Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

2019

Annual Report

Report published by the Supreme Court of Ireland with the support of the Courts Service.

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The Supreme Court sitting as a full Court of all its members

The Supreme Court of Ireland is at the apex of the courts system in the State and is the final arbiter and interpreter of Bunreacht na hÉireann, the Constitution of Ireland, which is the State's basic law.

Pursuant to Article 34.5.1° of the Constitution, "the Court of Final Appeal shall be called the Supreme Court." The Supreme Court enjoys both an appellate and an original jurisdiction as prescribed by the Constitution. The jurisdiction of the Court was altered in 2014 upon the establishment of the Court of Appeal.

In principle, a party may bring before the Supreme Court an appeal in respect of any type of case, including a civil or criminal law case, provided that the case meets the threshold which the Constitution sets out.

An objective of the Supreme Court is to ensure that the laws which the Oireachtas, Ireland's Parliament, enact are upheld and interpreted in light of the Constitution and the jurisprudence that has developed since it came into force in 1937.

The Supreme Court of Ireland is also, therefore, a constitutional court.

In addition, the Supreme Court has a role in the implementation of the law of the European Union and, as the court of final appeal in Ireland, is obliged under the Treaty on the Functioning of the European Union to refer questions regarding the interpretation of EU law which arises in cases before it to the Court of Justice of the European Union where the interpretation is not clear and clarification is necessary in order for the Supreme Court to decide a question before it.

The Supreme Court, through its decisions, brings finality to the appeals brought and heard before it. As the highest court in the land, the decisions of the Supreme Court have binding precedence on all other courts of Ireland.

Foreword
by the Chief Justice
Mr. Justice Frank Clarke

"Notwithstanding the extensive involvement of the Supreme Court in national and international initiatives, conducting the Court's core work - determining the cases that comes before it – must always remain one of the Court's primary objectives "

I am delighted to present this second annual report of the Supreme Court which highlights the work undertaken by the Court both inside and outside the courtroom during 2019.

Different sections of this report set out the involvement of our court in both national and international initiatives outside the courtroom. However, the core work of any Supreme Court must be to hear and determine the cases which come before it. Doing so in a timely and efficient way must always remain one of our primary objectives.

In that context I would like to draw particular attention to three matters. First, as a result of a review of the early years of the operation of the reformed jurisdiction of the Supreme Court (which came about because of the establishment of the Court of Appeal), adjusted procedural rules and a reformulated practice direction were introduced with a view to improving our process in the light of experience. One of the consequences of the operation of those new rules has been to reduce the time within which applications for leave to appeal are considered by the Court. Obviously the time taken to determine whether leave to appeal should be granted can be affected by any failure by a party or parties to file required documentation within the time specified. However, the new structure should allow for a decision on whether to grant leave to appeal to be taken within no more than ten weeks provided that there is broad compliance by the parties with those time limits.

Second, and of particular importance, is the time taken, in those cases where leave is granted, from the service of the notice of intention to proceed (which is the formal start of the substantive appeal process in cases where leave has been granted) to the time when the appeal is actually heard. We have looked at all of the appeals which were listed for hearing during the first term of 2020. Two of those appeals encountered some practical difficulties during case management with, indeed, one of those two appeals requiring a rehearing. If those two appeals are excluded and if the time taken during the long vacation is not reckoned, the average period from service of the notice of intention to proceed to hearing date is now 122 days or almost exactly four months.

The third element of the time taken to a final determination of an appeal is, of course, the period between the hearing and the delivery of judgment. In that context there are regular listings of all cases where that period exceeds two months and I am happy to say that the number of cases appearing in such lists in recent times have been at the lowest since that practice was introduced.

I am also happy that the Supreme Court was able to assist in the clearing of the legacy backlog of appeals which were transferred from the Supreme Court to the Court of Appeal, under Art. 64 of the Constitution, when that court was established. As appears elsewhere in this report, the Supreme Court took back a significant number of such cases and has now determined them. The Court of Appeal has, itself, virtually finished the task of dealing with the remaining cases so that it can now, I think, safely be said that there are very few remaining legacy appeals and all of those which do remain have had problems of one sort or another which have prevented them from being finalised.

But precisely because the Supreme Court has now cleared its own legacy appeals and will no longer have cases returning to it from the Court of Appeal, it will be possible to put in place enhanced internal protocols to ensure that the time between hearing and delivery of judgment is kept to the minimum. That being said it must always be emphasised that the cases now being hear by the Supreme Court are, by constitutional definition, all cases of general public importance which have, inevitably, a significance beyond the individual case. In such circumstances it is particularly important that the implications of the judgments of the Court are carefully worked out. It follows in turn that at least some cases do require very detailed and complex consideration before judgment can be delivered.

However, the above analysis suggests that, at least in very many cases, and in particular where there are no significant delays in the filing of relevant documents, the Court may hope to be able to deal with the entire process from application for leave to appeal to the delivery of judgment in nine to ten months. I frankly do not think that it will be possible to reduce that time much further except in those very rare cases where urgency requires that what might otherwise be seen as unrealistic demands are placed both on the parties and on the Court.

Finally, in relation to the Court's own process, I have to record that the uptake on the system put in place for making applications for leave to appeal online has been disappointing. However, discussions took place just before Christmas with representatives of the Law Society in that regard. Proposals for some small changes to the way in which the system operates are under active consideration and I would very much hope that, by this time next year, I will be able to report on a radically changed landscape in this regard.

This report also identifies the continuing significant international obligations of the Court. I am convinced that, not least in the context of Brexit, these international relations will, if anything, increase in importance for Ireland over the coming years. But it does have to be said that we are a small judiciary and do not have the numbers available to other comparable courts (even those of relatively small countries) so that the burden placed on our judges is correspondingly larger. In that same context I should also say that, while the establishment of the Judicial Council is very much to be welcomed, the proper operation of that council and its many committees will also place additional burdens on the judiciary. Where matters are to be decided which have implications for the judiciary as a whole, it is particularly important that judges of all jurisdictions are involved and that judges based outside Dublin play a full role. But we must be realistic about the demands that places on judges who have busy lists to conduct.

As this report also notes, we have continued to expand our national outreach programmes. During 2019 the Court sat in Galway and will, in 2020, sit in both Waterford and Kilkenny. It is proposed that we will visit the north west in 2021 with sittings planned for Castlebar and Letterkenny.

I am also particularly happy with the pilot Comhrá programme which enables secondary school students to ask questions by live link to judges of the Supreme Court. We very much hope to build on that pilot programme during 2020.

On my own behalf and on behalf of my colleagues I should also express our deep appreciation of the support which we receive from the staff of the Courts Service generally but in particular those members of staff, detailed in this report, who work directly to the Supreme Court and its judges. Their invaluable assistance enables us to concentrate on doing that part of the work of any court which is the essential job of judges being to decide cases in a fair but timely fashion

Mr. Justice Frank Clarke
Chief Justice

Dublin
February 2020

Introduction
by the Registrar of the Supreme Court
Mr. John Mahon

"There was a year-on-year increase of 19% in the number of applications for leave to appeal filed in 2019. In addition, there has been a 56% increase in the number of such applications being determined by the Court."

I am very pleased to introduce this second annual report which is a comprehensive reflection of the important and varied work of the Court and those who support it during 2019.

The Chief Justice has detailed the significant improvement in waiting times in his foreword. The legacy appeal issue which subsisted in recent years has been resolved in this Court and substantively resolved in the Court of Appeal. In parallel in 2019, there has been a 19% increase in the number of applications for leave to appeal filed when compared to the previous year and, in addition, there has been a 56% increase in the number of such applications determined by the Court. There were also significant increases in the number of appeals disposed of and in the number of written judgments delivered by the Court. The continuing increase in the business of the Court which is evident from these pages has presented further administrative challenge for the Office of the Court but I am glad that notwithstanding this we have been in a position to make our contribution to the overall improvement in our business position during 2019.

As the Chief Justice has mentioned revised rules and a revised practice direction were introduced early in 2019 and a new pilot system to facilitate on-line filing of applications for leave by practitioners was also introduced. This continues the programme to improve the way that we do our business and to improve our level of service. The new provisions in respect of case management have, I believe, worked very well and have made a further contribution to the just and efficient determination of appeals. The Office will continue to engage with practitioners during 2020, in particular, to increase the uptake of the on-line filing system which is an important initiative for the Court and for the Courts Service.

I am particularly delighted that in November a new text of the Constitution was enrolled in the Office of the Court. This was the 6th enrolment, the last one having occurred some twenty years ago in 1999. Pursuant to Article 25 5 3° of the Constitution this text is conclusive evidence of the Constitution and is the definitive text. I am grateful for the significant work undertaken by the Department of the Taoiseach, the Attorney General's Office and the Office of the President leading to this enrolment. I and the staff of the Office are proud to be responsible for its safe custody.

Our staff continue to rise to the challenge of increasing business and at the same time provide a high quality service to judges, litigants, practitioners and to the public and I am very grateful that in doing so they maintain such good humour and *esprit de corps*.

I am very grateful to the Chief Justice and to the judges of the Court for their support throughout the year which has been instrumental in allowing us to maintain what I believe has been a very good level of service to practitioners and to the public. We look forward to 2020 and to the further initiatives planned to make continued improvements in the services that we provide.

John Mahon

Registrar of the Supreme Court

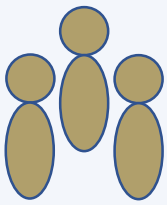
February 2020

2019 at a glance

Applications for Leave received **229**

Applications for Leave determined **248**

Appeals disposed of **144**



11 judges
(9 + 2 ex officio)
(1 vacancy)

Reserved judgments delivered **131**

Article 64 applications determined **71**


EXIT

"The Court of Final Appeal shall be called the Supreme Court."

Article 34.5.1° of Bunreacht na hÉireann

Part 1
About the Supreme Court of Ireland

1

About the Supreme Court of Ireland

Article 6 of the Constitution of Ireland, or Bunreacht na hÉireann in the Irish language, prescribes that "[a]ll powers of government, legislative, executive and judicial, derive under God, from the people."

Article 34.1 of the Constitution provides that "[j]ustice shall be administered in courts established by law by judges appointed in the manner provided by [the] Constitution." As members of the highest court in Ireland, judges of the Supreme Court are part of one of the three branches of government: the Judiciary, with the other two being the Legislature and the Executive. Each branch has its own constitutional functions and thus the principle of the separation of powers is respected.

The Supreme Court was established in 1937 pursuant to Article 34 of the Constitution of Ireland. It is the final court of appeal in all areas of law and is the highest of the five tiers of court jurisdiction in Ireland, the other courts being the District Court, the Circuit Court, the High Court and the Court of Appeal.

The Supreme Court considers appeals from the Court of Appeal where it is satisfied that the relevant decision involves a matter of general public importance or that it is in the interests of justice that there be an appeal to the Supreme Court.

In addition, the Supreme Court considers appeals directly from the High Court, bypassing or "leap-frogging" the Court of Appeal, where there are exceptional circumstances which warrant such a direct appeal. An appeal directly from the High Court to the Supreme Court is colloquially referred to as a "leap frog" appeal.

The Supreme Court determines all appeals properly brought before it on all matters in respect of which leave to appeal is granted. Such appeals often involve questions of interpretation of the Constitution, and of legislation, and may involve the question of the validity of any law having regard to the provisions of the Constitution.

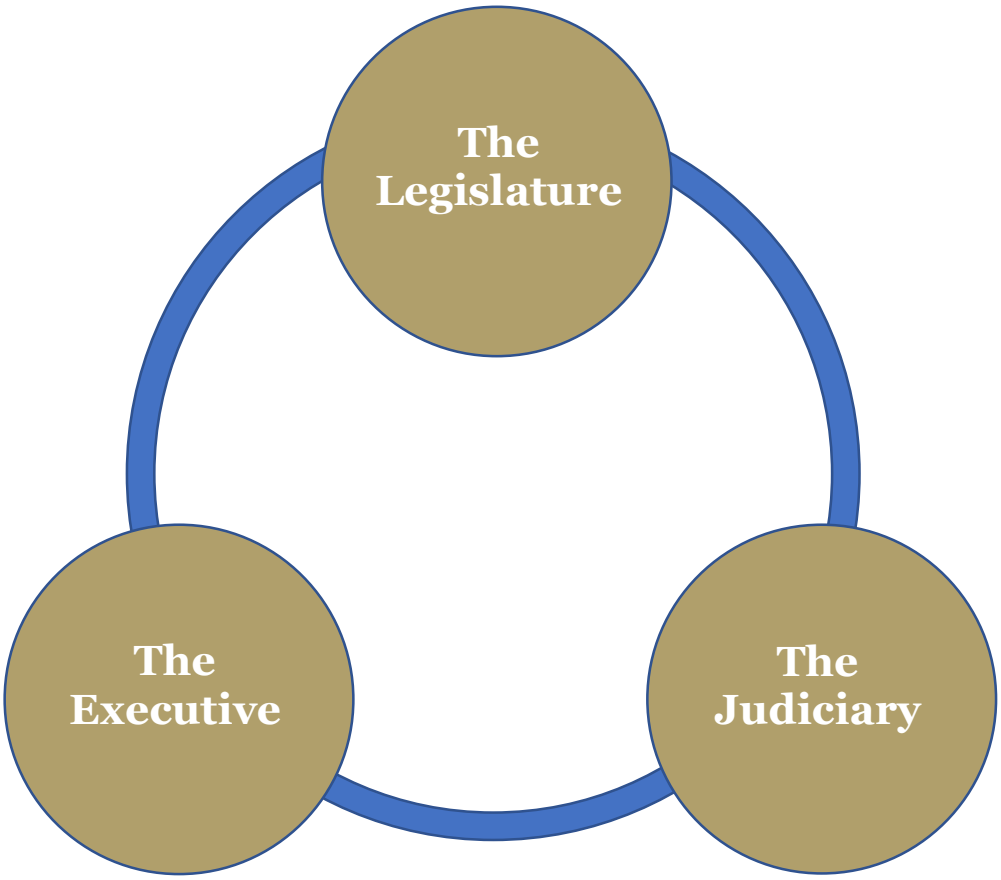
The Supreme Court also has jurisdiction to determine the constitutionality of Bills which the President refers to it. In addition, the Supreme Court is the body which, under Article 12.3 of the Constitution, is required to determine if the President of Ireland is permanently incapacitated.

The Branches of Government in Ireland

The Legislature

Comprised of the Oireachtas (the President and the Houses of the Oireachtas being Dáil Éireann (House of Representatives) and Seanad Éireann (the Senate)).

- Members of Dáil Éireann are directly elected by the Electorate with members of Seanad Éireann being either elected or nominated in a manner provided for in the Constitution and statute law.
- Considers and enacts laws by way of legislation.
- Enacts laws that are presumed to be in accordance with the Constitution.



The Executive

The Executive, also referred to as the Government or the Cabinet, is the Government of Ireland and is provided for in Article 28 of the Constitution, which stipulates that the Government must consist of no fewer than 7, and no more than 15 members and includes the Taoiseach (Prime Minister) who is the head of the Executive and his next-in-command, the Tánaiste (Deputy Prime Minister).

The Government is responsible to Dáil Éireann.

- The Executive is responsible for implementing laws passed by the Oireachtas.
- The Government decides major questions of policy and carries out a number of different and important functions.
- The Government meets and acts as a collective authority and is collectively responsible for all the Departments of State.

The Judiciary

Article 34 of the Constitution expressly states that "[j]ustice shall be administered in courts established by law by Judges appointed in the manner provided by [the] Constitution"

- Judges are appointed by the President on the nomination of the Government.
- Judges are required to make a Declaration to uphold the Constitution and the laws and shall be independent in the exercise of their judicial functions and subject only to the Constitution and the law.
- Judges have the power to review the compatibility of statutes with the Constitution and to judicially review subordinate legislation, decisions or actions of the Government or State bodies with a view to determining their legality and compatibility with the Constitution, and principles deriving from the Constitution such as due process.

About the Supreme Court of Ireland

Background

Prior to the establishment of the Court of Appeal in October 2014, there were four tiers of court jurisdiction in Ireland: the District Court, the Circuit Court, the High Court, and the Supreme Court. The Constitution of Ireland provided for an almost automatic right of appeal from the High Court, a constitutionally established Superior Court of Ireland with first instance full original jurisdiction, to the Supreme Court in relation to civil cases which originated in the High Court.

As a result of a constitutional Referendum held in 2013, which was approved by a majority of the People, the Constitution now provides for a Court of Appeal which occupies an appellate jurisdiction tier between the High Court and the Supreme Court.

In essence, the Supreme Court exercises three separate and distinct jurisdictions, namely:

(i) an appellate jurisdiction;
(ii) an appellate constitutional jurisdiction; and
(iii) an original jurisdiction as expressly provided for in the Constitution.

Appellate jurisdiction

Article 34.5.3° of the Constitution provides that:-

> "The Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the Court of Appeal if the Supreme Court is satisfied that –
>
> i. the decision involves a matter of general public importance, or
> ii. in the interests of justice it is necessary that there be an appeal to the Supreme Court."

In addition, Article 34.5.4° of the Constitution provides that:-

> "Notwithstanding section 4.1° hereof, the Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the High Court if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors:
>
> i. the decision involves a matter of general public importance;
> ii. the interests of justice."

The Supreme Court has a particular role in the application of European Union law as it is, as the court of final appeal, obliged to refer questions of EU law arising in cases before it concerning (a) the interpretation of the EU Treaties or (b) the validity an interpretation of acts of institutions, bodies, offices or agencies of the Union to the Court of Justice of the European Union where necessary to enable the Supreme Court to decide the case before it.

Appellate constitutional jurisdiction

Article 34.4.5° of the Constitution provides:-

> "No law shall be enacted exception from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of [the] Constitution."

As a result, the Supreme Court may be said to function as a constitutional court as it is the final arbiter in interpreting the Constitution of Ireland. This is a role of particular importance in Ireland as the Constitution expressly permits the courts to review any law, whether passed before or after the enactment of the Constitution, in order to ascertain whether it conforms with the Constitution. While such cases must be brought in the first instance in the High Court, there is an appeal from every such decision to the Court of Appeal, and the Supreme Court if the threshold is met. Subordinate legislation and administrative decisions may also be subjected to such constitutional scrutiny. The Superior Courts retain the power to annul legislation that is determined to be inconsistent with the Constitution.

Original jurisdiction

The Constitution of Ireland confers on the Supreme Court two first instance functions. Under Article 26 of the Constitution, the President of Ireland may, after consultation with the Council of State refer a legislative Bill deemed to have been passed by both Houses of the Oireachtas for a decision on the question of whether such Bill or any specified provision or provisions of such Bill is or are repugnant to the Constitution or to any constitutional provision.

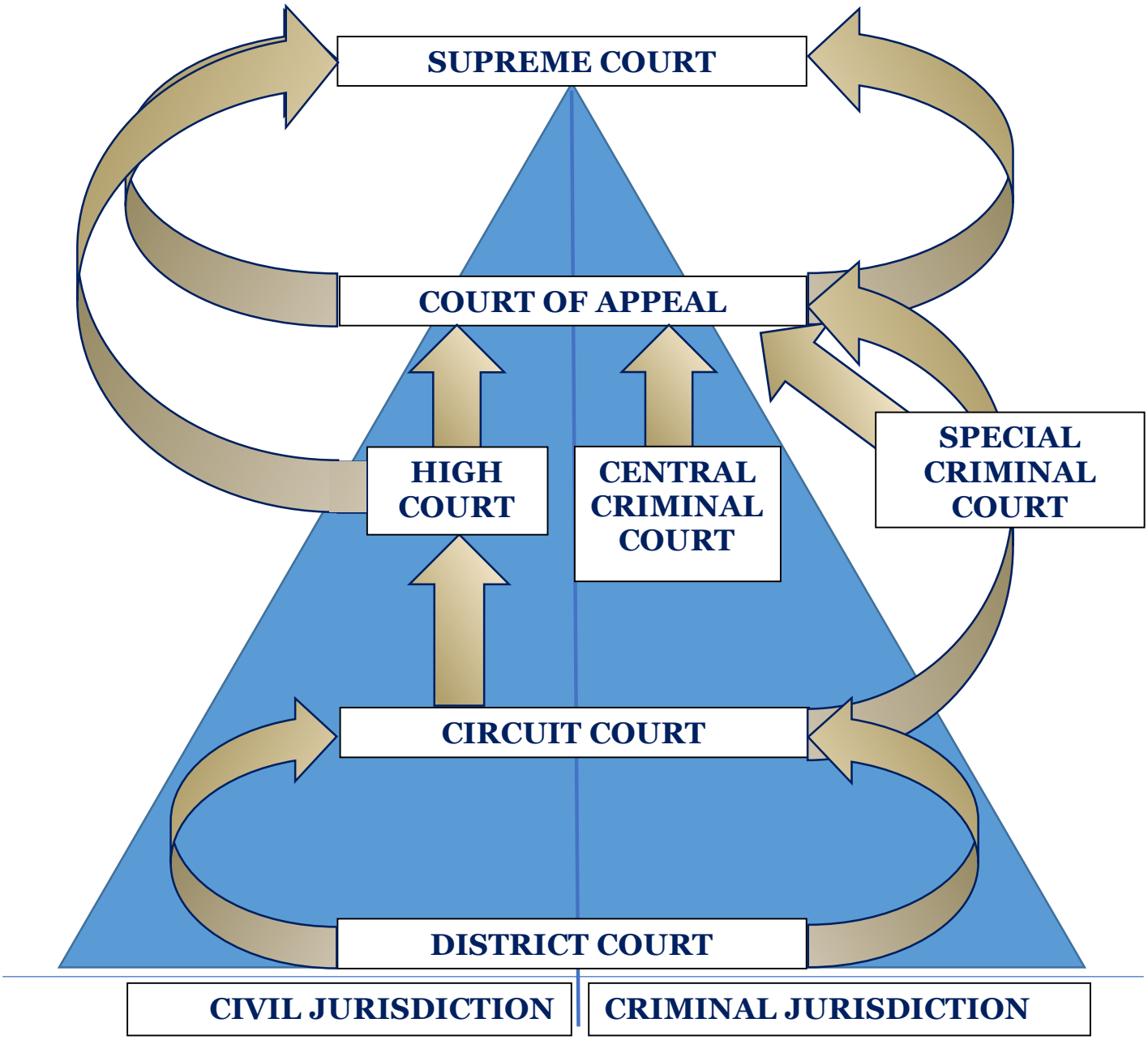
Should the Supreme Court decide that the Bill referred, or any of its provisions, is incompatible with the Constitution it shall not be signed or promulgated as law by the President. If the Supreme Court concludes that a Bill which has been referred to it under the Article 26 mechanism is not incompatible with the Constitution, the legislation in question cannot be challenged again before the Courts for as long as it remains in force.

Since the coming into force of the Constitution of Ireland in 1937, the Article 26 mechanism has been invoked by the President on 15 occasions, with the Supreme Court determining in seven of those cases that the Bill or a part thereof was repugnant to the Constitution. Although the President retains a sole discretion to invoke the Article 26 mechanism, its use is rare and the last year in which the Supreme Court was asked to consider a Bill under the Article 26 procedure was in 2005 when it was asked to determine the provisions of the Health (Amendment) (No. 2) Bill 2004 were repugnant to the Constitution or not. In that reference, the Supreme Court found that the retrospective provisions of that Bill were repugnant to the Constitution.

Article 26.2.2° of the Constitution provides that the decision of the majority of the judges of the Supreme Court, in hearing an Article 26 reference, shall be the decision of the Court. No other opinion, held by a member of the Court, whether assenting or dissenting, shall be pronounced nor shall the existence of any such other opinion be disclosed. This is colloquially referred to as a "one-judgment rule".

The other first instance jurisdiction of the Supreme Court, which to date has not been invoked, is provided for in Article 12 of the Constitution, which states that the question of whether the President of Ireland has become permanently incapacitated must be determined by not less than five judges of the Court.

Structure of the Courts of Ireland



Ireland has a five-tiered court system with both the District and Circuit Courts serving as courts of local and limited jurisdiction. The High Court enjoys full and original jurisdiction in all matters of fact and law, whether criminal or civil. These three Courts are courts of first instance and their respective jurisdictions are prescribed by the Constitution and in legislation. The Court of Appeal has, since its establishment in 2014, appellate jurisdiction from decisions of the Circuit Court and High Court in both criminal and civil matters.

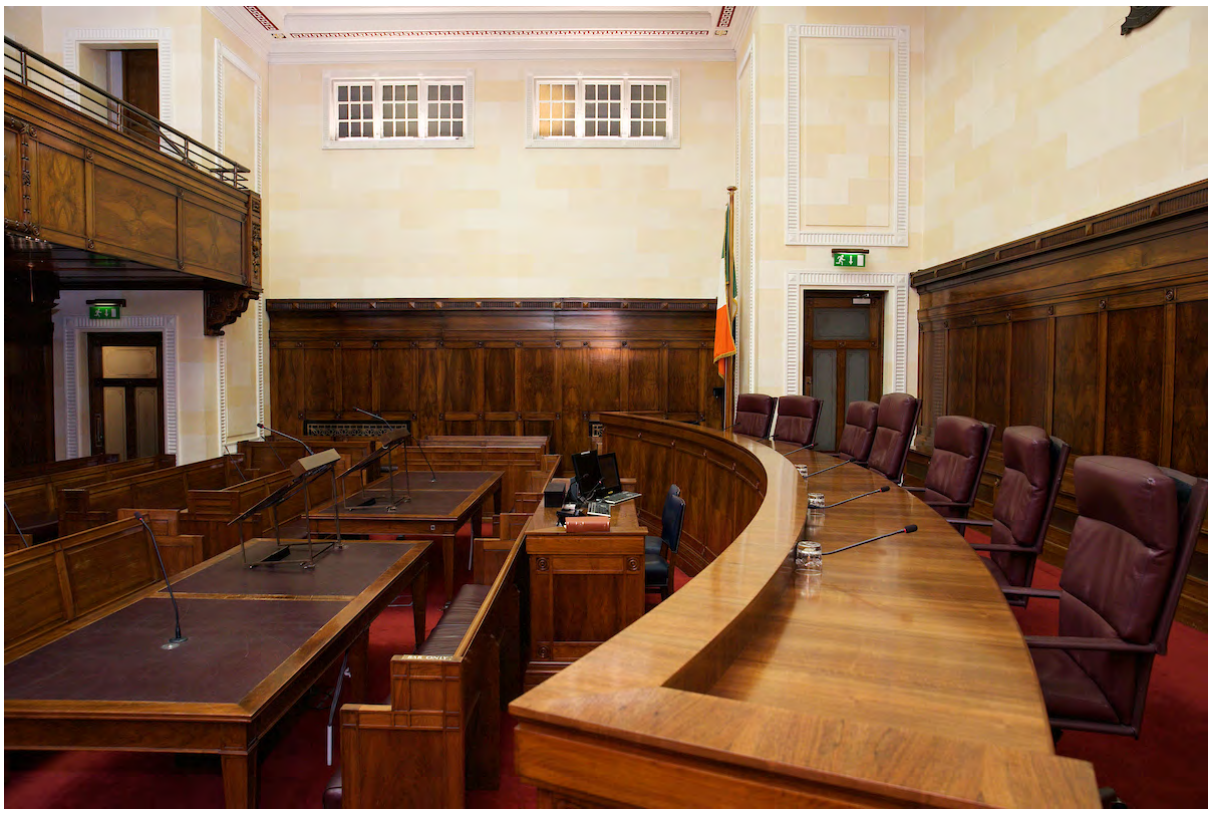
Seat of the Supreme Court

The seat of the Supreme Court is located in the Four Courts complex in Dublin city. The Four Courts has been the heart of the Irish legal system since 1796. The name of the building derives from the location of the four superior courts which it housed prior to Irish independence, namely the Court of King's Bench, the Court of Common Pleas, the Court of Exchequer and the Court of Chancery. Today, the function of these Courts are carried out by the High Court.

The main courtroom used by the Supreme Court for oral hearings is located in the original building, partly designed by Thomas Cooley and later developed and completed by James Gandon. The Irish court structure was created in 1924 following the establishment of the Irish Free State, Saorstat Éireann, in 1922. During the civil war, in the lead up to the establishment of the Irish Free State, the Four Courts was the scene of devastating destruction in June 1922. During the reconstruction of the Four Courts building, the courts moved to The Honorable Society of King's Inns buildings on Constitution Hill, and later to Dublin Castle, where they remained until 1931.

Neither of the two courtrooms used by the Supreme Court today existed in the original Gandon building or at any stage up to the substantial destruction which occurred during the Civil War. While much of the main building was reconstructed to resemble its form prior to destruction, the areas currently occupied by the Supreme Court courtroom, the Supreme Court Office (including the Chief Justice's Chambers) and the Hugh Kennedy Court, was a new design arising out of the reconstruction process.

The Supreme Court Courtroom



Interior of the Supreme Court courtroom.

The Supreme Court courtroom is the main courtroom in which the Court hears cases and pronounces judgment. In general, it accommodates compositions of the court sitting in panels of three, five or, exceptionally, seven judges. As the reformed jurisdiction of the Supreme Court requires that the Supreme Court consider cases having been satisfied that the decision involves a matter of general public importance, or in the interest of justice it is necessary that there be an appeal to the Supreme Court, cases are now generally heard by a panel of five judges in the main courtroom.

Most cases are heard in public in accordance with the Constitution. The courtroom contains a viewing gallery where members of the public may observe court proceedings. There is a dedicated area for members of the press, Judicial Assistants, ushers and visiting judges or official from other jurisdictions.

The Courtroom has a number of features to assist persons with a disability. There is a mechanical ramp that enables those with restricted mobility to access the courtroom. In addition, a loop system is installed which can enable those with hearing assistive devices to link in with the Courtroom's speaker system. To signify that the Supreme Court of Ireland is sitting, the national flag is displayed in the Courtroom. On occasions when the Supreme Court sits outside of Dublin, the national flag is displayed in the respective Courtroom or venue where the Court is sitting.

As is the case with all other courtrooms across the State, the Supreme Court Courtroom is equipped with Digital Audio Recording ('DAR') facilities to audio record all court proceedings. These audio recordings are available to the members of the Court and their Judicial Assistants. In addition, where directed by the Court, a written transcript of a court proceeding may be prepared based on the DAR recording.

Journey of a typical Appeal

An appeal before the Supreme Court begins its journey following a decision of the Court of Appeal, or in instances where leave is sought to appeal directly, from the High Court. A party to proceedings in either of those Courts who wishes to bring an appeal against a decision may file an application for leave to appeal to the Supreme Court. Since February 2019, it is now possible for such an application to be filed directly online.

The party wishing to bring an appeal (known at this stage as the 'Applicant') must inform the party on the opposing side of the case (known as the 'Respondent') that they have lodged an application for leave to appeal and the Respondent is required to file a notice setting out whether it opposes the application for leave to appeal and, if so, why. In practice, in most cases, the Respondent opposes the application for leave to appeal and sets out the grounds upon which it is said that the constitutional threshold has not been met by the Applicant. There are a minority of cases in which the Respondent does not oppose leave to appeal as both parties express the view that it is important that the Court provide clarity on an issue of law.

Panel of the Supreme Court considering an Application for Leave ('AFL') with the Registrar of the Supreme Court in attendance.

On receiving the application for leave to appeal and the respondent's notice, a panel of three judges of the Supreme Court convenes to consider whether the constitutional threshold for granting leave to appeal has been met. In addition to the application for leave and respondent's notice, the panel reviews the written judgment(s) of the High Court and/or Court of Appeal. Having considered the application, the panel prepares and issues a written determination stating whether or not leave to be appeal has been granted. The determination is then circulated to the affected parties.

While most hearings are conducted orally and in public, consideration of applications for leave to appeal generally take place in private, as is specifically provided for in the Court of Appeal Act 2014, which makes provision in relation to the reformed jurisdiction of the Supreme Court and the Court of Appeal. The Court may direct an oral hearing where it considers it appropriate to do so. This only happens occasionally. Pursuant to the constitutional requirement that justice is administered in public, the Supreme Court publishes its written determinations and accompanying documentation on the website of the Courts Service of Ireland.

Where leave has been granted and the Applicant, who at this stage is referred to hereafter as the 'Appellant', files a notice of intention to proceed, the Chief Justice will assign the appeal to a judge of the Supreme Court for case management. This is to ensure that the procedural requirements as laid down in the Rules of the Superior Courts and applicable Practice Directions are complied with, enabling the appeal to be conducted in an effective and efficient manner.

At the case management stage, the assigned judge may issue directions to parties in relation to legal authorities, exhibits and other relevant documents that the panel of the Court that will hear the appeal may require to have access to in order to adequately determine the appeal.

Both the Appellant and the Respondent must prepare and lodge written submissions, limited to a directed word count, in which both sides set out their reasons as to why the decision being appealed should be reversed or upheld. As the Irish legal system is part of the common law legal tradition, decisions of the Superior Courts of Ireland are binding on courts of lower jurisdiction by virtue of the doctrine of precedent and case law constitutes an important source of law. Therefore, legal submissions of the parties generally rely on previous court decisions in support of their respective arguments.

The written submissions, together with other relevant documentation properly put before the Court, are reviewed by each Supreme Court judge who is part of the panel which will be assigned to hear the appeal before the oral hearing is conducted.

A composition of the Supreme Court

At the oral hearing, both the Appellant and the Respondent are allocated a period of time in which to make their respective arguments. At the end of the Respondent's oral arguments, the Appellant is provided with an opportunity to reply to arguments made by the Respondent. When this has concluded, the Supreme Court ordinarily reserves its judgment, meaning that the Court indicates that it will not deliver its decision there and then, but rather will deliver its decision at a later date, following careful consideration and deliberation of the arguments made.

Occasionally, the Supreme Court delivers an oral judgment immediately following the hearing, which is known as an *ex tempore* judgment. The delivery of *ex tempore* judgments are rare since the implementation of the reformed jurisdiction of the Supreme Court.

A composition of the Supreme Court in conference.

The composition of the Supreme Court which has heard the appeal meets in what is referred to as a conference and deliberates. Each judge arrives at his or her respective decision independently of the other members of the Court. As the Court sits in odd numbers of three, five or seven, a decision is arrived at either unanimously or by majority.

By tradition, at the first case conference after the oral hearing, the most junior judge on the panel – that being the judge most recently appointed in time – which has heard the case makes the first observations, followed by the other judges in ascending order of seniority. This is different to the practice adopted by Supreme Courts in some other jurisdictions, such as the United States of America.

Owing to the importance and the complexity of the appeals to be determined, it is often necessary for the Court to hold subsequent case conferences to decide the case and to enable the members of the Court to reach their individual decisions.

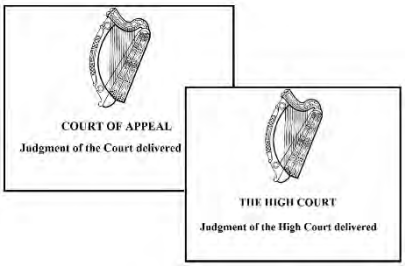
The decision reached by each Judge is formulated in written judgments (with the exception of judgements delivered *ex tempore*) which set out the reasons for either allowing or dismissing the appeal. Each judge may deliver his or her own separate judgment and a number of concurring judgments may together form a majority. A judge who does not agree with the decision taken by the majority of the Court may deliver a dissenting judgment.

In recent times, the Court has sometimes prepared a single judgment, to which all members of the composition hearing an appeal have contributed. As the judgment is not attributed to one single judge, but rather the Court as a whole, it is the convention for the presiding Judge (that is the most senior judge on the panel) to deliver the judgment on behalf of the other members of the Court.

When the written judgment(s) is in a position to be delivered, the Court will be convened and will pronounce its decision in public. The decision reached by the majority of the Court is given formal effect by an order of the Court. Any cost or ancillary applications are generally also considered on the delivery of the judgment of the Court.

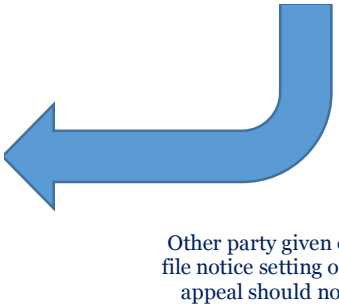
Once the judgment(s) is delivered, arrangements will be made for the decision to be published on the Courts Service website. In some cases, owing to the complexity of the issues or where multiple judgments are delivered, both concurring and dissenting, an Information Note or Statement may also be published which summaries the issues the Court had to consider and a summary of the decision reached by the majority. This summary is for information purposes only and does not purport to be an interpretation of the Court's decision.

Journey of a typical appeal



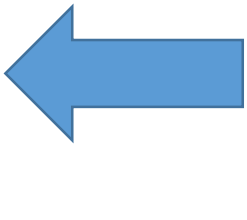
Decision made by the High Court or Court of Appeal and judgment handed down

Party may seek leave to appeal by filing an Application for Leave to Appeal

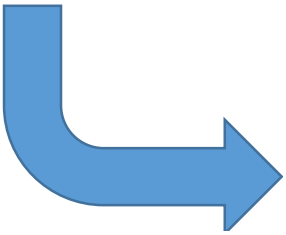


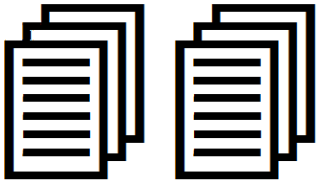
Other party given opportunity to file notice setting out why leave to appeal should not be granted.

Panel of three Supreme Court judges convene to consider application for leave



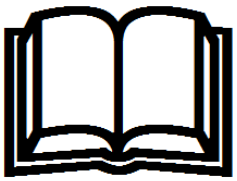
Panel issues determination setting out whether leave has been granted or not





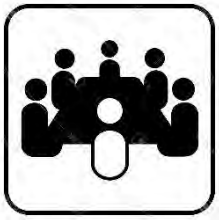
Case management process begins – both parties will be required to follow directions of an assigned Supreme Court judge to ensure appeal can be heard

Once appeal is ready to be heard, a hearing date will be set



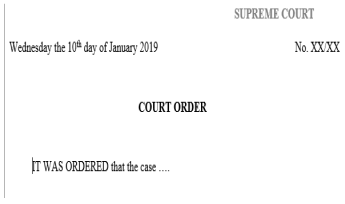
Judges assigned to hear appeal read written submissions of both parties in advance

Oral hearing in Courtroom where both parties make arguments and Court poses questions to both sides



Court reserves judgment and begins its deliberations

Judges circulate draft judgments for consideration by other members of the Court



The Court delivers its judgment and the decision reached is determined by the majority ruling.
The judgment takes legal effect in the form of a Court Order

The reformed jurisdiction of the Supreme Court – five years on

28th October 2019 marked not only the five-year anniversary of the establishment of the Court of Appeal – a seminal moment which heralded the most significant change to the Irish courts structure in over a century – but also a fundamental recalibration of the jurisdiction of the Supreme Court itself.

Five years on, it is no longer apt to describe the reformed jurisdiction of the Court as 'new' but rather as an evolving one, an evolution on which it is appropriate to reflect.

Since the formative days of the Court's reformed jurisdiction, the Court has – through a series of written determinations – sought to lay down 'way points', to serve in effect as navigational aids to parties and practitioners on how the Court would determine applications for leave, pursuant to the constitutional threshold as laid down in Article 34 of the Constitution, which was amended by way of Referendum in 2013 to provide for the establishment of the Court of Appeal.

In a wide range of determinations, the Supreme Court has provided guidance on matters ranging from procedural to substantive issues. From the outset, the Supreme Court laid down a marker that its function was no longer that of an appeal court "designed to correct alleged errors by the trial court".[1] Rather, it was the Court of Appeal that was now conferred with the jurisdiction to correct any alleged errors, as it may determine to have occurred. Further, the Supreme Court has specified the parameters within which a case must come before leave can be granted.

The Supreme Court, through its written determinations, has stressed that the facts which arise in a given case, as important as they might be, do not automatically confer an advantage or entitlement to leave to appeal being granted. The application of well-established principles of law to the facts of an individual case will not meet the constitutional threshold.

The new vista that emerged after the Thirty-third Amendment to the Constitution resulted in all participants in the process – the Judiciary, Courts Service and the legal professions – engaging in a learning curve.

The journey on this learning curve continues and, in 2018, arising from the work undertaken by the Supreme Court Procedures Review Committee, a new revised Order 58 of the Rules of the Superior Courts, which governs the conduct of proceedings in the Supreme Court, together with a new Practice Direction, specific to the Supreme Court, were prepared and came in to legal effect in January 2019. Order 58, rule 2(1) exemplifies the *raison d'être* of the ongoing process of refining and enhancing the jurisdiction of the Supreme Court. It requires that all applications, appeals and other matters before the Supreme Court "shall be prepared for hearing or determination in a manner which is just, expeditious and likely to minimise the costs of the proceedings."

[1] *Wansboro v. Director of Public Prosecutions and anor* [2017] IESC DET 115 at para. 5

The future evolution of the practice and procedure of the Supreme Court is contingent on keeping two separate but related goals in mind: the requirement of the Court to give the cases that come before it the detailed attention that they deserve, whilst bearing in mind that, important and all as such cases may be for the development of the law more generally at a jurisprudential level, the cases first and foremost involve the rights and obligations of individual parties.[2]

'Leapfrog' appeals

The term 'leapfrog appeals' is used colloquially to describe applications in which leave is sought to bring an appeal directly to the Supreme Court from the High Court. Ordinarily an appeal from a decision of the High Court may be appealed to the Court of Appeal. However, express provision for leapfrog appeals is made in Article 34.5.4° of the Constitution which prescribes that, if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it, and that one of two ordinary preconditions for leave to appeal generally are satisfied, the Supreme Court may grant leave directly from the High Court. The preconditions are either that the decision involves a matter of general public importance and/or that it is in the interests of justice that there be a direct appeal to it.

The exceptional nature of the 'leapfrog' appeal was considered by the Supreme Court in one of its first written determinations in the case of *Barlow v. Minister for Agriculture, Food and Fisheries*[3], where it stated that:

> "[W]here the court is satisfied that that constitutional threshold has been met the court will have to consider whether, either deriving from the nature of the appeal itself or from external circumstances such as urgency, it can be said that there are exceptional circumstances such as urgency, it can be said that there are exceptional circumstances justifying a leapfrog appeal. In attempting to reach an assessment on that question the court may well have to analyse the extent to which, on the one hand, there may be perceived to be a disadvantage in not going through the default route of a first appeal to the Court of Appeal and balance that against any disadvantage, whether in the context of putting the courts and the parties to unnecessary trouble and expense or in relation to a delay in achieving an ultimate resolution of urgent proceedings, which might be involved by running the risk of there being two appeals. In that later context it should be acknowledged that there will only truly be a saving of time and expense for both the courts and the parties, if it is likely that there will be a second appeal irrespective of the decision of the Court of Appeal."

In cases that give rise to a temporal urgency, the Supreme Court noted that:

> "[t]here clearly will be cases where, in one way or another, a clock in the real world is ticking. In such cases, even if there may be perceived to be some merit in, or advantage to, an intermediate appeal, the balance may favour a direct appeal to [the Supreme] Court, precisely because the downside of any delay which would be caused by two appeals would be disproportionate in the circumstances of the case."

[2] Frank Clarke, The shape of things to come – the conduct of appeals in the Supreme Court after the 33rd Amendment, Carolan (ed.) *Judicial Power in Ireland* (Institute of Public Administration, 2018)
[3] [2015] IESC DET 8 at para. 17.

Case management

Whilst the reformed jurisdiction brought about changes to the practice and procedure of the Court, it is the embedding of the case management process that stands out as one of the defining changes to the work practice of the Court. The assignment of a dedicated case management judge derives multiple benefits and efficiencies for all participants in the process. For parties and their respective legal representatives, for the members of the Court that will ultimately hear the appeal, having a case management judge in place facilitates a much more streamlined and effective conduct of appeals.

Case management enables a dialogue between the respective parties to an appeal and the Court in respect of purely procedural matters that, whilst technical in nature, have the potential to ensure that the oral hearing of the appeal is conducted with greater efficiency. Provision is made in the Court of Appeal Act 2014 and Order 58 of the Rules of the Superior Courts 1986, as amended, for the appointment of a case management judge, to ensure that parties are in compliance with the applicable rules of court and statutory practice direction.

Both the relevant Rules of Court and the statutory Practice Direction make specific reference to such a case management judge and gives powers to that judge to ensure the orderly progression of the case. In addition, it provides for the early focus by all concerned on the precise legal arguments to be made. It has been stressed in a number of rulings and statements by the Court that it is expected that the parties will engage with each other's written submissions so that there can be a ready identification well in advance of the hearing of any issues or contentions between the parties as to the facts and/or law.

When all of the other members of the Court on the panel for a particular case convene to hear the case at a pre-hearing conference, the case management Judge appraises his or her judicial colleagues of the practicalities of how the oral hearing might be conducted, including the time allotted to each side and the 'interruption free' period (colloquially referred to as a the 'no fly zone') that is afforded to Counsel for each side, whereby it is agreed in advance that a defined period of their opening oral argument will be made without interruption from members of the Court.

Once leave has been granted, a date is fixed for the first case management hearing. The Supreme Court Office communicates by letter with both the Appellant and the Respondent, advising them of what actions are required to be undertaken in advance of the first case management hearing, drawing the parties attention to Practice Direction SC19 – Conduct of Proceedings in the Supreme Court.

Parties are advised in relation to the nature of the papers that must be filed in advance of the first case management hearing. In granting leave to appeal the Supreme Court, in its written determination ordinarily sets out the issues on which leave has been granted or the grounds of appeal permitted to be advanced. However, in some instances, the written determination (in the paragraph granting leave) may confer a discretion on the case management judge to 'refine' or 'modify' the issues/grounds in a case management.

In advance of the first case management hearing, the case management Judge and assigned Registrar liaise with one another and any issues flagged in terms of potential non-compliance with the Practice Direction/Rules of Court are brought to the Judge's attention. When the case management judge is satisfied that parties have adhered to the procedural requirements as set out in the Practice Direction, he/she will indicate that the case can be listed for hearing and the Chief Justice will subsequently fix a hearing date.

Members of the Supreme Court

Current members of the Supreme Court of Ireland

Back row (Left to Right): Ms. Justice Marie Baker, Ms. Justice Iseult O'Malley, Ms. Justice Elizabeth Dunne, Mr. Justice John MacMenamin, Mr. Justice Peter Charleton, Ms. Justice Mary Irvine.

Front row (Left to Right): Mr. Justice Donal O'Donnell, Mr. Justice George Birmingham, Mr. Justice Frank Clarke, Mr. Justice Peter Kelly, Mr. Justice William M. McKechnie.

The Supreme Court is currently composed of the Chief Justice, who is President of the Court, and eight ordinary judges. In addition, the President of the Court of Appeal and the President of the High Court are *ex officio*, meaning by virtue of their office, members of the Supreme Court. Legislation provides that the Supreme Court may have up to ten members - the Chief Justice and nine ordinary members. During 2019, there were two appointments to the Court, filling vacancies that arose in 2017 and 2019. At the end of 2019, there was one vacancy on the Court.

Appeals are normally heard and determined by five judges of the Court unless the Chief Justice directs that any appeal or other matter (apart from matters relating to the Constitution) should be heard and determined by three judges. Since the establishment of the Court of Appeal, it is never three for substantive appeals other than Article 64 returns. In exceptional cases, the Supreme Court may sit as a composition of seven judges. In instances where the Supreme Court is exercising its original jurisdiction it sits, at a minimum, as a panel of five judges.

Applications for leave to appeal are considered and determined by a panel of three judges of the Supreme Court. The Chief Justice or an ordinary judge of the Supreme Court may sit alone to hear certain interlocutory and procedural applications. But this does not normally happen so that any issues of controversy are normally decided by a panel of at least three judges. As a matter of practice, the Chief Justice appoints a judge of the Court to case manage appeals for which leave to appeal has been granted.

Mr. Justice Frank Clarke
Chief Justice

Mr. Justice Frank Clarke was appointed the 12th Chief Justice of Ireland on the 28th July, 2017, by the President of Ireland, Michael D. Higgins.

Chief Justice Clarke was born in Dublin and educated at Drimnagh Castle CBS, University College Dublin (B.A. in Mathematics and Economics), and The Honorable Society of King's Inns (B.L.).

Having completed his legal studies, he was called to the Bar in 1973 and to the Inner Bar in 1985. He practiced mainly in the commercial and public law fields (including constitutional law) and was twice appointed by the Supreme Court as counsel to present argument on references of Bills to the Supreme Court by the President under Article 26 of the Constitution. He also acted as counsel to the Public Accounts Committee on its inquiry into the DIRT tax issue and was external counsel to the Commission to Inquiry into Child Abuse (Laffoy and Ryan Commissions). In 1994, Mr. Justice Clarke became a Bencher of the Honorable Society of King's Inns. He was elected as an honorary member of the Canadian Bar Association in 1994, and admitted as an honorary member of the Australian Bar Association in 2002. In 2018, he was made an honorary Bencher of The Honorable Society of the Middle Temple.

While at the Bar, Mr. Justice Clarke served for many years on the Bar Council including for a term of two years (1993-1995) as its Chair. He also served as Chair of the Council of King's Inns from 1999 until 2004. He was a member of the Council of the International Bar Association from 1997 to 2004, serving as co-Chair of the Forum for Barristers and Advocates (the international representative body for the independent referral bars) from 1998 to 2002.

Mr. Justice Clarke was appointed a judge of the High Court in 2004 and was mainly assigned to the Commercial list and also presided over the establishment of the Chancery and Non-Jury List in Cork. While a judge of the High Court, he was chairman of the Referendum Commission on the Twenty-eighth Amendment of the Constitution (Lisbon Treaty II) in 2009.

In 2012, Mr. Justice Clarke was appointed as a judge of the Supreme Court. Since 2013, he has been a representative of the Supreme Court on the Association of Supreme Administrative Courts of the European Union (ACA-Europe). On his appointment as Chief Justice, he became a Member of the Network of the Presidents of the Supreme Judicial Courts of the European Union and was elected a member of the Board of that Network in 2018. Mr. Justice Clarke has since March 2018 been a member of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union, the function of which is to provide an opinion on the suitability of persons for appointment as Judge and Advocate General of the Court of Justice and General Court of the European Union.

In the academic field, Mr. Justice Clarke was a professor at King's Inns from 1978 to 1985 and has been Judge-in-Residence at Griffith College Dublin from 2010 to date. He was appointed Adjunct Professor in the Law School in Trinity College, Dublin in September 2012, and Adjunct Professor of University College Cork in 2013. He was awarded the Griffith College Distinguished Fellowship Award in 2017.

The Role of the Chief Justice

The Chief Justice of Ireland is the President of the Supreme Court and the titular head of the Judiciary, the judicial arm of government.

President of the Supreme Court and judicial functions

The Chief Justice is responsible for the management of all aspects of the Court including the listing of cases in conjunction with the Registrar of the Supreme Court and assignment of cases to Judges. The Chief Justice regularly sits on cases which come before the Court and invariably presides in cases concerning the constitutionality of statutes, the reference of a Bill to the Supreme Court by the President pursuant to Article 26 of the Constitution and other cases of importance. The Chief Justice is *ex officio* a member of both the High Court and the Court of Appeal.

Presidential Commission

The Constitution confers on the Chief Justice specific additional functions. Under Article 14 of the Constitution, the Chief Justice is the first member of the Presidential Commission, which exercises the powers and functions of the President of Ireland in his or her absence. The other members of the Presidential Commission are the Ceann Comhairle (Chairman of Dáil Éireann, the chamber of deputies) and the Chairman of Seanad Éireann (the Senate). If any of the above persons is unable to act, the President of the Court of Appeal, the Leas (Deputy) Ceann Comhairle and the Leas (Deputy) Cathaoirleach, respectively, can act as members in their place.

The Chief Justice exercised his functions on the Presidential Commission throughout 2019 and signed into law a number of Bills, such as the Citizens' Assemblies Bill 2019, Courts (Establishment and Constitution) (Amendment) Bill 2019, Judicial Council Bill 2017 and the CervicalCheck Tribunal Bill 2019.

Council of State

Under Article 31 of the Constitution, the Chief Justice is a member of the Council of State, a body which aids and counsels the President of Ireland in the exercise of such of his or her powers as are exercisable under the Constitution after consultation with the Council of State.

Other responsibilities

In addition to the judicial duties and administrative responsibilities associated with the Supreme Court itself, the Chief Justice has a range of other administrative responsibilities. For example, the Chief Justice chairs the Board of the Courts Service of Ireland, the Judicial Appointments Advisory Board, the Committee for Judicial Studies and the Superior Courts Rules Committee.

The Chief Justice is also chair of the Judicial Council, which was established on the 17th December 2019.

Appointments

Commissioner for Oaths

A Commissioner for Oaths is a person who is authorised to verify affidavits, statutory declarations and other legal documents. Affidavits are statements made in writing and on oath. Persons wishing to be appointed as a Commissioner for Oaths are made by petition to the Chief Justice sitting in open Court.

Admittance of barristers

The Chief Justice calls to the Bar persons admitted to the degree of Barrister-at-Law by the Benchers of The Honorable Society of King's Inns. It is the Call to the Bar by the Chief Justice which permits barristers to practise before the Courts of Ireland. The Call to the Bar is a formal ceremony entitled the 'Call to the Outer Bar' in the Supreme Court at which the Chief Justice, sitting with other members of the Court, admits the new barristers to practise in the Courts of Ireland. Once called to the Bar, the barristers are referred to as junior counsel.

King's Inns admits to the degree of Barrister-at-Law persons who qualify by following its professional course, barristers from jurisdictions with whom there are reciprocal arrangements (at present only with Northern Ireland) and qualified lawyers practising in other jurisdictions whose qualifications are recognised and who satisfy the other requirements of King's Inns

The Government recognises the desirability of maintaining, in the public interest, an 'Inner Bar' which can provide with exceptional skill a wide range of specialist advice and advocacy in all courts and tribunals in areas of national, European and international law. The Government, at its discretion, grants Patents of Precedence at the Bar on the recommendation of an Advisory Committee to suitable persons with at least ten years' experience of practise at the Outer Bar.

Following receipt by successful applicants of Patents of Precedence from the Government, the Chief Justice calls those individuals to the Inner Bar of Ireland. Barristers called to the Inner Bar of Ireland are referred to as Senior Counsel and use the suffix S.C. after their name. The process of being called to the Inner Bar is colloquially referred to as 'taking silk', which derives from the black silk robes worn by Senior Counsel.

Notaries Public

A Notary Public is an officer who serves the public in non-contentious matters usually concerned with foreign or international business. Notaries certify the execution in their presence of a deed, a contract or other writing. The Chief Justice appoints qualified persons as notaries are appointed by the Chief Justice. The process of appointment involves a formal Petition to the Chief Justice in open Court. The Faculty of Notaries Public, which is the body responsible for the advancement and regulation of notaries and the Law Society of Ireland, the educational, representative and regulatory body of the solicitors' profession Ireland, are notice parties to notary applications.

Declarations of newly appointed judges

The Chief Justice receives the declaration sworn by persons who are appointed to judicial office pursuant to Article 34.6 of the Constitution this includes judges who are appointed a judge of a higher court and who thereby relinquish the judicial office previously held. In 2019, the Chief Justice received the judicial declaration from 15 judges appointed to judicial office for the first time. These included five judges of the District Court, seven judges of the High Court and three judges of the Court of Appeal. In addition, declarations were made by nine judges who were appointed to a higher court, including two Circuit Court judges, five Court of Appeal judges and two Supreme Court judges. All such declarations are received in the Supreme Court.

Statement to Mark the Opening of the 2019/2020 Legal Year

In 2019, the Chief Justice continued the practice he adopted when appointed in 2017 by delivering an annual public statement to mark the opening of the legal year in Ireland in October. In his statement, the Chief Justice noted that, in many areas of reform, the planning stage was now complete, and it was time to implement a number of plans across a range of areas of significance to the Judiciary and to the administration of Justice. He emphasised the following key priorities for the 2019-2020 legal year:

- Working towards the establishment of the Judicial Council, which was subsequently established on the 17th December 2019. The Chief Justice outlined the significant work which had been carried out and was ongoing to ensure the establishment of the Judicial Council and emphasised the importance of the detail in establishing the Council and its Committees and the need to ensure that it would have the resources to carry out its statutory role within the timeframes which the Judicial Council legislation specifies;
- Seeking to ensure that court processes and the methods by which people can access them are fit for purpose in the digital age. The Chief Justice referred to a number of projects put in place by the Courts Service in recent years, such as an e-licensing project, online filing in insolvency cases and e-filing of applications for leave to appeal to the Supreme Court. However, the Chief Justice pointed to the major investment which would be required for a widespread move towards digital management of most, if not all, court proceedings.
- The need for a consideration of judicial numbers against the backdrop of Ireland having the lowest number of judges per head of population in Europe and the potential for an in-depth consideration of a radical consideration of the structure of the Irish courts system.

International Engagement

Attorney General Seámus Woulfe S.C., Chief Justice Frank Clarke, and Micheal P. O'Higgins, Chair of the Bar of Ireland at an event in the Embassy of Ireland, Washington D.C. to promote the Brexit Legal Services initiative.

Another aspect of the role of the Chief Justice is to represent the interests of the Supreme Court, the Judiciary and the legal system of Ireland at international level.

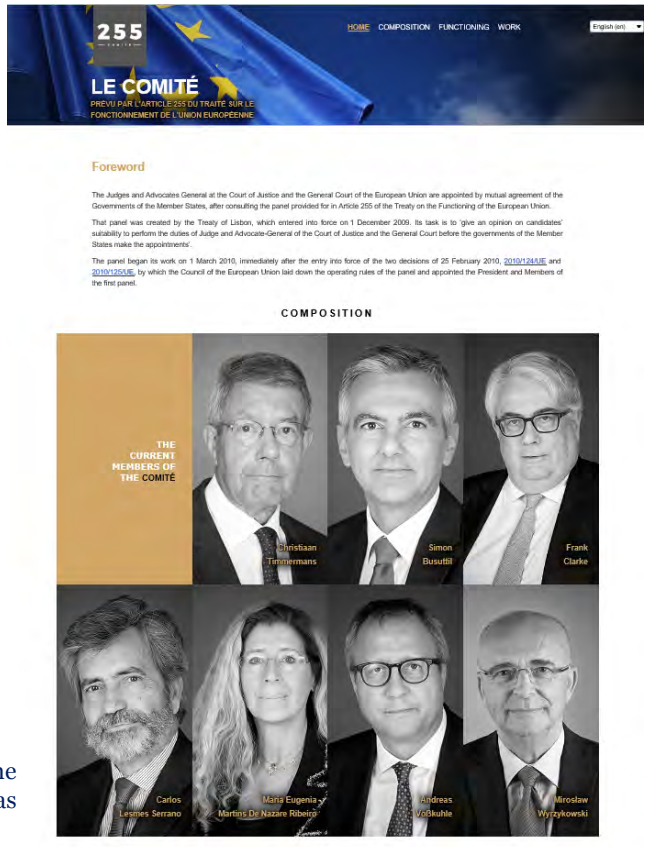
In 2019, the Chief Justice attended and delivered remarks at events in Washington as part of an initiative of the Government and legal community of Ireland aimed at promoting Ireland as a leading centre globally for international legal services' in the wake of Brexit.

Other international events which the Chief Justice attended included: the 30th Anniversary of the General Court of the Court of Justice of the European Union in Luxembourg, where he delivered remarks on 'Digital Technology and the Quality of Judicial Decisions', a conference on 'The Future of the Rule of Law' hosted by the Supreme Court of Poland in Warsaw; a conference of Heads of Supreme Courts of Council of Europe Member States hosted by the Supreme Court, Constitutional Council and Council of State of France on the occasion of the French Presidency of the Committee of Ministers of the Council of Europe in Paris; and a judicial Leadership Forum hosted by the Lord President of the Court of Session, Lord Carloway in Scotland.

The Chief Justice also met on several occasions with fellow members of the panel provided for in Article 255 of the TFEU in order to give opinions on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court.

During 2019, a new website of the Article 255 committee was launched.

He also engaged with courts in other jurisdictions in the context of international meetings and organisations in which the Court is involved, including work associated with his membership of the Board of the Network of the Presidents of the Supreme Judicial Courts of the European Union and in the context of the activates of ACA-Europe as outlined in Part 4 of this report.



Extract from the new website of the Article 255 committee which was launched in 2019.

Mr. Justice Donal O'Donnell

Mr. Justice Donal O'Donnell was born in Belfast and educated at St. Mary's C.B.S., University College Dublin (B.C.L.), The Honorable Society of King's Inns (B.L.), and the University of Virginia (LL.M.). Mr. Justice O'Donnell was called to the Bar of Ireland in 1982, commenced practice in 1983 and was called to the Bar of Northern Ireland in 1989. In 1995, he was appointed Senior Counsel and has practised in all the Courts of Ireland, in the Court of Justice of the European Union (C.J.E.U.) and the European Court of Human Rights (E.Ct.H.R.).

He was a member of the Law Reform Commission from 2005 to 2012. He has delivered the John M. Kelly Memorial Lecture (U.C.D.), the Brian Walsh Lecture (I.S.E.L.), the Brian Lenihan Memorial Lecture (T.C.D.) the Dan Binchy Lecture (Burren Law School) and the keynote address at a conference in the University of Limerick to mark the 80th anniversary of the Constitution. He has published articles on a variety of legal topics in the *Northern Ireland Legal Quarterly*, *The Irish Jurist*, the *Dublin University Law Journal*, the *Irish Judicial Studies Journal*, and has contributed to volumes of essays on legal issues. He was a director of Our Lady's Hospice from 2009 to 2014 and is the current chairman of the Judges' Library Committee and a member of the Incorporated Council for Law Reporting and of the Council of the Irish Legal History Society.

In 2009, he became a Bencher of the Honorable Society of King's Inns.

Mr. Justice O'Donnell was appointed to the Supreme Court in 2010.

His father, Lord Justice Turlough O'Donnell, was a judge of both the High Court and Court of Appeal in Northern Ireland and was later a member of the Irish Law Reform Commission.

Mr. Justice William M. McKechnie

Mr. Justice William McKechnie was appointed to the Supreme Court in June, 2010.

He was educated at Presentation Brothers College and also University College Cork, from which he graduated in 1971, University College Dublin, and The Honorable Society of King's Inns, Dublin. He holds a Masters Degree in European Law. He was called to the Bar in 1971, and admitted to the Inner Bar in 1987. As a barrister he practised in the area of commercial, chancery and local authority law and had a special interest in medical negligence.

He held a number of senior positions in the Bar Council of Ireland for several years and was elected Chairman in 1999, and re-elected in 2000. He is a Bencher of The Honorable Society of King's Inns.

He was appointed a High Court Judge in 2000 and took charge of the competition list from 2004 to 2010. As such, he presided over all competition cases, both civil and criminal. He made the first Declaration of Incompatibility under the European Convention on Human Rights Act 2003, in the case of *Foy v. An tArd Chláraitheoir*, which was instrumental in bringing about significant changes in that area of law.

Mr. Justice McKechnie was Chairman of the Valuation Tribunal from 1995 to 2000, and was previously the Chairperson of the Editorial Board of the Judicial Studies Institute Journal. He has been a member of the Courts Services Board for several years, as well as the Superior Courts Rules Making Committee. He is a member of the Executive Council of the Association of Judges of Ireland and is heavily involved with the European Law Institute.

In 2010 he was elected President of the Association of European Competition Law Judges, which represents each of the 27 Member States of the European Union, as well as judges from the Court of Justice and the General Court of the European Union, and from the EFTA Court. He is the third President of the Association following Sir Christopher Bellamy and Dr. Joachim Bornkamm. He has written several papers, participated in and presided over many conferences and delivered the Fourth Annual C.C.J.H.R. Lecture at U.C.C. on 4th March, 2010.

Mr. Justice John MacMenamin

Mr. Justice John MacMenamin was appointed to the Supreme Court in 2012.

He was born in Dublin, and educated at Terenure College, University College Dublin, (B.A. (History), and The Honorable Society of Kings Inns (B.L.). As a student he was a Council Member of the Free Legal Advice Centre, and was involved in running a Free Legal Advice Centre in Ballyfermot.

Mr. Justice MacMenamin was called to the Bar of Ireland in 1975. He was called to the Inner Bar in 1991, and engaged first in general practice, before then specialising in judicial review, administrative law and defamation. He acted for a number of clients before the Flood/Mahon Tribunal of Inquiry, and for the Department of Health and members of the then Cabinet, including the Taoiseach, before the Ryan Tribunal. He was legal assessor to the Fitness to Practise Committee of the Medical Council for ten years. Having previously served four terms as an ordinary member, he was elected Chairman of the Bar Council in 1997, serving in that office up to 1999. He was a Director of the V.H.I. from 1995 to 1997.

Mr. Justice MacMenamin was appointed to the High Court in 2004. There he dealt primarily with judicial review matters; cases with a constitutional or human rights dimension; the rights of asylum seekers; children in need of special care; the treatment of prisoners; and single parents. He was in charge of the High Court Minors List for three years. He was appointed a member of the Special Criminal Court in 2009. He was also, for a period of three years, Ireland's representative on the C.C.J.E., the Consultative Council of European Judges, an advisory committee to the Council of Minister of the Council of Europe.

Mr. Justice MacMenamin has written and lectured on a range of legal subjects. He delivered the 2014 National University of Ireland Garrett Fitzgerald Lecture on the future of the European Union. He has lectured in St. Louis University School of Law, and led a course of lectures on comparative constitutionalism at NALSAR, The National Academy of Legal Studies & Research at Hyderabad, India. He is an Adjunct Professor at Maynooth University. In 1998 he was elected a Bencher of the Honorable Society of Kings Inns.

In 2019, Mr. Justice MacMenamin was appointed as a Judge-in-Residence at Dublin City University.

Ms. Justice Elizabeth Dunne

Ms. Justice Elizabeth Dunne was appointed to the Supreme Court in 2013.

Ms. Justice Dunne was born in Roscommon and educated at University College Dublin (B.C.L.), and The Honorable Society of King's Inns (B.L.).

Ms. Justice Dunne was called to the Bar of Ireland in 1977. During her practice, Ms. Justice Dunne was elected to the Bar Council.

Ms. Justice Dunne was appointed as a judge of the Circuit Court in 1996 and was subsequently appointed to the High Court in 2004. She served as a member of the Education Committee of the Honorable Society of the King's Inns and subsequently served as Chair of that Committee for a number of years.

In 2004, Ms. Justice Dunne became a Bencher of the Honorable Society of King's Inns.

In 2013, Ms. Justice Dunne was appointed as the Chair of the Referendum Commission that was established in advance of the Referendums to establish the Court of Appeal and abolish Seanad Éireann.

Ms. Justice Dunne is currently the correspondent judge for the Supreme Court of Ireland on ACA-Europe. ACA-Europe is an European association composed of the Court of Justice of the European Union and the Councils of State or the Supreme administrative jurisdictions of each of the members of the European Union.

Mr. Justice Peter Charleton

Mr. Justice Peter Charleton was appointed to the Supreme Court in 2014.

Mr. Justice Charleton was born in Dublin and educated at Trinity College Dublin and The Honorable Society of King's Inns. He lectured in Trinity College Dublin from 1986 to 1988 in criminal law and in The Honorable Society of King's Inns in tort law from 1982 to 1984.

Mr. Justice Charleton was called to the Bar of Ireland in 1979, In 1995, he was called to the Inner Bar. From 2002 to his appointment to the High Court in 2006 he was counsel to the Morris Tribunal; a statutory enquiry which looked into certain misconduct in An Garda Síochána. In the High Court he was assigned principally to the commercial list. From February 2017 to June 2018 he was the Chairman of the Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters. The tribunal published two substantive reports on the issues before it, the last in October 2018.

He has published on intellectual property, criminal law, torts, constitutional law and executive power in journals, including the Maastricht Journal of European and Comparative Law, the International Journal of Law and the Family, the Yearbook of the International Commission of Jurists, Intellectual Property Law and Policy, the Journal of Criminal Law, the *Bar Review*, the *Judicial Studies Institute Journal*, the *Irish Law Times*, the *Gazette* of the Incorporated Law Society of Ireland and the Irish Criminal Law Journal. In addition, he is Adjunct Professor at NUI Galway.

Mr. Justice Charleton is the author of:

- *Controlled Drugs and the Criminal Law* (An Cló Liúir, 1986)
- *Offences Against the Person* (Round Hall Press, 1992)
- *Criminal law: Cases and Materials* (Butterworth, 1992)
- *Irish Criminal Law (*Butterworth, 1999, with McDermott and Bolger and
- *Lies in a Mirror: An Essay on Evil and Deceit* (Blackhall Publishing, 2006)

Mr. Justice Charleton was a founder member of the RTÉ Philharmonic Choir and was chairman of the National Archives Advisory Council from 2011 to 2016. He is the Irish representative on the Colloque Franco-Brittanique-Irlandais.

Ms. Justice Iseult O'Malley

Ms. Justice Iseult O'Malley was appointed to the Supreme Court in 2015.

Ms. Justice O'Malley was born in Dublin and educated at Trinity College, Dublin, and The Honorable Society of King's Inns (B.L.).

Ms. Justice O'Malley was called to the Bar of Ireland in 1987. In 2007, she was called to the Inner Bar. She practised at the Bar for twenty-five years, mainly in criminal law, and also had experience in judicial review, extradition, immigration, and housing law.

She was a Director of the Free Legal Advice Centres (FLAC) from 1985 to 2012 and was Chairperson of the organisation for three years.

In 2012, Ms. Justice O'Malley was appointed to the High Court.

She is a former Chairperson of the Refugee Agency and a former member of the Employment Appeals Tribunal from 1995 to 1998 and the Hepatitis C. Compensation Tribunal from 1995 to 1999.

In 2004, she received an E.S.B./Rehab Person of the Year Award for her work with F.L.A.C.

In 2012, Ms. Justice O'Malley became a Bencher of the Honorable Society of King's Inns.

Ms. Justice Mary Irvine

Ms. Justice Mary Irvine was appointed to the Supreme Court in May 2019.

Ms. Justice Irvine was born in Dublin and educated at the convent of the Sacred Heart, Mount Anville, University College Dublin and the Honourable Society of Kings Inns. She was called to the Bar of Ireland in 1978 and to the Inner Bar in 1996. As a member of the Inner Bar, Ms. Justice Irvine specialised in medical law and was the legal assessor to the Fitness to Practise Committees of both the Medical Council and An Bord Altranais.

While in practice at the Bar Ms. Justice Irvine was elected to the Bar Council and served as Secretary of the Council. In 2004 she was elected a Bencher of the Honourable Society of Kings Inns.

Ms Justice Irvine was appointed as a judge the High Court in 2007. As a judge of the High Court, she was in charge of the Personal Injuries List from 2009 to 2014 and was also responsible for the management and determination of all Garda Compensation claims. Following the retirement of Mr Justice John Quirke, she chaired the Working Group on Medical Negligence and Periodic Payments established by the President of the High Court in 2010 to examine the system within the Courts for the management of claims for damages arising out of alleged medical negligence and to identify shortcomings in that system.

On its establishment in 2014, Ms Justice Irvine was appointed a Judge of the Court of Appeal.

In 2018, she was appointed to chair the CervicalCheck Tribunal established by Government to hear and determine claims made outside the courts process arising from alleged acts of negligence on the part of CervicalCheck as provided for in the Cervical Tribunal Act 2019.

Ms. Justice Marie Baker

Ms. Justice Marie Baker was appointed to the Supreme Court in December 2019.

She was born in Co Wicklow but lived for most of her childhood in County Cork and was educated at St Mary's High School, Midleton, County Cork, University College Cork (M.A. (Philosophy) and B.C.L.) and The Honorable Society of King's Inns (B.L.).

Ms. Justice Baker was called to the Bar in 1984 and was called to the Inner Bar in 2004. She practiced in the Cork and Munster circuits. Her primary practices areas included land law and conveyancing, general chancery, family law, and commercial law.

She is an accredited mediator.

Ms. Justice Baker has previously lectured on contract and commercial law in Dublin City University (formerly known as the National Institute of Higher Education).

In 2014, she was appointed as a part-time Commissioner of the Law Reform Commission. She was a member of the advisory study group on pre-nuptial agreements which reported to Government in April 2007.

In 2014, she was appointed a Judge of the High Court and was assigned to the Non-Jury and Judicial Review Lists. She was the judge-in-charge of the Personal Insolvency List and the Non-Contentious Probate List from 2014 to the time of her appointment to the Court of Appeal

In June 2018, Ms. Justice Baker was appointed to the Court of Appeal.

Upon its coming into effect in May 2018, Ms. Justice Baker was appointed as the assigned Judge for the purposes of the application of the Data Protection Act 2018 in respect of the supervision of data processing operations of the courts when acting in their judicial capacity.

Ex Officio member

Mr. Justice George Birmingham
President of the Court of Appeal

Mr. Justice George Birmingham was appointed President of the Court of Appeal in 2018.

President Birmingham was born in Dublin and educated at St. Paul's College, Trinity College, Dublin and The Honorable Society of King's Inns (B.L.).

President Birmingham was called to the Bar of Ireland in 1976. In 1999, he was called to the Inner Bar.

In 2007, he was appointed as a Judge of the High Court and in 2014, upon its establishment, was appointed as a Judge of the Court of Appeal. In 2006, he was elected a Bencher of the Honorable Society of King's Inns.

From 1981 to 1989, he was a member of Dáil Éireann and served as a Minister of State of the Government of the day from 1982 to 1987.

In 2002, as a Senior Counsel, President Birmingham was requested by the Department of Health to conduct a preliminary investigation into allegations of historical clerical child sex abuse in the Roman Catholic Diocese of Ferns.

In 2006, President Birmingham was the sole member of a Commission of Investigation set up pursuant to the Commissions of Investigation Act 2004 in relation to the late Dean Lyons.

Ex officio member

Mr. Justice Peter Kelly
President of the High Court

Mr. Justice Peter Kelly was appointed President of the High Court in 2015.

Mr. Justice Peter Kelly was born in Dublin and educated at O'Connell's School, University College Dublin, and The Honorable Society of King's Inns (B.L.).

President Kelly was called to the Bar of Ireland in 1973, commencing practice in 1975. He was called to the Bar of England and Wales in 1981 and the Bar of Northern Ireland in 1983. In 1986 he was called to the Inner Bar.

He was appointed as a Judge of the High Court in 1996 and was the judge-in-charge of the Chancery List from 1997 to 1999, the Judicial Review List from 1999 to 2003 and was head of the Commercial Court since its inception in 2004. Upon its establishment in 2014, he was appointed as a Judge of the Court of Appeal.

In 1996, President Kelly became a Bencher of the Honorable Society of King's Inns. In 2014 he was elected a Bencher of Middle Temple.

In addition, President Kelly is a member of the Council of the Royal College of Surgeons in Ireland, and is also an Adjunct Professor of Law at Maynooth University

President Kelly is also a Patron of the Medico Legal Society of Ireland

Retirement and Appointments

In May 2019, Ms. Justice Mary Finlay Geoghegan retired from the Supreme Court after an illustrious judicial career spanning 17 years across all three courts that make up the Superior Courts.

Speaking at her valedictory ceremony, the Chief Justice, Mr. Justice Frank Clarke, noted that Ms. Justice Finlay Geoghegan was meticulous and firm in her role as a judge, but always brought an overlay of lightness and a deep underlay of humanity. These qualities, the Chief Justice noted, were also brought to bear in the many other areas of public contribution that Ms. Justice Finlay Geoghegan made, be it in her role as a member of the Constitutional Review Group, Chair of the Referendum Commission on the 31st Amendment of the Constitution in relation to the rights of children, and also as a member of the Board of the Mater Hospital.

Her former colleagues on the Court wish her a happy and rewarding retirement.

Ms. Justice Mary Finlay Geoghegan, accompanied by her husband, Mr. Justice Hugh Geoghegan, former Judge of the Supreme Court, on the occasion of her retirement from the Supreme Court in June 2019.

Ms. Justice Mary Irvine, with the Chief Justice Mr. Justice Frank Clarke, on the occasion of her appointment to the Supreme Court in May 2019.

In May 2019, Ms. Justice Mary Irvine, Judge of the Court of Appeal, was appointed as a Judge of the Supreme Court. Ms. Justice Irvine's appointment filled the vacancy that arose from the retirement of Ms. Justice Mary Laffoy in June 2017.

Ms. Justice Marie Baker, with the Chief Justice Mr. Justice Frank Clarke, on the occasion of her appointment to the Supreme Court in December 2019.

In November 2019, Ms. Justice Marie Baker, Judge of the Court of Appeal, was nominated for appointment as a Judge of the Supreme Court. Ms. Justice Baker's appointment filled by the retirement of Ms. Justice Susan Denham in July 2017.

Biographical details on both Ms. Justice Irvine and Ms. Justice Baker can be found on pages 41-42 of this report.

With these two appointments, the membership of the Supreme Court at the end of 2019 stood at nine Judges comprising the Chief Justice and eight ordinary members. There is currently one vacancy on the Court, arising from the retirement of Ms. Justice Finlay Geoghegan in June 2019.

The Constitution of Ireland

Bunreacht na hÉireann – the Constitution of Ireland – is the basic law that governs the State and provides, pursuant to Article 5, that Ireland is a sovereign, independent and democratic State. It provides for three branches of Government – the Executive, the Legislature and the Judiciary – and a tripartite separation of powers between these three branches. This doctrine, attributed to the French political philosopher Montesquieu, ensures a system of checks and balances between each of the three branches of State.

Bunreacht na hÉireann has been described as one of Ireland's seven sacred texts and, as the fundamental legal document governing the existence and authority of the State, has at its core, the source of all powers of the branches of Government and the fundamental rights of citizens.

In 1937, a Plebiscite was held which asked the People to decide whether or not they wished to ratify a draft Constitution that was put to them. The result of the Plebiscite was that 685,105 voters approved of adopting the draft Constitution, with 526,945 rejecting the proposal. As the majority of votes cast at the Plebiscite indicated an approval of the proposal, the draft Constitution was deemed to have been approved by the People and on 29th December, 1937, the new Constitution of Ireland, Bunreacht ha hÉireann, came into force.

The structure of the Constitution

Comprising 50 Articles, the first part of the Constitution relates to how the State is to operate, with provisions setting out the respective constitutional basis for the three branches of State. In addition, provision is also made for specific offices such as the Attorney General, the Comptroller and Auditor General and the Council of State. The second part of the Constitution is given over to the specifying of fundamental rights which are afforded to citizens. Such personal rights include the right to equality, liberty, inviolability of the dwelling and right to peaceful assembly. Specific Articles relate to the rights of the Family (Article 41), Education (Article 42), Children (Article 42A), Private Property (Article 43) and Religion (Article 44).

The Constitution concludes with provisions relating to how the text of the Constitution itself can be amended and the process through which such an amendment may be brought about, namely by way of a Constitutional Referendum. Finally, Article 50 makes provision for laws in effect prior to the coming into effect of the Constitution, and that are not inconsistent with the Constitution, to continue to have the force of law. As the Constitution superseded the Constitution of Saorstát Éireann – the Irish Free State – which came into effect upon Ireland gaining independence in 1922, it was necessary to provide for a continuation of the laws enacted by Saorstát Éireann.

Ireland is a dualist state with Article 29.6 of the Constitution providing that international agreements have the force of law to the extent determined by the Oireachtas. This means that international treaties entered into must be incorporated into domestic law by legislation before they are applicable within the State. An example would be the incorporation into Irish law of the Vienna Conventions on Diplomatic and Consular Immunities which was effected by the enactment of the Diplomatic Relations and Immunities Act 1967.

The exception to this requirement is European Community law, which, under the terms of Article 29 of the Constitution, has the force of law in the State. This means that any law or measure, the adoption of which is necessitated by Ireland's membership of the European Union, may not, in principle, be invalidated by any provision of the Constitution.

The Constitution of Ireland is comprises two texts – one in the Irish language and the other in the English language. Article 8 provides that the Irish language is the first official language of the State, with the English language recognised as the second official language. Article 25.5.2° of the Constitution provides the text of the Constitution enrolled for record in the Office of the Registrar of the Supreme Court is the definitive version of the Constitution and is conclusive evidence of its existence. During 2019, an updated text of the Constitution was enrolled and a report on this can be found on page 51.

The Constitution and the Courts

The Constitution establishes the Courts of Ireland and confers on the Superior Courts –the Supreme Court, the Court of Appeal and the High Court – the exclusive and sole power to review the constitutionality of legislation and to invalidate legislation which is incompatible with the Constitution. The Supreme Court, as the ultimate arbiter of the Constitution, has been tasked with interpreting the provisions of the Constitution. Since the 1960s when, in the landmark case of *Ryan v. Attorney General*[4], the High Court made a finding, which was upheld by the Supreme Court on appeal, that Article 40.3 of the Constitution, which guarantees personal rights, determining that that Article guaranteed personal rights not expressly referred to in the Constitution. The Supreme Court has identified specified unenumerated rights, such as the right to earn a livelihood[5] and the right to legal aid in criminal cases.[6]

Courts such as the Special Criminal Court, the Circuit Court and the District Court, whilst referred to as 'legislative' or 'statutory' courts, in that their establishment and existence emanates from an Act of the Oireachtas, all three courts derive their ultimate authority from the Constitution of Ireland.

Article 38.3.1° of the Constitution provides that special courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order. The Special Criminal Court, established pursuant to the Offences Against the State Act 1939, is such a court which derives its existence from Article 38.3.1°. Article 34.3 of the Constitution provides for Courts of First Instance. Article 34.3.4° provides that the Courts of First Instance shall include Courts of local and limited jurisdiction with a right of appeal as determined by law. The District and Circuit Courts are established in law to be such courts of local and limited jurisdiction.

[4] [1965] 1 I.R. 294
[5] [1992] 1 I.R. 503
[6] [1976] 1 I.R. 325

Amending and Interpreting the Constitution

Bunreacht na hÉireann has been described as "a living document" and as far back as the 1970s it was stated by the Supreme Court (*per* Walsh J.), in the seminal case of *McGee v. Attorney General*[7], that:

> "…no interpretation of the Constitution is intended to be final for all time. It is given in the light of prevailing ideas and concepts."[8]

In its constitutional role as the ultimate interpreter of the Constitution, the Supreme Court has interpreted the Constitution over the past eight decades as protecting fundamental rights such as the right to bodily integrity in *Ryan v. Attorney General*[9] and martial privacy in *McGee v. Attorney General*[10]. The Supreme Court, in 2017, held in *NVH v. Minister for Justice and Equality*, that the absolute ban on asylum seekers working was contrary to the constitutional right to seek employment.

As the basic law of the State, the Constitution of Ireland can only be amended by the People through the Referendum process that is expressly provided for in Article 47 of the Constitution. In a Constitutional Referendum, where a Bill to amend to the Constitution is passed by the Oireachtas it is then put to the People for them to determine whether they approve or reject the proposal contained in the Bill.

Since 1937, there have been 32amendments to the Constitution, the most recent being a proposal approved by a majority of the People at a Referendum held in May 2019 to amend Article 41 of the Constitution to provide for the recognition of foreign divorces and to reduce the period of time persons are required by law to be apart before an application for divorce can be brought.

The nature of the amendments to the Constitution in recent times illustrate the changing social landscape of the State. In addition, amendments to the Constitution have been required as part of Ireland's membership of the European Union. Other amendments have include inserting a prohibition on the death penalty from the Constitution, ratifying Ireland's membership of the International Criminal Court and to insert a new Article, Article 42A, into the Constitution to expressly provide specific rights for children.

In recent years, there have been a series of proposals put to the People to amend the Constitution. These have included amending the Constitution to provide for the establishment of the Court of Appeal, to provide for marriage equality without distinction as to sex; and to remove the offence of Blasphemy.

It is worth noting that there have been a number of referendums that have been held where the proposal put to the People on each occasion was not approved by a majority. Such proposals included reducing the age of eligibility for nomination to the Office of President and also the proposal to abolish the Upper House of Parliament, Seanad Éireann (the Senate).

As the Constitution of Ireland progresses through the ninth decade since its enactment, it continues to be amenable to change only by the express desire of the People, manifested through the Referendum process. The Supreme Court, and the other courts that make up the Superior Courts, continue with their collective task in interpreting the Constitution in cases where issues of constitutional law arise. In so doing, the Courts are bound by the Constitution itself and the extensive body of jurisprudence that has developed in the intervening eight decades.

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[7] [1974] I.R. 284
[8] [1974] I.R. 284 at 319
[9] [1965] 1 I.R. 284
[10] [1974] I.R. 284

Sixth enrolment of the Constitution

Article 25.5 of the Constitution provides that It shall be lawful for the Taoiseach, from time to time as occasion appears to him to require, to cause to be prepared under his supervision a text (in both the official languages) of the Constitution as then in force embodying all amendments theretofore made thereto.

A copy of every text so prepared, when authenticated by the signatures of the Taoiseach and the Chief Justice, shall be signed by the President and shall be enrolled for record in the office of the Registrar of the Supreme Court.

On 4th November 2019, at a ceremony held in Áras an Uachtaráin, President Michael D. Higgins, accompanied by An Taoiseach Leo Varadkar and Chief Justice Mr. Justice Frank Clarke, signed an updated version of the Constitution of Ireland.

President Higgins signed a text of the Constitution that embodies all constitutional amendments made since the last enrolment in 1999, and which has been authenticated by the signatures of both the Taoiseach and the Chief Justice, as required by the Constitution.

President Michael D. Higgins signing the sixth enrolled text of Bunreacht na hÉireann, accompanied by An Taoiseach Leo Varadkar T.D. and the Chief Justice of Ireland, The Hon. Mr. Justice Frank Clarke. (Photograph courtesy of Maxwell Photography)

The process of authentication is quite methodical with An t-Uachtarán, An Taoiseach and the Chief Justice required to initial each page of the text of the Constitution, to demonstrate that the head of each organ of the Government: the Executive, the Legislature, and the Judiciary, has reviewed the text in both official languages and are satisfied that the text conforms with previously enrolled text or, where applicable, a constitutional amendment as approved by the People at a Referendum.

Once signed by the President, the text is enrolled in the Office of the Registrar of the Supreme Court. When enrolled, this text becomes the definitive text of the Constitution of Ireland.

This is the sixth occasion on which a text of the Constitution, in both official languages, was enrolled. Previous enrolments occurred in 1938 (following the approval by the People of the Constitution in its original form in 1937), 1942, 1980, 1990 and 1999. Since the last enrolment in 1999, there have been fourteen amendments to the Constitution.

The five previously enrolled texts of the Constitution which were displayed at the enrolment ceremony in Áras an Uachtaráin. The text enrolled on 4th November 2019 supersedes the previous version enrolled in 27th May 1999. (Photograph courtesy of Maxwell Photography

Once signed by the President, the Department of the Taoiseach liaises with the Office of the Registrar of the Supreme Court to ensure that the final stage of the process – the enrolment itself – is concluded.

After receiving the enrolled text, the Registrar of the Supreme Court, Mr. John Mahon, signed a statement at the end of the text to indicate that the text was enrolled in the Office of the Registrar of the Supreme Court on the 13th November, 2019.

The safe custody of the enrolled text of the Constitution is the responsibility of the Registrar of the Supreme Court and the text is kept securely at the seat of the Supreme Court, which is located at the Four Courts in Dublin.

Registrar of the Supreme Court, John Mahon, concluding the formal process of enrolling the text of the Constitution of Ireland.

Secretary General to the Government, Mr. Martin Fraser, presenting the enrolled text of the Constitution of Ireland to the Registrar of the Supreme Court, Mr. John Mahon, accompanied by the Chief Justice, Mr. Justice Frank Clarke.

In the background is the photograph of the presentation of the first enrolled text of the Constitution in 1938.

Upon receiving the enrolled text from the Secretary-General to the Government, Mr. Martin Fraser, the Registrar to the Supreme Court Mr. John Mahon, accompanied by the Chief Justice, posed for a symbolic photograph, recreating a photograph taken at the time of the first enrolling when the then Registrar of the Supreme Court, Mr. James O'Brien K.C. accompanied by the then Chief Justice Timothy Sullivan, received a signed text of the Constitution from then Secretary to the Government, Mr. Maurice Moynihan.

The then Secretary to the Government, Maurice Moynihan, presenting the first enrolled text of the Constitution of Ireland to then Registrar of the Supreme Court, James O'Brien K.C., in the presence of the then Chief Justice, Mr. Justice Timothy Sullivan.

Women on the Supreme Court

23rd December, 2019 marked the centenary of the enactment of the Sex Disqualification (Removal) Act, 1919, a landmark statute that had the historic effect of removing the barrier that had prevented women from practising in law.

Whilst it would take less than two years for the first women to be called to the Bar and the first women to practice at the Bar, it was not until 1992 that the first female judge was appointed to the Supreme Court, with the appointment of Mrs. Justice Susan Denham.

To mark this historic occasion, in October 2019, all retired women judges of the Supreme Court were invited to the Supreme Court to reflect and celebrate the centenary of the 1919 Act. Retired members of the Court, former Chief Justice, Ms. Justice Susan Denham, Ms. Justice Catherine McGuinness, Ms. Justice Fidelma Macken, Ms. Justice Mary Laffoy, and Ms. Justice Mary Finlay Geoghegan, joined the current judges of the Court, Ms. Justice Elizabeth Dunne, Ms. Justice Iseult O'Malley, and Ms. Justice Mary Irvine.

Current and former Judges of the Supreme Court look on as Ms. Justice Susan Denham, as the first female Judge appointed to the Supreme Court, signs a copy of the Sex Disqualification (Removal) Act 1919, symbolising the centenary of the Act's enactment on 23rd December, 1919.

In a symbolic gesture to illustrate the significance that the 1919 Act had, each of the current and former judges of the Court signed a copy of the 1919 Act, which will hang in the Four Courts for posterity.

Each of the judges commented on how they overcame their own individual hurdles and that the landscape that now meets women in the law is a far different one than that which awaited the judges when they embarked on their own respective legal careers.

Remarking on her own experience, Ms. Justice Mary Irvine said:

> "I really hope that women starting a career at The Bar today consider themselves part of one single large community of barristers where gender is simply not an issue.
>
> Regardless of the Sex Disqualification (Removal) Act, 1919, when I started in practice, in 1979, women were as rare as hen's teeth. And, even if it wasn't actually the case, I think most of us felt that the eyes of our legal colleagues and the Judiciary were trained on us, waiting for us either to make a mistake or prove our worth.
>
> Today, with so many women in practice at The Bar and within the Judiciary, it's perhaps hard to believe just how male the legal landscape of the Law Library was back in the 1970s, even though women had enjoyed the right to practise as barristers for well over 50 years. I remember that landscape so very well and not only because of what happened when, in 1978, I applied to join The Bar Golf Society, which, at that time, had never had a female member. My request was countered with a motion, albeit put forward by a male colleague, who I later discovered had a wicked sense of humour, which proposed that no woman should ever be admitted to the society. This rattled my confidence somewhat, even if the motion was easily defeated due to the almost unanimous support of my male colleagues. Nonetheless, this little anecdote from the late 1970's probably serves to show that it has taken the greater part of the 100 years since the Sex Disqualification (Removal) Act, 1919 for women to be truly accepted as equal member of the profession."

Current and former women members of the Supreme Court at a specially convened gathering held at the Supreme Court in October 2019

Back (L-R): Ms. Justice Mary Irvine, Ms. Justice Mary Finlay Geoghegan, Ms. Justice Mary Laffoy, Ms. Justice Elizabeth Dunne, Ms. Justice Iseult O'Malley

Front (L-R): Ms. Justice Catherine McGuinness, Ms. Justice Susan Denham, Ms. Justice Fidelma Macken.

Of the two appointments to the Supreme Court made in 2019, both were women – Ms. Justice Mary Irvine was appointed in May 2019 and Ms. Justice Marie Baker was appointed in December 2019. As of 31st December 2019, of the nine judges of the Supreme Court, four are women.

To date, nine women have been appointed as Judges of the Supreme Court.

Ms. Justice Susan Denham was appointed as a Judge of the Supreme Court in December 1992, having previously been a Judge of the High Court since 1991. Ms. Justice Denham was appointed as the eleventh Chief Justice of Ireland in July 2011 and was the first woman to hold that office. She retired in July 2017.

Ms. Justice Catherine McGuinness was appointed to the Supreme Court in February 2000, having previously been a Judge of the High Court, and prior to which, a Judge of the Circuit Court. She retired in November 2006.

Ms. Justice Fidelma Macken was appointed in June 2007, and was previously a Judge of the High Court. She retired in February 2012.

Ms. Justice Mary Laffoy was appointed in July 2013, having previously been a Judge of the High Court since 1995. She retired in June 2017.

Ms. Justice Elizabeth Dunne was appointed in July 2013, having previously been a Judge of the High Court. Prior to her appointment to the High Court she was a Judge of the Circuit Court.

Ms. Justice Iseult O'Malley was appointed to the Supreme Court in October 2015, having previously been a Judge of the High Court.

Ms. Justice Mary Finlay Geoghegan was appointed to the Supreme Court in December 2017, having previously been a Judge of the Court of Appeal and prior to that, a Judge of the High Court. She retired in June 2019.

Ms. Justice Mary Irvine was appointed in May 2019, having subsequently been a Judge of the Court of Appeal and prior to that a Judge of the High Court.

Ms. Justice Marie Baker was appointed in December 2019, upon her elevation from the Court of Appeal. She was previously a Judge of the High Court.

The Judiciary and Legal Professions at the end of 2019

At the end of the 2019, the percentages of women in the respective legal professions were as follows:

- 52% of practising Solicitors are women.
- 38% of practising Barristers are women.
- 17% of Senior Counsel are women.
- 38% of the Judiciary are women.

Unveiling of historic Judicial Robe sketch

In his capacity as Chairman of the Rules Committee for the Supreme Court and the High Court, The Hon. Mr. Justice Hugh Kennedy (Chief Justice of Ireland from 1924 to 1936) campaigned vigorously for the replacement of the wigs and gowns traditionally worn by judges and barristers, which he regarded as the trappings of an alien regime, with robes inspired by the costumes of the brehons or judges of old Gaelic Ireland. He was enthusiastically supported by W.B. Yeats who recommended that the robes might be designed by the English artist, Charles Shannon.

Ultimately, Kennedy obtained sketches for the new robes from Shannon and sought to persuade the judges of their merits. However, he received little support from the judges or the government and the traditional dress was retained, although some district justices adopted a form of head-dress favoured by Kennedy and modelled on that worn by the Venetian doges. Kennedy himself declined to wear his wig when sitting in the Supreme Court: he carried it in his hand and placed it on the bench, apparently regarding that as a sufficient compliance with the rules. Kennedy's express desire was "to obtain, if possible, some scheme of judicial robes which would connect up with our own history, without at the same time being extravagant or theatrical."

What was to follow was, and is evident from the papers of Hugh Kennedy, a methodical and challenging process: an exchange of correspondence between all three.

Kennedy's zeal to bring this initiative to fruition is evident from his correspondence to Charles Shannon, and indeed to William Butler Yeats. In terms of the colours to be used, Kennedy suggested to Shannon that he look to the Book of Kells as a source of inspiration, observing that a "number of draped human figures showed a wonderful variety of colour schemes, some of very great beauty."

Shannon prepared for Kennedy two sets of sketches. The first set was sent in December 1924. The second set was sent in January 1925, in response to comments from Kennedy after consultations with his fellow judges.

The papers of Hugh Kennedy, deposited at University College Dublin, cast further light on the process and include correspondence between Kennedy, Shannon and Yeats. The collection comprises two sets of sketches. It was considered that Sketch Number 5 from Set Number 2 had been lost.

However, Brian O'Connell, grandnephew by marriage to Hugh Kennedy, discovered the sketch last year and it has kindly been donated by Mr. O'Connell to the Supreme Court to complement the existing collection of sketches prepared by Charles Shannon.

At a ceremony in the Four Courts held in November 2019, the Chief Justice, The Hon. Mr. Justice Frank Clarke, unveiled the sketch and thanked Mr. O'Connell for entrusting the sketch to the Supreme Court for posterity, where it will hang alongside the other sketches prepared by Charles Shannon.

Mr. Brian O'Connell with Chief Justice Mr. Justice Frank Clarke on the occasion of the unveiling of the historic Judicial Robe Sketch, Sketch No. 5, in the Four Courts, Dublin.

The following is the description that accompanies the sketch, based on the artist Charles Shannon's own observations.

Set 2, January 1925

Sketch 5: This drawing is based on Sketch 5 of the 1924 drawings and was intended for use in the Supreme Court. The design draws its inspiration from Roman dignitaries, with its faux ermine cape which could be easily substituted for a silk cape, according to the prevailing climate.

It was intended that this design in crimson or 'cardinal's red' would be reserved exclusively for the Chief Justice, while a purple version would be worn by the other members of the Supreme Court

The Judicial Council

On its establishment on the 17th December 2019, all members of the Judiciary, including judges of the Supreme Court, became members of the Judicial Council. The functions of the Judicial Council are to promote and maintain:

(a) excellence in the exercise by judges of their judicial functions;
(b) high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts;
(c) the effective and efficient use of resources made available to judges for the purposes of the exercise of their functions;
(d) continuing education of judges,
(e) respect for the independence of the judiciary, and
(f) public confidence in the judiciary and the administration of justice.

A number of Committees will be established under the Judicial Council, including: a Judicial Studies Committee: a Personal Injuries Guidelines Committee, a Sentencing Guidelines and Information Committee and Judicial Support Committees. The Council may establish such other committees as it sees fit.

The Chief Justice is chairperson of the Judicial Council and the President of the Court of Appeal is Vice-Chairperson. The Chief Justice has nominated Mr. Kevin O'Neill as interim Secretary to the Council in accordance with section 33 of the Judicial Council Act. An information session for all judges in relation to the Judicial Council took place in 2019 in preparation for the establishment of the Judicial Council. The first meeting of the Council will take place in February 2019, during which a number of the Committees will be established and elections will take place for the Board of the Council and then the committees in respect of which the Judicial Council Act provides for elections.

Minister for Justice and Equality, Mr. Charles Flanagan T.D., accompanied by the Attorney General Mr. Seámus Woulfe S.C. and the Presidents of the five Courts on the occasion of the establishment of the Judicial Council. Also photographed was Kevin O'Neill, Interim Secretary to the Council and Mary Murphy, Judicial Council secretariat.

Part 2
The Supreme Court in 2019

2

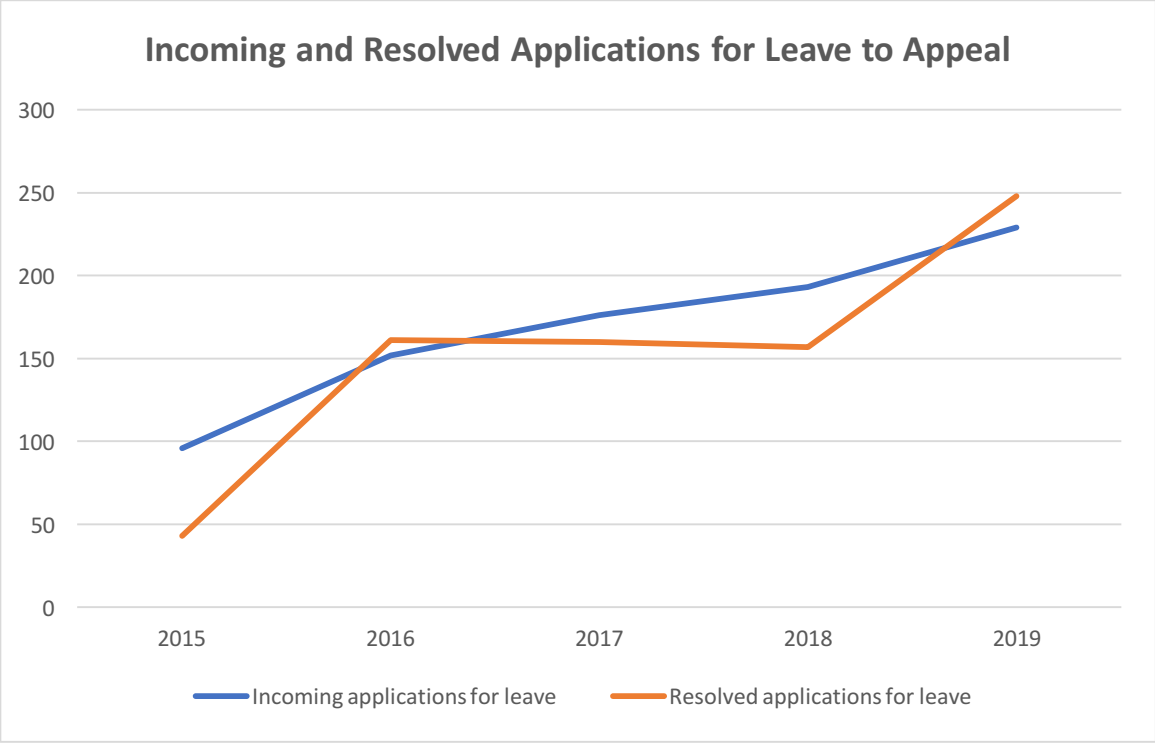
Statistics

Applications for Leave to Appeal

The Supreme Court first began to control the flow of appeals to the Court in 2014 upon the coming into force of its new jurisdiction pursuant to the Thirty-third Amendment to the Constitution. Since then, 769 applications for leave to appeal have been resolved.[11]

The below graph illustrates the increasing number of applications for leave to appeal brought to the Supreme Court each year since the first year in which it began to consider such applications. Figures compiled by the Supreme Court Office indicate that, in 2019, the Court determined 248 applications for leave to appeal and granted leave in respect of 64 of such applications (26%). The Court refused leave in relation to 180 applications (73%).

There has been a 19% increase in applications for leave to appeal brought in 2019 compared to 2018, and an overall increase of 138% since 2015, the first year for which full figures are available. Such an increase reflects the transitioning by the Court to its new jurisdiction and the below graph illustrates a stabilising of the number of applications for leave to appeal.



[11] Annual statistics for cases considered by the Supreme Court each year can be found in the Annual Reports of the Courts Service, available at beta.courts.ie

Categorisation of Applications for Leave to Appeal

Applications for Leave to Appeal from the High Court and Court of Appeal

It must be emphasised that the foregoing categorisation comes with a *caveat* in that many of the cases involve issues which fall under more than one area of law. For example, quite a few major criminal cases involve constitutional issues. Likewise, the same substantive claim can be framed both in private law (such as tort) but also in public law (such as legitimate expectation). The categorisation in this Chapter seeks to identify the single category which is most central to the case but is should not be taken to mean that there may not be aspects of the case which raise important questions under other headings.

Applications for Leave to Appeal from the High Court and Court of Appeal

The graph and table on pages 63 and 64 categorise all applications for leave to appeal brought to the Supreme Court in 2019 into areas of law. The categorisation is based on a consideration of the published determinations of the Court issued during 2019. Although the task of categorising applications for leave to appeal is subjective and, in reality, one case may encompass legal issues across a number of areas of law, a categorisation by case type indicates that the highest number of applications for leave to appeal were brought in cases involving procedural issues and, as was the case in 2018, cases involving judicial review proceedings in the area of immigration law and criminal law proceedings were the substantive areas of law which gave rise to the most applications for leave to appeal.

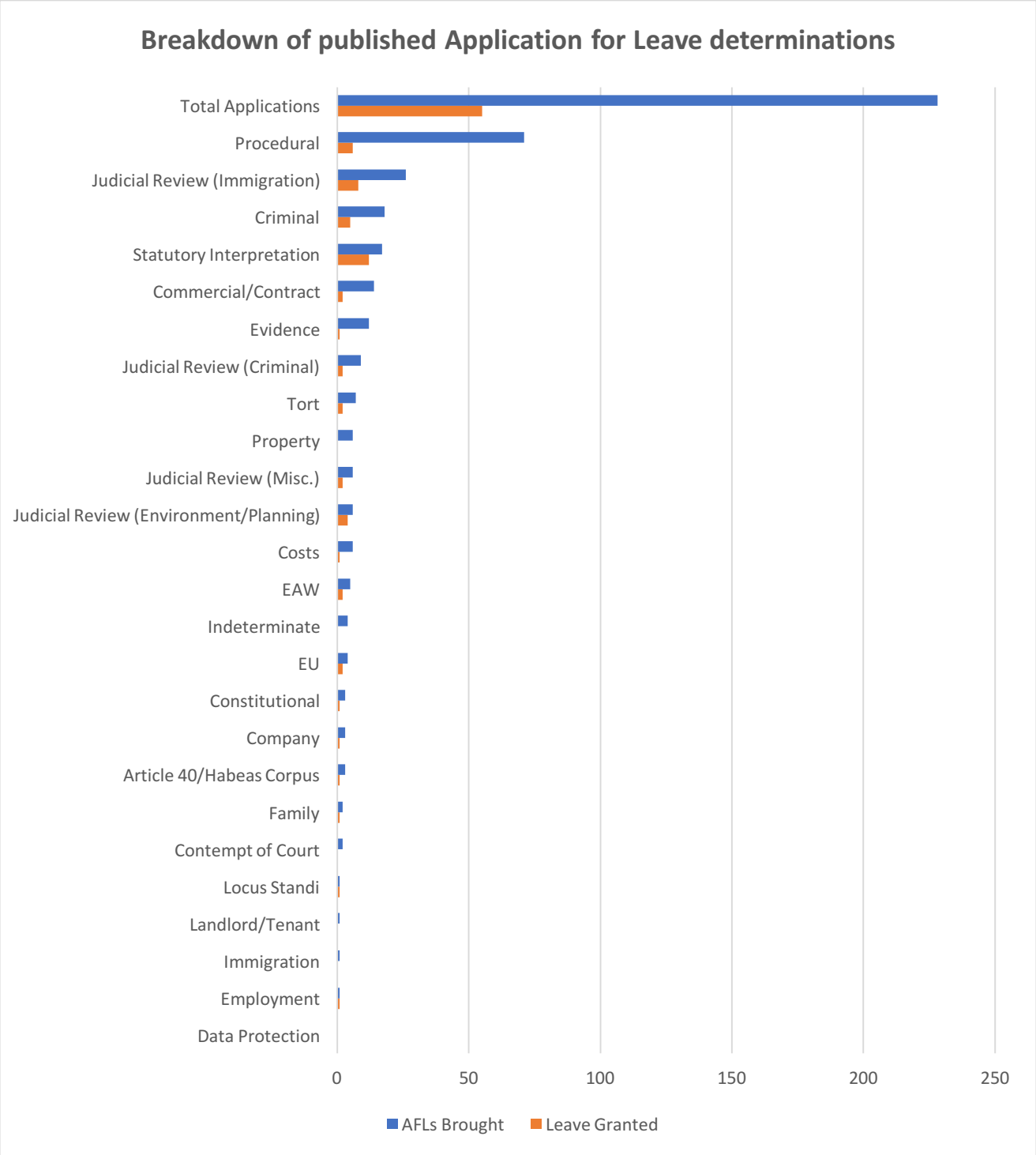
Cases involving immigration law issues accounted for 11% of applications for leave to appeal, with leave being granted in 30.8% of such applications. 7.9% of applications for leave to appeal involved issues of criminal law. Leave was granted in 27.8% of such cases.

Applications for Leave to Appeal directly to the High Court

The Constitution of Ireland provides for a direct appeal, known colloquially as a 'leapfrog' appeal from the High Court to the Supreme Court in exceptional circumstances. In 2019, 80 of the 228 (35.6%) of the published determinations of the Supreme Court involved applications for which leapfrog appeals were granted. In 28 of the 80 determinations (35%), the Supreme Court granted leave to appeal directly from the High Court. A breakdown of the categories of cases in which applications for a leapfrog appeal is provided on pages 65 and 66. This categorisation illustrates that 21 of the 80 applications (26.3%) related to cases involving judicial review in the area of immigration law and that 28.6% of such leapfrog applications for leave to appeal were granted.

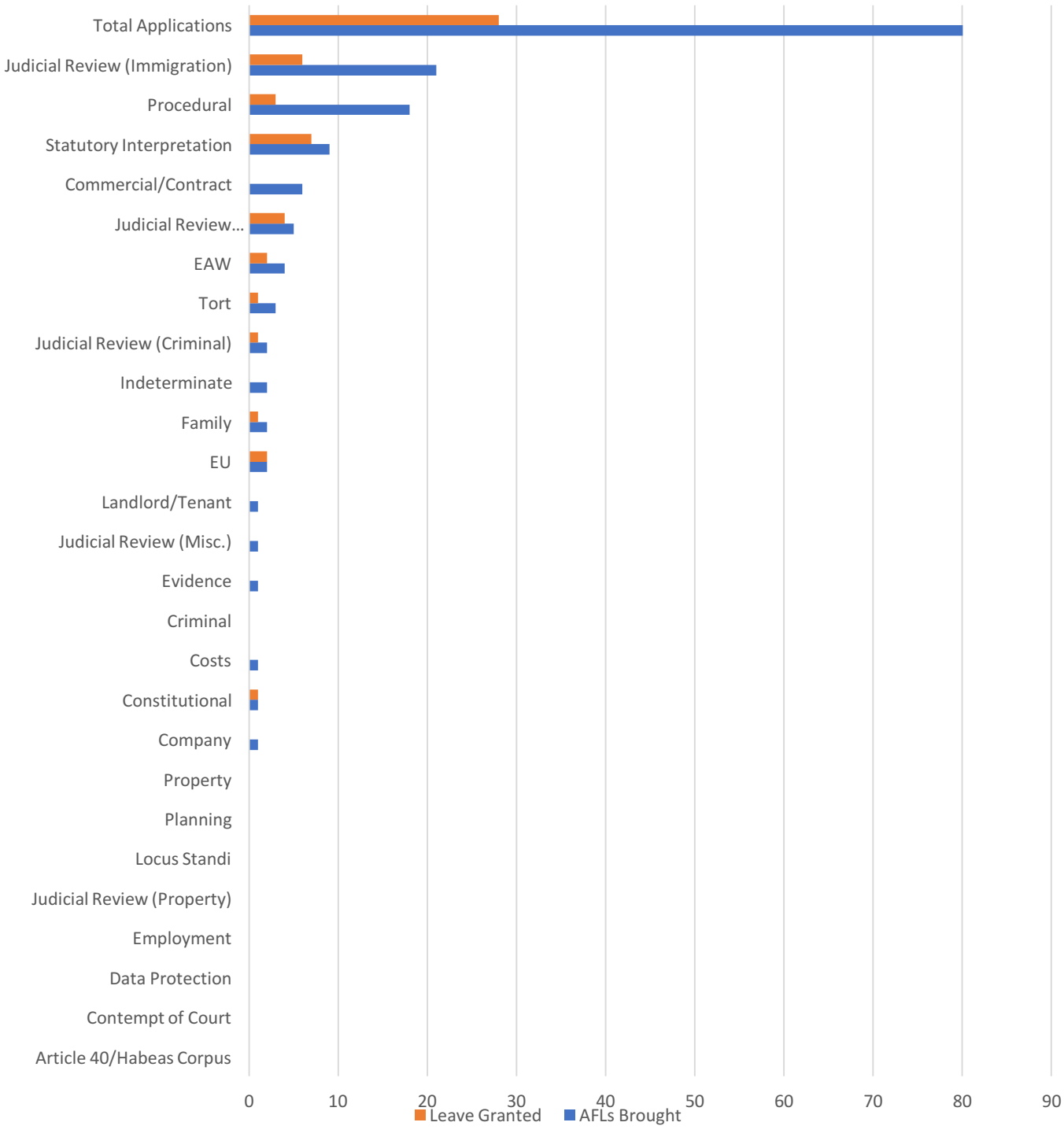
Of the 28 instances in which leave to 'leapfrog appeal' appeal was granted from the High Court to the Supreme Court, 9 (32%) were in cases in which the High Court had refused to certify that an appeal to the Court of Appeal was justified. Such a certificate is required by statute in certain circumstances before an appeal from a High Court decision can be brought to the Court of Appeal. However, the Supreme Court has noted in its determinations that, as a consequence of the appellate structure in place following the Thirty-third Amendment of the Constitution, even if the High Court refuses to grant such a certificate, this does not preclude a party from applying for a leapfrog leave directly to the Supreme Court.

Indeed, the Court has stated that where it is satisfied that the leapfrog application presents an issue of public importance, and thus meets the base-line constitutional standard for leave to appeal, the very fact that the High Court has refused a certificate might satisfy the exceptional circumstances requirement in leapfrog cases, thus justifying the granting of leave to appeal.



Breakdown of published Application for Leave determinations by number		
Category	**AFLs Brought**	**Leave Granted**
Data Protection	0	
Employment	1	1
Immigration	1	
Landlord/Tenant	1	
Locus Standi	1	1
Contempt of Court	2	
Family	2	1
Article 40/Habeas Corpus	3	1
Company	3	1
Constitutional	3	1
EU	4	2
Indeterminate	4	
EAW	5	2
Costs	6	1
Judicial Review (Environment/Planning)	6	4
Judicial Review (Misc.)	6	2
Property	6	
Tort	7	2
Judicial Review (Criminal)	9	2
Evidence	12	1
Commercial/Contract	14	2
Statutory Interpretation	17	12
Criminal	18	5
Judicial Review (Immigration)	26	8
Procedural	71	6
Total Applications	**228**	**55**

Breakdown of Published Leapfrog Application for Leave determinations



Breakdown of Published Leapfrog Applications for Leave by Number		
Category	**AFLs Brought**	**Leave Granted**
Article 40/Habeas Corpus	0	
Contempt of Court	0	0
Data Protection	0	
Employment	0	
Judicial Review (Property)	0	
Locus Standi	0	
Planning	0	
Property	0	
Company	1	
Constitutional	1	1
Costs	1	
Criminal	0	0
Evidence	1	
Judicial Review (Misc.)	1	
Landlord/Tenant	1	
EU	2	2
Family	2	1
Indeterminate	2	
Judicial Review (Criminal)	2	1
Tort	3	1
EAW	4	2
Judicial Review (Environment/Planning)	5	4
Commercial/Contract	6	
Statutory Interpretation	9	7
Procedural	18	3
Judicial Review (Immigration)	21	6
Total Applications	**80**	**28**

Full Appeals Determined in 2019

New jurisdiction appeals

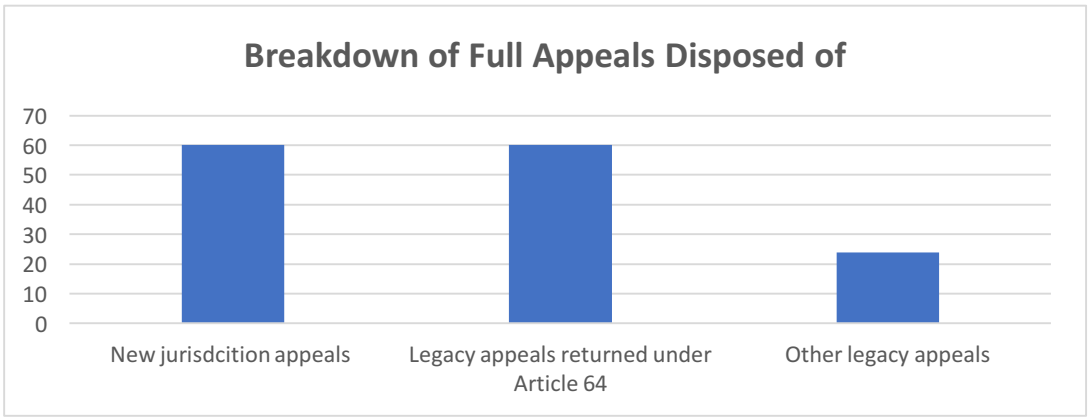
The Supreme Court disposed of 144 'full appeals' in 2019, 60 of which were 'new' appeals which were brought under the jurisdiction of the Court which came into force with the establishment of the Court of Appeal in 2014.

Article 64 'Returns'

When the Constitution was amended to establish the Court of Appeal, Article 64, a transitory provision (meaning that it does not now feature in the printed edition of the Constitution) provided that, on the day of the establishment of the Court of Appeal, the Chief Justice, if satisfied that it is in the interests of the administration of justice and the efficient determination of appeals to do so, and with the concurrence of the other judges of the Supreme Court, may direct that specified appeals be heard and determined by the Court of Appeal. In October 2014, the then Chief Justice, Ms. Justice Susan Denham, issued a direction transferring 1,355 appeals to the Court of Appeal.

The Supreme Court retained over 800 appeals under its previous jurisdiction, which are colloquially referred to as 'legacy appeals'. The establishment of the Court of Appeal enabled the Supreme Court to dispose of a backlog of such legacy appeals which had accumulated as a result of an almost universal right of appeal which lay to the Supreme Court prior to the establishment of the Court of Appel. The Court has now effectively disposed of all of its legacy cases, save for a small number of cases where certain procedural issues have not allowed for such cases to be dealt with in full.

However, the constitutional amendment altering the appellate jurisdiction of the Superior Courts had the effect of transferring the near automatic right of appeal from the Supreme Court to the Court of Appeal with only nine judges to consider appeals in the new court. As a result, a backlog of appeals in the Court of Appeal ensued. In order to alleviate this backlog, the Chief Justice and the President of the Court of Appeal agreed that a number of appeals which had been transferred to the Court of Appeal under Article 64 of the Constitution should be transferred back to the Supreme Court. In 2019, the Supreme Court determined 60 'Article 64 return' cases in order to assist the Court of Appeal to effectively clear its backlog.



Article 64 Applications

Article 64.3.3 provides that the Supreme Court, on an application to it, may, if it is satisfied that it is just to do so, make an order that can either cancel the effect of the direction or cancel or vary the effect of any provisions of that direction so far as it relates to that appeal. In 2019, the Supreme Court determined 71 applications seeking the transfer of cases from the Court of Appeal back to the Supreme Court.

Requests for Preliminary Rulings by the Supreme Court to the Court of Justice of the European Union

Article 267 of the Treaty on the Functioning of the European Union ('TFEU') provides a mechanism under which national courts which apply European Union law in cases before them may refer questions of EU law to the Court of Justice of the European Union ('CJEU') where such a reference is necessary to enable them to give judgment. The Supreme Court, as the court of final appeal, is under a duty to refer questions to the CJEU where necessary before it concludes a case.

The Supreme Court of Ireland has made preliminary references under Article 267 TFEU (or formerly under Article 234 EC) in 42 cases since 1983. The below graph indicates the number of preliminary references made by the Supreme Court each year.

The Supreme Court made one reference to the CJEU in 2019 and that was in the case of *Klohn v. An Bord Pleanála & anor*. In Klohn, the Supreme Court considered the rights of audience of a German lawyer (Rechtsanwalt) before Irish Courts. Mr Klohn sought to have a legal representative (Ms. Ohlig) who is qualified in Germany represent him in the proceedings in Ireland. The Court had to consider whether the German qualified lawyer was permitted to conduct the case without working in conjunction with an Irish lawyer (the "in conjunction with" requirement which the Irish Regulations presently require).

The court considered the proper interpretation and application of European and Irish law, specifically the European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979, as amended, ("the Regulations"), and European Council Directive 77/249/EEC of 22 March 1977, commonly referred to as "the Lawyers' Services Directive". The Regulations impose a requirement on a non-Irish qualified EU lawyer wishing to represent a party before a court in litigious proceedings in Ireland to work "in conjunction with" an Irish qualified lawyer who enjoys a right of audience before the Irish courts.

The Chief Justice, in his judgment, noted that Ms. Ohlig has established that she is entitled to offer legal services in Ireland under the Lawyers' Services regime and said that the only question which arises in respect of her right of audience in the proceedings is the proper interpretation of requirement to work "in conjunction with" an Irish lawyer. It was Ms Ohlig's contention that such a requirement is not necessary for the proper conducting of the case.

The question arises of whether Ireland is entitled to impose the "in conjunction with" obligation at all. This involved an examination of whether Ireland has properly transposed EU Law into Irish law by imposing this requirement on non-Irish lawyers in Irish Courts. The Chief Justice found that "the answer to that question is a matter of Union law in respect of which the answer is not clear" and accordingly the matter is to be referred to the CJEU under the provisions of Article 267 of the Treaty on the Functioning of the European Union.

Leapfrog appeals where refusal to certify leave Court

Of the 28 instances in which leave to 'leapfrog appeal' appeal was granted from the High Court to the Supreme Court, 9 (32%) were in cases in which the High Court had refused to certify that an appeal to the Court of Appeal was justified. Such a certificate is required by statute in certain circumstances before an appeal from a High Court decision can be brought to the Court of Appeal.

However, the Supreme Court has noted in its determinations that, as a consequence of the appellate structure in place following the Thirty-Third Amendment of the Constitution, even if the High Court refuses to grant such a certificate, this does not preclude a party from applying for a leapfrog leave directly to the Supreme Court.

For context, only 17 of the leapfrog applications which were granted were governed by such statutory schemes - meaning 53% of cases where a certificate of leave to appeal is required to appeal to the Court of Appeal had been refused the same in the High Court and were subsequently granted leave in the Supreme Court.

Reserved judgments

131 Reserved judgments were delivered by the Supreme Court during 2019, up from 91 judgments delivered in 2018.

Judgments are publicly available on the Courts Service website, www.courts.ie.

Case summaries

The following case summaries are published solely to provide an overview of some of the cases considered by the Supreme Court in 2019. They do not form part of the reasons for the decision of the respective case and do not intend to convey a particular interpretation of the case summarised. The case summaries are not binding on the Supreme Court or any other Court. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at www.courts.ie/judgments

1. *F. v. M.*
2. *A.M. v. Health Service Executive*
3. *Kerins v. McGuinness & ors (No. 1)*
4. *O'Brien v. Clerk of Dáil Éireann & ors*
5. *Mohan v. Ireland*
6. *Director of Public Prosecutions v. Mahon*
7. *P. v. Judges of the Circuit Court & ors*
8. *Ellis v. Minister for Justice and Equality & ors*
9. *B.S. & R.S. v. Refugee Appeals Tribunal & ors*
10. *Bates & anor. v. Minister for Agriculture, Fisheries and Food & ors*
11. *Sweeney v. Ireland*
12. *Kerins v. McGuinness & ors (No. 2)*
13. *F. v. Mental Health Tribunal & ors.*
14. *A.P. v. Minister for Justice and Equality*
15. *Data Protection Commissioner v. Facebook Ireland Ltd. & anor.*
16. *Tobin v. Minister for Defence*
17. *X.X. v. Minister for Justice and Equality*
18. *Klohn v. An Bord Pleanála*
19. *Nano Nagle School v. Daly*
20. *Harlequin Property (SVG) Limited & ors v. O'Halloran and anor*
21. *McKelvey v. Iarnród Éireann*
22. *Minister for Justice and Equality v. Celmer*
23. *Simpson v. Governor of Mountjoy Prison & ors*
24. *Michael (a minor) and ors v. Minister for Social Protection & ors*
25. *E.R. v. Director of Public Prosecutions*
26. *Bank of Ireland Mortgage Bank v. O'Malley*
27. *Director of Public Prosecutions v. F.E.*
28. *E.R. v. Director of Public Prosecutions*
29. *Fagan & ors v. Dublin City Council*
30. *Director of Public Prosecutions v. C.Ce*

The case summaries provide a flavour of the broad variety of issues that fall to be considered by the Supreme Court. These legal issues span a vast array of areas of law including constitutional law, administrative law and criminal law.

F v. M [2019] IESC 1

Judgment of Mr. Justice MacMenamin delivered on 22nd January 2019

In making proper provision for parties to divorce proceedings, a court must balance the respective rights, duties, obligations and circumstances of each party. Proper provision does not reflect who contributed "more" but what was appropriate and available for the parties at the time of the order.

The Supreme Court considered two appeals. The first was against an order of the High Court granting the parties a divorce and regulating their financial relationship. The Appellant (husband) argued that a High Court order that his pension fund ("the Fund") be awarded in the ratio of 80% to the Respondent and 20% to him did not make proper provision for him in accordance with the general duty of the courts to do so. In an interim application for a stay pending the appeal, the Court made a temporary pension adjustment order, varying the High Court order to require the Respondent (wife) to pay into Court half of the amount she received (40% of the total value of the pension) and each party was ordered to pay 50% of a sum of €40,000 for the costs of the Fund's administrators and trustees. Under the second appeal, the Appellant contended that these costs were exorbitant.

The Appellant submitted that he was in poorer health than when the High Court order was made. He maintained that he was effectively insolvent and being pursued by creditors, and that he should be awarded the balance of the Fund, while the Respondent should receive the extent of her mother's inheritance, said to be property valued at €1 million. The Appellant asserted that in the marriage he "brought to the table" a desirable home with a value amounting to 47% of the Fund. He contended that the Respondent had received about €500,000 which was expended to no benefit and without obtaining accommodation. He said he cared for one of their daughters and that he lived in the home he inherited from his father, attached to which was a small stud farm that he operated. He was entitled to a life interest only in the property. The Respondent submitted that she was in poor health, struggling financially, in debt, and was relying on borrowings to live. She stated that large sums of the money she had previously received had been spent on legal fees.

In relation to the duty to make "proper provision" for the parties having regard to their financial circumstances, Mr. Justice MacMenamin noted that, under the relevant legislation, the Court must balance the respective rights, duties, obligations and circumstances of each party and that proper provision does not reflect who contributed "more", but what was appropriate and available for the parties at the time of the order. Mr. Justice MacMenamin (with whom Mr. Justice O'Donnell and Ms. Justice O'Malley agreed) held that, generally, the Court must identify whether the trial judge erred in principle in making the award, but commented that, on appeal, one cannot ignore the realities as they then appear. Much time had elapsed since the High Court order. In addition, Mr. Justice MacMenamin held that the telling distinction was that the Appellant's accommodation position was significantly more stable than that of the Respondent, who informed the Court that she had no home, no income and faced an uncertain future. Mr. Justice MacMenamin considered the deterioration of the Appellant's finances and health were factors which the trial judge could not have reasonably anticipated. Ultimately, Mr. Justice MacMenamin held that the respondent should receive 75% of the balance of the fund, leaving 25% to the appellant.

As to the second appeal, the trustees and administrators were not put on notice of the date of the appeal, or that their costs were to be challenged. Despite feeling sympathetic to the parties in light of the costs incurred, neither Court could have made a pension adjustment order absent information from the trustees. The trial judge held that this issue might potentially be dealt with by the Pensions Ombudsman, and the Court did not see that he erred in so holding. Mr. Justice MacMenamin allowed the first appeal to the extent identified above and varied the High Court order accordingly. No order for costs was made. The Court directed that any other matter must be dealt with by the High Court.

A.M. v. Health Services Executive [2019] IESC 3

Judgment of Mr. Justice MacMenamin delivered on 29th January 2019

A wardship order under the Mental Health Acts may be made where it is "necessary" and "appropriate" to do so; but the courts will adopt a range of procedures under their wardship jurisdiction to ensure such measures also protect the rights of individuals.

The Supreme Court dismissed an appeal against a judgment and orders of the High Court making AM, who had received a ten-year sentence for manslaughter and had been transferred to the Central Mental Hospital ("CMH"), a ward of court and for his detention in the Central Mental Hospital just prior to the expiry of his sentence. On appeal, AM argued that a wardship order should not be made, and that any continued detention could only be made pursuant to the Mental Health Acts, 1945-2001 ("the Act"). He contended that the Act contained human rights safeguards which were absent from the wardship jurisdiction and that, by making a wardship application, the HSE was attempting to "circumvent" protections contained in the Act. The issue was whether involuntary detention on mental health grounds can be sought by way of wardship, or if necessary, the inherent jurisdiction of the Court, notwithstanding that an individual also satisfies the criteria for a detention order under the Act.

Mr. Justice MacMenamin (with whom Mr. Justice O'Donnell Ms. Justice Dunne, Ms. Justice O'Malley and Ms. Justice Finlay Geoghegan agreed) held that an order under the Act may be made where it is "necessary" and "appropriate" to do so; but that courts will also adopt a range of procedures under their wardship jurisdiction to ensure such measures also protect the individual's rights. In general, the two statutory codes do not overlap. Mr. Justice MacMenamin emphasised that the High Court decision had to be seen against its factual background, with a recognition that courts must occasionally decide matters on facts as presented at the time of an urgent application and that Courts of First Instance do not operate in a perfect world with infinite time and the luxury of hindsight. Absent any court order, AM, who would pose a risk to himself and others, would be released into the community within four days of the first application. In admitting AM to wardship, the High Court was therefore properly exercising judicial discretion in an area in which it enjoyed considerable latitude and where the choices available were significantly narrowed by circumstances outside the control of the Court. The situation should have been foreseeable to the HSE, yet the application was left to the eleventh hour when the High Court had little choice but to accede to it.

Having undertaken a detailed analysis of the Act and the wardship procedure as established in the cases of *In re a Ward of Court [*1996] 2 I.R. 79, *In re D* [1987] 1 I.R. 449 and *In re FD* [2015] IESC 83; [2015] 1 I.R. 741, Mr. Justice MacMenamin held that a court may make such orders as are necessary to give effect to the wardship jurisdiction for the protection of the rights, interests and welfare of the person involved, as well as property. It observed that the courts' inherent jurisdiction may be invoked only where necessary and where fundamental constitutional principles are at stake. Mr. Justice MacMenamin held that the "parallel lines" between wardship and the Act on this occasion did meet and that, in the instant case, the requirements for either jurisdiction were met, provided that adequate procedural protections were made available to AM to vindicate his rights. Mr. Justice MacMenamin pointed out that, under wardship, there is no bar to a court adopting procedural safeguards which "mirror" those of the Act and that the High Court had done so in this case. To make the wardship order, it was "necessary" to vindicate AM's constitutional right to life and welfare and to protect such rights of others. It was also "appropriate" to do so as the need was immediate. Where fundamental constitutional principles are concerned, the Court might in certain limited circumstances exercise its inherent jurisdiction.

Kerins v. McGuinness & ors (No. 1) [2019] IESC 11

Judgment of the Supreme Court delivered on 27th February 2019

The sanctity of parliamentary privilege and procedure, as underpinned by the separation of powers doctrine as enshrined in the Constitution, is not immune from judicial scrutiny, in circumstances where a determination was made by the Courts that a citizen's constitutional rights were not upheld by Parliament by its own procedures.

This appeal involved the intersection of the powers of the Oireachtas on the one hand to govern its actions by its own rules, and, on the other hand, the responsibilities of the Courts of ensuring that citizens' constitutional rights were upheld.

The Appellant in this case was, at the material time, the Chief Executive Officer of an independent charity that was in receipt of State funding. The Respondents were members of the Public Accounts Committee ('the 'Committee"') which sought to examine the funding provided to the charity by the State. Accordingly, the Appellant was invited to appear before the Committee as a witness. Whilst not legally compelled to do so, the Appellant accepted the invitation and attended a meeting of the Committee which was held in public.

Following her appearance before the Committee, the Appellant contended her physical and mental health deteriorated to such an extent that she attempted to take her own life. Her legal representatives subsequently wrote to the Committee informing them that she would not be attending before the Committee again. In reply, the Committee indicated that it would seek to invoke powers of compellability in securing the Appellant's attendance.

The Appellant subsequently initiated High Court proceedings seeking, amongst other things, a declaration that the Committee lacked jurisdiction to undertake the examination of the Appellant, that the Committee was biased towards her and a declaration that the procedures adopted by the Committee towards here were unfair so as to render its proceedings as unlawful.

A divisional composition of the High Court (that is, the High Court sitting with three judges) sat to consider the Appellant's claim in respect of the Committee's jurisdiction and freedom of parliamentary speech. It held against her, stating that it would be a breach of the separation of powers doctrine, as laid down in the Constitution, for it to embark on a consideration of the complaints of unconstitutional or unlawful activity made by the Appellant against the Committee.

The Appellant sought, and was subsequently granted, leave to appeal directly to the Supreme Court. In granting leave, the Court noted that the issues raised by the Appellant relate to the legal safeguards available to witnesses who appear before the Committee in a voluntary capacity *vis-à-vis* the role, if any, the Court has in protecting such witnesses, in circumstances where issues of freedom of parliamentary speech, separation of powers and the sanctity of parliamentary affairs arise.

At the core of the Appellant's claim was her assertion that she was invited to appear before the Committee on one basis, but that the Committee subjected her to a line of question that was at variance with the Committee's invitation.

The Supreme Court considered whether it was open to it to consider whether a parliamentary committee, which is conferred with constitutionally enshrined privileges and powers, had exceeded its remit. Both Houses of the Oireachtas, and any committees set up by either House has, under the Constitution, the power to make its own rules and also privilege in respect of any utterances or publications it makes.

If it was open to a Court to determine that a committee had exceeded its remit, a subsequent question that would have to fall to be considered was whether it could be held that that committee lost the privileges and immunities which the Constitution might otherwise confer.

Whilst acknowledging the principle that an Oireachtas committee enjoys the same privileges and immunities as the House itself, the Court stated that the applicability of that principle in a case where it was contended that a committee acts outside the scope of its remit fell to be considered. The privileges and immunities conferred on the Oireachtas by the Constitution came with responsibilities including a responsibility to take reasonable steps to maintain the protection of a witnesses constitutional rights.

Furthermore, the Court stated, that the constitutional rights of citizens do not disappear once inside the gates of the Parliament building but rather are primarily to be protected within the bounds of the Oireachtas by the Oireachtas itself. This is supported by the constitutional entitlement of the Oireachtas to enforce its rules and standing orders without interference.

The Court considered that the cumulative effects of the matters in controversy, finding that the Committee acted very significantly outside of its terms of reference (a finding that was critically also made by the Oireachtas's own Committee for Privileges and Procedures).

In circumstances which led to a citizen accepting an invitation on one basis but being treated significantly differently on attendance, together with the absence of any action on the part of the Oireachtas to deal with these matters, the Court found the circumstances would be appropriate for judicial intervention. The Court stated that a citizen who is invited to attend before an Oireachtas committee on a particular basis is entitled to take the committee at its word and that expectation extends to the committee acting in a manner broadly consistent with the basis on which the invitation is proffered.

Whilst accepting that a degree of practicality must prevail in relation to minor or technical deviations, the deviations that would give rise to a determination that a committee had acted unlawfully must be substantial and significant.

The Supreme Court, in a judgment to which all members who heard the appeal contributed, allowed the appeal and concluded that the Committee had acted unlawfully by the manner in which it had conducted its questioning of the Appellant. The Court concluded, *inter alia*, that it would not be a breach of the separation of powers for the Court to declare that the Committee's actions were unlawful in light of the fact that the committee was acting outside of its terms and that the Committee for Privileges and Procedures had come to a different view.

Notwithstanding the fact that it was open to the Court to declare that the Committee had acted unlawfully in a manner which affected the Appellant, it held over making such a declaration until it heard further submissions from the parties. The Court subsequently made a declaration. (see *Kerins v. McGuinness & ors (No. 2)* (on page 84)).

O'Brien v. Clerk of Dáil Éireann & ors [2019] IESC 12

Judgment of the Supreme Court delivered on 5th March 2019

Judicial analysis of a decision of a parliamentary committee would amount to an impermissible judicial inference to constitutionally protected utterances.

Similar to the *Kerins v. McGuinness (No.1)* ("*Kerins*") case, this appeal involved a consideration of the limits of the court's jurisdiction in dealing with matters arising from the alleged infringement of a citizen's constitutional rights by the Oireachtas. Whilst some of the conclusions reached in the *Kerins* decision have equal application in this case, there were significant differences between the factual and legal circumstances of both cases.

The Appellant, a prominent businessman, expressed concerns about certain statements made in Dáil Éireann by two deputies relating to his financial affairs that were the subject of a prior interlocutory injunction that prevented the public disclosure of information in relation to his affairs. As utterances made in Dáil Éireann attract privilege pursuant to Article 15.10 of the Constitution, it was open to the deputies to utter these allegations in respect of the Appellant's financial affairs without any threat of legal consequences. The Appellant subsequently complained to the second to eleventh named Respondents in their respective capacities as members of the Committee on Procedure and Privileges of Dáil Éireann ("the 'Committee'") and the case relates to the manner in which the Appellant's case was dealt with by the Committee.

The Appellant wrote to the Committee complaining about the utterances made by both Deputies. In reply, the Clerk of that Committee informed the Appellant that the utterances by both Deputies did not breach the standing orders (internal rules) of Dáil Éireann and did not abuse parliamentary privilege.

The Appellant initiated proceedings in the High Court wherein he sought a number of reliefs including declarations that the utterances made by the Respondents had caused or permitted a breach of the Appellant's rights pursuant to Article 40.3.1 of the Constitution and also that the by causing or permitting the said utterances the Respondents were guilty of an unwarranted interference with the operation of the courts in a purely judicial domain.

The Appellant's case was dismissed in the High Court, which relied on the judgment of the Divisional High Court in the *Kerins* case, thus emphasising the material overlap between at least some of the issues which arose in both the *Kerins* case and the instant case.

The Supreme Court subsequently considered and granted leave to the Appellant on the grounds that it was argued that the High Court's finding with respect to the non-justiciability of the Committee's determinations was in error as was its consequent refusal to grant the reliefs sought pertaining to the Committee's determinations.

Against the backdrop of the conclusions reached by the Court in the *Kerins* case, the Court then turned to consider the issues raised in the instant case and whether the actions of the Committee can be assessed as to their lawfulness in the circumstances of this case. As the Appellant was no longer seeking a remedy from the Court in respect of the utterances made in the Dáil chamber, rather the Appellant sought to challenge what happened before the Committee. In light of *Kerins*, it was necessary for the Court to determine whether it can properly be said that the Committee was carrying out a constitutional function of the Houses of the Oireachtas so that it and its members would attract the same privileges and immunities that would attach to the Houses themselves on the basis of the analysis conducted in *Kerins*.

The Court sought to reiterate, as it did in *Kerins*, that the constitutional rights of citizens do not disappear at the gates of the Parliament building. Rather, the constitutional architecture requires that, to the extent that to which the Constitution itself confers immunities in respect of court proceedings relating to what happens within the Irish Parliament building, citizens must look to Parliament themselves to vindicate their rights, where appropriate, resolving any question of balancing rights and obligations which arise. Furthermore, the Court then sought to draw distinctions between the instant case and *Kerins*, namely that the utterances complained of by the Appellant were made in a House of the Oireachtas and therefore non the questions concerning the scope of any immunity enjoyed by a committee, as discussed in *Kerins*, had any application to the instant appeal.

The Court considered it was appropriate to characterise the work of the Committee, when considering a complaint of a citizen that the rights of the citizen concerned have been infringed within the Houses, as constituting part of the constitutional function of the Houses in complying with their obligation to protect those rights. In assessing whether the work of the Committee was justiciable, the Court drew a distinction between the work of the Committee in respect of its own members and when acting on foot of standing orders (which the Court considers as being non-justiciable) versus the Committee considering a complaint by a citizen where the substance of the complaint concerned is that the citizen's rights have been infringed by a House or Houses.

The Court held that the Committee, in considering the Appellant's complaint, was carrying out a delegated function of the Dáil in protecting the constitutional rights of citizens in respect of matters occurring within the Dáil. The court went on to analysis whether the privileges and immunities that attach to the Committee render the decision of the Committee non-justiciable. The Court determined that in reviewing the decision of the Committee in such a case might result in an indirect or impermissible collateral consideration of the appropriateness or otherwise of utterances made in the Houses. Such a course of action would infringe on the immunity conferred on Deputies in respect of their utterances in the House and would amount to an impermissible departure from the separation of powers.

In distinguishing *Kerins*, the Court stated that in considering the Appellant's complaint may amount, in substance, to an indirect or collateral challenge to utterances made in the Dáil. As a result, the Court determined that the Appellant's challenge to the decision of the Committee in this case was non-justiciable. However, the Court stressed that such a determination does not amount to the Court not reaching a decision as to whether or not the decisions of the Committee might be justiciable in other circumstances. In determining that a consideration of the Committee's decision in respect of the Appellant would give rise to an indirect or collateral challenge to the utterances of the deputies, contrary to Article 15.10 of the Constitution. The only practical consequence of a successful outcome to proceedings such as this would be that it might lead to a reconsideration by the Committee of its decision in respect of the Appellant's complaint. If that were to lead to a different result, then a court would have been, at least indirectly or collaterally, involved in dealing with utterances made in the Houses, a course of action that would be contrary to the Constitution.

In conclusion, the Supreme Court determined that the High Court was correct to treat the Appellant's claim, in the circumstances of this case, as being non-justiciable and to dismiss the claim.

Mohan v. Ireland [2019] IESC 18

Judgment of Mr. Justice O'Donnell delivered on 21st March 2019

An individual seeking nomination to contest a general election from his affiliated political party election had standing to challenge legislation, the effect of which was to introduce gender quotas in prescribing minimum numbers of female candidates a political party must put forward for nomination in such elections.

The Appellant sought to challenge the constitutionality of section 17(4B) of the Electoral Act 1997 as inserted by s. 42(c) of the Electoral (Amendment)(Political Funding) Act 2012, which significantly altered the conditions on which State funding to political parties was to be awarded by requiring political parties seeking to obtain State funding to put forward for nomination at least 30% female candidates, with this figure rising incrementally at subsequent general elections. The Appellant was a member of a political party and had hoped to obtain a nomination from his party for the 2016 general election. He was one of three prospective candidates put forward and, of the three, he was the only male. He received correspondence from the General Secretary of his political party directing that the candidate to be selected must be a woman, and he was therefore excluded from consideration and a female candidate nominated. His appeal to the High Court and the Court of Appeal were unsuccessful on the grounds that he did not have *locus standi* to challenge the impugned section.

On appeal to the Supreme Court the Appellant argued that he was entitled to establish standing on three bases: that of a candidate who had sought nomination; as a member of a political party; and as a citizen. Under these bases, the Appellant contended that he met the test for establishing standing as determined in the 1980 decision of the Supreme Court in *Cahill v. Sutton* [1980] I.R. 269 in that his interests had "been adversely affected, or stand in real or imminent danger of being adversely affected, by the operation of the statute." Mr. Justice O'Donnell delivered the judgment of the Court (to which Mr. Justice MacMenamin, Ms. Justice Dunne, Mr. Justice Charleton and Ms. Justice O'Malley agreed. Having regard to the *Cahill*, Mr. Justice O'Donnell reiterated that there is no *actis popularis (*a right on the part of a citizen to challenge the validity of legislation without showing any effect on him or her, or any greater interest than that of being a citizen) in Irish constitutional law and that the Irish position is that it is necessary to show some adverse effect on the plaintiff, either actual or anticipated.

Mr. Justice O'Donnell noted the potential far-reaching consequences of a determination that a statutory provision is invalid and that such a determination is blunt in nature and can serve as a significant disruption of the legal order. Therefore, the step of permitting a challenge to the constitutional validity of a piece of legislation should not be taken lightly, simply because someone wishes, however genuinely, to have the question determined, but rather should only be taken when a person can show that they are adversely affected in reality. Mr. Justice O'Donnell reiterated that it is necessary to show adverse effect, or imminent adverse effect upon the interests of a real plaintiff. Having regard to the test established *Cahill*, the Court was required to determine what was precisely meant by a person's interests being "adversely affected". Mr. Justice O'Donnell then sought to develop the distinction between a person's 'interests' and a person's 'rights' *vis-à-vis* the challenge a plaintiff seeks to bring. Mr. Justice O'Donnell found that the findings of the High Court fell short of establishing that the impugned section had no effect upon the appellant, his interests, or rights. In considering whether that finding was fatal to the appellant's standing, or whether it was sufficient that the Appellant demonstrate that the impugned section had some non-trivial effect on his interests, Mr. Justice O'Donnell concluded that the Appellant had shown sufficient effect upon him to be entitled to challenge the validity of the provision. Accordingly, it was not necessary for the Court to go further and consider whether, if such standing could not be established, the Appellant might be able to bring himself within one of the exceptions contemplated in *Cahill v. Sutton*.

Director of Public Prosecutions v. Mahon [2019] IESC 24

Judgment of Mr. Justice Charleton delivered on 11th April 2019

While interrogating a jury as to its reasoning should be avoided, in very rare cases where a jury's verdict would be ambiguous without questioning, a trial judge may exercise his or her discretion and pose a question. When sentencing for manslaughter, there are four categories into which the offence may fall and a headline sentence should be identified before the aggravating and mitigating factors are established to come to a proportionate sentence.

This case concerns an appeal brought by the accused who was convicted of the manslaughter of his step-son and sentenced to seven years imprisonment. An appeal by the Appellant against his sentence to the Court of Appeal on the grounds that it was too severe and inconsistent with the verdict delivered by the jury was dismissed. The Appellant applied for and was granted leave to appeal to the Supreme Court relating to issues as to the proper approach to understanding the verdict of a jury and proper approach to sentencing those convicted of manslaughter. Mr. Justice Charleton delivered the judgment of the Court (to which the Chief Justice, Mr. Justice Clarke, Mr. Justice McKechnie, Ms. Justice Dunne and Ms. Justice O'Malley agreed.

Relating to the first issue, Mr. Justice Charleton emphasised that in the majority of cases, the meaning of the jury's verdict will be clear and that it is seldom two possible meanings of one verdict. Mr. Justice Charleton noted that a jury's verdict is protected against intrusion into the reasoning behind it. Relying on cited authorities, in particular *DPP v Piotrowski* [2014] IECCA 17, Mr. Justice Charleton found that while interrogating a jury as to its reasoning should be avoided, in very rare cases where a jury's verdict would be ambiguous without questioning, a trial judge may exercise his or her discretion and pose a question. Submissions relating to the questioning of the jury should be heard in the absence of the jury and prior to the asking of such questions. In interpreting a jury's verdict, its decision must be respected. As such, the trial judge must infer any corollary implications that flow from the jury's findings. If such factual implications are unclear, it is for the judge to decide on what facts the jury came to its decision. When sentencing, the trial judge should be clear as to the factual narrative accepted by the court.

Mr. Justice Charleton discussed sentencing guidelines and manslaughter, noting recent sentencing initiatives and highlights the usefulness of such research. It outlined the proper approach to sentencing, finding that a headline sentence should be identified before the aggravating and mitigating factors are established to come to a proportionate sentence. Given the varying levels of culpability involved in manslaughter, sentences were categorised into four discrete bands. It categorised sentences for the 'worst cases' as being close to indistinguishable in culpability from murder and attract sentences between 15 to 20 years, and are capable of attracting life sentences. 'High culpability' cases attract sentences of between 10 and 15 years and involve aggravating factors. 'Medium culpability' cases result in sentences of between 4 and 10 years. Mr. Justice Charleton found that such cases either lack aggravating factors or involve aggravating factors less serious than in the 'higher culpability' range. Cases involving 'lower culpability' involve sentences of up to four years imprisonment and can result in fully suspended sentences. Such cases, it found, do not involve aggravating circumstances and may involve diminished responsibility or extreme provocation. A number of examples of cases failing within each band are provided.

On the basis of this analysis, Mr. Justice Charleton found that while the sentencing judge should have given an account of the factual circumstances accepted by the Court, in absence of this, the Court could not take its own view as to the correct sentencing narrative, having not sat through the trial. As such, the appeal was dismissed and the sentence of the Appellant was upheld.

P. v. Judges of the Circuit Court [2019] IESC 26

Judgment of Mr. Justice O'Donnell delivered on 30th April 2019

Prosecution for alleged historical sexual offences can proceed, notwithstanding fact that statutory provisions underpinning offence had been repealed.

The Appellant was a teacher and was charged with historical offences alleged to have been committed by him against one of his male pupils, who was aged between sixteen and seventeen and a half years of age at the time of the alleged offences. However, the offences were alleged to have occurred at a time prior to the decriminalisation of consensual sexual activity between males by virtue of the Criminal Law (Sexual Offences) Act 1993. The offence in question was gross indecency contrary to section 11 of the Criminal Law Amendment Act 1885, which was repealed in 1993 and which was found by the Supreme Court in *Norris v. The Attorney* General [1984] I.R. 36 not to be unconstitutional.

The Appellant initiated judicial review proceedings and sought to challenge the decision to try him, contending that section 11 of the 1885 Act was inconsistent with the Constitution on grounds of vagueness and/or because of alleged impermissible discrimination on the basis of gender. His claim was dismissed by the High Court and, on appeal, by the Court of Appeal. On appeal to the Supreme Court, the Appellant sought to challenge the constitutionality of the law under which he was intended to be prosecuted. He asserted that were section 11 to be used to prosecute a person in respect of consensual adult activity conducted in private, such a prosecution would in all probability be impermissible for a variety of reasons, not least relating to the European Convention on Human Rights. Notwithstanding the decision of the Supreme Court reached in *Norris*, the Appellant invited the court to find that, in the circumstances pertaining to *today's* standards, section 11 of the 1885 Act (which continued in force by virtue of section 27 of the Interpretation Act 2005) was *now* unconstitutional.

The question, Mr. Justice O'Donnell acknowledged, was what standards were to be applied in assessing whether it is not constitutionally permissible to prosecute the Appellant. In particular Mr. Justice O'Donnell considered whether it was permissible for the Appellant to seek to rely on today's standards concerning sexual activity between consenting male adults but also to rely on the previous regime in respect of the age of sexual consent which was applicable at the time of the events alleged to constitute the offence in this case. On the consent issue, a majority of the Court held that consent is not an element of the relevant offence. On the question of whether the Appellant had the necessary *locus standi* to bring the appeal, Mr. Justice O'Donnell concluded that the Appellant had standing to challenge the constitutionality of the legislation but based only on the question of whether such unconstitutionality had been established in respect of an alleged offence with a sixteen-year-old some forty years ago. On the temporal issue, Mr. Justice O'Donnell stated that any current prosecution for historical offences must be viewed by the constitutional standard applicable at the time of trial, but nothing in the Constitution required the application of such mechanical and formal rules as to put any such offences beyond the reach of prosecution.

By a three to two majority, the Supreme Court dismissed the appeal. For the majority, Mr. Justice O'Donnell (with whom Mr. Justice MacMenamin and Ms. Justice Dunne concurred) concluded that the Constitution is not, or should not be, such a blunt instrument that exercising the invalidity or even precluding the unconstitutional use of legislation should come at the price of invalidating even those portions of the criminal code which seek to prohibit conduct which is regarded today as just as, if not more, serious than it was when the provision was first enacted. The Constitution did not preclude the Appellant's trial. A minority of the Court (Mr. Justice Clarke. and Ms. Justice O'Malley) were of the view that the Appellant's prosecution should be prohibited. Mr. Justice Clarke, Chief Justice, arrived at this conclusion on the basis that it is impermissible under the Constitution for the Director of Public Prosecutions to prosecute the Appellant in respect of the alleged offences, having regard to the fact that the complainant was, at the time of the alleged offences, of an age which was generally considered to be one at which a male could consent to sexual activity and that the Appellant's prosecution today for such an offence would be inconsistent with the Constitution as it now stands.

Ellis v. Minister for Justice and Equality & ors [2019] IESC 30

Judgment of Mr. Justice Charleton delivered on 15th May 2019

It is an impermissible breach of the separation of powers for the legislature to impose a mandatory minimum sentence on a limited class of persons convicted of an offence.

This appeal concerned a challenge to the constitutional validity of s. 27A(8) of the Firearms Act 1964, as amended ("s. 27A(8)"). This provision required that a mandatory minimum sentence of 5 years' imprisonment be imposed where an individual is convicted of a second or subsequent specified offence in relation to the possession or use of firearms.

In 2012, the Appellant was charged with two offences, one being a firearms offence contrary to s. 27A(1) of the 1964 Act. The sentencing judge heard evidence of the previous convictions of the Appellant, including a previous relevant conviction for a firearms offence, and adjourned sentencing. In light of his successful drug rehabilitation, the trial imposed a five-year sentence, fully suspended, in respect of the firearms offence.

The Director of Public Prosecutions ("DPP") sought a review of this sentence from the Court of Appeal on the grounds of undue leniency, arguing that the trial judge was not entitled to suspend the sentence of five years imposed on the firearms offence, under the provisions of s. 27A(8). This appeal was adjourned following the appellant's commencement of plenary proceedings challenging the constitutionality of s. 27A(8). This challenge was unsuccessful in the High Court in a decision which was upheld by the Court of Appeal. In the appeal in the criminal proceedings which was subsequently heard, the Court of Appeal held that, as a result of the operation of s. 27A(8), the trial judge was not entitled to suspend any part of the five year sentence.

On appeal, Ms. Justice Finlay Geoghegan (with whom Mr. Justice McKechnie, Mr. Justice MacMenamin and Ms. Justice O'Malley agreed) declared s. 27A(8) to be unconstitutional. In doing so, the Court distinguished between a fixed penalty prescribed by the Oireachtas for the commission of a specified offence, which applies to all persons convicted of such an offence, and a mandatory penalty prescribed only to a limited class of persons convicted of an offence. The former, which is subject to a rational relationship between the penalty and the requirements of justice with regard to the punishment of the specified offence, forms part of the law-making function of the Oireachtas and is not in breach of the separation of powers. The latter, at issue in these proceedings, determines the penalty to be imposed by reference to a fact which is either one characteristic of the offender, namely that he has one or more prior relevant convictions, or is one of the circumstances in which the offence of conviction was committed, namely that it is the second time or more that the offender has committed this offence or a similar relevant offence.

Ms. Justice Finlay Geoghegan found that the imposition by the legislature of a mandatory penalty on this limited class of persons convicted of an offence was an incursion into the selection of the appropriate sentence in accordance with law for the particular offence committed by an individual. Ms. Justice Finlay Geoghegan found that this exercise forms part of the administration of justice to be conducted by the courts under Article 34 of the Constitution and is also part of the right of an individual to a fair trial pursuant to Article 38.1, and thus it involved an impermissible breach of the separation of powers on the part of the Oireachtas. Ms. Justice Finlay Geoghegan granted a declaration of unconstitutionality in respect of s. 27A(8) and ordered that the criminal appeal be re-entered before the Court of Appeal.

B.S. & R.S. v. Refugee Appeals Tribunal & ors [2019] IESC 32

Judgment of Ms. Justice Dunne delivered on 22nd May 2019

A decision of the Minister for Justice and Equality to transfer the Appellants to the United Kingdom did not breach their data protection requirements under Article 34 of the Dublin III Regulation. Under Article 34, "Administrative Co-Operation" does not require the Minister to give a lengthy account in the information notice of the grounds for seeking information, or specify that the information request was being made because the Appellants had transited from the United Kingdom to Ireland, which is what happens in the majority of cases.

The Appellants, who were two Albanian citizens who previously lived in Kosovo, sought various reliefs by way of judicial review against the decision of the Refugee Appeals Tribunal to uphold a decision of the Minister to transfer them to the United Kingdom, the Member State competent pursuant to Article 12 of Regulation EU No. 604/2013 (Dublin III Regulation) for assessing their asylum applications. It was not in dispute that the Appellants had failed to provide a truthful account of the circumstances of their arrival in Ireland, and that the United Kingdom was the competent Member State according to the Dublin III Regulation criteria.

The main argument of the Appellants was that the decision of the Minister was unlawful as it was based on an information request made to the authorities of the United Kingdom which was not in accordance with the requirements set out in Article 34 of Dublin III Regulation. It was also argued that the transfer of data of the applicants, in particular, of their fingerprints, was unlawful under data protection law, because it did not have a legitimate basis as the information request on which it was based was unlawful. The Minister did not dispute that the information request, which had only stated that the appellants had made asylum applications, had failed to explicitly identify the reason why the information was being sought, but it was argued that the request was, in substance, valid.

The High Court, in a decision which was upheld by the Court of Appeal, found that there was no breach of the requirements set out in Article 34 and, thus, of data protection law. Even if there was such a breach, it was not an infringement of the rights of the Appellants which would give rise to a cause of action.

Ms. Justice Dunne, with whom the other members of the Court agreed, with Mr. Justice Charleton writing a separate concurring judgment) upheld the finding of the courts below that there was no breach of Article 34 of Dublin III Regulation and, thus, of data protection law. However, the Court was of the view that a definitive answer to the question of whether the appellants had rights deriving from Article 34 of Dublin III Regulation was best left to a case in which there has been a breach of Article 34. In dismissing the appeal, the Court held that Article 34, which appears in a section of the Regulation headed: "Administrative Co-Operation", does not require the Minister to give a lengthy account of the grounds for seeking information and that it was not necessary that the Minister set out explicitly that the information request was being made because the appellants had transited from the United Kingdom to Ireland, which is what happens in the majority of cases. It was relevant, in this case, that the British authorities had not requested further information. Ms. Justice Dunne also found that Article 34 of Dublin III Regulation did not require a prior request from the British authorities for the Minister to provide them with the Appellants' fingerprints, which were lawfully taken under the provisions of the Refugee Act 1996.

Bates & anor. v. Minister for Agriculture, Fisheries and Food & ors [2019] IESC 35

Judgment of Mr. Justice MacMenamin delivered on 23rd May 2019

In circumstances where the Supreme Court had not been directed to relevant evidence in the High Court and following a review of the evidence which was before the High Court, there was ample evidence to sustain the findings of the Supreme Court on appeal in an application to review a Supreme Court decision.

The Appellant sought to review a 2018 judgment of the Court ([2018] IESC 5) in which it had dismissed an appeal against a judgment of the High Court which held that the Minister's officials incorrectly and negligently advised the respondents in that case that it was lawful to fish in an area of the Bay of Biscay. They were later arrested by the French authorities and sustained limited losses for which the High Court awarded them €49,600 in damages. In seeking to review the 2018 judgment, the Appellant claimed that there had been an incorrect narrative of events which were central to the Court's reasoning in dismissing the appeal.

In *Nash v. DPP* [2017] IESC 51, the Supreme Court held that in the rare instance of an application to review a Supreme Court judgment, a moving party must carefully assess the nature of the alleged error, and examine whether it is trivial or inconsequential, whether it may be of some significance as to simple accuracy, or whether it might be said to be fundamental. A court must consider the cause and effect of any error and if the conduct or submissions of a party or parties contributed to what occurred. There is a very high threshold of a fundamental denial of justice.

In the original appeal in *Bates*, the Court was invited to consider the High Court judgment on a factual narrative contained in written and oral submissions. The Court was not directed to relevant parts of highly material evidence in the High Court. The oral and written submissions gave an inaccurate account of the evidence including the sequence of events. The Minister claimed an incorrect narrative in the finding that there had been proximate assurances given by the Minister's officials. He asserted that this was not part of the respondents' case. Mr. Justice MacMenamin delivered the judgment of the Court (with whom Ms. Justice Dunne and Mr. Justice Charleton agreed).

Mr. Justice MacMenamin engaged in an extensive review of the evidence before the High Court and the transcripts of proceedings in that forum and in the original appeal. On a review of the transcript, to which no sufficient reference was made in the original appeal, Mr. Justice MacMenamin found that there was ample evidence to sustain the findings of the Supreme Court on appeal. Mr. Justice MacMenamin rejected the Minister's contention that the Court had in 2018 given an incorrect version of events and noted that, in fact, the written submissions from both sides were incorrect and misleading in material respects.

Mr. Justice MacMenamin emphasised that any factual narrative contained in written submissions must be entirely accurate. If an error is detected, a party must notify its opponent and the court of the error in a timely way. Material in submissions must not contain factually erroneous, ambiguous, unclear or inaccurate summaries of events said to have occurred in a court of first instance, particularly where the appeal is on a point of law and where the transcript is not referred to in any detail. Oral submissions as to fact must be accurate. While observing that there was no suggestion of *mala fides* on the part of the lawyers, Mr. Justice MacMenamin held that in this instance these obligations were not fulfilled and that the original decision of the Supreme Court had a firm basis in the evidence. Mr. Justice MacMenamin concluded that the application effectively, and on an erroneous basis, sought to persuade the Court to reopen the merits of the case. The Court had given the parties ample opportunity to reconsider their positions prior to the delivery of the judgment. On review of the evidence, the application was dismissed.

Sweeney v. Ireland [2019] IESC 39

Judgment of Mr. Justice Charleton delivered on 28th May 2019

Persons having information about the commission of a serious crime who know or believe that disclosing such may be of material assistance to An Garda Síochána are obliged to do so if they lack reasonable excuse under penalty. The rights to silence and to not self-incriminate are not affected, but neither are they absolute.

S. 9(1) of the Offences Against the State Act 1998 mandates that persons with information relating to a serious offence which they know to be or believe might be of material assistance in apprehending, prosecuting, or convicting another person for the said serious offence must disclose it to a member of An Garda Síochána: to fail to do so without reasonable excuse is an offence. The late Thomas Ward had been killed in August, 2007, and the respondent to the appeal, Mr. Michael Sweeney, had made no relevant comments when interviewed under caution between August and September, 2007. He was arrested in November, 2007, and interviewed on four occasions subject to the same caution. He said nothing about the murder or anything that might be known to him about the murder. There was no evidence to charge Mr Sweeney with murder, but he was charged with failure to disclose information about a very serious crime. He was returned for trial to Sligo Circuit Criminal Court on the 30th of January, 2014. By order, dated the 21st of February, 2018, the High Court declared s. 9(1)(b) to be unconstitutional.

Mr. Justice Charleton (with whom Mr. Justice O'Donnell, Mr. Justice MacMenamin, Ms. Justice Dunne and Ms. Finlay Geoghegan agreed) allowed the appeal. Mr. Justice Charleton considered, comprehensively, the legal background of the balance between obligations to the State, and society as a whole, and the right not to be harassed or coerced by the State. To merely witness a crime is not an offence; participation in a crime requires that one give some aid in its commission. However, there is legislation for instances whereby persons in Ireland must disclose information, such as matters relating to the sexual defilement of children, for example. Furthermore, the judgment referenced Article 9.3 of Bunreacht na hÉireann and analysed the philosophy underpinning the State's justification for compelling its citizens to co-operate in certain circumstances alongside European case law. One area where the questions raised in this case occur very frequently is that of terrorism-related offences, and the judgment explored the regimes in the United Kingdom, Canada, and Australia requiring the disclosure of certain information in criminal investigations.

In bygone times, common law sovereigns used the offence of misprision of felony to compel subjects and citizens to assist in apprehending wrongdoers: it still exists in the United States, but has greatly fallen out of use or has been abolished (as in England and Wales) due to an *ad hoc* jurisprudential development that resulted in vagueness. On the point of vagueness, the offence in this case was held to, ultimately, not be so vague as to make it uncertain when considered in light of case law where law diverges from common speech in the language used. Mr. Justice Charleton held that s. 9(1)(b) was capable of clear construction in this regard, and thus was not so vague as to be uncertain. On the facts of this case, Mr Sweeney was warned that he did not have to say anything self-incriminating, and chose further to say nothing at all. S. 9(1)(b) does not require that one incriminate oneself, and so the right to silence is not interfered with. However, the right to silence is not absolute, including under an analysis in line with the European Convention on Human Rights. In short, s. 9(1)(b) is capable of a constitutional construction and protects the right to silence by its wording. The Court reversed the order of the High Court declaring it unconstitutional.

Kerins v. McGuinness & ors (No. 2) [2019] IESC 42

Judgment of the Supreme Court delivered on 29th May 2019

Actions of a parliamentary committee, as a whole, were unlawful in circumstances where a witness was invited to appear on one basis but the committee acted on a significantly different basis contrary to the right of the witness to fair procedures and natural justice.

This judgment was delivered subsequent to the substantive judgment of the Court in *Kerins v. McGuinness (No. 1)*. As noted in that principal judgment, two matters were left over for further consideration, namely whether it would be appropriate to join Dáil Éireann as a defendant in these proceedings, and whether the actions of the parliamentary committee, the Public Accounts Committee (the 'Committee'), looked at as a whole, can be said to have been in significant breach of the terms of the invitation issued by it to the Appellant. After the Court delivered its principal judgment, further written submissions were directed and an oral hearing was held.

In respect of the first matter – whether it would be appropriate to join the Dáil as a defendant in the proceedings – no objection was made in substituting the individual members of the Committee for the Clerk of the Dáil. Whilst unusual for a new party to be joined to proceedings at such a late stage, it was agreed that this substitution would be simply a technical question of specifying the precise identity of the correct defendant rather than seeking to join a new party. The Court made an order substituting the Dáil for the relevant individual defendants with the exception of the State entities. The Court expressly stated that the joining of a House or Houses of Parliament as a defendant in such proceedings does not alter the justiciability of any particular claim. The boundaries of the limitations of the jurisdiction of the Court were analysed in the principal judgment and that of *O'Brien v. Clerk of Dáil Éireann.*

In relation to the second matter – whether it can be concluded on the evidence that the Committee acted unfairly in the sense identified in the principal judgment – in that its actions, taken as a whole, can be said to have involved inviting a citizen to attend before the Committee on one basis, but that it acted significantly different outside the terms of the invitation once the citizen attended.

Prior to engaging in an analysis, the Court recalled the central factors which it had identified in its principal judgment that would give rise to a situation where it would be appropriate to grant a declaration. These included, amongst others, the fact that the Committee had acted significantly outside its terms of reference and that it had acted unfairly in departing significantly from the terms of the invitation it extended to the Appellant. The Court noted that of the four central factors it identified, each were capable of being remedied by the Houses of Parliament themselves. Whilst noting that the terms of any invitation issued to a citizen to attend before a committee is a matter for the inviting committee, there is no legal barrier to a citizen answering questions which go beyond the scope of an invitation.

The Court also noted that the conduct of the business of a parliamentary committee is a matter for Parliament. Accordingly, it is for Parliament to specify, in its rules and orders, the way in which business is to be conducted and, in particular, the role and powers of the Chair of any committee to ensure the committee concerned operates properly within the scope of both its remit and of any invitation issued to an attending citizen. In particular, the Court had to consider the proper characterisation of the relevant hearing in the context of the invitation issued by Committee to the Appellant. The Court noted that it was not the tone of the questioning which needed to be analysed but rather the substance of the actions of the committee as a whole.

The Court had regard to the letter of invitation issued to the Appellant and also to a previous letter. In reviewing the correspondence, the Court did not interpret the invitation in the manner in which it would interpret legislation. Rather, the Court noted that the invitation letter should be read in context with the previous letter. The Court's view was that a reasonable reader would understand that the oral hearing was to be confined to the matters specified in the later letter but that the scope of the enquiry under those headings might be informed by the content of the earlier letter. The Court also stated that it was not concerned with whether the Committee was acting within its remit under its terms of reference, but rather whether it went significantly outside the terms of its invitation to the Appellant.

Against this backdrop, the Court examined what actually transpired at the oral hearing. Reiterating what was said in the principal judgment, the Court stated that the assessment in which it was engaged involved the proper characterisation of the actions of the Committee as a whole, by reference to the invitation issued to the Appellant and the subsequent conduct of the hearing. This involved an assessment of any particular aspect of Committee's actions which could be taken to represent the actions of the committee overall. In addition, an overall assessment of what actions were actually taken was also required.

Based on an assessment of pertinent material evidence which was before it, the Court concluded that the Committee acted broadly in unison on the relevant issues. The Chair did not seek to prevent any line of questioning and no other member of the Committee raised any issues of that type. Further, there were a number of statements to the effect that the Committee was acting on an agreed course of action. However, the Court noted that an air of reality has to be brought to any assessment of this type undertaken and considered that at least three members of the Committee, including its Chair, engaged in questioning which went significantly outside the scope of that invitation.

Against the foregoing backdrop, the Court determined that it was appropriate to characterise the actions of Committee as a whole as being such that it could be said that to have condoned the significant departure by at least three deputies from the terms of the invitation issued to the Appellant, who extended to include reference to her salary. On that basis, the Court concluded that, on the evidence, it is appropriate to characterise the actions of Committee as a whole as being such that the Appellant was invited to attend before it on one basis but the Committee then acted on a significantly different basis once she attended.

The Court ultimately made a declaration to the effect that by conducting a public hearing in a manner which was significantly outside of its terms of reference and which also departed significantly from the terms of an invitation by virtue of which a citizen was requested to attend, the Committee acted unlawfully. In granting this declaration, the Court was critical of the fact that "a citizen had been invited to attend on one basis but the hearing had been conducted on a significantly different basis".

F. v. Mental Health Tribunal & ors [2019] IESC 44

Judgment of Ms. Justice Dunne delivered on 29th May 2019

While an admission order authorising the detention of an individual under the Mental Health Act 2001 expires after 21 days, the period of the admission order may be extended by a renewal order and, as a result, the admission order itself is extended. The trial court, in carrying out an examination, is bound to consider the up-to-date situation of the patient.

This case concerned the involuntary detention of a person for reasons connected to their mental health in accordance with the Mental Health Act 2001 ("the 2001 Act"). Under the 2001 Act, involuntary detention is subject to a number of rules and processes, including that detention is initially authorised in terms of an "admission order" and may then be renewed by "renewal orders". This decision was concerned with the 2001 Act prior to the amendments brought about by the Mental Health (Renewal Orders) Act 2018.

The Appellant brought an application for the judicial review of a decision of the Circuit Court which declined to hear an appeal against her continued involuntary detention on the grounds that her initial admission order had expired and became spent and not enough time had passed for the renewal order to be appealed. The High Court found that an admission order was replaced by a renewal order, which meant that s. 19(1) of the 2001 Act confined the jurisdiction of the Circuit Court to consider appeals in circumstances where the patient was suffering from a mental disorder at the time of the appeal and that it did not confer jurisdiction to consider the correctness of the original decision of the Mental Health Tribunal in relation to an admission order where it had expired.

On appeal, the Court of Appeal concluded that s.19(1) of the 2001 Act must be read as if the words "… on the grounds that he or she is not suffering from a mental disorder" were "… on the grounds that he or she is or was suffering from a mental disorder". It also held that the basis for the detention of an Applicant at all times remains the original admission order and that a renewal order merely prolongs or extends the validity of the admission order. On appeal to the Supreme Court, Ms. Justice Dunne (with whom Mr. Justice Clarke, Mr. Justice McKechnie, Mr. Justice MacMenamin and Ms. Justice Finlay Geoghegan agreed) emphasised that it is important to ensure that a person who is involuntarily detained by reason of mental illness is able to avail of a legal mechanism to confirm that the procedures leading to their detention have been carried out appropriately and that the continued detention of the person concerned is subject to scrutiny and that the provisions of the 2001 Act are designed to provide the necessary safeguards. Ms. Justice Dunne affirmed the order made by the Court of Appeal but did not agree with its interpretation of s 19(1) of the 2001 Act that the words "is or was" suffering from a mental disorder can be read into the Act. Ms. Justice Dunne was satisfied that, although an admission order expires after 21 days, the period of the admission order may be extended by a renewal order and that as a result the admission order itself is extended.

For that reason, Ms. Justice Dunne found that the matter was not moot when it came before the Circuit Court and the issue of the validity of the admission order could have been considered at that stage. Ms. Justice Dunne indicated that this did not preclude the fact that given that a further renewal order had been made, that order could subsequently give rise to an appeal in accordance with the provisions of the Act and that it should be clearly understood that the Court, in carrying out an examination, is bound to consider the up to date situation of the patient and whether, at the time of the hearing before the Circuit Court, the patient is or is not then suffering from a mental disorder. Ms. Justice Dunne found that the focus should have been on the then situation of the Appellant and that the position at that stage quite simply was that the admission order was extant. Therefore, there was nothing to preclude the Circuit Court from embarking on a hearing at that stage in relation to the then position of the patient.

A.P. v. Minister for Justice and Equality [2019] IESC 42

Judgment of Mr. Justice O'Donnell delivered on 29th May 2019

The refusal of the Minister for Justice and Equality to provide reasons to an applicant seeking naturalisation on the basis of national security grounds was unjustified.

The Appellant was an Iranian national who entered Ireland in 1989 and was granted refugee status in 1991. The Appellant initiated judicial review proceedings seeking an order of *certiorari* in respect of a decision of the Respondent refusing to grant a certificate of naturalisation on the basis that he could not have confidence in the Appellant's declaration of fidelity to the Irish State and his undertaking to faithfully observe the laws of the State and to protect its democratic values. In addition, the Respondent was not satisfied that the Appellant met the 'good character' condition as specified in section 15(1)(b) of the Irish Nationality and Citizenship Act 1956, as amended. The decision of the Respondent was predicated on a report that was prepared by his office on the basis of information regarding the Appellant which was received on a strictly confidential basis. The Respondent contended that that information could not be disclosed on the basis that the interest of the State in protecting its security and international relations outweighed the interests of the Applicant in knowing the rationale behind the Respondent's decision to refuse to grant a certificate of naturalisation. The Appellant sought an order of mandamus requiring the Respondent to disclose the gist of the information which formed the basis of the Respondent's refusal.

The High Court dismissed his application for judicial review and the Appellant was granted leave to appeal directly to the Supreme Court.

Mr. Justice O'Donnell (with whom Ms. Justice Dunne, Ms. Justice O'Malley and Ms. Justice, Finlay Geoghegan J agreed, with the Chief Justice, Mr. Justice Clarke delivering a separate concurring judgment), applying the decision in *Mallak v. Minister for Justice* [2012] 3 I.R. 297, allowed the appeal and quashed the decision of the Respondent refusing to grant a certificate of naturalisation. In *Mallak*, the Supreme Court held that the entitlement of the Minister to make a decision in his or her absolute discretion did not mean that he or she was not obliged to provide a reason. Accordingly, there was an onus on decision-makers to act fairly and rationally, meaning that they must not make decisions without providing reasons.

Mr. Justice O'Donnell held that it had not been demonstrated that the process followed by the Respondent in determining the extent to which it was permissible, consistent with legitimate State security interest grounds, to disclose information to the Appellant interfered with his entitlement to know the reasons for the Respondent's decision to the minimum extent necessary to protect those legitimate State interests.

Mr. Justice O'Donnell noted, *obiter*, that there is not in place in the Irish jurisdiction a mechanism, such as a special advocate procedure, by which documents over which executive privilege is asserted on national security grounds, can be made available to an affected person. The Chief Justice, Mr. Justice Clarke stated that it would at least be possible to put in place an enhanced process by which an independent assessment could be made as to whether any version of the information could be provided in a way which would not affect State interests to the extent that disclosure should not be required at all. The case was remitted back to the Respondent to make a further decision, following on from an enhanced process which conforms with the principles identified in the judgment of Mr. Justice O'Donnell.

Data Protection Commissioner v. Facebook Ireland Ltd. & anor [2019] IESC 46

Judgment of the Mr. Justice Clarke, Chief Justice, delivered on 31st May 2019

In exceptional circumstances, an appellate court may review and overturn findings of fact which were made by a trial judge as part of the process leading to a reference to the CJEU under Article 267 TFEU. This does not interfere with the sole competence of the referring court to decide whether to maintain, withdraw or amend the reference.

The proceedings originated following the 2015 judgment of the CJEU in *Schrems v. Data Protection Commission* (Case C-362/14), which made findings as to the duty of the national supervisory authority charged with data protection in each Member State to initiate legal proceedings in order to raise any objection to the validity of an EU instrument, so that the national court could refer the matter to the CJEU if it shared the doubts concerned. As a result, the Data Protection Commissioner initiated these proceedings in relation to the validity of certain EU Commission Decisions concerning "Standard Contractual Clauses". In the High Court, certain questions were referred to the CJEU under Article 267 TFEU.

The First-named Defendant, Facebook, sought leave to appeal to the Supreme Court. Leave was granted on two matters; the question of whether, as a matter of Irish constitutional law and the law of the EU, any appeal lay in the context of a decision of the High Court to make a reference to the CJEU; and also in relation to certain findings of the High Court in respect of the law of the United States regarding data protection.

The Supreme Court dismissed the appeal. The Chief Justice, Mr. Justice Clarke, delivering the judgment of the Court (to which Mr. Justice O'Donnell, Ms. Justice Dunne, Mr. Justice Charleton, Ms. Justice Finlay Geoghegan agreed) held that while, as a matter of Union law, an appellate court cannot interfere with the sole competence of the referring court to decide whether to maintain, withdraw or amend a reference already made, an appellate court may, in accordance with the ordinary principles of Irish law, review and overturn findings of fact made by the trial judge as part of the process leading to a reference. It would then be for the referring court to decide what action to take in respect of the reference, if any such findings were overturned on appeal.

The Chief Justice found that it would generally be inappropriate for an appellate court to entertain such an appeal while a reference is pending, as in "normal" proceedings, the preliminary ruling of the CJEU provides the national court with guidance as to the proper interpretation of Union law and the matter then returns to the national court, where the appropriate order is made. The appellant would then have the opportunity to appeal against the overall decision of the referring court and to have any erroneous findings of fact overturned. However, in this case exceptional factors were at play, as the sole relief claimed by the Commissioner was a reference to the CJEU. The CJEU was required to determine the validity of the relevant measures, and the Irish courts were to play no further role, meaning the appellant had no subsequent opportunity to invoke any appellate regime which the Constitution would otherwise permit. Thus, the Supreme Court was entitled to consider the appeal of Facebook against the findings of fact made by the High Court.

Turning to those findings, the Chief Justice held that it was not entitled to consider those matters which went to the terms of the reference or to the question of whether the High Court considered it appropriate to make a reference. Dismissing the remaining heads of appeal, which concerned findings of fact in relation to US law, the Court held that it was more appropriate to characterise the criticisms which Facebook sought to make of the judgment of the High Court as being directed towards the proper characterisation of underlying facts, rather than towards those facts themselves.

Tobin v. Minister for Defence [2019] IESC 57

Judgment of Mr. Justice Clarke, Chief Justice, delivered on 15th July 2019

The Court set out the proper general approach to discovery in cases where there is a suggestion that the disclosure sought is excessively burdensome.

The Appellant, Mr. Tobin, was employed by the Respondent, the Minister for Defence, in the Air Corps from 1989 to 1999. The Respondent alleged that, in the course of his employment, he was exposed to dangerous chemicals and, in 2014, he issued personal injuries proceedings against the State. In the defence delivered, every allegation made by the Respondent in his personal injury summons was denied.

The Appellant then sought discovery from the State of documents relating to the chemicals in use at the premises and the safety data and procedures relating to the workplace. The State consented to making discovery in part, but some categories of documentation were disputed on the basis of the logistical and financial burden which full discovery would impose.

In the High Court, the Appellant was granted a significant portion of the discovery sought. The Court of Appeal allowed the appeal in respect of a number of categories of documentation on the basis that that the information should be first sought by means of interrogatories, as an order for full discovery would be onerous and disproportionate.

The Chief Justice (with whom Mr. Justice McKechnie, Ms. Justice Dunne, Mr. Justice Charleton and Ms. Justice O'Malley agreed) allowed the appeal and restored the order of the High Court. Setting out the general principles to be applied by a court considering a discovery application, the Chief Justice outlined the concern that access to justice may be impeded if it becomes disproportionately burdensome. A court will order discovery if it is satisfied that the documents sought are both relevant and necessary. While the establishment of relevance should by default also establish necessity, it was held that such an assumption can be displaced if the order is found to be disproportionate.

The Chief Justice held that it is for the requesting party to establish the relevance of the documents whose discovery is sought but it is for the requested party, in its response, to indicate any reasons why full discovery should not be ordered. Where the relevance of documents has been established, the burden will lie on the requested party to put forward reasons as to why the test of necessity has not been met. It was held that a requesting party does not need to establish that they have exhausted all other procedures available, such as interrogatories, to establish relevant facts before discovery can be sought. It is for the requested party to suggest any alternative, effective and less burdensome means of obtaining the relevant information. Finally, the Chief Justice highlighted that relevance is determined by reference to the pleadings, and that it is appropriate for a court to take into account the manner in which the case is pleaded by both the requesting and requested parties.

Assessing the proportionality of the Respondent's discovery application, the Chief Justice emphasised the fact that the State effectively put Mr. Tobin on full proof of his claim, thereby extending the scope of the potentially relevant documentation in the case. In light of the nature of the proceedings, the Chief Justice noted the importance of any evidence concerning chemicals which may have been used and the training which he may have received in respect of the same. It concluded that the State had not discharged the burden of demonstrating that alternative measures would be capable of providing the necessary information but with much less use of resources. Finally, the Chief Justice noted that in the context of civil action proceedings, the State should not be considered differently to any other requested party by virtue of the resources at its disposal.

X.X. Minister for Justice and Equality [2019] IESC 59

Judgment of Mr. Justice Charleton delivered on 23rd July 2019

In international protection cases, courts should not allow the legislative system which requires parties to move with dispatch to be bypassed and for collateral attacks to be taken at a time when the entitlement to challenge a decision by judicial review has passed.

Mr. XX was deported from Ireland in 2016 on the basis of security grounds and his alleged activity on behalf of Daesh, or the Islamic State of Iraq and the Levant, ISIL, or ISIS. Mr. Justice Charleton, delivering the judgment of the Court (with whom Mr. Justice O'Donnell, Mr. Justice MacMenamin, Ms. Justice Dunne, Mr. Justice Charleton and Ms. Justice O'Malley agreed), considered a complex timeline of events which, in essence, caused them to consider the position where an application is made for refugee status, the application is withdrawn and then a subsequent application is made again. This raised the issue of the proper interpretation and application of the legislative provisions requiring challenges such as judicial review proceedings to be taken within a particular timeframe. Mr. Justice Charleton had to consider whether a challenge taken in such circumstances outside of the timeframe permitted for judicial review amounted to a "collateral attack".

On collateral attacks, the Court observed that the legislation provides for parties to move with dispatch and it is right from the point of effectiveness in operating international protection that points should be taken as and when they arise. Courts should not allow the system to be bypassed and for collateral attacks to be taken at a time when the entitlement to challenge a decision by judicial review has passed. Mr. Justice Charleton further noted that instead of challenging the relevant decisions under the appropriate statutory procedure Mr. XX sought declaratory relief the exclusive effect of which was to collaterally seek to undermine a legal status that required to be then judicially reviewed. Affirming the High Court and the Court of Appeal's findings that this was impermissible, Mr. Justice Charleton confirmed that there were no exceptional circumstances justifying a departure from the generally applicable rule.

Since Mr. Justice Charleton decided that what was occurring was an impermissible collateral attack on an earlier step in proceedings which should then have been challenged it went on to note that what is not possible in the code of legislation dealing with international protection is a later challenge which has the guise of a separate argument, but which in substance is an attempt to undermine a decision that is within the limits of the boundaries whereby it may be challenged, but was not then challenged.

Mr. Justice Charleton also declined to treat the matter as moot due to Mr. XX's deportation.

Nano Nagle School v. Daly [2019] IESC 63

Judgment of Mr. Justice MacMenamin delivered on 31st July 2019

Under the relevant provisions of the Employment Equality Acts, if a disabled person can be reasonably accommodated by an employer, they are to treated as if they had no disability if accommodation does not disproportionality burden the employer.

Ms. Daly, the Appellant, worked as a special needs assistant ("SNA") for the Respondent ("the School") which caters for children with certain disabilities. She suffered an accident resulting in paralysis from the waist down and her having to use a wheelchair. The School Board ("the Board") refused her permission to return to work. On its understanding of the Employment Equality Acts, 1998-2011 ("the Act"), the Equality Tribunal determined that she could not perform the duties of an SNA. On appeal, the Labour Court reversed that decision, awarding her €40,000 in compensation. The High Court upheld this decision, but this was reversed by the Court of Appeal. The Appellant appealed to the Supreme Court.

Section 16(1) of the Act does not require the retention of an employee if he or she is not, or is no longer, fully competent and available to undertake the duties of the position in question. Section 16(3) states that a disabled person is fully competent to undertake any duties if he or she would be so fully competent and capable on reasonable accommodation ("appropriate measures") being provided by the employer, unless to do so would disproportionately burden the employer. As such s.16(1) sets out a premise with s.16(3) providing an exception. Mr. Justice MacMenamin (with whom Mr. Justice O'Donnell, Ms. Justice Dunne and Ms. Justice O'Malley agreed; Mr. Justice Charleton dissenting) held that the Court of Appeal had incorrectly interpreted the law on this point. If a disabled person can be reasonably accommodated, they are to treated as if they had no disability if accommodation does not disproportionality burden the employer.

The evidence in the Labour Court was that an assessor advised that the Appellant could act only as a "floating" SNA. The Board received unclear information from the National Council for Special Education ("NCSE") in this regard, and without consultation with the Appellant, prohibited her from resuming employment. Mr. Justice MacMenamin considered that the NCSE advice would have been important in a consideration of whether there had been compliance with s.16(3). Additionally, the majority held that the Labour Court had failed to consider all of the evidence of the Appellant, some parts of which were potentially significant. Whether taken alone, or in conjunction with the NCSE issue, Mr. Justice MacMenamin held that the Labour Court had failed to make a determination by reference to all of the relevant evidence.

When determining whether a court should interfere with the decision of an expert administrative tribunal, the issues of law to be considered in a case stated could include (i) findings of primary fact where there was no evidence to support them; (ii) findings of primary fact which no reasonable decision-making body could make; (iii) inferences or conclusions which were unsustainable and (iv) whether a legal determination made by the body was wrong or *ultra vires*. Mr. Justice MacMenamin held that the High Court had been over-deferential to the Labour Court which had failed to consider large parts of Ms. McGrath's evidence, and that the Court of Appeal had erred in its interpretation of the Act. The Court held the matter should be remitted back to the Labour Court to consider whether, even if provided with reasonable accommodation, the appellant could return to the position of an SNA.

Harlequin Property (SVG) Limited & ors. V. O'Halloran and anor [2019] IESC 76

Judgment of Mr. Justice MacMenamin delivered on 1 November 2019

An appellate court does not observe witnesses as does a trial judge, and will only set aside a finding of fact when the version of the evidence relied on could not reasonably be correct or had no reasonable evidential basis. In relation to the tort of deceit, a misrepresentation is made fraudulently if the representor knows it is untrue or is reckless as to its truth; and where a representor fraudulently deceives another and causes loss, he or she is liable in damages for the tort of deceit.

This was an appeal under Article 64 of the Constitution against a judgment of the High Court through which both Respondents recovered judgment in the sum of €1,575,500. The High Court held that the Appellant, Mr. O'Halloran, had by fraudulent misrepresentation personally induced Harlequin to part with sums of money to that value or more.

Harlequin began a development in the Buccament Bay area of St. Vincent and the Grenadines by way of contract with a developer, Ridgeview. Harlequin later discharged Ridgeview and retained the ICE Group under Mr. O'Halloran's control and which previously had been a subcontractor. The High Court found that the Appellant later had made a series of misrepresentations to Harlequin upon which the company relied in sending substantial sums of money to ICE. The High Court found that Mr. O'Halloran not only continued to request payments when he was aware the project could not be completed on time, but had diverted large sums to his own purposes.

On appeal, two issues arose: first, the legal status of findings of fact and, second, the nature of the tort of deceit arising from fraudulent misrepresentations. As to the first issue, Mr. Justice MacMenamin (with whom Mr. Justice O'Donnell and Mr. Justice Charleton agreed) held that generally such findings fall into two categories: first, those of fact and secondly, inferences from facts. An appellate court does not observe witnesses as does a trial judge, and will only set aside a finding of fact when the version of the evidence relied on could not reasonably be correct or had no reasonable evidential basis. The judgement emphasised that a finding as to the credibility of a witness is a finding of fact.

In analysing the tort of deceit, Mr. Justice MacMenamin found that the High Court correctly summarised the principles: a misrepresentation is made fraudulently if the representor knows it is untrue or is reckless as to its truth; and where a representor fraudulently deceives another and causes loss, he or she is liable in damages for the tort of deceit. Mr. Justice MacMenamin noted that the fundamental task of the Court on appeal was to assess whether the evidence supported McGovern J.'s findings, whether the inferences he drew were fairly and properly drawn, and whether the judge had directed himself correctly on the law. The High Court had held that, due to the Mr. O'Halloran's material inducements, Harlequin continued to employ the ICE Group and funnel ever-increasing sums into the project when Mr. O'Halloran knew it could not be delivered on time. The High Court accepted evidence that when the ICE Group was dismissed from the site, it was far from the condition one could have expected had there been any real intention to finish it on time. Substantial work remained incomplete, the ICE Group was financially insolvent, and it lacked the capital to meet its obligations to Harlequin. Moreover, its controller, Mr. O'Halloran, had consistently diverted substantial sums paid by Harlequin to his own purposes through "bogus" transactions. Mr. Justice MacMenamin observed that in many senses this was a "fact case" where the trial judge had been entitled to accept the evidence and that he made sustainable findings in this regard and correctly directed himself on the law. Mr. Justice MacMenamin dismissed the appeal.

McKelvey v. Iarnrod Éireann/Irish Rail [2019] IESC 79

Judgment of Mr. Justice Clarke, Chief Justice delivered on 11th November 2019

An entitlement to legal representation in a disciplinary process exists only in exceptional circumstances where it is necessary to achieve a fair process.

The Appellant, Mr. McKelvey, was an employee of the Respondent, Iarnród Éireann, and was subject to an investigation concerning the alleged theft of fuel by way of the misuse of a company fuel card. As a result, he was suspended with pay and disciplinary proceedings were commenced, in the course of which a personal hearing was requested by the Appellant.

On his behalf, the Appellant's solicitors asserted an entitlement to represent him at his disciplinary hearing. This request was refused by the Respondent on the basis that there was no provision for legal representation in the formal procedures prescribed by the company disciplinary code. Instead, this code provided the employee with the right to representation "by fellow employee or trade union representative".

An interlocutory injunction was sought from the High Court to prevent the disciplinary process going ahead, on the basis that, amongst other things, Mr. McKelvey was entitled to legal representation during the hearing. In the High Court, an injunction was granted. In the Court of Appeal, Iarnród Éireann's appeal was allowed and the injunction was discharged.

Mr. Justice Clarke, Chief Justice (with whom Mr. MacMenamin, Ms. Justice Dunne, Mr. Justice Charleton and Ms. Justice O'Malley agreed) dismissed the appeal. The Chief Justice, following the decision of the Supreme Court in *Rowland v. An Post* [2017] IESC 20, [2017] 1 I.R. 355, held that a court should be reluctant to intervene in a disciplinary process prior to its conclusion unless it is clear at the stage when an injunction is sought that something has occurred which is sufficiently serious and incapable of being cured so that there was no reasonable prospect that any ultimate determination could be sustainable in law. On that basis, it was held that the overall question for the Court to address was whether it was clear at that stage in the disciplinary process that the process concerned could not be regarded as fair unless Mr. McKelvey were to be afforded legal representation.

In that context, the Chief Justice held that the proper approach to the question of whether a disciplinary process can be regarded as unfair because of the absence of an entitlement to legal representation is set out by Geoghegan J. in *Burns v. Governor of Castlerea Prison* [2009] IESC 33, [2009] 3 I.R. 682. This sets out the clear principle that an entitlement to legal representation in a disciplinary process exists only in exceptional circumstances where it is necessary to achieve a fair process.

The Chief Justice held that, on the facts of this case, there was nothing in the allegations, the likely evidence or the process likely to be followed which would place these disciplinary proceedings beyond the competence of an experienced trade union official, and he therefore concluded that it had not been established that legal representation was required in order to secure a fair process in the circumstances of the case. It was stated that if, coupled with the seriousness of the allegation and of the potential consequences, there are particularly difficult issues of law or extremely complex facts, then the cumulative effect of each of those matters might lead, in an exceptional case, to the view that legal representation was required.

In a separate judgment, Mr. Justice Charleton, agreed with the conclusion of majority, but on the basis of the principles of contract law. Under the terms of his contract of employment, he held that Mr. McKelvey was entitled to have a fellow employee assist him at the disciplinary hearing, or to be represented by a trade union official, but he was not entitled to legal representation.

Minister for Justice and Equality v. Celmer [2019] IESC 80

Judgment of Mr. Justice O'Donnell delivered on 12th November 2019

Threshold for refusing to surrender an individual who is the subject of a European Arrest Warrant is not met in circumstances where, notwithstanding systemic violations to the independence of the Judiciary of a Member State.

The Appellant's surrender was sought by three separate regional courts in Poland by way of the European Arrest Warrant procedure. The offences for which the Appellant was sought related to alleged drug production and smuggling. The Appellant was subsequently arrested on foot of these warrants in 2017.

The Appellant objected to his surrender on the basis that systemic changes had been made to the organisation of the Judiciary in Poland that had the effect of undermining the independence of the Judiciary. The Appellant sought to rely on the provisions of the Constitution of Ireland, the European Convention on Human Rights and the Charter for Fundamental Rights of the European Union. It was contended that the Appellant's right to a fair trial, as enshrined under these respective instruments, would be deprived to such an extent that it placed on obligation on the executing authority, in this case the Irish Courts, to refuse to surrender the Appellant to Poland.

The objection of the Appellant to his surrender in the High Court gave rise to a series of judgments which culminated in the referral by the trial judge of two questions to the Court of Justice of the European Union under Article 267 TFEU that Court. The Court of Justice held that "the existence of a real risk that the person in respect of whom a European Arrest Warrant has been issued will, if surrendered to the issuing judicial authority, suffer a breach of his fundamental right to an independent tribunal and, therefore, of *the essence of his fundamental right to a fair trial*". Mr. Justice O'Donnell (with whom the President of the Court of Appeal, Mr. Justice Birmingham, Mr. Justice McKechnie, Ms. Justice Dunne and Mr. Justice Charleton agreed). This essence, Mr. Justice O'Donnell held, is capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to that warrant, on the basis of Article 1(3) of the Framework Decision 2002/584.

Mr. Justice O'Donnell dismissed the appeal and upheld that the decision of the High Court to endorse the European Arrest Warrant surrendering the Appellant to the Polish authorities. Whilst noting that there was clear evidence of the breach of Poland's obligations under the European Treaties, the Court found that the evidence available did not satisfy the threshold that had been set by the Court of Justice for determining whether there was a "real risk" that the impact of the changes made to the Polish judicial system would, in effect, give rise to the Appellant not being afforded a fair trial. There was, as the Court noted, a breach of the essence to the Appellant's right to a fair trial, as opposed to a breach of the right itself. Whilst noting that system deficiencies could possibly amount to a sufficient breach of the essence of the right to a fair trial and thus requiring an executing authority to refuse surrender, Mr. Justice O'Donnell was of the view that it was clear from the decision of the Court of Justice that the systemic changes in Poland, while serious and grave in their own right, were not of a scale to meet the threshold set.

Simpson v. Governor of Mountjoy Prison [2019] IESC 81

Judgment of Mr. Justice MacMenamin delivered on 14th November 2019

The practice of 'slopping out' in a shared cell amounts to inhuman and degrading treatment and is in breach the unenumerated constitutional right to privacy and bodily integrity.

In 2013, the Appellant served a custodial sentence in Mountjoy Prison, the Governor of which was the first-named Respondent in these proceedings. The Appellant applied to the Respondent to be treated as a "protection prisoner" under Rule 63 of the Prison Rules, 2007 (S.I. 252 of 2007) (the 'Prison Rules').. The Appellant was subsequently detained in special protection from 13th February to 30th September 2013.

The Appellant instituted legal proceedings claiming that the conditions under which he was detained infringed his constitutional rights and his rights under the European Convention on Human Rights (the 'Convention'). At the core of the Appellant's claims was the practice colloquially referred to as 'sloping out', a practice which involves prisoners, in the absence of in-cell sanitation, being required to use chamber pots which were emptied daily.

The High Court held that whilst the evidence clearly showed there were serious deficiencies in the Appellant's conditions whilst on special protection to warrant the granting of a declaration that his constitutional right to privacy had been infringed, the trial judge refused to award him any damages or costs on the basis that he had lied and exaggerated in significant aspects of his claim.

The Appellant was granted leave to appeal directly from the High Court, an application which the Respondents did not resist. Whilst the appeal proceeded on certain agreed facts, the Supreme Court noted that "prison condition" cases are highly fact-specific. The Court noted that the case made by the Appellant on the appeal raised significant questions as to the relationship between the Constitution, the application in domestic law of principles now identified in the jurisprudence of the European Court of Human Rights, and the appropriateness of seeking to apply such principles to the Appellant's claim for damages for infringement of constitutional rights.

Giving judgment, Mr. Justice MacMenamin (with whom Mr. Justice O'Donnell, Mr. Justice McKechnie and Ms. Justice O'Malley agreed) recognised that the Constitution has been held to provide a wide-range of protections for the personal rights of prisoners. He noted that a deprivation of liberty must not only be in accordance with law, but further, any reduction of prisoners' fundamental rights must be proportionate and must not fall below the standards required to protect human dignity. Mr. Justice MacMenamin then engaged in an analysis of the ECtHR jurisprudence which has enunciated that personal space of less than 3 square metres per prisoner raises a "strong presumption" of violation of Article 3 of the Convention, prohibiting torture, inhuman or degrading treatment. He found that the conditions of detention were humiliating and invasive by any reasonable standard of personal privacy and they fell substantially below the standards to be expected of an Irish prison in the year 2013. Stressing that even a single substandard condition or trivial infringement of the Prison Rules could not, *per se*, render a prisoner's detention unlawful, Mr. Justice MacMenamin stated that the detention of the Appellant at all times remained lawful. However, the Appellant's entitlements must be measured against the constitutional guarantees contained in Article 40.3 of the Constitution which are to vindicate the rights of the *person*, insofar as is "practicable".

Referring to Article 40.3 of the Constitution, Mr. Justice MacMenamin observed that by virtue of personhood, each individual has an intrinsic worth which is to be respected and protected by others and by the State. Consideration of the constitutional right to privacy and dignity of the person followed by reference to the established Irish jurisprudence.

Mr. Justice MacMenamin stated that the conditions to which the Appellant was exposed diminished the right to privacy and the value of dignity due to him as a person, even when seen within the limitations which necessarily arose from the fact of his detention. Accordingly, Mr. Justice MacMenamin held that the Appellant was entitled to a declaration that the conditions of his detention infringed his constitutional rights under Article 40. He awarded damages in the sum of €7,500. Whilst noting that the declaration and the award of damages would be, in and of themselves, sufficient to dispose of the appeal, it would not generally speaking be necessary for a court to consider the Convention.

The effect of the Mr. Justice MacMenamin's decision was to frame the declaration made by the High Court in different terms and to allow the moderate award of compensatory damages in vindication. The award of damages was against the Prison Service only and no other respondent. The order of the High Court was accordingly varied.

Mr. Justice Donal O'Donnell, in a short concurring judgment, agreed with the majority judgment of Mr. Justice MacMenamin and confined his judgment to making a number of observations in relation to certain arguments that were made in the case on issues which may require further future consideration.

Michael (a minor) and ors v. Minister for Social Protection & ors [2019] IESC 82

Judgment of Ms. Justice Dunne delivered on 21st November 2019

Child benefit is payable to a qualified person, who must be habitually resident in the state. In circumstances where there was no difference in treatment between the applicants and any other qualified person in respect of the requirement of habitual residence, the Social Welfare Consolidations Act 2005, as amended, did not give rise to any inequality of treatment in terms of those entitled to claim child benefit.

This case concerned an appeal from a decision of the Court of Appeal in relation to the question of when the entitlement to the payment of child benefit arises to parents whose immigration status has not yet been determined finally by the State but a child of the relevant family had either status as an Irish citizen or as a refugee.

In Michael's case Mr. and Ms. X were Afghan citizens who came to Ireland with their eldest child, using false Pakistani identity documents and United Kingdom visas issued on foot of those documents. There were four children of the family, three of whom were born in Ireland. In 2014, Michael was declared to be a refugee and, on foot to this, the remaining members of the family applied for family reunification pursuant to s. 18 of the Refugee Act 1996. Permission was granted to the family to remain with Michael and Ms. X made an application for child benefit under the Social Welfare Consolidation Act 2005, as amended ('the Act of 2005) in respect of the four children.

The application was refused on the basis that Ms. X was not habitually resident in the State, since she was, at that time, still awaiting the decision from the Department of Justice and Equality on her application for residency. Proceedings were issued seeking the judicial review of the decision refusing child benefit. A second application was made for child benefit in respect of the four children, which was granted and Ms. X was permitted to claim the payment with effect from the date upon which she was granted permission to remain in the State. Her contention was that she was entitled to back pay of the child benefit to a point in time prior to the regularisation of her own stay in Ireland.

In the second case, Emma was an Irish citizen child whose Irish citizenship derived from her father. Her parents were not married and her mother was a Nigerian national whose stay in Ireland was regularised on the basis of her parentage of Emma. Mrs Y.'s contention was that child benefit should have been paid from the date of Emma's birth and not only from the date on which Mrs. Y's stay in Ireland became regularised.

Giving judgment, Ms. Justice Dunne (with whom the Chief Justice, Mr. Justice Clarke, Mr. Justice O'Donnell, Mr. Justice Charleton and Ms. Justice O'Malley agreed) held that child benefit is payable, as has been seen, to a qualified person and that the qualified person must be habitually resident in the state. Ms. Y, having regard to the fact that she did not have refugee status or permission to reside in the State, did not have habitual residence. Ms. Justice Dunne found that, once Ms. Y's status was changed by reason of a grant of permission to remain in the State, there was no difference in treatment between Ms. Y and any other qualified person in terms of the requirement of habitual residence.

Ms. Justice Dunne observed that it is important to bear in mind that one has to look at the status of the claimant for child benefit and not that of the child in respect of whom child benefit may be payable. Bearing that in mind, she held that the Act of 2005 did not give rise to any inequality of treatment in terms of those entitled to claim child benefit.

In respect of Michael, Ms. Justice Dunne concluded that child benefit should have been payable to Ms. X from the date upon which a declaration of refugee status was given to Michael. In other words, the Court of Appeal has focused on the position of the child rather than the claimant and that this approach was not correct. It held that the State was not obliged to make a payment of child benefit to Ms. X in respect of Michael until such time as she was given permission to reside in the State.

In a judgment concurring with the majority judgment of Ms. Justice Dunne., Mr. Justice O'Donnell. found that the direct discrimination made by the impact of the legislation between Emma's mother, and the mother of the comparator citizen child who is a qualified person for the purposes of the 2005 Act was a permissible distinction based upon rational grounds, and a legitimate State objective and therefore is not an impermissible discrimination contrary to Article 40.1 of the Constitution.

Bank of Ireland Mortgage Bank v. O'Malley [2019] IESC 84

Judgment of Mr. Justice Clarke, Chief Justice, delivered on 29th November 2019

A special indorsement of claim contained insufficient detail of how the sum claimed was calculated so as to meet the requirements of Order 4, rule 4 of the Rules of the Superior Courts. In order to establish a prima facie claim to a precise debt, a plaintiff must do more than merely assert.

At issue in this case was the level of detail required to be stated on a summons issued pursuant to the summary judgment procedure. A party wishing to recover a "liquidated sum"(a sum that can be clearly quantifiable) from another party may apply to court for a summary judgment.

The Appellant entered into a mortgage loan facility agreement with the Respondent in 2008 for the sum of €225,000. In 2011, the Appellant ceased to make any monthly repayments. In 2014, the Respondent issued a summary summons seeking a judgment of €221,795.53, which, it stated, was the remaining sum owing on the loan agreement. When the matter came before the High Court, the Appellant alleged that the Respondent's pleadings were defective and claimed that there was a l ack of detail concerning how the figure outstanding was calculated and arrived at. The Appellant stated that he had sought from the Respondent a detailed breakdown of how the sum of monies were calculated. In response, the Respondent furnished the Appellant with a copy of the Statement of Account. The Appellant argued that, in order for the Respondent to be entitled to judgment, there must be a sufficient calculation set out as to how the amount claimed is said to be due.

The High Court rejected the argument of the Appellant, holding that there was sufficient evidence to satisfy the legal requirements of what should or should not be contained in a motion seeking judgment and relied on the Irish jurisprudence in this regard. Accordingly, judgment to the Respondent was granted in the sum of €221,795.53. As this case arose prior to the establishment of the Court of Appeal, the Appellant appealed to the Supreme Court.

The Chief Justice, having regard to the well-established principles governing the test to be applied by a court in deciding whether to grant summary judgment, identified that the two separate questions arose in this case, namely (i) the level of detail needs to be included in order for a special indorsement of claim to be compliant with Order 4, rule 4 of the Rules of the Superior Courts in a case involving a claim for debt arising out of what is said to be a lending arrangement; and (ii) the evidence which needed to be put forward in order to justify the grant of judgment on a summary basis within the confines of a motion for judgment. In addition, the Chief Justice noted that there may be a question as to the consequences that may follow were the Court to determine that either the special endorsement of claim and the evidence put forward were insufficiently particularised.

The Chief Justice concluded that the special indorsement of claim in this case contained insufficient detail of how the sum claimed was calculated so as to meet the requirements of Order 4, rule 4 of the Rules of the Superior Courts. There was insufficient detail in the evidence submitted to the High Court to assess whether the precise claim to the debt alleged had been established on a prima facie basis. The Chief Justice found that a plaintiff, in order to establish a prima facie claim to the precise debt, must do more than merely assert and that, in this case, there were absolutely no details of how the sum stated on the special indorsement of claim said to be due was arrived at. A person receiving such a summons could not have the necessary details to decide whether they should concede or resist the summons. The appeal was allowed and the matter was remitted to the High Court.

Director of Public Prosecutions v. F.E. [2019] IESC 85

Judgment of Mr. Justice Charleton delivered on 6th December 2019

The Supreme Court set out sentencing guidelines for rape offences, as well as the circumstances of a crime to be considered when sentencing.

This was an appeal brought by the Director of Public Prosecutions on undue leniency of a rape sentence. This case concerned a husband, the accused, and wife, the victim. There were a number of separate events including threat to kill leading to rape. There were further threats over a period of weeks, and a couple of months later a violent attack. The accused was convicted of a number of offences including rape, threats to kill, and assault causing serious harm. He was sentenced to a headline sentence of 14 years reduced to 10 years. On appeal to the Court of Appeal his conviction was upheld and his sentence was reduced to 12-year headline reduced to 8 years 6months. The DPP was granted leave to appeal to the Supreme Court on grounds of undue leniency in sentencing, and also to raise questions as to the circumstances of a crime in situations where the offence forms part of a series of offences. In the Central Criminal Court the aggravating factors for sentencing the rape offence were said to include "the threat of violence with a weapon, the breach of trust, the violation of the injured party in her own home while her son was asleep, the fear that he instilled in her and the severe effect on his victim." However, in the Court of Appeal sentencing for the rape offence was viewed in isolation from the other offences and as such the headline sentence and time to be served were reduced.

In relation to what is to be taken into account when sentencing, Mr. Justice Charleton set out that the circumstances of the crime can take place over a period of time and that offences should not be viewed in isolation when sentencing. In order to clarify the law in this area, a detailed analysis of rape sentencing was set out in the judgment. In particular, guidance was provided as to sentencing bands and mitigating and aggravating factors to be considered, including: below the norm; ordinary headline sentence; more serious cases; and cases requiring up to life imprisonment

Sentences given below the norm carry 4 years imprisonment or less, and these cases tend to be those in which the accused was a young teenager. For example, in the case of *The People (DPP) v Lukaszewicz* [2019] IECA 65, the accused was 16 and the victim 15 at the time of the offence. An effective sentence of 3 years imprisonment with 2 years suspended was given having taken the accused's age into consideration among other factors.

The 'ordinary' headline sentence can be said to be in and around 7 years. In *The People (DPP) v WD* [2008] 1 IR 308 42 the Central Criminal Court considered cases, with the majority of sentences between 5 to 7 years imprisonment. However, there are more serious cases that merit a headline sentence of 10 to 15 years. These cases tend to involve violence or intimidation or the abuse of trust. In *The People (DPP) v Hearn* [2019] IECA 137 the accused pleaded guilty to rape, false imprisonment and sexual assault. The accused locked the victim in a hotel room and tied her hands and threatened her with having a knife in his bag. A headline sentence was set at 15 years reduced by 3 years for mitigating circumstances. There are also a number of rape cases that require up to life imprisonment. These tend to involve a series of offences or the exploitation of children over time.

Applying the above reasoning to the facts of this case, Mr. Justice Charleton allowed the appeal and the quashed the sentence imposed by the Court of Appeal. He found that the Court of Appeal erred in considering the rape and the other offences separately when it came to sentencing. Having clarified the law on sentencing, the Court has agreed to hear submissions and will make a decision as to sentence of the accused once those submissions have been heard.

E.R. v. Director of Public Prosecutions [2019] IESC 86

Judgment of Mr. Justice Charleton delivered on 14th November 2019

It is only in exceptional circumstances that the bringing of judicial review proceedings is appropriate during the course of a criminal trial as a trial only ends when the accused is either acquitted or sentenced after a finding of guilty, and no exceptional circumstances arose in this case. The issue of allowing an accused to withdraw a plea of guilty is at the discretion of the trial judge and should only be allowed in exceptional circumstances where the accused can demonstrate undue pressure.

The Appellant, along with her partner, had been charged with offences contrary to s 3 of the Non-Fatal Offences Against the Person Act 1997, and s 246 of the Children Act 2001, arising out of injuries suffered by her child. During the trial, the trial judge had stated in the absence of the jury, in open court, that if the accused would plead guilty to one of the offences he "could probably see [his] way to deal with the matter in a non-custodial way." Counsel for the prosecution told the court that this intervention of the judge did not mean that an appeal on sentence would not be open to the prosecution. The next day the accused pleaded guilty to the s 3 offence. Prior to sentencing the Appellant sought to vacate her plea of guilty, claiming that she had been influenced by the statement of the trial judge. Her application was refused by the trial judge.

The High Court, in judicial review proceedings, quashed the decision of the trial judge refusing the application of the Appellant to change her plea. The High Court found that the statements of the trial judge were understood by the Appellant as giving her the choice between a non-custodial sentence if she pleaded guilty and a custodial sentence if she pleaded not guilty. On appeal, the Court of Appeal held that judicial review proceedings were inappropriate for the quashing of a ruling made during the currency of the trial, as these proceedings had been commenced prior to the conclusion of the trial (i.e. before sentencing). The Appellant was granted leave to appeal to the Supreme Court on three issues of public importance, including: whether the case was inappropriate for judicial review proceedings; whether the Court of Appeal was correct to dismiss the case on that ground; and whether the intervention of the trial judge was such that the plea of guilty should be vacated.

Mr. Justice Charleton (with whom the other members of the Court agreed) held that only in exceptional circumstances was judicial review appropriate during the course of a criminal trial. As a trial only ends when the accused is either acquitted or sentenced after a finding of guilty, and no exceptional circumstances arose in this case, judicial review was not appropriate.

In relation to the statements made by the trial judge, Mr. Justice Charleton found that in Irish law, there was no place for discussions in court or in secrecy of chambers as to potential sentence, and as such the intervention by the Trial Judge was undesirable. However, given that the Director of Public Prosecutions had stated that an appeal on undue leniency of any sentence was possible, the Appellant would have been aware that the trial judge was not the ultimate authority on what the sentence would be. He stated that the issue of allowing an accused to withdraw a plea of guilty is at the discretion of the Trial Judge and should only be allowed in exceptional circumstances where the accused can demonstrate undue pressure. In order to change a plea, the court would need to hear evidence, and for this reason lawyers for the accused should immediately withdraw so that their evidence is available to the accused who is therefore not obliged to waive legal professional privilege.

Ms. Justice O'Malley delivered a short concurring judgment, agreeing with the conclusion of Mr. Justice Charleton but providing some additional observations in relation to the role of Counsel in advising as to change of plea.

Consequently, the appeal was dismissed.

Fagan & ors. Dublin City Council [2019] IESC 96

Judgment of Ms. Justice Irvine delivered on 19th December 2019

In exercising its discretion when determining whether a group of applicants for housing support constitute a 'household', while it is the opinion of the housing authority which is determinative of the issue of whether multiple applicants have a reasonable requirement to live together, the housing authority must form their opinion based upon the requirements of the applicants.

This appeal was concerned with how a housing authority can lawfully exercise its discretion when it determines whether a group of applicants for housing support constitute a household for the purposes of s. 20(1) of the Housing (Miscellaneous Provisions) Act 2009 ("the 2009 Act"). The Appellants were a father and his three children aged eleven, five and four who he was co-parenting with his former partner. The father applied to the Respondent ("the Council") for housing support. In his application, he sought to include his children as members of his household in the hope that the Council would provide him with housing support which would allow them to live together. However, his former partner had already been allocated housing support on the basis that the children lived with her.

When reviewing an application, the Council first determines the size of the household pursuant to s. 20(1) of the 2009 Act. The Act sets out in subs. (1)(c) that household means "two or more persons who do not live together but who, in the opinion of the housing authority concerned, have a reasonable requirement to live together". The Council indicated that, amongst other things, the children had already been provided with accommodation and, with the Council's resources being limited, it was not in a position to offer duplicate support to them. Consequently, the Council determined that the Appellants did not have a reasonable requirement to live together and that their application was to be progressed on the basis that the father was the only member of the household. The Appellants brought judicial review proceedings.

In the High Court, the dispute between the parties centred around what kind of considerations the Council may or may not take into account when it determines whether a group of applicants has a "reasonable requirement to live together". The Council maintained that it was entitled to take into account considerations relating to the resources it has available when answering this question. The Appellants contended that a housing authority must form their opinion solely on the basis of whether the applicants, as a group, have a reasonable requirement to live together as a household. The High Court held in favour or the Council.

Ms. Justice Irvine (with whom the Chief Justice, Mr. Justice Clarke, Mr. Justice MacMenamin, Mr. Justice Charleton and Ms. Justice O'Malley agreed) reversed the decision of the High Court. She held that in considering resources, the Council acted outside the four corners of s. 20(1) of the 2009 Act. She observed that, although it is the opinion of the housing authority which is determinative of the issue of whether multiple applicants have a reasonable requirement to live together, the housing authority must form their opinion based upon the applicants' requirements. Considerations as to resources do not assist the Council in such deliberations and are therefore outside the discretion afforded to the Council.

However, Ms. Justice Irvine held that the Council is permitted to gather evidence to satisfy itself of the fact that such requirement exists. She further observed that the decision of the Council to permit only one parent to include the children on their application for housing support means that it operates a *de facto* policy which inevitably prevents it from forming an opinion on a case-by-case basis as to the

reasonable requirement of the applicant to live together and that this is not what is envisaged by the legislation.

Ms. Justice Irvine criticised the Council for classifying parents in this position as "access parents", observing that in many instances both parents want to play a significant role in the upbringing of their children and that such classification and ensuing policy does not allow them to do so. The judge did however accept that housing stock is limited and that, when prioritising different applications, the fact that the children are already provided for may be taken into account at that stage.

Director of Public Prosecutions v. C.Ce [2019] IESC 96

Judgment of Mr. Justice O'Donnell delivered on 19th December 2019

The proper approach to be taken by a trial judge where an accused applies to have a trial halted as a result of a significant lapse of time between the alleged offence and the trial requires an assessment by the trial judge as to whether a trial is fair and just in light of the lapse of time complained of and whether the accused had thereby been deprived of a realistic opportunity of an obviously useful line of defence.

This appeal concerned the proper approach to be taken by a trial judge where an accused applies to have a trial halted on the grounds of alleged unfairness arising out of a significant lapse of time between the alleged offence and the trial. The appellant was found guilty by a jury on counts of rape and indecent assault in May 2016, and sought to appeal his conviction. The offences were alleged to have taken place in his home in 1971/72, and the appellant at all times denied his guilt. Significant evidence was tendered against him.

During the course of his trial in the Central Criminal Court, an application was made on behalf of the accused to halt the trial as a result of the prejudice arising from the delay in bringing proceedings. It was submitted that this delay had led to the real risk of an unfair trial due to the absence of evidence from his former partner, now deceased, which, he alleged, would have been a weighty factor in his defence. The trial judge dismissed the application and the decision was affirmed by the Court of Appeal. The appellant was granted leave to appeal to the Supreme Court on the issue of extent of the burden on an accused, tried on historic allegations, who argues that his trial is unfair by reason of delay.

The appeal was dismissed. There was agreement between all members of the Court that the proper approach at the level of principle requires an assessment by the trial judge as to whether a trial is fair and just in light of the lapse of time complained of and whether the accused had thereby been deprived of a realistic opportunity of an obviously useful line of defence. In his judgment, Mr. Justice O'Donnell ruled that the lower courts had correctly applied this test, and that the evidence which the appellant's former partner would supposedly have given was not so great as to undermine a fair trial by its absence. He further found that there was no failure to apply the law by the trial judge not stating explicitly that she was applying the test. Mr. Justice O'Donnell then enunciated a number of principles to be applied in cases of this nature: the jurisdiction to determine whether it is just to permit a trial on historic allegations is best conducted by the trial judge; the trial judge's decision is whether it would be just to permit the trial to proceed; they must make a separate and distinct determination in this regard; the test to be applied is the fairness and justice of the process to determine the matter; and, finally, that the trial judge should clearly lay out the considerations leading to the conclusion on this issue.

In a concurring judgment, Mr. Justice Charleton emphasised the above principles by restating the nine factors set out in *K v. His Honour Judge Carroll Moran and DPP* [2010] IEHC 23, which summarise the issues arising in a delay, and when an order of prohibition should be granted. He also considered the relevance of the accused's confession, which was a reliable and admissible admission of guilt. Separately, in her concurring judgment, Ms. Justice O'Malley considered that there must be a "reasonable possibility" that the absence of a witness might be of material assistance to the defence. However, she was satisfied in the instant case that there was supportive evidence on several issues, in addition to the unchallenged admission of criminal behaviour by the appellant. This, in her opinion, was evidence sufficient to dispose of any claim that the accused was unable to defend himself against the charge.

A minority of the Court (the Chief Justice and Judge MacMenamin concurring) considered that the absence of the witness concerned who had died before the trial came on, in circumstances where she would have been potentially available for approximately 36 years after the date of the alleged offence, coupled with the lengthy period of time which had elapsed, rendered the trial unfair.

Part 3
Education and Outreach

3

Education and Outreach

The Supreme Court views external engagement with bodies, such as with educational establishments and other institutions, as an important way of creating an awareness of the role and work of the Court. It is considered that building relationships through such engagement improves the accessibility of Supreme Court proceedings and provides opportunities for members of the Court to discuss the law and various aspects of the legal system. Events involving engagement by members of the Court with educational institutions also provides students with an insight into possible career paths in the law.

Supreme Court Sitting in Galway

Members of the Supreme Court with Professor Pól Ó Dochartaigh, Registrar and Deputy President of NUI Galway on the occasion of the Court's historic sitting at the University in March 2019.

In March 2019, the Supreme Court travelled to Galway, where it sat in the National University of Ireland Galway. It was the first occasion on which the Supreme Court sat in a university and the Court's third time in its history sitting outside Dublin. The Court heard two appeals and delivered judgment in the case of *O'Brien v. Clerk of Dáil Éireann & ors* [2019] IESC 12. The delivery by the Court of its judgment was broadcasted by national broadcaster, Raidió Teilifís Éireann (RTÉ) in line with the practice of the Supreme Court since 2017 to permit the broadcasting of its judgments. The Supreme Court also launched its inaugural Annual Report.

While in Galway, members of the Court delivered a series of seminars organised by the School of Law at NUI Galway. These included sessions on:

- 'Tribunals of Inquiry' delivered by Mr. Justice Peter Charleton and chaired by Professor Donncha O'Connell;
- 'Workplace Bullying' by Mr. Justice Donal O'Donnell, Mr. Justice John MacMenamin, Ms. Justice Iseult O'Malley and Ms. Justice Mary Finlay Geoghegan, chaired by Ms. Ursula Connolly;
- 'Consent in relation to sexual offences and other offences against the person' by Mr. Justice George Birmingham, President of the Court of Appeal, Ms. Justice Elizabeth Dunne, Mr. Justice Peter Charleton and Ms. Justice Iseult O'Malley, chaired by Mr. Tom O'Malley;

- 'Restriction and disqualification of company directors' by the Chief Justice, Mr. Justice Peter Kelly, President of the High Court' and Ms. Justice Mary Finlay Geoghegan;
- 'The Role of the Judge' by President Birmingham, Ms. Justice Dunne and Ms. Justice O'Malley, chaired by Dr. Conor Hanly;
- 'Separation of Powers' by the Chief Justice, Mr. Justice O'Donnell and Ms. Justice Finlay Geoghegan, chaired by Dr. Shivaun Quinlivan;
- 'Disability in the Courts' by President Kelly and Mr. Justice MacMenamin;
- 'Women on Supreme Courts' by Mr. Justice MacMenamin and Ms. Justice Dunne, chaired with the participation of Ms. Justice Catherine McGuinness, former judge of the Supreme Court, Ms. Justice Matilda Twomey, Chief Justice of Seychelles, Dr. Charles O'Mahony, Dr. Ciara Smyth and Professor Siobhán Mullaly also participated (*pictured below*).

Other sessions included an information session for secondary school student CAO applicants by Mr. Justice MacMenamin and a seminar on 'Working as a Judicial Assistant' given by the Chief Justice and Judicial Assistants of the Supreme Court chaired by Dr. Rónán Kennedy.

While in Galway, the Court collaborated with members of the solicitor profession under the auspices of the Galway Solicitors Bar Association and members of the Bar of Ireland. At a reception hosted by the Galway Solicitors Bar Association and NUI Galway, the Chief Justice gave an address on 'The Common Law Post-Brexit'.

The Chief Justice, Mr. Justice Frank Clarke, delivering a statement on the occasion of the historic sitting of the Supreme Court at NUI Galway in March 2019.

At the commencement of the sitting of the Court at NUI Galway, the Chief Justice remarked:

> "Since the establishment of the Court of Appeal… all of the cases which the Court hears will have been decided to be of general public importance and the Court marks this fact by sitting as often as it can outside of Dublin to show that this is not just a Court for Dublin but a Court for all of Ireland."

The sitting of the Supreme Court in Galway followed the success of its visit to Limerick in 2018 and Cork in 2015, where it sat for the first time outside of Dublin and outside of the Four Courts since its refurbishment in 1931.

Preparations are underway for the first sitting of the Supreme Court in Waterford and Kilkenny in February 2020.

Members of the Supreme Court with academic and administrative staff of the School of Law at NUI Galway on the occasion of the Court's historic sitting at the University in March 2019.

Comhrá – a video call initiative with secondary schools

The 18th of October 2019 saw the launch 'Comhrá' (or 'conversation' in English), a new pilot programme of the Supreme Court. The initiative involves a collaboration between the Supreme Court and the Courts Service with the National Association of Principals and Deputy Principals to allow secondary school students in schools around the country to participate in live Q & A video calls with judges of the Supreme Court.

In the first call, students of Carndonagh Community School in Co. Donegal asked the Chief Justice and Ms. Justice Irvine, who were situated in the Four Courts, questions in relation to the work of the Supreme Court and the role of a Judge.

Mr. Justice O'Donnell and Ms. Justice O'Malley later interacted with students of St. Gerald's College in Co. Mayo.

The Chief Justice and Ms. Justice Irvine participating in a video call with students of Carndonagh Community School in the Supreme Court conference room.

Speaking in advance of the first call, the Chief Justice commented:

> "This interactive engagement with second-level students will, it is hoped, demonstrate how technology can be used to encourage young people to better understand the work of the Supreme Court. As a Supreme Court for all of Ireland it is important that all citizens – young and old – are able to visit the Supreme Court, even if remotely, and learn more about the work of the Court to gain a greater understanding of how the Courts of Ireland uphold the Constitution."

According to Clive Byrne, Director of the National Association of Principals and Deputy Principals, the NAPD is delighted to collaborate with the Courts Service in the development of the *Comhrá* Pilot Programme.

> "Education is also about learning outside the classroom. This programme is a perfect example of our efforts to broaden our students' horizons and expose them to learning experiences they would not typically have during their normal school day. It represents a fascinating opportunity for second-level students who are considering pursuing a career in law. For others, it offers a window into our legal and justice systems."

The programme involves the utilisation of existing video-conferencing technology that is used for video-linking courtrooms with vulnerable and remote witnesses. In the coming months the pilot programme will continue with calls between the judges and students from Kildare and Dublin. It is hoped that an application process will then open through which all second level schools can apply to participate.

Ms. Justice Iseult O'Malley and Mr. Justice Donal O'Donnell engaging with students from St. Gerald's College, Castlebar, Co. Mayo as part of the Comhrá initiative launched by the Supreme Court.

Third Level Institutions

Outside of their work in the Supreme Court, members of the Court engage regularly with law schools throughout the country and abroad, in roles such as Adjunct Professors of Law.

The Chief Justice is an Adjunct Professor of the Law School of Trinity College Dublin and of University College Cork, a Judge in Residence at Griffith College Dublin and recipient of the Griffith College Distinguished Fellowship Award. Mr. Justice John MacMenamin is an Adjunct Professor of the National University of Ireland Maynooth and Judge in Residence at Dublin City University.

Mr. Justice Peter Charleton is an Adjunct Professor of Criminal Law at the National University of Ireland Galway and Judge O' Malley served as Judge in Residence at Dublin City University.

The Hon Mr Justice George Birmingham, President of the Court of Appeal: the Hon Ms Justice Marie Baker; the Hon Mr Justice Frank Clarke, Chief Justice; Prof Mark Poustie, Dean of Law UCC at the Feeney lecture in honour of the late Mr Justice Kevin Feeney, hosted by UCC in collaboration with the Bar of Ireland, the Cork Bar and the Southern Law Association. Photo credit: Rob Lamb photography

Judges of the Supreme Court regularly deliver lectures and papers and participate in initiatives of third level educational institutions around the country and abroad. The Chief Justice delivered the Brian Walsh Lecture at University College Dublin on the topic of 'Words words words - Text in the Law' and guest lectures in Constitutional Law at Trinity College Dublin. He also chaired the Feeney lecture delivered by George Birmingham, President of the Court of Appeal at University College Cork. Mr. Justice O'Donnell is chairman of the UCD Sutherland School of Law John M. Kelly Lecture Committee and a member of the UCD Constitutional Studies Group. He delivered a master class on 'Litigation & Arbitration' at the Association of Transnational Law Schools (ATLAS) Agora hosted by UCD in June, which brings together doctoral students in the field of transnational law from around the world.

Mr. Justice O'Donnell pictured with Dr. Richard Collins and ATLAS students.

Mr. Justice William McKechnie chaired an event jointly organised by the Institute of International and European Affairs and Maynooth University to mark the university's 10th anniversary at which Eleanor Sharpston QC, Advocate General of the Court of Justice of the European Union gave a lecture on "The European Project – Past Present and Future.' He also chaired a seminar at University College Cork exploring the future of judicial cooperation between Britain and Ireland post-Brexit and a conference on 'Developments in Tort Litigation at Trinity College Dublin. Mr. Justice MacMenamin delivered lectures at St. Louis University Law School on challenges to the rule of law. Mr. Justice Charleton gave a lecture to students of the University of Missouri in Dublin on 'Issues of Proof in Metadata from Telecommunications in Criminal Prosecutions and to students of the University of Washington in Rome on 'Ireland and European Integration'. Ms. Justice O'Malley and Ms. Justice Finlay Geoghegan chaired sessions at the Irish Supreme Court Review conference hosted by the School of Law, Trinity College Dublin.

Mooting Competitions

Moot competitions provide students with an opportunity to act as legal representatives in simulated court hearings. Throughout 2019, members of the Supreme Court judged a number of moot competitions. Mr. Justice MacMenamin judged the National Moot Court Competition hosted by Dublin City University and DCU's Grand Moot Court Final. The Trinity College Free Legal Advice Centre (FLAC) Karen Kenny Memorial Moot Court Competition was adjudicated by Mr. Justice Charleton and Ms. Justice Dunne judged the King's Inns Brian Walsh Memorial Moot.

Mr. Justice John MacMenamin and Ms. Justice Carmel Stewart with the winning team from University College Dublin at the National Moot Court Competition hosted by DCU.

The Chief Justice, Mr. Justice MacMenamin and Ms. Justice O'Malley judged The Bar of Ireland Adrian Hardiman Memorial Moot Competition in the Supreme Court for practising barristers.

L-R: Joe Holt BL (winner), April Duff BL (winner), Mr. Justice John MacMenamin, Chief Justice Frank Clarke, Ms. Justice Iseult O'Malley, Matthew Judge BL (finalist) and Patrick Fitzgerald BL (finalist) pictured in the Supreme Court at the Adrian Hardiman Memorial Moot Competition.

Student Law Reviews

The Supreme Court greatly supports student law reviews, which allow law students to produce and contribute to academic publications on a variety of legal topics. In 2019, the Eighth Volume of the King's Inns Law Review was launched by the Chief Justice. Ms. Justice Marie Baker launched the Eighteenth edition of the Cork Online Law Review.

Supreme Court Review

The Irish Supreme Court Review (ISCR), hosted by Trinity College Dublin, was launched by Mr. Justice Donal O'Donnell in 2019. The ISCR is a forum for in-depth analysis of the functions and jurisprudence of the Supreme Court of Ireland. Its second conference, which took place in October 2019, included a lecture on 'The Supreme Court's Treatment of EU Law and panels chaired by Ms. Justice Iseult O'Malley and Ms. .Justice Finlay Geoghegan which discussed some of the leading cases of the Court's 2018 to 2019 legal year.

Publications and extra-judicial speeches

Judges of the Court often speak at events and publish materials in legal publications.

The Irish Judicial Studies Journal is a legal publication aimed at the Irish judiciary and produced under the auspices of the Judicial Studies Institute, a statutory body with the function of organising training, seminars and study visits. The journal aims to provide Irish judges with information and opinions that are relevant and useful to them in their work and is published by an editorial team of the University of Limerick. Supreme Court members of the editorial board are the Chief Justice (*ex officio*) and Mr. Justice Peter Charleton. Two editions of the IJSJ were published in 2019. The first includes an article by Mr. Justice Charleton with Ms. Ciara Herlihy entitled 'Truth be told: Understanding truth in the age of post-truth politics'. The second 2019 edition is a bilingual publication drawn from papers given at the Franco-British-Irish Judicial Cooperation Committee Colloque held in Dublin in 2017.

Other publications of members of the Court in 2019 included: an article by Mr. Justice Charleton and Judicial Assistants Ciara Herlihy and Paul Carey on 'Clocha Ceangailte agus Madraí Scaoilte or How Tribunals of Inquiry Ran Away from Us' in the Dublin University Law Journal; a review by Mr. Justice MacMenamin of 'Juries in Ireland: Law Persons and Law in the Long Nineteenth Century' by Dr. Niamh Howlin for the Law and History Review published by Cambridge University Press; and the Chief Justice's contribution at the Colloquium to mark the 30th anniversary of the General Court of the CJEU on 'Digital Technology and the Quality of Judicial Decisions'.

Forewords written by members of the Court included forewords by the Chief Justice to '*Enforcement of Judgments*' (2nd ed.) by Sam Collins and 'Internet Law' by Michael O'Doherty and by Mr. Justice O'Donnell to 'National Security Law in Ireland' by Eoin O'Connor and 'Civil Proceedings and the State' (3rd ed.) by Anthony M. Collins and James O'Reilly.

Among several papers delivered by judges of the Supreme Court in 2019 were a keynote address by the Chief Justice at the Burren Law School on the pillars which support the administration of justice and the John Hume lecture delivered by Mr. Justice Charleton at the MacGill Summer School on tribunals of inquiry.

The Honorable Society of King's Inns

The Honorable Society of King's Inns is the institution of legal education with responsibility for the training of barristers in Ireland. It also offers a Diploma in Legal Studies and a range of advanced diploma courses for both legally qualified and non–legally qualified participants. King's Inns is comprised of barristers, students and benchers, which include all of the judges of the Supreme Court, Court of Appeal and High Court. Members of the Supreme Court and other senior judges serve on a committees of King's Inns which, in 2019, included Ms. Justice Finlay Geoghegan's membership of the Standing Committee until her retirement, Ms. Justice O'Malley's membership of the Education Appeals Board, Mr. Justice McMenamin's membership of the Disciplinary Committee. Ms Justice Baker, who was appointed a judge of the Supreme Court in December 2019 was a member of the Education Committee and Library Committee in 2019.

The affairs of King's Inns are managed by a Council which includes a Judicial Benchers Panel of which the Chief Justice is *ex officio* a member.

The Bar of Ireland and the Law Society of Ireland

In Ireland, there are two branches of the Irish legal profession – barristers and solicitors. The Bar of Ireland is an independent referral bar of which approximately 2,200 practising barristers are members. The Law Society is the educational, representative and regulatory body of the solicitors' profession in Ireland. Members of the Supreme Court cooperate with the practising professions primarily through participation in education and outreach initiatives of The Bar of Ireland and the Law Society.

L-R The Attorney General, Seamus Woulfe SC, The Rt. Hon. Sir Declan Morgan, Lord Chief Justice of Northern Ireland and Mr. Justice Frank Clarke, Chief Justice at the Construction Bar Association Annual Conference.

One such initiative is the Bar of Ireland Law and Women Mentoring programme for which Mr. Justice MacMenamin and Ms. Justice Dunne act as mentors.

The Chief Justice and Ms. Justice Dunne are mentors for the Denham Fellowship. The programme, named after Ms. Justice Susan Denham, former Chief Justice, which is operated by The Bar of Ireland in association with The Honorable Society of King's Inns, assists annually two aspiring barristers who come from socio-economically disadvantaged backgrounds to gain access to professional legal education at the King's Inns and professional practice at the Law Library.

Mr. Justice Frank Clarke, Chief Justice, addressing the Law Society of Ireland's Litigation Annual Conference in October 2019.

The Chief Justice chaired a Public lecture on 'Climate Justice and Human Rights Lawyering' by Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, organised by The Bar of Ireland. He also addressed the Construction Bar Association Annual conference, the Sports Law Conference and presented certificates to 100 transition year students who participated in The Bar of Ireland's 'Look into Law' programme.

He also presented on the implications and opportunities for Ireland as an International Dispute Resolution Centre post Brexit at the Law Society Litigation Committee/Law Society Professional Training annual Litigation Update seminar.

Mr. Justice O'Donnell chaired The Bar's inaugural Immigration, Asylum and Citizenship Bar Association Conference and Ms. Justice Irvine, Ms. Justice Dunne and Mr. Justice O'Donnell jointly chaired an Advanced Advocacy Seminar on Appellate Advocacy.

Mr. Justice Donal O'Donnell at the Immigration, Asylum and Citizenship Bar Association Conference

Faculty of Notaries Public

A Notary Public is a public officer constituted by law to serve the public in non-contentious matters usually concerned with foreign or international business. The Faculty of Notaries Public is responsible for the promotion, advancement and regulation of the profession of Notary Public in Ireland and the Institute of Notarial Studies, a division of the Faculty, has the role of preparing candidate notaries for entry into the profession. The Notarial Professional Course aligned with the Diploma in Notarial Law & Practice (Dip.N.L.) is the entry route to the profession and the final stage of the process of appointment as a Notary Public involves a formal petition to the Chief Justice in open court on a Notice of Motion.

Graduates of the Notarial Professional Course and the Diploma in Notarial Law & Practice for 2019-2020 with the Chief Justice; Dean of the Faculty of Notaries Public in Ireland, Ms Mary Casey; Deputy Dean Justin McKenna; Dean Emeritus Michael V O'Mahony; Dr Eamonn G Hall, Director of the Institute of Notarial Studies (Ireland); Dean Emeritus E Rory O'Connor; Secretary to the Faculty, Michael M Moran and other members of the Governing Council of the Faculty. Credit: Tutor Images

Chief Justice's Summer Internship Programme for Law Students

The Chief Justice welcomed twenty three law students for a one-month internship programme in the Superior Courts that began in June. This year marked the seventh year since the Programme was initiated. The Law Schools of NUI Galway, Dublin City University, Maynooth University, University College Dublin, University College Cork, Trinity College Dublin and the University of Limerick each nominated two students to participate in the programme. As in previous years, students from Fordham University, New York, Bangor University, Wales and the University of Missouri Kansas City brought an added international dimension to the programme. Each intern was assigned to a judge of the Superior Courts.

During the internship programme, interns observed court proceedings, conducted legal research and assisted their assigned judges by completing research tasks. Events organised for the programme included the Hardiman Lecture series, tours of the Four Courts and Green Street Courthouse, observations of sittings of the Drug Treatment Court and talks by judicial assistants on their roles. The programme provided interns with a unique opportunity to gain practical experience of the law and to allow interns gain an insight into the respective roles of officers of the court, with the view to considering potential future career paths in law. Many of the participating interns were struck by the uniqueness of the internship programme in that it provided them with an opportunity to engage on a one-to-one basis with members of the judiciary in relation to their experiences on the programme, from observing court hearings to being tasked with completing a research exercise.

One student remarked:

> "Having just completed the Chief Justice's Summer Internship for Law Students, I've had an opportunity to reflect on how unique an opportunity this was. The facility of engaging directly with members of the judiciary, discussing cases that are before them and getting an insight into the process by which they decide those cases was a fascinating experience. Visits to the Criminal Courts of Justice and the Drug Treatment Court provided some welcome diversity to the programme. On the whole, it was a hugely worthwhile experience, and one that I'll be certain to recommend to those considering applying in future years."
> Joshua Kieran-Glennon, University College Dublin

Reflecting on her time on the Internship Programme, Aoife Ní Dhonaile said:

> "I knew my experience would be unforgettable, but I didn't expect it to be as memorable as it was. Not only did we receive a fantastic insight into the courts, we were also exposed to a range of other opportunities such as lectures from esteemed judges and barristers. These afforded us a glimpse into the workings of the courts in Ireland and the many different elements that make up the Irish courts system. The Internship Programme was undoubtedly a once in a lifetime opportunity to gain an insight into the inner workings of the courts. The level of exposure that the interns were afforded into the work of a judge is a truly unique aspect of the Programme and an experience I will not forget."

The Chief Justice pictured in the Hugh Kennedy Court with: Seated L to R: Lisa Boylan (Maynooth), Eilbhe Harrington (UL); Patrick Conboy (Office of the Chief Justice), Michael Boland (UCC), Awen Edwards (Bangor), Ellen Coll (TCD), Aaron Flanagan (Bangor), Caitríona O'Sullivan (UCC), Padraic Burke (DCU), Paul Mulready (DCU), Peo Mesepele (NUI Galway), Haley Tarvin (Missouri), Sarah Patton (UCD), Charles Coogan (TCD), Krista Dooley (Maynooth), Joshua Kieran-Glennon (UCD) Ruth Coughlan (TCD), Aoife Ní Dhonaile (NUI Galway), Sinéad Mulcahy (UL), Shannon Gundy (Missouri), Katrina Bader (Fordham), Amir Khedmati (Fordham), David Garfinkel (Fordham). Absent from photograph: Al-Daana Al-Mulla (Fordham).

A new addition to this year's programme was a dedicated day for participating interns in the Criminal Courts of Justice. The day began with Interns meeting with the Director of Public Prosecutions, Claire Loftus, who spoke to the Interns about her role and that of her office. Interns then observed proceedings of the District Court, Circuit Criminal Court and the Special Criminal Court. Interns were provided with a tour of the Victim Support facilities in the CCJ and met with the staff of V-SAC (Victim Support At Court), who spoke about the importance of the practical assistance they provided to victims whilst in court. The day concluded with interns being addressed by practitioners from both legal professions who practice predominantly in criminal law. This series of events provided interns with an opportunity to gain a deeper understanding of the Irish criminal justice system.

The Hardiman Lecture Series

A lecture series organised by Mr. Justice Peter Charleton forms an important part of the Chief Justice's Summer Internship Programme. The lectures took place twice a week in the Four Courts during the course of the one-month programme in honour of the late Mr. Justice Adrian Hardiman, former judge of the Supreme Court, who participated as a speaker in all previous years of the programme during his life.

Mr. Justice Peter Charleton's lecture in Court 2, the Four Courts for the 2019 Hardiman Lecture series chaired by Ms. Justice Iseult O'Malley.

The lectures were open to student interns, judges, judicial assistants, researchers, other Courts Service staff and member of The Bar and Law Society

In 2019, the series included the following diverse range of lectures delivered by members of the Judiciary and legal practitioners:

- 'The Life and Legal Cases of Daniel O'Connell', Paul Gallagher, S.C.;
- 'The Role of the Attorney General', Séamus Woulfe S.C., Attorney General;
- The Iran Hostage Crisis: 444 Days that Ruined a Presidency', The Hon. Mr. Justice Peter Charleton;
- 'The Trial and Conduct of Personal Injuries Litigation', The Hon. Ms. Justice Bronagh O'Hanlon;
- The Role and Responsibility of the State in Litigation', The Hon. Ms. Justice Deirdre Murphy;
- 'The Trial of Roger Casement', The Hon. Mr. Justice Donal O'Donnell;
- 'The Art of Advocacy', Michael Collins S.C.

Launch of the OUTLaw Network

In January 2019, Chief Justice Frank Clarke attended the launch of OUTLaw Network, a network to connect LGBT+ people and allies working in the Irish legal sector. OUTLaw's mission is to promote and drive the inclusion of LGBT+ people across the Irish legal community. Its objectives include bringing together LGBT+ colleagues and allies across the Irish legal sector to foster an environment of inclusion, build their professional networks, avail of career and leadership development opportunities and to promote Ireland's legal profession as a destination of choice for LGBT+ people in Ireland.

Chief Justice Frank Clarke addressing guests at the launch of the OUTLaw Network in January 2019.

Part 4
International Engagement

4

International Engagement

The Supreme Court cooperates with other senior courts across the European Union and with the Court of Justice of the European Union in Luxembourg through the formal avenue of dialogue facilitated by the preliminary reference system provided for in Article 267 of the Treaty on the Function of the European Union. Moreover, higher courts of countries within the common law world frequently refer to judgments of other jurisdictions where the same or similar issues are addressed. Such judgments, although not binding, are considered to be of persuasive authority. Additionally, Irish courts must, under the provisions of the European Convention on Human Rights Act 2003, have regard to the jurisprudence of the Court of Human Rights in Strasbourg. However, beyond these formal legal relationships, there is an increasing level of co-operation between the Supreme Court and other senior courts which principally takes place through regular or occasional bilateral meetings or through the membership of the Supreme Court of international bodies.

International Organisations

The Supreme Court cooperates on a multilateral basis via its membership of a number of international networks and organisations which facilitate cooperation with courts and institutions in other jurisdictions. Given the wide-ranging nature of the jurisdiction of the Supreme Court, the area of law associated with each of these organisations varies. However, they have in common the aim of providing a forum in which courts of similar jurisdiction can meet and discuss their work, the nature of their functions and the organisation of their systems and to promote dialogue between such courts.

There are many international bodies and networks with which individual members of the Judiciary in each of the five courts of Ireland regularly engage. Some organisations of which the Supreme Court or the Chief Justice is a member include:

ACA-Europe - an organisation comprised of the Councils of State or the Supreme administrative jurisdictions of each of the members of the European Union and the Courts of Justice of the European Union. Through ACA-Europe, the Supreme Court exchanges views and information with other member institutions on jurisprudence, organisation and functioning, particularly with regard to EU law. In 2018, ACA-Europe Correspondents on behalf of the Supreme Court, the Chief Justice, Ms. Justice Elizabeth Dunne and Ms. Justice Mary Irvine attended a number of ACA-Europe seminars and participated in a number of projects and studies under which ACA-Europe engages with EU institutions. The Supreme Court of Ireland welcomed members of ACA-Europe to Dublin in March 2019 for a seminar on the topic of 'How Courts Decide: the decision-making processes of Supreme Administrative Courts'.

Network of the Presidents of the Supreme Judicial Courts of the European Union – a network of the Presidents of the Supreme Courts of EU Member States with general jurisdiction (as opposed to constitutional courts or courts with final jurisdiction in particular areas of law, such as supreme administrative courts). Supreme Court Presidents, including the Chief Justice of Ireland, participate in meetings and exchange information through this network, which also consults with institutions of the EU. The Chief Justice is a member of the Board of the Network.

Judicial Network of the European Union – an association which was established on the initiative of the President of the Court of Justice of the European Union and the Presidents of the Constitutional and Supreme Courts of EU Member States at the Meeting of Judges hosted by the Court of Justice in 2017. The JNEU is based on an internet site designed to promote greater knowledge, in particular from a comparative law perspective, of law and legal systems of Member States and contribute to the dissemination of EU law as applied by the Court of Justice of the European Union and the national courts.

Conference of European Constitutional Courts - an organisation comprised of European constitutional or equivalent courts with a function of constitutional review. Meetings and exchange of information on issues relating to the methods and practice of constitutional review are the key feature of this organisation. The Conference is currently chaired by the Constitutional Court of the Czech Republic which will host the XVIIIth Congress in 2020.

Venice Commission Joint Council on Constitutional Justice and World Conference of Constitutional Justice – Through the Joint Council on Constitutional Justice, the Supreme Court cooperates with constitutional courts and courts of equivalent jurisdiction in Member States of the Venice Commission, the Council of Europe's advisory body on constitutional matters. This is primarily achieved through the sharing of information between liaison officers of member courts, including officials in the Office of the Chief Justice of Ireland. Liaison officers prepare summaries of important constitutional cases, which are published by the secretariat of the JCCJ in bulletins. Liaison officers also pose and answer questions via a number of fora on a restricted website. Liaison Officers on behalf of the Supreme Court of Ireland attended the 18th meeting of the Joint Council on Constitutional Justice hosted by the Constitutional Court of Italy in 2019, where they delivered a presentation on the topic of 'Independence of the Judiciary and the role of Constitutional Courts'.

ACA-Europe Seminar hosted by the Supreme Court of Ireland on 'How our Courts Decide: The Decision-making Processes of Supreme Administrative Courts'

Chief Justice of Ireland, Mr. Justice Frank Clarke, addressing delegates at the opening session of the ACA-Europe Seminar, 'How our Courts Decide: The Decision-making Processes of Supreme Administrative Courts', held in Dublin Castle in March 2019.

A seminar organised by ACA-Europe and the Supreme Court of Ireland on 'How our Courts Decide: The Decision-making Processes of Supreme Administrative Courts' was held in Dublin on the 25th and 26th March 2019. Before the seminar, more than 30 of the delegates availed of the opportunity to observe a hearing of an administrative law case in the Supreme Court of Ireland.

Over 40 members of Supreme Administrative Courts and Councils of State from 28 countries in Europe gathered for the seminar in the historic setting of Dublin Castle to discuss the processes and practices they each follow in reaching their decisions. The seminar was a companion seminar to seminars hosted in 2019 by the Federal Administrative Court of Germany on 'Functions of and Access to Supreme Administrative Courts' and by the Supreme Administrative Court of the Czech Republic on 'Measures to Facilitate and Restrict Access to Administrative Courts'. The sessions concerning various specific aspects of the decision-making practices of Supreme Administrative Courts and Councils of State allowed participants to compare and contrast the approaches taken in their own institutions and gain a better understanding of the processes of institutions in other ACA member and Observer institutions.

Mr. Klaus Rennert, President of the Federal Administrative Court of Germany and ACA-Europe, and Mr. Justice Frank Clarke, Chief Justice of Ireland

The seminar opened with welcoming remarks from Chief Justice Frank Clarke and Mr. Klaus Rennert, President of the Federal Administrative Court of Germany and of ACA-Europe (*pictured left*). In the first session, Chief Justice Clarke presented the general report compiled by Irish academics, Dr. David Kenny, Trinity College Dublin and Dr. Áine Ryall, University College Cork, at the request of the Supreme Court of Ireland. The general report, which formed the basis of the seminar, collated and synthesised national reports provided by 28 jurisdictions in response to a questionnaire which asked members and Observers of ACA-Europe to provide accounts of their processes and practices relating to their decision-making.

Chief Justice Clarke provided an overview of the general report and highlighted some universal trends illustrated by the national reports, such as: the increasing caseload of member institutions and measures adopted to cope with this; increasing use and reliance on research support; an ability to raise points ex officio in at least some circumstances; and the issuance of judgment in the name of the institution rather than any one judge in most jurisdictions. Divergence in a number of areas as referred to in the report were also noted, such as: differences in the number of judges, in the number of cases, the nature of the institutions and legal systems and the use and importance of oral hearings and dissenting judgments.

(L-R) Francis Delaporte, President of the Administrative Court of Luxembourg, Roger Stevens, First President of the Council of State of Belgium, Bart-Jan van Ettekoven, Chair of the Administrative Jurisdiction Division of the Council of State of the Netherlands.

In the second session on 'Research Practice', chaired by Mr. Francis Delaporte, President of the Administrative Court of Luxembourg (*pictured left*), four presenters outlined the availability, the nature of and the roles fulfilled by legal support staff in their institutions. Mr. Roger Stevens, First President of the Belgian Council of State, Mr. Bart-Jan van Ettekoven, President of the Administrative Jurisdiction Division of the Netherlands Council of State, Ms. Skirgaile Žalimienė, judge of the Supreme Administrative Court of Lithuania and Lady Hale, President of the Supreme Court of the United Kingdom highlighted particularly interesting and contrasting features of their

systems. First President Stevens described the 'double examination' system in the Belgian Council of State, which involves a thorough preliminary examination by a body of magistrates known as the Auditorat and later the preparation of preliminary draft judgments by attachés. Mr. Gounin described a team effort in the Dutch Council of State, involving the drafting of judgments by support lawyers, the oral hearings by judges assisted by support lawyers, judicial deliberation in chambers assisted by support lawyers, drafting of judgments by support lawyers followed by the decision made by the judge.

Judge Skirgaile Zalimiene (on the left) and Lady Brenda Hale, President of Supreme Court of the United Kingdom

Lady Hale, President of the Supreme Court of the United Kingdom (*pictured on the right*) explained the role of Judicial Assistants in the Supreme Court of the United Kingdom, who provide bench memoranda summarising applications for permission to appeal, prepare summaries of cases and carry out research. Ms. Žalimienė referred to the work undertaken by assistants, consultants and advisors who provide administrative assistance and legal research support to judges of the Supreme Administrative Court of Lithuania, in addition the relationship of the Court with the Faculty of Law of Vilnius University which gives rise to interns serving as paralegals in the Court. There was lively discussion between all participants of the appropriate role and limits of research assistance.

'The Allocation of Roles of Decision-Makers' was the topic of the third session, chaired by Mr. Kari Kuusiniemi, President of the Supreme Administrative Court of Finland. Mr. Filippo Patroni Griffi, President of the Council of State of Italy, Mr. Aleksandrs Potaičuks, Legal Counsel at the Supreme Court of Latvia and Mr. Jacek Chlebny, Vice President of the Supreme Administrative Court of Poland delivered presentations for this session which involved a discussion of the use and nature of chambers or divisions and areas of specialisation, the use of Grand Chambers or plenary sessions and the effect of the way in which roles are allocated to decision-makers on workload. The presentations highlighted interesting practices in some institutions, such as the organisation and functioning of the Plenary Assembly described by President Patroni Griffi, which is a special jurisdictional body of the Italian Council of State with a function of guaranteeing uniformity and stability of case-law in the administrative system.

Mr. Filippo Patroni Griffi, President, and Ms. Marina Perrelli, Counsellor, Council of State of Italy

(L-R) Justice Magnus Matningsdal, Supreme Court of Norway, Mr. Jacek Chlebny, Vice President of Supreme Administrative Court of Poland, Ms. Marta Kulikowska, Head of Domestic and Foreign Relations, Supreme Administrative Court of Poland

Vice President Chlebny (*in centre of picture*) provided an overview of how the allocation of roles is structured in the Supreme Administrative Court of Poland, an institution of 107 judges with three chambers consisting of two divisions, so as to deal with the workload of the Court. Mr. Potaičuks gave an account of the situation in Latvia, where the Department of Administrative Cases does not have separate divisions, but rather each judge has his or her own area of specialisation. While cases are generally adjudicated by three judges, the law provides for referral of a case to a plenary sitting where the three judge court does not reach a unanimous opinion.

In the final session of the seminar, chaired by Ms. Justice Elizabeth Dunne, participants discussed 'The Deliberative Process', including whether oral hearings are used, whether and how often judges meet and the way in which they discuss cases; whether the institutions can raise issues of their own motion and the use of dissenting opinions. Presentations were given by Mr. Yves Gounin, International Relations Delegate at the French Council of State, Mr. Carsten Günther, judge of the Federal Administrative Court of Germany, Mr. Magnus Matningsdal, judge of the Supreme Court of Norway and Ms. Helena Jäderblom, President of the Supreme Administrative Court of Sweden. This session shed light on interesting diversity of practice across the jurisdictions. For example, 11 jurisdictions have oral hearings in either all or most cases 11 countries have no oral hearings and France sits in the middle, with oral hearings in 50% in cases. The roughly even division on the question of whether dissenting judgments are used provided an opportunity for lively exchange of views as to the merits of dissenting opinions.

The seminar ended with concluding remarks by Chief Justice Frank Clarke and President Klaus Rennert who each noted the benefits which had arisen out of the seminar and the opportunity for further discussion in Berlin and on other occasions in the future of the procedures and practices which ultimately lead to the decisions of Supreme Administrative Courts and Councils of State.

Delegates posing for a group photograph at the conclusion of the ACA-Europe seminar in Dublin Castle

Meetings with Judiciary of other Jurisdictions

The Supreme Court benefits from regular bilateral meetings with neighbouring jurisdictions through, for example, participating in biennial meetings with senior members of the Judiciary of the United Kingdom. Such longstanding bilateral engagement is of utmost importance having regard to our shared history, close geographical proximity and similar legal systems which share a common law legal tradition.

The Judiciary of Ireland also benefits from trilateral engagement under the Comité Franco-Britannique-Irlandais, an organisation which strengthens cooperation between judges of the highest courts of France, the United Kingdom and Ireland through the organisation of Colloquia.

In 2019, a delegation of the Judiciary of Ireland led by the Chief Justice attended the Franco British Irish Colloque which was held in London. The Colloque dealt with the topic of 'Human Trafficking and Modern Slavery' and the papers of speakers were published in English and in French in a special edition of the Irish Judicial Studies Journal, which is available at www.ijsj.ie.

Judicial exchange programmes

In 2019, the Supreme Court continued its practice of hosting judges from other countries for judicial study visits organised as part of the Supreme Court's membership of international organisations. In November 2019, the Court hosted Ms Teresa Bielska-Sobkowicz, Judge of the Supreme Court of Poland and Ms. Maria Olinda Garcia, Judge of the Supreme Court of Portugal on a two week exchange programme organised under the Network of the Presidents of the Supreme Judicial Courts of the European Union, and Ms. Gerdy Jurgens, Judge of the Council of State of The Netherlands under an ACA-Europe programme.

The visiting judges observed proceedings in all five courts of Ireland and met with the Presidents and members of the Supreme Court, Courts of Appeal and High Courts, in addition to other members of the Judiciary, to discuss the work of the Irish courts and share information on practices and experience. Courts Service officials, including staff of the Chief Justice's Office, Registrars, members of the Reform and Development Directorate and Judicial Assistants provided tours and information sessions on the Irish legal system, including the format of court hearings and processing of cases in the offices of the Supreme Court and Court of Appeal.

The visiting judges also attended a public hearing of the Disclosures Tribunal at Dublin Castle, where they met the Chairman, Mr. Justice Sean Ryan, the Tribunal legal team and staff.

The judges attended the Committee for Judicial Studies Annual Conference of the Judiciary as guests and enjoyed the tradition of dining at the Honorable Society of King's Inns.

Visits to the Supreme Court

The Court received many international visitors throughout the year for which the Judicial Support Unit of the Court Service and the Office of the Chief Justice organised specifically tailored programmes. The visits involved Information Sessions provided by Judicial Assistants of the Judicial Research Office and Supreme Court, staff of the Reform and Development Directorate, Registrars of the Supreme Court and Court of Appeal and observation of court proceedings and meetings with judges of each of the Courts of Ireland.

Judges of the Supreme Court met with members of the Judiciary from the United States of America, China, Ukraine, Australia, the Netherlands, Poland and Portugal and groups of lawyers from the Netherlands and France. Visitors also included the Minister of Justice and Immigration of Norway, Mr. Jøran Kallmyr, a delegation of the German and Czech Parliamentarians and a delegation of the Committee on Constitutional and Legal Affairs of the Chamber of Deputies of the Parliament of the Czech Republic.

The Chief Justice and Mr. Justice MacMenamin in the Supreme Court with members of the Ukrainian Judiciary undertaking a study visit to Ireland organised by the Department of Foreign Affairs and Trade in conjunction with the EU Advisory Mission Ukraine.

Attendance of Judges of the Supreme Court an international events

Mr. Justice MacMenamin and Chief Justice Roberts at the Supreme Court of the United States on the occasion of a courtesy visit to the Supreme Court of the United States

Judges of the Supreme Court also attended events overseas throughout the year.

In addition to the engagements of the Chief Justice referred to on page 34 of this report, the Chief Justice, Ms. Justice Dunne and Ms. Justice Irvine attended colloquia and seminars, and participated in working groups, of ACA Europe. Such groups included a Working Group on Better Regulation and on a transversal study through which ACA-Europe members will contribute to the EU Justice Scoreboard.

In April 2019, Mr. Justice MacMenamin paid a courtesy visit to the Supreme Court of the United States where he and Chief Justice John Roberts discussed matters of mutual interest to the Irish and US legal systems. He also represented the Irish Judiciary at a seminar in Dallas, Texas on the Brexit legal services initiative, organised by the Bar of Ireland, the Law Society, and the Department of Justice.

Part 5
Supporting the Supreme Court — The Courts Service

5

Supporting the Supreme Court – The Courts Service

The Supreme Court is supported by the Courts Service, the organisation which is responsible for the administration and management of all courts in Ireland.

The Courts Service

The Courts Service is an independent body established pursuant to the Courts Service Act, 1998. It manages all aspects of court activities, with the exception of judicial functions, which is a matter exclusively for the judiciary. The functions of the Courts Service are to:

- manage the Courts;
- provide support services for Judges;
- provide information on the Courts system to the public;
- provide, manage and maintain court buildings;
- provide facilities for users of the Courts; and
- perform such other functions as are conferred on it by any other enactment.

The Court Service Board is chaired by the Chief Justice and is comprised of 17 other members, including the court Presidents, judicial representatives from each court, a staff representative, a representative of the Minister for Justice and representatives from the legal professions, trade unions and business world. The function of the Board is to consider and determine policy in relation to the Service, and to oversee the implementation of that policy by the Chief Executive Officer. Courts Service staff are civil servants of the State.

Chief Justice Frank Clarke with Brendan Ryan on the occasion of his retirement as Chief Executive Officer of the Courts Service in September 2019

The Chief Executive Officer is responsible for the implementation of policies approved by the Board, the day-to-day management of the staff, administration and business of the Service.

Chief Executive Officer, Brendan Ryan retired in September 2019 following ten years as CEO of the Service, having commenced his work supporting the courts in 1981 in the Department of Justice before

Angela Denning
Chief Executive Officer
of the Courts Service

the establishment of the Court Service. Angela Denning replaced Mr. Ryan as CEO in 2019. Ms. Denning worked for many years as a High Court Registrar and worked in the Strategic Information Office of An Garda Síochána and the Government Reform Unit of the Department of Expenditure and Public Reform before re-joining the Courts Service in 2019 on her appointment as CEO.

The Chief Executive Officer is supported by the Senior Management Team comprising Head of Superior Courts Operations, Head of Circuit Court and District Court Operations, Head of Strategy and Reform, Head of Resource Management and Head of Infrastructure Services. The Chief Executive Officer liaises closely with the Chief Justice, judges of the Supreme Court and staff of the relevant offices in supporting the Court.

A Judicial Support Unit within the Office of the Chief Executive provides support to judges of all jurisdictions, including the Supreme Court in a wide variety of areas, such as foreign travel, protocol matters, internal and external liaison and coordination of visits.

Offices and units of the Courts Service collaboratively provide support to the Supreme Court and other courts. However, certain directorates, offices and officials provide support directly to the Court on a daily basis.

Registrar of the Supreme Court

The position of Registrar of the Supreme Court is a statutory one and the Registrar has superintendence and control of the Office of the Supreme Court. He is responsible to the Chief Justice for the business of the Court transacted in the Office. He is also subject to the general direction of the Courts Service for matters of general administration. The current Registrar is John Mahon.

Chief Justice Frank Clarke with Registrar of the Supreme Court John Mahon

Supreme Court Office

The Supreme Court Office provides administrative and registry support to the Court. It has a public office where applications for leave to appeal and appeal documentation are filed. The Registrar is supported by an Assistant Registrar and six additional members of staff.

The Rules of Court require that all applications, appeals and other matters before the Supreme Court are prepared for hearing or determination in a manner which is just, expeditious and likely to minimise the costs of the proceedings.

The Office and its staff is responsible for the following functions:

- Reviewing filings and documentation for compliance with the rules and practice of the Court.
- Managing applications for leave to appeal and appeals to ensure that they are progressed fairly and efficiently.
- Listing of applications and appeals.
- Issuing and publication of the Court's determinations and judgments
- Drafting and finalisation of the Court's orders.
- Enrolling of the text of the Constitution embodying amendments in accordance with Article 25.5.2° of the Constitution and enrolling of Acts of the Oireachtas in accordance with Article 25.4.5° of the Constitution.
- Processing of applications to be appointed as a Notary Public or a Commissioner for Oaths
- Authenticating the signatures of Notaries or Commissioners on legal documents for use in Ireland or other jurisdictions.
- Supporting protocol functions including the swearing in of new judges by the Chief justice and calls to the Bar of Ireland.

New Developments

New Practice Direction

A revised Practice Direction (SC 19) was signed by the Chief Justice and came into effect on the 4th January, 2019. The revisions include:

- Reductions in time limits to expedite the leave stage of the appeal process.
- Better focused case management provisions to assure the just and efficient management of appeals.

- provisions to ensure that necessary documentation relevant to the issues in the appeal is included in the appeal books.
- Provision for the assignment of an Applications for Leave Judge to deal with matters arising prior to the allocation of the application to a panel of the Court.
- provisions to facilitate the electronic filing of leave to appeal documentation.

On-line filing of applications for leave to appeal

A new system that allows practitioners to file applications for leave to appeal electronically was made available from the 4th February, 2019. It is now possible for practitioners to file all necessary documentation for first stage of the appeal process in this way. The system was introduced on a pilot basis as a proof of concept and during 2019 the Office engaged with practitioners and the Law Society of Ireland to encourage optimal use of the new system. This engagement will intensify in 2020 and practitioners are encouraged to familiarise themselves with and to utilise the new system when filing applications for leave.

6th Enrolment of the Constitution

The text of the Constitution authenticated by the signatures of the Taoiseach and of the Chief Justice and signed by the President of Ireland was enrolled in the office of the Registrar of the Supreme Court pursuant to Article 25 5 2° of the Constitution on the 13th day of November, 2019. This text is the 6th such enrolment.

The text so signed and enrolled is, pursuant to Article 25 5 3°, conclusive evidence of the Constitution as at that date and supersedes all previous enrolled texts for that purpose.

The first enrolled copy of the Constitution was authenticated by the signatures of the then Taoiseach, Éamon De Valera and of the then Chief Justice, Timothy Sullivan and of the then Chairman of Dáil Éireann, Frank Fahy, on the 16th February, 1938 and was enrolled in the Office pursuant to Article 64 (Transitory Provisions).

Staff of the Supreme Court Office
L-R: John Mahon, Jason Emmett, Mary O'Donoghue, Patricia Cuddihy, Sinead Mehlhorn, Sonia Murphy, Monica Litwin and Audrey McKeon.

Office of the Chief Justice

The Chief Justice, in carrying out his judicial and administrative functions at domestic and international level, is supported by a team comprising:

- Senior Executive Legal Officer to the Chief Justice, Sarahrose Murphy, who provides legal and administrative support to the Chief Justice and other judges nominated by the Chief Justice in the discharge of their international functions and their engagement with international organisations and assists the Chief Justice in discharging domestic administrative and organisational functions;
- Executive Legal Officer to the Chief Justice, Patrick Conboy, who also provides legal and administrative support in respect of domestic and international affairs;
- Judicial Assistant, Rachael O'Byrne, who provides legal research assistance to the Chief Justice. Former Judicial Assistant to the Chief Justice, Luke McCann completed his term during the year;
- Private Secretary, Tina Crowther, who provides secretarial support to the Chief Justice. Former Private Secretary to the Chief Justice, Carol Kelly, retired in 2019;
- Tony Carroll, Usher to the Chief Justice.

Office of the Chief Justice personnel
L-R: Patrick Conboy, Tina Crowther, Chief Justice Frank Clarke, Sarahrose Murphy,
Rachael O'Byrne and Tony O'Carroll.

Superior Court Operations Directorate

The Superior Court Operations Directorate provides administrative support and resources for the Supreme Court, Court of Appeal and High Court. The Directorate is responsible for managing the offices attached to these courts and the staff associated with such offices, including judicial assistants and secretaries assigned to judges of the Supreme Court. The Head of the Directorate, Geraldine Hurley and three other members of the Court Service carry out the day-to-day work of the Superior Court Operations Directorate.

Geraldine Hurley
Head of Superior
Court Operations

Legal research management

A Head of Legal Research and Library Services, Laura Butler, was appointed to the Courts Service in 2019 to fulfil a leadership and management role in the development and delivery of research and library services for the judiciary across all court jurisdictions. Two legal research managers, Emer Gillen and Juliet Dwyer, were also appointed to carry out roles of managing the legal research and judicial support services provided by the Judicial Research Office and Judicial Assistants to members of the Judiciary.

Legal research managers and staff of the Superior Court Operations Directorate
L-R: Emer Gillen, Eoghan Fitzgerald, Juliet Dwyer, Sheila Kulkarni and Colin Mehigan.
Absent from photograph is Juliet DuPreez

Ushers

During 2019, six Ushers provided practical support to judges of the Supreme Court. John Fahey, Usher to Ms. Justice Finlay Geoghegan, retired on the retirement of the judge. In general, the role of an Usher involves attending court with the judges to whom he is assigned, maintaining order in court, assisting with papers and correspondence of the judge, directing litigants to court and assisting with managing the judges' Chambers.

L-R: Ushers of the Supreme Court Tony Carroll, Chris Maloney and Pat Fagan. Absent from photo are Seamus Finn, John Fahey and John O'Donovan.

Judicial Secretaries

Seven Judicial Secretaries provided administrative and secretarial assistance to the judges of the Supreme Court in 2019. The responsibilities of the Judicial Secretary involve typing and formatting judgments and memoranda dictated by Judges, maintaining diaries and arranging appointments.

Back L-R: Judicial Secretaries Gillian McDonnell and Tina Crowther
Front L-R Sharon Hannon, Bernadette Hobbs, Margaret Kearns and Mary Gill.

Judicial Assistants

During the course of 2019, 19 Judicial Assistants supported judges of the Supreme Court, including those who concluded their positions as Judicial Assistant during the year. The work of a Judicial Assistant varies depending on the requirements of the judge to whom they are assigned. However, it typically involves carrying out legal research, the preparation of pre-hearing memoranda for judges in advance of oral hearings and proof-reading judgments prior to their delivery.

Judicial Assistants must possess a law degree at a minimum of level 8 on the National Framework of Qualifications or an appropriate professional qualification, as well as an extensive knowledge of Irish Law and the Irish legal system.

In addition to work of a legal nature, a number of the Judicial Assistants undertake the functions traditionally undertaken by Court Ushers as, since the enactment of the Financial Measures in the Public Interest (Amendment) Act 2011, the assignment of Ushers has been replaced by the recruitment of Judicial Assistants.

Judicial Assistant are recruited by the Courts Service on a three-year non-renewable contract. The Courts Service advertises competitions for the recruitment of Judicial Assistants on its website, www.courts.ie.

Judicial Assistants
Back L-R: Hayley Dowling, Cormac Hickey, Seán Beatty, Iseult Browne, Hansi Fishcer Kerrance, Patricia Erasmus, Ceara Tonna Barthet
Front L-R: Rachael O'Byrne, Shane Finn, Laurenz Boss. Absent from photograph is Giacomo Bonetto.

Judicial Assistants – a day in the life

By Shane Finn, Judicial Assistant to the Supreme Court

A judicial assistant, assigned to a Judge of the Supreme Court, becomes involved with a case as soon as an application for leave to appeal is lodged by the parties. A panel of three judges will consider each application and whether it meets the requirements set out by the Constitution.

Judicial Assistant, Giacomo Bonetto, discussing his work with his assigned Judge, Ms. Justice Marie Baker.

In such cases where my assigned Judge is a member of a panel, I may be asked to research certain points raised in the application or to prepare a summary of the facts. After the panel has reached their determination, I will be sent a draft of the written determination by the Judge to proofread to ensure that it conforms to the standard format used for determinations. The final version is then signed by the most senior judge on the panel and the judicial assistant conveys it to the Supreme Court Office for publishing and to notify the parties of the result.

If leave to appeal is granted, case management then begins. A judge will be assigned as the case management judge of a particular case, and their judicial assistant assists them throughout the case management hearings. The main role of the judicial assistant, at this stage, is to review the papers submitted and compare them to the standards required by Practice Direction SC19. I then check that the pagination and tabulation matches that set out in the schedule of each book submitted, that there are no pages missing, and that authorities submitted are done so in the proper format (*e.g.* the reported versions of cases are used where they are available), and that anything that has been photocopied has been done in a way that is readable. I compile a list of all potential issues, if there are any, I will present it to my assigned judge in a memorandum. If the parties need to be instructed to make any corrections, it is solely for the judge to determine such.

Once a case has processed through case management, it is scheduled for hearing by a panel of the Supreme Court. I usually prepare a memorandum in advance of the hearing for the judge. The contents can vary, although, nearly always, a summary of the relevant facts and the proceedings in the lower courts is be included. I may, time permitting, include some legal analysis or, at the very least, flag the important legal questions that I think arise in the case. During the hearing itself, I either sit in court and take notes or listen remotely on the DAR. If a judge does not have an usher assigned to him or her, then the judicial assistant also usually deals with the practical matters of bringing the judge to the hearing and assisting them during the proceedings.

In the period between the conclusion of the hearing and the handing down of the judgment, I may complete a number of tasks: my assigned judge may ask me to listen to the DAR and perhaps prepare a summary of oral arguments made by counsel; the judge may want me to research a specific point of law raised at the hearing; when case law from other jurisdictions is opened as authorities, the judge may ask me to review the academic commentary of the cases in question in their home jurisdictions to help them understand the context in which the case was decided.

Reflecting the collegiate nature of the Supreme Court, Judicial Assistants assigned to the Supreme Court meet regularly to collaborate and update colleagues on their work.

For the judgment itself, I proofread the drafts written by the judge and ensures consistency of formatting and content. This requires me to cross-reference with the books submitted by counsel, listen back to the hearing on the DAR, and make use of numerous databases to ensure that the quotations and citations of case law cited is correct. When the judgment is finally ready for approval, the judge signs it and it is both handed down in open court and published online. Alongside such duties, I may assist the judge in any lectures they are giving or research papers they are writing.

Part 6
A Look to 2020

6

A look to 2020

Sitting of the Supreme Court in the South East

Waterford Courthouse

From the 24th to the 26th February 2020, The Supreme Court will sit in Waterford and Kilkenny cities, where the Chief Justice will be accompanied by other members of the Supreme Court. It will be the first time that the Supreme Court has sat in either city and it will also be the first time that the Court has sat at two different locations.

Kilkenny Courthouse

While in Waterford and Kilkenny, members of the Supreme Court will engage in outreach with the local practising legal professions, Waterford Institute of Technology and with the wider public. The Court will also visit second level schools in Waterford and Kilkenny and run a 'Comhrá live' programme, which will be a live adaptation of the Comhrá pilot video call programme which commenced in 2019.

Speaking ahead of the historic sitting in the South East, the Chief Justice Mr. Justice Frank Clarke commented that:

> "This year the Supreme Court will continue with what has become an important annual occasion involving a sitting outside of Dublin. Building on the success of previous sittings in Cork, Limerick and Galway, we will visit the South East and sit in the newly redeveloped courthouses in Waterford and Kilkenny. We will also build on the Comhrá pilot scheme by expanding our community outreach to include five visits by members of the Court to secondary schools in Waterford and Kilkenny where the Comhrá model will be applied in a live setting. Developments such as these form an important part of the desire of the Supreme Court to significantly expand public understanding of its work. We will hope to further develop these initiatives in the future with a visit to the North West, involving sittings in both Castlebar and Letterkenny, being already pencilled in for 2021."

Comhrá

In 2020, the Supreme Court will continue to its Comhrá initiative by engaging with various schools across the country by way of video conferencing technology. It is hoped that when the pilot programme concludes, all second level schools will have the opportunity to apply to participate in the Comhrá programme.

Summer Internship Programme for Law Students 2020

In June 2020, the Chief Justice's Summer Internship Programme for Law Students will commence. Participants on the Programme will be assigned to a Judge of the Superior Courts and over the course of a month will observe court proceeding, undertake legal research assignments and attend the Hardiman Lecture Series.

Bilateral engagement with the Supreme Court of Canada

In June 2020, a delegation of Judges from the Supreme Court of Canada, led by Chief Justice The Rt. Hon. Richard Wagner, will visit Dublin for a bilateral meeting hosted by the Supreme Court of Ireland. The purpose of this bilateral is to provide both Courts with an opportunity to discuss topics of mutual interest and to exchange knowledge on a wide range of legal issues. The visit reflects the importance of the ties between the Judiciary of Ireland with those in other common law legal jurisdictions.

Biennial meeting with United Kingdom Judiciaries.

In December 2020, a delegation of judges from the Superior Courts of Ireland, led by the Chief Justice Mr. Justice Frank Clarke, will meet with a delegation of colleagues of the Judiciaries of the United Kingdom in Dublin, to discuss matters of mutual interest. The judiciaries of England and Wales, Scotland and the United Kingdom Supreme Court will be represented at this biennial meeting.

Commenting on these various engagements, the Chief Justice, Mr. Justice Frank Clarke, said:

> "I also very much welcome the continuation and development of our important international contacts during 2021. In addition to our regular bilateral and multilateral engagements, both with neighbouring jurisdictions and at the European level, I am very much looking forward to the planned visit of the Canadian Supreme Court during the summer months and have also commenced discussions to enhance our relations with the senior French judiciary. In the context of Brexit, reinforcing our relations with colleagues from the major European jurisdictions has become an important focus of our international work."

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