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Judicial Planning Working Group
Ms Brigid McManus
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“Establish a working group to consider the number of and type of judges required to ensure the efficient administration of justice over the next five years”

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Dear Ms McManus,

First of all congratulations on your appointment as chairperson of the Judicial Planning Working Group

We would be grateful if you could bring this short submission, made by members of the Open Justice Ireland group (hereafter OJI) and on its behalf, to the attention of the Judicial Planning Working Group. OJI welcomes the creation of your working group with the paramount objective to ensure the efficient administration of justice. The members of OJI include, among others, many unrepresented litigants whose views might be a necessary compliment the membership of the group over which you are presiding.

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I. Introduction

A. Overriding Objective of Civil Procedure Rules, 1998, Lord Woolf

First of all, as it is hard to re-invent the wheel, we respectfully submit that due consideration should be taken of the “not so” new Civil Procedure Rules established under the direction of Lord Woolf in the UK in 1998 and of their overriding objective shown at section 1.1 of the said rules.¹

“1.1 (1) [...] the overriding objective of enabling the court to deal with cases justly and at proportionate cost.

(2) Dealing with a case justly and at proportionate cost includes, so far as is practicable –

¹ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part01#1.1>

- (a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;*
- (b) saving expense;*
- (c) dealing with the case in ways which are proportionate –*
 - (i) to the amount of money involved;*
 - (ii) to the importance of the case;*
 - (iii) to the complexity of the issues; and*
 - (iv) to the financial position of each party;*
- (d) ensuring that it is dealt with expeditiously and fairly;*
- (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases; and*
- (f) enforcing compliance with rules, practice directions and orders.”*

B. the Bangalore Principle of Judicial Conduct

The Bangalore Principles of Judicial Conduct were actively supported by the United Nations Office on Drugs and Crime (UNODC). As such, their establishment was made with a view to prevent the Corruption of the Judiciary. They are: Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence.

As per its preamble, these principles:

- a) are recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions. As such, those principles have been upheld by Dunne J. as an international standard of universal application in *O’Driscoll v Hurley*², and,
- b) presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

C. “Justice must not only be done, but must also be seen to be done ”

The respect of the above Bangalore principles and of the Fundamental & Constitution Right to a fair hearing, at first instance, seems paramount to reduce the workload of the appellant Courts.

If the parties to proceedings understands the clear reasoning behind a judicial decision, it is less likely that the said judicial decision would be appealed.

² *O’Driscoll v Hurley* [2016] IESC 32

II. Number and type of judges to ensure the efficient administration of justice.

The number and type of judges required in Ireland in the next five years, and longer term to ensure the efficient administration of justice.

The OJI is concerned about the observed lack of competence of judges, especially when judges are to adjudicate in a field where they have no experience as a solicitor / barrister. The same requires that the Court should not be made as one bench, but as benches, and so, for each jurisdiction (District Court, Circuit Court, High Court, Court of Appeal, Supreme Court – Civil/Criminal/Constitutional).

The assignment of Civil matters to “Criminal” Judges or Criminal matters to “Civil” Judges are amongst the worst observed case scenarios. To that effect, without making clear suggestion in terms of numbers, we consider that the number should be defined by expressed categories, in each jurisdiction.

In each jurisdiction, it is believed that the case management should never be made by judges but by capable Civil Servants, as given by the example of the Master and Deputy Masters of the High Court.

A. Criminal

1. Investigation Judge / Evidence & Deposition

Assessing evidence before trial.

Case management

2. Trial Judge

3. Sentencing Judge

B. Civil

1. Chancery

2. Probate

3. Defamation

4. Family

5. ...

III. Impact of Covid pandemic, demographic & Brexit on caseloads

Impact of the Covid-19 pandemic, demographic changes, and implications of Brexit in regard to court caseloads and the subsequent resource requirements.

A. Covid-19 pandemic

The Covid pandemic is definitely going to increase the number of cases for loss of business, infringement of fundamental rights, breach of contract and the like. Some litigation could be prevented by the urgent review of the constitutionality of all Covid/Emergency legislation by the Supreme Court.

It is considered that the Constitutionality of all legislation should be assessed by the Supreme Court before its enactment, as the example of legislation being found unconstitutional years after being enacted poses serious consequences in term of re-litigation and appeal.

B. Demographic Changes

The Irish population grew from 3.78 million in 2000, to 4.55 million in 2010, to 4.94 million in 2020 and estimated at over 5 million as of today's date³. The above demographic evolution should be considered by age category and their direct impact on the Family and Probate divisions of the Courts.

C. Brexit

Brexit might create an increase in the demographic trend as well as an increase in the number of Companies (moving from the UK to remain in the Euro zone). It is believed that this trend will depend on the efficiency of the reform of the Irish Judiciary as the establishment of English speaking Courts in the Netherlands is an alternative which will be favoured by many, especially with due regard of comparative legal costs.

³ <https://www.worldometers.info/world-population/ireland-population/>

IV. Development of selection criteria / judicial skills

A. Competence Criteria

Any complaint against candidates either to the Law Society and to the Bar Council (including pending ones),

Any criminal conviction (including pending proceedings),

Any evidence of *pro bono* work

proof of independence from political influence

Jurisprudence

Empathy

Wisdom

Any judge who had a write-off from a bank should not sit in judgment of others and/or in relation to the said bank.

B. Skills – training prior to appointment

1. core fundamental judge training

In relation to fair hearing including principles of Equality of Arms, by reference to the two guides of the European Court of Human Rights on Article 6.1 (Civil limb & Criminal Limb).

Criminal and civil consequences for judges in the event someone's fundamental/constitutional rights to a fair hearing is infringed upon.

Bangalore Principle of Judicial Conduct

Understanding of the right of Courts' users to criticise Judges and of the Judges' obligation to welcome such criticism, without such criticism altering the judge's impartiality.

2. importance of training in relation to the principle that “ Justice must not only be done, but must also be seen to be done ”

The respect of the above principle at first instance seems paramount to reduce the workload of the appellant Courts. Cf. paragraph I.C.

3. specific training for area of practice of the judges

Ad hoc and continuous training whenever required..

V. Meeting state obligation of Access to Justice

The extent to which efficiencies in case management and working practices, as well as enhanced digital technology, could help in meeting additional service demands, improving services, and access to justice.

A. Alternative Dispute Resolution

Establishment of a Pre-action Protocol which is to make Alternative Dispute Resolution compulsory and which will make the party refusing or not adhering to the ADR liable for the costs of the said proceedings.

B. Independent Public Servant to ensure case / matter is ready for the Court

Equivalence of Master and Deputy Master of the High Court for all type Courts and all types of proceedings to save time of the members of the judiciary in managing cases.

C. Restorative Justice

Alternative to Criminal Proceedings to be offered by way of by Restorative Justice which will save the Courts' time of having further Civil Proceedings in relation to the same matter.

D. Record of Consent

Judges should ask if the parties clearly understand what they are consenting to and the implications of such consent.

Record of consent should be made by the Registrar.

E. Live streaming of hearing with public access to library for all cases not in camera.

Such will reduce the waste of Courts' time for hearing applications for the DAR and increase adherence to the Principles of Open Justice (including scrutiny of the Judiciary) and Transparency.

F. Time slot for mention and motion to be more precise

Allocation of more precise time slot for mention and motion to allow a better access to justice of Court users (especially unrepresented litigants, witnesses) which might be obliged otherwise to take a full day off.

G. All appellant Courts to make de novo hearing to reduce the length of proceedings

While the above suggestion might create additional costs for the Judiciary in the instance of Court of 3, 5 or 7 judges, same will reduce the duration of proceedings.

H. Book of authorities

Abandon the practice of printing the full book of authorities. Paper version of the book of authorities to be limited to the section quoted or referred to in the submissions (oral or verbal) and put the the full version of each authorities on DVD to save the time of the Courts, the moving parties and which also save the impact on the environment.

I. Avoidance

Inordinate delay - Disproportionality of costs

VI. Conclusion

The Open Justice Ireland group hopes that the above humble submissions might be of some assistance to your group and remains at your disposition if it requires any further assistance.

Yours faithfully

Arnaud Gaultier Swords
Acting Chairman

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