

Tribute to Mr Justice Peter Charleton

Delivered by Mr Justice Donal O'Donnell, Chief Justice, in the Supreme Court on 27 March 2026

Welcome and Opening Remarks

I would like to welcome all the family, friends and colleagues of Mr Justice Peter Charleton to the Supreme Court today for his final official sitting as a Judge. In particular, I would like to welcome Peter's family, his sister Georgina, his wife and our friend Fiona, their children Clara, Anna-Rose and Maitiú, and last but by no means least, Peter's grandson Eli.

In years to come when legal historians are scouring old Supreme Court social media messages for some clue as to the evolution of the thinking of Mr Justice Charleton, they will be surprised how many messages are photos of Eli.

I would also like to particularly welcome Annick McDermott, wife of Peter's devil and great friend Paul Anthony McDermott, whose forceful advocacy illuminated this courtroom and many others during his too short career. Finally, I would like to welcome Mr Justice Fred Morris joining us remotely from his home. Even a quarter of a century on, the knowledge that we are appearing before Mr Justice Fred Morris makes everyone sit up a little straighter in their seats.

You are all very welcome.

A Momentous Day

Today is a truly momentous day in Irish legal history. It may be the first example in almost 20 years of a judicial career and a 47-year legal career of Peter Charleton being persuaded to change his mind. Since becoming a judge, Peter has maintained that like General de Gaulle, he would like to quietly slip away without any monument or record. His prodigious work ethic is matched with his dislike of fuss. Left to his own devices, I think Peter would

have chosen to spend this morning fitting in one or two last AFLs¹, putting the final touches to an article for the Cambridge Law Journal and playing classical music. But in the end, he recognised the truth of John McGahern's observation that rituals are important in marking life events, and he has been prevailed upon to permit a few words to be said to mark the end point of a remarkable judicial career. But I should warn everyone here that we are all on the clock, and Peter will expect us all to be back at work and indeed to make up for any court time lost.

Origins and Early Life

A conventional account might start with Peter's birth almost exactly 70 years ago in Dublin but that would risk being boring, and as Peter has said on a previous occasion, the worst sin is to be boring.² In any event, I am not sure that Peter did anything as conventional as being born: it wouldn't surprise me if, like the Goddess Athena he had sprung straight from the forehead of Zeus fully-grown wearing a full suit of armour, speaking Greek, playing music, and issuing judgments in impenetrable 8 point Garamond. So, a starting point which is perhaps truer in psychology than in chronology, is the early part of the 20th century in Belfast.

Family History

It is a sign that partition was not just physical but also psychological, that so little is known in Irish history about the events of 1922 in Belfast. In what was to become the Free State, that was a period of uneasy peace, but in Northern Ireland, and in particular in Belfast, there was an epidemic of sectarian violence, the brunt of which fell on the Catholic community.

¹ Applications for leave to appeal to the Supreme Court.

² Declan Budd and Ross Hinds, *The Hist and Edmund Burke's Club: An Anthology of the College Historical Society, the Student Debating Society of Trinity College Dublin, from its Origins in Edmund Burke's Club 1747-1997* (Lilliput Press, 1997) 385.

Charleton is one of those unusual names in Northern Ireland, in that it does not immediately announce its tribal allegiance and might force you to ask the second question in any conversation 'where did you go to school?' But Daniel Charleton was by the standards of his time a relatively prosperous Catholic in Denmark Street in North Belfast with his family of 11, and was a publican. One of the worst incidents in what was known as the Belfast Pogrom, occurred less than a mile away, when a very similar family, the McMahons, also Catholic publicans, were attacked and murdered in their own home. The immediate aftermath was that almost 8,000 people left Belfast, becoming refugees and moving south to make a new home: among them the entire Charleton family. Many of those who came south to start a new life had a fierce work ethic and developed a very strong sense of loyalty to the New State and real patriotism, and that is certainly something that Peter acquired through his family. Peter's father John came first in history in his Leaving Certificate, a feat equalled by Peter's son Maitiú. It was Peter's own misfortune that he did the Leaving at a time where misplaced egalitarianism had temporarily abolished the system of ranking people in particular subjects, otherwise there could have been a real 'triple crown' of achievement.

Education and Trinity College

It is part of the function of an event like this to reveal something hitherto unknown about the subject of the celebration. In 1975 a key event occurred in Peter Charleton's life: he did not just go to university — he went to TCD. I don't know how you could be expected to know that, but the reverential tones with which he informs anyone who will listen of his newly acquired @tcd email might be a clue. But since we are on the clock, I will save time by taking the traditional jokes as read and leave for another day the integrity of that local squabble.

The mid-1970s were a very exciting time to go to Trinity. Peter's generation was part of an important development in Ireland's social history. The great literary scholar and social and cultural historian, Professor Terence Brown, wrote that the election as Provost of the great historian F.S.L. Lyons marked a significant turning point in the history of the

University.³ It was, he said, a sign that the college was opening out to Irish society and that Lyons was determined to make it clear Trinity would take its place as a university for all.⁴ And that was something particularly important for somebody like Peter with his strong sense of patriotism and attachment to Irish language and culture. It is hard to think that he would have been comfortable at Trinity say 20 years earlier.

Peter became a star of the Law School, and in due course Auditor of the Hist.⁵ I do remember a thin young man in a long, long overcoat with a taste for dramatic entrances, and a sonorous almost sepulchral voice that captivated the audience. It was clear even to a visitor that he was recognised as a star.

Early Legal Career

Peter came to the Bar in 1979 and immediately developed a strong practice, both civil and criminal. But, unusually for those times, he also showed an immediate facility for academic study and writing. I think his first article was published a year later in 1980, prophetically on the topic of improperly obtained evidence and the Constitution.⁶ But perhaps even more remarkably, in 1986 when he already had a very busy practice, he took up the Reid Professorship of Criminal Law in Trinity, which is a professorship designed to be held by a practising lawyer, but rarely by a practitioner as busy as Peter was then.

Peter's practice at the Bar involved prosecuting some of the most significant criminal trials in the history of the State but he managed to combine that practice with an extraordinary range of publications, firstly of scholarly articles, then of the first and leading book on the Misuse of Drugs Acts 1977 to 1984⁷, subsequently a book on the Offences Against

³ Terence Brown, *Trinity Tales: Trinity College Dublin in the Seventies* (Kathy Gilfillan ed, Lilliput Press 2011) xii.

⁴ *ibid.*

⁵ College Historical Society, Trinity College Dublin.

⁶ Peter Charleton, 'Improperly Obtained Evidence and the Constitution – The Rule in O'Brien's Case (1965)' (1980) 74 *Law Society Gazette* 169.

⁷ Peter Charleton, *Controlled Drugs and the Criminal Law* (An Cló Liúir 1986).

the Person Act,⁸ and then successive editions of the magisterial *Charleton, McDermott and Bolger on Criminal Law*.⁹ All these books are written with admirable clarity, and technical excellence. In 2006, just as he was appointed a Judge, he published a book, *Lies in a Mirror: An Essay on Evil and Deceit* which contains really fascinating and thoughtful reflections on evil in the world.¹⁰

One thing that was apparent even then was that Peter did not subscribe to conventional groupthink about the criminal law, or the roles of prosecutors and defendants. And if he considered that at times the law did not strike a fair balance between the rights and interests of victims, and those of persons accused of crime, then he said so. But he was equally hard on Gardaí who tried to bend the rules, and he was one of the reasons why the Morris Tribunal was such an efficient exposé of years of malfeasance in Donegal.

High Court Appointment

After serving as counsel on the Morris Tribunal he was appointed to the High Court in 2006. It might have been expected that with his wealth of experience and his academic record, he would have settled into becoming a key member of the judiciary in the Central Criminal Court. Instead, he took the course of sitting in the Civil Courts, and particularly the Commercial Courts, where he mastered some really difficult and technical legal issues, such as that raised by the long drawn out and hard-fought pyrite litigation, and he presided in a number of complex pharmaceutical patent cases, which probably present the maximum technical difficulty and the most complex law. But he also relished dealing with issues of criminal law and his brave decision in *DPP v Cash*¹¹ was the forerunner to the major change which occurred with this Court's decision in *DPP v JC*.¹² And if this was not enough, in addition to mastery of detail, he also developed a deserved reputation for the speedy production of judgments.

⁸ Peter Charleton, *Offences Against the Person* (Round Hall Press 1992).

⁹ Peter Charleton, Paul A. McDermott and Marguerite Bolger, *Criminal Law* (Tottel Publishing 1999).

¹⁰ Peter Charleton, *Lies in a Mirror: An Essay on Evil and Deceit* (Blackhall Publishing, 2006).

¹¹ [2007] IEHC 108.

¹² [2015] IESC 31, [2017] 1 IR 417.

Supreme Court Career

He was appointed to the Supreme Court in 2014. Over the last 11 years, he has shown himself capable of writing judgments on all topics that come before this Court. But his role in this Court has allowed him to return to his area of first expertise and write a number of very significant judgments for the Court to clarify the criminal law on the defence of provocation in murder, self-defence, and the use in evidence of information obtained from mobile phones and personal computers. But while this mountain of judgments is an impressive achievement in its own right, I would suggest that with his taste for icons and iconoclasm, you can perhaps learn most about his approach to the task of judging from his dissenting judgments. Peter has dissented, and sometimes been the lone dissenter in a seven-person court, in some of the most important cases in recent times, such as *Costello v The Government of Ireland*,¹³ *Dwyer v Commissioner of An Garda Síochána*,¹⁴ and *Heneghan v The Minister for Housing and Ors*,¹⁵ and he wrote one of the dissenting judgments *Zalewski v Adjudication Office and Ors*.¹⁶ He was the *ad hoc* judge in the European Court of Human Rights in *O’Keeffe v Ireland* and, true to form, delivered his own thoughtful dissenting judgment.¹⁷

The Value of Dissent

A famous quotation about the value of dissent which we like to comfort ourselves with in the Supreme Court is that of Charles Evans Hughes, the Chief Justice of the US, who said that: ‘[a] dissent in a court of last resort is an appeal to the brooding spirit of law, to the intelligence of a future day.’¹⁸ But as a matter of fact, there are relatively few dissents which are triumphantly vindicated in a later case, and if that was the only value of a dissenting judgment then a lot of ink has been wasted in other cases. The value of the

¹³ [2022] IESC 44.

¹⁴ [2020] IESC 4.

¹⁵ [2023] IESC 7, [2023] 3 IR 419.

¹⁶ [2021] IESC 24, [2022] 1 IR 421.

¹⁷ (2014) 59 EHRR 15.

¹⁸ Charles Evans Hughes, *The Supreme Court of the United States* (Columbia University Press, 1928) 68.

dissent is not merely that it might one day persuade some future court. Most dissents are probably wrong. The value of a dissent, whether right or wrong, is in the present, not in the future. The poet and lawyer Archibald MacLeish came closer to it when he said that 'the dissenter is every human being at those moments of his life when he resigns momentarily from the herd and thinks for himself.'¹⁹

Every collegiate court needs consensus builders, needs people who ruminate and sometimes reconsider their initial views, discuss and adjust and compromise, but a court also needs those who think completely for themselves and deliver their judgments, whatever the consequences. That is sometimes a real benefit to the rest of the court in having their thinking and perhaps their assumptions challenged. It would be easy to say that Peter was fearless in the delivery of his judgments whether dissenting or a majority, but in truth I don't think he found it difficult at all. One of his strongest features is that he simply comes to his own analysis, sets it down and moves on.

Tribunals and Judicial Education

While a member of the Supreme Court, Peter returned to the field of garda malpractice and took on the very onerous obligation of chairing the Disclosures Tribunal, and produced a report very speedily.²⁰ And in the last three years, he has taken on the role of the judge responsible for judicial education. It was originally understood that the judge taking on that role would be expected to devote half their time to that, and that they therefore should only be assigned by their president work representing roughly half the normal traditional workload. Peter took up the role, threw himself into it and produced a number of significant innovations. The 'Green Street Lectures' are now an established feature on the judicial calendar. But it was impossible for me or any other Chief Justice to keep up our end of the bargain: Peter kept volunteering for work and sometimes volunteering to

¹⁹ Archibald MacLeish, 'In Praise of Dissent' *New York Times* (New York, 16 December 1956).

²⁰ Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters *First Interim Report* 2017.

help out in the Court of Appeal and latterly the High Court even when producing a stream of bench books for circulation to other judges in all jurisdictions.

During all this time when driving himself very hard and expecting the same work ethic from others, he built up a strong rapport with his judicial assistants and their loyalty to him is very clear. One sign of Peter's thoughtfulness is that he made a practice of publishing learned articles jointly with his judicial assistants giving those that were interested in academic publishing a start and, if not, a useful entry on their CV. Peter revived and restored the Irish Judicial Studies Journal and turned it into a well-respected publication containing an invaluable mix of academic and judicial writing, a significant portion of which, as you might by now have guessed, was produced by Peter himself.

Legacy

I said at the outset that the Charleton name can be traced back to the North, and to both communities there. And in truth there's always been I think something of the flinty principled Presbyterian with a sometimes-biting sense of humour in Peter, maybe mixed with some Clint Eastwood in *Gran Torino*. And I think then of the great poem by John Hewitt published in 1972, when once again, violence was flaring in Northern Ireland. In his poem, *Neither an Elegy Nor a Manifesto*, the poet repeats the haunting refrain: 'but ... bear in mind these dead'. It's easy to be dazzled by the output, the knowledge and the varied interests (and I haven't even mentioned music), but it would be a mistake to miss the sensitivity. I think in his career it can be said that Peter, more than most, bore in mind the dead, the injured, the wounded, the hurt, the poor and those struggling with debt, and tried to make the law more sensitive to them. He did it all with a fierce sense of patriotic duty and some sardonic humour. And as John Hewitt says in the poem: '[p]atriotism has to do with keeping the country in good heart, the community ordered with justice and mercy'. If that is a definition of true patriotism, and I think it is, it is one that Peter Charleton has lived up to.



Conclusion

It was in his entry in the bicentenary history of the Hist, that Peter wrote that the only sin is to be boring²¹ – well he needn't have worried, it has been brilliant, it has been exciting, and sometimes a roller coaster, but it has never been boring. And given his energy, ability and interests none of us think this is the end or the beginning of the end – like a good singer Peter is just pausing for breath.

²¹ Budd and Hinds (n 2).