

Fitz the bill

The *Gazette* talks to Justice Minister Frances Fitzgerald about legal services reform



Mr Blue Sky

Sole practitioner Kevin O'Higgins on what it means to be Law Society president



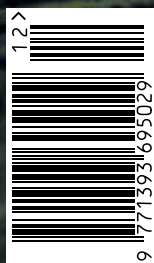
Apocalypse cow!

The *Finance Bill 2014* has introduced key changes to agricultural taxation

gazette

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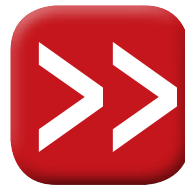
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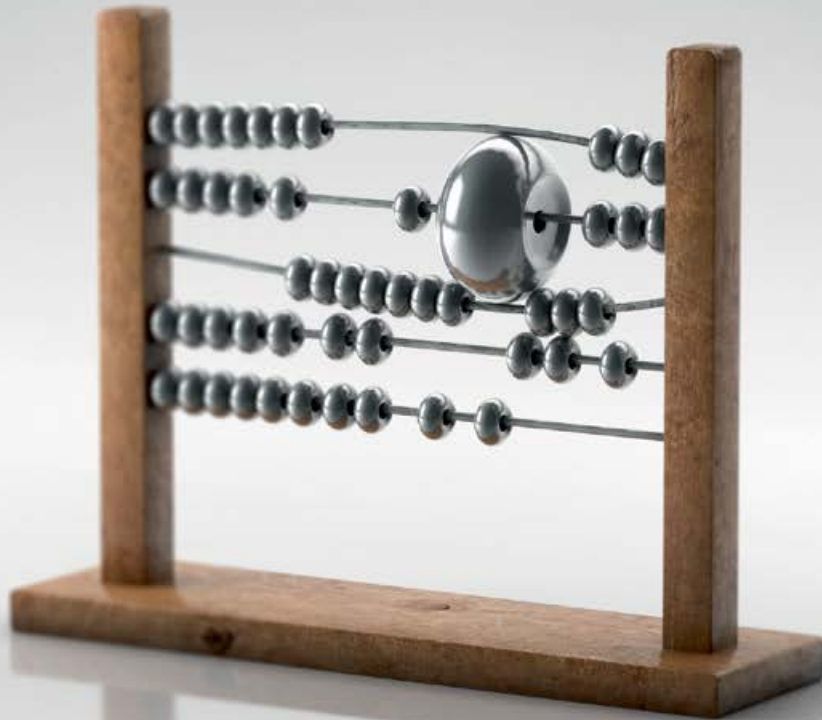
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Law Society Gazette

Volume 108, number 10

Subscriptions: €60/€90

Editor: Mark McDermott FIIC

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Printing: Turner's Printing Company Ltd, Longford

Editorial board: Michael Kealey (chairman), Mark McDermott (secretary), Mairéad Cashman, Paul Egan, Hilary Forde, Richard Hammond, Mary Keane, Aisling Kelly, Teri Kelly, Tracy Lyne, Patrick J McGonagle, Aisling Meehan, Heather Murphy, Ken Murphy, Andrew Sheridan



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nationwide

News from around the country



Keith Walsh is principal of Keith Walsh solicitors, where he works on civil litigation and family law cases

GALWAY

Colleagues remembered

Galway solicitors turned out in force for the annual remembrance mass for deceased members of the legal profession, Courts Service and judiciary of Galway city and county, held in Galway Cathedral on Wednesday 19 November 2014. The service was organised by Colman Sherry, president of the South Galway Bar Association.

MAYO

Mayo gets ready

Mayo Solicitors' Bar Association president Brendan Donnelly faced his first big speechifying test at the association's annual dinner in Westport on 6 December.

The Mayo event is long established as one of the leading bar association dinners outside the capital and attracts guests from all over Ireland, Northern Ireland and further afield. Law Society President Kevin O'Higgins was one of many distinguished guests.

CORK

An offer you can't resist!



At the recent Southern Law Association CPD seminar were (l to r): Sean Durcan, Joan Byrne, Michael Powell, David Curran and Bill Holohan

Holohan Law is offering bar associations around the country their expertise for CPD events – free of charge. They simply ask that bar associations make a donation to a charity of their choice.

Bill and his colleague David Curran (who is a member of the Law Society's PII Committee) have been running seminars between them on 'Purchasing in insolvency situations from a purchasing solicitor's perspective', 'Bringing

a professional negligence action on behalf of your client', and 'Claiming indemnity under your professional indemnity policy'.

To date, they have spoken at events organised by the Southern Law Association, West Cork Bar Association, Killarney Solicitors' Association, Kerry Law Society, Limerick Solicitors' Bar Association, and Clare Bar Association.

Bill can be contacted at reception@holohanlaw.ie.

And in other news, 'bar associations' aren't what the layman might think

The Cork Family Lawyers' Association began Christmas festivities early with an event on Friday 28 November 2014 in the misleadingly titled 'Sober Lane'.

The annual Cork Bar charity cheese-and-wine reception takes place between 6pm and 8pm on 11 December 2014 at the Courthouse, Washington Street. The charities that will

benefit from this year's event include Cork Simon Community, Marymount Hospice, Cork Life Centre and Cuanlee Refuge. Tickets for the event are priced at €15 each and will be available at the door.

At the recent Southern Law Association AGM, Peter Groarke (Ronan Daly Jermyn) was elected president. We wish him well in his term.

DUBLIN

Numbing November

November was a bad month for Dublin solicitors, with the profession saying farewell to Michael D Murphy of the Attorney General's office and former DSBA president. Michael spent many years in private practice before joining the AG's office. Also, Vincent Crowley, partner in Collins Crowley, passionate advocate and peerless heckler, passed away unexpectedly. Michael and Vincent will be sadly missed by colleagues and friends all over the country.

Nominees for the DSBA's Law Book of the Year Awards 2015 have just been announced. Among the nominees are Prof Wylie for his latest volume on *Landlord and Tenant Law*, former solicitor and now practising barrister Frances Meenan for *Employment Law*, Neville Cox and Eoin McCullough SC for *Defamation Law*, Declan McGrath for the second edition of *Evidence*, Bláthna Ruane, James O'Callaghan and David Barniville for *Law and Government*, a tribute to Rory Brady, and John Deeney for *Registration of Deeds and Title in Ireland*.

This year sees two nominated books dealing with judgments – *Summary Judgments in Ireland: Principles and Defences*, by Pat Barrett (Bloomsbury) and *Enforcement of Judgments*, by Sam Collins (consultant editor: Declan McGrath, Roundhall). Dr Mary Donnelly and Dr Fidelma White are nominated for *Consumer Law: Rights and Regulations*.

Nominees returning from last year include members of the Arthur Cox employment law group with its annual *Employment Law Yearbook 2013*. Karl Dowling has teamed up with Suzanne Mullally and Brendan Savage to produce the second edition of *Practice and Procedure in the District Court*.

representation

News from the Society's committees and task forces

IN-HOUSE AND PUBLIC SECTOR COMMITTEE

In-house solicitors and the right of audience

In-house solicitors holding a practising certificate can issue proceedings on behalf of their employer. They can either go on record in their own name, the name of the senior solicitor in the organisation or, if the individual practises under a business name, then under the business name, provided the proceedings are issued in the name of the solicitor. It should be clear to the party receiving the proceedings and to that person's solicitor that the proceedings have emanated from a practising solicitor acting in their capacity as solicitor to the plaintiff. The solicitor should not go on record solely in the name of their employer.

The right of audience of

all solicitors has been given statutory expression in section 17 of the *Courts Act 1971*, as follows: "A solicitor who is acting for a party in an action, suit, matter or criminal proceedings in any court and a solicitor qualified to practise (within the meaning of the *Solicitors Act 1954*) who is acting as his assistant shall have a right of audience in that court."

A solicitor must hold a current practising certificate in order to practise as a solicitor, as section 56(1) of the *Solicitors Amendment Act 1994* provides: "No solicitor shall practise as a solicitor unless a practising certificate in respect of him is in force."

Section 56(2) provides: "...a solicitor shall be deemed to practise as a solicitor if he engages in the provision of legal services whether as a sole practitioner or as a partner in a solicitor's practice or as an employee of any solicitor or of any other person or body, or as a solicitor in the fulltime service of the State..."

Therefore, all in-house solicitors holding a current practising certificate can issue proceedings and can appear in court on behalf of their employer.



IN-HOUSE AND PUBLIC SECTOR COMMITTEE

Litigation privilege not forever

A recent High Court decision, *UCC v ESB* (Finlay Geoghegan J, 21 March 2014), clarifies that any report, including a statement prepared by an employee or third party on behalf of the employer following an incident, will only be privileged if litigation was the dominant purpose for which the document was created, and the document will not be protected from disclosure forever. This is separate and distinct from legal advice privilege deriving from the

solicitor/client relationship.

The judgment provides welcome clarification of the law relating to litigation privilege, including its purpose, and distinguishes it from legal advice privilege – which is conditional upon the solicitor/client relationship and endures forever, unless waived by the client for whose benefit the privilege exists. The defendant, ESB, is appealing the decision. The judgment can be accessed on Courts Service of Ireland website.

TAXATION COMMITTEE

Section 604A TCA 1997 – seven-year CGT relief

The relief from capital gains tax (CGT) in respect of the first seven years of ownership for properties purchased between 7 December 2011 and 31 December 2014 is not being extended beyond 31 December 2014.

Revenue has confirmed that the normal rule as to when an asset is acquired for CGT purposes (that is, when an unconditional contract is signed) will apply for the purpose of the relief in section 604A of the *Taxes Consolidation Act 1997*.



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The new Companies Act will make the most far-reaching and fundamental changes to Irish company law in two generations, putting forward a radically different approach whereby the private company limited by shares will become the new model company. The Bill seems likely to be enacted in 2014 and commenced on 1 June 2015.

Who better to explain and contextualise the changes to Irish company law than the Bloomsbury Professional company law authors, to whom practitioners turn when they need to understand a point of company law?

CHAIRPERSON

Dr Thomas B Courtney

SPEAKERS

Nessa Cahill BL, Dr Thomas B Courtney,
William Johnston, Professor Irene Lynch-Fannon, Lyndon MacCann SC and Daibhi O'Leary

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The Companies Act 2014: Anatomy of the Act

Dr Thomas B Courtney,

Changes in the law of directors' duties

Dr Thomas B Courtney

Changes in the basics - constitutions, share capital and governance

Dr Thomas B Courtney

Corporate Restructuring - schemes, mergers and divisions

Lyndon MacCann,
Senior Counsel

Changes to re-registration, registers and filings

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Veni, vidi... oh, let's wait and see



Once again, the *Gazette* is a finalist at the 2014 Magazine Awards – yay us! We've been shortlisted for the business-to-business (more than 5,000 circulation) 'magazine of the year', 'design team of the year', 'cover of the year' and 'editor of the year' categories.

The winners will be announced on 4 December 2014, after this magazine goes to press. We'll keep you posted on www.lawsociety.ie and social media.

The DSBA's *Parchment* has been shortlisted in the business-to-business (less than 5,000 circulation) categories of 'magazine of the year', 'editor of the year', and 'journalist of the year'. *Bon chance!*

Assisted Reproduction Bill in embryo, not utero

Health Minister Leo Varadkar has said that he is to bring a memorandum for an assisted reproduction bill to Government by the end of the year.

"Legislation on assisted human reproduction, surrogacy and gamete donation is long overdue," he said. He said that he would be consulting with Justice Minister Frances Fitzgerald, Government colleagues, and others on the preparation of the bill. "It is likely

to deal with the issues of legal parentage, surrogacy, egg and sperm donation, and other related issues.

"Our prime concern here is that any law protects, promotes and ensures the health and safety of parents, others involved in the process, such as donors and surrogate mothers, and most importantly, the children who will be born as a result of assisted reproduction."

Vulnerable witnesses

The Diploma Centre is holding a free one-hour seminar titled 'Spotlight on... vulnerable witnesses', followed by a networking opportunity at 6pm on Monday 26 January 2015 in the Education Centre. This seminar is open to all current and past Diploma Centre students. Another seminar is planned for mid-spring, which will focus on charities and the law.

Students' dancing raises 14K for charity

On 27 November, PPC1 students donned their glad rags and dancing shoes in aid of Habitat for Humanity at a *Strictly Come Dancing*-style event in the Presidents' Hall. The students took their dancing roles seriously, with 11 pairs taking part in six weeks of training with a dance instructor. Orla Gallagher and Shane McCarthy won the event, which was in aid of Habitat for Humanity. Full report in next issue.

Habitat for Humanity is currently renovating a premises near the Law Society's Blackhall Place premises. The project is run solely



PICT: CIAN REDMOND PHOTOGRAPHY

using donations and manpower provided by volunteers to refurbish the house for a family in need.

To make a donation, email Daniel Watters (PPC1 social rep) at: 1721615@propc.ie.

LRC seeks views on succession and cybercrime

The Law Reform Commission has published a [paper](#) on section 120 of the *Succession Act 1965* and the admissibility of criminal convictions in civil proceedings. The LRC is seeking the views of legal practitioners and the general public. The closing date for submissions is Monday 26 January 2015.

Separately, the LRC has published an issues paper on cybercrime affecting personal safety, privacy, and reputation, including cyber-bullying. The papers are on the LRC's



PICT: ISTOCK

website, www.lawreform.ie.

The LRC is seeking the views of the general public and

practitioners. The closing date for submissions is Monday 19 January 2015.

CGT relief update

The relief from capital gains tax in respect of the first seven years of ownership for properties purchased between 7 December 2011 and 31 December 2014 is not being extended beyond 31 December 2014. Revenue has confirmed to the Law Society's Taxation Committee that the normal rule as to when an asset is acquired for CGT purposes (that is, when an unconditional contract is signed) will apply for the purpose of the relief in section 604A TCA 1997.

Kevin O'Higgins is elected Law Society president

Kevin O'Higgins has begun his term as president of the Law Society of Ireland for the year 2014/15, with effect from 7 November 2014. He is joined by senior vice-president Simon J Murphy and junior vice-president Patrick Dorgan. Kevin is principal in the law firm Kevin O'Higgins, founded in 1990.

Kevin grew up in Dalkey and Sandycove in south county Dublin and comes from a well-known legal and political family. He is one of seven children of the late chief justice and Fine Gael politician and government minister Tom O'Higgins and his mother Terry. He has five brothers and two sisters, one of whom is also a solicitor. Married to Gaye, they have three children, Sophie (26), Kevin (25), a trainee solicitor with Eugene F Collins, and Hugo (15).

Kevin was educated at CBC Monkstown and then boarded at Clongowes Wood College in Co Kildare. He was apprenticed with his uncle Michael O'Higgins of Hussey and O'Higgins, Solicitors (now Hussey Fraser), who was a Fine Gael TD at the time.

Following qualification in 1981, he worked with the firm J Delaney Gannon in Mohill, Leitrim, Arthur Cox and Felim Meade (TFO Connell Rooney & Co). He became a partner in the firm O'Higgins Dowling and, ultimately, set up his Blackrock-based practice in 1990 after a ten-year spell in Dun Laoghaire, alongside his great friend and school mate Gerard Lambe.



The Law Society's new president for 2014/15, Kevin O'Higgins, with junior vice-president Patrick Dorgan (left) and senior vice-president Simon J Murphy

He practises alongside three other sole practitioners: Ken Byrne, Niall Cawley and Pat Igoe, in an arrangement which he describes as "practice cohabitation".

Kevin became a member of the Council of the Law Society of Ireland in 1998. He is a past-president of the Dublin Solicitors' Bar Association. He has been a member of many of the Society's most senior committees, including: the Future of the Law Society Task Force, *Legal Services Regulation Bill* Task Force, Coordination Committee, Finance Committee, Education Committee, and Guidance and Ethics Committee (as chairman), among others.

council election 2014

The scrutineers' report of the result of the Law Society's annual election to the Council (November 2014) shows that the following candidates were provisionally declared elected. The number of votes received by each candidate appears after their names: Simon J Murphy (1,396), Michael Quinlan (1,267), Patrick Dorgan (1,266), Brendan Twomey (1,230), Michelle Ní Longáin (1,213), Christopher Callan (1,211), Maura Derivan (1,184), Eamon Harrington (1,145), Sonia McEntee (1,115), Claire Ryan (1,086), Deirdre O'Sullivan (1,071), Barry MacCarthy (1,053), Daniel E. O'Connor (1,024), John Glynn (939) and Adrian Shanley (926).

PROVINCIAL ELECTIONS

As there was only one candidate nominated for each of the provinces of Leinster and Ulster, there were no elections. The candidate nominated in each instance was returned unopposed: Leinster – Martin Crotty; Ulster – Garry Clarke.

Law Society committees' submissions on stamp duty

Three Law Society committees have made representations to the Revenue Commissioners that stamp-duty phone support should not be reduced as proposed by Revenue.

The joint representations made by the Technology Committee, Taxation Committee and Conveyancing Committee point out that if the Revenue Commissioners decide they

must reduce phone support despite the committees' objections, then it should not be reduced until:

- 1) The Stamp Duty section of the Revenue Commissioners' website has been substantially improved in relation to searchability, structure and identification of current guidance,
- 2) The structural problems around the availability and verifiability

- of tax numbers has been addressed, and
- 3) A reduction in the volume of calls following on from such improvements has been demonstrated.

Unfortunately, the Revenue Commissioners notified the committees on 11 November 2014 that they had decided the phone

service would be significantly reduced to a 10am to 1pm service from Tuesday to Thursday, from 17 November 2014.

Practitioners are being asked to email their comments on particular problems they have encountered with the stamping system – and to suggest any improvements that they consider necessary or desirable – to stampduty@lawsociety.ie.

Irish lawyers greet President Higgins in Malawi

November proved to be an exciting month for Irish Rule of Law International (IRLI) in Malawi, writes Emma Dwyer (IRLI coordinator). The team met with President Michael D Higgins on 11 November during his visit to the country as part of a three-country trip, which also included Ethiopia and South Africa.

Speaking before he travelled, President Higgins said that the visit would recognise “the immense contribution that Irish Aid, Irish aid agencies and workers and missionaries have made in Africa, and will include visits to a range of aid projects in both Ethiopia and Malawi”.

While in Malawi, the President visited a number of Irish Aid-funded community projects and heard presentations from Concern, Goal, Trócaire, and Self Help Africa on the 16 days of ‘Activism Against Gender Violence’ initiative, which began on 25 November.

Access to justice

IRLI was honoured to have been selected to speak to President Higgins about the work being done by Irish lawyers to strengthen the capacity of the criminal justice system in Malawi.

Excessive use of detention and the lack of a comprehensive legal-aid system, among



President Higgins greets Constable Yotamu Chaonaine, who works with IRLI to facilitate their police diversion training programme

other factors, have resulted in considerable overcrowding in Malawi’s prisons. The IRLI in Malawi assists with providing legal representatives to prisoners who have been detained for prolonged periods without trial. It also provides targeted training to advocates, police officers, magistrates and other key stakeholders.

Jane O’Connell (IRLI project coordinator) and Morgan Crowe (programme lawyer) addressed President Higgins about the

overall approach of IRLI’s Malawi project and invited local partners to speak about specific activities.

Chief Resident Magistrate Ms Ruth Chinanga spoke about IRLI’s magistrates training workshops. Constable Yotamu Chaoaine (Malawi Police Force) explained how he has worked with IRLI to facilitate police training as part of its diversion training programme.

IRLI also works in the Legal Aid Department and Office

of the Director of Public Prosecution to support improved case management and case-file review, as well as facilitating community information sessions to educate people about their legal rights and the criminal justice system.

‘Fine young people’

The project in Malawi has been running since 2011 and is supported by Irish Aid, the Human Dignity Foundation, donations and fundraising events. Irish lawyers commit to working as volunteers on the project for periods of 6-12 months, to which its success is largely due. This was acknowledged by the President in an interview with *The Irish Times*, where he complimented the “very fine young people from the legal system in Ireland”.

IRLI is a joint initiative of the Law Society of Ireland and Bar Council of Ireland. The Malawi project is one of a number of interventions aimed at strengthening governance and the rule of law in developing countries. Read more at www.irishruleoflaw.ie.



Jane O’Connell (IRLI project coordinator), Morgan Crowe (programme lawyer), and Chief Resident Magistrate Ms Ruth Chinangwa informed President Michael D Higgins about the work being done by Irish Rule of Law International to build capacity in the criminal justice sector in Malawi

FOCUS ON MEMBER SERVICES

Finance scheme

December is an expensive time of year. This is especially the case for many members who have just funded their preliminary tax, pension contributions and professional indemnity insurance, and must now meet the cost of their practising certificate renewals. With this in mind, the Law Society has teamed up again with Bank of Ireland to offer members a finance facility.

This short-term business loan allows members or firms to spread the cost of large annual payments over a term of up to 12 months at highly competitive variable rates. If seeking to avail of this facility, you will have to demonstrate a proven credit track record and meet standard lending criteria. The rates are highly competitive and apply to the cost of borrowing for:

- Preliminary tax payments,
- Pension contributions,
- Professional indemnity insurance, and
- Practising certificate fees.

To apply for a loan

To apply for a loan, you will need to complete the application form, which is available at <http://businessbanking.bankofireland.com/credit/business-loans/> or in your local Bank of Ireland branch. Its website has a wide range of supports to help you complete the application form, including a useful cash-flow planning tool to help you forecast your cash position for the next 12 months. Up-to-date financial information will be required. As with all borrowing, normal lending criteria, terms and conditions apply.

You may also contact the dedicated credit line on 1890 365 222 (or email businesslending@boi.com); or contact Yvonne Burke at the Law Society (email: y.burke@lawsociety.ie or tel: 01 672 4901).

WHAT IS THE RATE?

Unsecured lending 6.74%.

Repayments vary, depending on the amount borrowed, for example:

Loan amount	Interest rate	Term in months	Monthly repayments	Total cost of credit
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€10,000	6.74%	12	€863.90	€366.80
€15,000	6.74%	12	€1,295.84	€550.08
€20,000	6.74%	12	€1,727.79	€733.48

Variable rates quoted are correct as at 1 October 2014 and are subject to change.

A&L Goodbody named 'Irish tax firm of the year 2014'

A&L Goodbody has been named 'Irish tax firm of the year 2014' at the *International Tax Review* European Awards ceremony in London.

The awards recognise firms that have demonstrated excellence across an array of international corporate tax work. Nominations are reviewed by a panel of researchers who analyse the deals that firms were involved in. They also consult with tax advisers and lawyers, tax executives and in-house counsels to choose the best advisory firms in Europe.

Some of the most notable transactions on which A&L Goodbody instructed in 2013 included: Élan's successful defence of Royalty Pharma's \$6.8 billion hostile offer and, subsequently, on its \$8.6 billion takeover by Perrigo; and Endo Health Solutions on its \$1.6 billion acquisition of Paladin Labs and related corporate inversion into Ireland. Peter Maher, head of A&L Goodbody's tax department expressed his delight at the award. "Our tax group is at the forefront of the firm's international initiatives," he commented.



Pictured here at the launch of the Diploma in Arbitration Law by the Law Society Diploma Centre are some of the students along with lecturers Michael W Carrigan, (consultant, Eugene F Collins) and Bernard Gogarty, partner (Smyth and Son) and Deirdre Flynn, solicitor, course leader

APOLOGY Re: Jim Bailey, Ardcanought, Castlemaine, Co Kerry

In November 2006, the *Law Society Gazette* carried a report on the case of *Bailey v Gallagher*. The article was written by Byron Wade BL. The case related to Mr Bailey's efforts to clear his name and obtain access to his own medical records. We reiterate that the outcome of that case represented a full vindication of Mr Bailey's good name.

In the November 2006 article, it was stated that Mr Bailey had been certified insane and was a certified lunatic with a conspiracy theory. For the avoidance of any doubt, the Law Society and Byron Wade accept that Mr Bailey is of sound mind and has never been diagnosed or certified with any mental illness whatsoever. Any

impression to the contrary was incorrect and certainly not the intention of the Law Society or the intention of Byron Wade, the author of the article. Both the Law Society and Mr Wade apologise for any embarrassment and/or damage caused to Mr Bailey by either anything said in the article or the graphics accompanying it.

The implications of the ADR Directive for practitioners



A seminar on 'The ADR Directive – the Implications for practitioners and their clients' was held on 30 September, in collaboration with the European Consumer Centre (ECC) Ireland, the Law Society ADR Committee, the EU and International Affairs Committee and Law Society Professional Training. At the event were (from l to r): Prof Christopher Hodges (University of Oxford), Rachael Hession (Law Society Professional Training), James Kinch (vice-chair, ADR Committee), Mary Casey (chair, EU and International Affairs Committee), Brian Hutchinson (UCD), Minister of State Gerard Nash, Christoph Decker (European Commission), Ann Neville (European Consumer Centre), Peter Tyndall (ombudsman and information commissioner) and Ken Murphy (director general)

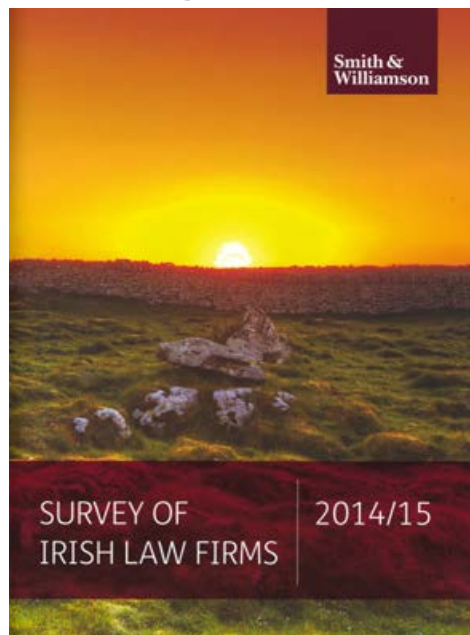
New confidence evident in legal sector

Improving economic conditions are mirrored in a resurgent confidence among 84% of Irish law firms – and, notably, among 100% of the top 20 firms, *writes Lorcan Roche*.

The findings are included in the third annual *Smith & Williamson Irish Law Firm Survey*. This increase in confidence contrasts with previous years, where 57% (in 2013) and a mere 20% (in 2012) believed the economic outlook could, or would, improve.

Property, construction and conveyancing were identified as the principal areas of growth. Larger firms enjoyed significant growth in the corporate, regulatory/financial, banking and employment practice areas.

Staff numbers are increasing overall, with 83% of top-tier firms recruiting additional staff in 2014. Predictions are for an expected average increase of 10% in staffing numbers across the sector in 2015. As a consequence, competition for talent is starting to become a concern, with 27% of firms reporting pay increases of 5% plus in 2014 – more than double the number of firms in 2013. However, 56% of firms made no pay increases in the last 12 months, consistent with last year's survey. More than one in four firms



increased the number of trainees taken on over the last 12 months, and one-third of firms said they expected to hire further trainee solicitors in 2015. (Full report next issue.)

Google queries send business your way

The Law Society has been running a successful 'search' marketing campaign on Google to direct more people seeking help with a legal query to contact a specific solicitor or firm through its website, *writes Carmel Kelly*.

The campaign is based on keywords entered in Google, where someone looking for legal assistance – and in some cases for a particular location – is directed to the Society's online 'Find a solicitor/firm' service.

In the two-month period from 1 September to 28 October 2014, the campaign resulted in over 5,000 clicks to the 'Find a solicitor/firm' section. This, in turn, led to over 1,000 clicks to the contact details of specific solicitors or firms.

CRYSTAL COUNTY CONVENES FOR ANNUAL DINNER

WATERFORD LAW SOCIETY



ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

At the [Waterford Law Society](#) annual dinner in Dooley's Hotel, Waterford, on 14 November 2014 were (front, l to r): Brendan Cunningham (president, Southern Law Society), Ken Murphy (director general), Kevin O'Higgins (president, Law Society), Jim Hally (president, Waterford Law Society) and John Goff Snr; (back, l to r): Frank Treacy (Property Registration Authority), Judge Kevin Staunton, Superintendent Chris Delaney and Dr Michael Howlett (head of Department of Applied Arts, WIT)



Gerard O'Connor, Mary Hally, Deirdre O'Connor and Dr Michael Howlett (head of Department of Applied Arts, WIT)



Jim Hally (president, Waterford Law Society), Gillian Cunningham and Brendan Cunningham (president, Southern Law Society)



Leona McDonald, Ian O'Hara and Rosa Eivers



Dermot O'Byrne, Leeann Morrissey, Maria Morrissey and John O'Donohoe



Eva Lawlor, Maeve O'Connor, Gill Ormonde and Sean Ormonde



Nessa Foley, Sharon Kearns, Nicola Walsh and Nicholas Walsh



Ken Murphy (director general), Yvonne Chapman, Susan Martin, Morette Kinsella and David Smythe



Paul Murran, Frank Treacy (Property Registration Authority), Orna Middleton and Tom Murran

SLA HOSTS SUCCESSFUL AGM

The AGM of the [Southern Law Association](#) (SLA) was held on 11 November 2014 at the Clarion Hotel, Cork, *writes Joan Byrne*. The pre-AGM reception hosted by outgoing president Brendan Cunningham. Among the many issues discussed, he outlined the hard work done over the past 12 months by SLA council members, the important representative role of SLA nominees on the Law Society's Council, and the contribution of SLA members on the various committees of the Law Society on which they serve. Over 100 members attended.

Special guests included the newly elected President of the Law Society Kevin O'Higgins, who was attending his first official event, and director general Ken Murphy. The president addressed the meeting on the challenges dealt with by the profession over the past year and that it faces in the future.



The outgoing SLA Council 2014 (back, l to r): Terry O'Sullivan, Rob Baker, John Fuller, Sean Durcan (honorary treasurer) and Don Murphy; (front, l to r): Juli Rea, Joan Byrne (honorary secretary), Peter Groarke (vice-president), Brendan Cunningham (president), Jonathan Lynch and Emma Meagher Neville



Peter Groarke (incoming SLA president), Joan Byrne (honorary secretary), Brendan Cunningham (outgoing president), Kevin O'Higgins (Law Society President) and Ken Murphy (director general)



Michael Joyce, Kevin O'Higgins (Law Society President) and Jim Grogan

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If this is you please call 00 44 1268 771333

www.lawcare.ie/volunteers



Noeline Blackwell is IWLA's 'woman lawyer of the year'



(Seated, l to r): Maura Butler (chairperson, IWLA), Claire Loftus (DPP), Carmel Stewart, Ms Catherine McGuinness, Ms Mary Faherty, Catherine Dolan (CEO Thomson Reuters), Maura Smyth (Thomson Reuters); (back, l to r): Dearbhail McDonald (Irish Independent), IWLA standing committee members Sarah Harmon, Aife McNickle, Jane Murphy, Sile Larkin, Lisa Chambers and Irene Lynch Fannon; EU ombudsman and keynote speaker Emily O'Reilly, Judge Grainne Malone, Judge Mary Emer Larkin, Judge Mary Ellen Ring (Circuit Court), Judge Sinéad Ní Chúlacháin, Noeline Blackwell, Judge Rosemary Horgan (president of the District Court), Judge Patricia McNamara, Attracta O'Regan and Sonia McEntee (Law Society Skillnet), Tracey Donnery (Skillnet), Mary Rose Gearty and Gráinne Larkin (Bar Council)

Noeline Blackwell has been named IWLA's inaugural 'woman lawyer of the year' at its annual 'Women Celebrating Women Lawyers' Gala Dinner, which was held in collaboration with Law Society Skillnet and the Bar Council of Ireland. The award was made by the [Irish Women Lawyers' Association](#) on 1 November in recognition of Noeline's work as a powerful and effective advocate for those most marginalised due to the recent recession.

Keynote speaker Emily O'Reilly (EU ombudsman) remarked: "In the cacophony of voices that emerged to challenge or to advise on certain of the decisions that were made following the banking collapse of 2008, Noeline's stood out."

The full text is available at www.ombudsman.europa.eu. The organisers wish to thank Thomson Reuters for sponsoring the reception.



(From l to r): Attracta O'Regan (Law Society Skillnet), Maura Butler (chairperson, IWLA), Noeline Blackwell (IWLA Woman Lawyer of the Year) and Mary Rose Gearty SC (Bar Council of Ireland)

viewpoint

JUSTICE DENIED: THE CASE OF DAVID RABELO

The case of David Rabelo highlights the persistent targeting of human rights defenders in Colombia – and why Ireland should prioritise human rights over trade, argues **Karol Balfe**



Karol Balfe is an advisor on governance, peace building and human rights with [Christian Aid Ireland](#). Its programme, with funding from Irish Aid, supports 11 human rights organisations in Colombia

Sunday 14 September marked four years of imprisonment for the internationally recognised human rights defender David Rabelo. A 2013 finalist for the [Front Line Defenders Award for Human Rights Defender at Risk](#), David was serving as secretary general of the human rights organisation Corporación Regional para la Defensa de los Derechos Humanos at the time of his arrest on charges of aggravated homicide.

The anniversary of his case shines a spotlight on the precarious situation that many Colombian human rights defenders face and the challenges with a legal system that has been subverted to pursue particular vested interests – just at the moment when Ireland and the EU are about to enhance trade links with Colombia.

David Rabelo's lawyers, supported by an *amicus* briefing by British and Irish lawyers, have repeatedly highlighted the lack of due process and fair trial in his case. The prosecutor in the case, William Pacheco, had been investigated for his involvement in the forced disappearance of a youth when he was a police lieutenant. He was removed from his post and subsequently sentenced to one year in prison as a result of his involvement in the crime. Since Colombian law prevents anyone found guilty of committing such a serious offence from holding the post of prosecutor, Pacheco was legally ineligible to prosecute the case against David Rabelo.

Grave concerns were highlighted about how the case against Rabelo relied heavily on the statements given by two released paramilitaries in exchange for benefits. [United Nations High Commissioner for Human Rights](#) Navanethem Pillay expressed concern about the practice of prosecutions directed against human rights

defenders that are based on “unreliable witness testimonies from demobilised individuals”. A witness in the case reported an attempt to bribe them; other witnesses for the prosecution are said to have constantly contradicted themselves and their testimonies have reportedly been false. All the more worrying, given David Rabelo's public stance denouncing the killings and illegal activities of paramilitary groups.

Context of criminalisation

The anomalies in the case weren't the only cause for concern. International authorities, like the [Special Rapporteur on the Situation of Human Rights Defenders](#) Margaret Sekaggya, sent a communiqué to the Colombian government expressing concern that the “criminalisation of Rabelo occurs in the context of increasing prosecutions against human rights defenders in Colombia”.

In fact, Rabelo's case is key to understanding the dynamics of power and pushback against human rights defenders in Colombia. In 2013, 70 human rights defenders were killed for the work they do – alarmingly, these figures are twice as high as figures from 2010. Violence and threats are so extreme that, following pressure from civil society, the [Inter-American Commission on Human Rights](#) and others, the state was forced to establish a National Protection Unit to provide security measures that unfortunately are insufficient, such as bulletproof vests and armoured cars to human rights defenders.

Over 50 years of violent internal

armed conflict has characterised Colombia, with the state supported by the military and in collaboration with the paramilitaries fighting guerrillas. The internal armed conflict and widespread and systematic violence is further fuelled by drug trafficking. Around 12% of the population, or 5.7 million people, have been displaced, and the conflict has claimed at least 220,000 lives since 1958, with four of every five deaths civilian.

In 2012, the European Parliament refused to ratify the final text of an [EU/Colombia free trade agreement](#) with the standard human rights clauses traditionally included in such agreements. It instead called for a “binding road map on human, environmental and labour rights” and stated “the practical enforceability of the human rights clause must be guaranteed”.

A collection of [Irish trade union and non-governmental organisations](#) believes that the human rights clauses in the agreement and the Colombian government's subsequent ‘roadmap’ on human rights do not provide adequate protection or safeguards. There are wider concerns that these trade agreements have devastating effects on developing countries. In Colombia, 2013 was marked

“Since Colombian law prevents anyone found guilty of committing such a serious offence from holding the post of prosecutor, Pacheco was legally ineligible to prosecute the case”

Pic: iStock

by escalating social protests – particularly from farmers who stand to lose most. These have been linked to land, working conditions, opposition to free trade agreements, and mega-project developments.

Precarious situation

Such free-trade agreements already signed by Colombia have introduced reforms at the expense of the interests of peasant farmers, who make up 34% of Colombia's population, and in favour of large-scale economic interests. The government is engaged in dialogue with the protest groups, and some agreements have been reached. However, these continue to be superficial and do not respond to the root causes of the precarious

situation of peasants, indigenous, and Afro-Colombian peoples. Their situation has worsened since the introduction of the [US free trade agreement](#).

Imports of cheap, subsidised products such as milk and corn have resulted in Colombian products being undermined by cheaper imports. This constitutes blatantly unfair competition, as these products are subsidised by the US taxpayer. Since the US free trade agreement, the purchase of imported dairy products has increased from [US\\$5,954m \(2010\) to US\\$20,595m in 2012](#). This has resulted in milk

producers being forced to sell their products below the price of production.

In the current Dáil session, Irish politicians will be asked to ratify a European Parliament free-trade agreement with Colombia and Peru, a necessary step by European regional parliaments before it can become

legally enforceable. Ireland now has a unique opportunity to take a principled stance on human rights in Colombia. While it won't stop the European process, given the gravity of human rights and humanitarian concerns in Colombia, the Irish Government

The Irish Government should consider not ratifying this treaty as a principled position



Pic: Wikimedia Commons

should consider not ratifying this treaty as a principled position, not least because of our membership of the UN Human Rights Council. At a very minimum, the Dáil should fully debate any trade links with Colombia. International embassies can also add pressure to the need to protect human rights defenders by visiting David Rabelo in prison and calling for due process and for an appeal of his case to be heard by the Colombian Supreme Court.

news in depth

DATA, DATA EVERYWHERE

Passing through the PPC2 in 2008, we joked that if you threw a penny down any main street, you'd be sure to hit a solicitor or trainee, writes **Cormac Ó Culáin**. But what are the current trends?



Cormac Ó Culáin is a solicitor and the Law Society's public affairs executive

During the last gasps of the 'Celtic Tiger', it seemed that the numbers joining the profession were booming. To some extent, the figures bear that out – but more importantly, they describe where and how the profession has weathered the intervening years. They also provide a roadmap as to how our data collection must respond to the dynamics of the sector.

In the first of a series of **economic studies** on the profession, the Society commissioned **Fitzpatrick Associates** to analyse existing sources of data relating to the profession and, in particular, its contribution to the Irish economy. Part of that examination focused on the current demographics of the profession and recent trends. Other themes included the economic output of the sector, the limitations to the data on the legal services sector relied upon by policymakers, and that bugbear of all practitioners: clarifying exactly what is and what is not meant by legal costs. These will be expanded upon in future issues of the *Gazette*.

Then and now

PPC1 intake leading up to 2007 had gathered and maintained a momentum, climbing from 650 to 670 each year

over the period. The downward trend in new students began in 2008, falling to almost half the peak in 2013 (353 students). A buck in that trend has finally come this year, with a rise in intake of almost 400 students. The recovery in student numbers comes at a time when the supply of solicitors could fall short of demand across a variety of legal sectors.

So, where are we now?

While the vast majority of solicitors work in practice settings (7,359), there are undoubtedly increasing opportunities for practitioners working outside the traditional law firm. The regard for a legal qualification, together with expanding opportunities in the commercial and public sector, is good news. Almost 1,500 qualified solicitors are working in the corporate sector, which includes advisory services, banking institutions, pharmaceutical companies and IT companies, to name a few. No doubt,

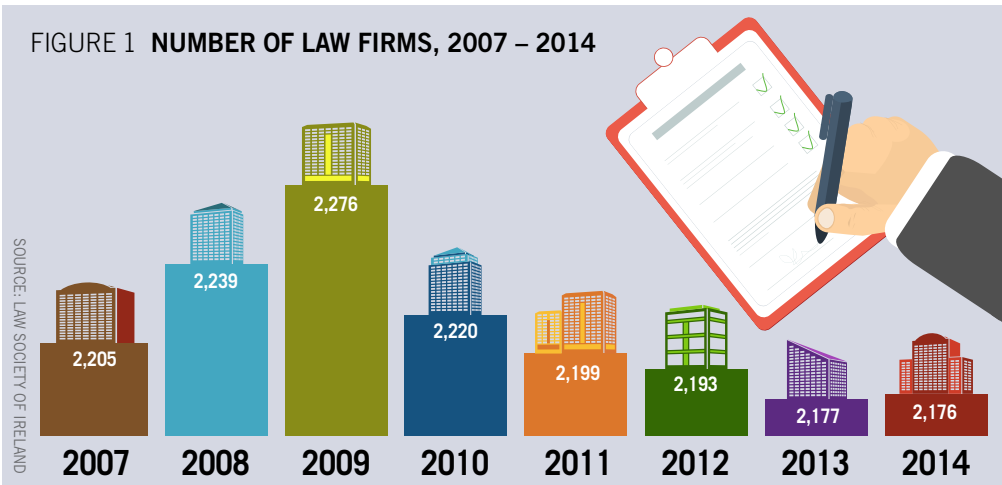
emerging industries will require emerging solicitors.

The public sector (including local authorities, State agencies and government departments) currently employs more than 300 solicitors. This modest and growing constituency of in-house and public sector solicitors is increasingly being represented in the activities of the Society, with a dedicated **committee** and a number of representative Council members.

It should come as no surprise that the profession has a strong urban bias, with 60% of all solicitors in the State based in Dublin (city and county). At a provincial level, this trend is repeated. For example, Cork (city and county) is home to 50% of the 1,634 solicitors of Munster. Out of the 600 Connaught solicitors, over 300 of them are based in Galway city and county. It's a similar story with Ulster and its Donegal 'solicitor-capital', but only when the 92 Blackhall-qualified solicitors in practising in Northern Ireland are discounted.

Robust and testable data empowers the Law Society to best respond to the changing needs of an increasingly diverse and dynamic profession

FIGURE 1 NUMBER OF LAW FIRMS, 2007 – 2014



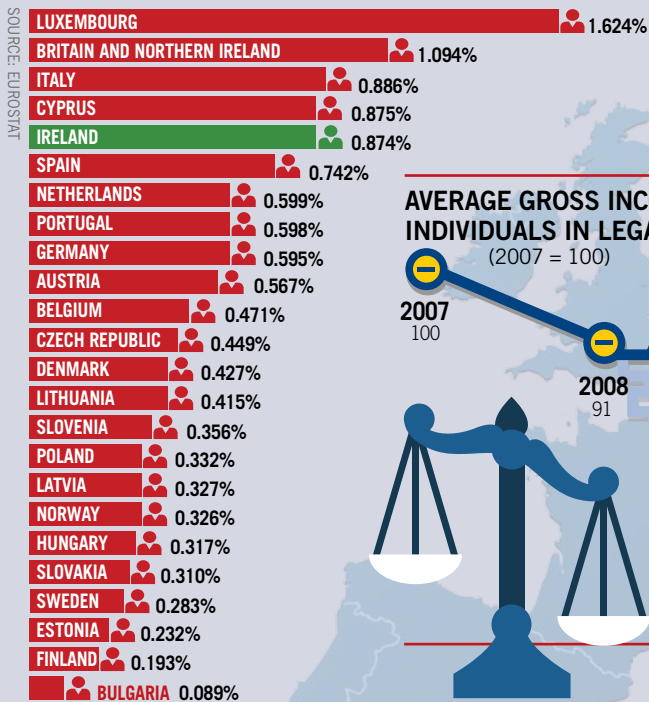
Firm size

Firms with five or fewer solicitors make up 92% of law firms in 2014. At the other end of the scale, firms with more than 21 solicitors represent about 1% of all firms. A sizeable 43% of all firms in the State are sole practitioner practices – but represent just over 10% of all solicitors in the jurisdiction.

In the absence of a trend, the critical economist might argue that it underlines the need for further consolidation and the potential for economies of scale. The geographer might argue that it represents a well-dispersed sector, mirroring its local, regional and national market. What cannot be disputed,

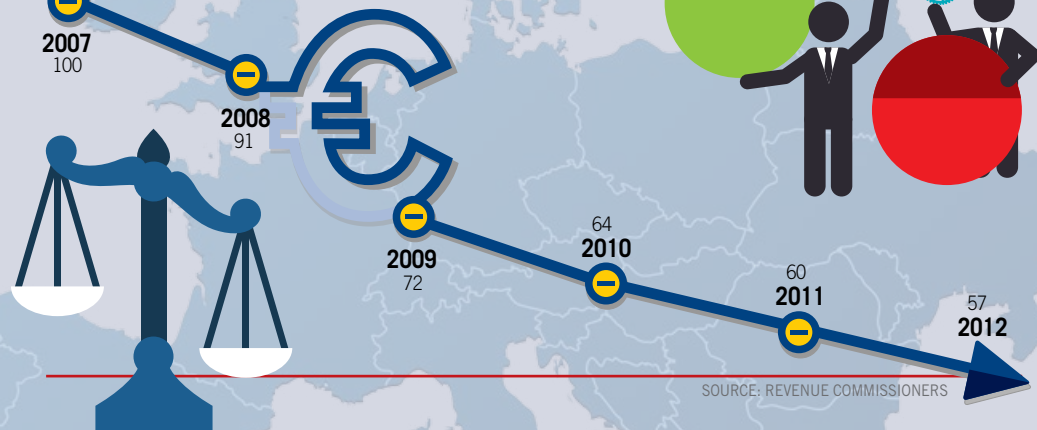
PERSONS ENGAGED IN LEGAL SERVICES AS % OF LABOUR FORCE, 2011

FIGURE 2



AVERAGE GROSS INCOME OF SELF-EMPLOYED INDIVIDUALS IN LEGAL SERVICES SECTOR

(2007 = 100)



however, is that it represents the extent of choice that an increasingly discerning client base enjoys – and the level of competitive tension that naturally arises between firms competing for their business.

Notwithstanding the position in 2014, context is everything. By examining the trend in firms and their sizes over the recent years, we can see a fuller picture.

Perhaps mirroring and thus accommodating the wave of newly qualified solicitors in 2008 and 2009, almost 2,280 firms existed in 2009 (see Figure 1). Since then, the number of firms has reduced, but not drastically (by about 100 firms, or 6%). The reduction

can be explained by the sharp constriction in the property market and related fields, consolidation at the higher end, and rationalisation in the mid-tier. Other factors include, to varying degrees, those retiring or withdrawing from practice, emigration, and solicitors opting for in-house/public sector roles.

However, there is no uniform trend within the profession. Between 2008 and 2014, there was significant growth in the number

of large firms – and within existing large firms – leading to an increase of almost 20% in the number of firms with more than 16 solicitors).

The most surprising finding may be the sharp drop in the number of firms with five to ten solicitors over that period. While the reasons might include some of those previously mentioned, certain commentators suggest

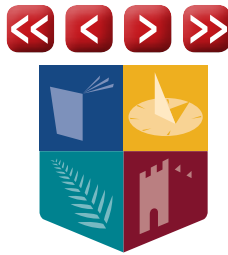
that one factor might be the now vigorous price competition from larger firms in markets that the

latter were less inclined to pursue during the boom. Growth in the large-firm segment is also likely a reflection of their diversity of work and of their export potential.

The very modest 5% fall in the number of sole practitioner firms would appear to be at variance with anecdotal reports during the period. The fact that the reduction in sole practitioner firms was not more severe might indicate a level of adaptability and resilience afforded to that sub-sector due to its low cost base.

While no analysis is included above, a number of factors point to a profession that, largely, is rebounding. These factors include

Improving student intake and changing firm profiles point to a profession that, largely, is rebounding



Maynooth University
National University
of Ireland Maynooth

Diploma in Public Procurement Law

Public Procurement Law is an influential and highly topical field of public policy and legislation which holds an important place within EU economic law. This area is evolving rapidly and is becoming increasingly more litigious. This has created a booming public procurement-related industry in the past few years.

A thorough understanding of public procurement law protects public bodies and utilities from challenge and informs tenderers, funders or other interested parties - protecting their rights in such competitive situations.

On completion of this course, graduates will have a thorough knowledge of public procurement laws, the tendering process and the judicial review process. The Course will be presented by top barristers and partners of large law firms who are practicing in this area, as well as leading academics in the field.

This is a crucial qualification for practitioners and other decision makers working for public bodies and utilities who have responsibility for the tendering process. However, a concise knowledge of public procurement is also important for anyone influenced by how this European requirement is shaping Irish procurement policy.

This is the first university level diploma in public procurement in Ireland and successful graduates will be awarded a university 'level 9' qualification in public procurement law following 20 weeks.

Speakers include:

Bruno Herbots, Partner

Professor Catherine Donnelly BL

Charles Béar, QC

Ciara Kennedy-Loest, Partner

David Dodd, BL

Dr. Delia Ferri

Eileen Barrington, SC

Emma McEvoy

Dr. Fergus Ryan

Fergus Ryan, BL

Dr. John Reynolds

Marcus Dowling, BL

Dr. Maria Murphy

Professor Michael Doherty

Nathy Dunleavy, BL

Niamh Hyland, SC

Patrick Thorpe, Director

Dr. Totis Kotsonis, Partner

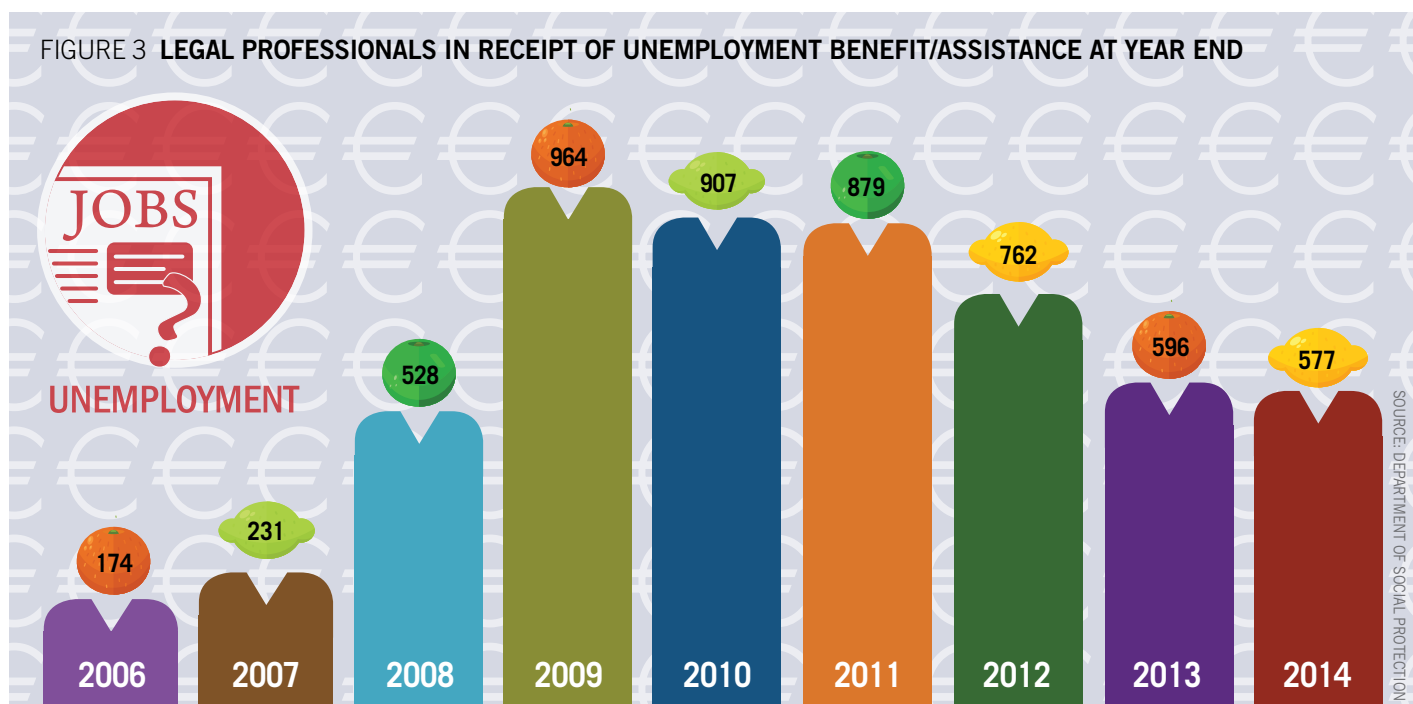
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FIGURE 3 LEGAL PROFESSIONALS IN RECEIPT OF UNEMPLOYMENT BENEFIT/ASSISTANCE AT YEAR END



increased profitability, growth in recruitment figures, higher operating costs, improving student intake and changing firm profiles.

Unemployment in the profession

The legal services sector directly employs around 18,000 people (between professionals and support staff), with solicitors representing 70% of all professionals within the sector. As the Fitzpatrick report confirms, there has been a drop of 16% in the number of professionals employed since 2008 and an overall reduction of 20% in the numbers employed in the sector. Consequently, the Society and the profession have had to contend with unemployment and reduced working hours for many members. In response, the Law Society's Support Services section continues to implement a range of relevant tools and resources for members. A successful motion at the most recent AGM, proposing to establish a Younger Members' Committee, should also lead to increased support in this matter.

Department of Social Protection figures confirm that, between 2006 and 2009, the number of legal professionals in receipt

of unemployment benefit and assistance climbed dramatically. There has been a welcome decline since 2009, however, due in part to emigration and cautious improvements in employment prospects. That said, 2014 numbers still remain three times higher than in 2006.

The Fitzpatrick report also documents the fall in the number of those employed in the legal services sector across the continent between 2008 and 2011. It confirms that Ireland has been the worst affected country within a cohort of 22 European countries. Unsurprisingly, this mirrors the changed economic fortunes during that period.

Apples, oranges, and lemons

Like all data, these figures come with health warnings. Issues arise when trying to define what is meant by 'legal services' and 'legal activities'. The extent to which

barristers, trademark attorneys and others working in the legal sector skew the results must be considered. Likewise, cross-country comparisons should be cautiously interpreted, particularly as they

cut across differing regulatory and educational regimes and legal systems.

Sectoral surveys, both from the private sector and State sector (such as the Central Statistics Office and World Bank) may be compromised by the sample size relied upon and the extent to which these represent distinct practice types and specialisms that make up the sector.

While, in many cases, it might be more a case of

comparing lemons and limes, rather than apples and oranges, there is little evidence to support any contention other than that the legal services sector has been affected significantly by the economic crisis.

While it might be more a case of comparing lemons and limes, rather than apples and oranges, there is little evidence to support any contention that the legal services sector has been unaffected by the economic crisis

Robust and testable data empowers the Law Society to best respond to the changing needs of an increasingly diverse and dynamic profession. It also enables commentators and other stakeholders to identify key changes in the sector and to spot developing trends and opportunities.

In that regard, stronger data collection may be required to determine where solicitors are practising, such as within the in-house and public sector or in other emerging settings – for example, with NGOs, in education, and so on. Effectively tracking unemployed solicitors and colleagues overseas enables better design and delivery of relevant Society supports. With regard to diversity, our data is limited to gender. A more diverse profession is a positive goal for the justice and legal sector and its users.

Finally, a more detailed examination of changes in practice size and structures might also yield useful information to inform us about practice-management issues.

A forthcoming article intends to deal with the issue of legal costs, the definitions, and how they are reported.

human rights watch

CRIMINAL JUSTICE AND HUMAN RIGHTS IN IRELAND

This year's human rights conference dealt with police accountability, penal policy, and the prison system in the context of human rights. **Helen Kehoe** reports



Helen Kehoe is policy development executive at the Law Society

“If prison is the only answer, then society is asking the wrong question.” So said Justice Minister Frances Fitzgerald when delivering the keynote address at the 12th Annual Human Rights Conference on 11 October at Blackhall Place.

The minister continued: “Prisons have a function in keeping off the street individuals who represent a violent threat to others. But supervised community sanctions for those convicted of lesser, particularly non-violent offences, can help reduce reoffending.”

On the issue of policing reform, the minister observed that Irish society is “at a unique and pivotal point when it comes to policing”. She continued: “As Minister for Justice and Equality, I am committed to putting in place and, where necessary, reforming the organisation,

structures, practices and systems to support the men and women of An Garda Síochána to effectively deliver the best possible policing and security services for our communities and our country. In some cases, this may involve substantial change. In some cases, this may involve confronting deficiencies and challenging bad practices. We are

starting with major changes to the administration and oversight of policing, and further changes will inevitably follow.”

This year's theme was criminal justice and human rights. The main topics were police accountability

and possible reform, social issues surrounding Irish penal policy, and a consideration of the Irish prison system in the context of human rights. Speakers included Justice Minister Frances

Prison is the only State service available to the poor for which there is no waiting list

Fitzgerald, Dr Vicky Conway, Conor Brady, Fr Peter McVerry and Michael Donnellan.

Director general Ken Murphy welcomed all attendees and guest speakers, saying: “Rarely has there been such an opportune time for genuine debate by all stakeholders on the intersection of criminal justice principles with human rights imperatives. The 12th Annual Human Rights Conference is a joint initiative by the Law Society and the Irish Human Rights and Equality Commission (designate) that combines and draws upon our organisations’ links to the legal community, civil society organisations, human rights and criminal justice bodies, and international networks.”

Emily Logan, chief commissioner of the IHREC, gave a welcome address. She stated that, as the *IHREC Act* was to be commenced shortly, this conference marked “the beginning of a new chapter for Ireland’s national human rights and equality institution.” She outlined the work undertaken over the years by the Irish Human Rights Commission, as the overlap between human rights and the operation of the criminal justice system has “long been a core area of work for the IHRC since its inception”.

Policing accountability

Dr Vicky Conway, senior lecturer at Kent Law School, gave a detailed and incisive overview of policing accountability and transparency and “how human rights standards can enhance the provision of these”. She commented that “police engagement with human rights law must move beyond adherence to standards and box ticking. We need those within the police service to buy in to the idea that this is how they should go about their job. If it is simply seen as yet another layer of bureaucracy, another regulation for which they can be disciplined, then it will not embed and become an underlying value.”

Dr Conway reviewed the relevant human

Top table (from l to r): Ken Murphy (director general), Emily Logan (chief commissioner, IHREC) and Justice Minister Frances Fitzgerald





ALL PICS: CIAN REDMOND PHOTOGRAPHY

“Prison is often used to deal with people whose problems society is unwilling or unable to address. In doing so, we further damage them and society”

rights standards, the accountability mechanisms currently in operation, and the proposed new policing authority: “We of course await

the specifics of the legislation, but if any opportunity remains to urge the government, I would urge that the authority be given teeth, otherwise the internationally known and recurring cycle of scandal/reform/scandal will continue in Ireland.”

Conor Brady, former commissioner of GSOC, provided an absorbing account of the challenges posed by a lack of public accountability and the historical roots of such issues. He referred to “cyclical crises” within the gardaí over the decades as being due to a “core issue” of “unwillingness on the part of the political establishment and the administrative elite – specifically the Department of Justice – to cede any control over the State’s police apparatus. There has been a veneer of public accountability while retaining the essence of central political control.” He referred to two models of policing common to the Western world – the “police of the prince” and the “police of the people”.

Referring to the historical origins of the gardaí, Brady observed that it was “brought into being to discharge

two functions, as did the RIC: it was to be a civil police and at the same time the State’s frontline security service. This is rare, unknown indeed through Western Europe and in many common law countries, where the police and the security services are quite distinct.” He argued that this leads to the gardaí being closer to the model of a ‘police of the prince’, with all the associated problems that creates for society. He discussed the potential reform contained in the *Garda Síochána Amendment Bill 2014* in detail, before closing his address by stating: “If we want a ‘police of the people’, we have to persuade the prince, along with the courtiers and the mandarins, not necessarily to surrender their power, but to make it genuinely and fully amenable to independent oversight and invigilation. We have made some progress, but we are not there yet.”

Penal and prison policy

Fr Peter McVerry drew upon his experience of visiting prisoners and working with the homeless to deliver




Fr Peter McVerry

an impassioned speech about the many issues facing those both in prison and upon their release. He referred to prison as being “an inherently destructive experience” and therefore one that “should be reserved for the most serious crimes – sending someone to prison for three months for a public order offence is not only absurd, it is damaging to the person and therefore to society”. He suggested that “society should make a point that prison is reserved, primarily, for crimes involving violence”.

Fr McVerry referred to the disproportionate numbers of those homeless before and after release. He argued that training and education must be “at the centre

of prison life” and that sufficient resources and funding must be provided. He discussed the problems of mental health and addiction that plague the majority of prisoners. Fr McVerry observed that “prison is the only State service available to the poor for which there is no waiting list” and concluded that “prison is often used to deal with people whose problems society is unwilling or unable to address. In doing so, we further damage them and society.”

Michael Donnellan, director general of the Irish Prison Service, offered a thought-provoking presentation on the human rights issues facing prisoners and prisoners’ families. He noted that often the effects of prison are thought to be constrained to those affecting the prisoner alone, whereas in reality prison also impacts upon a prisoner’s family and their wider community.

To close the event, Michael Finucane (the then chair of the Human Rights Committee) moderated an excellent Q&A session with the attendees and the panel of conference speakers. 

The conference papers are available on the Human Rights Committee page at www.lawsociety.ie/Solicitors/Representation/Committees/Human-Rights.

Highway to HELL

Self-driving cars are on the horizon. So what are the current and future legal challenges to their widespread use? **Dan Hayden** and **Shaun Smyth** put their pedal to the metal



Dan Hayden is a PhD candidate at UCD School of Law. He teaches at the UCD Innovation Academy



Shaun Smyth is a Dublin-based barrister

Self-driving cars are such a common science fiction trope that it's almost a cliché. Yet – despite the proliferation of announcements from major car manufacturers that “the technology is ready” – autonomous vehicles are a more than rare sight.

The technology promises wholesale change on many different fronts, with a promise far greater than simply allowing drivers to be ‘hands off’ in their private motor vehicles. Since it will inevitably be highly disruptive, the technology will be subject to legal and regulatory hurdles that will likely promise piecemeal as opposed to revolutionary change.

People have been driving motor vehicles for more than 100 years. Over that time, the number of rules and regulations that apply to these vehicles has expanded further and further. More importantly, these regulations did not foresee a future where vehicles would be autonomous. While the technological and engineering

challenges are all but resolved, policymakers and regulators are only beginning to confront the challenges that the technology will present.

Under the current law, a question arises as to whether a person who is being conveyed in a self-driving vehicle is managing or controlling that vehicle so as to satisfy the definition of driving under the 1961 act

Highway star

There are two main forces behind driverless cars: safety and efficiency.

With 1.2 million deaths annually from motor vehicles worldwide, and 93% of accidents stemming from human error, the safety benefits are clear. Computers can react to dangers more quickly than humans and make better decisions in the face of risk. Limited road space can be used more safely and more efficiently by cars controlled by cooperative computer models than by competitive drivers guessing each other's intentions.

The efficiency arguments are no less compelling. Most car owners use their cars for less than 10% of the day, meaning

that the rest of the time they sit idle, taking up some of the 30% of city space given over to vehicle parking. Autonomous cars are highly suited to ride-sharing models

at a glance

- Get your motor running
- Head out on the highway
- Looking for adventure
- In whatever comes our way

PICTURE: REX FEATURES





"Target acquired: kill, kill!"

of ownership already being pioneered in Ireland by services like GoCar. While the costs of these services are currently high, shared cars that drive to your location as you need them could make these services more efficient and attractive. Transport hubs can be connected together with autonomous individual vehicles, solving the 'last mile' problems that plague public transport. Later, when autonomous cars make up the major share of vehicles, more cars will be able to share the road while travelling at higher speeds.

I drove all night

No statute explicitly prohibits an automatically navigable vehicle to be driven on the public roads in this jurisdiction.

In those circumstances, it bears examining whether the removal of the human element of direct control renders a car truly 'driverless' in the eyes of the law.

Under section 3 of the *Road Traffic Act 1961*, as amended, 'driving' includes managing and controlling. Whether this might extend to switching on a self-driving vehicle's navigation system, entering a destination, and keeping watch over the route as the vehicle's software exercises 'control' over the route and journey would be a matter for the legislature – or, in the absence of

adequate statutory preparation being made, the judiciary. Of relevance would be the potential existence of a failsafe switch that reverts control to the driver, as such human oversight might arguably render one as being in control, even if one is not taking a hands-on role.

Road to nowhere

Upon examining the most frequently prosecuted road traffic offences before the courts, the majority contain a requirement that a person be 'driving' as a prerequisite to culpability. Such offences include dangerous driving contrary to section 53 of the *Road Traffic Act 1961* and the lesser but similar offences of careless driving and driving without reasonable consideration, as well as driving without a licence, contrary to section 38. In respect of the latter, it will be a matter for the legislature to determine if someone enjoying a ride in a self-driving vehicle without any failsafe switch would be required to bear a licence in circumstances where they are every bit as passive in the navigation and conveyance of the vehicle as a passenger on the Luas.

Regarding the former offences, which involve various degrees of inadequate driving, it is clear that each such offence is concerned with the manner of driving and, as such, would require evidence of actual culpable action on the driver's part, rather than his being taken on an erratic ride by his navigation system.

A delicate matter for the legislature to consider will be the offence commonly known as drunken driving or drug driving contrary to section 4 of the *Road Traffic Act 2010*. As matters stand, it is an offence to "drive or attempt to drive a mechanically propelled vehicle in a public place" while being under the influence of an intoxicant to such an extent as to be incapable of having proper control of the vehicle, or while there is present in that driver's body a quantity of alcohol such that, within three hours after the driving, the concentration of alcohol in his or her breath, urine, or blood exceeds certain statutory minimums.

It will be a matter for the legislature to determine if someone enjoying a ride in a self-driving vehicle without any failsafe switch would be required to bear a licence in circumstances where they are every bit as passive in the navigation and conveyance of the vehicle as a passenger on the Luas

FOCAL POINT

radar love

The US National Highway Transport Administration has created a five-level hierarchy of vehicle automation technologies. These levels have been widely accepted worldwide to describe different technologies:

- Level 0: The driver is in complete and sole control of the vehicle at all times,
- Level 1: Automation of one more specific control functions, including common technologies like electronic stability control and pre-charged brakes,
- Level 2: Includes technologies like adaptive cruise control in combination with lane centring,
- Level 3: Allows the driver to cede full control of the vehicle under certain conditions as they wish – the driver is expected to be available for occasional control with a suitable transition time,
- Level 4: The user simply inputs destination data, but isn't expected to be available to control the vehicle. The vehicle may or may not be occupied.

PIC: WIKIMEDIA COMMONS



Christine – definitely possessed

Under the current law, a question arises as to whether a person who is being conveyed in a self-driving vehicle is managing or controlling that vehicle so as to satisfy the definition of driving under the 1961 act, and whether the existence or absence of a failsafe mechanism influences the answer. Arguably, to prohibit one from being so conveyed while ‘over the limit’ defeats a key purpose of a self-driving vehicle – the ability to imbibe alcohol and have the vehicle take charge of the route home presumably being a unique selling point for many potential customers.

Moreover and perhaps more pertinently, section 5 of the 2010 act prohibits a person from being in charge of a mechanically propelled vehicle in a public place with the intent to drive or attempt to drive the vehicle while being under the influence of an intoxicant or having a specified quantity of alcohol in his or her system. It seems logical that an intention to drive could certainly be imputed whereby, for whatever reason, the ‘passenger’ anticipated that they might have to override the self-drive system to correct a navigation error, circumvent road works, or even to parallel park. Allowing for any of the

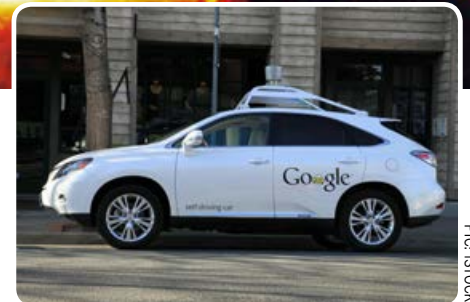
foregoing circumstances could constitute an intention to drive.

In light of the foregoing offences, one widely hailed purpose of self-driving vehicles – as a means to carry one home from the pub – depends very much on legislative intervention to see the light of day, whether by amending sections 4 and 5 to include exceptions for such vehicles, by differentiating between vehicles that contain a driver override that reverts control to the occupant and those that do not, or by altering the definition of ‘driving’ as contained in section 3 of the 1961 act.

Build my hot-rod

One sea change that would be prompted by a preponderance of self-drive vehicles on the public roads would be in the area of compulsory insurance legislation. Currently, under section 56 of the 1961 act, it is mandatory that a user of a vehicle be insured to drive a particular vehicle to the effect that any damage, loss or injury attributable to his negligence and suffered by a third party would be compensated.

Readers will note that, as distinct from the



PIC: ISTOCK

Google cars: “don’t be evil”

aforementioned offences, the person who must be so insured is the ‘user’ of a vehicle, rather than a driver in particular. Section 3 of the 1961 act clarifies that ‘use’ includes ‘park’ and declares that cognate words shall be construed accordingly. However, while it is uncontroversial to rule that parking a car is a form of driving, section 3 is silent on what other types of actions can also constitute such use. It seems axiomatic then that, in self-driving vehicles with a manual override, a person riding within that vehicle with an intention to take over the driving of the vehicle in certain circumstances might be held to be using the vehicle in accordance with the plain English meaning of the word.

As to the other main element of the offence contrary to section 56 – commonly cited as ‘no insurance’ – it must be proved that the user was not insured, guaranteed



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FOCAL POINT

space truckin'

Further to the legal implications of private autonomous cars on the road, the technology could have a major disruptive effect on several regulated markets. Heavy goods transport is probably first in line for this revolution. Between 20% and 40% of the cost of shipping by truck goes to fuel costs. The EU's SARTRE (Safe Road Trains for the Environment) saw a human-piloted lead truck remote-controlling a set of following vehicles operating hands-free. 'Road trains' of HGVs travelling together like this can generate fuel savings of 15-20%. In addition to the obvious payroll savings, there are also advantages with regard to compliance with EU

safety requirements necessitating a rest period of 45 minutes for every 2.4 hours' driving, and the consequent economic costs. Breaches can be the subject to criminal prosecution.

Issues also arise in the question of consistency across jurisdictions, with truck drivers already facing several different regulatory environments as they cross Europe. Meaningful legal harmonisation will need to span continents, as the potential cost and environmental advantages will be diluted quickly if vehicles are compelled to move from hands-off to hands-on modes as they cross jurisdictions.

or exempted against liability for harm caused by his or her negligent use of a vehicle. Most, if not all, civil claims on foot of road traffic incidents are grounded in negligence and take the form of personal injuries claims and/or claims for damage arising from a driver's negligent use of the vehicle. Where damage occurs when a vehicle is in self-driving mode, on the other hand, it is difficult to see how such damage would be attributable to the occupant's negligence, no more than one would be responsible if the taxi in which one is riding crashed and injured a third party.

As such, a statutory overhaul of the insurance regime would be necessitated in anticipation of the common use of self-driving vehicles on Irish roads. In the absence of such a regime change, it is conceivably possible that incidents of damage

No statute explicitly prohibits an automatically navigable vehicle to be driven on the public roads in this jurisdiction

caused by the 'mistakes' of self-driving vehicles might give rise to claims under the *Liability for Defective Products Act 1991* as against – for example – the manufacturer of the vehicle, the author of the navigation software, or

indeed the author of the mapping system with which the navigation software interacts, depending on the nature of the defect.

However, such avenues of recourse would be cumbersome and would present difficulties in light of the number of potential defendants, many of whom would be foreign-domiciled companies. In reality, a


statutory regime ought to be instituted to account for the changing landscape in light of the fact that a system, rather than a human, will be navigating vehicles. Possible solutions might include the amalgamation of motor tax and

insurance into one flat fee – in circumstances where the broad spectrum of driver-specific criteria that currently cause varying policy prices would be less relevant – paid into a pool out of which damage and injury arising from system failures is compensable, in a similar manner to the current operation of MIBI.

Here in my car

In May 2014, when the subject arose in the Dáil, Minister Leo Varadkar said: "It is absolutely the case that technology is ahead of legislation, but it is very hard to write legislation in anticipation of technologies that might or might not develop."

This fast-maturing technology offers advantages both myriad and meaningful. It will have certain legal consequences, whether in road traffic law, insurance, liability, or regulated markets. Despite the familiar political prevarication, legislators will ultimately be afforded few 'might or might not' when it comes to the need for legislative and regulatory change.

As in Lord Denning's famous *Shoe Lane Parking* judgment: "He may protest to the machine, even swear at it. But it will remain unmoved." Instead, the legislature must address likely developments in this field in advance with a positive and anticipatory attitude, lest the technology – and the congruent benefits it will bring – leave our regulators spluttering  in its exhaust fumes.

look it up

Legislation:

- *Liability for Defective Products Act 1991*
- *Road Traffic Act 1961*
- *Road Traffic Act 2010*

Law Society of Ireland

NEWSLETTER

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The Law Society's e-zine is the legal newsletter of the solicitors' profession. The e-zine issues once every two months and brings news and information directly to your computer screen in

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section on the Law Society's website at www.lawsociety.ie. Click on the 'e-zine and e-bulletins' section in the left-hand menu bar and follow the instructions.



Fitz

FOR PURPOSE



Mark McDermott
is editor of the Law
Society Gazette

Minister for Justice Frances Fitzgerald speaks to Mark McDermott about her personal goals, the *Legal Services Regulation Bill* – and the challenges of addressing the ‘severe systemic failings’ in policing

When seeking to interview a member of Cabinet, it tends to become a waiting game. Diary times get ‘hit for six’ when the Government is dealing with hot-potato issues like water charges and when you have the chief inspector of the Garda Inspectorate, Robert Olson, trying to beat you to the door of the office of the Minister for Justice.

Once finally through the door, Minister Fitzgerald comes across as extremely friendly and focused, to the point that her attention remains fully fixed on you, regardless of all other distractions. She speaks of having had “quite a chequered career” in politics: “You know, you win some, you lose some. You survive in it, you don’t survive in it. When I look at the number of people I’ve known who’ve had very short stays in the Dáil and the Senate, and for me to have had the opportunity to be in the Cabinet and to be a minister in two important portfolios, it is, really, a great opportunity.

“It’s an opportunity to shape various issues based on my particular experience of being a woman, of being somebody who’s totally committed to equality, of somebody who brings a social policy background to this area, as well as experience – not directly in the legal area,

but associated with the legal area – for probably 30 years of my life at this stage.”

Having no legal background, is it a help or a hindrance in her role as Minister for Justice?

“Whatever ministry you’re in, you build and work on your strengths and your experience. I have 16 years of writing and taking legislation through the Dáil and

at a glance

- On winning and losing in politics
- Her thoughts on being contacted by Enda Kenny to be the new Minister for Justice
- The minister’s personal vision for the Irish justice system
- Institutional reform, transparency and accountability
- The *Legal Services Regulation Bill* – its strengths and weaknesses
- Dealing with the breakdown in policing practices

‘I’m certainly very well disposed towards the concept that the new authority would have the benefit of the experience of Law Society people’

ALL PICS: JASON CLARKE

through the Seanad, so 16 years of legislation is probably as much as a lot of people have in the House. That’s a great help to me whatever department I’m in. I’ve been fortunate enough to work with many in the legal profession over the course of my career, for example, Mella Carroll and Catherine

McGuinness for four years when I was on the Commission on the Status of Women in Ireland.

“Obviously there are a lot of technical elements to justice but, equally, justice is about the sort of society we want – and my whole social policy background is about that

and about communities and how individuals access services, including legal services.

“I’m very conscious that I have huge legal expertise around me, and it’s really important to me that I use that well and avail of it. I know how to access that and who to work with. I have to say that I find people in law

very generous in terms of wanting our law to be better – and they’re not slow in giving me their opinions, as you probably know!”

Late-night phone call

How did she feel when Enda Kenny contacted her asking her to be the new Minister for Justice?

“Well, I got an indication in a late-night phone call from the Taoiseach that he’d be calling me the next morning, so I had to read a little bit between the lines. I was extraordinarily honoured, because it is a major Government department. I was very pleased that I’d had the experience of being a minister in Government where I had obviously been listening to, and been part of, all of the discussion about the legal changes that were coming in under my predecessor. I had the advantage of being in Cabinet. I knew that the scale of the job was very big, obviously.”

And, as minister, what is her personal vision for the justice system?

“Part of this Government’s approach to the last election was about reform, and I think all of our institutions are undergoing considerable analysis at the moment, and that includes the legal profession. It includes all our institutions. I think they’re all having to be more transparent, more accountable.

“There are many different areas. It’s hard to encompass all of them but, in terms of the legislation, there’s a huge legislative programme. I’d like to help the courts in the areas that they want to see reformed. There are a lot of outstanding areas that would make the courts – and the lawyers are telling me this – more effective, more efficient. Whether it’s the periodic payment review, whether it’s dealing with certain age limits in relation to judges, whether it’s just how the system works, whether it’s in the family courts so that you develop more expertise in the family law area, and I think we can be imaginative in how we do that.”

Pushing through

When asked about her priorities for the Government’s remaining term, she refers to “half a dozen areas” that she is determined to see through.

“We’ve done the Court of Appeal. That’s been really important. My priorities are making sure that we see the *Legal Services Regulation Bill* enacted and the *Judicial Council Bill* published and enacted, making

sure that the new sexual offences legislation is brought through, that the *Victims’ Directive* is enacted, that the *Child and Family Relationships Bill* leading to marriage equality is dealt with and that we have that referendum. I certainly see myself playing a leading role in that. That’s extremely important. And then we must look at ongoing reform in the penal area – we’ve just received a major report on that – and a Garda Síochána that’s absolutely fit for purpose and on the road to reform. That’s really critical.

“Obviously we’ve new bail legislation.

You get a lot of criticism obviously in relation to repeat offenders. I, as minister, have to work on reducing reoffending. I’d like us to be looking at the legal system in a very holistic way – to have holistic initiatives around the courts, around our probation service and the various

services, in the area of prevention. For example, when you do get to court, if you get to court, that it’s effective and efficient and works for the profession as well, because I think there are lots of elements that don’t work for the profession at the moment.”

Is she talking about stiffer sentencing, bigger prisons?

“No, we’re not talking about bigger prisons! We’re reducing the prison population and in fact, as I say, that’s why I’m focusing on reducing reoffending. I’m talking about persistent offenders. We

have to have more targeted initiatives for persistent offenders. We know enough about the diversion programmes out there, that they work.”

Elephant in the room

The elephant in the St Stephen’s Green office is the *Legal Services Regulation Bill*. What does she regard as its strengths and weaknesses?

“This is a key Government policy. In legal terms, it’s dealing with criticisms that go back at least 20 years, specifically from the Restrictive Practices Commission and the Competition Authority, and others. These all felt that independent regulation and the removal of restrictive practices in the Irish legal services was critical.

“Its key strengths are, first of all, the overhaul of the legal costs adjudication regime; independence in relation to complaints – the fact that you have independent, publicly accountable oversight is really important; regulation of the legal professions; and the beginning of opening up restrictions in business. My own belief in relation to the latter is that it has to be well researched in terms of its impact on the market. I don’t believe that one should be ideological simply for the sake of being ideological about it. You have to do what will work for the profession and for the consumer, and you have to have evidence about that. So that’s what I’m teasing out at the moment in the final stages of the preparation for the report stage of the bill.”

Progress on the bill has been lagging. When does she foresee it being enacted?

“We have the report stage coming up. The plan is to bring it in in a couple of weeks. We are working very actively on it. In fact, I was

“I, as minister, have to work on reducing reoffending. I’d like us to be looking at the legal system in a very holistic way”

FOCAL POINT

slice of life

Where from?

Stillorgan, Dublin. Attended school in Sion Hill, Blackrock: “So I was framed by the Holy Family of nuns and the Dominicans, those great women.” She has lived in West Dublin since 1981.

Better half?

Married to Michael, a child psychiatrist. They have three sons, Mark (an actor), Robert (an accountant), and Owen (recently graduated in French and translation studies in DCU), who are in their late 20s or early 30s.

Rising time?

“In this job, it gets earlier and earlier. I get up at around 6.30am.”

Quitting time?

“Very late. Very often around 11pm.”

If you weren’t a politician?

“I did some work with the BBC when I was in London, and I’ve always been quite interested in communications. I like radio and television. I did consider it as a career at one stage and I did apply to RTÉ. I don’t think they replied back to me!”

speaking to the AG about it this morning [10 November] and working out some of the detail. There's a lot of detail that came up at committee stage that still has to be worked out. I would hope that we would finish in the Dáil and get into the Senate before Christmas, and then finalise early in the New Year and bring the Legal Services Regulatory Authority into being in the first half of next year."

One of the big issues for the Law Society and its employees is the transfer of staff from the current Regulation Department to the new authority. Does she envisage a seamless transfer taking place?

"Well, I'll tell you something. I have met the Law Society. I have discussed this issue. I know the commitment of the people involved and the work that they've done, and I'm certainly very well disposed towards the concept that the new authority would have the benefit of the experience of those people. Now, I've had engagement with the Department of Public Expenditure on it. Obviously, you're moving people from a private body, and there are detailed implications about that. There are issues about how you handle the current complaints and who would be dealing with those in the new scenario. So those issues have to be worked through. But I would like to facilitate people as much as possible, and the work I'm doing is to try to ensure that that will happen."

Does she think it will happen?

"I would hope that it could happen for people, yes. I mean, that's my intention, you know. Obviously, I'm working out the transfer issues to a statutory public body, so it will be in the Senate when I sort that out, because I'm still working with the department on it. But, you know, my goal is to ensure that the experience isn't lost. Now people have argued, 'Oh, you need a fresh start,' but my own feeling is that experience is very important and I don't like losing experience, but there are transitional issues and I'm trying to resolve those."

Breakdown in policing practices

The problems in the Garda Síochána in recent years have been widely publicised, including, among others, the whistleblower penalty points saga, the suspected recording of solicitor conversations with their clients in garda stations, which have called into question certain garda practices, as well as

You have to look at the systemic failings in the Garda Síochána – and they are severe – and you have to have a plan of action to address those failings

minister react to the apparent breakdown in policing practices?

"Here's what I believe, and it's a real issue. When there's a critique of the establishment, you have to try and separate out poor systems from the performance of individual people and the commitment and dedication of so many. When I go down to Limerick and I see the horrific situations facing the gardaí down there with regard to murder – absolutely horrific to hear the details of what they have had to deal with; it's beyond imagining actually – and you see how they've dealt with it, you see the commitment, the personal risks that gardaí take, you see the huge commitment in an unarmed garda force. Quite incredible you know, apart from some of our specialist units. So what I would say is that you have to look at the systemic failings – and they are severe – and you have to have a plan of action to address those failings."

And just where have those systemic failings occurred?

Minister Fitzgerald replies: "In the Garda Inspectorate's report, the systemic failings are

the more recent Garda Inspectorate report into garda failures in the investigation of serious crime. How does the

quite serious in terms of crime investigation. They're serious in terms of management systems, technology – not unique to An Garda Síochána, I have to say, as the Courts Service will know, and they've had to do so much work in that area.

"But, you know, this is an overdue analysis. It's an excellent in-depth analysis with 200 recommendations. There are certain implications flowing from it, which I will be acting on. This is a line in the sand and we move forward from here in terms of the reform agenda, which includes the new Policing Authority, which is the most radical change in terms of garda accountability in decades, and the appointment of a new Garda Commissioner."

Is An Garda Síochána broken to such an extent that it can't be reformed?

"No, it *can* be fixed," she replies adamantly. "It *can* be reformed. It has the people. It has the commitment. It has the history. It has the community contact and trust, which we must make sure to build on. When you see a report like this, or indeed some of the other reports we've seen, you have to try and understand that so many people are very deeply committed. So many lawyers are 100% committed – gardaí the same – but systems need ongoing change and review."



Robert Olson (Chief Inspector of the Garda Inspectorate) with Frances Fitzgerald

Global WARNING

In an edited version of this year's prize-winning human rights essay, **Rosemary Hennigan** discusses climate change, the environmentally displaced, and the *Immigration, Residence and Protection Bill 2010*



Rosemary Hennigan is a trainee solicitor with McCann FitzGerald. She wishes to thank Patricia Brazil and Heather Murphy for reviewing this article

The recent publication of the [fifth assessment report](#) of the Intergovernmental Panel on Climate Change (IPCC) brought into sharp focus the broad spectrum of problems arising out of climate change, which require a concerted response from the international community. In this context, the most pressing concern for human rights law arises with respect to the displacement of persons.

The IPCC report has drawn attention to the problem of displacement by highlighting the likely increased occurrence of extreme natural events and rising sea levels brought about as a result of global warming. It is estimated that between 72 and 187 million people may become displaced if the current trends in erosion and inundation caused by climate change are not addressed. However, the problem of displacement is not merely of future concern. In addition to pockets of displacement occurring due to particular hurricanes and instances of drought, low-lying island states such as the Maldives, Nauru, Tuvalu, Papua New Guinea, the Federated States of Micronesia, and Kiribati are facing the immediate submergence and loss of their territory in its entirety. The problem is current and will become even more urgent in future. While acknowledging the worrying scope of the problem, the more moderate response evident in the recent IPCC report is welcome, as it leads the debate on the protection gap for the environmentally displaced out of the hyperbolic and points to the real need for practical solutions.

For human rights law, the most immediate actions to be undertaken are, firstly, a clarification of the legal status of the environmentally displaced and, secondly, an adequate legal

at a glance

- A pressing concern for human rights law arises with respect to the displacement of people due to extreme natural events and rising sea levels
- The definition of a 'refugee' in the 1951 *Refugee Convention* requires the cause of displacement to be human actors rather than environmental or natural forces
- The *Immigration, Residence and Protection Bill 2010* offers a valuable opportunity to consider ways in which the protection gap at international level can be dealt with domestically



The nature of climate change displacement is that it is frequently slow-onset in nature, becoming increasingly more severe over time

response to the ‘protection gap’ in which such persons currently fall. In this light, it would be regrettable not to use the opportunity presented by the impending enactment of the *Immigration, Residence and Protection Bill 2010* to address the protection lacuna surrounding the environmentally displaced. The *IRP Bill* was listed as awaiting committee stage in the Government’s recently announced legislative

programme for autumn 2014. Consideration of the protection gap for the environmentally displaced would be welcome before the bill is enacted.

The protection gap

The protection gap for environmentally driven migration arises due to the limited wording of the 1951 *Refugee Convention*.

Neither a literal nor purposive reading of the convention can provide solid legal grounds for expanding the definition to include environmentally displaced persons. The definition of a refugee requires the cause of displacement to be human actors rather than environmental or natural forces. Environmentally displaced persons who cross international borders therefore fall entirely

outside the ambit of the convention's protection. It is not clear what legal status, if any, such persons would have if, for example, displacement arises as a consequence of the total submergence of a state territory. This is the bleak prospect facing the low-lying islands and atolls of the South Pacific, where entire populations could be rendered stateless.

However, it is far from clear whether statehood would be extinguished in such a circumstance, producing another hugely problematic legal limbo for the displaced since, if the principle of the continuity of statehood is applied, the state could remain notionally in existence, so that the population of such state could not be recognised as stateless for the purposes of international law. This lack of clarity on the status of environmentally displaced persons in international law makes the domestic position similarly unclear.

The domestic regime in Ireland follows the international model laid down in the *Refugee Convention*, with the definition of refugee under existing Irish law, and the proposed *IRP Bill*, reflecting the international definition.

The bill is designed to address a number of shortcomings in the current refugee process in Ireland. It does not, however, address the protection gap for environmentally displaced persons. Given that the extent of the problem with climate change has now been established, the enactment of the *IRP Bill* presents a valuable opportunity to consider ways in which the protection gap at international level can be dealt with domestically.

While subsidiary protection is available for those who do not strictly satisfy the requirements of the *Refugee Convention*, the grounds for a grant of subsidiary protection remain limited to circumstances arising out of the wrongful conduct of human actors. The specific grounds are adopted from the *European Union (Subsidiary Protection) Regulations 2013* (SI 426/2013) and incorporated at section 67 of the *IRP Bill*. The grounds envisage serious harm being suffered by the applicant, requiring specific human agency, and therefore not applying to environmental displacement.

Temporary protection

The temporary protection regime, incorporated at section 114 of the *IRP Bill*, offers a limited avenue of protection solely in the event of a mass influx. Temporary protection was introduced in response to the humanitarian crisis resulting from the



PG:ISTOCK

It is not clear what legal status, if any, such persons would have if, for example, displacement arises as a consequence of the total submergence of a state territory. This is the bleak prospect facing the low-lying islands and atolls of the South Pacific

Balkan conflict during the 1990s, whereby EU member states failed to adequately respond to the displacement of persons in Kosovo. The 2001 *Temporary Protection Directive* provides for minimum standards of treatment in the event of a mass influx of displaced persons. Such a protective regime is promising for the environmentally displaced because the scope of protection under the regime is defined at article 2(c) of the *Temporary Protection Directive* as applying in particular, but not exclusively, to displacement brought about by violence. This can be interpreted to constitute broader protection than that which is afforded under a strict reading of the *Refugee Convention*. The *IRP Bill* incorporates this broader protection into Irish law, although protection is limited to a period of one year (with the possibility of a further year's extension), in line with article 4 of the *Temporary Protection Directive*. This limitation significantly curtails the effectiveness of protection, particularly for stateless persons displaced by environmental events in situations where permanent residence will be required, and it is regrettable that a degree of temporal

flexibility has not been included. For the environmentally displaced, a system of temporary protection that leads towards a more permanent solution would be preferable, and the enactment of the *IRP Bill* presents a useful opportunity to explore this possibility.

A further defect is the limitation of the temporary protection regime to situations of mass influx. The nature of climate change displacement is that it is frequently slow-onset in nature, becoming increasingly more severe over time. Natural disasters may create instances of mass influx, but it is likely that the direct effects of climate change will only gradually become an immediate problem for people living in vulnerable geographical locations and, consequently,

it is likely that displacement will consist of a steady stream of people rather than particular crises leading to mass influx scenarios.

The temporary protection regime was never intended to provide an answer to the protection needs of the environmentally displaced and, while it is promising to see broader protection for the displaced outside of traditional *Refugee Convention* scenarios being recognised in Irish law, it is far from an adequate response to the protection gap for environmental displacement. It is likely that protection under the temporary protection provisions would require sympathetic interpretation by the judiciary, and the lack of certainty that this creates suggests that it is not the answer for the environmentally displaced.

Complementary protection

Complementary protection is another means of providing protection outside of the refugee regime. The *EU Subsidiary Protection Regulations* are an example of this. In the United States, temporary protected status (TPS) was used to offer protection to the victims of the natural disaster in Haiti. The problem with such protection schemes, however, is that they are largely voluntary matters of domestic law. In Ireland, we have been slow to adopt domestic measures of protection for asylum seekers, let alone those who do not qualify for refugee status. Out of 3,503 people who applied for subsidiary protection since 2009, only 116 applications

were successful. The default status for those who do not qualify for residence under the *IRP Bill* is, by virtue of section 6, that they are illegally present, liable for arrest (using reasonable force) and detention, and ultimately, deportation.

Ireland has already been the subject of significant criticism for its domestic provision of protection to refugees. The direct provision regime for asylum seekers is the subject of a campaign for its abolition by the *Irish Refugee Council* and has been the subject of criticism domestically and internationally. The *IRP Bill*, while constituting an improvement on the current disjointed and delay-prone system for refugees, offers little to those victims of environmental events who find themselves displaced. Indeed, the delay in enacting the *IRP Bill* does not bode well for a timely response to this future problem. In this regard, it would be worth considering the provision of broader protection in the current bill or in future amending legislation.

Non-binding obligations are too vulnerable to the vicissitudes of politics to offer much certainty of protection for the environmentally displaced. By way of example, TPS in the United States involves a system whereby the citizens of a particular state are designated to have TPS following

a particular natural disaster. This makes protection a matter of political goodwill between states, which may lead to the use of TPS as a political tool in the event of conflict between states. This may result in unequal treatment of persons, potentially breaching article 14 of the *European Convention on Human Rights*. Arbitrary and unequal treatment between people requiring protection goes against the spirit of the *Universal Declaration of Human Rights*. It


would be unfortunate if the provision of protection becomes a point of political contention and, because of this, it would seem that non-binding complementary protection may not be an ideal response to the protection gap. Rather, a mandatory and binding system of complementary protection would be preferable.

Future crisis

There is no doubt that the future crisis affecting the international refugee system will have to be addressed. Given the current problems in our system of processing

asylum seekers, it is quite clear that we are not prepared for this inevitable change. The Conference of Plenipotentiaries that adopted the *Refugee Convention* in 1951 included in its closing remarks “the hope that the convention would have value as an example

exceeding its contractual scope, that all nations would be guided by it in granting as far as possible to persons in their territory as refugees, and who would not be covered by the terms of the convention, the treatment for which it provides”.

It is incumbent on Irish legislators to prepare for the human effects of climate change and, in so doing, it is hoped that the higher principles of human rights law will be incorporated into any legislative response. There is no doubt that the need for asylum will continue and will  grow ever more urgent.

For human rights law, the most immediate actions to be undertaken are, firstly, a clarification of the legal status of the environmentally displaced and, secondly, an adequate legal response to the ‘protection gap’ in which such persons currently fall

look it up

Legislation:

- *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations
- (Council Directive 2001/55/EC) *Temporary Protection Directive*
- *European Convention on Human Rights*
- *European Union (Subsidiary Protection) Regulations 2013* (SI 426/2013)
- *Immigration, Residence and Protection Bill 2010*
- *Universal Declaration of Human Rights*

Literature:

- Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Report of Working Group II, *Climate Change 2014: Mitigation of Climate Change*, IPCC 2014



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We need to talk about

KEVIN



Mark McDermott
is editor of the Law
Society Gazette

The Law Society's new president, Kevin O'Higgins, talks to Mark McDermott about politics, family history, defending the solicitors' profession, and his plans for his year in office

It will come as no surprise to those who know him that Kevin O'Higgins is a party animal – both socially and, more specifically, in his dedication to his beloved Fine Gael. During the speech to Council marking his presidential inauguration, Kevin referred to the adage of outgoing president John P Shaw, who often stated that he “didn’t do politics”.

“Well, it will come as no surprise to most here that I do!” Kevin said, only half in jest. “In truth, I have been involved professionally and actively in that space for 20 plus years and have considerable respect for most politicians, who are decent, honourable, and hardworking people.” Notwithstanding his political background, he is adamant that he will carry out his function as president in an agnostic fashion.

Kevin is a self-avowed and extremely proud sole practitioner with Leinster rugby blood flowing through his veins. He boasts of being the first sole practitioner president of modern times.

So where did it all start for the South Dublin man whose father, grandfather and great-grandfather went by the moniker Thomas F O'Higgins? The first question has to be why he himself was not christened ‘Thomas F’?

“The simple reason is because I was beaten to it by my eldest brother!” Coming fifth in a family of seven children, he ended up being called after his uncle Kevin. “My father was his godson, I think.”

He had a lot to live up to, given the O'Higgins' legal and political heritage. Kevin's father Tom was a stalwart in Fine Gael, a barrister and judge who subsequently became Chief Justice and a judge of the European Court in Luxembourg – as well as being a candidate in the 1966 and 1973 presidential elections. Surely, coming from such a strong political background suggested that Kevin might carve out a career in politics for himself?

“I was never really drawn to it, although I was always political and politically active. But I never really felt that I could go out there and do what politicians do, and I was never pushed into it.

“In my adult life, I might have been more strongly disposed towards it – in my middle years, let's say – because an awful lot of what I do now is political.”

He admits that getting involved initially with the Dublin Solicitors' Bar Association, and then on Council with the Law Society, resonated with his

at a glance

- Social and political outlook
- Following in the wake of the O'Higgins' heritage
- A life in law
- Steering a presidential course
- Recent legal controversies
- Political aspirations



“I’m a good judge of people and a good judge of reflecting the colleagues’ concerns. Those concerns continue to be about survival”

ALL PICS: JASON CLARKE

political DNA. “That was quite fulfilling. A lot of my legal work, of course, has become political and it has certainly been said to me by my political peers that I have the requisite skills.”

As the son of a prominent politician, did he ever resent politics for effectively kidnapping his father from ‘normal’ family life.

“No! I was very proud, you know. Quite honestly, it was nice to be able to go into the

schoolyard the day after a political debate and somebody would say: ‘Oh, I saw your dad on *Today Tonight*’. We certainly enjoyed his campaigns, particularly the presidential campaigns, which were great fun.”

Surely he doesn’t have many memories of the 1966 campaign, when he would have been just nine?

“Oh, I remember it very well! It was a remarkable campaign. It was the first political

campaign in Ireland that had American-style razzmatazz!”

His dad went head-to-head with Eamonn de Valera, and would have been regarded as a rank outsider. It was the 50th anniversary of 1916. “Notwithstanding the fact that my godfather, his best friend, ran RTÉ – Kevin McCourt – the station took a position that they would not afford him any access to television because Dev wasn’t campaigning. Dev thought it would be

unbecoming for the incumbent president to carry on a campaign.

"I think it was to thwart any TV coverage for his opponent, but yet, every Sunday, Dev was in every part of Ireland putting down wreaths and dominating the TV news. So my father's campaign was really confined to the press."

Tom did remarkably well, losing the election by only 9,000 votes. "It was a remarkable result," reminisces Kevin.

Cometh the hour, cometh the man

Seven years later, Tom decided to run again – against Erskine Childers. "This time, the tables had turned," says Kevin. "My dad was probably the favourite. He was a little bit unlucky because, shortly after he had declared as a presidential candidate in January, Jack Lynch called a snap general election the following month. Dad decided to stick with his decision and so didn't contest his seat. And, of course, the government changed."

It seemed to augur well for a non-Fianna Fáil candidate in the presidential election?

"Yes, but Fianna Fáil chose well. It was 1973 and the North was bubbling up. There was a lot of trouble up there and this was a chance for the fair-minded Southerners to

effectively declare that we were not bigoted and quite happy to elect a Protestant Englishman!"

Kevin was 16 at the time, at school in Clongowes Wood, Co Kildare, like his father before him.

"That same year, my father was president of the Clongowes Union, effectively a past-pupils' group. I remember him as the presidential candidate coming down on Union Day – the big day in the school, in late May. The election

was the following week. There was a lot of media interest."

That particular excitement over, two years later, Kevin finished his Leaving Certificate. Was his career path always going to be in the law?

"You'll be amused to hear this, but I thought my bent was in journalism! I would have been contemplating that and making suggestions in that regard, but the Jesuits took me aside and said 'No, no, no! You're not going to make a living out of that!'"

"So I decided to do the solicitor's course. I think life as a solicitor had more appeal to me than becoming a barrister, because it was much broader and seemed to

offer business acumen, management acumen, legal research and legal problem-solving. It was a decision that I came to in fifth or sixth year, and it was probably influenced to a degree that around 11 of my year went into law, mainly as solicitors."

Presidential plans

Every president tends to put their stamp on their presidential year. What are Kevin's plans?

"I'll play to my strengths. I'm a good judge of people and a good judge of reflecting the colleagues' concerns. Those concerns continue to be about survival. I'm lucky to be president now, when there is a great opportunity for the Law Society's relationship with its members to change. I think that the *Legal Services Regulation Bill*, when enacted, will give the Law Society the opportunity to recast its relationship with its members."

What are his thoughts on the *Legal Services Regulation Bill*?

"Apart from the positive benefits I've just mentioned, I have concerns about whether the changes to the regulation of the profession will cost us more. We will have to be ever vigilant about that. But the work that has been done by the Society over the last three years in dissecting the legislation and suggesting ways on how it could be improved, most of those ideas have been taken on board."

"That said, we would still have concerns about matters relating to privilege, specifically sections 15 to 17. There's also a lack of clarity in relation to certain other areas, particularly about limited liability partnerships."

"From the Law Society's point of view, of course, we continue to have concerns that the issue of the transfer of regulatory staff hasn't been resolved yet."

"My own view is that the sooner the legislation is passed the better – it's been three years now, and it will probably be another six months before it is enacted. It's time to get on with it, because it's very difficult to plan otherwise."

How does he respond to media comments that the Law Society has tried to meddle with the new legislation by suggesting that certain changes be made in order to suit its members rather than the general public?

"I think it's very surprising that the Law Society should be criticised by the media for taking a significant interest in legislation that is clearly going to affect its members. You know, there probably won't be another *Legal Services Regulation Act* for a generation. The last major legislation was 60 years ago, so this legislation is going to see most of our careers out. Of course the Law Society is entitled to, and must take, a huge interest in it. It's obvious that we're

It's very surprising that the Law Society should be criticised by the media for taking a significant interest in legislation that is clearly going to affect its members

FOCAL POINT

slice of life

Life's gurus?

"My wife, Gaye. She's got lots of common sense and has different interests to me, which is good from a balance and sounding board perspective."

"Then there's my father. His two big interests were the law and politics, so I would certainly have taken that from him. He was probably the best person I've ever heard telling a story. I can even see that in his judgments. His command of English was very simple and not unduly complex. He always urged us to seize the moment and, at the start of every day, resolve that you were going to learn something new."

Have you learned anything new today?

"It's not the end of the day yet. Must try to get to bed earlier perhaps!"

Most listened to on your iPod?

"U2 and Christy Moore."

You seem a bit long in the tooth for U2, Kevin?

"They've been going as long as I have, haven't they?"

Chill zone?

"Running about three miles every morning before the school run. I'm planning to do the Calcutta Run and the Dublin Marathon in 2015."

Pet hates?

"Replying to requisitions on title."

Star of the silver screen?

"*Michael Collins* definitely. Well, I've seen it 19 times."

Dream job?

"To be the first solicitor attorney general. Wouldn't that be the ideal job now? A solicitor at the Cabinet table in that capacity."

going to be interested in how this legislation is going to affect us, but I also believe that we have ably represented the public-interest concerns as well.

“One key feature of the legislation is that the client of a solicitor will be fully aware of what litigation will cost, or what legal services will cost him or her. That’s not always the way at present. We welcome these changes and we agree that such matters should become much more transparent, in order that it will be in the consumer’s interest as well.”

What are the top three issues for his presidential year?

“I’d like to try to address the isolation that many sole practitioners encounter. We’ve often heard that sole practitioners are an endangered species. I don’t happen to agree with that, and I remind colleagues that 10% of all practices in Britain – which is a much more urbanised country than we are – are run by sole practitioners.

“I believe that the private client will always prefer to deal with a smaller legal practice as opposed to a larger concern. So I see a future for the sole practitioner. The drawbacks will continue, of course, by which I mean the feeling of isolation, of not having a peer group to discuss issues with. That’s why I am very happy that the Law Society has been able to support the Sole Practitioners’ Network, which has recently been established by Sonia McEntee, Neil Butler and others. This is going to be a great help for sole practitioners.

“In relation to other matters, it would be great to see Dublin – the Dublin legal community – attract more international work than perhaps it has in the past. If there’s anything that I could do in my role as president of the Law Society to encourage that, I’d be happy to make myself available. Specifically, we need to be competing for more arbitration and mediation work, which, currently, tends to go to London.”

Controversies

What are his opinions on the recent controversies around court closure and the potential bugging of solicitor/client conversations in Garda stations?

“I would have concerns as to the social effect of court closures, particularly in rural Ireland. To take the Dublin situation as an example, it was absolutely bizarre – and the phrase used by the Society was that it was ‘bonkers’ – to

“The sooner the legislation is passed the better – it’s been three years now, and it will probably be another six months before it is enacted. It’s time to get on with it, because it’s very difficult to plan otherwise”

even contemplate that you could possibly run a justice system in the capital city and its environs by shutting four significant court venues. Thankfully, common sense has prevailed in relation to that madcap idea.

“I’d be very conscious of the social effect it must have when local garda stations and local courthouses close, while also recognising that, sometimes, courts simply are not viable and some level of rationalisation might be needed.

“On the reported tapping of phones in garda stations, I’d be aghast if there had been a systematic attempt, for prosecution purposes, to tape conversations. My own feeling is it these were more likely to be practices that grew up institutionally many years ago and which were never eradicated, or the significance of what they were doing wasn’t really thought through. We’ll have to wait, however, for the findings of the Fennelly Commission report before we know for sure.”

Discounting rumours

There have been rumours about a judicial appointment in the offing for Kevin. Has he heard anything?

“I’m well used to that sort of speculation. I hear those rumours in much the same way as those which suggested that I might become a politician. Would I welcome it? I think I would, at some stage, absolutely.”



Would he ever think of venturing into the political arena with Fine Gael?

“If it was just my decision, I would certainly consider it, but it’s not. I’d be conscious that it’s very difficult on family life, so for those reasons I have always declined. I would think at 57 or 58, it’s a young person’s game. It would be a rare politician who starts off in politics in his late 50s or early 60s. Peter Matthews is the only one I can think of at the moment.”


So it’s not unprecedented.

“No, but while I do have great regard for politicians and I admire people who put themselves out there, it’s a tough old business isn’t it? You need a huge dollop of egotism, you need the proverbial brass neck, you need a dose of idealism, you need to eschew any sensitivity whatsoever, and you just need to be solely focused on yourself. The typical politician, really, is a solo operator.”

Does Kevin possess any of those characteristics?

“No, I’m too sensitive. I have some idealism, I hope. I’ll let others decide on the egotism ... I hope not. Notwithstanding what view others might have of me, I’d be reasonably sensitive and that probably rules me out.”

It might rule him in very nicely for a judicial position?

“That’s kind of in the tea leaves isn’t it? I mean if it happens it happens. I’d certainly relish that opportunity .

Levelling the LAND



Aisling Meehan is a solicitor, tax consultant and qualified farmer practising as Aisling Meehan Agricultural Solicitors

The *Finance Bill 2014* gives clarity to a number of key agricultural taxation measures announced as part of the Agri-Taxation Review launched earlier this year. Aisling Meehan offers a general guide

The *Agri-Taxation Review Report* highlighted a lack of awareness among farmers of the generous tax reliefs that are available to the farming sector. While the taxation system can appear complex, with careful planning, the reliefs currently available see the majority of farm transfers passed down tax free to the next generation.

CAT agricultural relief

The backdrop to the introduction of restrictions on the availability of CAT agricultural relief was a view formulated during the Agri-Tax Review that land being gifted/inherited by people who were not necessarily committed to farming meant that land was not being used to its greatest potential in order to meet the ambitious targets in the *Food Harvest 2020 Report*. As averred to in *Food Harvest 2020*, which is the basis for Government agriculture policy, the primary objective of agri-taxation reliefs is to incentivise farmers to deliver on its objectives of smart, green growth. Consequently, the changes announced aim to encourage those being gifted/inheriting land either to commit to farming the land productively themselves or to leasing it long term to a farmer who will farm it to its maximum potential.

The reasoning behind the encouragement of long-term leasing is that, in order for farmers to invest in land so that it can reach its maximum potential, they need security of tenure; after all, why would a farmer invest in reclaiming and reseeded land, erecting new fences,

improving roadways, and so on, if there was a risk that he/she might not get the benefit from it over a number of years? Consequently, farmers and other stakeholders in agriculture have been vigorously lobbying policymakers to discourage the widely held practice of landowners letting land on an 11-month *conacre* basis. This has resulted in the various measures announced in the Budget to make long-term leasing of land more attractive.

Restrictions from 1 January 2015

Section 74 of the *Finance Bill 2014* details the changes announced in Budget 2015 to use CAT agricultural relief as a tool to ensure that land is made available to active

at a glance

- Changes to CAT agricultural relief are designed to encourage land to be farmed to its maximum potential
- Various measures were announced in the Budget to make long-term leasing of land more attractive
- In order to claim CGT retirement relief, the person transferring the land must be 55 years of age or over and have owned and farmed the land for ten years prior to transfer
- Consanguinity relief is being extended, but limited to transfers of farmland between 1 January 2015 and 31 December 2017 by individuals aged 65 years or under to active farmers



‘The reasoning behind the encouragement of long-term leasing is that, in order for farmers to invest in land so that it can reach its maximum potential, they need security of tenure’

farmers. These changes will apply to gifts or inheritances taken on or after 1 January 2015. While the 80% ‘farmer test’ will continue to apply, a further condition imposed in order to qualify for the relief is that the beneficiary must either be a farmer or lease it out to a farmer for at least six years from the valuation date.

By ‘farmer’, it is meant that the person must spend not less than 50% of their normal working time farming agricultural property (including the property comprised in the gift/inheritance) on a commercial basis with a view to the realisation of profits. The term ‘lease it out to a farmer’ means that the beneficiary must lease the agricultural property comprised in the gift/inheritance for at least six years from the valuation date to a person who will spend

not less than 50% of their normal working time farming agricultural property on a commercial basis with a view to the realisation of profits.

Further, the clawback provisions were amended to provide that the relief will be clawed back where any part of the agricultural property ceases to be farmed by a farmer or by any subsequent lessee of those lands during the six-year clawback period. This 50% normal working time test mirrors that test in relation to claiming [stamp duty relief for young trained farmers](#). It is a very subjective test and, in the absence of any guidelines from Revenue as to what constitutes ‘50% normal working time’, it will be very difficult for practitioners to advise as to whether a beneficiary will satisfy this condition.

Further, the *Finance Bill* did not include a provision similar to that contained in the stamp duty relief for young trained farmers, whereby a clawback will not be triggered where the agricultural property is disposed of during the clawback period, but is replaced within a year of the disposal by other land. A similar provision should be introduced to apply where a lease terminates before the expiry of the six-year period, but the land is subsequently leased within a year of the termination date to another farmer, and the two periods can be counted in satisfying the six-year period.

Further clarity is required on these issues, and the Law Society has asked the Department of Finance about what constitutes ‘50% normal working time’ and the requirements necessary to protect the beneficiary who, in good faith, leases to a farmer who then ceases to spend 50% or



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more of his or her time farming the land, and what time period would be available to enter such lease or replacement lease.

CGT retirement relief

In order to claim CGT retirement relief, the person transferring the land must be 55 years of age or over and have owned and farmed the land for ten years prior to transfer. Where the transfer is to a 'child', the person transferring the land can let the land for up to 15 years prior to the transfer and still claim CGT retirement relief, provided the person transferring the land owned and farmed the land for ten years prior to the first letting. The *Finance Bill 2014* has increased the period during which land can be let from 15 years to 25 years where the disposal is on or after 1 January 2015.

The same did not apply where the transfer was to someone other than a 'child'. However, section 43 of the *Finance (No 2) Act 2013* introduced a provision whereby, for disposals on or after 1 January 2014, the person transferring the land could let the land for up to 15 years prior to transfer and still claim CGT retirement relief, provided the person transferring the land owned and farmed the land for ten years prior to the first letting and each letting of land was for a minimum period of five years (although each five-year letting can be to a different individual). However, this relaxation of the rules could not be availed of by those landowners who had let the land on a short-term basis prior to 1 January 2014, and so section 44 of the *Finance Bill 2014* introduced what may be described as a short-term concession, whereby land that is currently let on a short-term basis and is disposed of before 31 December 2016 can

qualify for CGT retirement relief, notwithstanding that it has not been leased out for a minimum of five years.

For those landowners who are not in a position to dispose of the land prior to 31 December 2016, they can continue to qualify for CGT retirement relief, notwithstanding that they have rented the land on a short-term basis, provided they enter into a lease of between five and 25 years before 31 December 2016. However, the landowner must have owned and farmed the land for ten years prior to the first letting. Further, the section increased the period during which land can be let from 15 years to 25 years where the disposal is to someone other than a 'child'.

Stamp duty

Consanguinity relief – which halves the rate of stamp duty on transfers of non-residential property between related persons (that is, blood relations) – was due to expire on 31 December 2014. However, section 69 of the *Finance Bill 2014* confirms that consanguinity relief is being extended, but limited to transfers of farmland between 1 January 2015 and 31 December 2017 by individuals aged 65 years or under to active farmers – that is, an individual who farms the land on a commercial basis with a view to the realisation of profit for a period of not less than five years from the date of the conveyance or transfer and spends not less than 50% of his or her normal working time farming the land.


Section 66 of the *Finance Bill 2014* gives

By 'farmer', it is meant that the person must spend not less than 50% of their normal working time farming agricultural property on a commercial basis with a view to the realisation of profits

effect to the Budget announcement that agricultural leases of between five and 35 years in duration to active farmers will be exempt from stamp duty. This is intended to level the playing field with short-term conacre lettings, which are generally not subject to stamp duty. The exemption applies to a lease of land that is used exclusively for farming carried on by the lessee on a commercial basis and with the view to the realisation of profits, provided the lessee farms the land for not less than 50% of his/her normal working time from the date the lease is executed. A clawback of the stamp duty relief will apply if the lessee fails to satisfy any of the conditions within five years of the date the lease is executed.

Carrot and stick

While the minister announced 'carrot and stick' measures to encourage more farmers to lease their land long term, farmers currently letting their land on the conacre basis have been given until 31 December 2016 to get their house in order. Essentially, this means that, if farmers have let their land on a conacre basis, they are given a grace period until the end of 2016 either to sell their land or to switch to a long-term lease, otherwise they could face significant CGT bills when they transfer/sell their farm to someone other than a 'child'.

Additionally, people being gifted/inheriting land have until 31 December 2014 to avail of the old rules for CAT agricultural relief, whereby they need only satisfy the 'farmer test' – otherwise they will have to undertake to farm the land themselves or lease it out for six years from the valuation date in order to avail of CAT agricultural relief. 

look it up

Legislation:

- *Finance Bill 2014*
- *Finance (No 2) Act 2013*

Literature:

- *Agri-Taxation Review Report*, Department of Agriculture, 2014
- *Food Harvest 2020 Report*, Department of Agriculture, 2010

Merger Control in Ireland

Marco W Hickey. Round Hall (2013), www.roundhall.ie. ISBN: 978-1-8580-069-56. Price: €265.

It has taken me some time to review this ambitious work, which just falls short of 900 pages. The book represents the only dedicated and detailed treatment of merger control law and practice in Ireland.

Hickey's work is designed with practitioners primarily in mind, as it deals comprehensively with the decisional practice of the Competition Authority and the key case law of the Irish courts. The detail devoted to these precedents will no doubt also find favour with students.

For those international practitioners looking at the possibility of Irish merger filing as part of a wider merger review strategy involving multinational filings, the key value will lie in Hickey's treatment of the peculiarities of the Irish system compared to the European standards of review and process that have developed over time, all of which are clearly flagged and explained in detail. From a domestic perspective, Hickey's comprehensive coverage of the procedural aspects of merger reviews in Ireland should prove to be an invaluable reference source for both the legal and business communities.

The substantive aspects of merger review are presented in such a way as to provide valuable guidance on the reasoning of the Competition Authority in its treatment of mergers. Those readers searching for a

polemic against decision-making practice in Ireland might be disappointed, as Mr Hickey seeks to present the case precedents as objectively as possible, allowing the decision-making practice to speak for itself on all the key issues of market definition, market power, and theories of harm.

For those interested in the application of merger policy in Ireland and its connection to EU doctrine, policy and procedure, Marco Hickey's book serves as an excellent companion to any of the leading EU merger control texts, such as Cook and Kerse's *EC Merger Control*, Levy's loose-leaf *European Merger Control Law*, Lindsay's *The EC Merger Regulation: Substantive Issues*, and Hoeg's most recent *European Merger Remedies*. Hickey's contribution is most notable because of its ability to shed light on the workings of an ECN member authority that has not been afraid to develop its own way of implementing and interpreting guidance emanating from the European Commission.

This book should be welcomed by practitioners, business decision makers, and students with an interest in Irish merger control and competition law more generally. However, as merger review has an inevitable tendency to develop through the application of new economic approaches



and enforcement priorities, as reflected in new decisions, legislation and guidance, there may well be a need (and one hopes that there will also be a demand) for this to become a regularly updated series.

Peter Alexiadis is a partner at Gibson, Dunn & Crutcher LLP, Brussels, and is LL.M lecturer at King's College, London.

Safety and Health Acts

Raymond Byrne. Round Hall (2013), www.roundhall.ie. ISBN: 9-780-4140-329-10. Price: €140.

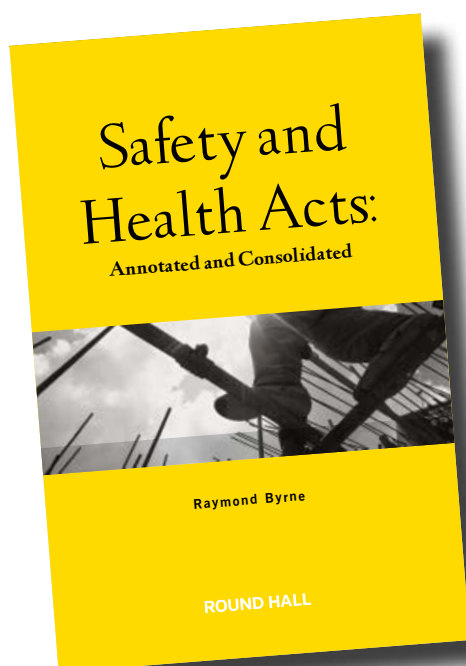
Safety and Health Acts is a comprehensive consolidation of relevant Irish safety and health legislation enacted up to November 2013. The principal purpose of the book is to provide readers with an annotated and consolidated commentary on the main legislative enactments governing health, safety and welfare at work. It provides a useful index to enable the reader to quickly jump to a particular area of interest and includes a table of (principally) Irish and British cases.

The author starts with an overview of health and safety legislation and considers the influence of EU directives and regulations governing safety and health at work and product market safety. He provides an interesting backdrop to the introduction of the *Safety, Health and Welfare at Work Act 2005* in highlighting concepts such as the potential for regulatory burden and the economic impact of health and safety legislation, which were considered by the Oireachtas prior to

the passing of the 2005 act.

The main chapter, and understandably main focus of the text, is a detailed review of the foremost piece of health and safety legislation – the 2005 act – with explanatory notes providing a synopsis of each section of the act. The author includes additional amendment notes where the applicable section has been altered by subsequent legislation. A review of key terms under the 2005 act (and accompanying regulations) such as 'reasonably practicable', the concept of 'risk' and their interpretation in appropriate case law (including in Britain, with analogous British legislation) provides colour to what could otherwise be a somewhat turgid area of law.

The book provides a consolidated version of the *Safety, Health and Welfare at Work (General Application) Regulations 2007-2012*, which encompass areas as disparate as workplaces,



personal protective equipment (PPE), physical agents, safety signage and night work.

The book topically devotes an entire section to the *Safety, Health and Welfare at Work (Construction) Regulations 2013*, which came into effect in August 2013. The main focus of the 2013 regulations is to prescribe the main requirements for the protection of the safety of persons working on construction sites. It provides useful guidance on the duties imposed under the 2013 regulations, such as those relating to the design and management of construction works (appointment of project supervisors for the design process and construction stage of works), the general duties

of contractors (compliance with the directions of project supervisors and the appointment of safety officers), and general safety provisions (site safety, provision of traffic routes and fire safety obligations).

Raymond Byrne has provided a valuable consultative resource for persons involved in the health-and-safety sphere – from the sporadic reader to those involved in the construction of major projects. *Safety and Health Acts* would be a worthwhile addition to the library of any practitioner with an interest in this area.

Conor O'Sullivan is a solicitor in the Assets Division of Bord Gais Energy.

Judicial Review of Administrative Action: A Comparative Analysis

Hilary Biehler. Round Hall (3rd edition, 2013), www.roundhall.ie. ISBN: 978-0-4140-314-63. Price: €95.

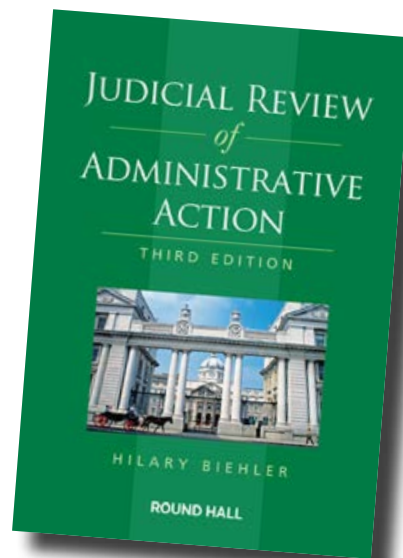
As Hilary Biehler acknowledges in the introduction, the circumstances in which the courts will review the exercise of administrative functions have increased significantly over the past few decades. Whether you are an in-house solicitor in a public sector organisation or other body susceptible to judicial review, or a solicitor acting for an applicant, this text is a useful summary of the law related to judicial review in this jurisdiction, accompanied by instructive comparisons from other common law countries.

Throughout the text, the author considers the ongoing tension in judicial review between the need to maintain public confidence in the standard of administrative decision making and the need not to interfere unnecessarily in such decision making. In the first few chapters, the author analyses the development of the law related to jurisdictional error, the control of discretionary powers, and legitimate expectation. Of particular interest to many practitioners, however, will be Chapter 5, which tackles the concept of fair procedures in administrative actions. Whether you are advising a decision maker or seeking to challenge a decision, it can be difficult to navigate what is required by natural justice, given that what is required may change depending on the circumstances of the particular case. In this chapter, the author draws together the case law on key areas of consideration from a fair procedures perspective including, for example, the case law concerning bias and prejudgment,

prior notice, disclosure, the entitlement or otherwise to an oral hearing, and the duty to give reasons.

Equally useful from a practitioners' perspective are Chapters 6 and 7, which respectively address the remedies available in judicial review and judicial review procedure (including the procedural changes introduced in 2011 by *SI 691/2011*). In Chapter 7 in particular, the author examines each of the key aspects of order 84 of the *Rules of the Superior Courts* and the procedural requirements for both the leave and substantive judicial review applications. This analysis should prove particularly helpful to any new practitioners to this area.

Tracy Lyne is a senior lawyer in the Enforcement Division of the Central Bank of Ireland.



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Ireland's General Anti-Avoidance Rule and the Rule of Irish Law

Tom Maguire. Irish Tax Institute (2014), taxinstitute.ie. ISBN: 978-1-8426-034-37. Price: €95 (e-book: €71 plus VAT).

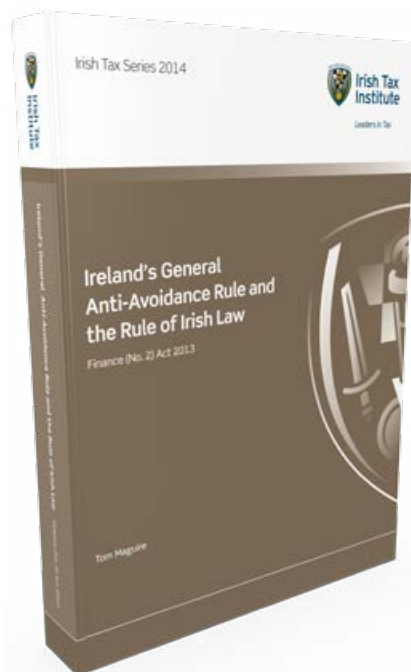
When the opportunity arose to review this book, I looked forward to the task. I approached the topic with a certain level of knowledge and, therefore, also a degree of sympathy for the author given the complexity of the topic generally and herculean task that he undertook. That said, I also wished to see a book that would assist in achieving a standard that would increase the understanding of this most complex area of tax law. In this respect, this work does not disappoint.

While the book is focused on the general anti-avoidance rule contained in Irish law, it would be inaccurate to view this book as only dealing with this one topic. The book offers an in-depth analysis of the changing views of tax avoidance right up to contemporary times and additionally explores the principles of statutory interpretation in Irish law and how such principles have developed through case law precedent. This exploration is necessary in order to understand the rationale for any general anti-avoidance rule. Maguire examines in detail the provisions contained in [section 811](#) of the *Taxes Consolidation Act 1997*, which has its 25th anniversary this year. In this regard, Maguire is at his best in dissecting and analysing a provision that was effectively lifted from a number of jurisdictions – mostly Canada – and then converted into one single statutory

provision in 1989, arriving at “a provision of almost mind-numbing complexity”, as O'Donnell J described it in the Supreme Court decision in the *O'Flynn Construction Co* case. This analysis will provide much assistance to students of the provision in unpicking its terms.

Maguire also explores at length the decision in *O'Flynn*. The majority decision held in favour of the Revenue Commissioners, based on the view that the introduction of the provision effected a change in the statutory interpretation rules pertaining to tax avoidance transactions. While the [minority decision of McKechnie J](#) rejected the notion that section 811 changed the principles of statutory interpretation, and this is referred to, Maguire's analysis highlights the uncertainties that now arise from this decision. This aspect is likely to run further.

For a work on this topic to be comprehensive, an analysis of general anti-avoidance rules in other jurisdictions should rightly be considered, as well as a review of EU law on the topic. In this regard, Maguire gives substantial guidance on these aspects, including topical EU and British law commentary. This work will be an invaluable tool for students or any practitioners advising or representing clients in relation to challenges by the Revenue under the general anti-avoidance rule. While the book necessarily assumes a reasonable degree of knowledge of tax law on the



part of the reader, it presents a real opportunity for practitioners to obtain an excellent understanding of the area. In light of the fact that challenges under anti-avoidance legislation, both under specific and general rules, will be a fact of life for practitioners going forward, a deep understanding of the topics covered by this book will be most valuable.

With decisions of the High Court and Supreme Court expected in the short term on section 811 challenges and related time limit matters, it is clear that this book will only be a first volume of further texts in this subject. Sympathies to the author.

John Cuddigan is a taxation partner with Ronan Daly Jermyn.

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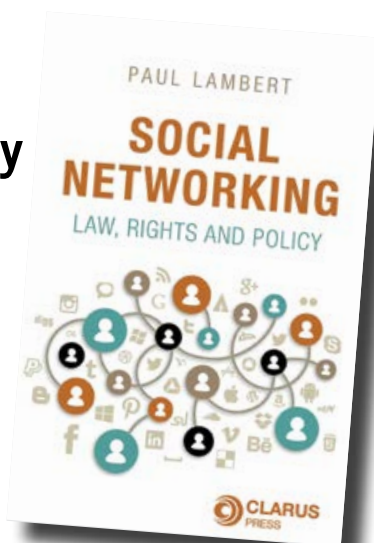
Social Networking: Law, Rights and Policy

Paul Lambert. Clarus Press (2014), www.claruspress.ie. ISBN: 978-1-9055-365-59. Price: €99.

The increase in social media use by both individuals and companies has led to concern regarding online personal information and the adequacy of the EU legal framework in regulating its use, which has no doubt struggled to keep pace with advances in this area.

This book is a thought-provoking and comprehensive examination of social media and the issues and challenges it poses to internet users, data controllers, enforcement agencies, and policymakers alike.

The author has drawn together a number of contributors with experience in aspects of social media policy and law. It is rather timely – in light of the recent ‘right to be forgotten’ ruling by the European Court of Justice – that the book contains a contribution on the background to the request for a preliminary reference by the Spanish High Court on this issue. The book also contains a number of chapters focusing on the practices of Facebook, including a summary of the 22 complaints made by the group Europe v Facebook against the social media giant to the Irish Data Protection Commissioner.



This book is a well-researched and comprehensive resource for anyone who is interested in the issues posed by social media. In an age where practitioners will no doubt increasingly encounter social media, whether in the form of the unlawful use of a client's personal data online, online harassment and bullying in the workplace, or the use of social media in discovery and litigation, this book is particularly useful in helping practitioners to understand the issues involved.

Aine Cadogan is a trainee solicitor with Phillip Lee.

new books available to borrow

- Bavasso, Antonio, *Butterworths Competition Law Handbook* (20th ed; LexisNexis, 2014)
- Bently, L, *Intellectual Property Law* (4th ed; Oxford University Press, 2014)
- Bonass, Matt, *Renewables: a Practical Handbook* (Globe Law and Business, 2010)
- Byrne, Raymond and Paul McCutcheon, *The Irish Legal System* (6th ed; Bloomsbury Professional, 2014)
- Collins, Sam, *Enforcement of Judgments* (Round Hall, 2014)
- Clerk & Lindell on Torts (21st ed; Sweet & Maxwell, 2014)
- Crean, John, *Do You Require Planning Permission? An Illustrated Guide* (3rd ed; Round Hall, 2014)
- Egan, Suzanne, *Ireland and the European Convention on Human Rights: 60 Years and Beyond* (Bloomsbury Professional, 2014)
- Hathaway, James, *The Law of Refugee Status* (2nd ed; Cambridge University Press, 2014)
- Hassan, Munir, *Wind: Projects and Transactions* (Globe Law and Business, 2014)
- Roberts, Marian, *A-Z of Mediation* (Palgrave MacMillan, 2014)
- Tully, John, *Tort Law in Ireland* (Clarus Press, 2014)

new precedents available from the library

- ‘Basic contract of employment (administrative, junior or lower managerial staff)’, *Practical Commercial Precedents* (Release 94, Sweet & Maxwell UK)
- ‘Offer letter (to be tailored to specific circumstances)’, *Practical Commercial Precedents* (Release 94, Sweet & Maxwell UK)

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Publishing January 2015

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Thomas B Courtney, Lyndon MacCann, Irene Lynch Fannon, William Johnston, Dáibhí O'Leary, Nessa Cahill.

Pub date: Jan-2015
ISBN: 9781780438344
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Companies Act 2014

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FINBAR DEMPSEY

1937 – 2014

Finbar Dempsey – who passed away on 25 July 2014 – was a legal pioneer in a far-flung territory, but he carried his accomplishments lightly, with great humility and grace.

Born in Nenagh in 1937, he graduated from UCD at the age of 19. He served his apprenticeship and worked for three years at the Cork firm of his half-brother, Michael JC Dempsey. He then spent four years with Ignatius Houlihan's practice in Ennis. Popular for his quick wit and sharp mind, he met local girl Ann Smythe, who later became his wife.

However, his career didn't continue on the usual trajectory for a young Irish solicitor. Instead, he took a job with the British Colonial Office in the Turks and Caicos Islands. Arriving as a newlywed in 1965, he became the principal lawmaker of the islands for the next four years. He simultaneously served as magistrate, acting Supreme Court judge, legal draftsman, legal adviser to the Crown, prison overseer, registrar of companies, registrar of deeds, coroner, land commissioner, member of the education and library committees, and registrar of births, deaths and marriages.

Based in Grand Turk, his work took him to all corners of the islands, by a notoriously unstable boat. He stayed in houses that lacked basic facilities and travelled from one settlement to another on foot or donkey. He loved meeting people, listening to their problems and administering justice. He quickly earned the admiration and respect of local people, and never failed to credit local



administrators for their assistance and achievements.

He updated the antiquated Victorian legislation. In his last year alone, he enacted 60 ordinances (statutes). He also made a huge contribution to the international development of the Turks and Caicos. As registrar of companies, he wrote to overseas law firms and business people, promoting the country as a place to establish offshore companies. During his tenure, the number of registered companies grew from six to several hundred.

His greatest legacy was the establishment of a land registry system, which still regulates land ownership in the islands. This empowered local people, who could freely dispose of their land, which in turn contributed to the country's economic progress.

Finbar left government in 1969 to set up his own law firm in Grand Turk with the help of local woman Jean Astwood. She remained his loyal friend and secretary for the next 40 years. Finbar F Dempsey & Company was the first law firm in the

islands and later expanded to Providenciales. He mentored many solicitors and barristers who came to work in the firm over the years, including his sons Paul and Barry. Many of Finbar's employees settled in the islands, with some establishing their own businesses. The Grand Turk practice closed in 2009 when Finbar retired.

He was a founder member and past-president of the Turks and Caicos Bar Association, and the first West Indian-based attorney to be inducted into the International Association of Trial Lawyers.

Finbar became almost more islander than the islanders themselves, but he remained a proud Irishman with a great sense of humour throughout his life. Soft spoken, modest and unassuming, he had a reputation for patience, fairness and integrity in all his dealings. Much of the charitable work done by him and his wife Ann locally was unknown and unheralded. The couple's warm welcome and advice to new expatriates of all nationalities was invaluable. Their St Patrick's Day parties were a wonderful celebration of Irish hospitality.

Finbar is survived by his loving wife Ann, who devotedly cared for him through the difficult final years after he was diagnosed with Alzheimer's. He also leaves behind his sons Paul and Barry, daughter Derinell, and their respective spouses; grandchildren Ciara, Senga, Niamh, Dylan, Ethan and Timothy; brothers Donán and Feargal; and a host of relatives, in-laws and great friends across the world.

Ní bbeidh a leithéad ann arís.

TF

Council meeting – 7 November 2014

council report

The president extended a warm welcome to all of the newly elected and newly nominated Council members: Martin Crotty, Don Murphy, Robert Ryan, Claire Ryan, Adrian Shanley and Keith Walsh.

Taking of office

The outgoing President John P Shaw thanked the Council for its support and encouragement during the previous 12 months. He noted that his year of office had been shaped by the *Report of the Future of the Law Society Task Force* and he was pleased to note that all of the 31 recommendations were either implemented or were in the course of being implemented. He hoped that he was leaving the office of president with a Society facing in the right direction, with the proper machinery in place to represent the members as they wanted and deserved.

Mr Shaw thanked the Council and, in particular, vice-presidents Kevin O'Higgins and Michael Quinlan, for their assistance and support. He paid tribute to the director general and the superbly loyal and dedicated staff of the Society. He thanked his partners in Michael Houlihan & Partners for the time they had given him to devote to the interests of the Society and the profession. Lastly, he thanked his wife Mary and daughters Hannah, Ellen and Julie for the support they have given to him during the year.

Kevin O'Higgins was then formally appointed as president. He paid tribute to Mr Shaw for the work he had done in order to tilt the Society in a more representative-leaning direction. His relentless commitment to represent the profession was as impressive as his command of his brief, coupled with his common sense and a remarkable work ethic.

Mr O'Higgins said that, as the first sole practitioner president of modern times, he would

examine and support any initiative that would help sole practitioners, who comprised 42% of all solicitors' firms, to remain viable. In this regard, he welcomed the establishment of the Sole Practitioners Network, an independent grouping of sole practitioners, to which the Society had committed financial support to defray its set-up costs. He urged Council members to encourage sole practitioners to avail of the huge benefits of the network. Mr O'Higgins said that he was privileged to have been appointed president and he looked forward to working with the Council over the coming year.

The senior vice-president Simon Murphy and junior vice-president Patrick Dorgan then took office and expressed their commitment to the Council and the president for the coming year.

Solicitor High Court appointments

On behalf of the Council, the president congratulated Mr Justice Donald Binchy and Mr Justice Bobby Eagar on their recent appointment to the High Court bench. Their appointments were a tribute to both men and recognition of their expertise and experience as practising solicitors. He read the contents of a letter from Mr Justice Binchy, who had served on the Society's Council for 20 years and as president of the Society three years' previously.

Motion: Solicitors Accounts Regulations

"That this Council approves the Solicitors Acts 1954 to 2011 (Solicitors Accounts Regulations) 2014."

Proposed: Martin Lawlor

Seconded: Christopher Callan

Martin Lawlor confirmed that the proposed regulations represented a consolidation of a series of previous *Solicitors Accounts Regulations*, together with clarifications in relation to the treatment of controlled trust accounts, insol-

venty arrangement accounts and interest obligations. There were no material changes to the substantive regulatory obligations of solicitors under the existing regulations. The Council approved the regulations as circulated.

Legal Services Regulation Bill

The director general reported that the report stage of the bill was still scheduled to take place before Christmas. However, it was unclear whether this target would be met. Communication and discussions between the Society and the department on the core issues were ongoing.

Proposed court closures

The Council welcomed the decision by the Courts Service to reverse its proposal to close the District Courts in Dun Laoghaire, Tallaght, Swords and Balbriggan, and noted that a significant lobbying campaign had been undertaken by the DSBA, the Law Society, and other court users. The Council reiterated its decision taken at the September Council meeting to oppose any further closures of courthouses and agreed that the Society should provide support to the West Cork Bar Association and the Tipperary Solicitors' Bar Association in their own campaigns against proposed closures.

It was agreed that the Society should raise the matter of court closures and the swingeing cuts to the Courts Service budget at a political level, and that a meeting should be sought with the Minister for Justice.

E-conveyancing

Patrick Dorgan briefed the Council on a hearing by the Oireachtas Committee on Justice to discuss the issue of e-conveyancing. He noted that the financial institutions had committed to making the necessary investment and process changes to ensure that they could interface efficiently and effectively with a new e-con-

veyancing system being developed by the Law Society with its preferred IT provider, Teranet. A detailed planning process was now underway.

Collapse of Setanta Insurance

The Council discussed the implications for clients arising from the collapse of Setanta Insurance and the intimation by the MIBI that it was not responsible to satisfy awards against drivers covered by a policy of insurance with Setanta. It was agreed that the Society should seek an urgent meeting with the Minister for Transport to discuss the matter.


Annual general meeting

As required by the bye-laws, the Council adopted the three motions approved by the AGM on the previous evening relating to (a) a study into e-voting at Council elections, (b) the establishment of a Younger Members Committee, and (c) support for the Tipperary Solicitors' Bar Association in its campaign against court or court services closures in Co Tipperary.

Economic study

John P Shaw outlined the contents of a report by economic consultants Fitzpatrick Associates entitled *The Solicitors' Profession: Contribution to the Irish Economy*. The report analysed published data in relation to the legal services sector and concluded that the solicitors' profession was not 'sheltered' or protected from the ill-effects of the economic downturn. The report would be circulated to the profession and would be released to the media.

Companies Bill

The Council approved a strategic plan from the Business Law Committee outlining the education, communication, and information tools that would be prepared and promulgated by the committee to the profession following enactment of the *Companies Bill 2014*. 

practice notes



CONVEYANCING COMMITTEE

Status of unregistered title while first registration is pending

Practitioners are reminded that, by virtue of rule 51 of the *Land Registration Rules 2012*, until such time as an application for first registration of an unregistered title has been successfully completed by the settlement of a draft folio or draft entry for a folio in the Land Registry, that title remains unregistered and must be treated as such.

It therefore follows that:

a) Where a purchaser acquires an unregistered title, which becomes compulsory registrable by virtue of that acquisition, the deed of assurance to the purchaser, together with any mortgage or other relevant document, should be registered in the Registry of Deeds as ex-

peditionously as possible in order to secure priority. Once registration in the Registry of Deeds is complete, the application for first registration may be made.

b) When purchasing property the title to which is unregistered and that is, at the time of entering into the contract, lodged in the Land Registry for first registration, the purchaser's solicitor must investigate the *unregistered* title in the usual manner. In addition, it is recommended that the purchaser's solicitor would have sight of the vendor's application for first registration pending in the Land Registry, together with any rulings on title raised and responses thereto. If the contract

for sale is not conditional upon completion of the application for first registration and the vendor's application for first registration has not been completed by the closing date, the purchaser's solicitor should ensure, in drafting the deed of assurance to the purchaser, that he or she treats the title as unregistered and uses the appropriate words of limitation. In these circumstances, the vendor may not be described in the deed of assurance as "the person entitled to be the registered owner". Once completion of the sale has taken place, the purchaser's solicitor should register the deed of assurance in the Registry of Deeds, as referred to in paragraph (a) above, and subsequently lodge the purchaser's own application for first registration of the title. When drafting this application for first registration, the purchaser's solicitor may take into account the existing statement of title lodged by the vendor's solicitor, but the decision to do so should be made based on the quality of that statement of title.



TECHNOLOGY COMMITTEE

Social media policy checklist

"We comfortably operate different personae for our personal and professional lives – and with good reason. However, the boundaries between our personal and professional selves can become blurred when we use social media" (Martin Molony, 'Social and Personal', August/September Gazette, p28).

Social media is the web-based mobile technology that transforms communication into active dialogue. The intention of this draft social media policy is to provide a template for solicitors to deal with issues that may arise from the use of social media in a context of the workplace and professional duties. The policy acknowledges the key characteristics of social media:

- Social media is published and widely available,
- Social media information exists long after its creation, and there are very limited mechanisms to redact or remove material once published,
- There is a lack of data control and

reduced options for security within social media materials,

- There are no enforceable assurances of privacy or storage location.

The key to best use of social media is a combination of a professional approach and sound judgment.

Whether social media is being used in a personal capacity or is being used for professional purposes, solicitors must take account of the key principles relating to their professional conduct. These include issues of identity, confidentiality, client care, advertising and publicity, relationships with third parties, and the sensitivity of subject matter and information. At all times, regard must be had to the available security settings in the different social media channels and the arrangements for archiving and deletion of material.

The checklist on social media policy can be found on the committee's 'Resources' tab at www.lawsociety.ie/technology-committee.



CONVEYANCING COMMITTEE

Amended jurat in conveyancing precedent declarations

The Conveyancing Committee would like to advise practitioners that it recently amended its precedent declarations in the members' area on the Law Society website to reflect the fact that statutory declarations may be made before peace commissioners (as well as before commissioners for oaths and practising solicitors).

To clarify, peace commissioners could always take declarations, but this option had not previously been included in the committee's pre-printed precedent forms.

Solicitors may wish to download the amended precedents to their computers to replace the old versions.



CONVEYANCING COMMITTEE

Law Society form of accountable trust receipt

The Conveyancing Committee, in response to a large number of complaints it has received from solicitors about the form and content of ATRs being used by some lending institutions, has drafted a form of ATR that it believes it can recommend both to solicitors taking up deeds on ATR and to lending institutions releasing deeds on ATR either directly or through their own solicitors. This form is now available in the members' area of the Law Society website.

The format has not yet been agreed by the committee with any lending institution, but the committee intends making representations to lending institutions, through the Banking and Payments Federation Ireland, that they would adopt the use of the Law Society recommended format of ATR as soon as possible. The committee will issue a further announcement if the new format is adopted by the lending institutions.

14 October – 10 November 2014

legislation update

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' area) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on www.oireachtas.ie and recent statutory instruments are on a link to electronic statutory instruments from www.irishstatutebook.ie

ACTS PASSED*European Stability Mechanism (Amendment) Act 2014***Number:** 32/2014

Amends and extends the *European Stability Mechanism Act 2012*. Makes provision for the introduction by the ESM board of governors, through article 19 of the *ESM Treaty*, of the ESM's direct recapitalisation instrument as one of the financial instruments envisaged under articles 14-18 of the treaty. This includes provision for the creation of subsidiary bodies that will implement the direct recapitalisation instrument. It also incorporates the *ESM Treaty*, as amended following the accession of Latvia to the ESM on 13/3/2014, into the *European Stability Mechanism Act 2012*.

Commencement: 30/10/2014*Forestry Act 2014***Number:** 31/2014

Reforms and updates the legislative framework relating to forestry. Repeals the *Forestry Act 1946* and amends the *Wildlife Act 1976*, the *Agriculture Appeals Act 2001*

and the *Environment (Miscellaneous Provisions) Act 2011*.

Commencement: Order(s) required as per s1(3) of the act*Freedom of Information Act 2014***Number:** 30/2014

Provides a legal right for each person to access information held by all public bodies and non-public bodies in receipt of significant funding from the Exchequer. Enables persons to have personal information relating to them amended where it is incomplete, incorrect or misleading. Provides for the continuance of the Office of the Information Commissioner and defines its functions. Repeals the *Freedom of Information Act 1997* and the *Freedom of Information (Amendment) Act 2003* and provides for related matters.

Commencement: This act shall come into operation (a) on enactment in respect of any body or other person that, immediately prior to enactment, was a public body within the meaning of the 1997 act, (b) in respect of any body or other person that, im-

mediately prior to enactment, was not a public body within the meaning of the 1997 act, but is a public body within the meaning of this act, six months from enactment or such later day, not later than 12 months from enactment, as the minister may by order appoint. Section 8 shall come into operation 12 months from enactment or on such earlier day or days as the minister may appoint.

SELECTED STATUTORY INSTRUMENTS*Irish Human Rights and Equality Commission Act 2014 (Commencement) Order 2014***Number:** SI 449/2014

Brings the provisions of the *Irish Human Rights and Equality Commission Act 2014* into effect as from 8 October 2014, 1 November 2014 and 1 January 2015.

*Irish Human Rights and Equality Commission Act 2014 (Establishment Day) Order 2014***Number:** SI 450/2014

Brings the Irish Human Rights and Equality Commission into being and dissolves the Equality Authority and the Human Rights Commission, which are being merged into the new body.

Commencement: 1/11/2014*Circuit Court (Fees) (No 2) Order 2014***Number:** SI 491/2014

Revokes the *Circuit Court (Fees) Order 2014* (SI 23/2014) and provides for the fees to be charged in the Circuit Court Office with effect from 30/10/2014. Provides for the exemption from fees of certain proceedings, including family law proceedings.

Commencement: 30/10/2014*Supreme Court, Court of Appeal and High Court (Fees) Order 2014***Number:** SI 492/2014

Revokes the *Supreme Court and High Court (Fees) Order 2014* (SI 24/2014), provides for the fees to be charged with effect from 29 October 2014 in the various courts, and provides for the exemption from fees of certain proceedings, including family law proceedings.

Commencement: 29/10/2014*Criminal Justice (Legal Aid) (Amendment) Regulations 2014***Number:** SI 493/2014

Prescribe the new forms for a certificate for free legal aid required following the establishment of the Court of Appeal.

Commencement: 29/10/2014

A list of all recent acts and statutory instruments is published in the free weekly electronic newsletter *Law-Watch*. Members and trainees who wish to subscribe, please contact Mary Gaynor at m.gaynor@lawsociety.ie.



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Disputes Resolution Lawyer of the Year 2013.



Winner: Corporate Intl Magazine Global –
Property Law Firm of the Year in Ireland 2014
Winner: Acquisition International Magazine –
Trademark Law Firm of the Year 2013 &
Arbitration Law Firm of the Year 2013.

regulation

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of John JA Rynne, solicitor, formerly practising as Rynne Hanrahan & Associates, Abbington House, 4 Limerick Road, Ennis, Co Clare, and in the firm of Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the *Solicitors Acts 1954-2011* [7318/DT37/13 and High Court record 2014 no 74 SA]

Law Society of Ireland (applicant)
John Rynne (respondent solicitor)

On 4 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to forward all files and documents to the complainant expeditiously, within a reasonable time, or at all, leaving his client unable to complete registration of a property at Inagh, Co Clare,
- 2) Failed to account for the sum of €2,500 to the complainant in a timely manner or at all,
- 3) Failed to respond adequately or at all to the Society's correspondence and, in particular, letters dated 17 September 2012 and 21 September 2012 respectively,
- 4) Failed to attend a meeting of the Complaints and Client Relations Committee on 16 October 2012, despite being required to do so.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 30 June 2014, made the following orders:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the respondent do pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal, to

include witness expenses, to be taxed in default of agreement,

- 3) That the respondent do pay to the applicant the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of John JA Rynne, solicitor, formerly practising as Rynne Hanrahan & Associates, Abbington House, 4 Limerick Road, Ennis, Co Clare, and in the firm of Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the *Solicitors Acts 1954-2011* [7318/DT38/13 and High Court record 2014 no 75 SA]

Law Society of Ireland (applicant)
John Rynne (respondent solicitor)

On 4 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with a direction of the Complaints and Client Relations Committee meeting made on 22 March 2012 that he refund to the complainants the fees and outlays paid by the complainants of €1993.50,
- 2) Failed to pay a costs levy to the Society of €450 as directed by the Complaints and Client Relations Committee meeting on 9 February 2012.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 30 June 2014, made the following orders:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the respondent do pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal, to

NOTICES: THE HIGH COURT

In the matter of Niall O'Kelly, a solicitor previously practising as Niall O'Kelly Solicitors, and in the matter of the *Solicitors Acts 1954-2013* [2014 no 116SA]

Take notice that, by order of the High Court made on Monday 20 October 2014, it was ordered that the name of Niall O'Kelly, solicitor, be struck off the Roll of Solicitors.

In the matter of Ambrose Steen, solicitor, and in the matter of the

***Solicitors Acts 1954-2013* [2014 no 129SA]**

Take notice that, by order of the High Court made on Monday 3 November 2014, it was ordered that the name of Ambrose Steen be struck off the Roll of Solicitors.

John Elliot,
Registrar of Solicitors,
Law Society of Ireland,
3 November and 18 November
2014

include witness expenses, to be taxed in default of agreement,

- 3) That the respondent do pay to the applicant the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of John JA Rynne, solicitor, formerly practising as Rynne Hanrahan & Associates, Abbington House, 4 Limerick Road, Ennis, Co Clare, and in the firm of Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the *Solicitors Acts 1954-2011* [7318/DT82/13 and High Court record 2014 no 76 SA]

Law Society of Ireland (applicant)
John Rynne (respondent solicitor)

On 4 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking dated 24 June 2000, given by him to the complainant, on behalf of a named client, in respect of property at Cork,
- 2) Failed to respond adequately or at all to the complainant's correspondence concerning a named client and his undertaking to the complainant dated 24 June 2000 and, in particular, letters dated 5 July 2006, 5 July 2007, 3 January 2008, 28 February 2008, 13

March 2008, 3 March 2010, 29 June 2010, 23 September 2010 and 24 May 2011 respectively,

- 3) Failed to comply adequately or at all with directions made by the Complaints and Client Relations Committee at its meeting on 15 May 2012 in respect of an undertaking given on behalf of a named client to the complainant, dated 24 June 2000,
- 4) Failed to attend before the Complaints and Client Relations Committee at its meetings of 26 June 2012, 4 September 2012, and 16 October 2012 respectively in respect of an undertaking given on behalf of a named client to the complainant, dated 24 June 2000, despite being required to do so,
- 5) Failed expeditiously, within a reasonable time, or at all to honour an undertaking given by him to the complainant, in respect of a named client, over property at Ennis, Co Clare, under cover of undertaking dated 11 August 2006,
- 6) Failed to reply adequately or at all to the complainant's correspondence concerning a named client and his undertaking to the complainant dated 11 August 2006, in particular, letters dated 19 August 2009, 16 November 2009, 15 February 2010, 3 March 2010, 29 June 2010, 23 September 2010 and 24 May 2011,
- 7) Failed to comply with the directions of the Complaints and Client Relations Committee made

at its meeting on 15 May 2012 adequately or at all in respect of the matter of a named client.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 30 June 2014, made the following orders:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the respondent do pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement,
- 3) That the respondent do pay to the applicant the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of John JA Rynne, solicitor, formerly practising as Rynne Hanrahan & Associates, Abbington House, 4 Limerick Road, Ennis, Co Clare, and in the firm of Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the Solicitors Acts 1954-2011 [7318/DT87/13 and High Court record 2014 no 77 SA]

Law Society of Ireland (applicant) John Rynne (respondent solicitor) On 4 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the regulations, in a timely manner or at all.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 30 June 2014, made the following orders:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the respondent do pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal, to

include witness expenses, to be taxed in default of agreement,

- 3) That the respondent do pay to the applicant the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of John JA Rynne, solicitor, formerly practising as Rynne Hanrahan & Associates, Abbington House, 4 Limerick Road, Ennis, Co Clare, and in the firm of Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the Solicitors Acts 1954-2011 [7318/DT114/13 and High Court record 2014 no 78 SA]

Law Society of Ireland (applicant) John Rynne (respondent solicitor) On 4 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed expeditiously, within a reasonable time, or at all to account for moneys paid by the complainant to him,
- 2) Failed expeditiously, within a reasonable time, or at all to account for the whereabouts of the original title deeds to the complainant's property at Ennistymon, Co Clare,
- 3) Failed expeditiously, within a reasonable time, or at all to stamp and register title deeds to the complainant's property at Ennistymon, Co Clare,
- 4) Failed to carry out his client's instructions,
- 5) Failed to attend Complaints and Client Relations Committee meetings, despite being required to do so and, in particular, 14 December 2011, 28 February 2012, 3 April 2012, and 16 October 2012,
- 6) Failed to respond adequately or at all to the Society's correspondence and, in particular, letters dated 7 March 2011, 11 April 2011, 22 May 2011, 3 August 2011, 22 August 2011, 6 September 2011, 12 October 2011, 18 October 2011, 20 October 2011, and 25 October 2011,

- 7) Breached an order made by the High Court on 5 December 2011 to attend a meeting of the Complaints and Client Relations Committee on 14 December 2011.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 30 June 2014, made the following orders:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the respondent do pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement,
- 3) That the respondent do pay to the applicant the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of John JA Rynne, solicitor, formerly practising as Rynne Hanrahan & Associates, Abbington House, 4 Limerick Road, Ennis, Co Clare, and in the firm of Hanrahan Rynne Solicitors, 3B Riverside Business Park, Ennis, Co Clare, and in the matter of the Solicitors Acts 1954-2011 [7318/DT81/13 and High Court record 2014 no 71 SA]

Law Society of Ireland (applicant) John Rynne (respondent solicitor) On 27 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed within a reasonable time, expeditiously, or at all to comply with an undertaking dated 2 April 2003 given by him to the complainant, on behalf of a named client, over property at Ennis, Co Clare,
- 2) Failed to respond adequately or at all to the Society's correspondence in relation to the complaint of a named client and, in particular, letters dated 13 March 2012, 11 April 2012, and 25 April 2012 respectively,

- 3) Failed to comply expeditiously, within a reasonable time, or at all with a direction of the Complaints and Client Relations Committee meeting on 15 May 2012, as extended to 4 September 2012, in respect of a named client,

- 4) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 26 June 2012, despite being required to do so,
- 5) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 4 September 2012, despite being required to do so,
- 6) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 16 October 2012, despite being required to do so,
- 7) Failed within a reasonable time, expeditiously, or at all to comply with an undertaking dated 20 May 2004 given by him to the complainant, on behalf of a named client, over property at Sixmilebridge, Co Clare,
- 8) Failed to respond adequately or at all to the Society's correspondence in relation to the complaint of a named client and, in particular, letters dated 13 March 2012, 11 April 2012, and 25 April 2012 respectively,
- 9) Failed to comply expeditiously, within a reasonable time, or at all with a direction of the Complaints and Client Relations Committee meeting on 15 May 2012, as extended to 4 September 2012, in respect of a named client,
- 10) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 26 June 2012, despite being required to do so,

regulation

- 11) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 4 September 2012, despite being required to do so,
- 12) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 16 October 2012, despite being required to do so,
- 13) Failed within a reasonable time, expeditiously, or at all to comply with an undertaking dated 6 August 2004 given by him to the complainant, on behalf of named clients, over property at Quin, Co Clare,
- 14) Failed to respond adequately or at all to the Society's correspondence in relation to the complaint of named clients and, in particular, letters dated 13 March 2012, 11 April 2012 and 25 April 2012 respectively,
- 15) Failed to comply expeditiously, within a reasonable time, or at all with a direction of the Complaints and Client Relations Committee meeting on 15 May 2012, as extended to 4 September 2012, in respect of named clients,
- 16) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding named clients on 26 June 2012, despite being required to do so,
- 17) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding named clients on 4 September 2012, despite being required to do so,
- 18) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding named clients on 16 October 2012, despite being required to do so,
- 19) Failed within a reasonable time, expeditiously, or at all to comply with an undertaking dated 27 September 2007 given by him to the complainant, on behalf of a named client, over property at Ennis, Co Clare,
- 20) Failed to respond adequately or at all to the Society's correspondence in relation to the complaint of a named client and, in particular, letters dated 13 March 2012, 11 April 2012, and 25 April 2012 respectively,
- 21) Failed to comply expeditiously, within a reasonable time, or at all with a direction of the Complaints and Client Relations Committee meeting on 15 May 2012, as extended to 4 September 2012, in respect of a named client,
- 22) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 26 June 2012, despite being required to do so,
- 23) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 4 September 2012, despite being required to do so,
- 24) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint on 16 October 2012, despite being required to do so,
- 25) Failed within a reasonable time, expeditiously, or at all to comply with an undertaking dated 18 October 2007 given by him to the complainant, on behalf of named clients, over property at Ennis, Co Clare,
- 26) Failed to respond adequately or at all to the Society's correspondence in relation to the complaint of named clients and, in particular, letters dated 13 March 2012, 11 April 2012, and 25 April 2012 respectively,
- 27) Failed to comply expeditiously, within a reasonable time or at all with a direction of the Complaints and Client Relations Committee meeting on 15 May 2012, as extended to 4 September 2012, in respect of named clients,
- 28) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding named clients on 26 June 2012, despite being required to do so,
- 29) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding named clients on 4 September 2012, despite being required to do so,
- 30) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint on 16 October 2012, despite being required to do so,
- 31) Failed within a reasonable time, expeditiously, or at all to comply with an undertaking dated 20 July 2010 given by him to the complainant, on behalf of a named client, over property at Inagh, Co Clare,
- 32) Failed to respond adequately or at all to the Society's correspondence in relation to the complaint of a named client and, in particular, letters dated 13 March 2012, 11 April 2012, and 25 April 2012 respectively,
- 33) Failed to comply expeditiously, within a reasonable time, or at all with a direction of the Complaints and Client Relations Committee meeting on 15 May 2012, as extended to 4 September 2012, in respect of a named client,
- 34) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 26 June 2012, despite being required to do so,
- 35) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 4 September 2012, despite being required to do so,
- 36) Failed to attend a meeting of the Complaints and Client Relations Committee in respect of the complainant's complaint regarding a named client on 16 October 2012, despite being required to do so.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 30 June 2014, made the following orders:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the respondent do pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement,
- 3) That the respondent do pay to the applicant the costs of the High Court proceedings, to be taxed in default of agreement.



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FOCUS POINT

information on complaints

This information on complaints about solicitors is published in accordance with section 22 of the *Solicitors (Amendment) Act 1994*

IN RELATION TO COMPLAINTS RECEIVED BY THE SOCIETY FROM 1 SEPTEMBER 2013 TO 30 AUGUST 2014

Allegations of misconduct

Delay	9
Failure to communicate	36
Failure to hand over	125
Failure to account	84
Undertaking	703
Conflict of interest	18
Dishonesty or deception	7
Witnesses' expenses	3
Advertising	7
Other	70
Counsels' fees	5
Total	1,107

Allegations of inadequate professional services

Delay	104
Failure to communicate	70
Shoddy work	76
Other	41
Total	291

Allegations of overcharging

Conveyancing	13
Probate	24
Litigation	45
Matrimonial	21
Other	25
Total	128
GRAND TOTAL	1,526

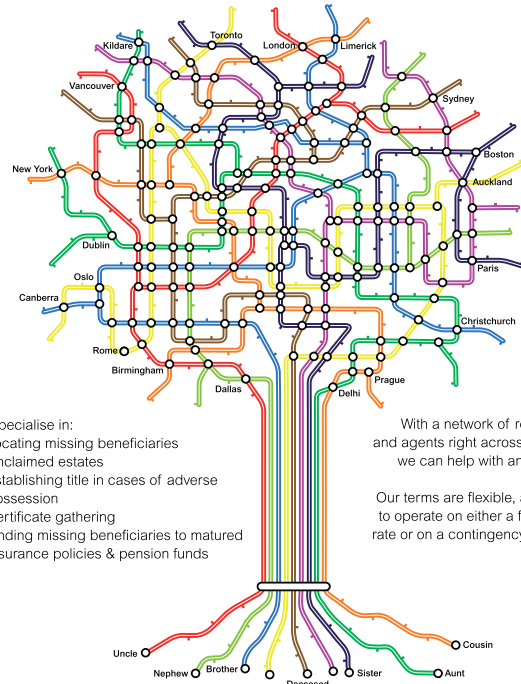
NUMBER OF COMPLAINTS REFERRED TO THE SOLICITORS DISCIPLINARY TRIBUNAL

Undertakings	278
Dishonesty/deception	1
Conflict of interest/section 68	1
Overcharging	1
Misappropriation/failure to account	7
Failure to comply with direction of CCRC	8
Failure to handover	6
Failure to carry out instructions	2
Breach of <i>Advertising Regulations</i>	5
Complaints by counsel	8
Breach of acts/regulations	1
Failure to respond to Society	1
Total	319

51 of these referrals are currently the subject of a stay.
None of the above cases have been finalised before the tribunal.

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THREE NEW PROCUREMENT DIRECTIVES PUBLISHED

Three new directives on procurement were published earlier in the year in the *Official Journal of the European Union*. The directives must be transposed into national law by member states within a two-year period from 17 April 2014, with a further 30 months for the implementation of full electronic procurement. The new directives are:

- [Directive 2014/24/EU](#) of 26 February 2014 on public procurement (works, supplies and services), replacing [Directive 2004/18/EC](#),
- [Directive 2014/25/EU](#) of 26 February 2014 on utilities procurement in water, energy, transport and postal services, replacing [Directive 2004/17/EC](#), and
- [Directive 2014/23/EU](#) of 26 February 2014 on the award of concession contracts, which is the first directive in that area.

The directives are the result of negotiations and consultations with stakeholders conducted during a period of economic recession, with many of the changes designed to simplify the rules and procedures to make them more flexible, facilitate procurement of innovation, encourage access to public procurement by SMEs, and facilitate qualitative improvement in the use of public procurement.

This article is intended as a brief overview of the new directive on public procurement (works, supplies and services).

Procedures

The open and restricted procedures are largely unchanged. The recitals to the directive underscore the need for contracting authorities to have additional flexibility to choose a procurement procedure that provides for negotiations.

There is a new 'competitive procedure with negotiation' that can be used in certain circumstances, including:

- Where a contract cannot be awarded without prior negotiation due to specific circumstances relating to the nature or complexity of the contract,
- Where the needs of the contracting authority cannot be met without adaptation of readily available solutions, or
- Where there are irregular or unacceptable tenders in response to an open or restricted procedure.

However, neither the description of the requirements, the minimum requirements, nor award criteria may be changed during the procedure.

Further, negotiations may be conducted in a staged procedure to reduce the number of tenders to be negotiated.

Significantly, there is greater flexibility for contracting authorities in the competitive procedure with negotiation as regards award criteria, as compared with the competitive dialogue procedure: while awards may be based on price/cost only in the competitive procedure with negotiation, in the competitive dialogue procedure, awards must be based on the 'best price-quality ratio' (see below). Similarly, contracting authorities may be able to award contracts on the basis of the initial tenders received without negotiation using the competitive procedure with negotiation, where they have reserved the possibility of awarding contracts on that basis in the

contract notice or in the invitation to confirm interest.

A new and separate 'innovation partnership procedure' is available, which may be used where contracting authorities identify a need for innovative products, services or works that are not available on market. The partnership may be set up with one or more partner. The minimum requirements and the award criteria – which must be awarded on the basis of the 'best price-quality ratio' – are not subject to negotiation. The procedure must be structured in successive phases.

As regards implementation, member states are obliged, when transposing the directive into national law, to give contracting authorities the

option of using the competitive procedure with negotiation or the competitive dialogue procedure in the situations identified in article 26(4) and that contracting authorities may apply innovation partnerships as regulated in the directive.

Limiting documentation

In order to limit the number of documents required to be provided by economic operators, contracting authorities shall accept the European Single Procurement Document (ESPD). An ESPD consists of an updated self-declaration, as preliminary evidence in replacement of certificates issued by public authorities or third parties, confirming that the relevant economic operator is not subject to one of the grounds of exclusion set out in article 57, meets the selection criteria pursuant to article

58 and, where applicable, fulfils the objective rules and criteria that have been set out pursuant to article 65. The ESPD is to be drawn up on the basis of a standard form established by the European Commission by means of implementing acts to be adopted in accordance with the examination procedure set out in article 89(3). The ESPD shall be provided exclusively in electronic form.

Specific services

Under the existing procurement regime, service contracts are divided into two parts: annex II(a) and annex II(b). The awarding of annex II(a) services such as engineering are subject to the full rigour of the regime, while the awarding of annex II(b) services, which include legal services, need only comply with general treaty principles. That distinction is abolished under the new directive. The directive applies to health, social services, and certain specific services having a contract value equal to or above the threshold of €750,000 – in which case a contracting authority must publish a contract notice/PIN and award notice. Annex XIV to the directive provides a broad listing of such services, which include compulsory social security, benefits, services provided by trade unions, religious services, and legal services. It should be noted however that no designated procedures are prescribed by the directive in the awarding of such contracts: member states may put in place procedural rules (on condition that they are consistent with the principles of the treaty) that ensure that contracting authorities may take into account the need for quality, continuity and related factors when assessing tenders. However, as regards the obligation to advertise, it should be recalled that

While the directive provides for greater flexibility, it will confer more obligations on contracting authorities



under Irish Government [Circular 05/13](#) of 10 July 2013, contracting authorities are required to advertise certain legal service contracts having a value above €25,000.

Certain legal services are specifically excluded from the scope of the directive, for example, representation in or advices given in anticipation of arbitration or conciliation or in judicial proceedings before national courts; certain legal services that in the member state concerned are connected with the exercise of official authority; and document certification services that must be provided by notaries.

Environmental criteria

Contracting authorities are to base the award of (all) public contracts on the most economically advantageous tender, which is now taken to include awards based on price or cost only. In broad terms, what was previously understood by 'most economically advantageous tender' is

now termed 'the best price-quality ratio'. The proposal of 'life-cycle costing' gives contracting authorities the possibility to base their award decisions on life-cycle costs of the products, services or works to be purchased. The life cycle covers all stages of the existence of a product or works or provision of a service, from raw material acquisition or generation of resources until disposal, clearance and finalisation. The costs to be taken into account do not only include direct monetary expenses, but also external environmental costs if they can be monetised and verified. Where a common EU methodology for the calculation of life-cycle costs has been developed, contracting authorities have to make use of it. As regards the use of eco-labels in procurement, the directive declines to follow the approach of the Court of Justice in *Dutch Coffee* (Case C-368/10 *Commission v Netherlands*) and instead follows

the approach of Advocate General Kokott by explicitly stating that contracting authorities may refer to and require a specific label on certain conditions (article 43).

Other matters

The reasoning of the court in *Case C-107/98 Teckal* and *Case C-480/06 Hamburg/Case C-159/11 Lecce* as regards the in-house exception and cooperation between public bodies respectively is mirrored in article 12 of the directive.

Where contracting authorities choose not to subdivide contracts into lots, an indication as to their main reasons not to subdivide into lots is to be included in the procurement documents or the individual report on the procedure for the award of contracts.

The court's reasoning in *Case C-454/06 Presstext* regarding whether a material change to an existing contract has taken place

that triggers an obligation to advertise has been codified in article 72.

Flexibility and complexity

While the directive provides for greater flexibility, it will confer more obligations on contracting authorities, with the new regime arguably even more complex than the current. The directive is talking at cross purposes to itself in parts: for example, it may be very difficult for contracting authorities to give 'main reasons' why a contract is not subdivided into lots, which may result in less (rather than the intended most) efficient use of public funds. Similarly, the competitive procedure with negotiation – with its greater flexibility – is arguably better suited as a vehicle for innovation than the innovation partnership procedure.

James Kinch is a solicitor with the law department of Dublin City Council.

Recent developments in European law

INSURANCE

Case C-162/13 *Damijan Vnuk v Zavarovalnica Triglav* dd, 4 September 2014


Directive 72/166 on insurance against civil liability in respect of the use of motor vehicles provides that each member state is to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance. The extent of the liability covered and the terms and conditions of the cover are to be determined on the basis of these measures.

Slovenian law required the owner of a vehicle to hold motor vehicle liability insurance. Mr Vnuk fell from a ladder that had been struck by a

trailer attached to a reversing tractor in a barn. He brought an action against the insurance company that had insured the tractor. The application was dismissed on the basis that a compulsory insurance policy in respect of the use of a motor vehicle covered damage caused by a tractor as a means of transport and nothing more. The Slovenian Supreme Court asked the CJEU whether the concept of 'use of vehicles' used in the directive covers the manoeuvre of a tractor in a farmyard in order to bring the trailer attached to that tractor into a barn.

The Court of Justice found that the definition of the concept of 'vehicle' within the meaning of the directive is unconnected with the

use that is made or may be made of the vehicle in question. The fact that a tractor may, in certain circumstances, be used as an agricultural machine has no effect on the finding that such a vehicle corresponds to that concept of 'vehicle'. A tractor to which a trailer is attached is subject to the obligation to insure against civil liability only if it is normally based in the territory or a member state that has not excluded that type of vehicle from that obligation. The concept of the use of a vehicle had to be given a common European interpretation. The development of the EU legislation concerning compulsory insurance shows that the objective of protecting the victims of accidents

caused by vehicles has continuously been pursued and reinforced by the EU legislature. Thus, the view cannot be taken that the EU legislature wished to exclude from that protection injured parties to an accident caused by a vehicle in the course of its use, if that use is consistent with the normal function of that vehicle. Slovenia did not exclude any type of vehicle for the obligation to insure against civil liability. The accident that gave rise to the dispute in this instance was caused by a vehicle reversing to take up a position in a specific location. Therefore it seems to have been caused by a vehicle being used for its normal function. This is, however, a matter for the national court to determine. 

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WILLS

In the matter of Rose McDaid, late of Ballyhaskey, Newtowncunningham, Co Donegal, who died intestate on 22 September 1984. Take notice that any person who may be entitled to a share in the above estate are called upon to furnish evidence of their entitlement to Gallagher & Brennan, Solicitors, House B, Carnamugagh Upper, Kilmacrennan Road, Letterkenny, Co Donegal, within 30 days from the date of this notice, otherwise we will proceed to administer the estate in accordance with the laws of statute

Byrne, Patrick Gerard (otherwise Paddy) (deceased), late of 2 Barnlodge, Coolbrock Cottages, Cappagh Road, Finglas, Dublin 11, and also 31 Luttrellstown Drive, Castleknock, Dublin 15. Would any person having knowledge of any will made by the above-named deceased, who died on 12 September 2014, please contact Helen McGrath of O'Connor Solicitors, 8 Clare Street, Dublin 2; email: helen.mcgrath@oclegall.ie

Carr, Matthew (deceased), late of Moyleggan, Batterstown, Co

Meath. Would any person having knowledge of any will made by the above-named deceased, who died on 17 September 2014, please contact Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath; tel: 046 943 1202, email: law@reganmcentee.ie

Cassidy, Fr Michael Joseph Mary (deceased), late of St Margaret Mary's Church, 87 Boswell Parkway, Edinburgh,

Scotland, and Swinford, Co Mayo. Would any person holding or having knowledge of a will made by the above-named deceased, who died on 8 April 2014, please contact Gartlan Furey Solicitors, 20 Fitzwilliam Square, Dublin 2; reference CUM102/0001; tel: 01 799 8045, email: privateclient@gartlanfurey.ie

Doyle, Mary (deceased), late of 27 Ballyboden (otherwise Ballyboden Cottages or Ballyboden

Crescent), Rathfarnham, Co Dublin. Would any person having any knowledge of any will made by the above-named deceased, who died on 18 October 1975, please contact Sheehan & Company, Solicitors, 1 Clare Street, Dublin 2; tel: 01 661 6922, email: fergusonm@sheehanandco.ie

Hedderman, Michael (deceased), late of Lackendarragh, Angelsboro, Kilmallock, Co Limerick, who died on 23 October

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No recruitment advertisements will be published that include references to years of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

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2014. Would any solicitor holding/ having knowledge of a will made by the above-named deceased please contact William Fitzgibbon & Co, Solicitors, Baldwin Street, Mitchelstown, Co Cork; tel: 025 84081, email: billy@shinnickfitzgibbon.ie

Kelly, Michael (deceased), late of 482 Mourne Road, Drimnagh, Dublin 12. Would any person having knowledge of a will executed by the above-named deceased, who died on 11 November 2014, please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928, fax: 0402 32272, email: fergus@cookekinsella.ie

McClearn, Joseph (deceased), late of Kylemore, Killimor, Ballinasloe, Co Galway, who died on 6 August 2014. Would any person having any knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Messrs Michael Collins & Company, Solicitors, Dominic Street, Portumna, Co Galway; tel: 090 974 1980, email: mcollinslaw@gmail.com

Martin, Felix (deceased), late of Latton, Castleblayney, Co Monaghan. Would any person having knowledge of a will made by the above-named deceased, who died on 12 October 2014,

please contact Creagh Joy & Co, Solicitors, 2 Prince of Wales Terrace, Bray, Co Wicklow; tel: 01 286 7228, fax: 01 286 7555, email: creajoy@iol.ie

O'Donoghue, John (otherwise John Anthony) (deceased), late of Bruion Caortainn, 3 Manor Ballybride, Rathmichael, Co Dublin, and formerly of Ballybride Road, Shankill, Co Dublin, who died on 11 September 2014. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Creavin & Co, Solicitors, 18 Lower Kilmacud Road, Stillorgan, Co Dublin; tel: 01 283 2922, fax: 01 283 2847, email: solicitors@creavinco.com

Potter, Eileen (deceased), late of Lyndale, Douglas, Moneygourney, Co Cork, who died on 23 March 2014. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Mr Jonathan Lynam of Finghin O'Driscoll & Co, Solicitors, 11 Pembroke St, Cork; 021 420 4122, email: info@fodsolicitors.ie

Webster, Margaret Josephine (deceased), late of 58 Villa Park Gardens, Navan Road, Dublin 7. Would any person having knowl-

edge of the whereabouts of the original will of the above-named deceased, who died on 3 November 2004, please contact James V Tighe & Co, Solicitors, Main St, Celbridge, Co Kildare; tel: 01 627 2397, email: jvt@indigo.ie

MISCELLANEOUS

Law graduate with BA (hons) and LLB seeks traineeship. Reliable and hardworking. Tel: 089 432 4772, email: oconor66@yahoo.com

Notice: Circuit Court, Eastern Circuit, Co Wicklow; record no 104/2012(E); between Wat Yuen Yee Patricia (Patricia Wat) (plaintiff) and Paul Campion (defendant)

Daly Lynch Crowe & Morris (solicitors for the plaintiff), The Corn Exchange, Burgh Quay, Dublin 2

Notice for encumbrances pursuant to order of the Circuit Court dated 11 June 2013 herein to all persons claiming to have encumbrances affecting the interest of the defendant in the property at Ashvale, Old Russian Village, Kilquade, Co Wicklow, being the property comprised in folio 3826 of the Register of Freeholders, Co Wicklow, situate in the townland of Kilpedder East in the barony of Newcastle and the electoral district of Newcastle Upper, and in folio 6626 of the Register of Freeholders, Co Wicklow, situate in the townland of Kilpedder East in the barony of Newcastle and the electoral division of Newcastle Upper, and in folio 7739 of the Register of Freeholders, Co Wicklow, situate in the townland of Kilpedder East in the barony of Newcastle and the electoral division of Newcastle Upper in the county of Wicklow, are to prove their claims by affidavits and exhibits therein and any security held and to so prove at the office of the county registrar, the Circuit Court Office of the Court-house, Bray, Co Wicklow on 12 January 2015 at 10.15am and in default may be excluded from the benefit of the order.

Date: 5 December 2014

Signed: County Registrar, County of Wicklow, Bray, Co Wicklow.

TITLE DEEDS

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Patrick McEntee

Take notice that any person having any interest in the freehold estate of the property known as no 56 Lower Sean McDermott Street, situate in the parish of Saint Thomas and district of North Central Dublin, the subject of an indenture of lease dated 1 April 1978 between Julius Lipschitz of the one part and Texacloth Limited of the other part for the term of 375 years, subject to a yearly rent of £35.

Take notice that (the applicant) Patrick McEntee intends to submit an application to the county registrar for the county/city of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the

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end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 December 2014

Signed: Gerardine Costello & Associates (solicitors for the applicant), Church Hill, Ballinasloe, Co Galway

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Anastasia Keane and in the matter of the property known as Bloomfield Garage, county of Dublin

Take notice that any person having an interest in the freehold estate or any intermediate interests in the property known as Bloomfield Garage, and now known as 57b South Circular Road in the city of Dublin, being property at the rear of both 57 and 59 South Circular Road, Dublin 8, held under an indenture of lease made 26 June 1959 between Christopher Gore Grimes and William Cremin of the one part and Henry Kennedy of the other part, and held under an indenture of lease made 12 March 1930 between Christopher Gore Grimes of the one part and Mary Jane Taylor of the other part (hereafter 'the leases').

Take notice that Anastasia Keane intends to submit an application to the county registrar for the county of the city of Dublin sitting at Four Courts, Inns Quay, Dublin 7, for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and that any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Anastasia Keane intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate that the person or persons beneficially entitled to the intermediate interests, including the fee simple, in the aforesaid property are unknown or unascertained.

Date: 5 December 2014

Signed: Messrs Gleeson McGrath Baldwin (solicitors for the applicant), 29 Anglesea Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the premises situate to the rear of number 89 Cromwellsfort Road, Walkinstown, in the city of Dublin, formerly part of the commons of Crumlin, situate in the parish of Crumlin, barony of Uppercross and county of Dublin: an application by James Whelan and Noel Whelan

Take notice that any person having an interest in the freehold estate or any superior interest in the following property: all that and those the lands, hereditaments and premises situate to the rear of the premises known as no 89 Cromwellsfort Road, Walkinstown, in the city of Dublin, being the lands comprised in an indenture of assignment dated 18 October 1994 and made between Dermot Farrell of the one part and James Whelan and Noel Whelan of the other part, and being part of the lands held under an indenture of lease dated 15 April 1905 and made between Samuel Jameson of the one part and Michael Morris of the other part for a term of 150 years from 25 March 1905.

Take notice that the applicants, James Whelan and Noel Whelan, being the persons currently entitled to the lessee's interest, in-

tends to submit an application to the county registrar for the city and county of Dublin, for the acquisition of the freehold interest in the aforesaid property. Any person asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice having been received, James Whelan and Noel Whelan intend to proceed with the application before the county registrar at the end of 21 from the date of this notice and will apply to the county registrar for the city and county of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in said premises are unknown or unascertained.

Date: 5 December 2014

Signed: Bourke & Company (solicitors for the applicant), 167-171 Drimnagh Road, Walkinstown, Dublin 12

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of 11 Stamer Street, Portobello, Dublin 8: an application by Claude Fettes, Annette Cooper and Irene Fettes DeGros

Take notice that any person having an interest in the freehold estate of the following property: 11 Stamer Street, Portobello, Dublin 8, more particularly described as all that and those the dwellinghouse and premises known as 11 Stamer Street, Portobello, Dublin 8, more particularly described as all that and those the plot or piece of ground situate and being on the west side of Stamer Street in the parish of St Peter and city of Dublin, containing in breadth in front to said street 21 feet, 9 inches; in the rear, 24 feet, 5 inches; and in depth from front to rear, 96 feet, 6 inches, being the said admeasurements or any of them more or less

measured and bounded as follows, that is to say, on the east side by Stamer Street, on the west by a Stable Lane, on the north by a Stable Lane, and on the south by ground the property of the said Joseph Rawlins, which said plot or piece of ground is more particularly described the boundaries thereof on the map thereof hereon delineated, together with the rights and appurtenances thereunto belonging or in any wise appertaining and being the dwellinghouse and premises known as number 11 Stamer Street, Portobello, Dublin 8, more particularly described on the map annexed to the deed of assignment dated the 15 April 2013 between Clearmount Properties Limited of the one part and Irene Fettes DeGros, Claude Fettes, and Annette Fettes Cooper of the other part.

Take notice that the applicants, Claude Fettes, Annette Fettes Cooper, and Irene Fettes DeGros, intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises and property or any of them are called upon to furnish evidence of the title to the aforementioned premises to the below-named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 December 2014

Signed: Donal O'Kelly & Co (solicitors for the applicants), 1 Grand Canal Wharf, South Dock Road, Dublin 4

ad nauseam



Smile – you're on candid camera

The website that claimed to let people “see into bedrooms of all countries of the world” is now defunct. Insecam.com (which now just displays a ‘job wanted’ ad from the Russian hacker behind the site) claimed to be streaming footage from more

than 73,000 webcams whose owners failed to change their passwords.

The cameras, used for CCTV, baby monitors and web chats, are all connected to the internet, but the default passwords were apparently

never changed, the website said. It claimed to feature more than 11,000 cameras in the US and over 2,000 in Britain. Over 300 cameras were listed in Ireland. The approximate location of cameras was also given, with a pin placed on Google Maps.

“This site has been designed in order to show the importance of the security settings,” the website said. “To remove your public camera from this site and make it private, the only thing you need to do is to change your camera password.”

Drunk in charge of a cow?

British government lawyers are preparing to change archaic rules that made it illegal to “impede escape from a shipwreck” and to make “assaults with intent to obstruct the sale of grain” in the *Offences Against the Person Act 1861*.

Kitty Knowles, writing in *The Independent*, suggests that they might take a look at the following oddities also:

- According to a 1313 statute, MPs are not allowed to wear a suit of armour in Parliament.
- Under the *Metropolitan Police Act 1839*, it is illegal to carry a plank along a pavement. The act also forbids flying kites, playing “annoying games” and sliding on snow in the street.
- It is illegal to be drunk in charge of a horse under the *Licensing Act 1872*. This act also bans



- being drunk in charge of a carriage, cow, or steam engine.
- According to the *Town Police Clauses Act 1847*, it is an offence to keep a pigsty in front of your house or to slaughter cattle in the street. Under the same act, it is illegal to beat or shake any carpet or rug in any street. That said, the beating or shaking of a doormat is allowed before 8am.

Batman too big for his boots

In a turnaround from being sued by the Turkish city of the same name (see ‘Final Verdict’ in the [June issue](#)), the owner of the Batman name, comics giant DC, is suing Valencia FC over who has the rights to claim the bat logo as their own, reports [Newstalk.com](#).

The New York-based publisher has filed papers with the Office for Harmonisation in the Internal Market asking Valencia FC to change their own bat-themed shield. The football club has included the bat in its logo since 1919, although it has undergone a few versions throughout the club's history. It should be able to claim grandfather rights, however, since Valencia city has boasted a bat on its city's coat of arms since the 13th century, when James I reclaimed the city from the Moors.

In contrast, Batman has only used a bat logo since 1939 – and that logo has changed at least eight times since the first comic was printed in May 1939.

Atheist's ‘pastafarian’ head shot for driver's licence

A Utah woman persuaded state officials to let her get her driver's licence photo taken with a metal pasta colander on her head by citing her ‘Pastafarian’ religious beliefs, *The Spectrum* reports.

Asia Lemmon, who is also known as Jessica Steinhauser (the name on her licence), provided documents showing her affiliation with the satirical Church of the *Flying Spaghetti Monster* to obtain permission

from Department of Motor Vehicles officials to wear the colander.

The strainer is the official headgear of the church, which began in 2005 as a protest against a plan to teach intelligent design as an alternative to evolution in Kansas schools.

Approximately 12 people have had similar driver's licence photos taken in Utah, said a director of the state's driver licence division.



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This Dublin based firm is seeking an experienced solicitor to join their Corporate/Commercial team. This is a role for an ambitious solicitor with experience gained either in private practice or in house. You will have dealt with M&A, Investments Agreements and general commercial law matters.

Corporate Finance Solicitor – Assistant to Associate – J00424

Advising financial institutions, government bodies and regulators as well as domestic and international companies, the successful candidate will have exposure to a broad range of financial services including asset finance, insolvency, regulation and secured/unsecured loans.

Energy & Renewables – Associate – J00486

This is an excellent opportunity to join a highly respected legal practice whose client base includes banks, commercial lenders and government agencies. The department advises on the full range of energy transactions and the successful candidate will be dealing with significant project and debt finance related matters.

Investment Funds – Assistant to Associate – J00478

A market leading firm is looking to recruit an experienced funds lawyer to advise investment managers, custodians, administrators and other service provider of investment funds on establishing operations in Ireland. A first rate remuneration and benefits package is on offer.

Tax Lawyer – Senior Associate – J00337

A Top 5 Dublin law firm is looking to recruit a Senior Tax Assistant with solid general tax experience to slot into a fast growing partner led team. You will advise Irish and European clients on structuring transactions, such as complex cross-border acquisitions, real-estate investment, private equity public offerings of debt and equity securities and joint ventures. The tax group also advises on executive compensation and share incentive schemes, VAT and international tax planning.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7. T +353 (0) 1 670 3997 E mbenson@benasso.com www.benasso.com

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