

THE COURTS IN NORTHERN IRELAND

Brief Historic Background

Politics has always played a big part in the legal system in Northern Ireland. That can lead to complexities. Brehon Law was one of the earliest forms of law in Ireland. Brehons were a professional class of native jurists thought to be descendents ultimately of the druids. This law continued to apply after the arrival of King Henry II and his Norman kinsmen brought English common law to Ireland in 1169.

The Normans were subject to English 'common law' which is interesting in itself. In English 'common law' the doctrine of binding precedent unified the local legal systems throughout England. Hence the term the 'common' law – it was just that – common to all. English law slowly spread its tentacles throughout Ireland and by 1300 it was applicable almost throughout the island of Ireland.

The seventeenth century saw the completion of the conquest of Ireland begun by Henry II some five centuries earlier. This meant the completion of the imposition of English common law and the displacement of the ancient Irish law. It was a century of bloody wars and conflict fought over the length and breadth of Ireland. Unfortunately to this day those wars affect social and political thought in both Northern and Southern Ireland.

Great controversy raged in Ireland over the dissolution of the Irish Parliament and the integration and union with Great Britain effected by the Act of Union 1800 passed in that year. The Irish would never forget that the soil in respect of which they now held such minor interests once belonged exclusively to them. The assumption of ownership by British conquest, confiscation and resettlement may have occurred several generations previously but the nationalist spirit sweeping Ireland in the 19th century would never permit acquiescence in the status quo. The winds of change were reaching gale force throughout Ireland.

To a large extent the 20th century saw the continued development in Ireland of reforms begun in the 19th century. Ireland was partitioned in 1921 into two separate jurisdictions. A new Irish Constitution in 1922 meant that twenty six counties became the independent 'Irish Free State'.¹

¹ The Irish Free State came into being on 6 December 1922 and remained as such until 1937. The Anglo Irish Treaty of December 1921 had given Southern Ireland dominion status within the Commonwealth.

The six other counties comprising Northern Ireland remained part of the United Kingdom, and this has, of course, been the subject of great controversy since then. Article 73 of the 1922 Irish Constitution carried all previous UK law forward into Irish law, which explains why some pre-1922 UK statutes are still in force in Ireland. Separate legal systems were established for the North of Ireland and the Irish Free State. The Irish Constitution of 1937 declared Ireland² to be a Sovereign independent state. Until quite recently however Ireland claimed jurisdiction over the whole Island of Ireland although actual jurisdiction only extended to the 26 counties comprising the Irish Republic³. The significance of this in terms of continuity of laws in Ireland was that all the laws previously enacted continued to be enforced insofar as they were found to be compatible with the new 1937 Irish Constitution. For example the old Larceny Act 1916 was in use in Ireland well after the Theft Act of 1968⁴ and 1969⁵ had replaced them in GB and Northern Ireland respectively. Each jurisdiction had its own Parliament and its own court system.

The Norman Conquest in Ireland established a legal system modelled on the English system. There were in existence Four Courts - Kings Bench, Exchequer, Common Pleas and Chancery. These were established in Dublin in the famous building bearing the name to this day. The four courts formed the heart of the English and Irish legal systems until late into the nineteenth century. Other courts were added over time reflecting trade such as a Court of Admiralty dealing with shipping cases, Probate to deal with Wills and a Landed Estates Court to endeavour to solve the bitter land problems in Ireland. Appeal Courts were added as were small claim courts known as civil bill court or county courts. Powers to try less serious criminal matters were designated 'The Magistrates' courts. By 1870 the court structure in Ireland was cumbersome and complicated.

A thorough reorganisation of the superior courts came about in 1877 along English lines. Nine courts were amalgamated into one High Court. In 1900 this had two divisions the Chancery division and the Queen's Bench division. Appeal courts were amalgamated into one Court of Appeal. The new High Court and the Court of Appeal (CA) were then known by the bizarre title of the Supreme Court of Judicature. There could always be a second appeal from the Court of Appeal in Dublin to

² Now known as Eire

³ This was recently changed by public demand in a referendum provided for in The Belfast) or Good Friday) Agreement.

⁴ Great Britain

⁵ Theft Act (NI) 1969

the highest court in the land, the appellate committee of the House of Lords sitting in London.

The Government of Ireland Act 1920 naturally created a separate court structure for the two jurisdictions in Ireland. The North however followed the existing structure previously prevailing in Ireland. A Supreme Court of Judicature of Northern Ireland was naturally established comprising a High Court and a Court of Appeal. In 1930 a court of Criminal Appeal came into being. The position today remains almost the same as when established one hundred and eighty six years ago.

The Government of Ireland Act 1920 s4 (1) provided the scope for Northern Ireland to develop its own legislation for the “peace, order and good government” of the province. The Parliament for NI was located originally in a building in South Belfast which is now the headquarters of the Presbyterian Church in Ireland. In 1932 it moved to its custom made building in the Stormont Estate outside Belfast. The Stormont government was responsible for the ‘transferred’ matters of law and order, local government, health and social services, education, industrial development, agriculture, planning and internal trade. The United Kingdom Parliament at Westminster however retained certain ‘excepted’ and ‘reserved’ matters. Imperial or matters of national concern were designated ‘excepted’. In other words it would be undesirable to enact local variations on such matters. This included matters relating to the armed forces, external trade, copyright law and weights and measures.

A Council of Ireland had been proposed – although it never came to fruition. It was to have responsibility for matters touching on postal services and taxes⁶ the registration of Deeds and the Supreme Court of Northern Ireland.

From 1920s until 1970s the legal system in NI developed in parallel with the English legal system, with ultimate appeal from the Northern Ireland Courts to the House of Lords in London. However, faced with an upsurge of terrorist violence post 1969 the government responded with a series of anti terrorism measures which would fundamentally amend the character of the courts in Northern Ireland.⁷

Though criminal courts continually existed in Northern Ireland the challenges to their authority both of those appearing in them and before

⁶ With the exception of road tax and stamp duty

⁷ Northern Ireland (Emergency Provisions) Act 1973 later amended as the Prevention of Terrorism (Temporary Provisions) Act 1974

them and the preference of the British government to introduce internment without trial, to avoid jurisdictional destruction of their symbolic function between 1970–1972, established yet another commission. In a quest to halt the crumbling of another pillar of the British liberal democracy the government appointed Lord Diplock to head an inquiry into the alternative to internment without trial. The commission found that the jury system as a means of trying terrorist crime was under strain and in danger of breaking down. It highlighted the danger of perverse acquittals because of partisan jurors and intimidation of jurors⁸. A system of trial without jury (*or judge only trials*) known as the Diplock Court was introduced and still pertains⁹. At this time Court Houses in Northern Ireland became heavily fortified with members of the judiciary under twenty-four hour police protection¹⁰.

In March 1972 following in the wake of what has become known as '*The Troubles*' the Stormont Parliament was prorogued by Westminster ushering in a period of what became known as '*direct rule*,' Laws on transferred matters were made by the Privy Council in London in the form of Orders in Council which were unamendable. The executive powers were exercised by the Secretary of State for Northern Ireland who is a member of the British Cabinet at Westminster.

Between 1973 and 1986 the focus of successive London Governments was the establishment of power sharing devolution in Northern Ireland. The first effort at this was the Sunningdale Agreement of 1974 which established for the first time a power sharing agreement in Northern Ireland headed by Sir Brian Faulkner, Ulster Unionist Party and Gerry Fitt, Social Democratic and Labour Party (SDLP). This executive functioned for a short time but was widely opposed within the Unionist community over the creation of a Council of Ireland which would have created an institutional link between the governing institutions North and South. The Executive collapsed in May 1974 in the midst of wide spread civil disobedience by the Unionist community, which became known as The Ulster Workers Council Strike.

⁸ The provisions underpinning the system are now contained in Part VII of the Terrorism Act 2000. The system operates on a defined list of offences contained in Schedule 9 to that Act (known as 'scheduled offences').

⁹ The Omagh bomb trial was conducted in a Diplock Court in front of Mr Justice Weir in the summer of 2006

¹⁰ Members of the judiciary were murdered by the Irish Republican Army (IRA). RM William Staunton shot by the IRA as he left his two daughters to school 25 January 1973. Resident Magistrates Martin McBurney and Judge Rory Conaghan were both murdered on 16 September 1974. Judge William Doyle was murdered outside his place of worship 16 January 1983 while on 8 April 1984 at the same Church Twenty One year old Mary Travers was shot dead by the IRA while attending Mass with her Father Tom Travers RM. One of Northern Ireland's most senior Judges Lord Justice Maurice Gibson and his Wife Lady Cecily Gibson were killed by an IRA landmine 25 April 1987.

Margaret Thatcher's new Conservative Government 1979 sought to restore local accountability through the introduction of 'rolling devolution' in 1982¹¹. This established an Assembly with no executive powers which was intended to scrutinise the actions of Westminster appointed direct rule Ministers. As well as pursuing devolution however Thatcher's government pursued an agenda of greater cooperation with the Irish Government which culminated in the signing of the Anglo Irish Agreement in 1985¹². This was a Treaty between two sovereign states and did not have the force of internal domestic law in either jurisdiction. However the agreement was introduced without the knowledge or agreement of the Unionist community who christened it the '*Anglo Irish diktat*'. Unionist withdrew their participation from all levels of administration including local government in a campaign under the slogan of '*Ulster says NO*'. This resulted in the collapse of the Assembly in 1986 and the return to direct rule from Westminster. However the Inter-Governmental Conference established by the Agreement remained in place and allowed representatives from the Irish government to express their views on the governance of Ulster.

Protracted political dialogue over the next decade resulted in the declaration of Paramilitary ceasefires in 1994. This new environment created the context for intensive multi-party negotiations which culminated in the Belfast Agreement on 10 April 1998 also known as The Good Friday Agreement¹³. The Belfast Agreement involves power sharing within Northern Ireland institutions and relations with the Irish Republic. It is underpinned by the legislative equality provisions contained in s75 and s76 of the Northern Ireland Act 1998¹⁴. This provided a new legal framework within Northern Ireland. Ss75 and 76 imposes a duty upon all public authorities to provide equality of opportunity and good relations. This in turn however provides a substantive ground for judicial review of executive action.

¹¹ Under the Northern Ireland Act 1982

¹² The Anglo-Irish Agreement was signed by the Taoiseach (Irish Prime Minister) Garret FitzGerald and British Prime Minister Margaret Thatcher on 15 November 1985 at Hillsborough, the former residence of the Governor General of Northern Ireland. The Agreement consists of thirteen articles dealing with the status of Northern Ireland, the Intergovernmental Conference, political, security and legal matters, cross-border co-operation and interparliamentary relations.

¹³ It was put to the electorates in May 1998. The New Northern Ireland Assembly was established on 25 June 1998 and first met on 1 July 1998 in '*shadow*' form until 2 December 1999 when powers were devolved to the new administration in Belfast. The Good Friday Agreement established ambitious new power sharing institutions including a 108-member Northern Ireland Assembly elected by proportional representation and a Northern Ireland Executive comprising ministers from all the major Unionist and Nationalist political parties. It also introduced a cross-community voting procedure, granting the Unionist and Nationalist groups mutual veto rights for certain votes in the Northern Ireland Assembly.

¹⁴ Public authorities in Northern Ireland must observe a new duty to have due regard to the need to promote equality of opportunity, implemented through equality schemes (section 75 and schedule 9). Part VII also makes it unlawful to engage in discrimination (section 76).

11 February 2000 saw the Secretary of State suspending the NI Assembly using powers under the Northern Ireland Act 2000. After further and protracted negotiations with the political parties in Belfast a further deal was struck and the Assembly was reinstated on 30 May 2000. 10 August 2001 the Assembly was suspended for 24 hours and similarly on 22 September 2001. On 14 October 2002 the Assembly was suspended again. The Northern Ireland Assembly elected on 26 November 2003 was dissolved on 30 January 2007. Members were known as MLA's. Although fully paid since that time they had never taken their seats. This caused some disquiet amongst the electorate and others who urged the Secretary of State to stop this obvious waste of public money. New elections to the Northern Ireland Assembly took place on 7 March 2007.

The Northern Ireland Act 2006 provided for a Transitional Assembly to take part in preparation for the restoration of devolved government in Northern Ireland in accordance with the St Andrews Agreement.¹⁵ A person who is a member of the Northern Ireland Assembly is also a member of the Transitional Assembly. The Transitional Assembly continued to meet until the Northern Ireland Assembly was restored. The Northern Ireland Assembly was restored on 8 May 2007 with Dr Ian R K Paisley: Democratic Unionist Party, elected as First Minister and Martin McGuinness: Sinn Fein, as Deputy First Minister.

Court structure in Northern Ireland

The Judicature (NI) Act 1978 created changes to the structure. A third division of the High Court was created – the Family division. The Crown Court replaced the old Assizes system and the Court of Criminal Appeal merged with the Court of Appeal. In 2006 the Supreme Court of Judicature in NI comprises the Court of Appeal, the High Court and the Crown Court. Judges entitled to sit in these courts are sometimes referred to as judges of the Supreme Court. That can prove to be a bit of a misnomer as a further appeal can lie on occasions from the Court of Appeal to the House of Lords (London).

The Secretary of State and Lord Chancellor is responsible for court administration, while the Northern Ireland Office, under the Secretary of

¹⁵ On Friday 13th October 2006, the British Prime Minister Tony Blair and Irish Taoiseach Bertie Ahern announced that a way forward had been agreed with the leaders of the Democratic Unionist Party, the Revd Ian Paisley, and the leader of Sinn Fein, Gerry Adams. The St Andrews' Agreement provided for a timetabled series of steps leading towards the eventual restoration of the Northern Ireland Assembly.

State, deals with policy and legislation concerning criminal law, the police and the penal system. The Secretary of State and Lord Chancellor have general responsibility for legal aid, advice and assistance. Civil legal aid is administered by the Law Society for Northern Ireland. Where legal aid is granted for criminal cases, it is free.

The Northern Ireland Court Service (the Court Service) was established in 1979 as a separate civil service department in Northern Ireland and is a department of the Lord Chancellor. The Court Service staff supports the administration of justice at 21 court venues throughout Northern Ireland as well as at its headquarters in Belfast.

The Northern Irish courts consist of superior courts and inferior courts, the former, The Supreme Court of Judicature of Northern Ireland comprising the Court of Appeal, the High Court, and the Crown Court. The latter comprising county courts, magistrates' courts and Industrial tribunals.

Superior courts

All matters relating to the Court of Appeal, the High Court and the Crown Court are under the jurisdiction of the UK Parliament. Judges are appointed by the Crown.

The Court of Appeal has power to review the civil law decisions of the High Court and the criminal law decisions of the Crown Court, and may in certain cases review the decisions of county courts and magistrates' courts. Subject to certain restrictions, an appeal from a judgment of the Court of Appeal can go to the House of Lords. The independent Criminal Cases Review Commission reviews alleged miscarriages of justice.

The High Court which sits in Belfast hears complex or important civil cases in three divisions and also appeals from county courts. They are divided as follows:-

- Queen's Bench Division, dealing with most civil law matters
- Chancery Division, dealing with, for instance, trusts and estates, title to land, mortgages and charges, wills and company matters
- Family Division, dealing principally with such matters as matrimonial cases, adoption, children in care and undisputed wills

The Crown Court which sits in ten towns in Northern Ireland deals with all serious criminal cases.

Inferior courts

The inferior courts are the county courts and the magistrates' courts, both of which differ in a number of ways from their counterparts in England and Wales. Industrial Tribunals in Northern Ireland come under the court structure. They are located in towns throughout the province. The main one is held in Belfast. There are also a number of other Tribunals such as the Mental Health Review, Lands, Rent assessment, Life Sentence Review, Pensions Appeals and Social Security and Child Support Tribunals.

County courts are primarily civil law courts. They are presided over by county court judges. They include three Family Care Centres wherein the Judge sits alone without a panel of Lay Magistrates. The county court judges in Belfast and Londonderry/Derry are called 'Recorder'. There are seven county court divisions throughout NI.

Youth Courts in Northern Ireland

As with the adult Magistrates Court there is a Youth Court corresponding to each of these districts. There are twenty court venues where the youth court of the relevant district will normally sit. The Youth Court is a specialist Court which was created for the specific purpose of hearing criminal charges against a child. Its powers are derived from the Children and Young Persons Act (Northern Ireland) Order 1968 and the Criminal Justice (Children) (Northern Ireland) Order 1998.

The Family Proceedings Courts in Northern Ireland

It could be argued that Victorian legislation regarding the care and protection of children prevailed in this jurisdiction until the Children (Northern Ireland) Order 1995 heralded a new dawn when it came into effect 4 November 1996. This far seeing legislation restructured the Family Court system (*known in the old days as the Welfare or Juvenile Courts*) and modernised the approach to family law. Court proceedings were finally co-ordinated while important new duties and powers for representing the legal and welfare interests of children were eventually legislated for.

Abolished was the cruel ex-parte Place of Safety Orders (POS) granted by a JP under s 99 of the Children and Young Persons Act (NI) 1968 whereby a child could be removed from the bosom of its family for a period of five weeks before the case was brought before a court. The former POS Orders was likened to 'internment' without trial by one

academic¹⁶. Five minutes in a child's life can be a long time five weeks was incomprehensible. Emergency Protection Orders (Art 63(1)) under the 1995 legislation replaced the old POS Order. As the name suggests Emergency Protection Orders are granted for the purposes of protecting a child who is considered to be in urgent need of protection by ensuring his/her immediate removal to a secure place. These ex-parte Orders can be granted by one of the new Lay Magistrates sitting alone in the Court building or at home. The beauty of the Order is that it is for a brief period it focuses attention on the child rather than the place of safety. The jurisdiction of family proceedings courts is to be found in the Children (NI) Order 1995. The procedure of same is governed by the Magistrates' Courts (Children (NI) Order 1995) Rules (NI) 1996.

There are Courts at County Court level and High Court level dealing with family proceedings. In the county court they are known as Family Care Centres and in the High Court it is the Family Division. The procedure to be followed in Family Care Centres is contained in Part IV of the Family Proceedings Rules (NI) 1996. The Children (Allocation of Proceedings) Order (NI) 1996 provides for the commencement and transfer of proceedings between the various courts. All three levels of courts have the same powers under the Children (NI) Order 1995 which is to be welcomed.

There are seven family proceedings courts corresponding to the seven County Court divisions in the Province. At times the court may be referred to as a Magistrates' Court or a court of summary jurisdiction sitting in petty sessions. The court consists of a bench of three persons all judicial officers. A Resident Magistrate with expertise in both Youth Justice and the Children Order matters chairs the bench. Two Lay Magistrates (LMs) sit with the RM. At least one of the LM's must be a female. Interestingly however an all female panel can sit as a bench but an all male panel cannot. The decision of the court is made by the majority vote of its members. Each member has an equal vote. Lay Magistrates in these courts were formerly known as Panellists. The chairperson may sit alone although this is a rare occurrence. There has been a recent judicial review on the matter.¹⁷

The Magistrates courts hear a wide range of civil actions and also appeals from Magistrate courts in both criminal and civil matters. The small

¹⁶ "Why Me" *The Use and Abuse of Place of Safety Orders* s99 Children and Young Person Act (NI) 1968 Rosemary Gregg QUB

¹⁷ In Her Majesty's Court of Appeal in NI. Appeal by way of case stated from a decision of a Resident Magistrate. DPP and MC. Ref KERF5540

claims courts hear consumer claims and minor civil cases. Appeals go from the county courts to the High Court.

In civil matters, the county courts decide most actions in which the amount or the value of specific articles claimed is below a certain level. The courts also deal with actions involving title to land or the recovery of land, equity matters, such as trusts and estates, mortgages, and the sale of land and partnerships.

The day-to-day work of dealing summarily with minor local criminal cases is carried out in magistrates' courts, presided over by a full-time, legally qualified resident magistrate (RM). There are 21 petty session districts in NI. These courts conduct preliminary hearings in more serious criminal cases. They hear and determine less serious criminal cases, as well as some civil and domestic cases. The Family Proceedings and Youth Courts are under the jurisdiction of the Magistrates court.

Included in the Court structure for NI are the Coroners Court which investigate the circumstances of sudden violent or unnatural deaths and the enforcement of Judgements Office which enforces money and other judgements. The Social Security Commissioners and Child Support Commissioners hears appeals from unified Appeal Tribunals in matters arising from social security, child support and tax credit.

There are three methods by which decisions made by a Magistrates' Court may be challenged.

1. An Appeal to the County Court by a person convicted against conviction and/or sentence and against orders binding persons over to keep the peace and/or be of good behaviour or against orders made in respect of civil cases. This includes cases under the Children (NI) Order 1995.
2. Case stated where any party to a case dissatisfied with any decision of the Court on any point of law involved in the determination of the proceeding or of any issue as to its jurisdiction may apply to the Court to state a case. This entails the Magistrates' Court setting forth the facts and grounds for its determination for the opinion of the Court of Appeal.
3. Judicial Review. Any party to proceedings may apply to the High Court for the Judicial Review of a Magistrates' Court decision. The applicant must obtain the leave of the High Court before proceeding with such an application. This type of application arises where the applicant

believes that the Court in question has erroneously exercised its jurisdiction or has exceeded its jurisdiction (Writ of *Certiorari*) or where a person has refused to perform a legal duty (Writ of *Mandamus*).

The history of lay involvement in the administration of justice

Richard the Lionheart in 1195 commissioned certain Knights to preserve the peace in unruly areas. They were responsible to the King for ensuring that the law was upheld. They were known as Keepers of the Peace.

Another ancient Act of 1327 referred to 'good and lawful men' to be appointed in every county in the land to 'guard the peace' and was first referred to as Conservators or Wardens of the Peace. They were appointed for life.

In the reign of King Edward III the 'peace' to be guarded was the King's peace and currently the Queen's Peace. Justices of the Peace today still use the powers conferred on them from the Justice of the Peace Act 1361. Women were not allowed to be JP's until 1919. The first woman JP was Ada Summers the Mayor of Stalybridge who was a JP by virtue of her office.

The office of JP was established in the Island of Ireland in the fourteenth century. JPs in England and Wales act as full-scale Magistrates. In NI their powers were and still are severely limited. They never enjoyed the same powers as that of their brethren in Great Britain. In Ireland the JPs were first mentioned in an Irish Statute of 1449 although the office was already in existence prior to this. The role had developed out of the ancient office of Keeper or Conservator of the Peace as prevailed in England.

JPs were granted power to bind a person to the Peace and/or be of good behaviour. Various laws were passed however to extend the powers and duties of Justices of the Peace in Ireland which included the authority to arrest and judge those who broke the law in their own county.

Following the partition of Ireland in 1921 the office of JP continued to exist in the Province. From that time until 1935 the Justices received no formal training for their role. They exercised extensive powers while sitting alone in petty sessions dispensing justice. Under the Summary Jurisdiction and Criminal Justice Act (NI) 1935 the right of JPs to sit in

petty session was removed. They were confined to sitting in ‘Special Courts’ such as remands or committal proceeding.

JPs also exercise out of court functions such as issuing criminal summonses and arrest warrants. They also signed summonses on a civil complaint and official documents such as passport applications and affidavits.

Things were to change again in 1942. Legislation dictated that lay panellists (known as Children’s Guardians) were required to sit with the Resident Magistrate in criminal cases involving juveniles. The panellist role was limited. They could ask questions of witnesses but were not involved in decision making.

The Children and Young Persons Act (NI) 1950 legislated for the court structure as it is known today. The legislation provided for a panel of two lay persons to sit on each occasion of the then justice or welfare courts with the Resident Magistrate. The lay panellists were given full judicial powers. If opinion differed among the panel the decision of the majority applied this still applies today. The juvenile court which heard all matters relating to children and young persons eventually had the designation changed¹⁸. There have been two substantive pieces of legislation since 1950. The first of these to bring children and young persons legal matters into line with the GB was the Children and Young Persons (Northern Ireland) Act 1968. The pressing need for legislative change in this area came with the Children (NI) Order 1995.

One of the recommendations of the Criminal Justice Review of 2000 (referred to earlier) and incorporated into the Justice (Northern Ireland) Act 2002 created a new judicial post of Lay Magistrate. The post came into being 1 April 2005. A Magistrate is a judicial officer exercising a summary jurisdiction in criminal and more recently non-criminal or civil matters. Lay Magistrates are not normally legally qualified. ‘Lay’ comes from the Greek word *laos* which means ‘people’. Lay Magistrates were appointed to represent the wider community within the justice system.

By Schedule 1 of the Justice (NI) Act 2002 ‘Lay Magistrate’ is listed as a judicial office. This Act also added the family proceedings court work to the functions of Lay Magistrates. All functions previously carried out by the Lay Panellists together with the criminal functions previously carried

¹⁸ The Children (NI) Order 1995 Art 164(4) stipulated that and civil matter pertaining to children and young persons should be heard in a Family Proceedings Court.

out by the JPs are now performed by Lay Magistrates. Their counterparts in GB are not remunerated. LMs must retire on reaching their 70th birthday. JPs on the other hand were appointed for life.

The Justice (NI) Act 2002 added the family proceedings court work to the functions of new LMs. All the functions previously carried out by lay panellists together with the criminal functions previously carried out by JPs are now performed by the LMs. The proposed new office of Lay Magistrate therefore did not sit easy with Justices of the Peace. Some JPs were also lay panellists in the youth courts across the Province. Others only performed the duties designated to JPs. These duties were jealously guarded and carried out with pride. The new Lay Magistrate posts were advertised widely across the Province. Those JPs not already lay panellists could apply for the new role with the hundreds of independent applicants. Some did most did not.

Consequently from 1 April 2005 the ancient and honourable office of Justice of the Peace in NI effectively came to an end. Those who had been formerly appointed retain the designation but have been stripped of all criminal functions. Most if not all of the criminal functions formerly carried out by JPs require a signature by a Lay Magistrate effectively rendering JPs redundant in Northern Ireland. It will be interesting to note whether or not anyone in the future will be appointed to this office in future. The face of justice in Northern Ireland changed once again.

Former panellists or JPs sat in the Northern Ireland Courts during the previous years and throughout the 'Troubles' sometimes at great personal cost for their own safety, with no remuneration other than mileage expenses if claimed. There was little or no security provision made for these office holders unlike the remainder of the judicial process in Northern Ireland. The new Lay Magistrates in Northern Ireland were remunerated as follows. A full day court sitting fee of £162.50 was paid increasing to £164 (wef 1.11.07). The half day court sitting fee will similarly be increased from £81 to £82 (wef 1.11.07). A daily fee for attendance at training events will be increased to £65.50 (wef 1.11.07) while a new half day fee is also being introduced - £33 (wef 1.11.07).

The Lord Chancellor has additionally agreed that these fees may be reviewed annually in line with approved annual average increases to judicial salaries. The Honourable Sir Brian Kerr Lord Chief Justice for Northern Ireland has agreed that Lay Magistrates may use the suffix 'LM' in appropriate circumstances.

Lay Magistrates/JPs in Great Britain are not remunerated. It must be remembered however that LMs in GB sit in the Magistrates Courts as a panel of three without any legal input on the bench. Legal advice comes from the legally qualified Clerk of the Court.

Lawyers in Northern Ireland

“The quality of solicitors and counsel varies as does the quality of wine from ‘unfit to ‘drink’ to vintage. Vintage tends to be very expensive beyond the means of the ordinary litigant. Most must be satisfied with ‘plonk’”¹⁹

The title of ‘lawyer’ is reserved for those in society who have achieved the special status of membership of the ‘legal profession’. Academic lawyers are not necessarily qualified, but are lawyers nonetheless. In the 13th century in Ireland Barristers started to reorganize themselves as a professional body. The Honourable Society of King's Inns was established in 1541 and is named after King Henry VIII. This today is the body responsible for training all barristers in the Republic of Ireland. The Law Library, which is located at the Four Courts, Dublin, has been described as *“a place which is in fact the fair or market where barristers are hired”*.²⁰

The partition of Ireland in 1921 saw judges and practicing barristers in Northern Ireland form their own Inn of Court in 1926. It is from this building that barrister work, in NI. The New Bar Library building opened in April 2003 and is located at Chichester Street, Belfast. The traditional smaller Bar Library is housed in the Royal Courts of Justice Belfast.

The main characteristic of the legal profession in Northern Ireland is that it is divided into two, barristers and solicitors. Solicitors in NI work in similar lines as their counter-parts in GB. Barristers in NI are self employed and are not permitted to form partnerships or work from ‘Chambers’ as prevails in England and Wales.

¹⁹ The Hon Mr. Justice Lightman, “The Civil Justice System and Legal Profession – The Challenges Ahead” (2003) 22 C.J.Q. 235

²⁰ McDonnell Bodkin M. , "Recollections of an Irish Judge" 1915 at page 84

Barristers are trained and organised in distinctive ways which reflect the differences in their functions and the services they provide. In April 2003 there were 555 barristers in independent practice in Northern Ireland 69% male 31% female. There are 66 Queen's Counsel, barristers who have earned a high reputation and are appointed by the Queen on the recommendation of the Lord Chancellor as senior advocates and advisers. The title does not imply an association with the State. From time to time barristers are invited by the Lord Chief Justice to 'take silk' that is to become a Queen's Counsel (QC).

A declaration has to be signed by QC's when they agree to become a Silk. A challenge²¹ was raised in 2000 against the wording of the said declaration. This led to the Lord Chancellor altering the declaration by deleting the words "*well and truly serve Her Majesty Queen Elizabeth II.*"²²

Those barristers who are not Queen's Counsel are called Junior Counsel. This term is misleading since many members of the Junior Bar are experienced barristers with considerable expertise.

Barristers in independent practice are known collectively as the Bar. They are specialists in litigation and advocacy who receive instructions from a solicitor. Barristers may not normally deal directly with members of the public. Their governing body is the Bar Council which like the Law Society for solicitors acts as a type of trade union safeguarding the interests of barristers. Barristers used to have sole rights of audience in the higher courts²³. Until recently access to barristers was only available in relation to advisory work and litigation through solicitors. However, the Bar Council has now decided that in such circumstances members of certain professional bodies may have direct access to barristers. Solicitors will continue to provide the main source of work for Counsel. Only a solicitor may brief counsel to appear in court.

Legal education in Northern Ireland

A would-be barrister or indeed solicitor must follow a single route in order to gain the coveted certificate to practice (Solicitors) and a call to the Bar for Counsel. For such a litigious society there is almost no

²¹ Re Treacy's Application [2000] NI 330 (Kerr J).

²² The declaration in NI now reads: "I [Name] do sincerely promise and declare that I will well and truly serve all whom I may lawfully be called upon to serve in the office of one of Her Majesty's counsel learned in law according to the best of my skill and understanding".

²³ Solicitors have rights of audience before Magistrates' courts and county courts. Additionally they may qualify for an advocacy certificate to appear in the higher courts.

instruction in law given in schools. Courses which are examined in the subject will invariably emanate from England and follow English law. There is a School of Law at Queen's University Belfast (QUB) and the University of Ulster based at Jordanstown and Magee campuses. These institutions offer various degree courses, certificates and diplomas both full and part-time. Colleges of Further Education offer lower-level courses in law. The Open University in Ireland offers an LLB Degree but only in English Law.

To become a solicitor or barrister in NI one has to successfully complete the vocational course organized by the Institute of Professional Legal Studies part of Queen's University. The University of Ulster bid for a like Institution has been given the green light by the Law Society for Northern Ireland but not the Northern Ireland Bar Council. This will mean some healthy competition which will be welcomed. The University of Ulster Institute will be established with effect from January 2008 on the Magee campus. One needs to equip themselves with a recognised law degree (of at least second class honours standard to be a barrister). Alternatively if one is in possession of another degree one can apply to complete a Bachelor of Legal Science degree at QUB (again either full or part-time). Competition for entry into the Institute/s is stiff.

An admission examination specifically designed to test ones aptitude for practicing law is held each December. In 2006 this consisted of two three hour examinations on consecutive days. The examination consisted of multiple choice questions. It is anticipated that the entry examination for the University of Ulster Institute will have to follow suit.

There are 90 places available on the Queen's University Institute course. 20 of these places are for prospective Barristers and the remainder for trainee Solicitors. In December 2006 approximately 1000 candidates competed for the 90 places. The opening of the Institute of the University of Ulster on the Magee Campus will provide for a further 55 places for prospective Solicitors. This will give a small glimmer of hope to prospective members of the legal profession in Northern Ireland. There has been litigation both recent and in the past challenging the legitimacy of the admission procedures for the Queen's University Institute. This has been unsuccessful.²⁴ The current tuition fees for both courses are £6,750. There is also a registration fee payable to the professional body - £250 for Bar trainees and £375 for Solicitor trainees.

²⁴ *Re CH* [2000] NI 62 (Carswell LCJ) and *Re Kelly's Application* [2000] NI 103 (CA)

For such a small population in the Province 1 ½ million there is at least one barrister for every 3,500 residents and one solicitor for every 740 residents. The foreseeable future for would be practitioners at the Northern Ireland Bar is not bright. Fees for the Institute are exceptionally high. Full employment for members of the Bar is formidable. However one lives in hope - cream will always rise to the top.