



Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

Report Launch Remarks

**Delivered by Mr Justice Donal O’Donnell, Chief Justice, at the launch of
the first Access to Justice Conference Report at Ballymun Civic Centre
on 22nd March 2022**

It was an Irish man, who was a distinguished judge in England, Mr. Justice Matthew, and who, at the end of the 19th Century, is reputed to have observed that *“in England, justice is open to all, like the Ritz Hotel”*.

That shows perhaps that the issue of access to justice is not a modern problem. Indeed, I think it would be fair to say that Mr. Justice Matthew would regard the modern system of the administration of justice as a significant advance from the late Victorian era. In those days, there was, for example, still capital punishment. There was no criminal legal aid, civil legal aid was unheard of, and public interest litigation did not exist. None of the voluntary bodies that now work in the field of providing information, advice and representation existed then. The daily diet of the courts involved criminal law or essentially private law litigation between people who could afford to dine from the expensive menu that was provided.

Things are much different and, I think, better today. However, it is still difficult today to avoid the impression that there is something of a mismatch between what goes on in a courtroom and the world outside, in that the disputes in the courtroom do not always reflect the disputes in the daily life of citizens but a further mismatch in perception of the system of justice. I think most people who work in the system or observe it closely see people working hard to ensure that a fair hearing is provided to everybody, and a fair result achieved. It has to be said immediately that reality often falls short of the ideal, but the criticisms we all make from time to time at least show a shared belief about what the system at its best can, and often does, achieve. However, that perception is not necessarily shared by those outside the legal system. This can sometimes be the product of lack of

knowledge but is also a consequence of justifiable frustration which can easily become cynicism created in part by the difficulty posed in getting access to the courtroom in the first place.

In Mr Justice Matthew's day, the orthodox view - which is shared by some even today - was that it was not the business of the courts to be concerned about access to justice. Courts existed to hear and determine disputes that were brought to them. Litigation was not itself an inherently desirable activity and not to be encouraged, and at some level it was actually a good thing that people should find it difficult to come to court and should have resort to litigation only if no other possible course was available.

But there is a difference between resort to court being a serious step not lightly taken, and access to justice being difficult if not impossible for ordinary people. If people cannot have disputes which are important to them resolved definitively by an independent court system or if indeed many people do not even know of the possibility, then the law becomes dangerously disconnected from the public it is meant to serve, and a cavernous discrepancy opens up between what the law says, and what the law on occasion does, or is understood to do.

This is a bad thing in itself, but current events have shown that the western liberal democratic model is a fragile one which we cannot take for granted. The existence of an independent court system in which justice is administered without fear or favour, affection or ill will, is not a luxury or optional extra. It is something, with all its inefficiencies and frustrations, that is central to the continued existence of a liberal democratic society. Francis Fukuyama defines liberalism as tolerance, pluralism personal autonomy the protection of private property and a recognition of community and, limited government. These are values under threat from different extremes today, but they depend very fundamentally on a properly function legal system.

We can see what happens when a legal system becomes increasingly disconnected from daily reality. In the United States, there are some highly developed and refined systems at State and federal level but for example, the point has been reached where some public defenders in the US at least, no longer refer to the

criminal justice system because that title implies that the system provides justice, something they increasingly are inclined to dispute. In addition, there is a growing tendency in academic circles, and other groups in civil society in the US – and this in a country that has spawned thousands of courtroom dramas – to even question the benefit of the adversarial system which is core to the common law concept of the administration of justice. It was a distinguished US lawyer Dean Wigmore who famously said that the adversarial system, and cross examination which is an essential part of that system was the greatest engine for discovery truth known to man, but we now see some of Wigmore’s successors question the value of the system. We should not assume that our system is immune from those pressures. My predecessor Frank Clarke, who is here today, established, as Chief Justice, an Access to Justice Working Group with members drawn from both branches of the legal profession, the Legal Aid Board and the Free Legal Advice Centres. I want to acknowledge the hard work that has been done by all participants in the Working Group, from the Law Society, The Bar Council FLAC and the Legal Aid Board and senior members of the judiciary. The Working Group is inspired by the Canadian Action Committee on Access to Justice in Civil and Family Matters, which has shown that there is a very positive benefit in having an independent working group, promoted by the Chief Justice of the day. I was very happy to commit to continuing to support the initiative that has been taken.

As some of you know a two-day conference on Access to Justice was held in early October, 2021 and this report is the product of that conference. I want to acknowledge the generous support of the Law Society which hosted the event in its headquarters in Blackhall Place and provided technical support, and I want to thank, very sincerely all the panellists who participated in the individual sessions. It was very heartening to experience the goodwill enthusiasm and energy, and hear from so many people with such extensive experience and commitment. The report itself is a comprehensive guide to the multifaceted issues involved in access to justice, and the very many people and organisations working in the area such as Gary Lee, Frank Murphy and others here. As such the report is itself much more than the account of a conference: it is both a rich resource in itself and also a valuable directory for a network of people and organisations working in the field, and who have much knowledge to share. The report is also, and importantly, a signpost to the future.

I think the focus of both the working group and the conference has been a mixture of enthusiasm and clear-eyed realism. What came across in the conference and comes across in this report, is the recognition that the problem of access to justice is complex and multifactorial and that there is no single easy answer. In the past it was fashionable to look to the State to provide answers and funding, almost without regard to cost, or the competing demands in society. I think it is now better understood that progress in this area involves careful work by those who are attempting to simplify court procedures on the one hand, voluntary groups providing advice and assistance, private practitioners providing services sometimes *pro bono*, and perhaps consideration of the reform and regulation of third party funding models for private litigation.

It is also fair to recognise the significant investment the State has made. I know that the Minister is very committed to the development of the Family Law Bill, and the significant investment in court facilities which will be required to provide the service envisaged. It is also the case that the Courts Service is currently engaged in the development of a purpose built family law facility at Hammond Lane in Dublin. If we look a little further down the river we can see the Criminal Courts of Justice building, the first major court development in the State since the building of the Four Courts more than 200 years ago. I think something in which we can take legitimate pride, is that a legal visitor to Ireland would see that when it came to investment in the legal system, priority was given to the areas of criminal law and family law, where most of the participants are not in a position to pay for legal services themselves. These substantial buildings are a real illustration of a commitment that legal disputes involving citizens of often limited means would take place in surroundings that reflected, respected, and enhanced the essential human dignity of all the participants. That is both important to acknowledge and also something to build upon.

The next step is to attempt to chart out a course for progress and development. This year we in the Working Group propose to focus on the question of the legal aid system. The development of a civil legal aid system has been a combination of an administrative system, subsequent legislation, and the influence of court decisions both in the Irish courts, and in the Court of Human Rights. Some of the

contributions to the conference pointed out that expanded access to justice can provide real and positive economic benefits, and more general benefits to society. But it must also be the case, that enhanced access to justice can strengthen the bonds that hold society together. It is important to recognise, I think, that the administration of justice is not something which can be merely left to be discovered by those brave enough to pass through the doors of the courthouse. It was the same famous American lawyer, Dean Wigmore said more than 100 years ago the State has been in the business of justice long before it became involved in the business of education or health. We have to recognise that it is not enough to provide courtrooms and judges, but ignore the many barriers that limit the capacity of ordinary citizens, or indeed, substantial businesses, to bring disputes to court and obtain a speedy and fair resolution of those disputes. Indeed, one of the key takeaways from the Conference was access to justice is not access to courts – it involves at a more basic and fundamental level access to information about legal rights and the law and the court system. We also have to recognise that the provision of a functioning legal system to which citizens can have recourse is a basic component in modern civilized society. It cannot or at least should not be left to the patchwork of private enterprise willing volunteers and a legal aid system that has developed incrementally and haphazardly.

I am very grateful that the Minister for Justice had wished to come here today, as a visible demonstration of the State's commitment to broadening access to justice. I wish to welcome the Secretary General of the Department of Justice, Oonagh McPhillips, and I want to take this opportunity of presenting the report to her and I am to express the hope that it will be of assistance to the Minister and her department, and to look forward to further discussion debate and cooperation in pursuit of an objective which I hope and believe, we all share.