)
Labour Day	Monday, September 6, 1999
Columbus	Monday, October 11, 1999
Veteran's Day	Thursday, November 11, 1999
Thanksgiving Day	Thursday, November 25, 1999
Day after Thanksgiving	Friday, November 26, 1999
Christmas Day	Saturday, December 25, 1999 (observed Friday, December 24, 1999)

The Justice of the Peace Courts remain open all year round. These courts may be divided into three types:—

- (a) open eight hours a day

(b) open sixteen hours a day

(c) open twenty four hours a day

The opening times of these courts depends on the category under which each particular court falls. The Justice of the Peace Courts have jurisdiction over civil cases in which the amount in controversy is not greater than \$15,000. These courts also have jurisdiction to hear certain misdemeanours and most motor vehicle cases (excluding felonies) and may act as committing magistrates for all crimes. Currently there are 53 Justices of the Peace.⁴⁴

7.3.v AUSTRALIA

The Legal system in Australia is broadly divided between the High Court, the Federal Courts and State and Territory Courts. Each State and Territory has a Supreme Court and in most State Jurisdictions there is also an intermediate court (District or County Court) and in both the States and the Territories a Magistrate's Court. Except where otherwise provided, the courts in all jurisdictions sit on each working day of the year outside the vacation periods.

7.3.v (a) *The High Court*

The High Court of Australia deals with cases which come to it on appeal or which begin in the High Court itself. Appeals may be against the decisions of the Supreme Courts of the States and Territories, of the Federal Court of Australia and of the Family Court of Australia. There are no further appeals once a matter has been decided by the High Court and the decision is binding on all other courts in Australia.

Section 14 of the High Court of Australia Act, 1979 provides that from a date fixed by Proclamation (1 September, 1980) the seat of the High Court shall be at the seat of Government in the Australian Capital Territory, i.e. Canberra. Section 15 provides that the sittings of the High Court shall be held from time to time

⁴⁴See <http://courts.de.us/supreme/report/juspeace.htm>.

as required at the seat of the court but the court may sit at other places within Australia and the external Territories.

Sittings of the Court for the transaction of all business as may be brought before the High Court for the year 1998 are as follows (all dates inclusive):

Canberra	Tuesday 3 February — Friday 6 February Tuesday 10 February — Thursday 12 February
Canberra	Tuesday 3 March — Friday 6 March Tuesday 10 March — Thursday 12 March
Hobart*	Monday 30 March at 2.15 p.m. and Tuesday 31 March at 2.15 p.m. Wednesday 1 April — Friday 3 April
Canberra	Tuesday 21 April — Friday 24 April Tuesday 28 April — Thursday 30 April
Canberra	Wednesday 20 May — Friday 22 May Tuesday 26 May — Friday 29 May
Canberra	Tuesday 16 June — Thursday 18 June
Brisbane*	Monday 10 August — Friday 14 August
Canberra	Tuesday 1 September — Friday 4 September Tuesday 8 September — Thursday 10 September Tuesday 29 September — Wednesday 30 September
Canberra	Thursday 1 October — Friday 2 October Tuesday 6 October — Thursday 8 October
Perth*	Monday 19 October — Friday 23 October (opening at 2.15 p.m.)
Canberra	Tuesday 10 November — Friday 13 November-Tuesday 17 November — Thursday 19 November
Canberra	Tuesday 1 December — Friday 4 December Tuesday 8 December — Thursday 10 December

* No sittings will be held unless there is sufficient business to warrant the attendance of the court.

Sittings to hear applications for special leave to appeal will also be held at Melbourne and Sydney on a particular day every two months excluding January and once a month in both November and December.

If there is sufficient business at a place at which applications for special leave to apply are listed to be heard the sittings may be moved to another capital city.

The winter vacation for the High Court begins on Saturday, June 28, 1998 and terminates on Sunday, 9th August, 1998. The summer vacations begins on Saturday, 12 December, 1998 and terminates at the end of January.

7.3.v (b) The Federal Court

The Federal Court of Australia is a national court, a superior court of record and a court of law and equity which sits in all of Australia's capital cities. At the Federal level, the legal year is not divided into terms. However, there is normally a short vacation in winter (June/July) of two weeks and a long vacation commencing approximately one week prior to Christmas which extends to the end of January.

The Federal Court operates under the Individual Docket System⁴⁵ and it was therefore decided by the Chief Justice in relation to appellate work of the court to schedule the Full Court Sittings over four set periods each year. This system of rostering appellate work during set periods was introduced to allow the judges greater capacity to manage their own calendars.

If the circumstances require it, a Full Court may sit in capital cities to deal with urgent matters on dates outside the nominated periods. The Full Court Sittings Dates for 1999 will be as follows:

8 February — 5 March, 1999

Sydney
Melbourne
Perth
Canberra
Brisbane
Adelaide

⁴⁵ This system involves each case being allocated to a particular judge who will ordinarily be responsible for that case from commencement to disposition.

10 May — 4 June, 1999

Sydney
Melbourne
Perth
Hobart
Canberra
Brisbane
Adelaide

9 August — 3 September, 1999

Sydney
Melbourne
Perth
Darwin
Canberra
Brisbane
Adelaide

8 November — 3 December, 1999

Sydney
Melbourne
Perth
Hobart
Canberra
Brisbane
Adelaide

No sittings will be held unless there is a substantial amount of business. Any urgent matter may be transferred to a place of sitting other than that at which the matter was heard at first instance. If the circumstances require it a Full Court may sit in capital cities to deal with matters on dates other than those listed.

7.3.v (c) *State of Victoria*

The Supreme Court of Victoria sits in terms, with a short vacation period occurring in the month of July and a long vacation which commences on December 18, 1999 and continues until the end

of January 2000. The sittings of the Supreme Court for 1999 are as follows:

First Term	Monday 1 February to Wednesday 31 March
Second Term	Wednesday 7 April to Friday 2 July
Vacation	Monday 5 July to Friday 16 July
Third Term	Monday 19 July to Friday 1 October
Fourth Term	Monday 4 October to Friday 17 December

During the terms judges will sit on circuit and in the Practice Court for periods of not more than one month. A number of judges will sit in order to dispatch business. If, however, there is insufficient business to be tried on a circuit, that sitting is liable to be cancelled. A judge will sit daily in the Practice Court from Monday, 4th January 1999.

The office hours of the Supreme Court Office are 9.30 a.m. — 1.00 p.m., 2.00 p.m. — 4.00 p.m.

In relation to County Courts, specific days in each month are appointed at the start of the legal year as days upon which the court shall commence sittings at particular places during the year. These courts will then sit, commencing on that specified date, until all business presented at the commencement of the sitting is disposed of. Facility is made for judges to be available for urgent matters.⁴⁶

The Magistrates Courts in Victoria do not sit in terms and they do not have court vacations. These courts sit each day of the year other than weekends and public holidays; however a Magistrate is available by telephone twenty-four hours a day to deal with urgent matters which may arise when the courts are closed.

7.3.vi COUNTRIES WITH A CIVIL LAW SYSTEM

Ireland and the United Kingdom are the only members of the European Union to have a common law system of law. In the

⁴⁶ Further information available at <http://www.Fedcourt.gov.au/about.htm>, <http://www.countycourt.vic.gov.au/sittings.htm> and <http://www.supremecourt.vic.gov.au/contact.htm>

other countries the system is that of a civil code. An adversary system has an emphasis on court advocacy.

To illustrate the systems existing in other European countries three were chosen, Germany, Denmark and Sweden. Germany has recently altered its court holiday system. Denmark has introduced aspects of trial found in common law countries.

7.3.vi (a) Germany

The Courts of the Federal Republic of Germany fall into five categories:

- (1) The “ordinary courts” which are responsible for criminal matters and may be divided into four levels: the Local Court (Amtsgericht), Regional Court (Landgericht), Higher Regional Court (Oberlandesgericht) and Federal Court of Justice (Bundesgerichtshof).
- (2) The Labour Courts (local, higher and federal).
- (3) The Administrative Courts (local, higher and federal)
- (4) The Social Courts (local, higher and federal).
- (5) The Finance Courts (state and federal).

Separate from the aforementioned five types of courts is the Federal Constitutional Court which acts as a Supreme Court and a Constitutional Court.

Court holidays did exist within the court system of the Federal Republic of Germany and ran each year from the 15th July to 15 September.⁴⁷ The court holidays were abolished with effect from 1 January, 1997.⁴⁸ From the year 1997/1998 it was intended that formal court holidays would no longer occur in the Federal Republic of Germany.

German law does not otherwise prescribe sitting days for courts. In principle German Courts can sit on any working day of the week. In practice, each ruling body sets aside time for oral hearings. The number of sitting days depends on a variety of factors, including the pressure of business. German Courts can also be availed of in emergency situations outside normal

⁴⁷ Section 199, Court Constitution Act [GVG] as in force until 31 December, 1996.

⁴⁸ Bundesgesetzblatt [BGB], 28 October, 1996, Federal Law Gazette 1, p.1546.

business hours, including night time, weekends and statutory holidays.

There has been a debate on the issue of court holidays. An overview of this debate and of the problems associated with court holidays may be read in the essay by Professor Dr. Reinhard Bork, Judge of the Hanseatic Superior Regional Court of Hamburg.⁴⁹ He described that under the prior law (s.200(1), GVG) no court hearings could take place or decisions issued during the court holiday period from 15 July to 15 September each year. The internal business of the courts, especially the work of the offices, continued. He stated that the applicability of s.199-202 GVG was limited as the constitutional courts, the administrative courts and the financial and social courts did not have court holidays. Court holidays thus applied in principle only to the ordinary courts, and even there it was limited. Criminal cases were excluded and thus could continue to be held. He described how when Roman Law was adapted in Germany the concept of court holidays was taken into German law. He described the ongoing debate on the issue of court holidays during the 19th and 20th centuries. Professor Bork concluded:

“The court holidays rule applicable to the ordinary courts, and then only to a limited extent, is systematically inconsistent, incoherent and complicated. It fails to fulfil its stated purpose of providing relief for judges and lawyers and enabling them holiday with their families. ... It causes considerable additional burdens for courts and lawyers before and after the end of the court holidays and threatens the quality of decisions reached. It inherently involves a risk for parties to disputes of a protracted deferral of cases, and also of a loss of justice as a result of missing deadlines. For lawyers it involves dangers of liability. On the other hand, its abolition will not create any serious disadvantages for the courts. Lawyers can continue to go on holidays, though will also have to continue to appoint temporary replacements, for whom relief could be provided by conventional means. The risk that parties to disputes could be exposed to particular dangers from missing deadlines and sitting dates is relatively

⁴⁹ “Do we need court holidays?” Prof. Dr. Reinhard Bork, Judge of the Hanseatic Superior Regional Court of Hamburg, *Juristenzeitung*, Vol. 48, 1993, pp.53 — 108.

small. All arguments thus favour the complete abolition of court holidays”

7.3.vi (b) Denmark

The Danish Court System consists of the Supreme Court, the High Courts, the Maritime and Commercial Court and the District Courts.

The Danish courts do not sit in terms nor do they sit for specified periods. As regard vacations the Supreme Court does not sit in July nor in the last two weeks of February, while in September only one of the two divisions of the Supreme Court sits. Hearings during these periods are possible but not very common.

There are no fixed vacations in the District Courts, the Maritime and Commercial Court or the High Courts. These courts only sit on weekdays. Each judge is entitled to five weeks vacation during the year, however the President or the administering judge can recommend that this vacation time should be taken during certain periods i.e.. during the month of July.

In the District Courts there has to be a judge available every day of the year and provision is made for this. Similarly there also have to be three judges available in each of the two High Courts every day of the year.

7.3.vi (c) Sweden

The court structure in Sweden is based on a three-tier structure comprising the District Courts, Courts of Appeal and the Supreme Court. Swedish Courts do not sit in terms nor do they have any court vacations. However, the months of July and August are traditionally “light schedule” months for the courts and they tend to deal with urgent matters only. Most court personnel take their vacation leave during this period.

Swedish courts do not sit every working day of the year but rather sit as pressure of business in the courts demand.

7.3.vii CONCLUSION ON OTHER JURISDICTIONS

A system of court sittings and court recesses (by whatever name described) is common in the organisation of legal business. The length of court sittings varies. In the jurisdictions studied local

courts of limited jurisdiction dealing with minor cases sit for most of the year. The courts dealing with more complex cases have a shorter length of court sittings and longer recesses. In all jurisdictions the work of courts proceeds throughout the year in one form or another and, where there are recesses or public holidays, provision is made for the hearing of urgent cases.

7.4 CHANGING COURT MANAGEMENT

Since the establishment of the State the management of the Irish Courts has been with the Department of Justice. An historic change is envisaged in the Courts Service Act, 1998 which was enacted on 16th April, 1998. On the passing of that Act the Courts Service Transitional Board was established. The functions of the Transitional Board are (1) to prepare for the assumption by the Courts Service of its functions, and (2) to appoint a Chief Executive Designate⁵⁰.

The function of the Courts Service will be to⁵¹:—

- (a) manage the Courts,
- (b) provide support services for the judges,
- (c) provide information on the courts system to the public,
- (d) provide, manage and maintain court buildings, and
- (e) provide facilities for users of the courts.

This is thus a time of great change in the management of the courts.

It is anticipated that the Courts Service will modernize the management of the courts.

In its overall planning and management the Courts Service will look at the current operation of the courts. Problems in the old system were identified in the first Report of the Working Group⁵². The problem of delay was identified and illustrated⁵³. While there has been a reduction in the delays in many areas there remain

⁵⁰ S. 39 Courts Service Act, 1998.

⁵¹ S. 5 Courts Service Act, 1998.

⁵² Managing and Financing of the Courts, April, 1996.

⁵³ Ibid, at p.36 et seq.

management problems. There is no doubt that case management will be further developed in the future.

There are many instruments of change at the moment. These vary from the planned Courts Service, to the development of both modern administrative management and judicial case management. Thus, the courts in Ireland are at a time of great change and modernization.

In addition, there is a change being introduced by way of modern information technology. There have been years of shortfall of investment in technology for the courts. There is the imminent danger of collapse of key systems for case tracking. New systems are required to underpin financial and personnel management. There is an absence of statistics for planning and research purposes, and a need for an infrastructure for communications. An investment of approximately £10m in information technology for the courts has been commenced to deal with these matters. New systems will address these deficiencies and will have a profound effect on the management of the courts.

The systems to be delivered under the new project will run in all courts. They cover Criminal and Civil case tracking, including family law, financial management and accounts systems, production of statistics, management information, case tracking in offices such as the Official Assignee and Examiner, document management systems, and a new online library system for the Judges' Library.

Thus the courts are planned to move, on the technology front, from the 19th Century (pen and paper) to the 21st Century. Obviously, there will need to be an analysis of management and procedures in light of the new technology. The technology will itself drive change.

7.5 POINTS OF VIEW

The issue of court sittings and vacations gives rise to a variety of points of view. Some very strongly felt opinions were submitted to the Working Group.

The courts do not go on "holidays" during "vacations". Legal work continues out of court and, in a more limited way, in court. The word 'vacation' is misleading, it is a misnomer. The behind

the scenes work carried on in the vacations was explained to the Working Group in many submissions.

The nature of trials in a common law adversarial system requires work to be done by many people both before and after the court hearing. Just as a professor, a surgeon or parliamentarian has much work both before and after a lecture, surgical operation or parliamentary debate so too do judges, barristers, solicitors, court staff, and others (such as expert witnesses) have a great deal of work before and after a court hearing. The court hearing is the tip of the iceberg.

There were submissions indicating that the law terms should be reduced to three terms, namely Hilary, Trinity and Michaelmas, i.e. that the Whit Vacation be abolished. In addition many submissions suggested that the long vacation should be in July and August rather than August and September and a number of submissions suggested that the Long Vacation should be for six weeks comprising part of July and all of August. It was pointed out that many litigants and professional witnesses take their holidays in July and August.

A strong case was made by many submissions that the system of sittings and vacations remain. It was pointed out that:

- (a) there are no significant delays in courts now, with the possible exception of the Central Criminal Court where the matter is being addressed;
- (b) the courts are open in fact at all times for urgent matters;
- (c) the iceberg principle must be considered, i.e. that much work for a case has to be done outside court.

The District Court has an increasing jurisdiction and case load and provides a service as previously described. It was submitted that the time of recess of the District Court should be extended by at least one week into September, by seven days at Christmas and to the end of Easter week. It was submitted that with the Law Library closed and many solicitors away little or no work other than urgent work gets done during these times anyway.

The Circuit Court also has an increasing jurisdiction some of which is concurrent with the High Court, and has sittings similar

to the High Court. On previous occasions,⁵⁴ when there was concern about or delay in hearing cases, sittings were organised for September. This took place after discussions with the Bar Council, Law Society and other relevant persons and bodies. While the work load of Circuit Court judges has become very heavy, because of the increasing volume of litigation and increasing jurisdiction of the Circuit Court, generally speaking there are only limited delays in the civil side. Times of court recess were felt necessary to keep abreast of new legislation and case law and to attend conferences and judicial studies seminars.

The High Court has a jurisdiction similar to the High Court of England and Wales and Northern Ireland. The nature of the work of this court is such that while judges take a holiday during part of the vacation a great deal of time is also taken up by judges in writing reserved judgments, preparing for the next terms cases, catching up on legal reading, attending seminars at home and abroad on legal matters, etc.

The impact of European Law and the increased length and complexity of much modern litigation with its inevitable voluminous documentation make the non-sittings time of the court year all the more important. In addition, most judges are members of various bodies, boards and committees, many of them connected with the law, which meet at this time.

The separate issue of the Central Criminal Court was referred to. It was pointed out that experiments with September sittings were not much of a success as cases tended not to get on. It was felt that the real solution is to have three judges sitting in the Central Criminal Court with the appropriate staff levels so that three jury trials may take place simultaneously. The number of High Court judges working on Tribunals and Commissions was referred to. Such activities constitute a severe strain on resources.

It was considered that if there is an arrears problem in any particular area or that some important or urgent case could not be reached during a particular term that the President of the High Court would be able, after consultations, to plan such additional sittings as might be requested. It was felt that if in any given year any additional services are required to catch up on any particular

⁵⁴ For example, organised by the Acting President, The Hon. Mr. Justice Diarmuid Sheridan in September, 1997.

arrears then the President of the High Court could so determine. Since the appointment of additional judges, arrears are not (as of October, 1998) a problem in the High Court other than in the Central Criminal Court where there are still delays.

The system of sittings and recess of the Supreme Court is similar to a Supreme or Constitutional Court in other countries. The nature of the work requires considerable time for preparation of cases and writing of judgments. In many countries the Supreme Court can elect whether or not to take particular appeals. In Ireland the Supreme Court is constitutionally required to hear all appeals. There is no case sifting process. In consequence, the Court has a high proportion of sitting days relative to other Supreme Courts. However, since the appointment of additional judges to the Supreme Court there has been a marked decrease in the number of cases awaiting hearing from 242 cases pending in 1994, to 105 cases pending in 1997 and as of January, 1998, only 43 cases were listed pending hearing.

As the Supreme Court is an appellate court there are many written (as opposed to *ex tempore*) judgments. Preparation of such written judgment takes time. Also, as the court is an appellate court there is a large amount of written material to be considered before an appeal is heard. The pressure on court time is now such that the time consuming practice formerly adopted of counsel reading to the court lengthy transcripts of evidence has long been abandoned. The members of the court must read the transcripts in advance of the hearing, together with any other relevant material contained in the books of appeal. The courts' practice of requiring written submissions to be furnished in most cases enables the reading of a lengthy transcript to be a more rapid process, since the submissions will direct the attention of the court to particular parts of the transcript which are of significance and will be referred to in the course of the oral arguments. It remains a lengthy process, the amount of time taken obviously varying greatly, depending on the length of the case in the High Court. A number of cases may last only a day or two and the reading burden in consequence is significantly reduced. At the other end of the scale, an appeal for hearing in Autumn, 1998 occupied 277 days in the High Court. The members of the court dealing with the appeal had to devote a

significant part of the summer recess in August and September to reading the transcript and other associated documents.

The problems for the court today are not simply the result of the cases having become lengthier and more complex, although that is undoubtedly a factor. In recent decades, whole new fields of law have opened up and, inevitably, the Supreme Court, as the final court of appeal, has been deeply involved in the relevant law. This has been particularly the case in relation to Constitutional law, Family law, Judicial Review, European Union Law, Competition law, Employment law and Anti-discrimination law.

Apart from the development of these areas of the law, there has been an enormous increase in the number of cases coming to the courts in traditional areas of the law, i.e. criminal law, personal injuries and commercial and chancery cases. To cope with this greatly increased volume of cases, the number of High Court judges has been increased by 300% in the past twenty years and the volume of appeals coming to the Supreme Court has also increased correspondingly.

In addition, members of the Supreme Court are required to sit on the Court of Criminal Appeal and the workload of that court has also increased enormously in recent years. Under the provisions of the Courts and Court Officers Act, 1995, the work of that court will be transferred to the Supreme Court and the total workload of that court will thus be increased.

The Bar Council submitted that there should be no alteration in the present arrangements regarding the length of court sittings and vacations and that there were in fact very good reasons for not making any alterations. It was felt that any alteration would have a very significant detrimental effect upon the ability of barristers to provide the level of careful competent and efficient service which the public are entitled to expect from the Bar. The Bar Council, while anxious to assist in bringing about relevant and necessary changes in the legal system, submitted that to change the existing arrangements as to sittings and vacations is neither relevant nor necessary; the consequences of doing so would be detrimental to the efficient working of the present system of administration of justice and produce no real benefit.

The Law Society consulted its members and found some support for a reduction in the length of the Long Vacation by two weeks and even greater support for the abolition of the Whit

Vacation. However, a clear majority favoured the retention of the present system, given that delays had now been almost eliminated, that the courts in fact sit so frequently during the vacation that access to justice is never denied and that the Courts Service may review the matter if necessary. In addition, solicitors were strongly of the view that the central office of the High Court and all other court offices should retain the same opening hours during the vacation as they do during term time.

It was pointed out by a solicitor's office that in their firm (a large firm) they prohibited the taking of holidays in term time. Thus, all their staff, from partners to apprentices, schedule their primary holidays over the two vacation months in the Summer. They felt clients would not be happy if their solicitors were not present for their cases. By scheduling their holidays in August and September they can assure clients of their availability in court. In addition, they use the long vacation to prepare for long and complex cases and for scheduling lengthy consultations with counsel and witnesses. This submission mirrored the views of many put to the Working Group.

In light of the information received it is clear that courts are accessible at all times. The current system is favoured by key participants and this is an important factor. While the whole courts system is going through a time of major change with the introduction of the Courts Service it would be inadvisable to introduce additional change without compelling reason and widespread support.

7.6 CONCLUSION

- The relevant fundamental concept is one of access to courts.
- A service is provided by the courts all year round. For example, the High Court sat every working day in August and September, 1998 except the day of the funeral of The Hon. Mr. Justice Peter Shanley.
- The consideration of Court sittings and vacations necessarily involves an examination of the efficient functioning of the court system. Inclusive in this is the general issue of "delay" as it relates to the hearing of court cases.

Traditionally, owing to a number of factors⁵⁵, delay in the court system was an inherent element of the legal process. However, in more recent times much of this delay has been alleviated. This has resulted from an increase in the number of judges appointed to each jurisdiction⁵⁶ as well as provision being made to dispose of existing delays on a scheduled basis.

Statistics which have been compiled over the recent years in each jurisdiction indicate a general decrease in the number of delays occurring in relation to civil actions. This is notable in the Supreme Court where over a period of two years, the number of cases awaiting hearing has decreased from 219 to 43⁵⁷, which has heralded a reduction in delayed hearings. As of July, 1998 in the High Court the number of cases being disposed of exceeded the number of cases being set down in a continued effort to reduce delays.

In the Circuit Court, the longest delays reported in civil cases, as of December, 1997, did not exceed 9 months, however, this was only occurring on the Cork Circuit. All other Circuits had a maximum of up to 6 months delay. This indicated a significant decrease in delays over recent years.

Delays relating to criminal cases in some jurisdictions are more significant. In the District Court, however, there are no undue delays. Cases in the Dublin Metropolitan District are heard within 8 weeks of the date of listing. In the Dublin Circuit Court, there is currently a delay of up to 3 months in the hearing of ordinary criminal cases. In other Circuits delays range from no delay at all in twenty venues, an average of 3-6 months delay in only 4 venues and 6-12 months in only 1 venue. The Central Criminal Court, as of the 26th June, 1998 does have an average delay of 14.47 months from the date the order for return for trial is made in murder trials and 10.41 months in rape trials.

An overview of the aforementioned statistics indicate a general reduction in delays experienced within the court

⁵⁵ These factors included the available number of Judges in each jurisdiction, the number of cases to be heard, the increase in the jurisdiction of the courts and administrative facilities.

⁵⁶ Courts and Court Officers Act, 1995.

⁵⁷ Statistics compiled by the Department of Justice, Equality and Law Reform as of January, 1998.

system over recent years, particularly in relation to Civil matters.

- The current system arranges the legal year into court sittings. However, there is access to justice at all times for urgent cases.
- The term vacation is misleading, it is a misnomer. Court related work continues throughout the year.
- The current system is favoured by key participants. Any change should be preceded by the appropriate consultations and negotiations.
- There are different arrangements of sittings for different jurisdictions, reflecting different types of work.
- Any alteration in the system should be lead by demand for an increased sittings service.
- If a demand for an alteration in the system does arise the Courts Service must try and meet the demand.
- The management of the Courts is going through a time of historic change as the Courts Service is being established.
- The Courts Service will bring about more efficiencies within the legal system.
- An investment of the order of £10 m. in Information Technology for the courts is proceeding.
- The impact of the Information Technology investment should be considered before expanding existing sittings. As technology advances, the day when a twenty four hour ability to lodge and receive documents via modern technological systems will be a factor in planning an efficient court system. Significant amendments to the Rules of Court will be necessary to meet this development.
- The courts have to capitalise on the efficiencies to be gained by the new Courts Service and Information Technology before drawing any firm conclusions on how to manage court sittings and vacations.
- The level of court staffing is consistent with current arrangements and would have to be reviewed if any new system were planned.

- There has been an immense growth in the volume and complexity of litigation. The time when courts are not sitting is used to catch up on paperwork. As the system develops and modernises new factors will be relevant (especially as information technology is established) but that has not yet occurred.
- The establishment and operation of the Courts Service should be studied to see how the Service affects the general efficiency of the court term system prior to resourcing further sittings.
- There is a clear recognition by all concerned (judiciary, court staff, barristers and solicitors) that there is a responsibility to keep court work up to date.
- There is a recognition that, when necessary, special sittings should be organised to meet special situations, such as a delay in the criminal trial lists.
- To effect any change in the court sittings system requires the co-operation of judges, barristers, solicitors, court staff and the public (such as witnesses etc. in making themselves available for court).
- The bulk of court users go on holidays during July and August. Difficulty in securing witnesses (especially expert witnesses such as doctors, engineers, accountants and others) is a factor at this time.
- The demands that are being placed on judges and courts for speedy decisions and judgments at the conclusion of cases increases the workload at recess — the aspiration being that all business of the previous term be concluded in the following recess. Work practices could be altered, such as “judgment writing days” granted to judges to write judgments at the conclusion of the hearing of cases. However, this would require an increase in the number of judges.
- It is the usual practice that the Scheduled Sittings of the Circuit Courts outside Dublin commence on a Tuesday. However, Circuits are now keeping this practice under review, and indeed, from time to time, sittings are fixed on Mondays to accommodate specially fixed cases, or to finish part heard cases, or to give priority to urgent Family Law matters.

7.7 RECOMMENDATIONS

1. The term “vacation” is misleading, it is a misnomer. It leads to a misunderstanding of the situation and it should be abandoned.
2. The court year should be described as being divided into court terms and recesses. While there is merit in changing the description of the “sittings”, or as recommended “terms”, to such as Autumn, Spring, Summer, the Working Group recommends that no such change be made at this time.
3. The system of organising the legal year should not be altered at this time but should be considered by the Courts Service.
4. The Courts Service (when established) should formulate a policy on court sittings. In the planning for the Courts Service the necessity to manage the courts both efficiently and effectively will require review of the planning of the year’s work in each jurisdiction and indeed in each area of speciality so that problems, such as lengthy delays, do not occur as a consequence of the planned system of the legal year.
5. To effect change in the organisational system of court terms would require the co-operation of many groups including the Judiciary, the Bar Council, the Law Society and court staff. Any change should be preceded by consultations and discussions with all relevant groups.
6. The Presidents of each Bench should inform the Courts Service (when established) of delays or other problems arising in their jurisdiction relevant to the efficient and effective administration of justice and their proposals for dealing with such difficulties.
7. Full statistics should be obtained by the Courts Service, (when established) through its statistics office (when established), of the flow of work throughout the year in each jurisdiction to enable proper planning for an efficient and effective service.

8. The public should be informed of the availability of the courts during the recesses.
9. A freephone number should be publicly available at all times for each jurisdiction of the courts.
10. Consideration should be given, after the appropriate consultations and negotiations, to keeping court offices open for normal hours during court recess times to meet the demand which continues during the recess.
11. A review should be maintained by the Courts Service in consultation with all relevant groups as to whether July and August are more appropriate for a recess than August and September.
12. The Whit Recess should be reviewed as the Courts Service proceeds.
13. The current use of courthouses, including during recesses, should be examined.

APPENDIX A

DISTRICT COURT — AUGUST 1998

The Working Group received computer printouts of over 200 pages on the business of the District Court during August 1998. These statistics show that there were:

- (a) 3,021 hearings during the month of August;
- (b) 1,444 of these hearings were new cases in the custody courts;
- (c) 482 cases were either disposed of or were cases in which a Bench Warrant was issued;
- (d) 25 fines were imposed;
- (e) 24 sentences were given.

In relation to the Courts for Juveniles during August there were 194 charge sheets before the court and 70 Eastern Health Board cases.

APPENDIX B
IRELAND
SITTINGS OF DUBLIN CIRCUIT COURT
LONG VACATION 1998

DATE	CATEGORY
6/8/98	Injunction
12/8/98	5 Family Law cases 70 District Court Appeals 15 Motions 10 Infant Rulings 10 Bench Warrants 5 Extempore Applications
17/8/98	1 Family Law case 1 Injunction
19/8/98	1 Family Law case
21/8/98	1 Injunction
26/8/98	22 Family Law cases 13 Infant Rulings 9 Motions 44 District Court Appeals 12 Criminal Applications
2/9/98	1 Injunction
9/9/98	21 Family Law cases 11 Judges' Motions 70 County Registrar's Motions 71 District Court Appeals 9 Infant Rulings 7 Criminal Applications
10/9/98	1 Family Law Case
16/9/98	1 Injunction
17/9/98	1 Injunction
23/9/98	17 Family Law cases 9 Judges' Motions 70 County Registrars' Motions 70 District Court Appeals 8 Infant Rulings 11 Criminal Applications
24/9/98	2 District Court Appeals
30/9/98	1 Injunction

APPENDIX C

IRELAND

Rules of the Superior Courts Order 118.

Sittings and Vacations.

1. The sittings of the Supreme Court and the sittings in Dublin of the High Court shall be four in every year, viz.: the Michaelmas sittings, the Hilary sittings, the Easter sittings and the Trinity sittings. The Michaelmas sittings shall begin on the first Monday in October and end on the 21st December; the Hilary sittings shall begin on the 11 January and end on the Friday of the week preceding the Easter vacation; the Easter sittings shall begin on the Monday of the week following the Easter vacation and end on the Thursday preceding Whit Sunday; and the Trinity sittings shall begin on the Wednesday of the week following Whitsun week and end on the 31st July, provided that, if the 11th January shall be a Saturday or Sunday the Hilary sittings shall begin on the following Monday.

2. The vacations to be observed in the several Courts and offices of the Supreme Court and the High Court shall be four in every year, viz.: the Christmas vacation, the Easter vacation, the Whitsun vacation and the Long vacation. The Christmas vacation shall begin on the 24th December and end on the 6th January. The Easter vacation shall begin on the Monday of the week before Easter week and end on the Saturday of Easter week. The Whitsun vacation shall begin on the Friday of the week preceding Whitsun and end on the Saturday of Whitsun week. The Long vacation shall begin on the 1st August and end on the 30th September.

3. The days of commencement and termination of each sittings and vacation shall be included in such sittings and vacation respectively.

4. (1) The several offices of the Supreme Court and of the High Court shall be open for public business on every day of the year except Saturdays, Sundays, Christmas Day and the seven next following days, St. Patrick's Day, Good Friday, Monday and Tuesday of Easter Week and the days duly appointed to be observed as public holidays in public offices.

(2) The hours during which such offices are open for public business shall be as follows:—

- (a) during the sittings, from half past ten o'clock in the forenoon to half past four o'clock in the afternoon;
- (b) during the Long vacation, from half past ten o'clock in the forenoon to one o'clock in the afternoon;
- (c) during other vacations, from half past ten o'clock in the forenoon to two o'clock in the afternoon.

5. One of the Judges of the High Court shall be selected at the beginning of each Long vacation for the hearing in Dublin during vacation of all such applications as may require to be immediately or promptly heard. Such Judge shall act as vacation Judge for one year from his selection. In the absence of arrangement between the Judges, the vacation Judge shall be the Judge last appointed if he has not already served as vacation Judge for two years, and, if he has already so served, then the vacation Judge shall be the junior Judge who has not served for two years according to juniority of appointment, and if and whenever all the Judges have served for two years, then and in such event each Judge in succession in order of juniority shall act as vacation Judge for one year. Any other Judge of the High Court may sit in vacation for any vacation Judge. The Chief Justice shall not be liable to act as vacation Judge.

6. Any interval between the sittings of the High Court, not included in a vacation, shall, so far as the disposal of business by the vacation Judge is concerned, be deemed to be a portion of the vacation.

APPENDIX D

IRELAND

SITTINGS OF THE SUPREME COURT AND HIGH COURT PURSUANT TO ORDER 118 RULE 1 OF THE RULES OF THE SUPERIOR COURTS

1996

HILARY	Thursday, 11th January to Friday, 29th March.
EASTER	Monday, 15th April to Thursday, 23rd May.
TRINITY	Wednesday, 5th June to Wednesday, 31st July.
MICHAELMAS	Monday, 7th October to Saturday, 21st December.

1997

HILARY	Monday, 13th January to Friday, 21st March.
EASTER	Monday, 7th April to Thursday, 15th May.
TRINITY	Wednesday, 28th May to Thursday, 31st July.
MICHAELMAS	Monday, 6th October to Sunday, 21st December.

1998

HILARY	Monday, 12th January to Friday, 3rd April.
EASTER	Monday, 20th April to Thursday, 28th May.
TRINITY	Wednesday, 10th June to Friday, 31st July.
MICHAELMAS	Monday, 5th October to Monday, 21st December.

APPENDIX E

IRELAND

LONG VACATION 1998 THE HIGH COURT

DATE	COURT	CASE	JUDGE	CATEGORY
4/8/98	Court 15	Elizabeth McManus & ors. v. John Quaile	O'Higgins J.	Succession Act matter
4/8/98	Court 15	Lillian Doyle v. Thomas Doyle	O'Higgins J.	Family Law
4/8/98	Court 15	Dunnes Stores Ireland Ltd. & ors. v. George Moloney & Anor.	O'Higgins J.	Judicial Review
5/8/98	Court 3	Bail List — 49 cases	O'Higgins J.	Bail Applications
5/8/98	Court 3		O'Higgins J.	Family Law Order
5/8/98	Court 3	Anthony Hanahoe v. Eastern Health Board	O'Higgins J.	Family Law
6/8/98	Court 15	Millennium Solutions 400 Ltd. v. Precision Software Ltd.	O'Higgins J.	Injunction
6/8/98	Court 15	Capper Fuels Ltd. v. Clondalkin Fuels Ltd.	O'Higgins J.	Ex Parte
6/8/98	Court 15	Creedon Property Services Ltd. v. Pat O'Connor & Ors.	O'Higgins J.	Short Service Notice of Motion
6/8/98	Court 15	Castletower Holdings Ltd. v. Ian Hayes McCoy	O'Higgins J.	Injunction
6/8/98	Court 15	Industrial Development Agency (Ireland) v. George Ward & Ors.	O'Higgins J.	Injunction
6/8/98	Court 15	Bula Resources (Holdings) Plc v. James Stanley & Anor.	O'Higgins J.	Mareva Injunction
6/8/98	Court 15	Mark Ralph v. James McCartan	O'Higgins J.	Injunction
7/8/98	Court 15	Dexion Ireland Ltd. (In liquidation)	O'Higgins J.	Companies Matter
7/8/98	Court 15	Allen Miller v. Forsye & Forsye Ltd.	O'Higgins J.	Injunction

DATE	COURT	CASE	JUDGE	CATEGORY
7/8/98	Court 15	Grafton Recruitment Ltd. t/a Grafton Recruitment & anor. v. Seamus McGrath	O'Higgins J.	Injunction
7/8/98	Court 15	James Franklin v. Sharon Franklin	O'Higgins J.	Family Law
7/8/98	Court 15	Colin Lynch v. Donal O'Niallain & ors.	O'Higgins J.	Injunction
7/8/98	Court 15	Michael F. Murphy v. William Joseph Broderick	O'Higgins J.	C.A.B. matter
10/8/98	Court 3	Several applications for production orders	Smith J.	Stateside
10/8/98	Court 3	Doyle v. Doyle	Smith J.	Family Law
10/8/98	Court 3	Heeny & Ors. v. Dublin Corporation	Smith J.	Ex-Parte
11/8/98	Court 3	Bail Lists, 48 cases	Smith J.	Bail Applications
12/8/98 — Vacation Sittings				
12/8/98	Court 3	Byrne v. Radio Ireland Ltd.	Smith J.	Motion
12/8/98	Court 3	Carroll & anor., v. Carroll	Smith J.	
12/8/98	Court 3	Counter Products Marketing (Ire.) Ltd. v. Mairena (Ire.) Ltd. & ors.	Smith J.	Motion
12/8/98	Court 3	Dublin Corporation v. Insulation Distributors Ltd.	Smith J.	Motion
12/8/98	Court 3	Duffy v. Hickey & anor.	Smith J.	Motion
12/8/98	Court 3	First National Building Society v. Thompson.	Smith J.	Motion
12/8/98	Court 3	Freeway Transport (Ire) & Cos. Acts	Smith J.	Motion
12/8/98	Court 3	Irish Nationwide Building Society V. Kingston	Smith J.	Motion
12/8/98	Court 3	Same v. O'Malley & ors.	Smith J.	Motion
12/8/98	Court 3	Kingston v. Mulhall & ors.	Smith J.	Motion
12/8/98	Court 3	Lombard North Central Plc. v. Costello & anor.	Smith J.	Motion

DATE	COURT	CASE	JUDGE	CATEGORY
12/8/98	Court 3	Meincourt Ltd. v. Bank of Ireland (2 Motions)	Smith J.	Motion
12/8/98	Court 3	Norbrook Laboratories Ltd. v. Minister for Agriculture, Food and Forestry	Smith J.	Motion
12/8/98	Court 3	O'Brien v. Kavanagh	Smith J.	Motion
12/8/98	Court 3	Schmidt Industries Ltd. v. Irish Life Finance	Smith J.	Motion
12/8/98	Court 3	Sugrue v. Butler	Smith J.	Motion
12/8/98	Court 3	Walsh v. Burnker	Smith J.	Motion
12/8/98	Court 3	Irish Life Homeloans v. Parsons	Smith J.	Summonses
12/8/98	Court 3	Same v. Same	Smith J.	Wards of Court
12/8/98	Court 3	Rochford Gallagher & Co.	Smith J.	Wards of Court
12/8/98	Court 3	Kelleen	Smith J.	Wards of Court
12/8/98	Court 3	O'Neill Regan & Co.	Smith J.	Wards of Court
12/8/98	Court 3	Conor Sheehan: Orig. Summons; Connolly Sellers Geraghty Fitt	Smith J.	Wards of Court
12/8/98	Court 4	Medical Practitioners Act 1978	The President	Medical
12/8/98	Court 4	National Irish Bank Financial Services Ltd. & Cos. Act	The President	For Mention
12/8/98	Court 4	McGrath v. McGrath (F.M.)	The President	Family Law
12/8/98	Court 4	O'Dea v. O'Dea	The President	Family Law
12/8/98	Court 4	Pulido v. Beaumont	The President	Family Law
12/8/98	Court 4	Skehan v. Skehan	The President	Family Law
12/8/98	Court 4	Bellerophon Ltd. v. Higher Education Authority & ors.	The President	Motion
12/8/98	Court 4	Byrne (minor) v. Minister for Education & ors. (2 motions)	The President	Motion
12/8/98	Court 4	Clonmel Horseshow and Agricultural Soc. v. Clonmel Leisure Group Ltd.	The President	Motion

DATE	COURT	CASE	JUDGE	CATEGORY
12/8/98	Court 4	Creedon Property Services Ltd. v. O'Connor & ors.	The President	Motion
12/8/98	Court 4	Dillon (minor) v. Minister for Education & ors.	The President	Motion
12/8/98	Court 4	Faherty (minor) v. same.	The President	
12/8/98	Court 4	Flynn v. Sweeney & anor.	The President	Motion
12/8/98	Court 4	Hannon v. Commissioners of Public Works & ors.	The President	Motion
12/8/98	Court 4	Healy (minor) v. Minister for Education & ors.	The President	Motion
12/8/98	Court 4	Horan (minor) v. Same (2 Motions)	The President	Motion
12/8/98	Court 4	McNamara (minor) v. Same (2 Motions)	The President	Motion
12/8/98	Court 4	Millennium Solutions Ltd v. Precisions Softward Ltd.	The President	Motion
12/8/98	Court 4	O'Mahony (minor) v. Minister for Education & ors. (2 Motions)	The President	Motion
12/8/98	Court 4	Southborough Int. Ltd. v. Cos. Acts	The President	Petition
12/8/98	Court 4	Stentor Communications Ltd. & Cos. Acts	The President	Petition
12/8/98	Court 4	O'Donoghue v. Longford County Council	The President	Ruling
12/8/98	Court 4	Nelson v. Nelson	Smith J.	Injunction
13/8/98	Court 1	Dunnes Stores Ltd. v. Maloney & anor.	Smith J.	Judicial Review
13/8/98	Court 1	Lasebai v. Lasebai	Smith J.	Family Law
13/8/98	Court 1	David Allen v. Gaynor	Smith J.	Family Law
13/8/98	Court 1	David Allen v. Boylan	Smith J.	Injunction
14/8/98	Court 1	Ryan v. Cole	Smith J.	Ex-parte Common Law
14/8/98	Court 1	Healy v. Spellman	Smith J.	Injunction

DATE	COURT	CASE	JUDGE	CATEGORY
14/8/98	Court 1	Franklin v. Franklin	Smith J	Family Law
14/8/98	Court 1	Sapporo Woods Ltd v. Coffey & Ors.	Smith J.	Injunction
14/8/98	Court 1	Irish Shell Ltd v. Murphy Central Bank Application	Smith J.	Injunction
14/8/98	Court 1	Michael Byrne v. Rover Ireland Ltd.	Smith J.	Injunction
17/8/98	Court 4	E.H.B. v. O'Brien	Kelly J.	Judicial Review
17/8/98	Court 4	Tyrell (minor) v. Minister for Education	Kelly J.	Judicial Review
17/8/98	Court 4	Dumbrell (minor) v. Minister for Education	Kelly J.	Judicial Review
17/8/98	Court 4	Larkin (minor) v. Minister for Education	Kelly J.	Judicial Review
17/8/98	Court 4	McDonald v. Norris	Kelly J.	Possession
17/8/98	Court 4	E.H.B. v. Conway (minor) & Ors.	Kelly J.	Judicial Review
17/8/98	Court 4	Byrne (minor) v. Minister for Education	Kelly J.	Judicial Review
17/8/98	Court 4	Healy & ors. v. Hession & ors.	Kelly J.	Injunction
17/8/98	Court 4	Southborough International Ltd. v. Cos. Acts	Kelly J.	Petition
17/8/98	Court 4	Ryan (minor) v. Minister for Education	Kelly J.	Judicial Review
17/8/98	Court 4	Power (minor) v. Minister for Education	Kelly J.	Judicial Review
17/8/98	Court 4	D.P.P. v. Europa	Kelly J.	Bail
18/8/98	Court 4	Central Bank of Ireland v. James Bower Investment Consultants Ltd. & anor.	Kelly J.	Chancery Special Summons
18/8/98	Court 4	Irish Shell v. Murphy & ors.	Kelly J.	Injunction
18/8/98	Court 4	Michael Byrne Motors v. Rover Ireland Ltd.	Kelly J.	Injunction
18/8/98	Court 4	Lasebai v. Lasebai	Kelly J.	Family Law

DATE	COURT	CASE	JUDGE	CATEGORY
18/8/98	Court 4	Sapporo Woods v. Coffey	Kelly J.	Injunction
18/8/98	Court 4	57 Cases	Kelly J.	Bail Applications
19/8/98	Court 4	Bellerophan Ltd. v. Higher Education Authority	Kelly J.	Judicial Review
19/8/98	Court 4	Bord na gCon v. McInerney	Kelly J.	Injunction
19/8/98	Court 4	Koddaert Street Ltd. v. Tullow Farm Machinery	Kelly J.	Appeal against Order of Master
19/8/98	Court 4	A.G. v. Crowley	Kelly J.	Bail
19/8/98	Court 4	Malone v. Shields & ors.	Kelly J.	Ex-Parte
19/8/98	Court 4	David Allen Poster Sites v. Gaynor & ors.	Kelly J.	Injunction
19/8/98	Court 4	David Allen Poster Sites v. Gaynor & ors.	Kelly J.	Injunction
19/8/98	Court 4	McCabe v. McCabe	Kelly J.	Family Law
19/8/98	Court 4	Michael Byrne Motors v. Rover Ireland Ltd.	Kelly J.	Injunction
20/8/98	Court 4	Glencar Explorations Ltd. & anor. v. Mayo County Council	Kelly J.	Judgment delivered
20/8/98	Court 4	Quinn v. Quinn	Kelly J.	Family Law
20/8/98	Court 4	Ralph v. McCartan	Kelly J.	Injunction
20/8/98	Court 4	Walsh v. Governor of Mountjoy Prison	Kelly J.	Stateside
20/8/98	Court 4	Roughan v. Governor of Mountjoy Prison	Kelly J.	Judicial Review
20/8/98	Court 4	Walsh v. Governor of Mountjoy Prison	Kelly J.	Judicial Review
20/8/98	Court 4	Walsh v. Governor of Mountjoy Prison	Kelly J.	Judicial Review
20/8/98	Court 4	O'Sullivan v. Governor of Wheatfield Prison	Kelly J.	Judicial Review
20/8/98	Court 4	Morris v. Minister for Justice	Kelly J.	Judicial Review
20/8/98	Court 4	Ward v. Governor of Fort Mitchel Prison	Kelly J.	Stateside

DATE	COURT	CASE	JUDGE	CATEGORY
20/8/98	Court 4	Hogan v. Governor of Fort Mitchel Prison	Kelly J.	Judicial Review
21/8/98	Court 4	Brennan v. Governor of Cork Prison	Kelly J.	Stateside
21/8/98	Court 4	Bord na gCon v. McNerney & ors.	Kelly J.	Injunction
21/8/98	Court 4	McDonald v. Norris	Kelly J.	Possession
21/8/98	Court 4	Doran v. Governor of Cork Prison	Kelly J.	Judicial Review
21/8/98	Court 4	McDonald v. Governor of Wheatfield Prison	Kelly J.	Judicial Review
21/8/98	Court 4	Cronin v. Governor of Limerick Prison	Kelly J.	Stateside
21/8/98	Court 4	Buck v. Governor of Limerick Prison	Kelly J.	Stateside
21/8/98	Court 4	Casey v. Governor of Limerick Prison	Kelly J.	Stateside
21/8/98	Court 4	O'Donnell v. Governor of Limerick Prison	Kelly J.	Stateside
21/8/98	Court 4	Stannton v. Governor of Limerick Prison	Kelly J.	Article 40
21/8/98	Court 4	Stannton v. Governor of Limerick Prison	Kelly J.	Article 40
21/8/98	Court 4	Orchid Transport v. Hughes	Kelly J.	Injunction
21/8/98	Court 4	Finlay v. Patrick Butterley & Co.	Kelly J.	Injunction
21/8/98	Court 4	D.P.P. v. Jameson	Kelly J.	Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v. O'Driscoll	Kelly J.	J.Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v. Honer	Kelly J.	Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v. Uzell	Kelly J.	Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v. Roe	Kelly J.	Stateside (Ex-Parte)

DATE	COURT	CASE	JUDGE	CATEGORY
21/8/98	Court 4	D.P.P. v. Murray	Kelly J.	Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v Cox	Kelly J.	Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v. Connolly	Kelly J.	Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v. Pisthoo	Kelly J.	Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v. Stannton	Kelly J.	Stateside (Ex-Parte)
21/8/98	Court 4	D.P.P. v. Mooney	Kelly J.	Stateside (Ex-Parte)
24/8/98	Court 4	Orchid Transport v. Hughes	Kelly J.	Interlocutory Injunction
24/8/98	Court 14	Power (De Paor) v. Judge Ballagh	Shanley J.	Leave to apply for Judicial Review
24/8/98	Court 14	McCabe — McCabe	Shanley J.	Family Law Settlement Ruled
24/8/98	Court 14	Application of Eileen O'Keeffe	Shanley J.	Personal Applicant leave to issue motion
25/8/98	Court 14	Tigarfa v. Tigarfa	Shanley J.	Interim Order Child Abduction case
25/8/98	Court 3	50 cases	Shanley J.	Bail Applications
26/8/98 — Vacation Sitings				
26/8/98	Court 3	Porter Morris & Co.	Shanley J.	Bankruptcy
26/8/98	Court 3	Doyle Hanlon	Shanley J.	Wards of Court
26/8/98	Court 3	Eugene F. Collins	Shanley J.	Wards of Court
26/8/98	Court 3	Barry Hickey & Henderson	Shanley J.	Wards of Court
26/8/98	Court 3	Egan O'Reilly	Shanley J.	Wards of Court
26/8/98	Court 3	Maurice E. Veale & Co.	Shanley J.	Wards of Court
26/8/98	Court 3	Frank Ward & Co.	Shanley J.	Wards of Court

DATE	COURT	CASE	JUDGE	CATEGORY
26/8/98	Court 3	Meath Hospital (or County of Dublin Infirmary) v. A.G.	Shanley J.	Summons
26/8/98	Court 3	Ashworth Properties Ltd. & Companies Acts 1963	Shanley J.	Petition
26/8/98	Court 3	National Irish Bank Financial Services Ltd & Companies Acts	Shanley J.	Petition
26/8/98	Court 3	Bula Resources (Holdings) Ltd. v. Stanley & anor.	Shanley J.	Injunction/ Discovery
26/8/98	Court 3	Custom Software Systems Ltd t/a Information System v. Mairena (Ireland) Ltd. & ors.	Shanley J.	Injunction
26/8/98	Court 3	Fagan (minor) v. Minister for Education & Science & ors.	Shanley J.	Judicial Review
26/8/98	Court 3	M. & J. Gleeson & Co. & ors. v Competition Authority	Shanley J.	Directions
26/8/98	Court 3	Murphy Brewery Ireland Ltd. v. Competition Authority	Shanley J.	Directions
26/8/98	Court 3	Murray & anor. v. Twomey	Shanley J.	Interlocutory Injunction
26/8/98	Court 3	Mink v. Europ. Assistant & anor.	Shanley J.	Injunction
26/8/98	Court 3	Albany Homes v. McCann & ors.	Shanley J.	Intermin Injunction
26/8/98	Court 3	Cormuda Ltd. v. Mahon & ors.	Shanley J.	Interim Injunction
26/8/98	Court 3	Industrial Development Agency (Ireland) & anor. v. Connors & ors.	Shanley J.	Interlocutory Injunction
26/8/98	Court 3	Quinn v. Quinn	Shanley J.	Family
26/8/98	Court 3	D.P.P. v. Melia	Shanley J.	Bail
26/8/98	Court 4	O'Leary v. Conroy	Budd J.	Summons
26/8/98	Court 4	Bambrick v. Mountjoy Prison	Budd J.	Motion
26/8/98	Court 4	Carberry (minor) v. Minister for Education & ors.	Budd J.	Motion
26/8/98	Court 4	Carberry (minor) v. Minister for Education & ors.	Budd J.	Motion

DATE	COURT	CASE	JUDGE	CATEGORY
26/8/98	Court 4	Dillon v. Minister for Education and Science & ors.	Budd J.	Motion
26/8/98	Court 4	Dillon v. Minister for Education and Science & ors.	Budd J.	Motion
26/8/98	Court 4	D.P.P. v. Judge Ballagh & anor.	Budd J.	Motion
26/8/98	Court 4	Elliot v. Elliot	Budd J.	Motion
26/8/98	Court 4	Fagan (nee Malone) v. Shields p/a L.K.	Budd J.	Motion
26/8/98	Court 4	Finlay v. Patrick Butterly & Co. Ltd.	Budd J.	Motion
26/8/98	Court 4	Flexlift Ltd. v. Add Gards Ltd. t/a Add Gards Co. Ltd & anor.	Budd J.	Motion
26/8/98	Court 4	Halpin (minor) v. Minister for Education and Science & ors.	Budd J.	Motion
26/8/98	Court 4	Halpin (minor) v. Minister for Education and Science & ors	Budd J.	Motion
26/8/98	Court 4	Healy (minor) & ors. v. Minister for Education & ors.	Budd J.	Motion
26/8/98	Court 4	Irish Shell Ltd. v. Murphy & ors.	Budd J.	Motion
26/8/98	Court 4	Keating (minor) v. Minister for Education & ors.	Budd J.	Motion
26/8/98	Court 4	Keating (minor) v. Minister for Education & ors. 1	Budd J.	Motion
26/8/98	Court 4	McNamara (minor) v. Minister for Education & ors.	Budd J.	Motion
26/8/98	Court 4	McNamara (minor) v. Minister for Education & ors.	Budd J.	Motion
26/8/98	Court 4	Quinn v. Quinn	Budd J.	Motion
26/8/98	Court 4	Ryan (minor) v. Minister for Education & ors	Budd J.	Motion
26/8/98	Court 4	Ryan (minor) v. Minister for Education & ors	Budd J.	Motion
26/8/98	Court 4	Schering Plough (Brinny) Co. v. Brewery Chemical & Dairy Engineering Ltd. & anor.	Budd J.	Motion

DATE	COURT	CASE	JUDGE	CATEGORY
26/8/98	Court 4	Slaneforth Properties Ltd. v. Byrnes (Chatham Street) Ltd.	Budd J.	Motion
26/8/98	Court 4	Taylor v. Johnson Filtration Systems Ltd.	Budd J.	Motion
26/8/98	Court 4	Tobin & anor. v. Tobin & ors.	Budd J.	Motion
26/8/98	Court 4	Tobin & anor. v. Tobin & ors.	Budd J.	Motion
26/8/98	Court 4	Jones (minor) v. Minister for Education & ors.	Budd J.	For Mention
26/8/98	Court 4	Monaghan (minor) v. Minister for Education & ors	Budd J.	For Mention
26/8/98	Court 4	Monaghan (minor) v. Minister for Education & ors	Budd J.	For Mention
26/8/98	Court 4	Morton (minor) v. Minister for Education & Science & ors.	Budd J.	For Mention
26/8/98	Court 4	Murphy (minor) Delacoin Provincial De Malaga Consejena de & ors.	Budd J.	For Mention
26/8/98	Court 4	O'Shea v. O'Shea	Budd J.	For Mention
27/8/98	Court 14	D.P.P. v. Robert Melia	Shanley J.	Bail
27/8/98	Court 14	Medical Council v. O'Leary	Shanley J.	Order confirming decision of medical council
27/8/98	Court 14	Somerville Large v. Wexford County Registrar	Shanley J.	Interlocutory Injunction
27/8/98	Court 14	Rahill v. McCrystal	Shanley J.	Settlement of motion for Interlocutory Injunction
27/8/98	Court 14	Griffin v. Murray & ors.	Shanley J.	Liberty to seek Judicial Review
27/8/98	Court 14	Lambert v. Cowan	Shanley J.	Interim Injunction
27/8/98	Court 14	Fingal Co. Co. v. Harrington	Shanley J.	Interim Injunction
28/8/98	Court 14	In re: Patrick Brennan	Shanley J.	Habeas Corpus (ultimately settled)

DATE	COURT	CASE	JUDGE	CATEGORY
28/8/98	Court 14	Bellerophan	Shanley J.	Extension of time for statement of opposition
31/8/98	Court 3	Gerard Staunton v. Gov. Limerick Prison	Quirke J.	Article 40 (return to)
31/8/98	Court 3	Kieran Staunton v. Gov. Limerick Prison	Quirke J.	Article 40 (return to)
31/8/98	Court 3	O'Donnell v. Gov. Limerick Prison	Quirke J.	Article 40 (return to)
31/8/98	Court 3	Albany Homes Ltd. v. McCann & ors.	Quirke J.	Interlocutory Injunction
31/8/98	Court 3	Norbrook Laboratories v. Minister for Agriculture	Quirke J.	Ex parte application
31/8/98	Court 3	Murnaghan v. Bradley	Quirke J.	Mareva Injunction application
31/8/98	Court 3	D.P.P. v. Thomas Gilhooley D.P.P v. Shayne Stephen	Quirke J.	Production Orders
1/9/98	Court 3	Owens v. Hayes	Quirke J.	Child Abduction — Interim App.
1/9/98	Court 3	Eccles v. Gov. of Mountjoy Prison	Quirke J.	Article 40 application
1/9/98	Court 3	Lowes v. Donegal County Council	Quirke J.	Leave to apply for Judicial Review application
1/9/98	Court 3	54 Bail Applications	Quirke J.	Bail
2/9/98	Court 3	J.S. City Limited t/a Jackson Stop McCabe v. McAleen	Quirke J.	Mareva Injunction application
2/9/98	Court 3	Anglo Irish Bank Corporation v. Kelly & ors.	Quirke J.	Short service
2/9/98	Court 3	West County Hotel Ennis v. Controller of Patents	Quirke J.	Leave to apply for Judicial Review
2/9/98	Court 3	A.G. v. Graham Mills	Quirke J.	Revoke bail applications
2/9/98	Court 3	Corrmuda Ltd. v. Mahon & ors.	Quirke J.	Motion on Notice for Injunction

DATE	COURT	CASE	JUDGE	CATEGORY
2/9/98	Court 3	Fagan (minor) v. Minister for Education & ors.	Quirke J.	Seeking education for autistic child
2/9/98	Court 3	Eccles v. Governor of Mountjoy Prison	Quirke J.	Return to Art. 40 Order
2/9/98	Court 3	Matsushita Electrical & ors. v. Irish Express Cargo & ors.	Quirke J.	Service and application
2/9/98	Court 3	David Allen Poster Sites v. Boylan & ors.	Quirke J.	Notice of Motion for Injunction
2/9/98	Court 3	Fingal County Council v. Harrington & ors.	Quirke J.	Notice of Motion for Injunction
2/9/98	Court 3	Mink v. European Assistant (Ireland) Ltd. & anor.	Quirke J.	Interlocutory Injunction — adjourned
2/9/98	Court 3	Tiganfa v. Tiganfa	Quirke J.	Family Law Child Abduction Consent Order
2/9/98	Court 2	Hart v. M.I.B. Bowes v. M.I.B.	Budd J.	Judgment (P.I. ordinary issue)
2/9/98	Court 4	M.J. Gleeson & Co. v. Competition Authority Murphy v. Competition Authority	Kelly J.	Notice of Motion for Interlocutory Relief
3/9/98	Court 3	McInerney Construction Ltd v. Waterford Corp.	Quirke J.	Leave to apply for Judicial Review
3/9/98	Court 3	Blackall & anor v. Blackall & ors.	Quirke J.	Application for Interim Injunction
3/9/98	Court 3	O'Neill v. South Dublin Co. Council	Quirke. J	Interim Injunction Application
3/9/98	Court 3	Industrial Development Agency (Ire) Ltd. v. Connors & ors.	Quirke. J.	Short service application
3/9/98	Court 12	Brennan v. Governor of Mountjoy Prison	Budd. J.	Judgment
4/9/98	Court 3	Brosnan v. South Western Regional Fisheries Board	Quirke. J.	Judgment in judicial review

DATE	COURT	CASE	JUDGE	CATEGORY
4/9/98	Court 3	O'Shea v. O'Shea	Quirke. J.	Ruling a settlement on consent in Family Law
4/9/98	Court 3	Miller v. Forsye & Forsye	Quirke J.	Motion on notice re injunction previously granted — consent order
4/9/98	Court 3	Wiese v. Jehle & anor. Gueniot v. Jehle anor.	Quirke J.	Mareva injunction service out application
4/9/98	Court 3	Owens v. Hayes	Quirke J.	Child abduction — return to Interim Order
4/9/98	Court 3	D.P.P. v. Farrell, D.P.P. v. O'Grady, D.P.P. v. Carroll, D.P.P. v. Meehan	Quirke J.	Production Orders
4/9/98	Court 3	McPherson v. AFAS	Quirke J.	Interim Injunction applications
4/9/98	Court 3	Blakeley v. Boland	Quirke J.	Child Abduction — Interim Order
4/9/98	Court 3	Tiganfa v. Tiganfa	Quirke J.	Child Abduction — Liberty to apply
4/9/98	Court 3	Wicklow County Council v. Kidman & anor.	Quirke J.	Short service of Motion for Interlocutory Injunction
7/9/98	Court 1	Green Taverns v. Borza & anor.	O'Donovan J.	Judicial Review For Mention
7/9/98	Court 1	T. McC. v. B. McC.	O'Donovan J.	Family Law Motion for hearing
7/9/98	Court 1	Kenny (minor) v. E.H.B. & ors.	O'Donovan J.	Children's Act Motion

DATE	COURT	CASE	JUDGE	CATEGORY
7/9/98	Court 1	E. O'K v. D. O'C.	O'Donovan J.	Family Law Motion for hearing — Sec. 43, Court & Court Officers Act, 1995
8/9/98	Court 1	Bula Resources v. Stanley & anor.	O'Donovan J.	Ex parte Chancery Injunction
8/9/98	Court 1	E.H.B. v. D.J. James P. McDonnell & anor.	O'Donovan J.	Ex parte Judicial Review
9/9/98 — Vacation Sittings				
9/9/98	Court 1	Larkin (minor) v. Minister for Education & ors.	O'Donovan J.	For Mention
9/9/98	Court 1	McGrath v. McGrath	O'Donovan J.	For Mention
9/9/98	Court 1	Monaghan (minor) v. Minister for Education & ors.	O'Donovan J.	For Mention
9/9/98	Court 1	Monaghan (minor) v. Minister for Education & ors.	O'Donovan J.	For Mention
9/9/98	Court 1	Morton (minor) v. Minister for Education & ors.	O'Donovan J.	For Mention
9/9/98	Court 1	Connolly v. O'Higgins	O'Donovan J.	Summons
19/9/98	Court 1	Anglo Irish Bank v. Kelly & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Carberry (minor) v. Minister for Education & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Carberry (minor) v. Minister for Education & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Carroll & anor. v. Carroll	O'Donovan J.	Motion
9/9/98	Court 1	Dillon (minor) v. Minister for Education & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Dillon (minor) v. Minister for Education & ors.	O'Donovan J.	Motion
9/9/98	Court 1	D.P.P. v. Judge Ballagh & anor.	O'Donovan J.	Motion
9/9/98	Court 1	Dumbrell (minor) v. Minister for Education & ors.	O'Donovan J.	Motion

DATE	COURT	CASE	JUDGE	CATEGORY
9/9/98	Court 1	Dunnes Stores Ireland Co. & ors. v. Maloney & anor.	O'Donovan J.	Motion
9/9/98	Court 1	Fagan (nee Malone) v. Shields p/a L.K.	O'Donovan J.	Motion
9/9/98	Court 1	Hanahoe v. Eastern Health Board	O'Donovan J.	Motion
9/9/98	Court 1	Healy (minor) & ors.v. Minister for Education & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Healy (minor) & ors. v. Minister for Education & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Industrial Development Agency (Ireland) & anor. v. Connors & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Menamin v. Harnett	O'Donovan J.	Motion
9/9/98	Court 1	McNamara (minor) v. Minister for Education & ors	O'Donovan J.	Motion
9/9/98	Court 1	McSweeney v. Criminal Assets Bureau	O'Donovan J.	Motion
9/9/98	Court 1	Meath County Council v. Cherry Picker Hire Ltd. & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Power (minor) v. Minister for Education & ors.	O'Donovan J.	Motion
9/9/98	Court 1	Quinn v. Quinn	O'Donovan J.	Motion
9/9/98	Court 1	Sligo Corporation v. Carton	O'Donovan J.	Motion
9/9/98	Court 1	Porter Morris & Company (2 Petitions)	O'Donovan J.	Bankruptcy
9/9/98	Court 1	15th Section; Dermot G. McDermott & Co.	O'Donovan J.	Bankruptcy
9/9/98	Court 1	15th Section; John G. Flynn	O'Donovan J.	Bankruptcy
9/9/98	Court 1	15th Section; M.A. Regan McEntee & Co.	O'Donovan J.	Bankruptcy
9/9/98	Court 1	15th Section; Matheson Ormsby Prentice	O'Donovan J.	Bankruptcy
9/9/98	Court 1	15th Section; Michael McInerney & Co.	O'Donovan J.	Bankruptcy

DATE	COURT	CASE	JUDGE	CATEGORY
9/9/98	Court 1	15th Section; (A.M.); Cullen Tyrell & O'Beirne.	O'Donovan J.	Bankruptcy
9/9/98	Court 1	15th Section; (V.O'R.) Cullen Tyrell & O'Beirne.	O'Donovan J.	Bankruptcy
9/9/98	Court 3	O'Flynn Construction Co. Ltd. v. An Bórd Pleanála & Ors.	Carney J.	For Mention
9/9/98	Court 3	Criminal Assets Bureau v. Long & anor (M.d. 24/3/98)	Carney J.	For Mention
9/9/98	Court 3	Same v. Same	Carney J.	For Mention
9/9/98	Court 3	Duffy's Garage (Castlebar) Ltd In Rec. & The Cos. Acts.	Carney J.	Petition
9/9/98	Court 3	Southborough International Ltd. & The Cos. Acts.	Carney J.	Petition
9/9/98	Court 3	Santall Ltd. t/a Eirecopters Helicopters and The Companies Acts	Carney J.	Petition
9/9/98	Court 3	Ala Colonia Insurance (Ire.) Plc & anor.	Carney J.	Motion
9/9/98	Court 3	Re: Browne (a minor)	Carney J.	Motion
9/9/98	Court 3	Bennett Enterprises Ins. & ors. v. Lipton & ors.	Carney J.	Motion
9/9/98	Court 3	Conroy & anor v. Tsarruss Ltd. & ors.	Carney J.	Motion
9/9/98	Court 3	David Allen Poster Sites Ltd. t/a David Allen Outdoor Advertising v. Boylan & ors.	Carney J.	Motion
9/9/98	Court 3	Healy & ors. v. Hession & ors.	Carney J.	Motion
9/9/98	Court 3	Irish Shell Ltd. v. Murphy & ors.	Carney J.	Motion
9/9/98	Court 3	L.G. Bemra Limited & anor. v. Walsh & ors.	Carney J.	Motion
9/9/98	Court 3	Norbrook Laboratories Ltd. v. Min. for Agriculture Food & Forestry.	Carney J.	Motion
9/9/98	Court 3	O'Brien v. Kavanagh	Carney J.	Motion

DATE	COURT	CASE	JUDGE	CATEGORY
9/9/98	Court 3	O'Gorman v. Blarney Wollen Mills Ltd. & ors.	Carney J.	Motion
9/9/98	Court 3	Ryan (minor) v. Min. for Education & ors.	Carney J.	Motion
9/9/98	Court 3	Same v. Same	Carney J.	Motion
9/9/98	Court 3	Ryan (minor) Shane v. Min. for Education & ors.	Carney J.	Motion
9/9/98	Court 3	Shannon Free Airport Dev. Coy. Ltd. v. McDonagh & ors.	Carney J.	Motion
9/9/98	Court 3	Slaneform Properties Ltd. v. Byrnes (Chatham St.) Limited	Carney J.	Motion
9/9/98	Court 3	In the Matter of Section 908 Taxes	Carney J.	Motion
9/9/98	Court 3	Dublin Corporation v. Insulation Distributors Limited.	Carney J.	Motion
9/9/98	Court 3	Wicklow Co. Co. v. Kidman & anor.	Carney J.	Motion
9/9/98	Court 3	Rolls Royce Plc v. Johnson & anor.	Carney J.	Motion
10/9/98	Court 1	Coffey v. Judge Kelliher & anor.	O'Donovan J.	Ex parte judicial review
10/9/98	Court 1	H.S. v. L.S.	O'Donovan J.	Family Law Motion for hearing
11/9/98		Funeral of The Hon Mr. Justice Peter Shanley	Judge of the High Court	No sittings
14/9/98	Court 2	Clare Co. Co. v. Doherty	Geoghegan J.	Chancery Injunction
14/9/98	Court 2	Heeney v. Dublin Corporation	Geoghegan J.	Chancery Injunction
14/9/98	Court 2	Cartor v. Cartor	Geoghegan J.	Child Abduction Act.
14/9/98	Court 2	Re H	Geoghegan J.	Revenue
14/9/98	Court 2	Feighery v. Silac Construction	Geoghegan J.	Injunction
15/9/98	Court 2	Healy v. Hession	Geoghegan J.	Injunction

DATE	COURT	CASE	JUDGE	CATEGORY
15/9/98	Court 2	Harrison v. Harrison	Geoghegan J.	Child Abduction
15/9/98	Court 2	67 Bail Applications	Geoghegan J.	Bail
16/9/98	Court 2	Blakley v. Boland	Geoghegan J.	Family Law
16/9/98	Court 2	CAB v. Long	Geoghegan J.	Proceeds of Crime Act
16/9/98	Court 2	McSweeney v. CAB	Geoghegan J.	Proceeds of Crime Act
16/9/98	Court 2	EHB v. Boyle	Geoghegan J.	Judicial Review
16/9/98	Court 2	IDA v. Connors	Geoghegan J.	Injunction
16/9/98	Court 2	Kingston v. Mulhall	Geoghegan J.	
16/9/98	Court 2	Morton v. The Minister for Education	Geoghegan J.	Judicial Review
16/9/98	Court 2	GCO v. HEA	Geoghegan J.	Judicial Review
16/9/98	Court 2	Owens v. Shelbourne Greyhound Stadium Ltd.	Geoghegan J.	Injunction
16/9/98	Court 2	McGovern v. Dunlaoghaire	Geoghegan J.	Injunction
16/9/98	Court 2	O'Reilly v. Cork Co. Co.	Geoghegan J.	Injunction
17/9/98	Court 2	Charles Haughey	Geoghegan J.	Revenue
17/9/98	Court 2	D.P.P. v. McDonagh	Geoghegan J.	Bail
17/9/98	Court 2	D.P.P. v. Dunne	Geoghegan J.	Bail
17/9/98	Court 2	Heeney v. Dublin Corporation	Geoghegan J.	Injunction
17/9/98	Court 2	Griffith College Dublin v. HEA	Geoghegan J.	Judicial Review
17/9/98	Court 4	2 Injunctions	Kinlan J.	Injunctions
18/9/98	Court 2	Owens v. Hayes	Geoghegan J.	Family Law
18/9/98	Court 2	Harrison v. Harrison	Geoghegan J.	Family Law
18/9/98	Court 2	Owens v. Shelbourne Greyhound Stadium Ltd.	Geoghegan J.	Injunction
18/9/98	Court 2	Armstrong v. Brandfort Development Ltd.	Geoghegan J.	Injunction
18/9/98	Court 2	Barringham v. Dublin Corporation	Geoghegan J.	Injunction

DATE	COURT	CASE	JUDGE	CATEGORY
18/9/98	Court 2	National Authority H & S v. Doherty	Geoghegan J.	Injunction
18/9/98	Court 2	RTE v, Cable Management Ireland Ltd	Geoghegan J.	Injunction
18/9/98	Court 4	Injunctions (Cont.)	Kinlen J.	Injunction
21/9/98	Court 5	Murphy v. Waldron	O'Sullivan J.	Criminal Assets Bureau Ex-Parte
21/9/98	Court 5	Wicklow Chamber Commerce v. Wicklow County Council	O'Sullivan J.	Judicial Review Ex-Parte
21/9/98	Court 5	Mick O'Shea Heating v. Ellewood Properties	O'Sullivan J.	Interim Injunction
22/9/98	Court 4	Ronan Leathers v. Irish Turkish Trading & anor.	O'Sullivan J.	Interim Injunction
22/9/98	Court 4	65 Bail Applications	O'Sullivan J.	Bail Applications
23/9/98 — Vacation Sittings				
23/9/98	Court 5	Greendale Dev. Ltd. & Cos. acts — Motions (2) Hussey & O'Higgins	Laffoy J.	For Mention
23/9/98	Court 5	Byrne (minor) v. Minister for Education & Science & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Byrne (minor) v. Minister for Education & Science & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Carberry (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Carberry (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Carter v. Carter (orse) John Dillon	O'Sullivan J.	For Mention
23/9/98	Court 5	Conroy & Anor. v. Tsarrus Ltd. & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Conroy & Anor. v. Tsarrus Ltd. & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Dillon (minor) v. Minister for Education & Science & ors.	O'Sullivan J.	For Mention

DATE	COURT	CASE	JUDGE	CATEGORY
23/9/98	Court 5	Dillon (minor) v. Minister for Education & Science & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	D.P.P. v. Judge Ballagh & anor.	O'Sullivan J.	For Mention
23/9/98	Court 5	Dumbrell (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Dunne v. Dunne	O'Sullivan J.	For Mention
23/9/98	Court 5	Faherty (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Faherty (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Haymarket Publishing Services Ltd. v. NRC Ltd.	O'Sullivan J.	For Mention
23/9/98	Court 5	Healy (minor) & ors. v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Healy (minor) & ors. v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	McNamara (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Meath County Council v. Cherry Picker Hire Ltd. & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Murphy (minor) v. Delacoin Provincial De Malaga Consejeria De & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Norwich Union General Insurance (Ireland) Ltd. v. O'Keeffe Insurances Ltd. & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	O'Mahony (minor) v. Minister for Education and Science & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	O'Mahony (minor) v. Minister for Education and Science & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Power (minor) v. Minister for education and Science & ors	O'Sullivan J.	For Mention
23/9/98	Court 5	Reynolds v. E & M Hotels Ltd.	O'Sullivan J.	For Mention

DATE	COURT	CASE	JUDGE	CATEGORY
23/9/98	Court 5	Schering Plough (Brinny) Co. v. Brewery Chemical & Dairy Engineering Ltd & anor.	O'Sullivan J.	For Mention
23/9/98	Court 5	Ulster Bank Limited v. Hunter	O'Sullivan J.	For Mention
23/9/98	Court 5	White v. Judge McCartan & anor.	O'Sullivan J.	For Mention
23/9/98	Court 5	Larkin (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Monaghan (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	Monaghan (minor) v. Minister for Education & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	O'Brien v. Kavanagh	O'Sullivan J.	For Mention
23/9/98	Court 5	O'Flynn Construction Co. Ltd. v. An Bord Pleanala & ors.	O'Sullivan J.	For Mention
23/9/98	Court 5	15th Section; Carvill Rackard & Co.	O'Sullivan J.	Wards of Court
23/9/98	Court 5	15th Section; John C. O'Toole & Co.	O'Sullivan J.	Wards of Court
23/9/98	Court 5	15th Section; Patrick J. Durcan & Co.	O'Sullivan J.	Wards of Court
23/9/98	Court 5	15th Section; Smyth & Son	O'Sullivan J.	Wards of Court
23/9/98	Court 5	15th Section; Ferrys	O'Sullivan J.	Wards of Court
23/9/98	Court 5	15th Section; Maurice F. Noonon & Son	O'Sullivan J.	Wards of Court
23/9/98	Court 15	Duffy's Garage Castlebar Ltd. & Companies	Laffoy J.	Motion
23/9/98	Court 15	Allanz France Iardt v. Minister for Agriculture and Food	Laffoy J.	Motion
23/9/98	Court 15	Armstrong v. Brandfort Developments Ltd. & anor.	Laffoy J.	Motion
23/9/98	Court 15	Creedon Property Services Ltd. v. O'Connor & ors.	Laffoy J.	Motion
23/9/98	Court 15	Eagle Star France & ors. v. Minister for Agriculture and Food	Laffoy J.	Motion

DATE	COURT	CASE	JUDGE	CATEGORY
23/9/98	Court 15	Irish Shell Ltd. V. Murphy & ors.	Laffoy J.	Motion
23/9/98	Court 15	Lambert v. Cowan	Laffoy J.	Motion
23/9/98	Court 15	Miller v. Forsye Ltd.	Laffoy J.	Motion
23/9/98	Court 15	Mink v. European Assistance Ireland Ltd & anor.	Laffoy J.	Motion
23/9/98	Court 15	O'Brien v. Dun Laoghaire-Rathdown County Council	Laffoy J.	Motion
23/9/98	Court 15	O'Reilly & ors v. Cork County Council	Laffoy J.	Motion
23/9/98	Court 15	Rolls Royce Plc. v. Rolls Royce Ltd. & anor.	Laffoy J.	Motion
23/9/98	Court 15	Shannon Free Airport Development Co. Ltd. v. McDonagh & ors.	Laffoy J.	Motion
24/9/98	Court 5	Criminal Assets Bureau v. Long & anor.	O'Sullivan J.	Order & receive consent
24/9/98	Court 5	Gael Linn v. Kilmainham Cinema Co.	O'Sullivan J.	Injunction
24/9/98	Court 5	Mick O'Shea Heating v. Ellewood Properties	O'Sullivan J.	Injunction lifted on undertakings and Judgment given.
24/9/98	Court 5	Mulhall v. Governor of Mounyjoy & ors.	O'Sullivan J.	Judicial Review Ex-Parte
25/9/98	Court 5	McKeon v. McKeon & anor.	O'Sullivan J.	Interlocutory Injunction
25/9/98	Court 5	Clare County Council v. Doherty & ors.	O'Sullivan J.	Interlocutory Injunction
25/9/98	Court 5	McGuirk v. McKeon	O'Sullivan J.	Family Law
25/9/98	Court 5	Harrison v. Harrison	O'Sullivan J.	Child Abduction Interloutory
25/9/98	Court 5	18 Bail Applications	O'Sullivan J.	Production Orders & short service

DATE	COURT	CASE	JUDGE	CATEGORY
25/9/98	Court 5	Capel Development Ltd. & anor. v. BATU & ors.	O'Sullivan J.	Interim Injunction & short service
28/9/98	Court 7	Minister for Defence v. Casey & ors.	McGuinness J.	Application for Order for Committal
28/9/98	Court 7	Capel Development Ltd. Ltd & anor. v. Building & Allied Trades Union & ors.	McGuinness J.	Interlocutory Injunction
28/9/98	Court 7	Doctors Orders Ltd & ors. v. Hall & anor.	McGuinness J.	Interim Injunction
29/9/98	Court 7	Irish Shell Ltd. & ors. v. Hall & anor.	McGuinness J.	Application for Interlocutory Injunction*
29/9/98	Court 7	52 Bail Applications	McGuinness J.	Bail Applications
30/9/98	Court 7	Eastern Health Board v. Boyle	McGuinness J.	Interlocutory Injunction
30/9/98	Court 7	Griffin v. Murray	McGuinness J.	Interlocutory Injunction
30/9/98	Court 7	O'Farrell v. Daly	McGuinness J.	Interim Injunction
30/9/98	Court 7	Fingal Co. Council v. Carty & ors.	McGuinness J.	Interlocutory Injunction
30/9/98	Court 7	C.J.I. Distribution Ireland Ltd. v. Sagem S.A.	McGuinness J.	Interim Injunction
30/9/98	Court 7	Grimes v. Judge Murphy	McGuinness J.	Leave to appeal for Judicial Review
1/10/98	Court 7	David Allen Poster Sites Ltd. v. Boylan & ors.	McGuinness J.	Interlocutory Injunction
1/10/98	Court 7	Bolger v. Harty & anor.	McGuinness J.	Interim Injunction
2/10/98	Court 7	Lavery v. Members In Charge Carrickmacross Garda Station	McGuinness J.	Habeus Corpus
2/10/98	Court 7	Mulhall v. Governor of Mountjoy Prison	McGuinness J.	Judicial Review
2/10/98	Court 7	David Allen Poster Sites Ltd. v. Boylan & ors.	McGuinness J.	Judicial Review
2/10/98	Court 7	Carter v. Carter	McGuinness J.	Family Law

APPENDIX F to Chapter VII

IRELAND

LONG VACATION 1998

THE SPECIAL CRIMINAL COURT

DATE	CASE	JUDGES	CATEGORY
31/8/98	John McMahon	Deery J. Reilly J. Ballagh J.	Charge
3/9/98	John McMahon	Barr J. Haugh J. Ballagh J.	Bail Application
3/9/98	Brian Meehan	Barr J. Haugh J. Ballagh J.	Charge
29/9/98	Moyna	Johnson J. Deery J. Smithwick J.	Return of Trial

APPENDIX G

IRELAND

LONG VACATION 1998

THE SUPREME COURT

DATE	COURT	CASE	JUDGE	CATEGORY
7/08/98	Supreme Court	National Association of Regional Game Councils v. Minister for Justice	Barrington J. Murphy J. Lynch J.	Public Law/ Injunction
7/08/98	Supreme Court	Blackall v. Blackall	Barrington J. Murphy J. Lynch J.	Probate/ Ex-parte application for stay of High Court Order
17/8/98	Supreme Court	Heaney & Ors v. Dublin Corporation	O'Flaherty J. Murphy J. Barron J.	PublicLaw/ Injunction

APPENDIX H

NORTHERN IRELAND

TERMS, RECESSES AND VACATIONS OF THE COURT OF APPEAL AND THE HIGH COURT: 1997 – 1998

ORDER 64 OF THE RULES OF THE SUPREME COURT (NI) 1980

MICHAELMAS TERM	5th September 1997 to 21st December 1997 subject to a recess from the Monday which falls on or nearest to 31st October to the following Friday, both days included.
HALLOWE'EN RECESS	Monday 3rd November 1997 to Friday 7th November 1997 inclusive.
CHRISTMAS RECESS	Monday 22nd December 1997 to Monday 5th January 1998 inclusive.
HILARY TERM	6th January 1998 to Friday before Good Friday — in effect. Tuesday 6th January 1998 to Friday 3rd April 1998.
EASTER RECESS	Monday 6th April 1998 to Friday 17th April 1998 inclusive
TRINITY TERM	Second Monday after Easter Sunday to 30th June — in effect Monday 20th April 1998 to Tuesday 30th June 1998.
VACATION	July and August.

APPENDIX I

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

TEXT FOR PROVISIONS; JUDICIAL VACATIONS

Rules of Procedure of the Court of Justice

Article 28

1. Subject to any special decision of the Courts, its vacations shall be as follows:
 - from 18 December to 10 January,
 - from the Sunday before Easter to the second Sunday after Easter,
 - from 15 July to 15 September.

During the vacations, the functions of President shall be exercised at the place where the Court has its seat either by the President himself, keeping in touch with the Registrar, or by a President of Chambers or other Judge invited by the President to take his place.

2. In a case of urgency, the President may convene the judges and the Advocates-General during the vacations.
3. The Court shall observe the official holidays of the place where it has its seat.
4. The Court may, in proper circumstances, grant leave of absence to any judge or Advocate-General.

APPENDIX J

Rules of Procedure of the Court of First Instance of the European Communities

TEXT OF PROVISIONS: JUDICIAL VACATIONS

Article 34

1. Subject to any special decision of the Court of First Instance, its vacations shall be as follows:
 - from 18 December to 10 January,
 - from the Sunday before Easter to the second Sunday after Easter,
 - from 15 July to 15 September.

During the vacations, the functions of President shall be exercised at the place where the Court of First Instance has its seat either by the President himself, keeping in touch with the Registrar, or by a President of Chamber or other Judge invited by the President to take his place.

2. In a case of urgency, the President may convene the Judges during the vacations.
3. The Court of First Instance shall observe the official holidays of the place where it has its seat.
4. The Court of First Instance may, in proper circumstances, grant leave of absence to any Judge.

APPENDIX K

LIST OF SUBMISSIONS RECEIVED

1. The Hon. Mr. Justice Ronan Keane, Judge of the Supreme Court, on behalf of the Supreme Court.
2. The Hon. Mr. Justice Frederick Morris, President of the High Court.
3. Submission from the High Court Judges.
4. His Honour Judge Diarmuid Sheridan, Retired President of the Circuit Court, on behalf of the Circuit Court Judges.
5. His Honour Judge John F. Buckley, Judge of the Circuit Court.
6. The Hon. Mr. Justice Peter Smithwick, President of the District Court.
7. Judge James Paul McDonnell, Judge of the District Court and Chairman, Association of Judges of the District Court.
8. Judge Clare Leonard, Judge of the District Court.
9. Judge James Carroll, Retired Circuit Court Judge.
10. Mr. John Dowling, Director of the Bar Council.
11. John McCoy, B.L., Chairman, The Young Bar Association.
12. Mr. Joe Donnelly, Librarian, The Judges' Library.
13. Mr. James Comerford, Registrar, The Supreme Court.
14. Mr. Michael Quinlan, Dublin County Registrar.
15. Mr. Thomas P. Owens, Chairperson, County Registrars' Association.
16. Mr. David Byrne, S.C., Attorney General.

17. Mr. Dermot Gleeson, S.C., Past Attorney General.
18. Gerrard, Scallan & O'Brien, Solicitors.
19. Mr. J.C. Delahunty, Chief Registrar, The High Court.
20. Mr. John Glennon, Assistant Registrar, High Court.
21. Mr. James A. Nugent, S.C.
22. Courts Division, Department of Justice, Equality and Law Reform.

APPENDIX L

INFORMATION SOUGHT AND RECEIVED FROM THE FOLLOWING SOURCES, INTER ALIA

1. Leonidas Ralph Mecham, Director,
Administrative Office of the United States Courts, Washington,
D.C.
United States of America.
2. Professor Greg J. Reinhardt, Executive Director,
The Australian Institute of Judicial Administration Incorporated,
Victoria, **Australia**
3. Sylvia Kriven, Public Relations Manager,
Courts Administration Authority, Adelaide, **Australia.**
4. The Federal Ministry of Justice,
Bonn, **Germany.**
5. Mr. T. L. Cranfield, Assistant Registrar,
Court of Justice of the European Community, **Luxembourg.**
Further information on the Court of Justice of the European Union
may be obtained on:
<http://www.dree.org/cellule/eng/english/other01.htm>.
6. Mr. Martin McMullan, Communications Unit,
Northern Ireland Courts Service, Belfast, **Northern Ireland.**
Further information on the N.I. Courts Service may be obtained on
<http://www.nics.gov.uk/pubsec/courts/courts.htm>.
7. Leonidas B. Contovounesios,
First Secretary, Greek Embassy, **Greece.**
8. Ministry of Justice, Courts Administration Department,
Copenhagen, **Denmark.**
9. Sir Thomas Legg, KCB QC, Permanent Secretary and Clerk of
the Crown in Chancery, House of Lords, London, **England,** (now
retired). Further information on the Courts Service in England and

Wales may be obtained on:
<http://www.open.gov.uk/led/lcdhome.htm>.

10. Shirley S. Abramamson, Chief Justice,
Supreme Court of Winconsin, **United States of America**.
11. J.J. Bailey, Chief Executive,
Department for Courts, Wellington, **New Zealand**.
12. Jeannie Thomas, Executive Director,
Canadian Judicial Council, **Canada**.
13. Mr. Frank Gavin, Director,
National Center for State Courts, **Virginia**.
14. Ms. Melissa Farley, External Affairs Division, Judicial Branch,
Office of the Chief Court Administrator, Connecticut, **United States of America**.
15. Mr. Stephen D. Taylor, Supreme Court Administrator, Delaware
Supreme Court, Wilmington, Delaware, **United States of America**.
16. Internet.

APPENDIX M

Round table discussion with:—

Mr. William Fagan, Director of Consumer Affairs.

Mr. Kevin Murphy, Ombudsman — Information Commissioner.

Mrs. Jennifer Guinness, Chairperson, Victim Support.

Professor William Binchy, Regius Chair of Laws, School of Law, Trinity College, Dublin 2.

Mr. Tom O'Malley, Lecturer in Law, National University of Ireland, Galway.

(Professor James Casey, Faculty of Law, University College Dublin was invited but was unable to attend.)

Judicial Conduct and Ethics

8.1 Request

The Working Group was requested to look into and prepare a report on the procedures which are adopted in other countries relating to the handling of judicial conduct that might be considered unsuitable for a member of the judiciary. The Working Group has initiated consideration of the matter and this Chapter contains a Report for the Chief Justice and the Minister for Justice, Equality and Law Reform.

8.2 Judicial Independence

Judicial independence is an important cornerstone of a democratic society. The Constitution of Ireland 1937 underpins that independence.⁵⁸ Part of the protection of the independence of the judiciary is that a judge of the High Court or Supreme Court shall not be removed from office except for stated misbehaviour or incapacity and then only upon resolutions passed by the Dáil and Seanad calling for his or her removal.⁵⁹ Statutes have provided for a similar provision to apply to Circuit and District Judges.⁶⁰

In relation to District Judges there are two additional statutory provisions. First, under the Courts of Justice (District Court) Act, 1946, s.21 the Minister for Justice may request the Chief Justice to appoint a High or Supreme Court Judge to investigate the condition of health or inquire into the conduct of a judge of the

⁵⁸ See Article 35 Constitution of Ireland.

⁵⁹ See Article 35.4.1 Constitution of Ireland.

⁶⁰ Courts of Justice Act, 1924 S.39 carried forward by the Courts (Supplemental Provisions) Act, 1961;
Courts of Justice (District Court) Act, 1946 S.20 carried forward by Courts (Supplemental Provisions) Act, 1961, S.48, as adopted by Courts Act, 1991, S.21.

District Court and to report the result to the Minister. Secondly, s.10(4) Courts (Supplemental Provisions) Act, 1961 states that where the Chief Justice is of the opinion that the conduct of a judge of the District Court has been such as to bring the administration of justice into disrepute the Chief Justice may interview the judge privately and inform him or her of that opinion.

8.3 Rule of Law

The independence of the judiciary is to benefit society so that judicial decisions on the law and the Constitution are made by persons who are independent of interference, especially political. It is a concept fundamental to the rule of law.

8.4 Review of Judicial Decisions

Judicial decisions are subject to review in a number of ways. First, judges work in the public eye. The vast majority of cases are held in public, the decision and reasons are given in public. The decisions are subject to public scrutiny. Secondly, there is a system of appeals from the decisions of judges. Thus, there is an appeal from decisions of the District Court to the Circuit Court, decisions of the Circuit Court may be appealed to the High Court, and High Court decisions may be appealed to the Supreme Court.

8.5 Systems relating to Judicial Conduct

However, in addition to these methods of regulation, over the last twenty five years or so systems relating to the conduct of judges have been established in other jurisdictions. The Working Group has considered a number of these structures.

8.6 Canada

In Canada there has been established the Canadian Judicial Council. Maintaining high quality in the administration of justice is a priority which the Canadians achieve by well funded programmes of continuing judicial education and by the implementation of a system for disciplining judges. Judicial Conduct is a matter for the Canadian Judicial Council.

The Canadian Judicial Council was created in 1971 by statute for the purposes of establishing a national judicial forum for

improving the justice system in terms of efficient operation and the quality of the judicial service. The Judicial Council is composed solely of judges; its members include the Chief Justice of the Supreme Court and the Chief Judges of the various benches of all the federal courts. The work of the Council can be divided into four main areas, as follows:

- (a) continuing education for judges;
- (b) handling complaints against judges;
- (c) development of consensus in issues affecting the administration of justice; and
- (d) making of recommendations to federal government regarding judicial salaries and benefits.

Handling Complaints Against Judges

The Irish and Canadian Constitutions have very similar provisions on the issue of removal of judges. Canada's Constitution provides that a judge of the Superior Courts "shall hold office during good behaviour" and that removal for misbehaviour be by Parliament. Article 35.4.1 of Bunreacht na hÉireann is similar, stating that a judge "shall not be removed from office except for stated misbehaviour or incapacity" and then only upon resolutions passed by the Dáil and Seanad.

Review of the judiciary in Canada involves two entirely different types of processes. The first concerns judicial decisions which are dealt with by the normal appellate procedures. The second concerns judicial behaviour which involves a separate process, although the distinction is not always apparent to the complainant and many complaints concerning judges actually relate to the merits of the case rather than to judicial behaviour. Judicial behaviour is reviewed by the Judicial Conduct Committee of the Judicial Council. The Committee has no power to discipline a judge; only parliament can remove a judge from office and only for failing to comply with the condition of "good behaviour".

Complaints Procedure in Canada

The Judges Act, 1971 endows the Council with the responsibility for receiving and considering complaints against the judiciary. It provides a forum for self-disciplining by the Judiciary of judges in

accordance with the tradition of judicial independence. There are three possible avenues through which a complaint can be processed: an initial stage, a panel stage and, finally, the formal investigation/inquiry stage. The first two stages operate on an informal basis whereas the latter follows set formal procedures.

(i) Initial Stage

The Judicial Conduct Committee has power to act for the full council in the initial stages of the complaints process. Complaints are received in written form and these are dealt with by the chairman or one or two vice-chairmen of the Judicial Conduct Committee on an informal basis. A file is opened for every complaint received. At this stage the chairman or vice-chairman review the validity of the complaint with a view to determining whether the file should be closed or whether it requires further determination. Comments or a response from the judge who is the subject of the complaint may be sought. The file may be closed with or without such comments and with an appropriate explanation to the complainant. Comments are not normally requested if the complaint is classed as “trivial, vexatious or without substance.” Alternatively, further information may be required from the complainant or independent counsel may be asked to embark on a fact finding investigation and make a report. If on the basis of the information the chairman or vice-chairmen are of the view that no misconduct has occurred, the file is closed or it may be forwarded to a Panel of the Committee for further determination. In every case whether the file is closed with or without comments from the particular judge, a copy of the complaint is provided to the judge concerned. This initial screening stage results in the dismissal of about 95% of complaints. The most common ground for dismissal is that the complaint relates to the merits of the case.

(ii) Panel Stage

The function of a panel of the committee is to determine whether a formal investigation is warranted and it may do so if the conduct complained of is sufficiently serious. A panel can consist of up to five members of the Committee. If the panel feels that a formal investigation is necessary it reports its view to the full Canadian Judicial Council who then decide whether a full formal

investigation should be undertaken by an Inquiry Committee. The panel may, prior to the making of this determination, refer the matter back to the chairman for a fact finding investigation where this has not occurred. The Minister for Justice also has authority to request the establishment of an Inquiry Committee.

(iii) Inquiry State

The formal investigation conducted by the Inquiry Committee has the same powers as a superior court to summon witnesses and require the admission of evidence under oath. The inquiry committee then reports back to the full Council with its recommendations including the possible recommendation of removal from office. The 1971 Act sets out four grounds on which a recommendation of removal can be based. These are: age or infirmity; misconduct; having failed in the due execution of office; having been placed, by conduct or otherwise, in a position incompatible with the due execution of office. This formal phase of the review process is very rarely resorted to and since 1971 there has been no recommendations by the Council that a judge be removed from office.

Actual Complaint Files

Year 1994/1995

Total no. of complaints received	213
Files closed	186
Files carried forward to next year	27

Breakdown of 186 files closed:

Files closed after initial review by Chair	170
(78 closed without requesting information from judge; 92 closed after response from judge)	
Files closed by a Panel of the Committee	9
Files withdrawn/discontinued	7

* Note: No complaints went on to a formal investigation, inquiry.

Nature of Complaints

One third of all complaints received arise out of divorce and custody proceedings. Complaints related to alleged gender bias, alleged racial/religious bias, alleged conflict of interest, alleged delay in rendering judgments.

Code of Conduct

In order to guide judges in their work and set standards for them the Judicial Council decided in September 1994, to draft a "Code of Conduct" for judges. To assist them in this exercise, a working group was established and Professor Martin Friedland was commissioned to publish a report concerning judicial independence and accountability. His report was entitled "A Place Apart: Judicial Independence and Accountability in Canada". In it he espoused the virtues of adopting a uniform code of conduct throughout Canada. He did not set out in his report what a code should contain, but he drew a comparison with the U.S. model. The 1990 U.S. Model Code of Judicial Conduct drew up five canons of conduct. These are:

1. A Judge shall uphold the integrity and independence of the judiciary.
2. A Judge shall avoid impropriety and the appearance of impropriety in all of the judge's activity
3. A Judge shall perform the duties of judicial office impartially and diligently.
4. A Judge shall so conduct the Judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.
5. A Judge or judicial candidate shall refrain from inappropriate political activity.

There would be benefit in further study of the Canadian System. This could involve further analysis and study of the process in practice.

8.7 New South Wales

New South Wales introduced a system under the Judicial Officers Act, 1986, which established the New South Wales Judicial Commission. This was modelled on the Californian Commission on Judicial Performance. In New South Wales a judge may only be removed by the Governor on an address from both Houses of Parliament. That section now operates in conjunction with the Judicial Officers Act.

The relevant aspects of the Judicial Officers Act are:

- (a) the Judicial Commission is made up of members the majority of whom are judges;
- (b) any person may complain to the Commission about a matter that concerns the ability or behaviour of a judicial officer;
- (c) the Attorney General may refer complaints to the Commission;
- (d) after a preliminary examination, which is held in private, the Judicial Commission shall:
 - (a) summarily dismiss a complaint,
 - (b) classify the complaint as minor, or
 - (c) classify the complaint as serious.

Serious complaints are those which could justify parliamentary consideration of removal from office of a judge. Minor complaints refer to those which are not serious and which have not been summarily dismissed. Summary dismissal occurs where, e.g. a complaint is deemed trivial or vexatious.

A minor complaint may be referred to the Conduct Division or to the head of jurisdiction. A serious complaint must be referred to the Conduct Division. The Conduct Division consists of three judges or two judges and a retired judge.

As far as practical the investigation of a complaint is conducted in private. When the Conduct Division determines to hold a hearing of a minor complaint it is held in private. Serious complaints, however, are held in public.

If the Conduct Division finds that a minor complaint is substantiated it can either inform the judge complained about or

decide that no action needs to be taken. Either way it must report to the Judicial Commission setting out the action it has taken. If the Conduct Division decides that a serious complaint is substantiated it may recommend parliamentary consultation of the removal of the judge. It must report its conclusions to the Governor.

There has been much public discussion in New South Wales about this Act. Mr. Justice McLelland of the New South Wales Supreme Court has argued that establishing legislative procedures for receiving, investigating and adjudicating complaints against judges presented the greatest threat to the independence of the judiciary since colonial times.⁶¹ Others have expressed concern of the effect on judicial independence.

However, the Judicial Commission for New South Wales has now been in operation for over 10 years. In its Annual Report for 1996-1997 it refers to its responsibility (among others) to deal with complaints made against judicial officers. The particulars of complaints 1996-1997

are set out as:

Complaint Particulars	Number
Complaints examined and dismissed under S.18 and S. 20 of the Act.	116
Minor complaints disposed of during the year.	2
Serious complaints disposed of during the year.	0
Complaints withdrawn	5

The functions of the Judicial Commission established under The Judicial Officers Act, 1986 are wider than simply related to the conduct of judges. The Commission may, for the purpose of assisting courts to achieve consistency in imposing sentences, monitor or assist in monitoring sentences imposed by courts, and disseminate information and reports on sentences. It may organize and supervise an appropriate scheme for the continuing education and training of judges, giving particular attention to the training of newly appointed judicial officers. Also, the Commission may formulate guidelines to assist the Conduct Division, and may monitor the Conduct Division. The Judicial Commission publishes

⁶¹ M.H. McLelland, "Disciplining Australian Judges (1990) 64 ALJ 388.

documents such as the Annual Report; the Strategic Plan; a regular publication on Sentencing Trends; The Judicial Officers' Bulletin; Fragile Bastion, Judicial Independence in the Nineties and beyond; a Monograph Series which has produced documents on subjects such as Child Sexual Assault and Magistrates' Attitudes to Drink-Driving, Drug-Driving and Speeding; and Judicial Review (the Journal of the Judicial Commission of New South Wales).

There may well be benefit in further analysis of the New South Wales system. The work done by the Judicial Commission may be very relevant and helpful in an Irish context.

8.8 California

The Californian Commission on Judicial Performance served as a model for the New South Wales Judicial Commission. Section 8 of the Constitution of California states:

- (a) The Commission on Judicial Performance consists of one judge of a court of appeal, one judge of a superior court, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the Governor, and 6 citizens who are not judges, retired judges, or members of the State Bar of California, 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly. Except as provided in subdivision (b), all terms are 4 years. No member shall serve more than two 4-year terms, or for more than a total of 10 years if appointed to fill a vacancy.

The Policy Declarations of the Commission on Judicial Performance, approved May, 28th, 1997, include the following matters. A staff inquiry may (but need not) precede a preliminary investigation. A staff inquiry determines whether sufficient facts exist to warrant a preliminary investigation. At the conclusion of a staff inquiry the Commission may:

- close the matter;
- authorise a preliminary investigation; or
- issue an advisory letter.

A preliminary investigation may follow a staff inquiry or may commence without a staff inquiry. When the allegations, if true, are more serious the Commission may commence with a preliminary investigation. This investigation is to consider whether formal proceedings should be commenced.

After a preliminary investigation the Commission may:

close the matter;

issue an advisory letter;

issue notice of intended private admonishment or notice of intended public admonishment;

or institute formal proceedings.

A judge must be afforded an opportunity to respond before action is taken.

There are precise declarations relating to the formal proceedings that may occur before the Commission. They cover matters such as a prehearing status report, a prehearing conference, agreed statement and discipline by consent.

Matters of administration such as meetings, election of chairperson and deputy chairperson and preparation of annual reports, are also covered in the policy declarations.

Under Procedural Rule 134, the Commission may privately or publicly admonish, censure, remove or retire a judge. The affirmative vote of six members of the Commission who have considered the record and report of the masters and who were present at any oral hearing as provided in Rule 121 or, when the hearing was before the Commission without masters, of six members of the Commission who have considered the record and at least four of whom were present when the evidence was produced, is required for a private or public admonishment or censure, removal or retirement of a judge or for dismissal of the proceedings.

Further study of this Commission, its policy declarations and procedures may prove useful.

8.9 England and Wales

In England and Wales there is a distinction made between personal complaints, which relate to matters such as a judge's rudeness to counsel or his general attitude and demeanour, and complaints made about judicial decisions such as a judge's failure to take particular documents into account or his or her actual decision in a case. Personal complaints are dealt with by the Judicial Appointments Section of the Lord Chancellor's Department, while complaints about judicial decisions are a matter for the appellate process.

To initiate a personal complaint the complainant writes to the Lord Chancellor's Department. Provided that the complainant has no objection, this letter is then passed on to the judge in question, who is given a chance to reply to the complaint. The complaint is then considered by the Lord Chancellor, who will write a letter back to the complainant which will usually incorporate the judge's comments.

The only disciplinary power given to the Lord Chancellor by statute in relation to the judiciary is the power of removal from office. He does not possess this power with regard to Lords of Appeal in Ordinary and Supreme Court Judges (i.e.. High Court Judges and higher). These judges may only be removed by the Queen following a motion passed by both Houses of Parliament. This power has not been exercised in recent times.

Circuit Judges may be removed by the Lord Chancellor on the ground of incapacity or misbehaviour. The statutory provisions governing the removal from office of other members of the judiciary vary, but, in general, they also relate to incapacity or misbehaviour (or the equivalent). The exercise of these powers is subject to judicial review. One Circuit Judge was removed from office on the ground of misbehaviour in 1983, having pleaded guilty to several charges of smuggling. Holders of part-time office are more numerous and there are occasionally instances where they are convicted of criminal offences or where for other reasons it would no longer be appropriate for them to sit judicially. In such cases, where they do not resign voluntarily, the Lord Chancellor has power to ensure that they do not sit again.

Apart from the sanction of removal from office, the Lord Chancellor has no formal powers of discipline. However, he seeks to exercise his personal authority in an informal manner to maintain the high standards of conduct expected of judges. In this regard, he works closely with the Heads of Division (the Lord Chief

Justice, the Master of the Rolls, the Vice Chancellor and the President of the Family Division of the High Court) and the Presiding Judges.

In practice, it is open to the Lord Chancellor to rebuke or reprimand a judge, in person or in writing, in public or otherwise, should circumstances require. In adopting any course which may be seen as a disciplinary measure, he is careful to ensure that the principles of natural justice are fully observed and that the judge in question is given the right to have his or her own comments observed.

8.10 Constitution Review Group

The Constitution Review Group was established by the Government in April, 1995. In its Report of May, 1996, having commented that the provisions of Article 35.2 to 35.5 of the Constitution have worked satisfactorily to date, it stated:—

“Judges, of course, are not immune from human frailties and from time to time there are complaints about matters such as disparaging or disrespectful comments, rudeness and failure to attend to judicial duties. Such matters ought to be attended to — at least in the first instance — without having to resort to the drastic remedy of impeachment. The Review Group considers it appropriate that judges themselves should regulate judicial conduct within a legislative framework embracing all the courts”.⁶²

The Review Group recommended that Article 35.2 should be amended to allow for regulation by the judges themselves of judicial conduct, in accordance with the doctrine of the separation of powers, in order to put beyond “yea or nay” the question whether the “disciplinary” provisions short of impeachment which they advocated would be inconsistent with Article 35.2 as it stands or otherwise unconstitutional.

The Review Group also recommended that Article 35.4 should be amended in two respects: first, to provide an impeachment process similar to Article 12.10 for judges and other constitutional officers; and, secondly, to qualify “stated misbehaviour” as a

⁶² Report of the Constitution Review Group at p.182.

ground for impeachment by the addition of the words “prejudicial to the office of judge”.

8.11 Delay in delivering reserved judgments

There have on occasions been concerns about delays in delivering reserved judgments. Owing to the relatively small number of judges and the resources of the courts High Court judges are not normally able to dispense with court work to write a reserved judgment after a case is heard. Rather, they are immediately reassigned to other court work. In general the reserved judgment will be written in the evenings or at weekends or in the next ‘vacation’. Obviously, the preferred situation would be that judges be given ‘judgment writing days’ immediately after hearing a case. Occasionally this may happen. However, owing to the lack of resources, it is rare in the High Court.

Delay in giving a reserved judgment may have consequences for a litigant. It may also have consequences for Ireland in that the State has an obligation under the European Convention on the Protection of Human Rights and Fundamental Freedoms Article 6.1 which deals with the right to a fair trial and includes the right to a hearing within a reasonable time.

Also, Article 13 provides as follows:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

An effective complaints system, administered by a judicial body, would be of assistance to the State in complying with the European Convention on the Protection of Human Rights and Fundamental Freedoms.

However, it must be noted that it is essential that adequate resources be allocated to the courts. It is vital that there be an adequate number of judges, court staff and basic facilities such as buildings, I.T. etc.

8.12 Conclusion

Jurisdictions similar to Ireland have introduced self-disciplining bodies for the Judiciary. Each acts as a forum for the consideration of complaints against the Judiciary. The essence of these bodies is the administration of justice. Such bodies may also draft documents relating to judicial standards and ethics, have a role in judicial education, and conduct studies and analysis on judicial matters, such as the publications on sentencing by the Judicial Commission of New South Wales.

Justice would benefit by a system in Ireland wherein such issues could be considered by such a body and wherein complaints relating to judicial conduct could be reviewed. Such a body could have the following characteristics:

1. Independence. Any such body must be controlled by the Judiciary.
2. Pre-emptive. This structure would be to forestall problems by dealing with any early manifestation of matters of concern raised rather than a mechanism for crisis management.
3. Objective. Any such system should be undertaken by a body of judges (and possibly retired judges) headed by the Chief Justice. It would be structured but would establish an informal system. It would be set up on a non-statutory basis.
4. Ethics. The judicial body could identify any areas of concern and isolate conventions of judicial behaviour and conduct which are appropriate in Ireland. Ultimately this could lead to the judges drafting a general Code of Ethics and/or Guidelines which could be published.
5. Complaints Procedure. A complaints procedure should be considered and established in an informal but structured manner.
6. No Retribution. It is essential that complaints should be dealt with in a manner which would not give rise to any sense that there may be retribution or any form of sanction applied to the complainant.
7. Immediacy. The Judiciary should address this matter immediately.

8. Public. The judicial body would be publicly known, with its name and address easily available. It would publish a report each year on the previous year's activities.
9. Consultation. There should be consultations with the Attorney General, the Minister for Justice, Equality and Law Reform, the Bar Council, the Law Society and any other body or person deemed appropriate.
10. Delay. Any issue on alleged delay of reserved judgments would be a matter to be considered by this judicial body.
11. Presidents. The present informal arrangement whereby a complaint on judicial conduct may be raised with a President of a Bench about one of the Judges of that Bench would not be displaced by such a judicial body as envisaged. Rather, the present situation would continue and access to the proposed judicial body could be an alternative or additional route for a complainant.
12. Publications. The judicial body would publish matters of relevance such as Judicial Code of Ethics and Standards and other judicial matters.
13. Judicial Education. Issues relating to judicial education should be addressed by this body (e.g. ethics) and liaison should be established with the Judicial Studies Institute. Monitoring, analysis and publications, such as on sentencing in New South Wales, could prove most useful.
14. Secretariat. A judicial body as envisaged would require the appropriate secretariat and funding.

8.13 RECOMMENDATION

It is recommended that the Chief Justice establish a Committee:

- (a) to examine this report;
- (b) to consider further the position in other jurisdictions;
- (c) to consult with the Attorney General, the Minister for Justice, Equality and Law Reform, the Bar Council, the Law Society and any other body or person deemed appropriate;
- (d) to advise on and prepare the way, if determined appropriate, for the establishment of a judicial body which

would contribute to high standards of judicial conduct and establish a system for the handling of complaints of judicial conduct;

- (e) to do other preparatory work relating to judicial ethics and standards (precedents established in the New South Wales system, may prove particularly helpful, in establishing such a body); and
- (f) to proceed on other matters deemed relevant and appropriate by the Chief Justice and the Committee.

CHAPTER IX

An End and a Beginning

With this document the Group brings to an end its work, which commenced three years ago. It does so in light of the forthcoming commencement of the Courts Service. The Courts Service Transitional Board is in being and functioning. It is anticipated that the Courts Service will be established in 1999.

The management of the courts and the issues relating thereto are matters for the Courts Service on its establishment. It is appropriate that this Group now conclude.

The methodology of having in existence a Working Group at a time of great change to facilitate all parties to that process and the process itself has, the Group believes, proved a useful tool in the development.

The issue of the change and development of court management is on the agenda in many countries today because of the growth in the volume and complexity of litigation worldwide. The Working Group has had fruitful contact with many jurisdictions over the last three years. The Reports of the Working Group have been the subject of discussion at Conferences in many parts of the world.

The Group wishes to thank all those very many people who gave to it great assistance over the last three years. It is hoped that our reports assist the development of modern court management both at home and abroad.

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