

P. O'CONNOR & SON
solicitors
notaries public

Swinford County Mayo F12 KX71 **telephone** 094 9251333 **telefax** 094 9251833
e-mail law@poconsol.ie • **website** www.poconsol.ie • **dx** 52 001

Legal Services Regulatory Authority

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P. O. Box 12906

Dublin 2

Submission to the Legal Services Regulatory Authority

(Consultation – Section 31 (1) (a) of the Legal Services Regulation Act, 2015)

*Founded
in
1900*

1. Preliminary

P. O'Connor & Son ("POC&S") accept the invitation to make further submissions concerning proposed changes in the education and training of legal practitioners in Ireland received from the Legal Services Regulatory Authority ("LSRA")

1.1. POC&S is one of the longest standing legal firms in the Country having been established in the year 1900. It currently has six solicitors amongst its twenty staff members. Whilst originally a family firm, now into its fourth generation since 2011 when the great grandson of the founder was admitted to the roll of solicitors, it has

developed into a modern progressive firm offering a diverse range of general and corporate legal services to both private and commercial clients. The firm continues to meet the needs of its private clients but in recent decades has taken a more focussed approach on the business world in the West of Ireland and has built and developed a strong corporate and commercial presence. The firm also provides a considerable number of additional ancillary services which complement its legal services:-

- (a) Notary Public;
- (b) Commissioner for Oaths;
- (c) Bilingual Legal Services – Irish and English Advanced
Legal Practitioner Irish qualification;
- (d) Chartered Tax Advisors;
- (e) Mediators
- (f) Arbitrators
- (g) Coroners
- (h) Mental Health Chairpersons and Legal Representatives

- 1.2. POC&S has had a number of its solicitors, through the years, serving on the Council of the Law Society of Ireland, two of whom went on to become President of the Society, two of whom served the Society as Chairperson of the Education Committee.
- 1.3. The firm has had many of its solicitors serve on the committee of the Mayo Solicitors' Bar Association in various capacities including President of that association up to the present.
- 1.4. In addition, the firm has facilitated the education and training of many solicitors and indeed barristers during the 120 years since its establishment. We are proud to have

solicitors in our firm who have taken very different routes to qualification to include, inter alia:-

- (a) Primary university law degree followed by FE'1s and training contract/professional course;
- (b) Primary university law degree availing of FE1 exemption and training contract/professional course;
- (c) Primary university non legal degree followed by FE1's and training contract/professional course;
- (d) Griffith College degree followed by FE1's and training contract / professional course;
- (e) 7 years paralegal/executive work experience followed by FE'1 and training contract/professional course;
- (f) solicitors for whom Law was a second career following a first career as:-
 - (i) Chartered accountant; and
 - (ii) Army officer to rank of Captain.
- (g) Primary degree with contemporaneous professional training (the old system).

1.5. Since the foundation of the firm in 1900, nine of the O'Connor family have been admitted to the Roll of Solicitors, whilst two were called to the Bar of Ireland, three became members of the Judiciary and three were appointed Coroners.

1.6. The firm currently has two of its solicitors appointed as Notary Public, two Mediators, one Arbitrator, Coroner for County Mayo, Charter Tax Advisor, Three solicitors are Mental Health tribunal chairs and one is a legal representative and one of our solicitors is an Advanced Legal Irish Practitioner.

2. General

2.1 The Legal profession in Ireland is currently divided into three branches, namely:-

1. Judiciary
2. Solicitors
3. Barristers

There are a number of other categories of persons providing legal services of a limited nature including:-

1. Notary Public
2. Commissioner for Oaths
3. Peace Commissioners
4. Coroners
5. Arbitrators
6. Mediators
7. Chartered Tax Advisors

2.3 **Regulation** of the three branches of the legal profession is currently dealt with by:-

- (a) The Judiciary;
- (b) The Law Society of Ireland;
- (c) The Bar Council of Ireland.

Such regulation which has been in place for decades will change under the provisions of the LSRA and the proposed Judicial Council.

This submission will not deal with the regulation of the Legal profession save to refer to it generally and briefly particularly in the context of the Regulation and discipline of Law Students.

2.4. **Representation** of the three branches of the legal profession is currently dealt with by the Judge' Association, the Law Society of Ireland and the Bar Council.

There are no changes in relation to such representation proposed at present, it seems.

Representation of Law Students is done on an ad hoc basis not by the professional bodies but within the student group from time to time. This may need to be addressed in the future.

3. Fundamental principles

POC&S is strongly of a view that both the education of students of law, particularly those who go on to be admitted to the Roll of Solicitors or called to the Bar, should and must be of the highest possible objective standard.

Furthermore POC&S is firmly of the view that standards within the three branches of the Legal profession must be maintained at the highest level in the interests of the public and indeed the continued practice of Law in this country.

To ensure objectivity and uniformity in the application of that standard POC&S is of the view that overall responsibility must rest with one body and not with individual universities or colleges.

4. Education

Whilst not having precise details of the number of the members of the legal profession who are currently degree holders,(graduates), it is assumed that the vast majority of practitioners (Judges, solicitors and barristers) do in fact have a third level degree of some sort.

There is still within the Solicitor's branch of the Legal profession a provision whereby non degree holders can seek to obtain exemption from the Preliminary Examination of the Law Society to gain permission to sit the Final Examination First Part (FE 1)- Entrance Exam. The Preliminary Examination should not be continued as it is vestige of another era.

POC&S suggests that the bar to sitting the Final Examination First Part (FE1's) until a student has attained a degree or otherwise qualifies to sit that examination should be changed such that any person who applies to sit that examination should be permitted to do so. This would allow students to attempt the FE1's whilst in the course of completing their primary degree, (whatever that degree may be), or indeed working experience if proceeding by that route, and as such it would shorten the long number of years (and as such reduce the costs involved) in becoming a solicitor.

The majority of Law degrees involve lecture hours of between 8 and 12 hours per week and when compared with science based degrees such degree courses cannot be described as intense in nature. The intense degree courses of 3 to 4 years duration (lecture/tutorial hours of 30 to 40 per week) allow the student to qualify and enter the professional working environment in a much shorter period of time. The average starting salary of a newly qualified solicitor does not reflect the time and expense of 7-8 years of training and education.

Shorter duration in terms of training lawyers would help respond to market demands more efficiently. At present, if the market is in need of more solicitors at the commencement of a student's legal training that position is very likely to have changed by the time the student completes the training. A shorter turnaround time would also allow educators to provide a more focussed approach to the issues of the day and allow graduates to *hit the ground running* and meet the demands of their employers e.g. the move from boom time conveyancing to a focus on distressed sales and receivership law .

POC&S is strongly of the view that entrants to the legal profession need not necessarily have a Law Degree. Indeed there is an argument that lawyers would be better educated if they had a more general degree before entering into the profession. We do not propose same in this submission.

5. The future of the legal profession.

5.1 There will always be a role for the Judiciary. We do not propose to make any submission in relation to the education of judiciary at this juncture save to comment that it is vitally important that the continuing education of judges, once appointed, be developed further. That is a matter that the judicial council, will, no doubt, attend to in due course.

6. Third level education.

The vast majority of applicants to the Bar and Solicitors branches of the legal profession hold a law degree. Most of those law degrees whether simplicitor or hybrids (with addition in business, languages or otherwise) are obtained in Ireland.

Whilst the Universities and third level providers of law degrees will undoubtedly assert that they maintain a high standard of education and examination POC&S is not convinced that the education received by students is objectively acceptable as a standard based entry criteria into the Law Schools of the King's Inns and Law Society.

There is considerable anxiety that third level institutions tend to set a standard based on the year in which the students are examined.

Is it any coincidence that the number of graduates from Universities with first class, second class (1) and second class (2) degrees has considerably increased through the years?

When professional training schools set the level of degree standard that need to be attained to gain entry to the schools the number of graduates with that standard increased significantly!.

POC&S is not convinced that at present all third level institutions can be trusted to maintain a high standard of education and examination such that the legal profession can and could rely on them to deal with the examination of prospective students in the core legal subjects of "*black letter law*" such as Tort, Property, Contract, Criminal law, Constitutional law, European law, Equity, Property, Labour and Family law to mention some.

POC&S is of the view that the present requirements of the Kings Inns and the Law Society of Ireland should be maintained particularly that applicants to the solicitor's branch of the legal profession should continue to be examined through a common standard based Entrance Examination (currently FE1). However, we repeat the view as set out above that the barrier to sitting these examinations should be removed to allow all students who feel they have

achieved the required standard an opportunity to sit the examinations and as such, shorten the overall time required to qualify as a solicitor.

POC&S is strongly of the view that all applicants for admission to the Roll of Solicitors and the Bar should be **jointly educated initially** in core subjects and skills.

POC&S suggest that the path to becoming a solicitor or barrister should be dealt with in the following way:-

1. All applicants sit a common entrance examination, similar to FE1 on an objectively designed standard.
2. The structure of the FE1 examination should change. POC&S recommends an amalgamation of some of the core subjects (eg equity and property) to reduce the number of compulsory subjects being examined from 8 to 6 and then a student would have to provide evidence of qualifications and/or work experience in at least 2 disciplines which would complement and enhance their legal practice such as:-
 - (a) Primary degree – law or other
 - (b) Arbitration
 - (c) Mediation;
 - (d) Taxation;
 - (e) Accounting
 - (f) Company secretarial
 - (g) Legal Practitioner Irish (POC&S does not advocate a return to the First and Second Irish examinations but something akin to the Advanced Legal Practitioner Irish standard).

- (h) Banking and finance;
- (i) Legal text published; or
- (j) A sufficient period of work experience in legal work.

3. POC&S would also suggest that the current rule that 3 subjects must be passed in the first sitting should be abolished but a requirement that all subjects be passed in a 3 year term should be introduced.

4. The general term for the education process-Legal Practice Course (“LPC”) should be in the region of five years as follows:-

- (i) Training contract, suitably designed for each branch of the profession – 2 years.
- (ii) Internship/apprenticeship/devilling – 2 years. Post admission to the Roll of Solicitors or called to the Bar). A limited practising certificate would be awarded on completion of the educational requirements allowing the graduate to practise under supervision which said certificate could not be upgraded to a full practising certificate until the requisite work experience had been attained. The work experience could be general or specialist in nature.
- (iii) Whilst designing a **joint legal professional training course** (principally skills based e.g. advocacy, negotiation, drafting, presentation, management and writing) for students to both branches of the legal professional a student would in the second last year of same opt to be admitted to the Roll of Solicitors or called to the Bar (i.e. choose which branch to qualify into).
- (iv) POC&S does not go into the detail of the design of the LPC referred to above but would be happy to make submissions in due course on the content of

same. The following are a number of matters that in general might be considered in designing such a course :-

- (a) There is no reason why the training contract (for either branch of the profession) should not commence at any earlier date than at present.
- (b) The Common Entrance Examination which would have “*black letter law*”, as referred to above, if being taken by students as part of an approved Law degree could be taken at the same time by the law student rather than having to wait to the end of the degree process, as at present. In other words if a student takes Contract or Tort in a law degree then he/she should be permitted to sit those subjects in the common entrance examination to avoid having to effectively repeat the learning of those subjects again later time.
- (c) At present the King’s Inns and Law Society of Ireland provide an independent education facility for students to the Bar and Solicitors’ branches of the legal profession. On the assumption that they could and would operate the LPC, referred to above, they should be authorised and approved to so do. They should be open to objective assessment and analysis on a regular basis.

POC&S see no reason why other educational establishments should not also seek authorisation and approval subject to them complying with the objective criteria of the standards required.

A licencing system, subject to rigorous review for all providers of professional legal education, should be considered.

- (d) Given the huge burdens now facing solicitors in terms of regulation and compliance requirements, POC&S advocates a return to an examination on

Regulation and Compliance and a move away from the group project type structure which had been in operation for the last number of years. It is imperative that all lawyers are fully aware of their obligations in this area in order to achieve and maintain a very high standard of compliance and reduce the overall risk to the profession and the compensation fund.

7. **The curriculum for the legal practice course.**

If it is accepted that there should be a unitary LPC for applicants to be admitted to the Roll of Solicitors and the Bar a carefully crafted curriculum objectively assessed with input from all branches of the legal profession and others with an interest in the end product, practising lawyers, should be designed. The curriculum needs to reflect the market needs of the time and as such needs to be developed and changed regularly.

There is currently a considerable wealth of experience and knowledge available to the legal profession particularly in the Kings Inns and Law Society which can and could be built on in setting out the contents of joint professional legal education system. Practitioners should be called upon regularly to contribute to the design and content of each course and not just its delivery in lecture halls.

8. **Numbers**

There should not be a control on the number of persons seeking to gain entry to the legal profession. The only control mechanism should be an objectively based examination and training system.

The market place will look after numbers. It appears there is a growing and considerable requirement for practising lawyers in Ireland and elsewhere.

This requirement and need will continue unabated in the context of the brave new world of *Brexit* and its consequences. Ireland will be the lead Common Law jurisdiction in the E.U. when Britain leaves the European Union. This will have challenges but also significant opportunities for Irish trained Lawyers who are appropriately and properly educated and trained.

The numbers in the Solicitor's branch of the legal profession have grown from 400 in the 1940s, through to 1500 in the early 1970s ,to 8000 in the 1990s, up to 18,000 solicitors in 2019 on the Roll in Ireland, of whom approximately 10,000 are in private practice.

9. **Other matters**

The needs of the large legal firms are worthy of consideration but **should not dictate** the objective standard based education and training for lawyers in this country.

Whilst the large firms do have a considerable number of solicitors working therein they only represent 18% of the practising Solicitors in the country.

Similarly those working in the Public and Commercial sectors should have their views on the design on a curriculum for the education of lawyers considered though again their views should not be the determining factor in what should be a good educational training for Lawyers.

Over emphasis on the demands of the larger law firms providing specialist and corporate services which are all located on the East of the Country would

result in neglect of the needs of the average Irish citizen . More importantly it would not meet the needs of the Law students themselves.

Simply put all aspirants to practice law (whether solicitor or barrister) in Ireland should have a common education and training in the basic legal principles and skills to become a practising Lawyer. This is in the best interests of the Law students themselves as well as the profession generally. **Specialisation** is something that should come later.

POC&S feels that all persons who qualify as Solicitors and Barristers, so long as they remain divided as different branches of the Legal profession, and until such time as there is a unified legal practising Legal profession should be educated as general Lawyers. They can specialise at a later stage following upon qualification.

There are many precedents in other professions for such a model e.g. Medicine, Veterinary, Dentistry, Accountancy, and other science professions.

10. **Post script**

POC&S recommend that the papers produced by the Universities (particularly UCD and Dublin University) and ACLET (the Advisory Committee on Legal Education and Training) and all of the research carried out in the 1990s, by the Law Society particularly, be reopened, reviewed and further considered.

POC&S is also mindful of the considerable fall in educational standards that occurred in the late 1980s in many students and subsequently qualified

solicitors up and until the reintroduction of an entrance examination to the Law Society following the three high profile cases determined in the Courts in the mid-1990s namely, *Bloomer*, *Abrahamson* and *Portobello*.

Criticism of the current training in the Kings Inns and Law Society is acceptable provided that it is constructive.

Criticism based upon the perceived failure of the current education system, particularly in the Law Society, to provide for specialist firms (whether they be the large practices or otherwise) is unfounded. This can be dealt with by a Curriculum Development Unit in both of the institutions in the short term. The option to specialise is something which the student her/himself should be left to decide upon during the course of their career. Early specialisation during the education stage could leave a lawyer qualified in a niche area virtually unemployable as market needs change. Would such a lawyer be required to re-train if they wished to practise in another area of law?

The education of lawyers should ensure that the profession is well prepared to meet the varying legal requirements of all persons in the country and is well equipped to provide the highest standard of legal service with consistency and integrity .

Dated this the 6th day of August 2019

Prepared and Submitted by:-

Patrick O'Connor,

Managing Partner, Coroner, Notary Public, Arbitrator, MHC Chair

and

Samantha Geraghty,

Partner, Notary Public, Chartered Tax Advisor, ALPI

For and on behalf of P. O'Connor & Son, Solicitors, Swinford, Co Mayo