

# Judicial Appointments Advisory Board *Annual Report 2011*

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iii Judicial Appointments Advisory Board



## Judicial Appointments Advisory Board



The Hon. Mrs. Justice  
Susan Denham\*

Chief Justice &  
Chairperson of the Board



The Hon. Mr. Justice  
Matthew Deery

President of the Circuit  
Court



Ms. Máire Whelan SC\*\*

Attorney General



Mr. John Shaw Solicitor\*\*\*

Law Society of Ireland  
Nominee



Ms. Karen Dent\*\*\*\*

Nominee of the Minister  
for Justice, Equality &  
Defence



Mr. Brendan Ryan BL

Secretary to the Board



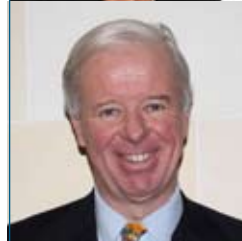
The Hon. Mr. Justice  
Nicholas Kearns

President of the High Court



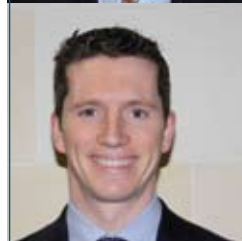
Her Honour Judge Miriam  
Malone

President of the District  
Court



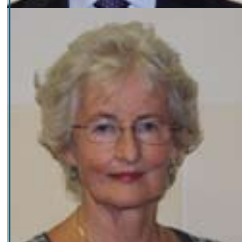
Mr. Paul O'Higgins SC

Chairperson of the Bar  
Council of Ireland



Dr. Simon Boucher\*\*\*\*

Nominee of the Minister for  
Justice, Equality & Defence

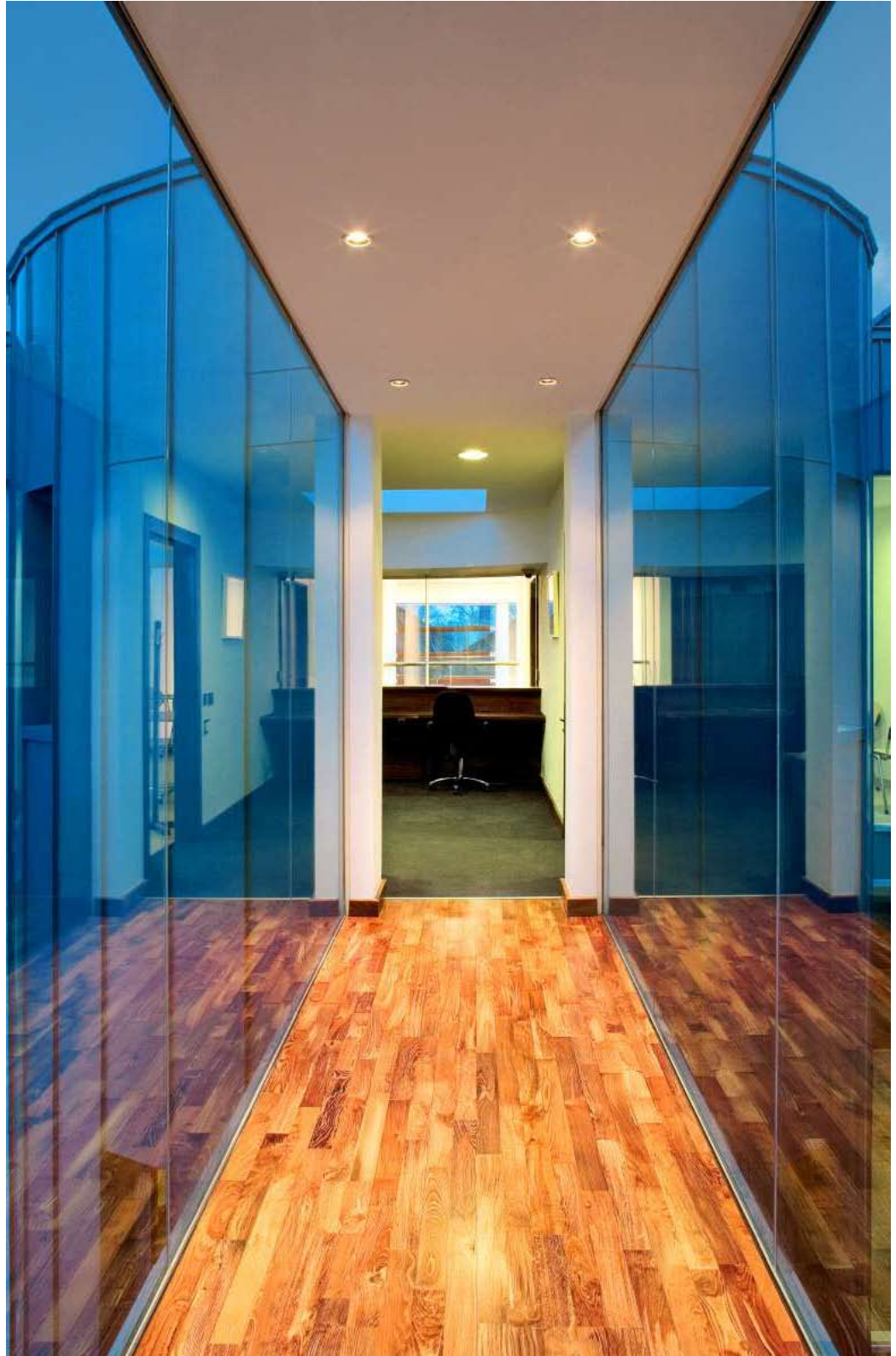


Dr. Valerie Bresnihan\*\*\*\*

Nominee of the Minister for  
Justice, Equality & Defence

\*The Hon. Mrs. Justice Susan Denham was appointed Chief Justice and Chairperson of the Board on the 27th July, 2011  
\*\* Ms. Máire Whelan SC replaced Mr. Paul Gallagher SC as Attorney General on the 9th March, 2011  
\*\*\* Mr. John Shaw replaced Mr. James MacGuill as nominee of the Law Society of Ireland on the 21st January, 2011  
\*\*\*\* Dr. Simon Boucher, Ms. Karen Dent and Dr. Valerie Bresnihan replaced Ms. Olive Braidon, Mr. Tadhg O'Donoghue and Mr. Pat McLoughlin, as nominees of the Minister for Justice, Equality and Defence on the 7th June, 2011





## 1 Introduction

The Judicial Appointments Advisory Board (hereafter “the Board”) was established pursuant to the **Courts and Court Officers Act, 1995** (hereafter “the Act”). The purpose of the Board is to identify persons and inform the Government of the suitability of those persons for appointment to judicial office.

The Board consists of (Section 13):

- ◆ the Chief Justice; who is Chairperson of the Board;
- ◆ the President of the High Court;
- ◆ the President of the Circuit Court;
- ◆ the President of the District Court;
- ◆ the Attorney General;
- ◆ a practising barrister who is nominated by the Chairperson for the time being of the Council of the Bar of Ireland;
- ◆ a practising solicitor who is nominated by the President for the time being of the Law Society of Ireland; and
- ◆ not more than three persons appointed by the Minister for Justice, Equality and Defence (hereafter “the Minister”), which are persons engaged in or having knowledge or experience of commerce, finance, administration, or persons who have experience as consumers of the service provided by the Courts that the Minister considers appropriate.

A person appointed to be a member of the Board by virtue of a nomination by the Chairperson of the Bar Council or by the President of the Law Society and persons appointed by the Minister are members of the Board for a period not exceeding three years and any such persons so appointed shall be eligible for re-appointment to the Board.

The Act (**Section 14**) enables the Board to adopt such procedures as it thinks fit to carry out its functions and, in the exercise of that power, the Board has adopted rules and procedures which are contained in Appendix (i) to this report. They also have power to appoint sub-committees to assist them and may:

- ◆ advertise for applications for judicial appointment;
- ◆ require applicants to complete application forms;
- ◆ consult persons concerning the suitability of applicants to the Board;
- ◆ invite persons identified by the Board to submit their names for consideration by the Board;
- ◆ arrange for the interviewing of applicants who wish to be considered by the Board for appointment to judicial office; and
- ◆ do such other things as the Board considers necessary to enable it to discharge its functions under the Act.

## Introduction

The extent to which these powers have been availed of by the Board is considered in Chapter 3 of this report.

**Section 16** of the Act deals with the submission of names to the Minister. A person who wishes to be considered for appointment to judicial office is required to so inform the Board in writing and to provide the Board with such information as it may require to enable it to consider the suitability of that person for judicial office, including information relating to education, professional qualifications, experience and character. To assist the Board in this regard the applicants are required to complete a detailed application form which includes questions on their practice, their professional qualifications, education, character, etc., and are also required to outline on their application form why they consider themselves suitable for judicial office.

This Section goes on to provide that where a judicial office stands vacant or before a vacancy in a judicial office arises, the Board, at the request of the Minister, is to submit to the Minister the names of all persons who have informed the Board of his or her wish to be considered for appointment to that judicial office and the Board shall submit the names of at least seven persons whom it recommends for appointment. The Board must also provide the Minister with particulars of education, professional qualification, experience and character of the persons whom it recommends under this Section.

Where fewer than seven persons inform the Board of their wish to be appointed to judicial office or where the Board is unable to recommend to the Minister at least seven persons, the Board may recommend to the Minister a lesser number of persons for appointment.

Where more than one judicial office in the same Court stands vacant or in advance of more than one vacancy arising in the same Court, the Board shall recommend at least seven persons in respect of each vacancy or such lesser number of names as the Minister specifies, following consultation with the Board.

**Section 16** of the Act goes on to require the Government when advising the President in relation to the appointment of a person to a judicial office to first consider persons who have been recommended by the Board. When a person is appointed on a recommendation by the Board, notice of that fact shall be published in *Iris Oifigiúil*.

The Board shall not submit or recommend the name of a person unless that person meets the eligibility requirements laid down by statute. Further, the Board shall not recommend the name of any person unless in the opinion of the Board the person concerned:

- ◆ has displayed in his/her practice as a barrister or solicitor, as the case may be, a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned;



- ◆ is suitable on grounds of character and temperament;
- ◆ is otherwise suitable; and
- ◆ complies with the requirements of Section 19 of the Act.

Having received the advice of counsel, the Board interprets these requirements as a minimum standard. A person must have these qualities to be recommended, but having these qualities is in itself not sufficient for a person to be recommended.

Under **Section 17** of the Act (as amended), the procedures set out above do not apply where the Government proposes to advise the President to appoint to judicial office a person who is for the time being a Judge of the High Court, Circuit Court, District Court or who is eligible for appointment to the Supreme Court or the High Court under the provisions of Section 5 of the Courts (Supplemental Provisions) Act, 1961, as amended.

**Section 18** of the Act provides that the Board shall not recommend its own members for appointment, with the exception of the Attorney General who must withdraw from any deliberations of the Board concerning his or her suitability for judicial office.

**Section 19** of the Act requires a person who wishes to be considered for appointment to judicial office to undertake in writing to the Board his or her agreement, if appointed to judicial office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or the President of the Court to which the person concerned is appointed.

Under **Section 23** of the Act, where the Government proposes to advise the President of an appointment to the office of Chief Justice or President of the High Court, President of the Circuit Court or President of the District Court, it is required first to have regard to the qualifications and suitability of persons who are serving at that time as judges in Courts established in pursuance of Article 34 of the Constitution.

There have been some amendments to the procedures followed by the Board since 1995:

- a) **The Standards in Public Office Act, 2001 as amended by Section 53 of the Civil Law (Miscellaneous Provisions Act), 2008** requires applicants to certify that their tax affairs are in order. **Section 22 (1)** prohibits the Board from recommending a person for judicial office unless the person has furnished to the Board:
  - (I) a tax clearance certificate that was issued to the person not more than eighteen months before the date of the recommendation, and
  - (II) a statutory declaration made by the person not more than three months before that date to the effect that, at the time of the making of the declaration, the person is, to the best of his or her knowledge and belief, in compliance with the obligations specified in *subsection (1) of section 25* and that nothing in *subsection (2)* of that section prevents the issue to him or her of a tax clearance certificate.

## Introduction

- b) The criteria for selection to the Supreme and High Courts has been amended by **Section 8 of the Courts and Court Officers Act 2002**.

The purpose of this amendment seems to be to ensure that solicitors appointed to the Supreme and High Courts (as they are now eligible to be under Section 5 of the 1961 Act, as amended by Section 4 of the 2002 Act) are sufficiently conversant with practice and procedure in the Superior Courts.

It is best to quote these directly:

### **Subsection (7)**

- b) (i) “The Board shall recommend a person to the Minister under this section only if the Board is of the opinion that the person:
- (I) has displayed in his or her practice as a barrister or a solicitor a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned,
  - (II) in the case of an appointment to the office of ordinary judge of the Supreme Court or of ordinary judge of the High Court, has an appropriate knowledge of the decisions, and an appropriate knowledge and appropriate experience of the practice and procedure, of the Supreme Court and the High Court,
  - (III) is suitable on the grounds of character and temperament,
  - (IV) complies with the requirements of section 19 of this Act, and
  - (V) is otherwise suitable.
- (ii) In determining whether the requirements of subparagraph (i)(II) of this paragraph are satisfied, the Board shall have regard, in particular, to the nature and extent of the practice of the person concerned insofar as it relates to his or her personal conduct of proceedings in the Supreme Court and the High Court whether as an advocate or as a solicitor instructing counsel in such proceedings or both”.

In the carrying out of its functions, the Board places advertisements calling on all those who wish to be considered for appointment to judicial office to apply to the Board. Additionally, all those who already have applications on file may be requested to re-apply.

In 2011, a new dedicated Judicial Appointments Advisory Board website “jaab.ie” was created specifically to contain information of upcoming judicial vacancies and deadlines for applications. General information is also available from the website in relation to the application process.

There is a separate standard application form for each Court level. Each completed application form must be accompanied by twelve original photographs. Two references must be furnished by referees directly to the Secretary and such letters must be submitted by referees and not by the applicants themselves. As previously stated, under Section 22 of the Standards in Public Office Act, 2001 as amended, the Board cannot recommend a person to the Minister unless that person has furnished to the Board the relevant tax clearance certificate issued to that person not more than eighteen months before the date of recommendation and a statutory declaration that their tax affairs are in order, made by the person not more than three months before that date. In practice, the tax clearance certificate is submitted with the application form or on the expiration of a certificate previously provided by the applicant. The Secretary to the Board writes to all applicants to request the statutory declaration when vacancies are advertised or preceding a meeting of the Board.

The process of considering persons and submitting names to the Minister commences when the Minister communicates with the Chairperson of the Board to request recommendations where a judicial vacancy exists or is due to arise. The Chairperson then agrees a suitable date with the Secretary, who informs the members of the Board. The members are given an agenda for the meeting, including a copy of the Minister's request (which indicates the number and jurisdiction of the vacancy(ies)) and a copy of all applications on file for the relevant jurisdiction(s).

Following the Board meeting, the Secretary to the Board corresponds with the Bar Council of Ireland and the Law Society of Ireland, as appropriate, asking them to verify that those who are to be recommended are in good standing with those professional bodies and that they meet the statutory requirements under the Courts (Supplemental Provisions) Act 1961 (as amended). Once a reply has been received, the Chairperson writes to the Minister, setting out the Board's recommendations.



## 2 Applications & Appointments

During the period that this report is concerned with, the Board met on five occasions.

The composition of the Board changed in January 2011 when Mr. John Shaw replaced Mr. James MacGuill as nominee of the Law Society of Ireland and consequently became a member of the Board.

A second change took place in March 2011 when Ms. Máire Whelan SC replaced Mr. Paul Gallagher SC as Attorney General and consequently became a member of the Board.

A third change took place in June 2011 when Dr. Simon Boucher, Ms. Karen Dent and Dr. Valerie Bresnihan replaced Ms. Olive Braiden, Mr. Tadhg O'Donoghue and Mr. Pat McLoughlin, respectively, as nominees of the Minister for Justice, Equality and Defence and consequently became members of the Board.

A fourth change took place in July 2011 when The Hon. Mr. Justice John L. Murray's tenure as Chief Justice expired and The Hon. Mrs. Justice Susan Denham was appointed Chief Justice and consequently Chairperson of the Board.

### 2.1 Supreme Court

No meeting took place.

### 2.2 High Court

The Board met on one occasion to consider two appointments to the High Court in 2011.

By letter dated the 20th April, 2011, the Minister for Justice, Equality & Defence communicated with the Board concerning the filling of two vacancies which had arisen as a result of the retirement of The Hon. Mr. Justice Bryan McMahon from the High Court with effect from the 10th April, 2011, and as a result of the pending retirement of The Hon. Mr. Justice Vivian Lavan from the High Court with effect from the 12th May, 2011. The Minister in accordance with section 16(2) of the Courts and Court Officers Act, 1995, requested the Board to furnish him with nominations for these vacancies and the name of each person who had informed the Board of his/her wish to be considered for these appointments.

The Board caused advertisements to be inserted in the Irish Independent on the 27th January, 2011, the Irish Examiner and the Irish Times on the 28th January, 2011, in the Legal Diary for the period from the 27th January, 2011 to the 4th March, 2011 and in the Law Gazette January/February 2011 edition requesting practising barristers and solicitors who were eligible for appointment to the Office of Ordinary Judge of the High Court and who wished to be considered for appointment to write to the Secretary of the Board for a copy of the application form which the Board required to be completed and which was required by the Board to be returned by Friday the 4th March, 2011 at 5p.m.



## Applications & Appointments

On the 14th July, 2011, the Judicial Appointments Advisory Board considered fourteen applications for two positions of Ordinary Judge of the High Court.

### Applications considered for the High Court – July 2011

Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male	0	0	9
Female	0	0	2
<b>Barrister</b>			
Male	0	0	0
Female	0	0	0
<b>Solicitor</b>			
Male	0	1	2
Female	0	0	0

Where applicants have qualified as members of both professions, they have been included under the profession practised at the time the application was made for the purpose of the above statistics.

## 2.3 Circuit Court

The Board met on two occasions to consider five appointments to the Circuit Court in 2011.

By letter dated the 13th January, 2011, the Minister for Justice & Law Reform communicated with the Board concerning the filling of a vacancy which would arise as a result of the retirement of His Honour Judge Frank O'Donnell from the Circuit Court with effect from the 7th March, 2011. The Minister in accordance with section 16(2) of the Courts and Court Officers Act, 1995, requested the Board to furnish him with nominations for this vacancy and the name of each person who had informed the Board of his/her wish to be considered for this appointment.

The Board caused advertisements to be inserted in the Irish Independent on the 27th January, 2011, the Irish Examiner and the Irish Times on the 28th January, 2011, in the Legal Diary for the period from the 27th January, 2011 to the 4th March, 2011 and in the Law Gazette January/February 2011 edition requesting practising barristers and solicitors who were eligible for appointment to the Office of Ordinary Judge of the Circuit Court and who wished to be considered for appointment to write to the Secretary of the Board for a copy of the application form which the Board required to be completed and which was required by the Board to be returned by Friday the 18th February, 2011 at 5p.m.

On the 2nd March, 2011, the Judicial Appointments Advisory Board considered eighty-two applications for one position of Ordinary Judge of the Circuit Court.

#### Applications considered for the Circuit Court – March 2011

Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male	0	0	5
Female	0	0	5
<b>Barrister</b>			
Male	1	2	9
Female	2	4	3
<b>Solicitor</b>			
Male	2	5	27
Female	2	5	10

Where applicants have qualified as members of both professions, they have been included under the profession practised at the time the application was made for the purpose of the above statistics.

By letter dated the 21st October, 2011, the Minister for Justice, Equality & Defence communicated with the Board concerning the filling of three vacancies which had arisen as a result of the death of serving judge His Honour Judge Corneilus Murphy on the 1st August, 2011, as a result of the retirement of His Honour Judge Anthony Kennedy on the 1st October, 2011, and as a result of the retirement of Her Honour Judge Olive Buttimer from the Circuit Court with effect from the 14th October, 2011. In addition, the Minister communicated with the Board concerning the filling of one further vacancy which would arise as a result of the elevation of His Honour Judge Michael White to the position of Ordinary Judge of the High Court with effect from the 24th October, 2011. The Minister in accordance with section 16(2) of the Courts and Court Officers Act, 1995, requested the Board to furnish him with nominations for these vacancies and the name of each person who had informed the Board of his/her wish to be considered for these appointments.

No new advertisements were placed in relation to these vacancies.

## Applications & Appointments

On the 15th November, 2011, the Judicial Appointments Advisory Board considered ninety-five applications for four positions of Ordinary Judge of the Circuit Court.

### Applications considered for the Circuit Court – November 2011

Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male	0	0	5
Female	0	0	4
<b>Barrister</b>			
Male	1	2	10
Female	3	4	3
<b>Solicitor</b>			
Male	2	6	34
Female	3	5	13

Where applicants have qualified as members of both professions, they have been included under the profession practised at the time the application was made for the purpose of the above statistics.

## 2.4 District Court

The Board met on two occasions to consider four appointments to the District Court in 2011.

By letter dated the 11th November, 2010, the Minister for Justice & Law Reform communicated with the Board concerning the filling of a vacancy which would arise as a result of the retirement of Judge Thomas Fitzpatrick from the District Court with effect from the 2nd January, 2011. The Minister in accordance with section 16(2) of the Courts and Court Officers Act, 1995, requested the Board to furnish him with nominations for this vacancy and the name of each person who had informed the Board of his/her wish to be considered for this appointment.

No new advertisements were placed in relation to this vacancy.

On the 18th January, 2011, the Judicial Appointments Advisory Board considered one hundred and twenty-seven applications for one position of Judge of the District Court.

### Applications considered for the District Court - January 2011

Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male	0	0	0
Female	0	0	1
<b>Barrister</b>			
Male	3	2	1
Female	3	3	0
<b>Solicitor</b>			
Male	12	16	47
Female	6	10	23

Where applicants have qualified as members of both professions, they have been included under the profession practised at the time the application was made for the purpose of the above statistics.

By letter dated the 5th May, 2011, the Minister for Justice, Equality & Defence, communicated with the Board concerning the filling of two vacancies, one which had arisen as a result of the retirement of Judge William Harnett from the District Court with effect from the 30th April, 2011, and one which would arise as a result of the elevation of Judge Thomas O'Donnell to the position of Ordinary Judge of the Circuit Court with effect from the 13th May, 2011. The Minister in accordance with section 16(2) of the Courts and Court Officers Act, 1995, requested the Board to furnish him with nominations for these two vacancies and the name of each person who had informed the Board of his/her wish to be considered for these appointments.

The Board caused advertisements to be inserted in the Irish Independent on the 19th May, 2011, in the Irish Examiner and the Irish Times on the 20th May, 2011 and in the Legal Diary for the period from the 19th May, 2011 to the 9th June, 2011 requesting practising barristers and solicitors who were eligible for appointment to the Office of Judge of the District Court and who wished to be considered for appointment to write to the Secretary of the Board for a copy of the application form which the Board required to be completed and which was required by the Board to be returned by Thursday the 9th June, 2011 at 5p.m.

On the 14th July, 2011, the Judicial Appointments Advisory Board considered one hundred and forty-three applications for two positions of Judge of the District Court.

Applications & Appointments

**Applications considered for the District Court – July 2011**

Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male	0	0	0
Female	0	0	0
<b>Barrister</b>			
Male	5	4	5
Female	4	1	1
<b>Solicitor</b>			
Male	12	14	49
Female	11	14	23

Where applicants have qualified as members of both professions, they have been included under the profession practised at the time the application was made for the purpose of the above statistics.

By letter dated the 8th June, 2011, the Minister for Justice, Equality & Defence, communicated with the Board concerning the filling of a vacancy which would arise as a result of the retirement of Judge Michael Pattwell from the District Court with effect from the 30th June, 2011. The Minister in accordance with section 16(2) of the Courts and Court Officers Act, 1995, requested the Board to furnish him with nominations for this vacancy and the name of each person who had informed the Board of his/her wish to be considered for this appointment.

No new advertisements were placed in relation to this vacancy.

On the 14th July, 2011, the Judicial Appointments Advisory Board considered one hundred and forty-six applications for one position of Judge of the District Court.



### Applications considered for the District Court – July 2011

Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male	0	0	0
Female	0	0	0
<b>Barrister</b>			
Male	5	4	5
Female	4	1	1
<b>Solicitor</b>			
Male	12	14	52
Female	11	14	23

Where applicants have qualified as members of both professions, they have been included under the profession practised at the time the application was made for the purpose of the above statistics.

A meeting of the Judicial Appointments Advisory Board was also held on the 30th November, 2011.

## 2.5 Summary

The following five persons were appointed to judicial office by the President on the nomination of the Government in 2011 following recommendations made by the Judicial Appointments Advisory Board:

### High Court

Mr. Kevin Cross SC 24th October 2011

### District Court

Ms. Rosemary Horgan, Solicitor 27th May 2011

Mr. Patrick Durcan, Solicitor 16th November 2011

Ms. Gráinne Malone, BL 16th November 2011

Mr. Michael Coghlan, Solicitor 16th December 2011

Applications & Appointments

Other Appointments: The Hon. Mrs. Justice Susan Denham was appointed Chief Justice with effect from the 25th July, 2011.

His Honour Judge Michael White was elevated to the High Court from the Circuit Court with effect from the 24th October, 2011.

Judge Thomas O’Donnell was elevated to the Circuit Court from the District Court with effect from the 16th May, 2011.

The following table is a statistical profile of the appointees:

Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male	0	0	1
Female	0	0	0
<b>Barrister</b>			
Male	0	0	0
Female	0	1	0
<b>Solicitor</b>			
Male	0	0	2
Female	0	0	1

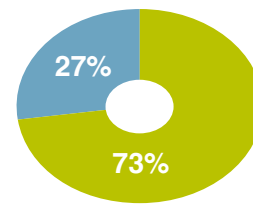
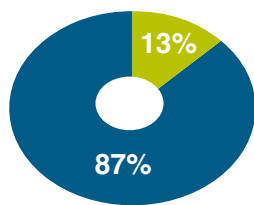
Where applicants have qualified as members of both professions, they have been included under the profession practised at the time the application was made for the purpose of the above statistics.

### 3 Statistics

Percentages have been rounded to the nearest whole number for the purpose of the below statistics:

**Total number of applications received for appointment to the Office of Ordinary Judge of the High Court in 2011.**

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
<b>Total</b>	15	13	2	11	0	4
% of Total	100%	87%	13%	73%	0%	27%

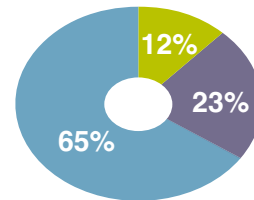
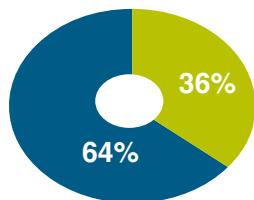


Male ● Female ●

Senior Counsel ● Barrister ● Solicitor ●

**Total number of applications received for appointment to the Office of Ordinary Judge of the Circuit Court in 2011.**

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
<b>Total</b>	107	68	39	13	24	70
% of Total	100%	64%	36%	12%	23%	65%



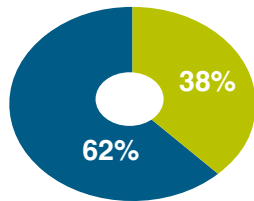
Male ● Female ●

Senior Counsel ● Barrister ● Solicitor ●

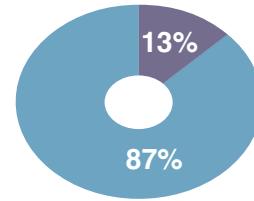
Statistics

**Total number of applications received for appointment to the Office of Judge of the District Court in 2011.**

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
<b>Total</b>	166	103	63	0	22	144
% of Total	100%	62%	38%	0%	13%	87%



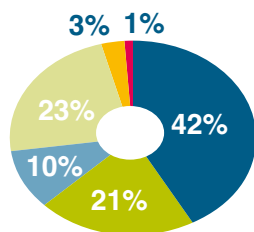
Male ● Female ●



Senior Counsel ● Barrister ● Solicitor ●

**Geographical Analysis of Applications - All Jurisdictions**

	Number of Applicants	% of Applicants
Dublin	122	42
Rest of Leinster	61	21
Connaught	28	10
Munster	66	23
Ulster	10	3
Outside Ireland	1	1
<b>Total</b>	<b>288</b>	<b>100</b>



● Dublin ● Munster  
 ● Rest of Leinster ● Ulster  
 ● Connaught ● Outside Ireland

## 4 Conclusions & Recommendations

The Board publishes advertisements from time to time inviting persons who wish to be considered for appointment to judicial office to submit their names to the Board. The new dedicated Judicial Appointments Advisory Board website “jaab.ie” also contains information of upcoming judicial vacancies and deadlines for applications. Applicants are required to complete extensive application forms and the nature of the information sought by these forms is kept under regular review by the Board.

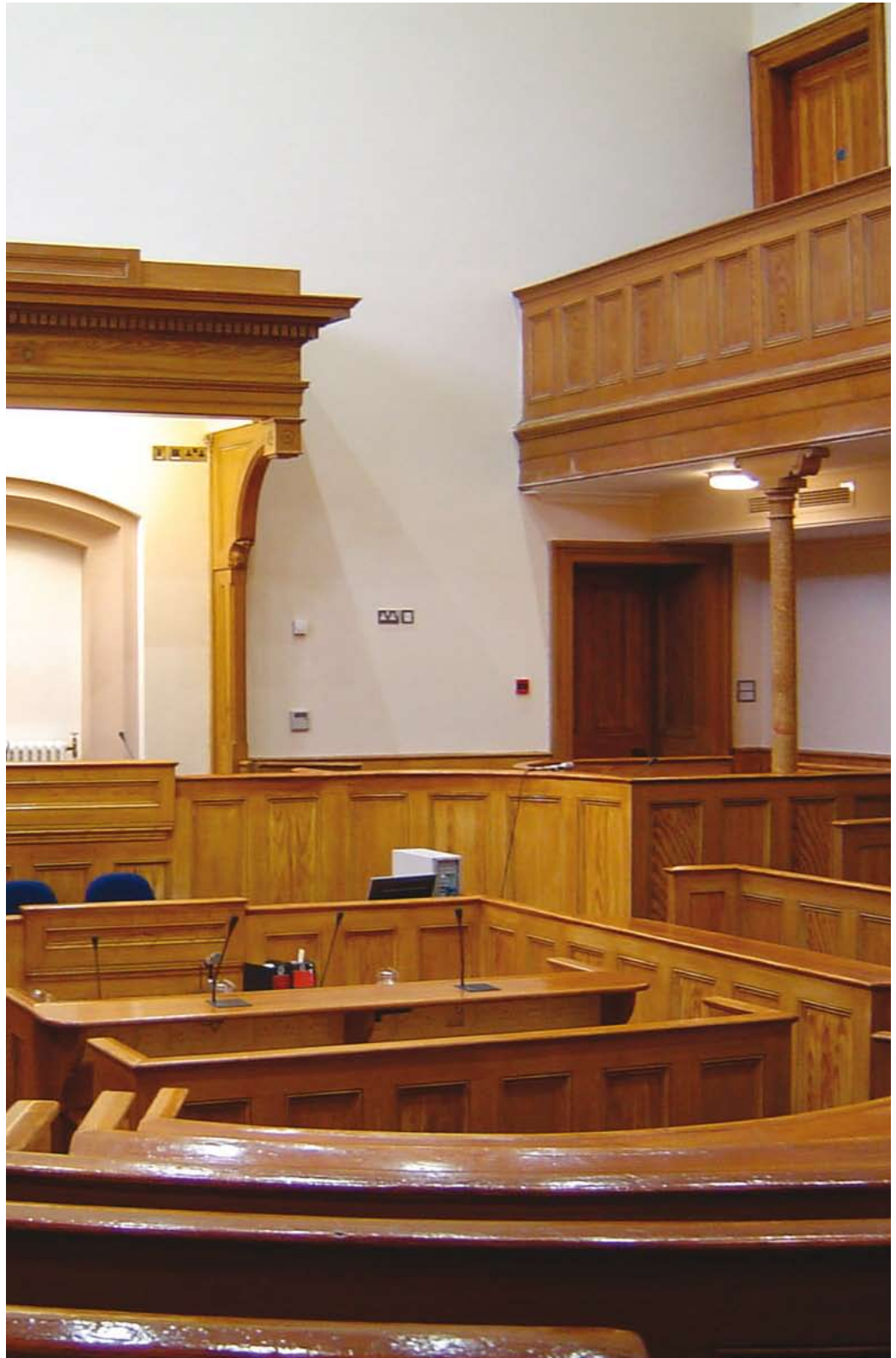
The Board has not to date availed of its power to arrange for the interviewing of applicants. There are serious practical obstacles to the Board conducting such a process routinely and generally the Board has sufficient information in particular which is provided by the applicants themselves to carry out its function in each instance. This is in the context that the Board does not have any function in deciding who should be appointed to judicial office. Moreover, the Board in submitting the names of persons whom it considers suitable for appointment does not make a decision or give an indication with regard to the relative merits of persons so submitted. The Board will continue to have regard to the option of interviewing applicants should this be considered necessary in particular circumstances.

The Board has also not availed of its power to invite persons identified by it to submit their names for consideration by the Board. There are clearly serious practical difficulties in exercising that power in the case of a body such as the Board whose role is to submit the names of persons who are suitable for appointment rather than decide who should be appointed.

The Board indicated in the 2002 Annual Report and subsequent Reports that it is concerned by the absence of any procedure for ensuring that a person who is recommended by them to the Minister as being suitable for appointment, and who is subsequently appointed, undergoes any form of medical examination. The Board recommended in the 2002 Annual Report that the Government should consider whether the existing legislation should be amended so as to enable the Minister to require any person whom the Government proposed to advise the President to appoint to any judicial office to undergo a medical examination before his/her appointment is finalised. Consideration could also be given to the introduction of an administrative requirement for such a medical examination. The 2002 Annual Report indicated that improved procedures had been implemented whereby applicants are now asked to confirm that there is no reason connected with his/her health which would prevent the applicant from performing the functions connected with judicial office. The details supplied provide the Board with a more complete picture of the health of applicants whom they propose to recommend for appointment to the Minister. However, the Board is firmly of the view that it is not practical for the Board to arrange for the medical examination of all those whom it recommends. Furthermore, the Board is also of the view that the best practice in the case of both the public and private sectors is for a medical examination to be required of those whom it is proposed **to appoint** to positions of particular responsibility, rather than the candidates for the position. It should also be noted that the Board is strongly of the opinion that the anonymity of all the applicants who are recommended is best preserved if only the person whom the Government propose to advise the President to appoint to judicial office is subject to a medical examination.



Conclusions & Recommendations



## 5 Appendices

### Appendix (i) Rules of the Judicial Appointments Advisory Board

#### Definitions

1. The following definitions apply for the purposes of these rules:

“The Act” means the Courts and Court Officers Act, 1995 (No. 31 of 1995); as amended.

“The Board” means the Judicial Appointments Advisory Board, established under section 13 of the Act.

“The Minister” means the Minister for Justice, Equality & Defence.

#### Chairperson

2. The Chief Justice of Ireland, for so long as he or she holds office as such, shall be the Chairperson of the Board.

#### Meetings

3. (1) The Board shall meet on such dates and at such times and in such places as the Chairperson of the Board shall from time to time direct.  
(2) The Chairperson of the Board shall, not less than ten days before the date of any meeting of the Board, cause written notice of such meeting to be given to each member of the Board.  
(3) A meeting of the Board may be adjourned to any date, time and place that the Board may decide.

#### Quorum

4. At any meeting of the Board a majority of the members of the Board shall constitute a Quorum.

## Appendices

### Presiding Member

5. The presiding member at any meeting of the Board shall be:
  - (a) the Chairperson of the Board;
  - (b) in the absence of the Chairperson of the Board, the President of the High Court;
  - (c) in the absence of both the Chairperson of the Board and the President of the High Court, such other person as may be agreed upon by a majority of the members of the Board present at the meeting.

### Secretary

6. (1) The Chairperson of the Board shall appoint a person to act as Secretary.
  - (2) The Secretary shall carry out such duties as may be conferred upon him or her by the Chairperson of the Board, and in particular shall be responsible for recording the minutes of the meetings of the Board.
  - (3) In the absence of the Secretary at a meeting of the Board, the presiding member shall appoint one of the members of the Board there present to record the minutes of that meeting.

### Voting

7. (1) Voting at meetings of the Board shall be by show of hands.
  - (2) Subject to rule 8, any resolution of the Board shall be passed by a majority of the members present at the meeting at which the resolution is considered, and such resolution shall be minuted.
  - (3) The presiding member at any meeting of the Board shall be entitled to vote and, in the event of a vote upon a resolution producing an equal division, the presiding member shall also have the casting vote.

#### Amendment of Rules

8. (1) Subject to sub-rule (2) of this rule, these rules may be amended by a majority vote of all the members of the Board on written notice being given to the Chairperson of the Board not less than ten days before the meeting at which the amendment will be considered.
- (2) On receiving the notice referred to in sub-rule (1) of this rule, the Chairperson of the Board shall immediately cause a copy of the notice to be sent to each member of the Board.

#### Sub-committees

9. (1) The Board may from time to time establish sub-committees comprised of members of the Board to which it may delegate the performance of any of the functions assigned to it under Part IV of the 1995 Act, save that no sub-committee may recommend to the Minister any person for appointment to judicial office, such function belonging exclusively to the Board.
- (2) Each sub-committee shall have not fewer than three members.
- (3) Without prejudice to the generality of sub-rule (1) of this rule, the Board may in particular establish sub-committees to perform any one or more of the following functions:
  - (a) to advertise for applications for judicial appointments;
  - (b) to draw up application forms to be used by applicants for appointment to judicial office;
  - (c) to consult persons concerning the suitability of applicants for appointment to judicial office;
  - (d) to make arrangements for the interviewing of, and to interview applicants who wish to be considered by the Board for appointment to judicial office and
  - (e) to do such other things as the Board considers necessary to enable it to discharge its duties under Part IV of the 1995 Act.

## Appendices

- (4) The Chairperson of each sub-committee shall be appointed by the Chairperson of the Board.
- (5) Resolutions of each sub-committee shall be passed by a majority of its members.
- (6) Each sub-committee shall meet on such dates and at such times and in such places, and shall give such notice of each meeting, as the sub-committee shall determine.

### **Interpretation**

10. These rules are to be interpreted in conjunction with the provisions of Part IV of the 1995 Act.

### **Commencement**

11. These rules shall come into force on such date as the Board shall determine.



## Appendix (ii) Numbers of valid applications considered at meetings of the Judicial Appointments Advisory Board 1996 - 2011

<b>Supreme Court</b>		
Board Meetings	Number of Vacancies	Number of Applications
March 1996	3	5
June 1999	1	4
January 2000	3	6
June 2000	1	2
October 2002	1	2
September 2004	1	2
July 2006	1	2
November 2009	1	2
June 2010	1	1

<b>High Court</b>		
Board Meetings	Number of Vacancies	Number of Applications
March 1996	2	16
May 1996	2	14
April 1997	1	13
April 1997	1	14
December 1997	1	13
November 1998	2	19
June 1999	1	18
October 1999	2	20
January 2000	1	18
March 2000	2	13
July 2000	1	9
January 2002	1	14
June 2002	4	27
December 2002	1	25
September 2004	3	17
October 2005	2	14
February 2006	1	19
March 2007	2	26
April 2007	4	33
February 2008	1	23
July 2010	1	13
July 2011	2	14

## Appendices

<b>Circuit Court</b>		
<b>Board Meeting</b>	<b>Number of Vacancies</b>	<b>Number of Applications</b>
June 1996	9	194
December 1996	2	199
May 1997	2	204
February 1998	3	219
March 1999	1	221
December 1999	1	224
January 2001	1	100
July 2001	3	98
June 2002	1	91
September 2002	2	90
January 2004	1	46
September 2004	3	82
December 2005	1	53
March 2007	1	82
April 2007	4	103
July 2007	1	90
June 2009	2	73
March 2011	1	82
November 2011	4	95

**District Court**

Board Meetings	Number of Vacancies	Number of Applications
August 1996	3	233
February 1997	1	245
April 1997	1	256
June 1998	3	291
October 1998	1	292
August 1999	1	306
December 1999	1	301
March 2000	1	155
March 2001	2	110
July 2001	1	109
June 2002	4	98
July 2002	1	93
May 2003	1	78
May 2004	1	43
September 2004	2	62
December 2004	1	70
May 2006	1	71
October 2006	2	97
March 2007	6	100
March 2008	1	95
June 2008	3	101
September 2008	1	102
November 2008	1	102
March 2009	1	137
July 2009	1	136
December 2009	2	136
October 2010	1	134
January 2011	1	127
July 2011	2	143
July 2011	1	146

Notes