



WORKING GROUP ON A COURTS COMMISSION

A WORKING PAPER ON INFORMATION AND THE COURTS

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Introduction

1. INTRODUCTION

It is the essence of an open democratic society that there are adequate channels of information between the organs of government and the people from whom they derive their authority. In the case of the courts one consequence of this principle is that justice, with a few exceptions, is administered in public. The right of access by the public to the courts is enshrined in the Constitution of Ireland, Article 34.1 of which states that:

“Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.”

Consequently, in most cases courts are open to the public who are entitled to enter, see and listen to justice being administered. This is a right which is exercised by many people every day in courts all over the country.

However, there are some instances in which the hearing is not in public. In these circumstances courts are held in private, usually described as being in camera.¹

While the best way of learning about what is happening in courts is to attend in person, the reality is that most people do not have the time or opportunity to do so. Consequently, in general, information about the courts is obtained through the media in one form or another. It is essential that there are channels or systems enabling the

¹ Circumstances in which a case is heard in camera or where a court has a discretion to exclude persons are set out in Appendix A.

communication of information from the courts to the public and the media.

The Courts Service Bill, 1997 refers to this issue. Section 5 states:

“The functions of the Service shall be to—

. . .

(c) provide information on the courts system to the public,”.

Consequently, the provision of information on the courts system is an important aspect of the proposed Courts Service. The manner in which that should be addressed is the subject of this paper.

2. COURTS ASSISTANCE OFFICER

In its First Report, the Working Group recommended that:

“there should be located in Courts an Information Desk where people may obtain information on all aspects pertaining to the Courts.”²

The Working Group welcomes the establishment in February 1997 of the position of Courts Assistance Officer. The Courts Assistance Officer works at the Information Desk which is located in the Four Courts, Dublin. She responds to queries and seeks to assuage the stress and confusion which often accompanies a day in court for the litigants and lay witnesses concerned.

The Four Courts building fills tourists with wonder. Their visit is a pleasurable one. However, court users can find it a very cold and unwelcoming environment. A “user friendly” attitude towards court users is necessary to reduce their discomfort and to ensure they feel respected and understood. By so doing the dignity of both the courts and people are upheld.

The main source of queries to the Courts Assistance Officer are from people involved in civil or criminal proceedings. Many have availed of the service, including witnesses, jurors, visitors, couriers, members of the legal professions, the Gardaí and the press.

The fragmented arrangement of the courts at the Four Courts, Dublin has resulted in frequent queries seeking the location of particular courts.

² Working Group on a Courts Commission: First Report: *Management and Financing of the Courts*, April 1996, p.53.

Users of the service also repeatedly seek the location of other services in the Four Courts including the Law Library and many court offices. Individuals also ask questions such as at what time their case will be heard, how to appeal a decision or how to complete a particular form. Others have sought general information on the Irish legal system.

Most visitors using the service do not appear to realise that the vast majority of trials are open to the public. This is further evidence of a lack of information on the legal system and strengthens the case for the establishment of a public information service for the courts.

The Working Group commends the work done by the first and current Courts Assistance Officer, Ms. Carol Kelly, and recommends that this service should be enhanced by the provision of clear strategically-placed notices alerting those entering the Four Courts to the existence of this service. In addition, consideration should be given to providing a similar service for courts in major centres outside Dublin.

The Service provided by the Courts Assistance Officer should be distinguished from the focus of this Report which is the creation of an Information Office for the courts which would provide and enable access to a comprehensive spectrum of information about the Irish Courts.

3. INFORMATION, GOVERNMENT AND THE STATE

There are already in our community institutions which provide information to the public and media on government. As the new Courts Service is established it will be necessary to provide a comprehensive information service to the public and the media on the new service. It is useful to consider the information services provided by some state bodies to consider the position of an information service for the Courts Service.

Government Information Services

The Government Information Bureau was established to collect and make available for publication information concerning the activities of the Government. This service was expanded in 1973 when the Bureau became the Government Information Services. Since that time Government Information Services has provided a comprehensive information service to the media and the public on behalf of the

Executive. The cost of running the G.I.S. in 1996 was approximately £230,000.³ This figure breaks down as follows:

	£
Staffing costs:	177,000
Official entertainment	4,637
Staff training and development	365
Couriers	11,917
Newspapers	6,901
Miscellaneous	159
G.I.S. media ⁴	29,510

4. SOCIAL WELFARE INFORMATION AND MEDIA SERVICES

The Social Welfare Information and Media Services office provides information on all schemes operated by the Department of Social, Community and Family Affairs (formerly the Department of Social Welfare). The staff of thirteen handle approximately 6,000 telephone calls per month in addition to providing some 35 to 40 detailed written responses each week.

The range of functions performed by the office include: providing a support service for 60 Social Welfare Information Offices across the country; producing and distributing some 100 leaflets, booklets and fact sheets; compiling and updating Social Welfare information for AERTEL; co-ordinating advertising on behalf of the Department; making presentations to voluntary groups, employers, employees, other Government Departments and State Agencies such as FAS; and proof reading material prepared by other relevant agencies such as the National Organisation of the Unemployed.

The modern nature of this consumer based information service provides a good example for a Courts Service information office.

5. CENTRAL TELEPHONE INFORMATION OFFICE OF THE REVENUE COMMISSIONERS

The Revenue Commissioners have opened a Central Telephone Information Office which provides a general information service on various forms of tax, including income tax, capital gains tax, corporation tax and VAT. This office, which is open from 9.30 a.m. to 5.00 p.m.,

³ Figures provided by the Finance Unit of the Department of the Taoiseach.

⁴ The G.I.S. Media subhead item covers costs such as photography, news programme transcripts and other media costs.

Monday to Friday, does not close for lunch and handles some 800-900 calls per day.

The office employs a staff of thirteen. The productivity of this staff is maximised by use of an Automatic Call Distribution package and appropriate information technology. Each officer has a personal computer.

This office complements the other information services provided by the Revenue Commissioners. It does not have access to individual files and refers taxpayers querying their own tax affairs to their individual tax district.

6. FREEDOM OF INFORMATION ACT

The Freedom of Information Act, 1997 is indicative of a growing recognition of the need for openness, transparency and communication in the public sector. This legislation, which will enter into force in April, 1998, grants to every person a right of access to records held by a public body. To facilitate such access, the Act obliges public bodies to give reasonable assistance to a person seeking a particular record. It also requires a public body to prepare and publish a comprehensive reference book outlining, amongst other things, its structure, organisation, functions, powers and duties. The public body must also offer a description of the service it provides to the public.

Under this Act individuals will be entitled to access records relating to either the general administration of the courts or to the officers of the courts. In addition, any person will be entitled to access records relating to proceedings in a court held in public, whose disclosure to the general public is not prohibited by the court.

A Courts Information Service would complement the operation of the Freedom of Information Act in a consumer-friendly fashion.

CHAPTER 2

Court Information in Other Jurisdictions

The matter of appropriate communication between the courts and the community has been addressed in other jurisdictions. This has been done in a number of different ways. The Working Group considered the approach taken in England and Wales, the United States of America, New Zealand, Canada, Australia, the European Court of Justice and Northern Ireland.

1. ENGLAND AND WALES

A Press Office has been established within the Communications Branch of the Lord Chancellor's Department to act as a bridge between the Department (including the Courts of England and Wales) and the media.

Personnel

Within the Press Office there is a Chief Press Officer and three other Press Officers. Their work is facilitated by appropriate support staff, including an office manager, a publications co-ordinator and two clerical assistants.

Objective

The Press Office seeks to ensure informed and accurate reporting of activities within the Lord Chancellor's office, with particular reference to trials and decisions in the Courts of England and Wales.

This aim is pursued through a number of avenues, including:

- (i) Handling media enquiries about particular cases.

- (ii) Supplying information to media officials, including copies of judgments, sentencing observations (where provided by the trial judge) and occasionally summaries of complex, lengthy or high-profile judgments. (Such summaries are written by the particular judge; the Press Office does not offer its own summary or interpretation of judgments). Occasionally the Press Office will place judgments on the Internet, although it is not standard practice to do so.⁵
- (iii) Writing and issuing press notices.⁶
- (iv) Correcting inaccurate reports of trials and decisions, either through contacting the relevant media organisation or, if necessary, through the issue of a press release.
- (v) Co-ordinating the reporting of high-profile trials through the preparation of Media Court Guides which set out:
- Details of the time and location of trial;
 - court timings;
 - security;
 - media accommodation: press rooms, media seating in court, etc.;
 - names and biographical sketches of the judge and counsel;
 - names of court staff;
 - official media contacts in the Press Office, and, where appropriate,
 - official contacts in the police and Crown Prosecution Service;
 - a copy of the indictment;
 - any orders restricting or otherwise governing reporting of a trial;
 - other practical information: maps, parking facilities, telephone locations, etc..
- (vi) Advising and assisting the judiciary and Department officials with media requests, interviews, etc.

⁵ Any summaries or judgments placed on the Internet can be accessed at www.open.gov.uk/lcd/lcdhome.htm.

⁶ Press notices are available on the Internet at www.coi.gov.uk/coi/depts/GLC/GLC.html.

- (vii) Attending Parliamentary debates and monitoring the passage of legislation in both Houses.
- (viii) Keeping the judiciary abreast of the service provided by the Press Office through seminars and a forthcoming information booklet.⁷

2. UNITED STATES OF AMERICA

The Supreme Court of the United States of America is served by a Public Information Office. This office employs a staff of five: a Public Information Officer, two persons who share a single position as Assistant PIO, a secretary and an assistant secretary. The functions of the Office can be classed under three headings: The Press, The Public and The Court.

I The Press

About 60% of the Office's time is devoted to facilitating competent coverage of the court and establishing and maintaining good relations with journalists assigned to the Supreme Court.

The Office assists journalists in the following ways:

- (i) Providing basic court documents including orders, opinions (judgments), underlying petitions and briefs, conference lists and other resource materials. The Press Office does not interpret the court's opinions.⁸
- (ii) Administering the Pressroom in the Supreme Court and assigning court press credentials and seating in the courtroom.
- (iii) Organising press coverage of major court events such as investitures or particularly newsworthy oral argument.
- (iv) Educating reporters who may not regularly report court proceedings, but who may be assigned to a particularly high-profile case.
- (v) Facilitating visiting journalists.

⁷ The Working Group wishes to thank Mr. Mike Wicksteed, Chief Press Officer and Deputy Head of Communications, The Lord Chancellor's Department, for his exposition of the workings of the Press Office.

⁸ However, each case to be argued before the Supreme Court is analysed in a publication, *Preview* which is written by academics and published by the American Bar Association.

- (vi) Serving as a liaison between the press and all other officers of the Supreme Court and individual judges, if requested.
- (vii) Handling all requests for filming and photography within the Supreme Court Building.

II The Public

The Information Office serves as a clearinghouse for telephone enquiries on every subject concerning the court.

The Office provides information to members of the public on the court, its members, its work and its history. It designs and writes several guides or booklets: one historical, one on visiting the court and one dealing with attending oral argument. The Office was also instrumental in the development of a film for visitors to the court.

A site on the World Wide Web is forthcoming. The Office also liaises between the police and those planning public demonstrations in front of the court.

III The Court

The Public Information Office also serves as an informal in-house source of news and information for those employed within the Supreme Court Building.⁹

3. NEW ZEALAND

The High Court of New Zealand has recently created the post of Senior Judicial Communications Adviser. This post was modelled on similar positions established in several Australian states. The objective of the Adviser is to help maintain public confidence in an independent Judiciary by being as open as possible with the public and with the media about how the New Zealand Courts process works.

The functions of the position include handling media inquiries on behalf of the New Zealand Judiciary, reducing the risk of misreporting, advising the Judiciary on controversial or potentially controversial public issues and responding publicly on behalf of the Judiciary in appropriate circumstances. The Adviser also co-ordinates responses by members

⁹ The Working Group wishes to thank Ms. Toni House, Public Information Officer to the Supreme Court of the United States, for providing this summary of the functions of the Public Information Office.

of the Judiciary to issues raised in the media by assisting with interviews given by judges and other matters.

The current Adviser is qualified both as a lawyer and as a journalist.¹⁰

4. CANADA

The position of Executive Legal Officer to the Chief Justice of Canada was created approximately twelve years ago and has been filled by full-time academics on sabbatical leave from Universities. The person appointed comes from a senior position in a law department of a University in Canada, someone who has had a reasonable level of experience of the Supreme Court's judicial work. The position is offered on the basis of a two year contract which is renewable for one year. Thus, the position is filled by one person for a maximum of three years.

By definition, the incumbent works very closely with the Chief Justice. Hence the duties and functions of the position are linked to the various spheres of responsibility which attach to the position of Chief Justice of Canada. Many of these duties and functions fall outside the scope of this Paper and as such are not summarised here.

Approximately 10% of the Executive Legal Officer's workload falls under the heading of media relations. This includes:

- (i) responding to media enquiries seeking information about the Supreme Court;
- (ii) establishing and maintaining a professional relationship with court reporters;
- (iii) informing the media of ceremonies, retirements, or other newsworthy items; and
- (iv) facilitating accurate legal reporting.

This last function is executed through various means such as:

- (a) providing advance notice of proceedings and judgments in the Supreme Court, and
- (b) providing copies and explanations of judgments.

¹⁰ The Working Group wishes to thank Mr. Neil Billington, Senior Judicial Communications Adviser, The High Court of New Zealand, for providing material for this summary.

(a) *Providing advance notice of proceedings and judgments in the Supreme Court.*

In the week preceding a sitting of the court the Executive Legal Officer issues to the Press a list of the cases to be heard and a brief summary of the facts of each case. The Canadian Supreme Court gives its judgments on Thursdays, usually one Thursday per month. The Canadian Supreme Court ceased reading their judgments in court about 10 years ago. Usually about eight judgments are released on the Thursday. On the preceding Friday the Executive Legal Officer indicates to the media what reserved judgments will be given the following Thursday.

(b) *Providing copies and explanations of judgments.*

On the Thursday morning the Executive Legal Officer meets with members of the Press and provides, free of charge, copies of the judgments about to be released. These copies are subject to an embargo of, usually, two hours. Background is provided by way of a verbal briefing to the media covering the facts, the history, the issues and the importance of given cases. The Executive Legal Officer stays with the Press between 9.00 a.m. and 11.00 a.m. to assist their reporting of these judgments. This briefing is for information only. It is not for attribution. Almost all such discussions are “off-the-record”.

The Executive Legal Officer sits on the Media Liaison Committee, which also includes two or three representatives of the media and two or three members of the Supreme Court. This Committee meets about twice a year, more or less on an as-needed basis, and serves as a forum for reciprocal communication between the court and the media.¹¹

5. AUSTRALIA

Several of the Federal and State Courts of Australia have appointed courts information officers (or officers with similar titles and functions). For the purpose of this working paper, the position of Courts Information Officer within the Supreme Court of Victoria, which was created in 1993, has been selected as a useful model.

¹¹ The Working Group wishes to thank Mr. Robin Elliot, Executive Legal Officer of the Supreme Court of Canada, for providing material for this summary, including *The Role of a Media Spokesperson for the Courts — The Supreme Court of Canada Experience* by Robert J. Sharpe 1 M.C.L.R. 271, which has also been used as a basis for this synopsis.

Although the position is a demand-driven one, the following can be cited as among the main functions of this officer:

- (i) Providing information concerning the work of all Victorian Courts.
- (ii) Avoiding aborted trials.
The Courts Information Officer seeks to assist the media in an effort to avoid reporting which could prejudice a trial. This is done by either alerting the media generally or contacting individual reporters if necessary. If requested, the Courts Information Officer will convey a judge's concern about the reporting of a trial to court reporters. While he or she occasionally answers reporters' questions, the Courts Information Officer will not offer expert legal opinion.
- (iii) Assisting the media so as to ensure accurate and fair reporting of trials and other events involving the courts.
- (iv) Organising seminars for reporters on areas such as contempt of court, restrictions affecting the reporting of jury trials and statutory restrictions on reporting.
- (v) Assisting members of the judiciary who wish to grant a radio or television interview. The Courts Information Officer does not perform a public relations function.¹²

6. COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

As part of the support to the Court of Justice of the European Communities and the Court of First Instance, there exists a Press and Information Division, which deals with the matters under discussion in this paper. The Division employs five lawyers and ten support staff.

Each lawyer is assigned responsibility for press and media relations with a certain group of Member States. He or she will also host any lawyers from a country within his or her group who visit the court, in addition to organising replies to requests from them.

Recently, the court has begun to publish, in each official language, all its judgments on the Internet the day they are read.¹³

¹² The Working Group wishes to thank Ms. Prue Innes, Courts Information Officer, The Supreme Court of Victoria, for providing material for this summary. Information has also been taken from *The Courts, the Media and the Community — A Victorian Perspective*, by the Hon. Mr. Justice Teague, (1995) 5 Journal of Judicial Administration p.22.

¹³ See <http://europa.eu.int/cj/index.htm>

Occasionally, the lawyers within the Press and Information Division will prepare and release a Press communique on the day a judgment or opinion of an Advocate General is released. Any such communique must be approved in advance by the President.

In addition, each of the five lawyers and their staff perform certain tasks for the court itself. One is responsible for producing a weekly digest of decided cases (20,000 copies per week). Another produces a weekly diary of hearings of the ECJ and the CFI for the following week with a brief summary of the point at issue. A third lawyer is responsible for general information publications and the Internet site. Another is in charge of the photo library and the distribution of published material. Finally, a fifth lawyer handles the organisation of study visits.

These tasks involve a certain degree of co-operation with the members of the court and their chambers.

The Press and Information Division do not publish the ECJ Court Reports nor any Notifications which appear in the Official Journal of the European Communities.¹⁴

7. NORTHERN IRELAND

A Communications Unit was established within the Northern Ireland Court Service some four years ago. This Unit has a broad spectrum of responsibilities, the most relevant of which are:

- (i) Dealing with all requests and queries from members of the press/media.
- (ii) Co-ordinating notable events such as major trials and opening of new courthouses.
- (iii) Regulating film access to courthouses.
- (iv) Providing information about the Court Service to facilitate responses to Parliamentary questions, Minister's cases and departmental enquiries.
- (v) Scanning the daily newspapers for material relevant to the Court Service.
- (vi) Developing the principles of a Citizen's Charter and encouraging better customer service within the Northern

¹⁴ The Working Group wishes to thank Mr. T.L. Cranfield, Assistant Registrar, the Court of Justice of the European Communities, for providing information for this summary.

Ireland Court Service. This has been done by developing and publishing a range of information sources, including:

- (a) local information leaflets and location maps
- (b) an information leaflet on the work of the Enforcement of Judgments Office
- (c) a general information pack on the work and structure of the NICtS
- (d) the Annual report of the NICtS.¹⁵

¹⁵ The Working Group wishes to thank Mr. Trevor Long of the Communications Unit, Northern Ireland Court Service, for providing material for this summary.

Information Office

The Working Group has considered carefully the alternatives from other jurisdictions. Whereas there are benefits in each variation the **Working Group advises that the most appropriate method of meeting the need for the communication of information between the courts and the community is the creation of an Information Office for the courts.** This would be within the new Courts Service.

The creation of the Courts Service and the introduction of modern management techniques within the Courts should take place side by side with the free flow of information on the new developments within the Courts to the community. Thus, an Information Office should be established as soon as possible.

FUNCTIONS OF AN INFORMATION OFFICE

(1) Public information function:

An Information Office would provide a comprehensive spectrum of information about the Irish courts and seek to enhance public awareness of the courts generally.

Information would be provided on the Courts Service. The office would be responsible for compiling and distributing information on the structure, administration and history of the courts. This function could be executed through information booklets, a visitors' film, a web-site or other appropriate media having regard to the current and future state of information technology.

Such a service would be of little use without sufficient sources of information at its disposal. The dearth of useful statistics on the Irish legal system was highlighted in the First Report of the Working Group,¹⁶ and merits reiteration in this context.

¹⁶ Working Group on a Courts Commission, First Report, *Management and Financing of the Courts*, April 1996, p.53.

The Information Office could also organise visits to court by interested groups.

In the First Report, it was recommended that the accountability of the Courts Service would be maintained through, inter alia:

- “— The publication of an Annual Report on the performance of the Courts Service, with statistical information on the effectiveness of the Courts Service.
- The preparation and presentation of information to the public and court users on an ongoing basis including the provision of educational material to schools, jurors and Court users.
- The publication of a “charter for court users.”¹⁷

The Information Office would assist in the preparation and dissemination of these materials.

(2) Media liaison function:

In pursuance of this aspect of the Information Office’s remit it would be the function of the Information Office to:

- (i) Facilitate accurate coverage of court proceedings.
- (ii) Assist the reporting of high profile trials.
- (iii) Establish and maintain relations with media organisations and their employees.
- (iv) Listen to the requests of court reporters and seek to accommodate them.
- (v) Meet on regular basis with court reporters to alert them to forthcoming judgments of interest. These meetings would be for the purposes of information only, and would not be attributable to the Information Officer and would not refer to the substance of any undelivered judgment.
- (vi) Advise reporters of upcoming events of interest such as the swearing-in of a new judge or the retirement of existing judges.
- (vii) Operate a system whereby provision would be made to bona fide members of the Press of copies of public court documents.

¹⁷ *ibid.* p.46

- (viii) Seek to facilitate proper journalistic standards in court reporting.
- (ix) Bring to the attention of court reporters orders affecting the reporting of a trial.
- (x) When requested, convey to members of the media a judge's concerns about the reporting of a particular trial.
- (xi) Point out errors of fact appearing in media reports of court proceedings either by contacting the journalist in question or, if necessary, by issuing an appropriate press release.
- (xii) Serve as an outlet for judicial response to media criticism when requested to do so.
- (xiii) Provide information on the Courts Service generally, as required.

(3) In-House Courts Service Communications:

In pursuance of this aspect of the Information Office's role the functions of the Information Office would include:

- (i) To support the Chief Executive of the Courts Service to maintain communications with the staff and the judiciary.
- (ii) The publication of a Newsletter within the Courts Service.
- (iii) To ensure that the work and progress of the Courts Service are highlighted including the dedicated work of individual staff who provide service to the public.
- (iv) To ensure that there are clear guidelines for all who work within the courts on the need for communication within the service and also guidelines for communication with the public.

(4) Instruction:

In addition the Information Office, in conjunction with the Training and Development Officer, would produce training and instructional modules, for example for

- Jurors
- Staff communications

- Customer service
- Communication with the media

(5) Positioning of Information Office within the Courts Service:

The Information Office would perform a supporting role to the Courts Service. The office would operate close to the Chief Justice and the Chief Executive. The Chief Executive would have management control of the office's functions and performance.

Access to Public Documents for Bona Fide Journalists

The Commission on the Newspaper Industry which was chaired by the former Chief Justice, Mr. Justice Thomas A. Finlay, reported in June, 1996. The Commission made a recommendation in relation to the provision of procedures for making available to bona fide journalists the right to inspect court documents which have become part of a public hearing in court. The Commission stated:

“7.59 Two other matters which do not form part of the law of libel but which receive significant emphasis in submissions on the burdens imposed by the existing law of libel on newspapers, are the questions firstly of access by the newspapers to court records and documents so that they can have an accurate source of information for reporting court proceedings and, secondly, . . .

7.60 These problems, though submitted by a number of different newspapers, are particularly the concern, the Commission is satisfied, of local papers.

7.61 The Commission accepts the genuineness of these complaints and would recommend that there should be a simple and certain procedure for making available to *bona fide* journalists, exercising their rights to provide material for newspapers, the right to inspect court documents which have become part of a public hearing in the court”.¹⁸

The Government noted the findings of the Commission. In relation to the foregoing recommendations the Government in 1996 decided that, due to its detailed and technical nature, the Working Group on a Courts Commission should be requested to report on this recommendation.

¹⁸ Report of the Commission on the Newspaper Industry, 1996.

Accordingly, the Minister for Justice requested the Working Group to consider and report on the said matter.¹⁹

The Working Group has considered the matter and will conduct a conference early in 1998 with representatives from the press, the judiciary, the Bar Council of Ireland, the Law Society, court staff, the media and other interested and appropriate personnel to consider a practical answer to this problem and as to how it can be provided for within the Courts Service.

¹⁹ Request from Minister for Justice to Working Group on a Courts Commission dated 20th December, 1996

CHAPTER 5

Conclusion

RECOMMENDATION

The Working Group recommends that there be established an Information Office within the proposed Courts Service to provide information on the Courts.

CONFERENCE

The Working Group will conduct a conference early in 1998 with representatives from the press, the judiciary, the Bar Council of Ireland, the Law Society, court staff and other interested and appropriate personnel to consider a practical procedure to make available through the proposed Courts Service to the public and the media court documents which have become part of a public hearing in court.

Cases Heard in Camera or where a Court has a Discretion to Exclude Persons

The special and limited circumstances in which a trial may be held in camera are prescribed by law. Section 45(1) Courts (Supplemental Provisions) Act, 1961 provides for the hearing of a number of matters in camera. These include applications of an urgent nature for habeas corpus, bail, prohibition or injunction; matrimonial causes and matters, lunacy matters and matters involving minors; and proceedings involving the disclosure of a secret manufacturing process. In addition to Section 45(1) there are other similar provisions such as Section 205(7) Companies Act, 1963, which create limited exceptions to the general rule that justice shall be administered in public.

FAMILY LAW CASES

The vast majority of cases held in camera are family law cases. These are held in private “in order to preserve, for the sake of the children and their welfare, a decent privacy in relation to the disputes which have arisen between their parents.”²⁰ Thus Section 34 of the Judicial Separation and Family Law Reform Act, 1989 provides “*proceedings under this Act shall be heard otherwise than in public*”. This provision is carried over into the Family Law Act, 1995 which at Section 38 subsection (6) states that Sections 33 to 36 of the 1989 Act shall apply to proceedings under this Act in the Circuit Family Court and in the High Court. Virtually the same provision is made in the Family Law (Divorce) Act, 1996 at Section 38 subsection (5) which states that Sections 33 to 36 of the 1989 Act shall apply to proceedings under the 1996 Act both in the Circuit Court and in the High Court. Section 29 subsection (1) of

²⁰ As stated by O’Higgins C.J. in *In re Kennedy and McCann*, [1976] I.R. 382 at p.385.

the Child Care Act, 1991 provides that proceedings under Parts III, IV or VI shall be heard otherwise than in public. Part III deals with protection of children in emergencies, Part IV deals with care proceedings and Part VI deals with children in the care of Health Boards. This means that all modern child and family legislation provides that the proceedings shall be heard otherwise than in public.

SPECIFIC CRIMINAL TRIALS

The Court has a discretion to exclude persons, but not bona fide representatives of the press, from criminal trials in specific circumstances such as under Sections 114 and 131 of the Children's Act, 1908 as amended by Section 29 of the Children Act, 1941; Section 20(3) of the Criminal Justice Act, 1951; Section 16(2) of the Criminal Procedure Act, 1967; Section 6 of the Criminal Law (Rape) Act, 1981 as inserted by Section 11 of the Criminal Law (Rape) (Amendment) Act, 1990; and Section 2 of the Criminal Law (Incest Proceedings) Act, 1995. The admittance of representatives of the press to such trials is usually coupled with reporting restrictions designed to protect the anonymity of those involved. Thus Section 7 of the Criminal Law (Rape) Act, 1981 as amended by Section 17(2) of the Criminal Law (Rape) (Amendment) Act, 1990 prohibits the publication of material likely to identify a complainant in the prosecution of a sexual assault offence except in the limited circumstances set out in the Act. Section 8 of this Act prohibits the publication of material likely to identify an accused in the prosecution of a rape offence. Such material may only be published after he has been convicted or following a judicial direction given pursuant to Section 8. Similarly, Section 3 of the Criminal Law (Incest Proceedings) Act, 1995 provides that after a person has been charged with an offence under the Punishment of Incest Act, 1908, no matter which is likely to identify either the accused or the person in relation to whom the offence is alleged to have been committed shall be published or broadcast. The purpose of such legislation is to protect the victim. Similarly, Section 18(1B) of the Broadcasting Act, 1960 (inserted by Section 3 of the Broadcasting Amendment Act, 1976) and Section 9(1)(e) of the Radio and Television Act, 1988 oblige R.T.E. and Independent Sound Broadcasters not to encroach unreasonably on the privacy of any individual.

It should be stressed that an in camera hearing is an exceptional court case. The vast majority of cases are held in open court and any person who wishes to is entitled to attend.

Wt. P52064. 750. 1/98. Cahill. (M27027). G.Spl.