PUBLIC CONSULTATION ON THE UNIFICATION OF THE SOLICITORS' PROFESSION AND BARRISTERS' PROFESSION

Submission by Andrew McKeown BL

Dear Sirs/Mesdames,

This submission was prepared in relation to the public consultation under section 34(1)(b) of the Legal Services Regulation Act 2015 and the LSRA preparation of a report to the Minister in relation to the unification of the solicitors' profession and barristers' profession. I am a practising barrister. I am happy to assist the Authority should any questions arise in relation to this submission.

Yours sincerely,

Andrew McKeown

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THE PUBLIC INTEREST

1. The Public Interest is best served by a system where specialised advocates carry out advocacy in the courts. As well as the considerations outlined in section 34(4)(c), the Authority should also have regard to the other regulatory objectives set out in section 13(e), being the encouragement of an independent, strong and effective legal profession, and section 13(f), the promoting and maintaining adherence to the professional principles of independence and integrity, acting in the client's best interests, compliance with duties owed to the court and confidentiality.

AN INDEPENDENT BAR

2. Under the "Cab-rank rule", a barrister in independent practice is required to accept any brief to appear before a court in an area in which he or she professes to practice, having regard to his or her experience and availability, at the proper fee. They cannot decline relevant instructions without good cause.

3. The cab-rank rule has been characterised as being part of the "ideology of service" which obliges lawyers "to serve society by providing, maintaining and sustaining justice. It confers upon the professional obligations of upholding legal order and facilitating access to legal processes and institutions within a conception of responsibility to others."[1]

4. The barristers of the Bar of Ireland are subject to the Cab Rank Rule. Lawyers in fused systems, such as counsel in US law firms, only accept those briefs in which their firm accepts instructions.

[1] Maree Quinlivan, The Cab Rank Rule: A Reappraisal of the Duty to Accept Clients (1998) 28 Victoria U Wellington L Rev 113

5. Lord Pannick QC said that the barrister propounds views "to which he does not necessarily subscribe, and which are sometimes anathema to him, on behalf of clients whose conduct may not interest him, will often offend him, and can occasionally cause him outrage."[2]

6. The independent advocate has a clear role in the administration of justice, as enunciated by Denning LJ:

> *"As an advocate he is a minister of justice equally with the judge… No one save he can address the judge, unless it be a litigant in person. This carries with it a corresponding responsibility. A barrister cannot pick or choose his clients. He is bound to accept a brief for any man who comes before the courts. No matter how great a rascal the man may be. No matter how given to complaining. No matter how undeserving or unpopular his cause. The barrister must defend him to the end. Provided only that he is paid a proper fee, or in the case of a dock brief, a nominal fee. He must accept the brief and do all he honourably can on behalf of his client. I say "all he honourably can" because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court."*[3]

7. Lord Hobhouse stated that the cab rank rule was "vital to the independence of the advocate since it negates the identification of advocate with the cause of his client and therefore assists to provide him with protection against

[2] David Pannick, Advocates (OUP 1992), 1
[3] *Rondel v Worsley* [1967] 1 QB 443, 502 B-C

governmental or popular victimisation".[4] Anderson P of the New Zealand Court of Appeal described the rule as "…a professional obligation to facilitate the administration of justice. It is not overstating the obligation to call it one of the foundation stones of a free and democratic society."[5]

8. The important nature of the independent advocate was discussed by Denham J[6]:

> *"… having acted for the Director of Public Prosecutions in prosecuting a case, counsel may the next day defend a defendant in a case prosecuted by the Director, or, having completed a personal injuries claim on behalf of a plaintiff in which case the defendant was covered by an insurance company, the counsel may then represent a defendant covered by the insurance company. Indeed, a person who has been on the receiving end of a barrister's skill (whether it be by way of advices or cross-examination or whatever) often decides that the next time he or she will need counsel he or she will ask his or her solicitor to seek out that particular barrister. Choice of counsel is an important matter."*

9. Barristers have the ability to act for opposing sides in different cases. This advocacy experience with two opposing sides would not be available to advocates in a fused system, especially in the case of criminal law.

10. The American Bar Association House of Delegates Model Rules of Professional Conduct, under the heading "Acceptance and Retention of Employment, EC 2-26" states that an attorney "is under no obligation to act as adviser or advocate for every person who may wish to become his client" but that they "should not *lightly* decline proffered employment." (Italics

[4] *Hall v Simons* [2002] 1 AC 615, 739G-H
[5] *Lai v Chamberlains* [2005] 3 NZLR 291 (CA), 106
[6] *Bula Ltd v Tara Mines Ltd (No.6)* [2000] 4 IR 412 at 443

mine) Under EC 2-30 a lawyer may turn away a client based on personal feelings. The legal history of America is replete with people who had difficulty in obtaining counsel due to unpopularity or prejudice: communists in the 1950s, people of colour accused of inter-racial crimes in the American South in the 1960s, and LGBT people prior to legalisation. The Cab-Rank rule of the independent referral bar mean that advocates are fully independent lawyers – independent of the state, but also independent from the interests of equity partners, and indeed their own political, religious, or social interests. The cab rank rule maintains that everyone deserves representation, however unpopular the person or cause.

11. An American lawyer writing in the journal of the American Bar Association characterised the barrister as being more independent than an attorney:

> *"Not having been involved in the client's business decisions, the barrister tends to be more independent of his client than the US trial lawyer might be. Simply put, he is not vested in the client's position nor is he beholden to the client for his business."*[7]

12. The same author stated that solicitors also benefit from this arrangement, which in turns makes the entire legal profession more independent:

> *"Consider the common plight of the lawyer whose client pushes her to take an aggressive position that may be commercially advantageous but marginally defensible. When that client happens to be your firm's largest, saying no is not easy… the barrister's independent voice can convince the client without damaging the solicitor's relationship."*[8]

13. Maintenance of the highest standards of integrity and independence remains vital to the administration of justice. As Michael Beloff QC has pointed out,

[7] David Strawbridge, 'Barristers and Trial Lawyers: A Comparative Search for Efficient Justice, Litigation' (2000) ABAJ Vol 26 No 3, 30-34, 31
[8] Ibid.

independent advocates do not possess some inherent morality – "they are cut from the same crooked timber of humanity as all of us". [9] However, the *institutional* independence which the referral barrister enjoys makes the fulfilment of the professional duties of independence easier for both counsel and solicitor:

> *"The barrister's advantage now, and probably always, derives in large part from the conditions under which he works. The barrister is less exposed to temptation; the man who is frequently exposed and resists is the greater moral hero, but with humans as with pitchers more frequent visits to the well tend to produce a higher proportion of breakages… because he acts for so many clients and for few in any continuous fashion, less likely to identify himself with the client's will to win at all costs."*[10]

14. Ms Justice Mary Rose Gearty recently noted in a judgment[11]:

> *"The personal investment of the litigant in the outcome of the case is in stark contrast with the position of the professional lawyer, and in particular the independent referral barrister, who has no financial or personal interest in the outcome of the case. The practical implications of her role include duties of independence and absolute good faith. The self-employed barrister is singled out, not because solicitors are not independent, generally speaking, but because the barrister is not beholden to any other person: she has no duties to partners and is not in receipt of a salary, she has no ongoing relationship with the client and she is as independent as it is possible to be. This is the reasoning behind the professional model adopted by the referral Bar. The independent lawyer is in the best position to see the facts clearly, assess them clinically, and is concerned only to argue her side of each issue to the best of her ability. Just as importantly, she will assess what is not in issue and focus on the true crux of the case."*

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[9] Michael Beloff, 'A view from the Bar': The 2010 Sir David Williams Lecture.

[10] Geoffrey Sawer, 'Division of a Fused Legal Profession: The Australasian Experience' (1966) UTorontoLJ, Vol 16, No 2, 264

[11] *Fogarty v The Governor of Portlaoise Prison* [2020] IEHC 154

15. Former Chief Justice Ronan Keane, writing as a barrister in 1965, said that

> *"The fact that a barrister advising on a particular case, moreover, is in no way solely dependant on the solicitor briefing him, but gives his services to a number of different solicitors, means that the client's problems are viewed with a detachment and independence of mind which one could not expect under a fused system."*[12]

16. The public interest is served by the split profession in another, less obvious, way:

> *"In assessing the value of the Bar to the community, its extra-legal services should not be overlooked. In the universities, their learning and experience have been communicated to new generations of students and they have made notable contributions to other fields of studies, to the humanities and the arts. The fraternal nature of the profession, its severe code of ethics and its great traditions of learning have benefited the nation in a sense the scope and depth of which cannot be measured in material terms."*[13]

17. The nature of the solicitor's work means that they cannot usually undertake any extra work. Barristers, as part of our working life, regularly work as lecturers, legal editors, journalists, etc. If the professions were fused, it would irrevocably change the working conditions of all lawyers and have a knock-on effect in all of the other realms where young barristers work. Any unification would have a profound effect on the members of the Bar of Ireland, who would be faced with huge costs and change in working conditions in transforming into this new, unprecedented and unsought role.

[12] Keane, Ronan. An Irish Quarterly Review (1965) Vol 54, No 216, 379
[13] Keane, Ronan. An Irish Quarterly Review, 383-394

INTERNATIONAL APPROACH

18. Section 34(4) of the 2015 Act states that the Authority's report shall contain details of other jurisdictions in which the professions have been unified. It is submitted that it is of great importance for the Authority to have regard, when considering the public interest, to the *reasons* for the fusion of the professions in other countries.

19. This submission does not have regard to Civil Law jurisdictions, as oral advocacy does not play an important a role in that legal system in comparison to the Common Law position. This submission includes three examples of Common Law jurisdictions that fused the roles of barrister and solicitor: the USA, Canada, and New South Wales.

A) THE UNITED STATES OF AMERICA

20. Professor L.C.B. Gower advocated in 1946[14] for the fusion of the English legal profession, writing "any objection that the divided profession is an essential element of the Common Law system is sufficiently disproved by the United States and many of the Dominions which have *found no difficulty in discarding it* and shown no desire to re-adopt it." [Italics mine]

21. The history of the American position should not be so quickly assumed. The fused system did not arise from a reasoned and considered study of what system was best. The Courts of the American Colonies were

> *"manned by planters and merchants who, as Thomas Jefferson observes, were 'chosen from among the gentlemen of the country for their wealth and*

[14] 9 Mod. L.R. 211, 223, quoted in Geoffrey Sawer, Division of a Fused Legal Profession: The Australasian Experience (1966) UTorontoLJ Vol 16, No 2, 245

standing, without any regard to legal knowledge.' Hence, practice before these courts was not too attractive for the trained common law lawyer."[15]

22. In Virginia, there were a number of acts passed which were hostile to the lawyer's profession as a whole. An Act "For the Better Regulating Attorneys, and the Great Fees exacted by them"[16] was passed in 1642. It forbade lawyers from charging a fee of more than twenty pounds of tobacco in the county court, "a ridiculously small fee."[17] Three years later a further statute provided that "whereas many troublesome suits are multiplied by the unskillfulness and covetousness of attorneys, who have more intended their own profit, and their inordinate lucre, than the good of their clients"[18], and stated that attorneys could not practise for a fee. Two years later a law[19] provided that attorneys

> *"shall not take any recompense, either directly or indirectly. And that it be further enacted, that in case the courts shall perceive that in any case either plaintiff or defendant by his weakness shall be like to loose his cause, that they themselves may either open the cause in such case of weakness or shall appoint some fitt man out of the people to plead the cause, and allow him satisfaction requisite, and not allow any other attorneys in private causes betwixt man and man, in the country."*

23. Lawyers were again allowed to practise in in 1659, when a new statute stipulated that "those only be called counsellors at law who have been all readie qualified thereunto by the lawes of England, and those so qualified to enjoy all privileges those laws give them."[20] Only barristers called in England could therefore act as counsel in Virginian courts. However, this policy was

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[15] Anton-Hermann Chroust, Legal Profession in Colonial America (1958) 34 Notre Dame L Rev 44, 46
[16] Act LXI of 1642-43, 1 HENING 275, cited in Chroust
[17] Anton-Hermann Chroust, Legal Profession in Colonial America (1958) 34 Notre Dame L Rev 44, 46
[18] Act VII of 1645, 1 HENING 302, cited in Chroust, 46.
[19] Ibid.
[20] Ibid, 47.

entirely reversed in 1658, when the Colony passed "a regulation of total ejection of lawyers" from Virginia. A statute was then enacted providing that

> *"… noe person or persons whatsoever, within this colony, either lawyers or any other, shall pleade in any courte of judicature within this colony, or give councill in any cause, or controvercie whatsoever, for any kind of reward or profit whatsoever, either directly or indirectly…"*[21]

24. No lawyers were permitted until 1680, when a new Act provided for a limited practice.[22] That Act was repealed two years later, but the statute disallowing lawyers was then itself subject to nullification by royal proclamation. "After this royal rebuff no further legislation was passed directly aiming at the extinction of the profession, though legislative efforts aimed against the professional lawyer did not cease until 1748."[23]

25. An Act of 1732[24] stated that it did not apply "to any attorney who at the time of passing thereof is a practioner in the General Court, or to any counsellor or barrister at law whatsoever." Choust notes that this reference

> *"comes somewhat as a surprise because, in view of the relatively small number of practicing lawyers, the English bifurcation of the legal profession into attorneys and barristers could not possibly be maintained in the New World. It was this scarcity which in America accounted for the natural fusion of the two branches of the profession, a fusion, that is, which was to become a permanent feature in the United States. Hence it must be surmised that the*

[21] Ibid.
[22] Ibid.
[23] Ibid, 48
[24] 4 HENING 361, cited Anton-Hermann Chroust, Legal Profession in Colonial America (1958) 34 Notre Dame L Rev 44, 48

reference to barristers in the statute of 1732 aimed at persons who had been called to the bar in one of the English Inns of Court."[25]

26. Virginia was not alone in its hostility to professional lawyers. In South Carolina, the Fundamental Constitutions of 1669 provided that "it be a base and vile thing to plead for money or reward; nor shall anyone (except he be a near kinsman…) be permitted to plead another man's cause, till . . . he hath taken an oath, that he doth not plead for money or reward."[26]

27. The fusion of the legal profession in America arose partly from the ad hoc requirements of colonies with low density populations, and partly from the above historical hostility shown to the legal profession, which drove barristers out of the colonies.

B) CANADA

28. Canada is made up of nine provinces and three territories[27] practising common law, and the Civil law province Quebec. Upper Canada (now Ontario) was created in 1791[28], and the Common Law was introduced there the following year.[29] The Parliament of Upper Canada passed a statute in 1797 permitting lawyers to organize the Law Society of Upper Canada. Ten lawyers attended its first meeting, one third of all lawyers in the colony.[30] That society, which from its inception had authority over barristers, solicitors

[25] Anton-Hermann Chroust, Legal Profession in Colonial America (1958) 34 Notre Dame L Rev 44, 49
[26] Ibid, 55
[27] Canadian provinces receive their power from the Constitution Act 1867 whereas territorial governments receive delegated powers from the Parliament of Canada.
[28] https://lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/chronology
[29] Christopher Moore, Law Society of Upper Canada and Ontario's Lawyers, 1797-1997 (1997) U TorontoP, 35
[30] https://lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/research-themes/history-of-the-law-society

and attorneys, passed a motion in 1799, allowing Upper Canadian practitioners to be both barrister and attorney (though they had to satisfy separate requirements).[31] "Because of the very limited supply of lawyers with training in English Inns of Courts in early years, coupled with a low population density in a vast territory, it was economically unviable to have a divided structure in legal profession."[32] In 1803, the legislature found that there were not enough lawyers in the colony. The Lieutenant-Governor was given the power to license "up to six men of due probity, education, and condition of life to be both barristers and attorneys."[33]

29. It is clear from the Act of 1803, and the addition of six new lawyers, that the numbers of practitioners was low, having stood around 30 in 1800. The population of Canada was 70,718 in 1806. The same circumstances in no way apply to Ireland in 2020. As of 30 June 2019, there were 11,618 solicitors holding practising certificates in Ireland.[34] 2,158 barristers practise from the Law Library.[35] This equates to roughly 287 lawyers per 100,000.

C) NEW SOUTH WALES

30. Writing in 1960, RW Bentham[36] and JM Bennett[37] explored the issue of fusion in New South Wales.[38] Before 1815 there were no lawyers qualified to appear before the newly constituted NSW Supreme Court of Civil Judicature. Before the arrival of the first solicitors from England in 1815 the Judges Advocate, responsible for the holding of Criminal and Civil Courts was "constantly

[31] Christopher Moore, The Law Society of Upper Canada and Ontario's Lawyers, 46
[32] Practice of the legal profession in selected places, Research Office, Hong Kong Legislative Council Secretariat FS06/17-18
[33] Christopher Moore, The Law Society of Upper Canada and Ontario's Lawyers, 47
[34] https://annualreport.lawsociety.ie/
[35] https://www.lawlibrary.ie/media/lawlibrary/media/Submission-to-the-LSRA-re-Section-33_Admission-Policies-06-02-20-(1).pdf
[36] Law lecturer at the University of Sydney and a barrister of the middle temple who studied at Trinity College Dublin
[37] Solicitor and researcher at the University of Sydney
[38] RW Bentham and JM Bennett, 'Fusion or Separation? The Division of the Legal Profession in NSW' (1960) SydLawRw 7 3(2), 285

called upon to give advice… upon all occasions where an action (was) about to be brought or defended".[39] In 1811, Judge Advocate Ellis Bent "earnestly recommended" that two barristers and two attorneys/solicitors should be encouraged to leave England for New South Wales. The Colonial Office made enquiries and selected two solicitors, who were each paid £300 per annum. Before their arrival, the Judge Advocate was "reluctantly induced... from necessity" to have ex-convicts appear before him in cases. The first Judge of the Supreme Court refused to permit ex-convicts to appear before him, which caused the closing of the Supreme Court itself for some years.[40]

31. The Supreme Court was empowered by the Charter of Justice 1823 s.10 to admit lawyers to practise who has been called as barristers or enrolled as Advocates in Great Britain or Ireland, or as writers, solicitors or attorneys in one of the Superior Courts at Westminster, Edinburgh or Dublin.[41]

32. In 1846 a Bill was introduced to abolish a division established in 1834. The matter was referred to a Select Committee of the House. The chief argument in favour of fusion advanced before the Select Committee was that it would reduce legal costs. The Committee found that the opposite was true "there can be no doubt that whilst the amalgamation which is now sought to be re-established, did exist, *the expenses of law suits were not smaller, nor even so small*, as they have been since the division of the profession". [42] [Italics mine]

33. The committee found that the "alleged multiplication of labour which is complained of as the cause of such increased expense to the public, has no foundation; and… that the division of the profession which now exists is

[39] RW Bentham and JM Bennett, 'Fusion or Separation? The Division of the Legal Profession in NSW' (1960) SydLawRw 7 3(2), 286
[40] Ibid.
[41] Ibid.
[42] 2 V. & P. 1847, 417, cited in RW Bentham and JM Bennett, 'Fusion or Separation? The Division of the Legal Profession in NSW' (1960) SydLawRw 7 3(2), 288

strictly a division of labour, and attended with the usual results of such a division-superior skill and cheapness."

34. According to the Committee the proposition of those who favoured fusion was that the division of legal practitioners into two branches was strictly a division and that the accumulation of practitioners in each branch was strictly a multiplication. The Committee asked "would there be any less labour if the Barrister were to receive his instructions direct from the client? He must be instructed by someone; and if he had to gain information in this way, which he at present derives from the Attorney[43], the labour of so obtaining it… must be paid for in addition to his brief."

35. The Judges of the Supreme Court were asked to give their opinion on a particular Bill which directed the fusion of the legal profession. They opined that no beneficial result would arise out of the proposed fusion:

> *"The demarcation along natural lines between the classes of work done by solicitors and barristers respectively makes for efficiency, for real economy, and for the prompt despatch of business.... Under the law as it stands at present every solicitor has the right of audience in every Court where a barrister can he heard, and many of them practise as advocates with great and deserved success. But a solicitor has many duties and responsibilities towards his clients from which a barrister is free, some connected with litigation, and some of an entirely different character. These, if his practice as an advocate is extensive enough to keep him for the greater part of the day in the Courts, he must entrust to partners or clerks, so that in the end the demarcation between the two branches of the profession, even if nominally abolished, would be in his case fully maintained."*[44]

[43] Prior to the fusing of the Common Law and Equity Courts, attorneys were lawyers at Common law and solicitors were lawyers in equity.
[44] RW Bentham and JM Bennett, 'Fusion or Separation? The Division of the Legal Profession in NSW' (1960) SydLawRw 7 3(2), 290

36. The judges did not think it to be in the public interest that people "who wish to devote themselves to the profession of advocacy, with all its heavy responsibilities, should be required to submit to an unnecessary training in another branch of the legal profession, and to take on themselves a new load of duties and responsibilities which are not required in their chosen calling and which may seriously hamper them in following it." [45]

37. In 1884, the Legislative Council of Victoria investigated the question of fusion. Chief Justice Way of South Australia give his opinion that a divided profession was better. Queenland's Chief Justice Lilley, where fusion was provided for by an Act of 1881, said that fusion there had not occurred in reality. The divided profession was re-established in Queensland by statute in 1938.[46]

38. In 1824, an editorial in the Sydney Gazette[47] commented that

> *"in the event of a Bar being established here on the same footing as in the mother country, such an arrangement would have been inevitably depressive to the rising interests of the colony. We are not old enough, nor are we in possession of sufficient wealth to sustain an independent Bar had the rule been made".*

39. A seminar entitled "The Fusion of the two Branches of the Legal Profession" was delivered to the Statistical and Social Inquiry Society of Ireland on 15th March 1892 by Dr William Lawson BL.[48] In it he quoted from a "leading

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[45] Ibid.

[46] Geoffrey Sawer, Division of a Fused Legal Profession: The Australasian Experience (1966) UToronto LJ, Vol 16, No 2, 248

[47] Sydney Gazette, 16 September 1824 https://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1824/supreme_court/division_of_the_profession/

[48] http://www.tara.tcd.ie/bitstream/handle/2262/6578/jssisiVolIX632_636.pdf?sequence=1&isAllowed=y

article which appeared in the Times after the passing of the resolution of the Incorporated Law Society of the 15th February 1886." That article said:

> *"[T]he public could only support amalgamation on the ground of pecuniary economy to be attained thereby, and even were economy compassed, which is doubtful, it would not necessarily mean any advantage; cheap law is not good law…. what the public really want is good law and efficient lawyers; and it is pretty clear that amalgamation would tend to the production of neither the one or the other. In countries where no distinction exists between the two professions public opinion is anything but undivided on the advantages of that system…"*

40. A split profession exists in New South Wales, Victoria and Queensland. In the states of South Australia and Western Australia, as well as the Australian Capital Territory, where fusion previously existed, a *de facto* separate Bar has been established. There are also aspects of separation both *de lege* and *de facto* in the professional organization of Tasmania and New Zealand.

41. England and Wales, Hong Kong, and Northern Ireland all have a split profession. In considering those jurisdictions which have fused the legal profession, the Authority should also have regard to those jurisdictions which have not fused the professions.

COST COMPARISON – COMMON LAW COUNTRIES

42. According to the National Association for Law Placement[49], the average number of billable hours required from a first-year associate in the United States is 1,892 hours. However, the average number of billable hours required

[49] National Association for Law Placement, 2016 Update on Billable Hours worked by Associates, https://www.nalp.org/0516research?s=billable%20hours%20required

for first-year associates at firms with more than 700 attorneys is 1,930 hours. Yale Law School created a chart on billable hours[50] that set out time actually spent for 1,800 billable hours and 2,200 billable hours.[51]

43. Dublin based firms' billable hours targets vary from 1300 – 1700 per annum.[52] An analysis of international common law costs indicates that the suggestion that the unfused system produces a duplication of work, and therefore an increase in legal fees, is incorrect. In 2013, the US Chamber Institute for Legal Reform produced a report on 'International Comparisons of Litigation Costs'.[53] It found that the United States of America and Canada, those Common Law jurisdictions where the legal profession is fused, had higher liability costs as a percentage of GDP than Ireland or the UK, where there is an unfused system.

44. Ireland had the lowest costs in that study of any Common Law country. It is submitted that the Civil Law countries bear costs in other ways, in the form of court costs via higher levels of tax. By way of example, in the area of criminal legal aid, a 2009 UK Ministry of Justice report entitled 'International comparison of publicly funded legal services and justice systems[54]' found that the UK had the most expensive legal aid:

> *"Delighted at this headline figure, the MOJ proceeded to bury the deeply dull, but vital, explanation behind it: the legal systems of the eight candidate*

[50] https://law.yale.edu/sites/default/files/area/department/cdo/document/billable_hour.pdf

[51] The chart accounts for vacations, coffee breaks, conference times and other activities that take up an attorney's time but are not billable. To achieve 2,200 billable hours, an associate would have to work from 8am to 8pm each day, added to two Saturdays per month from 10am to 5pm, which still would leave the associate short, so another Saturday would be required for 10 months. That gives the attorney 2,201 billable hours. The attorney will have worked 3,058 hours.

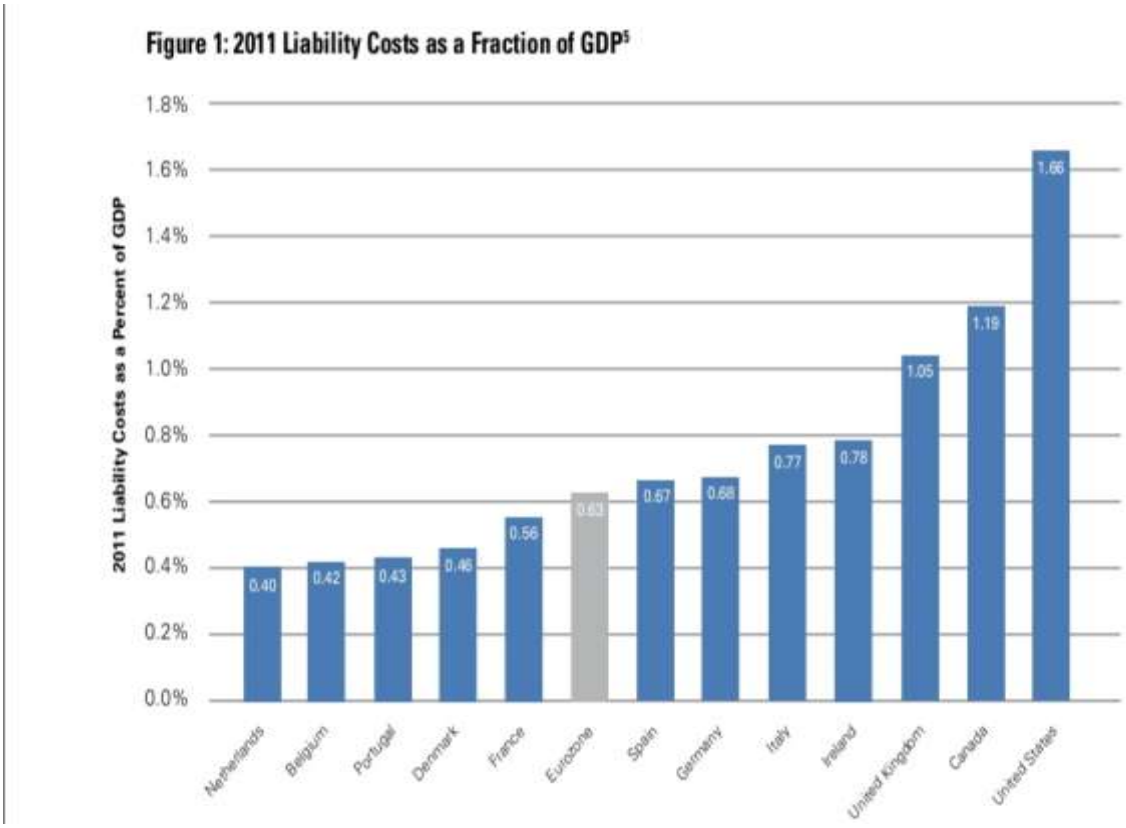
[52] https://keanemcdonald.com/wp-content/uploads/2019/03/A-Lawyers-Guide-on-Relocating-to-Ireland-2019.pdf

[53] https://www.instituteforlegalreform.com/uploads/sites/1/ILR_NERA_Study_International_Liability_Costs-update.pdf

[54] The report was prepared in 2009 from data collated from 2001-2007, and it considered the costs of the justice systems of eight countries – England and Wales, France, the Netherlands, Germany, Sweden, Australia, New Zealand and Canada.

countries differed so vastly, they were almost impossible to directly compare. The selection contained a mix of civil law and common law jurisdictions. Some … were inquisitorial systems in which court-based adversarial proceedings were a rarity. Some … had an established 'public defender' model, in which state-employed lawyers provided criminal defence, leaving limited scope for legal aid payable to private providers. The English and Welsh adversarial common law system results in the bulk of the costs …. being borne by the protagonists … with far lower costs falling on the courts' budget; in the other jurisdictions, costs which are met here by legal aid are allocated to different departmental accounts…. While our legal aid budget may be comparatively high, our courts' budget is comparatively miniscule."[55]

I include the graph taken from the American study below:



[55] The Secret Barrister, 'Stories of the Law and How It's Broken' (2018) Macmillan, 203

45. As David Turner-Samuels QC noted:

> *"Neither from discussion with those practising in jurisdictions where there is fusion, nor from personal experience in such jurisdictions, nor as a matter of logic does fusion reduce the cost of litigation. The legal practitioner in the fused profession who spends time in court in advocacy, and out of court preparing submissions, as does a barrister, inevitably has to employ others to do what the efficient solicitor would otherwise be doing during that time… Only the large firms with litigation departments would be likely to achieve anything like the same expense levels as the Bar. This would put large firms with experienced departments into a position of economic advantage over smaller firms which inevitably could not conduct all the litigation they are capable of generating. It would also reduce the freedom of choice of advocate for the litigant."*[56]

46. Barristers are not laden with the significant administration costs associated and with running a full service legal practice, such as the cost of staff, administrative costs, the renting of offices, and the high costs of insurance. Costs remain low, which means that counsel can accept work on a flexible basis. Barristers are better able to accept work on a "no foal, no fee" basis due to these considerably lower overheads.

47. The unfused model ensures all of the attendant benefits to the independent referral bar. Consumers have equal access to specialised advocates due to the cab-rank rule, there is direct competition between barristers, and legal costs are reduced by the engagement of barristers only when it is necessary.

48. The Legal Services Regulation Act s.45 provides that "a legal practitioner shall not hold moneys of clients unless that legal practitioner is a solicitor." Barristers do not hold client moneys. Under a fused system, all of the barristers in Ireland would be faced with very significant costs associated with the regulation of the holding of fund. This added costs would make legal services more expensive than they are under the current system.[57]

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[56] David Turner-Samuels, 'Planning the Legal System' (1987) Socialist Lawyer No 3, 9-10

[57] "[A] situation of direct competition with solicitors and exposed for the first time to additional and significant costs, to include the costs of regulating barristers' accounts, barristers will be more likely to agree to work and only accept instructions in cases where fee recovery can be guaranteed…. will lead to the commercialisation of the specialist legal services provided by barristers and that this will have

THE NEED FOR COMPETITION IN THE PROVISION OF LEGAL SERVICES IN THE STATE AND CONSUMERS ACCESS TO EXPERIENCED LEGAL PRACTITIONERS

49. In each of the jurisdictions that fused the legal profession, the reason for the fusion was justified because there were not enough lawyers in the countries to make the separated profession feasible over vast, low density population, territories. This is not the case in Ireland. In fact, the opposite is true: Ireland has the highest number of barristers per 100,000 population in comparison to other common law jurisdictions where there exists an independent referral bar. Below is a table submitted by the Council of the Bar of Ireland in February 2020 [58]:

the outcome of restricting access to specialist advocacy and advisory services to those who can afford to engage barristers on a full service basis." Bar Council LSRA Submission, June 2017, https://www.lawlibrary.ie/media/lawlibrary/media/Secure/SUBMISSION-TO-THE-LSRA.pdf

[58] Submission by Council of The Bar of Ireland to the Legal Services Regulatory Authority on the Admission Policies of the Legal Professions as required by Section 33 of The Legal Services Regulation Act 2015 https://www.lawlibrary.ie/media/lawlibrary/media/Submission-to-the-LSRA-re-Section-33_Admission-Policies-06-02-20-(1).pdf

Country	Association	Total number of barristers	Population	Per 100,000
Ireland	The Bar of Ireland	2,158[59]	4,792,500[60]	45
Northern Ireland	The Bar of Northern Ireland	640[61]	1,862,100[62]	34
New Zealand	The New Zealand Law Society	1,379[63]	4,793,700[64]	29
Australia	The Australian Bar Association	6,000[65]	24,511,800[66]	24
England & Wales	The Bar Council of England & Wales	13,500[67]	58,381,300[68]	23
Hong Kong	The Hong Kong Bar Association	1,400[69]	7,387,562[70]	19

50. Even if Ireland did not already have such high rates of advocates, fusion would still not be required. The Courts Act 1971 s.17 already provides that solicitors have full rights of audience.

51. The present system affords the lay client more choice than the fused profession. Under a fused system, he or she would be mainly restricted to the law firm he or she consults. When he or she consults a solicitor, that solicitor may brief the barrister of their choice. In a matter requiring specialization,

> *"he or she will naturally turn to a barrister who has developed a particular skill and reputation in that field… the solicitor's own knowledge of the legal*

[59] Membership Stats May 2018
[60] Central Statistics Office (2017)
[61] Direct Contact (2017/2018)
[62] Office for National Statistics (2016)
[63] Direct Contact (NZLS Figure as of 17 January 2018)
[64] Stats NZ (2017)
[65] Australian Bar Association website (2017)
[66] Australian Bureau of Statistics (2017)
[67] Direct Contact (2017/2018)
[68] Office for National Statistics (2016)
[69] HKBA website (number of members as at September 2017)
[70] Worldometers (2017)

world will enable him to form a far more reliable estimate of the merits of individual barristers and their capacities to handle different types of work than a lay client could form for himself under a fused system."[71]

52. "The paucity of information available to the client regarding barrister competence, compared to the inordinate amount available to the solicitor, generally ensures that the solicitor decides which barrister to select." [72] As practicing barristers are relatively few in number, solicitors' knowledge is often based on observation of a particular barrister in court, or comments that that other solicitor and barrister colleagues have made. As a solicitor is interested in obtaining the best result for a client, selection of a barrister will usually result in the most appropriate barrister being selected for the case. This is quite unlike the system in the United States, where the advocate chosen will be a member of the firm.

> *"Information available to the client, such as advertising, legal directories, referral services and reputation in the community, is an inadequate basis for selection of trial counsel…. a lawyer's substantive law specialization and courtroom competency may be well known within the bar, but the general public is usually unaware of a lawyer's abilities… Consequently, selection of an American attorney is not based on knowledge of competency."*

53. Professor Bergin contrasts this with the position in countries with separate professional where the "barrister is a product of an informal, but institutional, selection process which influences barristers' courtroom performance. The selection process generally operates by excluding inexperienced barristers from undertaking cases which may be too complex for their abilities at a given time. The selection process also assures that practice before certain courts will be by experienced advocates and provides

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[71] Ronan Keane, An Irish Quarterly Review (1965) Vol 54, No 216, 375-384 (www.jstor.org/stable/30088606)

[72] Marilyn Bergin, 'A Comparative Study of British Barristers and American Legal Practice and Education' (1984) 5 Nw J Int'l L & Bus 540 (https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1152&context=njilb)

a system for selection based on knowledge of performance." The end result, while informal, is "essentially a peer review system, because the selection process is by people within the legal profession…While laudable, American attempts to adopt a peer review system cannot guarantee a uniform level of competency similar to that evidenced in barrister practice."

54. The division of the profession has an equalising function. This, indeed, is at the bottom of the whole system of representation by lawyers. If all legal representation was forbidden, as it was for so long in America, the disparity in forensic talent would probably be striking between different people of different backgrounds and levels of education. *"Admit representation by solicitors, and at once the gulf is narrowed. Yet if one party is represented by one of the most distinguished firms in the City of London and the other by a one-man firm in a sleepy country town, the gulf, though narrowed, may still be substantial."*[73] However, the divided profession means that the small firm and the large firm have equal access to the referral bar. Small firms, instructing counsel, can and do compete with large firms every day in our courts.

55. Lord Shawcross stated that the division of the legal profession into barristers and solicitor *"has perhaps contributed more than any other single factor to the great prestige which English justice enjoys throughout the world."*[74]

56. In countries with a single legal profession, it is often the case that advocates are the senior lawyers within firms:

> *"the prominent advocates are at the head of large firms. If a very big case is coming on for trial the report informs us, and this is not unimportant in the view of the suggestion that one man will do all the work, that it is quite usual for the advocate, in order to escape interviews with clients, which in the office*

[73] Robert Megarry, Lawyer and Litigant in England, Hamlyn Lecture (1962)
[74] The Times, 21 June 1966, quoted in Roger Kerridge and Gwynn Davis, Reform of the Legal Profession: An Alternative 'Way Ahead' (1999) Modern LRev, Vol 62, No 6, 807-823 (www.jstor.org/stable/1097158)

he could not avoid, to absent himself for a few days and read up the authorities at home."[75]

57. In 1999, Roger Kerridge and Gwynn Davis of the University of Bristol carried out a survey on reforms in the legal profession. They remarked that "many solicitors told them that "the economics of their business militated against in-house trial advocacy." One partner, a specialist in defendant personal injury work, said of trial advocacy:

> *"It takes time. I can get a couple of lever arch files together or get the clerk to do it and send it off to counsel. I can get a clerk to sit behind counsel. In the meanwhile, I can be getting through all this stuff here on my desk. Now if I have to do advocacy, I need to prepare for it and because I do not do it very often, I probably have to prepare for it more fully… So all that preparation and all that attendance is stuff which can be done by someone else and is preventing me from doing work which my clients want me to do to progress the cases."*[76]

58. The academics stated that most of the solicitors they talked to said that there would be no cost advantage to the client in their doing trial advocacy, as their fees could well exceed those of a barrister, and there would likewise be no cost benefit to the firm:

> *"Most solicitors are under different pressures during the day. Barristers can say: 'I have a trial tomorrow and I need to prepare.' On an average day in the office the phone is going, clients are coming in, people are pestering me, whereas barristers do not have that, or their clerk manages it. You have to take into account the time spent in preparation - if a solicitor specifically wanted to*

[75] Ibid.

[76] Roger Kerridge and Gwynn Davis, 'Reform of the Legal Profession: An Alternative 'Way Ahead'' (1999) Modern LRev, Vol 62, No 6, 811

do [advocacy] they would have to reduce their caseload ... I am conscious of my fee target and the need to put in the chargeable hours."[77]

59. Their review noted that many of those interviewed, solicitors and barristers alike, claimed that it costs less to employ barristers than to employ solicitors because barristers' overheads are lower. They treated this as axiomatic - with need neither for discussion nor proof. One former barrister, who was now working for a firm of solicitors, said that he was charging clients more now for the work which he did on their behalf and yet he was, himself, receiving less:

I have noticed that when I have done cases of a substantial nature - a two week big industrial tribunal case a few months ago - I tend to bill (or 'record', as I am now in the 'recording' business) a lot. Far more than it would cost if I were doing it as barrister. Far, far more.[78]

60. Another barrister respondent observed:

Solicitors have to employ more staff than we do ... Most assistant solicitors still have their own secretary ... So [in solicitors' firms] you get this high ratio of employed staff [to fee earners].

61. Dr Tom Altobelli, formerly a solicitor, mediator and Associate Professor of the University of Western Sydney, and now a federal Australian judge stated that:

[77] Ibid.
[78] Ibid. at 812

"No busy litigation practice could succeed without the assistance of barristers. Quite apart from the specialist expertise that barristers offer, they also offer the very pragmatic role of being somewhere when the solicitor cannot be there, or where it is uneconomical for the solicitor to be there personally. … Often it makes more sense economically for a solicitor to stay in the office and see new clients, than it is for the solicitor to be preparing a case, or instructing a barrister in mentions or routine matters that can quite properly be delegated…" [79]

62. An American Lawyer, writing in the journal of the American Bar Association, wrote:

"The barrister's independence means also that solicitors have some flexibility in deciding who tries each case. A corporate partner at a large American law firm is unlikely to recommend a litigator from any other firm than her own. English solicitors are not so constrained. They have no direct economic interest in the selection of the barrister and cannot take any kind of fee for the referral." [80]

THE PROPER ADMINISTRATION OF JUSTICE

"It also seems that the countries with divided professions may be encouraged to retain, at any rate, some degree of division by envious glances and laudatory comments on those systems which occasionally emanate from countries like the United States, where fusion seems unlikely to be modified."[81]

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[79] Tom Altobelli, Working with Barristers: A solicitor's guide to relations with the Bar (2007) LawSocNSW

[80] David Strawbridge, 'Barristers and Trial Lawyers: A Comparative Search for Efficient Justice (2000) ABAJ Vol 26 No 3, 30-34, 31

[81] Geoffrey Sawer, 'Division of a Fused Legal Profession: The Australasian Experience' (1966) UTorontoLJ Vol 16 No 2, 246

63. U.S. Chief Justice Warren Burger, a prominent critics of the American lawyer's advocacy, largely attributed poor performance in the courtroom to a lack of adequate training in advocacy skills and technique.[82] After observing barristers, the Chief Justice concluded that barristers' advocacy is superior to the American bar's performance.[83]

64. The distinction between barrister and solicitor is justified by the different functions each has to discharge. The distinction is maintained "because experience has shown that these particular duties (which are only instances of the different kinds of work that has to be done by the solicitor and by the barrister) are better discharged by two persons than one."[84]

65. Fusion of solicitors and barristers was posited in the 1890s. William Lawson, LLD, Barrister-at-Law, warned of the things which would arise from the fusion of the professions:

> *"A solicitor might prefer to remain as he was unless he was ambitious to shine as an advocate; a barrister, on the other hand, except, perhaps, one in the first rank of his profession, would either have to qualify as a solicitor, or be liable to be passed in the race by his younger brethren who had been admitted to both professions. Even if he qualified as a solicitor, it would be of little use to him without a connection, and his only course would be to seek a partnership with a solicitor."*[85]

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[82] Warren Burger, 'The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?' (1973) 42 Fordham L Rev 227 (https://ir.lawnet.fordham.edu/flr/vol42/iss2/1)

[83] Ibid. at 228-29

[84] William Lawson, 'The fusion of the two branches of the legal profession' (1892) Dubl Journal of the Statistical and Social Inquiry Society of Ireland, Vol IX Part LXXII, 634

[85] Ibid.

66. Keane CJ, writing as a barrister, stated the following:

> *"The barrister provides the same services for a number of other solicitors on the circuit… Should the professions be fused, to whom will the solicitor turn to conduct his cases in court? The prospect of employing an assistant solicitor with comparable experience of court room procedure to do the work now done by the barrister for perhaps a dozen or more solicitors on the circuit would be economically ruinous for a significant number of solicitors. The alternative to going out of business would be a sharp increase in legal costs-the very reverse of the economies which the supporters of fusion desire."*[86]

67. The nature of the barrister's professional life means that counsel is free from the burden of routine correspondence, garda station interviews, civil interviews and preliminary consultations, telephone calls and other essential work which takes up so much of the solicitor's time. The barrister is enabled, when not advocating before a court or decision maker, to devote the necessary time and consideration to legal research and the drafting of pleadings and legal submissions. This freedom from office routine gives the barrister a particular advantage over the fused system's advocates.

68. The issue of costs has already been addressed earlier in this submission. "It will generally cost more to employ two lawyers than it costs to employ one, but if two lawyers are needed to carry out a task, it may well be cheaper if one of them is self-employed and, so to speak, on stand-by rather than in some sort of permanent link with the first."[87] Solicitors incur far greater overheads than barristers. An independent referral barrister, for his or her annual subscription fee to the Bar of Ireland, has access to a workplace in the Law Library. A barrister has access to the vast collection of cases, casebooks, textbooks and articles of the learned journals, both in physical and online form. More than this,

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[86] Ronan Keane, An Irish Quarterly Review (1965) Vol 54 No 216, 375-384 (www.jstor.org/stable/30088606)

[87] Roger Kerridge and Gwynn Davis, 'Reform of the Legal Profession: An Alternative 'Way Ahead'' (1999) Modern LRev Vol 62 No 6, 807-823

"each member is entitled as of right to seek counsel and advice from the other members of the Bar and call upon their accumulated wisdom and experience. All of them regard it as an unshakeable precept of their profession that a colleague who comes seeking advice, however inappropriate the time or the circumstances, must never be turned away. This great reservoir of legal knowledge, increased by daily discussion of cases in progress in the various courts throughout the country and of problems met with in practice, supplies even the youngest barrister with a unique fund of knowledge."[88]

69. Large American law firms provide for internal specialization in advocacy. Specialist advocates would mainly be available to the larger law firms if fusion occurred.[89]

70. Efficiency is economical, and the argument that division leads to a more efficient justice system was ably argued by Dr Robert Edgar Megarry QC[90] in his Hamlyn Lectures.[91] He argued that specialist advocacy achieves better efficiency if there is a specialised Bar. "Subject specialization for the bigger and more difficult cases is also better achieved with a specialized Bar if the circumstances of a community do not permit legal firms averaging some twenty practitioners per firm."[92] Most law firms in the country are small

[88] Ronan Keane, An Irish Quarterly Review (1965) Vol 54, No 216, 375-384 (www.jstor.org/stable/30088606)
[89] Michael Zander, Legal Services for the Community (1978), 172
[90] Originally a solicitor, he requalified as a barrister and pursued a parallel career as a law lecturer in Cambridge University. He served as an English High Court judge and was Vice-Chancellor of the Chancery Division from 1976 to 1981. He later served as Vice-Chancellor of the Supreme Court from 1982 to 1985.
[91] Robert Megarry, Lawyer and Litigant in England, Hamlyn Lecture (1962) (http://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/Lawyer_and_Litigant_in_England.pdf)
[92] Robert Megarry, Lawyer and Litigant in England, Hamlyn Lecture (1962)

firms. 2,043 solicitor firms in Ireland have five or fewer solicitors.[93] Some of the larger firms only cater to corporate clients.

> *"It is easier to create and preserve a high standard of personal probity and legal etiquette in a relatively small, specialized Bar leading a corporate existence in a few places and under constant scrutiny of judges and solicitors, than it is in all the members of a diffuse and geographically distributed legal profession, most of whose members rarely emerge from an office."* [94]

71. Advocacy is more efficient in a divided legal profession, as noted by the American Chief Justice Warren Burger, who estimated in his 1973 Sonnett lecture that he would "accept as a working hypothesis that from one third to one half of the lawyers who appear in serious cases are not really qualified to render fully adequate representation." Chief Judge David L Bazelon of the US Court of Appeals for the District of Columbia commented on US trial advocacy in 1973: "I come upon these 'walking violations of the Sixth Amendment' week after week in the cases I review."[95] This was echoed by Chief Judge Irving R. Kaufmann of the US Court of Appeals for the Second Circuit: "Too many lawyers come into court today with only a diploma to justify their claims to be advocates. They are untrained and unadvised in the immensely practical work of litigation."[96]

72. A research study assessing the quality of advocacy in federal courts was carried out for the Devitt Committee, which reported that "there were marked differences between those attorneys with a modicum of trial experience and those without any."[97] Incompetent advocacy occurred not

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[93] https://www.lawsociety.ie/News/Media/Press-Releases/the-engines-of-local-economies-across-rural-and-urban-ireland/

[94] Geoffrey Sawer, 'Division of a Fused Legal Profession: The Australasian Experience' (1973) UTorontoLJ Vol 16 No 2, 264

[95] David Bazelon, 'The Defective Assistances of Counsel' 42 UCin LRev 1 (1973) 2

[96] Irving Kaufman, 'The Court needs a friend in Court' (1974) 60 ABAJ, 175-176

[97] A Partridge and G Bermant, 'The Quality of Advocacy in the Federal Courts' (1978)

only amongst new lawyers, but also amongst lawyer lacking extensive courtroom experience.

73. Burger CJ said that trials involving barristers and solicitors are in the hands of "highly-experienced litigation specialists who have a common professional background. Each advocate has also served an intensive "apprenticeship" before he or she is permitted to appear in court as lead counsel."[98] Further, barristers' efficient advocacy is not the only service they provide that serves justice and saves costs:

> *"[A] significant proportion of the large volume of written and verbal advice which emerges from the Bar Library every day is devoted to keeping rash clients out of court. The barrister's training, knowledge of the law and highly developed instinct for the way an action is likely to go in court, combine to tell him when a claim should not be pursued, or when a claim cannot be resisted…. an enormous amount of money is saved by keeping futile and expensive actions out of court."* [99]

74. Advocacy specialisation still occurs in countries where lawyers are attorneys. An informal distinction abounds. However, this depends greatly on the size of the firm, and deeply affects the public's ability to have access to specialised advocates:

> *"Even though courtroom litigation is not an official designation, some American lawyers do consider themselves to be advocacy specialists. In*

[98] Warren Burger, 'The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?' (1973) 42 Fordham LRev 227, 229
[99] Ronan Keane, An Irish Quarterly Review (1965) Vol 54, No 216, 375-384, 380

particular, large law firms with litigation departments encourage lawyers to specialize in litigation."[100]

75. Burger CJ was of the view that barristers as a whole were more competent advocated than attorneys. He said that having watched advocates conduct trials for over twenty years, "and nowhere have I seen more ardent, more effective advocacy" than performed by barristers." He said that barristerial performance was

> *"…generally on a par with that of our best lawyers. I emphasize that their best advocates are no better than our best, but I regret to say that our best constitute a relatively thin layer of cream on top while the quality of… barristers is uniformly high, albeit with gradations of quality inescapable in any human activity."*[101]

76. Marilyn Bergin[102] wrote a paper on the distinction between barristers and attorneys in practice. I commend the paper to the Authority for further consideration:

> *"[A] litigation speciality is not required for an American lawyer to engage in trial practice. In fact, the majority of lawyers who do engage in trial practice tend to practice in small firms and have a general law practice. Therefore, a significant number of courtroom appearances may be by attorneys who either enter a courtroom only occasionally or in different substantive matters. Although it is difficult to establish definitively the reasons for inadequate*

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[100] Marilyn Bergin, 'A Comparative Study of British Barristers and American Legal Practice and Education' (1984) 5 Nw. J Int'l L & Bus 540 (https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1152&context=njilb)

[101] Warren Burger, 'The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice? (1973) 42 Fordham LRev 227, 229

[102] American attorney and Associate Professor of Law, University of Puget Sound School of Law (the Seattle University School of Law)

courtroom performance, the methods clients use to select American attorneys may contribute to the problem. The American legal system has developed few institutional mechanisms for selecting an attorney who will render a competent courtroom performance. Unable to determine either the nature or complexity of their cases, clients may hire an attorney without regard to whether that attorney has the ability to handle the case..."[103]

CONCLUSION

77. It is submitted that the interests of justice are better served by the unfused professions of barrister and solicitor. More people have access to specialized advocates under our current system than in fused systems. There is already a great deal of competition between the barristers in the State.

78. I reserve my position on the further questions outlined in the Act, being
    (i) How the professions can be unified,
    (ii) The reforms or amendments, whether administrative, legislative, or to existing professional codes, that are required to facilitate such unification, and
    (iii) Any other matters that the Authority considers appropriate or necessary.

    In the event that the LSRA considers that a proposal to unify the legal professions requires further consideration, I would welcome an opportunity to engage with such considerations.

    I submit that the legal profession in all countries naturally and organically organises itself into positions of litigators and advocates, by whatever titles. The practice in countries (especially in those jurisdictions which underwent fusion only to revert back to a system like our one currently in place) are proof that the theoretical unification of the barristers' and solicitors' professions is not in the public interest, or in the interests of justice. The experience of those jurisdictions was that legal costs rose, not fell, as a result

[103] Marilyn Bergin, 'A Comparative Study of British Barristers and American Legal Practice and Education (1984) 5 Nw. J. Int'l L & Bus, 540

of the fusion. Much more than this, the Law is better practised, and Justice better administered, in our system.