Leanna Byrne, An Appealing Prospect? The new court aims to improve efficiency, but critics are doubtful, The Sunday Business Post, Nov. 2, 2014, at 20, interviewing and quoting Tillman

The new Court of Appeal, heralded as the answer to a four-year backlog in the judicial system, will sit for the first time on Wednesday. Lawyers hope that the days of complaining about Supreme Court waiting times could be over.

Judges have been long advocating for a Court of Appeal to hear appeals in civil cases as an alternative to going directly to the Supreme Court. In March 2013, the country’s most senior judge and the head of the judiciary, Chief Justice Susan Denham, said the level of appeals before the courts was “unsustainable”, as both the High Court and the Supreme Court experienced a significant growth in litigation.

As she made her speech in the Four Courts, an appeal certified as ready at that point might not have been given a hearing date until mid-2017. Despite a slight decrease in appeals lodged to the court in 2013 (8 per cent), the establishment of a new court was considered to be the only way to shift the backlog.

“All other common law countries have a Court of Appeal in their legal system, placed between the High Court and the Supreme Court,” said Justice Denham during her address. “The new Court of Appeals should be established in law and provided for in the Constitution.”

And so it was. A year after the Court of Appeal amendment to the Constitution was passed in a referendum, nine judges made their declarations last week before the Supreme Court.

Already the court has 258 cases to process, allowing for an immediate 42 per cent decrease in the Supreme Court caseload for the legal year. Not only that, but a 190-page document on rules to govern the new court’s practices is expected to make it more efficient without changing anything too substantial for legal professionals.

According to senior counsel Mary Rose Gearty, the court is particularly welcome for the criminal bar, whose clients have had to wait long periods for appeals to be heard due to a chronic shortage of judges and high volumes of cases entering these lists.

“This enhances the experience of all those involved in the system, including victims of crime, accused persons and all citizens as it brings more certainty and predictability to the process, which is always important in any criminal justice system,” said Gearty.

“Anything which removes delay, simplifies the process and brings certainty and finality to cases, particularly after a prolonged period, will improve the quality of an already impressive jurisprudence, decrease costs and result in a more user-friendly legal system.”

The Court of Appeal is intended to reduce the volume of litigation in the Supreme Court and so allow it to reserve resources for weighty cases. But will a reduction in workload make the Supreme Court more efficient? Of course the transfer of case load reduces the amount of time that judges will have to spend on cases, but does the time spent on each case point to a problem itself?

“That those who argued for the Court of Appeal claimed it will solve the backlog. I have found and continue to find that prediction highly dubious,” said Seth Barrett Tillman, law lecturer at the Department of Law in Maynooth University and long-standing critic of the Irish judicial system.

“I might add that opening the new court more than a year after the 2013 referendum would seem to indicate that no one among the court’s proponents had a particularly clear vision how the new court should operate, and these people have been scrambling ever since.

“More importantly, if there were a series of meaningful institutional reforms that the judges, the bar, and the legal profession were ready to embrace, the players could have implemented those reforms in the Supreme Court prior to October 2013, when the referendum was held. That would have been a good dry run for Court of Appeal reforms. But nothing like that was tried. It is a real pity that that opportunity was wasted.”

As well as the expected freeing-up of the Supreme Court, the establishment of the Court of Appeal also reshuffled the judiciary, creating something of a “brain drain” from the High Court.

Much to the annoyance of High Court President Mr Justice Nicholas Kearns, seven of his judges have been promoted to the new court, leaving him with the difficult task of filling the vacancies. Four of the replacements came from the Circuit Court.
The reshuffle has led to grumblings in the corridors of the Bar Council, the Law Society and judges’ chambers about inexperience and fast-tracking judicial appointments.

To them, nothing is more important than years spent on the bench mulling over the complexities of jurisprudence. However, these misgivings are mostly among the legal professionals, as Tillman considers the shake-up to be beneficial.

“There might be something to be said about choosing young judges and practitioners having a lot of energy,” he said. “To be perfectly blunt, a judge having been on the bench for ten or 15 years can sometimes get burnt out. The issues are frequently the same; the work can become dull and monotonous. Such judges are in no rush, so things may take longer than they really should.

“Likewise, judges who worry about being overturned by the European courts will take even longer.”

Of course, there’s nothing like a change to dig up old rivalries. The judicial appointments also caused animosity between solicitors and barristers following a comment by Law Society director general Ken Murphy, who suggested that solicitors have wider experience of “law and life” than barristers. The government included only one practising barrister among nine nominees for the High Court.

The Bar Council, which represents and regulates barristers, was less than impressed. Chairman David Barniville responded that Murphy’s comments were “unfortunate and rather silly”.

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