



WORKING GROUP
ON A
COURTS COMMISSION

SIXTH REPORT

CONCLUSION

SUMMARY

November, 1998

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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 and 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. This is the Summary of 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.

Note: The Paragraphs are numbered in the Sixth Report and in this Summary. The paragraph numbers in the Summary correspond to those of the Sixth Report, for ease of reference. Consequently, the numbers of the paragraphs in this Summary are not sequential.

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, to be known as the Courts Service and to be created by statute.

On 25th May, 1996 the Government approved the publication of the First Report and accepted in principle the primary recommendation, 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 and 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. That report set out proposed Heads of the Courts Service Bill and recommended that steps be taken as a matter of urgency to legislate for a Courts Service.

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 Chief Executive 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 held a Working Meeting with the Chief Justice of Russia, Chairman Lebedev and other members of the Russian Judiciary in Dublin on 10th June, 1998.

A representative of the Working Group, Mr. Justice Ronan Keane, travelled to Conferences in the Russian Federation, Ukraine and Poland and spoke on the reports of the Working Group and the Irish Courts Service.

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?

How can the new Courts Service 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 and 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 in 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 in 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 it was recommended 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. Consequently, 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 and 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 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. However, 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** 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

4.8 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

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.

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.

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.

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.
- (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,

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

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 to Chapter IV of the Sixth Report. It 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 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.

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

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 regularly. 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.

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 to Chapter V of the Sixth Report. Since that date 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.

5.3 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 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, heard 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

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 presents 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.

This option involves considerable expenditure by the State. It is an expensive model.

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.

The Family Law Division of the High Court should also be afforded the facilities necessary. These would be similar to those of the other jurisdictions but relative to the need in the High Court.

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 question of providing some assistance to middle income family law litigants should be explored.

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 in that there is an absence of knowledge of the workings of the family law courts. 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.

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 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 an 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.

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.⁷ Information was sought from other jurisdictions as to their system of court terms.⁸ A round table discussion was held with persons representative of the public interest and the study of law.⁹

The requests to the Working Group were made at a time 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. In this Chapter the 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 sittings vary from jurisdiction to jurisdiction. Thus, it is necessary to consider each court separately.

⁷ See Appendix K to Chapter VII of the 6th Report of the Working Group.

⁸ See Appendix L to Chapter VII of the 6th Report of the Working Group.

⁹ See Appendix M to Chapter VII of the 6th Report of the Working Group.

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.¹⁰ 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 area¹¹ (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.¹² See Appendix A in the Sixth Report for the sittings of the District Court for August, 1998 under these arrangements for urgent business.¹³ At Christmas time the District Court does not organize sittings for the nine consecutive days commencing on 23rd December. Similarly, at Easter the court does not hold sittings in 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 Judges¹⁴. This jurisdiction hears the majority of cases which come

¹⁰ District Court Districts (Amendment) Order, 1970 (S.I. No. 160 of 1970).

¹¹ See schedule to S.I. No. 161 of 1970.

¹² District Court Areas (Amendment) Order, 1970 (S.I. No. 161 of 1970).

¹³ See Appendix A to Chapter VII of the 6th Report of the Working Group.

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

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 Chapter VII of the Sixth Report. 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 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.¹⁵ 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 deal 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 Minister for Justice, Equality and Law Reform, organized additional sittings of the Circuit Court to deal with criminal matters in September.

¹⁵ S.I. 5/1961 as amended. District Court (Areas) Order 1961.

Circuit Court Offices

The Circuit Court Rules¹⁶ 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.¹⁷ 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 Chapter VII of the Sixth Report.

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, 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

¹⁶ S.I. 179/1950 as amended (S.I. 167/1964) — Circuit Court Rules 1950 Order 1, Rule 6.

See Appendix D to Chapter VII of the 6th Report.

¹⁷ See Appendix B to Chapter VII of the 6th Report.

term in the High Court, Central Criminal Courts and Circuit Criminal Courts.

A similar picture emerges on examining the provincial Circuit Court Offices.¹⁸ 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 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 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.

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

¹⁸ The Working Group wishes to convey its gratitude to the County Registrars who made this survey possible by their assistance to the Working Group.

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.¹⁹

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 Rules²⁰ — 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 Supreme Courts are set out in Appendix D to Chapter VII of the Sixth Report.

Vacation Sittings

It used to be that there was not much urgent work during the vacation time. Thus it was ordered²¹ 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 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

¹⁹ See Order 118 Rule 1 Rules of the Superior Courts — set out in Appendix C to Chapter VII of the 6th Report.

²⁰ See Appendix C to Chapter VII of the 6th Report.

²¹ Order 118 Rule 5 Rules of the Superior Courts. See Appendix C of the 6th Report.

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 Court²². This survey was done on behalf of the Working Group on a Courts Commission.²³ 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 Chapter VII in the Sixth Report of the Working Group) 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.

However, formal sittings dates do not portray the reality. 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.

The details of the cases heard by the High Court in August and September are set out in Appendix E to Chapter VII of the Sixth Report. The type of the work conducted in the High Court in August and September varied from bail lists of 48 cases and over,

²² See Appendix E to Chapter VII in the 6th Report of the Working Group.

²³ 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.

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.²⁴

The hours during which such offices are open for public business are as follows:—²⁵

- (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.²⁶ 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 in the long vacation to deal with urgent appeals.²⁷

²⁴ Order 118 Rule 4(1) Rules of the Superior Courts. See Appendix C to Chapter VII of the 6th Report.

²⁵ Order 118 Rule 4(2) Rules of the Superior Courts. See Appendix C to Chapter VII of the 6th Report of the Working Group.

²⁶ See Appendix F to Chapter VII of the 6th Report of the Working Group.

²⁷ See Appendix G to Chapter VII of the 6th Report of the Working Group.

7.2.vi THE LONG VACATION OF 1998

It can be seen therefore that 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 Chapter VII of the Sixth Report.

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. The system in Northern Ireland, England and Wales, the Court of Justice of the European Communities, the United States of America, Australia, Germany, Denmark and Sweden were considered.

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.

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 Group²⁸. The problem of delay was identified and illustrated²⁹. While there has been a reduction in the delays in many areas there remain management problems.

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.

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.

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

²⁸ Management and Financing of the Courts, April, 1996.

²⁹ Ibid, at p.36 et seq.

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 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.

7.6 CONCLUSION

- The relevant fundamental concept is one of access to courts.
- A service is provided by the courts all year round.
- 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 factors³⁰, delay in the court system was an inherent element of the legal process. However, in more recent times³¹ much of this delay has been

³⁰ 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.

³¹ As of November, 1998.

alleviated. This has resulted from an increase in the number of judges appointed to each jurisdiction³² 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 43³³, 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 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.

³² Courts and Court Officers Act, 1995.

³³ Statistics compiled by the Department of Justice, Equality and Law Reform as of January, 1998.

- The term “vacation” is misleading, it is a misnomer. Court 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 led 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 £10m. in Information Technology for the courts is proceeding.
- The impact of the Information Technology investment should be considered before any expansion of 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.

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 in the Sixth Report 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.³⁴

8.3 Rule of Law

The independence of the judiciary is to benefit society so that 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, and are subject to public scrutiny. Secondly, there is a system of appeals from the decisions of judges.

³⁴ See Article 35 Constitution of Ireland.

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. The Canadian system was analysed, as was that in New South Wales, California, and England and Wales, as can be seen in the Sixth Report.

8.10 Constitution Review Group

The recommendations of the Constitution Review Group as to amending Article 35.2 to allow for regulation of judicial conduct by judges within a legislative framework were considered.

8.11 Delay in delivering Reserved Judgments

The fact that there have on occasions been concerns about delay in delivering reserved judgments was noted. Ireland's obligations under Article 6.1 and Article 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms were stated. 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.

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 complaints relating to judicial conduct could be reviewed by a judicial body. 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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