

Part-Time President of the Special Educational Needs and Disability Tribunal

Damian McCormick.

Damian McCormick was appointed part-time Chairman of the Special Educational Needs Tribunal (SENT) in September 1997 and President of SENT which became the Special Educational Needs and Disability Tribunal (SENDIST) in February 2003.

When SENT came into operation on 1 September 1997 there were three appeals (September – December). In 2010 there were 58 Appeals. Currently SENDIST is comprised of 7 legally qualified chairmen and 27 lay members.

Damian has been in private practice as a solicitor for 27 years. The profile below is based on Damian's role as Chairman of a SENDIST tribunal and not his role as President which involves additional administrative and managerial duties.

What attracted you to this post?

I had no experience of law, as it related to children with special educational needs, nor did I have any particular experience of a personal nature of families with children having special needs.

Initially, as a lawyer, what appealed to me was the opportunity to acquire some experience working in a judicial capacity. In preparation for my interview I read a report on special educational needs (The Warnock Report) and developed a vague idea of the direction in which special educational needs was moving and also the principles that underpinned the reforms.

The passage of time has demonstrated some difficulty in realising many of the recommendations, set out in Baroness Warnock's report, but I found the principles on which the report was based to be important (possibly even inspirational) and worth pursuing. So an element of doing something that might help children and their families became as much of an attraction as solely an opportunity to gain experience.

Did you know about the role before applying?

I knew very little about the role of a SENDIST chairman and very little about what to expect. I had some limited experience in appearing in Industrial Tribunals and a lot of experience in the *regular* courts but no real Tribunal experience.

For me this was something new but the training offered, and the emphasis placed on the importance of ensuring fairness, particularly for unrepresented parents, helped to put this in context. I also had the opportunity to observe a hearing and that helped greatly in placing the training in context.

A lack of prior knowledge of, any particular judicial tribunal, is not a significant obstacle. This was a new tribunal at the time and its procedures and ethos was developing under the guidance of its then President, Mr Aidan Canavan, and with the input of the experience of our sister tribunal in England.

What is a typical day like?

Normally one full day is fixed for the hearing of one appeal. In advance of the hearing the two lay members of the particular tribunal panel and the chair are briefed with an appeal booklet containing the Appellant's statement of appeal and the Respondents' answer to that statement. The booklet will normally contain many detailed reports from expert witnesses for both sides. The appeal booklet requires careful reading and re-reading prior to hearing as the reports are invariably detailed and complex.

It is the chair's duty to identify the issues arising that need to be considered at the oral hearing. On the day of hearing the panel meets and holds a pre-hearing discussion to consider the issues identified and any other matters that the lay members consider relevant.

At the start of the hearing, the issues identified by the panel, are set out for the parties and the procedure is explained. The parties are then given a little time to withdraw to consider what the panel has said. The hearing proceeds and, within the constraints of a judicial forum, we endeavour to be as informal as possible. Often there is cross table discussion rather than more formal methods of giving and challenging evidence. At the conclusion of the oral hearing the parties are informed that a written decision will be sent to them as soon as possible but not later than 14 days.

The panel then holds a post-hearing discussion to settle on its decision and the reasons for this decision. It is the chair's responsibility to have the decision drawn up and approved by the lay members as an accurate account of what was heard and decided. This process can take some time and it is for that reason that the tribunal rarely gives ex tempore decisions.

A typical written decision will record the main arguments advanced by the parties, the opinions of expert witnesses, the findings of fact made and the reasons for the decision. In terms of all the evidence given orally and in writing this is not by any means an exhaustive document but is rather designed to demonstrate that the Tribunal has understood the parties' arguments and that it has explained the reasons for its decision.

Post hearing and decision, the chair may be called upon to consider applications from one or both of the parties for a review of the decision on limited statutory grounds and on rare occasions to state a case for appeal. So a *typical day* can last a little longer than an actual day given the necessary pre-hearing reading and post-hearing drafting.

How much support do you have?

The Tribunal has always had the support of a secretariat which has a complete and comprehensive knowledge of the statutes and regulations that apply to the Tribunal but in the past this secretariat came from the Tribunal's sponsoring Government Department and a lack of experience of matters relevant and of great importance to the functioning of a judicial tribunal did cause difficulty on occasion.

The Tribunal's recent move to the Northern Ireland Courts and Tribunal Service has allowed it to combine the knowledge of its existing administrative staff with the experience and support of the Service which has brought marked improvement.

What is the most challenging part of your work?

I find the most challenging part of my work is arriving at a decision the reasons for which I can describe and set down in writing in terms of the evidence heard and the relevant standard of proof. To a lawyer this might not sound too onerous a task but I would suggest that it can be for two reasons. First is the fact that the reports from expert witnesses are often detailed and complex and I am often hugely indebted to lay members for their elucidations. Second is the emotional context in which many hearings are conducted. It does not take much imagination to realise just how hard parents will fight for the interests of their children and how passionately they will argue for what they believe is the best provision for their child who may have severe learning difficulties.

It is very satisfying to find in favour of parents in those cases where the evidence and facts support such a finding. In other cases one may be completely satisfied that the decision one reaches is as correct as it can be in terms of the function of a judicial tribunal yet be obliged to reconcile this with the grievous disappointment experienced by parents and the faith and hope they placed on their case for their child.

What would you say to someone who was considering applying for this position?

Expect it to be challenging work and potentially time consuming. Do not expect polite, reasonable or understanding users. Expect hearings to be highly charged and emotive at times. Do not expect thanks or even understanding of a decision you have worked hard to arrive at. Expect the necessity to develop skills to efficiently conduct a hearing and to develop strategies to deal with any number of matters intent on frustrating the businesslike progress of a hearing. Do not make the mistake of allowing any form of prejudice cloud your judgement.

However, expect occasionally, to feel really good about the part you have played within the statutory regulations in the process of securing the best interests of a child with special educational need.

Is the role conducive to a good work/life balance?

SENDIST in relative terms does not have a large caseload. Chairs are not required to commit to any more than two or three hearings a month and hearings are scheduled well in advance, in consultation with the panel and its availability.