



## **Martin O'Brien**

Legally Qualified Member Appeals Tribunals  
and the Disability Appeal Tribunal

### Professional Background

Martin O'Brien has been a practising barrister at the Bar of Northern Ireland for 30 years, with a specialism in providing advice, assistance and representation in a wide range of Employment Law cases in the public and private sector. Until 2018, he was also an academic lecturer at the Institute of Professional Legal Studies.

### **What attracted you to apply for the role?**

I was attracted to the role because it allowed me the opportunity to take on a judicial appointment whilst also allowing me to continue to work in private practice without any conflict of interest.

### **What is a typical day like as a Legally Qualified Member ["LQM"]?**

It is essential to read the appeal submissions as soon as I receive them about 3 weeks before the hearing, to ensure there is no obvious conflict of interest and to discern if any of the parties to the appeal require special measures that compliant with ***Galo v. Bombardier Aerospace UK*** [2016] NICA 25 (for example, loop hearing assistance, frequent breaks, or an interpreter). Then, a few days before the hearing, I read the papers again and make detailed notes on the key facts and issues to be decided, and research any novel legal issues by reading legal commentaries and the latest case law on those issues.

On the day of the hearing, I will arrive at the location of the tribunal around 9.30am, settle in and then talk through the identified factual and legal issues with the other Panel Members (usually a Medical Member and a Disability Member/Specialist). We also discuss the Appellant's medical history, medical notes and records, or any facts and issues the Panel Members would like to discuss or explore, including all the issues raised by the other party to the hearing (always a department of government). The hearing will typically take at least an hour, but can last up to 90 minutes.

Many of the Appellants are not represented. At the start of each case the Panel Members introduce themselves, explain that the hearing is informal and inquisitorial, that the panel will ask questions but the witnesses are not compellable and do not have to answer them, and that we are there to provide each party with a fully facilitative hearing that respects the sensitive and confidential nature of the issues. It is also vital to ensure that any special measures are appropriate and in place before the hearing begins.

Normally, the tribunal will hear 3 cases in the morning and 3 in the afternoon, with a lunch break in between.

### **What are the biggest challenges you face in the role?**

The biggest challenge is the time pressure to deal with the quantity of cases that we are expected to process, whilst ensuring each case is dealt with properly, in a consistent manner, and that by the time the parties leave the Tribunal room each person feels they have had a full and fair hearing.

In my view, the Appellant in the last hearing of the day deserves the same degree of courtesy and professionalism and as the first person you saw that day. This can, at times, be challenging because you may have had a particularly long day of emotionally or legally demanding hearings. But, to ensure fair treatment for every Appellant, I strive to provide a consistent level of engagement and consideration throughout the day.

### **Which aspects of your professional experience have proven most useful when carrying out judicial duties?**

I would say the 30 years I have spent practising law has given me the training, instinct and persistence to continue an appropriate line of inquiry that leads to the revelation of the truth. To be successful in the role you need to probe and question in an appropriate manner why a statement in evidence or a representation has been made. Oftentimes, I have found that it is only with the most careful and delicate probing that you actually get to the truth.

Also, you have to be an active listener, whilst simultaneously recording a reliable note of the evidence (these Tribunals have not, as yet, had the benefit of electronic recording).

Working in private practice served me well because it gave me the opportunity to deal with people from all walks of life, and as a result I developed the strong communication skills that are needed in a role such as this. You have to be very empathic, patient, and facilitative with Appellants. We often deal with people with mental health illnesses, physical disabilities, learning difficulties, those suffering from grief, in severe financial distress, and from a broad range of cultural, ethnic or racial backgrounds. As in life, each person is different, with an innate dignity, and presenting with unique issues. That has to be respected at all times.

The key professional skill is recognising and accommodating difference whilst at the same time effectively explaining the purpose of the hearing, outlining the 'route map' of what will happen during the proceeding, and yet efficiently moderating the case to the end by keeping everyone focussed on the key issues and not getting side-tracked into irrelevant matters.

### **Is the job what you imagined it would be?**

I would say “yes” subject to the caveat that the work is much more legally intricate than I anticipated it would be. There is such a wide spectrum of benefits - each with their own criteria of entitlement. These criteria change all of the time, and require you to keep up to date with developments. Allied to this are the additional layers of complexity that are the common threads running through all judicial activity; what we do must be human rights compliant, must comply with the rules of natural justice for all parties to the appeal, and must accord with the law of the European Union.

For instance, in the last 9 months I referred one of my cases to the Court of Appeal on a devolution issue – so far as I’m aware the first time a Tribunal has engaged such a referral in Northern Ireland. The Court of Appeal effectively approved my reference to it, and held that the rules of entitlement to the benefit in question did not comply with requirements of the European Convention on Human Rights. This year I have referred another case to the Court of Justice of the European Union for an expedited ruling because we have passed Brexit day and there is a point of European Law to be clarified before the Tribunal can decide the appeal before it. I had to read the rules of procedure for the Court of Justice for the European Union, and ensure my reference complied with the complex procedural requirements against a daunting time boundary. Working at that level of judicial activity is challenging but deeply professionally stimulating.

### **Would you recommend a judicial role to others?**

Without a moment’s hesitation, I recommend a judicial role. At times the work is incredibly complex but also profoundly invigorating on both a professional and human level. I have had to draw on all of the legal and interpersonal skills I have gained in the 30 years I have spent working as a lawyer. The role is not for the faint hearted – it requires you to work hard. But it is intensely rewarding.

Of all of the work I have done in the last 30 years, this is the work I have loved most because it draws on so many aspects of my professional life, my personality, and my understanding of human nature. More importantly, the work we do has a direct impact on people’s lives, and who would not feel a keen sense of fulfilment to see another’s whole life or circumstance changed for the better?

### **Do you have any advice for those considering applying for judicial appointment?**

I think this is a great role for someone considering a full-time or part-time judicial career in the future. It is something that should appeal particularly to lawyers, medical practitioners or those with specialism in the disability sector who are considering embarking on a judicial career. It is a wonderful forum in which to practice and hone judge-craft. If you can properly deal with the legal and factual complexities we encounter in Tribunals, that experience will serve you well for the rest of your career – wherever it may take you.

Furthermore, a judicial role such as this provides you with the opportunity to experience working with, and on occasion, challenging other Panel Members in a respectful way. After a hearing the Panel Members discuss the case. You have to listen as intently to the Panel Members as you did evidence and

submissions you have heard in the course of the hearing. As a team you have to arrive at a unanimous or majority decision. Likewise, I have to be open to the Tribunal members when they challenge me to explain why I have arrived at my decision. That process of discussion requires clarity of thought and is the essential fundament to writing the reasons for the Tribunal's decision.

The role gives an invaluable opportunity to acquire active listening, recording and team working skills.

I would also like to say that should you not be successful upon first application, then do not conclude that you are not appointable. The process can deter subsequent applications. Follow your dream. Keep applying until you achieve your goal. Don't give up if you are not appointed first time round!

### **Is there a lot of support in the role?**

There is undoubtedly a great deal of support. At the risk of sounding immodest or bombastic, I'd say each Tribunal member is passionately committed to the principle of delivering justice.

I *love* doing this work, and I have formed firm friendships with the people I have met whilst carrying out the role. There is an enormous amount of camaraderie amongst LQMs, the medical members, disability members, and the administrative staff from The Appeals Service. Underpinning all our work is an ethos of solidarity and team-work to serve the public to the best of our ability. That spirit can leave a lasting impact on the lives of the people we encounter: in the acknowledgement section of her book, *Milkman*, the 2018 Man Booker Prize-winning author Anna Burns thanked;

...the Housing & Council Tax Benefit system; the Department of Work and Pensions System; the First-Tier Tribunal Social Entitlement Chamber (of HM Courts & Tribunals Service), Brighton, consisting of Dr R.D.S. Watson and Judge A.J. Kelly, also the gentle, soothing usher whose name, sadly, I never knew...

The training for the role is marvellous. John Duffy is a very understanding, responsive and supportive President of the Appeals Tribunals.

I regard it is a 'tribunal family'. I never feel isolated or alone. It is a very close-knit family of judges who may professionally disagree on an issue, but rarely – if ever - personally disagree about anything. We all get on so well and keep in constant touch with one another. It is very reassuring to know that you can call upon any number of colleagues for advice or support without ever compromising your judicial independence.

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