

# POLICY AND LAW REFORM AGENDA

A PUBLIC INTEREST AGENDA FOR IRELAND

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## PRESIDENT'S ADDRESS

It is my honour to assume the role of the 150th President of the Law Society of Ireland.

In addition to significant Covid-19 related considerations, my tenure will focus on encouraging friendship across the profession and promoting the mental health themes which underpin the necessary balance between the working and personal life of every solicitor.

We are all too aware that this is a testing time, for the profession and for the country. The Society continues to support our members throughout this period by providing targeted supports and, through a new Practice Support Task Force, working hard to ensure that the changing needs of the profession continue to be met.

I look forward to continued engagement and cooperation during the year in the interests of our members and the wider public and wish you well in your work.

**James Cahill**, President of the Law Society of Ireland



## DEFENDING LEGAL PROFESSIONAL PRIVILEGE

Prior to its commencement in September 2020, the Society highlighted concerns that [section 16 \(10\) of the Consumer Insurance Contracts Act 2019](#) (which imposes a duty to disclose information which either supports or prejudices the validity of an insurance claim) could interfere with legal professional privilege.

In doing so, the Society cautioned against enacting the provision without first establishing that it was well-founded, clear, proportionate and aligned both with Constitutional and ECHR rights.

Since the new legislation has its origins in the Law Reform Commission's 2015 Report on Consumer Insurance Contracts, the Society has also engaged with the LRC to request that it would clarify certain aspects of that report.

## FEATURED ARTICLES



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## RECENT SUBMISSIONS



### 1) IMPLEMENTATION OF THE O'MALLEY REPORT RECOMMENDATIONS



The O'Malley Review Group was established to explore reforming the protections afforded to victims of sexual violence during the investigation and prosecution of sexual offences.

The Society has provided views to the Department of Justice on recommendations made by the Review Group under the following headings:

- › Improving the investigation and prosecution of sexual offences;
- › Extension, to other categories of sexual offences, of the legal provisions around anonymity and limiting media reporting;
- › Introducing statutory preliminary trial hearings;
- › Extending free legal aid advice to other sexual offences and legal representation to victims of sexual assault;
- › Improving information and support services for victims;
- › Establishing a register of qualified intermediaries;
- › Sentencing discounts for guilty pleas; and
- › Training for Judges and legal practitioners in trauma awareness and assisting vulnerable witnesses.

### 2) CHILD CARE (AMENDMENT) BILL 2019



Following publication of the Autumn Legislative Programme, the Society wrote to the Minister for Children, Equality, Disability, Integration and Youth on reforming guardian *ad litem* law through the Child Care (Amendment) Bill.

Having worked with the Department on the issue prior to the dissolution of the last Dáil, the Society sought to re-engage on the matter so that areas of concern could be further explored and the hands-on experience of practitioners, who are experts in the area, could be brought to the table.

### 3) UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES



The Society's Human Rights & Equality Committee communicated its concern to the Minister for Children, Equality, Disability, Integration and Youth that a number of significant legislative initiatives, relevant to the State's ratification of the UN Convention on the Rights of Persons with Disabilities ('UNCRPD'), appear to have been de-prioritised in the legislative agenda.

The Society regrets that the pace of legislative change in the area has not been as expected and has provided the Minister with the following examples of crucial issues which have either failed to make significant progress or have not been actioned at all:

1. Despite an increase in funding to the Decision Support Service, it is understood that commencement of the Assisted Decision Making (Capacity) Act 2015 is not now expected until 2022, some seven years after enactment;
2. The Disability (Miscellaneous Provisions) Bill, which was deemed necessary to ratify the UNCRPD, lapsed with the last Dáil and has not been reintroduced;
3. The development of deprivation of liberty safeguards legislation (which was to be included in the Assisted Decision Making (Capacity) Act 2015) has not formed part of any legislative proposal to date despite publication of a detailed report on the issue; and
4. The implementation of the Review of the Mental Health Act 2001 remains outstanding.

On behalf of member practitioners, who wish to operate within a framework which upholds and respects the human rights of all clients, the Society has asked that these matters be re-prioritised so that the State can comply with its obligations under the UNCRPD.

#### 4) FINANCE BILL 2020



Prior to the commencement of the Finance Act 2020, the Society made representations to the Minister for Finance on Committee Stage Amendment No. 175 which introduced new provisions (to the Stamp Duties Consolidation Act 1999) in respect of dematerialised securities.

The correspondence detailed a number of concerns which had been raised by the Society's Taxation Committee, cautioned that the amendment could have unanticipated impacts on transactions in Irish securities, and emphasised the need for further consideration of issues such as migration from CREST and defining 'dematerialised securities'.

The Society recommended that further amendments should be made to the Bill to provide certainty or, in the alternative, that the amendment (and its constituent provisions) should be made subject to a Commencement Order.

The submission further suggested that the Revenue Commissioners should issue clarification that the migration from CREST did not give rise to a taxable event for the purposes of stamp duty and that the Minister for Finance should be given a regulation-making power in respect of issues which may arise.

#### 5) GENERAL SCHEME OF THE COMPANIES (CORPORATE ENFORCEMENT AUTHORITY) BILL



The Society's Business Law Committee provided comments to the Joint Committee on Enterprise, Trade and Employment on the General Scheme of the Bill and highlighted the following items for further consideration:

- › the common seal;
- › mergers under Chapter 3 of Part 9 of the Act;
- › proxies for traded plcs with listed subsidiaries;
- › various issues in relation to share capital which had been highlighted in previous reports of the Company Law Review Group (as well as previous submissions from the Society); and
- › amendment of section 8(a) of the Migration of Participating Securities Act 2019.

### UPCOMING ITEMS



#### JOINT OIREACHTAS COMMITTEE ON JUSTICE

The Society welcomes recent requests from the Joint Committee for submissions on the following:

1. General Scheme of the Family Court Bill 2020; and
2. General Scheme of the Judicial Appointments Commission Bill 2020.

These important matters are being examined by

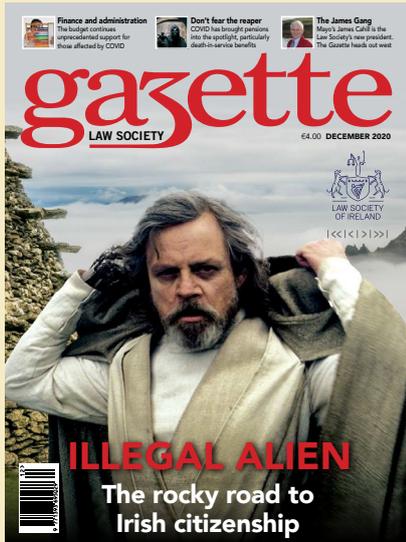
various of the Society's Committees and detailed responses will be provided to the Joint Oireachtas Committee for its consideration.

#### FAMILY JUSTICE OVERSIGHT GROUP

The Oversight Group was established by the Department of Justice in September 2020 and comprises representatives of the key state agencies which will be involved in the urgent reforms necessary to deliver a modernised family justice system. These include Government Departments, the Courts Service, the Legal Aid Board, and nominees of the Chief Justice from the District, Circuit and High Courts.

The Group will agree a vision for the development of a national family justice system and will consider a range of recommendations which have been made in that regard by the Joint Committee on Justice.

The Society has been invited to participate in the Group's current consultation process and looks forward to contributing its experience and expertise.



## POLICY & LAW REFORM IN THE GAZETTE

### Gazette.ie

If you would like to be interviewed in respect of your policy and legislative priorities – get in touch:

[gazette@lawsociety.ie](mailto:gazette@lawsociety.ie)

- **Share and share alike:** Most of the Data Sharing and Governance Act 2019 has yet to be commenced, but its provisions will enable public bodies to share personal data in a broader range of circumstances, where necessary and appropriate. (November 2020).
- **Covid-19 triggers welcome civil litigation reforms:** Many legal reforms which would otherwise have taken years to implement have been introduced in a matter of months as a result of Covid-19, including remote hearings and electronic filings (November 2020).
- **Fighting fire with fire:** The EU Commission is seeking reform to develop a comprehensive EU policy to combat money-laundering and terrorist-financing (November 2020).
- **Society welcomes new High Court practice direction:** Law Society Council Member, Liam Kennedy, welcomes Practice Direction HC 97, argues it is beautiful in its simplicity and believes that it will save

considerable court time, reduce costs for litigants – and is ecologically friendly (November 2020).

- **The day after tomorrow:** The publication of new legislation, as well as a seminal Supreme Court decision, are highly relevant to the EU and international policy framework regarding climate action (December 2020).
- **If you ever go across the sea to Ireland:** Immigration law solicitor Carol Sinnott discusses the road to Irish citizenship and the decisions to refuse and revoke citizenship applications which have led to significant constitutional challenges (December 2020).
- **Reform school:** The LSRA has issued two new reports - on legal education and on the question of unification of the two branches of the legal profession (December 2020).



For the latest articles from *The Gazette* see: [www.gazette.ie](http://www.gazette.ie)

## CALCUTTA RUN CHEQUE HANDOVER



On Thursday 17 December 2020, the Society presented €285,000 to its Calcutta Run charity partners, Peter McVerry Trust and the Hope Foundation, during an online cheque handover ceremony.

The 22nd Annual Calcutta Run took place virtually, for the first time, between 30 October and 8 November 2020. Over 1,000 members of the legal profession, their family and friends were asked to run, walk, cycle and hike to collectively reach 10,000km - the distance between Dublin and Kolkata.

## STREET LAW MOVES ONLINE

Every year, the Society's Street Law programme places trainee solicitors into local schools and community settings to teach about law. This year, 32 PPC I trainees were selected to be part of Street Law which was delivered online, with virtual teaching placements in 16 Delivering Equality of Opportunity (DEIS) schools and the Trinity Access Programmes Pathways to Law initiative.



Using best practice in civic education, the programme taps into people's inherent interest in the law and aims to promote legal literacy, equality, access to law, and to teach high cognitive and social skills which enhance participants' effectiveness in legal matters. Since 2013, the Society's Street Law programme has been delivered to over 3,500 school students.

# COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE (CCBE)



CCBE is recognised as the voice of the European legal profession. It represents the Bars and Law Societies of 45 countries and through them, more than one million European lawyers. It acts as a consultative

and intermediary body between its members and the institutions of the European Union on cross-border matters of mutual interest.

The Irish delegation to the CCBE comprises representatives of both the Law Society and the Bar of Ireland. The delegation is currently working on a range of initiatives which include:

## DIGITALISATION OF JUSTICE

The CCBE hosted a roundtable on Europe's approach to e-Justice in October 2020. The meeting heard from the German Federal Minister of Justice & Consumer Protection, the European Commissioner for Justice & Consumers and the Chair of the European Parliament Committee on Civil Liberties, Justice & Home Affairs on issues relevant to digitalisation, access to justice and the use of innovative technologies.

The roundtable was followed by publication of the European Commission's *Communication on the Digitalisation of Justice in the European Union* which aims to strengthen the resilience of the justice system across the EU. The Communication sets out a new approach to the digitalisation of justice based on a toolbox of legal, financial and IT instruments to be used by stakeholders in the justice systems of the Member States.

The Commission will propose legislation on the further digitalisation of judicial cooperation procedures in civil, commercial and criminal matters, in order to promote better access to justice. Among the IT tools envisaged by the Commission, e-CODEX (e-Justice Communication via Online Data Exchange) will be the main vehicle for establishing an interoperable, secure and decentralised communication network between national IT systems in cross-border, civil and criminal proceedings. It will allow users, such as judicial authorities, legal practitioners and members of the public, to send/receive legal forms, evidence and other information in a safe and efficient manner.

## ADOPTION OF THE DIRECTIVE FOR CONSUMERS' COLLECTIVE REDRESS

The Directive aims to empower consumers by facilitating the effective enforcement of EU rules on consumer protection. In particular, it requires Member States to put in place a system of representative action for the protection of consumers' collective interests against infringements of EU law.

The Directive entered into force on its publication in the Official Journal of the EU on 4 December 2020. Member States have 24 months from that date

to transpose the Directive into domestic law, with an additional six months for application of same.

## RULE OF LAW

The Commission's first *Rule of Law Report* was presented to the CCBE's October Standing Committee Meeting by the Director of Fundamental Rights and Rule of Law at DG Justice (European Commission). The meeting discussed trends on the independence, quality and efficiency of national justice systems which had emerged from the EU Justice Scoreboard 2020.

Following the expression of concern that the vital importance of the independence of lawyers had perhaps not been adequately captured by the Report, the CCBE was invited to provide examples of the undermining of lawyers' independence within the EU for consideration in the context of the Commission's 2021 Report.

## JUDICIAL TRAINING

The training of justice professionals on EU law is an essential tool to ensure its correct and effective application, to foster mutual trust among justice professionals in cross-border proceedings and to support the implementation of EU values and principles, such as the rule of law.

The package to modernise justice which includes a new *European Judicial Training Strategy for 2021-2024*, the *9th Annual Report 2020 on European Judicial Training* and the *European Training Platform (ETP)* was adopted on 2 December 2020.

The new Strategy broadens the scope of the EU offering to justice professionals in new policy areas such as digitalisation and artificial intelligence. While the priority is training judges and prosecutors, all justice professionals (e.g. lawyers, court staff, mediators, legal interpreters/translators and court experts) are also included.

The Annual Report measures the participation of justice professionals in judicial training on EU law while the ETP is a search tool for practitioners to source training courses and self-training resources on EU law.

## IWLA WOMAN LAWYER OF THE YEAR 2020 AWARD



The Society's 149th President, Michele O'Boyle, with the IWLA Woman Lawyer of the Year 2020 Award which was shared with Maura McNally SC, Chair of the Bar of Ireland.

## IN THE FIGURES

396



Volunteer solicitors who contribute to the work of the Society's >30 committees, working groups, and task forces.

17



Solicitors received the patent of precedence for the first time in October 2020.

4,424



'Brexit solicitors' who have applied to the Irish Roll of Solicitors since 2016.

60



Lobbying returns made between November 2019 and December 2020.

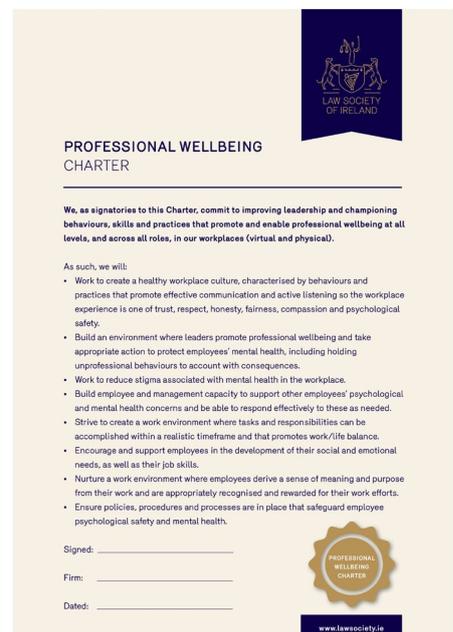
## PROFESSIONAL WELLBEING CHARTER

The Society has launched a Professional Wellbeing Charter and firms, practices, sole practitioners and those working in the in-house and public sector are invited to show their commitment to workplace wellbeing by signing up. The Society is committed to the wellbeing of our members and to supporting positive workplace cultures across the profession. The Charter aims to organise values around professional wellbeing, in the form of commitments, and to provide a forum for solicitors' workplaces to commit to same, publicly and collectively.

By signing the Charter, solicitors' workplaces commit to improving leadership and championing behaviours, skills and practices which promote and enable professional wellbeing at all levels and across all roles. The Charter also offers the opportunity to work towards creating a positive workplace culture and sends a message to employees that their wellbeing is valued.



For more information on the Law Society's Professional Wellbeing Charter, see: [www.lawsociety.ie/wellbeinghub](http://www.lawsociety.ie/wellbeinghub)



## OUR POLICY COMMITTEES - AT A GLANCE

The Society operates more than 30 committees, task forces and working groups at any given time which include dedicated policy committees. These committees are comprised of solicitors who volunteer their time and expertise to help shape our law reform agenda by providing submissions to Government in a wide range of areas such as:



1. Alternative Dispute Resolution
2. Business Law
3. Conveyancing
4. Criminal Law
5. Employment & Equality Law
6. EU & International Affairs
7. Family & Child Law
8. Human Rights & Equality
9. Intellectual Property & Data Protection Law
10. Litigation
11. Probate, Administration & Trusts
12. Taxation



## CONTACT US

We will be glad to discuss and engage on any of the matters raised in this Newsletter and invite you to contact the following members of the Law Society's Executive in that regard:

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