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Mr Justice Peter Kelly  
Chairman  
Review of the Administration of Civil Justice  
The Four Courts  
Dublin 7  
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**BY EMAIL AND POST**

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**Matter: Review of the Administration of Civil Justice**

Dear Mr Justice Kelly,

Many thanks for arranging the informative briefing session yesterday.

My own experience of the administration of civil justice is very narrow being confined to commercial litigation and insolvency. However, leaving insolvency aside, the views of parties (as distinct from the practitioners) who use the Irish courts for commercial litigation are I think relevant in economic and societal terms. This is because such users tend to bring a perspective informed by their experience in a number of jurisdictions. This comparative perspective is also brought to bear when they make choices about how to organise and locate elements of their businesses. These choices are informed, in part only, by their experience of the practical application of the law in any jurisdiction. And such choices obviously impact on the Irish economy and, as a further consequence, society as a whole.

The concerns of such users have some common themes. These are usually around delay, competence and predictability rather than other issues.

In that context, I was struck by the absence of such clients yesterday. I hope some have made submissions but I expect many have not. Some commercial users can be reluctant to comment publicly because of a fear, however unfounded, that any criticism, particularly if pointed, could lead to adverse judicial perception of those users or that it would be discounted as whinging by well-resourced entities who have suffered a few adverse outcomes.

Given that you remain open to submissions, I will try and collate some views from commercial users and will write to you separately when I have them. I accept that any such views should not have the force of a direct submission but I hope they might be in some way helpful.

In passing, I thought that the intervention from the floor by the lay litigant was symptomatic of the chronic problem of lay litigants requiring considerable court resources to the detriment of others and also developing a near mania in relation to their cases. Perhaps a system of triage in relation

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to some of the proceedings, motions and appeals brought by lay litigants might be useful. This could be used to distinguish merit from mania. It may well be that, compatible with constitutional rights, the payment into court of a significant sum in order to bring a new proceeding, motion or appeal should be capable of being required of some lay litigants either as an adjunct to, or separate from, an Isaac Wunder type order, particularly where there was evidence of the litigants using some of the resources and information on the internet regarding the deliberate obstruction and delay of court process.

Lastly, I was struck by some of the comments about discovery. While there is of course a very real issue of proportionality, in my experience discovery usually serves a useful purpose in most significant commercial litigation. This is not because the discovery produces the smoking gun but rather it has an incremental and moderating effect on a party's view of its own and its opponent's cases. This happens because the documents bring a clarity and exactitude to the evidence of witnesses who might otherwise be less exact in their recollection. Also, the judicial perspective of what emerges at trial also misses the impact of discovered, or likely to be discovered, documents on settlement dynamics. It is not only because of costs that many cases settle just before or just after discovery.

I wish the group every success with this initiative and will write again if I get useful insights from commercial users.

Yours sincerely,



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