



Submission to the Judicial Planning Working Group on behalf of the IWLA

1. Introduction

The Irish Women Lawyers Association (IWLA) is a voluntary organisation representing our members who are largely women involved in the law in Ireland be they students, academics, trainees, devils, solicitors and barristers. It was founded after a Women in Law conference in 2000 organised by the late Twinkle Egan.

The IWLA considers that it is of upmost importance that members of the public have confidence in the judicial branch of the State. For this to happen the judiciary must be representative of those members of the public be they citizens or litigants. There have been improvements in this regard but, as it stands, the judiciary does not represent society.

2. Recruitment

The IWLA thinks the Working Group should consider is what sort of pool judges are being recruited from. From a review of the women on the Supreme Court and Court of Appeal it can be seen that, prior to appointment, they were all Barrister Senior Counsel. Solicitors have only had the opportunity to become Senior Counsel since 2020. It may be that more solicitors are appointed to the Circuit or District Courts. However, we noticed that only two of the women on the Court of Appeal and Supreme Court had come up through the Circuit Court. Therefore, the IWLA is of the view that there are two options available and they may not be mutually exclusive. Either more female Senior Counsel need to be appointed or the recruitment net needs to be case wider.

2.1 Judges

Table 1. Female judges in Ireland in 2021

Court	Total Number of Judges	Number of Female judges	Percentage of women
Supreme Court	10	3	30%
Court of Appeal	16	8	50%
High Court	41	13	31.7%
Circuit Court	38	16	42.1%
District Court	63	24	38%
Total	168	64	38%

2.2 Supreme Court

The Hon. Ms. Justice Elizabeth Dunne (appointed in July 2013) – **Barrister**. Broad practice, encompassing family, commercial, chancery and banking law and defamation law proceedings. She was first appointed to the Circuit Court before moving to the High Court and then Supreme Court.

The Hon. Ms. Justice Iseult O'Malley (appointed in October 2015) – **Barrister (Senior Counsel)**. She practised mainly in criminal law. She was first appointed to the High Court before moving to the Supreme Court.

The Hon. Ms. Justice Marie Baker (appointed in December 2019). **Barrister (Senior Counsel)**. Her practice predominantly focused on commercial law, conveyancing, family law and litigation. She was first appointed to the High Court before moving to the Court of Appeal and then Supreme Court.

The President of the High Court, The Hon. Ms Justice Mary Irvine is an ex officio member. **Barrister (Senior Counsel)**. Medical law. She was first appointed to the High Court before moving to the Court of Appeal and then Supreme Court. She was then nominated as President of High Court.

2.3 Court of Appeal

The Hon. Ms. Justice Máire Whelan, **Barrister (Senior Counsel)**. She was the Attorney General before being appointed to the Court of Appeal.

The Hon. Ms. Justice Caroline Costello, **Barrister (Senior Counsel)**. She had a commercial orientated practice, focusing on commercial law, banking law and insolvency law. She was first appointed to the High Court before moving to the Court of Appeal.

The Hon. Ms. Justice Isobel Kennedy, **Barrister (Senior Counsel)**. She specialised in criminal and constitutional law. She was first appointed to the High Court before moving to the Court of Appeal.

The Hon. Ms. Justice Aileen Donnelly, **Barrister (Senior Counsel)**. She was first appointed to the High Court before moving to the Court of Appeal.

The Hon. Ms. Justice Mary Faherty, **Barrister (Senior Counsel)**. She was first appointed to the Circuit Court before joining the UN Appeals Tribunal. She was then appointed to the High Court before being elevated to the Court of Appeal.

The Hon. Ms. Justice Una Ni Raifeartaigh, **Barrister (Senior Counsel)**. Her practice mostly focused on criminal law. She was first appointed to the High Court before moving to the Court of Appeal.

The Hon. Ms. Justice Ann Power **Barrister (Senior Counsel)**. She developed a practice in Constitutional, Public and Medical law, as well as Immigration and Asylum law. She was elected to the European Court of Human Rights before serving as a Presiding Judge to the Specialist Chamber of the Constitutional Court at the Kosovo Specialist Chambers and Specialist Prosecutor's Office. She was then appointed to the Court of Appeal.

The Hon. Ms. Justice Teresa Pilkington. **Barrister (Senior Counsel)**. Her practice focused on property law and probate, construction law, guardianship and charities law. She was first appointed to the High Court before moving to the Court of Appeal.

2.4 High Court

There are 41 judges appointed to the High Court. The most recent appointment was Siobhán Stack. **Barrister (Senior Counsel)**. Her practice encompassed judicial review, asylum law, European Union law and law relating to the European Convention on Human Rights. She was appointed directly to the High Court.

3. Country examples of methods implementing work life balance (and consequently improving gender equality)

3.1 United Kingdom

The Crime and Courts Act 2013 extended the right to salaried part-time work to judges in the High Court and above (this was already available at lower court levels).

Alexandra Marks is a deputy high court judge who sits on the Judicial Appointments Commission (JAC). She explained that *“improvements made by the Crime and Courts Act, which already permits part-time working and job-sharing for judges, is rapidly expanding the pool of eligible female lawyers who will eventually be available for selection to the highest judicial positions”*.

The rate at which women are being appointed judges is gathering momentum in a “snowball effect”, ensuring gender equality on the bench is not that far away in the United Kingdom.

3.2 Canada

The Justicia Flexible Work Arrangements Profitability Model (developed by Deloitte) is a tool that has been developed for Law Firms but can be a source of inspiration for the judiciary as well. The tool is an example “of how the profitability of a flexible work arrangement (“FWA”) could be calculated.”

It is accompanied by [a guide to assisting law firms and lawyers in developing flexible working arrangements](#), which encourages job sharing, reduced hours, variable office hours and working remotely.

More than half of the judicial appointments in Canada from 2016 to 2019 have been women.

3.3 Hungary

There are a number of local practices on the creation of family-friendly working conditions across the judiciary. These practices include increasing the proportion of part-time work, flexible work hours, accommodation of the special needs of pregnant workers and parents as well as maternity/parental leave and reintegration management.

3.4 Mexico

In response to obstacles it had identified as deterring women from careers in the judiciary – e.g. limited family-friendly policies, mobbing and sexual harassment – the human resources department of the Federal Electoral Tribunal put in place a Gender Equality Unit to support shorter working hours, the implementation of paternity leave and action to raise awareness of gender stereotypes in the workplace. Yet, the distance of the Gender Equality Unit from the apex of decision making has significantly curtailed its influence. It has been transferred to the Presidential Office of the Court to increase its leverage, but its influence on decision making is still uneven and depends on the personality of the President of the Court.

4. Criteria for Selection

The criteria for selection to the Superior Courts was amended by Section 12(d) of the Court of Appeal Act, 2014. Subsection (d)(ii) states that “*The Board shall recommend a person to the Minister under section only if the Board is of the opinion that the person: (3) is suitable on the grounds of character and temperament*”.

The [Association of Judges Ireland website](#) also states that “*Anyone recommended by the Board to the Government for judicial appointment must not only hold the formal qualifications set out in the Courts (Supplemental Provisions) Act 1961 but must also display an appropriate ‘degree of competence and probity’ and be ‘suitable on the grounds of character and temperament’.*” This is also stated on the [Judicial Appointment Advisory Board website](#).

Based on research conducted by Professor Irene Lynch Fannon, School of Law, University College Cork, the IWLA considers that the criteria for appointment themselves should be reviewed, since they are ill defined and open to an overly subjective interpretation at present. Considerations like ‘character’ and ‘temperament’ should be replaced with criteria or competencies that are transparently meritocratic (like those adopted in the Ontario model, and as recommended by the N.I. Commissioner for Judicial Appointments), in order to guard against gender bias.

4.1 Ontario Model

Below is a list of the criteria for evaluating candidates with the Ontario Model, which is substantially more transparent and clearer. It offers a more objective method of assessing candidates based on merit.

(a) Professional Excellence

- *Professional excellence is the paramount criterion in assessing judicial candidates.*
- *A high level of professional achievement in the area(s) of legal work in which the candidate has been engaged. Experience in the field of law relevant to the jurisdiction of the Ontario Court of Justice on which the applicant wishes to serve is highly desirable but not essential.*
- *Involvement in professional activities that keeps one up to date with changes in the law and in the administration of justice.*
- *A demonstrated commitment to continuing legal education.*
- *An interest in or some aptitude for the administrative aspects of a judge’s role.*
- *Good writing and communications skills.*
- *Community Awareness*
- *A commitment to public service.*
- *Awareness of and an interest in knowing about the social problems that give rise to cases coming before the courts.*
- *Sensitivity to changes in social values relating to criminal and family matters.*
- *Interest in methods of dispute resolution alternatives to formal adjudication and interest in community resources available for participating in the disposition of cases.*

(b) Personal Characteristics

- *An ability to listen.*

- *Respect for the essential dignity of all persons regardless of their circumstances.*
- *Politeness and consideration for others.*
- *Moral courage and high ethics.*
- *An ability to make decisions on a timely basis.*
- *Patience.*
- *Punctuality and good regular work habits.*
- *A reputation for integrity and fairness.*
- *Compassion and empathy.*
- *An absence of pomposity and authoritarian tendencies.*

Demographics

The Judiciary of the Ontario Court of Justice should be representative of the population it serves. The Committee is sensitive to the issue of under-representation in the judicial complement of women, Indigenous, visible and ethnic/cultural minorities, LGBTQ+ and persons with disabilities.

5. IWLA Position

If judges are recruited from a pool where women are already under represented, there is no prospect of gender equality in the judiciary.

Accordingly where are the women lawyers? Answer – many are working in other areas, due often to family pressures.

For example, note the following in relation to solicitors:

- 2015 - The majority of practicing solicitors are female
- 2018 – 52% of practicing solicitors are female
- February 2017 – 67% partners in the six largest solicitors firms (where 14% of solicitors work) are male (e.g. 33% female. 64% of solicitors working below partner level are female. It will be another 15 or 20 years before there is gender parity at senior level.¹
- March 2018 – 35% of partners in the six largest solicitors firms are female (35% in large firms, 33% across the profession)
- April 2019 - 48% of female solicitors choose to work in private practice. The other 52% prefer working in-house positions for corporations and banks².

As for barristers, women leave the bar and go into the public service, in house roles in corporates etc.

6. Recommendations

6.1 Women and others from underrepresented groups should be approached directly and actively encouraged to apply themselves for available judicial appointments or suggest to another female lawyer that she applies.

¹ <https://www.irishtimes.com/opinion/legal-profession-s-top-ranks-still-dominated-by-men-1.3418260>

² <https://lincoln.ie/diversity-in-irelands-legal-sector/>

- 6.2 Communications should state that applications from all qualified candidates are encouraged, in particular those from underrepresented groups.
- 6.3 The recruitment net for judicial appointments should be cast wider than current Senior Counsel. This could include women lawyers working for State bodies, corporations and banks. Any deficiencies in terms of recent courtroom experience could be overcome by way of training or a shadowing period.
- 6.4 Women and others from underrepresented groups need to be encouraged to stay in practice at the bar so that there is a more diverse pool to recruit from. To do this the factors enticing them to leave should be considered. For example, steady pay and employee entitlements like sick leave and maternity leave.
- 6.5 Ensure that the recruitment process is as transparent as possible with a list of necessary skills/characteristics and a list of preferred skills/characteristics. Ensure that candidates know exactly what the role is that they are applying for and how the recruitment process will work, including timelines.
- 6.6 Consult with retired judges who, in looking back over their careers would be a source of great insight.

7. Conclusion

Judges have traditionally come from the Bar which is itself lacking in diversity. The solicitors' profession is more diverse at all levels, with 52% female practicing solicitors in 2018. Whilst the Bar must take its own steps towards increasing diversity amongst its members, if more judicial appointments were to be made from amongst these other groups, it is highly likely that the judiciary would become more diverse as a result.

This point was stressed in the UK by Lord Falconer when he said;

"We have been incredibly timid about going to government lawyers, prosecution lawyers, in-house counsel, academics, people who work in law centres—there is a whole group of places you could reach. We tell these people that they can apply, but you are never going to convince people that they will be appointed unless you start making appointments from this diverse group. By and large, most people would assume that they would not get through the process, and they are right."

If the recruitment net is cast wider it will capture some fantastic women lawyers and might even result in a more representative judiciary in terms of inclusion, diversity and society as a whole.