

# The Irish Commercial Court

The Hon. Mr. Justice Peter Kelly

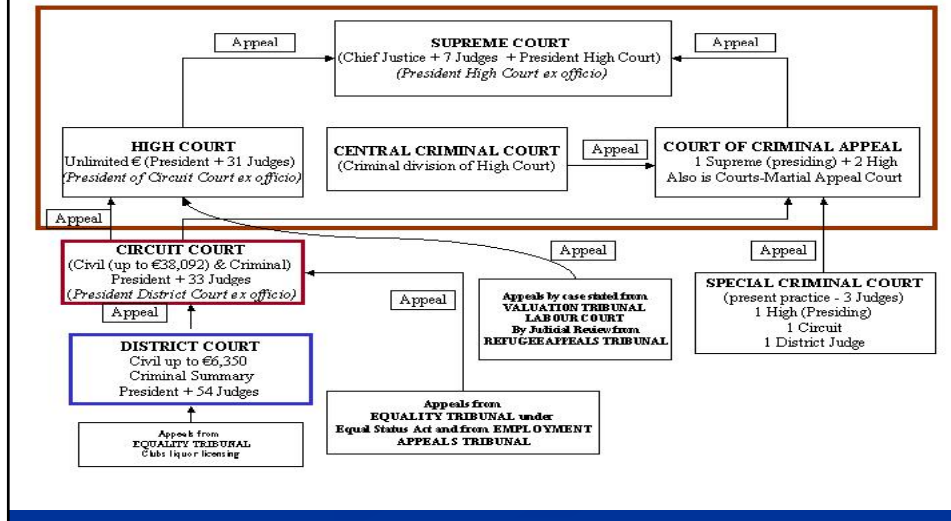
## The Irish Legal System: An Introduction

### Article 6:

- All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.
- These powers of government are exercisable only by or on the authority of the organs of State established by this Constitution.

# The Irish Courts

## MODERN IRISH COURTS SYSTEM



## Background

- Specialised institutional and procedural arrangements for commercial litigation recommended by a number of sources:
- Company Law Review Group, First Report (12.9.4):
  - “ there is a case for the establishment of a Commercial Division within the High Court which would deal with a Companies list as well as other commercial cases and we recommend that this should be established”
- Keane C.J. in *Orange Communication v. The Director of Telecommunications Regulation and Meteor Mobile Communications Ltd.*-
  - “absence of appropriate case management structures in the High Court...problem can indeed be acute” (at page 147)
- Committee on Court Practice and Procedure, 27<sup>th</sup> Report (February, 2002)

## Background

Committee on Court Practice and Procedure's Report a response, to:

- Developments in e-Government; Electronic Commerce Act, 2000
- Courts Service's 5 year e-Government strategy
- Dublin Chamber of Commerce Working Group report: "Dublin as a World Class e-City"
- Role of International Financial Services Centre
- Arbitration (International Commercial) Act, 1998

Committee's Report welcomed by President of High Court

President established group to prepare draft rules for Superior Courts Rules Committee

Committee comprised Mr Justice Kelly as chairman, two senior High Court registrars and Director of Reform and Development, Courts Service

Committee examined Commercial Court models in other jurisdictions

## Background

27<sup>th</sup> Report of Committee on Court Practice and Procedure recommended:

- Provision of an infrastructure for technologically enabled courts within framework of Courts Service 5 Year IT Strategy
- Project Commercial Court to be developed in High Court in Dublin under management of President of High Court
- Specially designated and trained judges for the court
- Separate office to manage the pilot project and proceedings
- Pilot e-court within the Commercial Court
- New pleadings and procedural arrangements to be legislated
- Development of links to Arbitration Centres
- Establishment of an arbitration centre to service the court
- Ease of access from Arbitration Centres to the Commercial Court

## Proceedings which may be entered in the Commercial List

Proceedings involving

- (a) any claim or counterclaim, not being a claim or counterclaim for damages for personal injuries, of not less than € 1,000,000 in value in respect of:
  - a business document or contract
  - purchase and sale of commodities
  - export or import of goods carriage of goods by land, sea, air or pipeline;
  - exploitation of oil and gas reserves or other natural resources
  - insurance and re- insurance
  - provision of services (excluding medical, quasi-medical or dental services)
  - operation of markets and exchanges in stocks, shares or other financial or investment instruments, or in commodities
  - construction of ships / aircraft
  - business agency
- (b) intellectual property
- (c) applications or proceedings under the Arbitration Acts (other than stay applications)
- (d) any other claim or counterclaim, not being claim or counterclaim for damages for personal injuries, which Judge, having regard to the commercial and any other aspect thereof, considers appropriate for entry in the Commercial List;
- (e) an appeal to the High Court from or application for judicial review of a decision or determination made / direction given by person or body authorised by statute to make such decision or determination or give such direction, where Judge considers appeal or application, having regard to the commercial and any other aspect thereof, appropriate for entry in the Commercial List

## Entry into the List

- Applications for transfer only for proceedings instituted on or after 12th January 2004
- Entry of a case in the Commercial List is at the **discretion** of the judge in charge of Commercial List
- Applications for the entry in the Commercial List are made by a party to judge in charge of Commercial List, by motion on notice to the other party or parties at any time before:
  - (a) the close of pleadings, for plenary proceedings, or
  - (b) completion of the filing of affidavits, for proceedings triable on affidavit without pleadings

### Main procedural features of the new regime

- Application for transfer is to judge in charge of Commercial List
- *Initial directions hearing* following allocation
- At Initial Directions Hearing, case management may be directed where complexity, number of issues or parties, volume of evidence or other special reason require it
- Where case management directed:  
*case management conference(s)* to be held  
*case booklet* to be maintained
- In all cases, *pre-trial conference* to be held and  
*pre-trial questionnaire*, *trial booklet* and *case summary* to be produced
- Provision for electronic service and filing of documents, to be regulated by Practice Direction

### Conduct of proceedings entered in the Commercial List

#### Key principles/ features

- Issues of law and fact should as far as possible be narrowed down in advance of trial, and cases should be progressed in a manner which is “just, expeditious and likely to minimise costs”
- Case preparation facilitated by three new types of hearing:
  1. *Initial directions hearing* at or following entry hearing
  2. *Case management conference* following initial directions hearing
  3. *Pre-trial conference* for all cases, whether case managed or not once all case management directions have been complied with, and if not so subject, once pleadings are closed or statements of issues exchanged
- Adjournments must be to specific date – no adjournments generally

## Alternative Dispute Resolution (ADR)

### Rule 6. (1)

“ ... a Judge may, at the initial directions hearing –

- (a) of his own motion and after hearing the parties, or
- (b) on the application of a party by motion on notice to the other party or parties returnable to the initial directions hearing,

give any of the following directions to facilitate the determination of the proceedings in the manner mentioned in that rule [viz. in a manner which is just, expeditious and likely to minimise the costs of the proceedings] :

...(xiii).. that the proceedings or any issue therein be adjourned for such time, not exceeding twenty-eight days, as he considers appropriate to allow the parties time to consider whether such proceedings or issue ought to be referred to a process of mediation, conciliation or arbitration, and where the parties decide so to refer the proceedings or issue, to extend the time for compliance by any party with any provision of these Rules or any order of the Court.”

## Function of Pre-trial Hearings

### 1. Initial directions hearing

- to direct mode of trial
- to fix issues of law or fact or facilitate the parties in defining them
- to give directions designed to advance preparation of case for trial

### 2. Case management conference, where required by

- (a) complexity,
- (b) number of issues / parties,
- (c) volume of evidence, or
- (d) other special reason, to ensure that
  - case is prepared for trial in manner which is “just, expeditious and likely to minimise costs”
  - as soon as possible prior to the trial date, issues are defined as “clearly, precisely and concisely as possible”
  - all pleadings, affidavits etc. are exchanged , and
  - all intended interlocutory applications are made

### 3. Pre-trial conference for all cases, whether case managed or not, to :

- address any steps remaining to be taken prior to trial
- quantify the likely length of the trial
- identify any special arrangements needed for evidence, ICT etc.

## Commercial Court Technology

- Electronic exchange, service and lodgment of documents to be regulated by Practice Direction
- Digital audio recording
- Document / Evidence dissemination hardware:
  - 17" flat touch screen monitors linked to courtroom server and controlled by registrar / judge
  - Plasma screen;
  - Visualiser
  - VCR
- Video conferencing
- Document / Evidence presentation from CD- Rom
- Plaintiff to collate trial bundle in consultation with defendant and save to CD-Rom using evidence indexing / presentation software

## Statistics

### COMMERCIAL COURT STATISTICS

12/1/2004 TO 31/12/10

- **CASES ENTERED INTO LIST: 1355**
- CASES DISPOSED OF: 1079**
- CASES OUTSTANDING: 276**

### AVERAGE WAITING PERIODS

- **From entry to List to conclusion of action:**  
**21 weeks**

## CONCLUDED CASES

### BREAKDOWN BY PERCENTAGE

- 25% of cases concluded in less than 4 weeks
- 50 % of cases concluded in less than 15 weeks
- 75% of cases concluded in less than 33 weeks
- 90% of cases concluded in less than 50 weeks

## MANNER IN WHICH CASES DISPOSED OF

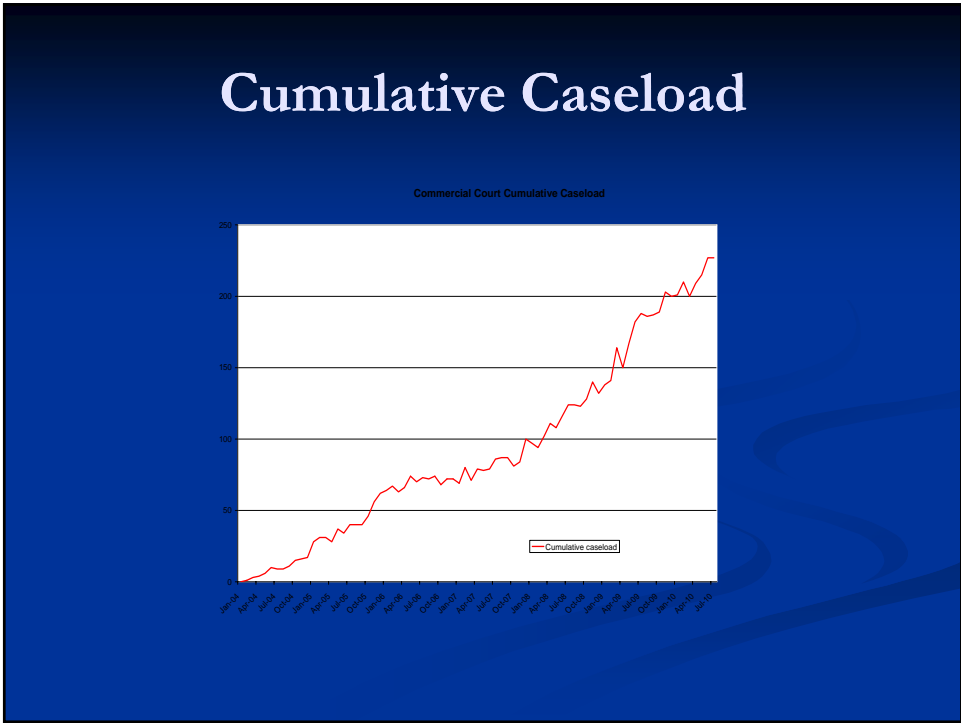
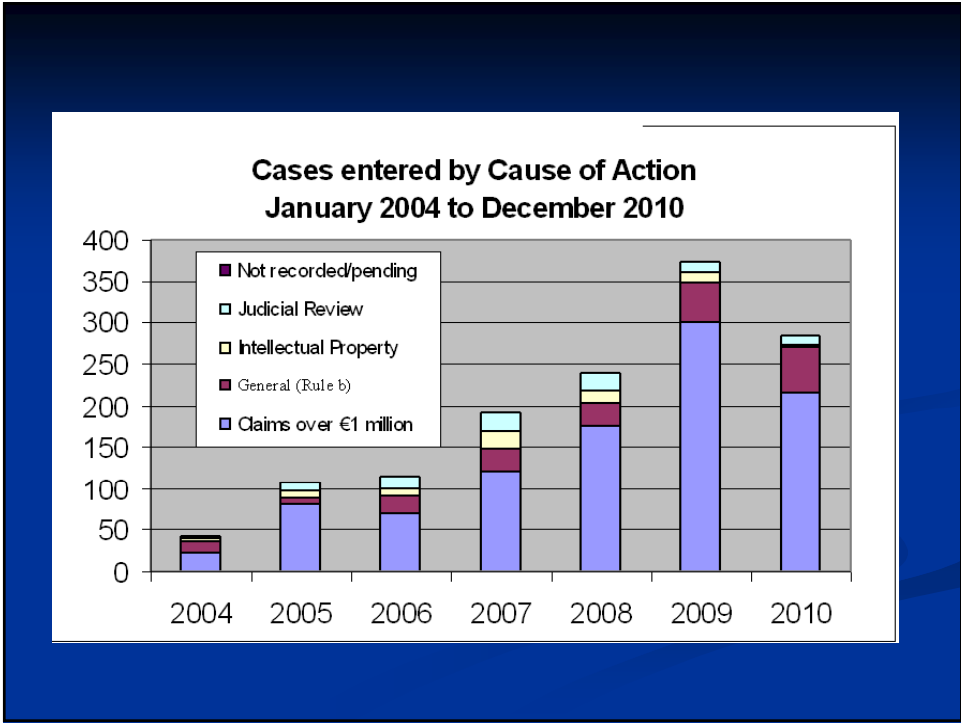
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|--------------------------------------|-----|-----|
| ■ Motion to dismiss                  | 4%  |     |
| ■ Settled after entry                | 6%  |     |
| ■ Settled after directions hearing   | 23% |     |
| ■ Settled after hearing date fixed   | 14% |     |
| ■ Settled after pre trial conference | <1% |     |
| ■ Settled at hearing                 | 18% |     |
| ■ Full Hearing                       |     | 33% |
| ■ Other (strike out, other codes)    | 1%  |     |

## Cases Entered

Year	2004	2005	2006	2007	2008	2009	2010
Cases entered	43	108	114	193	239	373	286
Of which concluded	43	107	113	186	224	289	118

## Cases Disposed of by Year

Year	2004	2005	2006	2007	2008	2009	2010
Cases disposed of	26	61	106	163	208	306	209



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