

The Australasian Institute of Judicial Administration

Oration 2010

**The 21st Century Judge.
The Evolving Role of Judges
in the Administration of
Courts and the Judiciary,
with Special Reference to Ireland.**

by

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The Supreme Court, Ireland

on

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The Banco Court
Supreme Court of Victoria

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1. Introduction

It is a great pleasure to be in Melbourne, thank you A.I.J.A. for the kind invitation.

To an extent I feel that I am home from home, being in this building, in the Banco Court of the Supreme Court of Victoria, which has a certain similarity to the Four Courts in Dublin. I was honoured to have afternoon tea with Chief Justice Warren yesterday, and to be given a tour of this magnificent building.

However, the connections between Ireland and Victoria go far deeper than similar grand court buildings.

Even the most cursory study of the history of the courts of Victoria shows strong links with Ireland. Not only with Ireland, but also with Trinity College Dublin, University of Dublin, of which I am a graduate, and of which I was Pro-Chancellor from 1996 to earlier this year.

The Irish and Trinity College connections may be traced from Dr. Edward Brewster, the first barrister to arrive in Melbourne¹, who became the first chairman of the Court of Quarter Sessions in 1839, to Redmond Barry, Samuel Raymond, William Jeffcott, Roger Tierney, William Stawell, Robert Molesworth, Richard Davies Ireland, George Higinbotham, John Madden, William Hill Irvine – all Irish and all Trinity College men.

¹ Jarlath Ronayne, *First Fleet to Federation, The Influence of Trinity College Dublin on Law, Learning and Politics in Colonial Australia*, (Trinity College Press, 2001).

I have been re-reading with pleasure Jarlath Ronayne's "First Fleet to Federation"², where he points out, at p.146:-

"From 1857 until Irvine's retirement in 1935 Irishmen had served as Chief Justices of Victoria, a total of seventy-eight years. Apart from Madden's eighteen years, Trinity-educated lawyers held the post."

It gives me great pleasure to continue this Irish and Trinity College link with the judiciary and legal community in Victoria.

Twenty Years

Over the past twenty years we have seen an expansion in the role and responsibilities of judges in areas other than the administration of justice. I shall discuss this development by reference chiefly to Ireland. A similar evolution has occurred or is occurring in other common law countries. The time frame varies from State to State. Some changes have occurred in Ireland years after similar changes in other states, while in some areas Ireland has been a leader. In our world wide web era of instant connection and communication, the changes upon which I am reflecting are not isolated to Ireland.

A Generation on a Cusp of Time

I believe that I am a member of a generation on a cusp of time in the legal world. We commenced practising when the courts had been fundamentally unchanged for centuries. I was called to the Bar of Ireland in 1971. When I commenced practising I felt a sense of stepping into a timeless institution which had existed for centuries. I was frequently the only woman barrister in a busy court – no women were judges of the superior courts, nor were any registrars, and jurors were usually men. The Court heard

² Ibid.

cases as they came before them as presented by counsel. The Circuits went out, in many ways unchanged from the Assizes of previous centuries. I was in a world evocative of the 19th Century. In an institution preserved in time. I believe that those of us in practice 40 years ago hold a folk memory of courts which reflects the centuries from 1701.

However, over the last few decades there have been great changes. Indeed, most of the changes have come in the last 20 years.

Our central role continues to be the administration of justice. I stress this fact.

2. Administration of Justice

The primary role of a judge is as a decision-maker in court. Chief Justice French recently described a model of judicial decision-making as follows:-

- (i) The judge identifies a rule of law applicable to a class of fact situation;
- (ii) The judge determines the facts of the case;
- (iii) The judge applies the rule of law to the facts of the case to yield a conclusion in terms of the rights and liabilities of parties before the court.

He stated:-

"The proper function of the judge can be considered in the light of that simple model."³

However, as he pointed out, the nature of common law is such as to leave much to the evaluation of the judge:-

³ The Honourable R. French, "Judicial Activism – The Boundaries of the Judicial Role", The Judicial Review, Journal of the Judicial Commission of New South Wales, Vol 10, No. 7, Sept. 2010, p.2 .

"Many common law rules use language such as "reasonable" or "unconscionable" or "foreseeable" or "remote" or "good faith". Such terms leave so much to judicial evaluation in their application that it is difficult to say that they have a single useful meaning. The same phenomenon is found in statutes in which broad terms are used which are capable of application to a wide range of fact situations. It is left to the courts to work out the appropriate application case by case. That task must involve the development of sub-rules of application. So a new common law grows, derived from case-by-case application of a broadly expressed legal rule."

Today in our common law countries, judges are faced with significant challenges in the volume and complexity of cases which come before the courts for decision. In the 2006 Oration the Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada, spoke of the traditional role of judges, the changing role, and the qualities required of judges in modern courts. I agree entirely with her analysis.

The "Day Job" and "Additional Duties and Responsibilities"

This paper does not address the issue of the administration of justice, which is the primary work of judges, the "day job". This paper addresses the additional duties and responsibilities which have evolved recently. Over recent decades there have evolved further duties and responsibilities to be carried out by judges in other, albeit related, areas.

This has meant, also, that there has been an expansion in the work and in the role of administrators connected to the courts. This is an important consequence of the development of these additional duties and responsibilities.

3. Additional Duties and Responsibilities

The evolving role of judges over the last few decades has encompassed responsibilities in or connected to the administration of justice and connected to the administration of the courts. To illustrate the expansion of the role of judges and the other duties and responsibilities I shall consider:-

- court administration;
- case management;
- judicial studies;
- judicial conduct and ethics;
- information on sentencing; and,
- transnational responsibilities.

Each of these areas is complex and involves judicial responsibilities which were not on the radar when I became a judge nearly 20 years ago. They are examples of an evolving branch of government, the judiciary. Of the three branches of government I consider that they illustrate that there has been a greater change in the judiciary than in the other branches of government in modern times.

This growth in the role and responsibility of a judge is an important part of a developing democratic state. I shall return to an analysis of the situation in my concluding remarks, after considering individually some of the areas where this expansion of responsibility is occurring.

Bear with me a moment as I give some examples of the evolving role of judges.

3.1 Court Administration

Traditionally, in common law countries, the courts were managed by a department of the executive, often a department of justice. There have been learned discussions on court governance in recent decades. In the 2008 Oration The Rt Hon The Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales , spoke on court governance and described the radical developments in England and Wales and the establishment of a Courts Service. In Ireland we have a Courts Service, but a different model.

In 1995 the Irish government established the Courts Commission to review the operation and financing of the courts system. The First Report: Management and Financing of the Courts, April, 1996⁴, made the primary recommendation that there should be established by statute as a matter of urgency an independent and permanent body to manage a unified court system. This recommendation was supported and advanced by the government, and in due course the Courts Service Act, 1998⁵ was passed by the legislature and came into law. After a year, with an interim board, the independent corporation which is the Courts Service was established in November, 1999.

⁴ To see this and other reports of the Courts Commission go to <http://www.courts.ie> where, under "Publications", may be found the six reports of the Courts Commission

⁵ The Courts Service Act, 1998, No. 8 of 1998

The functions of the Courts Service are to:-

- manage the courts;
- provide support services for the judges;
- provide information on the courts system to the public;
- provide, manage and maintain court buildings; and
- provide facilities for people who use the courts.

The Courts Service Board consists of seventeen members, of whom nine are members of the judiciary. The function of the board is to consider and determine policy in relation to the service, and to oversee the implementation of policy by the Chief Executive Officer.

The membership of the board includes the Chief Justice and the Presidents of the High Court, Circuit Court and District Court, or their nominees. In addition, four judges are elected by the judiciary – one from each of the four jurisdictions. I draw your attention to this element of election, and will return to it later. In addition, the Chief Justice may nominate to the board a judge in respect of his or her expertise in a specific area of court business. For example, The Hon. Mrs. Justice Catherine McGuinness, an expert in family law, was a member of the board for a number of years when we were undertaking some developments in family law, and The Hon. Mr. Justice Iarfhlaith O'Neill was a member as we developed our building programme. Thus, the majority of the board consists of members of the judiciary.

In addition, on the board are: the Chief Executive Officer; a barrister nominated by the chairman of the Bar Council of Ireland; a solicitor nominated by the President of the Law Society of Ireland; a member of staff elected by the staff of the Courts Service; an officer of the Minister nominated by the Minister; a person nominated by the Minister

to represent the consumers of the services provided by the courts; a nominee of the Irish Congress of Trade Unions; a nominee of the Minister who has relevant knowledge and expertise in commerce, finance or administration.

The Chief Executive Officer, C.E.O., is appointed by the board of the Courts Service on a contract, usually for seven years, which may be renewed. The C.E.O. may be requested to attend an Oireachtas Committee, a parliamentary committee, to account for the general administration of the Courts Service. However, he or she may not be asked any question as to a judicial function exercised by a judge.⁶

I have had experience of working in the Courts Service. I chaired the Courts Commission 1995 to 1998 which recommended the establishment of a Courts Service, was a member of the interim board, and then of the board of the Courts Service when it was established, and chaired the board and the finance committee from 2001 to 2004. Although it is a large board, it works extremely well, bringing to the table the various skills and knowledge of its members, which have assisted the development of this extremely successful corporation.

Vital statistics of the Courts Service in 2009 included that it:-

- managed 149 courts in Ireland;
- had 1,081 staff - but anticipate that it will be less than 1,000 by the end of the year, under government policy;
- received €122 million funding from the State;
- managed €1.16 billion in a trustee capacity; and,
- had 78 offices nationwide.

⁶ Section 21 Courts Service Act, 1998

The involvement of the judiciary on the board of the Courts Service and its committees has been a key factor in its success. As the functions of the Courts Service do not include the administration of justice, those members of the judiciary on the board and the committees act in an administrative capacity. Judges have given dedicated work to the board and to the committees of the board. The C.E.O. of the Courts Service, Mr. Brendan R. Ryan, has stated:-

"The Courts Service has been described as the "greatest revolution in the administration of justice in this country since independence". In my view the single most important recommendation contained in the reports of the Working Group on a Courts Commission which led to the establishment of the Service was that it would be appropriate for judges to work alongside others on the Board and Committees of the Service. I have no doubt that had this not happened much of the success we have achieved simply would not have been possible. There is very little that we do that does not require and benefit from the support and engagement of the judiciary. The fact that the Chief Justice, the Presidents of each court and a judge representing each Bench are members of the board has made it significantly easier for me as Chief Executive Officer and for the Service generally to obtain the engagement, cooperation and assistance of judges at all levels. Through the combination of judicial and non judicial involvement in the development of policies on the management and administration of the courts we have put in place a strong courts governance model which works very effectively and has proved very successful in the modernisation and reform of court administration."

Friendly Advice

Prior to establishing our Courts Service we had received very helpful assistance from friends and colleagues in other jurisdictions. I had a most useful telephone conversation, and got excellent advice from, Chief Justice Doyle of South Australia. Lord Woolf of England and Wales spoke at one of our conferences, as too did Mr. Ernest Schmatt, C.E.O. of the Judicial Commission of New South Wales. Many others were most helpful, and I shall refer to some of them later on.

Since establishing our Courts Service we have had many visitors to Ireland to study our system of court management and to seek further information. We have been delighted to accede to these requests. The global debate on court administration continues.

There is no perfect system of court administration. In Ireland the move from a form of executive governance of court management by a section of the Department of Justice to an independent Courts Service has worked well. Care has been taken to have open and constant communication with the Minister for Justice. This system has had the full support of the Minister and his staff. In fact the Minister for Justice has referred to it as "the jewel in the crown of public administration".⁷

The new system has in general been well received. This year when the Annual Report of the Courts Service was published in July the first leader in the Irish Times on the 22nd July, 2010, was entitled "Courts Report". It stated:-

"The Annual Report of the Courts Service provides a snapshot of Irish society at any given time, and the 2009 report, published yesterday, is no exception. It shows that the recession has driven more and more people to the courts in an attempt to resolve issues relating to debt, insolvency and the winding up of companies. From cases involving hundreds of millions of euro in the High Court to modest debts in the District Court, all jurisdictions saw an increase in this area of court business.

There was a 53 per cent increase in new cases admitted to the High Court Commercial list. There was a 66 percent increase in the winding up of companies and a 23 percent increase in orders for possession.

However, it is the volume of such cases in the lower courts, where the amounts of money are smaller, that shows the true impact of the recession on the lives of ordinary people. The Circuit Court saw 13,613 debt judgments last year, an increase of 33 percent, and the District Court saw 29,285 up 28 per cent. Thus, almost 43,000 people found themselves before the courts for non-payment of debt."

⁷ Speech given at the opening of the new Navan Courthouse in May, 2004

The leader related further facts from the report and concluded:-

"The Courts Service reported an increase in the productivity of the courts, with a cut in net expenditure of 34 per cent last year, accounted for by combined savings and increased efficiency in collecting fines and fees – a good news story from the public service.

Few aspects of both private and public life are not touched, at some point, by the courts. Debt, business disputes, divorce and separation, custody of and access to children, child welfare issues, the care of Wards of Court, and the prosecution of crime all fall within their remit. It is vital therefore that they run smoothly and efficiently and that citizens can have faith in the service they provide."

To sum up the current situation:-

- There has been a 40% increase in the work of the courts since 2006.
- 800,000 matters were heard in the Irish Courts in 2009;
- Year on year from 2008 to 2009, there has been a drop of 10% in the budget to provide court services;
- Year on year from 2008 to 2009, we have cut net expenditure by 34% and increased our revenue by 21%;
- The increase in the rate of collection of fines has gone up 40% over 5 years – which is one of the reasons we have the increased revenue;
- We are currently working with 10% less staff and we have a target of 11% as a consequence of government policy in these recessionary times;
- We have heard more cases and made great savings, with less resources and fewer staff;
- Not one court sitting has been cancelled or postponed as a result of the financial reductions, so far;
- Through efficiencies the cost of our dealing with a case has reduced from €138 in 2006 to €117 in 2009.

The new system is working well. However, it does involve members of the judiciary carrying responsibility in an area which is not the administration of justice, albeit relevant to the administration of justice. These additional duties are time consuming.

3.2 Case Management

Another area in which judges have an increased role and responsibility is in case management.

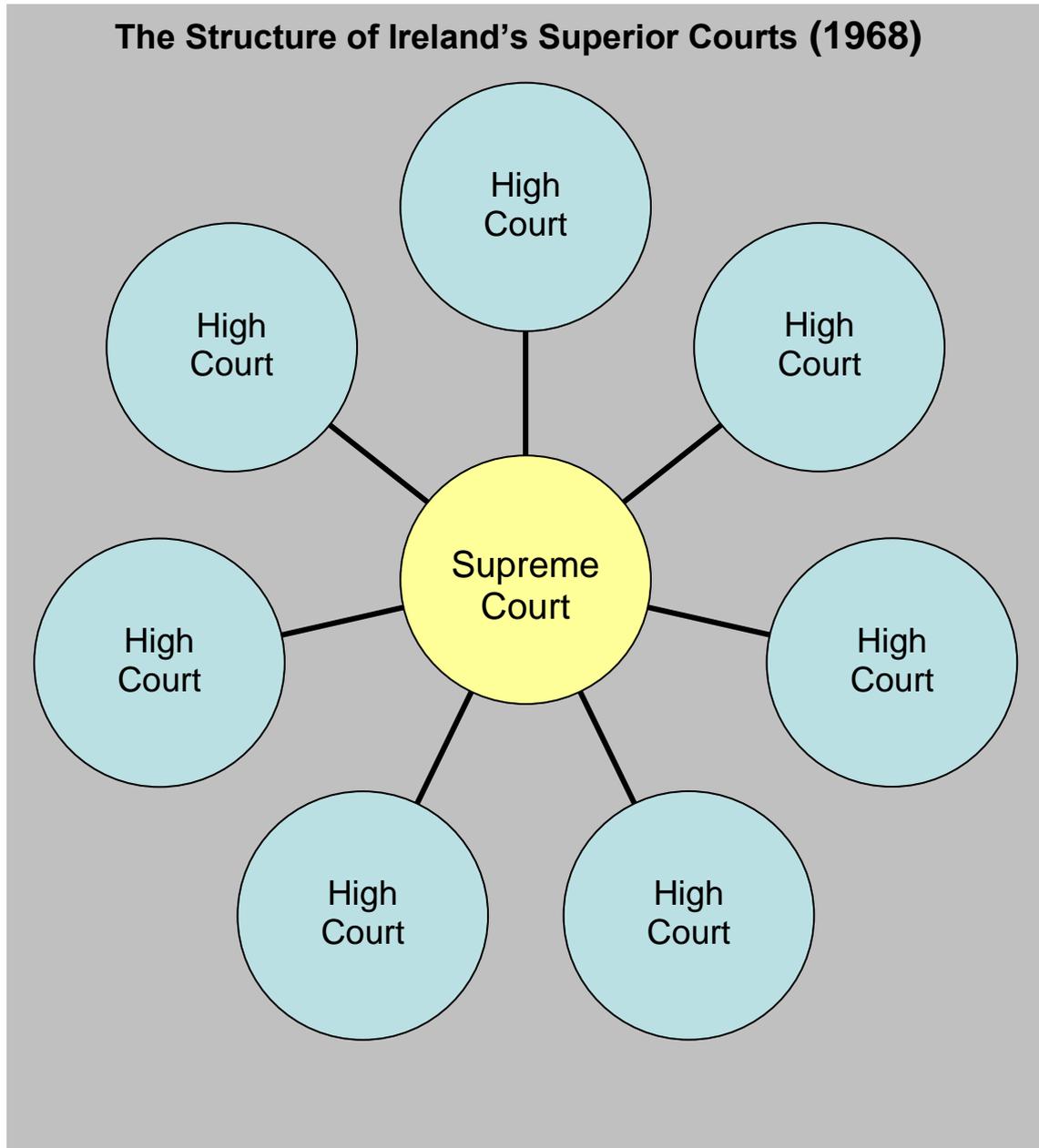
Case management has been an important development in our courts. It has arisen as the child of necessity.

There has been a great increase in the number of cases coming before our courts. Also, many of these cases are more complex and take a significant amount of court time. The growth in the number of cases, and the type of cases, coming before the courts has accelerated in recent years.

This increase in the workload before the courts in Ireland was described in the Report of the Working Group on a Court of Appeal⁸.

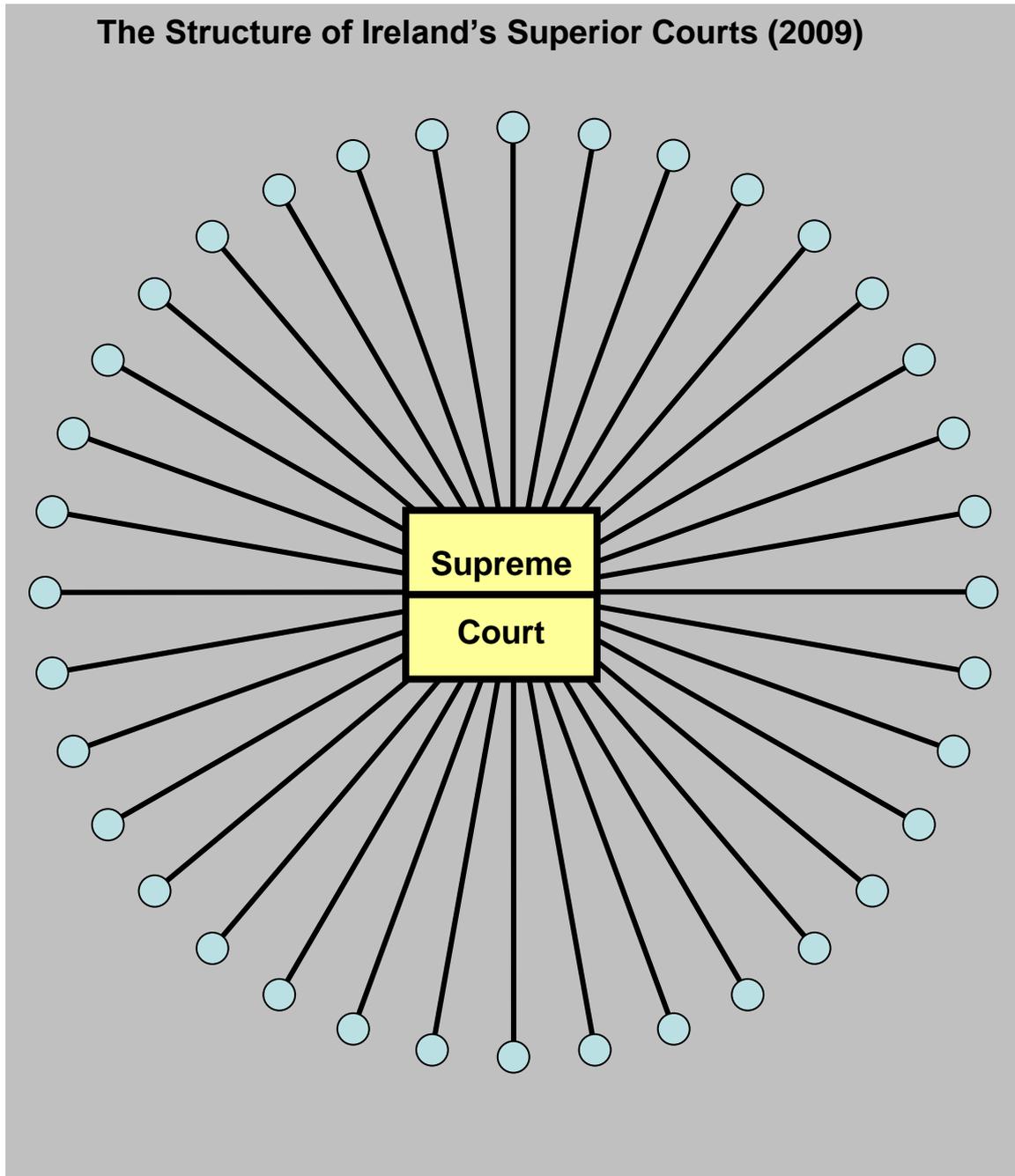
Because of the growth in litigation the number of High Court judges in Ireland has increased, from 7 in 1968 to 36 in 2009. Two diagrams illustrate this increase.

⁸ Executive Summary of Report of the Working Group on a Court of Appeal, May 2009, Government Publications



This diagram illustrates the number of High Courts in existence in 1968 from which decisions could be appealed to the Supreme Court.⁹

⁹ Ibid, p.7



This diagram illustrates the number of High Courts in existence in 2009 from which decisions may be appealed to the Supreme Court.¹⁰

Quite apart from the increased number of cases before the courts, there is greater complexity in modern cases – and more specialisation. Thus, the 36 judges of the High Court preside over 37 different types of lists. These include:-

¹⁰ Ibid p.7

Specialist Lists in the High Court

Admiralty
Asylum
Bail
Bankruptcy
Chancery
Chancery Summonses
Circuit Appeals (Dublin)
Commercial
Common Law Motions
Competition
Dental Council
European Arrest Warrants
Examiner's Court List
Extradition
Family Law
Garda Compensation
Hague - Luxembourg Convention
Hepatitis C
Judicial Review
Jury List
Land Registry
Master's List
Medical Council
Non Jury List
Nursing Council
Personal Injuries (Dublin)
Personal Injuries (Provincial)
Probate List
Proceeds of Crime Act
Provincial - High Court Personal Injuries
Rulings
Section 150 Companies Act
Solicitors Act
Taxing Master's List
Wards of Court

In these changing times we are all familiar with case management. There may be both judicial and administrative case management. It is an area where there has been a radical change in our courts.

The traditional common law approach was that of *laissez faire*. The judges sat and heard counsel for the parties run their cases as they thought appropriate.

Today case management is an essential part of our legal systems. Lord Woolf led the change in England.¹¹ In his report he made 303 recommendations. He argued that it had been appreciated all over the common law world that the way the courts were proceeding was not satisfactory and that we were moving toward case management as the viable solution. He sought to reduce the expense of litigation, and delay, to introduce sanctions and carrots, and a multi-track approach. Today case management has become an important part of our court systems.

An example of the old ways is that for centuries in our most senior appellate court it was the practice for counsel to read to the appellate court the entire transcript of the proceedings in the lower court and then to make submissions on the appeal. Such a relaxed approach could be found in no appellate or supreme court today.

In our Supreme Court today there is e-filing, written submissions are required, not more than 25 pages, and a length of time for the hearing of an appeal is determined at a call over list. We still allow appeals to be listed for up to a day or more: not taking the approach of some such as the Supreme Court of the United States of America where

¹¹ Access to Justice, Final Report by the Right Honourable The Lord Woolf, Master of the Rolls, July 1996

time for oral hearing is limited strictly. Nor are we as restrictive on oral argument as the European Court of Justice which allows a maximum of 20 minutes to each party.

Commercial Court

In some courts, very precise and strict rules of case management have been developed. Thus, in our Commercial Court there are specific rules for a very tight case management by the judge.¹² Order 63A of the Rules of the Superior Courts provides for a managed system in the Commercial List which means that most cases are completed within eight weeks. This is an important factor for commerce in the State. However, it does mean that very considerable judicial time is required in managing the list both before, during and after court hearings.

Obviously the type of management required in a list of commercial cases is not that required of, for example, a family law list. Nor is the case management which is appropriate for a trial court similar to that of an appellate court. However, throughout our court systems judges now manage the lists. This is a heavy responsibility, involving considerable work outside court sitting hours. It is part of the modern administration of justice. Such case management makes it feasible for our courts to hear the greatly increased numbers of cases coming before the courts. It is a responsibility not carried by previous generations.

Case management is a new philosophy and practice in our common law courts – a great change from the *laissez faire* approach taken over the centuries, until just a few decades

¹² <http://www.courts.ie/rules>

ago. It is essential today. However, it should be recognized that it involves judges in extra duties and responsibilities, an extra workload.

3.3 Judicial Studies

Another example of the additional duties and responsibilities of judges is in judicial studies.

When I became a member of the Judiciary, nearly twenty years ago, there was no system in place, and indeed no discussion, of continuing studies for members of the Judiciary. Other states have introduced educational programmes for judges over the last few decades and developed very successful programmes, we have been slow in Ireland in developing this area.

Judicial Studies Institute

In or around 1994, at a meeting of the High and Supreme Court judges in Dublin, an *ad hoc* committee was established to develop judicial studies. There was no infrastructure or system of funding. Subsequently, a Judicial Studies Institute, J.S.I., was formed after the passing of s.19 of the Court and Court Officers Act, 1995.¹³

The J.S.I. was set up to provide for the ongoing education of the judiciary. It runs seminars and conferences for the further and continuing education of judges. There are no staff, the J.S.I. receives support from the Courts Service. A J.S.I. Journal is

¹³ Section 19 of the Court and Court Officers Act, 1995 provides: "A person who wishes to be considered for appointment to judicial office shall undertake in writing to the Board [the Judicial Appointments Board] his or her agreement, if appointed to judicial office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or President of the court to which that person is appointed."

published twice a year. It is widely supported by the judiciary, who write many of the articles.¹⁴

The importance of developing the J.S.I. further has been under consideration for years, in conjunction with the establishment of a Judicial Council in Ireland. Such a council was recommended by the judiciary in 2000 in the Report of the Committee on Judicial Conduct and Ethics.¹⁵ Owing to a number of factors the matter has been delayed.

However, coming before the Oireachtas, the Irish Parliament, this session is the Judicial Council Bill, 2010. In that Bill it is proposed that a Judicial Council be established in Ireland and that it establish a committee of the council, to be known as the Judicial Studies Institute. It is proposed that the new J.S.I. facilitate the continuing education of judges in relation to all aspects of the judicial function, including the preparation and distribution of bench books and other materials, organisation of conferences, seminars and meetings, the provision of training for judges in relation to information technology, and the dissemination of information on sentencing. It is stated that the council shall provide administrative support for the Judicial Studies Institute.

Under the proposed legislation it is provided that the J.S.I. will consist primarily of judges. However, provision is made to include persons who are not members of the judiciary but who have special knowledge or experience related to the purposes of the institute.

Thus in Ireland we are in the early days of providing significant continuing studies for judges. At this time it is very helpful for us to consider the systems established in other

¹⁴ <http://www.jsijournal.ie>

¹⁵ Committee on Judicial Conduct and Ethics Report, December, 2000, Government Publications

states for judicial studies. Those I have looked at have been established within the last twenty years.

I have a great admiration for the Judicial College of Victoria.

Judicial College of Victoria

The Judicial College of Victoria provides education for judges and magistrates. It was established by the Judicial College of Victoria Act 2001 and began operating in November 2002. On its website¹⁶ it is stated that:

"Victorian judicial officers drive the education the College provides and the resources it develops. Judges, magistrates and VCAT members comprise the steering, editorial and special purpose committees, and all Victorian jurisdictions support the College's programs and resources. The College Board, which includes the heads of all Victorian jurisdictions, meets four times each year."

I note that the board has a majority of judges on it and two Attorney General appointees. Clearly the judiciary guide the programmes.

I am very impressed by the investment in the Judicial College and the expertise of its staff - from the C.E.O. Lyn Slade BA, LLB, M Bus; the Director Project Development; Maria Lusby PSM, BA, LLB; Director Research and Publications; Chris Michell BA(Hons), LLB; Director Education; Samantha Burchell BA, LLB; Manager Projects; Carly Shrever BSc, LLB; Manager Programs; Fiona Brice BA, LLB(Hons); Manager Programs; Sally Hyatt BA, LLB(Hons); Senior Researcher Criminal Procedure Project; Matt Weatherson BSc(Hons), LLB(Hons); Senior Researcher Criminal Charge Book; Jamie Walvisch BA(Hons), LLB(Hons); Research Officer, Mereana White BA,

¹⁶ <http://www.judicialcollege.vic.edu.au>

LLB(Hons); Research Officer, Jane Mevel BA, LLB (Hons), Grad Dip Leg Practice;
Judicial Intranet Coordinator, Damian Siracusa BA, LLB, Gad Dip Leg Practice;
Project Officers, Sarah Welch, B Bus, LLB, Grad Dip Leg Practice and Rebecca Mond,
B Tech, PA to C.E.O. and Program Support, Kylie Pearse; Administrative Assistant:
Konstantina Giblet.

Clearly there are highly skilled personnel administering this Judicial College.

As we press ahead with our Judicial Council and a new Judicial Studies Institute, I am going to suggest that we use the Judicial College of Victoria as a template.

This college has become a successful national and international leader in judicial education and training. Such an institution is to the benefit of judges, and the community the judges serve. It is also an institution where judges have responsibilities and duties in guiding the college – and in attending meetings and the events organised.

There are other judicial colleges and institutes in common law jurisdictions.

Judicial Studies Committee of Scotland

The courses and conferences run by the Judicial Studies Committee of Scotland are very impressive. The Judicial Studies Committee of Scotland was set up in 1997. It aims to promote training for the judiciary. The committee is made up of a majority of judicial members and has a full time staff of five.

The independence of the judiciary, and the separation of powers, two fundamental principles of democracy, are recognised in a statement by the Judicial Studies Committee, J.S.C..

As the J.S.C. states:-¹⁷

“In any true democracy, judges must enjoy a high degree of autonomy so that they can exercise their judicial powers independently without others, including organisations of the State such as the Executive and Parliament, being able to control their decision making. Unless judges have such independence, the public will not be able to have confidence in the administration of justice.

Judicial training itself, insofar as it seeks to influence how judges carrying out their duties, might be thought to compromise judicial independence. In order to ensure that it does not, it has to be recognised, in all democratic countries, that the overall control and direction of judicial training and awareness requires to be in the hands of the judges. This also ensures that judicial training has credibility among the judges. The composition of the Judicial Studies Committee recognises the importance of these principles.”

Scotland has a very successful judicial studies system.

New Zealand

Thus, as we look around our common law world we see judicial studies developing in jurisdictions over the last few decades. The New Zealand Institute of Judicial Studies was an initiative of the judiciary and was established in 1998. The institute is governed by a Board, the majority of whom are judges. The Board seeks to deliver education of the highest quality. To assist that aim there are a number of committees, including the Higher Courts Education Committee, the Family Court Education Committee and the

¹⁷ <http://www.judicialstudies-scotland.org.uk>

Environment Court Education Committee. The institute has a staff led by Director Richard Moss.

I was impressed by the Annual Reports which show a thriving organisation, addressing such issues as keeping judges up to date with changes in the law, an orientation programme for new judges, and the core curriculum.

It is clear that there has been and is an active participation by members of the judiciary in growing this institute. Also it is clear that an important role has been played by the Director and the staff.

England and Wales

In England and Wales the Judicial Office, established in 2006 to support the judiciary, brought together in one organisation several units which had previously existed independently, including the Judicial Studies Board. It has a Chief Executive Officer who reports to the Chief Justice, and the work is directed by the judiciary. It is a reform brought about by the Constitutional Reform Act, 2005. Training and development are provided through the Judicial Studies Board. The Judicial Studies Board is an independent judicial body and part of the judicial office. The Lord Chief Justice has responsibility for oversight through the Judicial Executive Board.

Judicial Studies Board of Northern Ireland

The Judicial Studies Board of Northern Ireland is responsible for judicial training in Northern Ireland. It was established in 1994. The majority of the members of the

board are members of the judiciary, being at least one representative from every judicial tier. There also is a legal academic and the Director.

The board aims to provide suitable and effective programmes of practical studies for members of the judiciary and to improve upon the system of disseminating information to them. “In order to protect judicial independence and in particular to ensure that sectional interests are not brought to bear on the judiciary through training events, the Board is ‘judge driven’.”¹⁸

Reflection

Thus it may be seen that over the last two decades jurisdictions of common law countries have been establishing and developing institutions for judicial studies. To protect judicial independence and the separation of powers, required in a democratic state, these bodies are judge driven. They are thus another example of the evolving duties and responsibilities of judges.

European Judicial Training Network

Before I leave the subject of judicial studies, I should mention the European Judicial Training Network, EJTN. The EJTN is the principle platform and promoter for the development, training and exchange of knowledge and competence (to use a term favoured in the EU) of the EU judiciary.¹⁹ The EJTN’s mandate is to help build a genuine European area of justice and to promote knowledge of legal systems, thereby enhancing the understanding, cooperation and confidence between judges within the EU. It works with the European Commission and nearly forty EU national judicial

¹⁸ <http://www.jsbni.com>

¹⁹ <http://www.ejtn.net>

bodies; which are members or observers. Ireland is a member of the EJTN and has been actively involved in its development. This means that members of the Irish judiciary attend at meetings of, and are members of, the EJTN. Judicial training is an important matter but is another call upon judicial time and an added responsibility.

3.4 Judicial Conduct and Ethics

Another area where judicial duties and responsibilities have expanded is in relation to judicial conduct and ethics. Considerable careful analysis, and a degree of concern, has accompanied the development of new processes and committees relating to judicial conduct and ethics. This is an aspect of a modern accountability of judges. Great care has to be taken, while establishing such processes, to protect judicial independence.

A cornerstone of the judiciary in common law countries today is that they are independent. This concept and its modern development is steeped in history. Common law systems developed from the English system where judges were appointed during good behaviour under the Act of Settlement, 1701 and could be removed only by both Houses of Parliament.

The Act of Settlement, 1701 provided:-

“... Judges Commissions be made *quam diu se bene gesserint* and their salaries ascertained and established but upon the Address of both Houses of Parliament it may be lawfull to remove them.”

A similar rule did not apply initially to the colonies, where judges could be removed more easily: Burke’s Act, 1782. There is a learned discussion and analysis of this

situation by Professor John McLaren of the University of Victoria in his lecture “Dewigged, Bothered and Bewildered: British Colonial Judges on Trial, 1800-1900”.²⁰

Today, states with the common law tradition give security of tenure to judges, to protect the independence of the judiciary, for the benefit of the community. Article 35 of the Constitution of Ireland has a provision which is similar to those found elsewhere. It provides:-

“4.1° 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.

2° The Taoiseach shall duly notify the President of any such resolutions passed by Dáil Éireann and by Seanad Éireann, and shall send him a copy of every such resolution certified by the Chairman of the House of the Oireachtas by which it shall have been passed.

3° Upon receipt of such notification and of copies of such resolutions, the President shall forthwith, by an order under his hand and Seal, remove from office the judge to whom they relate.”

This process has not been implemented by the Oireachtas, the Irish Parliament. There have been occasions when it was anticipated, and an Oireachtas Committee established to investigate,²¹ but timely retirements have obviated any need for further proceedings.

There are no statutory provisions relating to an investigation of complaints against the judges of the superior courts. However, there are provisions relating to District Judges. Section 10(4) of the Courts (Supplemental Provisions) Act, 1961, provides that:-

²⁰ <http://www.coag.uvic.ca/resources/preservation/Dewigged-April-9-2010.pdf>

²¹ **Curtin v. Dáil Eireann** [2006] 2 I.R. 556

"Where the Chief Justice is of opinion that the conduct of a judge of the District Court has been such as to bring the administration of justice into disrepute the Chief Justice may interview the judge privately and inform him of such opinion."²²

Also, the President of the District Court may investigate the conduct of a colleague where it appears that such District judge's conduct is prejudicial to the prompt and efficient discharge of the business of that Court. The President must consult the relevant judge and may report his or her findings to the Minister for Justice.²³ In addition, the Minister for Justice may request a judicial inquiry into the conduct or condition of health of a District judge. On such a request the Chief Justice shall appoint a judge of the High or Supreme Court to conduct the investigation and report the result to the Minister.²⁴

No other formal system of making or receiving a complaint exists. It has been the practice for Presidents of courts of each jurisdiction to deal informally with any complaints received.

There have been discussions for many years in Ireland about introducing procedures relating to judicial conduct. In 2000 a committee, the majority being judges, advised that there be established a Judicial Council, within which there should be a Judicial Conduct and Ethics Committee.²⁵ Prior to making this report we had the benefit of consultations with colleagues from other jurisdictions. Indeed we held a conference at which most helpful papers were presented. Amongst others there was a paper on

²² Section 10(4) Courts (Supplemental Provisions) Act, 1961, as amended by s.21(2) of the Courts Act, 1991.

²³ Section 36(2)(a) and (b) Courts (Supplemental Provisions) Act, 1961

²⁴ Section 21 of the Courts of Justice (District Court) Act, 1946

²⁵ Committee on Judicial Conduct and Ethics Report, December, 2000, Government Publications.

“Judicial Accountability” by The Hon. Sir Anthony Mason AC, KBE, where he analysed the tensions between judicial accountability and judicial independence. There was a paper on the Role and Functions of the Judicial Commission of New South Wales, by Ernest Schmatt, PSM Chief Executive of the Judicial Commission of New South Wales. Also a paper was presented by Ms. Jeannie Thomas, Executive Director of the Canadian Judicial Council, explaining the Canadian experience.

At this time in Ireland the Heads of a Bill exist and it is anticipated that a Bill to establish a Judicial Council will be before the Oireachtas, the Irish Parliament, this session. Under this Bill provision is made for a complaints procedure to a specified committee. Thus, while we are moving toward establishing a procedure to handle issues of judicial conduct, other common law jurisdictions have advanced upon this road many years ago.

Whichever model is adopted in a State, it means that judges have the additional responsibility of leading and directing such new processes. Also, of course, it means that there are opportunities in administrative positions for experienced staff to manage the system.

3.5 Information on Sentencing

Another area where judges have undertaken additional responsibilities is in the provision of information on sentencing. Sentencing is a sensitive and important power and a critical aspect of the administration of justice. It is an area where the community

seeks information and consistency. In many jurisdictions information on sentencing has been expressly addressed by institutions, albeit often in different ways.

Thus the Judicial Commission of New South Wales has as its major functions to:-

- assist the courts of New South Wales to achieve consistency in imposing sentences;
- organize and supervise an appropriate scheme for the continuing education and training of judicial officers; and
- examine complaints against judicial officers.

In this Commission three of the important developments of additional duties and responsibilities for judges are to be found. It is one of the first such developments in a common law jurisdiction, being established in 1986.

The Commission consists of six official members, being the Heads of Jurisdiction of the state's five courts and the President of the Court of Appeal, and four members appointed by the Governor of New South Wales. The Chief Justice of New South Wales is the President of the Commission. The Commission is supported by a staff of 35.3 full time staff and is headed by a Chief Executive. The Annual Report 2008-2009 states that the total revenue for the Commission was \$5.324m.²⁶

An important function of the Commission is to assist courts to achieve consistency in approach to sentencing. The Commission does this in several ways, including access to the Sentencing Information System (SIS); a computerized sentencing database developed by the Commission; and undertaking and disseminating original research and

²⁶ <http://www.jud.com.new.gov.au/publications>

statistical analysis in aspects of sentencing and related topics. The SIS was the first of its kind in Australia. SIS includes statistics, case summaries, judgments, sentencing principles and practices, electronic bench books, on-line legislation. The Judicial Commission of New South Wales has a most impressive website.²⁷ Since its establishment in 1986 the Judicial Commission of New South Wales has been established as a world leader in computerized sentencing information.

Sentencing Council of England and Wales

Judges provide information on sentencing in different forms in other jurisdictions. Guidelines are given in England and Wales. On the 29th March, 2010, The Lord Chancellor and The Lord Chief Justice announced the appointment of new members of the Sentencing Council of England and Wales, an independent body set up to support greater consistency in sentencing. There are eight judicial members of the council and six non-judicial members. The Lord Chief Justice stated:-

“The Sentencing Council will contribute to consistency of approach to sentencing throughout England and Wales, as well as to the improved public awareness of and confidence in sentencing practice.

I am grateful to the members of the Sentencing Council for accepting this responsibility.”

The Right Honourable Lord Justice Leveson has been appointed chairman of the Sentencing Council by the Lord Chief Justice.

²⁷ <http://www.judcom.nsw.gov.au>

Scotland

The judiciary of Scotland have recently launched a new website.²⁸ It provides information about judges and their work. It also provides up to date information on the latest sentencing statements. Thus providing easy access to recent sentencing decisions.

A section of this website is entitled "About the Judiciary". It describes roles and jurisdictions, it sets out principles of judicial ethics, it has a series of F.A.Q.s and a section on "A day in the life of ..." an Outer House Judge and an Inner House Judge. This is a new website and clearly it is intended to be developed further. But its presence illustrates the development of the judiciary, its responsibilities, and its communication on the issue of sentencing.

Irish Sentencing Information System, ISIS

In Ireland a Steering Committee, composed of judges and an academic with a specialist knowledge of sentencing, has just completed a pilot project. On the 3rd August, 2010 the Courts Service launched a website, ISIS, Irish Sentencing Information System.²⁹ This website is available to the public. It contains computerised data on sentencing, with examples from all jurisdictions. There are statistics and some publications. We are awaiting an analysis of the pilot and feedback, and will then plan an appropriate future.

²⁸ www.scotland-judiciary.org.uk

²⁹ <http://www.irishsentencing.ie>

Reflection

Thus the provision of information on sentencing, whichever be the approach, is another example of the additional responsibilities and duties of judges. Another area where judges have increased their workload by being involved in, and committed to, systems which provide information on sentencing. It is important for the judiciary to be able to access the information and also that the public may see the process. Thus it assists public confidence in the judiciary.

3.6 Transnational Responsibilities

My final illustration of the additional responsibilities of judges is in the transnational field. Judges today are required to participate in conferences and working groups in a way which was inconceivable years ago.

The point is illustrated by the fact that we are meeting at a conference of the Australasian Institute of Judicial Administration – a transnational organisation. Those of us attending come from several jurisdictions. We are here to exchange views in the belief that it will assist our work at home.

Judges are members of and participate in global organisations for the judiciary. In addition in different areas of the world specific local transnational organisations exist. I shall illustrate my point by reference to the European Union.

EU Membership

EU membership has brought additional duties and responsibilities upon judges of the Union. I am not addressing here the fact that a national judge is the judge applying the law of the European Union in each Member State. Rather, I refer to the many important judicial bodies in the EU to which judges of each Member State should belong and in which they should participate.

European Judicial Training Network

I have referred already to the European Judicial Training Network, EJTN. EJTN represents the interests of over 160,000 European judges, prosecutors and judicial trainers across Europe. It was formed in 2000. It aims to foster a common legal and judicial European culture. EJTN develops training standards and promotes cooperation between EU judicial institutions. Ireland was a founder member and we have a judge of the High Court delegated to represent us at its meetings and to participate in its work.

Association of Presidents of the Supreme Judicial Court of EU

The Presidents of the Supreme Judicial Courts of the Member States of the European Union decided to form an Association, whose constituent assembly was held on 10th March, 2004 at the French Cour de Cassation, with the financial support of the European Commission.³⁰ This network provides a forum through which European institutions may take the opportunity to request the opinions of Supreme Courts. The members gather to discuss matters of interest. The colloquium last spring was held in Dublin, hosted by the Chief Justice of Ireland, The Hon. Mr. Justice John L. Murray.

³⁰ <http://network-presidents.eu>

European Network of Councils for the Judiciary

The European Network of Councils for the Judiciary, ENCJ, was established in 2004. It was founded at the instigation of members of the judiciary of the Netherlands, Belgium and Ireland. Its members are national institutions in the Member States of the European Union which are independent of the executive and legislature and which are responsible for the support of the judiciaries in the independent delivery of justice. In most states the Judicial Council is the national representative. In Ireland, at present, our Courts Service is the representative, and in due course when we have a Judicial Council it will represent the judiciary also. The ENCJ supports cooperation between the judiciaries of the EU and the exchange of information.³¹ The ENCJ proposes to act as a mediator between the institutions of the EU and national judiciaries. It has formulated a number of objectives within the developing European area of freedom, security and justice.

I have been involved with the ENCJ from its creation and establishment. Five judges from Ireland attend regularly the meetings and working groups on behalf of the Irish judiciary, together with a member of the Courts Service.

Lord Justice Thomas of England and Wales is just completing his second year as President of the ENCJ. His has been a very successful presidency. It has been important to have a judge of a common law jurisdiction in such a position. However, it involved a considerable commitment by Lord Thomas as it requires attendance at regular meetings in Brussels and all over the EU. Lord Thomas has said:-

³¹ <http://www.encj.eu>

"It is of great importance for common law judges to be involved in the development of the "common area for justice in Europe". Few judges were involved at a European level in what was taking place in Brussels. It is opportune that judges have now become involved, as change, particularly in the light of the Lisbon Treaty, is occurring at an ever increasing rate. Judges need to ensure that the judicial voice is heard, not only to see that their independence (on issues such as training) across Europe is secured but so that legislation takes into account the views of judges on its technical content and practicality."

I asked Judge Thomas the practical question as to how he had managed to carry out this role together with his judicial duties in England and he stated:-

“Being a judge and President of the ENCJ has, over the past two years, been a juggling act. I got no sabbatical and have been sitting with only a slightly reduced case load. The only way I could have managed is to have a wonderful wholly supportive wife, an excellent clerk who masterminds my diary, the day to day help of our Judicial Office where there are a number of first class civil servants and finally our tiny [ENCJ] office in Brussels – the perfect combination of Director, Assistant Director and Administrative Assistant. It has been quite a lot of work getting the voice of judges taken into account in the institutions of Brussels but with the support of those I have mentioned, we are beginning to make progress."

Other Associations of Judges

There are many other important judicial associations in the EU. For example, the Association of European Competition Law Judges, AECLJ.³² This body concerns itself with the very technical law on competition. Ireland was a founder member. Those involved are judges from the Member States of the EU who hear cases in their national courts involving both national and European competition law. The association aims to promote knowledge and understanding of competition policy and law issues throughout the judiciaries of the Member States. Since it was founded in 2002 Ireland has had a

³² <http://www.ec.europa.eu/competition>

member of the judiciary active in this association. Indeed, the new President is my colleague on the Irish Supreme Court, The Hon. Mr. Justice Liam McKechnie.

Participation in EU Judicial Bodies

It is important for members of the judiciary to participate in EU institutions at this time when the justice area is developing. It is of particular importance for those states who have a common law system, of which there are few, to participate. As the majority of states of the EU have a civil system of law, unless the voice of those with common law systems, such as Ireland, England and Wales, and Malta, speak up, the common law approach will not be heard.

4. Judicial Numbers

The additional responsibilities, and participation in the new duties of judges at home and abroad, casts a heavy burden on states where the number of judges are few. The situation in the common law jurisdictions contrasts with the civil law jurisdictions. The number of judges per head of population is higher in civil law countries. Also, in many such states there is a tradition of giving a judge a sabbatical so that he or she may work whole time in judicial institutions, such as judicial councils.

The number of judges may be illustrated by statistics of the European Commission for the Efficiency of Justice, CEPEJ,³³ taken from Table 51.

³³ European judicial systems, Edition 2008, (data 2006); Efficiency and quality of justice, European Commission for the Efficiency of Justice (CEPEJ), Council of Europe Publishing

Country	Professional Judges (2006)	
	Number	Per 100,000 inhabitants
Austria	1,674	20.2
Belgium	1,567	14.9
Cyprus	98	12.7
Denmark	359	6.6
Finland	901	17.1
France	7,532	11.9
Germany	20,138	24.5
Iceland	47	15.7
Ireland	132	3.1
Italy	6,450	11.0
Malta	34	8.3
Norway	512	10.9
Serbia	2,506	33.8
Spain	4,437	10.1
UK, England & Wales	3,774	7.0

In general, in common law countries fewer professional judges are appointed per head of population than in civil law countries, and so there are fewer judges to undertake the existing and expanding duties and responsibilities of the judiciary.

Under the last published national census in 2006 the population of Ireland was 4,239,848. The combined effect of the natural increase in population and migration resulted in the Central Statistics Office of Ireland estimating the population at 4.47 million in April, 2010. In 2006 we had 132 judges. Today there are 146 judges, and 1 vacancy. We have no magistrates, lay judges or part-time judges. Our numbers are few to carry the responsibility of administering justice and undertaking the additional responsibilities and duties which I have discussed.

I note that as of March, 2010 the estimated population of Victoria was 5,529,400.³⁴ It appears that there are 43 judges in the Courts of Victoria, being the Supreme Court, Court of Appeal and Trial Division³⁵. You have, of course, also other courts, including the Federal Courts, the Family Court, the High Court. However, you appear to follow the same pattern of number of judges per head of population, there are relatively few professional judges.

Administrators

These significant changes for the judiciary, the establishment of such new institutions, have also meant that there are new roles for administrators. There are great opportunities in this area. While some states have already established Councils and Commissions, with the appropriate staff, we in Ireland are anticipating such changes in the near future. It opens up opportunities for court staff.

Over the years we have met with and been assisted by administrators from other states – Australia and Canada, for example. I look forward to seeing the development of specialised administrative skills in Ireland in our Council and specialised committees in the future.

³⁴ Australian Demographic Statistics, Ma2 2010

³⁵ Australian Bureau of Statistics

5. Role as a Judge

Our role as a judge has been described by Chief Justice Brennan³⁶ as follows:-

"A judge's role is to serve the community in the pivotal role of administering justice according to law. Your office gives you that opportunity and that is a privilege. Your office requires you so to serve, and that is a duty... Freedom, peace, order and good government - the essentials of the society we treasure - depend in the ultimate analysis on the faithful performance of judicial duty."

I agree with this description, while acknowledging the current evolution taking place. The changing role of the judge was referred to by Chief Justice Murray Gleeson in 1998 when speaking at the National Judicial Orientation Programme. He said:-

"We live in an age of accountability. What is required of judges is changing. That is a good thing, but it does not make life easier for judges. A good deal of what will be said to you during this orientation programme will be directed to various aspects of judicial performance. The very fact that such a programme is now conducted, annually, by the Judicial Commission of New South Wales and the Australian Institute of Judicial Administration, itself speaks volumes as to the change that has occurred in the expectations of the profession and the public."³⁷

I agree with Chief Justice Gleeson's view that "What is required of judges is changing."

I agree also with his view that it is a good thing. However, we should be conscious of these changes which are occurring in our busy lives, and plan appropriately.

³⁶ "The Role of the Judge". National Judicial Orientation Programme, Novotel Northbeach, Wollongong, The Hon. Sir Gerard Brennan AC KBE, Chief Justice of Australia, 13 October 1996, available at <http://www.hcourt.gov.au/speeches>

³⁷ The Honourable Murray Gleeson AC "The Role of the Judge and Becoming a Judge", available at www.hcourt.gov.au/speeches/cj/cj_njop.htm

6. Conclusion

In our time, on our watch, the responsibilities and duties of the judiciary in common law jurisdictions has been evolving. There has been a paradigm shift.

I have referred to several illustrations of areas where judges have received further responsibilities in recent decades including, court administration, case management, judicial education institutions, judicial conduct and ethical institutions, and involvement in transnational organizations. I am in favour of all these developments. However, it is necessary to acknowledge the increased responsibilities and workload which these evolving responsibilities place on the judiciary.

In our democracies today it is important that the judiciary retain public confidence. This raises issues of more accountability and public information. The additional duties and responsibilities address these requirements.

Many of these areas of new responsibilities are areas where, to protect the independence of the judiciary, the responsibility is required to be borne by the judiciary. There is a potential danger that with these new institutions there will be new external and internal pressures on judges. There may be new tensions to be recognized and addressed.

It is necessary to protect the independence of the judiciary as a branch of government **and** the independence of the individual judge as these new responsibilities and

institutions are developed. One way to do this, as I referred to earlier, is to have an organising judicial body made up at least in part by judges elected by other judges. This way the institution is of the judges and for the judges.

Thus, as we develop more complex institutions within the judiciary it is important to protect the independence of the individual judge and the institution of the judiciary.

As Professor Shimon Shetreet said:- ³⁸

"Modern conception of judicial independence is not confined to the independence of the individual judge and to his personal and substantive independence. It must include collective independence of the judiciary as a branch. Likewise, judicial independence should not be perceived only in terms of shielding the judge from executive pressures or legislative interferences. It must also encompass internal independence, i.e., the independence of the judge from his judicial colleagues or superiors."

As we develop further infrastructure in the judiciary, committees or institutes on matters such as studies, judicial conduct, case management, and on issues such as sentencing, this latter aspect of judicial independence should not be ignored. Thus perceived pressure by judicial colleagues must be considered. However, at the same time as recognizing the internal independence of the judiciary, that is the independence of a judge from his judicial superiors and colleagues, we must also recognize the collective independence of the judiciary. Indeed, the individual independence of a judge is an aspect of institutional independence.

These great changes which we have seen arise in our modern states are rooted in concepts such as accountability and public confidence in the judiciary. They should be

³⁸ Shetreet, S. and Deschênes, J. (eds.), *Judicial Independence: The Contemporary Debate*, (Martinus Nijhoff Publishers, 1985, Dordrecht) Chapter 52, Shetreet S, "Judicial Independence: New Conceptual Diversions and Contemporary Challenges", p.590.

addressed. Because of the very nature of the issues, to protect the independence of the judiciary, judges must lead the additional institutes, councils, committees etc..

However, these new responsibilities and duties draw heavily upon a judge's time. This may affect detrimentally the time he or she has for the primary work of administering justice. So a practical analysis has to be made as to whether there needs to be further judges appointed so that these additional responsibilities and duties may be addressed appropriately.

These new responsibilities and duties, and the new institutions established, require to be adequately funded. Unless the appropriate resources are provided such institutions could not perform efficiently and effectively.

These developments are taking place in the third branch of government, the judiciary. There have been many changes in the government of our democracies over the last two decades. However, I suggest that the greatest change has been in the judicial branch, by the addition of responsibilities outside the administration of justice.

My Generation

When I joined the judiciary nearly twenty years ago none of the new responsibilities to which I have referred were part of a judge's life. All is changed,

As a member of what I have described as "the generation on a cusp of time", we have seen great changes in our time. It behoves us, while welcoming the additional institutions, to bear in mind the fundamental principle of the independence of the

judiciary, so that what was gained in the 18th Century is not reduced through modernisation in the 21st Century.

For new, recently appointed, judges these new institutions are a normal part of the judiciary. For those of us on the cusp of time between the old and new systems we have a longer view – as such institutions did not exist when we commenced our careers. As we embrace the modern institutions we should take care in our busy lives that we do not do so in a manner that will reduce the independence of the judiciary, but that the new institutions may be developed to strengthen, and to assist public confidence in, the judiciary.

There has been a quiet revolution in the role of judges over the last 20 years. As Sir Ninian Stephen described it, it is a "fragile bastion"³⁹. We need to take care of the bastion. While we should meet the expectations of a modern democracy, and retain public confidence, we must also protect the diamond in our democracy – the independence of the judiciary. As these winds of change blow through our courts, while embracing the new institutions, we must protect the independence of the individual judge, and of the judiciary as a branch of government, for the communities we serve. It is not an easy road we have to take.

As we face into these challenging times and travel down the road together, let me leave you with some ancient words from Ireland:-

"May the road rise to meet you,
May the wind be always at your back,
May the sun shine warm upon your face,
The rain fall soft upon your fields."

³⁹ 1981 Southey Memorial Lecture, (1982) 13(3) Univ Melb Law Rev 334.