



TWENTY-SEVENTH INTERIM REPORT
of
THE COMMITTEE
on
COURT PRACTICE AND PROCEDURE

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ARNAFHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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TERMS OF REFERENCE

1. The Committee on Court Practice and Procedure was appointed by the Minister for Justice on April 13, 1962 with the following terms of reference:

- “(a) To inquire into the operation of the courts and to consider whether the cost of litigation could be reduced and the convenience of the public and the efficient despatch of civil and criminal business more effectively secured by amending the law in relation to the jurisdiction of the various courts and by making changes, by legislation or otherwise, in practice and procedure;
- (b) to consider whether, and if so, to what extent, the existing right to jury trial in civil actions should be abolished or modified;
- (c) to make interim reports on any matter or matters arising out of the ment Committee’s terms of reference as may from time to time appear to the Committee to merit immediate attention or to warrant separate treatment.”

2. By warrant of the Minister for Justice dated July 19, 1973 the foregoing terms of reference were extended by the addition of the following subhead:

- “(d) To make recommendations on such matters (including matters of substantive law) as the Minister for Justice may from time to time request the Committee to examine.”

MEMBERS OF THE COMMITTEE

The Hon. Mrs. Justice Susan Denham, Judge of the Supreme Court, Chairperson

The Hon. Mr. Justice Robert Barr, Judge of the High Court

The Hon. Mr. Justice Esmond Smyth, President of the Circuit Court

His Hon. Mr. Peter A. Smithwick, President of the District Court

Mr. Richard L. Nesbitt, S.C.

Mr. Gerard Hogan, S.C.

Mr. John Fitzpatrick, Solicitor

Mr. Garry McMahon, Solicitor

Mr. Peter Kelly

Mr. Joseph McPeake

Ms. Marian McGennis, T.D.

Mr. Peter Kavanagh, (Secretary)

Mr. James Tunney, who died on January 17, 2002, was a valued and long standing member of the Committee. He contributed to and participated in the work leading to this report.

TOPIC

The Committee has taken as the subject matter of the 27th Interim Report the general topic of the courts of e-government with particular reference to a Commercial Court with links to Arbitration Centres both domestic and international. The Committee is satisfied that in general the convenience of the public would be enhanced and the efficient despatch of court decisions would be facilitated by e-courts. In particular, in this report, the Committee makes recommendations in relation to the development of a Commercial Court with links to commercial arbitration centres at home and abroad.

It is recommended that e-courts should develop throughout the courts system. In particular, the specialist nature of an e-court Commercial Court would benefit the development of Dublin as an e-city, and Ireland as an e-commerce centre. Ireland's position as an e-commerce hub would be underpinned and reinforced by such development. It would be a significant service in "Ireland, Inc."

GOVERNMENT

Under the Constitution of Ireland there are three branches of government. Each branch of Irish government is developing and modernising. This includes the growth of e-government. The courts, as one of the three organs of government, are preparing for e-government.

e-GOVERNMENT

An important aspect of changing Ireland is e-government, which is proceeding together with other electronic developments such as e-commerce, e-mail, e-business. As the methods of communication and doing business change and develop so too do the tools of government. Information technology is at the heart of this change and is essential for the courts. This technology will be of particular importance as a tool in certain courts. The third branch of government, the courts, plan to develop e-courts to maintain an efficient and effective administration of justice. This will be an appropriate service within the State for business both within and without the State. With the growth of a high tech economy it is of importance that courts are developed to service the modern State and economy in accordance with new tools and expectations.

ADVANTAGES

Ireland already has many advantages which assist international commercial transactions. For example, Ireland has a settled common law jurisprudence. Ireland utilises English in its commercial transactions. Irish courts have established skills in major commercial litigation. There are other important factors.

COURTS SERVICE

A modern management body has been established to manage the courts¹. The Courts Service was established in November, 1999. The functions of the Courts Service are:

- To manage the courts;
- To provide support services for the judges;
- To provide information on the courts system to the public;
- To provide, manage and maintain court buildings;
- To provide facilities for the users of the courts.

It is planned that the Courts Service will be a world class model for court management.

Thus, the structure is in place to give modern management to the courts. This includes information technology, e-courts, to enable the development of a world class service.

Strategic Plan for the Courts Service

The Courts Service Strategic Plan, 2000-2003 was published in November, 2000. It set out a plan to manage the courts, support the judiciary and provide a high quality and professional service to all users of the courts. It includes a plan to devise and implement a 5 year Information Technology Strategy. Key performance indicators are stated as:

- Provision of high quality, reliable and leading edge systems.

¹ Courts Service Act, 1998.

- Implement Local and Wide Area Networks providing seamless integration of all Court Sites into a modern communications infrastructure based on modern information and communications technologies.
- Implement a Case Management System across all jurisdictions to manage criminal and road traffic cases.
- Implement a Civil Case Management System across all Court jurisdictions to manage the processing of civil business including family law proceedings and the work associated with the various specialised offices of the courts (i.e. Wards of Court, Examiner, Probate, Official Assignee, etc.)
- Implement systems to meet the accounting requirements of the Service.
- Develop a Management Information System to support the administrative and management requirements of the Service.
- Provide a modern office productivity tool across all Courts Service Sites.
- **Develop the capacity of the Service to supply services electronically, consistent with the Government initiative for the development of e-commerce.**

(The emphasis is added)

The Courts Service has presented this five year Information Technology Programme to the Minister for Justice, Equality and Law Reform, John O'Donoghue, T.D. and it has been accepted by the Department of Justice, Equality and Law Reform and by the Department of Finance. This programme is designed to lead to the creation of e-courts in Ireland.

e-CITY

The Dublin Chamber of Commerce has published a report from a Working Group entitled 'Dublin as a World Class e-City'. The e-city Working Group was asked by the Dublin Chamber Executive to study Dublin's capabilities as an international e-city and to make appropriate recommendations. The Working Group considered that their findings can be an example of what could also be achievable in other national locations. 'The output from the Working Group is intended to be an actionable and executable list of recommendations for the Chamber, its members, providers and operators and local and national government.'² This report describes the services and infrastructure that make an e-city. Dr. Horn, who chaired the Working Group, stressed the importance of such an e-city.

Clearly part of such an e-city is the legal infrastructure. Of key importance are the courts. It is part and parcel of developing Dublin as a world class e-city that the service given by the courts is compatible in form and content.

INTERNATIONAL FINANCIAL SERVICES CENTRE

The International Financial Services Centre has been a successful development which is planned to be a global leader in international financial electronic business. Further legal services and infrastructure for this centre should be developed in Ireland. Such services may be in courts and in other institutions, such as arbitration centres.

² Dublin as a world class e-city, e-city Working Group, Dublin Chamber of Commerce, Draft Report, 17th December, 2001, Executive Summary.

e-HUB

Ireland is placing itself as an e-commerce hub in the European Union and globally. It is therefore essential that the courts should be in a position to offer an appropriate service to support and facilitate such a hub.

LEGISLATION

The Electronic Commerce Act, 2000 was signed into law on 10th July, 2000. Having signed the bill in the traditional way the President then signed the Bill digitally. It is planned that this legislation creates equivalence of treatment between electronic documents, contracts writing, signatures, seals and their paper based counterparts under Irish law. The Act was passed to facilitate Ireland's position as a world-centre for electronic commerce. Part of this picture will be the development of e-courts. However, it will also involve the development of further specialist services.

A COMMERCIAL COURT - LONDON

There has been a Commercial Court in London for over 100 years. In October, 1894 a committee of senior English High Court judges considered the question of establishing a Commercial Court. The committee had itself been established following a resolution of the judges of the Queen's Bench Division in May, 1894 to the effect:

“That it is desirable that a list should be made of commercial causes to be tried at the Royal Courts of Justice by a judge alone or by jurors from the City: and that a commercial court should be constituted of judges to be named by the judges of the Queen's Bench Division”³

³ Quoted in Veeder, “Mr. Justice Lawrance: The ‘True Begetter’ of the English Commercial Court” (1994)

Following the positive recommendations of the Committee, a “Commercial List” was established and a memorandum on commercial causes was issued by the judges of the Queen’s Bench Division in February, 1895.⁴ The first case, *La Société Anonyme des Usiers Lanieres Malines et Duffel Reunies v. Pessors*⁵ - in which Flemish cloth manufacturers sought an account as against their London agent - was heard by Mathew J. sitting as the Commercial Judge on March 1, 1895.

Pressure for the establishment of a Commercial Court had been growing for some time within the City of London who were “dismayed with the unnecessary delays, technicalities and cost of commercial litigation in the Queen’s Bench Division.”⁶ Matters are generally thought to have come to a head following the judgment of Lawrance J. in *Rose v. Bank of Australasia*, an important test case concerning the law of general average. In light of concerns raised from that decision the need for a separate Commercial Court was recognised by the legal and judicial community. Today the Commercial Court is an important part of the infrastructure provided by London and the United Kingdom placing it as a world centre in commerce.

A COMMERCIAL COURT - SCOTLAND

Scotland has a Commercial Court in Edinburgh. It has been a successful development. Because of factors common to both jurisdictions the Scottish Commercial Court may well be an important precedent for Dublin.

110 LQR 292, 298.

⁴ Colman, *The Practice and Procedure of the Commercial Court* (3rd. Ed.) At p. 6.

⁵ (1895) 1 Comm. Cas. ix.

⁶ Veeder, *loc.cit.*, 298.

A COMMERCIAL COURT - DUBLIN

The High Court is the jurisdiction within which most important commercial cases currently proceed in Ireland. Such cases appear in a variety of court lists of that jurisdiction. Other jurisdictions also hear commercial cases.

There is merit in establishing a more specialised approach to commercial cases. Under the direction of the President of the relevant jurisdiction a division of that jurisdiction could be developed into a *de facto* Commercial Court. It would not involve the development of a stand-alone court. Rather, as is in fact done in certain areas already, judges with a particular expertise may specialise in that area of the jurisdiction. The High Court is the location for the larger and more important cases. Effectively the High Court would include the Commercial Court. Specialisation would facilitate the public, the State, the major institutions, Irish companies and multinational corporations. The convenience of the public and the efficient despatch of court business would be more effectively secured by such a development.

The type of cases heard by the Commercial Court may expand. It may be wise to commence with a restricted list of cases, such as those relating to intellectual property, and/or applications under the Arbitration (International Commercial) Act, 1998. Consideration may be given to including applications under the Company Law Enforcement Act, 2001.

However, if a pilot project was as extensive as to include a considerable volume of cases the number of judges nominated by the President of the High Court to such a project should reflect the estimated number and complexity of cases. As the project proceeds it may be appropriate to review the classes of cases included. This would be for the President of the

High Court to determine, or his nominee judges, with the assistance of the Courts Service, after the appropriate consultations.

With the expansion of the jurisdiction of the Circuit Court it may be that a specialist division of that court might also be developed in the future. Initially, however, it is recommended that a pilot project be considered in the High Court.

COMMERCIAL COURT OFFICE

To facilitate a pilot project Commercial Court it would be appropriate if a separate office were established by the Courts Service to manage the administration of the proposed pilot Commercial Court. This would enable cases to proceed with speed in accordance with any new directions, rules or electronic practice and procedures.

FINANCIAL AND OTHER BENEFIT

There is both a considerable financial imperative and financial benefit to the State in establishing a Commercial Court. Notwithstanding the past buoyancy of the Irish economy, the current realities of international trading, both for established domestic companies and enterprises considering an inward investment in the State, demand an efficient and relevant legal system to enable the speedy resolution of commercial disputes. The need for such a system can never be replaced by alternative dispute resolution procedures and/or arbitration.

The benefits of having a Commercial Court are substantial. They include, but are not limited to:

- (1) The return to the State from employment in new business attracted by the advantages of a jurisdiction with a functioning Commercial Court which offers a court system that accommodates modern business commercial needs.
- (2) The return to the State from employment in existing business which benefit in the availability of the services of a Commercial Court.
- (3) The savings to businesses which will flow from using the modern communication techniques of e-commerce when involved with a dispute resolution before the Court.
- (4) Maintaining the State's desire to be a global leader and player in e-commerce through the provision of e-court services. The attraction to other existing State initiatives that will benefit from the existence of a Commercial Court are obvious.

ARBITRATION

Consideration should be given to establishing an Arbitration Centre and/or links with existing centres of arbitration. Arbitration plays a significant role in the resolution of international commercial disputes. In other jurisdictions the establishment of such centres alongside the courts or with links to the courts has proved fruitful. The benefit of an arbitration centre in Dublin or links to arbitration centres should be explored in a pilot project.

In addition to establishing links to existing or future centres of arbitration a stand alone arbitration centre linked to the courts should be considered. It may be an area where a public private partnership would be applicable.

RELEVANT FACTORS FOR A PILOT COMMERCIAL COURT

- (a) A pilot Commercial Court would require support from the relevant institutions.
- (b) The planning of courts in the Four Courts complex should include planning to enable the development of a Commercial Court with e-court infrastructure.
- (c) Practice directions may be relevant.
- (d) Rules relating to e-government legislation may be made in conjunction with the Department of Enterprise, Trade and Employment.
- (e) The President of the High Court may consider requesting some judges to visit similar courts in other jurisdictions, such as in Scotland and England.
- (f) The Courts Service may identify and train civil servants of the State in the Courts Service to participate in such a project.
- (g) Appropriate resources should be made available and planned for such a project.

RECOMMENDATIONS

1. The Committee recommends continuing support and development of e-courts in Ireland.
2. The Committee recommends that a pilot project Commercial Court be developed in Dublin as a matter of urgency.
3. The management of such a project may be under the direction of the President of the High Court and the Courts Service.
4. Matters which might be usefully considered in such a project include:
 - (i) The designation of specific judges to the Court by the President of the High Court and the availability of relevant judicial studies for the judges.
 - (ii) The establishment of a separate office by the Courts Service to manage the administration of the pilot project Commercial Court and all pleadings and proceedings therein. The training of the nominated civil servants of the State.

- (iii) The consideration at a later stage of implementing as part of the project a pilot e-court within the Commercial Court. This would require the establishment of an e-court room and the training of all relevant personnel and may be part of the courts strategy to e-courts.
- (iv) The consideration of altering, by legislation, rule or practice direction, the pleadings or proceedings in the pilot Commercial Court.
- (v) The development of links to Arbitration Centres and the consideration of any necessary legislative or rule change. The consideration of the establishment of an arbitration centre to service the Commercial Court.
- (vi) The taking of any necessary steps to facilitate ease of access from Arbitration Centres to the Commercial Court.

Susan Denham (Chairperson)

Robert Barr

Esmond Smyth

Peter Smithwick

Richard Nesbitt

Gerard Hogan

John Fitzpatrick

Garry McMahon

Peter Kelly

Joseph McPeake

Marian McGennis

P.D. Kavanagh, Secretary
13th February
2002