



WORKING GROUP  
ON A  
COURTS COMMISSION  
  
SECOND REPORT  
  
CASE MANAGEMENT AND  
COURT MANAGEMENT

July, 1996

Baile Átha Cliath  
Arna Fhoilsiú ag Oifig an tSoláthair  
Le ceannach díreach ón  
OIFIG DHIOLTA FOILSEACHÁN RIALTAIS  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2  
nó tríd an bpost ó

FOILSEACHÁN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
4-5 BÓTHAR FHEARCHAIR, BAILE ÁTHA CLIATH 2,  
(Teil: 01-6613111, fo-líne 4040/4045; Fax: 01-4752760)  
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(Pn. 3070)



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The Working Group on a Courts Commission was established by the Minister for Justice, Nora Owen, T.D.

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 Working Group on a Courts Commission consists of:

Mrs. Justice Susan Denham, Judge of the Supreme Court.  
Mr. Justice Ronan Keane, Judge of the Supreme Court.  
Mrs. Justice Catherine McGuinness, Judge of the High Court.  
Judge Kevin O'Higgins, Judge of the Circuit Court.  
Judge Peter Smithwick, President of the District Court.  
Mr. Justice Anthony J. Hederman, Chairman of The Law Reform Commission.  
Mr. Ken Murphy, Director General of The Law Society.  
Mr. James Nugent, Senior Counsel, Chairman of The Bar Council.  
Mr. Ken Wright, Management Consultant.  
Mr. John Rogers, Senior Counsel.  
Ms. Róisín McDermott, Chairwoman of Women's Aid.  
Mr. Kevin Duffy, Assistant General Secretary, Irish Congress of Trade Unions.

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Mr. Noel Synnott, Department of Justice.  
Ms. Niamh O'Donnell, Department of Justice.

Working Group on a Courts Commission  
Four Courts,  
Dublin 7.

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# Introduction

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The First Report of the Working Group on a Courts Commission addressed the issue of the current relationship between the Courts, the Department of Justice and the Oireachtas. It recommended that there should be established by statute an independent and permanent body to manage a unified Court system to be known as the Courts Service. This recommendation was accepted in principle by the Government on 20th May, 1996.

Whereas the First Report considered the management structure of the Courts on a national basis this Second Report is an introductory report on management at the individual jurisdictional level. The necessity for such a study arises from existing problems in the Court system as identified in the First Report, including:

- (a) delay in litigation;
- (b) high cost of litigation; and,
- (c) inefficient management of litigation.

Chapter One considers a proposal that Presidents of each Bench should hold office for a fixed term e.g., seven years, which would be non-renewable and makes recommendations in relation to that proposal.

Chapter Two examines the existing powers and composition of the Rules Committees (which lay down the procedures to be followed at the different Court levels) and makes recommendations as to their future.

In Chapter Three we have raised the issue of judicial case management. The introduction of a judicial case management system (which would apply only to civil, as distinct from criminal, litigation) would signal a radical transfer of the responsibility for the management of civil litigation from the litigants and their legal advisers to the Courts. We have not come to any definitive conclusions as to whether a system of judicial case management should be established at the different Court levels. We set out the steps we are taking, and plan to take, on this issue. Final recommendations will be made after the full process of consultation and debate as planned has been completed.

Administrative case management is essentially concerned with the manner in which the administrative infrastructure of the Courts system carries out its tasks. This aspect of caseload management is to be distinguished from judicial case management. The Group is conducting an on-going study of administrative case management throughout the entire Court system. In this chapter we examine some of the shortcomings and the extent to which they are being remedied in certain offices of the High Court. Consultation and analysis are continuing in relation to the other jurisdictions and will be addressed in later Reports.



# Technology and Case Management

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The term "case management" may sometimes be used to denote the use of modern technology and computerisation. The application of modern technology to the Courts will be of immense benefit. A fully computerised system is a matter which a Courts Service would probably consider as a matter of urgency. The success of even a modest computerisation system can be seen in the Probate Office<sup>1</sup>.

The first step to be taken is the centralisation of the management structure as a whole as recommended by this Group in its First Report and as accepted in principle by the Government on 20th May, 1996. The relationship between a centralised management system and computer technology was acknowledged recently by Ian Rohde, Project Director and Information Services Manager for South Australian Courts<sup>2</sup> when he stated:-

*"The South Australian Courts pioneered the unified model of court administration which is now being adopted by other courts in Australia and New Zealand. Firstly, separate administrative units supporting the courts were merged to become a single State Government department responsible to the Attorney-General. Later, the Department was proclaimed a statutory authority — thus completing the actual and perceived independence of the courts from Executive Government.*

*It has been in this context of a single administrative unit that the initial decision was made to develop a uniform system which has the capacity to address the specific needs of all jurisdictions and to satisfy the total business information needs of a modern court administration. The systems have been developed in near ideal conditions with the full support and involvement of the judiciary and senior management. The high cost of developing and supporting separate solutions and interfaces for each jurisdiction have been avoided."*

---

<sup>1</sup> See Chapter Four

<sup>2</sup> See Computers and Law, The Magazine of the Society for Computers and Law, April/May 1996, Volume 7, Issue 1, p. 42.

The unified Court structure in South Australia - the South Australia Courts Administration Authority - has teamed up with a major company to develop systems for use by their Courts where it is anticipated PCs will be the standard workstation for all Court staff. Modern technology will be of immense benefit to the Irish Court system in all its aspects in the future, but "case management" insofar as it relates to modern computer technology is not addressed in this Report.

## President of Each Bench

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- 1.1 The President of each Bench carries a heavy burden of administrative work. He holds a crucial role for that Bench. In submissions the Group was invited to consider a proposal that, as part of the overall modernisation of the administrative structures of the Courts, the present system of appointing Presidents of the different Court levels to hold office until they retire from judicial office should be altered. It was suggested that under a new system, the Presidents — i.e. the Chief Justice and the Presidents of the High Court, Circuit Court and District Court — would hold office for a fixed term — e.g. seven years — which would be non-renewable.
- 1.2 It is appropriate at the outset to deal with the constitutional aspects of the proposal, since, if there was any significant obstacle, it would clearly be a waste of time to consider it further.
- 1.3 A distinction has to be drawn in the constitutional context between the positions of the Chief Justice and the President of the High Court on the one hand and the Presidents of the Circuit and District Courts on the other. Not surprisingly, the Constitution makes no reference to the Presidents of the Circuit Court and District Court, since those Courts are not expressly dealt with in the Constitution which does, of course, empower the Oireachtas to establish Courts "of local and limited jurisdiction". It does, however, provide in Article 34.4.2° that:-

*"The president of the Supreme Court shall be called the Chief Justice."*

There are other provisions in the Constitution relating to the Chief Justice, e.g. those in Article 14.2.1° providing that he or she is to be a member of the Presidential Commission and in Article 31.2 providing that he or she is to be a member of the Council of State and also providing that a former holder of that office who is able and willing to act as a member of the

Council of State is also to be a member. In addition, Article 34.5.2° provides that every new judge on appointment must make and subscribe the necessary constitutional declaration *"in the presence of the Chief Justice or the senior available judge of the Supreme Court in open Court."*

- 1.4 The Constitution also provides that the President of the High Court is to act as a member of the Presidential Commission when the office of the Chief Justice is vacant or the Chief Justice is unable to act. He or she, and any former holder of the office willing and able to act, is also ex officio a member of the Council of State.

- 1.5 The provisions of Article 36 must next be considered. It says that:-

*"Subject to the foregoing provisions of this Constitution relating to the Courts, the following matters shall be regulated in accordance with law, that is to say:-*

- i. the number of judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such judges,*
- ii. the number of the judges of all other Courts, and their terms of appointment, and*
- iii. the constitution and organization of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure."*

It will be noted that the expression 'terms of appointment' is used only in relation to the judges of the Circuit Court and District Court. It has been held by the Supreme Court in Magee v. Culligan, [1990] 1 I.R. 223 that the statutory power to appoint temporary district judges constituted a valid exercise by the Oireachtas of its powers under this provision. In contrast, the appointment of temporary judges of the Superior Courts would be inconsistent with the constitutional provision that they cannot be removed from office other than by a resolution of both Houses of the Oireachtas. However, the proposal to appoint Presidents of the Courts for fixed non-renewable terms is not to be equated to the appointment of a temporary judge.

- 1.6 Such a proposal would not in any way encroach on the constitutional position of the judge concerned, since he or she would remain a member of the particular Court until reaching the age of retirement. It would not, of course, apply to the existing office holders and, accordingly, would not



infringe the constitutional prohibition on any reduction in the remuneration of judges during their tenure of office. The proposal would appear to represent a legitimate exercise by the Oireachtas of its powers under Article 36.iii. to regulate *"the constitution and organization of the ... Courts,..."*

- 1.7 As already noted, special considerations apply to the offices of Chief Justice and President of the High Court, to whom specific roles of a non-judicial nature are assigned by the Constitution. Undoubtedly, careful consideration would have to be given to the provisions of Article 35.4.1°, i.e.:

*"A judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal."*

Would a provision effectively removing the Chief Justice or President from office before they reach the retiring age as determined by law in accordance with Article 36.i fall foul of the provision? It must be accepted that there is at least an argument which can be advanced to that effect and which would gain support from the fact that corresponding offices existed under the Constitution of the Irish Free State. It could be argued that it must have been contemplated by the framers of the Constitution that the offices of Chief justice and President, save to the extent that the Constitution provided otherwise, would be similar in nature to the corresponding offices in the Constitution which they replaced.

- 1.8 However, while such arguments could be plausibly advanced, it seems clear that there is no insuperable constitutional difficulty in the proposal, given that Article 36.iii of the Constitution leaves "the constitution and organization" of the Courts to be regulated in accordance with law. Ultimately, of course, it would be for the Attorney General to advise the Government on this matter. It can, however, be said with confidence at this stage that, if the proposal has intrinsic merits, the constitutional difficulties, to the extent that they even exist, are not so serious as to make it pointless for this group to make a recommendation in this case.
- 1.9 The Working Group are satisfied that the advantages of such a proposal would heavily outweigh any possible disadvantages. The workload of the Presidents at all four levels has increased enormously in recent years. That is particularly so in the case of the President of the High Court, who, in addition to the administrative burdens of the office, has had to cope with the large volume of business in relation to wardship and solicitors'

matters assigned to him by statute. But it is also true of the Presidents at the other levels. It seems wrong in principle that the Government, in appointing a judge to be a President at any level, should find itself in the position of appointing a President for a period of anything up to twenty years or else excluding from consideration judges who may be better qualified than others to hold the office in question. The fact that in the past the presidencies at the various levels were occupied by the same judges for lengthy periods of time was of considerably less importance when the workload was far less demanding. It seems inevitable that a judge who is appointed to an office of this nature and holds it for a period of many, many years will, in the nature of things, become progressively less responsive to the need for change and less energetic in the implementation of change. At present, the only method of avoiding that problem is the appointment of a judge who is not too far off the retiring age.

The Government have already accepted in principle the First Report of the Working Group and have undertaken that it will be speedily implemented. When this happens, the administrative responsibilities of the Presidents will be significantly increased. It will, accordingly, be even more important for the judges best qualified to hold these positions to be appointed to them by the Government. It would also bring the terms of appointment of these critically important positions into alignment with what is now accepted as normal practice in other areas of public and professional life. The Working Group is satisfied that, in the long term, it could be a factor of great significance in improving the administrative infrastructure of the entire Court system.

- 1.10 If the proposal were accepted, it would follow, of course, that the nominees of each of the Presidents would also remain as members of the Courts Service Board only for so long as the President nominating them remained in office, so that in no case would they remain as such members for longer than seven years.
- 1.11 Two final points should be made. It is important that the term of office as President of the Bench should be non-renewable: it would be extremely undesirable if the holders of such offices were exposed to the criticism that they were influenced in their decisions by the hope of serving a second term; although they would, of course, remain a judge of their Bench. Secondly, as already noted, the proposals should not apply to the persons who at present occupy these offices.



## **RECOMMENDATION**

The Group recommends that the necessary steps be taken to enable appointments to the Presidency of Benches to be for seven years, non-renewable.

### **1.12 CURRENT CRISIS**

The Courts are experiencing a crisis at the moment in view of the volume and complexity of cases and the delays in the hearing of cases. The Presidents of each Bench are very heavily burdened. Consideration should be given to permitting greater flexibility in the use of resources to the President of each Bench so that, for example, he may be enabled to request a judge to work in a specialised area as required. It would ease the Courts and their office if such flexibility was available to enable the President to request a judge to work on the management of specific issues e.g., the coordination of the Family Courts, the listing of cases, organising the resources.

## **RECOMMENDATION**

The Group recommends that there be greater flexibility in the use of resources to the President of each Bench so that he may request a judge to work on the management of specific issues e.g. the coordination of the Family Courts, the listing of cases, the organisation of resources.

## CHAPTER TWO

# Court Rule Making Committees

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### 2.1 THE RULES COMMITTEES

Committees exist at each jurisdictional level of the Court structure to make Rules of Court. They are an important part of the Court system.

### 2.2 STATUTORY PROVISIONS RELATING TO COURTS RULES COMMITTEES

#### 2.2.1 Superior Courts

Section 36 of the Courts of Justice Act, 1924 conferred on the Minister for Home Affairs subject to the concurrence of the Minister for Finance in respect of any matter affecting public revenue or expenditure, the power to make rules of Court for carrying Part I of the Act into effect. It also provided that rules of Court could be made or annulled or altered only with the concurrence of a majority of a committee consisting of the judges of the Supreme and High Courts, the President of the Law Society and two practising barristers, of the senior and junior Bar respectively to be selected by the Bar Council.

#### Present position

Section 68 of the Courts of Justice Act, 1936 amended Section 36 of the 1924 Act to provide that the power of making, annulling or altering rules of Court should cease to be exercisable by the Minister for Justice and should instead be exercisable by the Superior Courts Rules Committee with the concurrence of the Minister for Justice. Section 67 of the 1936 Act provided for the constitution of the Superior Court Rules Committee and also provides that the Registrar of the Supreme Court shall be secretary to the Committee.

## **Membership**

Section 15 of the Courts of Justice Act, 1953 reconstituted the Superior Courts Rules Committee to consist of three ex-officio members i.e., the Chief Justice (Chairman), the President of the High Court (vice-chairman) and the Master of the High Court, two ordinary judges of the Supreme Court, two ordinary judges of the High Court, two members to be nominated by the Bar Council (1 senior and 1 junior counsel) and two practising solicitors nominated by the Law Society.

## **Scope of Rules (Section 36 of the 1924 Act, as amended)**

- pleading, practice and procedure generally in all civil cases and proceedings as to the validity of any law having regard to the provisions of the Constitution and proceedings in the nature of a petition of right;
- pleading, practice and procedure generally in all criminal cases before the Central Criminal Court, a Court of the High Court Circuit or the Court of Criminal Appeal;
- sending out of Commissioners of the High Court Circuit;
- use of the national language in the Courts;
- mode of address/robes and official dress;
- commencement and duration of sittings and vacations;
- fixing and collection of fees;
- the adaptation or modification of any statute that may be requisite for the purposes of the Act and all subsidiary matters.

Under Section 14(3) of the Courts (Supplemental Provisions) Act, 1961, rules of Court may authorise Court officers to exercise powers in uncontested cases.

### **2.2.2 Circuit Court Rules Committee**

Sections 65 and 66 of the Courts of Justice Act, 1924 conferred on the Minister for Home Affairs the power to make rules of Court for carrying Part II of the Act into effect subject to the concurrence of the Minister for Finance in respect of any matter affecting public revenue or expenditure and the concurrence of a majority of a committee consisting of five Circuit Court judges selected by the Bench of Circuit judges, two practising

barristers selected by the Bar Council and two solicitors selected by the Law Society.

### **Present position**

Section 65 was repealed by the Courts of Justice Act 1936. Section 66 was amended by Section 70 of the 1936 Act to the effect that the rule making authority for the purposes of Section 66 shall be the Circuit Court Rules Committee with the concurrence of the Minister for Justice.

### **Membership**

Section 69 of the 1936 Act provided for the constitution of the Circuit Court Rules Committee to consist of two ex-officio members and six nominated members, two of whom shall be judges of the Circuit Court nominated by judges of the Circuit Court, two to be practising barristers nominated by the Bar Council and two to be practising solicitors nominated by the Law Society. Section 12 of the Courts Act, 1947, as amended, provides that the ex-officio members of the Circuit Court Rules Committee shall be the President of the Circuit Court (chairman) and the County Registrar for Dublin, who shall be secretary of the committee.

### **Scope of Rules (Section 66 of the 1924 Act, as amended)**

- regulating sessions, vacations and circuits
- practice, pleading and procedure generally
- the use of the national language in the Court
- fixing and collection of fees
- the adaptation or modification of any statute that may be necessary for the purposes of the Act and all subsidiary matters.

#### **2.2.3 District Court Rules Committee**

Sections 90 and 91 of the Courts of Justice Act, 1924 conferred on the Minister for Home Affairs the power to make rules of Court for carrying Part III of the Act into effect subject to the concurrence of the Minister for Finance in respect of any matter affecting public revenue or expenditure and the assistance of a Committee consisting of not less than five District Court judges nominated by the Minister for Home Affairs, two practising



solicitors selected by the Law Society and one practising barrister selected by the Bar Council.

### **Present Position**

Section 90 was repealed by the Courts of Justice Act, 1936. Section 91 was amended by Section 72 of the 1936 Act to the effect that the rule making authority for the purposes of Section 91 shall be the District Court Rules Committee with the concurrence of the Minister for Justice.

### **Membership**

Section 71 of the 1936 Act provided for the constitution of the District Court Rules Committee to consist of two ex-officio members and seven nominated members, four of whom shall be judges of the District Court nominated by the Minister for Justice, one a practising barrister nominated by the Bar Council and two practising solicitors nominated by the Law Society. It also provided that the District Court Clerk for the district which comprises or includes the County Borough of Dublin shall be secretary to the Committee.

Section 44 of the Courts Supplemental Provisions Act, 1961 (as amended by Section 40 of the Court and Court Officers Act 1995) provided that the ex-officio members of the District Court Rules Committee shall be the President of the District Court (chairman) and such one of the District Court Clerks as the Minister shall nominate in that behalf to be secretary of the Committee.

### **Scope of rules (Section 91 of the 1924 Act, as amended)**

- regulating sittings, vacations and Districts
- places where proceedings are to be brought
- the forms of process, summons, case stated, appeal or otherwise and conditions to be complied with
- practice and procedure generally
- entering up of judgment and granting of summary judgments
- use of national language in the Court
- the fixing and collection of fees
- the adaptation or modification of any statute that may be necessary for the purposes of the Act and all subsidiary matters.

## **2.3 GENERAL PROVISIONS AFFECTING THE RULES COMMITTEE**

Section 75 of the Courts of Justice Act, 1936 requires the secretary of each of the Committees to summon a meeting of the Committee at least once every year for the purpose of the general consideration of the practice, procedure, and administration of the relevant Court or Courts and as soon as convenient after every such meeting to report to the Minister for Justice whether any amendments or alterations should be made in the practice, procedure or administration of the Courts.

Section 45 of the Courts and Court Officers Act, 1995 provides that the Superior Courts Rules Committee and the Circuit Court Rules Committee may make rules in relation to the disclosure of certain matters by parties to High Court or Circuit Court personal injuries actions without the necessity of an application to Court.

Section 46 of the Courts and Court Officers Act, 1995 empowers the Minister for Justice to prescribe by regulations scales of solicitors' costs and counsels' fees in circumstances where a rules committee fails to submit costs rules for the Minister's concurrence within three months of the Minister requesting the Committee to submit such rules or, where they are submitted within three months, the Minister is of the opinion that the scales are excessive. The consent of the Minister for Enterprise and Employment is required under the provisions of the Prices Acts where the Minister makes rules under this section.

The Rules Committees have the potential to be active vehicles for improving the practice and procedure of Courts. They should be enabled to meet very regularly and react positively to problems. If they are fully resourced they should be proactive in the Court system. This, however, places an additional burden on the Presidents of each Bench.

## **2.4 RECOMMENDATIONS**

- (a) It is recommended that the Rules making Committees be enabled to be active vehicles for introducing improvements in the Court system.
- (b) It is recommended that ex-officio members be entitled to delegate membership of the Committee to another and that the necessary legislative amendments be carried out.
- (c) It is recommended that when the proposed Courts Service is established that the Chief Executive Officer (or his or her nominee) together with a senior member of the 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.



- (d) It is recommended that the resources of the proposed Courts Service be available to the Rules Making Committees.
- (e) It is recommended that each Rule Making Committee shall make a report each year to the Courts Service for inclusion in the Annual Published Report.

## CHAPTER THREE

# Judicial Case Management: Raising the Issue

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- 3.1 Judicial case management is being considered by the Group. This system has been utilized in other jurisdictions to combat the delays caused by expanding and complex litigation. Judicial case management represents a fundamental change in approach. It involves active oversight by the Court of the progress of proceedings. It has been defined as:-

*"... the court taking the ultimate responsibility for progressing litigation along a chosen track for a pre-determined period during which it is subjected to selected procedures which culminate in an appropriate form of resolution before a suitably experienced judge. Its overall purpose is to encourage settlement of disputes at the earliest appropriate stage; and, where trial is unavoidable, to ensure that cases proceed as quickly as possible to a final hearing which is itself of strictly limited duration."*<sup>3</sup>

It is a radical change of approach, requiring the Court to take responsibility for cases at an earlier stage.

- 3.2 Case management has been in existence in varying forms in the United States of America for over twenty years where it has been developing to meet the problems of increased volume and complexity of cases which have resulted in delays and inhibited access to Courts. The idea of caseload management<sup>4</sup> was studied seriously first in the early 1970s.

*"In 1972, the assertion that the Court should take responsibility for active supervision of case progress, while not radical, was far from reality in most trial Courts."*

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3 The Right Honourable the Lord Woolf, Access to Justice, Interim Report to the Lord Chancellor on the Civil Justice System.

4 Caseload Management in the Trial Court, Now and For the Future. Maureen Solomon and Douglas K. Somerlot. American Bar Association, Lawyers Conference Task Force on Reduction of Litigation Cost and Delay, 1987.

The study and implementation of caseload management by judges and Court administrators have developed apace in the U.S.A. Apparently, it has helped reduce delays in Courts and has eased access to Courts in that jurisdiction. It is a goal orientated process:-

*"A predictable, regulated flow for each case from filing to termination will achieve important goals in addition to expeditious disposition. Court management of case progress as part of an organized, predictable system should assure:*

- 1. equal treatment of all litigants by the court;*
- 2. timely disposition consistent with the circumstances of the individual case;*
- 3. enhancement of the quality of the litigation process; and*
- 4. public confidence in the court as an institution."*<sup>5</sup>

- 3.3 The concept and use of caseload management is at its initial stages in Ireland. Its benefit has been recognised in certain specialised areas of the system. For example, in the work of the Examiner's Office<sup>6</sup> there have been steps taken to develop caseload management at both the administrative and judicial level. These have been important and successful developments with consequent benefit to litigants. They arose through the work of an innovative judge and highly skilled and motivated Court staff.

The Law Reform Commission in its Report on Family Courts identified problems of delay, drift and confusion in litigation. It recommended the introduction of formal case management procedures throughout the family law system.

In June 1996 the President of the High Court introduced on a trial basis a system of case conferences in personal injury actions in which liability is admitted. It is an experiment in a limited type of case; it is voluntary. See the Practice Direction and the pre-trial check list at Appendix A.

- 3.4 In similar jurisdictions, where the Courts are under pressure because of the increased volume and complexity of cases, case management by the judiciary is being studied and is being found to be useful. In Ireland, a number of issues arise which will have to be considered in depth.

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<sup>5</sup> Ibid at p. 5

<sup>6</sup> See Chapter Four

### **3.4.1 Jurisdiction of the Courts**

The Constitution provides for the establishment of a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. It also provides for a Court of final appeal to be called the Supreme Court. It enables Courts of local and limited jurisdiction to be established. The Oireachtas availed of this power to establish the Circuit and District Courts.

One of the issues which arises in any scheme of judicial case management, as the Woolf Report amply demonstrates, is the importance of ensuring that cases are dealt with by the Courts which are best equipped to provide a just decision at the minimum cost within a reasonable time. It necessarily follows from this that cases below a certain value threshold, however determined, should ideally be heard by a Court in the locality where the parties reside or carry on business i.e. the District or Circuit Court. Obviously, some cases involving complex issues of necessity must be tried by the High Court.

Consideration, accordingly, would have to be given to matters such as (a) the relevant jurisdictions of the District Court, the Circuit Court and the High Court in all areas of civil litigation; (b) the operation of the "Small Claims" procedure and whether it should be enlarged; (c) whether the powers of remitting cases from one level of the Court hierarchy to another should be enlarged; (d) whether the High Court should sit in specialised divisions (commercial, chancery, insolvency, judicial review, personal injuries and family law) with a senior judge in each division exercising the "case management" responsibilities for that division.

### **3.4.2 The nature of case management**

Matters that will arise for consideration here are:

- (a) At what stage should case management begin? Should it be confined to the period subsequent to the first appearance of the case in the list when, on one view, delay becomes a serious factor for the first time? Or should it begin as soon as the proceedings are issued? In support of the latter view, it can be said that crucial decisions may be taken at that stage which could have a critical effect so far as the avoidance of delay and/or expense are concerned, not least the choice of Court level and venue.
- (b) By whom should the case management be conducted? To take the example of the High Court, should it be the senior judge in charge of



the particular division, assuming that the High Court operates in future in separate divisions? Or should it be a "case management judge" nominated either by the President or the senior judge? Alternatively, again confining oneself to the High Court, should it be the responsibility of the Master (or Masters assuming that more are appointed) or a senior registrar?

- (c) What powers of compulsion should the case management judge or registrar possess? To what extent should he or she, rather than the parties, determine the issues which fall to be decided? What powers should he or she have in relation to those interlocutory proceedings, such as discovery, interrogatories and particulars, which are a frequent source of expense and delay?
- (d) How can the Courts encourage the use of alternative methods of resolving disputes, e.g. arbitration or mediation?

These, of course, are only some of the issues which will inevitably arise for discussion. Again, we emphasise that we have deliberately refrained from expressing even a tentative view as to (a) the desirability of a case management system and (b) the form which it could take.

We think that everyone concerned would agree that, given the fundamental change in philosophy underlying civil litigation which would be reflected in the introduction of judicial case management, it is of great importance that the fullest and most wide-ranging investigations and discussions should take place before we come to make final recommendations to the Minister for Justice.

- 3.5 The Group is continuing the consultation process and facilitating debate on this issue. It is planned to take four steps.

#### **STEP ONE**

- Highlighting the issues
- Facilitating a debate
- Consulting the relevant parties
- Organising a conference on "Court and Case Management".

#### **STEP TWO**

- International experts on the topic from other jurisdictions debate the issues at a central conference.
- Seminars on related topics.

### **STEP THREE**

- Consultation with key groups following the conference.

### **STEP FOUR**

- Final Report on Court and Case Management.

- 3.6** The Group believe that a wide-ranging inquiry of this nature is a vital precondition to the making of informed recommendations to the Minister on this critically important topic.



## Administrative Case Management — A Preliminary Consideration

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The Group continues to study the current systems of administrative case management throughout the Court system. This is being done by a process of consultation with all the different offices and sections. It is a process which is ongoing and not yet near completion. Most of the offices considered in this Report are attached to the High Court. However, many of the issues raised are relevant also to other jurisdictions, which jurisdictions will be considered in later Reports.

### 4.1 PRELIMINARY FINDINGS

The Group continues to find the problems as identified in the system in the First Report. In relation to this area the Group has found, in particular:-

- crisis management in many offices
- staff locked into systems where they have grave responsibility but are not empowered
- lack of communication systems
- lack of resources
- lack of training schemes
- lack of information technology.

An outline sketch of some of the offices as studied and discussed by the Group highlights these findings.

### 4.2 THE ACCOUNTANT

The Accountant, with a staff of ten, manages investments in excess of £300 million per annum. The accounts are held predominantly by persons in

Wardship. The office appears isolated. There is no significant system for contact or communication between the Accountant's Office and the High Court, Circuit Court and District Court staff. There is no proper training scheme for those working in the Accountant's Office. Pre-trial procedures in all three Court divisions on relevant matters are confusing, time-consuming, wasteful and should be co-ordinated.

In spite of the fact that the monthly income is approximately £10m to £12m the staff still operate a manual accounting system. Letters are typed on a typewriter which was acquired from another office just over a month ago. The only problem with this is that the typewriter is missing two keys!

In view of the fact that the manual system is time consuming there is no time to plan or prioritize work. There is approximately £1.2m in uncollected Court percentages in respect of which the office does not have the time or resources to seek payment.

This then is one office which illustrates the isolation of sections of the Court system, the absence of appropriate communication lines to the different jurisdictions, the lack of resources and the lack of training. In fact the only reason this office is able to function at all is because of the dedication of the staff who work there.

#### 4.3 THE EXAMINER

##### (i) Historical

The Court of Chancery Ireland Act 1867 (Sections 11 and 137) provide that Chief Clerks shall assist the judges in business "not of a judicial character" with power to the judges to regulate the business to be done by their Chief Clerks.

The 1891 Rules (Order 55 Rules 16 and 18) and the 1905 Rules (Order 55 Rules 17 and 19) take cognisance of Assistant Chief Clerks.

In October 1867 and February 1868 regulations were issued but these were challenged as private rules in Lamprey v. Lambert and Sheppard v. Howlin (unreported, but see pamphlets in T.C.D. Library issued in 1872 by Christian L.J. and in 1873 by McDonnell J.). The Court of Appeal made "No Rule" on the point.

The Judicature Ireland Act, 1877 (Section 73 last paragraph) provides for the exercise of Judicial authority over Court Officers as to the duties to be discharged by such officers.

The Court Officers Act, 1926 (Sections 13 and 14) vested in the Examiner the duties etc. formerly vested in Chief Clerks and Assistant Chief Clerks. Section 28 provides for the appointment of a deputy.

The Court Officers Act, 1945 (Section 7) provides for two Examiners. The number was reduced to one pursuant to the Courts (Supplemental Provisions) Act, 1961 (Eighth Schedule, paragraph 12).

#### **(ii) Appointment of Examiner**

The Court Officers Act, 1945 provides for the manner of appointment of an Examiner. He or she is appointed by the Minister for Justice after consultation with the President of the High Court. The requisite qualifications are:-

- He must be a person employed in the Court Offices, and must either
    - (a) be a solicitor or barrister; or
    - (b) have been employed in the Court Offices for the whole of the 12 years next preceding the appointment.
- (If no person is so qualified, the Minister may appoint a solicitor or barrister of 6 years standing).

#### **(iii) Present Status and Powers of Examiner**

The Examiner now is a "principal officer" pursuant to the Courts (Supplemental Provisions) Act, 1961 (Eighth Schedule, paragraph 3) and as such may be authorised under Section 14(3) of the Act by rules of Court to "exercise functions, powers and jurisdiction in uncontested cases and to take accounts, conduct inquiries and make orders of an interlocutory nature."

Paragraph 11 of the Eighth Schedule vests in him or her the powers, duties etc. of his or her historical predecessors (see above). His or her powers and duties (other than in bankruptcy) are set out chiefly in Order 55, Rule 6 of the Rules of the Superior Courts 1986.

#### **(iv) Designated Officers**

An Officer employed in the Examiners Office and qualified to be appointed to be Examiner may be designated by the President of the High Court to exercise the powers and authorities, perform the duties and fulfil the functions of the Examiner (subject to any restrictions which the President may think fit to impose).

#### **(v) Role of the Examiner**

The primary role of the Examiner is to take such accounts and enquiries as are directed by the Court. In particular, the Examiner on behalf of the Court

takes accounts, processes inquiries, settles lists of creditors/encumbrancers, arranges sales of property, countersigns all payments and investments in Court liquidations, prepares review sheets and case summaries, processes In Chamber Applications for the judge and acts as registrar to the Court in the following main areas;

- (i) Court Liquidations
- (ii) Bankruptcy<sup>7</sup>
- (iii) Mortgage Suits
- (iv) Administration Suits
- (v) Next-of-Kin enquiries
- (vi) Receivers appointed by the Court
- (vii) Charity Schemes
- (viii) Partnership Suits

## **(vi) SUMMARY OF THE MAIN PROBLEMS**

### **Historical and present**

- Huge arrears accumulated over many years combined with a very high volume intake of new cases in the 1980's. In this regard it should be noted that the first net decrease in the accumulated arrears in the last fifteen years was achieved in the legal year 1994/95.
- Age profile of many of the cases, particularly where the files have been handled by a succession of solicitors and staff members.
- Delay/inaction on the part of the solicitors and official liquidators in processing cases.
- Growth in the case numbers complicated by the involvement of a much wider spread of practitioners, inexperienced in this area and often effectively 'learning on the job' and almost entirely dependant on the staff of the Office for guidance.
- Increasing complexity of caseload.

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7 The Examiner's role in bankruptcy was altered by the Bankruptcy Act, 1988 which allocated some of the functions previously performed by the Examiner to the Official Assignee, however, Order 76 Rules 156, (S.I. No. 79 of 1989) charged the Examiner with Auditing the books of the Official Assignee.



- Inadequate staffing and resources particularly during the years of peak intake.
- High staff turnover at critical periods resulting in the loss of accumulated expertise.
- Office systems and procedures more suited to the 19th century than the 20th century.
- Lack of management information systems and planning.
- No control over quality/turnover of staff assigned to the office and inadequate basic training systems.
- Historically differing perceptions of the role of the Examiner by both the holders of the office and by the judges in the Chancery area.
- Historically poor liaison/communication with the judges, Chief Registrar, Department of Justice, the Companies Office and other Court Offices.

#### **Additionally**

The Office has suffered and continues to suffer from the inadequacies of the whole system in which it operates as set out in the First Report of the Working Group on a Courts Commission on the Management and Financing of the Courts.

#### **(vii) Efforts made to address problems**

Since the appointment of the current Examiner in October 1990, she, with the full support of her staff have made a very serious and sustained effort to address a number of the problems, e.g.,

- Office systems and practices have been reviewed and streamlined.
- New improved recording systems have been set up and maintained including checklists, review sheets and case summaries to increase the level of information available in particular cases and for overall planning and review purposes.
- Some basic training material and systems have been put in place.
- Staff have been sent on any available training courses, particularly in Information Technology.



- The use of word processors/personal computers has been gradually introduced. The majority of staff are now in a position to process their own material and maintain their own basic records.
- Practitioners are provided with checklists of the requirements of the Office and with any precedents required.
- Priority has been given to the production of current and meaningful statistics covering all areas of the work in the office.
- The workload and responsibilities of each member of staff has been reviewed and duties re-assigned and delegated where appropriate.
- In recent years there has been much improved liaison/communication with the persons and agencies previously referred to, particularly with the Department of Justice.
- Up to date statistics and information have been provided to the President of the High Court, to the judge having charge of the Examiner's Court list and to the Chief Registrar including reports on the problems being experienced by the office.
- The office participated in a Department of Finance Administrative Audit in mid 1995, and provided the Audit Team with all information required to complete their review, following which a comprehensive report was produced by them on the current state of the office and additional staffing and resources recommended. This has been met by the appointment of additional staff and some additional resources being made available.

#### **(viii) JUDICIAL AND ADMINISTRATIVE CASE MANAGEMENT**

The high volume intake of work in the mid 1980's prompted the President of the High Court to assign a specific judge experienced in Chancery and Company matters to deal exclusively with applications in the Examiner's Court List, which had the effect of bringing certainty and consistency to judicial policies and decisions in this area.

The particular judge so assigned adopted a very active approach and was greatly interested in planning and reform, thus enabling policies, reforms and priorities to be defined and implemented. Following from these discussions a series of reforms were introduced e.g.,

- Agreed form of review sheets/case summaries prepared for judge's use.
- The systematic processing of applications for restriction of directors pursuant to Section 150 of the Companies Act 1990.
- A programme of referrals by the Examiner to the Court of cases not progressing to finality was initiated - the circumstances, scope and quantity of such referrals are reviewed at frequent intervals by the judge and the Examiner.

Thus in this department we see an example of developing administrative and judicial case management. It has had a radical effect on the system.

#### **(ix) STATISTICS**

The Examiner has drawn up statistics on the office. These are set out in Appendix B. The number of cases pending as of 31st July, 1995 are shown to be 2,207. The output as a percentage of intake in 1994/1995 is calculated at 171.57%. The significant increase in finished cases over the last 25 years is noted.

#### **(x) PRESENT POSITION**

The number of cases pending as at 31st July 1995 was 2,207. The Examiner pointed out that even if it were possible to continue to process at least 100 cases per year (and without any guarantee in this regard) it would take over 20 years to clear this backlog.

The combination of all of these reforms and improvements has contributed greatly to a more efficient service to the Court, to the practitioners and the people. This is reflected in a much increased turnover in many aspects of the work of the office and especially in the significantly higher number of cases being completed in recent years. There are too many factors and variables outside the Examiner's control to allow for any certainty of increasing or indeed maintaining in the future their present level of case turnover which, though unprecedentedly high, is inadequate to process the current annual intake and to dispose of the accumulated arrears in any reasonable time-frame.

A complete appraisal of the statutory role and responsibilities of the Examiner's Office should be undertaken, particularly in the area of Court liquidations, together with a radical review of the whole system (insolvency) in which this office operates.

## 4.4 THE OFFICIAL ASSIGNEE

### 4.4.1 FUNCTIONS

#### Primary Functions

The primary functions of the Official Assignee in Bankruptcy, as laid down by Statute<sup>8</sup>, are:

- (i) to realise the property of persons adjudged bankrupt, and of arranging debtors in vesting arrangements;
- (ii) to ascertain the debts and liabilities of bankrupts or arranging debtors, and
- (iii) to distribute the proceeds of realisation of such property to the unsecured creditors of the bankrupt or arranging debtor, after discharging costs, Court fees, expenses and preferential indebtedness.

The discharge of these functions involves the performance of a variety of tasks, which may be grouped in relation to the primary functions as follows:

#### (i) Realisation of property

- (a) **investigation of financial affairs of the bankrupt:** interviewing and examination of bankrupts, their advisors and associates; analysis of financial records and accounts; conduct of searches in property and companies registries; correspondence with banks and other financial institutions concerning accounts or securities held;
- (b) **investigation of property dealings of the bankrupt:** scrutiny of any disposals of property by the bankrupt prior to bankruptcy; examination of the parties to such transactions and their professional advisors; institution of legal proceedings to set aside pre-bankruptcy voluntary or fraudulent dispositions;
- (c) **arrangement of the sale of moveable and immoveable property of the bankrupt:** inventory, seizure and sale by auction or private treaty of stock-in-trade, vehicles, livestock, etc. of bankrupts; examination of any retention of title provisions

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<sup>8</sup> Section 61(2), Bankruptcy Act, 1988.



affecting such property; investigation of title to freehold and leasehold property, and provision of instructions to Official Assignee's solicitor and auctioneer regarding the sale of same;

- (d) **receipt and investment of proceeds of realisation of assets:** maintenance of accounts relating to bankruptcies and vesting arrangement; deciding as to manner in which funds should be invested, within the parameters laid down by the Court;

## **(ii) Ascertainment of Liabilities**

- (a) **adjudication on the validity, priority and amounts due on foot of mortgages and charges affecting freehold and leasehold property of the bankrupt:** scrutiny of instruments of security, memoranda of deposits of title deeds, letters of undertaking and claims to lien;
- (b) **adjudication on unsecured claims against the bankrupt's estate:** examination of proofs of debt (invoices, statements of account, bank statements, etc.) submitted by creditors; computation of contractual and statutory interest entitlements;

## **(iii) Distribution of Realised Assets**

- (a) calculation of Court fees due on realisations of assets; agreeing of costs of petitioning creditor's and Official Assignee's solicitors, or opposing such costs on the measurement or taxation of same;
- (b) arrangement and advertisement of sittings for distribution of estates;
- (c) furnishing to the Court, in each case in which distribution is to be made, of (i) a report on realisations of assets, (ii) a full account of funds received and disbursed and (iii) particulars of costs, fees and expenses incurred, and of the dividend proposed to be paid.

## **Ancillary Functions**

In addition to his primary functions aforementioned, the Official Assignee performs an advisory role in the following areas:-

- (i) furnishing of observations and assistance to the Department of Justice, the Department of Enterprise and Employment and other Government Departments in relation to legislation governing or having implications for the personal insolvency regime;



- (ii) furnishing of observations and assistance to the Superior Courts Rules Committee on Rules of Court affecting bankruptcy or arrangements;
- (iii) provision of technical advice to the Department of Justice and the Department of Enterprise and Employment in relation to international conventions on insolvency.

#### 4.4.2 ORGANISATION AND PERSONNEL

The **Official Assignee**, who has overall management responsibility for the Office<sup>9</sup>, shares a total caseload of 462 bankruptcies and 24 vesting arrangements (of which approximately 200 would be active) with the Chief Clerk, to whom day to day responsibility for personnel matters (e.g. supervision of attendance and leave arrangements and completion of personnel reports) is delegated.

The **Bankruptcy Inspector** makes initial contact with the bankrupt immediately following adjudication, serving the Warrant of Seizure on the bankrupt at his residence or premises, inventorying the bankrupt's assets, and arranging the sale of any perishable items. The Inspector provides a detailed written report on the execution of these tasks to the Official Assignee.

The **Staff Officer, Bank Liaison and Debt Collection**, communicates immediately following adjudication with all banks, building societies and other financial institutions in the State, requesting details of any accounts maintained or securities held in relation to the bankrupt, and instructing the institution concerned to remit to the Official Assignee any funds held to the bankrupt's credit. Files are opened in relation to each institution identified as having dealings with the bankrupt.

The **Staff Officer, Ledger Section**, who is assisted by a clerical officer, maintains accounts for each estate administered by the Official Assignee, as well as the Official Assignee's Private Account and Unclaimed Dividend Account. This section also makes up the final accounts submitted by the Official Assignee to the Court on the occasion of a distribution and makes up, bi-annually, a statement of all balances held by the Official Assignee, for submission to the Court.

The **Staff Officer, Proof of Debt Section**, who is assisted by a clerical assistant, receives and initially scrutinises all proofs of debt received from creditors in response to public advertisement, and maintains the claims register.

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<sup>9</sup> Paragraph 9 of Eighth Schedule to Courts (Supplemental Provisions) Act, 1961

The **Court Clerk** monitors the progress of individual cases, by following up correspondence and directions of the Official Assignee and Chief Clerk within such time-frames or deadlines as they have fixed.

The **Typing Pool** is staffed by two Clerk Typists, each operating word processors.

The remaining **ancillary clerical staff** comprise a clerical assistant and paper-keeper. The Clerical Assistant carries out all Companies Office, Registry of Deeds and Land Registry searches, maintains the correspondence register and carries out routine clerical duties. The Paper-keeper maintains the files of the office, in addition to carrying out miscellaneous duties. These two officers also service the public reception area.

An organisation chart of the Office is appended at Appendix C.

#### 4.4.3 CASE MANAGEMENT WITHIN THE OFFICIAL ASSIGNEE'S OFFICE

The caseload of the Office is apportioned between the Official Assignee and the Chief Clerk on an alternating basis. However, the course to be adopted in each bankruptcy is charted at a preliminary case conference, attended by the Official Assignee and the Chief Clerk, which usually takes place following a detailed interview of the bankrupt by the Official Assignee shortly after the bankrupt's adjudication. At this case conference, the Official Assignee and the Chief Clerk will have the benefit of the following key sources of information regarding the bankrupt's affairs:

- (a) the Bankruptcy Inspector's Inventory and Report;
- (b) the bankrupt's statement of affairs;
- (c) detailed notes of the interview of the bankrupt;
- (d) the results of the bank-liaison staff officer's inquiries of all financial institutions within the State, and
- (e) the results of Registry of Deeds, Land Registry and Companies Office searches.

Decisions will be made at the case conference as to any immediate steps requiring to be taken to secure or preserve assets, as to the order of priority and time-frame within which assets should be realised, and as to whether any pre-bankruptcy dispositions of property by the bankrupt should be further investigated with a view to their being impugned.

Once the general course of the bankruptcy has been decided upon, the Official Assignee or Chief Clerk, as the case may be, proceed with the

realisation of the assets concerned. Their correspondence with the Official Assignee's solicitors or auctioneers, with secured creditors and with others affected by the realisation process, **is monitored by the Court Clerk** to ensure that the time-frames or deadlines for the achievement of particular objectives are complied with.

Where it is necessary to have recourse to litigation to realise an asset (e.g. the sale of the family home of the bankrupt<sup>10</sup> or the setting aside of a pre-bankruptcy disposition) a preliminary consultation will be arranged with the Official Assignee's solicitor and, if deemed appropriate, Counsel. The Official Assignee attends personally all such consultations, irrespective of whether he has retained the case or has delegated same to the Chief Clerk. Should the Official Assignee be advised to issue proceedings, the management of the litigation is, in turn, monitored by the Court Clerk and by means of **litigation reviews** which take place each term with the Official Assignee's solicitor.

Once sufficient funds have been realised in a case to enable a distribution to be made, the Official Assignee or Chief Clerk will instruct the Proof of Debts section to arrange public advertisement for proofs of debt to be received from creditors by a certain date. Adjudication on claims must by law be carried out by the Official Assignee, and may not be delegated. Generally, two afternoons weekly are allocated by the Official Assignee for adjudication on claims. Where either proofs are not submitted by the date advertised by the Official Assignee, or where further particulars or vouchers required by the Official Assignee are not lodged within the time limited by, the claimant will require to apply to Court for late admission of his proof<sup>11</sup>.

Once adjudication on claims has been completed, the Official Assignee or Chief Clerk will instruct (a) the ledger section to prepare a final account and (b) the proof of debt section to prepare final calculations as to stamp duty and dividend payable. The Official Assignee then lists the matter before the Court for authorisation of the distribution proposed.

A diagram showing the stages in the progress of a bankruptcy is appended at Appendix C2.

In addition to individual case management, the Official Assignee and Chief Clerk at the commencement of each term fix targets for the amount of distributions to be made in that and the following term.

As will be apparent from the foregoing, the Official Assignee's Office already operates a case review and management system and a system for the monitoring of compliance with day-to-day directives and instructions

10 See Section 61(4), Bankruptcy Act, 1988

11 Paragraph 3 of First Schedule to Bankruptcy Act, 1988.



given by the Official Assignee or the Chief Clerk in the course of their administration of individual bankruptcies. While these systems have operated very satisfactorily, it is felt that the introduction of a computer-based management information system would greatly enhance the effectiveness of the existing procedures. It is understood that this office may expect to be reviewed early next year with a view to the introduction of computerisation for that purpose. A limitation on the effectiveness of case management and monitoring within the office arises from the fact that, since much of the process of realisation of assets involves litigation with third parties, the pace of realisations is very much determined by the pace at which litigation in general may be conducted.

#### **4.4.4 LITIGATION**

In the course of ascertaining and realising assets in a bankruptcy, the Official Assignee frequently, and increasingly, is involved in litigation, whether at his own recourse, or at the instance of third parties. Reference has already been made to the need to investigate and challenge transactions entered into by the bankrupt prior to his adjudication. In such cases, the litigation will usually take the form of an application by the Official Assignee to declare void a transfer or conveyance by the bankrupt to a third party, the latter and any subsequent disponee or encumbrancer being respondent to the proceedings. A source of litigation of equal, if not greater, importance arises from the frequent need of the Official Assignee to have recourse to the realisation of his interest in the family home of the bankrupt in order to pay a dividend to creditors. Where the debtor was involved in litigation with third parties at the date of his being adjudged bankrupt, the Official Assignee may, depending on the nature of the litigation, expect to be joined as a party.

#### **Unique position of Official Assignee**

In consequence, the Official Assignee is, perhaps, in the unique position of being both the provider of a Court service and a regular user of the litigation-related services provided by the Courts. The efficiency and cost-effectiveness of the latter services have a very direct impact on the time-frame within which bankrupt estates may be liquidated, and on the amount of dividend which unsecured creditors may expect.

Much of the litigation involving the Official Assignee may originate in an application made in the Bankruptcy List (viz. the Monday list of the Judge exercising jurisdiction in bankruptcy). Usually the matter is either adjourned for plenary hearing, or, on the close of pleadings, is remitted to the next



Chancery or Non-Jury list to fix dates, thus taking its place in one of the queues of litigation awaiting trial. This results from the fact that the Bankruptcy Judge — who in recent years, has also been assigned the Monday Examiner's List — is, for the rest of the week, liable to be assigned to other areas of the High Court's jurisdiction, and is seldom in a position to try bankruptcy litigation.

The current arrangements, quite apart from the effect they may have on the pace at which estates are wound up, fail to take full advantage of the experience and specialised knowledge which the judge assigned to bankruptcy will have acquired.

### **Insolvency Court**

Most common-law jurisdictions have a self-contained insolvency court with full control over its own calendar and over the litigation generated in the course of bankruptcies or company liquidations. The volume of litigation generated by bankruptcies would not be sufficient to justify permanent assignment of a judge to deal with it in Ireland. However, the combined caseload of the companies liquidation, Examiners and bankruptcy lists is such that the creation of a small division of the High Court, an Insolvency Court, whether on a formal or an informal footing, is worthy of consideration.

A further factor which serves to delay and render more costly the administration of bankruptcies is the amount of litigation initiated by third parties in the course of a bankruptcy brought in the Circuit Court, and outside Dublin. Issues such as those of the beneficial ownership of assets and the validity of mortgages, to which the Official Assignee must be joined as a party, are now regularly tried on the Circuit in which the property is situate. This will require the attendance of the Official Assignee and his legal advisors at the Circuit Court Sittings, at what is often a wholly disproportionate cost both to the estate in question and, because of the Official Assignee's absence from the Office, to the administration of the bankruptcy regime generally.

Under the legislation in force prior to the introduction of the Bankruptcy Act, 1988, the Bankruptcy Judge had the power to decide all questions, whether of law or fact, arising in any bankruptcy or arrangement matter or which the Court deemed it expedient or necessary to decide "for the purpose of doing complete justice or making a complete distribution of property in any such case"<sup>12</sup>. This provision enabled the Bankruptcy Judge to prevent a multiplicity of litigation being generated in a bankruptcy, and also provided an effective means of disposing of issues the determination of

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<sup>12</sup> Section 66, Bankruptcy (Ireland) Amendment Act, 1872.

which was necessary before winding up could be completed. This facility was repealed by the Bankruptcy Act 1988. In a reorganised Insolvency Court system it may be appropriate to reconsider this repeal.

### **Training**

It will, perhaps, already be apparent from the description of the functions and responsibilities of the Official Assignee's Office that legal training for management grades is desirable, if not essential. Apart from a comprehensive knowledge of the provisions of the Bankruptcy Code and the case-law pertaining to it, a sound knowledge of securities law, property law and contract law is required for the competent discharge of the duties of management grades in the office.

While the facility afforded to departmental grades in the offices of the High Court and Supreme Court to study for the degree of Barrister-at-Law ensures that a pool of staff with a general legal training will be available to staff those grades, the Bar course alone does not adequately equip officers for assumption of senior-level responsibilities in the Official Assignee's Office, or the other specialised offices in the Courts. Consideration needs to be given to the establishment of specialised training programmes concentrating on areas such as securities law, insolvency, conveyancing and the law of property, for those officers who may be expected to be assigned to the specialised offices of the High Court dealing with such areas.

### **CONCLUSION**

Serious consideration needs to be given to the creation of a division of the High Court to deal with bankruptcy, company liquidations and matters arising from the Examiner's list, as already noted in Chapter Three. This Insolvency Court could be created on a *de facto* basis initially as a pilot scheme.

Incorporated in this concept would be the extension of the jurisdiction of the 'Bankruptcy' Judge to cover all issues, whether of law or fact, arising in, or which the Court deems is expedient or necessary to decide in the course of a bankruptcy or arrangement. This would involve the re-introduction of Section 66, Bankruptcy (Ireland) (Amendment) Act, 1872.

This office also illustrates the benefit to be gained by the establishment of specialised training programmes in the areas of law with which the specialised offices of the High Court are concerned, for officers assigned to these offices at executive or management level.

#### 4.5 THE PROBATE OFFICE

The Probate Office has modernized its administration and today the time taken to process grants is between ten to twenty-one days. The Probate Office deals with non-contentious jurisdiction only and almost 99% of the work is carried out without any reference to Court.

Broadly speaking, the main functions of this office are:-

1. The admission of Wills to proof.
2. The issue of Grants of Probate and Administration.
3. The preservation of Probate Records for inspection.
4. The provision of certified copies of Probate documents when bespoken.

Approximately 6,500 Grants of Probate (including Will Annexed Grants) and 2,500 Grants of Administration Intestate are issued annually from the Principal Registry. About 90% of these numbers would have the involvement of Legal Practitioners, while the remaining 10% would emanate from the Personal Applicants' Section which operates in pursuance to Order 79, Rule 74 of the Rules of the Superior Courts. Two Court Clerks are permanently assigned to this section.

There are fourteen District Registries and they issue an approximate total of 5,500 Grants of Probate (including Will Annexed), and a total of 2,700 Grants of Administration Intestate per annum. The application for each of these Grants is submitted to the Probate Office for "searching" and, where necessary, for approval of title. On completion of this process, a "Nil Certificate" issues from the Probate Office thereby permitting the District Registry to issue the relevant Grant. This operation was formerly carried out by post but, in recent years, the introduction of faxing facilities enables these Certificates to be returned on a same day basis.

Each District Registry is under the immediate control of the County Registrar for the area, but under the Rules of Court all Side-Bar Orders and such like must be applied for to the Probate Office.

The late seventies and early eighties marked a period of serious difficulties for the office. A significant increase in the workload without compensating staff allocations led to long and unacceptable delays in the issue of Grants.

In the mid-eighties, however, a modest computerization system was introduced and all Records back to and including 1983 were ultimately placed on computer thereby eliminating much of the delay and tedium involved in the searching process.



The backlog of work in the Probate Office has been completely cleared for a number of years now. The time taken to process Grants can vary from ten days to a maximum of twenty-one days which, it is understood, is the optimum achieved for many decades.

The present staff structure of the Probate Office is as follows:-

Probate Officer	—	1
Asst. Probate Officer	—	1
Deputy Probate Officer	—	1
Court Clerks	—	4
Junior Court Clerks	—	3
Clerical Officers	—	2
Clerical Assistants	—	3
Paper-Keeper	—	1

Plans for the expansion and complete overhaul of the computer system in the office have been in train for some time now. An entirely new and innovative programme is currently at testing stage. When operational, the work of the Probate Office should be further enhanced and expedited.

#### 4.6 THE OFFICE OF WARDS OF COURT

The office is concerned mainly with the management of the property of persons who are under disability either through incapacity or not having attained their majority. In recent years, the office has also been called upon to become involved in dealing with the personal welfare of persons under disability, for example, in cases of sexual or physical abuse or neglect. While no precise statistics are available as to the value of the assets under the control of the office it is estimated that the sum involved could not be much less than £200,000,000 and that it is increasing all the time with the large awards in personal injury cases becoming commonplace.

Jurisdiction in wardship matters is vested in the President of the High Court and the office deals with the management of the property of the Wards under the general directions of the President of the High Court. While any formal written Orders made in wardship matters have to be signed by the President of the High Court (or by a Judge assigned by him to act on his behalf when he is not available) the vast majority of Orders made are prepared in the office and submitted to the President for signature in chambers. In general, most wardship matters are only listed once for hearing before the Court and that is for the purpose of taking the person into wardship. Motions in relation to contentious applications also come on



for hearing before the Court but the number of such applications is very small although they can be very time consuming and of great importance.

In dealing with the application to take a person into wardship, a large amount of time is involved in the preparation of the papers for the Court hearing and in submitting to the President of the High Court in advance for consideration by him the terms of the Orders to be made in relation to the appointment of a Committee (Guardian) and the steps to be taken to bring the assets of the person under the control of the Court and the directions to be given in relation to the management of such assets. Taking a person into wardship deprives him of his freedom and is not a step which is taken lightly by the Court.

Apart from giving specific directions in relation to the assets of a person at the Declaration Order stage, or shortly thereafter, the President would include a general direction giving authority to the Registrar of Wards of Court to make payments at his discretion for the maintenance and benefit of a Ward and/or his family, for the payment of debts of the Ward and to put the Committee or Guardian in funds. Likewise, in relation to the letting of lands or residential property, the President would give a general authority for the Committee or Guardian to let such properties but such lettings would be directed to be subject to the approval of the Registrar. In practice, only a very small proportion of applications for payment would be brought to the attention of the President for a decision to be given by him. The approval of the President would, of course, be required in relation to acceptance of offers made for the properties of Wards which have been put up for sale and for the approval to expend sums on the purchase of a dwellinghouse or other property for the Ward. In all matters of this nature which are brought before the President for consideration by him in chambers, the Registrar would obtain all of the relevant information including independent valuations of the property and would make a recommendation to the President in regard to the matter. All of the case work, apart from specific aspects of the matters like accounting and income tax affairs, are dealt with by the Registrar and three Assistant Registrars, one of whom is at Principal Officer rank and the other two of whom are at Assistant Principal rank. This staffing level is inadequate for the level and volume of work.

Up to comparatively recent years the vast majority of Wards were in public or private hospitals or nursing homes. The position has now changed completely as while there are still a large number of people who have become senile or suffer from psychiatric illness and are in hospitals or nursing homes, such cases now appear to constitute, although no statistics are available, less than one half of the total number of Wards and quite definitely represent considerably less than one half of the workload in the

office. While Wards in hospitals or nursing homes can have complicated property to deal with, the fact is that at least they are in secure accommodation and the main difficulties caused by such Wards for this office are family dissent as to the property.

The main workload for the office arises from the Wards who are living in the community. If the workload does not result from the problems and behaviour of the Wards themselves, it arises from those of their families and dependants. When a large award is made for damages for personal injuries and such injuries have resulted in brain damage to the injured party, the Court generally directs lodgment into Court of the damages pending an application being brought to have the Plaintiff taken into wardship. In all cases where comparatively large awards have been made, there are nearly always immediate demands for funds for the provision of new accommodation (or the extension and adaptation of existing property which may or may not be owned by the Ward), a new car and a large allowance to meet the cost of maintaining the Ward and his dependants in the community. The office has to have great regard to the fact that the award is intended to last the Ward for the rest of his life and that the funds therefore must be invested in a manner which will achieve capital gain and act as a hedge against inflation. In very many cases, the Ward can be quite young and have a normal life expectancy. In addition to mentally incapacitated persons being taken into wardship, an increasingly large number of children are taken into wardship for the management of their property. In such cases, which would normally arise after actions about road traffic accidents or for medical negligence, there would quite often be a requirement that a house be purchased or considerable sums be expended on the extension or adaptation of existing accommodation and as the Minor would not have the contractual capacity to enter into a purchase of property, it is necessary for the Court to take the Minor into wardship so that a Guardian can be appointed on the Minor's behalf and authorised to complete the necessary purchase in the name and on behalf of the Minor.

Because of the wide range of property owned by the Wards and the taxation and other implications of legislation, it is necessary for the office to acquire expertise in many areas and efforts are made to manage a Ward's property in the most tax efficient manner and in the best interest of the Ward or Minor. In recent years persons have been taken into wardship who have owned stud farms, been large shareholders in private companies as well as having complex freehold and leasehold property and complex financial portfolios. There have also been cases where taxi plates have had to be leased or sold and in a very large number of cases houses have had to be bought and sold on behalf of Wards and Minors or adapted and extended to



meet their particular needs. In many cases the house which requires to be adapted or extended may not be the property of the Ward. It may be owned by a Local Authority or by a family member. Particular difficulties can arise in such cases with the necessity to obtain security for any of the Ward's funds which are used to meet the cost of such works. The Court's usual requirement by way of security is that an interest in the property proportionate to the sum advanced should be transferred into the name of the Ward. Negotiations in this regard can be very difficult and time consuming. As in non-Wardship cases, property extensions of this nature can be very disruptive and traumatic to the household with the usual complaints arising about delays and unsatisfactory workmanship. Unfortunately, in Wardship cases, the office is expected regularly to deal with the problems which arise in this regard. These are merely examples of the changing nature of the assets of Wards. Up to thirty years ago it was not uncommon for a person who was in a mental hospital to be taken into Wardship because they had less than £100 in a bank or post office. Cases of that nature clearly required very little management or time from the office but persons would no longer be taken into Wardship in the High Court for situation like that.

There is also another office which, although separate from the Wards of Court Office, is responsible to the President and acts under the direction of the President and the Registrar of Wards of Court. That is the Office of the General Solicitor for Minors and Wards of Court who would be appointed as a Committee generally where there is no suitable relative prepared to bring the Wardship application or to act as Committee or, which is becoming a more common occurrence, where there is a direct conflict between the interest of the Ward and that of the relatives. The General Solicitor would also be required in a number of cases to carry out investigations into a person's property for the Registrar so that he could consider whether proceedings should be instituted to have such persons taken into Wardship. The nature of this office is considered further in this Chapter.

The Office of Wards of Court is partly financed by the collection from the various Wards and Minors of a Court Percentage. A percentage is payable on the clear annual income of each Ward and Minor whose clear annual income is at least £600. However, the maximum payment in respect of any one year is £500. A maximum fee of £500 is clearly ludicrous in the case of a Ward whose estate would be in the region of £2,000,000 and whose affairs would have to be dealt with by the office on virtually a daily basis. There is a very considerable scope for an increase in revenue from this source by increasing the maximum payment of £500. However, such an increase must be accompanied by an increase in staffing to provide the full

service and management to which the estate of a Ward and his or her family are entitled.

In addition the level of income at which Wards should become liable for Court Percentage should be considerably increased. This would have the effect of taking out of the system a considerable number of Wards and would reduce the workload involved in the calculation and collection of Court Percentage. In cases of low annual income, the Court Percentage payable may amount to considerably less than £50 but the amount of staff time involved in the calculation and collection thereof could be the same as in a case in which the maximum amount would be payable. It would also eliminate an anomaly where a person who has dividend income of £3,000 per annum would be liable to an annual Court Percentage of approximately £90 whereas a person who had £3,000 per annum income from an Old Age Non-contributory Pension would be exempt from any liability for Court Percentage. This anomaly arises because under the Fees Order, payments in the nature of unemployment assistance and non-contributory pensions are not regarded as income for the purposes of the Fees Order.

Another source of income in the office is Stamp Duty payable on documentation. In relation to Stamp Duty on actual wardship papers, this is now quite normal, having been streamlined in recent years but there are fees payable on the passing of Committees's accounts and on the measurement of Bills of Costs in this office. The funds from these sources are increasing annually and if the office had more time to devote to the regular measurement of Committee's costs, a further increase in revenue could be obtained in this way.

Apart from its jurisdiction in dealing with Wardship matters, the office has also been asked to deal with applications under the Marriages Act, 1972 where the permission of the President of the High Court is required for marriages in certain circumstances. This Act is shortly to be replaced by the Family Law Act, 1995 but while this Act give concurrent jurisdiction to the High Court and Circuit Court in relation to applications for exemption from the Act, it is anticipated that a number of applications will still be brought before the High Court and presumably through this office.

The office will also be required under recent legislation to be involved in the registration of enduring Powers of Attorney and presumably under Rules of Court to be made to process applications to the Court which might arise in relation to such enduring Powers of Attorney. The office does not at present have the staffing level to deal with the anticipated influx of work in this regard nor does it have any Information Technology which is essential in the introduction of a system of registration. There is also clearly an urgent need for computerisation of the records of the office generally. Priority



would require it to be given to the Information Technology required in connected with the registration of the enduring Powers of Attorney.

There is also a requirement in the Rules of the Superior Courts that the Registrar is to visit periodically every mental hospital and institution in which a Ward is resident and, as occasion may require, every Ward in private care. Such visits, particularly in relation to Wards in private care, can be of very great assistance in seeing and identifying problems. Such visits are generally very much welcomed by the families of the Wards concerned. Unfortunately, again due to staff shortages, it is only possible for the Registrar or one of the Assistant Registrars to visit Wards on a very occasional basis and this would normally be to deal with a crisis situation which has arisen.

The most pressing need in the office is for the provision of additional staff at the appropriate level. If such additional staff were made available this would leave time and scope for other improvements to be carried out. Apart from the statutory requirement to provide facilities for the management of property of persons under disability, more revenue could be generated if an improved service in the management of the property of Wards could be provided. The introduction of Information Technology is an absolute priority, more visits to Wards in accordance with the requirements of the Rules of the Superior Courts should be carried out and the Registrar and Assistant Registrars should from time to time be enabled to attend continuing legal education courses with a view to keeping abreast of the complexities of new legislation which would impinge on the welfare of Wards and the management of their estates. The provision of additional staff would allow for more time for visits and attending courses of this nature. Additional staff would also allow the Registrar to have more time for the actual management of the office. This time is not available at present due to the actual case work which has to be dealt with by him. More time would be required in relation to staff training even at Court Clerk level and at lower levels as the work in the management of a Ward's affairs can involve a wide range of work which is carried out in other offices of the High Court such as Litigation, Probate, Registration of Title, Accountant's Office and Measurement of Costs.

In general the public, and to a certain extent the legal profession, are not very familiar with the workings of the office and the duties of the office in the management of the affairs of Wards. The position in this regard is not helped by the archaic legislation which deals with the management of the property of Wards, the Lunacy Regulation (Ireland) Act, 1871 which to a large extent is of no great assistance in dealing with problems which arise in the management of property 125 years on. Likewise, the forms which have

to be served on parties in Wardship proceedings are not very suitably worded for modern times and cause considerable offence in a number of instances especially where reference is made to a person being described as "a person of unsound mind". New legislation is urgently required to deal with the situation and it is also desirable that a form of words should be found to replace the term "person of unsound mind".

In view of the general unfamiliarity with the nature of Wardship and the workings of the office, it would be of considerable benefit if a User-Friendly Booklet could be produced giving general guidelines on the necessity for Wardship and the procedures in the office. Desirable as the publication of such a booklet would be, present staffing levels would not permit the time which would be involved in the preparation of the booklet as priority has to be given to the urgent daily needs in managing the affairs of Wards and Minors.

#### **4.7 OFFICE OF THE GENERAL SOLICITOR FOR MINORS AND WARDS OF COURT**

Until 1969 the General Solicitor was a solicitor in private practice. Following the death of the then General Solicitor in that year it was decided to bring the position within the public service as a temporary office attached to the High Court pending review, and if appropriate, the passing of necessary legislation by the Oireachtas for the establishment of a permanent office. The expenses of the office were to be paid out of public funds and the costs and other revenues generated by the office were to be paid to the Exchequer. The appointment of the General Solicitor would remain a matter for the President of the High Court and the Department of Justice would undertake the staffing, maintenance and appropriation of the office.

This continues to be the arrangement today and there would not appear to be any statutory basis for it, including the transfer of monies and revenues to the Exchequer.

The General Solicitor is a law officer appointed by the President of the High Court and acts in Wardship matters as assigned and directed by the President of the High Court and the Registrar of Wards of Court.

The purpose of Wardship is the protection of the affairs and property of persons deemed by the Court to be without capacity. Such persons may be under a mental incapacity or be of minor age. The protection in Wardship is achieved by the appointment of a guardian known as a Committee who acts on behalf of the Ward and is answerable to the Court. The General Solicitor, therefore, has a dual role, i.e. she acts as Committee on behalf of a Ward and as solicitor in regard to the affairs of that Ward.

The role as Committee is both wide and varied and the most common duties can be summarised as follows:-

- Payment of allowances, pocket money, household expenses and disbursements on behalf of the Ward.
- Calculation and negotiation of pension, salary, Court funds or other money.
- Dealings with next-of-kin etc.
- Calculation and negotiation of hospital maintenance charges.
- Management of property and building maintenance.
- Letting of property.
- Dealing with a Ward's income tax affairs.
- Investigating the suitability of a Ward's living accommodation.
- Lodging formal accounts with the Registrar of Wards of Court on an annual basis in respect of monies received and expended on behalf of each Ward and replying to queries raised thereon.

The main areas of legal work on behalf of a Ward are as follows:-

- Institution of Wardship proceedings.
- Sale or purchase of property.
- Extraction of Grants of Probate or Letters of Administration in respect of estates to which a Ward is entitled and distribution thereof.
- Establishing the Ward's legal right to a property which may involve litigation.
- Institution of proceedings under Section 117 of the Succession Act, 1965.
- Establishing a Ward's legal right share to an estate of a deceased spouse and making recommendations to the Court as to whether or not to elect to take said share.
- Proceedings under the Judicial Separation and Family Law Reform Act.
- Instituting proceedings for the recovery of sums due to a Ward.
- Institution of proceedings for personal injuries where a Ward has been injured in an accident.



- Establishing a Ward's title to registered land and making an application under Section 49 of the Registration of Title Act, 1964.
- Negotiation and completion of legal documentation in regard to the release of a Ward's interest in property.
- Dismissing an estate from Wardship on the death or recovery of a Ward.

Cases are assigned to the General Solicitor through the Registrar of Wards of Court with one of the following directions:-

- To investigate the affairs of an individual alleged to be of unsound mind and report to the Registrar of the Wards of Court so that the question of Wardship can be considered.
- To institute Wardship proceedings. In the event of the General Solicitor bringing an individual into Wardship, she may be further directed by a Court Order to carry out certain directions or if the assets of the Ward have not been ascertained, she may be directed to file a Statement of Facts, i.e. a document setting out the Ward's assets/liabilities with her recommendations as to what directions the Court should make in respect thereof.
- A case already in Wardship may be assigned to the General Solicitor by Court Order due to the retirement of the existing Committee or difficulties encountered with that Committee and the General Solicitor will be directed as to the requirements of the Court in regard to the said Ward.

Appendix E illustrates the present structure and staffing of the office.

Initially, the files are assigned to the General Solicitor and in this way, she can assess the complexity and sensitivity of the case before deciding whether to assign it and to whom. In recent years, there has been a significant increase in the complexity and sensitivity of cases assigned to the office resulting in a greater proportion of new cases being assigned to a solicitor as opposed to a legal clerk.

It is felt that the effective management of the cases assigned to the office could be improved by:-

#### **(a) DATABASE**

The provision of an automated database to ensure a fast and efficient retrieval of information in respect of each case. The cases managed by the



General Solicitor are often under the control of the office for a considerable number of years, during which time a large bank of paper files is generated. A database system would enable essential information to be stored in a uniform manner in regard to each individual case. The word processing system operated by the office is now used to store certain information, but it is not a suitable mechanism for the retrieval of key items of demographic data.

#### **(b) STAFFING**

The imposition of an excessive personal caseload on the General Solicitor results in an inability to deal effectively with case review and with issues of staff planning, service development and procedural improvement. An application was made to the Department of Justice to replace a Legal Clerk post which became vacant in November 1995 with a post of Assistant Solicitor on the basis of the increased complexity of work being assigned to this office and having regard to the negligible pay differential between the two scales. Sanction was approved for this proposal in December 1995 but the post has not been filled. It is envisaged that the additional post of Assistant Solicitor would allow for a greater opportunity of delegation by the General Solicitor enabling her to more adequately deal with general management and long term issues affecting the office.

Adequate secretarial facilities. There are three Clerical Assistants (Typists) assigned to the office dealing with all the typing requirements of the six case officers who operate dictaphone machines resulting in a considerable volume of typing. In addition, the Clerical Assistants (Typists) are responsible for preparing all Court documentation in regard to the institution of Wardship proceedings and other High Court proceedings. The Clerical Assistants also undertake filing and ancillary clerical duties and are responsible for the reception area of the office and telephone switchboard. The workload carried out by the three Clerical Assistants (Typists) does not allow sufficient time to carry out secretarial duties on behalf of the case officers resulting in case officers expending valuable time dealing with the minutiae generated by their case work which work could normally be assigned to a secretary.

#### **(c) CAREER STRUCTURES**

The absence of a defined career and promotional structure in relation to the legal/technical staff should be addressed to improve staff morale.

#### **CONCLUSION**

The Office of the General Solicitor has been within the ambit of the public service since 1969. The establishment of the office was not classified

following its transfer into the public service. The undefined status of the office hinders its development within the Court system. It is essential that the lack of statutory establishment and accountability of the office of the General Solicitor be resolved.

#### **4.8 THE TAXING MASTER**

##### **Historical background**

The Office of the Taxing Master is a very ancient one dating back to the early middle ages. Originally a Taxing Master was, it is believed, a tax collector for the King. Later, he became attached as an Officer of the Lord Chancellor and charged with the duty of taxing costs as between litigants, and adjudicating thereon. Later still, the function of and duties of a Taxing Master became annexed to the various divisions of the Superior Court. Following the passing of the Judicature Acts, 1877, the various Taxing Masters attached to the various divisions of the Superior Courts were consolidated as Taxing Masters of the Superior Courts, the Taxing Master of the Chancery Court then became the Senior Taxing Master. This position held until the foundation of the State and until the passing of the Courts of Justice Act, 1924. The present Taxing Masters are in addition governed by the Courts Officers Act, 1926 and later by the Courts (Supplemental) Provisions Act, 1961 and the Courts and Court Officers Act, 1995 and, in particular, Rules of the Superior Courts, 1986.

##### **Functions**

In general terms, Taxing Masters have the power to tax:-

- (a) The costs of, arising out of, any cause or matter in any of the Superior Courts;
- (b) The cost directed by an award made on a reference to arbitration to be paid;
- (c) The cost of a receiver appointed in any cause or matter on the application of the receiver or of any party to such cause or matter;
- (d) The cost of registering judgments as mortgages, of obtaining grants of probate and of letters of administration, of satisfying judgments, and any other costs usually taxed ex parte, on the application of any party interested;

- (e) Without any order for the purpose, costs as between Solicitor and client, on the application of the client and upon a written undertaking, to be lodged in the Taxing Master's Office, to pay any balance which the Taxing Master may certify;
- (f) Any other costs to be taxed under, or by virtue of a statute, or the Rules of Court.

### **Main objectives**

The main objectives of the Taxing Masters are to exercise their judgment so as to:-

- (a) ensure the propriety of the Bill of Costs as taxed and the validity and correctness of the certificates of taxation issued;
- (b) protect the interests of paying parties in a legal action or a client/solicitor case and to ensure that justice and equity is done in matters of legal and disbursements which come before them.

There are two Taxing Masters and in accordance with the Rules of the Superior Courts, 1986 each Taxing Master may tax or assist in the taxation of a Bill of Costs which has been referred to the other for taxation and in such cases, can certify accordingly. However, presently there is only one Taxing Master due to the recent death of Taxing Master Thomas K. O'Connor.

Each Taxing Master is assisted by a Chief Clerk who holds the grade of Assistant Registrar.

### **Main tasks**

The Taxing Masters act in a judicial capacity on matters relating to legal costs. They have their own Court and give oral as well as written rulings. The parties concerned in a taxation of a Bill of Costs (which are generally represented by Cost Drawers, or solicitors or indeed both junior and senior Counsel) have the right of appeal in accordance with Order 99 of the Rules of the Superior Court, 1986. The procedure for appeal is set out in full in Order 99, Rule 38 and, as can be seen from Order 99, Rules 38(2) of the Rules of the Superior Courts, 1986, a Taxing Master may be required to produce written decisions on the request of any of the parties to the taxation. Furthermore, under Order 99, Rule 38(5), the Taxing Master on receiving a motion for review of his taxation is required to produce a written report to be submitted to the High Court.



### **Key role of the Taxing Master**

The key role of the Taxing Master is to exercise his judgment and discretion at hearings on the admissibility and amount of the discretionary cost items. In exercising discretion in relation to any item, the Taxing Master has regard to all relevant circumstances, submissions and, in particular, to:-

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty and novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
- (c) the number and importance of the documents (however brief) prepared or proved;
- (d) the place and circumstances in which the business involved was transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount and value;
- (g) any other fees and allowances payable to the solicitor in respect of other items in the same cause or matter but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

### **The Office**

The Taxing Master's Office consists of two Taxing Masters who share the responsibility for taxing legal costs. Each Taxing Master is assisted by one Assistant Registrar and there is one Junior Clerk who assists both Registrars and Taxing Masters and carries out other administrative functions.

It is the responsibility of the Junior Clerk for setting down all Bills of Costs for taxation, checking that those Bills are in the correct format, within the correct time limits, etc. This person has responsibility for preparing the Taxing Master's List, recording and indexing all Bills and dealing with queries by telephone and at the counter of the Public Office. It is also his/her duty to record comprehensive monthly and yearly statistics. The statistics for 1994 -1995 are set out in Appendix F.

Following the completion of taxation, it is the responsibility of each Assistant Registrar, on receipt of a draft certificate from the party seeking a Certificate of Taxation, to ensure that the contents of each Bill of Costs are accurate. This involves a complete check of each item of every page of the Bill, each of which contains three columns of figures and assessing the



stamp duty payable on the final figures. If necessary, the Assistant Registrar is required to raise queries which regularly involves consultations with members of the legal profession or their agents, the Taxing Masters themselves or members of the public. When the draft certificate is returned with all the relevant queries discharged, an original and copy certificate is filed and the Assistant Registrar examines the original and copy certificate and the draft certificate and compares them with an agent for the legal costs accountants or with a solicitor or lay litigant and on being satisfied with the accuracy of the final figures requires the parties mentioned above to swear before him or her an Affidavit as to the correctness of the final figures. The certificate is then presented to the Taxing Master for signature and the final certificate of taxation is then ready to be issued and judgment can be entered against the party liable for costs on foot of the said certificate.

All certificates are then indexed and recorded in the office and are made available for being bound in book form (the practice here is that the previous year's Bills of Costs are bound during the summer vacation of the following year). In the event of certificates of taxation not being taken up after taxation and the State or Taxing Office being deprived of very considerable amounts of stamp duty, the Assistant Registrars are required not only to carry out checks on Bills which have been taxed but not certified but also to assess the stamp duty payable on the said Bills and to follow up and ensure that same is paid.

In addition, the Assistant Registrars frequently have to exercise their discretionary judgment and expertise in relation to matters brought to their attention by the Junior Clerks and in dealing with the many varied queries brought because of the awareness and high profile that costs have received over the last number of years. Some of these queries arise out of cases which have been taxed or are in the process of being taxed while other queries are of a more general nature in respect of taxation matters and require dealing with members of the legal profession and lay litigants. Each Assistant Registrar is accountable to and assists the Taxing Master either by reports or direct consultation with regard to practice or personnel matters.

### **Problems identified**

Master Flynn has for some considerable time sought to obtain:-

- (a) a photocopier;
- (b) a word processing system; and,
- (c) the removal (to the National Archives) of Bills of Costs some 50 years old, for health reasons, from the office of one of the Assistant Registrars.

#### 4.9 THE SUPREME COURT

Case management of appellate work differs in many ways to that of trial Courts. However, important common principles may be applied. In the Supreme Court the administrative case management is done by staff led by the Registrar. They work with an absence of statistics, modern technology and space, all of which are needed for the staff. The caseload in the Supreme Court warrants a modern administrative approach. This legal year from 1st August 1995 to June 1996, 284 appeals have been lodged in the Supreme Court. See Appendix D.

## CHAPTER FIVE

# RECOMMENDATIONS

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- 5.1 The Group recommends that the necessary steps be taken to enable appointments to the Presidency of Benches to be for seven years, non-renewable.
- 5.2 The Group recommends that there be greater flexibility in the use of resources to the President of each Bench so that he may request a judge to work on the management of specific issues e.g. the coordination of the Family Courts, the listing of cases, the organisation of resources.
- 5.3
- (a) It is recommended that the Rules making Committees be enabled to be active vehicles for introducing improvements in the Court system.
  - (b) It is recommended that ex-officio members be entitled to delegate membership of the Committee to another and that the necessary legislative amendments be carried out.
  - (c) It is recommended that when the proposed Courts Service is established that the Chief Executive Officer (or his or her nominee) together with a senior member of the 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.
  - (d) It is recommended that the resources of the proposed Courts Service be available to the Rules Making Committees.
  - (e) It is recommended that each Rule Making Committee shall make a report each year to the Courts Service for inclusion in the Annual Published Report.

## SUBMISSIONS

The Group continues to receive submissions. Those who have made submissions to date include:-

- (1) Association of Higher Civil Servants (*Written and Oral*)
- (2) Aoibhneas Women's Refuge
- (3) Branigan & Matthews, Solicitors
- (4) Bray Women's Refuge
- (5) C.A.R.I. Foundation (*Written and Oral*)
- (6) N.T. Chambers, District Court Clerk (*Written and Oral*)
- (7) The Society of Chartered Surveyors
- (8) Child and Adolescent Section, Royal College of Psychiatrists (Irish Division) (*Written and Oral*)
- (9) The Commissioner of An Garda Síochána
- (10) Coolock Community Law Centre (*Written and Oral*)
- (11) Court Stenographers
- (12) Mr. Mel Cousins
- (13) Family Lawyers' Association (*Written and Oral*)
- (14) Commission of the Status of People with Disabilities
- (15) Dockrell Farrell, Solicitors
- (16) The Dublin Solicitors' Bar Association
- (17) Ms. Ann Fetton
- (18) Free Legal Advice Centres Limited
- (19) Grandparents Obliterated (*Written and Oral*)
- (20) Impact (*Written and Oral*)
- (21) Irish Insurance Federation
- (22) Legal Aid Board (*Written and Oral*)
- (23) Longford Bar Association
- (24) McCann Fitzgerald, Solicitors
- (25) Mr. Sean McElligott
- (26) Mr. Robert McKee
- (27) Noonan Linehan Carroll, Solicitors
- (28) Mr. Gregory O'Connor, Archivist
- (29) Mr. Liam Ó Gógáin, Parental Equality (*Written and Oral*)
- (30) Provincial Newspapers Association of Ireland
- (31) Public Service Executive Union (*Written and Oral*)
- (32) Mr. Kevin Reilly
- (33) RTC Tallaght
- (34) Sligo Social Service Council Limited (*Written and Oral*)
- (35) University College Galway



- (36) Victim Support (*Written and Oral*)
- (37) Mr. Michael Williams
- (38) Consumers' Association of Ireland
- (39) Patrick J. Farrell, Solicitors
- (40) F.U.G.E. (*Written and Oral*)
- (41) High Court/Supreme Court Press Reporters
- (42) Mr. Justice Barr
- (43) Mr. Justice Budd
- (44) Mr. Justice Blayney
- (45) Mr. Justice Geoghegan
- (46) Mr. Justice Johnson
- (47) Mr. Justice Kinlen
- (48) Mr. Justice Murphy
- (49) Mr. Justice O'Flaherty
- (50) Pierse & Fitzgibbon, Solicitors
- (51) Women's Aid (*Written and Oral*)
- (52) Mr. Ray Managh on behalf of Court Reporters
- (53) Conradh na Gaeilge
- (54) Threshold
- (55) Bord na Gaeilge
- (56) Mr. Mark Costigan, Network Radio News
- (57) Mr. Robert Sheehan, Chief State Solicitor's Office
- (58) Civil and Public Service Union (*Written and Oral*)
- (59) The Bar Council
- (60) The Law Society of Ireland - Family (*Written and Oral*)
- (61) The Law Society of Ireland - Litigation Committee (*Written and Oral*)
- (62) The Department of Justice (*Written and Oral*)
- (63) Mr. John Delahunty, Chief Registrar (*Written and Oral*)
- (64) Aim Family Services (*Written and Oral*)
- (65) Ms. Margaret McGreevy, General Solicitor: Minors and Wards of Court (*Written and Oral*)
- (66) Mr. Maurice McMorrow, Accountant, Courts of Justice  
(*Written and Oral*)
- (67) Continuum (Europe) Ltd.
- (68) Probation and Welfare Service (*Written and Oral*)
- (69) Mr. James Comerford, Supreme Court Registrar
- (70) Judge James Paul McDonnell on behalf of the Association of Judges of the District Court
- (71) Master Flynn, Taxing Master (*Written and Oral*)
- (72) Mr. Tommy Kelly, Chief Clerk, Circuit Court (*Written and Oral*)
- (73) Mr. Harry Hill S.C., Master of the High Court (*Written and Oral*)

- (74) Mr. Gerry Kenna, Probate Officer (*Written and Oral*)
- (75) Mr. Noel Rubotham, Official Assignee (*Written and Oral*)
- (76) Ms. Alecoque Condon, The Examiner (*Written and Oral*)
- (77) Mr. John Dalton, Registrar, Wards of Court (*Written and Oral*)
- (78) Mr. Kieran McGrath, Senior Social Worker, The Children's Hospital, Temple Street (*Written and Oral*)
- (79) Mr. Justice Morris

- (80) The County Registrars' Association made written and oral submissions prior to the First Report of the Working Group and again to the Working Group on a Courts Commission on the issues of Case Management and Family Courts. It is regretted that owing to a clerical error there was no reference to the Association in the list of submissions received in the First Report.

## PRACTICE DIRECTION

### Personal Injury Actions in which Liability is Admitted

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- (1) With a view to reducing the number of cases awaiting trial and the length of trials and to reduce costs it is proposed to introduce, on a trial basis, a scheme for the holding of preliminary hearings by way of Case Conference by a judge of personal injuries actions in which liability is not in issue. When such actions have been placed in the waiting list the plaintiff may, by letter to the Chief Registrar, request a Case Conference. These cases will then be listed for a Case Conference for the purpose of exploring the possibility of early resolution of such cases either by way of settlement or if this is not possible, the reduction of the issues to be tried with the ultimate objective of listing such cases for an early trial. At the Conference, the judge will consider any objections to its holding that the defendant may wish to advance.
- (2) Cases Conferences will be held in chambers and will be attended by the parties' Solicitors and, if briefed, Counsel responsible for the conduct of the case. Clients should be readily available to furnish instructions. It is proposed initially to list cases on Mondays at 2 p.m. during term.
- (3) One week prior to the Case Conference, the parties will be required to complete a check list in the form appended to this Practice Direction, file it in the Central Office, and serve it on other parties. Copies of the check list can be obtained from the Central Office.
- (4) At the Conference enquiries may be made, inter alia, in relation to the following matters:



- (a) Whether there has been compliance with any Rules made under section 45 of the Courts and Court Officers Act, 1995.
- (b) Whether the parties have exchanged medical reports or are they prepared to do so.
- (c) Whether the parties have exchanged witness statements or are prepared to do so.
- (d) Whether the parties have exchanged expert witnesses' reports or are prepared to do so.

The parties may be required:

- (i) to state in concise form the nature of the case or defence for the purpose of identifying the issues remaining in the case
  - (ii) to furnish an exact statement of the special damages now claimed or admitted
  - (iii) to identify the areas in which they are not in agreement.
- (5) At the Conference, the judge will have power to make such Orders by consent for the speedy resolution of the remaining issues in the case, including the power to:
- (a) Order Discovery of Documents.
  - (b) Direct Replies to Particulars.
  - (c) Direct Delivery of Interrogatories.
  - (d) Direct Delivery of Replies to Interrogatories.
  - (e) Extending the time provided for in the Rules of the Superior Courts for taking any Interlocutory step in the action.
  - (f) To enter judgment in an action or to strike it out.
  - (g) To deal with all matters relating to the costs of the action including costs of holding the Conference if the action is settled. If the action is not settled the costs will be reserved for the trial judge.
- (6) At the Conference the judge may, with the parties' consent, assist in effecting a settlement of the action. In this event, and if the case is not settled, he/she will not preside at the trial.

- (7) The Conference judge may direct that appropriate steps be taken to refer specific issues for hearing in Court.
- (8) After the Conference the case will be listed for hearing at an early date suitable to the parties.

Dated: 21st day of June, 1996.

Signed: D. Costello  
President of the High Court

# Pre-Trial Check List

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THE HIGH COURT

NUMBER P 19

BETWEEN

(SET OUT PLAINTIFF'S NAME)

PLAINTIFF

AND

(SET OUT DEFENDANT'S NAME)

DEFENDANT

PRE-TRIAL CHECK LIST TO BE COMPLETED BY THE SOLICITOR FOR EACH PARTY AND LODGED WITH THE COURT FILE NOT LESS THAN SEVEN DAYS PRIOR TO COURT CONFERENCE AND COPY TO BE SENT TO THE OTHER PARTIES TO THE ACTION.

## 1. PLEADINGS

- (a) Do you intend to make any amendments to your Pleadings?
- (b) If so when?



## 2. PRE-TRIAL PROCEDURES

- (a) Have all Orders which have been made to date in this case been complied with?
- (b) If not specify what Orders have not been complied with.
- (c) Please state what steps you propose to take in relation to these outstanding Orders.
- (d) Do you propose to make any further applications to the Court prior to the hearing?
- (e) Please state what applications you propose to make.
- (f) Please state when you propose to make these applications.
- (g) Have you given all the particulars of personal injuries suffered by the Plaintiff together with particulars of the consequences of these injuries so as to enable the case to proceed without interruption or delay?
- (h) If not, what particulars of personal injuries remain outstanding?
- (i) When did you propose to give these particulars?
- (j) Have you given all particulars of special damage and loss so as to enable the case to proceed without delay?
- (k) If not, state what particulars you propose to give.
- (l) Please state when you propose to give these particulars to the Defendant.
- (m) State why they have not been furnished to date.
- (n) Have you considered the desirability of obtaining leave to deliver interrogatories?
- (o) If so, have you reached a decision not to do so?

**3. COURT FILE**

- (a) Have you confirmed that the Court file is now complete and that there are no notices for particulars, replies to notices for particulars or other documents which should be on the Court file but remain unfiled?

**4. LENGTH OF TRIAL**

- (a) What are the estimates for the minimum and maximum lengths of the trial.

**5. RESOLUTION OF THE ISSUES BY NEGOTIATION**

- (a) Have you considered the possibility of attempting to resolve this case by negotiation?
- (b) Have negotiations in fact taken place?
- (c) If not, please state the reason why.

**6. EXCHANGE OF EVIDENCE**

- (a) Have you already exchanged medical reports with your opponent?
- (b) If not, are you prepared to do so?

**7. SPECIAL DAMAGES**

- (a) Have you calculated the special damages?
- (b) Have you calculated the social welfare payments that fall to be deducted from any award?

**8. SETTLEMENT**

- (a) Do you wish to the judge presiding at the Case Conference to assist in the settlement of the action?

## The Examiner's Office — Statistics

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### INDEX

- (i) Technology Resources acquired.
- (ii) Staffing levels, legal years 1980-'81, 1993-'94 and 1994-'95.
- (iii) Number of cases pending as at 31st July, 1995.
- (iv) New cases - legal years 1969-'95.
- (v) Turnover of cases - legal years 1980-'95.
- (vi) Output as percentage of intake - legal years 1980-'95.
- (vii) New cases - 5 yearly analysis - legal years 1980-'95.
- (viii) Finished cases - 5 yearly analysis - legal years 1980-'95.
- (ix) Turnover - 5 yearly percentage figures - legal years 1980-'95.
- (x) Work output - 5 yearly periods - legal years 1980-'95.

## APPENDIX B2

# Examiner's Office

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### (i) TECHNOLOGY RESOURCES ACQUIRED

Year	Technology Resources
Pre 1986	None
1986	1 electric typewriter
1992	1 word processor
1993-95	4 additional word processors/personal computers

#### Total Technology Resources as of 31st July, 1995:

5 word processors/personal computers plus 1 electric typewriter.



## APPENDIX B3

# Examiner's office

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### (ii) Staffing: 1980-'81, 1993-'94 and 1994-'95

#### Legal Year 1980-'81

Examiner (Personal Scale)	Assistant Secretary	(1)
Assistant Examiner	(P.O.)	(1)
Assistant Examiner	(A.P.)	(2)
Court Clerk	(H.E.O.)	(1)
Court Records Clerk	(C.O. approximately)	(2)
Clerical Assistant		(1)
	Total	(8)

(All typing sent to Typing Pool)

#### Legal Year 1993-'94

Examiner	(P.O. I)	(1)
Assistant Examiner	(P.O.)	(1)
Assistant Examiner	(A.P. I)	(1)
Assistant Examiner	(A.P. II)	(1)
Court Clerk	(H.E.O.)	(1)
Junior Clerk	(E.O.)	(1)
Staff Officer*		
Clerical Officer**		

Total (10)

(All typing done internally)

\* Clerical Officer post upgraded 1992 following industrial action.

\*\* Clerical Assistant post upgraded 1992 following industrial action. Third Clerical Officer allocated to office in December, 1993.

# **Legal Year 1994-'95**

Examiner	(P.O. I)	(1)
Assistant Examiner	(P.O.)	(1)
Assistant Examiner	(A.P. I)	(1)
Assistant Examiner	(A.P. II)	(1)
Court Clerk*	(H.E.O.)	(2)
Junior Clerk	(E.O.)	(1)
Staff Officer		(1)
Clerical Officer		(3)
Total		(11)

(All typing done internally)

- \* Additional Court Clerk allocated by Department of Finance February 1995 pending Administrative Audit of Staff/Resources of Examiner's Office.

## APPENDIX B4

# Examiner's Office

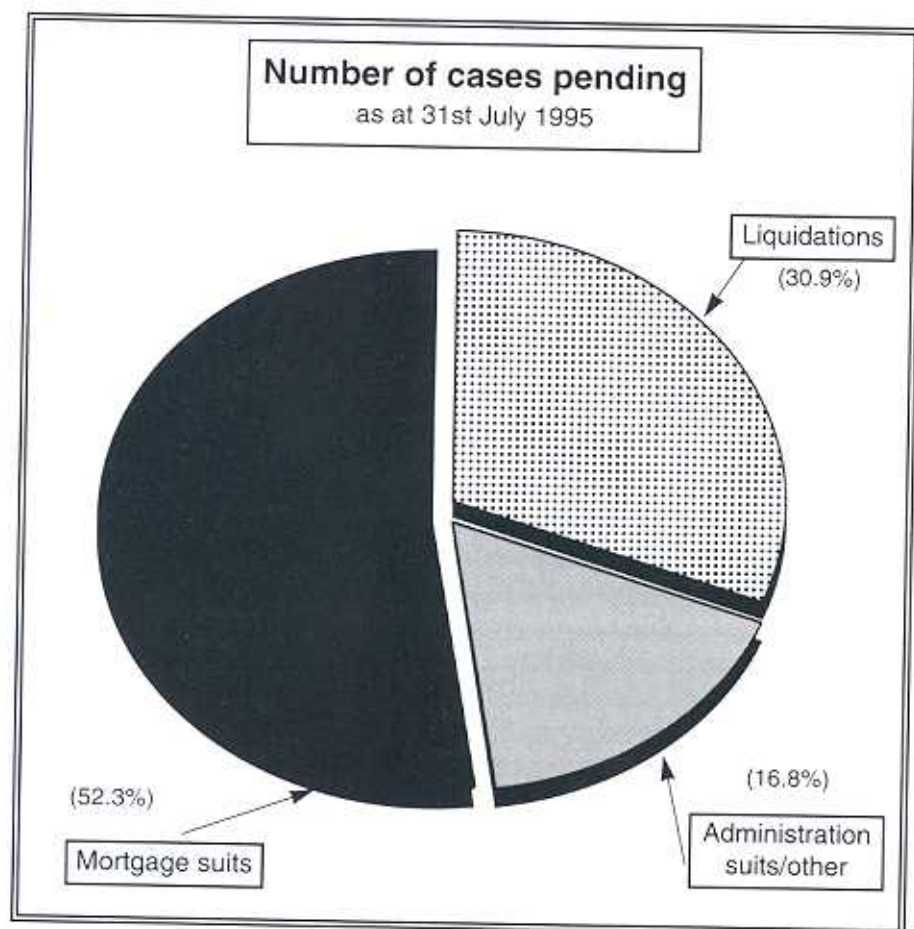
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(iii) Number of Cases pending as at 31st July 1995

LIQUIDATIONS	MORTGAGE SUITS	ADMINISTRATION SUITS/OTHER	TOTAL
682	1,154	371	2,207

## Examiner's Office

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## APPENDIX B6

## Examiner's Office

## (iv) NEW CASES - LEGAL YEARS 1969 - 1995

YEAR	LIQUIDATIONS	MORTGAGE SUITS	ADMINISTRATION SUITS/OTHER	TOTAL
1969/70	2	14	6	22
1970/71	18	17	8	43
1971/72	8	20	7	35
1972/73	10	12	7	29
1973/74	12	12	7	31
1974/75	13	23	9	45
1975/76	15	22	10	47
1976/77	15	26	14	55
1977/78	11	27	6	44
1978/79	16	28	10	54
1979/80	20	16	5	41
1980/81	20	26	8	54
1981/82	18	32	9	59
1982/83	40	42	8	90
1983/84	90	48	6	144
1984/85	129	59	4	192
1985/86	82	92	3	177
1986/87	80	176	11	267
1987/88	51	185	9	245
1988/89	53	149	6	208
1989/90	54	108	8	170
1990/91	34	69	1	104
1991/92	53	59	1	113
1992/93	51	54	4	109
1993/94	*58	60	3	121
1994/95	**50	50	2	102

\* Includes 11 cases which did not commence by Notices to Proceed

\*\* Includes 9 cases which did not commence by Notices to Proceed

# Examiner's Office

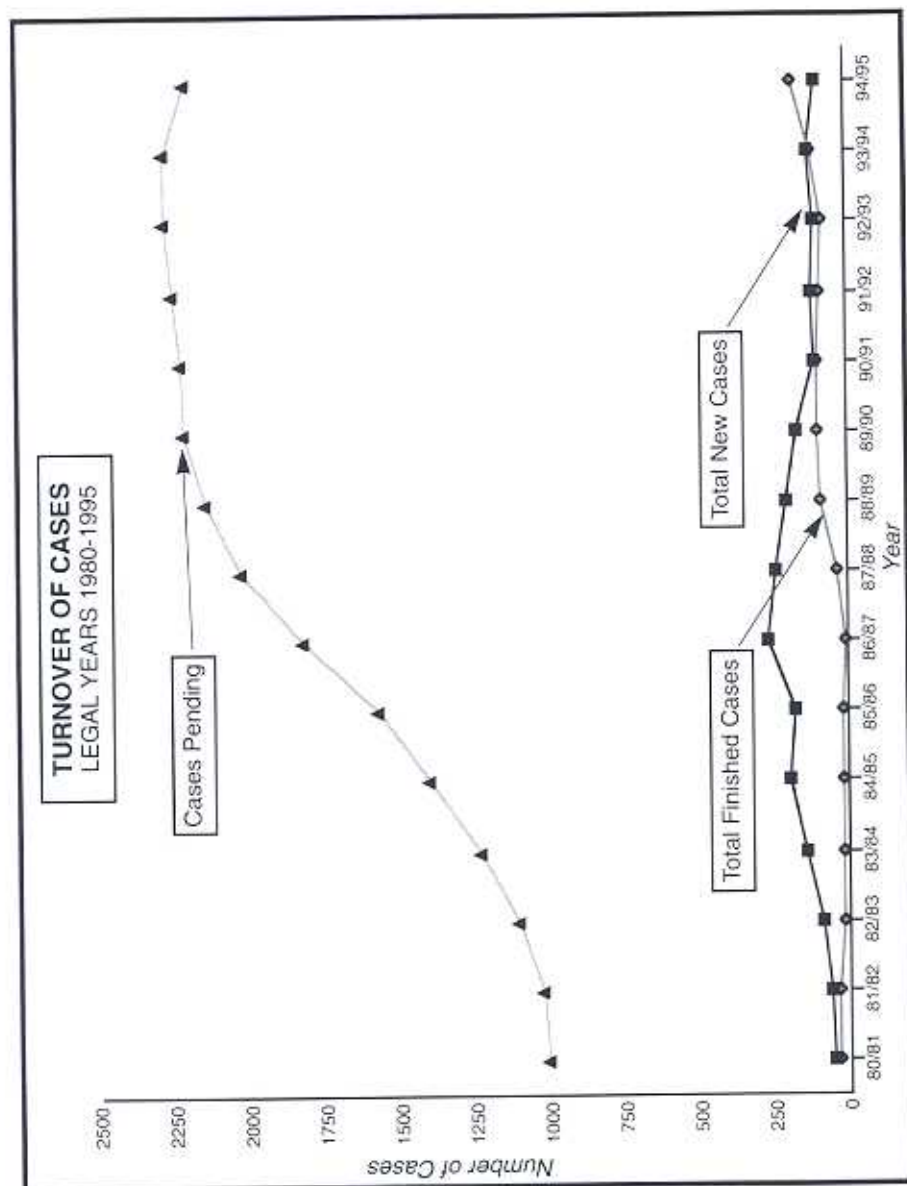
## (v) TURNOVER OF CASES - LEGAL YEARS 1980/1995

YEAR	TOTAL NEW NEW CASES	TOTAL FINISHED CASES	CASES PENDING
1980/81	54	38	1006
1981/82	59	34	1031
1982/83	90	17	1104
1983/84	144	19	1229
1984/85	192	16	1405
1985/86	177	15	1567
1986/87	267	13	1821
1987/88	245	39	2027
1988/89	208	89	2146
1989/90	170	99	2217
1990/91	104	97	2224
1991/92	113	90	2247
1992/93	109	80	2276
1993/94	*121	*117	2280
1994/95	*102	*175	2207

\* 93/94: Includes 11 cases which did not commence by Notice to Proceed

\* 94/95: Includes 9 cases which did not commence by Notice to Proceed

# Examiner's Office



# APPENDIX B9

## Examiner's Office

### (vi) OUTPUT AS PERCENTAGE OF INTAKE - LEGAL YEARS 1980-95

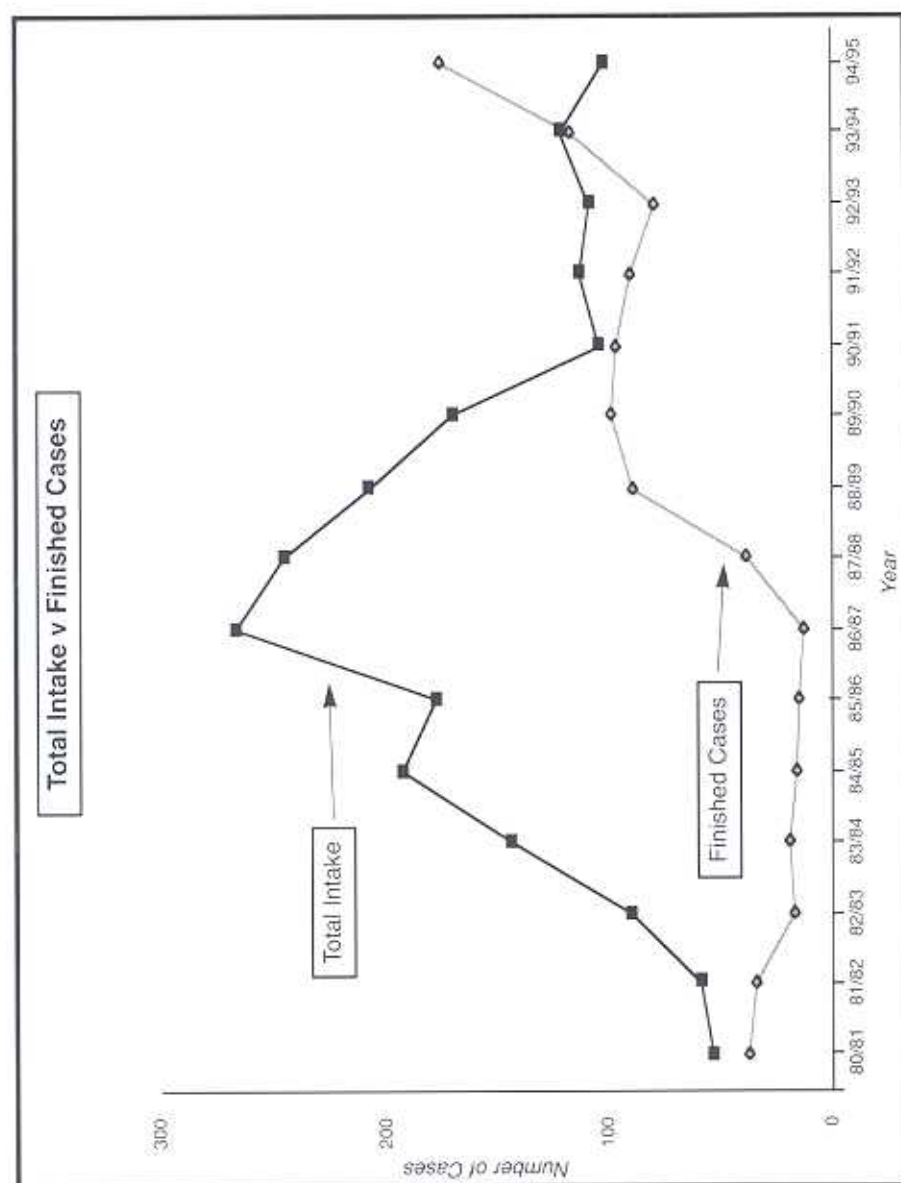
YEAR	TOTAL INTAKE OF CASES	TOTAL FINISHED CASES	%
1980/1981	54	38	70.37
1981/1982	59	34	57.62
1982/1983	90	17	18.89
1983/1984	144	19	13.19
1984/1985	192	16	8.33
1985/1986	177	15	8.47
1986/1987	267	13	4.87
1987/1988	245	39	15.92
1988/1989	208	89	42.79
1989/1990	170	99	58.24
1990/1991	104	97	93.27
1991/1992	113	90	79.65
1992/1993	109	80	73.39
1993/1994	*121	*117	96.69
1994/1995	*102	*175	171.57

\*93/94: Includes 11 cases which did not commence by Notice to Proceed

\*94/95: Includes 9 cases which did not commence by Notice to Proceed



## Examiner's Office



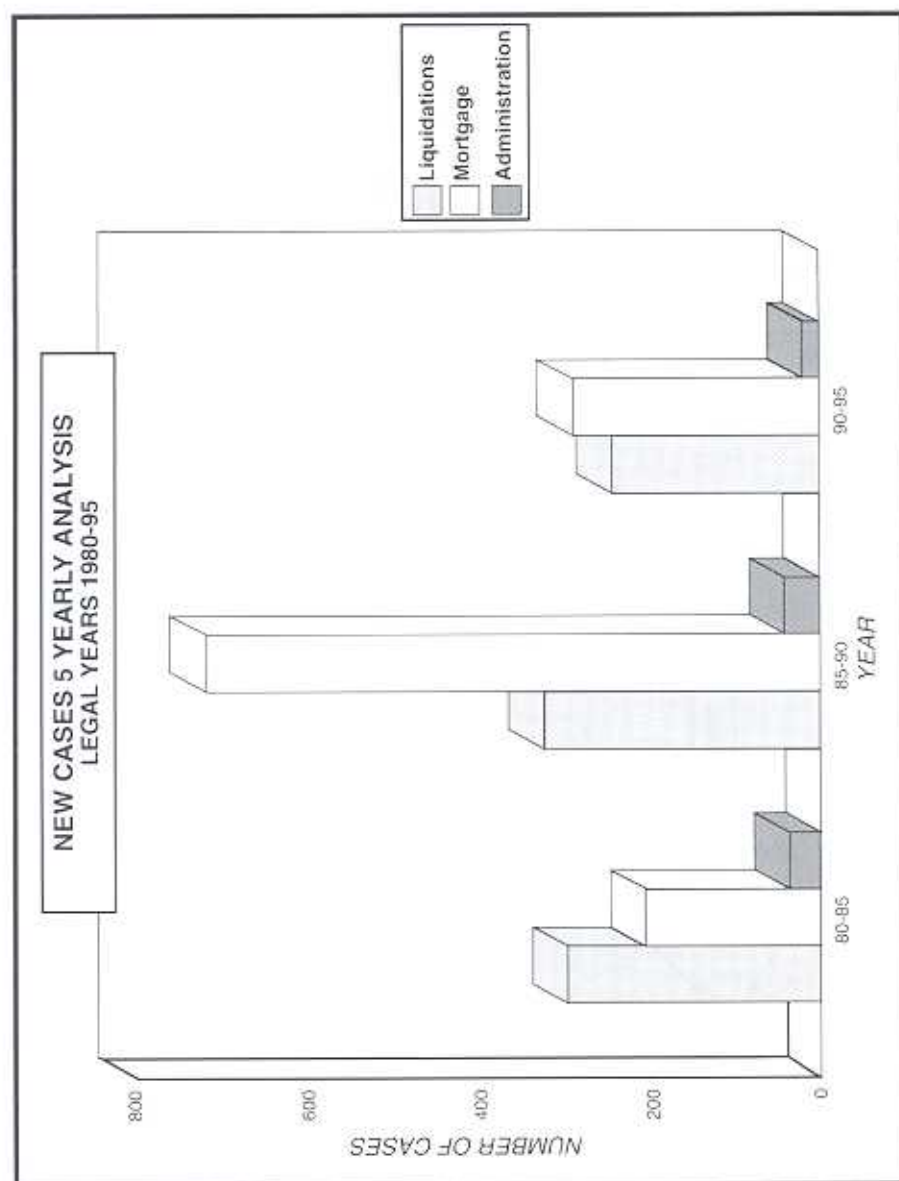
## Examiner's Office

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(vii) NEW CASES - 5-YEARLY ANALYSIS - LEGAL YEARS 1980-95

LEGAL YEARS	LIQUIDATIONS	MTGE. SUITS	ADMINISTRATION SUITS/OTHER	TOTAL
1980/85	297	207	35	539
1985/90	320	710	37	1,067
1990/95	246	292	11	549

# Examiner's Office



## Examiner's Office

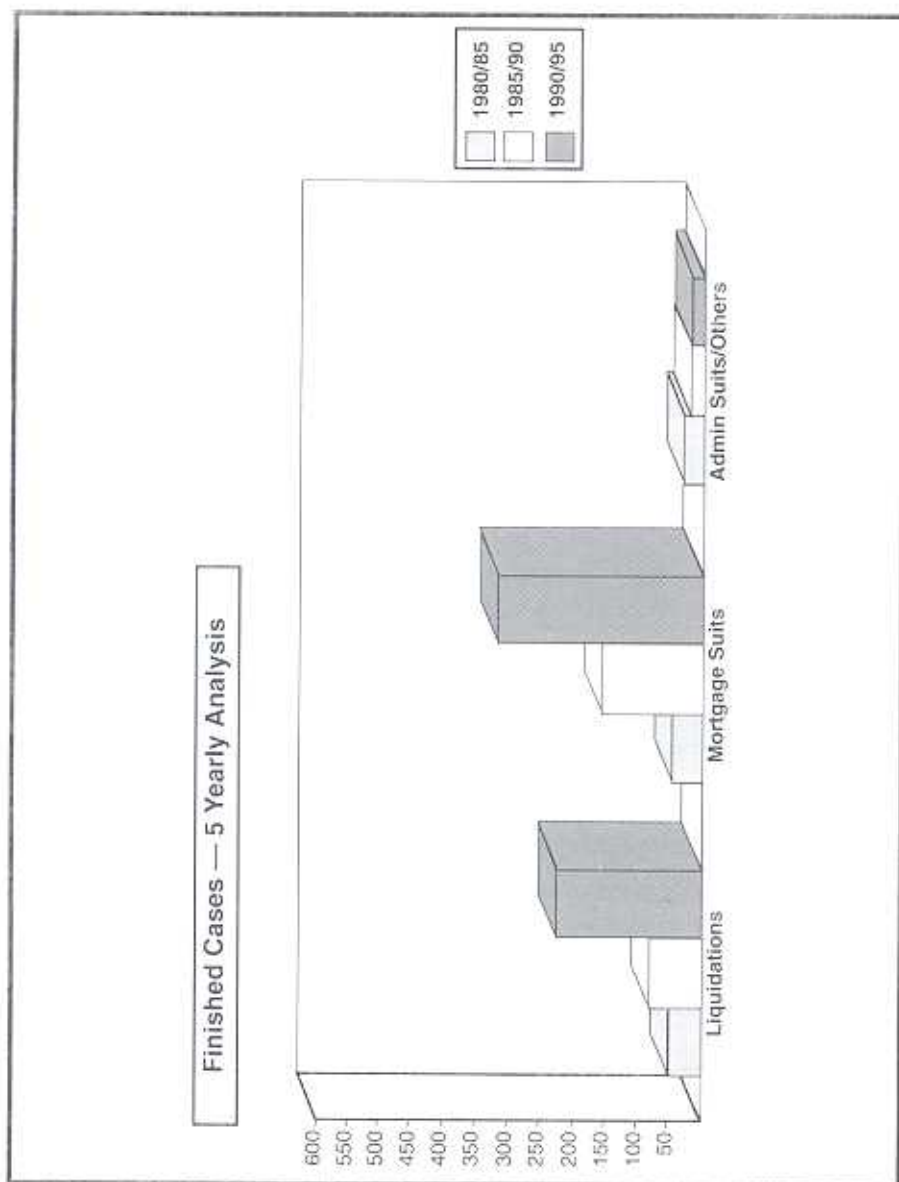
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(viii) FINISHED CASES - 5-YEARLY ANALYSIS  
- LEGAL YEARS 1980-95

LEGAL YEARS	LIQUIDATIONS	MTGE. SUITS	ADMINISTRATION SUITS/OTHER	TOTAL
1980/85	50	46	28	124
1985/90	81	154	20	255
1990/95	224	317	18	559



# Examiner's Office



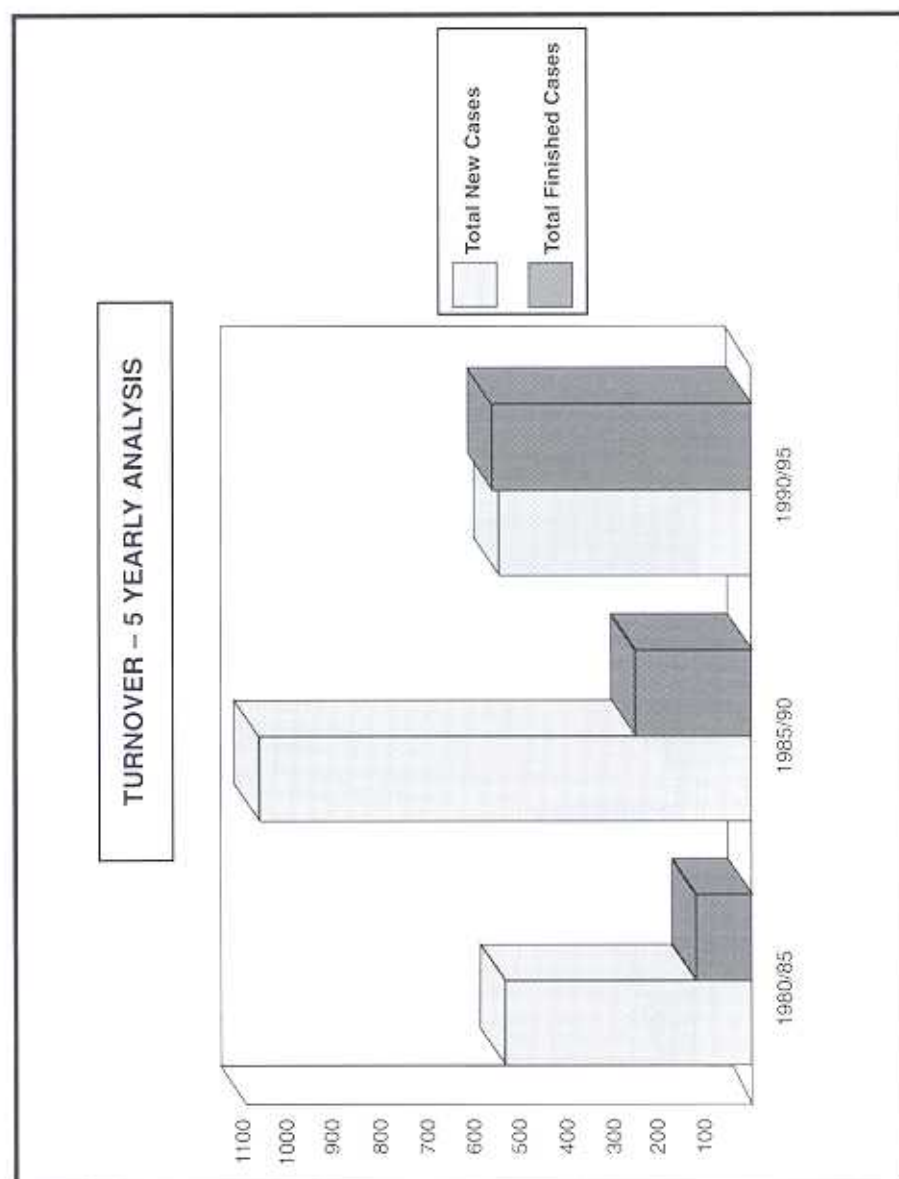
## Examiner's Office

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(ix) **TURNOVER - 5-YEARLY PERCENTAGE FIGURES**  
**- LEGAL YEARS 1980-95**

YEAR	TOTAL INTAKE OF CASES	TOTAL FINISHED CASES	%
1980/85	539	124	23.00%
1985/90	1067	255	23.89%
1990/95	549	559	101.82%

## Examiner's Office



## Examiner's Office

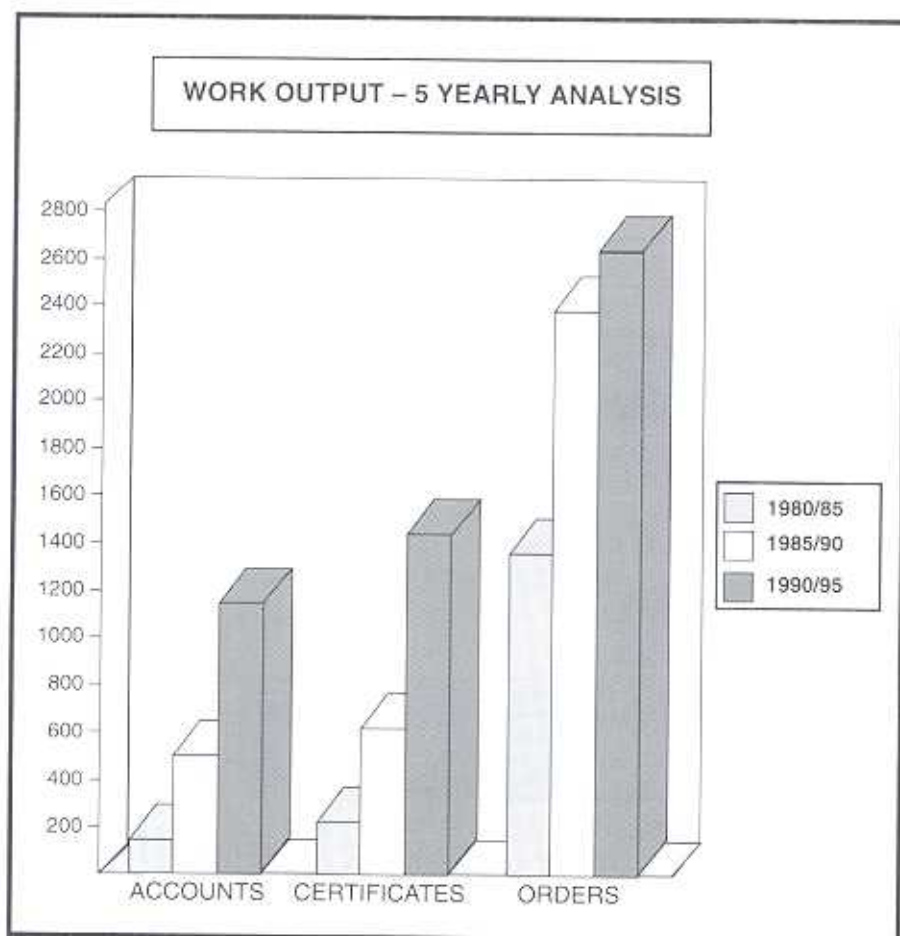
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**(x) WORK OUTPUT - 5-YEARLY PERIODS**  
**- LEGAL YEARS 1980-95**

LEGAL YEARS	ORDERS	CERTIFICATES	ACCOUNTS
1980/85	1,349	206	152
1985/90	2,373	611	492
1990/95	2,637	1,433	1,140



## Examiner's Office



# Official Assignee's Office

## ORGANISATION AND PERSONNEL CHART (Number and grading of staff given in square brackets)

### OFFICIAL ASSIGNEE

(Personal case-load and overall management responsibility)

CHIEF CLERK [1 Assistant Principal]  
(Personal case-load and

BANKRUPTCY INSPECTOR [1 Clerical Officer]  
(Seizes and inventories bankrupt's assets)  
personnel management)

COURT CLERK [1 Higher Executive Officer]  
(Monitors progress in individual cases  
and prepares routine court applications)

TYPING POOL [2 Clerical Assistants (Typists)]  
(Typing of documents  
for all sections of office)

PROOF OF DEBTS SECTION  
[1 Staff Officer, 1 Clerical Assistant]  
(Collates and examines all  
claims from creditors) [1 Staff Officer]

BANK LIAISON  
AND  
DEBT COLLECTION

LEDGER SECTION  
[1 Staff Officer, 1 Clerical Officer]  
(Invests monies realised in individual  
cases, keeps accounts of funds held,  
processes cheque payments)

(Correspondence with banks, collection  
of debts due to bankrupts)

ANCILLARY CLERICAL STAFF [1 Clerical Assistant, 1 Paperkeeper]  
Record-keeping and keeping  
of correspondence register.

# The Course of a Bankruptcy

Inspector inventories and seizes bankrupt's property.	Realisation of individual assets
Banks etc. contacted and Report.	Management information
Bankrupt files Statement of Affairs searches.	1. Inspectors Inventory
Registry of Deeds, Land Registry and Companies Office searches made.	2. Bank Statements etc. 3. Bankrupt's Statement of Affairs. 4. Property and Companies preliminary 5. Detailed notes of interview with bankrupt.
Debtor adjudged bankrupt	Management information appraised at of estate, case conference.
Bankrupt examined by Official Assignee.	Distribution
	Adjudication on claims once sufficient funds realised.

# APPENDIX C3

## Official Assignee's Office Statistics

1. Total number of: Arrangements - 24; Bankruptcies - 459
2. Total amount of funds on hand: Arrangements - £160,910.42; Bankruptcies - £2,958,482.59
3. Distributions since 1984:

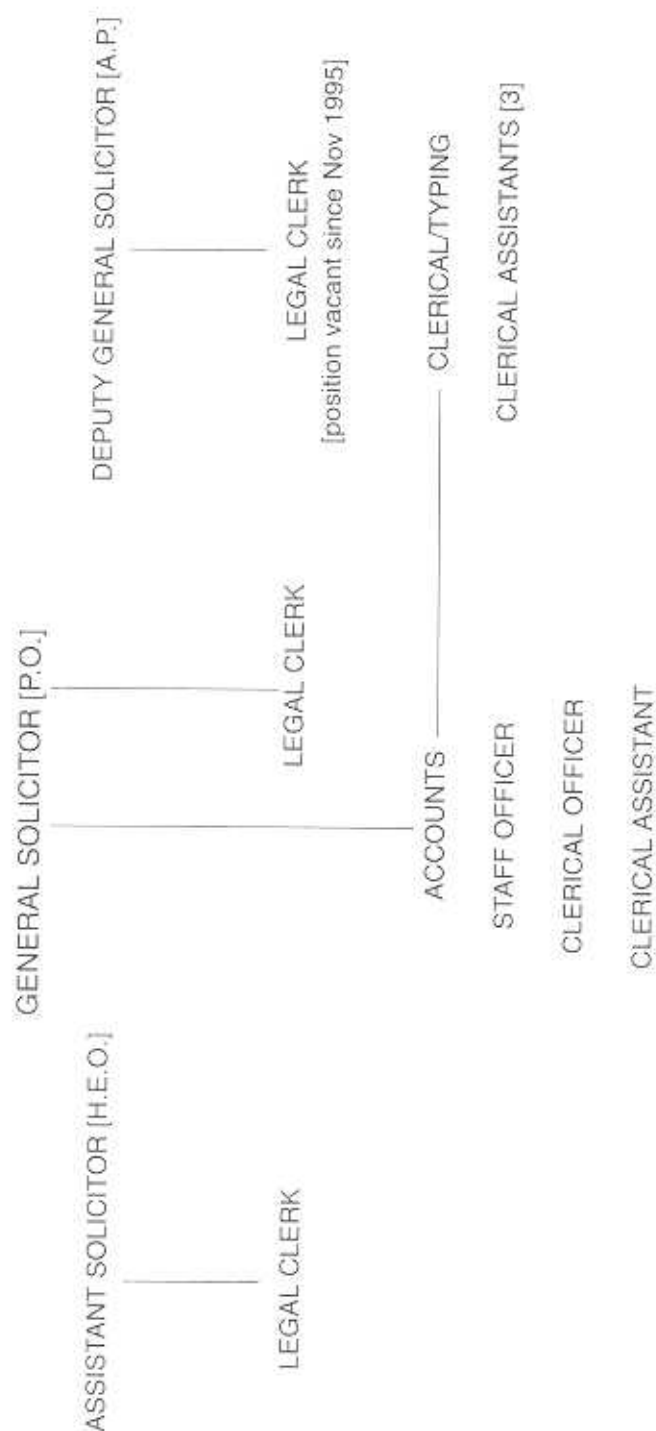
Year	No.	Court Office Fees	Average Court Office Fee	Amount of distribution	Average Amount of distribution
1984	26	50,497.50	1,942.21	481,645.14	18,524.81
1985	24	35,447.12	1,476.96	334,042.91	13,918.45
1986	33	61,803.45	1,872.83	423,410.65	12,830.63
1987	22	23,604.85	1,072.95	133,856.08	6,084.37
1988	29	122,208.25	4,214.08	543,274.51	18,733.00
1989	14	42,860.40	3,061.46	378,003.85	27,000.28
1990	20	32,332.75	1,616.64	578,453.33	28,922.67
1991	16	21,732.75	1,358.20	240,250.92	15,015.68
1992	19	144,066.60	7,582.45	476,257.45	25,066.18
1993	26	103,118.95	3,966.11	1,114,972.56	42,883.56
1994	26	49,216.75	3,515.48	471,808.19	33,700.5
1995	18	228,814.29	12,711.91	992,281.84	55,126.77
1/1/96 to date	12	76,181.10	6,348.43	394,626.16	32,885.51



## APPENDIX D

284	Appeals to Supreme Court this legal year. (From 1st August '95 to June '96)	
	58	Personal Injury
	30	Judicial Review
	68	Interlocutory
	10	Cases Stated
	118	Other

## APPENDIX E



## APPENDIX F1

# The Taxing Masters' Office

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### STATISTICS 1994 TO 1995

#### CERTIFIED BILLS AND BILLS ISSUED

##### MASTER O'CONNOR

AMOUNT CLAIMED	2,151,212.79	NO. OF BILLS CERTIFIED	288
DEDUCTIONS	315,861.72		
AMOUNT CERTIFIED	1,835,351.07	NO. OF ITEMS CERTIFIED	26,486
DUTY	88,765.00		
FEES ON SUMMONSES ISSUED	4,320.00	TAXED OFF 14/6% (14.6830)	

##### MASTER FLYNN

AMOUNT CLAIMED	8,054,651.79	NO. OF BILLS CERTIFIED	337
DEDUCTIONS	1,358,033.90		
AMOUNT CERTIFIED	6,696,617.89	NO. OF ITEMS CERTIFIED	41,849
DUTY	317,300.00		
FEES ON SUMMONSES ISSUED	4,810.00	TAXED OFF 16.8% (16.8603)	

##### TOTALS

AMOUNT CLAIMED	10,205,864.58	NO. OF BILLS CERTIFIED	625
DEDUCTIONS	1,673,895.62		
AMOUNT CERTIFIED	8,531,968.96	NO. OF ITEMS CERTIFIED	68,335
DUTY	406,065.00		
FEES ON SUMMONSES ISSUED	9,130.00		

BILLS WITHDRAWN: 266

FEES ON SUMMONSES OF BILLS WITHDRAWN: 2,660

## The Taxing Masters' Office

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TOTAL FEES 1994 - 1995	£
CERTIFIED BILLS (DUTY)	406,065.00
DUTY STAMPED BILLS (18)	11,010.00
DUTY ON SUMMONSES	9,130.00
REPORTS (8 X £15)	120.00
OBJECTIONS (28 X £7)	196.00
PHOTOCOPYING (APPROX)	20.00
TOTAL DUTY PAID	426,541.00



## APPENDIX F3

# The Taxing Masters' Office

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1994 TO 1995

MASTER O'CONNOR

MONTH	AMOUNT CLAIMED £	AMOUNT DEDUCTED £	AMOUNT CERTIFIED £	DUTY £	ITEMS	NUMBER OF BILLS
AUGUST '94	242,138.01	24,387.56	217,750.45	10,560	2,545	25
SEPTEMBER	73,860.73	30,551.72	43,309.01	2,125	384	8
OCTOBER	42,123.06	6,509.42	35,613.64	1,735	511	7
NOVEMBER	221,857.74	33,392.59	188,465.15	9,265	2,269	42
DECEMBER	245,540.02	29,566.74	215,973.28	10,535	2,148	28
JANUARY '95	133,706.97	22,477.00	111,229.97	5,470	1,687	22
FEBRUARY	156,959.07	19,424.54	137,534.53	6,675	1,316	22
MARCH	192,385.43	26,737.23	165,648.20	7,485	2,483	32
APRIL	228,240.09	39,380.97	188,859.12	9,125	1,265	18
MAY	213,062.54	22,153.82	190,908.72	9,310	7,761	29
JUNE	139,451.10	15,157.44	124,293.66	5,975	1,957	22
JULY	261,888.03	46,122.69	215,765.34	10,505	2,160	33

PERCENTAGE TAXED OFF: 14.6%

## APPENDIX F4

# The Taxing Masters' Office

1994 TO 1995

### MASTER FLYNN

MONTH	AMOUNT CLAIMED £	AMOUNT DEDUCTED £	AMOUNT CERTIFIED £	DUTY £	ITEMS	NUMBER OF BILLS
AUGUST '94	893,199.60	169,030.01	724,169.59	35,130	4,706	42
SEPTEMBER	283,279.07	35,528.45	247,750.62	11,935	3,559	21
OCTOBER	168,981.81	51,447.07	117,534.74	5,685	624	12
NOVEMBER	628,681.57	230,172.74	398,508.83	15,960	1,990	21
DECEMBER	521,742.91	86,168.86	435,574.05	20,690	3,127	28
JANUARY '95	682,149.01	104,509.37	577,639.64	27,725	4,392	36
FEBRUARY	703,679.33	160,479.04	543,200.29	26,090	2,467	24
MARCH	732,688.08	117,812.54	614,875.54	29,475	3,651	31
APRIL	319,107.31	60,010.41	259,096.90	12,070	2,079	22
MAY	621,239.28	61,313.72	559,925.56	26,840	3,070	27
JUNE	1,017,001.06	142,605.92	874,385.14	41,910	4,238	38
JULY	1,482,902.76	138,955.77	1,343,946.99	63,790	7,946	36

PERCENTAGE TAXED OFF: 16.8%

# The Taxing Masters' Office

## RETURN OF PROCEEDINGS FOR YEAR ENDING 31ST JULY, 1995

\*NOTE: Michaelmas Term is inclusive of August and September

ITEMS	MICHAELMAS TERM £	HILARY TERM £	EASTER TERM £	TRINITY TERM £
AMOUNT OF FEES	123,620.00	102,920.00	57,345.00	122,180.00
AMOUNT OF COSTS CLAIMED	3,375,404.52	2,547,567.89	1,381,649.22	2,901,242.95
AMOUNT OF COSTS ALLOWED	2,624,649.36	2,150,128.17	1,198,790.30	2,558,401.13

AMOUNT OF COSTS CLAIMED: 10,205,864.58

AMOUNT OF COSTS ALLOWED: 8,531,968.96

AMOUNT OF FEES (DUTY): 406,065.00

