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Legal education  
throughout the  
lifetime of lawyers



**Tumbling down**  
The destruction of the  
Solicitors' Buildings and  
the Four Courts in 1922



**Small is beautiful**  
Law Society support  
services address the needs  
of smaller practices

# gazette

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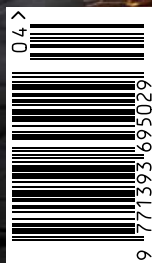
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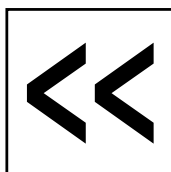
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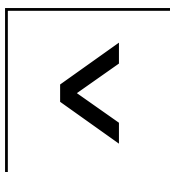


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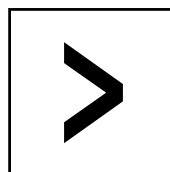
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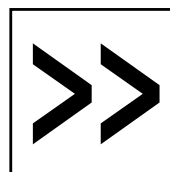
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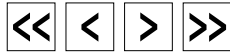
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New York Office  
jmurphy@mmlawus.com  
Tel: +1 212 880 3968



**Thomas J McGonigle**  
Washington, DC Office  
tmgonigle@mmlawus.com  
Tel: +1 202 661 7010

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# TEMPUS FUGIT

It's amazing how time flies – this is my third 'Presidents Message', and we are nearly halfway through the presidential year. This profound thought leads me back to the *Market Study of Sole Practitioners and Smaller Legal Practices in Ireland*, which you may recall was approved by the Council recently and sent to all firms of five solicitors and under.

One of the conclusions relates to the need to plan for the eventual exit from practice, including making pension provision. This is something that took a back seat during the recession, but no one would be naïve enough to assume that any State pension in the future will be adequate, and we should all look to provision for old age, almost from the moment of qualification.

It is the intention of the Council that the report will not gather dust. As a result, the Law Society has begun to implement a range of supports and tools for sole practitioners and smaller practices (see p28). Don't forget that you can access the report at [www.lawsociety.ie](http://www.lawsociety.ie).

PIAB practitioners need to be alert to a number of recent developments. Changes to the *Civil Liability and Courts Act 2004* and the *PIAB Act 2003* came into effect on 28 January and 3 April 2019 respectively. The most significant development is that the section 8 (of the 2004 act) requirement to provide a letter, before action, has been reduced to just one month, unless reasonable cause can be shown. In addition, rules in respect of affidavits of verification, cooperation with PIAB during the assessment process, and the *Statute of Limitations* have been introduced (see p32).

## Wellbeing

The whole area of wellbeing and mental health is receiving increasing scrutiny. The Council recently heard a presentation by Psychology at Work, outlining their research and evaluation of the mental health supports provided by the Law Society to its members.

An implementation plan has been initiated by the Society, sending out a clear message that 'it's okay not to be okay' and that mental-health issues are like any other health issues – they need to be properly identified and treated. The legal profession, internationally, is recognised as having a high level of mental-health issues due

to the stressful nature of the work, the stressful situations in which lawyers find themselves, and a variety of other pressures, whether in large firms or small. We need to look after ourselves, and our colleagues, better (see p21).

## Ireland's international role

The whole Brexit debacle is a cause for concern to many solicitors and their clients, to a greater or lesser degree. It is a fact that, after Brexit, Ireland, Malta and Cyprus will be the only English-speaking, common law countries in the EU. This gives impetus to a Government-led plan to try to establish Ireland as a venue for international litigation and dispute resolution – and, indeed, to have Irish law increasingly included in international contracts.

This project was launched officially in the Irish Embassy in Washington recently, where the chief justice, the attorney general, the chair of the Bar Council and I were speakers, together with representatives of the IDA (see p15). We are confident that this is an initiative we can grow, and which may well have significant positive consequences, both for the profession and Ireland Inc.

Ken Murphy and I continue our tour of



WE WANT TO SEND OUT A CLEAR MESSAGE THAT 'IT'S OKAY NOT TO BE OKAY' AND THAT MENTAL-HEALTH ISSUES NEED TO BE PROPERLY IDENTIFIED AND TREATED

the country. It's great to meet colleagues at the various bar association meetings and clusters, to brief these meetings, and hear about the concerns of colleagues. I look forward to meeting many more of you throughout the course of the year. As ever, if you have any queries, comments or issues, I can be contacted at [president@lawsociety.ie](mailto:president@lawsociety.ie).

PATRICK DORGAN,  
PRESIDENT





# gazette

LAW SOCIETY

PIC: GAZETTE STUDIO



**g** Volume 113,  
number 3

Subscriptions: €65  
(€95 overseas)

Blackhall Place, Dublin 7  
tel: 01 672 4828  
fax: 01 672 4801  
email: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie)

**PROFESSIONAL NOTICES:** see the 'Rates' panel in the professional notices section of this *Gazette*

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**Editor:** Mark McDermott FIIC  
**Deputy editor:** Dr Garrett O'Boyle  
**Art director:** Nuala Redmond  
**Editorial secretary:** Catherine Kearney  
**Printing:** Turner's Printing Company Ltd, Longford

**Editorial board:** Michael Kealey (chairman), Mark McDermott (secretary), Aoife Byrne, Ken Casey, Mairéad Cashman, Tracy Cruikshank, Caroline Dee-Brown, Hilary Forde, Richard Hammond, Teri Kelly, Patrick J McGonagle, Aisling Meehan, Heather Murphy, Ken Murphy, Andrew Sheridan

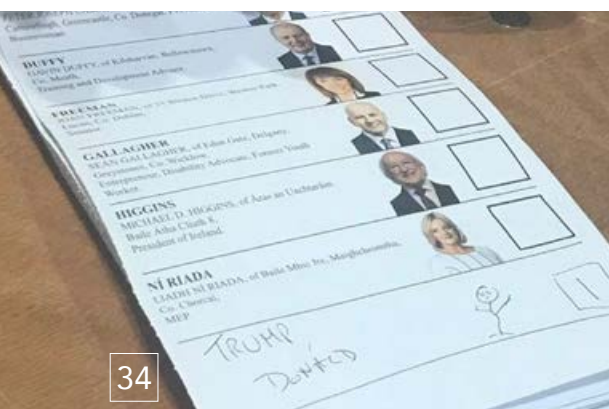
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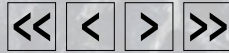
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# THE BIG PICTURE





## BREAK FOR THE BORDER

The changes in road markings on the A13 Road near Derry reveal subtle – and not so subtle – differences between the Republic of Ireland (*left*) and Northern Ireland. The mechanism known as the ‘backstop’, has been one of the main sticking points that has tied up the British Parliament in knots. It is seeking to negotiate a path towards Brexit, but must uphold the legally binding Good Friday Agreement





## MIDLANDS MINES LOCAL TALENT



PICTURE: PAULA NOLAN PHOTOGRAPHY

The Midland Bar Association held a very successful CPD event, followed by its AGM, at the Tullamore Court Hotel on 6 February. The new committee, elected for a two-year term, comprises Dermot Scanlon (chair), Mary Clear (secretary) and Patrick Fox (treasurer). The CPD event dealt with the anti-money-laundering landscape, *Solicitors Accounts Regulations* and disciplinary matters and procedures, including inspections from the Law Society. Accountants Michael Casey and Michael Kinsella (BCA Chartered Accountants, Tullamore) and colleague Sean Sexton made the presentations. (Front, l to r): Michael Byrne, Caren Farrell, Claire Hickey, Gill Allen, Denise Biggins (outgoing secretary), Brian Mahon, Dermot Scanlon (president), Patrick Dorgan (Law Society president), Anne Marie Kelleher (outgoing president), Ken Murphy (director general), Mary Clear (secretary), Jane Farrell, Verona Smyth, Rita Tynan and Emeria Flood; (middle, l to r): Marc Bairead (outgoing treasurer), Joseph Brophy, Tom O'Donovan, Seamus Tunney, Brian O'Brien, Martin Reidy, Corona Grennan, Brian O'Meara (outgoing assistant secretary), Dermot Murphy, James Fox, Mary Ward, John Wallace, Bernadette McArdle, Michelle Mellotte, Emma Egan and Aisling Penrose; (back, l to r): Mark Scanlon, Niall Moran, Kevin McGee, Patrick Martin, Matt Shaw, Patrick Fox (treasurer), Marcus Farrell, John Reedy and Tom Farrell

## DIET OF WURZBURG



The Wicklow Bar Association recently visited Wurzburg in Bavaria, Germany, and attended its district and regional courts, accompanied by Winter Staatsanwaltschaft (state attorney of Wurzburg). The group also attended a reception at the city hall and council chambers and enjoyed a tour of the School of Law at the University of Wurzburg, given by Professor Eric Hilgendorf. Members of the association on the visit included Gerarda Benville, Rory Benville, Augustus Cullen, Emer Cullen, Jennifer Haughton, Aine Hogan, Tom Honan, Paucic Hyland, Richard Joyce, Karl Karney, Fergus Kinsella, Cathal Louth, Michael O'Neill, Donal O'Sullivan, Damian Sheridan, Heather Sheridan, Andrew Tarrant, David Tarrant and Declan Whittle





## SLA EXUDES SOUTHERN CHARM



ALL PICS: TONY O'CONNELL

The annual dinner of the Southern Law Association (SLA) took place at Maryborough House Hotel on 22 February. Attended by 300 practitioners and special guests, the speeches were given by Richard Hammond (president, SLA), Suzanne Rice (president, Law Society of Northern Ireland), Patrick Dorgan (president, Law Society of Ireland) and Robert Baker (vice-president, SLA). Pictured are (front, l to r): Julie Rae, Sean Durcan, Catherine O'Callaghan, Robert Baker (vice-president, SLA), Richard Hammond (president, SLA), Patrick Dorgan (president, Law Society of Ireland), Emma Meagher Neville, Brendan Cunningham and Joan Byrne; (back, l to r): John Fuller, Gerald O'Flynn, Johnathan Lynam, Fiona Twomey, Barry Kelleher, Kieran Moran, Don Murphy and Dermot Kelly



Catherine O'Callaghan (secretary, SLA), Richard Hammond (president SLA) and Emma Meagher Neville (PRO, SLA)



Robert Baker, Richard Hammond (president SLA) and Catherine O'Callaghan (secretary, SLA)



Joyce Good Hammond (Hammond Good Solicitors) and Richard Hammond



Ken Murphy (director general, Law Society) and Suzanne Rice (president, Law Society of Northern Ireland)



Judge Mary Dorgan with her brother Patrick Dorgan (Law Society president)





# ROYAL OCCASION FOR SOUTHSIDE SOLICITORS



ALL PICS: DERMOT BYRNE PHOTOGRAPHY

The solicitors of south Dublin held their 34<sup>th</sup> annual dinner at the Royal St George Yacht Club on 1 February 2019, organised by Justin McKenna (Partners at Law). Pictured are (l to r): Maria Dorgan, Ken Murphy (director general), Judge Anne Watkin, Greg Ryan (president, Dublin Solicitors' Bar Association), Minister Josepha Madigan, Patrick Dorgan (president) and Yvonne Chapman



Laura McKenna BL, Judge David Kennedy, Geraldine Kelly and Judge Anne Watkin



Gerard I Lambe, Justin McKenna, Minister Josepha Madigan and Kevin O'Higgins



Christina Duffy, Ronan Cogan and Clare McKenna



Paul Ryan and Ken Byrne



Brian Harpur, Angela McCann and Raphael King



Diego Gallagher



Jeremiah McCarthy, Bernadette Kirby BL, Mary McCarthy, Rosaleen Connolly and Peter McCabe



Frank Cantwell and Joanne Sheehan





## MAJESTIC NIGHT AT MOUNT FALCON



The Mayo Solicitors' Bar Association dress dance in Mount Falcon, Ballina, attracted legal luminaries and practitioners from far and wide, including (*front, l to r*): Judge Fiona Lydon, Mr Justice Michael Peart, Judge Dermot Simms, Judge Patrick Durcan and Suzanne Rice (president, Law Society of Northern Ireland); (*back, l to r*): Mark Ryan (president, Dublin Solicitors' Bar Association), Dermot Morahan (president, Mayo Solicitors' Bar Association), Judge Eoin Garavan, Patrick Dorgan (president, Law Society of Ireland) and Enda Lavery (chairman, Belfast Solicitors Association)



Claire O'Grady, Eithne Foy and Aoife O'Malley



Dermot Morahan (president, Mayo Solicitors' Bar Association) and Stacey Morahan



Deirdre Loftus and Marc Loftus (vice-president, Mayo Solicitors' Bar Association)





Charlie Gilmartin and Sandra Murphy



Neil Reilly, Samantha Geraghty, Siobhan Durcan, Paul Cunney, Niamh Murtagh, Pat O'Connor, Gillian O'Connor, Colleen O'Connor and William O'Connor



Siobhan Murphy and Patrick Murphy BL



Claire O'Grady, Frances Morahan, John Morahan, Stacey Morahan, Dermot Morahan, Fintan Morahan, Ruth Coonan and Eithne Foy



Darren McMaster and Kathleen Doocey



Augusta Tuohy, Laura Glennon and Elaine Silke



Simon Quinn, Mairead Bourke, Dermot Morahan and Stacey Morahan





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## SOCIETY HONOURS CCBE PRESIDENTS



The Law Society held a special dinner at Blackhall Place on 21 March 2019 in recognition of the election of Law Society past-president James MacGuill to the position of third vice-president of the Council of Bars and Law Societies of Europe (CCBE). James is set to become president of the body in 2022. The CCBE represents the bars and law societies of 45 countries, and through them more than one million European lawyers. It is recognised by all of the EU institutions. James will be the second Irish lawyer to become CCBE president, following in the footsteps of John Fish, who served as president in 2002. James will be the first past-president of the Law Society to be elevated to this position. The dinner was hosted by Law Society President Patrick Dorgan with other members of the Co-ordination Committee, with James MacGuill and John Fish as joint guests of honour. Other former Law Society representatives to the CCBE were present, including Geraldine Clarke and Michael Irvine. (Front, l to r): Geraldine Clarke (past-president, Law Society), John Fish, Patrick Dorgan (president, Law Society), James MacGuill (third vice-president, CCBE), and Michele O'Boyle (senior vice-president, Law Society); (back, l to r): Dan O'Connor (junior vice-president), Ken Murphy (director general), James Cahill (Council member), Michael Irvine (past-president), Cormac Little (Law Society representative, CCBE), Mary Keane (deputy director general) and Cormac Ó Cúláin (secretary, Irish delegation to the CCBE)

## BIG WHEEL KEEP ON TURNIN'



There was a great turnout for the recent Diploma Centre alumni evening, which focused on key legal issues facing charities today. The Law Society event was run in collaboration with The Wheel and featured speakers Helen Martin (director of regulation, Charities Regulatory Authority), Ivan Cooper (director of advocacy, The Wheel) and Breda Crehan-Roche (chief executive, Ability West)





## TRUST AND INTEGRITY IN THE PROFESSIONS



The Irish Interprofessional Association held a working lunch at the King's Inns on 8 March, where Mr Justice Peter Kelly (president of the High Court) delivered an address on the theme of trust and integrity in the professions. Solicitors, barristers, accountants, dentists, doctors, engineers and pharmacists were all represented. Council member Michelle Ní Longáin and Teri Kelly (director of representation and member services) represented the Law Society. (From l to r): Teri Kelly, Dr Paddy Hillery (chair of the Irish Medical Organisation's NCHD Committee) and Mr Justice Peter Kelly

## DATA-DRIVEN REFORMS TO SHAKE UP YOUTH JUSTICE

Two significant initiatives in the reform and development of youth justice have been announced by David Stanton (Minister of State for Equality, Immigration and Integration).

Building on research by the University of Limerick, the changes will kick-start development of a new youth justice strategy, as well as a reform and development programme for the network of 106 Garda Youth Diversion Projects (GYDPs) around the country.

The GYDP Action Research Project will work with 15 GYDPs across ten counties, over a two-year period to tease out best practice in working with young people at risk.



The findings of the research, which are due in June, will be used as the basis for the design of new, more effective ways of working, using the same resources.

Minister Stanton said: "The next steps with these research studies will be different. We have a determined collaboration of committed officials and local practitioners ready for change, and a team based in the University of Limerick that is producing top-class practical research."

## CHIEF JUSTICE PRINT TO BENEFIT CALCUTTA RUN

Northern Irish art publisher Hanna Fine Art, in association with the Law Society of Ireland and the Bar of Ireland, have announced the forthcoming release of a rare and valuable print signed by Chief Justice Frank Clarke.

Irish artist Stephen McClean's critically acclaimed painting of the Round Hall in Dublin's Four Courts has been printed in a limited edition of only 150.

Each print has been signed by the chief justice and the artist to create an important and historic piece of legal memorabilia, which will be sold to raise funds and awareness for Irish charities, including the Calcutta Run – the Legal Fundraiser.



Chief Justice Frank Clarke and Paul Hanna (Hanna Fine Art)

Anyone wishing to reserve one of the few remaining prints at the published price of £295

(£250 unframed), please contact Maria Hanna at 085 112 2388 or [modernirishart@btinternet.com](mailto:modernirishart@btinternet.com).

## SEXUAL OFFENCES AND HOW TO BALANCE RIGHTS

The sixth annual [Criminal Justice Agencies' Conference](#) will take place on 4 June at the Conference Centre, Dublin Castle. The theme of this one-day conference will be 'Sexual offences: the challenge of balancing rights in the criminal justice system'.

Charlie Flanagan (Minister for Justice and Equality) and Claire Loftus (Director of Public Prosecutions) will be among the main speakers.



## LEGAL SECTOR 'BREXIT DIVIDEND' PROMOTED IN WASHINGTON DC

A campaign to promote Ireland as an international legal centre received a soft launch in front of a carefully selected audience of leading American lawyers in the Irish Embassy in Washington DC on 15 March 2019.

The event was part of the traditional St Patrick's Day celebrations in the US capital that included, as always, a visit by the Taoiseach to the White House and Capitol Hill. This year, among the Irish Government's policy objectives is the promotion of a project initiated by the Bar and the solicitors' profession to encourage the international legal world to use Irish law and Irish legal services in contracts, transactions and dispute resolution.

This policy was adopted by the Cabinet in early January of this year. It was initiated in a submission to Government last year, on which the Law Society, the Bar of Ireland, and some of the largest Irish law firms collaborated.

In late February, Attorney General Seamus Woulfe invited a Law Society delegation to accompany him to Washington DC for the launch of this campaign. A number of events were organised by the Irish Embassy, to which leading Irish American lawyers were invited so that they could be introduced to this initiative.

The Law Society delegation comprised President Patrick Dorgan, director general Ken Murphy, and Council member Liam Kennedy, who had done a great deal of drafting work on the original submission to Government. The Bar was represented by its chair Micheál P O'Higgins SC, its director Ciara Murphy, and a number of members of the Bar Council.

A key figure in the Irish del-



The visiting speakers to the specially invited audience of American lawyers in the Irish Embassy in Washington DC were (l to r): Seamus Woulfe SC (attorney general), Mr Justice Frank Clarke (chief justice), Micheál P O'Higgins SC (chair of the Bar of Ireland), Gemma Allen (IDA) and Patrick Dorgan (president of the Law Society)

egation was Chief Justice Frank Clarke, who has been a passionate advocate of this initiative.

When Brexit takes effect, Ireland will be the only legal jurisdiction (other than Malta and Cyprus) that is a common law jurisdiction and a member state of the European Union.

As Ken Murphy said in an article on the front page of the *Global Legal Post*: "We believe the uncertainty surrounding the enforceability in the EU of judgments of the UK courts, post-Brexit, will make dispute resolution in Irish courts more attractive to international litigants."

He added: "Ultimately, the aim is to see increased numbers of international commercial agreements with Irish jurisdiction clauses included in them, in their dispute resolution provisions."

The Government's next move will be to appoint an implementation board for this project.

## CHILD LAW EXPERT MOVES TO CALDWELL & ROBINSON

Eminent Irish family lawyer Geraldine Keehan has joined the newly opened Dublin office of **Caldwell & Robinson**. The firm has added to its established presence in Belfast and Derry with a branch at Mary's Abbey in Dublin 7.

Previously a family and child law partner at Augustus Cullen Law, Geraldine advises and acts in domestic and international private family law matters, including



adoptions, divorces and custody agreements, as well as international surrogacy cases. She also acts for guardians *ad litem* and advises in relation to the movement of children between jurisdictions.

Philip Gilliland (Caldwell & Robinson's managing partner) said the move would position the firm well for the increased north-south and east-west legal activity that Brexit is bringing.



BOOK NOW



# LAW SOCIETY GALA 2019

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Kicks', Ireland's  
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and satirist

This October, the Law Society Gala 2019 will take place in the historic Shelbourne Hotel in the heart of Dublin. This black-tie dinner raises funds for the Solicitors' Benevolent Association (SBA) and is a social highlight for the solicitors' profession.

Guest speaker Oliver Callan is back by popular demand to entertain guests for the evening.

**Table dinner package for 12 guests: €2,400 (plus VAT). Individual dinner seats: €200 (plus VAT) per person.**

To book your place, visit **[www.lawsociety.ie/gala](http://www.lawsociety.ie/gala)**

Law Society Gala profits will be donated to the Solicitors' Benevolent Association, which provides assistance to members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, families and immediate dependants who are in need.





## IWLA PLANS TO INCORPORATE FOR RESEARCH PURPOSES

The Irish Women Lawyers' Association (IWLA) is to incorporate as a company in order to apply for research funding on gender diversity. In addition, it is preparing sponsorship offerings and working to amplify female voices in the media. A corporate membership proposal is also in the pipeline.

These developments were announced by chair Maeve Delargy at an IWLA gala evening at the Stella Cinema in Rathmines, Dublin, on 25 February. Members attended a showing of *On the Basis of Sex*, a biopic about pioneering US Supreme Court judge Ruth Bader Ginsburg.

Those attending included representatives of the Law Society and the Bar of Ireland, the offices of the Chief State Solicitor and the DPP, senior counsel, partners and



At the Stella Cinema event were (l to r): Patrick Dorgan (president, Law Society), Ms Justice Catherine McGuinness, Maeve Delargy (IWLA chairperson), Prof Irene Lynch Fallon (UCC), and Ken Murphy (director general, Law Society)

managing partners from various law firms, and legal academics.

The IWLA's goal is to be the foremost public voice on behalf of women lawyers in Ireland.

The body has commissioned research from barrister Ann Conlon into article 41.2 of the Constitution on women's role as homemakers. It has also met the

Association of Female Lawyers of Liberia and made a strategy submission to the Courts Service, as well as approaching the King's Inns to explore opportunities for collaboration.

The Rathmines event was attended by Minister Katherine Zappone, Ms Justice Marie Baker and Ms Justice Caroline Costello (both Court of Appeal), Ms Justice Úna Ni Raifeartaigh, Ms Justice Teresa Pilkington and Mr Justice Seamus Noonan (High Court), DPP Claire Lofthus, Chief State Solicitor Maria Browne, State Coroner Dr Myra Cullinane, Judge Pauline Codd (Circuit Court), and judges Anne Watkin and Patricia McNamara (District Court). Also present were Law Society President Patrick Dorgan and director general Ken Murphy.

## IRELAND'S TOUGHEST LAWYERS

You may have heard some talk of a 'hard border' over the past few months. If you haven't, go back to sleep in your hermit's hut on Mars, writes Stuart Gilbooly.

I thought I'd heard more than enough of it, but then Brian McMullin phoned me with the germ of an idea to pit solicitors from both sides of the border against each other in an Ironman triathlon. After giving my tentative support, I thought I'd never hear of it again. But, no – Brian is a determined man who doesn't take 'no' for an answer.

And so it has come to fruition. Thanks to sponsorship from Thread Legal by Expd8, O'Leary Insurances, and Willis Towers Watson, this show is about to hit the road. And the sea.

Taking place on 17 May, with



Brian McMullin, Stuart Gilbooly, Declan Branagan (Xpediate – sponsor) and Ivan Feran

an early start, it will commence in Lough Melvin, Co Leitrim, and finish at Blackhall Place, Dublin. Ivan Feran from the South and the North's Peter

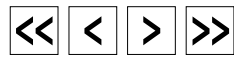
Jack will swim 3.86km, before handing the baton to me and Darren Toombs of the North for a 180km cycle (after which the 'Toombstone' is likely to

be mine!). The race will finish with a marathon from Maynooth to Blackhall Place, where Brian McMullin, up against the North's Adam Wood, will attempt to make up my deficit.

The triathlon will encompass three provinces, six counties, and at least six border crossings, so hopefully Brexit can be delayed a little longer! We are raising money for this event, and all proceeds will go the Solicitors' Benevolent Association. There, but for the grace of God, go us all. Please give generously if you can.

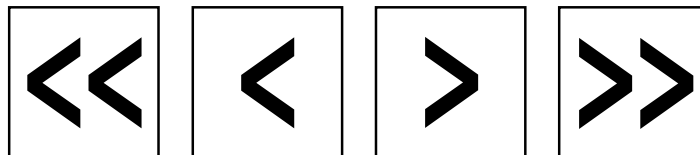
Donations may be made by contacting Stuart at [stuart.gilbooly@bjward.ie](mailto:stuart.gilbooly@bjward.ie), Brian at [brianjmcullin@brianjmcullin.com](mailto:brianjmcullin@brianjmcullin.com), or Ivan at [ivanferan@feran.ie](mailto:ivanferan@feran.ie).





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## EUROPE'S TOP JUDGES ENGAGE IN HIGH-LEVEL DUBLIN TALKS

Dublin Castle hosted judges from all 28 EU supreme courts for a high-level seminar on 25 and 26 March, organised by the Association of Councils of State and Supreme Administrative Jurisdictions of the EU.

The aim of the event was to explore greater access to the decisions and jurisprudence of each court in the area of EU law. This would allow courts in each country to reference, cite or rely upon approaches in other countries.

The association's aims are to:

- Create a better understanding of EU law by the judges of the supreme administrative courts across Europe,
- Foster a better knowledge of the functioning of the other supreme administrative courts in the implementation of EU law,



ALL PICS: CIAN REDMOND



Skirgaile Zalimiene (Supreme Administrative Court, Lithuania) and Baroness Brenda Hale (president of the British Supreme Court)

- Improve the mutual trust between supreme court judges,
- Foster the effective and efficient administration of justice in the EU,
- Provide opportunities for the exchange of ideas on the rule of law in the administrative judicial systems, and
- Ensure access to the decisions of the supreme administrative courts implementing EU law.

## SOCIETY ISSUES CLAIMS HARVESTING WARNING

In November 2017, the Law Society secured orders against non-solicitor businessman David Smyth and his company Agenda Computers Limited, under section 18 of the *Solicitors (Amendment) Act 2002*.

In this case, Mr Smyth and his company were ordered to cease operating a prominent claims-harvesting website that was operating in contravention of the *Solicitors Acts*, and were directed to provide the Society with the names of all solicitors who have received referrals for personal injury claims via the website.

Mr Smyth swore an affidavit and the Society received a list of 17 solicitor firms that were in receipt of claims referrals from

his company. As part of its ongoing investigation into the 'claims-harvesting' industry, the Society notified the principals of each of the solicitor firms identified by Smyth that the Society was concerned that they were contravening, or have contravened, or are likely to contravene, the *Solicitors Acts* and/or the 2002 regulations.

The Society requested responses from each firm principal, and all responses received from the solicitors were then referred to the Regulation of Practice Committee for its consideration.

At its meeting on 19 April 2018, the committee considered each response and, satisfied that any admitted dealings with the claims-harvesting website had

been terminated, directed each solicitor firm to provide the Society with the written undertaking that:

- The firm principal and/or the firm will have no connection with any other person and/or website and/or enterprise that either engages in the activity of 'claims harvesting' and/or expressly or impliedly offers any inducement to make a claim for damages for personal injuries or refers to the provisions of legal services in connection with such claims,
- The firm principal will ensure that all future advertising commissioned by them in their capacity as solicitor is done in compliance with the *Solicitors (Advertising) Regulations*.

Further, three solicitors were called before the committee at its meetings on 12 July and 15 October 2018 to assist the Society with its investigations into the illegal practice of 'claims harvesting'. The legal costs of the proceedings were ordered against Mr Smyth and the company. These costs have been taxed, and the Society is taking the necessary steps to enforce the costs order.

The Law Society continues to take a strict approach towards solicitors found to be accepting and paying for such referrals, and a breach of primary legislation in respect of such activities may constitute professional misconduct on the part of the solicitor and may result in a referral to the Solicitors Disciplinary Tribunal.





## ENDANGERED LAWYERS

JUDGE MARIA LOURDES AFIUNI  
MORA, VENEZUELA



At the time of her arrest in December 2009, Judge Maria Lourdes Afiuni was a judge of the Criminal Circuit of the Metropolitan Area of Caracas, Venezuela. She was arrested without a warrant some hours after she ordered the conditional release of a person charged with evading currency controls, who had been held for three years in pre-trial detention, outside the two years' maximum prescribed.

She was eventually charged with corruption, being an accessory to an escape, criminal conspiracy, and misuse of authority. During her detention, Judge Afiuni was subjected to multiple violations, including to her personal integrity, her right to health, and her right to be treated with humanity and respect for the inherent dignity of the human person.

She was released to house arrest in 2011 after emergency surgery for cancer. In June 2013, her house arrest was lifted on health grounds, with restrictive conditions: she was required to report to the authorities every 15 days and to refrain from talking to the media, practising law, using her bank account, or leaving the country.

Her case has been adjourned

over 60 times for lack of prosecution.

In January 2018, the Public Prosecutor's Office requested to end the trial stage and proceed to adjudication with the evidence so far collected, but the judge rejected the request and argued for the need to hear further testimonies.

This tends to support the widely held impression that judges and the legal profession are operating in a climate of fear of reprisals for actions not liked by the government. Amnesty International and Human Rights Watch regard her as a political prisoner. Hearings throughout the rest of 2018 were adjourned every two weeks, and did not take place because the court was not sitting. It seems that her trial will now not conclude until the political situation is resolved.

Interestingly, she is quoted as saying: "I knew conditions were tough but didn't realise just how degraded. If I was back on the bench, I'd find it difficult to send anyone to jail unless the system was changed."

*Alma Clissmann is a member of the Law Society's Human Rights Committee.*

## INJURIES TO MOTHERS IN CHILDBIRTH

Injuries to mothers in childbirth and the litigation that follows will be the focus of a medico-legal CPD seminar for charity at King's Inns on 1 May.

The event will take place from 1.30pm to 5.30pm and will attract four hours of general CPD. Judge Bronagh O'Hanlon (High Court) will open the seminar.

Organiser Doireann O'Mahony BL has lined up a panel of experts to discuss the clinical aspects of birth injuries. She will present the lawyer's perspective.

London-based obstetrician and gynaecologist Roger Clements will deal with the avoidance and management of injuries from spontaneous and instrumental deliveries. Professor Marc Winslet will focus on the recognition and treatment of obstetric injuries. Other speakers include urogynaecology consultant Charlotte Chaliha and consultant urologist Ronald Miller.

Physiotherapist Maeve Whelan will examine available treatment options, while Sue Newsome



(psychosexual therapist) will discuss how individuals and couples' emotions and behaviours are affected by these injuries.

Proceeds will be donated to Nurture Health, a nationwide service delivering counselling and support surrounding conception, pregnancy, childbirth and related difficulties for women and their partners.

The cost of attending the CPD event is €150. For further information, contact Doireann at [doireannmahony@gmail.com](mailto:doireannmahony@gmail.com).

## JURY-SUMMONS ADMIN TO BE IN MAYO

Jury summons administration is to be centralised in Castlebar, Co Mayo, the Courts Service has announced, in order to create a more efficient system. In addition, all documents for legal actions initiated outside the jurisdiction that concern an Irish citizen or company will now be managed centrally by the Courts Service.

All 60 organisations and Government departments with prosecutorial duties – including An Post, the Environmental Protection Agency, and the Depart-

ment of Agriculture, Food and the Marine – will now upload all relevant documentation through the new portal.

Paperwork that was previously brought to the Courts Service manually will now go online. A Courts Service spokesman said that this would lead to greater accuracy and efficiencies.

The Courts Service has also reminded solicitors that they can now lodge applications electronically for leave to appeal in the Supreme Court in cases where all parties are legally represented.

## FREE MOOC ON ARTS AND MEDIA LAW

'Arts, entertainment and media law – issues that take centre stage' is the theme for the Diploma Centre's 2019 massive open online course (MOOC) starting on Tuesday 7 May.

MOOCs are free online courses open to all and are part of the Law Society's public legal education initiatives.

Since it was first launched in 2014, the Diploma Centre's MOOCs have attracted over 10,000 participants from over 60 countries. Courses feature online recorded and streamed presentations, as well as interactive discussion forums and quizzes that allow those taking part to engage directly with our expert presenters.

This year's course will provide a comprehensive guide to legal and business issues for those working in the arts, drama, entertainment, media and publishing industries.

It will examine many hot topics, including:

- The current position of arts, media, and entertainment industries in Ireland,



- State funding, tax treatment, and other incentives,
- Commissioning and sponsorship deals,
- Rights, risks, and responsibilities linked to publication,
- Protecting copyright,
- 'Fake news',
- Dealing with writer's block,
- Everything you need to know about contracts and negotiations,
- Challenges facing the music industry,
- Using technology and social media as a tool for good, and
- Selling your product and going global.

The course will run for a five-week period, starting on 7 May. To sign up, visit [www.mooc2019.lawsociety.ie](http://www.mooc2019.lawsociety.ie).

## NEW PRECEDENT COMPLETION NOTICES

The Conveyancing Committee has revised its precedent completion notices to tie in with the recent changes to the contract for sale reflected in the 2019 edition.

With the move to pre-contract investigation of title on 1 January 2019, and the introduction of the new *Conditions of Sale* (2019 edition), it has been necessary to amend the precedent completion notices to reflect the new num-

bering of some of the general conditions in the 2019 contract. The new precedents are now available on the 'precedents' page on the Society's website.

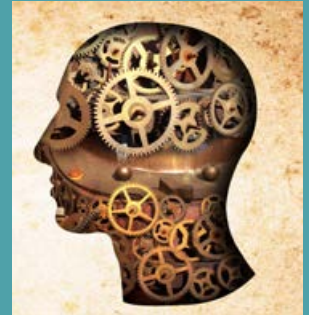
The old precedents will also remain on the precedents page for a period of six months, as a transition measure, to allow for cases where completion notices may be required in relation to the 2017 edition of the contract for sale.

## WORKPLACE WELL-BEING THE ECONOMIC BURDEN OF MENTAL ILLNESS

It may seem counter-intuitive to link mental health to money and profits in a column concerning well-being, but it is difficult to separate the dancer from the dance. When we think of disability at work, we may focus on back problems or accessibility issues. Similarly, if someone mentions 'disease', we often think of physiological conditions. So you might be surprised to learn that the Global Burden of Disease Study, a comprehensive and ongoing global research program assessing the impact of disease, found that mental, neurological and substance-use conditions are the leading causes of disability globally, with mental health issues accounting for the largest proportion of years lost to 'healthy' living. Depression is the most disabling and prevalent mental illness, and the research confirms that mental illness is now the major health challenge of this century.

Let's take a look at some statistics: 27% of adults in the EU experience a period of mental illness during their lives. That's more than a quarter of the people around you struggling with their mental well-being at some point; the most frequently occurring conditions being anxiety, depression, and substance-use disorders. Yet only a quarter of that 27% receive any professional help – mostly after years of living with distressing symptoms.

The World Economic Forum suggests that mental ill-health will account for a global loss of over US\$16 trillion between



2010 and 2030, with 65% of that burden being carried by high-income countries like Ireland. That's a huge burden, and it trickles down to every employing organisation, including yours.

The impact of mental ill-health is measured by (a) how it relates to the individual and to society and (b) the burden it creates. Both of these measures are important when considering the supports required to alleviate the psychological burden for the individual and the psychological and economic burden on your organisation.

It may be time to consider what your organisation can do to support people in respect of what are often silent and damaging experiences, hidden due to fear and stigma. When we think about one-in-four people experiencing mental ill-health, it seems clear that this is an issue that needs every employer's attention. Communication, space to talk, and education are good starting points. And remember, if it is good for the individual, it will likely be good for the organisation!

*Paul Hughes is a practising psychotherapist.*





## FINAL BURREN LAW SCHOOL PROMISES STELLAR CAST

A stellar line-up of speakers has been put together for what looks set to be the very last [Burren Law School](#), in Ballyvaughan, Co Clare, from 3-5 May.

This year's [programme](#) will mark the end of a 26-year run, and will address the future of democracy and the challenges for human rights and politics – both at home and abroad. The event will also examine Ireland's changing relationship with the EU and the US, and the impact of Brexit on Northern Ireland.

Confirmed speakers include Chief Justice Frank Clarke, Barra McGrory QC (former DPP for Northern Ireland), Marion McKeone (US-based journalist), Conor Gearty (professor, LSE), Eamon Ryan TD, Catriona



Barrister Patrick McEntee, former Tánaiste Dick Spring, Judge Ronan Keane and late Supreme Court Justice Adrian Hardiman at the 1998 school

Crowe (author and broadcaster), and Dr Brendan Dunford (environmental consultant).

"We're retiring gracefully," says Mary Hawkes-Greene, who, together with her late

husband Michael Greene and Brian Sheridan (now a District Court judge) founded the Ballyvaughan event in 1994.

The founders' initial desire was to increase knowledge about Brehon Law and its core wisdom among those in the legal profession. But 25 years on, Mary believes that the time has come to reinvent the school: "One mustn't hold on to the same model all of the time," she said. "We have had a very loyal and dynamic group of people, but it's time for a fresh iteration. What we are doing is making space for a new model to emerge."

Bookings for this year's school can be made at [www.burren-college.ie](http://www.burren-college.ie). Enquiries to [julia@burrencollege.ie](mailto:julia@burrencollege.ie).

PICT: MARY HAWKES-GREENE, BURREN LAW SCHOOL

## 'BE PROUD OF YOUR PROFESSION', SAYS SLA PRESIDENT

Being entrusted with the presidency of the [Southern Law Association](#) (SLA) is the highlight of solicitor Richard Hammond's professional career, he told the body's annual dinner on 22 February. He said that fewer than half a dozen of his Leaving Cert class had gone to UCC and that a career in law would not have been an obvious prediction when he was born to hard-working, rural stock.

In that respect, Hammond commented that, despite some significant VIP guests at the dinner, the most special guests from his perspective were his parents PJ and Mary. They had encouraged and promoted his education as a gateway for anything he might wish to achieve in life.

Reflecting on the legal landscape in 2019, he expressed a



Joyce Good Hammond, Richard Hammond, Sinead McNamara, and Shane McCarthy

concern that the profession's collective self-respect and self-worth were constantly being eroded. "Interestingly, I think that this sets the scene for the cognitively dissonant position in which many in Irish society find themselves, whereby they are quite sure that

they trust and appreciate their own individual lawyer, while having a deep mistrust and often outright disdain for lawyers generally," he commented. "There is no doubt that lawyers play a crucial and beneficial role in our country, and have always so done.

"The environment in which we operate is constantly evolving and, on some days, it would be understandable to think that we, as a profession, are under siege and, indeed, that the very concept of being a 'professional' is being undermined and diluted."

Hammond reflected on the "immense talent" within the legal profession, with practitioners constantly innovating and developing their offerings.

"Undoubtedly, the Southern Law Association, the other bar associations, and the Law Society of Ireland work hard to ensure that there is a strong counter-point advanced against any negativity about our profession," he stated.

He encouraged pride in the profession, saying that each practitioner had a part to play.

PICT: TONY O'CONNELL



## IT'S READY, STEADY, GO FOR THE CALCUTTA RUN!

The Calcutta Run – the Legal Fundraiser launched its 2019 campaign on 7 March at Walkers' new offices in the IFSC. A total of 19 law firms were represented, 16 of them by their managing partners.

Managing partners pointed out that the Calcutta Run was now firmly embedded into their corporate social responsibility programmes and discussed the array of fundraising events and ideas that were being implemented by their firms in the two-month lead-up to the run.

Gavin Duffy (formerly of *Dragon's Den*, and MC on the day) reminded those present that runners and walkers were now being joined by an ever expanding coterie of cyclists who could take part in either a 50k/100k fund-raising cycle. Cycling enthusiast Patrick Dorgan (president of the Law Society) strongly endorsed his recommendation.

In addition, a Cork 5k run is being organised by the Southern



Maureen Forrest (founder of the Hope Foundation) and managing partners and representatives of 19 law firms at the official launch of Calcutta Run – the Legal Fundraiser 2019

Law Association for the second time, on 19 May. Over 200 practitioners, family members and friends took part last year, with 300 the target this year.

Once again, the charities to benefit will be the Hope Foun-

dation and the Peter McVerry Trust, both involved in alleviating homelessness in Calcutta and Ireland.

Law firms can enter as a 'supporter firm' and sign up for the 'team challenge' by organising a

fundraising event on the official fundraising day in May.

For more information on the Dublin and Cork events, as well as the 50/100k Dublin Cycle Sportive, visit [www.calcuttarun.com](http://www.calcuttarun.com) or email [hilary@calcuttarun.com](mailto:hilary@calcuttarun.com).

## FLANAGAN SLAMS INSURANCE COSTS

Justice minister Charlie Flanagan has slated the "onerous costs" of insurance premiums, commenting during a Seanad debate that the insurance industry must do more to drive down the cost of premiums.

Speaking on 28 March in a debate on damages for personal injuries, he said that the Law Reform Commission had committed to carrying out a detailed analysis in order to develop constitutionally sound legislation to delimit or cap damages in relation to personal injuries awards.

"We now have an ideal opportunity, therefore, to debate this matter with the



Minister Flanagan: 'constant hiking of insurance costs is threatening livelihoods'

benefit of expert analysis of the issues concerned to determine what our optimal legislative and

policy responses should be," he said. "I am pleased that the Law Reform Commission has agreed to prioritise this work and that this initiative has been endorsed by the Cost of Insurance Working Group.

"The annual profits of ten major insurance companies amounted to between €6.1 million and €201 million at the end of 2017, with the total assets of insurance corporations reported by the Central Bank to be €305 billion at the end of last year.

"There is clearly scope to reduce insurance costs for consumers, and I am calling on the industry to act," he said.

The minister said that 29

out of 33 recommendations of the Cost of Insurance Working Group had now been completed or categorised as ongoing.

He added that the new *Personal Injuries Assessment (Amendment) Act 2019* would be commenced on 3 April, and would reinforce the PIAB process and set a three-year review period for the *Book of Quantum*.

He added that the Government would not oppose the *Civil Liability (Capping of General Damages) Bill 2019*, as it was important to facilitate a debate. However, constitutional difficulties would need to be addressed at committee stage, he concluded.





# **CALCUTTA RUN 2019** THE LEGAL FUNDRAISER



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NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

CONVEYANCING COMMITTEE

## KYC AND AML REQUIREMENTS OF CERTAIN FUNDS OPERATING IN THE IRISH MARKET

The Conveyancing Committee is receiving numerous queries from solicitors acting for the purchasers of properties where the property in sale is secured to a fund/lender that has its own requirements in relation to 'know your client' (KYC) and/or anti-money-laundering (AML) as part of the sale process.

The committee is of the view that there are a number of matters arising that are causing difficulty for the profession.

### 1. Letter confirming KYC and/or AML enquiries

Frequently, a letter was being sought from the solicitor acting for the purchaser that created certain obligations directly to the fund/lender in relation to KYC and AML enquiries (as well as obligations in relation to associated documentation procured) that had been carried out by the solicitor in respect of his/her client.

Following representations made by the committee, it has been assured by one such equity fund that this letter will only be used in exceptional cases, and will no longer be accepted in auction scenarios. Practitioners are referred to paragraph 2 below in relation to special conditions that are being insisted upon by certain funds/lenders.

If the parties (including their respective legal advisors) decide to proceed on the basis of such a letter, the form and content of such letter needs to be carefully considered. Practitioners are reminded of their obligations pursuant to the relevant legislation and to their client, which



are of paramount importance and should not be fettered by any such agreement with, and/or letter to, the fund/lender.

Any such letter must be carefully drafted to ensure that it does not in any way restrict the solicitor's obligations under the relevant legislation. The solicitor, when providing such a letter, also needs to ensure that his/her client has formally and irrevocably (in writing) consented to the provision of such a letter to the fund/lender and to the commitments and obligations created. Such obligations and commitments may continue beyond the solicitor/client relationship and may, at a later date, conflict with the wishes of the client.

### 2. Special conditions in contract for sale entitling vendor to retain deposit

Some contracts being used contain a special condition entitling the vendor (regardless of whether or not it is the owner of the property and/or the fund/lender) to retain deposits and rescind the contract for sale if the fund/lender is not satisfied that its AML/KYC

requirements have been met. This is usually a unilateral entitlement to retain the deposit, with no clear objectivity as to the information required from the purchaser. As such, it leaves the matter largely open to the fund/lender to decide whether or not the relevant information has been provided. It is the view of the committee that such a condition is unreasonable, and should be resisted.

Indeed, the provision itself may be, in certain appropriate cases, an unfair contract term.

### 3. AML requirements of a fund/lender on the redemption of a loan

It appears that a process has now crept into the redemption of loans, where a property is being sold and a loan repaid and the fund/lender, in some cases, is requiring KYC and/or AML details of the ultimate purchaser.

While it is accepted that the fund/lender would be entitled to complete the usual KYC and/or AML enquiries in respect of its customer (the borrower), to insist on the same information from an unrelated third-party purchaser

for value in an arm's-length transaction, where the funds are passing through a solicitor's client account before being remitted in redemption of the facility, is an unusual and extraordinary practice.

This practice may cause difficulties with borrowers disposing of assets in order to discharge his/her obligations to the fund/lender, and could potentially result in a loss of value of the asset and/or the creation of a 'clog on the equity of redemption'.

### 4. Summary

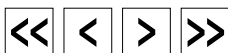
Solicitors practising in this jurisdiction are regulated and required, as a matter of law, to comply with the relevant money-laundering legislation in force.

As such, the committee is of the opinion that it is not appropriate for the fund/lender to seek and compel unrelated third parties (such as third-party purchasers for value), who are independently represented by solicitors with the balance purchase moneys flowing through their solicitors' client account, to produce personal and sensitive data to the fund/lender and/or to require a letter or other evidence in this regard. It is quite reasonable and understandable that an unrelated purchaser will not wish to provide such details to the fund/lender.

These practices being introduced are unusual and not customary in this jurisdiction. Such practices may deter purchasers, reducing the pool of potential buyers and adversely affect the price achievable.

These are not practices supported by the committee.





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COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

## LEST YE BE JUDGED IN TURN

The UCC First Year Moot Competition 2018/2019 concluded on 26 March, when the two finalist teams competed against each other in the beautiful surrounds of the University Council Chamber in the North Quad. Emma Neville and Don Murphy were on hand as judges to this hotly contested competition, which saw a record ten teams taking part. Darragh O'Keeffe and Tara Flynn appeared for the 'appellant' (who had been convicted of murder) in an appeal to the Supreme Court on the basis that the trial judge erred in not allowing the defence of provocation, and that the actions of medical staff amounted to a *novus actus interveniens*. The talent displayed by the four students was apparent from how close the final scores were and, although Eve O'Shaughnessy and Max Philpot were announced as the winners, the judges concluded that they wouldn't want to come up against any of the four finalists in court.



Eve O'Shaughnessy and Max Philpot (students), Don Murphy and Emma Neville (SLA council members and judges on the night), and Tara Flynn and Darragh O'Keeffe (students)

CORK

## ANNUAL SLA DINNER ATTRACTS A CROWD

The annual [Southern Law Association](#) (SLA) dinner was held at Maryborough House Hotel on 22 February, *writes Emma Meagher Neville (PRO)*.

Close to 300 practitioners and their distinguished guests attended, as well as Law Society director general Ken Murphy. There were speeches from

newly appointed SLA president Richard Hammond, Suzanne Rice (president, Law Society of Northern Ireland) and Corkonian Patrick Dorgan

(president, Law Society of Ireland). A humorous reflection from Robert Baker (vice-president, SLA) set the tone for a wonderful night.

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- ▼ You need to be available for 2 hours on one evening per month and training is provided.

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# LAW SOCIETY TO DEVELOP SUPPORTS FOR SMALLER PRACTICES

On foot of the recent Crowe report, the Law Society will focus on developing a range of supports and tools for sole practitioners and smaller practices throughout 2019, writes **Teri Kelly**

TERI KELLY IS THE LAW SOCIETY'S DIRECTOR OF REPRESENTATION AND MEMBER SERVICES



A MEDIA RELATIONS CAMPAIGN WILL BE UNDERTAKEN TO DEMONSTRATE THE VALUE OF LEGAL SERVICES GENERALLY, AND SMALL PRACTICES AND THE GENERAL PRACTICE MODEL SPECIFICALLY

Over 90% of all solicitors' firms in the State are run by a sole practitioner or have five or fewer solicitors. These small firms have their own defined characteristics. Not only must practitioners in smaller firms be accomplished lawyers and provide excellent service to their clients, they must also be adept at running a small business. After all, that's what a solicitors' firm is: a business.

It is perhaps not a great revelation to members that solicitors' firms are businesses and that small firms are small businesses. However, it is the conclusion of the *Market Study of Sole Practitioners and Smaller Legal Practices in Ireland* – the Society-commissioned report by consultancy firm Crowe – that the Society and small firms themselves, have not focused enough on developing practitioners' skill-sets as business owners and operators.

Practitioners in small firms require business-management skills and access to business supports in order to increase scale and take advantage of the opportunities present in the marketplace. Indeed, smaller practices face similar challenges and opportunities that are common to business owners and SMEs in other sectors.

It is important that smaller practices work and, where necessary, evolve in response to today's more demanding and 'instant' business environment in order to serve their clients and succeed.

The recommendations made in the study are a roadmap for both smaller practices and the Law Society to achieve greater success for small firms. The Society is now working to address the study's 11 recommendations. Throughout 2019, the Small Practice Support Project will develop a range of supports and tools for sole practitioners and smaller legal practices.

The programme focuses on delivering supports within four main categories, as depicted on page 30.

## Supports for growth planning

A key recommendation of the market study is that smaller practices should develop a growth strategy that reflects the long-term vision, purpose, and growth ambition for the practice. Developing a growth strategy provides a focus for the future of the business, in terms of the type of business and clients it wants to target, the rationale for doing so, and what it needs to do to achieve its ambition.

To assist sole practitioners and smaller legal practices with the

development of a growth strategy, the Law Society will provide a sample strategy that can be customised by each practice. The sample strategy will cover activities such as the definition of current service lines, market analysis, and options for both organic/ internal growth (expanding within current operations) and inorganic/ external growth (for example, via takeovers or mergers). The growth strategy will also cover target setting, financial and human resource planning, market activities, and monitoring mechanisms.

A guided workbook for the growth strategy will be provided to firms, and this will be followed by a range of sample scenarios that will assist sole practitioners and smaller practices in understanding, completing, and implementing a growth strategy for their own business. These scenarios will be developed by 'hot-housing' a small number of firms that wish to participate. Each scenario will be focused on, and tailored to, different types of practices, such as new practices, specialist practices, general practices, rural practices, and mid-size practices. This will ensure that sole practitioners and smaller practices will have the tools they need to assist them with developing their own growth strategy.



PIC: SHUTTERSTOCKGAZETTE STUDIO

Growing a business is also dependent on effective marketing and the ability to communicate with existing and potential clients to convince them of their need to use the services on offer in the practice.

To assist smaller practices in formally planning their approach to marketing, including client communications, the Law Society will provide a sample marketing and communications plan. This will also be provided as a guided workbook that will support small firms to customise the various elements for their own practice, including market trends analysis, market segment profiling, defining sources of service-line income, competitor analysis, developing market-

ing objectives, business-mix definition, and market planning by segment.

#### Expansion collaboration

The Law Society's market study recommends collaboration and network building:

- Within the solicitors' profession itself,
- By smaller practices with external bodies, and
- By the Law Society with external bodies.

Many of the issues to be addressed by small practices would benefit from collaboration, where other interested parties are working together to achieve a mutually beneficial end result

in areas ranging from financial and human-capital benefits to partnering and sharing physical and/or intellectual resources. Networking can also assist with furthering business-development opportunities and marketing efforts, jointly achieving what might take longer individually and creating more significant business outcomes.

To assist sole practitioners and smaller practices with the expansion of their network, the Society will provide guidelines and supports for network expansion and collaboration, which will include a listing of potential SME organisations to join and their benefits, a guide for maximising memberships, and case studies of success-

LEARNING AND KNOWLEDGE-SHARING EVENTS WILL ALSO BE DEVELOPED, AND CPD OPPORTUNITIES EXPLORED, TO ASSIST SMALL BUSINESSES





# Small Practice Support Project



## VISION

To create a more sustainable future for smaller practices



## HOW?

By providing the following small-practice supports:

1

### Small practice growth planning toolkit



Growth-strategy workbook



Sample growth-strategy scenarios



Marketing and communications-plan workbook and samples

3

### Small practice learning supports



Small-practice support hub with dedicated area for small-practice resources



CPD programme developed for small-practice implementation learning



Learning and knowledge-sharing events



Monthly Small Practice Support Bulletins

2

### Guidelines and supports for network expansion and collaboration



List of potential SME organisations to join, and benefits



Guide for maximising memberships



Case studies of successful memberships

4

### Promotion and communication



Demonstrate the value of small practices



Promote quality of life in rural Ireland



Communications preference survey and strategy



### What's included in the monthly Small Practice Support Bulletin?



#### Programme outputs overview

Understanding the supports developed that will be available to small practices in 2019



#### The value of research and how to get started

Market scanning to understand market trends and client needs – why, how, and benefits



#### Competitor analysis

Why and how to understand your market and key stakeholders



#### Client communications

The benefits of building and maintaining a customer-relationship/case-management system



#### Marketing content that excites

Creating great copy – emails, blogs and social media. (content, titles, creative and writing style)



#### Finding efficiencies

Project planning and risk management



#### A guide to networking

Where and how to generate leads and increase your referral base



#### Thinking outside the box

The benefits and challenges of shared office space



#### Financial planning

The practice and benefits of target setting and monitoring



#### Performance/time management

Maximising your time and your staff as a valuable resource



ful memberships. The Society will also explore collaborating on issues of shared concern with external bodies that work with SMEs in other sectors.

### Learning supports

The Law Society will continue to develop and deliver a programme of learning supports that will respond to the current needs of smaller practices, including supporting them in their efforts to create sustainable businesses. A range of learning opportunities, channels and supports will be delivered to small practices to support their journey in creating a sustainable future. A Small Practice Support Hub will be developed for [lawsociety.ie](http://lawsociety.ie), with a dedicated area for small-business resources. There will be ongoing additions to this hub, including monthly Small Practice Support Bulletins that will aim to support small firm practitioners with guides to key business areas such as:

- *The value of research and how to get started*: market scanning to understand market trends and client needs – the why, the how, and the benefits,
- *Competitor analysis*: why and how to understand your market and key stakeholders,
- *Client communications*: the benefits of building and maintaining a customer relationship management system (CRM) and/or a case-management system,
- *Marketing content that excites*: creating great copy for emails, blogs, and social media,
- *Finding efficiencies*: project planning and risk management,
- *A guide to networking*: where and how to generate leads and increase your referral base,
- *Thinking outside the box*: the benefits and challenges of shared office space,
- *Financial planning*: the benefits and practice of target setting



and monitoring, and

- *Performance and time management*: maximising your time and your staff as a valuable resource.

Learning and knowledge-sharing events will also be developed, and CPD opportunities explored, to assist in small business implementation, action-learning and peer sharing.

### Promotion and communication

The value of legal services is not generally understood by the public, and needs to be promoted further by both small firms and the Society. To this end, a media relations campaign will demonstrate the value of legal services generally, and small practices and the general practice model specifically. There will be additional work to promote the value of life in rural areas and work in small practices. Some of this activity will be in collaboration with local authorities and local development agencies.


The Law Society currently offers many supports for small practices, and these will be expanded significantly over the course of 2019. However, the market study showed us that there was a disappointing level of awareness of existing supports among our members. A communications preferences survey will aim to clarify how members prefer to be communicated with in

terms of method, timing and frequency. The results of the survey will inform the development of a new member communications strategy.

### Foundations for the future

The aspiration of the Small Practice Support Project is that smaller practices will be fully equipped – through the range of toolkits and supports provided – to develop and implement growth plans, marketing, and networking strategies during 2019. Sole practitioners and small practices can then focus on the roll-out and implementation of these strategies and plans in 2020, which will assist their growth and help create a foundation for future sustainability.

This work was initiated by former Law Society President Michael Quinlan, whose aim was to help smaller firms achieve sustained growth and realise their potential. We will keep you informed of our progress throughout the year across all Law Society communications channels, but especially in the *Gazette*, on [www.lawsociety.ie](http://www.lawsociety.ie) and in the member *eZine*.

If you would like to provide feedback on this project or have any questions on how your firm can begin implementing the recommendations, contact [smallerfirms@lawsociety.ie](mailto:smallerfirms@lawsociety.ie). The market study can be found on [www.lawsociety.ie/marketstudy](http://www.lawsociety.ie/marketstudy). 

THE RECOMMENDATIONS MADE IN THE STUDY ARE A ROADMAP FOR BOTH SMALLER PRACTICES AND THE LAW SOCIETY TO ACHIEVE GREATER SUCCESS FOR SMALL FIRMS. THE SOCIETY IS NOW WORKING TO ADDRESS THE STUDY'S 11 RECOMMENDATIONS





# TROUBLED WATERS

There are dangers implicit in the legislative changes that have been made to personal injuries litigation, warns **Stuart Gilhooly**

STUART GILHOOLY IS A PERSONAL INJURIES PRACTITIONER AND IS A PAST-PRESIDENT OF THE LAW SOCIETY

ALL PERSONAL INJURIES SUMMONSES ISSUED FOR ACCIDENTS OCCURRING ON OR AFTER 28 JANUARY 2019, WHERE THE NOTICE HAS NOT BEEN SERVED WITHIN THE ONE-MONTH PERIOD, MUST PROVIDE AN EXPLANATION AS TO WHAT 'REASONABLE CAUSE' EXISTED TO EXPLAIN SUCH A FAILURE

**T**he much-vaunted Government programme for insurance reform continues apace and has resulted in well-signposted, but significant, changes to the *Civil Liability and Courts Act 2004* and the *PIAB Act 2003*.

The amendment to section 8 of the *Civil Liability and Courts Act* changes the obligation to serve a letter from two months to one month, and removes the saver 'or as soon as practicable thereafter'.

Most significantly, it now states that the court 'shall' rather than 'may' draw inferences from a failure to do so. The new section 8(1) now reads: "Where a plaintiff in a personal injuries action fails, without reasonable cause, to serve a notice in writing before the expiration of one month from the date of the cause of action, on the wrongdoer or alleged wrongdoer, stating the nature of the wrong alleged to have been committed by him or her, the court hearing the action, shall (a) draw such inferences from the failure as appear proper, and (b) where the interests of justice so require (i) make no order as to the payment of costs to the plaintiff or (ii) deduct such amount from the costs that would, but for this section, be payable to the plaintiff as it considers appropriate."

This change came into being on 28 January 2019 and applies to all accidents that occur on or after that date. The effect of

this is to, in fact, make 'without reasonable cause' now the most important words in this section.

## The sound of silence

New rules of court – because the section now contains a mandatory requirement – state that all personal injuries summonses issued for accidents occurring on or after 28 January 2019, where such a notice has not been served within the one-month period, must provide an explanation as to what 'reasonable cause' existed to explain such a failure. If none is provided, or such explanation is not accepted by the court, then inferences and costs deductions would seem inevitable in most cases.

Of equal importance is the change to section 14 of the 2004 act. This section currently requires, among other things, that a plaintiff and defendant shall verify all pleadings, and the plaintiff all further information, provided by way of affidavit and lodge the affidavit within 21 days of delivery of such pleading or information.

The new section 14 (4)(a) now mirrors the penalty provisions in section 8 for failure to do so, stating the court shall "draw such inferences from the failure as appear proper and, where the interests of justice so require, make no order as to the payment of costs to the plaintiff, or deduct such amount from the costs that would, but for this section, be payable to the plaintiff as it considers appropriate".

This change also came into effect on 28 January 2019 and applies to all pleadings and information provided after that date.

## Slip slidin' away

The second piece of significant legislation is the *PIAB (Amendment) Act 2019*, which came into force on 3 April 2019. All practitioners in the area are advised to read it carefully and in full.

Section 51C is a new provision that penalises claimants (and in limited cases respondents) who have not fully cooperated by with the PIAB by providing information or documents to them or their experts in the form of, for example, special damages, further medical information such as MRI scans, and previous injuries or details of all other claims made when requested by assessors. In addition, failure to attend the PIAB medical examination may also be penalised under the section.

This section does not contain a mandatory requirement in the manner of the above amendments to the 2004 act, but states that, in the event of failure to comply with such requests or attend a medical examination, the court may order that no order as to costs in favour of the offending party may be made or, alternatively, an apportionment of any such costs.

This requirement applies to all applications made under section 11 after 3 April, and all applications made before that,



P.C. SHUTTERSTOCK

where such requests had not already been made.

Under section 13, there is no longer a requirement to lodge a medical report with the application form in order to stop the statute from running. The application, of itself, is deemed to suffice for that purpose. However, the amendment to section 13 now states that a preliminary notice will be served on a respondent in circumstances where only the application form is provided, and the formal section 13 notice that sets the 90-day period in motion will not be served until

a medical report is provided and the PIAB administration fee (currently €45) is paid.


#### The times they are a changin'

As a result of *Renehan v T&S Taverns* (2015 IESC 8), the provisions of section 50 applied to all respondents made under a section 11 application, no matter when they were joined to the application. In other words, the date of the initial application stopped the time for all respondents, even if they were added years later.

This anomaly has now been corrected, so it will now mean

that the actual date of joining a new respondent to an application already made will be the date on which the statute stops for the purposes of section 50 of the 2003 act, as opposed to the date of the original application.

Oh, and under section 54, the *Book of Quantum* must now be reviewed from time to time, and revised at least every three years.

These are the main alterations. Please read the *PIAB Amendment Act 2019* in full and be aware of the dangers of the new costs provisions in the 2004 act. It isn't getting any easier! 

BE AWARE OF  
THE DANGERS OF  
THE NEW COSTS  
PROVISIONS  
IN THE CIVIL  
LIABILITY AND  
COURTS ACT 2004





# THE ABCs OF THE VOTING SYSTEM

Ireland's system of ordering candidates on ballot papers in alphabetical order is manifestly unfair and leads to perceived electoral discrimination. It's time for a ballot paper for the 21<sup>st</sup> century, argues **Anthony Moore**

ANTHONY MOORE IS A BARRISTER PRACTISING ON THE DUBLIN AND EASTERN CIRCUITS AND IS A FIANNA Fáil CANDIDATE IN THE 2019 LOCAL ELECTIONS



'WHAT IS DESCRIBED AS A BIAS IN FAVOUR OF THE CANDIDATES WHOSE NAMES APPEAR AT THE TOP OF THE BALLOT IS NOT SO MUCH A DEFECT IN THE SYSTEM ITSELF, AS A DEFECT OR A WANT OF CARE OR A WANT OF INTEREST BY THE ELECTORATE'

On 24 May this year, voters will go to the polls in local and European Parliament elections and will be asked to vote for their preferred candidates, all neatly arranged before them in alphabetical order on the ballot paper, according to their surnames. Under relevant legislation, the names of candidates on ballot papers for elections to the presidency, Dáil Éireann, local authorities, and the European Parliament must all be arranged alphabetically in order of their surnames.

This practice came before the High Court in 1986 in the case of *O'Reilly v Minister for the Environment* ([1986] IR 143) in the context of local elections. The plaintiff there wished to contest forthcoming local and Dáil elections and sought a declaration that the arrangement was repugnant to article 40 of the Constitution in failing to provide fairness of procedures, or to hold him equal before the law.

During the trial, the plaintiff abandoned reliance on his right to equality before the law, because the then applicable case law showed that the right asserted had to derive from the rights of citizens as human beings – an application of the so-called 'human personality' doctrine.

In dealing with his remaining

argument, Murphy J accepted that the legislation disadvantaged candidates by reference to their surnames, saying: "I am satisfied that the evidence adduced proves conclusively that, in Dáil Éireann elections over a period of nearly 40 years, there has been a significant over-representation of candidates whose surnames begin with letters at the commencement of the alphabet. The word 'significant' was used by the expert witnesses to indicate a degree of deviation, which was not necessarily large, but of such a magnitude that it could not be explained by chance."

However, he was not persuaded that the system was unreasonable or unconstitutional, saying: "The established propensity of the electorate in favour of candidates whose names appear towards the top of the ballot paper is not, as I see it, so much a defect in the present electoral system, but rather it is a measure of some degree of indifference by the electorate or some part of it as to how their votes – and in particular their second and subsequent preference votes – are cast."

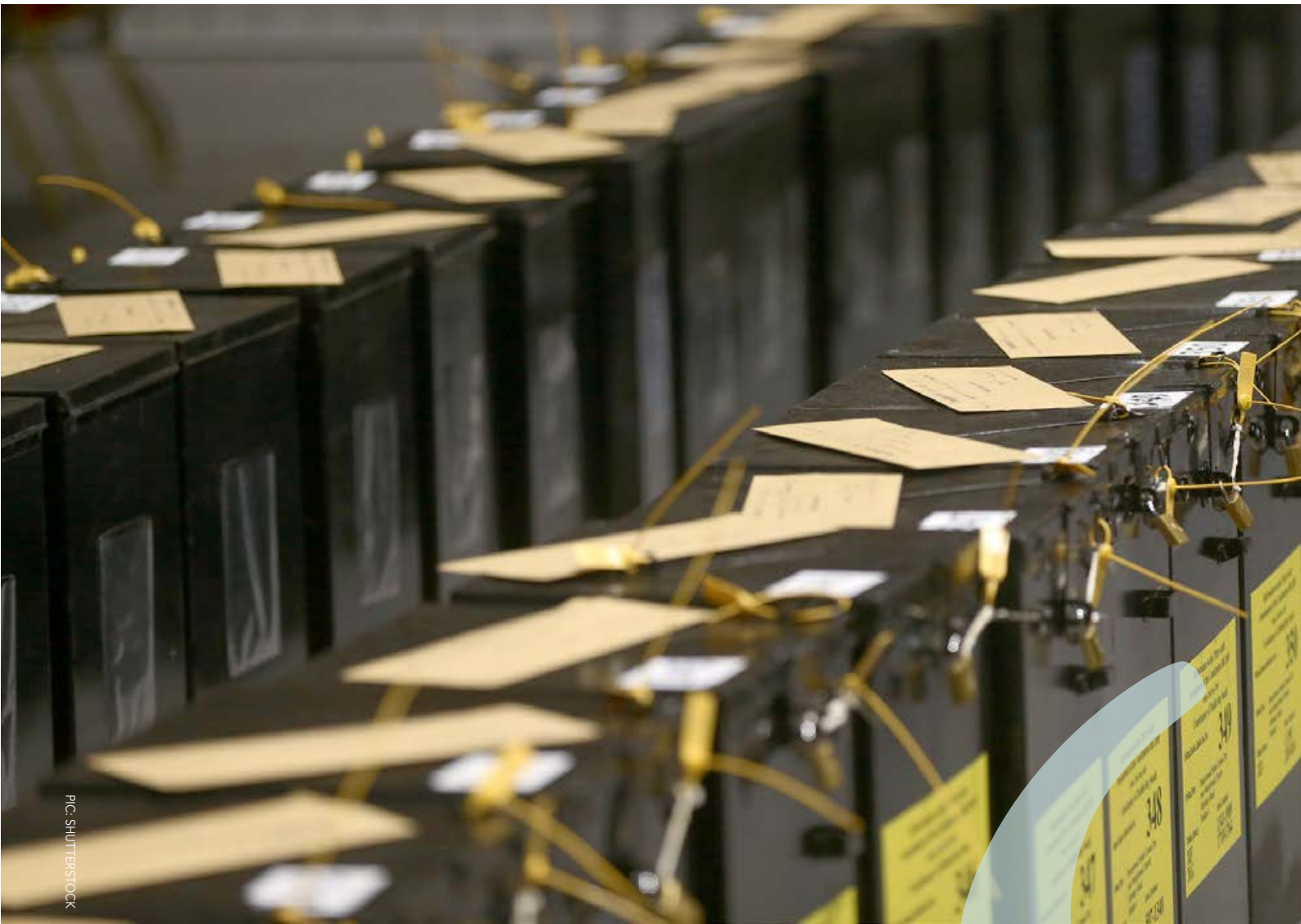
He continued: "It would seem, therefore, that what is described as a bias in favour of the candidates whose names appear at the top of the ballot is not so much

a defect in the system itself, as a defect or a want of care or a want of interest by the electorate ... I am left with the belief that the alphabetical system of listing candidates as provided for under the [relevant legislation] constitutes a reasonable regulation of elections to Dáil Éireann. It was not argued that any different considerations applied in relation to elections to local authorities."

## Time for reconsideration?

Over 30 years have passed since *O'Reilly*, and the decision seems ripe for reappraisal on a number of grounds.

First, it is questionable whether the 'human personality' doctrine as it is presently constituted would preclude reliance on article 40.1 of the Constitution. The right to stand for election or participate in the political life of one's country is well-recognised in key human rights instruments (articles 21 and 25 of the 1948 *Universal Declaration of Human Rights* and article 25 of the 1966 *International Covenant on Civil and Political Rights*). The European Court of Human Rights has also held that the right to stand for election is "inherent in the concept of a truly democratic regime" (*Podkolzina v Latvia* (2002), application no 46726/99). The right could, therefore, be said to form part



P.C. SHUTTERSTOCK

of the human personality as to enable an attack to be mounted on the compatibility with article 40.1 of provisions requiring alphabetical ordering of candidates' names.

In that regard, it may be noted that, in 2017, in *NHV v Minister for Justice*, the Supreme Court relied in part upon international legal commentary to conclude that the 'right to work' formed part of the human personality. In 2018, the High Court held that the process of grading the Leaving Certificate went to the fundamentals of human personality (*Carter v Minister for Education*).

Secondly, the characterisation of the discrimination likely to be suffered by the plaintiff in *O'Reilly* as being due to the essential indifference of the voters does not sit easily with the modern appreciation of the harm done to individuals who are indirectly discriminated against as a result of an ostensibly neutral provision, criterion, or practice.

Thirdly, the provisions providing for the current alphabetical listing of names could also fall foul of article 14 of the *European Convention on Human Rights*, which prohibits discrimination, and become the subject of an

application for a declaration of incompatibility with the convention under the *ECHR Act 2003*.

#### EU law

The rationale in *O'Reilly* could also be impugned before the Court of Justice of the European Union (CJEU) on anti-discrimination grounds via a reference for a preliminary ruling under article 269 of the Treaty on the Functioning of the European Union.

Elections to the European Parliament are governed by the *European Parliament Elections Act 1997*, as amended. The act gives effect to Council Directive 93/109/EC,

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THE TOP TEN MOST COMMON SURNAMES IN POLAND BEGIN WITH THE LETTERS K, L, N, S, W AND Z. A POLISH NATIONAL STANDING AS A CANDIDATE HERE IN THE EUROPEAN ELECTIONS, AND BEARING A SURNAME BEGINNING WITH ANY OF THOSE LETTERS, MAY BE PLACED AT A DISADVANTAGE AS A RESULT OF NOT BEING NEAR THE TOP OF THE BALLOT PAPER

as amended, which lays down the arrangements for member state nationals to vote and stand as candidates to the European Parliament in their host member state. In giving effect to the directive, the Oireachtas is implementing EU law, which means that the provisions of the EU's *Charter of Fundamental Rights* apply to it.

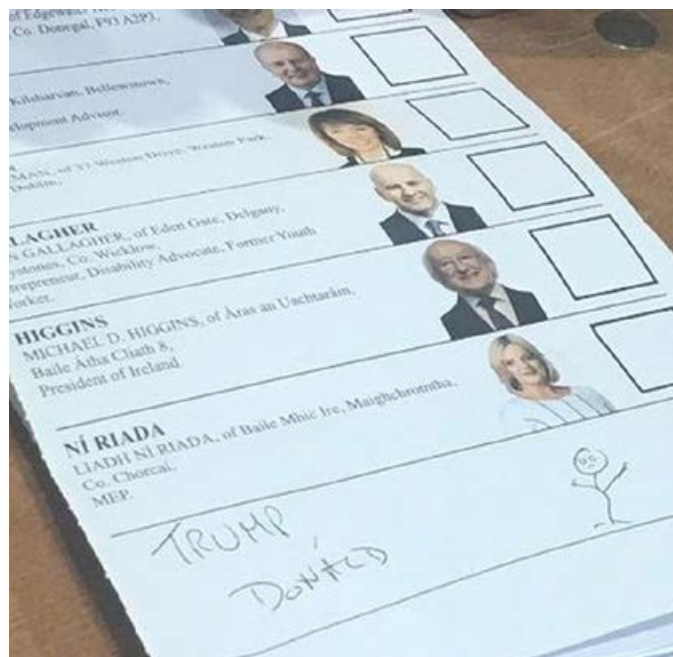
In this regard, article 20 of the charter provides that “everyone is equal before the law”, and article 21.1 goes on to prohibit discrimination on a non-exhaustive list of grounds. Article 21.2 also prohibits discrimination on the grounds of nationality.

In *C-68/17 IR* (2018), a case concerning alleged discrimination on the basis of religion, the CJEU made clear that plaintiffs may rely on article 21 of the charter in disputes concerning EU law and that, if necessary, a national court must disapply national law that is inconsistent with it.

It said: “The prohibition of all discrimination on grounds of religion or belief, now enshrined in article 21 of the charter, is therefore a mandatory general principle of EU law and is sufficient, in itself, to confer on individuals a right that they may actually rely on in disputes between them in a field covered by EU law. Accordingly, in the main proceedings, if [a national court] considers that it is impossible for it to interpret the national provision at issue in a manner that is consistent with EU law, [it] must disapply that provision.”

Article 52 of the charter provides that any limitation on the exercise of rights recognised by it has to be provided for by law.

Proportionality considerations are relevant: “[limitations] may be made only if they are necessary and genuinely meet objectives of general interest recognised by the union or the need to protect the rights and freedoms of others”.



In the EU context, it is difficult to see how the discrimination caused by the 1997 act's requirements concerning the ordering of names on European Parliament election ballot papers can comply with the charter, as a simple example shows.


According to the 2016 census, there were 122,515 Polish nationals in Ireland. The top ten most common surnames in Poland begin with the letters K, L, N, S, W and Z. On the assumption that that is replicated among the Polish community living in Ireland, a Polish national standing as a candidate here in the European elections, and bearing a surname beginning with any of those letters, may be placed at a disadvantage as a result of not being near the top of the ballot paper, and would have a reasonable basis for contending that the 1997 act constituted discrimination in breach of the articles 21.1 and 21.2 of the charter.

### Proposals for reform

The present system can be replaced with a fairer one. Last year, city councillors in Vancou-

ver voted to scrap the alphabetical listing of candidates for municipal elections and replace it with a randomised ballot paper. This followed a motion by a councillor who said that the alphabetical listing was biased against candidates whose surnames were Chinese, South Asian and Latino, among others – a bias more pronounced the longer candidate lists were. It was noteworthy that, of Vancouver's ten city councillors holding office at that time, six had surnames beginning with the letters A to D.

As the High Court accepted in *O'Reilly*, Ireland's current system of ordering candidates on ballot papers in alphabetical order is manifestly unfair to candidates whose surnames begin with the letters H to Z. It must now be abolished.

Perceived electoral indifference to this unfairness is no reason for maintaining it, particularly in a changing, more diverse Ireland, and given the very clear non-discrimination requirements of EU law. It is now time for a ballot paper for the 21<sup>st</sup> century. 



## THE MENTAL-HEALTH COST OF 'NEVER-OFF' SYNDROME

*From: Jennifer O'Sullivan, Younger Members' Committee, c/o Law Society of Ireland, Blackhall Place, Dublin 7*

In a world where we are more connected than ever, we seem to be becoming more and more disconnected from ourselves. A byproduct of this disconnection is poor mental health.

We all intuitively know what mental health is, and we don't need to discuss its ins and outs. It is more useful to assess how mental health affects us collectively as a profession. I read a statistic recently that mental health will affect one in four people at some stage in their lives. However, I maintain that mental health issues will affect all of us, on some level, at some point in our lives.

In December 2018, I attended the Mental Health Summit at the Aviva in Dublin. Brent Pope opened proceedings with an account of his own struggle with mental health. He spoke of the guilt attached to mental health, asking: "Why me? I have everything I need. I am not homeless. Why do I feel like this? Why can't I just be happy?"

He also spoke about the societal pressure on men to suppress their emotions and how this pressure stifled his mental-health journey

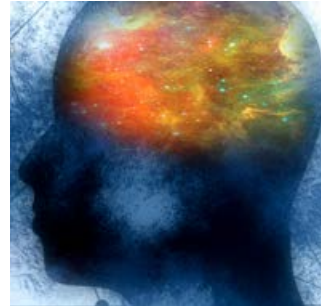
until he was ready to set the stigma aside and find a way for himself.

This point was then further discussed by Steve Bowcott, CEO of John Sisk & Sons Construction, when he addressed the question of why his company was spending so much money protecting workers on site from falling structures, when a large proportion of employee fatalities were from suicide.

This certainly shook the audience, and he proceeded to speak in-depth about his employees' struggles and how he, as a member of senior management, felt responsible to act. This got me thinking about my own profession.

Our profession is suffering from the 'never-off' syndrome. We are now more productive, responsive, and efficient than ever before – but at what cost? Mental-health conditions are diseases of public-health importance, constituting about 14% of the global burden of diseases (Martin Prince et al (2007), 'No health without mental health', *The Lancet* (370) pp859-77). Mental-health illnesses are, indeed, one of the leading causes of workplace absenteeism or loss of job opportunity.

Solicitors are not immune to this. We therefore need a profes-



PIG: SHUTTERSTOCK

sion-wide, practical approach to mental health to be implemented as a matter of policy, as is evident from previous statements of the Law Society's immediate past-president Michael Quinlan, and now Patrick Dorgan (see 'President's message', *Law Society Gazette*, Jan/Feb 2019).

Individual breakthroughs can only be made when we have the right tools to build resilience and educate ourselves on mental health. This early intervention approach is necessary, therefore, from our profession's policymakers. This will allow us to transcend ourselves and, more importantly, help ourselves in our day-to-day professional lives.

Taking a step back and looking at mental health from a wider perspective, we could seek guidance from those in the know. Freud spoke of the capacity to live, to work, and to love. These, he

mused, were essential to successful living as a functioning human being.

We know how to live and how to love. But to work? What about the stress and the inevitable mental-health implications of living in a state of stress caused by excessive work and inevitable responsibility?

Those in the know will tell us that stress, *per se*, is good for us. It is necessary and inevitable. But we should not live in a constant state of *distress*. Distress, it is reported, can be neutralised by managing our perceptions of situations, as well as building resilience through disassociation.

Disassociation can be effected through practices like mindfulness meditation, yoga, and pilates. In simple terms, it means taking a step back, being truly present, and watching a situation from the third person. This harks back to the old advice of "act as you would if you were advising a friend".

There is no health without mental health. Mental health is irrational, and we won't always understand why it affects us when it does. Proactive steps must be taken by us and by management in legal services firms, as well as policymakers, to encourage an open conversation in our profession about mental health.

## ORDERS OF ATTACHMENT AND COMMITTAL

*From: Kate Mulkerrins, executive director of legal and compliance, Garda Headquarters, Phoenix Park, Dublin 8*

I am writing to you in respect of the service of orders of attachment and committal upon An Garda Síochána. As you will be aware, it is the policy of the Garda Síochána that High Court orders

of attachment and committal addressed to An Garda Síochána are served at Garda Headquarters for execution.

On occasion, however, these orders have been served at local garda stations, which in turn has led to some difficulties. In this respect, some documents that purported to be such orders were

not, and led to delays in the execution of same.

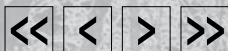
It is therefore submitted that it is in the best interests of all concerned if such orders were served on the Commissioner of An Garda Síochána at Garda Headquarters, Phoenix Park, Dublin 8; D08 HN3X.

The Office of the Commis-

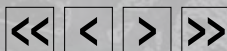
sioner will ensure that any such orders served upon their office will be forwarded to the appropriate garda division for execution.

I would be obliged if you could advise your members that High Court orders of attachment and committal are to be served at Garda Headquarters – and not at garda stations.









# Away in a hack

The dangers posed by advances in cybercrime are growing.  
**Diane Reidy** considers the recently enacted *Criminal Justice (Offences  
Relating to Information Systems) Act 2017*

DIANE REIDY IS A SOLICITOR AT EDWARD O'SULLIVAN SOLICITORS, TRALEE





In our increasingly sophisticated technological and interconnected world, the dangers posed to online security by advances in cybercrime are growing. The borderless and anonymous nature of the internet has added a new dimension to traditional crimes like fraud and theft, allowing criminals to expand their criminal enterprises across several jurisdictions. The construct of ‘cyberspace’ has also produced its own unique forms of crime, such as hacking, denial-of-service attacks, and cracking – all facilitated through the medium of the internet.

For several years, it was acknowledged that the law in Ireland dealing with computer crime was an afterthought. The principal offences in the area were to be found in the *Criminal Damage Act 1991* and the *Criminal Justice (Theft and Fraud Offences) Act 2001*, neither of which were specifically drafted or designed with computer crime in mind. The inherent limitations of these acts presented a fundamental challenge to the effective policing of crimes involving computers.

In May 2017, the then Tánaiste and Minister for Justice Frances Fitzgerald brought forward new legislation in the form of the *Criminal Justice (Offences Relating to Information Systems) Act 2017*. She described the act as “landmark legislation in this jurisdiction”, being “the first Irish statute specifically and solely dedicated to cybercrime”.

### Chancing your arm

In tandem with advancements in, and an increased reliance on technology, came recognition that specific laws were needed to address the rise of computer-related offences. As early as 1989, the Council of Europe sought to address the matter, and issued guidelines for member states listing

## AT A GLANCE

- For several years, the law in Ireland dealing with computer crime was little more than an afterthought, neither specifically drafted nor designed with computer crime in mind
- It is a welcome step forward that Ireland has finally enacted a single, unifying piece of legislation, dedicated to dealing with cybercrime
- The 2017 act is a long overdue and necessary addition to the law’s capacity to tackle new waves of cybercrime



A less harmful sort of Hacker

a minimum of eight offences necessary for a uniform criminal policy concerning computer-related crime.

The 1991 *Criminal Damage Act* was the first piece of legislation in Ireland that addressed computer-related offences, in any form, by criminalising the offence of hacking. Section 5 of the act defined, for the first time in Irish law, the offence of “unauthorised accessing of data”, making it

an offence for “a person who without lawful excuse operates a computer (a) within the State with intent to access any data kept either within or outside the State, or (b) outside the State with intent to access any data kept in the State”. Property was defined as including data, and ‘data’ was defined as meaning information in a form that could be accessed by means of a computer and included a program.

It is clear from the wording that the offence is extremely wide in its application. Firstly, it is immaterial whether the offender succeeds in accessing data. Rather unusually for Ireland, this is an ‘attempt’ offence, which is complete whether or not the offender does in fact access any data.

When one considers the sparsity of prosecutions under section 5, an issue with the previous law on hacking becomes clear. Its status as a summary offence made it difficult to prosecute. The limited 12-month time frame within which the prosecution must be initiated was problematic. The Garda Computer Crimes Investigation Unit, which deals with such investigations, often requires months to properly establish and reconcile the internet protocol (IP) addresses in cases. Given the often complex and technical nature of such investigations, it is clear that this time frame was unsatisfactory in some cases.

### Stop the lights

Prior to evaluating the new offence created by the 2017 act, let us first consider the directive to which it gives effect. The objective of [Directive 2013/40/EU](#) of the European Parliament and of the Council of 12 August 2013 on attacks against information systems is the approximation of the criminal law of the member states in the area of attacks against information systems, by the establishment of minimum rules regarding the definition of offences, relevant sanctions, and improved cooperation. The

LEGISLATION ALONE IS NOT A PANACEA FOR CYBERCRIME, NOR INDEED ANY FORM OF CRIMINALITY. CRIMINAL SANCTIONS CAN ONLY EVER BE ONE WEAPON IN THE ARMOURY OF PREVENTING AND RESPONDING TO HACKING ATTACKS



## THE DIRECTIVE RECOGNISES THAT INFORMATION SYSTEMS ARE A KEY ELEMENT OF POLITICAL, SOCIAL, AND ECONOMIC INTERACTION AND, TO ENSURE THE SAFETY OF THE COMMON MARKET, SUCH SYSTEMS MUST BE PROTECTED

directive recognises that information systems are a key element of political, social, and economic interaction and, to ensure the safety of the common market, such systems must be protected through an effective comprehensive framework of prevention measures accompanying criminal law responses to cybercrime.

The directive comprises five categories of offences. The first category, stipulated by article 3 of the directive, refers to illegal access to information systems, namely the offence of hacking. The offence involves intentionally accessing, without right, the whole or any part of an information system by infringing a security measure. This article must be considered in conjunction with paragraph 11 of the directive, which provides that criminal penalties be applied by member states for cases “which are not minor”.

It provides clarity on when a case may be considered minor – for example, “where the damage caused by the offence and/or the risk to public or private interests, such as to the integrity of a computer system or to computer data, or to the integrity, rights or other interests of a person, is insignificant or is of such a nature that the imposition of a criminal penalty within the legal threshold or the imposition of criminal liability is not necessary”.

Further, the offender must infringe a security measure in the commission of the offence. The most commonly encountered security measures used to prevent or hinder illegal or unauthorised access to an information system are passwords, access codes, and encryption codes.

### Get in!

The *Criminal Justice (Offences Relating to Information Systems) Act 2017* is a welcome move towards a more consolidated approach to cybercrime. Section 2 of the act has repealed the offence of hacking contained in section 5 of the 1991 act. It has also

introduced a new definition of ‘information system’ and ‘data’, both of which replicate the definitions set out in the EU directive.

Section 2 provides that it shall be an offence for a person, without lawful authority or reasonable excuse, to intentionally access an information system by infringing a security measure. Therefore, to establish an offence, the prosecution must prove that the accused accessed an information system, with intent, by circumventing a security measure, and that he did so without lawful authority or reasonable excuse. It is evident that the newly enacted offence corresponds closely with the provision contained in the directive.

Section 2 applies where the person carrying out the offence is in Ireland, and also where the data is located in the jurisdiction but the person committing the offence is located outside Ireland. Significantly, the 2017 act also increases the penalties that may be imposed for an offence under section 2.

Section 8 provides that, on summary conviction, the court may impose a fine of up to €5,000 or a term of imprisonment not exceeding 12 months, or both. The commission of the offence can also now be the subject of a prosecution on indictment.

### Anyone buying or selling?

What is the effect of these changes in practical terms?

Let us consider the following scenario, where ‘P’, an employee of XYZ Ltd, is authorised to access certain information on the company’s server. P uses his password and login details on the company computer to access information for which he is not authorised. He downloads it and provides this information to a third party, who uses it to steal clients from the business. Has P committed an offence?

Under the previous law in Ireland, it

is arguable that P committed an offence. However, if we consider the elements of section 2 of the 2017 act, it would appear that he has not committed a crime. Firstly, P has lawful authority to access the information system. Secondly, he has not infringed a security system to gain such access. The scope of the original hacking offence has, therefore, been considerably restricted.

When considering the actions of P, one must wonder whether it is indeed appropriate that such action would not be the subject of a criminal offence. The previous approach to unauthorised access was extremely broad. In the drafting of the new offence, the legislature has sought to limit the scope to cases involving the circumvention of code-based restrictions, such as a password gate, before criminal liability would be triggered. Clearly, this was the premise on which the provisions of the 2013 directive were framed.

Indeed, the criminal justice system may not be the appropriate response to P in our above scenario. The scope of a criminal offence should not be so broad as to allow its intrusion into what amounts to a potential breach of employment law or data protection law. The availability of civil remedies to deal with P’s wrongdoing may offer the most suitable avenue for redress. The requirement for an offender to infringe a security system before triggering criminal sanctions may allow for a fairer application of the offence. It may also serve to encourage individuals and businesses to protect their privacy in the way most likely to be technically effective, by creating effective firewalls and password schemes to protect unwanted access to data.

### I’ll look into it

There is little doubt that, following decades of inactivity, it is a welcome step forward that Ireland has finally enacted a single





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## IN THE DRAFTING OF THE NEW OFFENCE, THE LEGISLATURE HAS SOUGHT TO LIMIT THE SCOPE TO CASES INVOLVING THE CIRCUMVENTION OF CODE-BASED RESTRICTIONS

unifying piece of legislation dedicated to dealing with cybercrime. The 2017 act is a long overdue and necessary addition to the law's capacity to tackle new waves of cybercrime.

The State is clearly cognisant of the need for legislation and action to address the problems of cybercrime and, together with the publication of the [National Cyber Security Strategy](#) and the establishment of the [National Cyber Security Centre](#), Ireland is acknowledging that cybercrime

investigation and prevention is a national priority.

Of course, legislation alone is not a panacea for cybercrime, nor indeed any form of criminality. Criminal sanctions can only ever be one weapon in the armoury of preventing and responding to hacking attacks. Increased public awareness of the risks, provision of appropriate training, and employment of adequate security systems are essential protections for individuals and businesses. [E](#)

### LOOK IT UP

#### LEGISLATION:

- [Criminal Damage Act 1991](#)
- [Criminal Justice \(Offences Relating to Information Systems\) Act 2017](#)
- [Criminal Justice \(Theft and Fraud Offences\) Act 2001](#)
- [Directive 2013/40/EU](#) on attacks against information systems

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# Castaway

If your holiday turns sour, the liability of package-holiday providers can become a legal quagmire. **Stephen Healy** slaps on the sunscreen

STEPHEN HEALY IS A PRACTISING BARRISTER. HE WISHES TO THANK EOIN QUILL, AUTHOR AND SENIOR LECTURER IN LAW AT THE UNIVERSITY OF LIMERICK, FOR REVIEWING THIS ARTICLE



oing away is something that we all look forward to. It provides a welcome release from the day-to-day of normal life. However, with this new-found freedom comes increased risk of personal injuries. The risks become even more significant in a foreign country. When abroad, we can be exposed to simple enhanced risks like the change in direction of road traffic as a pedestrian, or driving on the right-hand side of the road.

Aside from this, holidaymakers may also engage in activities that they may not have experienced at home, which carry further risks of personal injury – even something simple like hiring a moped. These are claims that legal practitioners will not see every day, and they can require careful consideration. When there is a jurisdictional element to a personal injuries claim, suddenly the basic questions of where to sue, who to sue, and how much is the plaintiff likely to recover become much more complex. Here, we consider some of the relevant legal provisions for litigating personal injuries accidents in the context of Irish customers purchasing holiday packages abroad, with specific emphasis on packages purchased in Ireland, Britain and the European Union.

## I've been everywhere

The contractual relationship that gives rise to the accident abroad becomes extremely important in terms of attaching liability to defendants. Consider this: an Irish-based holidaymaker books a family package holiday in Mexico through a package-holiday provider, also based in Ireland. On the holiday, the husband slips and falls on alleged dangerous tiles

at the hotel swimming pool. He is rushed to the local hospital and admitted for three weeks with a head injury. His ultimate recovery back in Ireland takes 12 months, where he is unable to return to work.

## Dreadlock holiday

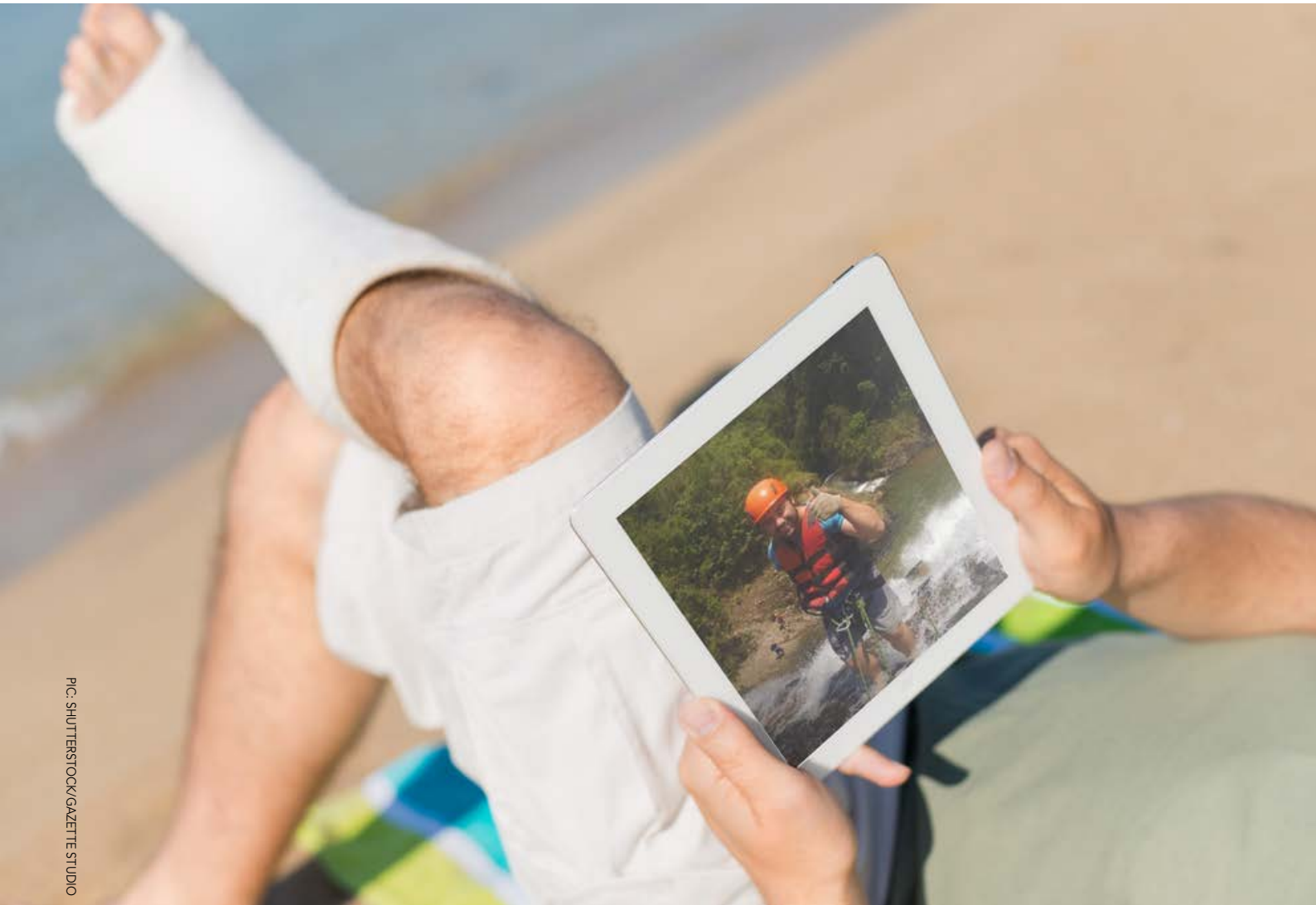
There is a significant loss-of-earnings claim and post-accident treatment expenses back in Ireland. Suddenly, it becomes easy to imagine a problematic and complex claim. Issues of privity of contract between the plaintiff and the package-holiday provider would arise in normal circumstances. Package-holiday providers can include travel agents, retailers, and organisers within the legal relationship. These distinctions can become important when considering liability, how the holiday package was sold, and where it was sold.

A number of these legal issues can be resolved by making a claim under the *Package Holidays and Travel Trade Act 1995*. The act transposed [Council Directive 90/314/EEC](#) of the European Communities on package travel, package holidays and package tours. Section 2(3) of the 1995 act provides: “This act applies to packages offered for sale or sold in the State.”

However, the interpretation of ‘offered for sale or sold’ under the 1995 act requires the organiser of the package to be established within the State or to have a travel agent or retailer selling a package directly in the State. In this regard, you might have a travel agent selling a package holiday for an organiser abroad, with other third parties possibly providing the services abroad. Under the

## AT A GLANCE

- The contractual relationship that gives rise to an accident abroad becomes extremely important in terms of attaching liability
- Irish legislation has, in many respects, fallen behind with the advance of internet selling: in more recent years, linked travel arrangements have become much more popular
- In order to strengthen the protection of consumers around linked travel arrangements, the EU has introduced the *Package Travel and Linked Travel Arrangements Directive*



PIC: SHUTTERSTOCK/GAZETTE STUDIO

IN MORE RECENT YEARS, LINKED TRAVEL ARRANGEMENTS HAVE BECOME MUCH MORE POPULAR. THIS CAN LEAD TO MANY PACKAGE HOLIDAYS FALLING OUTSIDE OF THE SCOPE OF THE 1995 ACT

legislation, a 'package' is a combination of at least two components, whether transport, accommodation, or tourist services arranged by the organiser. The service should cover a period of more than 24 hours or include overnight accommodation.

A key benefit of suing under section 20 of the 1995 act is that the legislation allows the customers to establish vicarious liability in respect of the organiser for the negligent acts of other third parties that provide services under the package.

Notwithstanding, there must actually be negligence under the test established by the Supreme Court in *Scaife v Falcon Leisure Group (Overseas) Ltd* – that is, the test is not one of strict liability, but the services must be performed with reasonable skill and care. The





1995 act also recognises that a customer can be a ‘principal contractor’ or a ‘beneficiary’, allowing beneficiaries to overcome the privity of contract rules that would normally preclude the non-contracting party from suing the travel agent or organiser.

Because of the requirement under the 1995 act for the organiser (or travel agent, or retailer, as the case may be) to be established within the State, the legislation has, in many respects, fallen behind commerce and innovation with the advance of internet selling. In more recent years, linked travel arrangements have become much more popular. This can lead to many package holidays falling outside of the scope of the 1995 act. Technology has given consumers far more options to book their own flight connections and packages through organisers abroad.

### Wherever I may roam

Many holiday package providers target consumers in other member states for package holidays, though not established in that member state. Thomas Cook closed its Irish package-holiday operation in 2014 to grow its online business from Britain. The managing director of Thomas Cook UK, Reto Wilhelm, commented: “Our proposal to offer greater personalisation and flexibility to our Irish customers through our dedicated website reflects our high-tech, high-touch business strategy.”

If a customer were to purchase a package in this way, but arrange their own flights to where the package originated from, they might find themselves unable to rely on the 1995 act. In these circumstances, the customers would still be relying on the 1990 directive, but suing in the defendant’s member state. For example, if a customer purchased a package holiday through a British provider departing from Stansted, but booked their own flights leaving from Ireland to get to Stansted, this would mean they could



not sue under the 1995 act, but could sue under Britain’s *Package Holidays and Package Tours Regulations 1992*.

The 1992 act does the same as the 1995 act, but the Irish customers would have to sue in Britain and would, no doubt, recover less in damages under the British courts’ personal injuries regime.

If a plaintiff found themselves outside the scope of the 1995 act, but still wanted to sue from Ireland, they could possibly rely on the special jurisdiction rules for consumers under section 4 of *Council Regulation 1215/2012 (Brussels 1 Recast)*. The section 4 consumer jurisdiction rules can oust the default jurisdiction rules under the regulation. The default rules can be unhelpful in the context of holiday packages, because they require the plaintiff to sue a defendant in their own member state or where the contract is performed. *Brussels 1 Recast* came into force in Ireland on 9 January 2015 through the *European Union (Civil and Commercial Judgments) Regulations 2015* (SI 6 of 2015).

### Fly away from here

Article 17 of *Brussels 1 Recast* allows a consumer who is acting outside their trade or profession to sue the other contracting party in the consumer’s own member state if it can be demonstrated that the party selling the package pursued commercial or professional

activities and directed those activities into the member state where the consumer is domiciled. Therefore, you might have a company directing marketing activities into a member state through emails, adverts, websites and Google, or other online marketing campaigns, which can pull them within the scope of article 17.

Article 18(1) provides: “A consumer may bring proceedings against the other party to a contract, either in the courts of the member state in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.”

The application of article 17(1)(c) in terms of what constitutes ‘commercial or professional activities’ has been considered by the European Court of Justice (ECJ). In *Pammer v Reederei Karl Schlüter GmbH & Co KG*, the court held that the change to the wording between the *Brussels Convention* and *Brussels 1* were to give greater protection to consumers. The professional activities caught by article 17(1)(c) are, in that regard, wider than that of the earlier *Brussels Convention*. A professional directing marketing emails, such as offers directed to consumers, into a member state is certainly evidence of directing activities under article 17(1)(c).

### Here I go again

It gets more complicated in respect of online marketing and websites. When an internet search is carried out, it is not always obvious, and can be hard to link how the organiser or retailer is directing activities into a member state. Just because a professional creates a website, it does not follow that they are targeting global business or a particular member state where the consumer is domiciled. In *Pammer*, the ECJ held that the court needed to consider whether the professional party has “manifested its

IT GETS MORE COMPLICATED IN RESPECT OF ONLINE MARKETING AND WEBSITES. WHEN AN INTERNET SEARCH IS CARRIED OUT, IT IS NOT ALWAYS OBVIOUS, AND CAN BE HARD TO LINK HOW THE ORGANISER OR RETAILER IS DIRECTING ACTIVITIES INTO A MEMBER STATE



## DIRECTIVE 2015/2302 WAS REQUIRED TO BE TRANSPOSED AND BE IN FORCE ON 1 JULY 2018 IN MEMBER STATES. THE OBLIGATION TO INTRODUCE THIS DIRECTIVE THROUGH LEGISLATION FALLS ON TRANSPORT MINISTER SHANE ROSS

intention to establish commercial relations with consumers from one or more other member states, including that of the consumers domicile”.

The mere fact the consumer can access the website would not mean that the test was satisfied; nor would the mention on the website of an email address, geographical address, or telephone number without an international dialling code.

Examples of evidence where the intention to solicit might be apparent include specific references to the goods or services offered in a given member state, or money spent on search-engine optimisation services for that country. There may be other less obvious examples. In *Pammer*, the ECJ stated that the following factors were relevant: “The international nature of activity at issue, such as certain tourist activities; mention of telephone numbers with the international code; use of a top-level domain name other than that of the member state where the trader is established, for example ‘.de’, or use of top-level domain names such as ‘.com’ or ‘.eu’; the description of itineraries from one or more other member states to a place where the service is provided; and mention of international clientele composed of customers domiciled in various member states, in particular by presentation of accounts written by such customers.”

In *Emrek v Sabranovic*, the ECJ declined to impose an additional requirement that there be a direct causal link between the activities relied upon (such as setting up an internet site) and the conclusion of the contract. Clearly, however, such activities would be indicative evidence to the court where jurisdiction was being sought, and to which it should have regard.

There is no requirement for the contract to have been concluded in the consumer’s member state, nor does the consumer need to take any steps to conclude the contract in their member state. This was one of the key

differences between the *Brussels Convention* and *Brussels 1*, and continues to be a feature of *Brussels 1 Recast*.

### King of the road

In order to strengthen the protection of consumers around linked travel arrangements and modernise the law, the EU has introduced the *Package Travel and Linked Travel Arrangements Directive* (Directive 2015/2302). The ‘linked travel arrangement’ (LTA) will apply when a traveller pays for two or more travel services on a business’s point-of-sale device.

Interestingly, in the preamble to the directive, it is noted how the traditional way of selling packages has been replaced by customised packages that are sold on the internet. The preamble states: “Many of those combinations of travel services are either in a legal grey zone or not covered by Directive 90/314/EEC.”

Directive 2015/2302 enhances the protection for customers by enforcing additional insolvency contingency requirements on package organisers within member states. The directive now makes organisers automatically liable for services provided by their third-party business partners who provide the direct services under the package – for example, the hotel providing accommodation or the charter airline providing the flight transfers under the package.

Under the 1990 directive, organisers could be held vicariously liable for negligent acts, but the new changes further enhance customer protections. The directive also provides enhanced precontractual information disclosure obligations and more favourable cancellation options for customers, including no termination fees where the customer has to cancel for “unavoidable and extraordinary circumstances”.

Directive 2015/2302 was required to be transposed and be in force on 1 July 2018 in

member states. The obligation to introduce this directive through legislation falls on Transport Minister Shane Ross. This issue has come up in Dáil parliamentary questions twice recently.

The issue was last raised by Deputy Noel Rock and answered on 23 January 2018 by Minister Ross, who [stated](#): “Officials in my department are currently working on regulations to amend the relevant provisions of these instruments with a view to promulgating the regulations ahead of the 1 July 2018 deadline.”

At the time of writing, unfortunately, there is no draft legislation available or published in Ireland. Interestingly, Britain is set to leave the EU and has had the [draft legislation](#) published on their website since 24 May 2018. The minister must be busy advancing reform of judicial appointments! [g](#)

## LOOK IT UP

### LEGISLATION:

- Council Directive 90/314/EEC
- Council Regulation 1215/2012
- European Union (Civil and Commercial Judgments) Regulations 2015 (SI 6 of 2015)
- Package Holidays and Package Tours Regulations 1992
- Package Holidays and Travel Trade Act 1995
- Package Travel and Linked Travel Arrangements Directive (Britain; SI 634 of 2018)

### CASES:

- *Emrek v Sabranovic* (C-218/12)
- *Pammer v Reederei Karl Schlüter GmbH & Co KG* (C 585/08 and 144/09)
- *Scaife v Falcon Leisure Group (Overseas) Ltd* [2007] IESC 57





# Let battle commence

The right of a company to be represented by someone other than a lawyer was most recently considered by the Supreme Court in October 2018.

**Emma Slattery** lets slip the dogs of war

EMMA SLATTERY IS A DUBLIN-BASED BARRISTER PRACTISING IN COMMERCIAL, BANKING AND FINANCE LAW. SHE WISHES TO THANK FRANCIS MCGAGH BL FOR REVIEWING THE ARTICLE



As we all no doubt recall from our ‘introduction to company law’ days, the principle of separate legal personality was established in the 1897 case of *Salomon v Salomon*. That is, the legal personality of a company is separate and distinct from that of its members, subscribers, and office-holders.

What has become clear over the last 50 years is that the corollary of this rule is that a member, subscriber, or office-holder may not represent a company in legal proceedings. This was first considered by the Supreme Court in *Battle v Irish Art Promotion Centre Limited* (1969).

Briefly, *Battle* concerned an application by a managing director of a defendant company for liberty to conduct the

defence of the action on behalf of the company. The single judgment, delivered by Ó Dálaigh CJ (with whom Haugh J and Walsh J concurred), found that the right to represent a company

was limited to counsel instructed on the company’s behalf: “This is an infirmity of the company which derives from its own very nature. The creation of the company is the act of its subscribers; the subscribers, in discarding their own personae for the persona of the company, doubtless did so for the advantages which incorporation offers to traders. In seeking incorporation, they thereby lose the right of audience which they would have as individuals; but the choice has been their own.”

This is the starting point: a company cannot be represented by one other than a lawyer. The difficulty therein being

## AT A GLANCE

- The 1969 *Battle* case reinforced the situation that a member, subscriber, or office-holder may not represent a company in legal proceedings
- In a judgment delivered in October 2018, the question of lay representation of companies was again considered by the Supreme Court
- The case confirmed that the rule in *Battle* remains and, once subject to potential exceptions in the interests of justice, is not unconstitutional





PIC: REX FEATURES

that there is no exception to the rule – it is absolute. This absolute rule remained the status quo until the Supreme Court revised the issue in 2014 in *Coffey v The Environmental Protection Agency*.

#### Residual discretion

*Coffey* identified the jurisdiction of the High Court to permit an exception to the rule against layperson representation of a company. The exception identified was that that the High Court has an inherent jurisdiction to manage and control its own proceedings and “in rare and exceptional cases to permit an unqualified advocate to represent another litigant”.

In coming to his conclusion, O’Neill J relied on a passage from the Court of Appeal

of New Zealand in *Re GJ Mannix Limited* (1984), where it was held: “But I consider the superior courts to have a residual discretion in this matter arising from the inherent power to regulate their own proceedings. Cases will arise where the due administration of justice may require some relaxation of the general rule. The occurrence is likely to be rare, their circumstances exceptional or at least unusual, and their content modest. Such cases can confidently be left to the good sense of the judges.”

From that point on, the rule in *Battle* was subject to the ‘rare and exceptional circumstances’ exception. The rationale for the exception was set out by Fennelly J at p 24 of the *Coffey* judgment. In essence, owing to the ethical and professional restrictions

that applied to lawyers, litigation was best conducted through them and their offices. The court was careful to note that this was not an attempt to protect the work of the profession, but rather to safeguard the administration of justice.

In a judgment delivered in October 2018, this question of lay representation of companies was again considered by Supreme Court in *Allied Irish Bank plc v Aqua Fresh Fish Limited*. The plaintiff had issued a special summons seeking an order for possession and sale of lands owned by the defendant company arising out of funds advanced and a mortgage created over certain lands. The managing director and principal shareholder of the company sought to enter an appearance to the proceedings on behalf of the company.

IMPECUNIOSITY, A GOOD ARGUABLE DEFENCE, BEING THE PRINCIPAL SHAREHOLDER, OR A COMBINATION OF THE FOREGOING DO NOT AMOUNT TO EXCEPTIONAL CIRCUMSTANCES SUCH AS WOULD DISPLACE THE RULE IN *BATTLE*





In an interlocutory motion, leave to enter an appearance in those terms was ultimately refused by the High Court. The Court of Appeal dismissed the managing director's appeal.

The managing director contended that the rule in *Battle* was at odds with the State's obligations under article 40.3 of the Constitution and article 6 of the *European Convention on Human Rights*.

### Girding for Battle

In the majority judgment of the Supreme Court, delivered by Ms Justice Finlay Geoghegan, the court reviewed the decision in *Battle* and the developments in the years following, including *Marble and Granite Tiles Limited*, *Coffey v Tara Mines*, *PMLB v PH7*, and *Coffey v Environmental Protection Agency*.

The court considered the opportunity afforded to the legislature through the *Companies Act 2014* to make provision for lay representation of companies, and noted that it opted not to. It is noted in the judgment (see paragraph 224) that provision is made in section 868(5) of the *Companies Act* for a person appointed to represent the company on indictment. However, section 868(6) states: "A representative of a company shall not, by virtue only of being appointed for the purpose referred to in subsection (5), be qualified to act on behalf of the company before any court for any other purpose."

The first issue for consideration by the court was whether the rule in *Battle* should remain, subject to the inherent jurisdiction to make exceptions where the interests of justice necessitate. Ms Justice Finlay Geoghegan held that changing the rule at this stage would represent "a fundamental change to the general rule in relation to rights of audience before the courts" (paragraph 29). The court further recognised that the rule "exists in the interests of the administration of justice and serves the public interest".



As to whether such a rule was constitutional, Ms Justice Finlay Geoghegan held that "provided that there is an inherent jurisdiction to make exceptions to the general rule in *Battle*, justified in the interests of the due administration of justice, such a restriction is not then, in my view, prohibited by the Constitution".

The justification appears to be one within the category of 'you can't have your cake and eat it'. The court noted: "As pointed out in many decisions, companies are used by persons to conduct business or other activities without the risk of being liable for losses incurred, and thereby create advantages for such persons. The use of a separate legal personality may also, however, have disadvantages. One such disadvantage is the inability of a company to represent itself in legal proceedings. It is, however, as stated by McKechnie J in the Court of Appeal, 'the logical corollary of the *Salomon* principle'."

*Aqua Fresh Fish* thus confirms that the rule in *Battle* remains and, once subject to potential exceptions in the interests of justice, is not unconstitutional.

### Via negativa

What of these exceptions? The court went on to consider whether it should provide guidance as to what might, in any individual case, constitute exceptional circumstances. While the court declined to offer guidance as to what might be an exceptional circumstance,

it did comment on what would *not* be an exceptional circumstance.

It is worth noting that Ms Justice Finlay Geoghegan suggested the 'rare' element of the "rare and exceptional circumstances" was essentially surplus to requirements and that, really, the court only had to consider whether exceptional circumstances existed.

In terms of what would not be considered exceptional, the court found that "unfortunately, the impecuniosity of a company or the lack of available funds in a company to procure legal representation is not in any sense exceptional or even unusual ... a view expressed on behalf of a company that it has a good arguable defence or even the putting up of facts, which objectively suggest an arguable defence, is not of itself an exceptional set of circumstances ... the fact that Mr Flynn is the principal shareholder and a director of the company is similarly not, in my view, an exceptional circumstance ... nor do I consider that all of the above in combination are exceptional, as they are a combination of facts which often occur".

So, impecuniosity, a good arguable defence, being the principal shareholder, or a combination of the foregoing do not amount to exceptional circumstances such as would displace the rule in *Battle*.

### What should be considered?

The court found that "it is probably relevant for a court to consider, when asked to exercise this jurisdiction, to identify the nature of the claim, the type of proceedings, and the representation sought". Further, it found that "whether or not the person by which the company seeks to be represented is already a party to the proceedings or is willing to be joined and has an interest such as would permit joinder, pursuant to [order 15](#) of the *Rules of the Superior Courts*, may be a relevant circumstance to be taken into account in determining whether or not the overall facts and circumstances are such as to amount to exceptional".

THE HIGH COURT HAS AN INHERENT JURISDICTION TO MANAGE AND CONTROL ITS OWN PROCEEDINGS AND 'IN RARE AND EXCEPTIONAL CASES TO PERMIT AN UNQUALIFIED ADVOCATE TO REPRESENT ANOTHER LITIGANT'



## MS JUSTICE FINLAY GEOGHEGAN HELD THAT CHANGING THE RULE AT THIS STAGE WOULD REPRESENT ‘A FUNDAMENTAL CHANGE TO THE GENERAL RULE IN RELATION TO RIGHTS OF AUDIENCE BEFORE THE COURTS’

Is there a solution to the problem faced by companies that can't or won't appoint legal representation and members or officers who wish to represent them? The court considers the merits of the proposed representative being joined to the proceedings (paragraph 46). This protects the opposing party, in the sense that there is a person who can be made liable for the costs of the case should the company's case fail.

Ms Justice Geoghegan relies on the judgment of Bingham MR in *Radford*, wherein it was held that part of the fairness and justice of the rule of limited representation, certainly in relation to limited companies, relates to their separate legal personality from their directors and

shareholders, and the absence of any risk either by reason of the company's debts or costs of the proceedings to the directors and shareholders. A person who is already a party to the proceedings is probably at risk of an adverse order for costs if unsuccessful in the claim or defence.

As is clear from the foregoing, it was held that the managing director was not entitled to represent Aqua Fresh Fish Limited. No such exceptional circumstance had been established. More fundamentally, the court confirmed that the rule in *Battle* remains, subject to the inherent jurisdiction of the court to waive the rule in exceptional circumstances, and does not conflict with the Constitution, as was alleged. [g](#)

## LOOK IT UP

### CASES:

- *Allied Irish Bank plc v Aqua Fresh Fish Limited* [2018] IESC 49
- *Battle v Irish Art Promotion Centre Limited* [1969] IR 252
- *Coffey v Environmental Protection Agency* [2013] IESC 31; [2014] 2 IR 125
- *Coffey v Tara Mines* [2007] IEHC 249
- *In the Matter of Marble and Granite Tiles Limited* [2009] IEHC 455
- *PMLB v PHJ* (High Court, unreported, 5 May 1992)
- *Re GJ Mannix Limited* [1984] 1 NZLR 309
- *Salomon v Salomon & Co Limited* [1897] AC 22

### LEGISLATION:

- *Companies Act 2014*, section 868
- *Rules of the Superior Courts*, order 15

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# The walls came tumbling down

The Four Courts are regarded as the home of the Irish legal system. Their destruction on 30 June 1922 was ‘unexpected’ and described at the time as a deplorable disaster. **John Garahy** surveys the fall-out

JOHN GARAHY IS A RETIRED SOLICITOR WHO HAS COMPLETED AN MPhil IN MODERN IRISH HISTORY



The Four Courts allows the placement of Charles Mannors (fourth Duke of Rutland and Lord Lieutenant of Ireland) and Rory O'Connor (commandant-general of the anti-Treaty IRA) to be mentioned in the same sentence. The former laid the foundation stone of the building on 13 March 1786; the latter occupied the complex on 14 April 1922.

O'Connor's refusal, with his garrison, to vacate on 28 June 1922 resulted in a bombardment by the Provisional Government's forces – leading to the destruction of the complex, including the Solicitors' Buildings, on 30 June 1922.

The name of the ‘Four Courts’ has its origins in the four courts of Chancery, Exchequer, Common Pleas, and King's Bench, which were unified into one High Court by the *Supreme Court of Judicature Act (Ireland) 1877*. The name was applied, irrespective of the location. The Four Courts were

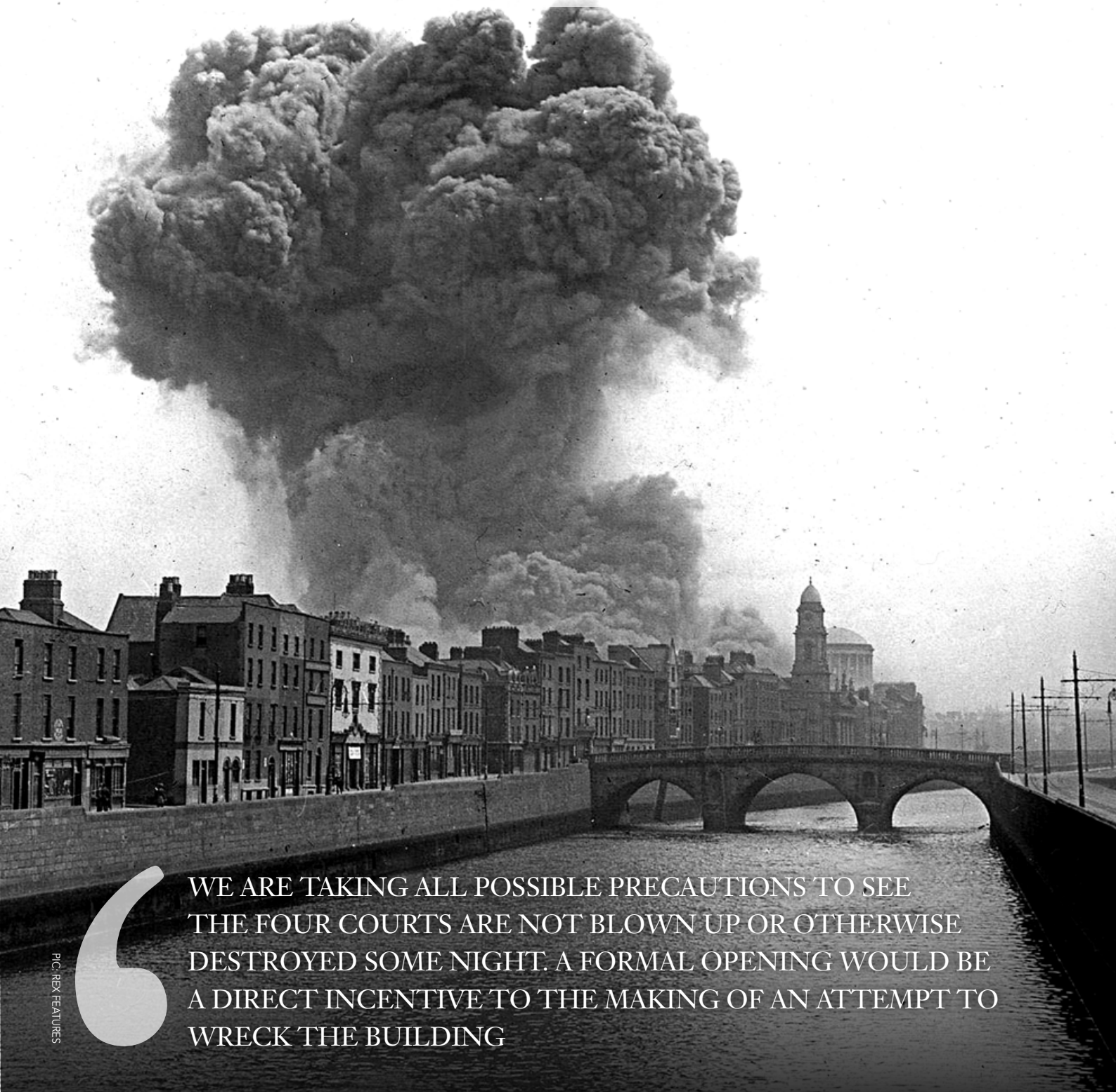
briefly located on the present site from 1606-08, but were moved to Christ Church at the insistence of Dublin Corporation, to be within the city. The Courts Service website notes that, in 1775,

the courts at Christ Church were dilapidated, with entry gained, literally, through ‘Hell’ – the name of one of the passages, where stood a large wooden statue of the devil.

The construction of the Public Record Office had begun on the site in 1776, with the Four Courts integrated into the design. The original architect was Thomas Cooley, who died after one wing had been completed. His successor was James Gandon, to whom the plaudits for the design, particularly the dome and Round Hall, are ascribed – a further iteration of his design for the Custom House. The buildings were completed in 1802, becoming and remaining the location of the superior courts, courts administration, the Bar Library, and the Solicitors' Buildings.

## AT A GLANCE

- A garrison of the anti-Treaty IRA occupied the Four Courts on 14 April 1922, leading to the destruction of the complex during a Government bombardment on 30 June 1922
- The Solicitors' Building was destroyed, leading the Law Society to submit a malicious-injury claim to Dublin Corporation and the Provisional Government
- There was no progress in relation to the malicious-injury claims
- In 1926, the Government decided to rebuild, and the courts resumed sittings on 12 October 1931, without formal ceremony



PIC: REX FEATURES

WE ARE TAKING ALL POSSIBLE PRECAUTIONS TO SEE THE FOUR COURTS ARE NOT BLOWN UP OR OTHERWISE DESTROYED SOME NIGHT. A FORMAL OPENING WOULD BE A DIRECT INCENTIVE TO THE MAKING OF AN ATTEMPT TO WRECK THE BUILDING

The destruction of the Four Courts was unexpected. *The Irish Law Times and Solicitors' Journal* was optimistic on 7 January 1922: "The prospects of the term appear as hopeful as in the past few years."

There was no reference to the vote in Dáil Éireann that day, which accepted the treaty

to conclude the Anglo-Irish war, with 64 voting in favour and 57 against. Optimism was apparent at the Council meeting of the Incorporated Law Society of Ireland (as it then was) in the Solicitors' Buildings on 5 April. The president was absent on holiday; the Suggestions Book was examined – nil, no

questions, no notices.

A solicitor from Nenagh asked the Council to request the proprietor of *The Irish Law Times and Solicitors Journal* to reduce the (annual) subscription of £2-10s-00d, which did not compare favourably with the (London) *Times Reports*





at £1-14s-00d. “Ordered: the Council do not see their way to make suggestion.”

Neither did it decide on the attendance of apprentices in person to collect their certificates, nor the holding of the Solicitors’ Dinner. The Council adjourned until 26 April, following the Easter vacation.

### Seized and occupied

The subsequent Council meeting was held on 21 April 1922 at Mills Hall, 8 Merrion Row, when Mr Orr, the vice-president, reported that “on the morning of Friday 14 inst, the entire Four Courts, incl the premises of the Society, had been seized and occupied by armed body of men hostile to the Free State Army, and they continue in occupation”.

The subsequent Council meetings were held at 33 Molesworth Street, which the secretary had secured at “the weekly rent of £2-10s-00d, with 5 shillings for cleaning”.

A stand-off ensued for the following three months between the Provisional Government and the anti-Treaty force. Sean Lemass, future taoiseach, then aged 23, was the barrack adjutant of the Four Courts’ garrison. He issued passes to the garrison, stamped on the back with the wax seal of the Lord Chief Justice of Southern Ireland. A general election had been scheduled to be held in April, but was deferred to June. Both sides wished to avoid a civil war, though there were many incidents and contests. The occupation of the Four Courts was merely the most prominent incident.

The month of June was to prove the catalyst. The general election poll on 16 June 1922 results were: pro-Treaty, 239,193 votes; anti-Treaty, 133,864 votes; other parties, 247,226 votes. The Provisional Government regarded the election result as ratification of the Treaty (contested in the historiography). The anti-Treaty IRA further split on 18 June 1922. The killing of Field Marshal Sir Henry Wilson in London on 22 June 1922 enraged the British government, resulting in extreme pressure on the Provisional Government.

Winston Churchill (colonial secretary) said in the House of Commons on 26 June: “If it [the occupation of the Four Courts] does not end, and a speedy end, it is my duty to say the Treaty has been violated.”

The Provisional Government forces issued an ultimatum to the garrison to surrender on 28 June 1922. When not complied



PG: REX FEATURES

with, the Four Courts was bombarded with two 18-pounder field guns supplied by the British Army. The Four Courts’ complex, including the Public Records Office, was destroyed on 30 June 1922. *The Irish Times* reported “about mid-day, an ear-splitting explosion shattered Dublin”. The cause of the explosion is contested in the historiography, though the GHQ Irish Army issued a poster the following day: “Public Records Office destroyed with all its historic documents through fire caused by Irregulars’ explosion of mine.” This was emphatically denied by the Four Courts’ garrison, particularly Ernie O’Malley, who contended the explosions were caused by the shelling and fires.

### Malicious-injury claim

The Law Society Council meeting on 12 July at 33 Molesworth Street was informed by the president that the Four Courts was destroyed, “including the Society’s building”. It was resolved to submit a malicious-injury claim for £300,000 to Dublin Corporation, with a similar claim to the Provisional Government, and a claim for the contents (£7,700) to Yorkshire Insurances.

The Benchers of the King’s Inns were informed ‘without prejudice’. The subsequent meeting on 19 July read the lease from the Benchers to the Society, granted in 1871 for a term of 999 years, at 1 shilling per annum, noting that there was a covenant to reinstate. The meeting on 4 October

authorised the expenditure of £300 to re-establish the library, with appeals made in the *Gazette* for donations of books, which was very successful.

The meeting on 15 November was made fractious by a demand from Dublin Corporation for payment of rates on the Society’s premises at the Four Courts from 1 April to 28 June at £87-0s-7d, and for electric lighting at £31-18s-3d. The secretary was ordered not to reply.

The Master of the Rolls, Sir Charles O’Connor, in his judgment on the *habeas corpus* application of Erskine Childers in November 1922, determined a “state of war” existed “because one of the noblest buildings in this country, which was erected for the accommodation, and was the home of justice for more than a hundred years, is now a mass of crumbling ruins”.

The report of the Council for the year ending 26 November 1922 was explicit on the destruction of the Solicitors’ Buildings: “That such a disaster should have overtaken the Society is deplorable”, noting that the insurance company had repudiated liability, “relying on the circumstances under which the destruction occurred”.

On 17 January 1923, Mr AE Murray BE reported, valuing the destroyed premises at £95,240 and contents at £9,619. Dublin Corporation resumed correspondence on 14 March 1923, seeking payment of one year’s poor rate of £38-1s-10½d on the Solicitors’ Buildings, 1 March to 28 June 1922. [The Council] “ordered secretary to interview City Solicitor and Collector”.

Mr Wakely, the secretary, reported at the following meeting, on 28 March 1923, his offer to pay £38-1s-10d, in full discharge of all claims.

There was no progress in relation to the malicious-injury claims, despite constant inquiry from the Council. The meeting on 13 February 1924 was informed that counsel for both bodies agreed that the Benchers, under the lease, were liable to rebuild the Solicitors’ Buildings – “the claim of this Society was against the Benchers and not the State”. It was agreed that both bodies would seek an interview with the Minister of Finance with a view to settlement of the claim on “a cash basis”.

The contents claim was ruled in the Circuit Court on 28 June 1924 in the sum



## THERE WAS UNCERTAINTY AS TO WHETHER THE IMPECUNIOUS FREE STATE WOULD REBUILD THE FOUR COURTS – ‘A SYMBOL OF BRITISH JUSTICE AND IMPERIALISM’

of £7,074, with the *Gazette* in January 1925 noting the compensation received by the Society: “£2,000 cash and £4,950 compensation stock” – a shortfall of £124, caused by the retention to meet the cost of the Society’s Grant of Arms. Cash was a scarce commodity in the early years of the Irish Free State.

On 28 January 1925, the secretary reported on the joint deputation meeting with the Minister for Finance Ernest Blythe, when it was disclosed that the Government had not decided whether to rebuild the Four Courts. It did, however, intend to rebuild the front portion as government offices. He also quoted the estimated costs of rebuilding the Solicitors’ Buildings at £26,000.

The question of temporary office accommodation was declared by the minister “for sympathetic consideration”, which found practical conclusion in 45 Kildare Street in May 1925, when the Board of Works agreed to lease it from Sir Stanley Cochrane “for the free temporary occupation of the Society pending settlement of the claim, subject to the drainage being in sound condition”. Alas, the drainage was defective, delaying the occupation.

### Symbol of imperialism

There was uncertainty as to whether the impecunious Free State would rebuild the Four Courts – “a symbol of British justice and imperialism”. TJ Byrne, principal architect at the Board of Works, had the ear of WT Cosgrave, president of the Executive Council, from his time as an alderman, whom he informed that the existing structures could be used and the work completed at reasonable cost.

The Government, in late 1925, decided to rebuild. It was also engaged in rebuilding the GPO, increasing the expenditure. In May 1926, the plans for the new premises were received – the new Bar Library to be sited on the destroyed premises, with the Solicitors’ Buildings moved to its present location.

Difficulties abounded. The Council meeting on 15 July 1927 was a ‘special meeting’ called by the president, “in order to consider the passing of a resolution in reference to the murder of Mr Kevin O’Higgins, vice-president of the Executive Council, and Minister for Justice and for External Affairs, which occurred on Sunday the 10th inst”.

In consequence of this killing, the Cumann na nGaedheal Government introduced a law requiring all Dáil candidates to agree to swear the oath of allegiance required by the Treaty, providing the catalyst for Mr De Valera to declare the oath of allegiance “an empty formula” and Fianna Fáil to take their seats in the Dáil for the first time.

The Council meetings in October and November 1929 saw movement in the intractable title difficulties, with the attorney general prepared to advise the Government to accept a lease from the Society. Daire Hogan, solicitor and historian, has noted that the lease was not completed until 1954, which contained provisions for the repairing, servicing and heating of the Solicitors’ Buildings, but crucially, not responsible for the external portions of the building.

The *Gazette*, in June 1931, reported that the new premises were expected to be ready for occupation in June or July, but “owing however, to the strike in the building trade, the work has been considerably delayed”.

The Council meeting on 1 October 1931 was the first held in the new premises. The secretary reported that he had taken over the new premises on 6 September, and the caretaker had been in residence since 7 September.

The president, at the half-yearly meeting, welcomed members “to our new home”, acknowledging the “architectural skill of Mr TJ Byrne, principal architect of the Board of Works, Messrs Alex Hull & Co, the builders, and Mr R Caulfield Orpen, the Society’s architect, and to our secretary Mr Wakely, who has spared no effort in assuring


our premises would be all they should be”. The Council meeting on 27 October 1932 resolved to give Mr Wakely a gift of £1,000 “in view of the exceptional services rendered by him”.

### Resumption of normality

The resumption of normality was demonstrated by the following notice in the *Gazette* in December 1931: “Members can rent lockers in the Solicitors’ Buildings, Four Courts, for the sum of 5 shillings per annum. Application should be made to the caretaker.”

The normality was a myth. Chief Justice Hugh Kennedy had proposed a formal public opening and corresponded with the Minister for Justice, James FitzGerald-Kennedy, who replied, stating that the political situation in the country was far worse than the public was aware: “We are taking all possible precautions to see the Four Courts are not blown up or otherwise destroyed some night. A formal opening would be a direct incentive to the making of an attempt to wreck the building.” The courts resumed sittings on 12 October 1931, without formal ceremony.

At the time of writing, the Four Courts is subject to further renovation and refurbishment by the OPW. Mr Byrne’s concrete encasement has become time-expired. The value of the works chimed with the history and purpose, as expressed by Tomás Clancy, barrister and historian: “The Four Courts were, however, more than just the stone and an idea – they became the home of the Irish legal system.”

A portion of the Solicitors’ Buildings was sold to the Bar Council in 1977 to partially fund the acquisition of Blackhall Place, the Law Society’s headquarters. An office and consultation rooms remain in use by solicitors. It is right and fitting that the solicitors’ profession retains a presence in the Four Courts, which remains the home of the Irish legal system. 





# Rock of stages

A solicitor's working life inevitably evolves through various stages.  
**David Cowan** dusts off the evidence for some anthropological analysis

DR DAVID COWAN IS AN AUTHOR, JOURNALIST AND TRAINER



At age 15, Charles Dickens worked as an 'attorney's clerk', serving subpoenas, registering wills, copying transcripts, and later became a court reporter. He enrolled as a law student in 1839 but, like David Copperfield, didn't pursue a legal education, in part because he could not afford the £100 needed.

Ironically, the only one of his ten children to find success was Henry – as a lawyer. Charles and Henry Dickens would find that today's legal system still retains many processes and procedures latent in common law jurisdictions. As Dr Rónán Kennedy (lecturer at NUI Galway) notes: "Many aspects have not changed since the 19<sup>th</sup> century."

However, there has been much change since Dickens was excoriating the legal profession. The presence of women at all levels of the profession, albeit still with an imbalance in certain areas, would surprise. The use of technology would certainly come as a shock, as it would to anyone from a bygone era. He would also be surprised to learn of Ireland's independence, with its own legal system and training.

On the other hand, Dickens may have been fortunate enough to receive access support for his £100 fees, though he may not have given the world such great literature, with 11 of his books featuring a rich cast of legal characters.

The unprecedented pace of transformation and innovation in the legal profession is creating new demands on training for lawyers in all five stages of their career:

law degree, training contract, professional qualification, continuing education, and exit. If the profession is to keep up, then training is central to the task and needs to reach into all dimensions of the profession. What binds together all the training efforts undertaken by firms, institutions, professional bodies, governments and corporations is the need to help the lawyer, at each and every point in their career, meet the challenges of innovation.

## Waiting for the bus

If we start at the beginning, at the undergraduate level of legal training, there is something of a dichotomy here. The traditional universities tend to be quite adamant that their

role is to teach the law itself, though they make the occasional nod towards the work their products will one day undertake.

The younger universities are more experimental, and seek to have their graduates as well-rounded as possible as they enter the next phase of the profession. Dr Kennedy accepts that "third-level institutions are disconnected from practice, and need to understand better and build better connections", but he believes his law department is "getting it about right", adding that the department is "changing as fast as we can".

Kennedy spent much of the 1990s working in industry as a programmer, analyst and webmaster, so he knows a thing or two about change and technology. However, he says: "In

## AT A GLANCE

- The unprecedented pace of transformation and innovation in the legal profession is creating new demands on training for lawyers in all five stages of their career: law degree, training contract, professional qualification, continuing education, and exit
- If the profession is to keep up, then training is central to the task and needs to reach into all dimensions of the profession
- Thinking like a lawyer means adapting to change. Hence, professional training is undergoing transformation, as legal bodies address the needs of the future lawyer



PIC: SHUTTERSTOCK

## CLASSICAL LEGAL PRINCIPLES ARE STILL VITAL, BUT THE MODERN SOLICITORS' PROFESSION IS ALSO EQUIPPED WITH 21<sup>ST</sup> CENTURY SKILLS

the formation of students, the practical reality is that there's not enough space in the curriculum for everything."

He continues: "It takes years to become a lawyer" – by which he means not just the qualifications, but thinking like a lawyer.

### Sharp-dressed man

Thinking like a lawyer means adapting to change. Hence, professional training is undergoing transformation, as legal bodies address the needs of the future lawyer. The Law Society launched the *Peart Commission Report* as part of its aim to support solicitors using '21<sup>st</sup> century skills'. The commission was convened to develop specific actions following an independent root-and-branch review of the Society's prequalification training by a team of international experts.

Law Society Director General Ken Murphy said at the launch that the Society was "committed to expanding its focus on innovation, in line with Government policy and with global developments in law and

across all areas of global business".

He continued: "Classical legal principles are still vital, but the modern solicitors' profession is also equipped with 21<sup>st</sup> century skills. This includes collaboration and digital literacy."

The commission's recommendations fall under three main themes: increasing access to the profession, innovation in education, and streamlining the established training model.

The Bar of Ireland has also set training as a priority, with a [report](#) – *Promoting Ireland as a leading centre globally for international legal services* – placing legal education at the heart of its approach. Brexit is a central issue, but there is also an overall desire to further develop the range of options available for legal education in Ireland, with particular emphasis on EU law and on specialist legal issues arising in growth-industry sectors.

The report argues that Irish law students should be offered new prequalification training courses specifically focused on

international and EU commercial law, with incentives and encouragements put in place to attract students. It says that "the immediate establishment of further professorial chairs and teaching positions in third-level institutions would advance this objective. Increased investment in legal education generally, and the development of a greater range of options in legal education, would also encourage competition in the market for legal services in Ireland to the benefit of companies doing business here (and, indeed, consumers), while leading to more jobs and tax revenue."

Student placements play a key role in bridging the gap between the classroom and the workplace. Dr Kennedy says: "We need to prepare lawyers who are going into an environment where they are given a legal problem and told 'tell me what it means after lunch'."

Meghan McSweeney, a tutor at UCD Sutherland School of Law with an LLM from Georgetown, agrees: "Prospective





## MANY OLDER LAWYERS ARE JUST AS TECH SAVVY AND HAVE THE EXPERIENCE OF WORKING THROUGH THE DIFFERENT AGES OF TECHNOLOGICAL DEVELOPMENT IN SOCIETY AND THE LAW

employers want to know what practical experience and skills a graduate has acquired. The more opportunities that law students can avail of throughout their studies will assist them become future lawyers.”

### Got me under pressure

McSweeney is starting a traineeship with Mason Hayes & Curran later this year. Reflecting on her experience to date, she says: “I can see how, in six short years since my graduation, that there is a greater emphasis on providing Irish law students with the opportunities to develop their advocacy skills. Students are also encouraged to speak in small tutorial groups, where they receive grades for both participation and presentations.”

Contrasting her US experience, McSweeney says: “The culture of law schools in the United States places greater emphasis on communication skills in its law students. The notorious ‘Socratic method’, which encompasses seating charts in vast lecture halls, means that there is no hiding if a student has not done the reading. This method results in an increased engagement and discussion with the subject matter, as all students will be called upon throughout a two-hour lecture.” She believes that “a culture of active student participation needs to be sustained and fostered throughout the four years of academic study because, upon graduation, these students will be stepping into law offices, the Law Library, or indeed lecturing, and will be required to communicate with colleagues and clients”.

Brian O’Callaghan, partner and head of the trainee and graduate programme at William Fry, explains. “There is a changing approach. Students are more ready now for a career in law. They know a great degree is not enough, and students are alive to this, taking up summer internships and other opportunities.” He suggests that the



Three stages of Elvis

experiential aspect of lawyering needs to be “more front-loaded”, explaining that “firms are competing for graduates, who are asking what can you do for me? Why should I pick you? They aren’t just looking for the package; they expect top-end training. Millennials demand it, not just the qualifications, but also the soft skills, like mindfulness, well-being, CSR projects, and firms are reacting to this change. The lawyer needs to be a well-rounded business person.”

### Just got paid

Sinead Kelly, director of professional development at William Fry, says that lawyers are looking for a new kind of training experience, and suggests that lawyers “need to start with a holistic approach; analyse how they can work in law. Business acumen was not needed as much before, but now lawyers need to be equipped to support the requirements of today’s clients.”

Technology is a key component, and the experience of using technology can differ across age generations. However, Kennedy suggests it is not as simple as the idea that younger people have grown up with technology and are used to it. Many older lawyers are just as tech savvy and have the experience of working through the different ages of technological development in society

and the law. The key is the balance between people development and technology tools, and to fully operationalise the training. Kelly says that this means “getting people thinking before they arrive, and following up afterwards with feedback. Bringing groups back regularly.”

Adrian Kiernan, managing director at LaTouche Training (an Irish company specialising in training non-lawyers in how to apply the law), says that technology is “only as good as the lawyer using it”. He elaborates: “Technology is a wonderful tool, but clients still want or need someone they can relate to, one-on-one, and get confidence from them.” He advocates blended learning, providing substantive theory together with interactive and experiential learning.

Kiernan argues that: “In blended learning, you get the best of both, using advanced cyber-materials, pre-reading, and initial videos. Then you get the face-to-face learning and follow-up assessments. There is still an important role for face-to-face training to play, because there is a networking element – sharing common issues and challenges, that’s the by-product.”

The real impact of technology has been the emphasis now being placed on transferable skills but, again, this needs to be placed in the social and economic context.



Kiernan cites the boom years, when there was a lot of conveyancing work and big conveyancing departments but, during the recession, the demand decreased and many lawyers were caught out, needing to reskill. Meanwhile, a substantial volume of this work is being commoditised. Kiernan suggests that “they will not be caught out on that twice. Lawyers know they need more transferable skills, and are now more discerning in the training they do”.

Continuing professional development and other courses cannot simply be a process of box-ticking. Aisling Mooney Eddy, talent director at A&L Goodbody, says: “To be trusted advisors, lawyers truly need to understand where the client is coming from, and this should flow through all the different levels of the firm.” ‘Commodity lawyers’ will give you a service, but she says that high-end lawyers go beyond that, beyond the technical law, to develop their leadership, skills sets, and a collaborative approach.

Julian Yarr, managing partner at A&L Goodbody, explains: “Being integrated is what makes you stand out, and what clients are looking for in lawyers is a more holistic

approach.” He adds, “Integration is our business strategy.”

The holistic approach is one shared by Declan Black, managing partner at Mason Hayes & Curran: “For more senior people, we do maintain a panel of coaches whose focus ranges from the more obvious, like business development, to holistic personal development.”

Black says the firm’s mantra is “learning not training, so we try very hard to get learning out of the time and money we spend on training. For example, we have mandatory multiple-choice tests for all solicitors on a range of issues, and we have performance tests for hard and soft skills. While these inputs are more difficult to design and deliver, we think the impact is better than the classic training session.”


### Jesus just left Chicago

The place where training is done is another factor, as Black explains that getting lawyers to disconnect from work to focus on training is a key challenge. “We do see a value in off-site residential training and provide this, particularly for new partners. It gives the partners time and space to fully absorb

issues, and there are some very high-quality providers.”

The last age of the lawyer’s development is how to approach retirement, something that garners much less attention. A holistic approach suggests that it needs more attention, both in terms of the lawyer’s role as mentor or tutor, and in knowledge management – but also with regard to their own journey in exiting the legal profession. The lawyer’s journey is a rewarding one, and few look forward to the end point.

Training and lifelong learning are increasingly entrenched in the legal profession, not because they are nice to have, but because they are necessary in order to engage with clients and within the firm. As Murphy explains: “Today’s client is more knowledgeable and tech-savvy than ever before. The Law Society’s vision is to train 21<sup>st</sup> century solicitors who will meet and exceed the exacting requirements of their clients and their firms.”

O’Callaghan agrees wholeheartedly: “Lawyers have been resistant to change, but that’s not good enough anymore,” to which Kelly adds, “Yes, don’t step back, develop the best lawyers.” 



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## BOOKS

**THE TAXATION OF CAPITAL GAINS: FINANCE ACT 2018****Damian Riordan, Finola O'Hanlon and Jim McCleane.** The Irish Tax Institute (2019), [www.taxinstitute.ie](http://www.taxinstitute.ie). Price: €76 (incl VAT), e-book €53 (incl VAT)

Writing a technical book on tax for the Irish market generally offers few rewards. The market is small, and regular changes in the legislation result in such books going out of date in a short time. Authors who are prepared to undertake the burden of writing such books deserve the gratitude and applause of the relatively small body of solicitors, accountants, barristers and other tax advisers who constitute the main market for such books.

As a tax practitioner myself, I have made great use of earlier editions of this work, and am delighted to see this new edition. At over 1,100 pages, it is a substantial work. This size is justified by the fact that it considers the application of capital gains tax (CGT) in great detail, giving clear explanations of complex legislation with simple examples of how it works in practice. It makes reference to the relevant case law and Revenue publications.

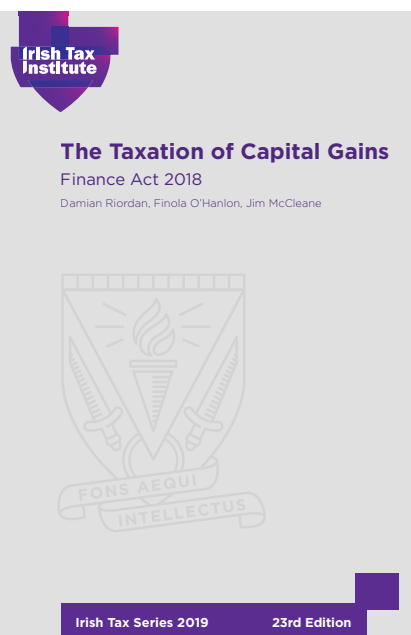
Not only does it provide the tax law, it also explains the relevant legal background with helpful diagrams. For example, I particularly like the chapter dealing with CGT and the new regime for mergers and divisions of companies.

The language is as clear as it is possible to be in a book of this nature. Furthermore, for the busy practitioner, there is a reasonable index, so the full answer to a particular ques-

tion can generally be discovered very quickly.

Of all the books published by the Irish Tax Institute, this is the one that I most admire and appreciate, and I recommend it to everyone likely to encounter this difficult area of tax legislation.

*Michael O'Connor, TippMcKnight, Solicitors, 41 Fitzwilliam Place, Dublin 2.*

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# BUILDING AN OUTSTANDING LEGAL TEAM – BATTLE-TESTED STRATEGIES FROM A GENERAL COUNSEL

**Bjarne P Tellman.** Globe Law and Business Ltd (2017), [www.globelawandbusiness.com](http://www.globelawandbusiness.com). Price: €60 (incl VAT)

The endorsements for Bjarne P Tellman's book are a veritable 'who's who' of US Fortune 500 companies and academia. I met Tellman (GC of Pearson PLC) twice in Ireland. First, when his book had just been published and he was the keynote speaker at the [Legal 500 Ireland Trailblazers](#) event in March 2017, where Irish general counsel were gifted with his 'toolkit for GCs'.

The second encounter was in February 2019, where he gave the [Lawyers' Business Development Club](#) an insight into his career, leading global legal teams, and managing innovation and disruption in legal services, which has been the inspiration for, and focus of, his book. Tellman's analogies with computing – the hacking of hardware, talent, software and culture – inspired both sets of audiences.

In *Building an Outstanding Legal Team*, he focuses on how and why you need to bring people along with you to successfully embrace the natural state of change for an organisation.

The book is timely and will resonate with GCs from Dublin's 'Silicon Docks' and 'Regulator Quays', and will appeal also to those who deliver in-house legal tech, as well as external advisors.

The call from the Competition and Consumer Protection Commission for changes in how legal services are delivered in order to effect greater competition, and the competitive responses by GCs, are echoed in the book.

## Building an Outstanding Legal Team

Battle-Tested Strategies  
from a General Counsel

Bjarne P Tellmann



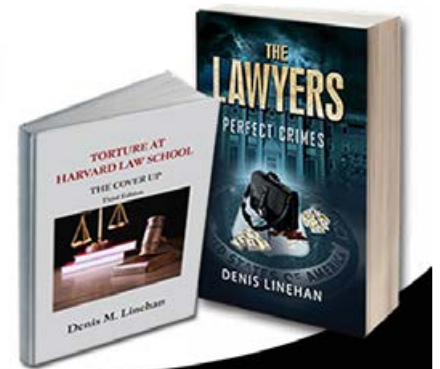
Tellman reminds his readers that in-house advisors are part of the business team – they can foster a culture of successful change management and provide strategic direction by being curious, flexible and creative.

He concludes by quoting Andy Warhol: "They always say time changes things, but you actually have to change them yourself." This is particularly apt, given the changes Tellman advocates for the legal profession.

*Caroline Dee Brown is general counsel at the Commission for Communications Regulation, One Dockland Central, Guild Street, Dublin 1.*



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# UNLOCKING E-COMMERCE VIA THE GEOBLOCKING REGULATION

Unjustified geoblocking and other forms of discrimination based on customers' nationality, place of residence, or place of establishment within the internal market are now illegal. **Mark Hyland** clicks 'pay now'

DR MARK HYLAND IS A LECTURER IN INTERNATIONAL INTELLECTUAL PROPERTY LAW AT BANGOR UNIVERSITY LAW SCHOOL, WALES



GEOBLOCKING  
ALSO OCCURS  
WHEN TRADERS  
APPLY DIFFERENT  
GENERAL  
CONDITIONS OF  
ACCESS TO THEIR  
GOODS/SERVICES  
TO CUSTOMERS  
FROM OTHER  
MEMBER STATES,  
BOTH OFFLINE  
AND ONLINE

On 3 December 2018, another important building block of the European Commission's Digital Single Market was put in place: the *Geoblocking Regulation* (2018/302) came into force throughout the EU. In many ways, the regulation is an anti-discrimination measure, designed to safeguard the EU's 'internal market freedoms'. It attempts to "realise the full potential of the internal market" (recital 1), with particular emphasis on the free movement of goods and services. This will give a timely boost to e-commerce within the EU and, simultaneously, foster growth and increase consumer choice throughout the internal market (recital 2). Increased e-commerce should also create "wider choice and optimal conditions" for EU consumers (recital 2).

Geoblocking refers to various practices whereby businesses discriminate against online customers based on their location. For example, an e-trader operating in one EU member state may block or limit access to their 'online interfaces' (in essence, websites and apps) for customers from other member states wishing to engage in cross-border transactions. Geoblocking also

occurs when traders apply different general conditions of access to their goods/services to customers from other member states, both offline and online. Geo-filtering is another form of geoblocking. There, a customer is rerouted from the 'targeted' website to a 'local' website, often with different content, offering, and prices. In short, geoblocking encompasses commercial practices whereby a customer is being treated differently based on 'geo-factors', – that is, nationality, place of residence, or temporary location.

Geoblocking frequently occurs following a unilateral decision by a trader, but sometimes it is the result of a bilateral arrangement. This might occur in the context of distribution/licensing agreements. For example, there may be a clause in such an agreement that restricts cross-border distribution of goods/services. Besides potentially infringing the regulation, such a clause may also fall foul of EU competition law, in particular, article 101(1)(b) of the *Treaty on the Functioning of the European Union*, which refers to markets being limited by provisions in an agreement.

Geoblocking is achieved through technologies that deter-

mine the physical location of a customer. This may be achieved either through the tracking of that location by means of an internet protocol (IP) address or coordinates obtained through a global navigation satellite system.

## Objective and scope

The objective and scope of the regulation is set out in article 1. This provision states that the purpose of the regulation is "to contribute to the proper functioning of the internal market by preventing unjustified geoblocking and other forms of discrimination based directly or indirectly on the customer's nationality, place or residence, or place of establishment". Unjustified geoblocking denies or limits access to goods or services by customers wishing to engage in cross-border transactions. Article 1(2) stipulates that the regulation only applies to transborder geoblocking. In other words, it will not apply to "purely internal situations", where all the relevant elements of the transaction are confined within a single member state. Interestingly, unjustified geoblocking perpetrated by traders established in third countries (that is, non-EU countries such as Turkey) is also caught by the regulation, pro-



PIC: SHUTTERSTOCKGAZETTE STUDIO

vided that customers within the EU are being affected by the trader's actions (see recital 4).

### Why geoblock?

Recital 2 of the regulation is illuminating in terms of why companies geoblock. It explains why microenterprises, and SMEs in particular, engage in geoblocking. Some reasons include:

- Divergent legal environments,
- The legal uncertainty of dealing with consumers from a different member state,
- The associated risks of dealing with the consumer protection laws of other jurisdictions,
- Catering for foreign environmental or labelling laws,
- Taxation and fiscal issues,
- Delivery costs, and
- Language considerations/requirements.

### Rationale for the regulation

There is a strong nexus between the regulation and the *Services Directive* (2006/123/EC). The lat-

ter aims to realise the full potential of services markets in the EU by removing legal and administrative barriers to trade. In particular, article 20 of the directive requires that EU member states ensure that service providers established within the EU do not treat recipients of services differently on the basis of nationality or place of residence. However, recital 4 of the regulation makes clear that article 20 has not been fully effective in combating discrimination. Nor has it sufficiently reduced legal uncertainty. One of the aims of the regulation is to further clarify article 20 by defining situations where different treatment based on nationality, place of residence, or place of establishment cannot be justified. Where there is a conflict between the provisions of the regulation and the provisions of the directive, the former shall prevail.

The final European Commission *Report on the E-Commerce*

*Sector Inquiry* (10 May 2017) is revelatory. It helps explain why the regulation was needed. The report states that 36% of respondent retailers reported that they do not sell at least one of the relevant product categories in which they are active across their member state's borders. More pertinently, 38% of retailers collect information on the location of the customer in order to implement geoblocking measures. The report established that the most common form of geoblocking in the EU was the refusal by traders to deliver goods to customers in other member states. The second most common form was a refusal to accept payments from such customers.

### Key terms

The regulation is relevant to cross-border e-commerce involving a 'trader' and a 'customer'. These two important terms, along with that of 'con-

sumer' are defined in the Regulation as follows:

- A 'trader' is defined as meaning "any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in the name or on behalf of the trader, for purposes relating to the trade, business, craft or profession of the trader",
- A 'customer' is defined as "a consumer who is a national of, or has his or her place of residence in a member state, or an undertaking which has its place of establishment in a member state, and receives a service or purchases a good, or seeks to do so, within the union, for the sole purpose of end use",
- A 'consumer' means "any natural person who is acting for purposes that are outside his or her trade, business, craft or profession".





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12/13 April	<b>Planning &amp; Environmental Law Masterclass for Conveyancers</b> Radisson Blu Royal Hotel, Dublin 8	8 General plus 2 M & PD Skills (by Group study)	€350	€425
8 May	<b>The Older Client: the Role of the Solicitor in Resolving Disputes</b> in partnership with Solicitors For the Elderly	3 General (by Group Study)	€160	€186
9/10 May	<b>Essential Solicitor Update Part I &amp; II</b> Landmark Hotel, Carrick on Shannon, Co Leitrim	9 May - 4 CPD Hours & 10 May - 6 CPD Hours	9 May - €100 10 May - €135 9 & 10 May - €190	
16 May	<b>In-house Panel Discussion</b> in partnership with the In-house & Public Sector Committee	3 M & PD Skills (by Group Study)	€65	
17 May	<b>Midlands General Practice Update</b> Midland Park Hotel, Portlaoise, Co Laois	6 CPD Hours	€135	
24 May	<b>Enduring Powers of Attorney Masterclass</b> Execution and Registration	SAVE THE DATE		
13/14 June	<b>North West General Practice Update Part I &amp; II</b> Solis Lough Eske Castle Hotel, Donegal	13 June - 4 CPD Hours & 14 June - 6 CPD Hours	13 June - €100 14 June - €135 13 & 14 June - €190	
21/22 June	<b>Personal Injuries Litigation Masterclass</b>	10 including 1 Regulatory Matters (by Group Study)	€350	€425
28 June	<b>Essential Solicitor Update</b> Inn at Dromoland, Dromoland Co Clare	6 CPD Hours	€135	



The main prohibitions are contained in articles 3 and 4 of the regulation.

Article 3 prohibits traders from using technological measures or otherwise to block or limit a customer's access to the trader's website for reasons related to the customer's nationality, place of residence or place of establishment. In addition, traders are not permitted to redirect a customer to a different version of the trader's website (for example, a different language version) unless the customer has explicitly consented to such redirection.

Under article 3(3), the prohibitions shall not apply where the blocking or limitation of access or the redirection is necessary in order to ensure compliance with a legal requirement laid down in union law or in the laws of a member state that accord with union law, to which the trader's activities are subject. Where such a situation occurs, the trader must provide a clear and specific explanation to customers regarding the reasons why the blocking or limitation of access or the redirection is necessary in order to ensure compliance. The explanation must be in the language of the website (or other online interface) that the customer initially sought to access.

Article 4 concerns access to goods or services. Article 4(1) prohibits traders from applying different general conditions of access to goods or services for reasons related to a customer's nationality, place of residence, or place of establishment. The prohibition applies in three situations:

- Where the customer seeks to buy goods from a trader, these must be goods that are either deliverable to or collectable from a location within

a member state to which the trader offers delivery or collection in the general conditions of access,

- Where the customer seeks to receive electronically supplied services from the trader, other than services the main feature of which is the provision of access to and use of copyright protected works,
- Where the customer seeks to receive services from the trader (other than electronically supplied services) in a physical location within the territory of a member state where the trader operates.


However, there are exceptions to the prohibition in article 4. Under article 4(2), traders may offer differing general conditions of access, to include net sales prices, between member states or even within a single member state. But they must be offered to customers in a specific territory or to specific groups of customers on a non-discriminatory basis.

### Enforcement

Article 7 requires each member state to designate a body responsible for enforcement of the regulation. In Ireland, the Competition and Consumer Protection Commission will take on that responsibility. Article 7 also requires member states to adopt measures to counteract infringements of the regulation. These measures must be "effective, proportionate, and dissuasive". Article 8 requires member states to designate a body to provide practical assistance to consumers in the case of a dispute between a consumer and a trader arising from the application of the regulation. In Ireland, the designated body is the European Consumer Centre.

Solicitors who act for traders engaged in cross-border e-commerce need to advise them to examine their online interfaces (websites and mobile applications) to ensure that they are not discriminating against customers based on their nationality or location.

In addition, solicitors need to be proactive and move to review clients' commercial agreements (including terms and conditions of sale) to, once again, ensure that there is no discrimination against customers based on their nationality or location. There are certain exceptions to the prohibitions contained in articles 3 and 4 of the regulation. These exceptions provide solicitors with an opportunity to offer added value to their clients. Solicitors can take on a key role here by advising clients how to avail of the exceptions or how to ensure their commercial activities fall within the scope of one or more of the exceptions.

Last year, the European Commission helpfully published a practical '[Questions and answers guide on the Geo-blocking Regulation in the context of e-commerce](#)'. While this document is aimed principally at traders, customers/consumers, and the authorities in the member states who will enforce the regulation, it will also prove of use to lawyers, as it provides many practical examples of commercial activities that either come within or fall outside the scope of the regulation. The guide also sets out the package of measures proposed by the commission to boost the potential for cross-border e-commerce in the EU. One such measure is [Regulation \(EU\) 2017/1128](#) on cross-border portability of online content services in the internal market. 

SOLICITORS WHO  
ACT FOR TRADERS  
ENGAGED IN  
CROSS-BORDER  
E-COMMERCE  
NEED TO  
ADVISE THEM  
TO EXAMINE  
THEIR ONLINE  
INTERFACES TO  
ENSURE THAT  
THEY ARE NOT  
DISCRIMINATING  
AGAINST  
CUSTOMERS  
BASED ON THEIR  
NATIONALITY OR  
LOCATION





# SOLICITORS' BENEVOLENT ASSOCIATION

155<sup>TH</sup> REPORT, 1 DECEMBER 2017 TO 30 NOVEMBER 2018

This is the 155<sup>th</sup> report of the Solicitors' Benevolent Association, which was established in 1863. It is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, family, and immediate dependants who are in need, and it is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €773,058, which was collected from members' subscriptions, donations, legacies, and investment income. Currently there are 84 beneficiaries in receipt of regular grants, and approximately half of these are themselves supporting spouses and children.

There are 19 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices at Blackhall Place. They meet at the Law Society in Belfast every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The directors also make themselves available to those who may need personal or professional advice.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Michael Quinlan (past-president of the Law Society of Ireland), Eileen Ewing (past-president of the Law Society of Northern Ireland), Ken Murphy (director general), Alan Hunter (chief executive), and the personnel of both societies. The Law Society again organised the

## RECEIPTS AND PAYMENTS A/C FOR YEAR ENDED 30/11/2018

	2018	2017
RECEIPTS	€	€
Subscriptions	448,721	429,962
Donations	133,422	183,328
Investment income	61,419	65,684
Legacies	–	2,000
Bank interest	18	6
Repayment of grants	1,200	1,200
	<b>644,780</b>	<b>682,180</b>
PAYMENTS		
Grants	773,058	716,928
Administration expenses	55,447	59,770
Bank interest and fees	1,288	1,212
Currency loss	463	2,827
	<b>830,256</b>	<b>780,737</b>
<b>OPERATING DEFICIT FOR THE YEAR</b>	<b>(185,476)</b>	<b>(98,557)</b>
Profit on disposal of investments	50,901	152,468
Provision for decrease in the value of quoted investments	(434)	(18,277)
<b>(DEFICIT)/SURPLUS FOR THE YEAR</b>	<b>(135,009)</b>	<b>35,634</b>

## DIRECTORS AND OTHER INFORMATION


- **Directors:** Thomas A Menton (chairman), Felicity M Foley (deputy chairman), Caroline Boston (Belfast), Liam Coghlan (Killarney), Thomas W Enright (Birr), William B Glynn (Galway), John G Gordon (Belfast), Colin G Haddick (Newtownards), Niall Lavery (Dundalk), Seamus Mallon (Castleblayney), Paul Malone (Borrisokane), Anne Murrin (Waterford), John M O'Connor (Dublin), John TD O'Dwyer (Ballyhaunis), Mark Quinn (Gorey), James I Sexton (Limerick), John Sexton (Dublin), Andrew F Smyth (Dublin), Brendan J Twomey (Donegal)
- **Trustees** (ex officio directors): Felicity M Foley, John G Gordon, John M O'Connor, Andrew F Smyth
- **Secretary:** Geraldine Pearse
- **Auditors:** Deloitte Ireland LLP, Chartered Accountants and Statutory Audit Firm, Deloitte & Touche House, Earlsfort Terrace, Dublin 2
- **Financial consultants:** Brewin Dolphin Wealth Management Ltd, 3 Richview Office Park, Clonskeagh, Dublin 14
- **Bankers:** Allied Irish Banks plc, 37 Upper O'Connell Street, Dublin 1; First Trust Bank, 92 Ann Street, Belfast BT1 3HH
- **Offices:** Law Society of Ireland, Blackhall Place, Dublin 7; Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast BT1 3GN
- **Charity number:** CHY892

Spring Gala during the year for the benefit of our association, and a very sincere thanks to Michael Quinlan, the members of the Council, and to the organisers of the gala.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising certificates, to those who made individual contributions, and to

the following: Law Society of Ireland, Law Society of Northern Ireland, Dublin Solicitors' Bar Association, Courts Service, Faculty of Notaries Public in Ireland, Limavady Solicitors' Association, Medico-Legal Society of Ireland, Midland Bar Association, Sheriffs' Association, Southern Law Association, Tipperary Solicitors' Bar Association, Waterford Law Society, West Cork Bar Association, and Anthony E Collins (Law Society president 1984/85).

The demands on our association are rising due to the present economic difficulties and, to cover the greater demands on the association, additional fundraising events are necessary. Additional subscriptions are more than welcome as, of course, are legacies and the proceeds of any fundraising events. In certain cases, the association can claim tax relief for donations of €250 or more. I would encourage bar associations to run functions such as CPD courses to raise funds for the association. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4. Information can also be obtained from the association's website at [www.solicitorsbenevolentassociation.com](http://www.solicitorsbenevolentassociation.com). I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at p34 of the *Law Directory 2018*.

I would like to thank all the directors and the association's secretary, Geraldine Pearse, for their valued hard work, dedication, and assistance during the year. 

*Thomas A Menton, chairman*



# 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 Sandra Mahon, solicitor, of O'Donovan Mahon Cowen, Solicitors, William Street, Tullamore, Co Offaly, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT32]**

***Named client (applicant)*  
*Sandra Mahon (respondent solicitor)***

On 6 December 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in respect of the following complaint as set out in the applicant's affidavit:

- 1) That she acted in an unprofessional manner and ignored a court order, in the absence of any evidence, which denied the applicant access to his children,
- 2) That she did not provide any evidence to justify her actions.

The tribunal ordered that the respondent solicitor stand advised and admonished.

**In the matter of Damien Cassidy, a solicitor practising as Walker & Co, Solicitors, 22 Sandymount Road, Dublin 4, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2015* [2466/DT111/14; High Court 2016/58 SA; Court of Appeal 2016/563 CA]**

***Law Society of Ireland (applicant)*  
*Damien Cassidy (respondent solicitor)***

On 20 January 2016, 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 given by him in respect of his named client over property at Co Dublin to the governor of the company of Bank of Ireland, by undertaking dated 12 February 2004,
  - 2) Failed to reply adequately or at all to the Society's correspondence in respect of an undertaking given by him on behalf of the same named client over property at Co Dublin and, in particular, letters dated 11 October 2013, 6 November 2013, and 14 February 2014 respectively,
  - 3) Failed to attend a meeting of the Complaints and Client Relations Committee on 25 March 2014 in respect of the complaint concerning his same named client over property at Co Dublin, despite being required to do so,
  - 4) Failed to reply adequately or at all to the Society's correspondence in respect of an undertaking given by him on behalf of his named clients over property at Co Dublin and, in particular, letters dated 11 October 2013, 6 November 2013, and 14 February 2014 respectively,
  - 5) Failed to attend a meeting of the Complaints and Client Relations Committee on 25 March 2014 in respect of the complaint concerning his named clients over property at Co Dublin, despite being required to do so,
  - 6) Failed to reply expeditiously, within a reasonable time, or at all with an undertaking given by him to Bank of Ireland Mortgage Bank on behalf of his named clients over property at Dublin 4, dated 14 October 2008,
  - 7) Failed to reply adequately or at all to the Society's correspondence in respect of an undertaking given by him on behalf of his clients named clients over property at Dublin 4 and, in particular, letters dated 11 October 2013, 6 November 2013, and 14 February 2014 respectively,
  - 8) Failed to attend a meeting of the Complaints and Client Relations Committee on 25 March 2014 in respect of the complaint concerning his named clients over property at Dublin 4, despite being required to do so.
- The tribunal ordered that the matter should go forward to the High Court and, on 21 November 2016, the High Court ordered that:
- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
  - 2) The respondent solicitor pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal,
  - 3) The respondent solicitor deliver up all files to the Society pursuant to provisions of section 19(1) of the *Solicitors (Amendment) Act 1960*, as amended, by substitution, by section 27 of the *Solicitors (Amendment) Act 1994*.
- The respondent solicitor appealed the order and, on 11 January 2019, the Court of Appeal ordered that, unless the


books of appeal were lodged by 21 January 2019, the said appeal should stand struck out with liberty to apply or re-enter the appeal, with costs of the appeal to the applicant as against the respondent, to be taxed in default of agreement.

**In the matter of Aisling Maloney, a solicitor practising as AM Maloney & Co, Solicitors, Harbour Street, Tullamore, Co Offaly, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT59]**

***Law Society of Ireland (applicant)*  
*Aisling Maloney (respondent solicitor)***

On 22 January 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that she failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €1,062 as a contribution towards the costs of the Law Society. 



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## WILLS

**Armstrong, Aileen (deceased)**, late of Bridge Street, Carrick-on-Shannon, Co Leitrim, and formerly of 3 Corryard, Drumshanbo, Co Leitrim, and formerly of Saint Factchnas, 1 Kilcrea Park, Magazine Road, Cork, and formerly of 54 Lewellyn Close, Grange Valley, Rathfarnham, Dublin 14, and also 34 Ramleh Park, Miltown, Dublin 6, who died on 19 January 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact George Lynch & Son, Solicitors, Bridge Street, Carrick-on-Shannon, Co Leitrim; tel: 071 962 0017, email: [info@georgelynych.ie](mailto:info@georgelynych.ie)

**Byrne, Michael Andrew (deceased)**, late of 27 Glendown Grove, Terenure, Dublin 6W, and formerly of 20 Emmet Court, Inchicore, Dublin 8. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 24 January 2019, please contact Richard McGuinness & Co, Solicitors, 24 Sundrive Road, Dublin 12; tel: 01 492 1544, email: [info@richardmcguinness.ie](mailto:info@richardmcguinness.ie)

**Carter, Ernest (deceased)**, late of Crafffield, Aughrim, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased, who died on 13 September 2018, please contact Deirdre Fox & Associates, Solicitors, Market Square House, Aughrim, Co Wicklow; tel: 0402 36955, email: [info@foxsolicitors.ie](mailto:info@foxsolicitors.ie)

**Casey, Catherine Mary (or se Irene) (deceased)**, late of Knockeevan, Clerihan, Clonmel, Co Tipperary, who died on 26 June 2009. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding same, please contact McCarthy Looby & Company, Solicitors, Church Street, Cahir, Co Tip-

## RATES

## PROFESSIONAL NOTICE RATES

## RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €150 (incl VAT at 23%)
- **Title deeds** – €300 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €150 (incl VAT at 23%)

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

perary; tel: 052 744 1355, email: [info@mccarthylooby.ie](mailto:info@mccarthylooby.ie). If no notice is received by this office within 30 days from the date of this publication, the estate will be distributed in accordance with the rules of intestacy

**Casey, Eugene (deceased)**, late of Drumeer, Ruan, Co Clare, who died on 3 October 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rory Casey, John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co Clare; tel: 065 682 8159, fax: 065 682 0519, email: [rory.casey@caseylaw.biz](mailto:rory.casey@caseylaw.biz)

**Casserly, Frances (deceased)**, late of Gillstown Little, Kells Road, Athboy, Co Meath, who died on 10 January 2019. Would any person having knowledge of the whereabouts of a will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Cora Higgins, Regan McEntee and Partners, Solicitors, High Street, Trim, Co Meath; DX 92 002 Trim; tel: 046 943 1202, email: [chiggins@reganmcentee.ie](mailto:chiggins@reganmcentee.ie)

**Davies, Doreen (deceased)**, late of St John's House, 202 Merion Road, Dublin 4, and formerly of Ingoldsby, Crosthwaite Park South, Dun Laoghaire, Co Dublin, who died on 22 December 2017. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact O'Connor Solicitors, 8 Clare Street, Dublin 2; tel: 01 676 4488, email: [helen.mcgrath@oclegal.ie](mailto:helen.mcgrath@oclegal.ie)

**Dunne, Sean (deceased)**, late of 1 The Lane, Foxlodge Woods, Ratoath, in the county of Meath, who died on 8 September 2004. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Tallans Solicitors, The Haymarket, Drogheda, Co Louth; tel: 041 983 8708, email: [drogheda@tallans.ie](mailto:drogheda@tallans.ie)

**Evangelidis (or se Evangelides) Stephen (or se Steven) (or se Stellos) (deceased)**, late of 11 Sussex Road, Upper Leeson Street, Dublin 2, who died on 22 July 2018 at St Vincent's Hospital, Dublin 4. Would any person having knowledge of the whereabouts of any will made by the

above-named deceased please contact Sheil Solicitors, 34 Lad Lane, Dublin 2; tel: 01 631 0360, email: [info@sheilsolicitors.ie](mailto:info@sheilsolicitors.ie)

**Farrington, James (deceased)**, late of 2 Vincent's Cottage, Blackhorse Avenue, Dublin 7. Would any person having knowledge of a will made by the above-named deceased, who died on 30 July 2018, please contact Bannon Solicitors, 3 The Paddocks, Main Street, Dunshaughlin, Co Meath; tel: 01 801 7871, email: [info@bannonsolicitors.ie](mailto:info@bannonsolicitors.ie)

**Foley, Elizabeth (deceased)**, late of 28 Abbey Street, Ardara, Ballina, Co Mayo, teacher of art and pottery, formerly of 14A Commons Road, Cork, and 14 Chapel Street, Shandon, Cork, who died on 10 December 2018. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact John J Gordon & Son, Solicitors, John Street, Ballina, Co Mayo; tel: 096 21644, email: [law@jgordon.ie](mailto:law@jgordon.ie)

**Gilson, Hollie (deceased)**, late of Anner Lodge, Cappaghmore, Cloneen, Fethard, Co Tipperary/Coolbawn, Fethard, Co Tipperary, who died on 17 May 2017.



Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Johanna Lacy, Solicitors, Mespil House, Sussex Road, Dublin 4; tel: 01 231 4600, email: [johanna@jlacy.ie](mailto:johanna@jlacy.ie)

**Glynn, Anthony (otherwise Tony) (deceased)**, late of 30 St Bridget's Terrace, Prospect Hill, Bohermore, Galway, who died on 24 November 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact EP Keane & Co, Solicitors, 4<sup>th</sup> Floor, Queensgate, Dock Road, Galway; tel: 091 561 964, email: [info@keanesolicitors.ie](mailto:info@keanesolicitors.ie)

**Lennon, Michael (deceased)**, late of Coolboy, Tinahely, Co Wicklow, who died on 1 February 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Pauline O'Toole, solicitor, Main Street, Carnew, Co Wicklow; tel: 053 942 3596, email: [info@otoolesolicitors.com](mailto:info@otoolesolicitors.com)

**Moran, Michael (deceased)**, late of 30 Shanard Road, Santry, Dublin 9. Would any person having knowledge of any will made by the above-named deceased (who died in or around the mid-1990s), please contact PG Cranny & Co, Solicitors, 230 Swords Road, Santry, Dublin 9; tel: 01 842 2919, email: [caroline@pgcranny.ie](mailto:caroline@pgcranny.ie)

**Moran, Theresa (deceased)**, late of 30 Shanard Road, Santry, Dublin 9. Would any person having knowledge of any will made by the above-named deceased please contact PG Cranny & Co, Solicitors, 230 Swords Road, Santry, Dublin 9; tel: 01 842 2919, email: [caroline@pgcranny.ie](mailto:caroline@pgcranny.ie)

**Morrisroe, James (otherwise Jim) (deceased)**, late of 28 Riverwood Crescent, Castleknock, Dublin 15, who died on 20 April 2017. Would any person having

knowledge of the whereabouts of any will executed by the above-named deceased please contact C Grogan & Co, Solicitors, 3 Isolde's Tower, Essex Quay, Dublin 8; tel: 01 872 6066, email: [dublin@cgrogansolicitors.com](mailto:dublin@cgrogansolicitors.com)

**Prendergast, William (deceased)**, late of 1021 Meadow Way, Arroyo Grande, California 93420L, USA. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased on 22 August 2016, who subsequently died on 10 August 2018, please contact David Scott & Co, Solicitors, 56 O'Connell Street, Limerick; tel: 061 204 070, fax: 061 409 717, email: [info@scottssolicitors.ie](mailto:info@scottssolicitors.ie)

**Rath, Mary (deceased)**, late of Crooked Street, Clogherhead, Co Louth, who died on 1 February 1947. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Branigan Berkery, Solicitors, 29 Laurence Street, Drogheda, Co Louth; tel: 041 983 1238, fax: 041 983 1145, email: [colm@braniganberkery.com](mailto:colm@braniganberkery.com)

**Tynan, Angela (deceased)**, late of 'Duhallow', Mill Road, Thurles, Co Tipperary, and formerly of A510 Du Cane Court, Balham High Road, London SW17 7JJ, England, and Oughterard, Co Galway, who died on 9 September 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Butler Cunningham & Molony, Solicitors, Slievenamon Road, Thurles, Co Tipperary; tel: 0504 21857, fax: 0504 22230, email: [info@bcmthurles.ie](mailto:info@bcmthurles.ie)

**Weldon, Kenneth (otherwise Ken) (deceased)**, late of 3 Richmond Park, Newline Road, Wexford, and formerly of 1 Boland's Cottages, East Wall, Dublin 3; 120 Charlemont, Griffith Avenue, Dublin 9; and 1

The Rock's, Lower Abbey Street, Cahir, who died on 15 June 2018. Would any person having knowledge a will made by the above-named deceased please contact Catherine Stack, solicitor, Stone Solicitors, The Bull Ring, Wexford; tel: 053 914 6144, email: [cstack@stonelaw.ie](mailto:cstack@stonelaw.ie)

## MISCELLANEOUS

**Principal, based in mid-west region (county town), wishing to retire**, seeks interested party to take over long-established private client firm. Absolute confidentiality guaranteed. Reply to box no 02/03/19

## TITLE DEEDS

**In the matter of the Landlord and Tenant Acts 1967-2005 and in them matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Colin Doyle**

Take notice that any person having interest in the freehold estate or any immediate interest in the following property: all that the premises known as number 1 South Main Street in the town of Youghal, parish of St Mary, barony of Imokilly, and county of Cork, held under a lease dated 15 January 1914 and made between Clavevaux Henry Faunt of the one part and John Millerick of the other part for a term of 99 years from 25 March 1913, subject to yearly rent of £2.

Take notice that Colin Doyle intends to submit an application to the county registrar for the county of Cork 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 is called upon to furnish evidence of the title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Colin Doyle intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and

will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the said premises are unknown or unascertained.

*Date: 5 April 2019*

*Signed: O'Shea & Co, Solicitors (solicitors for the applicant), DeValera Street, Youghal, Co Cork*

**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 Junebay Limited in respect of premises known as 47 North Strand Road, Dublin 3**

Take notice that any person having a freehold estate or any intermediate interest in all that and those 47 North Strand, Dublin 3, being currently held by Junebay Limited (the applicant) under an indenture dated 8 March 1972 and made between Albert Siev of the one part and Martin J O'Reilly of the other part, that the applicants, as lessees under the lease, intend to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Junebay Limited intends to proceed with the application before the county registrar at the end of the 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 April 2019

Signed: Griffin Solicitors (solicitors for the applicant), Gabriel House, 6 Cypress Park, Templeogue, Dublin 6W

**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 Incity Accommodation Limited in respect of premises known as 22 Hill Street, North City Centre, Dublin 1**

Take notice any person having a freehold estate or any intermediate interest in all that and those the property 22 Hill Street, North City Centre, Dublin 1, being currently held by Incity Accommodation Limited, the applicants, under indenture of lease dated 10 January 1924 and made between Charles Coates of the one part and John Lysaght of the other part, as lessees under the lease, intend to apply to the county registrar in the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property 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 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 county of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 5 April 2019

Signed: Griffin Solicitors (solicitors for the applicant), Gabriel House, 6 Cypress Park, Templeogue, Dublin 6W

**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 DOWB Limited in respect of premises known as 34 Cabra Park, Dublin 7**

Take notice any person having a freehold estate or any intermediate interest in all that and those 34 Cabra Park, Dublin 7, being currently held by DOWB Limited (the applicants) under indenture of lease dated 25 March 1920 and made between Mary Jane Clarke of the one part and John PJ Smith and Kathleen Josephine Smith of the other part, take notice that the applicants, as lessees under the lease, intend to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property 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 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 county of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 5 April 2019

Signed: Griffin Solicitors (solicitors for the applicant), Gabriel House, 6 Cypress Park, Templeogue, Dublin 6W

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of section 17 of the Landlord and Tenant (Ground Rents) Act 1967, and in the matter of section 8**

**of the said act of 1967, and in the matter of premises situate at 22 and 22A Chapel Street, Cork, and in the matter of an application by Paul Sheehan and Gareth Sheehan**

Take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as 22 and 22A Chapel Street, Cork, and as more particularly described in the lease dated 14 January 1957 and made between the Reverend Aiden Ronald Cumming Olden to Mary Hogan.

Take notice that Paul Sheehan and Gareth Sheehan intend to submit an application to the county registrar sitting at the Cork Circuit Courthouse, Washington Street, Cork City, for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold the fee simple or any intermediate interests in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within six weeks from the date of this notice.

In default of any such notice being received, Paul Sheehan and Gareth Sheehan intend to proceed with the application before the county registrar at the end of this notice and will apply to the county registry for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the intermediate interests including the fee simple in the aforementioned property are unknown and/or unascertained.

Date: 5 April 2019

Signed: JRAP O'Meara (solicitors for the applicant), 89/90 South Mall, Cork

**In the matter of the Landlord and Tenant Acts 1967-2005, and in the matter the Landlord and Tenant (Ground Rents) (No 2) Act 1978, and in the matter of an application by Derek McCormack and Mar-**

**tin McCormack in respect of the premises at the rear of 9 Sallymount Avenue, Ranelagh, Dublin 6**

Take notice that any person having an interest in the freehold estate of land to the rear of 9 Sallymount Avenue, Ranelagh, Dublin 6, being part of the property comprised in an indenture of lease dated 15 September 1888 between Joseph Edward MacDermott of the one part and Eldred Oldham of the other part for a term of 200 years from 15 September 1888 at a yearly rent of £25 (subsequently apportioned), and therein described as "all that part of the lands of Cullenswood with the house and the premises thereon known as no 9 Sallymount Avenue, Leeson Park, containing in front to said avenue 35 feet from front to rear, on the west side 142 feet, and on the east side 157 feet, and in the rear 32 feet, the said measurements more or less, which said premises are situate in the barony of Upper Cross and county of Dublin and are delineated on the map endorsed on these presents, together with such right of passage from the garden to Chelmsford Lane at the rear of said demised premises as by a certain indenture of lease dated 14 December 1871 from John MacDermott to James Donovan, is reserved to the lessor, his heirs and assigns".

Take notice that Derek McCormack and Martin McCormack intend to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises (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, Derek McCormack and Martin McCormack intend to proceed with the appli-

cation 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 the aforesaid premises are unknown or unascertained.

*Date: 5 April 2019*

*Signed: Lavelle Solicitors (solicitors for the applicants), St James' House, Adelaide Road, Dublin 2*

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

Any person having an interest in the freehold estate or any intermediate interest in the property known as 17 Ulster Street, Dublin 7, held pursuant to the indenture of lease made on 5 February 1926 between Mary Dinnage

of the first part, the Irish Civil Service (Permanent) Building Society of the second part, and Nicholas Hand of the third part, which lands are described as "all that and those the piece or plot of ground particularly shown and delineated on the map thereof in the fold of these presents, and containing the measurements and bounded as shown thereon be the same several measurements more or less, together with the stable and premises now erected thereon and known as no 17 Ulster Street, Phibsborough, all of which premises are situate in the manor and parish of Grangegorman and county of the city of Dublin" for a term of 188 years from 16 January 1926, free of rent.

Take notice that Daniel Lambert intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a

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superior interest in the aforesaid property is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days of this notice.

In default of any such notice being received, Daniel Lambert intends to proceed with the application before the county registrar for the county of Dublin at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for such orders or directions as may appropriate on the basis that the person or persons beneficially entitled

to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

*Date: 5 April 2019*

*Signed: Ryan & Associates (solicitors for the applicant), 100 Lakeshore Drive, Airside Business Park, Swords, Co Dublin*

#### RECRUITMENT

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DE MINIMIS NON CURAT LEX

## I PUT IT TO YOU THAT I AM, IN FACT, LOVIN' IT

Some British barristers may be better off flipping burgers, [bbc.com](http://bbc.com) reports.

Criminal Bar Association chairman Chris Henley said "too often, fees for prosecuting produce hourly rates worse than wages at McDonald's". Henley noted that barristers working on standard hearings are paid just £46.50. This equates to roughly £5 an hour.

Figures published by the Bar Council show that the average criminal barrister earns around £40,000 a year. However, overheads can see this drop to just £28,000.

Still significantly higher than the starting salary at McDonald's (currently £16,640 or £8 an hour), it's worth noting that the Bar Council's figure is an average – in reality, many barristers working on a fixed-fee basis are earning well under the minimum wage, due to the hours spent working on a case.



## CAMBRIA AND CALIBRI SAVE THE DAY

A font issue is responsible for exposing an alleged fraud in Canada, [Newser.com](http://Newser.com) reports.

When Gerald McGoeys' company went bankrupt, he was ordered to pay \$5.6 million to creditors. He sought to protect two properties with signed declarations claiming that they were held in trust by his wife and three children, and therefore safe from the courts.

The problem was that one declaration (dated 2004) was written in Calibri, while the other (dated 1995) was written in Cambria. But the Cambria font wasn't designed until 2004, while Calibri was designed



between 2002 and 2004 – but both only became widely available in 2007. A self-described 'font detective' told the court that no one but a Microsoft employee or contractor could have had access to Calibri in March 2004.

"The conclusion that the trusts are shams is unavoidable," Ontario Superior Court Justice Michael Penny wrote.

So *that's* the reason that Times New Roman is popular among lawyers...

## NESCIO QUID DICAS

A law firm sent a client with a learning difficulties letters that were "full of technical and Latin phrases", [Legal Cheek](http://Legal Cheek) reports.

Despite being repeatedly asked by the client to write letters in plain English and to explain any difficult concepts, the unnamed firm sent a number of pieces of correspondence containing phrases such as 'ab initio' and 'prima facie'. The example of 'poor service' appears in fresh guidance on the Legal Ombudsman's approach to determining consumer complaints.

English Court of Appeal judge Nicola Davies has said that she loathed studying law and wishes she'd done English or history instead, reports [Legal Cheek](http://Legal Cheek). Davies was speaking to fellow jurist Heather Hallett on a podcast: "If I was advis-

ing the teenage me," she said, "I would say to her, 'do English or history at university'. I didn't realise that I could do a non-law degree and then become a lawyer. It would have given me a breadth at that early age that I didn't have."

## NOW THAT'S A HUNTIN' DOG

A man who was shot by his dog has been ruled unfit to carry a firearms licence in Germany, [The Independent](http://The Independent) reports.

The man was wounded in the arm in 2016 after his dog managed to pull the trigger on a loaded rifle left in his car. A Munich court dismissed the man's appeal against an earlier ruling to revoke his rifle licence and his hunting permit. The court decided the hunter was unreliable "because it must be assumed that he will handle firearms and ammunition carelessly in future as well".

## TOP JUDGE 'HATED STUDYING LAW'



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## **Career Opportunity**

### **Legal Research Manager (Assistant Principal Officer)**

The Courts Service is offering an excellent opportunity at a senior management level as Legal Research Manager in Smithfield, Dublin 7. The purpose of this role is to work as part of a team to lead and manage the provision of legal research and court support duties to judges of the Supreme Court, Court of Appeal, High Court, Circuit Court and District Court.

Each candidate must on or before 16<sup>th</sup> April 2019:

- hold an honours Law Degree (Level 8 in the National Framework of Qualifications) with at least 2.1 honours and a recognised relevant professional qualification, for example, a qualified Solicitor or Barrister.
- demonstrate in-depth and up to date knowledge of Irish law and the Irish legal system, including contemporary statute and case law;
- demonstrate excellent research skills and have experience of undertaking research and leading research projects and services;
- demonstrate strong written and oral communication skills; and
- possess high level ICT skills required for research purposes and be familiar with the use of commercial and open access on-line electronic law sources.

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Closing date for applications is Tuesday 16th April 2019 at 16:00

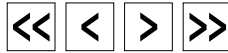
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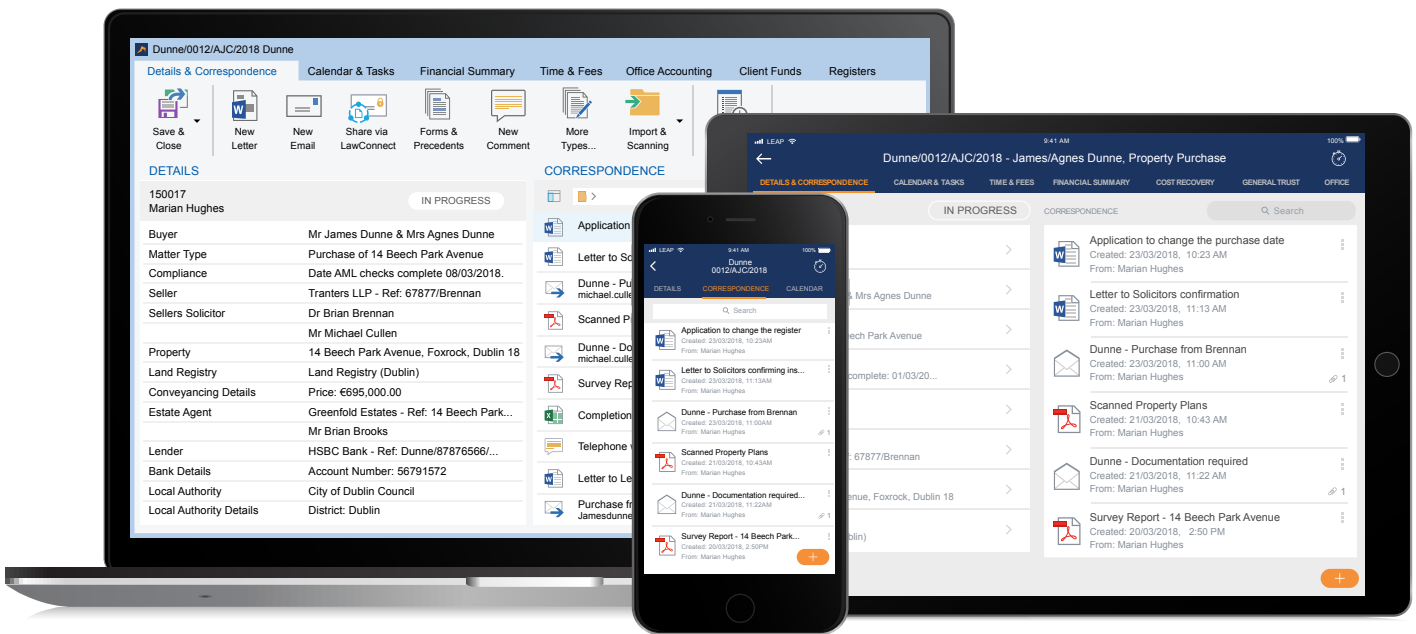
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