

THE INSTITUTIONAL PROVISIONS OF THE INDUSTRIAL RELATIONS ACT 1990 IN OPERATION

*Joe Wallace and Conor McDonnell**

Introduction

The Industrial Relations Act 1990 was the most significant piece of collective labour legislation to be introduced in Ireland since the Labour Court was set up under the Industrial Relations Act 1946. The 1990 Act contained trade disputes legislation, which repealed the Trade Disputes Act 1906, while retaining the immunities-based approach of the 1906 Act. This was significant, as a discussion document issued by Ruairi Quinn TD, Minister for Labour, in 1986, had proposed the introduction of "positive rights" and claimed that such an approach would be more in tune with the general treatment of trade disputes legislation in continental Europe (see Department of Labour, 1986). This part of the 1990 Act has proved controversial with a number of high profile cases arising from it. These include the *Westman Holdings Ltd. v McCormack and Irish National Union of Vintners, Grocers and Allied Trades Assistants (INUVGATA) (the Judge Roy Bean)* case (1991) and the *Nolan Transport v Halligan and Others* (1994 and 1998) cases. Within a number of member unions of the Irish Congress of Trade Unions (ICTU), there have been sporadic calls for amendments to the trade disputes provisions, but this has never amounted to a full-scale campaign for change. Much of the activity seems to have subsided with the successful appeal by the Services Industrial Profes-

* The authors are respectively, Senior Lecturer in Industrial Relations, and Teaching Assistant, Department of Personnel and Employment Relations, University of Limerick. The authors would like to express their appreciation to Michelle O'Sullivan, Research Assistant, University of Limerick, for research assistance and extremely helpful comments on various drafts of this paper.

sional and Technical Union (SIPTU) in the *Nolan Transport v Halligan and Others* case (1998). Within academic circles, there has been some divergence on how to view the Act. Kerr (1991) has seen it as deriving from a consensus-based approach to industrial relations, while Wilkinson (1991) and Wallace and Delany (1997) have questioned the extent to which the trade disputes provisions have served to strengthen voluntarism, which was a stated intention outlined for the Act by the then Minister for Labour, Bertie Ahern TD.

While the trade disputes provisions of the 1990 Act have given rise to some controversy and debate, the institutional provisions have not been the subject of similar scrutiny. These were generally accepted by employers and trade unions when introduced and this has remained the case since then.¹

That these provisions were generally accepted by both trade unions and employers' representatives is best accounted for by the fact that they were firmly grounded in the voluntarist tradition, which eschews legal intervention in industrial relations.

The New Arrangements

The main institutional change introduced by the 1990 Act was the establishment of the Labour Relations Commission (LRC) and the transfer of a number of functions previously performed by the Labour Court to the new body. The conciliation and equality services were transferred from the Labour Court to the LRC and the rights commissioner service from the Department of Labour to the LRC. In addition, certain new functions were given to the Commission. The most important innovation was the creation of an advisory service designed to pre-empt disputes and to address long-standing industrial relations difficulties in companies. In the round, the structural differences between the arrangements previously in place, and those established under the 1990 Act, seem in many regards to be minimal. The conciliation service was maintained and continues to be staffed by Industrial Relations Officers; Equality Officers were retained to adjudicate on equality cases² and the office of Rights Commissioner continued in operation to hear cases not concerned with pay and conditions of a group of workers. The main institutional differences introduced by the 1990 Act can then be summarised as follows:

1. The separation of the Labour Court and the Labour Relations Commission;
2. The development of an advisory service;

3. The requirement for the LRC to prepare codes of practice in various areas.

The general acceptance of the institutional provisions, and the absence of subsequent controversy attached to them, has meant that they have not been the subject of detailed study since their implementation. There is a general impression, created by the public pronouncements of politicians and arising from LRC reports, that the new arrangements are working well and achieving their objectives, but what is missing is an objective evaluation of this impression. Any starting point for evaluating the institutional provisions must commence with the objectives, which were set down for the 1990 Act when it was being introduced. The following are the key objectives which the institutional changes were meant to achieve:

1. Promote the local settlement of disputes;
2. Restore the Labour Court to a "court of last resort".

Essentially, these proposals involved reducing the reliance of the industrial relations system on institutional intervention and requiring parties to take ownership for the settlement of disputes. One measure introduced to promote a reduction in the reliance on institutions was the creation of an advisory service within the LRC. This service was designed to deal with the so-called "frequent users". It had been noted that certain organisations accounted for a disproportionate number of cases referred to it. The logic of establishing an advisory service was to improve industrial relations in these organisations with a view to reducing the number of cases coming to third parties. The advent of an advisory service was an innovative measure and had been suggested by a number of industrial relations commentators over the years.

Some Theoretical Considerations on Institutional Reform

International comparisons have concentrated on the comparative strike record of different countries and the comparative efficiency of different bargaining systems. It is well established that corporatist bargaining arrangements tend to produce lower levels of conflict than in countries with pluralist arrangements. Initially, it was also suggested that corporatist countries enjoyed higher levels of economic performance. Subsequent research suggested that superior economic performance was associated with either high levels of centralisation in

the bargaining structure in a country — a corporatist approach — or low levels of centralisation — a market approach (Calmfors and Driffill, 1988). Calmfors and Driffill (1988) posited a U-shaped relationship between the degree of neo-corporatism and levels of economic performance rather than a linear relationship, as previously presumed. The U-shaped relationship implies that highly centralised neo-corporatist arrangements, as well as highly decentralised systems, are conducive to economic success and the ability of an economy to provide employment (Calmfors and Driffill, 1988). It was suggested that lower levels of economic efficiency are produced by intermediate industrial bargaining structures. The results of such macro-based comparisons between countries are, however, highly sensitive to the time period chosen for comparison as well as the allocation of countries into the above categories. More recent research, using data from the period 1986 to 1996, suggests that the evidence from this time period “does not show many statistically significant relationships between most measures of economic performance and collective bargaining” (Organisation for Economic Co-operation and Development (OECD), 1997: 64).

The Irish concern over the extent of the usage of third parties, which was evident at the time of the introduction of the Industrial Relations Act 1990, does not loom large in comparative research and would seem a largely domestic consideration. In one very important respect, the desire to return the Labour Court to being a “court of last resort” and to encourage greater local settlement of disputes, runs directly counter to the proceduralisation of industrial relations. This proceduralisation, which has its foundation in one of the principle recommendations of the Donovan Commission (1968) in the UK, is arguably the main development in Irish industrial relations in the last 30 years.

Disputes procedures in Ireland are now widespread³ and almost invariably contain a clause restraining industrial action prior to referral to the Labour Court (Wallace, 1989). This means that employers and unions can end up referring disputes to the Court, not because of any desire on the part of both parties to go to the Court, but because they must do so in order to comply with procedure. There is strong normative support, from both employer organisations and trade unions, for the requirement that disputes be referred to the Labour Court prior to notice of any form of industrial action being served. Indeed, most trade unions will not sanction official strike action unless procedures have been complied with, thus giving procedure agreements the same force as union rules in such cases. Equally, employers

who refuse to use the services of the Labour Court, and articulate the view that they favour "dealing directly with their employees", also risk public opprobrium, as the Dunnes Stores example demonstrates. The doomsday scenario for either party is to be interviewed on television news and to be accused of having taken pre-emptive action without exhausting available procedures.⁴

None of the above discussion should be taken to infer that the objective of greater settlement of industrial relations disputes at local level is undesirable — it clearly is. That this is the case is demonstrated by the innovative bargaining which has emerged in recent years over the issue of competitiveness. Examples of such agreements are contained in the ESB Cost and Competitiveness Review, the Telecom Eireann agreement prior to privatisation, and the negotiation of Annual Hours Agreements in a number of companies such as Aughinish Alumina and Cement Limited (see Gunnigle and Brosnan, 1999, and Wallace, 1999). A distinguishing feature of these agreements is their high level of sophistication and elements of mutual gains (Wallace, 1999). These are features which are unlikely to be achieved by traditional third party processes of conciliation and arbitration. What is questionable, however, is the extent to which redesigned institutional arrangements can, over the longer term, lead to greater settlement at local level in the face of the rational interests of the parties to industrial relations.

Horgan (1989: 198), writing in the 1980s, noted a reduction in the rate of settlement at local level and suggested that "negotiators are losing the art of compromise".⁵ In the same passage he notes, "it is fascinating how many employers are prepared to have the Court recommend concessions to their own employees rather than offer these concessions themselves and thereby gain at least some goodwill for themselves". This passage suggests that employers are behaving irrationally and also implies that training in negotiation skills can reverse the problem. Neither is any mechanism identified by which unions and employers became less willing to compromise. The alternative suggestion — that the main cause in the higher levels of third party intervention is due to the greater proceduralisation of workplace industrial relations — sees the industrial relations actors as behaving rationally and would not expect training in negotiation to greatly affect the level of third party intervention. Equally, if there was a loss of the art of compromise in the years between the 1960s and the 1980s, then the growth in proceduralisation appears the best candidate to have produced this effect. This can be regarded as the institutionalisation of industrial conflict, with the attempt being made to limit

conflict by the provision of third party intervention. This proceduralisation leads to an increase from one level of third party intervention to an entirely higher level. Of course, the level of usage of third parties can be expected to vary, being influenced by, among other variables, the bargaining arrangements in place at any time, as well as economic and other factors. Provisions for improving negotiating skill may be helpful in particular instances, but such effects would be unlikely to transform the general level of utilisation of third party intervention.

Empirical Findings

In order to test the extent to which the 1990 Act has achieved the institutional objectives set for it, it would ideally be necessary to measure the number of local settlements as a proportion of all negotiable issues arising. However, as data on collective agreements are not collected in Ireland, it is not possible to directly establish the level of local settlements. Data are not collected on the number of negotiable issues arising and it would probably be impossible to agree on a definition of what constitutes a "negotiable issue". The best alternative is to examine the number of cases being referred to conciliation prior to the introduction of the 1990 Act and to compare them to the number of cases going to conciliation since the institutional provisions of the 1990 Act took effect in January 1991.⁶ This measure has a number of obvious inherent defects. The most significant is the possibility that any change in the number of cases being referred to conciliation could be due to factors other than the operation of the 1990 Act — the so-called *ceteris paribus* condition. Changes could be due to the booming economy, the presence of national agreements or the provisions contained in any particular collective agreement. The national agreements are likely to be the most important. The consensus or partnership approaches, which have been claimed for these agreements, may work in favour of a higher proportion of local settlements.

Alternatively, the booming economy and the alleged growing feeling that the benefits of the tiger economy have not been shared equally, would act in the opposite direction, potentially increasing third party referrals. The trade disputes provisions of the 1990 Act would also magnify any such effect if workers were anxious to comply with procedures to ensure they did not lose the immunities conferred by the Act. Thus, the number of cases being referred to conciliation could increase to ensure that procedures were complied with.

In the event that no substantial reduction in cases is observed, it is necessary to consider the possibility that the Act might have prevented a rise in cases. An examination of the trend in the figures in the 1980s does not indicate a rising trend in the number of cases going to conciliation. The average annual number of cases from 1981 to 1985 was 1,860 compared to 1,650 for the years 1986 to 1990 (Table 1). This indicates a significant decrease in the number of cases occurring prior to the conciliation service being transferred to the LRC. The annual average for number of cases being referred to conciliation in the years 1991 to 1998 was 1,693, which is on a par with the annual average number of cases in the period 1986 to 1991.

TABLE 1: CONCILIATION SERVICE CASE LOAD AND SETTLEMENT LEVELS FOR THE REPUBLIC OF IRELAND FROM 1946 TO 1998

Year	Number of Disputes in which Conciliation Conferences were held	Number and Percentage of Disputes settled at Conciliation⁷	
1946-47	166	105	63%
1947-48	228	153	67%
1949	135	81	60%
1950	102	66	65%
1951	157	111	71%
1952	169	134	79%
1953	143	94	66%
1954	166	110	66%
1955	188	135	72%
1956	173	116	67%
1957	191	119	62%
1958	226	136	60%
1959	191	125	65%
1960	197	122	62%
1961	211	151	72%
1962	300	214	71%
1963	337	238	71%
1964	388	282	73%
1965	450	289	64%
1966	429	300	70%
1967	532	377	71%
1968	546	408	75%
1969	414	327	79%
1970	564	451	80%

1971	628	429	68%
1972	713	443	62%
1973	855	487	57%
1974	951	646	68%
1975	1,108	576	52%
1976	1,071	581	54%
1977	1,175	638	54%
1978	1,288	651	51%
1979	1,301	634	49%
1980	1,379	693	50%
1981	1,582	756	48%
1982	1,855	923	50%
1983	2,090	1,113	53%
1984	1,750	1,037	59%
1985	2,021	1,355	67%
1986	1,892	1,268	67%
1987	1,787	1,151	64%
1988	1,571	1,064	68%
1989	1,450	1,019	70%
1990	1,552	1,143	74%
1991	1,880	1,598	85% (85%)+
1992	1,935	1,451	75% (73%)+
1993	1,844	1,309*	71% (69%)+
1994	1,551	1,028	66% (66%)+
1995	1,692	1,184	70% (67%)+
1996	1,487	1,204*	81% (78%)+
1997	1,588	1,318*	83% (82%)+
1998	1,563	1,286*	82% (81%)+

+Figures in brackets indicate settlement rates using Labour Court reported figures for referrals to conciliation.

*These figures have been calculated from the rounded percentage figure and as such are approximations. The LRC figures from 1991 for number of disputes settled at conciliation include, for some or all of the years 1991 to 1998, cases settled by direct contact in addition to these settled at conciliation conferences (see commentary in text below).

Source: Labour Court and LRC Annual Reports.

The main conclusion that emerges from these figures is that there has been no significant decline in the general level of cases being referred to conciliation since the conciliation service was transferred to the LRC in 1991. The annual average number of cases being referred

to the conciliation service has, since 1980, operated within a relatively stable band, not dropping below 1,300 and not exceeding 2,100 in any one year. The annual average number being referred to conciliation in the years 1991 to 1998 was 1,693, which is on a par with the 1981 to 1990 figure of 1,755 and much higher than the figure for the years 1971 to 1980, which was 1,047 (Table 2). The figures in Table 2 indicate that Irish industrial relations has seen a significant rise in utilisation of conciliation since the 1960s and this has also been paralleled by a rise in the utilisation of the adjudication service of the Labour Court. There is no evidence that the institutional provisions of the 1990 Act have had any appreciable effect on the number of cases being referred to conciliation, thus casting doubt on the achievement of any greater settlement of issues at local level.

Turning to the settlement rate achieved at conciliation, the figures in Table 1 seem to indicate a major growth in the settlement rate since the LRC took over responsibility for that service in 1991. Unfortunately, the LRC figures in Table 1 overstate the settlement rate achieved by the conciliation service while under the LRC. This arises because the figures for settlement reported by the LRC, from 1991 to 1998, are not directly comparable with those published by the Labour Court previously. There are two differences involved. First, and most importantly, the Labour Court convention was to report figures for "the number of disputes in which conciliation conferences were held" while the LRC figures, in some years, include in addition "cases in which direct contact was made with the conciliation service" but which did not proceed to a conciliation hearing.⁸ All of these cases would by definition be settled and the resultant 100 per cent settlement rate would overstate the settlement rate at conciliation. While in some years since 1991, cases in which direct contact was made have been used in calculating the settlement rate at conciliation; it does not appear that this has been done in every year. Thus, the settlement rate claimed by the LRC is not directly comparable with the settlement rate reported by the Labour Court nor does it appear that the LRC has compiled the settlement rate on a consistent basis in each year. It appears that cases settled by direct contact have been included in some years and not in others. Inclusion of the figures for "cases in which direct contact was made" would significantly increase the settlement rate. In particular, it appears that this may be the reason for the very high settlement rates reported in the years 1996 to 1998. The number of cases settled by direct contact in at least one year was in the order of 120 cases and this could increase the settlement rate by as much as 8 to 10 percentage points.

The second difference arises because the LRC, in some years, reports figures for cases referred from conciliation to the Labour Court, which differ from the Labour Court figures. In certain years the LRC has excluded cases in which section 26(1) orders have been signed (cases referred from the LRC to Labour Court) but in which no Labour Court hearing was actually held (Table 2). This has the effect of including these cases in the claimed settlement rate, thus marginally increasing the settlement rate of the conciliation service. It has been possible to recalculate the settlement rate at conciliation using the Labour Court figures for referrals to the Labour Court from conciliation for the years 1991 to 1995 and this shows the extent to which the LRC figures have overstated the settlement rate since 1991 (see figures in brackets in Table 1).

TABLE 2: CASES REFERRED TO THE LABOUR COURT FROM CONCILIATION UNDER S. 26(1), INDUSTRIAL RELATIONS ACT 1990

	According to the Labour Court	According to the LRC
1991	187	187
1992	340	305
1993	368	336
1994	315	315
1995	360	314
1996	335	296
1997	316	298
1998	282	255

Source: Labour Court Annual Reports and data sent directly, 1991-1998; Labour Relations Commission Annual Reports, 1991-1998.

Despite the differences in the methodology of data reporting between the LRC and the Labour Court, there would appear to have been a discernible rate of increase in the percentage of disputes which have been settled at conciliation, relative to the levels prevailing in the 1970s. Excluding the figures for a settlement rate of over 81 per cent in each year from 1996 to 1998 (as these reported settlement rates seem to include direct contact cases), the average annual settlement rate for the years 1991 to 1995 is 72 per cent (Table 1). This compares with an average annual rate of 56.5 per cent in the years 1971 to 1980 and an average annual rate of 62 per cent in the years 1981 to 1990. Although the increase in the settlement rate since 1991 is overstated, any recalculation, based on more comparable data, would still be likely to leave it significantly above the settlement level achieved in the 1980s. The figure is not greatly above the 68.6 per cent annual av-

erage settlement rate recorded by the Labour Court in the years 1986 to 1990 inclusive. This is another example of an objective established for the Industrial Relations Act 1990 which was already underway prior to the introduction of the Act. This reservation aside, the greater level of settlement at conciliation appears to be the single most significant change occurring following the LRC taking over responsibility for the conciliation service. It is also the outcome which *a priori* was most likely to be achieved, as it is a process over which the LRC has most direct influence. However, even in this instance, the average annual settlement level of 72 per cent for the years 1991 to 1995 is below the comparable figure (72.6 per cent) for the years 1961 to 1970.

TABLE 3: DISPUTES AT CONCILIATION FOR THE REPUBLIC OF IRELAND: YEARLY AVERAGES FOR EACH DECADE

Time Period	Cases Average per annum
1946-1950	146
1951-1960	180
1961-1970	417
1971-1980	1,047
1981-1990	1,755
1991-1998	1,693

Source: Labour Court and LRC Annual Reports.

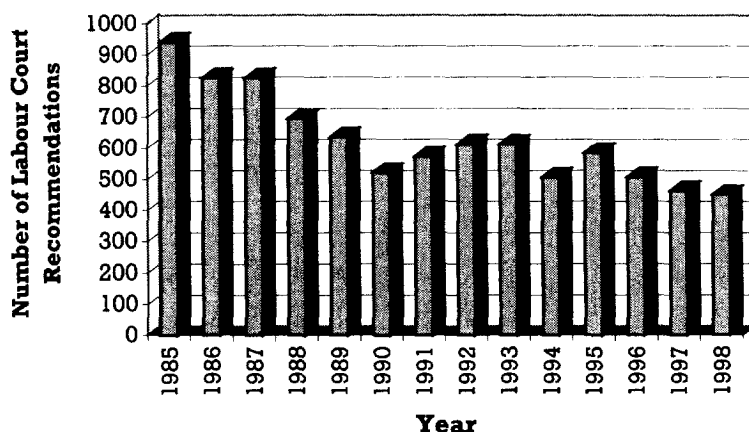
Return of the Labour Court to a "Court of Last Resort"

The term "court of last resort" can have a number of meanings. A purely technical meaning refers to the Labour Court being the final arbiter in a trade dispute and that cases heard by it should not be the subject of any further hearing by another body, other than the Labour Court, for example, by the LRC.⁹ A more fundamental meaning, in terms of the stated objectives of the Industrial Relations Act 1990, is that there should be a significant reduction in the usage of the Labour Court to resolve industrial disputes and that it should only be used as a last resort. Looking at the figures for cases referred to the Labour Court since 1985,¹⁰ there has been a discernible reduction in the number of recommendations being issued by the Court (Figure 1). The levels in the last few years have been around 450 to 600 recommendations per annum, relative to 900 to 800 in the years 1985 to 1987. The main reductions, however, occurred in the years 1987 to 1990. This would appear to have occurred because of a focus within

the Labour Court on reducing what was perceived as unnecessary reliance on the services of the Court combined with the development of consensus industrial relations with the Programme for National Recovery (PNR) in 1987.

In the years immediately following the foundation of the LRC, there was an increase in the number of recommendations issued by the Labour Court in the years 1991 to 1993, following an unusually low level in 1990. The reason for the increase in the number of Labour Court recommendations in 1991, while there was a reduction in referrals from conciliation, was mainly due to a high level of appeals from Rights Commissioners decisions (128), referrals by trade unions under section 20(1) of the Industrial Relations Act 1969 (97), cases dealing with complaints of a breach of Registered Employment Agreements (32) and referrals under section 67 of the Industrial Relations Act 1946 (177). The latter included disputes on which conciliation meetings had taken place prior to the establishment of the LRC and which were referred directly to the Labour Court by IROs (see Labour Court Annual Report 1991: 6).

FIGURE 1: NUMBERS OF LABOUR COURT RECOMMENDATIONS FOR THE REPUBLIC OF IRELAND (1985–1998) — EXCLUDING CASES UNDER ANTI-DISCRIMINATION (PAY) ACT 1974 AND THE EMPLOYMENT EQUALITY ACT 1977



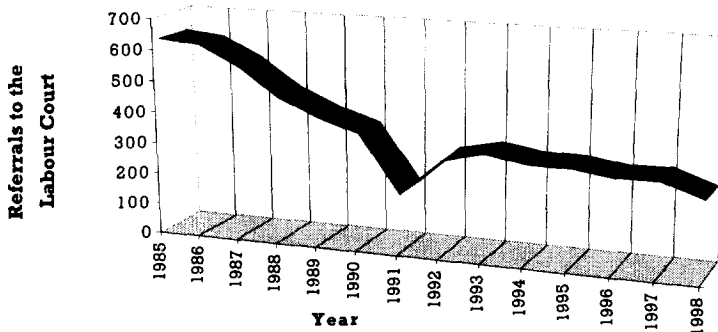
Source: Labour Court Annual Reports 1985–1998.

While a stated objective for the 1990 Act was a return of the Court to being a “court of last resort”, there was no specification, prior to the introduction of the 1990 Act, as to what level of usage was intended for

the Court. This raises the question as to what level of observed reduction in the number of annual cases being completed by the Labour Court would be sufficient to conclude that the objectives of the 1990 Act had been achieved? For instance, should there be a reduction to the annual average levels prevailing in the 1970s, which averaged 358; or a reduction to the level in the 1960s, which was 118; or 91, which was the figure in the 1950s (see Finlay, 1996)? Examining the current caseload of the Labour Court indicates that 1998 was the year with the lowest number of recommendations — a total of 451 — since the introduction of the 1990 Act (Figure 1). This is significantly higher than the annual average level in the 1970s.

Looking specifically at the number of referrals from conciliation to the Labour Court, we see again that the main reductions, with the exception of 1991, occurred in the years 1985 to 1990, a period prior to the LRC taking over responsibility for conciliation. It is apparent that referrals from conciliation have, with the exception of 1991, been relatively stable since the LRC took over responsibility for the conciliation service (Figure 2 and Table 4). Anecdotal reports from employer and trade union representatives suggest that in the first year of its operation the LRC made very strong efforts to achieve settlement short of the Labour Court and that these representatives came under strong encouragement to settle short of a Labour Court referral. From the evidence in Figure 2, it would seem that this had a purely short-term effect.¹¹ Furthermore, analysing the data for 1991 allows a comparison of Figure 1 with Figure 2 and Table 4, which shows that, despite the reduction in the number of referrals from conciliation, the number of cases dealt with by the Labour Court in that year actually increased compared to 1990 (Figure 1).

FIGURE 2: REFERRALS TO THE LABOUR COURT FROM CONCILIATION FOR THE REPUBLIC OF IRELAND (1985–1998)



Source: Labour Court and LRC Annual Reports.

TABLE 4: REFERRALS TO THE LABOUR COURT FROM CONCILIATION CONFERENCES, TOTAL CONCILIATIONS AND REFERRAL RATES FOR THE REPUBLIC OF IRELAND (1991-1998)

Year	Referrals to Court	Total Conciliations	Percentage Referrals
1985	629	2,021	31%
1986	617	1,892	33%
1987	556	1,787	31%
1988	464	1,571	30%
1989	409	1,450	28%
1990	368	1,552	24%
1991	187	1,880	10%
1992	305	1,935	16%
1993	336	1,844	18%
1994	315	1,551	20%
1995	314	1,692	19%
1996	296	1,487	20%
1997	298	1,588	19%
1998	255	1,563	16%

Source: LRC Annual Reports.

The Frequent Users Initiative and the Advisory Service of the LRC

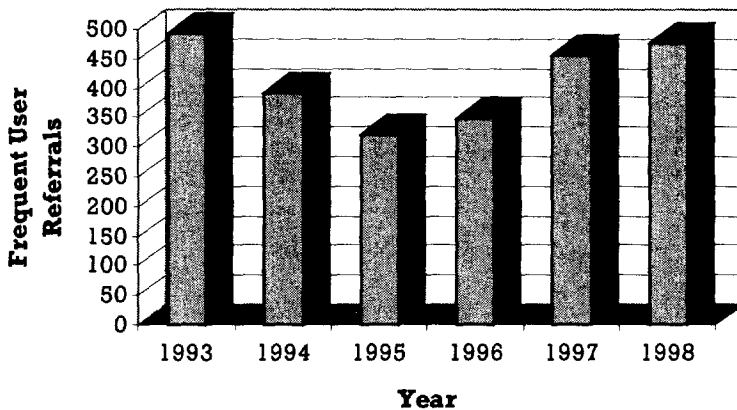
The introduction of the advisory service of the LRC was an innovative measure and had been suggested by a number of reports and industrial relations commentators (see Wallace, 1982). It was a much more substantial measure than those contained in the Industrial Relations Act 1969, where the renaming of the Conciliation Officers to Industrial Relations Officers (IROs) was intended to presage a more proactive role for those officers than they previously had. In the event, this initiative was stillborn and the role envisaged for the IROs failed to develop. The LRC, in its 1996 Annual Report, specified the aim of this frequent users initiative as being to:

- "Identify those organisations — employers and trade unions — which use the Commission's services frequently;
- Establish the reasons for such frequent use; and
- Recommend measures for the improvement of industrial relations, if necessary".

(Source: LRC Annual Report, 1996: 22)

The LRC reports that “a total of 148 frequent user organisations and associated trade unions have been identified since 1993” (LRC Annual Report 1998: 26). The trend for frequent user referrals to conciliation can be seen in Figure 3.

FIGURE 3: FREQUENT USER REFERRALS TO CONCILIATION FOR THE REPUBLIC OF IRELAND (1993–1998)

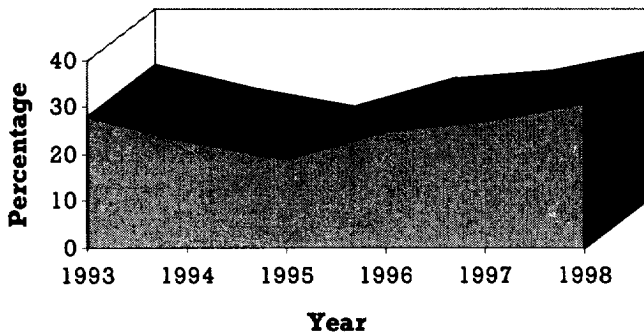


Source: LRC Annual Reports.

There was an initial decline in frequent user referrals between 1993 and 1995, but since then the numbers of these have increased. Looking at frequent user referrals as a percentage of total conciliation referrals (Figure 4), a similar pattern emerges. While the trend is roughly the same in Figures 3 and 4, the data in Figure 4 indicates that the 1998 results are actually a disimprovement on 1993 figures. The results of this analysis are indicative of difficulties in implementing the objectives underlying the Frequent Users Initiative of the Advisory Service. Firstly, the definition of a frequent user at “five referrals to conciliation in a six-month period” is now considered too blunt by the advisory service. Large organisations, such as Health Boards, might quite legitimately have five referrals to conciliation in a period without this being excessive. Secondly, it has not been found possible to achieve a reduction in the reliance on conciliation by a number of well-known frequent users. One such possibility is that the difficulties are structural and not amenable to exhortations by a third party (see Wallace, 1992). In fact, in recent years the advisory service has directed its attention away from the frequent users initiative towards mediation focusing on attempts to promote mutual gains bargaining (interview with LRC staff member, 1999). This parallels a similar de-

velopment noted by Kessler and Purcell (1993) who suggest that the Advisory, Conciliation and Arbitration Service (ACAS) in the UK have attempted to place more emphasis on "the processes of conflict resolution via joint problem solving and less on the provision of expert advice or the proffering of structured solutions" (Kessler and Purcell, 1993: 7). This has involved returning responsibility for addressing the problems to the individual employers and trade unions through the use of joint working parties (Kessler and Purcell, 1993: 7).

FIGURE 4: FREQUENT USER REFERRALS AS A PERCENTAGE OF TOTAL REFERRALS FOR THE REPUBLIC OF IRELAND (1993-1998)



Source: LRC Annual Reports

While there has been no systematic research on this new more sophisticated approach to the operation of the advisory service in Ireland, there are a number of well-known cases in which this approach has been used and trade unions and employers have expressed satisfaction with the results. This approach represents a shift in focus from the objectives underlying the Industrial Relations Act 1990, as it is targeted in nature, and because of resource demands, it can only be conducted in a limited number of companies. By prioritising in-depth involvement in mutual gains bargaining, the advisory service can only make a limited impact on any excessive reliance on third parties, an aspiration which underpinned the objectives of the institutional provisions of the Industrial Relations Act 1990.

Conclusions

The emerging evidence indicates that the objectives underlying the institutional provisions of the Industrial Relations Act 1990 have not been achieved or, at least, that any improvements cannot be attrib-

uted to the Act. Most of the evidence points to trends which were in place prior to the introduction of the Act and which have now levelled out. The most significant effect of the institutional changes associated with the Industrial Relations Act 1990 appears to be the higher settlement level at conciliation, but even this is over-stated by the published LRC figures.

While these findings could be taken as a criticism of the institutions, we do not take this view. The evidence can equally support an interpretation of an institutional framework, which has widespread acceptance and seems to work most of the time for the participants to industrial relations. We suggest that the more informed interpretation is that there were underlying limitations to achieving the objectives set down for the 1990 Act, in the institutional area. The stated objectives went against the single most significant development in industrial relations in the last 40 years — namely the greater proceduralisation of workplace industrial relations following the Donovan Report (Donovan, 1968).

As already pointed out, this proceduralisation involves both parties signing up to dispute clauses, which almost invariably require referral to a third party prior to any industrial action by either employer or trade union. Given the existence and normative support for such procedures among employers and trade unions, it is difficult to see how the objectives of the 1990 Act could be met through institutional measures. This is not to suggest that proceduralisation prevents any reduction in the reliance on third parties or that a continued rise in their usage is inevitable. As already noted, reduction in the usage of third parties has been achieved, but most of these predated the introduction of the 1990 Act. But the requirement for processing issues through procedures is likely to place some limit on the extent to which reduction in the usage of third parties is possible. Thus, the most that might be claimed for the Industrial Relations Act 1990 is that it may have cemented the trends, which were already underway from the mid 1980s.

References

Calmfors, L. and Driffill, J. (1988), "Bargaining Structure, Corporatism and Macro-Economic Performance", *Economic Policy*, No. 31, April, pp. 14–61.

Department of Labour (1986), *Outline of Principal Provisions of Proposed New Trade Disputes and Industrial Relations Legislation*, Dublin: The Department of Labour.

Donovan (1968), *Report of the Royal Commission on Trade Unions and Employers' Associations*, London: HMSO, CMND 3623.

Finlay, I. (1996), *The Labour Court: "... Not an Ordinary Court of Law"*, Dublin: Stationery Office.

Gunnigle, P. and Brosnan, K. (1999), *The Contribution of Collective Bargaining to Employment Creation and Employment Protection and to Competitiveness in Ireland*, Report to the International Labour Office, Geneva: ILO.

Horgan, J. (1989), "The Future of Collective Bargaining" in T. Murphy (ed.) *Industrial Relations in Ireland: Contemporary Issues and Developments*, Dublin: UCD.

Kerr, T. (1991), "Irish Industrial Relations Legislation: Consensus not Compulsion", *Industrial Law Journal*, Vol. 20, No. 4, pp. 240-257.

Kessler, I. and Purcell, J. (1993), "Joint Problem Solving and the Role of Third Parties: An Evaluation of ACAS Advisory Work", *Human Resource Management Journal*, Vol. 4, Part 2, pp. 1-21.

Labour Court (various years), *Labour Court Annual Reports*.

Labour Relations Commission, *LRC Annual Reports 1991-1998*.

Industrial Development Agency (1984), *Survey of Employee/Industrial Relations in Irish Private Sector Manufacturing Industry*, Dublin: IDA.

Organisation for Economic Co-operation and Development (1997), "Economic Performance and the Structure of Collective Bargaining", *Employment Outlook*, July, Paris: OECD.

Wallace, J. (1982), *Industrial Relations in Limerick City and Environs: Final Report of the Employment Research Programme*, Limerick: National Institute for Higher Education.

Wallace, J. (1989), "Procedure Agreements and their Place in Workplace Industrial Relations", in T. Murphy (ed.), *Industrial Relations in Ireland: Contemporary Issues and Developments*, Dublin: University College Dublin.

Wallace, J. (1992), *The Industrial Relations Act 1990 and other Developments in Labour Law*, Unpublished Paper Delivered to the Institute of Personnel Management (Mid-West) Workshop, University of Limerick.

Wallace, J. and Delany, B. (1997), "Back to the Future? The Irish Industrial Relations Act, 1990" in F. Meenan (ed.) *Legal Perspectives — The Juridification of the Employment Relationship, Proceedings of the Fifth International Industrial Relations Association European Regional Industrial Relations Conference*, Dublin: Oak Tree Press.

Wallace, J. (1999), *Collective Bargaining on Competitiveness and Employment: Investigating Employment Pacts, Final Report for the European Foundation for the Improvement of Living and Working Conditions*, Dublin, Unpublished.

Wilkinson, B. (1991), "The Irish Industrial Relations Act 1990 — Corporatism and Conflict Control", *Industrial Law Journal*, Vol. 20, No. 1, pp. 21-37.

Endnotes

¹ The main note of controversy arose from opposition to the establishment of two separate institutions which had the effect of depriving the Labour Court of direct responsibility for the conciliation service (Horgan, 1989).

² Equality Officers have since been transferred to the Department of Equality and Law Reform.

³ A survey for the Industrial Development Authority (IDA) (1984) found that in companies employing more than 50 workers "89% of companies studied had procedure agreements with the figure for unionised companies being 95%".

⁴ The emotive and value-laden term "wildcat strike", formerly an exclusively North American term, has even begun to make its way into the interviewing vocabulary of industrial correspondents in recent years.

⁵ The evidence for this assertion is somewhat tenuous. Although there was a quantum leap in the utilisation of third parties from the general level prevailing in the 1960s, to the general level of the 1980s, this seems to be best accounted for by the growth in workplace procedures. In the 1980s, the figures for conciliation conferences and Labour Court recommendations do not provide clear cut evidence to support a "loss of the art of compromise" hypothesis. Settlement levels at conciliation were already rising by the 1980s, relative to the 1970s (Table 1). The number of Labour Court recommendations was high in the early 1980s — peaking in 1983 at a level of 1,045 — and this may have been linked to the return to decentralised bargaining. From 1985, the number of recommendations decreased in every year up to 1990 (Figure 1).

⁶ It is, of course, necessary to deduct cases going to the Labour Court under the equality acts in order to exclude the effects of any increase in the workload of the Labour Court due to that legislation.

⁷ Since 1991, the LRC reports "referrals to conciliation" as a measure of the level of activity of the conciliation service. For the first time in the 1998 Annual Report of the LRC, which was published on 8 September 1999, a distinction is drawn between cases referred to conciliation and cases "in which there was active involvement by the service with the balance being dealt with by direct contact with the parties" (LRC, 1999: 19). The Labour Court, prior to 1991, reported disputes in which conciliation conferences were held. This introduces difficulties of comparison between the two sets of figures, which the authors have not yet been able to resolve. Standardisation of the figures to ensure direct comparability would leave the broad conclusions of the paper intact but could indicate a somewhat lower level of conciliation conferences since the LRC took over responsibility for conciliation in 1991. On the other hand, if cases withdrawn from conciliation were counted in the settlement rate reported by the LRC, then the settlement rate at conciliation since 1990 would decline on standardisation. Further refinement of the figures is necessary to resolve the queries raised by the reporting conventions.

⁸ This has the effect of overstating the extent of the resort to conciliation since 1990. However, this does not affect the general order of magnitude of the usage of conciliation and it is still possible to conclude that a high degree of utilisation of the conciliation service continues post the implementation of the Industrial Relations Act 1990.

⁹ The Labour Court and the LRC have signed a protocol, thus formalising this "court of last resort" aspect of the Industrial Relations Act 1990, to ensure that the Labour Court would be the final arbiter in cases.

¹⁰ The figures for conciliation cases and for Labour Court recommendations do not include third party intervention carried out by the private sector (LRC Annual Report 1996: 8). As such cases do not show up in the official figures, they underestimate the extent of third party intervention. Any substitution of the state mediation and adjudication services by private sector services, reduces the extent to which the objective of increased local settlements has been achieved and any reduction in Labour Court cases would be a hollow victory. Referring to the growth in private conciliators, the LRC (1996: 8) states that it is "concerned that this practice might, in the long term, diminish the value and effectiveness of the current dispute-settling process".

¹¹ An alternative explanation is that the settlement rate for 1991 included cases in which direct contact was made with the conciliation service but which did not proceed to a full conciliation conference.