



Judicial selection reform must increase diversity



Ken Murphy
Opinion

Judges must be chosen on merit, but failure to appoint more solicitors to superior courts cannot be defended

The process by which we select judges is important because of the impact judges' decisions have on people's lives, individually and collectively.

In 2014 a committee chaired by Chief Justice Susan Denham and including representatives of all court jurisdictions was sharply critical of the "demonstrably deficient" appointment system. "It is increasingly clear that the relative success of the administration of justice in Ireland has been achieved in spite of, rather than because of, the appointment system," the judges argued.

The Law Society views the Government's proposals to reform the judicial appointments process as an opportunity for a fresh start. It is an opportunity to take the best of the Judicial Appointments Advisory Board and to develop it into a new, contemporary, properly resourced and professionally managed system.

The society made a 25-page submission to the Government last week on its proposals contained in the scheme of the Judicial Appointments Commission Bill 2016. This was the result of detailed

research, conducted with the benefit of

outside expertise on the issue, and a full debate at the council of the society.

In this submission the society broadly supports the Government's proposed Bill as a forward-looking, inclusive and contemporary approach to reform of the judicial selection system. However, the society believes some changes to the proposed Bill would improve it further.

Diversity

One of the key objectives of the new appointments regime should be to increase the diversity of the judiciary. Diversity must include the appointment of more women, more solicitors and, in general, more candidates from wider social and, indeed, geographical origins. Such candidates will enrich the judiciary with additional talents, skills and insights. This increase in the diversity of the judiciary is desirable as a matter of logic, as a matter of good public policy and as a matter of fairness.

The society supports the proposed new judicial appointments commission with a



majority non-legal membership. A majority of lay members will ensure there is a much greater measure of diverse public interest represented in the judicial selection process. It is also consistent with the State's policy approach, supported by the society, whereby there is now a lay majority on the Legal Services Regulatory Authority which was inaugurated last year as the regulator for legal services in this jurisdiction.

Greater public involvement in the selection of judges is central to the public interest. The society has long called for a reduction in the Government's discretion in judicial selection because of persistent fears that judicial selection has been too tightly linked to political party patronage or perceptions of such patronage. A reduction to three, per judicial appointment, in the number of names of recommended candidates being sent to Government will help greatly in this regard.

The Government has also proposed

that the new appointments commission be chaired by a layperson – someone who is neither a judge nor a lawyer. The society welcomes this proposal also.

In the society's view, the selection of the chairperson should be performed through open competition. This open competition should seek a candidate with a skill set derived from senior professional recruitment experience, board management and governance experience and experience of identifying and engaging highly skilled professionals.

The society has long emphasised the importance of selecting judicial candidates based solely on merit. But what is merit in this context? Of course knowledge of the law and a capacity for legal reasoning are essential. In our 2014 submission we detailed the range of

personal qualities that should also contribute to "merit", including common sense, independence, balance, an even temper, humanity, humility, courtesy, compassion and social awareness. A list of such qualities can be drawn up by the new commission and candidates professionally tested against them.

The society has long been committed to securing greater diversity in the judiciary, particularly diversity of legal professional experience, gender and socioeconomic

background. A judiciary that is reflective of society is essential for the enduring legitimacy of the judicial branch of government.

Exceptional talent

There is broad diversity of legal experience in this State, including solicitors and barristers in private practice, legal academics and a range of in-house lawyers both in the service of the State and in private entities. There is exceptional talent and experience among this very broad pool of practitioners who offer a wide range of legal, personal and professional experience.

Solicitors have been eligible for appointment to the superior courts since 2002. Since then there have been 90 appointments to the High Court, Court of Appeal and Supreme Court. Of those, only eight have been solicitors. Accordingly, between 2002 and 2016 the branch of the legal profession with about 80 per cent of the legal practitioners in the State has produced just 8 per cent of the superior court judicial appointments.

This cannot be reconciled with the public interest, the intent of the Courts and Courts Officers Act 2002 or the desirability for a broadly experienced judiciary reflective of the community it serves.

The failure to appoint more solicitors to the superior courts simply cannot be defended. Solicitors have broad experience of life and of law, gained not only as legal practitioners and advisers but also as employers, as managers of large and small businesses and as the branch of the profession that deals with the public directly, often at the most difficult times in their lives.

Let the success of the administration of justice in Ireland in future be achieved through, rather than in spite of, the judicial appointments system.

Ken Murphy is director general of the Law Society of Ireland

A judiciary that is reflective of society is essential for the enduring legitimacy of the judicial branch of government