

POLICY AND LAW REFORM AGENDA

A PUBLIC INTEREST AGENDA FOR IRELAND

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BUSINESS AS USUAL, DELIVERED DIFFERENTLY

I am writing to you at a time of unprecedented challenge, both for our country and our profession. Throughout this period, the Law Society has, through the dedicated work of our Council, Committees and Executive, continued to represent and support the solicitors' profession during what has been an extraordinary period in our history.

Representation

We have engaged extensively over the last number of months to communicate the views, and represent the concerns, of our members.

In that regard, we have worked with the Courts Service, numerous Government Departments, the Revenue Commissioners, the Probate Office, the Workplace Relations Commission, the State Claims Agency, the Construction Contracts Adjudication Service, the Property Registration Authority and the Companies Registration Office.

Support

We have altered and enhanced our services in order to support practitioners as they adapt to a changed environment.

Initiatives have included daily President's eBulletins to the profession, on-line delivery of legal education for trainees, free CPD for practitioners, new support services for both practice owners and individuals as well as the introduction of a range of health and wellbeing supports for practitioners and their dependents.

Remote courts and technology

April saw what has been described as a seismic shift in the manner in which our justice system operates when remote court hearings were introduced. The capacity to run cases remotely will almost certainly have a substantial impact on the manner in which our courts conduct business into the future.

Recent months have seen a remarkable fast-forwarding of the adoption and implementation of technology across our profession. We are all participants in that change which is likely to be permanent, as many traditional ways of doing business are unlikely to return.

A word of thanks

As I invite you to enjoy this overview of the Society's recent policy and law reform work, I want to acknowledge the officers and officials at the Government Departments and Agencies who worked tirelessly with us to ensure the continued operation of the legal system throughout the crisis.

Each of our organisations were challenged to continue to provide essential services, sometimes in difficult circumstances, and we appreciate the collaborative and constructive approach to addressing obstacles.

I would like to congratulate both the new and returning members of the Houses and wish you well in what we know will be challenging times ahead.

For our part, our members will continue their vital work in communities across the country and as ever, the Law Society remains available to assist in working through the difficulties which may arise, in whatever way we can.

Michele O'Boyle, President of the Law Society of Ireland

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RECENT SUBMISSIONS



1) ON-LINE HARASSMENT, HARMFUL COMMUNICATIONS AND RELATED OFFENCES



In this submission to the Oireachtas Committee on Justice and Equality, the Society identified the following issues to be addressed:

1. Any definition of 'communication' needs to encompass changing technologies.
2. Focus should be placed on harm inflicted and defining 'harmful content'.
3. Criminal law must be nuanced and responsive to technological developments and legislative reform should consider the proportionality of the response as well as the harm caused.
4. The Society supports the introduction of the offence of distributing a threatening, false, indecent or obscene message by any means of communication, with the intent of causing alarm, distress or harm, or being reckless as to same.
5. Balancing the right to freedom of expression with the right to privacy is delicate. While criminal legislation is vital in punishing harmful activity, education is also important.
6. The Society believes that allowing varying levels of self-regulation among online platforms is not an adequate response. The establishment of a Digital Safety Commissioner will be welcome.

2) CRIMINAL JUSTICE (VICTIMS OF CRIME) BILL 2018



In providing evidence on the Bill to the Justice and Equality Committee, the Society emphasised the vital nature of the prosecution of sexual offences, and conviction of sexual offenders, in any society which wants to protect the rights of all victims of sexual and gender based violence.

It is in the public interest for victims to be supported through the legal process as they are the primary, and often only, witnesses to such crimes. Currently, the right to legal aid and representation for victims of sexual and gender based violence is ad hoc. This Bill is an important step towards developing a comprehensive legal aid and advice service for victims in order to support them through the complex and often gruelling process of a criminal justice trial.

3) DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE MARKET



Ireland is at the forefront in technological advancement and creativity both of which are of strategic, societal and economic importance. As such, it is vitally important that the legal and regulatory framework around this issue is precise, balanced and robust.

This submission welcomed the development of an appropriate framework to provide legal certainty for consumers, businesses and practitioners operating in the market.

4) REVIEW OF THE PROHIBITION ON THE INCITEMENT TO HATRED ACT 1989



The Society participated in the Department of Justice and Equality's public consultation on the review of this Act and submitted that:

1. Striking a balance between the right to freedom of expression and the right to be free from violence and hate is of vital importance.
2. Protected characteristics under the Act should be broadened to include those based on gender, disability, civil status, family status and age, whether actual or perceived.
3. The term 'hatred' should be clearly defined and the work of the European Commission against Racism & Intolerance, as well as that of the UN Special Rapporteur, could be considered in that regard.
4. Intention to 'stir up' should be capable of being established without needing actual proof that a third party responded to, or was incited by, the impugned behaviour.
5. The mental threshold required to prove the offence of incitement to hatred should be lowered to recklessness.
6. Any reform of the existing framework must address on-line incidents of hate speech and where conduct reaches sufficiently serious levels, criminal measures should be in place to deal with such offences.

5) GENERAL SCHEME OF THE HOUSING AND PLANNING AND DEVELOPMENT BILL 2019



The general scheme includes proposals to:

- a. reform standing rights to bring judicial review proceedings in planning cases; and
- b. introduce special legal costs rules.

The Society expressed concern that the cumulative effect of the proposed changes would be to severely restrict access to justice, which is a fundamental personal right under Article 40.3 of the Constitution.

It is also of concern that the requirements described in the general scheme risk breaching the Aarhus Convention and its implementing Directives as well as provisions of the EU Charter of Fundamental Rights and the European Convention on Human Rights.

At a time when the Dáil has recognised that Ireland is facing a 'climate and biodiversity emergency', the introduction of these proposals would endanger the progress which has been made in enabling citizens to participate meaningfully in decision-making where environmental rights are threatened.

6) CAPPING DAMAGES IN PERSONAL INJURY



The Society made a submission to the Law Reform Commission on its Issues Paper on the question of capping damages in personal injury actions. In doing so, the following matters were highlighted:

1. The Issues Paper accepts, for the purpose of its legal analysis, two factual premises neither of which have been established by Government or any other relevant body and neither of which are accepted by the Society. They are that:
 - i. Damage awards are, in fact, too high; and
 - ii. Capping general damages will result in the lowering of insurance premiums.
2. The Society would have significant concerns, driven by the profit maximisation incentives of insurance companies, if a cap on damages was to be introduced without

any consequential guaranteed reduction in insurance premiums.

3. Section 90 of the Judicial Council Act 2019 provides that general guidelines may be adopted by the Council regarding the level of damages which may be awarded or assessed in respect of personal injuries. The Society believes that it is neither appropriate, nor constitutionally justified, to introduce legislative proposals to cap damages without first assessing the effectiveness of Guidelines introduced under this section.

The Society concluded that, of the models proposed, Model 4 is the only one which fully accords with the constitutional requirements of separation of powers and the administration of justice by the courts and further, that Section 90 Guidelines should be allowed an opportunity to operate.



POLICY & LAW REFORM
IN THE GAZETTE

- **Life in technicolour:** COVID-19 has wrestled the legal world into embracing the technological advantages of the 21st century, but not every matter can be dealt with remotely, say judges (May).
- **Pandemic supports** still evolving: Limited State support is in place for self-employed people during the COVID-19 pandemic, but a range of initiatives to support businesses and employers have been established (May).
- **Law Society launches updated eCompendium:** The Law Society has launched the fully digital eCompendium to the Solicitors Acts, which contains all primary legislation regulating solicitors

and empowering the Society, and now includes the Legal Services Regulation Act 2015.

- **Family Law:** Guidelines on the assessment and preparation of 'voice-of-the-child' reports place significant obligations on parties and their legal representatives.
- **Litigation:** When documents disclosed in discovery have been redacted, the courts face a balancing act between the public interest in the confidentiality of documentation and the public interest in securing justice.



For the latest articles
from *The Gazette*
see: www.gazette.ie

COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE



The 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 is comprised of representatives from both the Law Society and the Bar of Ireland. Recently, the delegation engaged with the CCBE on the following initiatives:

1. AMENDMENT OF THE RULES OF THE EUROPEAN COURT OF HUMAN RIGHTS

In circumstances where:

- a lawyer had lodged applications to the Court in the name of clients who were deceased; and
- the lawyer had been excluded from representing applicants in those and any other cases,

the Court consulted with the CCBE on amendments to its Rules to provide clarity in the event of future similar scenarios.

2. EU POLICY ON JUDICIAL TRAINING

The CCBE has long advocated for high-quality training for lawyers and the need for a better mutual understanding of different EU legal systems. As such, it welcomed work undertaken by the European Commission to further develop policy on judicial training for justice professionals.

In its engagement with the Commission on the issue, the CCBE emphasised the necessity to:

- ensure the continued development of principles defined in the long-term strategy on European judicial training;
- guarantee political commitment to regular professional development and continuing legal education; and
- regularly update and develop lawyers' knowledge and skills to safeguard the quality of justice across the EU.



Read more about the work of CCBE at www.ccbe.eu

THREE KEY PRIORITIES

1. INSURANCE

LAW SOCIETY PRIORITY - *Attract international competition to Ireland's dysfunctional insurance market*

The first annual Private Motor Industry Report from the Central Bank's National Claims Information Database confirmed that the insurance industry in Ireland generated an operating profit of 9% in 2018, almost double that of its UK equivalent at 5%. This evidence supports

a position long-held by the Society; that neither claims costs nor legal fees could possibly account for the extortionate insurance premiums which are commonplace in Ireland.

It is vital that attracting international competition into Ireland's uncompetitive and dysfunctional insurance market is now progressed as a matter of urgency, as the State faces into a period of widespread uncertainty and economic concern.

It becomes even more crucial as our SME sector embarks on a recovery that will always be vulnerable to the unrealistic demands of insurance providers, which have become all too familiar.

It has never been more important that decisive action is taken quickly to bring an end to the status quo and in doing so, protect both individual consumers and the SME sector which will be vital to our recovery.

2. ACCESS TO JUSTICE AND LEGAL AID

LAW SOCIETY PRIORITY - *Improved access to justice*

Access to justice is a fundamental right of all European citizens and is protected as such under Article 6 of the European Convention on Human Rights.

Legal aid is an essential tool in ensuring access to justice and accordingly, Ireland has an obligation to enable that access through a properly functioning and appropriately funded criminal legal aid system.

After a decade of budget constraints, Ireland's system has been placed under enormous strain which in turn, directly impacts on solicitors' ability to provide legal aid services to vulnerable clients. Urgent action is needed to begin to address fundamental imbalances in the existing system.

3. TAXATION

LAW SOCIETY PRIORITY - *Tax law consultation period*

Adequate time must be given - both to practitioners and Revenue - to fully consult on key changes to tax law.

We have repeatedly highlighted the need for input in this area, particularly in respect of Finance Bills.

Providing adequate time for legislation to be considered by practitioners in advance of its introduction, mitigates against confusion and enhances certainty in our tax system.

With that in mind, the Society is recommending the introduction of a formal technical consultation period to operate prior to the publication of future Finance Bills.

LEGAL SERVICES REGULATORY AUTHORITY



An tÚdarás Rialála Seirbhísí Dlí
Legal Services Regulatory Authority

The Society meets with representatives of the Authority on a regular basis to discuss items of mutual interest. We also make submissions to the Authority from time to time in respect of relevant matters.

Most recently, the Society provided views around Regulations which the Authority will make in respect of the advertising of legal services. In sharing its experience of previously regulating solicitors' advertising, the Society suggested that the Authority consider:

- technological advancements in online advertising;
- specific prohibitions on advertisements which refer to claims for damages for personal injury;
- use of the phrase 'no win, no fee'; and
- the distinction between an advertisement and a communication intended to provide information on the law.



CALCUTTA RUN 2020



THE LEGAL FUNDRAISER



Over its 21 year history, the Calcutta Run has raised €4.3 million for worthy causes. Due to Covid-19, this year's run has been postponed until Saturday, 24 October 2020. Undeterred, many runners still took to the streets on 23 May 2020 to celebrate and take part in the first Virtual Calcutta Run!



For more visit www.calcuttarun.com

IRELAND FOR LAW

Post-Brexit, Ireland is the only English-speaking common law jurisdiction in the EU which is fully integrated into the European legal order. It is a set of circumstances which, while offering clear advantages, pose unique challenges.

Under the Chairmanship of former Taoiseach John Bruton, the Society is a member of Ireland for Law (previously the Brexit Legal Services Implementation Group) together with the Bar of Ireland, the Attorney General, the IDA and senior civil servants across a number of Government Departments.

In seeking to capitalise on our potential competitive advantage, the Group will work to promote Ireland as a leading centre for international legal services. The Group will also advocate for the use of Irish law and Irish legal services in contracts and transactions.

Far from being a given, this is a hotly contested space with other EU jurisdictions - including France, Germany and the Netherlands - also seeking to avail of any opportunities. It is vitally important that we position Ireland to play a significant role in the international market for global legal services.

IN THE FIGURES

500



PPC 1 students in 2019/20

448



PPC2 students learning remotely during Covid-19

46



PPC Hybrid students on pilot course

11,532



Practising Certificates issued in 2020

2,465



Law firms in Ireland offering legal services

COURTING DISASTER CAMPAIGN

A properly functioning courts system is essential to providing access to justice and yet, some of the most vulnerable members of society are subjected to wholly unsuitable court facilities. These include those seeking to resolve family law issues arising from relationship breakdown and domestic abuse.

Family law and childcare cases are heard in buildings without consultation rooms or separate waiting areas which could provide some privacy in these most sensitive of cases. We have seen that this can significantly increase the stress and anxiety which is commonplace.

The Society has consistently highlighted this crisis and has now pledged its support to the multi-agency *Courting Disaster Campaign*.

Other participants include Aoibhneas, Barnardos, Children's Rights Alliance, Community Law and Mediation, Dublin Rape Crisis Centre, Family Lawyers Association, FLAC, National Women's Council of Ireland, One Family, Rape Crisis Network Ireland, SAFE Ireland, Sonas Domestic Violence Charity, The Bar of Ireland, Treoir and Women's Aid.

Building on the Justice and Equality Committee's recommendation "*that the necessary funding be allocated to ensure the construction of a purpose-built family law complex is commenced as a matter of urgency*", the Courting Disaster Campaign is calling for a number of urgent actions which include:

- 1. Assign Budget** - to develop a dedicated Family Law and Children's Court at Hammond Lane.
- 2. Prioritise Children** - enable the voice of the child to be heard, provide onsite services such as guardian ad litem and social workers.
- 3. Provide Suitable Accommodation** - including onsite Legal Aid Board and mediation facilities, child-friendly spaces, separate waiting areas and private consultation rooms.
- 4. Make it Accessible** - include wheelchair ramps, induction loop systems, video links for vulnerable users, supports for people with intellectual disabilities and assistance for lay litigants.

OUR POLICY COMMITTEES - AT A GLANCE

The Law Society operates up to 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. Our committees provide submissions to Government across a wide range of areas which include:



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 engage further 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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