



ELECTION BULLETIN 2020



THE BAR
OF IRELAND
The Law Library

SAFEGUARDING
JUSTICE

Foreword from the Chairman

Justice is a fundamental value of utmost importance in the life of every citizen and the forthcoming General Election is an opportunity to ensure that timely and efficient access to justice is accessible to all those that need it.

Barristers, as advocates, play a vital role in safe-guarding justice by defending the independence of the courts and securing their efficient functioning; by promoting the rule of law; and by affording effective and equal access to justice for all. However, constricting budgets are making it harder for practitioners and the courts to do their work, and too many people are unable to access justice quickly or

effectively. This is particularly pertinent for those living in poverty, or who are otherwise vulnerable, who, without access to justice are denied the opportunity to assert and vindicate their legal rights. Resources are urgently needed to underpin an effective and efficient justice system that will ensure access to justice for all court users and this bulletin appeals to the next Government to prioritise investment and policy action in four key areas.

Mícheál P. O'Higgins SC

1

Safeguarding the constitutional right of access to the courts



2

Safeguarding Access to Justice through Legal Aid



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Allocation of appropriate budget to develop dedicated Family Law and Children's Court at Hammond Lane



4

Promoting Ireland as a leading centre for international legal services



1 Safeguarding the constitutional right of access to the courts

Government must prioritise investment in the courts so that timely and efficient access to justice is accessible to all those that need it.

- Constricting budgets are making it harder for the courts to do their work. Despite our remarkably high GDP per capita, our investment in the Courts is relatively poor in comparison to other European states. According to the latest data from European Commission for the Efficiency of Justice (CEPEJ), Ireland allocated a per capita budget allocation of €24 to its Courts system in 2016. This is in stark contrast to the €38 per capita budget allocation of our common law counterpart England and Wales, who incidentally have a much lower GDP per capita.
- According to the Doing Business survey of the World Bank Group for 2020, Ireland ranks 91 out of 190 countries in the category relating to ease of resolving a contractual dispute, which measures whether each economy has adopted a series of good practices that promote quality and efficiency in its court system. Ireland's low rank is largely attributable to its poor scores in case management, court automation and time, which at 650 days is well above the average of 442 days across the 8 common law jurisdictions surveyed.

BUDGET ALLOCATED TO COURTS SYSTEM (2016)

IRELAND

€24 PER CAPITA

ENGLAND AND WALES

€32 PER CAPITA

“ IN 2016, IRELAND HAD THE SECOND LOWEST NUMBER OF JUDGES IN 47 COUNTRIES ”

- The number of judges must also be addressed. The ability of the courts to cope with caseload is closely related to a continuing shortage of judges. In 2016, Ireland had the second lowest number of judges of 47 countries examined by the CEPEJ, at 3.4 per 100,000 inhabitants. The recent increase in the number of Judges appointed to the Court of Appeal to 15 is welcomed but a deficit persists and The Bar of Ireland urges the next Government to confront this as a possible factor in delays and inefficiencies of the courts system.
- The Courts Service is commended in its efforts to reduce time for case processing and facilitating greater efficiency in the way trials are managed through initiatives such as e-filing, the e-courts system and other procedural and legislative reforms, but increased investment in IT is needed to strengthen the Courts Service ability to realise the full potential for increased technological solutions.

Organised propaganda should not detract from a citizen's right of access to justice.

The high cost of insurance in Ireland has rightly been the subject of much debate in recent times and there has been considerable debate about whether the fluctuation in insurance cost has been affected by the level of personal injury awards in the courts. The Bar of Ireland supports the adoption of a carefully considered and collated set of judicial guidelines as recommended by the Personal Injuries Commission (PIC), and which are now provided for under the recently enacted Judicial Council Act, as a positive step in helping to achieve greater levels of consistency and certainty in awards, but would caution the introduction of any legislative measures to put a cap on damages.

Any steps to cap damages must be considered in tandem with and in preservation of the citizen's constitutional rights and The Bar of Ireland welcomes the work of the Law Reform Commission in this regard. In the midst of this ongoing debate, we urge the next Government not to lose sight of a genuinely injured individual's entitlement to fair compensation. No amount of organised propaganda should detract from a citizen's constitutional right to go to court to have their rights vindicated or their interests defended.

2 Safeguarding Access to Justice through Legal Aid

The availability of legal aid to those who cannot afford legal representation is an essential element in the administration of justice in a democratic society.

Legal aid has long been recognised as a vital component to ensuring that a person's constitutional rights of access to the courts and to a fair hearing are given effect to, and that litigation can and (can be seen to) operate on an equality-of-arms basis. In Ireland, while there are State-run legal aid schemes aimed at supporting access to justice, they are chronically under-resourced and failure to adequately invest is hindering their capacity to provide meaningful legal aid to the most vulnerable sectors of society on a long term and sustainable basis.

PUBLIC BUDGET ALLOCATION

FOR LEGAL AID IN IRELAND

2010 2016



€87M

€82M

DOWN



16%

There are strong economic arguments that support investment in legal aid. A recent report of the World Bank, in collaboration with the International Bar Association Access to Justice and Legal Aid Committee (September 2019), notes that the failure to address the justice gap through legal aid can be "a false economy, as the costs of unresolved problems shift to other areas of government spending such as health care, housing, child protection, and incarceration... Investments in legal aid can lead to significant government savings through avoided cost of arrest, conviction, incarceration, probation, and post-prison supervision. In addition, public investments in legal aid are also found to generate net savings in terms of avoided shelter/housing costs. Studies find significant net economic benefits, even in the short term, including immediate benefits to clients and cost-savings to governments."

Despite our remarkably high GDP per capita, our budgetary efforts in facilitating access to justice through legal aid are relatively poor in comparison to other European states. According to the latest CEPEJ data, Ireland's annual public budget allocation to civil and criminal legal aid decreased from €87m in 2010 to €82m in 2016.

Severe cuts applied to professional fee levels during the economic downturn have also made it unviable for many legal practitioners to continue to participate in State-funded schemes such as the Civil and Criminal Legal Aid Schemes, and many new entrants to the Law Library are voting with their feet and choosing not to practice in legally aided areas such as crime and family law, potentially resulting in a manpower shortage in the future. Research indicates an emerging dearth of experienced junior barristers who can survive the early years of poor income from a criminal practice and survive long enough to then go on to maintain a career at the criminal bar. This loss of valuable experience and talent cannot be easily replicated. If the situation is not addressed, it will undoubtedly have a profound effect on the administration of justice and the public good.

3 Allocation of appropriate budget to develop dedicated Family Law and Children's Court at Hammond Lane

- A properly functioning courts system is essential to providing access to justice yet some of the most vulnerable members of society seeking to resolve family law and childcare proceedings are faced with wholly unsuitable court facilities in archaic conditions where not even basic needs are met such as separate waiting areas, family friendly spaces and consultation rooms to allow for privacy in these most sensitive of cases.
- The construction of dedicated Family Law Court facilities has been agreed in principle for some time and the site at Hammond Lane is ready and waiting, however agreement has yet to be reached on its structure and funding. This ongoing failure to commit the necessary resources gives rise to a significant and serious risk that the existing system cannot adequately protect the rights of individuals or children participating in family law proceedings, and is inhibiting access to justice for some of the most vulnerable members of our society.

- A number of organisations, including The Bar of Ireland, whose clients are forced to seek resolution to their family law issues in these inadequate facilities joined together to launch the “Courting Disaster” campaign in December 2019 which strongly echoes the recommendation of the Joint Oireachtas Committee on Justice and Equality Report on Family Law Reform (October 2019) that the necessary funding be allocated as a matter of urgency.
- The Bar of Ireland appeals to the next Government to make the necessary funding available without any further delay so that the deficiencies in the current family law system can begin to be addressed.



4 Promoting Ireland as a leading centre for international legal services

The departure of the United Kingdom from the European Union presents a significant opportunity for Ireland to grow the market for international legal services. Ireland is best placed to reassure the international business community that legal services can continue to be transacted within an EU, English speaking, common law system through the use of Ireland and Irish law as a preferred jurisdiction and/or governing law for international businesses, transactions and disputes.

To fully capitalise on this opportunity, a joint initiative was produced by The Bar of Ireland, the Law Society and the wider legal community (with support from the IDA and the Department of Justice and Equality) in 2018 to promote Ireland as a leading centre globally for international legal services. An implementation group was subsequently established under the Chairmanship of John Bruton and held its first meeting in October 2019, where an action plan to take the initiative forward was agreed.

In order to maximise the opportunity for Ireland, it would not be sufficient to simply promote Ireland's existing offering. It is necessary for the next Government to demonstrate its commitment to reform and modernise the existing Courts and legal system and to commit the additional financial and other resources required to ensure that Ireland's judiciary, Courts service and legal system is best positioned to meet international expectations and the needs of international as well as domestic court users. Speed and predictability are arguably the most fundamental drivers for international business and the Irish legal system must continue to improve its capability to provide these features if it is to encourage international business to choose to avail of the Irish legal system.

With the support of the next Government, the benefits that will accrue in promoting Ireland as a global legal hub are not limited to the legal industry but will also assist the wider Irish economy. It is estimated that even a 1% movement of legal services from the UK to Ireland could add between 1,100 and 1,600 jobs to the Irish economy in a year.

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