

## **Roles and Responsibilities: For Whom? By Whom? The Irish Experience**

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During a discussion of ‘International Models of Court Governance’ at the 2008 annual meeting of the Association of Canadian Court Administrators held in St John’s, the Chief Executive Officer of the Irish Court Service (ICS) extended a general invitation to Association members and others interested in court governance to come to the St John’s of Europe, aka Dublin, and examine the Irish model first hand. A small group consisting of Canadian Chief Justices, a representative of the CBA, and a court administrator accepted the invitation in November 2008. The purpose of the visit was to gain information about the structure and operation of the ICS at a level that would not be apparent from a reading of its constituent legislation and available website or other public material. Of particular importance was the desire to obtain information about the motivations for choosing the particular model of court administration represented by the ICS through meetings with representatives of the various groups who were involved in its creation, and subsequent functioning, in particular; politicians, senior justice officials, judges, and senior officials working in the ICS itself.

Most major changes are precipitated by a triggering event and in the early 1990s the Irish Department of Justice failed to inform a judge that his request to be delisted had been granted and unknowingly the judge sat as a member of a court, which convicted a number of high-risk terrorists. The result was that the convictions were overturned and the terrorists were released from prison.

The resulting public outrage, along with a number of crises in the Department triggered the appointment by the Minister of Justice of a widely representative committee headed by a highly respected Justice of the Irish Supreme Court, the Honourable Susan Denham who just last

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year was appointed Chief Justice of Ireland. In 1995, Justice Denham and her group worked tirelessly, holding meetings and issuing reports, which culminated in the recommendation of establishing, under statute, an independent and permanent body to manage an administratively-unified court system. This resulted in the enactment of the *Court Services Act, 1998* and the establishment of the Irish Courts Service later that year. We were able to obtain unique perspectives of on-the-ground participants by meeting with politicians, senior justice officials, judges and other participants who presided over the birth of the ICS and its subsequent operation. There has been a transformational change in Irish Court Administration, which the ICS has been able to achieve in its twelve years of operation. From a fractured organization mired in crisis, the ICS has built an administrative structure now widely regarded in Ireland as the ‘Jewel in the Crown’ of Irish public administration. In the eyes of the Irish, the devolution of authority for court management and operation from Government to an independent statutory agency has been an overwhelming success. The words of the Irish Deputy Minister of Justice are instructive in this regard: “*It works. You should try it. It has been mutually beneficial.*”

Section 5 of the *Courts Services Act, 1998*, provides that the mandate of the Court Services is to:

- a) manage the courts;
- b) provide support services for the judges,
- c) provide information on the courts system to the public;
- d) provide, manage and maintain court buildings; and
- e) provide facilities for court users.

The service is a body corporate and, subject to the legislation, is independent in carrying out its mandate. The functions previously exercised by the Minister relating to management and administration of the Courts were transferred under the *Court Services Act, 1998*, to the Courts Service, as were some departmental staff.

Political accountability for the Service was to reside, and continue to reside, with the Minister who also retains ultimate responsibility, through his dealings with Treasury Board, for the size of the Courts Service’s fiscal envelope, as he does for the entire ‘Justice Family of Divisions.’

The ICS has a board consisting of seventeen members of which the judiciary holds nine positions. The board sets policy for the

administration of the court while the purely administrative aspects of the system are exercised through a CEO. The board consists of a barrister, solicitor, member of the staff, an officer of the minister, representative of the consumers, representative of the trade unions, a financial expert, and the CEO. The board is the face of the ICS. It is indicative of the transparency of the system. It works! The Irish are rightly very proud of their system.

The ICS was exceedingly kind and open to our delegation and arranged meetings with all levels of the judiciary, politicians, bureaucrats, the bar and their own staff. From our many interviews and meetings, it became apparent that the Department was happy to cede day-to-day responsibility for managing the courts service to the board and chief executive. In putting responsibility where it is exercised, on a daily basis, the efficiency gains have been enormous. It gave ownership back to those who understand and deliver the service. Openness, a willingness to consult and the confidence to weigh and consider what has been heard are all hallmarks of the new service.

If imitation is the highest form of flattery, then the Irish should be very flattered indeed, because the Scots and Northern Irish have adopted similar models of court administration and the Norwegians are closely examining the Irish model. Some may say that this model works well in good times when abundant funding is available as it was for the first nine years that ICS administered the court—but what about in tough times? The true test came when Ireland became the ‘I’ in PIGS, i.e. the group of European countries at greatest risk of financial failure in the EU. I will quote from a report prepared for me by the CEO last year.

There has been significant reduction in our financial allocation since 2008. Total current expenditure (both Pay and Non Pay) has decreased by €22.7m over the period 2008 to 2011. Capital allocation decreased by €25.5m in the same period to €11m, and our compliment of staff has also been significantly reduced—10% to date and 17% by 2014. We have managed, in spite of these challenges, to maintain front line services to a very high level and no Court sitting has been cancelled to date due to staff shortages. Greater challenges await us in 2012 and beyond but we will continue to meet these challenges head on and are committed to continue the process of transformation and reform.

The average cost of a case fell from €136 in 2008 to €118 in 2010 (an improvement of 13%) and waiting times decreased in many

instances or stayed unchanged despite substantial increases in the number of cases coming before the courts. The case load in the courts grew by 33% between 2005 and 2010; the number of Judges increased by 29% between 2002 and 2010 with no sustained increase in the number of staff.

During the period 2008 to 2011, significant savings have been realised in expenditure. By the end of 2011 it is projected that non-pay current expenditure reductions amounting to €15.146m (34%) will have been achieved through a range of budgetary control and cost saving measures.

The savings achieved in current expenditure include a:

- 47% reduction in expenditure on courthouse maintenance;
- 42% in Travel and subsistence for staff and judges;
- 40% in Interpretation;
- 40% in Office Expenses and
- 26% in other areas.

While this is a very significant curtailment of expenditure, it has been achieved without any short-term detrimental impact on the operation of the courts.

In addition during this period significant increases have been achieved in the level of income generated on services provided by the Courts Service. This has in turn reduced considerably the cost to the Exchequer of operating the courts. Savings in expenditure combined with increased fee income has resulted in a net saving to the Exchequer of €39.5m, since 2008.

Last month the CEO provided an update on his 2011 report:

There has been significant reduction in our financial allocation since 2008. Total current expenditure (both Pay and Non Pay) has decreased by €25.4m (25%) over the period 2008 to 2012. Capital allocation decreased by €28m (76%) in the same period to €8.7m, and our compliment of staff has also been significantly reduced—14% to date and 18% by 2015. We have managed, in spite of these challenges, to maintain front line services to a very high level and no Court sitting has been cancelled to date due to staff shortages. Greater challenges await us in 2013 and beyond but we will continue to

meet these challenges head on and are committed to continue the process of transformation and reform.

The average cost of a case fell from €136 in 2008 to €120 in 2011 (an improvement of 12%) and waiting times decreased in many instances or stayed unchanged. The case load in the courts grew by 23% between 2005 and 2011; the number of Judges increased by 22% between 2002 and 2012 with no sustained increase in the number of staff.

During the period 2008 to 2012, significant savings have been realized in expenditure. By the end of 2012 it is projected that non-pay current expenditure reductions amounting to €16.6m (38%) will have been achieved through a range of budgetary control and cost saving measures.

The savings achieved in current expenditure include a:

- 44% reduction in expenditure on courthouse maintenance,
- 46% in Travel and subsistence for staff and judges;
- 55% in Interpretation;\*
- 47% in General Premises Expenses; and
- 31% in other areas.

\* This reduction comes about due to a reduction in the number of non-nationals coming before the courts and the scheduling of cases by similar language type. While this is a very significant curtailment of expenditure, it has been achieved without any short-term detrimental impact on the operation of the courts.

In addition during this period significant increases have been achieved in the level of income generated on services provided by the Courts Service. This has in turn reduced considerably the cost to the Exchequer of operating the courts. Savings in expenditure combined with increased fee income has resulted in a net saving to the Exchequer of €45.4m since 2008.

When the present CEO was asked what advantage if any the new administrative model has over the old one in coping with the Irish economic crises, he answered:

That the most important single aspect is that decisions in relation to the service are made by the Board of the Courts Service and not by officials working in the Department of Justice, who may have

only a passing knowledge or interest in the Courts system. This is important in a number of respects;

- a) The Board has a wide membership, with a majority of judicial members, which gives them a far better understanding of the operation of the courts and the key priorities in relation to maintaining services at an acceptable level. The Board now makes decisions in relation to priority issues including expenditure and savings based on the extensive information made available to them by officials from within the Courts Service.
- b) The Board of the Courts Service decides on how the funding Voted to it by the Dáil (Parliament) is spent. This is crucial particularly when funding is extremely limited. We prioritize our spending based on our needs and requirements.
- c) The role of the judiciary on the board is key to the development of initiatives and the engagement of the judiciary with such initiatives is key when difficult decisions have to be made. Such decisions are now no longer made in isolation—the judiciary, staff and those other members on the Board representing the legal community, trade unions, consumers of our services, etc. now have a voice in relation to these initiatives and where the cuts have to fall.
- d) The fact that the Service is an independent agency chaired by the Chief Justice gives the Courts a certain standing and importance within the Justice sector which it never had when part of the Department of Justice—the Prisons and the Police Service would in the old days have been given first priority in most cases and while in my view this is still true to a certain degree the views and concerns of the Courts Service are now at least heard.
- e) The Courts Service is dedicated to the development and operation of the Courts, which has brought a focus and energy to this area which was not there before.

It is fair to say that the ‘proof is in the pudding’ in that the ICS model ‘works in all seasons.’

The real question is not whether the independent courts administration agency works but whether there is the political will in a

province to make it happen. The Irish experience clearly shows that there is nothing to fear in the devolution of authority for courts management and administration from government to an independent statutory agency. Indeed there are gains on all sides. The Irish politicians and government officials were uniformly pleased with the result of their experiment/leap of faith. It was the view of all those with whom we met that what was required to get the ball rolling in Ireland was leadership, vision, and trust.

