PUBLIC CONSULTATION ON CERTAIN ISSUES RELATING TO BARRISTERS

Submission of Kieran Fitzpatrick to the LEGAL SERVICES REGULATORY AUTHORITY –

From: Kieran Fitzpatrick, Anbally, Cummer, Co. Galway[1]

Category of contributor - Member of the public[2]

Deadline = no later than midday on June 2nd 2017.

Submissions may be sent: By email to public120@lsra.ie Submission word-count = 4,841 words

---

Response to issues raised: (I have split my response into two sections):

Issue (b) – Direct Access to Barristers is responded to in pages 2 to 10.

Issues (a) and (c) are interconnected [holding of clients' money], and my response is combined:

Issues (a) AND (c);

Re Client's Monies; Section 45 [Legal Services Regulation Act 2015] states that, *'…a legal practitioner shall not hold moneys of clients unless that legal practitioner is a solicitor….'.*

Should this freedom to handle clients' monies be extended to barristers?

Client's Monies:

I understand that the Law Society maintains a compensation fund to protect clients in situations where a solicitor misappropriates money which he/she is holding in trust. The implication appears to be that if this role is extended to barristers, then a similar compensation fund would need to be created. However, barristers may have to hold funds less often than solicitors, and a system of escrow accounts, ensuring that large sums are controlled by third parties, would provide adequate protection.

Barristers, who currently provide professional direct access, already handle clients' fees and an unrestricted direct-access system could operate similarly. As regards fees payable to other professionals engaged by the lead barrister (including any additional barristers), these could be paid directly by the client.

In summary:

1. **Allow barristers to handle their own fees and court document lodging fees.**

2. **Create an Escrow account system for larger sums of client's money, where it is not practical for a client to transfer sums directly.**

---

[1] No confidentiality is requested in relation to my submission.

[2] I am currently a law-student and I hope to qualify as a barrister in 2018.

Issue (b); Direct access to Barristers for advice and legal representation:

Whose Rights are at stake?

Firstly, the right of the public to affordable legal services is at issue.

Secondly, the right of young/newly qualified barristers to earn a living is also at issue.

In general, in keeping with international law, any interference (restriction) which touches on fundamental rights (such as the right to accessible legal representation (without being prohibitively expensive), or the right to earn a living) should be prescribed by law[3], notwithstanding that the *right to earn a living* as a proclaimed right[4] within the UN Universal Declaration of Human Rights has only been transposed in international conventions as a socio-economic right.[5]

The general economic effect of all restrictions:

Generally, restrictions on contracts between service providers and consumers have the effect of pushing up the price of the service being offered. Therefore, any such restrictions need to be justified by government or by regulatory authorities authorised [by law] to impose such restrictions.

Balancing conflicting rights (or policy goals):

In constitutional law, and more particularly in human rights law (ECHR jurisprudence), where two conflicting rights exist, any implementation measures pursuing the vindication of one right, where such vindication interferes with the vindication of the second competing right, should be:

1) Prescribed by law
2) Should legitimately (and convincingly) pursue the (first) right (sought to be vindicated)
3) Should interfere with the second right in the most minimalistic fashion possible
4) Should proportionally balance the conflicting rights in question

The above human rights moulded approach to conflicting rights should also be adopted as a good model for the pursuit of public policy. My arguments herein will focus on the public policy aspect of direct access to barristers, and I will generally refrain from pitching legal arguments other than the international law argument relating to the Aarhus convention (which requires that legal costs should not be prohibitively expensive).

---

[3] See – *Zand v Austria* ECHR (App No 7360/76) http://hudoc.echr.coe.int/eng?i=001-74962

[4] See - Article 23. of the UN Declaration of Human Rights – *'(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'*

[5] See Article 6 ICCPR – See; UN Economic and Social Council 9E/C.12/GC/186 February 2006) : 'In article 6, paragraph 1, States parties recognize "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right".'

Direct Access versus Indirect Access (via solicitors):

Arguments in favour of restrictive access to barristers:

A) Maintenance of the Cab-Rank Rule
B) The strengthening of the Independence of barristers

Arguments in favour of direct access to barristers:

A) Reduce the costs of getting legal advice and effective legal representation
B) Improve the independence of barristers
C) Enhance the rule of law by providing access to civil justice to many more people
D) Reduce the risk of double-booked barristers dropping a case close to a hearing
E) Provide more employment for lawyers by making litigation more affordable
F) Enhance Ireland's compliance with the Aarhus convention
G) Allow persons from more diverse backgrounds to become barristers and aspire to a realistic opportunity to maintain a livelihood as a barrister
H) Reduce the chances of persons accused of criminal offences being wrongly convicted due to ineffective self-representation, where such persons do not qualify for legal-aid, but believe that hiring two lawyers (a solicitor and barrister) is excessively expensive, and are thus prevented from hiring a barrister of their choice to act alone.
I) Assist the enforcement of competition law to the benefit of all consumers, by making litigation more affordable for small businesses. (In the USA, for example, 90% of competition cases are taken by private parties; this compares with a trickle of cases in Ireland).
J) Enhance compliance with human rights law, and allow Irish citizens to benefit from a more normal number of cases being submitted to the ECHR court, by making the exhaustion of national remedies less exhausting.

Below, I will tease out some of the above issues in more detail:

(1) The Cab-rank Rule –

This is sometimes advanced as a reason for maintaining the prohibition on direct access. This rule states that a barrister cannot refuse a case offered to him/her by a solicitor. Firstly, for a rule to be effective, it needs to be capable of enforcement, and this is unclear here.

Secondly, there is no conceivable barrier to maintaining the Cab-Rank rule in a direct access system, so I cannot foresee how this can represent a credible ground for maintaining a prohibition.

Thirdly, there is a "catch 22" in operation here also: Due to prohibitive legal costs, there is a very low level of litigation. This makes it more difficult for barristers to specialise, as there may not be enough work in a niche area of law to earn a living. This reduces the number of specialists, and can create a greater need to have access to a small number of specialists for solicitors. Reducing costs by making it easier for barristers to obtain work, by allowing direct-access, would create more specialists, and facilitate greater access, without needing to rely upon a (potentially unreliable) a cab-rank-rule.

(2) The independence of barristers –

Firstly, it is only the independence of an individual barrister that matters, rather than the independence of a particular representative group for barristers, where references are sometimes made to the "independent referral bar".

Simply, an independent lawyer needs to be able to represent his/her client without undue influence from government or other entities influencing his/her performance. It escapes me why it is believed that because a solicitor is required to "hover" about (at great expense), that this somehow significantly advances the performance of a barrister.

It is accepted that if two professional persons act on a client's behalf, and if one of those professionals underperforms, the other may be able to prompt a remedy, or may reduce the probability of any unethical behaviour. But, if this were the argument advanced, then surely, the argument would be that two lawyers should always be deployed; such a requirement could be met by allowing two barristers to act together (rather than a barrister in tandem with a solicitor).[6]

In this context, even if there is an advantage, in two lawyers acting in tandem, can such a requirement be justified, as a proportionate interference, taking account of international practice, and its effects on costs and access to justice?

It should be observed that the ECHR court, has held that where a defendant is only represented by one lawyer, in a situation where the prosecution may have two or more lawyers, such does not represent an Article 6 violation. In the USA, it is only in death penalty cases where legal-aid for two lawyers is sanctioned for a defendant.

More particularly, the requirement to impose the two-lawyer or tandem rule on barristers, but not impose the same rule on solicitors undermines the purported claim to its "public interest" justification. In a number of cases, where governments have claimed "public interest" exceptions to EU laws, the CJEU has held that such claims lack credibility, if the "public-interest" policy is inconsistently applied.[7]

To the contrary, I submit, that rather than furthering the independence of barristers, the requirement that barristers can only obtain 98% (odd) of their work via solicitors, furthers a dependence on solicitors. In the UK, one Chamber's practice manager was quoted as saying

---

[6] By analogy, Taxi drivers could be required to have co-drivers present, on the basis that drivers would speed less often; we'd then have to ignore the probability that more people would wander home by foot instead of paying the resulting huge taxi-fares, and the fact that some may get injured/killed in the process.

[7] The CJEU has previously ruled that public interest justifications [even if established] must be applied consistently: I reference the case of C- 243/01 *Gambelli and others v Italy* CJEU; see paras 67-69, where the court said that a Member State could not restrict the organisation of gaming (gambling) while at the same time encouraging consumers to participate in games of chance – see CJEU ruling in paragraph 69 below:

> *69; In so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating to the need to reduce opportunities for betting in order to justify measures such as those at issue in the main proceedings.*

Similarly, in the German Beer Purity case, the CJEU held that a claim that Germans needed to be protected from additives in Beer (from foreign Beers) was undermined by the fact that similar additives were not outlawed for use in soft drinks sold in Germany: See: Case 178/84 - *Commission v Germany* CJEU (12 March 1987). See other inconsistent "public interest" application cases: the case regarding UK Customs seizure of goods in *Conegate v UK* (C-121/85), the *Commission v Sardinia* stopover tax case (C-169/08), and the Swedish prohibition of magazine advertisement of alcohol at licensed outlets (C-405/98 - *Gourmet Intl. Products*).

that, 'But the problem of a referral profession having access to clients means that the first time we pinch a client direct off one of our best firms of solicitors he's just not going to send us any more.'[8] The Flood/Whyte report states:

> 'We identify a concern that a barrister who is accepting work through the solicitor route and via Public Access may find himself placed in an embarrassing position with regular instructing solicitors, and this in turn leads to reservations in certain sectors of the Bar about Public Access as a means of instruction.'[9]

In order to obtain a steady stream of work, barristers must prioritise addressing the needs of the solicitor profession, and this requirement may in some cases conflict with the interests of their (potential) clients. Currently, barristers depend on solicitors for the collection of fees.

It is therefore questioned whether the second limb of the four-part public policy test (set out above), which requires that a restriction must pursue and validly achieve a legitimate goal, is met here. Significant restrictions which reduce access to justice by inflating costs need to be based on more than notional or conceptual claims. What evidence is there that solicitors acting alone, as occurs in the district/circuit courts, pose a threat to the administration of justice? Even if a two-lawyer model provides benefits, the inconsistency of current implementation acts discriminately against barristers and members of the public who seek to only employ barristers.

(3) Prohibitive Costs –

When costs are considered, the arguments for a two-lawyer system fade further. To obtain legal-advice from a barrister who has specialist skills in an area of law, a consumer must also pay for the additional cost of a solicitor, but with very little benefit. This is wasteful of limited resources. This also adds to the state's costs in legal actions, which are imposed on taxpayers. The Flood/Whyte report found that most users of Direct-Access in the UK, found the system positive, "Responses often include terms such as: 'great value for money', 'fast', 'very knowledgeable' and good communication'."

Let's look to what some experts have said about multi-lawyer representation:

> *'Stormont justice committee chairman Paul Givan, commenting on the legal system in the higher courts in general, said: "A culture has developed in Northern Ireland where two counsel was awarded without any other consideration being given to whether or not the case merited it." '*[10]

> *In 2010, Western Australia's Chief Justice Wayne Martin speaking in Perth, Australia said, "... the model promoted quantity over quality and encouraged "time-sheet padding" among lawyers desperate to meet targets. "Clients may be charged for the lawyer thinking about their case while driving to work or showering or shaving," he*

[8] Professor John Flood and Ms. Avis Whyte, 'Straight There No Detours: Direct Access to Barristers (27th November 2008)

[9] Ibid.

[10] See - Belfast Telegraph article – 'Revealed: What Northern Ireland's top barristers earned last year', 29th March 2012 http://www.belfasttelegraph.co.uk/news/northern-ireland/revealed-what-northern-irelands-top-barristers-earned-last-year-28741345.html

said. The model also encouraged "over-service" where four lawyers may attend a meeting when only one was really required"[11]

Dr. Michael Arnheim, writing in the (UK) Barrister magazine in 2010 (Costs – a missed opportunity?) said; "Duplication: The high degree of unnecessary expense resulting from the two-lawyer model that is still prevalent here but is absent from most other jurisdictions." [12]

The two-lawyer model results in many persons being denied justice, as they cannot access justice due to the prohibitive costs which the multi-lawyer model creates. For some, the costs of litigation are made prohibitive, by the threat of the costs that an opposite party with multi-lawyer representation may impose on them, if they lose a case.

For others, the additional costs of two-lawyers for themselves means that sometimes these litigants will choose to self-represent. This is increasingly happening. *The Irish Times* reported that in repossession cases, 'One-third of cases before the Court of Appeal involve lay litigants.'[13]

Some 28% of Supreme Court cases involve lay litigants. Lay-ligancy poses problems for courts[14] and can add to the length of a case due to sometimes irrelevant arguments being presented.[15] The inability of lay-litigants to consult barristers at low cost, without the tandem involvement of solicitors, can result in cases being taken which might otherwise not be taken, if such litigants got appropriate specialist legal advice at an affordable price. This adds to the delay before the courts and wastes state resources. Inequality of arms can also result.[16]

Ireland has the lowest number of judges per capita (which is about one sixth of the average) of the 47 states of the Council of Europe. This reflects the very low level of civil litigation, due to the threat of prohibitive costs, which, I submit is significantly contributed to by the multi-lawyer model, and the prohibition of direct access to barristers. The UK system has a similar lawyer to judge ratio as Ireland and both are similarly significantly out of kilter with Europe and the USA, where single-lawyer representation is more the norm.

---

[11] Debbie Guest, 'Leading jurist attacks legal fees', The Australian; *' "Teams of lawyers go to court, some just sitting and watching," Chief Justice Martin said.'* (18 May 2010).
<http://www.theaustralian.com.au/business/legal-affairs/leading-jurist-attacks-legal-fees/story-e6frg97x-1225867930583 > *accessed 30th November 2014*

[12] < http://www.barristermagazine.com/archive-articles/issue-45/costs-%E2%80%93-a-missed-opportunity.html>. [The UK and Irish systems are very similar, having a shared history]

[13] High costs and rise in repossessions drive growth of lay litigants - "Judges say the unrepresented are poorly advised and lack knowledge of procedures" http://www.irishtimes.com/news/crime-and-law/high-costs-and-rise-in-repossessions-drive-growth-of-lay-litigants-1.2962474

[14] See - Evan Bell, 'Judges, Fairness and Litigants in Person'; states that 'Trying cases in which a party represents himself "can be amongst the more difficult judicial tasks" '
http://www.jsijournal.ie/html/Volume_10_No._1/[2010]1_Judges_fairness_litigants_Bell.pdf

[15] Ibid- 'Litigation involving self-represented litigants is therefore usually less efficiently conducted and tends to be prolonged.'

[16] In a tenant and landlord disputes study - "Only 22% of the represented tenants in this study received an adverse final judgment, compared with 51% of the self-represented tenants." – See:
C.Seron, G Ryzin and M Frankel, 'The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment' (2001) 35 (2) Law and Society Review 419.

However, the success of any Direct-Access scheme is dependent, in part, on the reform of legal costs rules, to avoid undoing support for reform. The UK case of *Agassi* illustrates how the success of Direct-Access is intertwined with the reform of costs rules.[17] In *Agassi*, the Court refused to award the (referral) costs of a (non-solicitors) firm, despite acknowledging that those costs could be three times higher if solicitors had been used.[18]

(4) The Aarhus Convention –

Ireland and the UK both have the distinction of being successfully prosecuted by the EU Commission for maintaining prohibitive legal costs systems in relation to access to justice relating to environmental law.[19] It is no coincidence that both states apply the multi-lawyer model system of legal representation, and apply the tandem barrister-solicitor model generally. The UK ostensibly has relaxed the restriction of the prohibition on direct access; however, various caveats applied to this relaxation have rendered it predominantly ineffective as a reform. For example, a 2008 report indicates that the client needs to do the "court work".[20]

The tandem system inevitably contributes to both countries continued non-compliance with the convention. In the case of Spain, the Aarhus Convention Compliance Committee (ACCC) commented that a dual-lawyer requirement before certain appeal courts[21] could contribute to prohibitive legal costs and violate Article 9(4) of the convention.[22] It said that,

> '*The Committee observes that the Spanish system of compulsory dual representation may potentially entail prohibitive expenses for the public*.'[23]

It is submitted that coercing environmental litigants who seek the advice or representation of barristers with specialist environmental-law skills to also hire solicitors, significantly increases the costs of such advice/representation and makes it prohibitively expensive in many cases and thus likely exacerbates Ireland's non-compliance with the Aarhus convention and EU directives which part-transpose it into Irish law.

---

[17] See para 80 of - *Agassi v S Robinson (HM Inspector of Taxes)* [2005] EWCA Civ 1507, [2006] 1 WLR 2126: "*We were told by our assessor that the fees charged by a firm of solicitors for the work done in respect of these two appeals might well have been three times as high as Tenon's charges."*

[18] Ibid.

[19] See - CJEU findings in C427/07 (EC v IRL, 16/7/2009) and C 530/11 (EC v UK, 14/2/2014).

[20] Flood/Whyte (n 9) p8. : "The barrister must be satisfied that the lay client, with the guidance of the barrister, will be able to do all the necessary court work." (It is unclear whether reforms have since been implemented).

[21] See Communication to ACCC - C36 (Spain) Additional remark by the Party concerned 03.03.2010 - "…it is clear from the Act (Law 29/1998, art. 23), the dual representation (attorney and lawyer) is only mandatory before associated bodies (Supreme Court and High Regional Courts), while the general rule is that before first instance courts (single judges) it is mandatory to be assisted only by a lawyer."

[22] Spain ACCC/C/2009/36; ECE/MP.PP/C.1/2010/4/Add.2 08 February 2011, para 67 - http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-28/ece_mp.pp_c.1_2010_4_add.2_eng.pdf

[23] Ibid (para 67).

(5) Right to choose a lawyer in criminal cases –

Where persons may seek the assistance of a barrister, which he/she believes to be a good criminal-law barrister, such persons may be coerced to self-represent, where the additional costs of also hiring a solicitor, tip the decision towards self-representation, due to the additional costs proving prohibitive. The US Supreme Court has held that a person is entitled to be assisted by counsel of one's choice, when one is not dependent on legal-aid, and that the establishment of a violation of this right does not require proof that any such denial caused any prejudice.[24] A defendant in Ireland, who does not qualify for legal aid, and who feels that he/she can only afford one lawyer, may be coerced to either self-represent or to hire a solicitor, and are thus constructively denied a barrister-lawyer of his/her choice.[25]

(6) 2005 Competition Authority Report[26] –

Analysis by the Competition Authority; The then authority (2005) said – at para 7.12

> *'7.12 Even if the preservation of an independent referral Bar is regarded as a valid objective, the restriction resulting from the rule is disproportionate to the achievement of that objective.'*

I would again suggest that it is only the independence of a lawyer which is important, and that this is better assured when a barrister can obtain work from all potential litigants or lawyers rather than being constrained to obtain most work only from solicitors.

The proportionality of any interference is raised in regard to any claimed necessity of the restrictions of direct-access to barristers: Even if a tandem (barrister-solicitor) system of representation as well as a tandem system of obtaining advice is deemed necessary, it seems that this could still be achieved by allowing barristers to refer clients to solicitors, rather than only allowing solicitors to refer clients to barristers. It is hard to see what benefit is afforded the public good by not allowing a two-way referral system, which would enhance the independence of the barrister profession, by reducing barristers' dependence on solicitors. (For clarity, I'm not recommending a two-way referral system as the best system). If tandem representation is the goal sought to be achieved, then the absence of a two-way referral system fails the third limb of the public policy test in relation to balancing conflicting rights.

There are huge costs generated by dragging solicitors into court at very high hourly rates, when often such solicitors do little other than hand the odd file to a barrister, work which could be done either by the barrister or a by a paralegal (in more complex cases) at a far lower hourly rate (perhaps, 10 times lower). These "sitting-around" costs could be avoided by allowing direct access, and allowing the barrister to decide to only obtain assistance when this is cost effective.

---

[24] *United States v Gonzalez-Lopez* 548 US 140 (2006) https://supreme.justia.com/cases/federal/us/548/140/

[25] Ibid – "The right to counsel of choice, however, commands not that a trial be fair, but that a particular guarantee of fairness be provided—to wit, that the accused be defended by the counsel he believes to be best." (From summary/syllabus of case).

[26] The 2005 CA report is available here - http://www.ibanet.org/Document/Default.aspx?DocumentUid=dbb06867-99ec-4edd-9597-ee2070191682

It is suggested that barristers seeking to be stand-alone advocates could convert to being solicitors and hence represent clients in any court. However, the barrister and solicitor professions have marketed the barrister profession as consisting of superior advocates for over 300 years[27], and the government advances the profession of barrister as specialist advocates at international fora. It is hard to undo this branding in a short period of time, and thus most of the public fear that they will generally not be as well represented unless they hire a barrister, particularly before the higher courts, where most solicitors have little experience, as advocates.

The similarity of attire between barristers and judges emblematically suggests to the public that barristers' opinions will carry more weight with the courts and projects an impression in the minds of the pubic that solicitors have a lower status as advocates.[28]

Professors Judith Resnik and Dennis Curtis suggest that court architecture and iconography influences the public's perception of the role of courts in a democratic society. They say, 'The visual vocabulary of courts - rooted in Babylonian, Egyptian, Classical, and Renaissance iconography - provides a transnational symbol of government…'.[29] They posit that, 'Adjudication…obliges disputants and judges to treat each other as equals…'.[30] How then can it be deemed appropriate for barristers to dress in specialist garments, and yet claim that this does not affect the public's perception of the equality of representation between solicitors and barristers?

This commentary perhaps takes the discussion beyond the confines of the current consultation and into the broader question of the unification of the professions. However, reviewing the historical arrangements between barristers and solicitors, as outlined by Prof Cohen, it is hard to imagine that solicitors will continue to calmly accept their perceived second-class status as advocates, in a situation where they are deprived of their hefty fees for attending barristers before the higher courts. I suspect that solicitors will only support direct-access for barristers, in the long-term, if there is sufficient conditionality attached to its operation to render it ineffective, in practice. If a relatively unrestrictive direct access system is introduced, then, I suspect that this will unleash a demand for equality from solicitors, a demand which ultimately appears unresolvable, other than by "grasping the nettle" of unification of the professions. The General Council of the Bar argued that direct access would end "any real purpose in having different professions"[31] and would inevitably lead to fusion.

---

[27] See - article by Professor Harry Cohen –'The Divided Legal Profession in England and Wales-Can Barristers and Solicitors Ever Be Fused?' ; he says: *"We do not know if some kind of a deal was struck between the barristers of the time and the solicitors. It could have been that the denial of the right of audience was exchanged for the right to deal directly with clients and to interview them before the trials."*

[28] I understand that Solicitor Advocates in the UK have won the right to also ware wigs to ensure that their attire accords with their status. – 'Solicitors get permission to wear wigs', By The Lawyer (21 December 2007).

[29] Judith Resnik and Dennis Curtis, 'The changing face of justice' (24 March 2011) https://www.theguardian.com/law/2011/mar/24/changing-face-justice-judith-resnik

[30] Ibid.

[31] General Council of the Bar, 'Quality of Justice-The Bar's Response' (Butterworths 1989) 141.

(7) Diversity –

The current system discourages law-students, other than those from more prosperous backgrounds who have rich enough parents to keep them in food and accommodation over a long and slow career development path, from becoming barristers. A young barrister usually has to endure between 7 and 10 years of frugality, to eventually be in a position to earn enough to support themselves, without other employment or financial support. Most law-students have to generally contend themselves with seeking to join the solicitor profession, where actual litigation/advocacy is less practised, even though advocacy may be their preferred activity.

It is accepted that there are exceptions to this general rule, where determined persons wishing to be advocates, will work part-time at low-paid jobs to further their chances of becoming a successful barrister. But these exceptions do not deflect the general trend towards gentrification of the barrister profession. This takes the practice of law largely outside of various social groups in society, and undermines political support from certain quarters for the use of litigation for resolving social and human rights issues. The perception of a gentrified barrister profession is seen by some to feed into a gentrified judiciary allowing some politicians to claim that furthering more accessible courts would be adverse to the pursuit of social-justice goals, on the (misguided) claim that legal system can only protect the better off.

Allowing direct access would lessen the financial hardship of barristers in their "teeth-cutting" years, and make those years far shorter to the benefit of consumers and society overall. This would allow students from less prosperous backgrounds to pursue their preferred careers. The double wipe-out of law students from the barrister profession, firstly by their refusal to seek to qualify, and secondly by the high attrition rate of those who do qualify, means that inevitably the public is deprived of the advocacy of the best potential advocates.[32] This causes the loss of the huge investment of the state in terms of the education invested in such persons through the third level system.

The current system fails to provide an accessible path to a career of advocacy for most aspiring advocates. The hurdle presented by the restrictions on direct-access is too high for most, but it particularly discriminates against those with less privileged backgrounds. The restriction is not compatible with an inclusive society or with the goal of widespread access to justice.

Conclusion (Issue (b)) -

For the above reasons, I submit that the LSRA should recommend to the government that unrestricted direct access to barristers be made explicit in law at an early date and that the current requirement in the Rules of Court of the District court that requires barristers be instructed by solicitors be removed. Further, the law needs amendment to allow barristers to sue to enforce contracts (payment) for legal services provided.

Kieran Fitzpatrick *1st June 2017*

[32] The current system awards those with excellent networking skills and less those with more focused advocacy skills.