IRELAND’S NEW COURT OF APPEAL

This summer saw the passing of legislation which will effect the most important reform to the organisation and structure of the Irish court system since the foundation of the State. The Court of Appeal Act 2014 (“the Act”), which was signed into law on 20 July last, provides for the establishment of a general Court of Appeal which will sit between the High and Supreme Courts.

The Act is largely technical in nature in that its main purpose is to provide for the establishment of the new Court of Appeal and to accommodate it within the existing court structure. However, once fully established, the new Court will have a significant impact on the practical operation of the Irish court system, particularly in terms of reducing waiting periods and improving overall efficiency.

THE NEED FOR A NEW COURT

The need for a general Court of Appeal was identified in 2009 by a Government Working Group. More recently, in 2013, the Chief Justice, The Honourable Mrs Justice Susan Denham explained that the structure of the Irish Superior Courts was not designed to cope with the volume and complexity of litigation now coming before the courts on a daily basis. The Chief Justice noted that the Supreme Court, which can only sit as one or two panels, was the only avenue of appeal from rulings of the 36 judges of the High Court. This bottleneck structure has resulted in delays of up to four and a half years for hearings before the Supreme Court, a situation which the Chief Justice described as “unsustainable” and “untenable”. She further expressed the view that the Supreme Court, as a court of last resort, should only hear cases of public significance or cases where an important aspect of the law or the Constitution is in issue.

In 2013 a referendum to amend the Constitution to provide for the establishment of a Court of Appeal was passed by over 65% of voters. The Act provides the mechanics necessary to establish the Court.

ESTABLISHMENT DAY & LOCATION OF THE COURT OF APPEAL

The Government has yet to appoint an “establishment day” for the Court of Appeal. However, the Minister for Justice has indicated that it should be operational in October. It will be located in the public records building in the Four Courts complex.

COMPOSITION OF THE COURT OF APPEAL

The Honourable Mr Justice Sean Ryan has been named as President Designate of the Court. In addition to the President, the Court will comprise nine ordinary judges. Six High Court judges have been nominated for appointment to the Court, namely Mr Justice Peter Kelly, Ms Justice...
Mary Finlay Geoghegan, Mr Justice George Birmingham, Ms Justice Mary Irvine, Mr Justice Gerard Hogan, and, Mr Justice Michael Peart. The remaining three positions will be filled by the Judicial Appointments Advisory Board. The Act provides that the Court may sit in divisions of three judges, which divisions may sit simultaneously.

BUSINESS OF THE COURT OF APPEAL
In broad terms, the Court of Appeal will have the jurisdiction which prior to the Act was vested in the Supreme Court, the Court of Criminal Appeal and the Courts-Martial Appeal Court, the latter two courts having been abolished by the Act. As such, it will be the default court for all appeals from decisions of the High Court and its decision will be final (save in certain limited circumstances).

BYPASSING THE COURT OF APPEAL
It will be possible in exceptional circumstances to bypass the Court of Appeal and appeal a ruling of the High Court directly to the Supreme Court (“a Leapfrog Appeal”). Permission to bring a Leapfrog Appeal must first be obtained from the Supreme Court and will only be granted if the Supreme Court is satisfied that (i) the High Court decision involves a matter of general public importance, and/or (ii) the interests of justice require that the appeal be heard by the Supreme Court. Accordingly, the Supreme Court will determine the type of appeals it will hear, which will likely be cases which raise constitutional and legal issues of significant importance only.

Going forward, parties wishing to appeal a decision of the High Court will need to carefully consider whether the decision is one which warrants a Leapfrog Appeal or whether the more appropriate route is to go directly to the Court of Appeal.

APPEALING A DECISION OF THE COURT OF APPEAL
Decisions of the Court of Appeal will in the ordinary course be final. However, permission to bring a further appeal may be sought from the Supreme Court. The Supreme Court will only grant such permission if it is satisfied that (i) the decision of the Court of Appeal involves a matter of general public importance; and/or (ii) the interests of justice require that a further appeal be heard by it.

APPLICATIONS FOR PERMISSION TO APPEAL TO THE SUPREME COURT
The Supreme Court will decide applications for permission to appeal by reference to the papers before it and without an oral hearing. However, it has the power to direct an oral hearing where the circumstances so require.

APPEALS CURRENTLY PENDING BEFORE THE SUPREME COURT
The Chief Justice may direct that appeals falling within a specified class of appeals are to be heard and determined by the Court of Appeal. Parties to an appeal pending before the Supreme Court can apply to be added to this class and have their case transferred to the new Court or conversely can apply to be removed from the class. Importantly, cases will not be precluded from being transferred to the Court of Appeal solely on the basis that the Supreme Court has heard an interlocutory application relating to the case.

It is anticipated that appeals currently pending before the Supreme Court that do not involve issues of general public importance will be transferred to the Court of Appeal on its establishment. Accordingly, as soon as the Court commences operations, it will have a significant number of appeals listed before it, which should in turn result in an immediate reduction in the Supreme Court’s backlog.

Parties to cases which are transferred to the Court of Appeal may need to review estimates on timing around the hearing of their appeals as the Court should be in a position to hear cases in a much shorter time frame than the Supreme Court would have been.

CASE MANAGEMENT POWERS
To assist the Court of Appeal and the Supreme Court manage their business as efficiently as possible, the Act confers them with significant case management powers

» the Chief Justice and the President of the Court of Appeal have the power to issue practice directions in relation to the conduct of appeals before their respective courts. This may include the use of pre-hearing submissions, strict timetables and meetings to establish points of agreement and to identify points of difficulty.

» interlocutory applications relating to any appeal before the Court of Appeal (save appeals confined to procedural matters) may be heard and determined by either the President of the Court of Appeal sitting alone, or any other judge of the Court sitting alone as may be nominated by the President.

» interlocutory applications in respect of any appeal before the Supreme Court may be heard by the Chief Justice sitting alone or by a single judge as may be nominated by the Chief Justice.

COMMENTARY
It is anticipated that the establishment of the Court of Appeal will have a significant impact on the current waiting lists and will greatly improve the overall efficiency of the Irish court system. However, the Act is silent on a number of important procedural and administrative issues in respect of the bringing of an appeal to the Court, such as time periods, filing obligations, court fees etc. Therefore, at this stage, it is not possible to comment on how the new Court will conduct its daily business and what impact there will be on the preparation for bringing an appeal. This will not become clear until the Court has become operational and an initial transition period has passed. We are keenly monitoring this new development and will keep you updated.

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