

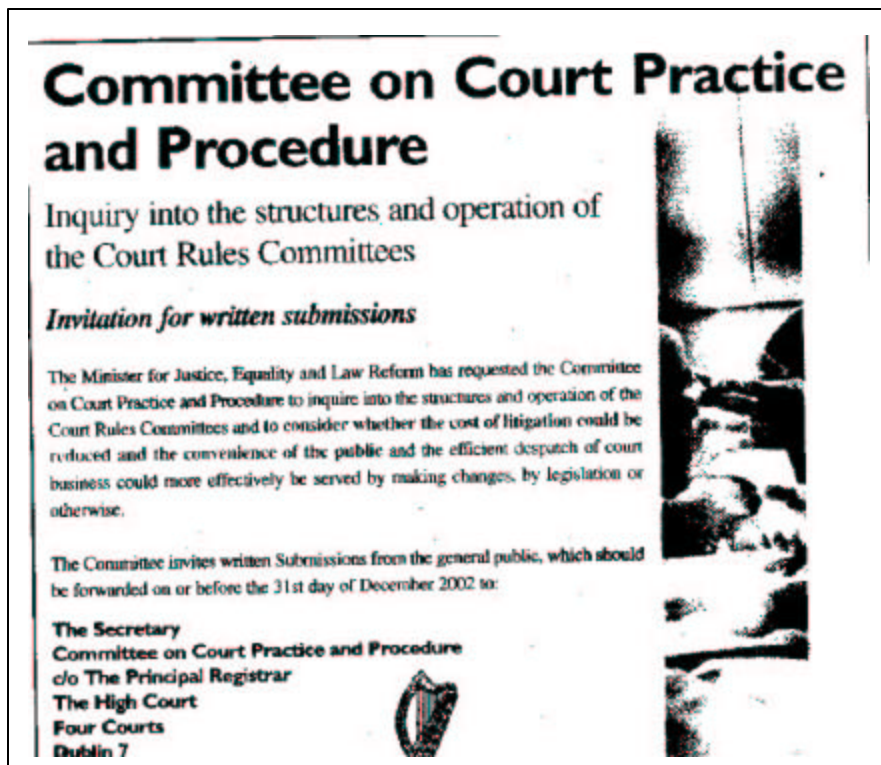
31st December 2002



Submission from parentalequality.ie to committee on Court Practice and Procedure.

Context:-

This submission is a response to a notice in the National Media some weeks ago calling for written submissions from the general public:-



This notice mentions **the cost of litigation, the convenience to the public and the efficient despatch of Court business**. An initial reflection on the notice was to ask:-

- ‡ Who is this committee?
- ‡ Who are the members of the Court Rules Committees?
- ‡ Who appointed them?
- ‡ What is their remit?
- ‡ How transparent are their procedures and activities?
- ‡ What problem or inadequacy, perceived or real, are they attempting to address?
- ‡ Whose opinions, experiences and wishes are they trying to include?
- ‡ Are they independent, perceived to be so and are they representative of the broadest base of users of the courts process and of the public interest?

The answers to the above questions are not generally known to the public and hence it is an inherent limitation to the effective focus of a submission from the general public. The IPA diary of 2002 does list a number of members, many of whom are recognisable legal personnel. The list does not indicate representatives of court users groups or representatives of those people who essentially pay for the whole process including the taxpaying public and the litigants themselves. A typical example of the lack of user-friendliness is my experience on both December 30th and today the 31st trying to get in contact with an appropriate official in the four courts to get an operational Email address so that I might deliver this submission before the deadline. After ringing 01-8886000, first speaking to a receptionist who was of a pleasant disposition but could not either provide an email for the contact person specified in the Press Notice, nor find anyone at a phone extension who might enlighten both of us. After some delays I hung up in desperation. I have decided to address the submission to PJ. Fitzpatrick's email as I have at least had a recent acknowledgement to correspondence to that address) and request that it be forwarded to the relevant personnel.

NOTE:- (Appendix 1 are examples of previous PE correspondence, trying to unravel the details of courts committees). No remotely satisfactory responses to these queries were ever provided)

Einstein once mused that one cannot solve a problem with the thinking that created the problem. In terms of managing change around the courts system the inevitable make-up of the investigating groups seems to be overloaded with those who represent the culture, attitudes and paradigm of the present and historical court system. I submit that, in spite of the best intentions and commitment of such investigative groups, the potential for worthwhile and effective change is fundamentally compromised.

Given the make-up of the committee one wonders why the request for submissions from the public.

- ‡ Is it truly to get the public perspective, or is it a face saving exercise?
- ‡ What if the public require a level of change and quality of service which feels uncomfortable for the vested interests represented on the committee?
- ‡ What guarantees do the general public have that their submissions will be adequately considered and evaluated with open minds?

Another contextual aspect of this request for submissions from the general public is the timing of the notice, providing a short few weeks notice, running right into the festive Christmas period. For those people who are embroiled in Family Law and relationship difficulties and for groups such as **parentalequality.ie** who, as a voluntary organisation are always stretched to the limit responding to calls for help, such timing is particularly inappropriate. One wouldn't need to be too cynical to suggest that perhaps the commitment to stimulate submissions from such members of the public is less than total. If this were commercial market research such timing and efforts to broaden the net of engagement would be considered pathetic at best.

These initial comments should be considered in the light of the notice contents namely **“the cost of litigation, the convenience to the public and the efficient despatch of Court business”**

In spite of the contextual reservations expressed above **parentalequality.ie** seek to put on the public record, to the limited extent that both our voluntary, underfunded status inherently constrains our capacity to do so, some reflections on the rules and procedures process which reflect the lived experience of real court users who have recounted their experiences in their thousands over the last decade.

Some of the thoughts guiding this submission include the following:-

- ✓ Good law makes good sense, bad law makes nonsense !
- ✓ Nemo iudex in causa sua !
- ✓ Just because one has the power doesn't give one the right !
- ✓ One of the concerns expressed internally within PE when making submissions such as this is the question of being hard hitting and critical against the powerful forces of the status quo, for fear of being dismissed as tiresome troublemakers. ***“Obsession has replaced reason and invective has replaced argument”*** is a line used by Chief Justice Keane in a supreme court judgement on the 8th June 2002. If this were the response of your committee to this submission it would be an unfortunate exposition of dominant discourse at play. Our response is that the Facts do not cease to exist just because one ignores them! We ask the committee to reflect on the seminal insight to the same Chief Justice Keane who on April 2nd 1998 stated that:- ***“The most benign climate for the growth of corruption and abuse of powers, whether by the judiciary or members of the legal profession, is one of secrecy”***.

Credentials for considering submission by parentalequality.ie :-

parentalequality.ie have been working at the coal face supporting family law litigants for the last ten years. During the last decade our phone help lines have taken calls from thousands of members of the public, men and women, fathers, mothers, children, grandparents, brothers and sisters, and friends of those whose experience of family courts are stories that cannot be exposed for fear of breaking the dreaded “In Camera Rule”. But where is the rule written? Where is it explained that the same rule applies to all irrespective of connections, professions, gender or class. When a person calls a helpline, be it the Samaritans, Women’s Aid, Amen, Parental Equality, ISPCC, or opens up to their confidante, whether priest, minister, Rabbi or such equivalent person in whatever religion (in its broadest sense), their TD, Senator, Councillor or MEP, their doctor, therapist (mainstream or alternative), how can the listener caution a caller on the edge on the nuances of the “In Camera Rule”. When a party to a relationship breakdown is vulnerable, or frustrated, or angry, or depressed, or suicidal, or drunk, or simply retelling their own particular version of their family law hearing to their nearest and dearest, or sometimes to anyone who will listen, which of us good citizens takes the logical step of reporting them for breach of the secrecy of the “In Camera Rule”.

In keeping with the realistic response of other listeners **parentalequality.ie** have gleaned an irrefutable insight to the procedures of the Family Law Courts, in spite of the culture of suppression of such a misguided and draconian rule. We accept that anecdotal evidence is not in itself a truly reliable yardstick on which to act, the experience of the tribunals over the past number of years would suggest that when the “dogs in the street” have a repeatedly consistent view of what’s going on that once a thorough, honest investigation with commensurate powers takes place the anecdote begins to flesh out into a decisive detail. Our advice to callers has always been to encourage them to document their issues and to seek irrefutable evidence to back up their claims. We appreciate how demanding this is for ordinary members of the public, who are under-resourced, often stressed out and isolated and ill prepared for the long arduous journey to seek justice.

If the committee acknowledge the reality of the “In Camera” rule and they truly seek to learn from actual court user’s experiences, in order to improve cost, convenience, effectiveness issues as well as contribute to a more equitable, accountable, just and transparent court’s process then **parentalequality.ie** recommend the setting up of a forum for uncovering the truth behind the veil of years of secrecy within the family law courts and for this forum to be facilitated by an individual who is independent of the legal profession and the judiciary. Within the safety of such

a forum, and supported by appropriate resources, **parentalequality.ie** will present evidence which will withstand thorough scrutiny.

In the meantime any detailed examples given herein come from my personal experience as being evidence from within my own material knowledge.

In Camera Courts: -

parentalequality.ie have campaigned over the years to expose the injustice, the inadequacy, and the dangers to democracy through the non-accountability of the private In-Camera court system. We have been pleased to note the Minister for Justice's recent statements that he intends to change the In-Camera rule. I enclose for your consideration (**Appendix 4**) a copy of the papers from the seminar on the In-Camera process, which Parental Equality organised in Buswell's Hotel in October 2000.

We appreciate the fairly seismic shift in thinking for a Minister for Justice in being prepared to even consider changing this In-Camera rule which over the years has created its own momentum and legitimated a whole culture of behaviour within the courts, legal and administrative systems. Therefore it is all the more important in considering a change to the In-Camera laws that the views of the end users of the courts systems in these cases, namely the applicants and defendants (who are the only people who actually pay to be part of the process) are listened to.

There is now an opportunity for a radical overhaul of the family court system. A slight tweak of the process such as the recent dismal attempt to have a barrister sit in on a sample of family law hearings and to take notes in order for a select unrepresentative group to evaluate the actual goings on in the courts, can actually do more harm than good. As I understand that process to have operated, at best the agreement of both parties would have been required to facilitate that barrister taking notes. We can find no evidence or references to that barrister being a trained stenographer or using recording technology so that in-fact there can be no metrication of the accuracy or completeness of the note taking. **parentalequality.ie** recommend a public forum facilitated by non legal personnel to examine and tease out the development of family court recording and reporting procedures, which provide for public accountability while preventing unnecessary damage to vulnerable people.

Further Issues for Consideration:-

The relaxation or even the removal of the In-Camera rule, while itself a welcome initial step towards a more accountable and consistent justice system, will not be enough to deconstruct the dysfunctional culture that has permeated through and become synonymous with the family law court system. In order to recreate a fair, transparent, accountable, trustworthy and honourable family law court system there are a number of other elements, which require fundamental re-evaluation and radical change. **parentalequality.ie** request that the committee consider the following points:-

1. Procedures in the courts seem to be set down by the various court rules committees. Over the years **parentalequality.ie** have been at best shabbily responded to when seeking details of the membership and working of these committees (see **Appendix 1** for examples of previous correspondence). What we have gleaned is that the membership of the groups that decide the procedures within the court system do not consist of representation from the customers of the courts, namely the range of end users. In fact the court rules committee seem to be made up only of all of the people who are paid for operating in the court system and the customers who effectively pay for the process are not represented. Against the broader landscape of the importance of

developing **partnership** in business, in administration, in education, in health and in all other aspects of our communities this glaring deficit in the make-up of these committees needs to be redressed. By including representatives of various user groups of the courts on these committees and through developing partnership ethos on the basis of participative discourse with the view to optimising the operation of the legal system to the benefit of all, we believe that much good work could be done in this structure. The balance of influence on these committees must be such as to create real power sharing.

2. We understand that the District Court rules restricts the right of audience (see box inset below):-

RIGHT OF AUDIENCE
[0.6,r.1 Persons entitled to appear and address the court]

1. The following persons shall be entitled to appear and address the Court and conduct proceedings—

- (a) any party to the proceedings; or
- (b) a **solicitor** for such party; or
- (c) a **counsel instructed by the solicitor for such party**; or
- (d) where the proceedings are in relation to the taxes and duties under the care and management of the Revenue Commissioners, or in relation to any fine, penalty or forfeiture incurred in connection therewith or otherwise incurred under the Customs Acts, a duly authorised officer of the Revenue Commissioners or the Revenue solicitor; or
- (e) in proceedings at the suit of the Director of Public Prosecutions in respect of an offence, the said Director or any member of the Garda Síochána or other person appearing on behalf of or prosecuting in the name of the Director² .

2. Save where otherwise provided by statute or by rules of court, the father, mother, son, daughter, husband, wife, brother or sister of any party may appear on behalf of that party provided that any such person has the leave of the Court to appear and be heard and that the Court is satisfied that the party is, **from infirmity or other unavoidable cause** , unable to appear.

This is a most restrictive practice. It should be an individual's choice in any court, to hire a solicitor or to separately and independently hire a barrister or to choose to represent oneself or to choose to have a friend articulate their positions on their behalf. I understand that these rules have been made by the aforementioned Court Rules Committees who as stated previously do not include end users representatives. Thus the cartel of control is propagated and maintained. **parentalequality.ie** recommends that rules should be modified and procedures should be streamlined in order to enable an individual to choose whatever level and type of representation that they wish in order to present their cases to court. Lay litigants should also receive the same access to the courts facilities as any of the legal professionals and if there are fees for services such details should be visibly displayed.

3. The seminal Philip Sheedy affair and its ramifications have not yet been faced up to. During the first referendum on Nice the other referendum issue in relation to judicial misconduct was conveniently shelved and since then the public have heard little about progress towards a process for independently dealing with allegations of judicial

misconduct. Several people who have been in contact with Parental Equality have been waiting for years in order to report cases of judicial misconduct and furthermore conduct within different members of the legal profession but have been provided with no trustworthy forum to do this (see **Appendix 2** for an example of an unanswered correspondence to the Judicial complaints committee. Once again court end-users groups who would no doubt have quite legitimate, strong and challenging views in relation to judicial misconduct have been excluded from the process. **parentalequality.ie** recommend an ombudsman who is independent of the judiciary, to collate, document and analyse complaints of judicial and administrative misconduct. A key role for such an ombudsman would be to inform public awareness of the existence and operation of such a complaints process (similar to the impactful advertisement campaign presently being run by the office of Consumer Affairs).

4. One area where technology and revamped procedures can converge to provide a less stressful, more cost effective and a marked reduction in the level of disputes about the facts is in the area of recording and managing court proceedings and documentation. Audio visual technology, data entry and scanning equipment is now commercially available at very reasonable costs. It should be a basic expectation that all family law hearings should be digitally recorded at a quality level of clarity and made available on the spot to the parties to the hearing and a copy kept on file. These recordings should be effectively archived and made available for future hearings to be able to instantly replay disputed recollections. Much more importantly is the need for an attitude shift among court staff, judiciary and legal professionals to implement this technology effectively.

Explanatory examples:-

- a. I was pleasantly surprised earlier in the year when after taking an unsuccessful appeal to the Supreme Court and having had a judgement given ex-tempore, the court registrar subsequently informed me that there are tape recording facilities in the Supreme Court. I then requested a copy of the same tape and I was informed that the registrar was not sure if the tape recorder in the highest court in Ireland was in fact switched on. I am still awaiting a response to my request.
- b. In Cavan District Court earlier this year while appearing to successfully defend an incorrect driving charge by a member of the garda, I seem to have caused severe annoyance to the judge when I asked that the garda repeat his evidence so that he could actually be heard as either the microphones were switched off or set totally inadequately.
- c. While attending the John Waters libel case in the High Court some time back, in a relatively small court room, I and many others whom I discussed the matter with found it almost impossible to make out with any clarity what was being said by the various participants.

Such a low level of competence in the use of amplification would suggest an underlying unwillingness by all concerned to give real meaning to the spirit of Article 34 of the Irish Constitution for courts to be “administered in public”.

All documents associated with a case should be digitally stored and referenced in a rational, easily accessible and understandable format. I have personal experience, a few years ago of watching as a court official dropped three different files involving me on the floor, spilling the contents everywhere. The official then calmly proceeded to collect all the documents and put them back into the files with no possible regard to their order or sequence. Litigants should be facilitated in having computer access to their files with typing and printing facilities made available to them on the court premises.

5. Customer Charter and service:-

There should be a customer service charter published and visibly displayed in every court office. Such displays should proactively identify the various court staff and judges (with Photographs) and explain their respective roles, their contact details, clear times when they are available for consultation by the public, and a clear definition of any rules of engagement with the public.

Courts are very daunting places, particularly for family law litigants, many of whom have never seen the inside of a court before. **parentalequality.ie** have heard from an otherwise well informed lay litigant who on his first appearance in court mistook the court crier in his gown for the judge. For the convenience of the public **parentalequality.ie** recommend that Court officials should wear identification tags, identifying their role. Judges should have clear nameplates in front of them while holding court. Court listings should be made available at the reception desks for everyone, not just for solicitors and barristers (See **Appendix 3** for example)

There should be display monitors in the court and in the foyer areas indicating the case number being presently heard, in order that people can be prepared and reschedule others commitments they may have.

The whole mechanism for scheduling hearings, starting with long drawn out callovers followed by indeterminate waiting around, often without a decent place to sit down, depending on the length of other cases is highly inefficient and abusive of litigants in terms of dignity, time and cost. An initial suggestion would be to divide court time into half hour slots and pre-book slots at a cost. Litigants could book court time in advance. If they settled out of court they would pay for the time they had booked. Extensions and emergency hearings could be built into the schedules similar to hospital operations. Such thinking would greatly improve the cost effectiveness and efficient despatch of court business. The scheduling would benefit from the skills of facilities management professionals.

Some years back the then registrar of County Louth, a man called Breathnach, actually refused to meet with me because I was lay litigant. This was an abuse of public service which added greatly to my stress and the further avoidable escalation of animosity between myself and the other side. This behaviour is in contrast to the consistently courteous treatment I have experienced from the present County Registrar for Louth Mairead Ahern and her assistant Helen Lennon, in spite of them having made decisions with which I disagreed.

Demonstrating that the behaviour of Mr. Breathnach, (although he is now retired), is not unique is my recent experience with the Registrar of County Meath, Maire Teehan (See **Appendix 3** for details). This recent incident and the ensuing failure by the CEO of the Courts Service to process my correspondence is evidence of a fundamental “Stuckness” in the culture of the courts administration. In spite of an email response indicating that the matter was receiving URGENT attention, I have heard no more, nor does my experience to date suggest that I will receive a professional, competent response without further pressure from me.

parentalequality.ie recommend that an independent ombudsman be appointed to deal with complaints of poor service in the courts. There should also be a grievance procedure for complaints by members of the public against the courts service personnel. This procedure should be widely available, including publication on the internet and the stages and timeframes for dealing with complaints should be set out clearly.

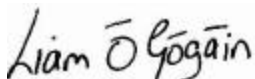
Summary:-

The level of Court Activity in the area of Family Law has been on the increase for years and there are no indicators that it will level off or decrease. Relationships are much more complex and the large number of cases create delays, further fuelling disharmony between couples already in conflict and increasing their legal costs. While there has been a degree of recognition of the need for radical change in the courts system, most of the need for change is being defined and rate and direction of change is being controlled by the same powerful legal entities which have allowed the process to fall centuries behind the rest of society while continuing to reap large rewards for maintaining inefficiencies and ineffectiveness. There is an inherent toxic incentive for all of the legal professionals and administrators which mitigates against meaningful effective change. Other differing and challenging views from those end users who ultimately pay for the whole process are being excluded.

The core of this submission is that without fundamentally changing the courts culture, towards facing the customer, participative discourse between all parties in the courts process based on parity of esteem and sharing the powers of decision making in meaningful partnership with the customers, any changes will be like rearranging the deck chairs on the Titanic. The effects, such as the modernised buildings will be short term. Any perceived change will be on the surface, elastic in nature and before long the deeply rooted values and behaviours which have brought the courts process to a point, where even those on the inside acknowledged the need for change, will remerge, permeate through the process and continue to thrive even if they are couched in a new facade.

parentalequality.ie are committed to promoting deep rooted and meaningful change. We would appreciate the opportunity to have an oral interchange of views with the committee to assist the committee in its work and to allow bilateral challenge and constructive critiques of our respective positions.

On behalf of **parentalequality.ie**, I wish to congratulate the committee on taking the initial step towards engagement with the public by inviting submissions and sincerely hope that you continue the process of opening up the partnership process to the end users of the courts



Liam O Gogain (Chairman **parentalequality.ie**)

Appendix 1

Examples of previous PE correspondence trying to unravel the details of courts committees. No remotely satisfactory responses to these queries were ever provided)

12/9/99

PARENTAL EQUALITY

1 Muirhevna

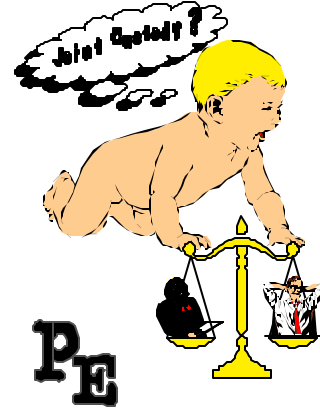
Dublin Road :

DUNDALK

PH:- 042 - 33163

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e-mail----- logogain@iol.ie



Ms Olive Caulfield

Secretary

District Court Rules Committee

Four Courts

Dublin

REMINDER No 1

Please acknowledge receipt of this letter.

Dear Ms Caulfield

Further to my letter to you dated 16/2/99, I do not appear to have received a response from you. I would appreciate if you would now respond to the letter, a copy of which follows below:-

As part of our research into collecting information for our members in Parental Equality, the voluntary information and support group supporting shared parenting and joint custody, and to the callers to our help-line, your name has been provided by the Department of Justice as the secretary of the Superior Court Rules Committee. I would appreciate if you would confirm if your committee and its deliberations, findings, structures etc. come under the ambit of the Freedom of Information Act. If so, please consider this to be a formal request under the Freedom of Information Act.

I would be grateful if you could confirm the reference for the latest legislation which governs the committee. At present I understand from the F.O.I. officer of the Department of Justice, Equality and Law Reform that the 1936 Courts of Justice Act is the relevant legislation. I would also be grateful if you could provide me with any explanatory information about the operation of the committee, how often it meets, who its members are, how they are elected, how often they are elected, its lists of publications and modus operandi. If you have an e-mail facility or an on line web page, please provide this reference also. One of the issues which concerns our members and callers is the lack of clarity which seems to exist in delineating which particular court rule applies to different elements of legislation. This has recently caused much tension to lay litigants in in camera family law courts where disagreement with opposing counsel and sitting judges and a procedural inability to clearly define the rules applying to particular legislation has caused a sense of judicial intimidation felt by lay litigants. I am of the understanding having spoken with officials in the Attorney General's office that the next release of the Irish statutes on CD Rom predicted to be in April next, will include a comprehensive set of statutory instruments. Please confirm if the rules made by your committee will be on this CD Rom and if they will be the up-to-date and comprehensive compilation of all the rules which apply.

In relation to the make up of your committee, I would appreciate if you could identify along with the names of the individuals, the areas of our society which they are representative of. Please confirm also if there are any representatives from the fourth pillar of our society common namely the community or end-users of the court system presently sitting on your committee, or if there is provision for such representation.

Yours sincerely

Liam O Gogain
Chairperson Parental Equality
Dundalk

Ref: 16029/FR

12th August 1999

Reminder No 1

Please acknowledge receipt of this letter

The Secretary
Circuit Court Rules Committee
Four Courts
Dublin

Dear Secretary,

I wrote to Mr. Michael Quinlan, whom I believed was the then secretary of the Circuit Court Rules committee, on the 16/2/99. Unfortunately I did not receive an acknowledgement or a reply. I would appreciate an early reply to my letter, a copy of which follows:-

As part of our research into collecting information for our members in Parental Equality, the voluntary information and support group supporting shared parenting and joint custody, and to the callers to our help-line, your name has been provided by the Department of Justice as the secretary of the Superior Court Rules Committee. I would appreciate if you would confirm if your committee and its deliberations, findings, structures etc. come under the ambit of the Freedom of Information Act. If so, please consider this to be a formal request under the Freedom of Information Act.

I would be grateful if you could confirm the reference for the latest legislation which governs the committee. At present I understand from the F.O.I. officer of the Department of Justice, Equality and Law Reform that the 1936 Courts of Justice Act is the relevant legislation. I would also be grateful if you could provide me with any explanatory information about the operation of the committee, how often it meets, who its members are, how they are elected, how often they are elected, its lists of publications and modus operandi. If you have an e-mail facility or an on line web page, please provide this reference also. One of the issues which concerns our members and callers is the lack of clarity which seems to exist in delineating which particular court rule applies to different elements of legislation. This has recently caused much tension to lay litigants in in camera family law courts where disagreement with opposing counsel and sitting judges and a procedural inability to clearly define the rules applying to particular legislation has caused a sense of judicial intimidation felt by lay litigants. I am of the understanding having spoken with officials in the Attorney General's office that the next release of the Irish statutes on CD Rom predicted to be in April next, will include a comprehensive set of statutory instruments. Please confirm if the rules made by your committee will be on this CD Rom and if they will be the up-to-date and comprehensive compilation of all the rules which apply.

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Yours sincerely

Liam O Gogain
Chairperson Parental Equality
Dundalk

Ref: 16029/FR

12th August 1999

Mr John D'Alton
Secretary
Superior Court Rules Committee
Four Courts
Dublin

Reminder No 1

Please acknowledge receipt of this letter

Dear Mr D'Alton,

I wrote to you on the 16/2/99. Unfortunately I do not appear to have received a response. I would appreciate your early reply to my letter a copy of which follows below:-

As part of our research into collecting information for our members in Parental Equality, the voluntary information and support group supporting shared parenting and joint custody, and to the callers to our help-line, your name has been provided by the Department of Justice as the secretary of the Superior Court Rules Committee. I would appreciate if you would confirm if your committee and its deliberations, findings, structures etc. come under the ambit of the Freedom of Information Act. If so, please consider this to be a formal request under the Freedom of Information Act.

I would be grateful if you could confirm the reference for the latest legislation which governs the committee. At present I understand from the F.O.I. officer of the Department of Justice, Equality

and Law Reform that the 1936 Courts of Justice Act is the relevant legislation. I would also be grateful if you could provide me with any explanatory information about the operation of the committee, how often it meets, who its members are, how they are elected, how often they are elected, its lists of publications and modus operandi. If you have an e-mail facility or an on line web page, please provide this reference also. One of the issues which concerns our members and callers is the lack of clarity which seems to exist in delineating which particular court rule applies to different elements of legislation. This has recently caused much stress for lay litigants during “In Camera” family law courts where disagreement with opposing counsel and sitting judges about relevant rules and a procedural inability to clearly define the rules applying to particular legislation, causing a sense of judicial intimidation felt by lay litigants. I am of the understanding having spoken with officials in the Attorney General’s office that the next release of the Irish statutes on CD Rom predicted to be in April next, will include a comprehensive set of statutory instruments. Please confirm if the rules made by your committee will be on this CD Rom and if they will be the up-to-date and comprehensive compilation of all the rules which apply.

In relation to the make up of your committee, I would appreciate if you could identify along with the names of the individuals, the areas of our society which they are representative of. Please confirm also if there are any representatives from the fourth pillar of our society, namely the community, or end-users of the court system presently sitting on your committee, or if there is provision for such representation.

Yours sincerely

Liam O Gogain
Chairperson Parental Equality
Dundalk

Appendix 2

1 Muirhevna
Dublin Road :
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PH:- 087-2543997

e-mail-- logogain@iol.ie

Ms. Mary Hennessy

Secretary

Committee on Judicial Conduct and Ethics.

Four Courts

Dublin 7

Saturday Oct. 30th 1999

Dear Secretary,

Please submit the enclosed documents to the committee. I wish to formally request an opportunity to make an oral presentation to this committee.

Dear members of the Committee on Judicial Conduct and Ethics,

I have been attempting, with great difficulty, for the last week to put in writing my submission to your committee. My core difficulty has to do with my cynicism and frustration arising out of my personal lived experience and the dealing with thousands of end users of the courts systems over the last seven years in Parental Equality. I have been an end user and interested observer of the Family Law courts process since 1990. I have previously made both a written and a verbal submission to the Working Group on a Courts Commission. I have recently led a delegation to meet with the CEO of the Courts Service. I have had numerous letters published in local and national papers on family law issues.

Over the last decade I have searched out rules for fairness of procedure and focussed on equality issues. Three tenets are of core importance to me. The first two I have discovered to be the rules of Natural Justice:

1. Nemo judex in Causa Sua.
2. Audi Alterem Partem

I discovered these after asking many questions and seeking information from government ministers, legal practitioners etc. I agree wholeheartedly with the fundamental and timeless nature of these rules. The third tenet is one from the area of Quality Systems:

3. Facts do not cease to exist just because you ignore them.

My personal experience of the Irish Judicial and legal system has been a continuous breach of all of the above tenets. Worse still has been the abuse I have suffered for daring to challenge these breaches. Public servants, including those who have the honour of serving as judges, having solemnly sworn the oath contained in Article 34.5.1 of Bunreacht na hEireann have disregarded both the oath and the rules of fair procedure and have disabused my personal rights under Article 40 of the constitution. My belief is that this committee has been forced into existence as a direct result of the Sheedy Affair. The committee is made up of judges and the AG who is there to represent the public interest. I wish to make a set of complaints of Judicial Misconduct against a range of judges. I have already written to the Present AG, Mr. Michael McDowell seeking for him to represent my interest (see copy letter enclosed 12/7/99). He has chosen not to respond or to acknowledge my letter.

Under the rules of Natural justice how can this committee deal with such complaints? Will the facts and the validity contained in these complaints disappear just because a committee who, by definition, cannot be independent, adjudicate on their veracity and their merits. Is it “appropriate” for your committee to have the power to determine what process should be put in place to consider complaints against judicial misbehaviour? How can we resolve the apparent paradox between an independent judiciary and such powerful people being accountable to the citizens of this state for the quality of their work? In the last decade our country has been rocked by endless expositions of the abuse of position by the powerful forces and individuals within our society. Increasing diversity of communication media such as the internet will facilitate the promulgation of exposing such abuses of power.

An open, transparent and honourable way forward is through a Paradigm Shift, where these apparent paradoxes are fleshed out, with everybody’s agenda in clear view. The potential of the Courts Service if it is allowed to do its job and supported and funded in doing so, is to begin to revolutionise the quality of the legal service and to bring into the new millennium a legal system that is centuries out of kilter. In the Working Group on a Courts Commission Women’s Aid were represented ably by Roisin Mc Dermott. Nobody seems to have questioned this inherent and blatant bias in favour of Women by the Courts. Any consideration of the reports should consider this absence of representation of men’s perspectives, which was fundamentally discriminatory, although politically correct.

I have attached two documents, one a study on Public attitudes towards some equality issues around relationships and the other a draft discussion paper about In Camera. This draft was produced prior to the seminal hearing (Murphy Vs RTE, Etc 2/4/98). That judgement, I submit, supports the thrust of the arguments in the paper. I am seeking that your committee considers its contents. They are the product of a long journey and a real experience. If the arguments are flawed and the facts are untrue then do me the honour of enlightening me. If there is validity in the arguments then I encourage you not to shirk from them. I am also seeking a transparent, independent and accessible complaints procedure to deal with allegations of judicial misconduct. I am also enclosing a CD audio which contains an expression of a challenge to how we address parental roles.

When you have had an opportunity to consider these issues, I am requesting that I be provided with an opportunity to orally discuss the contents with you. When a just complaints process is in place I will proceed with my formal complaints.

Yours Sincerely

Liam O Gogain.

Appendix 3

Recent experience with the Registrar of County Meath, Maire Teehan and subsequently with PJ Fitzpatrick CEO of Courts Service.

Email sent to PJ Fitzpatrick CEO Courts Service 23rd October 2002

PJ,

We met some years ago when you were at the early stages of developing the Courts Service. I was a member of a delegation from Parental Equality which reflected to you the experiences of the user group we represent who use the court system.

Earlier today I accompanied a man Trim court to appear in response to a civil law injunction granted to his ex wife ex-parte (he is divorced and since remarried). He came to me last night and told me the following information:-

'This injunction was granted on Friday last the 18th of October in Dundalk Circuit court for return today Wednesday the 23rd of October. The papers were served on this man last Friday night around 8pm and he thus had only TWO working days in which to instruct a solicitor. On Monday his family solicitor was not available and he only met him yesterday, Tuesday. His solicitor told him that his ex-wife's boyfriend acts as the solicitor's accountant and thus the solicitor at this late stage told the man that the solicitor could not represent him.

In despair the man drove to Trim and tried two solicitors. None were in a position to represent him at such late notice. He finally found a solicitor in Dundalk who advised him to appear himself in court today and an adjournment would be the likely outcome where the case would then revert to Dundalk.'

This man was very nervous and frightened. I agreed to accompany him to court knowing that this case was a civil case and not an "In Camera" secret court hearing.

I was taken aback at the developments in Trim Court facilities, which is a credit in no small way to your court service and finally begins the process of dignifying the humanity of all of the staff and court users.

We approached the receptionist and this man asked for a copy of the court list. A very courteous receptionist told us that the registrar was in Court number 1 and had copies of the list there.

We entered the court, where this man approached the registrar Maire Teehan and spoke briefly to her. He returned to me saying she had not given him a copy of the list. Maire Teehan then moved to the back of the courtroom exit. I drew her attention and asked if the man could have a copy of the list.

I must say that I personally felt treated in a very patronising manner by Ms Teehan. She stated that she was not obligated to hand out copies of the list, emphasising that it was a family law list. It proved difficult for me to get a word in with her, but when she finally took a breather, I quietly pointed out to her that this case was not a family Law case, and that I personally had been given access myself over many years and in many courts including Trim court, copies of the lists and that as I expected that I was no more or less equal or valid than this man, that he also should be treated similarly.

I stressed that the lists which I was given included many Family Law lists (my experience is of lists which identify abbreviations of participants names, thus preserving at least an illusion of anonymity). I asked Ms. Teehan if she was in any way obliged to give out the list. She then stated that the giving

of a list is done by her only as a matter of courtesy and that only solicitors and barristers can get them. I got her to restate her position for the purposes of clarification. She was quite dismissive of my communication with her and I reflected sadly on the tragic failure of the administration of the courts to really grasp the concept of customer service, in the light of the massive investment in change management within the courts services, all out of public taxpayer's monies.

I then requested from Maire Teehan a contact name and number for her superior and she gave me your name and general phone number (01-8886000). I rang your office. An Anne Gaughan (I think that's the name) took the call. She said you were at a meeting and I gave her an account of the events of some moments earlier. She went elsewhere to see if she could get some information and we were then cut off. I re-established contact with her some minutes later and she said she understood (but was not definite) that copies of list were given at the discretion of the court registrar.

I explained that I was simply trying to trace this procedure or rule to some documented source and she suggested that I write to you. She was very helpful and courteous to me.

My query is:-

What is the rule re handing out copies of courts lists?

Are solicitors and barristers only eligible?

Is the decision solely at the court registrars?

Is every citizen to be treated equally?

What is the procedure for listing cases vis-a-vis names, i.e full names, surnames, initials anonymity etc?

If the court lists are so private then why are they left lying around in court as they were left today in Trim?

I enclose for your consideration and perhaps for reflection by Ms. Maire Teehan (in the light of her strenuous declaration of her powers of discretion) a copy of what appears to be the list for Trim court for today the 23rd of Oct 2002, which I picked up from the ground in a car park outside the courthouse (See Attached PDF file). Note that I was shocked to find what appears to be the full surnames of participants (at least I assume that Darragh is a surname) in Family law cases. Even in Ms. Teehan's model this list could be given to solicitors not associated with these cases.

I enclose for comparison a sample of just one of the many lists I have been given over the years (in the attached PDF) which by identifying abbreviations of participants names, at least provides a semblance of anonymity.

At this point I am seeking the references which Ms. Teehan believes legitimises her position. Perhaps you would confirm if the rules are the same in each county or if Co. Meath operates under a unique set of rules.

This man had two working days in which to instruct a solicitor. His ex-wife's solicitor Mr. Roger McGinley confirmed to me that the service of the papers with such short notice were definitely as per the rules but he refused to tell me which rule he referred to. I would be grateful if you could refer me to the

relevant rule of service of papers in such a case so that everyone can determine the administrative facts.

I would also be grateful for a list of the members of the various rules committees with the contact addresses, phone numbers and emails.

Yours Sincerely

Liam O Gogain

Sole RESPONSE to email. Since then NOTHING!!

Sent Thu 10/24/02 3:47 PM

I have been asked by the Chief Executive Officer to respond to your email dated 23rd October regarding the above.

This matter is receiving urgent attention and he will revert to you in due course.

Regards,

Jackie Lynch,
Corporate Services Directorate

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Appendix 4

Copy of the papers from the seminar on the In-Camera process, which Parental Equality organised in Buswell's Hotel in October 2000.

See attached PDF files:-

1. In_Camera_Document_BobMC
2. incamera_conference