



Cúirt Uachtarach na hÉireann  
Supreme Court of Ireland

**Tribute to Ms Justice Marie Baker**

**Delivered by Mr Justice Donal O'Donnell, Chief Justice, on the  
retirement of Ms Justice Baker on 15 April 2024**

Mr Attorney General, Chair of the Bar Council, President of the Law Society, Chief Executive of the Courts Service, Secretary of the Judicial Council, Registrar of the Supreme Court and friends. I would like to welcome you to the Supreme Court for this final sitting of our colleague Ms Justice Marie Baker. I would particularly like to welcome Marie's sons Donal and Tim, her brothers Sean and Micheal, and her sister Patricia. I would also like to send our good wishes to her sister Susan who cannot be with us today but is listening from Wales.

As many of us now know, it is exactly 100 years ago since the establishment of the Irish courts system by the Courts of Justice Act, 1924. That was by the standards of its time, quite a radical piece of legislation. One of the innovations introduced was contained in s. 12 of the Act, which, for the first time, set a retirement age for judges of the High Court and the new Supreme Court and fixed at 72. That was in due course replaced by s. 47 of the Courts and Court Officers Act, 1995 which reduced the retirement age by two years. It is, accordingly, thanks to these provisions that we know something, which we would not otherwise have guessed, and that is, that Marie Baker, a person of irrepressible vitality, enthusiasm and youthfulness, was in fact born almost exactly 70 years ago and retires today.

She was born in Bray, County Wicklow, but her family moved very shortly after that to Cork, but in a sign of things to come, even that significant and no doubt traumatic event, did nothing to halt her progress.

I would like to welcome all those who have travelled here in such numbers from the southern capital, and those joining us remotely. In recent years Cork has not had the sporting success which it has as a matter of history enjoyed (and some would say to which Cork people feel unduly entitled – try being from Antrim), and

so it is good to see they have not lost the ability to travel in large numbers to the northside of Dublin for celebrations.

Now if we were to pay undue attention to over-simplified, but popular accounts of courts and judges in general, and the Supreme Court in particular, you might believe that the Supreme Court was and is populated by grey-suited, grey-spirited men, pupils of private schools and graduates of UCD and who had all chosen to practice law because they decided the excitement of a career as an accountant might be too much for them.

Marie Baker's story is a striking antidote to this crude caricature. She was born the eldest of five children. Her father was a postmaster, and her mother left school at 16. They were both very intelligent people, who inculcated in their children not just a belief in the value of education, but a love of learning. Marie attended the local convent school in Midleton, where she excelled, and then decided to go to UCC for third level education, something encouraged enthusiastically by her parents.

Pausing there, there is already, in this simplified account, so much more of interest than the stereotype that some would wish to press upon judges, and also something that gives us an insight into the social history of our country. The appreciation of the value of education and, indeed, the love of learning, is perhaps one of the great enduring and valuable features of Irish life. It is something which I encounter regularly when I meet the families of newly appointed judges. It is the single unifying feature that the judges and their families share whatever their background, practice or experience. Education is the only so-called socio-economic right, which was included in the judicially enforceable provisions of the 1937 Constitution, at a time when the resources of the State were vastly more limited than they are today. That is its own illustration of the country's commitment to education.

As a young girl, Marie was, it was said, never without a book. Today, many people tend to look back on the Ireland of the mid-20<sup>th</sup> century as a gloomy and very insular place, but it is also true that during that time, if you had access to books and the support and encouragement of teachers and other likeminded people, there were no real limits to where you could travel to, not just in terms of the

physical world, but more importantly, in the world of ideas, and that is perhaps why the young Marie Baker did not simply go to university and seek to obtain one of the professional qualifications that were then and are now highly valued, she chose to study philosophy. Obviously, that choice tells us something about Marie's character and personality, but it also tells us something about the generous influences which have shaped her.

She graduated from UCC and then decided to travel the world in reality, and moved to Spain where she lived in Bilbao for almost five years, and developed a love for that country. Those were very interesting and exciting times to be in Spain, when the country was going through a peaceful transition from dictatorship to democracy and the experience left her with an abiding love for that country, and its vibrant culture. And one of the many regrettable aspects of the retirement of Marie Baker is that it reduces by fully 50% the complement of Hispanophiles on the Irish Supreme Court. And I have been asked to say that this pales into insignificance when compared to the fact that it also halves Cork's representation.

She returned to Cork and obtained a master's degree in philosophy and then decided to study law with a view to becoming a barrister. This was not a natural progression at the time. She had of course, no background in law, let alone any connections in the legal profession and still less at the Bar, but she was encouraged by her father, and pursued her interest because I think she thought, correctly, that it would be an interesting job for her, and equally correctly, that she would meet interesting and stimulating people.

It Is true that the Bar in the 1980s was still predominantly male, although that was changing quite rapidly, and predominantly middle-class. Coming to the Bar from outside that world, and being perhaps the first in your family to go to university and obtain a professional qualification, can provoke some different responses. One response might be to be naturally defensive and to seek motivation from a conviction that the deck was stacked against you. Another response might be to take on the protective colouring of your surroundings and become as it were more barristerial than the barristers, and more fogeyish than the youngest fogey.

It is I think, characteristic of Marie Baker that she did neither of these things. She embraced the wonderful world of the Munster bar, in all its excitement, interest, stimulation and occasional eccentricity. She was able to simply ignore occasional pretensions and foolishness, and find those things that she loved; the challenge of a rigorous and demanding job, and the companionship of good friends. She made her way diligently by dint of simple intelligence, by her love for the discipline of the law itself, by an aptitude for hard work and she won a deserved reputation for expertise in areas of black letter law which could be intimidating to less talented practitioners.

She took silk in 2004. She was appointed a part-time member of the Law Reform Commission in 2012, its own recognition of her standing as a lawyer. Two years later in 2014 she was appointed to the High Court, served there for four and a half years before being promoted to the Court of Appeal, where she served for another year and a half, before her appointment to this Court in December 2019.

Others will speak about her role as a barrister, and her public role, before and after her judicial career, but I would like to focus on her career as a judge. It is obvious that a large part of the work today of being a judge in the Superior Courts, is in producing judgments and indeed, reading the judgments of colleagues, past and present. In Marie's case her judgments have, I think, shown the benefit of her background in philosophy and, indeed her love of literature. They show an appreciation of nuance and subtle distinctions and also, a commitment to precision of expression. She was willing to take on any issue. In addition to giving judgments on issues which from her practice it might be expected she would be familiar with such as personal insolvency arrangements under the Personal Insolvency Act, 2012, bankruptcy, landlord and tenant, she has also given judgments on the question of the constitutionality of a section of the Offences Against the State (Amendment) Act, 1998; the interpretation of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010; the question of the turning off of a life support machine of a pregnant woman; and perhaps the most demanding case she dealt with, a question of the entitlement of an imprisoned person on hunger strike to refuse medical and nutritional assistance and more.

In this Court she delivered judgments on issues of conveyancing, property law, wardship, and personal insolvency, but also a landmark decision in relation to the

legal position of the President, as well as decisions on European Arrest Warrants. In all of these judgments there is both an elegance and clarity of expression but there is something more; a constant focus upon and sympathy with the individuals involved.

There are, however, aspects of judicial office which are not obvious even to experienced observers. One notable feature of Marie's career from the High Court, Court of Appeal and this Court, is that her advance through the system has been one continuous process of acquiring friends at every stage, precisely because she has not only an understanding of the judicial task but also a palpable enthusiasm for the job, a belief in its importance, a sympathetic understanding of all its demands, coupled with an intelligence that finds interest in many other stimulating topics outside the law, such as music, gardening, science, literature and nature, that made her an engaging and sympathetic companion.

I am not sure if everyone's job always looks easy when viewed from the outside, but I do recall being struck when Marie said in passing, that being a judge in the Supreme Court was the hardest job she had done. That was because it involved hearing cases often of considerable complexity in areas where she had not previously practised, but also, in all cases, because the demand for rigour of analysis is, or at least should be, at its highest in this Court. If it is true that it is a challenging job, and I think it is true, then it must be said that Marie embraced the challenge. She took on judgments without any complaint, in every area of the law, as I have said. She also took on the role of judge assigned as data protection supervisor for the judiciary, which is a demanding role. She became a member of the Board of the Judicial Council, and chaired its judicial welfare committee.

Her contribution to this Court goes well beyond the individual judgments that she produced. There are at least two features of a collegiate court, particularly a final appellate court, which are not necessarily understood or appreciated, even by those within the legal system or even the wider judicial system.

First, is the fact that the reading of sometimes extensive and dense material in preparation for a case, the hearing of a case, the production of a sometimes complex draft judgment, or the receipt of a draft from a colleague, is only part of the work of a judge of the Supreme Court. Once a draft is in circulation, it is

necessary to analyse it, discuss it and consider whether it can be refined and improved or whether it is necessary to produce a concurrence or in some cases dissent. Even when there is broad agreement about 90% of what is said, it is necessary sometimes to look very carefully at passages in the judgment. Many of these judgments will be reported in the Irish Reports and become a source for legal advice and legal argument in the future. We do not always know what part of any judgment will be cited and debated in the future, just that the judgment will be scrutinised and picked over, just as we have scrutinised and picked over the judgments which have been cited to us. In those situations, it is obvious that Marie's background in philosophy is and has been of great assistance, but more importantly perhaps, is the fact that it comes with a lively and sympathetic approach which is always positive.

The second thing that is not always appreciated is that while considerable effort is put into trying to find common ground and agreement, disagreement is not a defect in the system; instead, it can be said that disagreement is part of the essential DNA of a Supreme Court. There were some legal cultures in which a judgment which was unanimous was not valid because that fact was understood as indicating that there had not been sufficient scrutiny or debate. Judges have never been selected for service on the Supreme Court on the basis that they will be likely to agree with their colleagues. Instead, they are required above all to demonstrate independence of mind, and that may often mean challenging the views of colleagues not just about the outcome of a case, but also about the detail of the reasoning process. A collegiate court, particularly a Supreme Court in a common law system means working with people at a particularly close and almost an intimate level. It is impossible not to learn a lot about the way a person's mind works, from hearing a case with them, particularly a difficult one, and seeing at close quarters how they analyse an issue with which you yourself have struggled.

But all of this can have a consequence at a human level. I am reluctant to add to the belief that Cork is the epicentre of the legal universe, but it is the case that one of the greatest lawyers of the common law, Oliver Wendell Holmes, was as it happens, a visitor to Cork, and a correspondent with the novelist Patrick Sheehan, also, of course, the much-loved parish priest of Doneraile. In one of his letters, Holmes said that any writer had to have some sense of vanity, since it was vanity

which made a person want to do their work as well as possible. But that sense of pride in craftsmanship is the same pride which may make it difficult to accept criticism of it. And where the issues seem to be really fundamental ones with far-reaching importance, then that can place a strain on relationships, particularly in a field where people are required to work at close quarters, and are bound by confidentiality. We have seen in Supreme Courts in other countries, at other times, how friction can sometimes no longer be positive, and can be negative. One strength of the Irish Supreme Court in my experience, has been that while disagreements have sometimes been robust, relationships at a personal level have always been warm; it has been possible to disagree without being disagreeable. But this does not happen by chance, and one of Marie's most valuable contributions to the Court is that she has been a constantly positive, sympathetic and generous participant in discussions without ever sacrificing intellectual rigour. I asked the current members of the Court to describe Marie and the words used are instructive: instinctively generous; intuitively pragmatic and someone who always sought to see the individual involved, not just with the litigants and lawyers who appeared before her, but also with her colleagues; philosopher; thinker; talker; mediator; incorrigible optimist; gardener; chef; walker and friend. The judgments of Baker J. will be consulted for some time to come. But there are many, many more judgments which Marie Baker influenced for the better.

At a professional level we will miss her clear mind and clear prose, but at a personal level we will miss her even more.

One of the benefits of being both a philosopher and a linguist is an appreciation of language and the fact that different languages slice the world up differently and that translation is only therefore, an approximation. For example, English makes the single word "goodbye" do a lot of work to cover a lot of different things, from the finality of a definitive farewell to the words casually said to end a conversation with someone you fully expect to see soon. Spanish is much more sophisticated in this respect. And while today marks the definitive, statutorily prescribed end of Marie's career as a sitting judge of the Supreme Court, it is not *Adios*; it is instead the leave taking of friends – *amigos* which involves a warm embrace – *un abrazo*; a promise to meet again soon – *hasta pronto*, and an expression of gratitude for

the time spent together which does not need translation – *muchisimas gracias por todo.*