



THE BAR
OF IRELAND
The Law Library

SAFEGUARDING
JUSTICE

November 2019

Promoting a Fair and Just System

The Bar of Ireland – Policy and Law Reform in the Public Interest

Upholding the rule of law, promoting access to justice and ensuring the interests of justice are the primary functions of a barrister. A key role of the Council of The Bar of Ireland in upholding and improving our justice system is through advocating for the development of legislation and regularly participating in

reviews of the operation of the justice system.

Over the past year, the Council and its committees have made submissions, attended meetings and spoken across the media, on behalf of the profession. This publication summarises some of that advocacy work.

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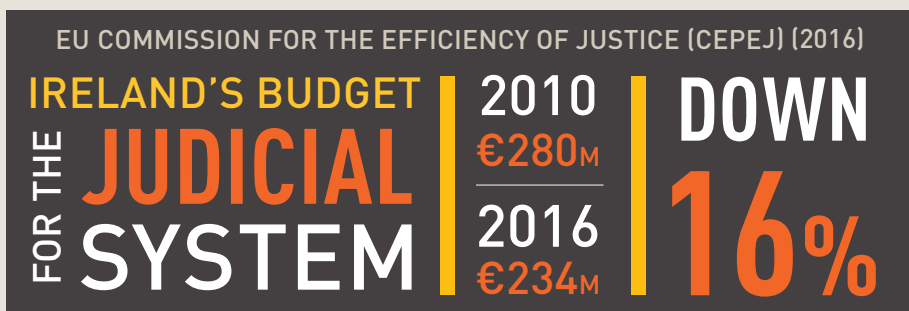
Underfunded justice

According to the European Commission for the Efficiency of Justice (CEPEJ), Ireland's expenditure on its judicial system – the courts, legal aid, and public prosecution services – has been consistently lower than that of neighbouring jurisdictions since 2010. Constricting budgets can make it harder for the courts to do their work. 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 across four areas. Ireland has ranked in the sub-categories as follows:



Expected investment in IT by the Courts Service, alongside the forthcoming outcome of the Civil Justice Review being carried out by Mr Justice Peter Kelly, has the opportunity to improve Ireland's score on case management and court automation, provided it is supported by appropriate levels of funding. Of the common law jurisdictions surveyed, Ireland performed the second worst in the category of "time". Time is recorded in calendar days, counted from the moment that a claim is filed until payment. Only Canada (910 days) takes longer than Ireland's score of 650 days, which is well above the average of 442 days across the eight common law jurisdictions surveyed.

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. This deficit must be confronted as a possible factor in delays and inefficiencies of the courts system.



Underfunding of legal aid

For any legal system to operate at its optimum level, access to justice must be available to all. This is particularly relevant in the work of the civil and criminal legal aid schemes through which barristers advocate on behalf of some of the most vulnerable in society. However, with severe cuts applied to professional fee levels during the economic downturn, many new entrants to the Law Library are voting with their feet and choosing not to practise in legally aided areas such as crime and family law, potentially resulting in a manpower shortage in the future, which is most certainly not in the public interest. A positive response from Government in restoring the cuts that were applied to professional fee levels is urgently needed.



In the spotlight

Protecting the vulnerable

The Bar has an important role in ensuring that the criminal justice system provides a fair trial for complainants, accused persons and witnesses, and that any measures to improve the position of those who give evidence in criminal trials do not jeopardise the constitutional right to a fair trial of the accused.

This principle was to the fore of Council's submission to the O'Malley working group, which was established by the Minister for Justice to review the adequacy of current arrangements for the protection of vulnerable witnesses in the investigation and prosecution of sexual offences.

The Bar submission addresses:

- the law on anonymity;
- the case for pre-trial hearings;
- issues surrounding disclosure and discovery; and,
- support for vulnerable witnesses.

The full submission is available on www.lawlibrary.ie.



Reforming the family law system

In March 2019, a delegation from The Bar of Ireland appeared before the Joint Oireachtas Committee on Justice and Equality to discuss much-needed reform of the family law system. Among the solutions recommended by the Council is:

- The creation of a specialist division of family law courts and judges to ensure that the same judges deal with family law lists on an ongoing basis, ensuring greater efficiency and consistency in the approach to proceedings, particularly where the views of a child are to be ascertained.



Seán Ó hÚallacháin SC addressed the Joint Oireachtas Committee on Justice and Equality as part of The Bar of Ireland's campaign on reform of the family law system.

- The construction of dedicated family law facilities at Hammond Lane. In the absence of a purpose-built family law complex in Dublin, applications are heard and determined in locations that are unfit for use and have a direct impact on the way in which family law proceedings are conducted. This is entirely contrary to the legislative and public policy purpose behind the *in camera* nature of family law proceedings.
- Resources to address the chronic delays experienced in courtrooms outside Dublin. The number of days allocated to family law sittings can be quite limited on circuit, which results in system clogging and long gaps between the institution of proceedings and their determination.
- The Council also stated that an adequately resourced civil legal aid system is fundamental to family law proceedings, and that the Legal Aid Board requires significant additional resources if a properly functioning civil legal aid system is to be provided.

The Council welcomed the publication of the Justice Committee’s report in October 2019, in particular the recommendation of the Committee to establish a dedicated and integrated family court within existing court structures and, critically, to ensure the necessary resources and supports for implementation. The Council joins the Committee’s calls on Minister for Justice Charlie Flanagan TD to bring forward the required legislation as a matter of priority.

A copy of the full submission can be found on www.lawlibrary.ie.



Courts safety

The prevalence of aggression, threats and violence towards barristers in the course of their professional work has been steadily increasing over the last number of years. Since January 2019, the Courts Service has put new security measures in place, including security screening at the entrance to the courthouse at Phoenix House in Dublin, along with a number of G4S security personnel present while the courts are sitting. Issues of safety and security in the courtroom are an absolute priority for the Bar, and the Council continues to actively engage with the Courts Service to ensure the protection of all court users, and to facilitate a safe environment in which barristers can advocate on behalf of their clients.

High cost of insurance

In response to the ongoing public discourse on the high cost of insurance in Ireland, a letter to the Editor authored by Micheál P. O’Higgins SC, Chairman of the Council of The Bar of Ireland, was published in *The Irish Times* in April 2019, highlighting the right of access to justice, and the role of barristers in advocating on behalf of genuinely injured persons. Clever and expensive propaganda campaigns directed at making it socially unacceptable to go to court should not detract from a citizen’s right of access to justice.

The Bar of Ireland position:

- 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, and in increasing the frequency of early resolution of claims.
- However, any steps, including legislation, to reduce the level of awards, must be considered in tandem with and in preservation of the citizen’s constitutional rights – a position reiterated by representatives of the Council to the Minister of State at the Department of Finance, Michael D’Arcy TD, at a meeting held in May 2019.
- The Bar of Ireland continues to engage and co-operate with the Department of Finance-led Cost of Insurance Working Group on Government initiatives to reform the personal injuries landscape in Ireland.

Promoting Ireland as a leading centre for international legal services post Brexit



The initiative to promote Ireland as a centre for legal services post Brexit was promoted at an event in the Irish Embassy in Washington DC in March. From left: Seamus Woulfe SC, Attorney General; Mr Justice Frank Clarke, Chief Justice; Micheál P O’Higgins SC, Chairman, Council of The Bar of Ireland; Gemma Allen, IDA Ireland; and, Patrick Dorgan, President of the Law Society.

A key focus of our advocacy this year has been on the opportunity for Ireland to increase the market for international legal services post Brexit.

- 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) to promote Ireland as a leading centre globally for international legal services.
- An implementation group was established under the Chairmanship of John Bruton and held its first meeting on October 25, 2019, where an action plan to take the initiative forward was agreed.
- In order to maximise the opportunity for Ireland, the Government must demonstrate its commitment by way of reform and modernisation of the existing courts and legal system, and to commit the additional financial and other resources required.
- Recent increases in the number of judges in the Court of Appeal from nine to 15, and the forthcoming outcome of the Civil Justice Review being carried out by Mr Justice Peter Kelly are likely to further develop Ireland’s laws and legal system to make them even more effective, responsive and business friendly, and to make dispute resolution more efficient and predictable.

To learn more about the initiative, a copy of the proposal can be found on www.lawlibrary.ie.



Legal commentary in *The Bar Review*

The Bar Review, The Bar of Ireland's journal, is published six times per year. It contains articles from leading barristers on key developments and topical issues of practical and legal importance, as well as a comprehensive Legal Update detailing pertinent publications, judgments and legislation.

The latest edition (November 2019) highlights the role of counsel in the administration of justice, and considers the implications of Brexit on Ireland's trans-jurisdictional relationship with Northern Ireland, including cross-border co-operation in the area of criminal justice, the European Arrest Warrant, and the Common Travel Area arrangement.

For more information about *The Bar Review* visit www.lawlibrary.ie.



Pro bono at The Bar

The Bar of Ireland continues to dedicate significant time to our *pro bono* initiatives, including the Voluntary Assistance Scheme (VAS), the formal *pro bono* scheme of the Bar, through which hundreds of barristers provide legal assistance and training to charities on a wide range of legal areas, including debt and housing, landlord and tenant issues, social welfare appeals, and employment and equality law. Since the VAS was established in 2004, it has provided *pro bono* legal assistance in over 650 matters for over 100 charities/NGOs.

VAS projects:

- Provided legal advice in 22 new matters and legal representation in 16 matters this past legal year, in addition to continuing work on ongoing cases from previous years.
- Organisations to whom assistance has been provided include: Galway Traveller Movement; Rape Crisis Network Ireland; Community Law and Mediation, Coolock; Ballymun Youth Action Project; National Advocacy Service for People with Disabilities; Migrant Rights Centre Ireland; St Vincent de Paul; Bunratty Child Care; MABS; and, Citizens Information.
- Annual advocacy training workshop for charities, 'Speaking for Ourselves'.
- A joint event in January 2019 with the Charities Regulator, which offered practical guidance to those impacted by the new Charities Governance Code, was attended by numerous charities and watched online by over 300 people from all around the country.

Members of the Law Library continue to provide voluntary legal assistance in a private capacity through a number of community outreach projects that operate outside of the Bar, including the law clinics run by FLAC and also by Community Law and Mediation through their clinics in Dublin and Limerick.



From left: Jonathan Miller BL; Sonja O'Connor BL, Co-ordinator, Voluntary Assistance Scheme of The Bar of Ireland; Tom Malone, Assistant Director of Regulation, Charities Regulator; and, Sarah Mongey, Research & Policy Officer, Charities Regulator.

Diversity at The Bar

The Denham Fellowship

The Denham Fellowship, which provides financial and professional support to aspiring barristers from socioeconomically disadvantaged backgrounds, is entering its third year. Denham Fellows are provided with financial, educational and professional support from point of entry to the Barrister-at-Law degree programme at the King's Inns, all the way through their first four years of practice at the Law Library, a five-year programme that will ultimately, it is hoped, lead to a successful, rewarding and long-lasting career at the Bar.



ABOVE: Students participating in the Bar's TY Programme got to take part in mock trials in Green Street Courthouse.

LEFT: Look into Law gave participants a unique opportunity to act the part of witnesses, the registrar and members of the jury.

'Look into Law'

The Bar of Ireland's 'Look into Law' Transition Year Programme is an exciting initiative aimed at increasing students' awareness of the work of The Bar of Ireland, and to encourage students from all backgrounds to consider a career as a barrister. Some 100 students from all over the country and from a wide cross-section of society take part in the programme every year, with a minimum of 20% of places reserved for students from DEIS schools.

To learn more about the Fellowship and the TY Programme, visit www.lawlibrary.ie.

Informing and reforming

Over the past number of months, The Bar of Ireland, through its Council and committees, has submitted independent expert opinion across a range of issues concerning the rule of law and the administration of justice.



January 14, 2019	Submission to the Joint Committee on Justice and Equality on the General Scheme of the European Convention on Human Rights (Compensation for Delays in Court Proceedings) Bill. Representatives of the Council appeared before the Committee on January 16, 2019, to present and discuss the submission
March 4, 2019	Submission to the Joint Oireachtas Committee on Justice and Equality on reform of the family law system. Representatives of the Council appeared before the Committee on March 6, 2019, to present and discuss the submission
July 2019	Submission to the Review Group on the Protection of Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences
November 2019	Submissions to the Legal Services Regulatory Authority concerning the making and issuing of regulations in relation to the advertising of legal services

Like all sections of society, we must always seek to evolve and improve, and The Bar of Ireland proactively engages with decision-makers on an ongoing basis. Our latest returns arising under the Regulation of Lobbying Act can be viewed at www.lobbying.ie.



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