

Sent by Email

publicconsultations@lsra.ie

Legal Services Regulatory Authority

P.O. Box 12906

Dublin 2

From:

Norman Spicer

Date: 2nd of May 2020

Re: Section 34 Consultation

Dear Sir/Madam,

I refer to the above public consultation and wish to provide this submission for your consideration. My name is Norman Spicer, I am currently a practicing litigation solicitor based in Dublin. I provide this submission to you based upon what I would describe as my unique experience in the area of law practice, which I believe has relevance to this public consultation.

Although from and educated in Dublin, I started my legal career as a New York attorney. I was admitted to the New York State Bar in December 2013 and practiced in New York as a litigation attorney for almost 3 years thereafter.

During this time, I attended court 2-3 times per week to; argue motions, participate in settlement meetings, participate in discovery conferences, to engage in oral arguments, depositions and towards the latter part of my practice in New York, jury selection and trials. I also maintained and was responsible for my files whilst back at the office including engaging with the client. In essence, I was both a solicitor and a barrister during these 3 years. I have at this stage practiced solely in litigation as a solicitor in Ireland for 2.5 years.

It should be noted at the outset however, that I am not advocating that solicitors now should do all of the work themselves and that there is no need for counsel, I just want the reader to be alive to my background in litigation both in Ireland and overseas.

One of the many things that I often noted whilst practicing in New York was the use of what the New York lawyers refer to as '*Per Diem*' (per appearance) attorneys. These were attorneys that did not work directly for any one office but rather, they appeared in court on motions/trials/conferences and everything else for different firms either on the day or whenever an appearance was needed in court. These people had considerable experience in litigation and were effectively, barristers without doing the solicitor end of it.

Similarly, of the two different firms I worked for during the three years, I noted that not every lawyer was one who went to court every day or even regularly. Some were proficient and comfortable with litigating and others were not. The ones who were, eventually adopted the title of 'trial lawyer'

which was an informal term, but was one which distinguished those in the firm who participated in trials in the office.

These members of the firm were then often sent away for week long advocacy and skills trainings at a time with one or a number of the associations that formed with the goal of training advocates (e.g the New York Trial Lawyers association was one association which often ran this course).

I believe that the professions should be merged and that anyone who has a BL degree should be given a specialist designation 'specialist in litigation' or something similar which would be capable of being marketed and at the end of a lawyers signature and only lawyers who have completed this course could have the title.

That a neutral name/title would need to be adopted such as 'attorney' so that no profession has the monopoly or is more readily distinguishable from the other, which would otherwise benefit one or the other with regard to the public.

In my view, merging the professions tomorrow will not see solicitors rural or otherwise, decide they now want to appear in the High Court without counsel for a 2-week trial. Rather for such occasions, specialist trial lawyers will still be needed and utilised.

It may have the effect that solicitors will do more of the appearances in court which would help with continuity and would probably cut down on fees certainly where routine motions etc are before the court. Similarly, barristers now would be able to step back to the office and engage with the public directly. Barristers could set up LLP's with solicitors and a more holistic system could be adopted.

The Kings Inns could continue to provide the education to these specialist litigation lawyers but now it would be open to solicitors to obtain the qualification if they so wished. This would generate revenue for the Kings Inns as an education body and they could form an association representing this group of specialist litigation lawyers much like they have now. They could also provide more general CPD (and CPD for maintaining the specialisation) which solicitors (as we are now known) could avail of, this would contribute to their fee generating capabilities.

Similarly, the Law Society could run courses for barristers to be able to get them familiar with how to run a practice etc and to make them aware of the differences in the professions which would mean that all professionals have a grounding in day to day practice. This would help prevent anti-competitive practices whereby the Law Society have a monopoly over one part of the profession and the Kings Inns another. Barristers would then no longer be required to be instructed by solicitors as they are suitably qualified lawyers quite capable of taking instructions from clients directly.

This would help to make the profession more transparent and would ensure that a relationship with a solicitor is not complicated by the sudden appearance of a professional of which, the average citizen knows much less about (as opposed to solicitors) and where the client has had little interaction with that professional throughout the case.

Barristers (now just attorneys with a specialisation in litigation) could also be hired directly by law firms and these specialists could have a more hands on role in the case from its inception up to its conclusion, including facetime with the client which would help foster trust and confidence.

Every firm could (and in my view likely would) hire one of these specialists to handle their firm's complex litigation matters and to help with drafting.

Junior Counsel could be known as 'Specialist in Litigation Level 1' and Senior could be 'Senior Specialist in Litigation' or 'Specialist in Litigation Level 2. This would still be distinguishable to

solicitors and could be identified and pointed out to clients so that they appreciate the lawyer's specialist experience and expertise.

This new system would also help with the appointment of judges because we know that the vast majority of judges were barristers before their appointment. Removing this distinction would in some way help to open judicial appointments more widely up to solicitors with the appropriate experience.

In conclusion, I am strongly of the view that the professions should be merged and I feel that the public would greatly benefit from this move. I believe that this will help to promote a more diverse but more modern and dynamic legal system in Ireland, one which is not beholden to outdated practices and one which is considerably more transparent and cost-effective.

I hope the LSRA will take this letter into consideration in forming your views on what to do with our professions into the future.

All views my own.

Yours sincerely,

Unsigned – Sent by Email

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