

Judicial Separation and Divorce in the Circuit Court

Headline Findings; March 2014

By Roisin O'Shea

Funded by the Irish Research Council

*Recommended for the award of Doctor of Philosophy, **March 2014** by external examiners Prof. William Binchy Trinity College and Dr. Aisling Parkes, UCC*

Host Institute; Waterford Institute of Technology

Supervisor; Dr. Sinead Conneely

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1 About the researcher

Róisín O’ Shea is an Irish Research Council funded doctoral scholar who has received multiple awards for her research work including joint 1st place in the HEA/Irish Independent Innovation in Research Awards in 2010, was an Irish Research Council ‘New Ideas’ Awardee 2011, and was awarded joint 2nd place with Prof., Marsha Garrison, Brooklyn School of law, in the ‘Innovating Justice Awards’, by the Hague Institute for the Internationalisation of Law 2012. In June 2013 she was an international guest presenter at the AFCC (Association of Family & Conciliation Courts) 50th Annual Conference in Los Angeles, where she presented her paper “Exploring a World Family Justice Model”.

Following her Viva Voce in 2013, the award of PhD was recommended with “minor corrections”, by examiners Professor William Binchy, Trinity College and Dr Aisling Parkes U.C.C., who stated in their report;

“This is clearly a major piece of empirical research of a socio-legal nature, a most unusual achievement in Irish legal scholarship, where empirical research is in its infancy...well deserving of the award of PhD...”

The examiners reviewed the additional material submitted and approved the award of PhD in March 2014.

Roisin studied law at Waterford Institute of Technology as a mature student to “do my own divorce”, however, a chance encounter with the Chief Justice of Canada propelled her into family law research, “I now know this is my path for the rest of my life; I want to do whatever I can to assist bring about very necessary reform”.

Roisin will publish her findings in 2014, and hopes to secure postdoctoral funding to enable her to publish her extensive research material. Ultimately she hopes to work on the development of a best practice designated family court in Ireland, within a user focussed family justice system.

2 About the Research

Research approved by the Minister for Justice, Equality and Law Reform under Regulation 2(b) of S.I. 337 of 2005, research and reporting as provided for in Section 40(3) of the Civil Liability Courts Act 2004.

Methodology

This research is primarily based on a representative selection of applications to the Circuit Court in relation to judicial separation and divorce, based on a “unit of time”, October 2008 - February 2012 inclusive, using Dr. Carol Coulter’s research format as a starting point. The Courts Service Pilot project, 2007, being the only comparable empirically based research project carried out in this subject area. The Circuit Court hears approximately 98% of all divorces and judicial separations, the greatest volume of those cases being heard in the major cities of Dublin and Cork. The statistical measure to be used, being the sample size compared against orders made in the Circuit Court, during the research period. Initially the number of applications in the research period was to be the comparative measure used, but investigation showed that applications can take a significant period to come to court, and cases where orders are made, are contemporaneous with the research period giving a truer like for like comparison. The aim was to observe cases in every Circuit based on the percentage of applications per Circuit per year (averaged over 3 years), where possible. This was dependent on when family law days were scheduled in seven of the eight Circuits, as Dublin held continuous family law days in Phoenix House. The courts and cases were selected on as random and as representative a basis as possible, seeking to adequately represent each circuit, whilst ensuring that as many judges as possible were observed.

The dataset contains cases observed from the eight Circuits from October 7th 2008 to February 24th 2012. The research sample consists of 1,087 unique cases, which were listed 1,179 times during the period of the research. The percentage of listed cases observed by Circuit were as follows; Cork Circuit 17%, Dublin Circuit 29%, South East Circuit 29%, Western Circuit 8%, South Western Circuit 3%, Eastern Circuit 5%, Midland Circuit 1% and Northern Circuit 8%. Half the dataset was taken from the Dublin and Cork circuits, comprising almost 46% of the sample, with a greater representation of cases in the Southeast based on the ability of the researcher to access those courts. Family law lists were often cancelled, or amended with less days than initially scheduled, or the same judge previously observed was scheduled again to hear the list. The researcher accessed as many courts as possible within the limitations of (a) the lack of predictability of family law lists, and (b) the costs involved in travelling around the country. In the Dublin Circuit Court access was given to review case files, and 40 cases were selected, the oldest of the cases, in that Circuit, that had been observed in court during the research, filed between 2003 and 2006, and an in-depth analysis of the cases was carried out from the date of application to substantive hearing and orders made.

Interviews were carried out with six judges, court clerks, County Registrars, and others associated with the family law courts. All interviewees were given the research protocols, and anonymity was assured. The 13 judges observed during the course of this research have been assigned numbers randomly, and the numbers do not correspond to the sequence in which cases were heard. There were 5 female judges.

11 judges were also shadowed in Toronto Canada (2009), and Wellington New Zealand (2012), to enable a comparative analysis to be undertaken.

Family law Research conference

A conference was developed by the researcher to underpin the research, the Canadian-Irish Family law conference October 2010, held at Carton House Maynooth, supported by the Research Department of Waterford Institute of Technology. International speakers were invited by the researcher, and topics were selected relevant to this research project, and assigned to individual speakers. 12 Canadian Family law judges presented, along with 3 Canadian family law experts, two American judges, the Principal Family Court Judge of New Zealand, Judge Peter Boshier, and the Hon. Mr. Justice Henry Abbott, High Court. Master of ceremonies for the event was the Hon. Mr. Justice Liam Mc Kechnie Supreme Court, and the invited moderators were Dr. Carol Coulter and Minister Alan Shatter. The conference was attended by 25 Irish judges from the District Court, Circuit Court and High Court, including then President of the Circuit Court the Hon. Justice Matthew Deery and President of the High Court the Hon. Mr. Justice Nicholas Kearns. The researcher proposed topics for the Canadian-Irish judicial workshop on the second day of the event, selected from research questions, which was hosted by the Canadian judges, and included a training session on child representation.

International Family Law Workshop

An International Family Law workshop, to develop the concept of a One World Family Justice Model, was held by the researcher in March 2012, funded under the Irish Research Council 'New Ideas' Scheme. The objective of the workshop was to determine a core list of issues that require investigation inter-jurisdictionally, and to identify issues of mutual concern, for the purpose of developing an overarching family law model. The workshop was attended by Judge Deborah Mc Nabb, Michigan U.S.A., Jane Long S.C. Family Policy and Programs branch, Ministry of the A.G. Toronto Canada, Dr Tamar Morag Associate Professor Haim Striks School Colman Israel, Oliver Connolly BL, Dr. Sinead Conneely BL and Law Lecturer W.I.T., Marianne Gabrielsson Barnfried Stockholm Sweden, Josepha Madigan Sol., Judge James O' Donohoe Circuit Court Ireland, Mary O' Malley County Registrar Meath, Susan Ryan County Registrar Dublin, Shane Dempsey BSc MSc, David Hodson Deputy District Judge Family Division HC London, Owen Connolly Consultant Psychologist Dublin, Ann Thomas Sol., Managing Partner International Family Law Group London, Inge Clissman SC Ireland, Morag Driscoll Director Scottish Child Law Centre and Dr. Louise Crowley Law Lecturer U.C.C.

Database Structure

The database with 184 inter-linked fields was designed by Róisín, and the data analysed with the help of IT experts, Shane and Conor Dempsey, who sought to capture the richness of the data encountered, in the 1,087 unique cases, in electronic format. A weakness of the existing data, relied on in the Courts Service project 2007, which is gathered by the Courts Service, is that there is insufficient detail about the litigants, their circumstances, the timing and costs of the legal process and the outcomes that are produced to give meaningful answers to questions regarding the quality of the Irish family justice system. My project is an empirical study which sought to rectify this with assistance from two IT experts and input from legal academics and practitioners from other countries. The statistical data collated provides the basis for reform recommendations. The sample size is statistically significant, giving confidence levels of between +/-3% and +/-6%, indicating that the final findings are good indicators of what is happening across all cases dealt with by the courts during the research period.

Project aim;

To examine holistically, the family law system in Ireland, specifically in relation to judicial separation and divorce. Empirically based research forms the foundation for critical analysis, and subsequent development of, recommendations for reform.

3 Preface



My research, funded by the Irish Research Council, is the first substantial empirical family law research carried out in the Circuit Court using a purpose built 184 field database. It may indeed be the very first empirical thesis in the area of law in Ireland. Records to date, comprise of elementary statistics compiled in an Annual Report by Courts Service, and reported judgments from the Superior Courts. The Courts Service Pilot Project in 2006-2007, co-ordinated by Dr. Carol Coulter, was a starting point for my research, which found that there was a need for the development of a statistics gathering system. My project has addressed that need, additionally I have included 187 anonymised family law case reports, transcribed from my verbatim court notes. My research also critically examines the workings of the family law system in the Circuit Court, and I prioritised directly hearing the views of judges, both of which were excluded from the brief issued to Dr. Carol Coulter.

I wanted to carry out research that puts a spotlight on our family courts, warts and all, and to shake out the dust and debris accumulated from over 200 years of custom and practice. I wanted to gather clear information on how our family courts actually operate, to profile the users, document all aspects of the process, hear the opinions of judges and quantify the outcomes. While my thesis presumes a knowledge of family law, little or no case law was actually argued in the courts, nor did the Constitution make its presence felt. There was little complexity of law, the issues were uniform, and a predictable range of human dynamics presented in almost every case.

It has been an interesting and at times deeply distressing journey. I have seen so much anger, frustration, fear and misery, for both men and women, and it was very difficult at times to continue to observe and remain detached. I am so grateful for the support and assistance of the judiciary, in particular the Hon. Mr Justice Matthew Deery, the Hon Mr. Justice Henry Abbott and the Hon. Mr Justice Liam Mc Kechnie, without whom my proposal for a Canadian- Irish Family law conference in 2010 would not have been possible, an event supported by W.I.T., that greatly enhanced my research goals. The assistance of senior Canadian and New Zealand judges for the duration of my research was both unexpected and incredibly helpful, and has filled me with hope for the development, through international collaboration, of a family justice system designed fit for purpose.

I have been practising as a family mediator throughout my research and was shocked by the incredibly small uptake of mediation, just 8 cases, as an alternative to litigation. Mediation was misunderstood as a reconciliation process, and some mediated agreements were criticised by judges as being poorly written and incapable of legal enforcement. With the support of W.I.T. and Waterford Area Partnership I piloted a self-financing means-tested family mediation model, May-Dec 2013, developed during the course of my research, which was launched by Canadian Ambassador Loyola Hearn. Essentially another

turn of the wheel of evolution based on international reform developments, outcomes will be published shortly.

I hope to secure postdoctoral funding, so I can publish and set out clearly my recommendations for the structure of a designated family court and ancillary services. Evidence based reform is really necessary, and now that I understand the injustices of the Irish family law system, I, like many others in this arena, am fully committed to improving its outcomes.

This research could not have been completed without the incredible support of my supervisor Dr. Sinead Conneely, whose own research into Family Mediation in Ireland inspired me. She was always available to hear new research findings, new cases, and to act as the critical sounding board that I needed, throughout the long hours of isolation spent sitting in courts all over the country and writing up my 145,000 word thesis.

Minister Alan Shatter noted that alarm bells started to ring in the 1985 Report of the Joint Oireachtas Committee on Marriage Breakdown, which highlighted the difficulties being experienced by the onerous demands placed on the courts. Those bells are still ringing. The Minister has already taken significant steps towards reform, the most far-reaching of which is his proposal to facilitate the development of a dedicated and integrated Family Court structure.

We must now go beyond the traditional role of the court and develop a family justice system that effectively and meaningfully contributes to the cost-effective and timely resolution of family disputes, and is primarily designed to meet the needs of the users of that support system.

Going to court should be the option of last resort, not the port of first call.

A handwritten signature in cursive script, appearing to read "Pádraig Ó Sé".

4 Litigants

- It is a finding of this research that the poorest outcomes were for men who were lay litigants or self-representing, followed by non-national lay litigants
- 22% of all litigants were self-representing (lay litigants)
- It is a finding of this research that litigants, who attend at court, are generally treated as peripheral to their case, by the custom and practice of the family law courts. Litigants must usually operate two steps (solicitor, barrister) removed from any discussion relating to their case and are seated at a distance from the legal players and proceedings within the court- room. Judges very rarely spoke directly to litigants where they had representation, unless that litigant was on the stand giving evidence. The formality and age-old traditions operated by the officers of the court, and the court itself, clearly created an uncomfortable and often incomprehensible forum for litigants.

Quotations;

Judge 6; *“It is extremely important to have researchers and court reporters in the court-room so that more information on decisions is in the public domain, particularly in light of the increase in lay litigants in cases”*

Judge 9 *“I would be very much against people representing themselves, you get people involved who don’t have proper training. Trust is also a huge issue, when a practitioner or officer of the court says something you can take that it is so, counsel have a high duty to the court. Lay litigants take a much greater amount of court time, instructing them in matters of law is hugely time consuming”.*

Judge 7 *“...there were two categories of lay litigants, those who were forced to self-represent due to economic circumstances, and the “jihadists” who become obsessed with the court process, coming frequently to court through multiple applications, who have become embittered about what they perceive as injustices or wrongs wrought against them, often believing there is some form of conspiracy”.*

5 Children

- **In 95% of the cases** observed the primary carer was the mother, and in 100% of cases where access was unilaterally withdrawn, it was done by the mother.
- **In no case** was the primary carer sanctioned for persistent unilateral cessation of access in breach of court orders.
- **In 93% of the cases** before the court, children under the age of 12 resided with the mother.
- **1% of children** resided with both parents under 50/50 parenting arrangements
- **In no case** were the views of any child heard directly by a judge, the views of the child were expressed through the primary carer or through court ordered expert reports where there were allegations of abuse. On several occasions counsel asked the court if a child could speak with a judge, in all instances this request was refused.
- **In no case** observed did a judge ask to meet with a child in any matter that affected them, despite such rights being stated in the U.N. Convention on the Rights of the Child, 1989.
- A finding of this research is that no mechanism currently exists for the views of a child to be heard by the court, where that child wishes for their views to be considered.
- In divorce cases where there were dependent children, **71%** of the applications were made by women, and in judicial separation cases where there were dependent children **75%** of the applications were made by women.
- Where child maintenance was agreed or ordered by the court, € 100 per child per week was set in 43% of the cases, in almost 1/3 of the cases it was set at € 50 per child per week. Child maintenance orders were frequently made by the court where the husband was only in receipt of State benefits.
- **100%** of maintenance orders were made in favour of the wife; where the husband was the primary carer no application came before the court for maintenance from the liable wife.
- **"Joint custody"** in the Circuit Court appeared to be merely an acknowledgement that both parents have obligations to provide for their children, it did not mean shared parenting relating to the day to day care of children. While the agreement or orders may commence with "joint custody", it was usually followed by "with primary residence to the mother/father".
- Of great concern was the common approach of the court to make child maintenance orders where the payor, in 100% of cases the father, was only in receipt of State benefits, the average State benefit observed being € 200 per week. The national insolvency guidelines for 2013 state that subsistence level, i.e. the basic amount a single person requires to live on, as € 237.65 per week. The court, in the main, prioritised the legal and moral obligation on the payor parent to financially provide for their child/children, making orders that effectively brought payor fathers below subsistence level, and took no account of their financial ability to exercise "access" in terms of any transport costs and providing for the child/children during those periods.
- It is a finding of this research that where court orders were made relating to access and parenting, that the outcome of those orders, was that the 'tender years' principle was almost uniformly applied.

- **Most of the judges interviewed indicated an intense dislike for the emotional context of family law cases, and found disputes over the arrangements for children to be extremely difficult, and sometimes distasteful**
- All of the judges interviewed acknowledged that persistent breaches of court ordered access was a chronic problem, but did not believe that attachment and committal was an appropriate sanction where the primary carer was the mother.
- The types of access orders made, ensure that primary carers become the pre-dominant parent, with very limited time allocated to the non-resident parent
- The standard presumption operating in almost all courts, was that the status quo of children with the mother in the family home, should be preserved. Where a husband sought the sale of the family home, the response of the court indicated that the request was unreasonable. No alternatives were entertained, such as the possibility that the children could live with the father, or live with both parents, or live in rented accommodation post the division of marital assets. A very traditional view of property ownership was evidenced by the actions of the court, reflecting the Irish predisposition to acquire and own a home
- Eighteen **Section 47 reports** were reviewed in court, and four were ordered by the court. It was clear that there were no guidelines available to the court or the practitioners, as to what a s 47 should entail or indeed the required qualifications of the 'expert' who would carry out such an investigation. There was no consistency in the format or content of these reports, and only one judge took the view that s 47 reports should always be questioned and the opinions of the expert rigorously examined. Six of the judges, in court, indicated that they did not have time, or they did not see the necessity, to read the full report.
- A standard access arrangement for the non-resident parent, primarily fathers, that permeated across all courts as a default position, was the policy of ordering access every second weekend, for a period of hours during the day, and once or twice mid-week for a couple of hours. This arrangement did not appear to be informed by any social studies or child centred research, but seemed to be derived from the only experts that the court dealt with directly, those experts who created section 47 reports
- **Primary carers**, the majority of whom were women, often sought to severely restrict or exclude the other parent from the lives of the children, on the basis that frequent contact with the non-resident parent distressed them, and in turn distressed the children. Where fathers were the primary carers they acted in a similar way in 'high conflict' cases.

Quotations;

Judge 1 *"I believe that children should be left with their mother at least until they are 12 or 13 and I do not think it appropriate to order the sale of the family where dependent children reside there with the mother."*

Judge 7; *"I am concerned that allegations of sexual abuse are at times being used as a very effective weapon, but a court is obliged to ensure that the HSE or the Gardaí investigate all such complaints".*

6 Delays and long lists

- Over-burdened lists, multiple adjournments and short hearings were found on all eight Circuits. The pressure of the list promoted inadequately short hearings and intense pressure to settle.
 - **18% of contested cases** [75% of which were divorce cases] were filed between 3 and 4 years before the case was heard in court
 - **10%** of contested cases were filed between 4 and 5 years before coming to court
 - **6%** of cases were filed between 5 and 6 years before coming to court
 - **3%** were filed 6 to 7 years before coming to court
 - **2%** were filed over 7 years before coming to court
 - **58%** of cases observed in Cork dated from 2007 or earlier
 - The longest delays were observed in the Northern Circuit, where it was observed that there was more than one active divorce case 11 years or older.
 - **Almost 1/3** of judicial separations or divorce applications in Cork and Dublin took more than four years to substantive hearing, meaning that a significant number of divorce cases took eight years or more to be concluded.
 - **24.8% of all cases** listed to be dealt with were adjourned, usually without explanation. Despite significant adjournments, lists were still over-burdened on all but 2 days of this research.
 - Letterkenny in the Northern Circuit was the worst example of an over-burdened list where 79 cases were due to be dealt with in three days – The indicative time required for cases to be heard on that list was 10 days, on top of which there were 52 further cases “for mention”.
 - Waterford Circuit Court had the second most extreme over-burdening of a list where 76 cases were listed to be dealt with in a four day period
 - Dublin operated 3 courts on most days, yet the average list to be completed for each court had 16 cases listed on any day. There were usually 2 full hearings listed per day. The longest Dublin list had 31 cases listed, of which 9 sought adjournment without any reason given.
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- A significant number of cases before the courts in the eight Circuits were dated from 2007 or earlier.

In Dublin 29.65% of all cases observed were from 2007 or earlier;

In the Cork Circuit 58.65% were from 2007 or earlier

In the South Eastern Circuit 23.79% of cases were from 2007 or earlier

In the Western Circuit 9.43% of cases were from 2007 or earlier

In the South Western Circuit 8.82% of cases were from 2007 or earlier

In the Eastern Circuit 24.56% of cases were from 2007 or earlier

In the Midland Circuit 22.22% of cases were from 2007 or earlier

In the Northern Circuit 18.98% of cases were from 2007 or earlier

Quotations;

Judge 4; *“The lists are over-loaded, the quantity of work for us is too great on any given day. The system has unreasonable expectations listing multiple cases for hearing and motions on the same day. The system would never function without barristers, the court is so inundated with work”.*

7 Family home/Marital assets

- Where the court ruled to allocate a greater percentage of the house to one spouse, in **95% of the cases** the ruling was in favour of the wife
- The impact of the recession commenced at the start of the research period, and the court was no longer able to rely on valuations or the possibility of selling the family home. Where cases were observed again at a later date, the key issue was the inability to perform terms of settlement or orders, as no offers were made on the family home in the region of the agreed reserves and in many instances, no offers were made at all.
- The stated starting point for all judges was that the marital assets, of a long marriage, should be divided on a 50/50 basis, however, only 3 judges clearly pursued that presumption.
- A consistent trend was noted where the mother was the primary carer and resided in the family home, the court generally would not consider the sale of the family home until the children were no longer dependents, even where that property was mortgage free.
- The single greatest difficulty facing the court where the family home, investment properties or land was to be sold was the issue of valuation. Valuations submitted by 'experts' were of no real value where no comparative data was available, there was no consistency between professional valuers who gave evidence, and litigants appeared to still have unrealistic expectations of the Irish property market.
- The Circuit Court deemed the role of 'homemaker' and 'breadwinner' to be equal contributors to the marital assets, where the 'homemaker' was the mother. Their contributions were regarded as equally valuable to the family, in line with Abbot J.'s view in *N. V N.* [2003] HC, unreported. However, reflecting the Constitutional protection for the role of women in the home, the court did appear to discriminate where the 'homemaker' was male, and did not appear to value the contribution of a father who chose to stay at home to care for the children on a full-time basis.

Quotations;

Judge 3; *"We are entering the world of Rumsfeld, the unknown and the great unknowns, that is where we are at with valuing the family home"*

8 Judges

Length of time in the courtroom

- **The shortest time in court was 30 seconds** for a consent divorce (Western Circuit), no evidence was heard and neither litigant was sworn in.
- **The longest full hearing observed was 5 hours.**
- The average duration of all court sessions was 8.36 minutes.
- The average time for consent divorces across all 8 circuits was 5.3 minutes and 7.5 minutes for consent separations.
- **Contested divorces took on average 20.57 minutes and contested judicial separations took 16.79 minutes.**
- The average amount of time for “call-over” in all courts was 20 minutes, with courts commencing between 10 a.m. and 10.45 a.m. depending on the judge.
- The average time the court sat, from “call-over” to the court “rising” on the Dublin and Cork Circuits was 4 ½ hours per day, excluding a break for lunch. On the South-Eastern Circuit it was 6 ½ hours, the Northern Circuit was 6 hours and the average court time in all other circuits was 5 hours.
- During this research period only three reserved judgements were given.
- An analysis of 40 of the oldest Dublin cases that were observed, filed between 1999 and 2006, showed that; the average number of judges per case was 5; two of the cases were heard by 10 judges. 45% of the cases were heard by 6 judges or more. 25% of these cases eventually entered into terms of compromise.
- Where a case was observed for a second time, and before a different judge, there was a markedly different approach to the case.
- **Eight of the 13 judges** indicated that they did not support the concept of a designated family court with designated family judges. One judge thought it was a good idea, but not for him. Three judges said they would be interested, but would not like to specifically be a family law judge 100% of the time. One judge said if he had the choice he would never ever hear family law cases.
- **Five of the six judges** interviewed indicated that they believed appropriate judicial training was required to enable judges to meet with children in chambers.
- **Five of the 13 judges** observed, were openly hostile to lay litigants, male or female, four judges were very supportive of lay litigants.
- The courts determinations as to maintenance payments did not use any set criteria or formulae. Maintenance was primarily determined through a process of negotiation, facilitated by the court, but without due reference to a litigant’s disposable income based on the submitted Affidavit of Means. Generally, the starting point was the amount per week requested by the party seeking maintenance.
- **Nine of the 13 judges** indicated in interviews and in court that they would prefer not to order the sale of the family home where there were dependent children residing with the mother, and would grant exclusion orders, granting sole right to reside to the mother.
- It was unexpected to find that judges received no training specific to family law cases, particularly the emotional and psychological dynamics of relationship break-downs, or any training to assist the court in hearing the voice of the child.

- The common use of social media, text, tweets, email and voicemail communications as evidence, proved a valuable source of information for the court, but raised questions about the ability of the court to authenticate these sources of evidence. All such sources of evidence were accepted without question and were often persuasive in terms of the findings of the court.
- The application of the in camera rule by the judiciary, observed during this research, restricted court attendance to the parties involved in the proceedings and their legal representatives, and generally no recorded record was available of the proceedings, either written or digital.
- Breaches of the in camera restrictions were permitted on a number of occasions; Gardaí, with no involvement in the cases before the court, remained in the courtroom; Discussion of cases, identifying the parties, took place at “call-over” between Judges and practitioners with members of the public in attendance; digital recordings were made on the DAR system in cases in Dublin (by design) and Waterford (by accident); a stenographer was allowed to record the hearing at the request of a lay litigant; a wheelchair assistant was allowed to remain in the courtroom for the duration of a case and interpreters, who were invariably family friends or relatives, were allowed to remain in the courtroom.
- **Judges 1 and 2 advocated “doing away” with judicial separation, and suggested shortening the time to divorce.**
- **Five of the six judges interviewed recommended that appropriate training, to hear the voice of the child, and mechanisms other than a s 47 should be considered to ensure that the views of children are heard.**
- Four of the six judges interviewed, recommended giving more powers to County Registrars to handle consent matters.
- It is a finding of this research that the wide discretionary powers applied by the judiciary, on separation and divorce, resulted in a considerable variation of approach and outcome. Rather than finding consistent decision making patterns, it was difficult to identify any consistency of approach

Judge 9; *“While the ‘in camera’ rule is necessary to protect the parties and their children from the public eye, the lack of any record is a significant downside. Would people really attend family law proceedings if the ‘in camera’ rule was lifted, no-one comes in for civil cases and very few people attend most criminal trials, apart from the high profile cases”.*

Judge 1 *“Parenting agreements should be put together by experts, every case is different and a lot of court time can be wasted trying to work out individual arrangements.”*

Judge 2; *“The lack of judicial training in family law is an issue, particularly training to deal with children. Some form of training is required to assist judges deal with children directly when required, and to understand the dynamics of parental conflict”.*

Judge 7 *“I can manage short bursts, but if I had to do a long stint, I would go mad”.*

9 Mediation

As a practising mediator throughout the course of this research, it was startling to discover that mediation is a very rare phenomenon at any stage of the process post the break-down of a marriage.

- Mediation was tried in only 0.7% of the cases before the court.
 - Mediation was mentioned seven times in court by litigants, who said they knew about mediation, but hadn't used it as they didn't want to reconcile
 - Two different judges strongly recommended mediation, urging the parties to engage in mediation to create parenting agreements. The parties declined to do so.
 - Mediation was used four times, without any agreement. The Family Mediation Service was used.
 - Mediation was used four times, with agreements successfully concluded. The Family Mediation Service was used.

Quotations;

Judge 2 ; *“Mediated agreements must “stand up”, a poorly worded mediated agreement that does not deal clearly with the legal issues arising, creates significant problems later on... A great number of mediated agreements that have come to my court have been prepared by non-legally trained parties and this is an issue where there are issues around financial provision for children and assets to be divided”.*

Judge 7 *“Mediated agreements that come before the court show lack of consistency, often are written in unenforceable language and showed disregard for possible legal outcome”. Only those with legal training should construct separation agreements in mediation that deal with financial provision and asset division.”*