

Speech by Judge William Hamill (Judge of the District Court) at the launch of the Law Reform Commission's [Report on Search Warrants and Bench Warrants](#). The launch was held at the Bar Council's Distillery Building on Wednesday 9th December.

President, Commissioners, Colleagues, Ladies and Gentlemen,

I would like to thank the President for his kind invitation to launch this Report this evening.

I was honoured to be asked although I have to say in my more realistic moments it occurred to me that the lack of interest in these areas of law and the practicalities surrounding same may have had something to do with it.

It is indeed encouraging that the Law Reform Commission continues to throw light on areas of law crying out for reform that cannot be described as high profile or to use a modern expression "sexy".

I don't intend parsing and analysing the Report but here it is and I urge you to read it (or at least the recommendations).

It is well researched, well presented, thought provoking, a breath of fresh air and is deserving of a fate other than being put on a shelf somewhere and forgotten.

All involved are deserving of congratulations.

The myriad of legislation regarding search warrants, the variety of forms, the different levels of evidence to be applied that currently generate volumes of case law illustrates the need for reform.

One practical area concerning search warrants involves the principle that judges must administer the law in public and therefore a District Court Judge must go to a Courthouse to hear an application for same.

However, since the passing of section 20 of the *Criminal Justice Act 2009*, these applications are required to be "otherwise than in public".

There may or may not be advantages in going to a Courthouse and there may be disadvantages.

ADR may or may not be available and as pointed out in the report for practical reasons most are done in chambers.

A clear Statutory provision empowering applications to be made anywhere would have a beneficial effect regarding for example availability and speed.

There would, of course, always be a need for the Judge, the Registrar and the Applicant to be present.

District Court Judges are on duty 24 hours a day, 7 days a week, 52 weeks a year.

Since the passing of the *Criminal Justice Act 2006*, section 180, any Judge, anywhere, can deal with a search warrant application for anywhere, provided they are assigned to the District Court District in which the search is intended to be carried out.

There are currently 20 Moveable Judges scattered throughout the country assigned to all Districts as well as the judge or judges assigned to each District Court District and they in turn are assigned to their neighbouring Districts.

And so to bench warrants and fines warrants.

... what can I say about them and the need for reform.

Well there are certainly a lot of them – unexecuted and unexecutable.

I am conscious that I should not bury you in statistics to the extent that everything gets lost in the figures...including your interest.

But a few headlines - there were last month 36,399 unexecuted bench warrants for failing to appear in Court on CCTS including 3049 in respect of what are called drink driving offences.

There were also 211,715 unexecuted fines warrants (including 7951 in respect of drink driving offences) and 44,901 in respect of other Penalty Point Offences.

All constituent parts of the recent statistics regarding drink driving offences that have been in the News but not specifically referred to.

One wonders why they are not mentioned by the Road Safety Authority and the Department of Transport as matters that would rightly concern them.

There have also been in the 6 months from May 2015 in the DMD alone 3686 warrants of all descriptions cancelled and not executed (including 57 fines warrants for drunken driving).

The decision in Elaine Walker and the Commissioner of An Garda Síochána 2012 has led to a tsunami of applications for cancellations in respect of warrants not dealt with where the defendant has had dealings with the Gardai subsequent to the warrant or warrants issuing and it or they have not been executed.

Two areas crying out for reform and which contribute hugely to the number of unexecuted and unexecutable warrants are the procedures around the registration of motor vehicles and those categories of Offences prosecuted by bodies other than An Garda Síochána whose servants and agents have no power to seek and obtain proof of identity.

Motoring offences are involved with 10,512 of the unexecuted bench warrants and 132,009 of the unexecuted other warrants.

A person can register and tax a motor vehicle without proof of identity or any evidence of any connection with the address provided.

Apart from false registrations people change address but do not alter their particulars in the motor tax office.

Companies are struck off the Companies Register but the vehicles remain registered in the former company name.

Two examples:

I recently cancelled over 20 warrants in the name of a company struck off in 2006 that had accumulated between then and 2014.

I also cancelled over 20 warrants in an individual's name, who could not be traced, where approximately half the warrants provided for imprisonment in a female prison and the remainder in a male prison in default.

Such fundamentals as a date of birth and the gender of the person weren't known.

A birth certificate or PPS number or proof of existence on the Register of Companies on registration and evidence of connection with the proffered address akin to what has to be done to open a bank account for even a child would improve the situation beyond recognition.

Not many people have the same name and date of birth.

These problems as can be seen from the figures I have given effect not only non intervention cases e.g. speeding but also where Gardaí have interacted with the defendant but when Gardaí attempt to execute a fines warrant usually more than a year after the date of offence the only particulars available are those contained in the Motor Registration Office.

Amazingly even when the Garda cannot execute a warrant it is not the practice to notify the Motor Registration Office in the hope that the person cannot go on re-taxing the vehicle with at least misleading particulars which they have to do to avoid having it seized, as untaxed, but which enables them to commit various offences without ever having to pay a cent or serve a day, or indeed suffer any penalty points with the resulting consequences.

The current situation is a waste of time and money involving the Gardai, the Court Service and the Judiciary dealing with prosecutions which on many occasions are pre destined to lead to nothing. With the additional loss to the State in respect of the unpaid fines.

Precise examples are few and far between, however, for example prior to 1998 when approximately 30,000 warrants were cancelled it was estimated that approx 6 million was lost to the State.

In 2013, The National Roads Authority wrote off €1,710,000 in respect of unpaid tolls alone on the M50 in one year 2012 incurred by Irish registered vehicles.

Recent figures from the Garda Inspectorate in respect of unserved summonses, 93,500 in 2011/2012 estimated a loss of revenue of €7.4 million.

If either traced immediately or after some effort it is not unusual among a certain category of defendants to refuse to pay the fines as they know that if lodged in prison they probably will be released from custody immediately or within hours.

On occasions, quicker than the time it takes to complete the formalities by the Gardai lodging them.

If, as is unavoidable on occasions, it is after midnight, the Prison Authorities often refuse to admit them.

Recent announcements regarding long term plans taking 3 years and costing 4 million euro – subject to the development of a detailed business plan will address issues for those who do exist and can be traced.

How, if at all, it will deal with all the categories is not stated.

Whose licence will be matched when there is no match or multiple matches?

The address on the driving licence may be 9 years out of date etc, etc.

For all the above reasons the Commissions' recommendations re unpaid motoring fines are uncontestable and will be efficient and effective.

The second category I referred to is best illustrated by the fact that only in approximately one third of cases prosecuted by An Post for no TV licence in the DMD is any fine collected most are cancelled... 750 in the last six months.

One foreign student who appeared in Court explained to me that he didn't know he needed one; the system was different in his country.

He had looked it up on the internet and the advice on one site was to give a false name as there was no power by the Inspector to obtain identity.

Over the years there have been many proposals but they have come to nothing.

In all these matters the honest are dealt with and the dishonest or least very careless usually escape. Everyone works in their own area and there is a lack of joined up thinking and of an overview.

This Report rightly refers to technology and these subjects are crying out for it.

In the case of the DDP v Shane Dunne 1996 – High Court - unreported the late Mr. Justice Paul Carney stated “in the future there will, no doubt, be in place a computerised system whereby the applicant’s appearance in Court would automatically trigger the activation of any warrant outstanding against him.”

It is now almost 2016 and we do have two computerised systems PULSE - the Garda system and CCTS- the Court Service system but unfortunately it has not led to the action envisioned.

If anything it has assisted the cancellation rather than the execution of warrants.

There are many long standing but urgent issues surrounding all warrants.

The delay in issuing warrants, the availability of warrants, the transporting of warrants, the necessity again to move prisoners from one prison to another at vast expenses to lodge warrants, the inability to lodge warrants when the prisoners are in the custody of Prison Officers in Courthouses.

All these matters would benefit from technology.

They are crying out for reform and are mostly governed by laws from the mid 18th hundreds.

Your next project perhaps?

Thank you, I have detained you too long.

END