

# Family Law Matters

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# Delivering information and protecting privacy

It is no surprise that the public want more information on the application of family law, writes **The Hon. John L. Murray Chief Justice**

**T**he publication of this first issue of *Family Law Matters* represents the first fruits of a proposal adopted by the board of the Courts Service – to establish a pilot project to provide information for legal practitioners, the media, researchers and the public on family law proceedings, the initiation of which was enabled by enactment of the Civil Liability and Courts Act, 2004, and which commenced upon the engagement of Dr Carol Coulter as family law reporter by the Courts Service in October 2006.

While our legal system requires, subject to exceptions provided by law, that justice is done in public, the exclusion of the public and media from family law proceedings under the *in camera* rule, in order to protect the privacy of the families involved, has often given rise to criticism. Indeed, judges themselves are cognisant of the problems associated with the lack of reporting of family law proceedings, but are bound by the rules governing such proceedings. Given that family law concerns some of the most discussed and important aspects of Irish society, including divorce, separation, domestic violence and guardianship and custody of children, and affects thousands of people each year, it is not surprising that more information is sought concerning its application in the context of individual cases.

In this light, the engagement of Dr Coulter to produce reports on family law cases is a positive development that will not only provide useful information to those who seek it, but should also assist in dispelling some of the misapprehensions surrounding the application of family law.



Dr Coulter's brief is to report significant judgments of the High, Circuit and District Courts relating to family law, to compile statistical information concerning the work of the family courts, and to draft family law information for distribution to the general public. As the reports herein demonstrate, it is possible to increase the level of information available on family law proceedings while protecting the privacy of the parties. The deftness and professionalism displayed by Dr Coulter in this balancing act inspires confidence for future reports.

The publication of this first issue of *Family Law Matters*, a mere three months since Dr Coulter commenced the pilot project, also clearly demonstrates her enthusiasm and capacity to fulfil this brief. As her material accumulates over time with further reports, Dr Coulter's work should provide a valuable insight for everyone concerned into this complex but important area of the law. She is very much to be commended for producing her first report in such a timely and professional manner.



# Most cases conclude with agreed settlements

Until now, few knew what went on behind the closed doors of the family law courts. This new publication offers a valuable insight into how they operate while protecting the identities of litigants, writes **The Hon. Mrs Justice Catherine McGuinness**

I very much welcome this first issue of *Family Law Matters*. For a considerable time there has been a widespread demand for a greater degree of openness in the family law courts. The enactment of Section 40.3 of the Civil Liability and Courts Act 2004 has been an important step in providing a system of reporting which will balance the need for that openness with the equally important need to provide privacy and anonymity to family law litigants.

Over the years the strict operation of the *in camera* rule, particularly as provided in the family law statutes enacted from 1989 onwards, has led to public ignorance of the reality of family law litigation. There has been criticism by individual litigants and by commentators in the media of what is sometimes described as the “star chamber” nature of the family law courts. Much of this criticism has been ill-founded, but it has flourished in a situation where real information is lacking.

In this first issue Dr Carol Coulter provides information under three headings – reports, trends and statistics, and judgments. All three sections provide valuable insights. Her reports bring a genuine picture of family court proceedings. The section on trends and statistics highlights among other matters the fact that a great majority of family law cases conclude with agreed settlements. This fact contrasts with the impression which has been created by critics and commentators that there is a battle to the death in every case. The judgments section, which deals with judgments in the Circuit Court, will give useful information not alone to members of the public but also to family lawyers.



*Family Law Matters* is an excellent beginning to this new project of family law reporting. I feel sure that it will be welcomed by family lawyers and the public alike. I look forward to further issues.

# Reports, judgments, trends and statistics

**Dr Carol Coulter** introduces the new Courts Service report on family law

This is the first issue of *Family Law Matters*, the family law report published by the Courts Service, arising out of Section 40.3 of the Civil Liability and Courts Act 2004. This Act permitted the relaxation of the *in camera* rule in family law cases to allow a number of categories of people attend court where family law was being heard and report on the proceedings. One such category was those engaged by the Courts Service to prepare such reports.

Following the commencement of the legislation last year, the Courts Service sought applications from people interested in providing a reporting service on a pilot basis. I was selected to carry out this pilot project and I started work on it in mid-October. My first weeks were devoted to meeting stakeholders, finding out how the system worked, where information could be obtained within the Courts Service, and analysing the decisions of the Dublin Circuit Court for the month of October. I then attended court sittings across the three jurisdictions.

The remit of the pilot project is wide. The Courts Service wanted a person or persons to provide “reports, judgments, trends and other statistical information” from the three jurisdictions, that is the District, Circuit and High Courts. Such material was to be “disseminated within the judiciary, among legal practitioners, particularly in the family law area, and to the public generally.”

This publication is a first attempt to meet these requirements. Accordingly, it is divided into sections headed “reports”, “trends and statistics” and “judgments”. The section dealing with “judgments” is shortest because most cases are either settled and ruled on consent, or settled before the hearing concludes, and so there are relatively few judgments.

I have attempted to give the flavour of what happens typically in a family law hearing in the “reports” section.



In this issue the “trends and statistics” section contains an analysis of the decisions, including consents, made in the Dublin Circuit Court in the course of a month. This report also contains some observations from members of Courts Service staff who are familiar with family law: Emer Darcy of the Dublin Circuit Court family law office and Pat Meghen, county registrar in Limerick, who is pioneering case conferencing in family law.

Where other people have contributed, they are credited. Otherwise all articles are written by me.

This publication will be circulated to the legal community and to organisations involved in various ways with the family law system. It will be made available to the general public through the media, whose support will be required to circulate the information it contains about how the family law system works, and on the Courts Service website [www.courts.ie](http://www.courts.ie).

Future issues will not necessarily exactly mirror this one and will be based on the information I continue to glean both from attending family law hearings and from examining Courts Service records. I will also take on board comments and suggestions from the judiciary, legal practitioners and the public, in whose interest this report is published.

# A Week in the High Court

## Family Court:

### 'Cases can get legs and run for days'

*I am concerned that the children have two places to live, the judge said. Will there be a good price for the house?*

Judgments from the High Court, and sometimes from the Supreme Court, have hit the headlines when family law judgments come into the light of day, often giving an unreal picture of what normally happens in the area. High Court cases often involve cases where the parties have very considerable financial resources, leading to headlines highlighting the millions of euro involved in the settlement, which are not typical of most family law cases.

In 2005 less than 1.5 per cent of all divorces and 3 per cent of judicial separations were sought in the High Court, 79 in all. About the same number (82) of family law judgments in the Circuit Court were appealed to the High Court. Cases that

go to a full hearing in the High Court, and where there is a reserved judgment later given in writing, are eventually reported in the official *Law Reports*. These contain a summary of the evidence, the law involved and the court ruling.

Even such cases, however, do not make up the bulk of the High Court's work in family law. As a week in that court revealed, much of its time goes into processing the business of the court, making sure cases are progressing with the exchange of documents and encouraging cases to settle.

In one week during October 2006 two High Court cases listed to go on were settled, and no case went to a hearing.

The first case before Mr Justice Henry Abbott concerned an appeal from the Circuit Court with the applicant wife seeking a variation of orders relating to the family home and the husband's pension.

At the outset her counsel said that the wife had made an offer and they were waiting for a reply. The court adjourned to allow this. At 2pm the court was told that negotiations were continuing and at 4pm the parties returned with their lawyers saying they had a settlement they wished the court to rule on. They read out the terms.

They sought to confirm the Circuit Court order to grant a decree of judicial separation

and to vary its ancillary orders. The new orders included maintenance of €145 a week for the two younger children of the marriage, with the wife retaining the family allowance for them. The couple were to have joint custody of the three youngest children with the day-to-day care of the oldest of the three with the father, and that of the two younger children with the mother.

The family home was to be sold and, after paying the balance of the small mortgage, the proceeds were to be split between the parties, with 53 per cent going to the wife and 47 per cent going to the husband. A pension adjustment order would provide for 40 per cent of the man's pension going to the wife, while he would retain the entire lump sum payable on retirement.

In addition, the wife was to initiate a divorce within weeks as the couple had been separated for more than four years. This would not be contested.

An agreed access schedule for the children would begin as soon as the family home was sold.

"I am concerned that the children have two places to live," Mr Justice Abbott said. "Will there be a good price for the house?" When told it was valued at over €1 million he said this meant that each party would have about €500,000.

"Where there is one and a bit salaries and a fair number of children it is not easy," he said. "The parties can be happy they have brought affairs to a conclusion which will enable them to care for their family without friction. I approve the settlement and make orders in the terms of the draft consents signed by the parties.

"I congratulate the parties on a good day's work on their own behalf and especially on behalf of their children, and I wish them well in their future lives.

"They have also saved money. Cases can get legs and run for several days, eating into the available resources."

The other case settled was also a Circuit Court appeal which had granted a divorce where the outstanding issue related to the sale of the family home. The husband's counsel said this had now been settled with 35 per cent of its value going to the husband and 65 per cent to the wife. The couple's children were grown up and had left home.

The wife had a full-time job and the husband was self-employed. They had separated in 1999. The family home was valued at about €500,000 and both had the capacity to borrow. There was no need to hear evidence, she said.

Mr Justice Abbott was happy to comply. "It is an intrusion once the court has decided," he said. He congratulated the parties on reaching an agreement that enabled them to go forward to a new life without tension and acrimony. "It will stand you in good stead emotionally, psychologically and financially," he said.

He also congratulated the lawyers involved, saying that without them it would not be possible for agreements to be negotiated successfully. "If you were not represented it would be necessary for the court to probe and intrude in a way that might be upsetting for the people concerned," he said.

Following the call-over of cases on Friday, where lawyers report on progress and dates for hearings are sought, short applications are heard *in camera*. These can concern barring and protection orders or advancing issues such as the discovery of documents.

In one case the husband was a lay litigant though, according to himself, he owned a lot of property. His wife's solicitor was seeking a continuation of a protection order and he complained that he had not received her

*I congratulate the parties on a good day's work on their own behalf and especially on behalf of their children, and I wish them well in their future lives*

*I'm in a more difficult position than my wife. I have considerable property and have partners and that. I'm only a lay person and don't understand the law*

*It's my choice whether to employ a solicitor. I don't have money to waste on a solicitor. You're telling me I'm going to lose. I'm prepared to lose*

affidavit of means. He would give this only when he had received hers.

"I'm in a more difficult position than my wife," he said. "I have considerable property and have partners and that. I'm only a lay person and don't understand the law."

His wife's solicitor said that if the husband's affidavit of means was not complete it might be necessary to seek discovery.

"You're using a word now I don't like," the husband said. "'Discovery.' That word would destroy me. It would close me down overnight."

"No one can approach your bank manager without you coming into court and explaining why it should not be done," Mr Justice Abbott told him. "In the first instance discovery is for you to do, to bring in documents and so on. Third

party discovery can be done in an extreme case.

"I'll allow a week of informality to allow the parties to exchange all the documents they have."

"I run this company myself," the husband said. "The money I used to buy all these properties was my money. She never signed any mortgage."

The judge told him that the wife could seek a portion of the marriage assets when a marriage broke up. He urged him to employ a solicitor.

"It doesn't sit easy with me," the husband replied. "It's my choice whether to employ a solicitor. I don't have money to waste on a solicitor. You're telling me I'm going to lose. I'm prepared to lose."

Mr Justice Abbott said he was leaving the protection order in place, and adjourned the case for a week.



# A Day in Dublin Circuit Court:

## A matter of judicial separation or divorce

In Dublin Circuit Court, Judge Alison Lindsay reserved judgment in an application for divorce. The husband's counsel said his client would claim they had been living "separate and apart", though under the same roof, for the requisite four years and qualified for divorce. The wife denied the length of separation.

The husband said the couple had married in 1990 after a 10-year courtship that began when they were young. The family home, close to Dublin city centre, was inherited from his family who had had it as an investment property. The couple had renovated it as a family home. Lawyers for the two parties had valued the house at €1.35 million. The renovations meant there was a small mortgage.

They also co-owned an apartment as investment property worth €410,000, and had a €40,000 mortgage. The couple had no children but the husband had a three-year-old child in another relationship. He also had €100,000 inheritance from his mother.

He said the relationship ended when he discovered his wife was having an affair in 2001. "We grew apart and lived separate lives within two or three months of that. We didn't socialise together. I moved into another part of the house. There were no sexual relations. I was in another relationship. So is she."

He thought there should be no maintenance and they should go their separate ways. He wanted to continue to live in the house he had inherited from his family

and could raise €200,000 to buy out her interest and transfer the apartment to her name.

Under cross-examination by counsel for his wife, he said his mortgage was deducted from his salary and he had paid half the bills. She was not prepared to entertain the idea of having a child until her mid-30s, when she encountered difficulties. Asked about them, he said: "I was not privy to what she went into hospital for."

The wife's counsel said: "She says the marriage was going well until 2003 when she discovered you were in another relationship and had a child. She was devastated, depressed and suicidal. She denies what you say happened in 2001. Even in the light of the information about the child she tried to save the marriage and you went on holiday in 2003." He replied that they went on holiday as friends, not as husband and wife.

It was put to him that he was trying to claim a sentimental attachment to the house when it had been his mother's investment property. He said he had spent a lot of time in it: "There are different sentimental attachments for different people."

When asked for his response to his wife's proposal that the house and apartment be sold and the proceeds divided, he said he did not agree. "You are proposing she get the apartment and €200,000. She already owns half the apartment. You are proposing she get €400,000 after 16 years of marriage?" "Yes," he said.

*We grew apart and lived separate lives within two or three months of that. We didn't socialise together. I moved into another part of the house*

*I didn't know he was having an affair. He came in one day and he told me he had been having an affair for six months... He came and told me she was pregnant*

The wife said she had met her husband when she was 18 and neither of them had been in a relationship before. Eight years later they got engaged. They did not live together before marriage.

She was a public servant and took a career break during which she set up a small business, based in the house. She paid the bills as he was paying the mortgage. If the bills came to more than the mortgage, they split the difference.

When asked how the marriage had broken down, she said she had started trying to get pregnant around 1997 when she was 36. By the end of the second year she had medical tests and got panicky about her fertility. "It was the most difficult time of my life. It would put a strain on any marriage."

By the time she reached 40, she did not want to continue trying to get pregnant though her husband pleaded with her.

"I didn't know he was having an affair. He came in one day and he told me he had been having an affair for six months. The next day I went to the park and rang him at work. He came and told me she was pregnant." At this point, the wife broke down and Judge Lindsay asked her if she wanted a break. She refused.

"It really hit home," she continued. "I'd been trying for so long and he went away for a weekend and she got pregnant. I'd be quite willing to take care of that child, even part time. I loved my husband. I still do. I forgive him."

After this they went on holiday together. She said this was an intimate time though "there were a few tears".

She went to Accord for counselling for three years and this had helped her a lot. Asked if she would be interested in a reconciliation if there was any hope, she said she would be but he would not.

She said her father and sister had helped her to set up a small business of which she was manager.

When asked what she wanted, she said they had been together for 26 years and married for 16 and she wanted her "fair share" of the family assets which was 50 per cent.

When cross-examined by her husband's counsel, she agreed he had brought an almost fully-paid-for house into the marriage.

When asked if she had begun an affair in 2001, she said: "That's a blatant lie. When I discovered I couldn't get pregnant I took up line-dancing. I went out with my girlfriends. The marriage was under strain then. It had not broken down."

Asked whether her husband had moved out of the bedroom then, she said he moved in and out. He did not move out completely until the birth of his child in 2003. "It dramatically changed. A little boy was born and I was substituted. Even when he was born I thought we could work something out. I thought we could take him off for two weekends a month."

She said they shared a bed on the holiday they took after the child's birth.

Her husband's counsel cross-examined her extensively on the business she was now managing, in which he claimed she was the major shareholder. She said her family wanted to help her and her sister had put a lot of money into it. She herself did not have the money. It was put to her that she had not been honest with the court and her husband about her financial affairs.

She told her own counsel that the firm's articles of association showed her father owned 70 per cent of it and her sister 30 per cent.

Summing up for the husband, his counsel said that in the McA case the judge had

found that a couple could be living “separate and apart” while still under the same roof. It was a question of who the court believed on this matter. Referring to the property, he said that in the High Court Mr Justice O’Higgins had ruled that “proper provision” could be made for a spouse while having “significant regard” to the property’s provenance.

In her reserved judgment a week later, Judge Lindsay said the issues were whether there should be a judicial separation or a divorce, and whether there should be a property adjustment order.

To bring an application for divorce she said the couple needed to be separate and apart for four out of the previous five years. There was a dispute about their intimate relations. “I have a doubt about the marriage being over in 2001. I must on balance proceed on the basis that this provision is not complied with” She granted a decree of judicial separation under the 1989 Act.

There was no claim on the inherited money and no real pensions issue, she said. The only real issue was the house.

She found evidence that the mortgage had been paid 50/50 by the set-off contributions from the respondent wife. She took this as evidence that the parties intended everything to be 50/50. The house had previously been an investment property.

The applicant had made an offer to the court worth €350,000, about 25 per cent of the value of the two properties. This was insufficient. The marriage had lasted 16 years and the relationship the previous 10. The house had been the family home and all through the marriage there was evidence of sharing. Having read the case law on the matter, she had to decide what was

fair and equitable. “I cannot see why I should do anything other than split [the assets] 50/50,” she said.

On the wife’s business, introduced to question her credibility, she said she did not find it persuasive and little useful purpose was served by it.

Granting an order of judicial separation, and a 50/50 split of both the house and the investment property, she gave the applicant husband the opportunity to buy out the wife’s share by paying €675,000 on or before February 1st.

# A Day in Cork Circuit Court: Two Irish houses and a US divorce

*Judge O'Donohoe asked the wife if proper provision had been made in the US divorce. More or less, she said. I would like more*

During four days of family law hearings in Cork before Christmas 2006 Judge James O'Donohoe gave judgment in one long-running case, granted eight decrees of judicial separation and 28 divorces, and recognised one US divorce. One decree of judicial separation followed a lengthy hearing. All other decrees were on consent.

The US divorce took some time. A considerable amount of US property had been divided between the parties and both continued to live there. The US judge ruled that he did not have jurisdiction to divide two properties in Ireland. These were a €550,000 family home and a commercial property worth €750,000. The parties had agreed that the wife would be paid €550,000 with the husband taking over the outstanding mortgage of €110,000 on the family home. They were seeking a judicial ruling on this consent along with recognition of the US divorce.

The wife's barrister said the property valuations were not agreed, adding that one valuer put a substantially higher price on the commercial property the husband owned in a rural town. The wife was sworn in and Judge O'Donohoe asked her if proper provision had been made in the US divorce. "More or less," she said. "I would like more."

The husband's barrister said this application was for recognition of the US divorce. An application relating to property could be brought only if it

could be shown that the original provision was not adequate.

She added that the husband was offering €550,000 for the wife's share in the two properties and to take over the mortgage on the family home in Ireland, costing him a total of €660,000. He had owned the commercial property for some years before the marriage.

An auctioneer called by the wife's barrister said he valued the commercial property at €1.7 million after a cursory inspection from the outside. Judge O'Donohoe examined photographs of the building and said the husband's valuers had priced it on the low side. He would put it at €1.2 million, he said, and he would take into account the inheritance of the property and the taking over



of the mortgage. He would award the wife 30 per cent of €1.2 million, less the mortgage.

The husband's counsel said the judge had been asked to recognise the divorce and rule on the consent, not make an award. "This is a validly entered into consent on the part of both parties," she said. It was based on the 1995 Act, she said, not the 1996 Act, which referred to "proper provision". The only actual issue to be decided was whether the court had jurisdiction to recognise the US divorce.

The wife's counsel said his client had made an offer and it had been accepted and signed. The husband's counsel then pointed out that half the value of the family home, €275,000, plus 30 per cent of €1.2 million, less the mortgage of €110,000, amounted to €525,000. "No one is being done here, please rule the consent," she said.

After a short adjournment to enable the parties to discuss the figures, the wife's barrister said she was prepared to accept the €550,000 originally offered and to concede that there was no basis for a court inquiry into "proper provision".

# A Day on the Midland Circuit Court:

## The rise of the lay litigant

In one November day in a midland town, Judge Anthony Kennedy heard seven short cases and another expected to last most of the day was listed. There was also a District Court appeal and a case concerning an English divorce added to the list.

The brief cases, which the judge took first, all concerned divorce applications.

The first involved a lay litigant. The judge asked him if he was happy to do this himself without representation. He said he was. The man was asked if he had a letter from his wife with her consent which he did. He was sworn in, gave his name and stated that everything in his declaration was true. He then stood down.

The judge said he granted a decree of divorce and cross orders (extinguishing succession rights), made no orders on costs and said the respondent was to be notified forthwith. The man left.

The second case also concerned a lay litigant, a woman whose husband was not present. Judge Kennedy asked her if she knew his attitude to the application. She replied that she did not but she thought he was not interested. The judge confirmed with her that the couple had been separated since 1989, that the husband lived locally, and that they had a separation agreement. The woman

*Seven short cases and another expected to last most of the day*

*Are you happy that all property, maintenance, custody and access arrangements reflect your wishes, asked the judge. Yes, he replied*

added that she also had a church annulment. The separation agreement dated from 1993.

She then entered the witness box and took the oath, confirming that everything she had already said was true. She also confirmed that all matters of importance had been settled.

Judge Kennedy granted a decree of divorce and a cross order, and ordered that the respondent be notified forthwith.

The third case again concerned lay litigants, who appeared together. The judge asked if the couple's daughter was young and the couple assented. He then asked who she was living with, and the husband said: "Me." He asked the wife if she had access which she did. "There is no acrimony?" asked the judge, and the couple agreed. They also agreed that they were seeking a divorce, the mutual extinction of succession rights, and that everything relating to property, maintenance, the child and access had been settled.

Judge Kennedy granted a decree of divorce and cross orders. The couple left court together.

In the fourth case a man who represented himself said the couple had agreed a separation agreement in 2005. "It's all grand now," he said. Asked if the existing custody and access arrangements were to continue, he said: "It's all working out fine."

The judge granted a decree of divorce and cross orders.

In the fifth case a barrister represented the applicant husband. She said there had been negotiations and that terms of a settlement had been agreed. The respondent was not present because there had been agreement.

The applicant was sworn in, and gave evidence that the couple had married in 1979 and had four children, aged 18 to 26. They were all "more or less" self-supporting. The couple had separated in 1994. The family home was in a Dublin suburb and he said that

under the terms of the settlement he was relinquishing his interest in it. He wanted a decree of divorce and terms according to the consent.

Judge Kennedy granted the decree and made orders according to the consent.

In the sixth case again a barrister represented the applicant husband and the respondent, who had agreed to the terms of the divorce, did not appear. There was a separation agreement.

The applicant said the couple had married in 1990 and had one dependent child. They had lived separate and apart since May 2000. He said the settlement terms were agreed and they reflected his wishes. "Are you happy that all property, maintenance, custody and access arrangements reflect your wishes?" asked the judge. "Yes," he replied. Asked if there was any prospect of reconciliation, he replied: "No."

The judge granted a divorce, with the terms of the agreement to be made rules of court.

The seventh case involved two lay litigants who appeared together, though the judge said that the husband had written in saying he would not bother to appear.

The applicant wife was sworn in and told the judge that all important matters had been dealt with in a separation agreement. Judge Kennedy asked if the two children of the marriage, who were very young, were living with her, and she said they were. "With access to your husband?" he asked, and she said: "Yes." He asked the husband if he had any questions. He had none.

Judge Kennedy then granted the decree of divorce and cross orders.

He rose at 11.05am as discussions continued about the remaining cases, one of which had been expected to go to a full hearing and last the rest of the day.

When the court resumed at 11.30am the barrister for one of the parties in this case said that terms had been agreed and were now being reduced to writing. "That is very gratifying, having spent many hours reading the papers," Judge Kennedy said.

This case was adjourned so the settlement terms could be written down.

The next item was the recognition of an English divorce where the man was deceased and his daughter was bringing the application. The divorce contained a clause referring to the wife's inheritance rights in his will. But the man had died intestate.

If the English divorce was recognised mutual inheritance rights between the husband and wife would be extinguished.

The daughter's barrister told the court there were five children of the marriage, and the only property was a house unoccupied since her father's death. The family wanted to deal with the matter of the house but could not until the divorce was resolved.

The couple had married in 1959. In 1979, the wife had deserted the family and had not been seen since. Attempts to contact her had failed. The daughter wanted an order recognising the English divorce's validity.

The judge granted this application. "All else falls into place then?" he asked, and the barrister said it did.

The earlier case then resumed and the husband was sworn in. He said the couple had married in 1987. There were two children, aged 18 and 15, residing primarily with their mother. Access was agreed.

He said it had been agreed that his wife would pay €150,000 for his share in the family home in a provincial town and he would pay her €30,000 in lieu of maintenance for the two children. A District Court order that he pay €150 a week in maintenance was then vacated.

He said they had lived separate and apart for more than four years and there was no prospect of a reconciliation. The judge granted a decree of divorce and received the terms, which he made orders of the court.

The court was told that there was also agreement in the next case, which was an appeal from the District Court concerning access and maintenance. The appeal was struck out.

This concluded the sitting, which ended at 12.55pm because of the unexpected settlement of the case due to be heard.

In all, eight divorces were granted, one District Court appeal was disposed of, and an English divorce recognised.

Five of the uncontested cases concerned lay litigants.

*In all, eight divorces were granted, one District Court appeal was disposed of, and an English divorce recognised*

# A Day on the Northern Circuit: the importance of keeping records

*It's coming up to Christmas and this lady needs money said the judge*

A family law day in a town on the northern circuit continued before Judge John O'Hagan from 10.30am until 7.30pm. One case involved a disputed settlement, another an application to vary maintenance and 15 consent divorces and judicial separations were granted.

An application was made to vary the terms of a settlement in a judicial separation. The husband had agreed to pay €250 a week in maintenance for the couple's four children but he had since been made redundant by his employer of 32 years and wanted to reduce this to €150. His severance payment was €44,500 and he was getting €165 a week in social welfare. He had tried and failed to find other work.

Most of the redundancy money had gone on paying debts, he said, and €6,100 remained in his bank account. His outgoings, including paying the mortgage on the family home, came to €590 a week and this was not covered by social welfare.

He said he had 50-60 acres of land which he was selling for €300,000. The outstanding mortgage on the family home was €47,000.

The wife's barrister asked what was happening to two houses and some parcels of land listed in the affidavit of means. The husband said that all was being sold except the two houses: one the family home in which his wife and children now lived and the house he occupied himself.

"When was the last time you applied for a job?" she asked. "Not for the last couple of months," he replied. He acknowledged that he had paid no maintenance from the beginning of July until September, though he received his salary until the end of August. Asked why he had not cleared the mortgage with the redundancy money, he said: "I couldn't afford it."

Judge O'Hagan pointed out that he wanted to reduce the sum he was paying to keep his children by €100 a week which, given their ages, would amount to €60,000 by the time the youngest was no longer dependent in 12 years' time. "Are you prepared to pay it out of the €300,000 you get for the land?" he asked. "I don't know what'll be left after the legal fees," the husband replied.

His wife gave evidence that she worked part time, earning €132 a week. Her income, including maintenance and social welfare, came to €767 a week while her outgoings were €790. She said she could not afford a reduction in maintenance of €100 a week.

"It's coming up to Christmas and this lady needs money," said the judge. The wife's barrister said that arrears for July and August were €2,250. Judge O'Hagan said this should be paid immediately out of the €6,100 in the husband's bank account. He refused to vary the maintenance order but the husband had to pay only €150 a week until the proceeds of the land sale were realised. Then the balance of the arrears accrued up to that



time, at the rate of €100 a week, would have to be paid.

He said he was returning the issue until the next family law session to consider making a lump sum order in lieu of periodic payments for the children's maintenance.

In the afternoon, Judge O'Hagan heard a case involving a settlement which had broken down. Much of the evidence came from lawyers for the two parties who each gave their accounts of negotiations that had taken place and what they had understood the settlement involved.

The husband's solicitor said the wife had offered to buy the family home, the farm and machinery, assuming debts on the property, for €250,000. His client did not accept this and negotiations continued last year. In November a settlement was reached whereby he would pay her €475,000 for her interest in the family home, the land and machinery. She was to give him a list of personal effects she wished to take from the family home and would also keep a separate farm that was registered in her name. Two months after receiving the list he would pay the first half of the money.

The money was paid over but the wife appeared to resile from the agreement,

saying that the list of personal effects had not been agreed. The solicitor said his client's understanding was that the money would be paid following receipt of the list, not agreement on it. The question of the list could be litigated separately from the other issues.

The judge asked the wife if she would accept the payment and litigate the list. She said: "No." She asked her husband's solicitor why the first letter questioning the list had been sent after the money had been sent and banked. "You must appreciate we were preoccupied with dealing with bankers to raise the €475,000," the husband's solicitor replied.

The husband's barrister then gave evidence, saying he did not recall that the agreement hinged on agreeing the list. Asked if he had a record of the discussions, he replied: "That's not the way negotiations go. You draw up the agreement at the end."

The wife's solicitor then gave evidence that he had a handwritten note of his attendance at the negotiations, which he signed and dated. This stated that there was no agreement until a list of items she wished to take from the house had been agreed, and that she would draw up this list as soon as possible. His notes included

*You must appreciate we were preoccupied with dealing with bankers to raise the €475,000*

*I really want this to end. But the list of contents is very important to me. There are 30 years of my life in that house. It can't be put away with money*

reference to the possibility of another meeting if there was a difficulty with the list.

“I always anticipated difficulties with the list which did not exist at this time. I had instructions from my client that agreement on what she was to take from the family home was critical,” he said.

Judge O'Hagan asked counsel for the husband if the wife was not entitled to assume that, as the money was paid, the list was agreed. “The precondition was waived because the money was accepted,” the barrister replied. The wife's solicitor said: “I profoundly disagree.”

The wife gave evidence that agreement on the list was a precondition of the settlement. After the money had been paid and lodged

she received a letter from her husband's lawyers saying he was prepared to give her four or five items on the nine-page list. “It was obvious then we didn't have agreement,” she said. “I felt I was led into a trap by him sending the money and then coming back with changes to the list.”

Asked if she was trying to reopen the case to get a better deal, she said: “No. I really want this to end. But the list of contents is very important to me. There are 30 years of my life in that house. It can't be put away with money. Some has monetary value, but a lot hasn't – music and books and memories of my father.”

Judge O'Hagan asked her solicitor for his interpretation and he said: “The whole deal stood or fell on whether or not the list of contents was agreed.”

The judge said he knew both solicitors well. The wife's solicitor took a clear note of the negotiations. It was a precondition of agreement on the transfer of properties that the list of contents be agreed. This was sent in mid-November and there was no reply until late January when the date for the first tranche of the money had passed. “She was entitled to assume the list was agreed. If there was a dispute as to the list it should have been raised before the payment of the money,” he said.

He found there was a settlement and that the list's contents had been agreed. He ruled that the items on the list had to be handed over within three months along with the balance of money. He granted a judicial separation, with the “usual orders” concerning succession rights, and liberty to apply to the court again should further problems arise.

# A Day in Dublin District Court: Access, guardianship and protection orders

The District Courts deal with two types of applications: those that come under the domestic violence legislation (safety, protection and barring orders) and those that come under family legislation (custody and access applications and maintenance orders for spouses and children). Dublin District Court handles a vast volume of family law and has at least two judges sitting full-time. It also deals with child-care cases.

During one sitting in December Judge Gerard Furlong heard 10 cases covering the gamut of applications handled by the District Court. His colleague, Judge Hugh O'Donnell, dealt with 20 cases on another day that week.

A typical item for Judge Furlong concerned a summons for breach of an access order by the mother of two girls, aged 13 and 10, who had recently moved out of Dublin. The father was meant to have them from 10.30am to 6.30pm every second Sunday.

He told the court that the previous August when he was to collect his daughters he phoned and got no answer there. He called to the house and there was no answer. Then in September when he rang his eldest daughter she told him she would not be there as she was staying with a friend.

The following weekend he again attempted to see the children. He arrived to collect them but a woman staying in the house said the family was away. He rang his daughter and his former partner

answered saying they would be there at 4.30pm. The next weekend his daughter said she could not see him as she was going to have her hair done.

The mother told the court that he was to have the children on their last weekend in Dublin but he did not take them and this upset them. The weekends then became confused. On the weekend when they arrived back at 4.30pm, her daughter had told her that the father said he would not be there until then because of a sporting fixture so they stayed with an aunt on the Saturday night. She tried to contact him all day on Saturday to check the arrangements but there was no reply. The daughter had had her hair done one weekend because a relative had done it for nothing.

"I don't have a contact number for him," she said. "He's meant to ring me. He doesn't. He rings [daughter's name], putting it all on her. Last weekend he let them down. That's twice in the last month. He said his wife's not well."

Judge Furlong said he would not commit the mother to prison for breach of the access order but would treat it as a variation of that order. He added some conditions: current contact numbers were to be exchanged; mobile phones were to be switched on for at least 24 hours before every access visit and remain on during visits; all parties were to continue actively to encourage access; under no circumstances should other arrangements be made on access days. If a genuine emergency meant a cancellation then an

*I don't have a contact number for him. He's meant to ring me. He doesn't. He rings [daughter's name], putting it all on her. Last weekend he let them down. That's twice in the last month*

*The next weekend his daughter said she would not see him as she was going to have her hair done*

alternative day would have to be arranged; contact should be made directly between the parents and not the children which was unfair on them, and this would prevent misunderstandings.

Another dispute concerned an application for guardianship of a four-year-old child from an English father along with an application for unsupervised access. His former partner was seeking maintenance. Both parties were represented.

The father's solicitor said the existing access, supervised by the child's maternal grandmother, was going well. He wanted unsupervised access in order to develop the relationship with his child.

The mother's solicitor said access had been suspended for a time. Since it resumed the

child's behaviour had deteriorated. They were suggesting that the three-hour visit was too long and should be replaced by two hour-and-a-half visits. Her client was not happy to consent to guardianship at this time.

The father said there had been a six-month gap in visits but they were now going well. He agreed he had left about 10 minutes early when the child's mother was coming as the child went to her. "It would be nice to see her on a one-to-one basis without someone watching me all the time," he said.

With unsupervised access he said he would probably find attractions around the city. He said guardianship would allow him play a bigger part in his daughter's life.

On the gap in access he admitted he had threatened not to bring his daughter back after the next visit and that he would take her to the UK.

When asked about the suspension of access the mother said she was very concerned when he had made this threat because there was an ongoing allegation of sexual abuse of the child against her paternal grandfather when she was two. The police investigated this and said they were keeping the file open until the child got older. Social workers advised them to move away from the grandfather. They had come to Ireland and stayed together for a further year. After they broke up everything went well for a while, up to the time of the threat to take the child to the UK.

She also told the court that since access had resumed the child, who had just started primary school, had started wetting the bed every night and had tantrums. There was a tantrum every weekend when she was told she was seeing her father. She said she did not trust the father enough to allow him be a guardian. On maintenance, which was €40 a week, she outlined her expenses and income, which came from social welfare. The father was working, and earning €330 a week.



The child's maternal grandmother told the court that the father left early on seven of the nine visits. She thought that three hours was too long, the child got bored in the house doing the same thing with him.

Judge Furlong increased the maintenance to €50 a week. He said the unfortunate allegation concerning the sexual abuse had come as a shock to both parties and was dealt with appropriately by both. The father's unfortunate threat to remove the child had affected the mother deeply. It was regrettable but had been dealt with at a previous hearing, had been apologised for and it was time to move on. The father was not to apply for a passport for the child without a court order.

He found merit in the suggestion that access be varied, with a two-hour visit on Sundays and another during the week after school. It was to begin and end in the grandparents' home, but not confined there, and one of the maternal grandparents must be present.

On guardianship he said: "I believe it is always a positive thing." He made the father joint guardian, with sole custody and primary care and control to the mother.

Of the three applications for protection orders, an elderly woman sought one against her adult son. She told the court that he was in a relationship but when he and his partner fought he moved back in with her. And he was drinking.

"He's the best in the world but when he gets drink in him he abuses me," she said. She added that she was separated. "I had all this from his father. It's bringing it all back to me."

The judge issued a protection order and told her to bring it to the local Garda station. They would serve it on her son. She could seek its renewal in March.

# A Day in Dublin District Court: Taking care of the children

*You're shutting everything down. You're obstructing every suggestion, the judge said*

Several applications were made to Judge Hugh O'Donnell for access over the Christmas period, with cross-applications for maintenance. Other cases involved applications for protection and barring orders.

A woman wanted sole custody of her sister's child with the consent of the mother. The solicitor for the parties said the mother had been in a violent marriage and her husband was not the child's father. They had separated some considerable time before the birth. She had hidden her pregnancy because she feared her husband's reaction. Shortly after the birth she asked her sister to take the child. The sister and her husband were happy to do so and this application was a first step towards adoption.

The judge asked the mother if she was happy that the application was for sole custody and she said she was. She saw the child all the time and the child was happy with her sister. "I couldn't give her a home," she said. She planned to tell her of the true relationship when she was ready for it. The application was granted.

A young mother sought maintenance from the father of her seven-year-old child. The father said he had left drug recovery a year and a half ago and was not working. The mother said her income was €182 a week, along with child benefit, which she said was insufficient to pay for school uniform and books, birthdays and other expenses as well as maintaining the child. She said that according to her daughter the father was working as a carpenter.

Judge O'Donnell asked him if he was working as a carpenter and he said he was not. He had done some carpentry in the past but he had no papers. He had been on drugs for about 10 years. He also said that he did not have proper access to his daughter.

The judge ordered access from 11am to 3.30pm on Saturdays and Sundays, and maintenance of €50 a week. "Where am I meant to get €50 from?" asked the father. "I'm in college, living in a box-room with my parents." "You'll have to deliver pizzas or something. Work it out," said the judge.

In another access case, the paternal grandmother and aunt of a three-year-old child were seeking access from the mother. A third applicant, the child's father, was not in court because he was in hospital following the amputation of a leg due to drug dependency.

The grandmother said the mother would not allow her to see her grandson. The mother's solicitor said that this was a severely damaged child, who had been diagnosed as autistic, and who suffered learning difficulties. The mother lived in Dublin and the grandmother in a town about 30 miles away. Asked why the grandmother should not see him, the solicitor said: "This child is very disturbed. He is very anxious if taken away from his mother."

"No one is going to take him away from his mother. Any access I would grant would be supervised in your client's home," the judge said.

"I don't think the mother would have me in her home," the grandmother said. Asked if she would not avail of access in the child's home, she replied: "I would not be welcome there."

"Autism is a very difficult condition. You can't have it unsupervised. If you get access it will be in a familiar place," Judge O'Donnell said. The grandmother had hoped the mother would bring the child to the town where she lived to see her.

The solicitor said the child was spending several hours a day in a special school and the judge asked if access was possible there. "You can't ask the teachers to get involved in this type of dispute," the solicitor said. "You haven't asked them. You're shutting everything down. You're obstructing every suggestion," he replied.

The judge asked the mother why she would not permit the grandmother see the child. "She keeps saying she didn't interfere between me and her son but she did," she said. "When I got a protection order against him she rang up and said, 'My blood is boiling. Wait till I get my hands on you.' The only reason she is here is to get access for her son. She thinks he might not get it because he's a heroin addict."

The judge commented that there was a lot of history in this relationship. "Perhaps there is some intermediary that could bring peace to this family," he said. He adjourned the case to April, asking the parties to explore whether there was an independent place where access could take place with independent supervision.

A woman who wanted a barring order and a safety order against her partner said he had threatened her and their children with a licensed gun. He was present in court. Neither was legally represented. Visibly shaking in the witness box, she gave evidence that he came to the door about 2.15am, and she told him to go away. "Take your time. Take a drink of water," said the judge.

"He said he'd kill me and the kids. He went and got the gun," she said, and broke down. "Do you realise what you're putting the woman through?" the judge asked the man.

"It's 90 per cent true. I want my [gun] licence revoked. I deeply regret it," he said, adding that his partner had threatened to have him killed. "A barring order for three years," ruled the judge.

"Please, your honour. My son, your honour, my son idolises me. I was attacked in my own home. She attacked me. Don't let my son suffer." "Go upstairs and get an access summons," Judge O'Donnell advised.

"Everything I own is in that house" he said. "How will I get it? I can't go near her. She won't talk to anyone. She won't talk to my mother. I run a business. How do I get my stuff now? My life is gone."

"You'll sort it out," the judge responded. "Not through these courts. It's a joke," the man said, slamming the door as he left the court.

*He said he'd kill  
me and the kids.  
He went and got  
the gun*

*Please, your  
honour. My son,  
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Don't let my son  
suffer*

# Case by Case: A Month in Dublin Circuit Family Court

Having analysed a month's decisions in the Dublin Circuit Family Court **Carol Coulter** finds most cases are settled, often quickly, and the people concerned get on with their lives

Lack of information severely hampers discussion on how family law operates in this country. Not only has the *in camera* rule closed the courts to observers but statistics on what happens in court, shorn of specific detail, have also been limited. The Courts Service has published global statistics on numbers of divorces, judicial separations, nullity, maintenance and domestic violence orders applied for and granted each year, but so far further breakdown of these figures has not been possible.

This is primarily a task for statisticians and IT professionals. Nonetheless, some knowledge of how the family courts are working should be available from a study of court records.

In 2005 over 97 per cent of all divorces and judicial separations were decided in the Circuit Courts, a total of 4,341. Over a third of these were decided in Dublin where 1,126 divorces and 309 judicial separations were granted. There were also 380 District Court appeals decided here, indicating that Dublin Circuit Court accounts for about a third of all divorces and judicial separations decided in the State.

## A useful snapshot

While Dublin cases may not fully represent all family law cases heard in Ireland (few will involve decisions on the family farm, for example), a review of decisions there over a given period can provide a useful snapshot. Since it represents one area in a given timeframe, it is better described as a "snapshot" rather than a "sample".

I chose October 2006 in the Dublin Circuit Family Court and examined the cases listed on the Courts Service computer system back to the beginning of 2003, the first year in which all cases were logged on the new computerised system. I identified 183 cases in all decided from October 3<sup>rd</sup> to October 31<sup>st</sup> including 22 appeals from the District Court.

The computer records showed how long they took, how many were settled, how many went to a full hearing, and what orders were made. The computer records did not show the contents of the agreements (known as "consents") that were filed and made rules of court, and I examined these separately. Orders for judicial separation and divorce usually gave the date of the marriage so it was possible from the computer records to see the variation in the duration of marriages that ended in separation or divorce.

My examination of the records was essentially manual, scrolling along all computer records to identify October decisions. I also manually examined the



paper files in the cases where consents were filed. I have checked all the figures several times and I am confident that they are accurate to within 2 per cent.

### Fastest case took four days

A total of 161 cases were decided in Dublin in the month of October 2006, with 99 of those cases initiated earlier in the year. Contrary to some perceptions, it is possible for some cases to be decided very quickly. The fastest case concerned a divorce, where both parties consented, where the papers were lodged on October 23rd and the order granted four days later. According to court staff, an order can be rushed through where one of the parties is terminally ill. Apart from that, the shortest case took six weeks from initial application to final order. (See figure 1)

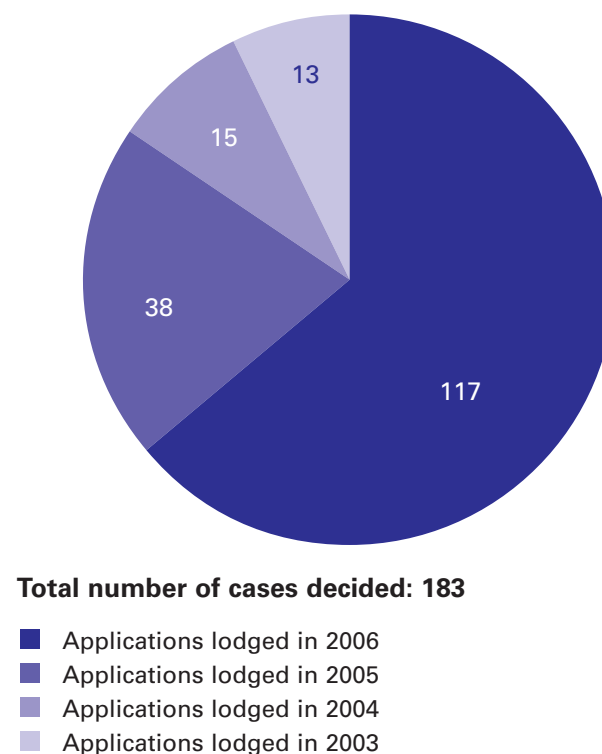
### Early agreement

Of the 99 cases originating in 2006, 81 were divorce applications where both parties consented to the terms of the divorce. In 65 of these the only order made was a blocking order, extinguishing the inheritance rights of both parties against the estate of the other. In a further six cases a blocking order was accompanied by a pension adjustment order, which may have been nominal. Therefore in only 10 of the divorce cases decided on consent were other issues such as the family home, other property, maintenance and the custody of children part of the settlement and filed as a rule of the court.

This suggests that many issues are decided earlier in the process when the divorce applicants have negotiated a separation agreement or gone through a judicial separation. By the time they fulfil the condition of having to live separate and apart for four of the previous five years, most contentious issues have been resolved.

Nine of the applications for judicial separation initiated that year ended in consents, with the terms filed as schedules or

**Figure 1 Cases concluded October 2006  
Year of application**



rules of court. Of the remaining 2006 cases, three (two divorces and one judicial separation) went to full hearings and judgment, and six concerned other matters like guardianship of children, declarations of parentage and protection or safety orders.

### Most cases settled

There were fewer divorces by consent among the cases initiated in earlier years. Of the cases that started in 2005 there were 14 divorces granted on consent and 11 judicial separations. Two divorces and four judicial separations went to a full hearing ending in a decision by the court. Of the 2004 cases two were divorces on consent, eight were judicial separations on consent, and three divorces and two judicial separations went to trial. Of the 2003 cases six divorce cases were settled, five judicial separations were also settled, and two divorces went to a full hearing.

Therefore of the 161 cases concluded in October, 103 were divorces where the terms were agreed between the parties, and 33 were judicial separations where the terms were

agreed. Sixteen cases went to a full hearing and a court decision. Nine of the total concerned other matters like guardianship, declarations of parentage or protection. (see figure 2)

### 10 per cent fought

These figures show that only about 10 per cent of family law cases are contested to the end. Contrary to popular perception, most are settled and the people concerned get on with their lives.

It is clear from the files that the settlement can come at various stages and may follow years of bitter dispute and protracted negotiations. For instance, cases begun in 2003 or 2004 had often gone through several hearings on matters like discovery and access to children before eventually they end with a settlement. Sometimes these settlements are accompanied by court orders, such as

pension and property adjustment orders. In other cases, the files show that where anything up to 20 court appearances were registered, a long battle preceded the final settlement.

But other cases have ended with significant agreement between former spouses. The large number of divorces where the only orders made were blocking orders, extinguishing each other's succession rights, indicates that many couples prefer a "clean break" to end their marriages.

### Children and maintenance

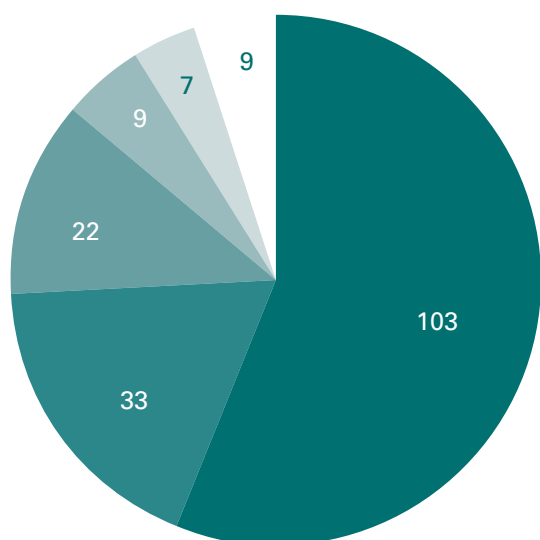
At the other end of the spectrum lie the cases that were contested all the way. Here the main problems appear to relate to custody of children and maintenance, with 11 of the 16 fully contested cases involving children. In six of the 11 joint custody was ordered, usually with the child or children living with the mother and access either as agreed between the parties or as laid down by the court following hearing of the evidence.

Court-ordered access can include complex arrangements to ensure that the child spends substantial amounts of time with both parents. Typically such arrangements could involve the child spending every second weekend and one or two nights during the week with the father, living the rest of the time with the mother, though there are exceptions.

In three cases the mother was granted sole custody. In one of these the father did not appear in court while in another he was granted only supervised access, suggesting allegations of abuse found credible by the court. In two of the cases no custody orders were made though there were some concerns concerning maintenance, suggesting that custody was not an issue.

Orders relating to children were sometimes combined with other orders relating to property, maintenance and the

**Figure 2 Cases concluded October 2006**  
**Types of cases**



**Total number of cases decided: 183**

- Consent Divorce
- Consent Judicial Separation
- District Court appeal
- Divorce judged following hearing
- Judicial Separation judged following hearing
- Other

family home, while in other cases these were the only matters decided. Maintenance was an issue in 11 cases. Amounts ordered varied widely, presumably reflecting the different circumstances of the applicants. In one case a maintenance payment of €8 a week per child was ordered while in another a husband was ordered to pay €1,550 a month of which €650 was for the wife and €300 each for the three children. This was the only case among the 16 where maintenance for both wife and children was ordered on an ongoing basis.

In a case where substantial property was divided the husband was ordered to pay €866.66 a month for the maintenance of the couple's child. In one case the only maintenance was a contribution from the husband of €300 at Christmas. There is no way, from the Courts Service records, of knowing what the husband's income was in either case.

In general, the maintenance payments ordered by Dublin Circuit Court in October were €100 to €150 a week per child. In two cases maintenance had already been set by the District Court and the amounts were not recorded. There was one case where there were no dependent children and maintenance of €120 a week was ordered for the wife.

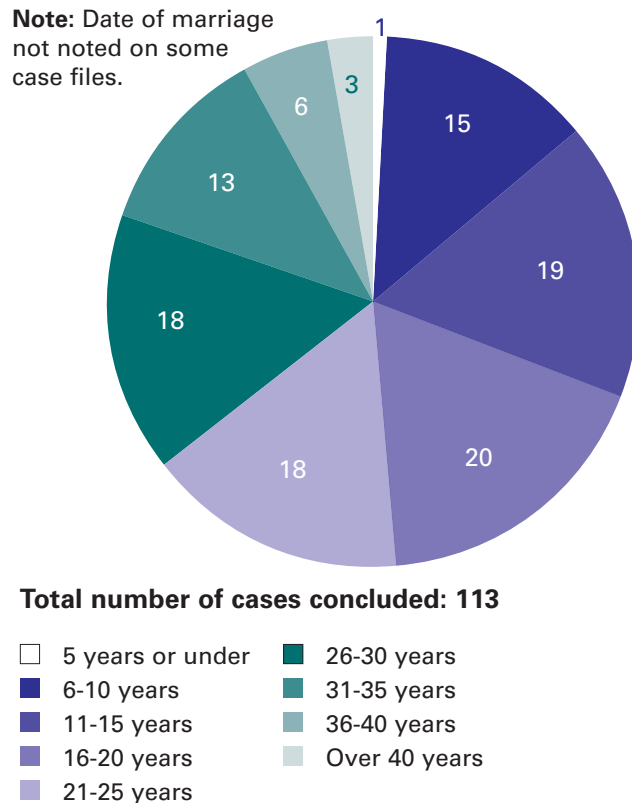
### The family home

The fate of the family home was decided in 11 of the 16 contested cases. It was ordered to be sold in five cases (with the proceeds divided either 50/50 (three cases) or 60/40 (larger share to husband in one case, to the wife in the other)). In two instances the house was to be sold when the youngest child was no longer dependent and the proceeds then divided 50/50. In two further cases the husband's interest was transferred to the wife and in two she had the right to occupy the family home for life.

In both these latter cases the maintenance ordered for the children was negligible (€8 per child per week in one, none in the other),

**Figure 3 Cases concluded October 2006  
Length of marriage ending in Divorce**

**Note:** Date of marriage not noted on some case files.



suggesting the transfer of the husband's interest was in lieu of maintenance. In one of the cases where the family home was transferred to the wife no one appeared for the husband and in the other a divorce was granted with no other orders.

Other property issues included two cases where pension adjustment orders were adjourned and one where the husband's retirement lump sum and the family's savings were ordered to be split 50/50. There was also a case where three additional properties were ordered to be sold along with the family home and the proceeds divided 50/50 between the husband and wife.

### Length of marriage

Marriage duration does not seem to be a major factor in whether it ends in divorce or judicial separation. Among the divorces granted, three were to people who had been married more than 40 years and 18 were

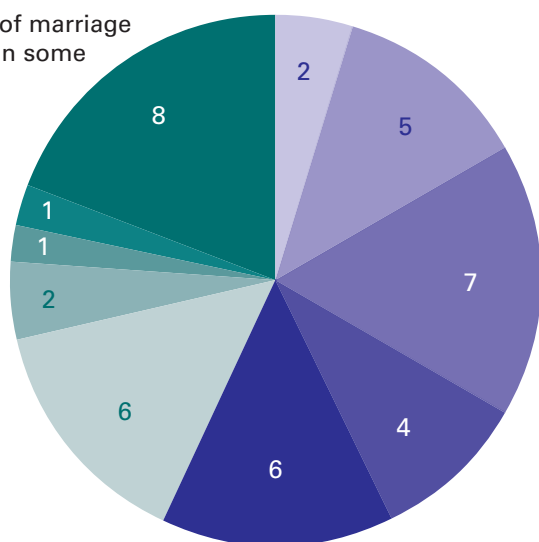
granted to people married more than 30 years. The rest were sprinkled fairly evenly among those married for periods ranging between six and 30 years. (See figure 3)

The date the divorce is granted does not, of course, necessarily indicate when the marriage ended. Divorces are often sought years after a separation, either by separation agreement or judicial separation, where the affairs of the two parties are effectively separated and matters concerning children, maintenance and property sorted out. Divorces granted where the only orders sought were those extinguishing succession rights suggests that such earlier agreements were already in place.

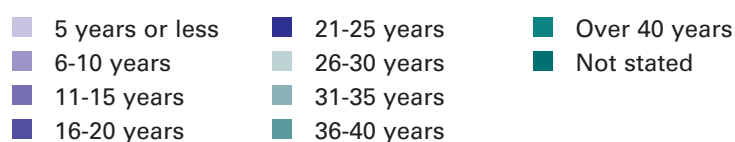
The duration of a marriage before a judicial separation is sought may be a better indicator of when marriage breakdown occurs. But here too there is a wide spread, with two couples obtaining a judicial separation after less than five years of marriage, and one doing so after 40 years. Three judicial separations were granted to people after more than 30 years of marriage. (See figure 4)

**Figure 4 Cases concluded October 2006**  
**Length of marriage ending in Judicial separation**

**Note:** Date of marriage not noted on some case files.



**Total number of cases concluded: 42**



## Consents

Sixty-four of the cases concluded in the Dublin Circuit Family Court in October had consents filed in court. Forty-eight of these consents were available for analysis of the terms, 28 linked to judicial separation, 18 to divorce and two to guardianship.

## Children

Agreements relating to children were made in 21 of these cases, with custody and access referred to in 18. In 16 of the cases joint custody was agreed, with the child or children residing primarily with the mother in 11, and sharing time equally in five. In two the wife had sole custody, with access for the husband.

In most cases access was either “as agreed”, or according to detailed arrangements handed in to the court, normally specifying that the child or children would spend two weekends a month and at least one week night with the father, with further detailed arrangements for festival periods and holidays. In one case the children’s wishes were mentioned in relation to access. (See figure 5)

In most, but not all cases, the father agreed to pay maintenance for the children. The amounts varied from €100 per child per month to €173 a week (about €700 a month). In two cases no maintenance was agreed, apart from VHI cover in one, and in the other the wife acknowledged that the husband was getting less than his fair share of the family home in lieu of maintenance. In two other cases no maintenance was agreed apart from half the child or children’s educational and medical expenses. In the 13 other cases where monetary amounts were agreed, the average rate was just over €400 a month. Only in three cases was the amount agreed less than €75 a week.

It was relatively rare for wives to be paid maintenance and the amounts varied widely. In two cases where dependent children were

also being paid maintenance, the wives were paid €400 and €580 a month respectively. In one of the three cases where maintenance was paid to the wives where there were no dependent children, €571.38 was being paid for four months until she became eligible for the non-contributory old-age pension, when this would cease. But she did receive ownership of the family home. In another instance where the wife received maintenance for herself alone, the amount was €400 a month while in the other it was almost four times that.

### Division of property

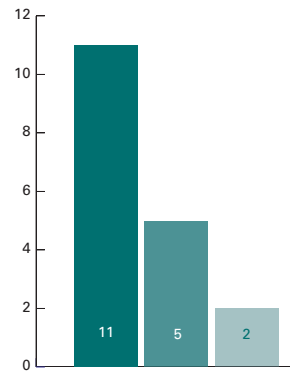
It is clear from the consents that couples prefer a “clean break” to the link represented by maintenance. Often this is achieved by apportioning the family home disproportionately in lieu of maintenance. A few lump sums were also paid.

The family home was dealt with in 43 of the cases. In 26 of these it was transferred to the wife, normally on payment of anything between €20,000 and €320,000. Explanations for these sums are not recorded but the variations could be attributed to house value and the outstanding mortgage and to whether or not maintenance was being paid as well. It was often, but not always, specified here that the wife would take on the mortgage and in one of the 26 the husband continues to pay the mortgage.

In four of the 43 cases either the wife already owned the house or she was permitted to live in it without ownership being specified. In three cases it was agreed that it be transferred to the husband, for the sums of €10,000, €110,000 and €210,000 respectively.

In the 10 remaining cases it was agreed that the family home be sold, and the proceeds divided. The ratio of the division ranged from 50/50 (in three instances) to 75/25, with the average range being 45 per cent to the husband and 55 per cent to the wife. (See figure 6)

**Figure 5 Consents filed October 2006: Custody and access**



**Total number of cases filed: 18**

- Joint custody, main residence mother, access agreed
- Joint custody, residence shared or not specified
- Sole custody to mother, access to father

### Pensions

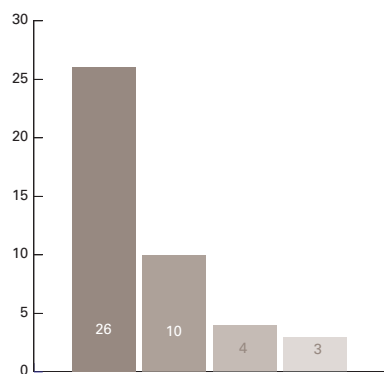
Pensions and other assets featured in 42 of the 48 cases available for analysis but in most of these pensions were referred to only to specify that there was no claim or that a nominal pension adjustment order was being made (typically for 0.001 per cent of the pension). In two of the 42 cases it was agreed that the wife should receive 50 per cent of the husband's pension, and in two others that she remain the beneficiary of his contingent pension (should he die). In another the wife received a refund of his pension contributions.

The most common form of other financial adjustment was provision for life assurance, either to guarantee maintenance of children or mortgage payment. Such payments were agreed in six cases. In another instance, the wife received half the family's savings and, in the one case where significant resources appeared to exist, a property and the family home were transferred to the wife along with €25,000 towards her legal costs. In this case, which involved a divorce after 36 years of marriage, a High Court maintenance order was discharged, so there was a transfer of property but no continuing financial support.

In 20 of the 42 cases the parties specifically stated that they had no claim on each other's pension or other assets. (See figure 7)



**Figure 6 Consents and Disposal of Family Home, filed October 2006**



**Total number of cases concluded: 43**

- Transferred to wife\*
- Sold and proceeds divided
- Other
- Transferred to husband\*

\* On payment of sum of money

In 13 of the 28 judicial separation consents one of the clauses was that the consent constituted “full and final” settlement, or that it was binding in future divorce proceedings. In two of the divorce consents it was also stated that this was a “full and final” settlement.

### Some conclusions

It appears from an examination of the court rulings on the one hand and the consent terms

on the other that there was not a significantly different outcome between a negotiated settlement and a judgment of the court in Dublin Circuit Court. Custody of children, access arrangements, the disposal of the family home, maintenance and other financial matters seem to fall within certain broad parameters whether negotiated or decided.

One difference concerns children where the negotiated agreements almost all resulted in joint custody while in three of the 11 disputed cases sole custody was awarded to the mother. Pension division also featured more in the disputed cases. But when it came to child maintenance the amounts the courts awarded and those agreed by negotiation were very similar.

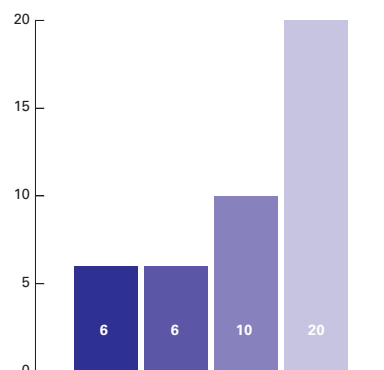
However, these consents and the orders made when judgments are given do not necessarily indicate a conclusion to the proceedings. There may be subsequent court hearings to enforce the court orders or the consents that were made a rule of court.

What they do show is that the parties generally seek a final settlement except where children are involved. Dependent children usually though not always mean maintenance and can influence what happens to the family home.

In only seven cases out of the total of 154 divorces and judicial separations granted in the Dublin Circuit Family Court in October 2006, that is, approximately 5 per cent, did the wife receive ongoing maintenance payments.

As I said above, this analysis can best be described as a “snapshot” of what happened in the busiest family court in the state during a specific period. While it does not necessarily represent all family courts, it does give an idea of what outcomes can be expected from proceedings for divorce or judicial separation. With the technological capacity to analyse all court orders and terms ruled in court, it would be possible to provide practitioners and the public alike with information on what to expect when they embark on such proceedings.

**Figure 7 Consents filed October 2006 Pensions and other assets**



**Total number of consents filed: 42**

- Transfer of portion of pension
- Nominal pension adjustment order
- Other financial settlement
- Specified that “no claim” on pension or other financial assets

# Marriage is over and mother gets custody

**Judge Alison Lindsay** made a judgment in Dublin Circuit Court in a case that had already been part-heard. The hearing continued with the cross-examination of the respondent husband, judgment was reserved and given later in the week. The wife had applied for judicial separation and the husband wanted 50 per cent of the family home and access to his infant daughter.

## The facts

**T**he couple had met while the applicant wife was on holiday in the eastern Mediterranean. They married there in 2001 and returned to Ireland. They lived for a time with the wife's family before moving into their own house in 2003. The deposit came from a credit union loan and there was a mortgage of €180,000, paid by the wife. The house was in joint names. The husband claimed he contributed to the household expenses, which the wife disputed.

The couple also bought a site in the husband's country of origin and this was registered in his name. The husband valued it at €10,000 but the wife disputed this also, saying it could be worth up to €100,000.

The couple had a baby in 2005 and separated shortly afterwards. The husband had access visits to the baby in the home of the parents-in-law. He said he found the atmosphere there uncomfortable and felt he did not have "quality time" with his daughter.

There was a protection order and a barring order against the husband. He was charged as a result of breaching the protection order and received a six-month suspended sentence. He denied that he had threatened his former wife, saying that he had only tried

to open her bedroom with a screwdriver. He said it was not true that he had threatened her with the screwdriver as the gardai claimed.

On financial matters, he said he had saved money to buy the site in his home country. Judge Lindsay said that in earlier evidence his wife had said this money was joint savings. He agreed. On contributions to the family household, he said he bought groceries for the family. The wife claimed he sent money home and spent it on gambling and had contributed little.

He was seeking access, not custody, of his daughter and was willing to give an undertaking he would not take her out of the jurisdiction. He also agreed to access in a community centre.

## The ruling

The judge said she accepted there was some violence in the marriage and a lack of understanding between the couple along with cultural and religious differences. This led to a barring order and access to the couple's daughter was disrupted. It was now a severely troubled area.

She accepted the marriage was over and granted a decree of judicial separation.



She granted sole custody of the child to the wife, along with primary care and control. The husband was to have access twice a week in the community centre he had agreed to and was to text his wife with information on the days he was free for access. She would then bring the child to the centre and leave her there for an hour or an hour and a half. If this worked well over the next six months or so he could take the child to a park or shopping centre, and eventually to his home.

He should continue to pay €50 a week maintenance for the child.

The judge accepted that he had put money into the household as the family could not have managed otherwise. There was now €100,000 equity in the house. She also accepted that the wife was paying the mortgage and this would continue. It was difficult to assess his contribution, but the judge put it at 20 per cent, which meant his interest in the equity was €20,000.

The wife was not interested in maintaining her interest in the site abroad. Relinquishing it reduced his interest in the family home to €15,000. If she paid this amount the house could be directly transferred to her name. Otherwise he could have 10 per cent of the house value on its sale when the daughter reached 18.

The court accepted his undertakings to stay away from the family home and not remove the child from the jurisdiction.

# Issue of conduct weighs on judge's mind

**Judge James O'Donohoe** gave judgment in Cork Circuit Court on a case that had begun in May 2005 and had had 18 days' hearing concerning an application for a judicial separation. The applicant's case had been heard and the respondent wife gave the last of her evidence in the days before the judgment.



## The facts

**T**he couple married in 1987 and had three children: a daughter (13) and twin boys (7). The husband worked in a substantial family business and the family had moved around for the first 10 years of marriage, settling back in Cork in 1997. The wife had worked in the business in the early years but after the return to Cork worked full-time in the home.

In 2003 the wife began a relationship with the husband of a couple who were close friends. She told the husband about this in July 2004 and the marriage effectively ended though she continued to live in the family home until July 2005. The husband issued judicial separation proceedings in

October of that year. The man with whom she was having a relationship had also left his wife.

During the earlier proceedings the judge had ordered that she be paid half the equity in the family home, amounting to €410,000. The wife had been paid no maintenance during this time. There were other assets, including a holiday home in the south-west worth €240,000. It was subject to tax clawback if sold within the next two years.

There was already joint custody of the children who spent units of five and two days with each parent. The arrangements showed evidence of difficulty and strain and the daughter was hostile towards her mother. The wife said difficulties with the children meant she and her partner were not living together but she hoped they would eventually.

The husband was a shareholder of 20.7 per cent of the family business. He had also been in a property partnership with a brother but this had been dissolved in 2004 and all the properties sold to the brother. They had since been sold on at a considerable profit. The husband had discharged the mortgages on the family home. Because of the loss of rental income, the disposal of these assets had resulted in the husband halving his income, which had been €120,000 in 2003.

The husband had also taken out an SSIA for the wife in 2004, due to mature in 2007.

The wife only had a Junior Certificate and few skills but had begun a back to work scheme.

The wife said there was a shortfall of €750 a week between her income, which at the moment came from child benefit, and her outgoings should she move from rented accommodation into a house she intended to buy mainly with the lump sum she had already received for her interest in the family home.

The judge sought details of the financial circumstances of the wife's new partner but these were not available as his separation had not been finalised.

### The Ruling

Judge O'Donohoe said the issue of conduct weighed on his mind. He said the wife had given some idea of the background that led to her seeking happiness elsewhere but the manner in which she did so and the deceit that went on for 18 months had caused her husband great hurt.

He said he would award her maintenance, but this would not be open-ended but rather limited to 24 months. There would also be maintenance for the children and she would receive the SSIA when it matured.

He said the husband would also have to be a bit more mature about the impact the adulterous affair had had on the family and not involve the children or his wife's family in it. He would have to accept that his marriage was over, that his wife was in a new relationship and his children would have to accept that new situation. He would have to be firm with his daughter about accepting her mother's authority when she was with her.

Summing up his orders, Judge O'Donohoe ordered a 50/50 split of the holiday home, which was to be available to the wife when it

was not rented. It was not to be sold before the expiry of the tax clawback.

The wife was to receive €300 a week maintenance for herself for a period of two years and €200 a week for the children. Their maintenance would be reviewed in two years.

The couple were to have joint custody of the children, with access according to the schedule already drawn up. Each was to foster good relations between both parents and the children.

He granted a decree of judicial separation on the basis of the couple living apart for one year. He declined an initial request from the husband's counsel to ground it on desertion.



# 'People are prepared to move on'

Last year, the Dublin Circuit Court granted 1,126 divorces and 309 judicial separations out of a total of 3,391 divorces and 950 judicial separations granted in the State. **Emer Darcy**, manager of the State's busiest family law office, talks to **Carol Coulter** about advising the public, the rise of the lay litigant, and the cost of children

**E**mer Darcy, manager of the Dublin Circuit Family Law office, is in charge of processing the applications for divorce and judicial separation. This court, which handles about a third of all family law in the State, also deals with those who want to enforce an existing order on a matter such as maintenance. Thousands of such applications have been through her hands and she is now in a position to offer an overview of how family law works out in the Dublin Circuit Court.

Most of the time people are fairly calm about the breakdown of their marriage and what needs to be done. "People ask for help. They are prepared to move on," she said.

The Dublin Circuit Court granted 1,126 divorces last year and 309 judicial separations out of a total of 3,391 divorces and 950 judicial separations granted in the State. Divorces therefore outnumber judicial separations by about three to one, and are much less contentious, probably because the most contentious issues have usually been dealt with by the time the statutory four years' separation has elapsed.

## 'We don't give legal advice'

Of course, many people do not attend the court's family law office in person but through a solicitor. An increasing number, however, try to deal with their disputes, divorces in particular, by themselves.

"If we can assist people in the process on the basis of the Circuit Court rules, we will," Emer said. "We don't give legal advice. We suggest people get legal advice, especially where issues like children and property are involved."

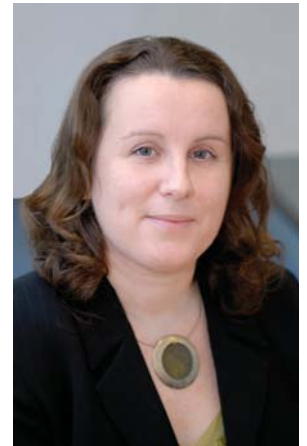
But she says about half of all Circuit Court divorce applications are based on consent. "Both parties provide letters of consent or one party agrees verbally so there is a ruling in default."

In addition, more than half the cases listed for a hearing ended up being settled, she said. "Divorce is often by consent. Judicial separation is much more contested."

## Rise in lay litigants

Emer has seen a huge rise in lay litigants over the past few years, due perhaps to the costs involved in legal representation. "A consent divorce costs €6,000-€10,000. There are DIY divorce companies who charge €600-€1,000. We can give the information for nothing." The Circuit Court rules are on the Courts Service website.

Judicial separations tend to be much more complex than divorces and office staff always recommend that people get legal advice if they request papers for a separation. Emer points out, however, that people can manage



*There are DIY divorce companies who charge €600-€1,000. We can give the information for nothing*

*We don't give legal advice. We suggest people get legal advice, especially where issues like children and property are involved*

*There are extreme cases of men who don't see why they should contribute. But the majority are more than willing to contribute to the maintenance of their children and the family home*

separation through mediation and then have the mediated agreement made a rule of court.

While there has been a lot of publicity around access to children, she said a judge rarely refused access to a parent. "It usually only happens after a lot of consideration by the court and a lot of medical reports and reports from social workers. I have also seen men fight tooth and nail for access and then not take it up."

### **'Children cost a lot'**

"The maintenance applications we see here are usually for the children, not for the spouse. There are extreme cases of men who don't see why they should contribute. But the majority are more than willing to contribute to the maintenance of their children and the family home. Children do cost a lot! There are schoolbooks, uniforms, etc. What we normally see is €60-€100 a week in maintenance per child. A lot of people just look for a contribution to childcare."

Sometimes people sign consents which are then made a rule of court but they then fail to adhere to the terms. This particularly affects maintenance, according to Emer. The other party then comes back into the Circuit Court seeking enforcement of the consent terms that were made a rule of court.

Although Ireland has complex legislation in place for the distribution of pensions when marriages break down this is often not availed of, Emer said. "The pension only comes up as an issue for older people, though everyone should look at them in the context of marriage breakdown. The number seeking pension adjustment orders is not great," she said.

### **Courts reflect societal change**

"However, judges are requesting nearly as a matter of course that people clarify their

pension position. It doesn't mean that ex-wives are automatically getting half the pensions or anything like that. Most pension orders are that each party retains their own pension, sometimes with special provision made for children."

She believes recent changes in Irish society are reflected in the family courts. The numbers seeking recognition of foreign divorces have risen. So have applications for recognition of foreign marriages, especially traditional African marriages. There are growing numbers of African men appealing domestic violence orders granted to their partners in the District Court. And young Roma girls are sometimes brought in by "uncles" seeking a dispensation with the three months' notice of marriage, or the over 18 rule.

Most cases that go to hearing are heard in under two hours but some run for two days or more. The increase in lay litigants means that cases can take longer as the judge has to explain issues like pension adjustment orders, she said.

While most cases go smoothly and some can take only a few days from the initial application (for example, one party is seriously ill and wishes to process a divorce in order to marry a new partner), others are bitterly contested. These can be seen from the multiple applications for discovery, for variations in access and maintenance orders, or seeking enforcement of such orders, as the case continues for what can be years.

Referring to the relaxation of the *in camera* rule, she said she thought it would help people out there to have a more accurate picture, based on the facts. "If we have reporting showing that the less contentious cases are the norm, family law might hold less fear for people, and they would realise it is not the daunting prospect they thought. It's not about who said what to whom, but focusing on making provision for the future."

*I have also seen men fight tooth and nail for access and then not take it up*

# Let's talk about it

**Pat Meghan**, Limerick County Registrar, explores the advantages of case conferencing

When a marital relationship breaks down it is common to have disputes between the parties about serious issues such as custody of and access to children of the marriage, ownership and possession of property including the family home, maintenance and other financial matters and succession. These cases invariably come before the Circuit Court to be resolved in judicial separation or divorce proceedings. The courts provide an adversarial system whereby both parties are usually represented by solicitors and barristers who present their cases. Decisions are made by the circuit judge. There is little or no scope for the parties along the way to talk about the issues affecting them or to try to reach a solution that they can both live with. This is understandable given the human and emotional distress involved and the often mutual distrust which exists in some cases.

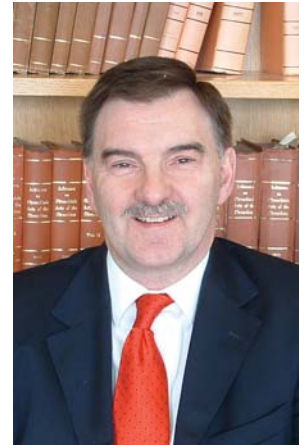
## What are the alternatives?

There are alternative dispute resolution mechanisms but they too have their drawbacks. For example if the talks fail and the cases have to go to court, solicitors withdraw from these cases. This means that new solicitors have to be retained with additional loss of time and further expense. Another drawback is that court proceedings have to be commenced. Case conferencing is a procedure to address these problems. The case conference is, by agreement, a meeting held by the county registrar with the solicitors for both parties which takes place after court proceedings have issued. The purpose is to narrow the

issues for trial or to facilitate settlement of some or all of the issues between the parties. The county registrar is a legal officer who can make court orders, for example time for filing of documents, inspections of property, interim maintenance and access orders and orders for discovery etc. All orders made are minuted and are of the same status as if they were made by the circuit judge. The county registrar is also responsible for the listing of cases in the Circuit Court. Cases which have gone through the case conferencing procedure and are either settled or some issues are for trial will be fast-tracked to a judge for hearing or to make any necessary legal orders.

## Pilot procedure

I have decided to pilot this procedure in Limerick because the local solicitors can see the potential for its success. The procedure has been well received, has had a positive response and results have been very satisfactory and mutually beneficial to the parties. I also have certain skills acquired in the past from my experiences as deputy director of the Samaritans in Limerick, coroner for west Limerick and a fellow of the Institute of Arbitrators. Case conferencing has potential to be very beneficial for people whose marital relationships have broken down. It is voluntary. When proceedings have issued there is an option for people to enter into early talks with the potential to arrive at viable solutions. The county registrar can make orders. Where progress has been made cases can be fast-tracked to the judge's list for ruling/hearing and it will produce results beneficial to both parties.



# Preserving anonymity: a draft protocol for family law reporting

by Carol Coulter

A broad consensus emerged during the debate on amending the *in camera* rule in family law proceedings that any change should not permit the identification of the parties involved or their children. The legislation reflects this although it does not spell out how it should be achieved. Nor was the Courts Service specific about how the requirement should be met when it set up the pilot project.

Based on my experience of rewriting High Court family law cases for The Irish Times, and in reporting on rape and sexual assault cases, I drew up a number of points that should guide the project and formulated them in the draft protocol below. These can be modified in the light of experience. They are intended to apply to myself and to any other reporter working with me on the pilot project.

## Protocol

The primary purpose of the **Family Law Reporting Pilot Project** is “the publication of a report of proceedings” in family law and “the publication of the decision of the court in such proceedings”, in line with the requirements of Section 40(3) of the Civil Liability and Courts Act 2004. That section also stipulates, “provided that the report or decision does not contain any information which would enable the parties to the proceedings or any child to which the proceedings relate to be identified”. To prepare such reports, the legislation permits a reporter to attend the

proceedings unless “in the special circumstances of the matter, for reasons which shall be specified in the direction” the court directs otherwise. The Courts Service engaged Dr Carol Coulter to conduct this pilot project.

The following draft guidelines are proposed to fulfil this purpose, and are intended to apply to Dr Coulter herself and any other reporter engaged on this project by the Courts Service. These guidelines are preliminary only, and may be modified in the light of experience, but offer a general outline of the form such reports will take.

## Guidelines

- 1 The reports shall be published in the first instance by the Courts Service in a printed or electronic form which will be made available to the public through the media, the Courts Service website, and appropriate professional publications. The Courts Service will permit its dissemination through the republication of articles and reports appearing in this publication on such terms as to identification of the source and subject to such restrictions as to re-editing as the Courts Service may specify.
- 2 The reporter shall take the utmost care to ensure that the reports do not contain any information that could lead to the identification of any party to the proceedings or any child

involved in the proceedings. The following measures will be taken to ensure the anonymity of the parties:

(i) There shall be no use of the initials of the parties' names in identifying the case for the courts themselves, their staff and practitioners. Instead reports should refer to, for example, "the applicant wife (or husband)" at first reference and "the wife" subsequently, and "the respondent husband (or wife)" and the "the husband" subsequently. Where unmarried parents of children are involved, they should be referred to as "the father" and "the mother". Obviously the children should not be named, though fictional names or initials (identified as fictional) may have to be used to distinguish one from another;

(ii) Cases reported will be given an identifier which will not include the initials of the names of the parties concerned;

(iii) There shall be no reference to the city or town where the parties live outside Dublin and Cork, where there is a large volume of family law and courts sit almost permanently. Instead general terms such as "a provincial city" or "a town" should be used. District and Circuit courts and judges will not be identified where this would result in the identification of the parties;

(iv) Property will be described in general terms, for example, eg "a substantial farm" rather than "a farm of x acres", or "a medium-sized business" rather than "a clothes shop". In certain cases involving ample resources, however, division of these resources may account for a significant part of the judgment and be of significance in it and so should be reported;

(v) There shall be no specific reference to a person's trade or profession unless it is relevant to the proceedings;

(vi) There shall be no identification of the children's school. Where the fact that they are attending a fee-paying school is

relevant, it would be sufficient to refer only to "a fee-paying school", or "a boarding school abroad";

(vii) Particular sensitivity shall be shown in dealing with psychological and welfare reports on children. Again, there may be circumstances when specific details of physical or sexual abuse should be mentioned as they would be relevant in the context of custody and access disputes, and would feature prominently in the judgment. The practice of the reporting of rape and sexual abuse cases by the responsible media offers useful experience here.

3 Matters which are aired in the pleadings should not form part of the report unless they are opened in evidence, and/or have a bearing on the outcome of the case.

4 The guidelines on preservation of anonymity listed under paragraph 2 above will apply to the contents of any pleading or document filed or produced to the court in the case concerned, and to any order made therein (including the contents of any settlement ruled by the court, or produced to the court for any other purpose).





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