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JUDGING JUSTICE – HOW SOLICITORS' EXPERTISE CAN IMPROVE THE COURTS SYSTEM

From: Dr Brian Barry, Department of Law, Dublin Institute of Technology, Aungier Street, Dublin 2

Solicitors are a critically important source of information and expertise in ongoing efforts to research and improve the Irish courts system.

This has been an eventful year for the judiciary and the Irish courts system. There has been considerable debate on the issue of judicial appointments and what format legislative reforms should take. Debate has not only taken place in the media and in the Oireachtas, but the Association of Judges of Ireland also took the unusual step of contributing to the debate by expressing concerns with the *Judicial Appointments Commission Bill*.

Outgoing Chief Justice Susan Denham used her retirement as an opportunity to criticise successive governments' failures to establish a judicial council. The Department of Justice established a group to review the civil justice system.

During this time of scrutiny and legislative change for the Irish courts system, it makes sense that the views of litigation solicitors should be canvassed and be central to developments.

Solicitors who practise in litigation regularly engage with the entire court process, from pre-trial processing, through to receiving the decision of a court. They are, therefore, uniquely placed to compare consistency and quality within and across different courts, from case processing and case-management issues, to how court hearings are run by judges, to the quality and consistency of the judgments of courts.

Litigation solicitors also witness at first-hand how their cli-



ents experience the courts system, and their response to their interactions with the Courts Service, the judiciary, and court facilities.

Owing to this unique perspective, litigation solicitors offer, perhaps, the richest resource of knowledge and understanding on what works well and what needs to improve within the Irish courts system. Their views can, and should, inform policymakers and Government on ongoing developments in the area.

With this in mind, the Department of Law at the Dublin Institute of Technology is currently undertaking a nationwide study of litigation solicitors' views on the Irish courts system and the judiciary.

I recently conducted the first stage of this study, interviewing litigation solicitors practising in a variety of different court circuits and court levels in Ireland. The anonymised views expressed by solicitors who participated in these confidential interviews will be used to refine and augment the development of a nationwide survey of solicitors' views on the Irish courts system, which will soon be disseminated.

Readers who practice in the area of employment law or industrial relations law may recollect a

similar practitioner survey that I conducted last year with my colleagues in the Employment Law Association of Ireland. Over 100 specialist employment law and industrial relations practitioners provided their views on the initial operations of the Workplace Relations Commission and revised Labour Court – one year after that two-tier dispute resolution structure for resolving workplace disputes was introduced by the *Workplace Relations Act 2015*. The collective, informed perspective of this pool of practitioners offered incisive and practical feedback on what was working well, and what needed improving within the new system.


The WRC relied on the results of the survey to implement improved procedures and case-management processes. The survey demonstrated the benefits of canvassing the views of those who legally represent participants in a particular dispute resolution system. By extension, collating the views of litigation solicitors should yield informed, practical feedback on how the Irish courts system is operating.

Reflecting on the preliminary, small-scale, interview stage of the current DIT study, it may tentatively be suggested that litigation

practitioners perceive the overall standard of judging to be reasonably high. Some expressed specific concerns about inefficiencies in court listing procedures and difficulties and inconsistencies in aspects of pre-trial case processing by the Courts Service. However, it is important to emphasise that further stages of the study – in particular, the comprehensive survey to follow – will provide much more substantive data on these and other possible trends on how solicitors view the system.

The DIT study is timely in light of the recent establishment of the Department of Justice and Equality's Review of the Civil Justice System, chaired by President of the High Court Mr Justice Peter Kelly. The review group has set a number of aims, including improving access to justice, reducing the cost of litigation, improving court procedures, removing obsolete, unnecessary or over-complex rules of procedure, reviewing the law of discovery, and reviewing the use of electronic communication.

The review group would undoubtedly benefit from the collated views of litigation solicitors on these matters. I would urge the litigation solicitor community to participate in DIT's upcoming nationwide survey of litigation solicitors' views on the Irish courts system, and in other similar research projects.

It is imperative that the knowledge, understanding and experience that they possess is researched and communicated clearly to Government and policy developers. It will lead to a fairer, more efficient courts system for all. 

To contact Dr Brian Barry about the research project, email brian.barry@dit.ie