

Submission created from emailed submission

From: Hazel Smyth

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Dear LSRA,

Submission on the unification of the solicitors' profession and the barristers' profession.

I would like to express my strongly held views on the case for the unification of the solicitor and barrister profession.

In September 2016, I qualified as a barrister at law. I have always worked as an in-house/company lawyer. The majority of the other individuals on the legal teams I have worked as part of are qualified solicitors. The nature of the work we deal with is the same, on a day to day basis. The fact that I am a barrister and they are solicitors does not impact or influence how we carry out our services. As an in-house legal counsel, I have gained particular expertise in construction law, contract law and privacy law by dealing with fellow lawyers. The organisations I have worked with are large multi-national organisations, where the differences between the barrister-at-law and solicitor qualifications are not well understood. In light of the same, I would make the following arguments for the unification of the profession:

1. Alignment with other major jurisdictions - e.g. USA, France and Australia

Many Irish lawyers will, at some point, work in other jurisdictions where there is only one "lawyer" or "attorney" qualification - albeit, many will specialise within different areas (e.g. litigation or probate). For large multi-national organisations within Ireland, it would be much more useful for there to be one qualification to avoid the need to explain why we have an entirely different professional qualification process for solicitors and barristers.

2. Existing training, knowledge and requirements are broadly similar

Irish solicitors today are receiving training on advocacy and have 'rights of audience' within the Irish courts. Irish barristers are often asked to provide guidance on matters not covered in great detail within the barrister-at-law course, such as wills and probate. It would be extremely beneficial to merge the training processes. Many Irish barristers soon discover that they would prefer not to act as advocates within the courts and many are choosing to work as in-house legal counsels, etc. The skills learnt from the barrister-at-law course and I'm sure many of those taught through the PPC1 and PPC11 courses would be equally helpful for those choosing to work as in-house legal counsels. There is often no reason that opinions sought from Senior Counsels could not be sought from well-seasoned partners in law firms. This is demonstrated very clearly by the fact that the qualification of either profession can be converted to the other after three years and subject to limited criteria.

3. Inequal access to the barrister profession

The existing unpaid 'devilling' apprenticeship requirement of the barrister profession (that can last from between one to two years) is prohibitive for many people, who are not in a position to work without payment for this length of time. I note from my time at King's Inns that this led to

exceptional barristers with top grades declining to pursue work as a barrister-at-law; not because they didn't want to work as barristers, but because they couldn't afford to work for no payment. This has and will continue to lead to a decline in the quality (and quantity) of those who decide to pursue careers as barristers, as it is merely those who can afford to do so and not those who are most qualified to do so. The unification of the solicitor and barrister professions would allow (i) solicitors who happen to be talented orators to practice within the courts, on a needs-be basis and (ii) barristers to act as 'litigation solicitors', where they can be guaranteed payment for their work and continue to develop their advocacy skills.

4. Greater transparency for clients and value for money

The fact that clients have no choice over what barrister is engaged by a solicitor, the lack of communication between a client and a barrister and the lack of transparency over what the solicitor intends to pay/the barrister intends to charge the solicitor is and should be of great concern to all. Clients deserve to have some decision-making ability in terms of who their advocate in the courts should be, how much they are willing to pay them and should be able to liaise with them regarding concerns they might have. With thanks to CSPE classes in secondary schools and information made available online (citizensinformation.ie, etc.), Irish people know in general terms what their rights are and they should be able to actively engage with any person who is due to advocate on their behalf with respect to them (particularly when they are paying them large amounts of money to do so).

5. Ensuring security for barristers

The incomes of barristers today in Ireland are notoriously precarious. If a solicitor fails to pay them, they are often left with very little recourse due to the stigma associated with pursuing claims against solicitors who have engaged you and due to the costly nature of litigation. The ability for barristers to be able to work as 'lawyers' within firms or to have the choice to work as independent litigators should be a choice they can decide to make. This would also benefit the solicitor profession, as both would benefit from the interchangeable skills that all lawyers required to demonstrate.

I hope that you will seriously consider my submission above. Based on the points made above, I hope that it is clear that the unification of the barrister and solicitor professions would be better for the legal profession, for clients/the general public and for Ireland.

Please let me know if I can be of any further assistance with this.

Kind regards,

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