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## Judicial Appointments Advisory Board

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Dublin 7

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# Judicial Appointments Advisory Board

## Annual Report 2002

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HER  
EXCELLENCY  
MURRAY ROBINSON  
GOVERNOR OF IRELAND TO  
COMMEMORATE THE  
HUNDRED YEARS  
OF SITTINGS IN THIS  
BUILDING ON  
11 NOVEMBER  
1911-2011  
CMXC







## **Judicial Appointments Advisory Board**

Annual Report 2002

\*10th April – 31st December

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\* The date of the passing of the Courts and Court Officers Act, 2002.



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## 1. Introduction



The Hon. Mr. Justice  
Ronan Keane  
Chief Justice

*Chairperson of the Board*



The Hon. Mr. Justice  
Joseph Finnegan

*President of the  
High Court*



The Hon. Mr. Justice  
Esmond Smyth

*President of the  
Circuit Court*



His Honour Judge  
Peter Smithwick

*President of the  
District Court*



Mr. Rory Brady S.C.

*Attorney General*



Mr. Conor Maguire S.C.

*Bar Council Nominee*



Mr. Laurence K. Shields  
Solicitor

*Law Society Nominee*



Ms. Olive Braiden

*Appointed by the Minister  
for Justice, Equality and  
Law Reform*



Mr. John Coyle

*Appointed by the Minister  
for Justice, Equality and  
Law Reform*



Mr. Tadhg O'Donoghue

*Appointed by the Minister  
for Justice, Equality and  
Law Reform*



Mr. Brendan Ryan B.L.

*Secretary to the Board*

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 Chairman 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 Law Reform (hereafter the 'Minister'), which are persons engaged in or giving 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 Chairman 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.

The extent to which these powers have been availed of by the Board is considered in Section 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 qualification, 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 appointment to 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 all 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 enough 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** 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 18 months before the date of the recommendation, and
  - (II) a statutory declaration made by the person not more than one month 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.

- b) The criteria for selection to the Supreme and High Courts have 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.

- b) (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 each year 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 are requested to re-apply. Applications are valid for a calendar year.

There is a separate standard application form for each court level. Each completed application form must be accompanied by twelve original photographs. As previously stated, under Section 22 of the Standards in Public Office Act, 2001, the Board cannot recommend a person to the Minister unless that person has furnished to the Board a 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 one month before that

date. In practice, the tax clearance certificate is submitted with the application form, and the Secretary to the Board writes to all applicants in advance of a meeting to request the statutory declaration.

The process of considering persons and submitting names to the Minister commences when the Minister communicates with the Chairman of the Board to request recommendations where a judicial vacancy exists or is due to arise. The Chairman 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 valid applications on file for the relevant jurisdiction(s)).

Following the Board meeting, the Secretary to the Board writes to the Bar Council and the Law Society, 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 1961 Act. Once an affirmative reply has been received, the Chairman writes to the Minister, setting out the Board's recommendations.

During the period that this Report is concerned with, the Board met on nine separate occasions and, in total, the Board made recommendations to the Minister in respect of thirteen judicial vacancies.

The composition of the Board changed in June 2002. Prior to this change, the Board comprised:

- The Hon. Mr. Justice Ronan Keane, Chairperson of the Board;
- The Hon. Mr. Justice Joseph Finnegan;
- The Hon. Mr. Justice Esmond Smyth;
- His Honour Judge Peter Smithwick;
- Mr. Michael McDowell S.C. (as Attorney General);
- Mr. Rory Brady S.C. (as Chairman of the Bar Council);
- Mr. Laurence K. Shields, Solicitor;
- Ms. Olive Braiden;
- Mr. John Coyle; and
- Mr. Tadhg O'Donoghue.

Mr. Michael McDowell T.D. was appointed as Minister for Justice, Equality and Law Reform and Mr. Rory Brady S.C. as Attorney General in June 2002. Mr. Rory Brady S.C. replaced Mr. Michael McDowell T.D. as Attorney General on the Judicial Appointments Advisory Board. Mr. Conor Maguire S.C. replaced Mr. Rory Brady S.C. on the Board as the nominee of the Bar Council of Ireland.

## 2.1 Meetings held to consider vacancies in the Supreme Court

By letter dated the 20th September 2002, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of the vacancy which was due to arise in the Supreme Court when The Hon. Mr. Justice Francis D. Murphy left the Bench on the 18th October 2002. 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.

On 17th October 2002, the Judicial Appointments Advisory Board considered two applications for the position of ordinary judge of the Supreme Court.



Applications considered October 2002			
Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male			1
Female			
<b>Barrister</b>			
Male			
Female			
<b>Solicitor</b>			
Male			1
Female			

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

Appointed: The Hon. Mr. Justice Brian McCracken<sup>1</sup>

<sup>1</sup>The Hon. Mr. Justice Brian McCracken was elevated by the Government from the High Court to the Supreme Court.

## 2.2 Meetings held to consider vacancies in the High Court

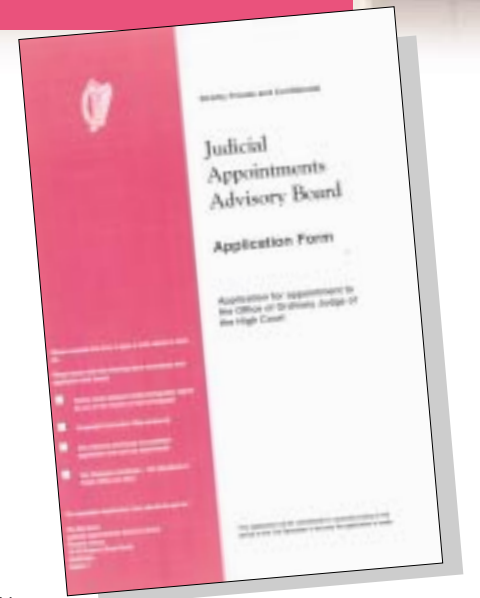
By letter dated the 12th March 2002, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of one vacancy in the High Court which was due to arise when The Hon. Mr. Justice Dermot Kinlen retired on the 19th April 2002.

By letter dated the 10th April 2002, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of two positions in the High Court which had been provided for in the Courts and Court Officers Act 2002.

The Board met on the 17th April 2002 to consider the applications for these three positions. The enactment of the Courts and Court Officers Act, 2002, had amended Section 5 of the Courts (Supplemental Provisions) Act, 1961, with regard to the qualifications of Judges and the Board took the view that as solicitors were now eligible for appointment to the office of ordinary judge of the High Court, it would withhold making recommendations to the Minister pending the re-advertisement of these positions. This meeting was adjourned to 5th June 2002 and was further adjourned on that date to the 19th June 2002.

By letter dated the 10th June 2002, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of a vacancy which was due to arise in the High Court when The Hon. Mr. Justice Robert Barr left the bench on the 28th June 2002.

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.



On the 19th June 2002, the Judicial Appointments Advisory Board considered twenty-seven applications for the four positions of ordinary judge of the High Court

Applications considered June 2002			
Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male		2	13
Female			2
<b>Barrister</b>			
Male			
Female			
<b>Solicitor</b>			
Male			9
Female		1	

Where applicants had 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.

Appointed : Mr. Eamonn de Valera S.C.  
Ms. Mary Finlay Geoghegan S.C.  
Mr. Michael Peart, Solicitor  
Mr. Barry White S.C.

By letter dated 29th October, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of a vacancy which was due to arise in the High Court as a result of the elevation of The Hon. Mr. Justice Brian McCracken to the Supreme Court.

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.

On 10th December 2002, the Judicial Appointments Advisory Board considered twenty-five applications for the position of ordinary judge of the High Court.

Applications considered December 2002			
Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male		2	10
Female			1
<b>Barrister</b>			
Male			
Female			
<b>Solicitor</b>			
Male			11
Female		1	

Where applicants had 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.

Appointed: Mr. Paul Gilligan S.C.<sup>2</sup>

<sup>2</sup>It should be noted that The Hon. Mr. Justice Paul Gilligan was appointed on 28th January 2003 which is outside the timeframe under consideration in this Annual Report. However, the meeting of the Board at which it was agreed to recommend him for appointment was held on 10th December 2002.

### 2.3 Meetings held to consider vacancies in the Circuit Court

By letter dated the 10th April, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of a vacancy in the Circuit Court which would arise when His Honour Judge John Clifford left the bench on the 10th May 2002.

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.

On the 5th June 2002, the Judicial Appointments Advisory Board considered ninety-one applications for the position of ordinary judge of the Circuit Court.



Applications considered June 2002			
Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male		1	9
Female			5
<b>Barrister</b>			
Male	1	5	11
Female	1	3	3
<b>Solicitor</b>			
Male	1	5	37
Female	1	4	4

Where applicants had 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.

Appointed: Ms. Patricia Ryan B.L.

### 2.3 Meetings held to consider vacancies in the Circuit Court

By letter dated the 19th August 2002, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of two vacancies which were due to arise in the Circuit Court as a result of the resignation of His Honour Judge Dominic Lynch, with effect from the 5th October 2002, and the retirement of His Honour Judge Liam Devally on the 17th October 2002.

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.

On the 30th September 2002, the Judicial Appointments Advisory Board considered ninety applications for two positions of ordinary judge of the Circuit Court.

Applications considered October 2002			
Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male		1	9
Female			5
<b>Barrister</b>			
Male	1	5	11
Female	1	2	3
<b>Solicitor</b>			
Male	1	5	37
Female	1	4	4

Where applicants had 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.

Appointed: Ms. Miriam Reynolds S.C.  
Mr. James O'Donohoe, Solicitor

## 2.4 Meetings held to consider vacancies in the District Court

By letters dated 12th March and 10th April 2002, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of one vacancy which was due to arise in the District Court when Judge Gillian Hussey left the bench on the 12th April 2002, the filling of a vacancy which was due to arise when Judge Brian Kirby left the bench on the 16th May 2002 and the filling of two positions in the District Court which were provided for in the Courts and Court Officers Act, 2002.

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.



On the 5th June 2002, the Judicial Appointments Advisory Board considered ninety-eight applications for four positions of ordinary judge of the District Court.

Applications considered June 2002			
Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male			
Female			
<b>Barrister</b>			
Male	1		1
Female		1	1
<b>Solicitor</b>			
Male	2	5	63
Female	5	5	14

Where applicants had 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.

Appointed: Mr. Geoffrey Browne, Solicitor  
Mr. Cormac Dunne, Solicitor  
Mr. Bryan Smyth, Solicitor  
Ms. Anne Watkin B.L.

## 2.4 Meetings held to consider vacancies in the District Court

By letter dated 8th July 2002, the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of a vacancy in the District Court which was due to arise when Judge James O'Sullivan retired from the District Court on the 3rd August 2002. 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.

On the 30th July 2002, the Judicial Appointments Advisory Board considered ninety-three applications for one position of ordinary judge of the District Court.

Applications considered July 2002			
Experience in years	10-15	15-20	Over 20
<b>Senior Counsel</b>			
Male			
Female			
<b>Barrister</b>			
Male	1		1
Female		1	
<b>Solicitor</b>			
Male	3	5	58
Female	5	5	14

Where applicants had 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.

Appointed: Mr. John Coughlan, Solicitor

## 2.5 Summary

The following persons were appointed to judicial office subsequent to meetings of the Board which took place between 10th April and 31st December 2002:

### Supreme Court

The Hon. Mr. Justice Brian McCracken<sup>3</sup>

### High Court

Mr. Eamonn de Valera S.C.

Ms. Mary Finlay Geoghegan S.C.

Mr. Michael Peart, Solicitor

Mr. Justice Barry White S.C.

Mr. Justice Paul Gilligan S.C.

### Circuit Court

Ms. Patricia Ryan B.L.

Ms. Miriam Reynolds S.C.

Mr. James O'Donohoe, Solicitor

### District Court

Mr. Geoffrey Browne, Solicitor

Mr. Cormac Dunne, Solicitor

Mr. Bryan Smyth, Solicitor

Ms. Anne Watkin B.L.

Mr. John Coughlan, Solicitor

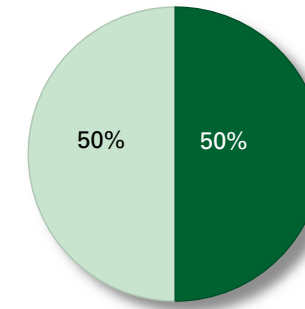
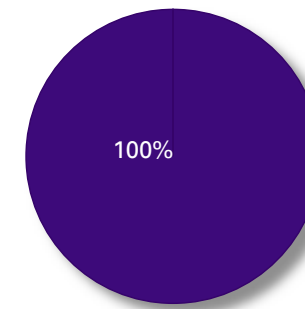
The following table is a profile of the appointees

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

<sup>3</sup>The Hon. Mr. Justice Brian McCracken was elevated to the Supreme Court from the High Court.

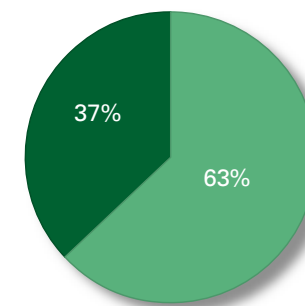
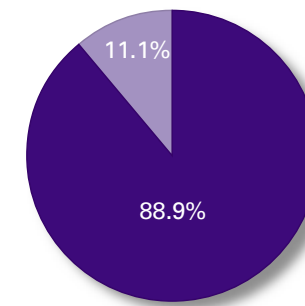
### Total applications Supreme Court

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	2	2	0	0	1	1
% of Total	100	100	0	0	50	50



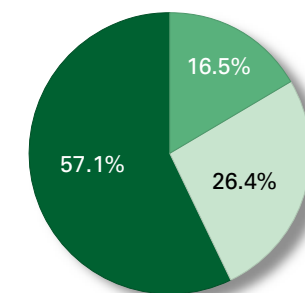
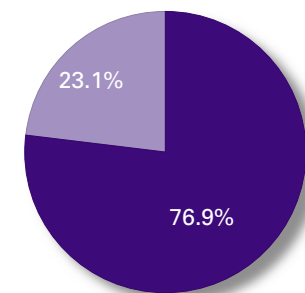
### Total applications High Court

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	27	24	3	17	0	10
% of Total	100	88.9	11.1	63	0	37



### Total applications Circuit Court

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	91	70	21	15	24	52
% of Total	100	76.9	23.1	16.5	26.4	57.1



Key

<span style="display:inline-block; width:10px; height:10px; background-color:purple; border:1px solid black;"></span> Male	<span style="display:inline-block; width:10px; height:10px; background-color:lightpurple; border:1px solid black;"></span> Female	<span style="display:inline-block; width:10px; height:10px; background-color:lightgreen; border:1px solid black;"></span> Senior Counsel	<span style="display:inline-block; width:10px; height:10px; background-color:lightgreen; border:1px solid black;"></span> Barrister	<span style="display:inline-block; width:10px; height:10px; background-color:darkgreen; border:1px solid black;"></span> Solicitor
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**Total applications District Court**

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	98	72	26	0	4	94
% of Total	100	73.5	26.5	0	4.08	95.92



**Total appointees**

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	13 <sup>4</sup>	9	4	5	2	6
% of Total	100	69.2	30.8	38.5	15.4	46.1



**Key**

<span style="display:inline-block; width:10px; height:10px; background-color:purple; border:1px solid black;"></span> Male	<span style="display:inline-block; width:10px; height:10px; background-color:lightpurple; border:1px solid black;"></span> Female	<span style="display:inline-block; width:10px; height:10px; background-color:mediumgreen; border:1px solid black;"></span> Senior Counsel	<span style="display:inline-block; width:10px; height:10px; background-color:lightgreen; border:1px solid black;"></span> Barrister	<span style="display:inline-block; width:10px; height:10px; background-color:darkgreen; border:1px solid black;"></span> Solicitor
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<sup>4</sup>It should be noted that The Hon. Mr. Justice Paul Gilligan was appointed on 29th January 2003 which is outside the timeframe under consideration in this Annual Report. However, the meeting of the Board at which it was agreed to recommend him for appointment was held on 10th December 2002.

Some important features of the provisions under which the Board carries out its functions should be noted. In the first place, there is no obligation on the Minister to request the Board to make recommendations to him or her as to the filling of any particular vacancy. However, since the Board was established, the Minister has, in the case of every judicial vacancy, requested the Board to make recommendations in accordance with Section 16, including cases in which the Government ultimately availed of its power to advise the President to appoint a judge already in office to a particular vacancy which had arisen or would arise. The Government is also entitled to advise the President to appoint a person who has not been recommended by the Board who is not already a judge. The public will, however, become aware from the terms of the statutory notice in *Iris Oifigiúil* as to whether the Government has advised the appointment of such a person. To date, no such appointment has been made.

The legislation also does not empower the Board to recommend applicants in any order of preference. That may render the recommendations less helpful, particularly in cases where there are a relatively limited number of applications for a particular vacancy. Set out in Appendix II to this Report are the number of applications received in respect of each vacancy which the Board had been asked by the Minister to make recommendations, since the Board was established. It will be seen that, in the case of vacancies in the High Court or Supreme Court,

the number of applicants has, on occasions, been relatively small.

The Board has, accordingly, given careful consideration as to whether it should invite the Government to consider whether the legislation should be amended so as to enable it to indicate an order of preference. It is conscious, however, of the difficulties which might result from such a change, not least the question as to whether it would place unjustifiable constraints on the exercise by the Government of a function which is exclusively assigned to it under the Constitution. It has accordingly decided not to make such a recommendation.

The Board has also given careful consideration as to whether it should invite the Government to consider whether the present legislation should also be amended so as to reduce the minimum number of candidates whom the Board is required to recommend below the present figure of seven. Again, in cases where there is only a limited number of applicants for the position, this would make the Board's recommendations more helpful.

However, having regard to the fact that, particularly in the case of vacancies in the Circuit Court and District Court, reducing the minimum number of recommendations below seven would result in the exclusion of a number of candidates whom the Board would otherwise have no difficulty in recommending, the Board has come to the conclusion that the present minimum number of seven is appropriate. It should be noted, in this



connection, that the Board has received the benefit of legal opinion from senior counsel that, in arriving at a list of candidates whom it is prepared to recommend to the Minister as suitable for appointment, it is not confined simply to transmitting to the Minister the names of all those who meet the threshold requirements of eligibility and suitability and that its function is to select from the candidates so qualified (seven or more in number), those whom they are satisfied that they should recommend as suitable for appointment to the vacancy concerned, having regard to all the requirements laid down in the Act.

As has already been pointed out, the Board has been given certain powers to assist it in the discharge of its functions, not all of which have been exercised. Apart from the yearly advertisements which are published inviting persons who wish to be considered for appointment to any judicial vacancies that may arise to submit their names to the Board, the Board frequently, although not invariably, publishes advertisements inviting applications in respect of specific vacancies which have arisen or are about to arise. Applicants are required to complete application forms and the nature of the information sought by those forms is kept under regular review by the Board.

The Board has not to date availed of its power either to arrange for the interviewing of applicants or to consult with other persons concerning the suitability of applicants. It is satisfied, however, that it should avail of both of

these powers in the future.

The Board will consider retaining suitable expert advice as to how such interviews should be conducted. In addition, in such cases, the Board will, where appropriate, avail of its power to consult with persons, such as senior members of the legal profession in the particular region where the applicant has been practising, with a view to obtaining further information as to their suitability. In the latter context, the Board is, of course, conscious of the statutory requirement that all its proceedings be confidential and will take every precaution to ensure that this requirement is observed.

Having regard to the large number of applications which are regularly received in respect of vacancies in the Circuit and District Courts, the Board also intends to avail of its power to appoint a sub-committee when considering such applications, as it has done in the past. While the final decision as to whether to recommend a particular candidate must always remain with the Board, it is satisfied that availing more frequently of the sub-committee procedure will greatly assist in the efficient conduct of its business.

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 which has no control over the appointment that will ultimately be made.

The Board 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 whom the Government subsequently decides to appoint, undergoes any form of medical examination. It is, of course, aware that, in the case of both the public and private sectors, a medical examination of persons whom it is proposed to appoint to positions of particular responsibility is a *sine qua non*. The application form which applicants were heretofore required to complete asked the applicant to provide the name of his/her general practitioner and to confirm that they have no objection to him or her being consulted as to the state of the applicant's health.

The Board has improved this procedure and 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. It is hoped that this will provide the Board with a more complete picture of the health of applicants whom they propose to recommend for appointment to the Minister. The Board is satisfied, however, 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 proposes to advise the President to appoint to any judicial office to undergo a medical examination before his/her appointment is finalised.

As previously stated, under Section 22 of the Standards in Public Office Act, 2001, the Board cannot recommend a person to the Minister unless that person has furnished to the Board a tax clearance certificate issued not more than eighteen months prior to the date of recommendation and a statutory declaration that their tax affairs are in order made by the Applicant not more than one month before the date of recommendation. In practice, the tax clearance certificate is submitted with the application form and the Secretary to the Board writes to all applicants in advance of a Board meeting requesting them to furnish the statutory declaration. The requirement of a statutory declaration causes particular administrative difficulties, as it must be submitted within a very short timeframe before the meeting of the Board. It can also cause difficulties for the Board, as not all of the applications which are considered can be recommended, as a fresh statutory declaration may not have been filed by a particular applicant. The Board would suggest that the relevant legislation be amended by extending the duration of the validity of the statutory declaration from 1 month to 3 months.

### 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 1995 Act;

“The Minister” means the Minister for Justice, Equality and Law Reform.

#### 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.

#### 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 no 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 1999 Act (as amended).
- (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 (as amended).

**Commencement**

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

<b>Supreme Court</b>		
<b>Board Meetings</b>	<b>Number of Vacancies</b>	<b>Number of Applications</b>
March 1996	3	5
June 1999	1	4
January 2000	3	6
June 2000	1	2
October 2002	1	2

<b>High Court</b>		
<b>Board Meetings</b>	<b>Number of Vacancies</b>	<b>Number of Applications</b>
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

<b>Circuit Court</b>		
<b>Board Meetings</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

<b>District Court</b>		
<b>Board Meetings</b>	<b>Number of Vacancies</b>	<b>Number of Applications</b>
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