THE IRISH COURTS SYSTEM IN THE 21ST CENTURY: PLANNING FOR THE FUTURE

THE HON. MR. JUSTICE RONAN KEANE*

The Irish courts system, since it was first established in 1924, has never been subjected to any critical analysis conducted with a view to ascertaining how far it falls short of achieving the presumed objectives of any such system. I do not suggest for a moment that within the compass of a short paper I can hope to fill that remarkable void. What I hope to do is to survey the structure itself, compare it with those that exist in other countries and identify what seem to be any problem areas. Again, it would be over ambitious to suggest any detailed solutions to such problems as appear to arise: I will content myself with indicating possible strategies that might at least be considered.

As to the objectives, it would probably be generally agreed that it is the duty of the State to provide the citizens with a system of civil and criminal justice that is accessible to all and which functions in a manner that is impartial, open and expeditious. As a preliminary to assessing the extent to which the Irish system falls short of achieving those objectives, it may be helpful to begin with a summary of its history and the changes it has undergone.

I. THE DEVELOPMENT OF THE IRISH COURTS SYSTEM

As with much of the rest of the Irish mechanics of government, the current court structure can be traced to a combination of what was in place under British rule and the consequences of the turbulence of the War of Independence and the Civil War. The British legal system was considerably reformed during the 1870s, a period best remembered in legal

---

* Chief Justice. This paper was originally given as a lecture to UCC Law Society on 23 March 2001.

circles for the fusion of the jurisdictions of equity and common law. These changes were also reflected in Ireland, where there was established a unified court called the Supreme Court of Judicature, comprising the High Court of Justice and the Court of Appeal. There was a final right of appeal to the judicial committee of the House of Lords. A further rationalisation between 1897 and 1907 resulted in a new structure: a High Court of Justice, divided into the King's Bench Division and Chancery Division, along with two judicial commissioners of the Irish Land Commission who were High Court judges and the Court of Appeal. The right of appeal to the House of Lords remained.

At the lower levels, there was a three tier structure. First, there were the assize courts which dealt with important civil and criminal cases outside Dublin. The quarter sessions, presided over by judges known as justices of the peace, sat about four times a year to deal with less serious criminal matters. These judges also sat at what were called the petty sessions, dealing with minor civil and criminal matters. The preliminary hearing for indictable crimes was before the body known as the "Grand Jury", a group of property owners who, until the reform of local government in 1898, also struck the rate for their area. A person did not have to be legally qualified to sit as a justice of the peace and the institution - which survives, of course, in the United Kingdom to this day - was regarded with suspicion by Irish nationalists because of their doubts as to its genuine independence. In some cases, they were replaced by resident magistrates sitting outside Dublin. Finally, the county courts dealt with minor civil cases.

In 1920, Dáil Éireann (which was technically a seditious gathering) passed a decree establishing a court system. This existed in parallel to the British system and in practice supplanted it throughout much of the country, despite operating under constant threat of suppression by the forces of the Crown. It established a four tier system: at the bottom were the parish courts, which met weekly and dealt

with minor civil and criminal matters. Above them were the District Courts, which sat monthly in each parliamentary constituency and dealt with more serious civil and criminal matters and appeals from the parish courts. There were also circuit courts which sat three times a year and had unlimited civil and criminal jurisdiction. Finally, there was the Supreme Court which sat in Dublin and acted both as a court of first instance (for prerogative writs) and as an appellate court.

Following independence, the executive council of the Irish Free State appointed a Judiciary Committee in January 1923 to recommend a new court structure to be established under the 1922 Constitution. The recommendations were implemented by the Courts of Justice Act 1924 and the structures which they established have remained in place, largely unchanged, to the present day. Although the judiciary committee was given wide terms of reference, its final recommendations broadly retained in being the structures that existed before independence, but with significant changes which reflected the experience of the Irish under what was seen to be a "foreign" legal system.

At the local level, lay participation in the administration of justice, other than through the jury system, ended completely. The justices of the peace went, as did the grand jury. Their places were taken by the professionally qualified "District Justices", now to become a permanent feature of the legal scene. At the next highest level, there was a major increase in local jurisdiction: the old system of county courts, quarter sessions and assizes was replaced by the newly established "Circuit Court". This had a substantially wider common law jurisdiction than the county court - probably not far off the present Circuit Court ceiling of £30,000 in contract and tort cases in 1923 values - and a significantly greater equity jurisdiction. It dealt with all serious crime, other than capital offences.

The work begun by the Judicature Acts in fusing the systems of law and equity was completed by the abolition of the division between the common law and chancery courts.

(In practice, it remained the norm for the next half century for two judges to be assigned virtually exclusively to chancery work.) The High Court, as required by the Constitution, had an unlimited original jurisdiction. The "Central Criminal Court" - the name proposed by the committee for the new High Court exercising its criminal jurisdiction - sat in Dublin exclusively and tried all capital crimes (principally murder). For the first time, there was provision for an appeal in all indictable crime to the new Court of Criminal Appeal.

Again, as required by the Constitution, there was a final court of appeal, called "The Supreme Court", consisting of three judges, the president of the court being called the Chief Justice.

The system thus established has remained broadly unchanged until the present day. The jurisdiction of the District Court and the Circuit Court in civil cases has been increased from time to time. Those changes sometimes did no more than reflect the fall in the value of money. On occasions, they reflected a more significant expansion of the jurisdictions of those courts.

The court structures, as they now exist, are as follows. In criminal cases, there are essentially five tiers. The District Court is the most important court in this area in terms of its workload, although many of the offences with which it deals are relatively minor, since it is a court of summary jurisdiction and cannot try indictable cases, i.e. cases which must be heard by a judge and jury. (Until recently, it also conducted the preliminary inquiry which had to be held before a person could be returned for trial on indictment to the Central Criminal Court or the Circuit Criminal Court.) The Circuit Court sitting with a judge and jury has full criminal jurisdiction in all serious offences, except for murder, rape, aggravated sexual assault, treason, piracy and allied offences. The Central Criminal Court also sits with a judge and a jury, but is confined to trying cases which cannot be dealt with in the Circuit Court, in practice almost exclusively murder and rape. There is an appeal from the

District Court to the Circuit Court which is by way of rehearing. Appeals from the Circuit Court and the Central Criminal Court are heard by the Court of Criminal Appeal. Appeals on points of law of exceptional public importance can be brought to the Supreme Court, if the Court of Criminal Appeal certifies that such a point arises and grants leave to appeal.

In civil matters, the District Court has jurisdiction where the claim does not exceed £5,000. The ceiling of the Circuit Court jurisdiction is £30,000. (These may change in the near future.) Both courts deal with a wide range of family law matters, such as maintenance and barring orders in the District Court: the Circuit Court can grant decrees of divorce, judicial separation and nullity. An appeal lies in most civil cases from the District Court to the Circuit Court and takes place by way of rehearing.

The District Court enjoys some important statutory jurisdictions, e.g. under the Intoxicating Liquor Acts. The Circuit Court also has jurisdiction in licensing cases, but the Oireachtas has vested in that court a wide range of additional statutory jurisdictions in recent years in areas such as planning and employment.

The High Court has unlimited original jurisdiction in all civil cases, can review the decisions of inferior tribunals and, alone among the courts of first instance, can consider the question of the validity of any law having regard to the provisions of the Constitution. It sits regularly at venues outside Dublin at specific times of the year to hear personal and fatal injury actions. The criminal business of the High Court, commercial and chancery cases and judicial review proceedings are transacted exclusively in Dublin.

There is an appeal from the Circuit Court to the High Court in all civil cases which takes the form of a rehearing. Such appeals outside Dublin are heard by "the High Court on Circuit". There is no appeal from the decision of the High Court on a circuit appeal (as there is also no appeal from the decision of the Circuit Court on a District Court appeal).

Questions of law may, however, be referred by the Circuit Court and the High Court to the Supreme Court by means of the case stated procedure.

The Supreme Court is the final court of appeal in all civil matters and constitutional cases. Questions of European Union law can be determined by any of the Irish court levels, but the final arbiter in all questions of European Union law is the Court of Justice of the European Communities in Luxembourg.

The Constitution allows for the establishment of special courts sitting without juries to try serious crime in cases where the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. This has been availed of under the Offences Against the State Act 1939 to establish a special criminal court from time to time. At present, the court sits with three judges and no jury, although retired judges and army officers have sat on the court in the past.

II. How the present system operates

It is difficult to get accurate and up-to-date statistics on court delays. The survey which follows is based on such information as I have been able to garner. It is obvious that more systematic research needs to be undertaken in this area.

In the District Court, there is generally no delay in dealing with criminal cases. Where such arrears exist, judges will arrange special sittings. Civil cases, outside Dublin, Cork and Limerick, are dealt with by way of special sittings and this can lead to some delays. In family cases, there is an average delay of 10 to 12 weeks in Dublin, and 7 to 8 weeks in Cork. Urgent cases are, in general, heard immediately, In the processing of applications to the Small Claims Court, there is a delay of up to 6 months in Dublin and 12 months in Dun Laoghaire, with no delays outside Dublin.

In the Circuit Court, the level of delay varies very much from venue to venue. In criminal cases, there is no delay in 14 venues. There is a delay of three months (i.e. to

the next session) in three venues (Kilkenny, Trim and Waterford). There is a delay of 6 months in 4 venues (Dundalk, Naas, Portlaoise and Trim), 9 months in Wicklow, 12 months in Cork and Tralee and 18 months in Limerick and Longford.

In family law, there is no delay in 12 venues, and a delay of three months in seven venues (Kilkenny, Limerick, Naas, Tullamore, Sligo, Waterford and Wexford), a delay of six months in three venues (Wicklow, Letterkenny, Mullingar and Tralee), a delay of nine months in Cork and a delay of 12 months in Clonmel. In Dublin there is no delay in criminal or civil cases and a delay of about two months in family law cases.

All High Court chancery, judicial review and civil cases certified as ready are given a date for hearing in the following term. Personal injuries cases can obtain a hearing within 14 days if they are ready. There is a delay of three months in family law cases.

In the Central Criminal Court, there has been a considerable increase in the number of cases returned for trial: in the year ending 31st December 1994, the number was 58 and in the year ending 31st December 1999, 163, an increase of 181%. This is contributing to the delays in the hearing of cases, currently running at approximately 11-12 months. In the Special Criminal Court, there is approximately 10 months delay. In the Court of Criminal Appeal, the waiting time for the hearing of an appeal is 9 to 12 months from the date the appeal is lodged. Finally, in the Supreme Court the average waiting time for the hearing of cases is three to six months from certification as ready.

It is obvious from examining the above statistics that there are considerable difficulties in the administration of justice in Ireland. Justice delayed can often be justice denied; in a civil case, a delay of a year or more can lead to drastic changes in circumstances and considerable hardship. In a criminal case, a delay may lead to the incarceration of a innocent person for longer than is necessary, or it may mean

that a guilty person is free on bail while awaiting a hearing of his case.

It is interesting to note that the figures vary across the country - indeed, in some venues, judges are underworked. This could be for a variety of reasons: a larger demographic base, a more efficient Judge, more efficient local practitioners.

Whatever the reason for the delays, the statistics, such as they are, mask a disquieting feature of the present system. This is the extent to which judges in some areas at least endeavour to dispose of their crowded lists by holding protracted daily sessions, sometimes sitting late into the evening. While there can be no question as to the dedication and professional commitment of the judges concerned, this gives rise to anxiety as to the quality of justice being dispensed in courts where fatigue must inevitably set in for both judges and practitioners. When appeals are made by the Presidents of the different jurisdictions for more judges, the reply sometimes given by the executive is that judges in some areas sit for only part of the day. That merely emphasises that the present system is not merely under-resourced: it is failing to make the most efficient use of such resources as are available.

III. Court Structures in Other Jurisdictions

The following is a sketch of the court structure and jurisdiction in various other countries. It is somewhat brief and omits many points of detail. In particular, it does not deal with the administrative law systems which exist in parallel to the "normal" courts, particularly in civil law countries or with many specialised judicial or quasi-judicial bodies, such as coroners' courts, courts-martial and special tribunals, which may or may not be considered "courts" in particular countries. The emphasis here is on providing an overview of the day-to-day legal business which concerns most citizens of a state. The jurisdictions chosen are a sample from around the world: our nearest geographical neighbour, the United

Kingdom, some European jurisdictions (both civil law and mixed), the American state of Connecticut (as it is comparable to Ireland in size and population), Canada (as an example of a large federal system) and New Zealand (as a small island nation with a legal system rooted in the Common Law).

A. England and Wales[1]

In England and Wales, there is a five-tier system in civil cases and a four-tier system in criminal cases. It is simplest to consider the two branches in turn. The lowest level in civil cases are the Magistrates' Courts which have a limited jurisdiction largely dealing with family law, local taxation and administrative functions. Above them are the County Courts which have jurisdiction to try cases up to £5,000. There are also specialist facilities for arbitration and small claims.

The High Court hears more complicated civil cases, appeals from tribunals and Magistrates' Courts (in both civil and criminal matters). There are three divisions: Family, Chancery and Queen's Bench (which has the widest jurisdiction and includes specialist Admiralty and Commercial courts). Above the High Court is the Court of Appeal (Civil Division) and finally the House of Lords.

In criminal cases, the Magistrates' Courts deal with about 98% of business. Summary offences can be tried here directly and more serious offences (such as murder, manslaughter, rape and robbery) are heard on indictment by the Crown Court. Some offences ('either way' offences) can be tried either by the magistrates or by a jury in the Crown Court, depending on the circumstances of the case and the wishes of the defendants. There are specialist Youth Courts, which are a Division of the Magistrates' Court.

The Crown Court is essentially the High Court sitting as a criminal court and is divided into six circuits. It hears the most serious offences, always with a jury of twelve. Appeals

[1] See generally *Britain's Legal Systems*, pp. 17–33.

from the Magistrates' Court lie to the Crown Court against sentence and to the Queen's Bench Division of the High Court on points of law and procedure. Appeals from the Crown Court lie to the Court of Appeal (Criminal Division) and then to the House of Lords which is the final appeal court. The House of Lords will only consider cases if they involve a point of law of general public importance.

B. Scotland[2]

The Scottish system is somewhat simpler. Again, as the two branches are somewhat distinct, they will be described separately.

In civil matters, the Sheriff Court is the court of local jurisdiction, and above that is the Court of Session, which is divided into two houses, the Inner House and the Outer House. The Outer House is a court of first instance, whereas the Inner House is a Court of Appeal. There are no specialist divisions.

In criminal cases, the District Court deals with minor offences before a lay magistrate. It hears offences summarily and can impose a maximum sentence of sixty days and a maximum fine of £2,500. Sheriff Courts and District Courts (with stipendiary magistrates) deal with less serious crimes (with power to impose unlimited fines on conviction on indictment and £5,000 in summary proceedings; and a maximum prison sentence of three years on indictment and six months in summary proceedings). The High Court of Justiciary is the highest criminal court. It hears the most serious offences. Both a High Court and the Sheriff Court can sit in what is known as solemn procedure, that is to say with a jury of 15. There is no appeal from the High Court of Justiciary to the House of Lords.

C. Northern Ireland[3]

---

[2] See generally *Britain's Legal Systems*, pp. 78–85.

[3] See generally *Britain's Legal Systems*, pp. 104 –106.

The structure of the Northern Ireland courts are somewhat similar to that of England and Wales. The Magistrates' Courts are the lowest courts and deal with minor criminal cases, some family law cases and a very limited civil jurisdiction. The County Courts have a primarily civil jurisdiction.

The High Court is divided into a Queen's Bench Division (for most civil matters) and a Chancery Division (for probate, real property and company law). The Crown Court deals with all serious criminal cases; it may sit without a jury for terrorist offences. Above the High and Crown Courts, there is a right of appeal to the Court of Appeal, and possibly to the House of Lords.

D. The Netherlands[4]

The Netherlands has a four-tier court system. At the bottom is the Sub-District Court (*Kantongerecht*), which sits with a single judge. It deals with minor criminal offences and civil cases up to NLG 5000, along with labour and landlord and tenant cases. The District Court (*Arrondissementrechtbank*) is the second level court. It tries all indictable criminal offences (with three judges, rather than with a jury), all civil cases not within the competence of the Sub-District courts (divorces, bankruptcy, compulsory purchase orders and claims in excess of NLG 5000) and appeals from Sub-District courts. There is also a Children's Division.

Above this are the Courts of Appeal (*Gerechthof*). All District Court judgments at first instance can be appealed against. Finally, there is the Supreme Court (*Hoge Raad der Nederlanden*) which is essentially a court of cassation.

E. Denmark[5]

---

[4] See generally *The Court System in the Netherlands*.

[5] See generally *A Brief Account of the Judiciary and the Administration of Justice in Denmark*.

The Danish court structure has three levels. At the bottom are the County Courts. Practically all civil matters fall in their jurisdiction. In criminal matters, they deal with less serious offences (where the prosecution requests a sentence of less than four years' imprisonment).

The next level is the High Court, which has two divisions, Eastern and Western. There is also the Maritime and Commercial Court of Copenhagen, which has a specialised jurisdiction. The High Court hears civil cases involving a claim in excess of DKK 1,000,000, appeals from the County Courts, cases that are referred from the County Courts (where the case concerns a question of general public interest) and cases concerning the validity of decisions made by a Ministry or a government agency authorised to adopt the final administrative decision in disputes between the state and private individuals. In criminal cases, where the prosecution requests a sentence in excess of four years, the case is heard on indictment before a jury of twelve. The High Court hears criminal appeals without a jury.

Finally, the Supreme Court is the highest court. This hears civil appeals from judgments of the Maritime and Commercial Court and of the High Court in first instance and, when leave is granted by the Board of Appeal on the grounds that it concerns a question of general public interest, appeals from judgments and rulings of the High Court in appeal cases. High Court decisions in jury trials may be appealed to the Supreme Court on points of law and sentence. High Court decisions in appeal cases may only be appealed to the Supreme Court with leave from the Board of Appeal. Somewhat outside the structure is the Special Court of Indictment and Revision, which is primarily concerned with the resumption of criminal cases and also processes complaints against judges.

F. France[6]

---

[6] See generally West *et al.*, *The French Legal System*, pp. 76–95.

The French court system can be considered as a four-tier system. In civil matters the lowest courts are the *Tribunaux d'Instance* (TI), which deal with cases of value less than FF 30,000. There are several specialised courts which can be considered as roughly equivalent to the TI: the *Conseils de Prud'hommes* (employment law), the *Tribunaux des Affaires de Sécurité Sociale* (general social security matters), and the *Tribunaux Paritaires des Baux Ruraux* (agricultural tenancy). The *Tribunaux de Grande Instance* (TGI) deal with general civil claims exceeding of FF30,000 which are not explicitly assigned to other courts. There is also the specialised jurisdiction of the *Tribunaux de Commerce*, which can be considered as equivalent to the TGI and deals with commercial cases. Above these, there is a right of appeal to the *Cours d'Appel* for claims greater then FF 13,000. Finally, at the apex of the system is the *Cour de Cassation*, which hears appeals on points of law.

In criminal matters, the lowest court is the *Tribunal de Police*. This can be considered as equivalent to the TI and deals with minor offences (called *contraventions*) in a summary fashion before a single judge. The *Tribunal Correctionel*, which is roughly equivalent to the TGI, tries intermediate offences (*délits*) before one or three judges. *Crimes* (the most serious offences) are tried before the *Cour d'Assises*, which does not have a direct civil equivalent and sits with three judges and a jury of nine. There is a appeal from the *Tribunal Correctionel* to the *Cour d'Appel*, but not from jury decisions of the *Cour d'Assises*. Appeals on a point of law can always be taken to the *Cour de Cassation*. There are also special youth courts and two very specialised courts which do not have equivalents in most other jurisdictions: the *Haute Cour de Justice* (for cases of high treason by the President of the Republic) and the *Cour de Justice de la République* (to try government ministers for *crimes* and *délits* committed in the exercise of their functions).

G. Connecticut[7]

Although Connecticut has four distinct court levels, it can be considered a three-tier system. At the bottom is the Probate Court which has a specialised jurisdiction over the estates of deceased persons and related matters. Its decisions are appealable to the Superior Court, which hears all legal controversies except those of which the Probate Court has exclusive jurisdiction.

The Superior Court is divided into 13 judicial districts, 22 geographical areas and 14 juvenile districts. There are four principal trial divisions: Civil, Criminal, Family and Housing. In general, major cases and cases not involving juveniles are held at district court locations. Cases involving juveniles are held in specialised locations.

Above the Superior Court is the Appellate Court which is strictly an appeals court and does not hear testimony.

Finally, there is the Supreme Court which reviews decisions made in the Superior Court and also reviews selected decisions of the Appellate Court. In general only cases involving the invalidity of the State Constitution or State statutes and convictions of capital offences are appealed directly to the Supreme Court. The Supreme Court may also transfer any matter pending before the Appellate Court to it and conversely may transfer any matter pending before it to the Appellate Court.

H. Canada[8]

The court system in Canada, a large federal jurisdiction, is as follows. At the federal level there is the Supreme Court of Canada, the Federal Court of Canada (which contains an Appellate and Trial Division) and the Tax

---

[7] See generally *Organisation of the Courts*, http://www.jud.state.ct.us/ystday/orgcourt.html, accessed on 5 February 2001.

[8] See generally Gall, *The Canadian Legal System*, Chapter 7.

Court of Canada (which has an obvious specialised jurisdiction).

At the provincial level, the structure varies widely but can be generally described as being a three-tiered system. Each province will have a Supreme Court or a Court of Superior Jurisdiction, which may be separated into Appellate and Trial Divisions or may even establish these divisions as separate courts. The Trial Division is generally equivalent to the Irish High Court, with unlimited jurisdiction, hearing indictable offences with or without a jury and civil matters over a given monetary amount.

Below these are the County or District Courts. Each province will also have Provincial Courts, which are generally divided into specialist areas such as Youth Courts, Family Courts, Criminal Courts (dealing with summary offences and some indictable offences) and a Small Claims Court. The Surrogate Courts, which have federally appointed judges, generally deal with questions of Probate.

I. New Zealand[9]

Although New Zealand can be considered to have as many as ten distinct courts, the court structure there is really a three-tier one. There are several courts that do not fit neatly into the court structure but stand somewhat outside it: the Maori Land Court (which hears cases under the *Te Ture Whenua Maori*/Maori Land Act 1993), the Employment Court and the Environment Court.

The District Court, which is the lowest level of court jurisdiction for most cases, hears civil actions where the value of claim is not more than $200,000 and has criminal jurisdiction to hear summary offences, indictable offences triable summarily, summary offences triable indictably and the preliminary hearing of indictable offences. It also has three specialised divisions, the Family Court, the Disputes Tribunal (which is in fact an arbitration mechanism for small

---

[9] See generally *Court Structure*, http://www.adls.org.nz/lawnz/court.html, 4 February 2001.

claims, with no direct involvement of lawyers and judges) and the Youth Court.

Above the District Court lies the High Court. This has almost unlimited original jurisdiction, which means that it can hear all civil matters outside the jurisdiction of the District Court and matters which have been transferred to it from the District Court. It hears trials of indictable offences, almost always before a jury of twelve.

The Court of Appeal hears appeals from all lower courts except the Environment Court (which has a limited right of appeal to the High Court). There is also a specialist Maori Appellate Court for the Maori Land Court, but the High Court can review decisions in that specialised jurisdiction.

The Court of Appeal is the final court of appeal within New Zealand but in common with several other Commonwealth countries, New Zealand has maintained the right of appeal to the Judicial Committee of the Privy Council. It is intended to abolish this avenue of appeal but not until a satisfactory second tier of appeal has been set up. There is some talk of an Australasian Court of Appeal, but these proposals are very vague.

IV. Conclusions

While there are undoubtedly serious delays and other deficiencies in the existing court system, they are by no means all the result of the nature of the system itself. Problems arising from the inadequacy of court premises, the inefficient deployment of staff and the absence of information technology, which have been allowed to fester for far too long, can and are being dealt with in a systematic and coherent manner by the newly established Court Service. At the High Court level, where particular problems tend to arise, the introduction of case management techniques is under active consideration.

These urgently needed reforms can be implemented without any serious alteration to the present court system. But

that is no reason for deferring any further a complete reappraisal of that system and how suited it is to actual conditions in Ireland today.

That there are a number of anomalies and irrational features of the present system is clear. There appears no reason why the High Court cannot deal with major crimes such as manslaughter, fraud, the importation and sale of drugs, robbery with violence and kidnapping. Equally, there seems no reason why the Circuit Court, which is entrusted with the trial of those offences, is precluded from trying murder and rape cases.

The anomalies in the civil law area, although not so immediately apparent, are also striking. Cases which are within the jurisdiction of the Circuit Court may produce complex issues of law and/or fact but the procedures are markedly different from those in the High Court. In the case of actions for defamation, a particularly remarkable situation exists: a person who wishes to have the issue of "libel or no libel" determined by a jury, regarded as a right of paramount importance, must sue in the High Court, even though he may be happy with the level of damages available in the Circuit Court, since jury trial in civil actions does not exist in the Circuit Court. In every civil case, moreover, no matter how important the issues, there is no right of appeal to the Supreme Court: the only appeal is to the High Court whose decision is final. Points of law of major importance may thus not be decided at the Supreme Court level, unless the protracted and cumbersome procedure of a Case Stated is invoked. Finally, it should be noted that, in the family law area, the legislation, as judicially construed, has resulted in the High Court and the Circuit Court having concurrent jurisdiction to grant divorces, judicial separations and decrees of nullity with no guidance to the hapless litigants in choosing the court in which to institute the proceedings.[10]

---

[10]See *R. v. R.* [1984] I.R. 296.

These anomalous and irrational features of our court system principally derive from the fact that we have a three tier system of courts of first instance, unlike most of the other systems which I have examined and in which a two tier system is the norm. A rationally designed Irish system would consist, at the first instance level, of a District Court with a significantly enhanced civil jurisdiction and an expanded High Court to which would be transferred all the existing civil and criminal jurisdiction of the Circuit Court.

Under such a system, the High Court, while remaining a unified court of first instance with unlimited original civil jurisdiction and exclusive criminal jurisdiction in serious crime, would sit as a regional court. Inevitably, of course, major constitutional and judicial review cases and commercial/chancery cases, would be tried by the High Court in Dublin and to avoid any tendency for a two tier High Court to emerge, it would be necessary for all the High Court judges to sit in rotation in the different regions, including Dublin.

These proposals would not require any amendment of the Constitution, since a court of local and limited jurisdiction in the form of the District Court would remain. The proposal, indeed, would be more in harmony with the spirit of the requirement in the Constitution that the High Court should be invested with a "full original jurisdiction empowered to determine all matters and questions whether of law or fact, civil or criminal".

The possible changes to the appeal structure must next be considered. Again, the Irish system is unusual in that the Supreme Court fulfils all the functions of final courts of appeal in other jurisdictions, not merely in cases involving important points of law and in constitutional cases, but in all cases decided by the High Court, except where a right of appeal is excluded by an Act of the Oireachtas. In the result, the Supreme Court regularly hears appeals in cases which are of no general public importance leading to inevitable delays in the hearing of those cases which are.

In this area, Ireland is unusual in having a one tier appeal system in civil cases. It would be far more satisfactory if a permanent Court of Appeal existed which sat in both civil and criminal divisions and which heard appeals from the High Court in all civil cases and cases of serious crime. That court in turn could grant leave to appeal to the Supreme Court where it was satisfied that a point of law of public importance was involved.

There would appear to be no necessity to amend the Constitution in order to provide for the establishment of a new appeals structure of this nature. The Supreme Court has already held that there was nothing in the Constitution to preclude the establishment by the Oireachtas of the Court of Criminal Appeal in its present form.[11] It was held that it was open to the Oireachtas to establish both courts of first instance and courts of appeal other than those mandated by the Constitution, i.e. the High Court and Supreme Court. In criminal cases, a permanent court of appeal would not suffer from the problems which now arise from the fact that the Court of Criminal Appeal consists of three judges chosen for a particular list of cases. This has led to serious inconsistencies in the jurisprudence of that court and, in particular, in the all important area of sentencing. A provision in the Court and Court Officers Act 1995 for the transfer of the entire jurisdiction of the Court of Criminal Appeal to the Supreme Court has never been implemented.

The existing appeals structure from the District Court to the Circuit Court and the Circuit Court to the High Court is also clearly defective. In the case of appeals from the Circuit Court to the High Court, the hearing of such appeals outside Dublin by the High Court on Circuit is a seriously wasteful use of judicial resources. Members of the High Court, and, on occasions, the Supreme Court, frequently travel to the appointed venues to find that there is virtually no work for them to do. This is at a time when there are huge lists of cases to be dealt with in the High Court and it is constantly asked to

[11] *The People (Attorney General) v. Conmey* [1975] I.R. 341.

supply judges to deal with other work of public importance, such as tribunals and other enquiries.

One feature of the present appeal system which is particularly unsatisfactory is the fact that every civil appeal from the District Court to the Circuit Court and the Circuit Court to the High Court is by way of rehearing. This is particularly unfortunate in family law cases. However much judges may endeavour to soften the adversarial nature of the proceedings, increased bitterness and tension is often engendered by the hearing and these difficulties are exacerbated if one party decides to appeal, since there then must be another confrontation at the next level. With the growing introduction of technology to all the courts, it is inevitable that there will be a full audio recording available of all court proceedings and this would enable appeals in such cases to be taken directly from the District Court to the Court of Appeal on a transcript of the proceedings, in the same manner as appeals are at present taken from the High Court to the Supreme Court, thus avoiding the necessity for a second confrontational hearing.

There is also a strong case to be made for vesting the entire family law jurisdiction in the District Court, with the exception of nullity cases. Unless and until the legislature intervenes to clarify the boundaries of the last mentioned jurisdiction, the development of the relevant jurisprudence should be left to the High Court and the Supreme Court.

The vesting of some statutory jurisdictions in the courts also calls urgently for reappraisal. Local authorities are now entrusted with the grant of permissions and licences in areas of enormous importance, such as planning and the environment generally. The retention by the District Court and the Circuit Court of a licensing jurisdiction in the case of alcohol can be seen, in this context, as an anachronistic survival which is also wasteful of judicial resources.

Many of these changes will be ineffective, unless there is also a greater allocation of resources to the courts. In such areas as staff, court accommodation and information

technology, this is now the responsibility of the Courts Service. But it is also clear that we have not enough judges in Ireland to cope with the hugely increased volume and complexity of litigation today. The number of judges per head of the population in Ireland is one of the lowest - perhaps the lowest - in the European Union. That remains a problem which must be dealt with by the executive and the legislature.

I have emphasised the importance of having a court structure which not only functions efficiently in the interests of all the citizens but is also seen by them as reasonably accessible. Clearly, a legal system to which people are unwilling to have resort, unless they are effectively compelled so to do, because of the high cost of litigation cannot be regarded as genuinely accessible to all. That, in turn, points to the necessity for an efficient system of legal aid in both criminal and civil cases. The question as to what improvements may be required in the present system of legal aid lies outside the scope of this article. I would hope, however, that the establishment of a more rational and less cumbersome court system would contribute, to at least some extent, to reducing the high cost of litigation. In particular, changes which are designed to ensure that justice is administered, so far as possible, at the local level, may ultimately help to reduce the cost of litigation: it would certainly make the system more genuinely accessible than is at present the case.

The changes I have proposed would not provide an instant or magic solution to the difficulties at present being experienced. There may be other models which might be thought more appropriate to Irish conditions. I have no doubt, however, that a reappraisal of the present system is seriously overdue. The reports of the Denham Working Group led to the greatest revolution in the administration of justice in this country since independence with the establishment of the Court Service. Now seems to be the appropriate time for the establishment of a body composed, as was the Denham

Group, not merely of representatives of the judiciary and the legal professions, but also of all the interested sections of the public and equipped with similar resources. The first task of such a body would be a fact finding one: to establish the extent to which the present system is failing to achieve the administration of justice in a manner which is accessible, fair and expeditious. Its terms of reference should obviously be sufficiently broad to enable the body to investigate all the issues which I have endeavoured to identify and in addition any other features which their enquiry, as it proceeds, may identify.

The adoption of such a strategy would, I am convinced, enable the Irish courts to face with confidence the challenges which the new century will undoubtedly bring.