Opening of the Legal Year Address

Delivered by Mr Justice Donal O'Donnell, Chief Justice, at the Opening of the Legal Year Ceremony in the Four Courts on 7 October 2024

1. Good morning. I would like to welcome everyone to this simple but important event the opening of the legal year in Ireland, on, as has become traditional, the first Monday in October at the commencement of the Michaelmas term.

2. I would particularly like to acknowledge the presence of some distinguished international visitors:

- our neighbours and friends, The Right Honourable Dame Siobhan Keegan, Lady Chief Justice of Northern Ireland, and Mr Justice Stephen Fowler, Judge of the High Court of Northern Ireland;
- The Right Honourable Lord Patrick Hodge, Deputy President of the Supreme Court of the United Kingdom;
- The Right Honourable Lord Pentland, Judge of the Inner House of the Court of Session in Scotland; and
- The Right Honourable Sir Julian Flaux, Chancellor of the High Court of England and Wales.

3. The presence of international judicial visitors is particularly important. It emphasises our international links, but perhaps more importantly, it helps us to adopt a certain perspective in examining our legal system – its strengths, weaknesses, achievements and challenges. The legal business of a year can be

very demanding and all-consuming, and it is valuable to have an occasion to pull back the camera lens and try to form some overall view of what has been achieved and where we might go. The presence of our distinguished visitors today is not just an opportunity to meet old friends and make some new, but it is an opportunity to view developments in the legal system in Ireland within a broader context.

4. I would also like to welcome all the stakeholders in Ireland's justice system who are present here today, including the Attorney General, representatives of the Department of Justice, representatives of both branches of the legal profession, the Courts Service, the Judicial Council and the forthcoming Judicial Appointments Commission, representatives of NGOs and civil society groups, and, in particular, the judges joining us from each court jurisdiction in Ireland.

5. I said that it *has become traditional* to mark the opening of the legal year on the first Monday in October, and those words –"*has become traditional*" – are what I wish to speak a little bit about today. The legal system, with its respect for precedent, tends to start with a presumption that if something has been done before to some effect, it should continue to be done. But the truth is that what we regard as tradition sometimes involves radical change, and other times, the quiet discarding of practices no longer considered appropriate or effective or just congenial. The real test is whether the practice that is being followed is aligned with function, that is to say if it is still connected to the achievement of an objective that is still considered useful.

6. Here we are on a site steeped not just in legal history, but in Irish history. If you are visiting the Four Courts for the first time, or indeed, if you are one of the many people rushing through it on a daily basis, you might easily miss a recently acquired artefact from a particularly iconic period in 1922. It is the

Propaganda Communique issued on the morning of 28th June 1922 by Rory O'Connor, the commander of the forces occupying the Four Courts in response to the commencement of the bombardment that marked the outbreak of the Civil War. Reading that Communique gives a sense of the revolutionary fervour of those like Rory O'Connor who were committed to opposing the Treaty. One telling thing is the date: the 28th of June, not of 1922, but the 7th year of the Republic.

7. I do not suggest that anything revolutionary occurred here last year, nor am I suggesting any change to the legal calendar, but there is a sense in which this can be said to be *year two*. It is only the second year, in 100 years of the Irish courts system and in the 93 years since those courts have been in operation in the Four Courts building, that the ceremony which marks the opening of the legal year actually takes place in the Irish courts themselves. It had indeed *become* traditional – by which I mean that it was the system which we came to, and assumed must have been in place forever, and even became attached to – for the opening of the legal year in Ireland to be marked by two religious ceremonies in both St Michan's Churches.

8. This set-up, over time, came to be accepted as the official opening, but there was a growing unease, which I must say I shared, of the intertwining in Ireland of religion with an important branch of the government of a state which was established from the outset, 100 years ago, on republican principles and which has been, in name and reality, a republic since 1948. In the years preceding 1921, there was once quite an elaborate ceremony, which took place in the Four Courts building, known as the Lord Chancellor's *Levee*, where the Lord Chancellor entered the building preceded by two tipstaffs, and a mace-bearer, and was followed by a train-bearer and purse-bearer. That ceremony occurred each April at the same time as the commencement of the fiscal year.

9. For obvious reasons, there was no ceremony in 1922 or 1923, and in 1924, when the new courts system was established, there was a short ceremony in June captured on a Pathé newsreel footage, involving a procession of the newly appointed, and to my eye, slightly embarrassed judges, dressed in morning suits who made their way rather briskly way around the castle yard.

10. In October 1931, when the Four Courts building was reopened, it was proposed that the occasion should be marked by a ceremony, but that was vetoed by the then President of the Executive Council, WT Cosgrave, in favour of religious ceremonies, private and unofficial, in the two St Michan's Churches.

11. And so, the tradition which many lawyers encountered in the succeeding years is really an example of happenstance, which, as many of you will know, is a regular visitor to the legal system. However, it is important, in my view, that if there is to be a ceremony marking an important milestone in the justice system, then it should, in a republic such as this, take place in a public building in circumstances which illustrate the essential equality of every person coming to the courts irrespective of their beliefs.

12. The message of the last 100 years and more is that we have repeatedly made our own traditions; discarded those things that make no sense, adopted others, sometimes for convenience, and sometimes for principle. That is, of course, *how* we come here and why we are today, but perhaps leads to a different question as to *why* have an opening ceremony at all?

13. First, as I mentioned already, this provides a moment of reflection and consideration. It will also, I hope, in the future permit contributions from other actors in the justice system, such as Ministers, the Attorney General, members of the practising legal professions, other members of the judiciary, and other NGO's active within the courts and justice system, and provide the opportunity for

exchanges. We do not have many opportunities to do so. As I said, some things change but some things should remain the same. One thing that is constant is that judges do not participate in public controversy. That is emphasised in the Bangalore Principles. A central feature of the administration of justice is that the public is entitled to expect a determination made on the merits, factual and legal, by a decision-maker, without fear or favour, solely by reference to facts and law. It is not that people without opinions are appointed judges. Rather, it is that all judges must set aside their fears, their affections and general opinions, and refrain from comment. That public reticence is, in and of itself, an important demonstration of that commitment.

14. But that reticence has to be respected for what it is. That is much more difficult when we recognise that today's world is one in which communication, both in mainstream media and on social media, is prevalent and even pervasive. Most businesses or voluntary organisations or politicians, whether within or outside of government, have and rely heavily on communication and media relations advisors. It is no part of the judicial function to try and manage public reaction in advance of a case, or to try to influence public reaction afterwards. However, there are some occasions when it is appropriate for those in leadership positions within the judiciary to make a public comment, but even then it is expected that those occasions should be limited, and that the expression of views should be measured.

15. At the same time, the way in which the media industry has developed both at national and local level, and the increasing influence of social media, might lead a regular media consumer to have noticed that the routine day to day reporting of court cases, which used to be a staple diet of newspapers and other media, has significantly decreased. This matters because research in our neighbouring and comparable jurisdictions shows that the more experience and knowledge members

of the public have of the legal system, the greater their confidence in it. Constructive criticism is welcome, but there is also a corresponding obligation on those who would comment on or criticise the court system based on generalisations to recognise the limitations of the information available, and the significant constraints that are upon the courts in general, and individual judges in particular.

16. This is particularly important in today's world, having regard to the role that courts are required to play in societies which are rapidly changing. Recent studies on constitutionalism illustrate the fact that there is nothing inevitable about a form of government in which a system of checks and balances provides for the limitation of the legislative and executive powers by courts, however familiar and essential as it may appear to us. It must be recognised that this system is now under challenge at a level we have not witnessed before, and much of that challenge is directed towards courts, whether at a national or supernational level.

17. That criticism or challenge is, in truth, existential, and while some elements of it are refined intellectual analysis, at another level it is more visceral, which is multiplied, amplified and made more dangerous by a number of the factors I have just described: that is to say a lack of comprehensive, accurate information about courts, a tendency to extrapolate from isolated or extreme instances, and the capacity for criticism to be amplified exponentially by social media and widely shared, particularly with those who have no immediate or direct experience of courts.

18. The entire courts system, in providing a form of completely independent adjudication, by reference solely to the factual and legal merits, is a key element in maintaining not just order in society, but also confidence in it. The legal system is not simply a service provided by the State. It is an essential element of the

State that has a critical role to play in maintaining both the checks and balances of the system and the confidence of the citizens in it. That is why events like this are not only celebrations; they are also a reminder that we all have a role to play in seeking to improve the courts system, and, where appropriate, defending it and explaining it.

19. Some of the more significant occasions which took place earlier this year included the events organised by a dedicated centenary committee to celebrate and commemorate 100 years of the Irish courts system. The objective of these events was not simply to celebrate or commemorate, but to consider the past century and to look forward to the future. On 12th April last, there was a very successful conference organised by the judiciary and Courts Service in Dublin Castle in conjunction with Dr Niamh Howlin of UCD on the Courts of Justice Act 1924 and the surrounding legal and historical landscape. Those papers will be gathered in a book, titled *A Century of Courts*, due to be published in November of this year.

20. At the risk of oversimplification, it is worth highlighting from the discussions at that conference the real sense of radicalism of change that was instituted in 1924. But what was once radical quickly became established, and little changed in the succeeding years, which in part reflected a state that had very limited resources and a society that was not so much stable as stagnant.

21. In contrast, the pace of change, particularly in the last twenty or so years, has been extraordinary and dramatic. The population has increased significantly and become more diverse, law is becoming more elaborate and multi-layered, and litigation is correspondingly expanding, complex, and demanding. It is fair to say that even if these changes were not occurring at their current pace, there would be significant challenges in seeking to administer justice in a system that was

devised 100 years ago, and in a network of courthouses and auxiliary offices, much like this one, which long pre-dates the establishment of the system in 1924. Indeed, the dramatic changes in society, the law and the nature of litigation in recent years increases those challenges and make it urgent that we take this opportunity to examine our system with fresh eyes and perhaps adopt some of the radical spirit of a century ago.

22. In May of this year, we held an event in the Round Hall to commemorate the 100th anniversary of the coming into force of the Courts of Justice Act 1924. Later that day, President Higgins hosted a memorable reception for visitors and others at Áras an Uachtaráin, where he spoke about the significance of the courts system, and said:

> "*One may well ask if there is any aspect of our republic more essential to its effectiveness and continuity than the independence of our nation's courts and their ability to uphold the rule of law? It is, after all, our judiciary that has an enormous responsibility in being part of a system that seeks to ensure, not only that order is based on a legitimate and democratically sourced assent, is maintained in our nation, but also that the struggles in which the citizens of our country engage with each other—whether over law, ideas, politics, or social values—are resolved reasonably, and fairly*."

As we in the Supreme Court say in some of our best judgments – I agree – but discharging that important role comes at a price.

23. Many of you will have heard of the acronym JPWG, and indeed some of you are contributors to it, but it is worth recalling, on this occasion of reflection, the situation that led the government to agree to the establishment of a judicial planning working group to assess – on a scientific and evidential basis – the need for additional judges, both now and into the future. The simple fact is that the

approach to judicial numbers, and indeed to facilities and other supporting infrastructure, had changed little in the preceding hundred years, and the necessary frugality of the early years of the State had become ingrained in the State's approach to resourcing the courts system, and indeed the justice system more generally. Ever since the EU Justice Scoreboard was first published in 2013, Ireland has had the dubious distinction of being consistently at the bottom of an EU member state league table in terms of numbers of judges *per cap*ita.[1] Ireland also has the lowest number of judges in the 44 Council of Europe member states.[2]

24. The final component to this perfect storm is that the courts system was particularly affected by the economies that were forced on this country as a result of the financial crisis. IT, which is a key driver in modernisation, was required to be the area where savings were made by simply not reinvesting in the system, so that until very recently, some of the court systems in operation dated back almost twenty years.

25. By way of example, IT networks in courts across the country are either at or over capacity in most locations, which can result in unstable conditions and disruptions. In the Four Courts complex, which is now required to hold over fifty judges (in addition to close to another 20 in other buildings in the complex), with a vastly increasing workload and requirement for ancillary support staff, the fibre cabling is between 20 and 25 years old and incapable of facilitating the high data speeds needed for modern day business activities. The Courts Service is embarking on a major Network Upgrade project later this year as part of its

[1] See EU Justice Scoreboards, including the most recent EU Justice Scoreboard 2024, available at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en

[2] See CEPEJ evaluation report (2022 cycle) at p.46, available at https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279.

modernisation journey, which is well underway, in order to revamp networks across the country, but the large technical debt caused by an extended period of underinvestment and the age profile of many courthouses means that significant and consistent investment will be needed over the next decade to provide both the physical infrastructure and modern, digital services that an efficient courts system requires, perhaps most obviously in this historic building itself.

26. The JPWG commissioned a report from the OECD, which estimated the shortfall in judges at between 60 and 108 judges. The scale of the shortfall can be illustrated by the fact that this was estimated by reference to a system where judicial numbers were 160, and the Supreme Court numbers (complement of 9) should be subtracted from that total, since the successful reform of the appellate structure and jurisdiction of the Superior Courts in 2014 meant that it was considered unnecessary to review the numbers of judges in the Supreme Court for the purposes of the JPWG.

27. A shortfall of this nature converts directly into avoidable delay and contributes to a chain reaction where delay increases exponentially. Delay is a constant threat in any legal system because a speedy and efficient system should be a central value in the administration of justice .

28. The JPWG report recommended the appointment of 44 judges to the District, Circuit, High Court and Court of Appeal by the end of this year – that is 2024. These were to be appointed in two phases, the first phase of 24 and a subsequent phase of 20, subject to a satisfactory review. I am pleased to say that the report was accepted by the Government and the first phase of appointments has now been completed.

29. The implementation of the recommendations of the JPWG has been a learning curve for all concerned. It had to be done in flight, as it were, while the

courts system was still operating. In order to measure the effect of the additional judges, it is necessary to gather accurate and, in so far as possible, real time data. However, that in turn involved constructing an entire system to collect and analyse the data on the disposal of work at each level of the court system, and indeed, in each courtroom.

30. A second thing that is emerging from the process is that there is a direct correlation between judicial numbers and throughput, but judicial numbers are only one pinch point in what is an extended pipeline, all parts of which must function properly if work is to flow through the system to achieve maximum efficiency. Take the criminal justice system as an example. In order to deal with an increased number of cases, it is necessary that there be: an adequate supply of counsel to prosecute them; solicitors to instruct counsel; staff from the Office of the Director of Public Prosecutions to supervise prosecutions; gardaí available to give evidence; probation services in some cases; Courts Service staff; and ultimately, prison spaces, to accommodate persons if they are sentenced at the end of the process. There is, in this regard, a need for a system wide analysis.

31. Having said that, it has been possible to analyse data which has been collected in respect of the first phase of additional judges, and compare for the first time output in Q1 2023 with Q1 2024. The simple takeaway is, as I say, that there is a direct correlation between increased judicial numbers and increased output of work. Resources do lead to results. To take just some examples, which are representative of the impact of additional judicial numbers: the District Court saw the most protracted process of additional judicial numbers, which resulted in an 8% increase in the number of family law cases resolved, and a decrease in summonses awaiting scheduling by 83%. In the Circuit Court, family law waiting times were reduced and court sittings were increased by 36%, representing 457

additional sittings. In the Central Criminal Court, the number of resolved cases increased by 8%, waiting times for priority cases dropped by 18%, and defendants on bail saw a 40% decrease in waiting time.

32. If there is a clear appetite for improving these figures further still, which – in my view – there absolutely still should be, then the emerging message is clear: there is a measurable connection between resources and output.

33. A further consequence of the JPWG process has been the necessity to establish implementation steering groups which require a degree of communication and interaction between the judiciary, the Courts Service, the Department of Justice and others, with a view to understanding how to best achieve the full implementation of the report and the benefits which it seeks to accomplish. That in and of itself is a beneficial process. The independence of the judiciary does not have to mean the isolation of the judiciary, and exchanges on issues in relation to the functioning of the justice system are valuable to everyone concerned.

34. There is an openness to change within the justice system, just as there was a century ago, but it is for change which – like the establishment of the Court of Appeal in 2014 or the creation of the JPWG – is firmly based on research and expert analysis, and which can be shown to achieve positive results.

35. Some areas of change are initiated by the Government, and others come from within the courts system itself. One thing we have become much more conscious of is the emphasis on the delivery of judgments. It is widely acknowledged that litigation has become increasingly more complex, involving complicated issues of law rather than simple issues of fact, and the expectation of the nature and quality of judgments has increased. Coupled with that, we had inherited a system that prioritised the listing of cases for hearing because, by

tradition, a large proportion of cases, particularly those in the personal injuries list, tended to settle on the day of the action. Accordingly, it became common place to list many more cases for hearing so that as many cases as possible could be processed through the system.

36. However, a number of changes have now taken place which mean that there are many more ways in which cases can be settled and resolved without recourse to the courts system, and the number of cases which proceed to hearing is now much higher, often involve legal issues of some complexity, and regularly require considered written judgments. It follows that the parties are not necessarily benefiting from an early hearing date; rather, the critical date for them is the period between the commencement of the proceedings and their conclusion with the delivery of judgment.

37. Producing a written judgment in the Superior Courts is not easy, and it is remarkable how little it is understood about the process, even by those within the system. There is an elementary system provided for in the Court and Court Officers Act 2002, as amended, which provides for the listing by the president of a court of a case two months after judgment is reserved before the judge who reserved judgment. However, that procedure is very poorly adapted in practice, for example, to the case of collegiate courts. In the case of the Court of Appeal and Supreme Court, the point at which a judge has produced a final draft of his/her judgment, and circulated it to his/her colleagues, may only be half way through the entire process of debating, discussing, analysing and refining, and sometimes dissenting from that judgment. All of this is a necessary part of the process of an appellate court, particularly one which is tasked with deciding points of law of general public importance, the outcome of which is likely to control or at least influence many other legal issues beyond the particular dispute in question.

38. My colleagues in the Supreme Court and I have recently adopted a protocol which seeks to explain the process of producing a judgment in a collegiate court, the average length of time anticipated and the steps that will be taken when that time is exceeded. The protocol provides for the listing of cases in which a judgment is outstanding individually before the presiding judge of the panel that reserved judgment, and in a general list before the Chief Justice in order to communicate the progress of the judgments process. This protocol will be published on the Supreme Court website. The Court of Appeal and the High Court are also in the process of adopting similar protocols, adapted to the particular circumstances of each of those courts.

39. Some other changes occur externally. This year has seen the promulgation of the Judicial Appointments Commission Act 2023 following a reference to the Supreme Court by the President of Ireland pursuant to Article 26 of the Constitution and a very protracted gestation, but I am pleased to say that the Minister has recently announced the appointment of four lay members of the Commission. There are a significant number of steps that need to be taken by the Commission, but it is, in my view, to be welcomed that for the first time the Commission will be required by statute to provide a maximum of three suitable candidates to the government for appointment, which selection must be made on merit. There has been considerable debate on the structure of a commission, and I have contributed to that myself on a number of occasions. But the Commission is now about to be established, and I am firmly of the view that confidence in the judiciary commences with confidence in the appointment process. I look forward to working with both the lay members and judicial members of the Commission in that task. In doing so, I must also pay tribute to the work of the members of the

Judicial Appointments Advisory Board who carried out their task in my experience very carefully and conscientiously .

40. There is an overall sense, particularly in today's climate, that requests by agencies for additional funding should be heavily discounted or even completely ignored. I think if we were to look at this in the context of the court system – coldly and dispassionately – two things are clear. First, there has been a century of persistent and consistent underinvestment in the courts system, not only in judicial numbers, as I have outlined, but also in the ancillary staff required in order to support the operation of an efficient courts system, and in the type of physical infrastructure and IT facilities that would be regarded as standard in any business. Secondly, there is causal connection between investment in the courts system and beneficial outcomes in terms of reducing waiting lists, delays and increased efficiencies, the quality of decision-making for all court users, and reducing the stresses on judges and court staff working within the system.

41. The scale of investment in the system, and therefore the scale by which we still fall short, can be illustrated by a quick rule of thumb calculation by which I estimate that the budget for the Courts Service, and the salaries and pensions of judges from the central fund, would keep the health service funded for less than a week and the education system for approximately a week or so.[3] It goes without saying that these sectors face their own unique demands and costs, and I am not for a moment suggesting that they are not vital state services, but it is a legitimate question to ask whether this comparison is an instructive reflection of the *relative*

[3] The Courts Service had a budget of approximately €185m in 2024(and just over €195m in the most recent budget). An estimated figure for judicial salaries and pensions is €40m. The health budget was €23.5bn for 2024 (or €25.7bn for 2025) or the education budget is €10.5bn.

importance of the courts system in the State, in particular having regard to its essential function in the operation of the State, which I have discussed today. On the positive side, the calculation shows that an investment which would go unnoticed in other sectors of the State could have significant beneficial and even transformative impact on the legal system.

42. We have a generational opportunity to address this, to stand back and take a fresh look at the type of model of justice system that we wish to have, one that provides speedy access to justice and fair decisions to all litigants who engage with it. One that contains the best of the system we have inherited, but is well adapted to today's world. A justice system model that we can take pride in and will endure in the future and perform its function in supporting the type of rights-based democracy of checks and balances that we, as a people, deliberately chose a century ago and which we should value, if anything, even more today.

43. Coming back to where I started, it is important to address issues like these on an occasion such as this, but they are not a matter for one speech by a Chief Justice or anyone else. In truth, it is or should be a matter for everybody who is here and for everyone who has an interest in the administration of justice. If it is true to say that the courts system has been grossly under resourced for decades, and requires a step change in the approach to its funding, and that increases in funding result in measurable improvements, then that is something which should be said not just by judges whose public utterances must be limited and measured, it should be said by everybody concerned in the justice system.

44. It may not be year two, but there is much to do, and it is work for all of us.